



Texas Department of Housing and Community Affairs  
**SUPPLEMENTAL INFORMATION TO THE BOARD POLICY ON**  
**American Recovery and Reinvestment Act of 2009,**  
**Section 1602 Tax Credit Exchange Program (“the Policy Supplement”)**

**1) Definitions.** Terms in this Policy that are also defined in 10 TAC §49.3 of the QAP have the same meaning as in the QAP unless redefined herein.

- a) *Credit Price Ceiling.* A key component of one of three limits on the maximum amount of Exchange funds that may be awarded to any development akin to the syndication price. 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.
- b) *Good Faith Effort.* Attempts 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.
- c) *Notice.* The document promulgated by the Department and executed by the Development Owner to express the intent to return credits and request Exchange funds
- d) *Written Agreement.* (or “Contract”). A contract governing the award of Exchange funds between the Department and Applicant which may include the General Partner as well as the Limited Partner(s).

**2) Additional Requirements of Program**

- a) Closing on Exchange funds committed under this Policy must be by December 31, 2009 unless otherwise extended by the Department.
- b) The Department may enter into a master funding agreement with the construction lender to cooperate in the distribution of draw funds where the Exchange funds are drawn with priority for eligible cost reimbursement to ensure that the funds can be fully disbursed by the federal deadline. Where a master funding agreement with the construction lender can not be reached, funds shall be drawn for eligible costs incurred according to the schedule of funding evidenced in the partnership agreement and based upon the percentage of completion.
- c) Should it be determined that an equity structure including the Department can not be created, any loan alternative shall bare an interest rate equal to 0% for the entire period

during which funds are drawn. No payments on such a loan will be required for the first 15 years or thereafter unless allowed by Federal law, regulation or guidance, however if allowed, 20% of any net cash flow, residual funds and/or net sale proceeds shall be paid to the Department. Where the Applicant has increased the number of 30% units in the development by not less than 10%, the cash payment 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%, the cash payment to the Department shall be reduced to not less than 10%. Any loan funded by the Department shall be secured by a subordinate deed of trust against the property.

- d) Funds made available under the Policy for 2009 9% awards shall be subject to the following set-asides and regional allocation:
- i) At least 20% of the funds shall be set aside to Developments awarded under the At-Risk Development Set-Aside and will be deducted from the total funds made available in the Policy prior to the application of the regional formula required under paragraph (iii) of this subsection. Awards to meet this requirement shall be made in the same manner as prescribed in 10 TAC §49.7 for housing tax credits except that the At-Risk Set Aside amount is increased from 15% to 20%.
  - ii) At least 40% of the funds shall be set aside through the regional allocation formula to award to Developments which are located in Rural areas. Awards to meet this requirement shall be made in the same manner as prescribed in 10 TAC §49.7 for housing tax credits except that the Rural Allocation target is increased from 20% to 40%.
  - iii) Except as otherwise provided herein, the funds made available in the Policy shall be regionally allocated based upon the following table (Table 0), which excludes the funds to meet paragraph (i) of this subsection. Awards shall be made in similar manner to that prescribed in 10 TAC §49.7 for housing tax credits as applied by the Department.
  - iv) Where funds in a subregion are insufficient to fully fund the next available application, the funds will collapse from the Urban subregion into Rural subregion. Where such a collapse provides insufficient funds to fully fund the next available application in the Rural subregion the funds shall collapse into a statewide pool and allocated to the next available application in the most underfunded subregion.

Table 0. Regional, Rural, and Urban Funding Amounts

Region	Place for Geographical Reference	Regional Funding Amount	Regional Funding %	Rural Funding Amount	Rural Funding %	Urban Funding Amount	Urban Funding %
	At Risk	\$ 40,994,344					
1	Lubbock	\$ 5,657,957	3%	\$ 4,313,395	76%	\$ 1,344,563	24%
2	Abilene	\$ 3,338,146	2%	\$ 2,878,352	86%	\$ 459,795	14%
3	Dallas/Fort Worth	\$ 37,647,159	23%	\$ 14,021,418	37%	\$ 23,625,741	63%
4	Tyler	\$ 5,814,100	4%	\$ 5,161,505	89%	\$ 652,596	11%
5	Beaumont	\$ 4,139,371	3%	\$ 3,726,499	90%	\$ 412,872	10%
6	Houston	\$ 39,981,663	24%	\$ 14,457,096	36%	\$ 25,524,567	64%
7	Austin/Round Rock	\$ 10,877,111	7%	\$ 5,028,700	46%	\$ 5,848,411	54%
8	Waco	\$ 7,783,586	5%	\$ 4,321,030	56%	\$ 3,462,556	44%
9	San Antonio	\$ 11,690,316	7%	\$ 5,330,933	46%	\$ 6,359,382	54%
10	Corpus Christi	\$ 6,063,919	4%	\$ 4,149,254	68%	\$ 1,914,665	32%
11	Brownsville/ Harlingen	\$ 20,846,297	13%	\$ 11,730,698	56%	\$ 9,115,599	44%
12	San Angelo	\$ 2,810,393	2%	\$ 2,774,920	99%	\$ 35,473	1%
13	El Paso	\$ 7,327,359	4%	\$ 4,094,889	56%	\$ 3,232,470	44%
	Total Regional	\$ 163,977,377	100%	\$ 81,988,688	50%	\$ 81,988,688	50%
	Grand Total	\$ 204,971,721	100%	\$ 81,988,688	40%	\$ 81,988,688	40%

