

Title 15. Natural Resources and Economic Development

Chapter VII. Arkansas Development Finance Authority, Department of Commerce

Subchapter C. Housing

Part 88. Housing Credit Program 2009 Qualified Allocation Plan Guidance to Implement the Tax Credit Assistance Program and the Section 1602 Exchange/Subaward Program of the American Recovery and Reinvestment Act of 2009

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"Pursuant to Section 42 of the Internal Revenue Code, 26 USC § 42, the Arkansas Development Finance Authority (the "Authority") must annually adopt a Qualified Allocation Plan ("QAP") that establishes selection and program criteria for the allocation of federal low-income housing tax credits from the State's annual ceiling. On July 17, 2008, and August 21, 2008, the Board of Directors for the Authority adopted its QAP for 2009. Due to the reduction or complete loss of federal low-income housing tax credit investor equity, President Obama signed into law the American Recovery and Reinvestment Act ("ARRA"), Public Law 111-5 on February 17, 2009. ARRA established two subsidy provisions to assist those developments that have been or will be awarded tax credits in 2007, 2008 and 2009. The first is the Tax Credit Assistance Program ("TCAP") which provides \$20,463,053 in federal funding to Arkansas from HUD for the express purpose of providing financing to those taxpayers "awarded" low-income housing tax credits under Section 42(h) of the Internal Revenue Code (IRC) in fiscal years 2007, 2008 and 2009. The second is a grant program whereby Arkansas can elect to receive a grant of funds in an amount up to \$.85 per tax credit for tax credits consisting of all unused and returned credits held by the Authority plus 40% of our 2009 state ceiling (not including disaster credits). This is referred to as the "exchange program". In addition to the stimulus funding provided by the ARRA, the Board of

Directors has implemented two additional initiatives to assist existing developments in need of additional financing: 1) Pursuant to 26 USC § 42(d)(5), the Board of Directors has designated certain existing developments as difficult to develop entitling them to a 30% basis boost; and 2) provide additional tax credits to those developments in need of additional financing.

Distribution of the \$20,463,053 in TCAP funding must be done on a competitive basis. The Board of Directors has determined to award TCAP funding in association with the other funding sources available as indicated by the financial needs of the applicant. The following "ARKANSAS'S THREE TIER SELECTION PROCESS" and 2009 Guidance and Procedures have been approved by the Board of Directors on May 15, 2009, and June 18, 2009, respectively, for the distribution of TCAP funds and Exchange Program fund."

Subpart 1. Generally

15 CAR § 88-101. Arkansas's three-tier selection process.

(a) Tier One — 2006, 2007, and 2008 allocation recipients — Initially consider to allocate unused, returned, and as-needed 2009 tax credits.

(1) **Additional tax credits only.** Per the Board of Directors of the Arkansas Development Finance Authority's directive of December 2008, staff will allocate/reserve additional tax credits to those 2006, 2007, and 2008 owners that have not been issued Internal Revenue Service Form 8609.

(2)(A) Application will be by submission of a 2009 Special Application to include updated financial commitment letters and an updated Pro Forma, Attachment C.

(B) Applicants must meet the minimum debt coverage ratio of 1:10.

(3) Application must be submitted by the deadline date determined by the Arkansas Development Finance Authority.

(4)(A) Additional tax credits must be purchased at no less than fifty cents (\$0.50) per additional tax credit requested.

(B) Recipients of additional tax credits will not be eligible to return any tax credits allocated or reserved by the authority for the purpose of receiving TCAP funds or an exchange/subaward.

(5) Pursuant to 26 U.S.C. § 42, eligibility for additional tax credits is determined as follows:

(A) If development buildings were placed in service in 2009, or will be placed in service in 2010, and credit eligibility has increased due to nine percent (9%) credit percentage requirement of Section 3002 of Pub. L. No. 110-289 and thirty percent (30%) basis boost per board directive of January 15, 2009 (available for new buildings only);

(B)(i) After building's first tax credit year and only if the LIHTC qualified basis has increased by virtue of an increase in number of LIHTC units or LIHTC square footage.

(ii) In this instance, the two-thirds (2/3) rule of Section 42(f)(3) of the Internal Revenue Code.

(iii) Will require board approval to increase LIHTC units from original application; and

(C) The amount of additional tax credits plus any previous allocation cannot exceed the maximum amount allowed pursuant to Section IIIA. of the 2009 Qualified Allocation Plan.

(6) These developments will not be entitled to TCAP, an exchange/subaward, or additional HOME Investment Partnerships Program funds because they have not competed for these types of financing as required below.

(b) Tier Two — 2006, 2007, and 2008 allocation recipients — Considered after determining amount of credits remaining after Tier One awards for purposes of awarding additional tax credits, TCAP exchange/subawards, and/or additional HOME Investment Partnerships Program funds.

