

# UPDATED GUIDANCE FOR ARRA FUNDS

## AMERICAN RECOVERY & REINVESTMENT ACT GEORGIA DEPARTMENT OF COMMUNITY AFFAIRS UPDATED IMPLEMENTATION PLAN

### Current Funds Available

General: Approximately \$10 million

Preservation: Approximately \$15 million

(Preservation Program fund notice is attached as a separate document)

## I. OVERVIEW

On February 17, 2009 the President signed the American Recovery and Reinvestment Act (ARRA) in an effort to combat the recession, stimulate the economy, create employment and begin reinvestments in the nation's physical and economic infrastructure. The resources from ARRA, in combination with those provided by the 2008 Housing and Economic Recovery Act (HERA), provide the State of Georgia with powerful resources intended to combat current economic challenges within the Low Income Housing Tax Credit (LIHTC) program. DCA has an exciting and historic opportunity to utilize ARRA's affordable housing resources to address these issues while participating in the State of Georgia's economic recovery. Since that time, DCA in partnership with the development community has overcome significant challenges to ensure that Georgia tax credit projects that qualify for funding have proceeded quickly in meeting the priorities and goals of that legislation. The following are the resources that ARRA has made available to DCA as of December 10<sup>th</sup>, 2009:

TCAP				\$54,481,680
Section 1602		GRANT 1	\$75,952,358	
		GRANT 2	\$119,607,586	
		TOTAL	\$195,559,944	\$54,481,680

DCA completed its first review of submitted applications. As of December, 2009, DCA has ARRA resource requests totaling \$171,119,788 and TCAP requests totaling \$54,257,079. Projects have closed on awards totaling approximately \$85 million which are now under construction bringing jobs and resources into Georgia.

As the tax credit market continues to be challenged by price volatility, lower prices and lack of investors, DCA remains committed to ensuring that these resources are carefully, wisely and quickly expended in accordance with all federal, state and DCA policies. The following is updated guidance on requests for remaining resources. (These overall policies and procedures should be read in conjunction with the program descriptions and guidance, the DCA application process and loan term documents for the TCAP and Section 1602 Exchange programs found on our website.)

DCA will accept requests for ARRA funds commencing immediately until January 30, 2010. Submission of a request for funds is not a guarantee that funds will be available. DCA reserves the right to determine which funding source will be utilized for each project.

# UPDATED GUIDANCE FOR ARRA FUNDS

## II. ARRA POLICY

### A. Statutory and Program Objectives

DCA's Implementation Plan for ARRA resources considers the policy objectives and priorities which are mandated by the statute. These include the following:

Maximize the value of resources. DCA has implemented policies that take into account leveraging of other funds and overall efficiency of resource utilization. DCA will reject projects that deflate the value of the resources made available through ARRA or negatively impact the long term viability of the tax credit program.

Spur immediate economic activity and employment by focusing on projects that can be implemented quickly. While not every stalled project will move forward, many can be restructured to immediately start construction. The Act mandates a preference for projects which are "shovel ready". DCA defines "shovel ready" projects as a tax credit development that can actually commence construction within thirty days of approval of a commitment for ARRA funds. The ability of a project to expend funds in accordance with the strict program requirements of the program will also be a significant consideration.

Improve the quality, sustainability, energy efficiency and long term impact of projects developed with ARRA resources. These one-time funds create a special opportunity to structure transactions that can weather the difficult economic headwinds currently facing Georgia. It gives DCA and its affordable housing development partners the opportunity to look creatively at new and innovative ways to foster the long term improvement and viability of the tax credit program.

Increase the transparency and accountability of both DCA and ARRA recipients' utilization of resources which have been entrusted to us by the United States Government.

### B. DCA Policy and Program Objectives

DCA carefully reviewed the needs of the Georgia affordable housing program and formulated specific policy objectives which have been used in the formulation of the Georgia Implementation Plan for ARRA programs. These policy objectives include, but are not limited to the following:

DCA believes that continued inclusion of syndicators in the funding of projects is a priority under ARRA and is essential to the long term viability of the Tax Credit Program. Therefore, projects with syndication participation will generally be given priority in funding decisions.

