

South Carolina State Housing Finance and Development Authority

9% Tax Credit Exchange Program Plan

The American Recovery and Reinvestment Act of 2009 (ARRA) established a tax credit Exchange Program (the Exchange Program) under the United States Department of Treasury's Section 1602 Program. The Exchange Program permits states to substitute a cash grant in place of tax credits in an amount up to 85 percent (85%) of the tax credit exchanged times 10 (eligible tax credit x 0.85 x 10= exchange amount). The program is intended to replace the tax credit equity in affordable housing developments that have been unsuccessful in securing adequate equity commitments.

The Exchange Program funds will be awarded pursuant to existing tax credit allocation plans and to additional guidance provided by the Treasury Department. **All funds allocated to developments from the Exchange Program must be disbursed by December 31, 2010. This deadline is imposed by Congress and the Authority does not have the ability to extend this deadline. Failure to meet this deadline will result in the development owner's loss of Exchange Program funds.** The Authority reserves the right to further restrict the development expenditure deadline date in order to ensure that funds are disbursed as necessary to meet the December deadline.

Program Overview

Unlike the typical 9% Tax Credit Program, the Exchange Program imposes additional requirements on the Authority which creates liabilities and public expectations that do not currently exist in the 9% Program. The Authority will re-underwrite all developments seeking funds from the Exchange Program. Funds allocated to any development will not exceed the amount needed to make the development financially feasible based on the Authority's underwriting criteria. Developments that are not viable within the maximum Exchange Program award will be rejected for funding consideration.

Although it is the Authority's intent to help as many developments as possible there may not be enough exchange funds to assist all developments. Development owners are strongly encouraged to continue seeking equity commitments for tax credit developments.

Eligible Applicants

Funding for the Exchange Program will be made available to development owners who received a 2008 or 2009 tax credit reservation during the Authority's 2008 or 2009 tax credit funding cycles. First priority for exchange funds will be given to 2008 tax credit reservation recipients. Exchange funds will only be awarded to development owners who have been unable to find any syndication for their tax credit development. Developments with any amount of syndication are encouraged to apply for equity gap funding through the Authority's Tax Credit Assistance Program (TCAP). TCAP funds and Exchange Program funds will not be combined in one development.

Applicants must be in compliance with the original tax credit allocation reservation and carryover allocation agreement (if applicable). In addition, applicants must be in good standing with all Authority programs.

In order to receive exchange funds applicants must demonstrate that they have made every good faith attempt to find syndication for their development. To participate in the Exchange Program a full return of the tax credit reservation is required as well as the submission of a completed 9% Tax Credit Exchange Program Application along with any required documents and/or exhibits required by the Authority.

Funding Assistance

The Authority will ensure that the allocation of exchange funds is consistent with the requirement of Section 42(m)(2) of the Code and that the allocation made to a development does not exceed the amount necessary to ensure the financial feasibility of the development throughout the credit period. Developments receiving Exchange Program funds will be required to comply with the requirement for Housing Credits in Section 42 of the Code.

The Authority expects to award funds from the Exchange Program in an amount based on the equity gap derived from the sources and uses of funds submitted in the Tier Two application. The Authority will exclude deferred developer fees as a source in determining the equity gap. Applicants expecting to need a greater amount of Exchange funds will be required to submit justification for why a greater amount is needed and a revised application for underwriting analysis. The Authority will consider these requests on a case-by-case basis and reserves the right to deny any request that is not justified to the satisfaction of the Authority. The Authority will not award funds that exceed those needed based on underwriting and gap analysis.

The Authority will provide Exchange Program funds to a development as a zero percent (0%) loan with a term and amortization of thirty (30) years. No payments will be required except in the event of recapture resulting from noncompliance. The Authority will record a standard mortgage on the property. The thirty (30) year period will correspond to the thirty (30) year IRS affordability and compliance monitoring extended use period. The mortgage loan may be subordinated only to an amortizing permanent mortgage. In addition to the mortgage, other documents such as, but not limited to, a 9% Tax Credit Exchange Program Fund Written Agreement, Promissory Note, Guaranty, and Land Use Restrictive Covenants must be executed in order to receive Exchange funds.

Exchange funds may be used only to finance the construction or acquisition and rehabilitation of qualified low-income buildings in accordance with Section 1602(c) of the Act. The Authority will fund construction draws only after an inspection has been completed in order to determine work in place.

Applicants applying for Exchange funds will be subject to the requirements, underwriting standards, and parameters of the respective QAP under which the development was initially awarded tax credits. Developments will be required to meet or exceed the commitments made in their original tax credit application for tax credits including income targeting, extended use affordability, and any other criteria the developer elected for points under the QAP.

