

# **Tax Credit Exchange Process and Criteria**

The American Recovery and Reinvestment Act (ARRA) included two provisions for Housing Credits:

- \$2.25 billion for the Tax Credit Assistance Program (TCAP) , and
- the ability for agencies to exchange certain allocations for cash from the Treasury (Exchange).

The North Carolina Federal Tax Reform Allocation Committee (Committee) and Housing Finance Agency (Agency) will administer the state's Exchange pursuant to these Process and Criteria (Exchange Criteria).

## **I. INTRODUCTION**

The Agency will follow ARRA's overall purpose of creating and saving jobs in the near term by using the appropriation to start construction on shovel-ready activities.

The Exchange Criteria are subject to revision based on changed circumstances, such as continued guidance from federal agencies. The Agency will announce and clearly indicate any changes.

Terms used in the Exchange Criteria will have the same meaning as under IRS Code Section 42, federal regulations, the 2009 Qualified Allocation Plan, Treasury's "Grantee Terms and Conditions", and legal agreements between the Agency and Owners.

## **II. APPLICATION AND EVALUATION**

### **A. THRESHOLD ELIGIBILITY**

1. The project must have an award of 9% tax credits from the 2007, 2008 or 2009 cycles and the Owner must have either an equity investment or made good faith efforts to obtain one. For purposes of the Exchange Criteria, "award" means approval by the Committee and posting on the Agency website [www.nchfa.com/Rental/RDdevportfolio.aspx](http://www.nchfa.com/Rental/RDdevportfolio.aspx).
2. The project and Owner must be eligible under applicable federal requirements.
3. The project complies with the terms of its carryover allocation agreement (if applicable) and the Owner has made no material changes after the final accepted application without the Agency's prior approval.
4. Owners must be able to expend one hundred (100%) of the Exchange award before December 31, 2010 and place projects in service by December 31, 2011. In determining whether Owners will be able to meet this requirement, the Agency will consider:
  - the anticipated building timelines, including any challenges (e.g. extensive sitework), and
  - Owners' and general contractors' recent history of timely construction.

### **B. APPLICATION PROCESS**

1. Only projects qualifying under Section II(C)(1) below with awards from the 2007 or 2008 cycle will be able to apply in the initial application round. The application form and deadline will be announced later. Subsequent rounds will open later in the year.
2. Owners of projects without equity must submit a written description of efforts to obtain an equity investment for each project, including a list of all syndicators and investors contacted. The Agency may contact equity providers for verification.

3. The Agency will assess a \$500 application processing fee.

#### C. FUNDING PRIORITIES

1. Replace anticipated equity investment and/or state resources.
2. Gap financing for projects that closed equity at a lower price than anticipated.

### III. GENERAL REQUIREMENTS

In addition to the terms of the Exchange Criteria, Owners will comply with the Qualified Allocation Plan (QAP) and Appendix B applicable to the project's final accepted application.

#### A. UNDERWRITING STANDARDS

Other than the following provisions, underwriting standards will be announced along with the TCAP/Exchange application. The Agency will have the ability to make changes to a project's final accepted application (if applicable), including but not limited to the sources, uses, income, and expenses.

1. Exchange contributions will be approximately equal to the anticipated equity in the project's final accepted application. In all cases the award and contribution amounts will be no more than the lesser of:
  - (a) the project's eligible basis, and
  - (b) what is necessary to ensure the project's financial feasibility and viability for thirty (30) years based on the Agency's IRS Code Section 42(m)(2) review.
2. Exchange contributions will be for thirty (30) year terms with no interest or payments.
3. Developer fee for projects without an equity investor will be paid as follows:
  - (a) twenty five percent (25%) upon the Owner expending the entire Exchange contribution amount; and
  - (b) twenty five percent (25%) upon Agency approval of the project's final cost certification.

Owners will deposit the remaining fifty percent (50%) in a controlled bank account with funds released based on the Owner maintaining compliance. Twenty percent (20%) of the total deposited can be withdrawn each year for five (5) years starting in December of year after the project places in service.

4. Owners will need to provide updated commitment letters from all permanent funding sources (other than equity).

#### B. POST-AWARD AND CONTRIBUTION TERMS

1. Exchange Contribution Commitments will specify construction schedules. Owners will have until November 15, 2010 to send the Agency information necessary to disburse Exchange funds. (This date may change based on federal disbursement practices.)
2. Owners will be responsible for securing sources to cover any part of the Exchange contribution amount not expended by December 31, 2010. The Agency will make a determination if doing so will be feasible, and if not may
  - rescind other funding commitments, such as RPP loans, and/or
  - initiate foreclosure proceedings to recapture Exchange contributions.
3. Construction loans must allow for future advances and principal payments permitted at any time during the life of the loan.

4. Remedies for default on the Exchange contribution agreement or other noncompliance may include the Agency having the ability to do some or all of the following:
  - declare participants not in good standing,
  - change the structure of the ownership entity, including adding or removing members/partners,
  - replace the management company,
  - recapture as authorized under federal policies, and
  - other remedies as determined by the Agency.

Any amount subject to recapture becomes a debt owed to the United States payable to the General Fund of the Treasury and enforceable by all available means against any assets of the Owner.

5. Owners will return the project's tax credit allocation by a date determined by the Agency.
6. The Agency will assess an origination fee equal to one percent (1%) of the Exchange contribution amount.
7. Owners will record a thirty (30) year Declaration of Land Use Restrictive Covenants (Declaration) pursuant to QAP Section VI(A)(9).

#### C. REPORTING AND COMPLIANCE

1. Owners will report to the Agency on the number of:
  - construction jobs created and retained,
  - non-construction jobs created and retained,
  - total housing units newly constructed or rehabilitated, and
  - low-income housing units newly constructed or rehabilitated,plus any other information necessary for the Agency's federal reporting requirements after the end of each calendar quarter.
2. Owners will follow the Agency's processes and procedures applicable to IRS Code Section 42 projects with an investor and any additional compliance requirements made necessary due to Exchange funding.