(1)(A) Application will be by submission of a 2009 Special Application to provide information required for the TCAP and exchange/subaward programs, to include:

- (i) Updated financial commitment letters;
- (ii) An updated Pro Forma, Attachment C; and
- (iii) If applicable, updated Attachment G.

(B) Applicants must meet the minimum debt coverage ratio of 1:10.

(2) Applications for funding will only be considered if the applicant is eligible for such funding pursuant to the American Recovery and Reinvestment Act and Section 42 of the Internal Revenue Code and if submitted by the deadline date determined by the authority.

(3) To be eligible for TCAP funds, the applicant must retain no less than:

(A) One thousand dollars (\$1,000) in annual federal low-income housing tax credits; or

(B) Ten thousand dollars (\$10,000) in the aggregate.

(4)(A) Applications requesting TCAP funds will be based upon priority and competitive scoring as follows:

(i)(a) Certification of a development timeline that verifies the development will expend one hundred percent (100%) of the TCAP funds awarded no later than November 15, 2010, and will place in service no later than December 31, 2011.

(b) Failure to make the certifications eliminate the applicant's eligibility for funding separate from that in the applicant's original application.

(c) Failure to adhere to the timelines required will result in a recapture of tax credits, TCAP, or exchange/subaward funds, as applicable;

(ii)(a) The final score received with 2008 scores adjusted to match 2007 scoring criteria.

(b)(1) The final score for 2008 will be reduced by any bonus points received under Item #11 "Market Feasibility Study", as the bonus points were not available for 2007.

(2) With this reduction, the scoring criteria for 2007 and 2008 are identical; and

(iii)(a) Five (5) priority points to those applicants requesting additional tax credits.

(b) Additional tax credits must be purchased at no less than fifty cents (\$0.50) per additional tax credit requested.

(c) Recipients of additional tax credits will not be eligible to return any tax credits allocated or reserved by the authority for the purpose of receiving TCAP funds or an exchange/subaward.

(B) In the event of a tie, the board will award priority based upon factors in the application such as:

- (i) Market need;
- (ii) Number of affordable units;
- (iii) Income/rent limitations;
- (iv) Energy efficiency; and
- (v) Unit amenities.

(C) TCAP funds will be awarded based upon the highest score as determined under this subsection.

(D) The maximum amount of the TCAP fund award will be five hundred thousand dollars (\$500,000).

(5)(A) Applicants requesting the maximum amount (five hundred thousand dollars (\$500,000)) of TCAP funding will be eligible for additional HOME Investment Partnerships Program funds not to exceed nine hundred thousand dollars (\$900,000), including any previous allocation.

(B) Recipients may use the additional HOME Investment Partnerships Program funds to reduce permanent debt, deferred developer fee, or other funding source in the original application.

(6)(A) To be eligible for an exchange/subaward, the applicant must request, at a minimum, one hundred thousand dollars (\$100,000) in TCAP funding.

(B) Equity created by an exchange/subaward can only be used to replace equity lost from the original application.

(7) If requesting exchange/subaward, applicants must provide the following:

(A)(i) Written statement from most recent investor/syndicator submitted to the authority that indicates that the investor/syndicator has rescinded its previous equity commitment to the applicant.

(ii) The written statement must reference the:

(a) Date and terms of the previous equity commitment rescinded; and

(b) Amount rescinded.

(iii) If the rescission is limited to a portion of the previous credit amount accepted and equity commitment, the investor/syndicator statement must specifically identify the amount of credits and amount of equity that remain accepted and committed;

(B)(i) Written statement from nationally recognized investor/syndicator indicating that the investor/syndicator has been contacted by the applicant and rejected an offer to purchase any/all of the tax credits offered.

(ii) The rejection must specifically identify the amount of credits offered and rejected.

(iii) If the rejection is limited to a portion of the tax credits offered, the investor/syndicator statement must specifically identify the:

(a) Number of credits accepted for purchase; and

(b) Amount of equity to be paid for such purchase; and

(C) Sworn statement by the applicant that:

(i) In addition to the investor/syndicator identified in subdivision (b)(7)(B) of this section, the applicant has contacted two (2) additional nationally recognized investors/syndicators and they have rejected the purchase of any tax credits allocated to the applicant; and

(ii) Each investor/syndicator contacted has made no offer/counteroffer to purchase credits allocated at any per-credit price.

(8)(A) Recipients must provide official evidence, e.g., building permit, construction permit, etc., that they can begin construction within one hundred twenty (120) days of commitment of funding.

(B) Failure to produce this evidence will result in no eligibility to receive subsidy.

(9) Applicants must certify that the development's buildings will be placed in service as required by Section 42 of the Internal Revenue Code.

(c) Tier Three — 2009 applicants — Considered after determining amount of credits remaining after Tier Two awards for purposes of awarding additional tax credits, TCAP, and/or exchange/subawards.