- 3) Threshold Criteria.** Any Development Owner wishing to participate in the program with an existing allocation of tax credits from 2007, 2008 or award from 2009 must submit the Notice of intent to return credits and request Exchange funds in the form prescribed and attached as Exhibit 1. The Department will notify the Development Owner of the Department's acceptance of the return at which point the Development Owner will have 10 days to complete and submit the following mandatory requirements of Threshold Criteria, unless specifically indicated otherwise:
- a) Certification that the Development complies with this Policy and all threshold and scoring under the QAP for which it was originally awarded remain true and contemplated as part of the development; and 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;
  - b) Good Faith Effort Documentation;
  - c) Submission of items impacted by the change in the development costs and financing structure contemplated herein. The Applicant must provide the following updated information, as applicable, using the forms in the 2009 Uniform Application and supplemental application documents:
    - i) Activity Overview [Vol. 1, Tab 1, Part A]
    - ii) Rent schedule reflecting current rent and utility allowances [Vol. 1, Tab 2, Parts B & C];
    - iii) Annual operating expenses [Vol. 1, Tab 2, Part D];
    - iv) 30 Year Operating Proforma [Vol. 1, Tab 2, Part D];
    - v) Development Cost Schedule [Vol. 1, Tab 3, Part A];
    - vi) Offsite Cost Breakdown [Vol. 1, Tab 3, Part B];
    - vii) Site Work Costs [Vol. 1, Tab 3, Part C];
    - viii) Summary of Sources & Uses Costs [Vol. 1, Tab 4, Part A] Note: This must be consistent with Notice of Intent Filed August 7, 2009;
    - ix) Financing Participants [Vol. 1, Tab 4, Part B], Financing Narrative, executed grant/subsidy, and updated construction loan commitment;
    - x) Previous Participation Exhibits [Vol. 1, Tab 5, Parts A-E];
    - xi) Tax Assessor valuation and tax rates by taxing jurisdiction;
    - xii) Evidence of Site Control;
    - xiii) Acquisition and/or Rehabilitation Information [Vol. 3, Tab 6]; and
    - xiv) Updated Property Condition Assessment ("PCA") meeting the requirements of 10 TAC §1.36, if applicable.

Within 60 days of an award of Exchange funds and prior to any release of said funds by the Department, the Development Owner will be required to provide any and all remaining conditions of the original award including underwriting conditions that must be met prior to commencement of construction, proof of a

final construction loan approval, construction set of architectural drawings, and final building permits. Construction must commence prior to January 31, 2010 and any extensions must be approved by the Board.

- 4) Application Deadlines.** The notice of intent to return credits and request Exchange funds must be received on or before **5:00 p.m. Austin local time on August 7, 2009**. The additional application information described in Section (3)(a)-(c) above is due within 10 days of the notice of acceptance of the credit return but no later than **September 10, 2009**.
- a) The Department will accept Notices and additional application information from 8 a.m. to 5 p.m. Austin local time each business day, excluding federal and state holidays from the date this Policy is published on the Department's web site until the deadline. For questions regarding this Policy please contact Robbye Meyer at 512-475-2213 or via e-mail at [robbye.meyer@tdhca.state.tx.us](mailto:robbye.meyer@tdhca.state.tx.us).
  - b) Applicants must submit the Application materials on forms established by the Department. In addition to the application requirements herein, staff may use discretion to determine if additional information that is typically required in the full application (including third party reports) is necessary or prudent in order to review for compliance with state or federal rules or due to changes in the market since last reviewed by the Department.
  - c) Notices and additional application information must be submitted by one of the following delivery methods:

via overnight delivery to:

**Texas Department of Housing and Community Affairs  
Attn: Tax Credit Exchange  
221 East 11th Street  
Austin, TX 78701-2410**

or via the U.S. Postal Service to:

**Texas Department of Housing and Community Affairs  
Attn: Tax Credit Exchange  
Post Office Box 13941  
Austin, TX 78711-3941**

- 5) Review and Assessment of Applications.** Applications submitted for consideration for Exchange funding under this Policy will be reviewed according to the process outlined in this section.
- a) Eligibility Criteria Review. All Applications will be reviewed to confirm eligibility for funding.
  - b) Threshold Criteria Review. Applications will be reviewed for Threshold. Applications not meeting Threshold Criteria will be notified of any Administrative Deficiencies, in each event the Applicant will be given an opportunity to correct such deficiencies. Applications not meeting Threshold Criteria after receipt and review of the Administrative Deficiency response will be terminated and the Applicant will be provided a written notice to that effect.
  - c) Administrative Deficiencies. If an Application contains Administrative Deficiencies pursuant to 10 TAC §49.3(2) which, in the determination of the Department staff, require

clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. Because the review for Eligibility, Selection, Threshold Criteria, and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made several times. The Department staff will request clarification or correction in a deficiency notice in the form of an email, or if an e-mail address is not provided in the Application, by facsimile, and a telephone call (only if there has not been confirmation of the receipt within 24 hours) to the Applicant and one other party identified by the Applicant in the Application advising that such a request has been transmitted. If Administrative Deficiencies are not clarified or corrected to the satisfaction of the Department by 5:00 p.m. Austin local time on the fifth business day following the date of the deficiency notice, then the Application shall be terminated. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period. This Administrative Deficiency process applies to requests for information made by the Real Estate Analysis Division review.

- d) Financial Evaluation. The Department shall underwrite an Application to determine the financial feasibility and amount of need of the Development to arrive at an appropriate level of Exchange funds. Underwriting of a Development will include a determination by the Department, pursuant to the Notice, that the amount of Exchange funds recommended for commitment to a Development is necessary for the financial feasibility of the Development and its viability as a qualified rent restricted housing property. In making this determination, the Department will use the Underwriting Rules and Guidelines, 10 TAC §1.32.
- e) The Department may decline to consider any application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any applications which are received and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department strives, through its loan terms, to securitize its funding while ensuring the financial feasibility of a Development. The Department reserves the right to negotiate individual elements of any application.
- f) Compliance Evaluation. After the Department has determined which Developments will be reviewed for financial feasibility, those same Developments will be reviewed for evaluation of the compliance status by the Department's Compliance and Asset Oversight Division, in accordance with 10 TAC Chapter 60.
- g) Alternative Dispute Resolution. In accordance with §2306.082 Texas Government Code and 10 TAC §53.6, it is the Department's policy to encourage the use of appropriate Alternative Dispute Resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Cod, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rules on ADR at 10 TAC §1.17.

- 6) Contract Administration.** Any activity funded under this Policy will be governed by a Written Agreement or Contract that identifies the terms and conditions related to the awarded funds. The Contract will not be effective until executed by all parties to the Contract. Any amendments must be in writing and are subject to the requirements of the Department's amendment process for the tax credit program and the requirements of this section.
- a) Unless otherwise changed by agreement of the parties in a Contract and approved by the Board, the terms found in Contract shall be consistent with the following:
    - i) Up to seventy-five percent of the developer fee may be disbursed in accordance with the percentage completion of construction. The remaining twenty-five percent of developer fee may be caused to be withheld until the later of the following:
      - (1) 100% completion of the Department's Cost Certification process; or
      - (2) Sufficient sources of funds are available as determined by the Department.
    - ii) Department authorized pre-award costs for eligible pre-development costs, including but not limited to legal, architectural, engineering, appraisal, surveying, and market study fees, may be paid if incurred before the effective date of the Contract.
    - iii) The Department may withhold any draw until completion of a site/construction inspection as deemed necessary by the Department to ensure that construction progress is being made in accordance with the Contract.
    - iv) All applicable sections of the Department's rules for Loans and Contract Administration as reflected in 10 TAC Chapter 53 Subchapter G shall apply; where HOME funds are specifically referenced in this Chapter, the Department may interpret such language to also apply to the funds provided under this Policy.
  - b) Unless otherwise changed by agreement of the parties in a Contract and approved by the Board, performance under the Contract will be evaluated with the following benchmarks:
    - i) Closing must occur by December 31, 2009;
    - ii) Construction must begin by January 31, 2010;
    - iii) Fifty percent of construction completion must occur within 8 months of the closing date;
    - iv) Construction sufficient to justify request and receipt of reimbursement of eligible costs to fulfill the requested Exchange funds to be disbursed by December 31, 2010
    - v) Completion of construction and receipt of certificates of occupancy, or certification of completion by an architect for rehabilitation, must occur within 24 months of the date of actual closing.
  - c) The Executive Director may collectively provide up to one six-month extension to the end date of any Contract except those limited by Federal or state law or regulation. Any additional time extension granted by the Executive Director shall include a statement by the Executive Director relating to unusual, non foreseeable, or extenuating circumstances that warrant more than a six-month extension. If the extension is longer than six months and the Executive Director determines that a statement related to unusual, non-foreseeable, or extenuating circumstances cannot be issued, it will be presented to the Board for approval, approval with modifications, or denial of the requested extension.