DCA also believes that maintaining competitive pricing of tax credits is essential to the continued viability of the program. Therefore, DCA will consider whether proposed pricing is reasonable in determining whether a project is eligible for ARRA funding. DCA will utilize pricing data for similar projects as well as the 85 cent standard established through the ARRA exchange in determining whether the pricing of credits is reasonable.

## UPDATED GUIDANCE FOR ARRA FUNDS

All projects that request ARRA funds will undergo rigorous scrutiny to determine the reasonableness of all budgeted items and to ensure that all funds are used in the manner intended by the Act.

DCA will require that all projects that propose ARRA funding undergo a rigorous review of projected construction costs to ensure reasonableness of the construction budget.

DCA may require the incorporation of additional design modifications for the purpose of reducing utility costs, increasing energy efficiency and/or improving feasibility, as a condition of funding.

Regardless of whether a project received an allocation of credits, DCA reserves the right to determine whether any project requesting funds constitutes the best use of ARRA resources.

Projects that fail to meet milestones and/or DCA deadlines may be replaced with projects that can meet projected start dates.

Delays in commencement of construction may result in the immediate withdrawal of funding.

Existing government funding sources that have been committed to a project must remain in place unless specifically waived by DCA. These sources include HUD, USDA and HOME funding. DCA believes that ARRA is meant to provide gap financing and not supplant long standing programs for affordable housing financing. DCA will also consider whether a project is eligible for ARRA funding from another source in determining a project's allocation of funds.

All applicants and general contractors are required to take DCA's federal compliance training prior to the commencement of construction. Applicants and general contractors will also be required to participate in a pre construction conference prior to the start of construction.

All general contractors of a project funded by ARRA are required to undergo an audit of actual costs and provide a general contractor cost certification of costs at the time of project completion.

Construction contracts should have a fixed pricing structure. The ARRA legislation encourages the use of competitive bidding in determining contract pricing.

Projects located at or near areas with high foreclosure rates will be carefully scrutinized. New construction projects at or near abandoned, foreclosed or underutilized existing housing will be carefully scrutinized to determine whether funding would further negatively impact proposed neighborhoods.

DCA will determine ARRA funding and financing structures through a more sustainable underwriting model. The volatility of market conditions makes effective estimation of rents, taxes, utilities and similar variables difficult. Therefore, DCA will attempt to address these issues through sensitivity analysis of rent and expense variations as well as the adequacy of reserve requirements. Applicants should expect to see their pro

## UPDATED GUIDANCE FOR ARRA FUNDS

forma modified in order to insure that developments funded with ARRA funds will be financially sound and able to handle periodic changes in rent and expense structures.

Projects that receive ARRA funds will be reviewed to ensure that there is not an undue enrichment to any party to the transaction. This review may result in the limitation of unrestricted, net cash flow annual return. DCA may also require that a portion of cash flow be utilized to further fund reserves, lower rents or reduce the principal amount of the ARRA loan. This limitation is made to prevent the Applicant from being unduly enriched and will not be utilized to limit the feasibility of the project.

Except as set forth in this Notice or in future DCA guidance, all pro formas should incorporate the policies set out in the 2009 QAP relating to tax credits allocations and HOME funding.

### III. DCA SELECTION PRIORITIES

In determining which projects will be selected for an award of ARRA funds, DCA will consider all statutory and DCA Policy and Program objectives set forth above. In addition, projects that can demonstrate one or more of the following will be given priority in funding selections:

2008 projects that were selected for an allocation of 9% credits, have obtained a firm commitment for the sale of federal credits, and which can conclusively prove that they can be ready to close on all funding sources within sixty days and need \$2 million or less.

Projects that can qualify for TCAP and meet the following conditions:

- Have received an award of credits within the TCAP program requirements (Oct, 2006 through September 2009);
- Have closed on equity commitments and completed a majority of the proposed construction and/or renovations;
- Have stalled as a result of lack of funds, lack of permanent financing, resizing of permanent loans or the need to complete additional repairs.

4% tax credit/tax exempt bond projects which have firm equity commitments, which preserve an expiring tax credit project and which can be ready to commence construction on or before April 1, 2010 and which have a gap of \$3 million or less. To qualify for TCAP, these projects must have a published award of tax credits on DCA's website prior to or no later than 9/30/09.

2009 projects that have received an allocation of 9% credits, did not request ARRA funds in the original application, have obtained a firm commitment for the sale of federal credits and which can conclusively prove that they are ready to close on all funding sources within sixty days and need \$1 million or less.