(1) Funding availability will include:

(A) Tax credits remaining after the 2007 and 2008 outstanding developments have been awarded additional tax credits and exchange/subaward;

(B) TCAP funds remaining after award to 2007 and 2008 outstanding developments;

(C) Exchange funds available after award to 2007 and 2008 outstanding developments; and

(D) HOME Investment Partnerships Program funds availability.

(2) 2009 applicants will be scored as required under the 2009 QAP.

(3)(A) 2009 applicants will be awarded remaining tax credits based upon the highest score.

(B) Following a reservation of the tax credit award, if any TCAP, exchange/subaward, or HOME Investment Partnerships Program funds remain available, applicants will be given an opportunity to request such funding with the highest scoring development receiving priority.

(C) In the event of a tie, the board will award priority based upon factors in the application such as:

(i) Market need;

(ii) Number of affordable units;

(iii) Income/rent limitations;

(iv) Energy efficiency; and

(v) Unit amenities.

(4) To be eligible for TCAP funds, the applicant must retain no less than:

(A) One thousand dollars (\$1,000) in annual federal low-income housing tax credits; or

(B) Ten thousand dollars (\$10,000) in the aggregate.

(5) TCAP funds will be awarded based upon the following priorities:

(A)(i) Certification of a development timeline that verifies the development will expend one hundred percent (100%) of the TCAP funds awarded no later than December 31, 2010, and will place in service no later than December 31, 2011.

(ii) Failure to make the certifications eliminate the applicant's eligibility for funding separate from that in the applicant's original application.

(iii) Failure to adhere to the timelines required will result in a recapture of tax credits, TCAP, or exchange/subaward funds, as applicable; and

(B) The highest score as determined under subdivision (c)(3) of this section.

(6)(A) Applicants requesting the maximum amount (five hundred thousand dollars (\$500,000)) of TCAP funding will be eligible for additional HOME Investment Partnerships Program funds not to exceed nine hundred thousand dollars (\$900,000), including any previous allocation.

(B) Recipients may use the additional HOME Investment Partnerships Program funds to reduce permanent debt, deferred developer fee, or other funding source in the original application.

(7)(A) To be eligible for an exchange/subaward, the applicant must have requested, at a minimum, one hundred thousand dollars (\$100,000) in TCAP funding.

(B) Equity created by an exchange/subaward can only be used to replace equity lost from the original application.

(8) If requesting exchange/subaward, applicants must provide the following:

(A)(i) Written statement from most recent investor/syndicator submitted to the authority that indicates the investor/syndicator has rescinded its previous equity commitment to the applicant.

(ii) The written statement must reference the:

(a) Date and terms of the previous equity commitment rescinded; and

(b) Amount rescinded.

(iii) If the rescission is limited to a portion of the previous credit amount accepted and equity commitment, the investor/syndicator statement must specifically identify the amount of credits and amount of equity that remain accepted and committed;

(B)(i) Written statement from nationally recognized investor/syndicator indicating that the investor/syndicator has been contacted by the applicant and rejected an offer to purchase any/all of the tax credits offered.

(ii) The rejection must specifically identify the amount of credits offered and rejected.

(iii) If the rejection is limited to a portion of the tax credits offered, the investor/syndicator statement must specifically identify the:

(a) Number of credits accepted for purchase; and

(b) Amount of equity to be paid for such purchase; and

(C) Sworn statement by the applicant that:

(i) In addition to the investor/syndicator identified in subdivision (b)(9) of this section, the applicant has contacted two (2) additional nationally recognized investors/syndicators and they have rejected the purchase of any tax credits allocated to the applicant; and

(ii) Each investor/syndicator contacted has made no offer/counteroffer to purchase credits allocated at any per-credit price.

(9)(A) Recipients must provide official evidence, e.g., building permit, construction permit, etc., that they can begin construction within one hundred twenty (120) days of commitment of funding.

(B) Failure to produce this evidence will result in no eligibility to receive subsidy.

(10) Applicants must certify that the development's buildings will be placed in service as required by Section 42 of the Internal Revenue Code.

Authority. Arkansas Code § 15-5-207.

Codification Notes. "TCAP" means tax credit assistance program.

"LIHTC" means low-income housing tax credit.

The American Recovery and Reinvestment Act was enacted as Pub. L. No. 111-5.

15 CAR § 88-102. Board approval.

(a) Any award made pursuant to Arkansas's three-tier selection process is subject to the approval of the Board of Directors of the Arkansas Development Finance Authority.

(b) The board has the authority to determine the amount of any additional tax credits, TCAP, exchange/subaward, or additional HOME Investment Partnerships Program funds requests based upon the financial feasibility analysis of any applicant.

Authority. Arkansas Code § 15-5-207.

Appendix A. 2009 Guidance and Procedures

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/261/15CARpt.88AppendixA.pdf>