- d) If the Development Owner fails to meet a benchmark requirement and does not seek, or is not granted, an extension of a benchmark, the awarded funds related to the lack of performance may be entirely or partially de-obligated at the Department's sole discretion.
  - e) Individual benchmarks. Each benchmark reflected in Subsection (b) of this Section is an individual term and subject to the amendment processes. An interim benchmark extension may or may not extend the entire Contract at the Department's discretion.
  - f) Waiver. The Board, in its discretion and within the limits of federal and state law, may waive any one or more of the requirements of the Contract if the Board finds that waiver is appropriate to fulfill the purposes or policies of Chapter 2306, Texas Government Code, or for good cause, as determined by the Board.
  - g) Accounting Requirements. Within sixty (60) days after the Contract end date, the Administrator or Development Owner shall provide a full accounting of funds expended under the terms of the Contract in accordance with the Cost Certification requirements of 10 TAC §49.15(b). Failure of a Development Owner to provide full accounting of funds expended under the terms of a Contract shall be sufficient reason for the Department to deny any future Contract to the Development Owner.
- 7) 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 syndicator, 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.
- 8) Crosscutting Requirements.** Any activity funded under this Policy will be required meet all requirements of the Act and Section 42 of the IRC.

***NOTE:** This Policy does not include the text of the various applicable regulatory provisions that may be important to Exchange. For proper completion of the application, the Department strongly encourages potential applicants to review all applicable State and Federal regulations.*

NOTICE OF INTENT TO RETURN CREDITS AND REQUEST EXCHANGE FUNDS  
IN CONNECTION WITH THE SECTION 1602 TAX CREDIT EXCHANGE PROGRAM

Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, Texas 78701

To Whom It May Concern:

\_\_\_\_\_ (the "Awardee") was awarded \$ \_\_\_\_\_<sup>1</sup> in low income housing tax credits by the Texas Department of Housing and Community Affairs (the "Department") under application number(s) \_\_\_\_\_<sup>2</sup>, such low income housing tax credits being referred to herein as the "Credits." The Awardee, acting by and through its duly authorized officer or representative, hereby gives notice to the Department of its intent to return the Credits to the Department to enable the Department to exchange the with the U. S. Treasury for cash, all as provided for in Section 1602 of the American Recovery and Reinvestment Act ("ARRA"). Further, the Awardee intends to request a sub award of Exchange funds not to exceed \$ \_\_\_\_\_ which is 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 Awardee intends to select a Credit Price Ceiling of (select only one):

- \$0.77 based on the original approved income and rent mix;
- \$0.81 based on restricting 10% of the total number of units at 30% rents and for households earning 30% or below of the area median income in addition to any 30% units in the originally approved income and rent mix; or,
- \$0.85 based on restricting 20% of the total number of units at 30% rents and for households earning 30% or below of the area median income in addition to any 30% units in the originally approved income and rent mix.

The Awardee understands and acknowledges that once it has returned the Credits to the Department, any cash or other funds received by the Department from the U. S. Treasury will be awarded in accordance with the Department's Exchange Policy, as adopted by the Department's Governing Board on July 30, 2009. Further, the Awardee agrees that the information contained in this notice will be relied upon by the Department to make Exchange awards and may not be revised except by the request of the Department. The Awardee represents and warrants to the Department that it has reviewed the above-referenced Exchange Policy, has had the opportunity to consult with counsel of its choosing, and understands the requirements and limitations of the Exchange Policy.

\_\_\_\_\_ ("Awardee")

By and through: \_\_\_\_\_  
Its duly authorized officer or representative (DATE)

<sup>1</sup> If allocated multiple carryover/determination amounts, identify each amount separately.

<sup>2</sup> If allocated under multiple years identify all award numbers.