

Board Resolution No. 09-047
Texas Department of Housing and Community Affairs
Multifamily and HOME Divisions
American Recovery and Reinvestment Act of 2009,
Section 1602 Tax Credit Exchange Program (“Exchange”) Policy (“the Policy”)

President Barack Obama signed into law the American Recovery and Reinvestment Act of 2009 (the “Act”) on February 17, 2009, which provided for the exchange of a portion of the annual allocation amount of tax credits for grant funds available to the state housing credit agency to assist in the development of properties that agree to be operated as and under the restrictions of the low income housing tax credit (“LIHTC”) program established under the rules of the state’s qualified allocation plan (“QAP”). These funds are to be used to help provide additional financing at a level determined by the State to create jobs and provide affordable housing. Under current Federal law and regulation, all the funds awarded under the Exchange program must be disbursed or returned by January 1, 2011.

The Governing Board of the Texas Department of Housing and Community Affairs, through the authority granted to it under the laws duly passed and authorized in Chapter 2306 of the Texas Government Code, hereby establishes the following policy to further the goals of the aforementioned laws and does hereby find that:

Whereas, the federal and state governments do desire to create economic development by assisting in productive job creation; and

Whereas, the state needs to increase the amount of affordable housing to meet the demand of safe decent and affordable housing; and

Whereas, economic development and stability in our communities benefits all Texans

Therefore, the Governing Board of the Texas Department of Housing and Community Affairs has determined that the state should maximize the exchange of tax credits and utilize all funds made available to the state by the Federal Government under the Tax Credit Exchange Program and resolves to exchange and make awards to further these goals consistent with the following criteria:

Section I. Eligible Applicants

1. Only Applicants that received an allocation of LIHTC for award years 2007, 2008 and/or 2009, have paid all required tax credit commitment fees, and intend to return 100% of their tax credit allocation will be eligible to request Exchange funds (Applicants who wish to return partial credits are encouraged to participate in the TCAP program).
2. Applicants must provide a notice of intent to return credits and request Exchange funds (“Notice”) and document that they are able to move forward and meet their existing

deadlines (except where federal regulation for the Exchange program requires a more restrictive deadline).

3. Developments receiving Exchange funds must continue to meet the threshold and scoring requirements as included in the original application or most recent amendment approved by the Board and all other requirements of the QAP under which they were originally allocated tax credits.
4. The Department may make awards of Exchange funds to any 2007 and 2008 9% credit development that provides Notice.
5. The Department may make awards of Exchange funds to 2009 9% credit developments that provide Notice, in accordance with this Policy and as Exchange funds are available up to the Exchange limit available to the Department as provided by the Act, regulation covering the Act and any subsequent legislation. As of July 30, 2009 the Department is limited to exchange 40% of the 2009 regular annual credit ceiling. Developments that provide Notice but are not funded due the limited amount of Exchange funds will be allowed to withdraw their Notice.
6. The amount of Exchange funds that may be requested and awarded is limited to the lesser of: eligible basis as defined by Section 42 of the Internal Revenue Code, unless otherwise allowed by written U. S. Treasury Department guidance; the amount necessary to support the total development cost less any committed permanent financing or permanent financing with a 30 year amortization and 8% interest rate based on a 1.25 debt coverage ratio on Net Income (as further defined in 10 TAC § 1.32, the Department's Real Estate Analysis Rules) and other sources of funds including previously identified sources of funds; or the amount of total credit allocated to the development times 10 times the Credit Price Ceiling. The Credit Price Ceiling shall be \$0.77 except where the Applicant agrees to increase the number of units restricted by rent and income to households earning not more than 30% of the area median income as defined by the QAP ("30% units"). Where the Applicant agrees to restrict not less than an additional 10% of the total number of units as 30% units the Credit Price Ceiling shall be \$0.81 and the development gap will be re-evaluated by the Department. Where the Applicant agrees to restrict not less than an additional 20% of the total number of units as 30% units the Credit Price Ceiling shall be \$0.85 and the development gap will be re-evaluated by the Department.
7. Applicants requesting funds must provide evidence of a Good Faith Effort to obtain equity commitments. A Good Faith Effort is an attempt by the Applicant to secure final financing commitments from an equity investor as evidenced by term sheets or letters of interest with or without paid due diligence or commitment fees for due diligence efforts and a subsequent retraction or denial letter from the previously committed equity investor.
8. Applicants, as defined in the QAP, must not be in material non-compliance for any Department program. The Department may check for material non-compliance at the time of Notice. The Department may also check for material non-compliance at the time of execution of the Exchange Agreement and at closing to the extent that any of these subsequent events occur more than three months after the initial review at application.