4% tax credit/tax exempt bond projects which have a firm equity commitment, credit enhancement in place, leveraged funds besides equity and have a gap of \$2 million or less. To qualify for TCAP, these projects must have a published award of tax credits on DCA's website prior to or no later than 9/30/09.

# UPDATED GUIDANCE FOR ARRA FUNDS

## A. Application Submission Requirements

- Revised Core Application (whichever format was originally utilized in the tax credit application). The amount of ARRA financing requested should be entered into the Sources in the amount requested. Applicants must ensure that development and operating costs are reasonable and accurately represented in the Application. This should also be submitted on a CD.
- \$3,000 pre-paid asset management fee (credited at closing)
- Narrative on Applicant's letterhead that includes but is not limited to the following information:
  - Amount of assistance requested. (The purpose of ARRA funds is to fill the gaps in financing resulting from reduced equity pricing or inability to secure an investor relating to current economic conditions. Changes in income, expenses, cost budgets, etc. is generally not allowed unless they are accompanied by supportable, detailed justification contained in the Narrative. (However, DCA reserves the right to make these changes as a result of its underwriting.)
  - A statement regarding any change that would impact the original score from the original Application submission during the competitive round.
  - Detailed description as to what the applicant has done to fill the gap with other sources, including names and contact numbers.
  - Narrative description of the "energy efficiency" scope of your construction plans with details as to how the project will achieve the national goal of green building and energy efficiency. If construction techniques which would reduce utility costs or alternative energy sources have been considered, but determined that the current project structure makes inclusion cost prohibitive, please provide a detailed narrative of those considerations and their anticipated cost and expense saving, if available.
  - Estimate of jobs that will be created/retained.
- Detailed Project time Schedule in a format similar to the DCA time line sample posted on the web which clearly outlines the project's ability to commence construction on the appropriate Round's "shovel ready" date. The project schedule must address each step of the process which will lead to the commencement of construction. Note all incomplete documents or processes in the schedule. DCA will utilize this schedule as bench mark for successful development of the project and to stage our work flow. Therefore, Applicants will be responsible for meeting the deadlines that they develop in this project schedule. It is imperative that the schedule be accurate and complete. Note: Applicants are not required to use DCA's sample form if they have similar scheduling software that can provide a detailed timeline.
- Current commitment(s) for tax credit equity (if applicable). The priority with respect to processing and funding will be dependent upon the firmness of your equity commitment(s). The commitment must have the name and phone number of your contact. Direct syndication of credits is allowable, but an investor must be in place for the commitment to be considered semi firm.

## UPDATED GUIDANCE FOR ARRA FUNDS

- Current commitment(s) for debt financing (construction and permanent) if such financing is part of your financial structure. Again, the priority with respect to processing and funding will be dependent upon the firmness of debt commitment(s). The commitment must have the name and phone number of your contact, and be willing and able to close within 60 days of the commitment date.
- Detailed work scope for rehab projects
- Fully completed Design-Development Plans must be ready for review no later than thirty days after application submission.
- Revised or updated Relocation Plan (if occupied rehab)
- If the site has been purchased, a copy of the settlement statement
- A copy of the Owner-Architect agreement
- If the project is proposed as an acquisition/rehabilitation where there is no syndicator involved and there is an identity of interest between the buyer and the seller of the proposed project, a legal opinion regarding the eligibility of the proposed ownership structure to qualify for acquisition credits is required.

### **B. Environmental Requirements**

- Applicants may be required to also provide a Phase I environmental assessment that meets DCA HOME/TCAP requirements. Projects that have a NEPA release from another entity should provide all of the information that was utilized to obtain the NEPA release. DCA will determine whether an additional review is necessary in accordance with NEPA Guidance published by HUD and Treasury.
- HUD Environmental Questionnaire.
- Request for Approval of Contractor form and all documentation required for the request (see website for requirements).
- A copy of the proposed Owner-Contractor Agreement, Schedule of Values and preliminary construction schedule. The Schedule of Values must be prepared by the contractor based upon a quantity take-off of the design development/construction documents, and must be sufficiently detailed so as to permit a cost analysis evaluation.
- If the project involves new construction, geotechnical soils report.
- HUD Environmental and Relocation Notice