In addition, the Authority will require all developments requesting Exchange Program funds to underwrite to a minimum 1.2 debt coverage ratio

Earned Developer Fees

For Exchange developments the developer fees will be paid out as follows:

- a) 20% paid at start of development construction;
- b) 30% paid once 50% of the total development is completed and certified to by the project architect and/or engineer and verified by Authority staff through an on-site inspection;
- c) 30% paid once the development is 100% complete;
- d) 20% paid when the Authority issues 8609s.

Exchange Guaranties

During construction all obligations with respect to the Exchange Program funds will be full recourse to the development owner(s) and will be guaranteed on a joint and several basis by all general partners in a limited partnership and by all managing members in a limited liability company.

The full recourse obligation and the guaranty requirements of the Exchange funds will be terminated when the development receives certificates of occupancy and the construction loan is converted to a permanent loan. This termination applies solely to the construction obligation and in no way relieves the development owner from any liability for repayment of exchange funds due to defaults under the Exchange Program Fund Written Agreement, Promissory Note, Guaranty, Mortgage, or recapture of Exchange funds due to instances of noncompliance.

Oversight and Asset Management

The ARRA mandates the Authority perform asset management functions to ensure compliance with Section 42. These asset management functions are in addition to the normal Section 42 compliance monitoring functions performed by Authority staff once a development is placed in service and include, but are not limited to, construction and disbursement oversight, review of on-going financial feasibility, annual review of income and expense reports, annual audits, annual budget reviews, and periodic capital needs assessments. The Authority will contract with a third party asset management firm to perform specific asset management services. Costs incurred by the Authority for oversight management performed during the course of construction and during the compliance period by third party entities will be paid by the development owner.

For planning purposes, the costs development owners normally pay syndication firms for oversight and asset management services should be budgeted accordingly. Pursuant to the 2008 and 2009 Tax Credit Manual, the standard tax credit compliance monitoring fees charged by the Authority will be incurred once a development places in service.

Recapture

Any development that does not remain a qualified low-income building throughout the compliance period is subject to recapture of Exchange Program funds received. Any amount subject to recapture will be 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.

The Authority has the right, should a development owner default on the Exchange Program Fund Written Agreement or other regulatory documents, to do some or all of the following:

- a) Render the development owner ineligible to participate in all LIHTC programs administered by the Authority for a minimum period of five (5) years;
- b) Change the structure of the ownership entity, including adding or removing partners/members;
- c) Replace the management company;
- d) Recapture funds as authorized under federal policies, including filing liens and initiating foreclosure as necessary; and
- e) Other remedies determined appropriate by the Authority.

Transparency, Accountability and Reporting Requirements

The Authority is responsible for reporting on a variety of development features and outcomes as per the ARRA. Development owners must agree to provide any and all data, reporting, and information needed by the Authority in order to comply with current or future state or federal reporting requirements imposed as a result of ARRA. At this time, owners are expected to report to the Authority on the number of:

- a) Construction jobs created and retained;
- b) Non-construction jobs created and retained;
- c) Total housing units newly constructed or rehabilitated; and
- d) Low-income housing units newly constructed or rehabilitated.

Application and Evaluation Process

A. Threshold Eligibility

1. The development must have an award of credits from the 2008 or 2009 9% tax credit application cycles;
2. The development and development owner must be eligible to participate under applicable federal requirements and be in good standing with all Authority programs;
3. The development must be in compliance with the original Tax Credit Reservation Certificate and Carryover Allocation Agreement, and Binding Agreement (if applicable);
4. Development owner must be able to expend 100% of the Exchange Program award before December 31, 2010 and place the development in service by December 31, 2011; and
5. Development owner must have made and documented every good faith effort to secure adequate equity commitments. Developments with equity commitments are not eligible for Exchange Program funds.

B. Application Process

1. The application cycle for Exchange Program funds will be August 31, 2009 through 5:00 p.m. (EST) September 9, 2009. Award announcements will be made no later than October 9, 2009.
2. Development owners must submit a completed Tax Credit Exchange Program Application and submit all applicable exhibits and attachments.

C. Evaluation and Selection Criteria

1. 2008 and 2009 tax credit developments will be reviewed and awarded exchange funds based on the following:
 - a) 2008 developments will have first priority for funding consideration. Awards will be made to 2008 developments based on the final combined Tier One and Tier Two point score from highest to lowest score.
 - b) 2009 developments will be given second priority for funding consideration. Awards will be made to 2009 developments based on the final combined Tier One and Tier Two point score from highest to lowest score.
2. Developments must be financially feasible and meet all threshold Exchange Program Fund underwriting requirements and any established threshold underwriting criteria as outlined in the QAP and Tax Credit Manual under which the development was initially awarded tax credits. Developments determined to be infeasible will be disqualified for funding consideration.
3. Developments may not have any outstanding environmental issues in either a Phase I or Phase II environmental assessment report. This requirement does not mean that the entire HUD NEPA review will be completed; however, any and all environmental issues, recommendations, conclusions and opinions rendered in a Phase I or Phase II environmental assessment report must be addressed to the satisfaction of Authority staff.