Section II. Priority for awarding of Exchange Funds

1. Applicants that can certify that the Development can be nearly completed and be able to request and receive reimbursement of eligible costs sufficient for the requested Exchange funds to be fully disbursed by December 31, 2010, or earlier as may be required under existing funding source requirements.
2. Developments that maximize the use of prior awards and tax credit resources.
3. Priority for the allocation of Exchange funds will be given to developments that have a valid allocation of 9% tax credits at the time the Notice is made by the Development Owner .
4. Developments that had a tax credit allocation but returned their credits prior to July 30, 2009 and any recipient of tax credits associated 4% bond transactions (“Eligible Non Priority Exchange Applicants”) will only be considered for Exchange funds if any Exchange funds remain available after all developments who provided Notice and return their tax credits after July 30, 2009 have been considered and awarded if eligible. To the extent that any such excess Exchange funds remain available they will be awarded to Eligible Non Priority Exchange Applicants on a first come first serve basis based on the day a request for Exchange funds is submitted. Where multiple requests from different developers are submitted on the same day, awards of Exchange funds will be made to Eligible Non Priority Exchange Applicants with the highest original tax credit allocation score first and lowest amount of Exchange request second.
5. Developments that obtained the highest application scores in the round they applied in general accordance with regional allocation formula including set asides of 20% for At-Risk developments and 40% for Rural developments (the dollar amounts of the set asides in accordance with this Policy to be established in the Policy Supplement).

Section III. Affordability, Repayment, Ownership and Asset Management

1. **Affordability.** It is the intent of the Texas Department of Housing and Community Affairs to achieve the same or greater levels of affordability that would have been achieved under state and federal law had tax credits under 26 USC §42 been issued. The Applicant will be subject to the recapture provisions as defined by the U. S. Treasury Department.
2. **Repayment and Ownership.** The Texas Department of Housing and Community Affairs desires to provide these funds in the form of equity partnership investments, where possible, in a manner that treats third party lenders appropriately, giving due consideration for their relative risk position and other relevant factors. The Department will retain a minimum stake in the limited partnership and retain typical rights of a special limited partner to remove or replace the general partner under certain conditions of nonperformance under the LURA and partnership agreement. The Department’s stake in the development will allow for the maximum amount of depreciation to remain available to the general partner and the other partners however provide not less than a 20% distribution to the Department of any net cash flow, residual funds and/or net sale proceeds. Where the Applicant has increased the number of 30% units in the development by not less than 10% of the total number of units in the development, the cash distribution to the Department shall be reduced to not less than 15%. Where the Applicant has increased the number of 30% units in the development by not less than

20% of the total number of units in the development, the cash distribution to the Department shall be reduced to not less than 10%. Should it be determined that an equity structure can not be created to satisfy the parameters of this section, the Department may enter into a loan structure which can best satisfy the parameters of this section and this Policy.

3. **Asset Management.** Any activity funded under this Policy will be required to enter into a written contract for asset management with the Department. In order to reduce the asset oversight burden on the property, the Department may enter into agreement(s) with the lender or other third party to accomplish the asset management objectives of the Department and assure the long term viability of the development. The Department may require a fee for asset management and/or require reserves be established and maintained for the duration of the Compliance Period and Extended Housing Commitment.

The Governing Board hereby adopts this policy and directs staff to develop guidelines consistent with this policy to fully implement this resolution.

Passed this the 30th day of July, 2009 by a majority vote of ___ ayes ___ nays ___ abstentions will all members present except for _____.

Kent Conine
Chair

Tim Irvine
Secretary to the Board
