

Increase Guidelines For Credit Equity Loss

Guidelines for Requesting Additional Funding Related to Decreases in Low-Income Housing Credit Equity Contributions

Subject to the availability of funds, the New York State Division of Housing and Community Renewal (“DHCR”) and the New York State Housing Trust Fund Corporation (“HTFC”) will consider requests for additional tax credit and/or subsidy financing to address the loss of tax credit equity attributable to market conditions beyond the control of project awardees. Under the terms outlined below, DHCR and HTFC will seek to work collaboratively with awardees and other partners to enable projects to move forward to completion. Awardees are strongly encouraged to discuss their request for additional funding with their DHCR Project Manager prior to submission of the request.

Further, certain provisions of the federal Housing and Economic Recovery Act of 2008 , enacted July 30, 2008 (the “date of enactment”), have provided state housing credit allocation agencies, such as DHCR, with temporary additional tools and resources to assist projects experiencing the loss of tax credit equity. The federal legislation included modifications which:

- Provide a 10 percent increase in New York State’s tax credit allocation in 2008 and 2009.

This temporary increase in credit allocation authority will enable DHCR, where warranted, to increase by up to 10 percent both the current maximum annual allocation amount per unit and the maximum annual allocation amount per project for funded projects facing financing gaps and new projects through December 31, 2009, as follows:

- The maximum annual credit allocation amount per unit may be increased by 10 percent, from \$20,000 up to \$22,000 per unit.
- The maximum annual credit allocation amount per project may be increased by 10 percent, from \$1,300,000 up to \$1,430,000 for a standard project and from \$1,500,000 up to \$1,650,000 for projects in which 50% or more of the units will serve large families (as defined in the annual Request for Proposals) or serve persons with special needs;
- Sets the 70 percent present value (“9 percent”) credit applicable percentage at the greater of current law, which floats on a monthly basis, or 9 percent for buildings placed in service after the date of enactment through December 31, 2013;
- Authorizes state credit allocation agencies to award up to a 30 percent basis boost to buildings the state may determine needs the boost to be economically feasible, for buildings placed in service after the date of enactment;

- Eliminates below-market federal loans, including the HOME and CDBG programs, from the definition of federally subsidized properties, thus allowing projects with such federal program financing to obtain the 9 percent credit rate for buildings placed in service after date of enactment. (Note: This does not apply to tax-exempt bond financed properties); and,
- Eliminates the prohibition on the 30 percent basis boost for HOME-assisted properties located in Qualified Census Tracts or Difficult Development Areas for such properties placed in service after the date of enactment.

On a case-by-case basis, DHCR will consider utilizing one or more of these tools to provide additional Low-Income Housing Credit to previously selected projects facing a financing gap due to the loss of tax credit equity.

DHCR reserves the authority to provide additional HTFC subsidy financing and/or DHCR allocated tax credits based on an assessment of the project's adherence to the guidelines provided below, the availability of financing from either of these sources, and a determination as to which source will best assure the continued financial feasibility of the project.

I. Submission Requirements

Requests for additional funding must be submitted in writing and must include the following:

- A cover letter explaining the nature and extent of the current gap in financing associated with the decrease in credit equity contribution proposed by the syndicator/credit equity investor, as well as a narrative clearly describing each action taken by the awardee to resolve the financing gap;
- Updated Development Budget (Exhibit 3) reflecting the new funding being requested and any changed, or new, financing sources;
- If applicable, Updated Unit Rents/Maintenance Fees & Affordability (Exhibit 4);
- If applicable, Updated Project Income & Operating Budget (Exhibit 5);
- If applicable, Updated Tax Credit exhibits, (LIHC/SLIHC Qualified Building Information, Exhibit 9 and LIHC/SLIHC project summary, Exhibit 10);
- Requests that include construction cost saving measures pursuant to the November 2007 Design Handbook must provide updated specifications; and
- If rent increases are requested, a letter from an approved market study firm demonstrating that a market exists for units at requested levels.

Requests for additional financing must meet the following criteria:

- A written request with all required documentation outlined above must be submitted to the DHCR Project Manager not less than 60 days prior to construction closing (earlier submission is highly recommended provided that other criteria have been met). DHCR will make its best effort to accommodate those projects facing more immediate funding commitment and/or reservation deadlines;
- The request must include correspondence and other documentation (e.g., application cover letter, declination letter) evidencing that additional funding sources have been requested. Such evidence must clearly document the outcome of those requests.
- The request must include evidence that the awardee has sought additional financing and/or improved financing terms from funding sources that were included in the awardee's original plan of financing at the time of credit reservation. Such evidence must clearly document the outcome of those requests;
- The request must include a firm commitment or offer from the credit equity investor with the new equity contribution amount;
- The request must provide evidence that commitments or offers have been obtained for all other sources of construction and permanent financing for the project;
- Based on the option which would contribute more toward resolution of the project's financing gap, the request must, at a minimum, either (1) provide that any developer fees in excess of 10% of the total development cost, as defined in the commitment letter or as established at the time of reservation acceptance, be contributed back to the project by the awardee, or (2) provide a deferral of no less than one-third of the developer's fee, provided that repayment is supportable by the project's fifteen year cash flow;
- Awardees must explore construction cost saving measures based on the updated specification requirements in the November 2007 Design Handbook and apply savings toward reducing the construction cost of the project (See [Section 4: Design & Specification Requirements](#));
- Awardees should note the recent change in DHCR/HTFC's requirement for annual replacement reserve contributions to a project and explore its applicability to the specific project, since this formula has also been modified to assist project sponsors. Specifically, the annual replacement reserve contribution for non-senior projects has been reduced from .5% of total development cost less land to .5% of total construction cost, up to a maximum annual contribution of \$800 per unit;

This change may enable non-senior projects facing a funding gap to seek out additional conventional loan financing based on the availability of increased cash flow to cover the debt service payments associated with a larger loan;

- The request must include correspondence and other documentation (e.g., application cover letter, declination letter) evidencing that the awardee has sought improved terms from builders and other members of the development team;
- In projects in which an identity of interest exists between parties (e.g., owner and general contractor, purchaser and seller of the project site or building[s]), the request must demonstrate that development and operating cost savings resulting from these relationships have been maximized and contribute to the resolution of the project's financing gap.

II. Preferences for Determination of Additional Funding

In addition to the submission requirements set forth above, the following represent DHCR and HTFC's specific preferences in considering requests for additional funding:

- Projects which avert the loss of affordable housing currently serving the housing needs of a population whose housing need would justify the replacement of the housing if it ceased to be available to that population;
- Projects which request lower amounts of additional funding per unit;
- Projects which have successfully obtained and documented the receipt of additional funds and/or improved financing terms from funding sources included in the awardees's original plan of financing at the time of reservation;
- Projects which have successfully obtained and documented the receipt of additional financing from new funding sources;
- Requests that include documentation demonstrating that all local governmental approvals necessary for the project to obtain a building permit and to proceed to construction are fully in place;
- Projects which have successfully obtained better terms from builders and other members of the development team;
- Projects which have obtained enforceable commitments from the credit equity investor and/or other financing sources;
- Projects which identify additional development and operating cost saving measures consistent with the DHCR Capital Programs Manual and Design Handbook; and
- Projects that have been identified as a priority by other governmental agencies as evidenced by a commitment for capital financing and/or rental/operating subsidies. This will include a consideration of the potential loss of such leveraged monies.

III. Additional Considerations

In considering requests for additional funding, the DHCR and HTFC reserve the right to

adjust the funding amounts provided through the Housing Trust Fund, HOME, SLIHC, and LIHC programs as deemed necessary, as well as the overall amount of additional funds based on its review of project need and the project's construction and operating feasibility.

Please note that awardees requesting an increase in credit and/or subsidy financing pursuant to these guidelines, and who have successfully met the submission requirements outlined herein, will not subsequently be penalized in the submission of future applications by a reduction in HTF or LIHC scoring points obtained for development team experience.

To help ensure the economic viability of selected projects, DHCR and HTFC will consider requests from awardees for rent increases, provided the increases are justified and contribute to the resolution of the funding gap, and provided further that rents will still be affordable (based on the most recent HUD income limits) to the income groups that were originally intended to be served by the project. DHCR and HTFC may also consider additional underwriting solutions in order to facilitate project completion.

DHCR may consider requests for Section 8 project based vouchers. Such requests will be subject to the availability of vouchers at the time of the request and compliance with all applicable requirements, including successful completion of a HUD subsidy layering review. Preference in the consideration of requests for vouchers will be given to those projects providing deep income targeting of units.

These Guidelines, and the submission of successful requests for increased funding pursuant to the criteria contained herein, in no manner change DHCR's current and very limited parameters for the consideration of reservation deadline extensions (see the Low-Income Housing Credit Program – Commissioner's Findings and Determination at <http://nysdhcr.gov/Programs/LIHC/findings.htm>). However, to assist in moving projects forward to completion, DHCR will consider a project which has closed its construction financing in escrow by the reservation deadline date as having met the deadline if: (1) all other LIHC requirements have been satisfied with the sole exception being the completion of a governmental entity's review and approval process which was timely commenced and is still ongoing; and (2) the escrow agreement and its terms have been pre-approved by DHCR.

Notwithstanding the criteria set forth above, DHCR and HTFC recognize that market conditions remain fluid and reserve the right to deny or authorize the provision of additional financing in a manner which is consistent with the furtherance of the State's housing goals and determined by the Commissioner of DHCR to be in the interests of the citizens of the State.