

TAX CREDIT PROGRAM GUIDELINES

The Low-Income Housing Tax Credit Program ("Tax Credit Program") is a federal program created by the 1986 Tax Reform Act and amended pursuant to several subsequent federal laws. The Pennsylvania Housing Finance Agency ("Agency") is the agency responsible for the administration of the Tax Credit Program in the Commonwealth of Pennsylvania. The purpose of the Tax Credit Program is to assist in the creation and preservation of affordable housing for low-income households. The Agency has adopted an Allocation Plan containing the criteria to be used in distributing the Tax Credits based upon the housing needs of the Commonwealth. The Allocation Plan is located in the Multifamily Housing Program Guidelines.

The Tax Credit Program makes available to owners of and investors in low-income rental housing developments a federal Tax Credit which is a dollar-for-dollar reduction of their federal tax liability. The Tax Credit may be taken for a 10 year period provided that the development remains in compliance with the Tax Credit Program.

These guidelines are provided to assist applicants for Tax Credits in preparing the Application. The guidelines are a supplement to the Allocation Plan. Should there be an inconsistency between these guidelines and the Allocation Plan, the terms and descriptions set forth in the Allocation Plan will prevail. The terms set forth in these guidelines may change from time to time. The Agency will attempt to notify interested parties of any changes in the Tax Credit Program or the process of implementing the Tax Credit Program through the Agency's website at www.phfa.org.

Applicants are advised to be familiar with the requirements of Section 42 of the Internal Revenue Code, as amended (the "Code"). Information concerning the basic requirements of the Tax Credit Program is provided on the Agency's website. It is recommended that, before completing the Application, applicants should check the Agency's website to ensure that the development meets current program eligibility.

Review Process

An Application, once received by the Agency, may not be altered, amended or modified except as approved by staff during underwriting and program review. If a discrepancy is found in an Application during the review process, the applicant may be given five business days to respond to the request for clarification. Corrections allowed by staff may not include replacement, substitution, or amendment of material items used in the ranking of the Application. An omission from the Application Checklist may result in the immediate rejection of the Application.

The following information and summaries are provided as a general overview only. Applicants must consult their own tax advisors and may be required to provide opinions from qualified professionals regarding any aspect of their development and the Tax Credit Program. All allocations of Tax Credits in the Commonwealth are subject to the Agency's review and approval of Applications submitted in accordance with the Allocation Plan and subject to compliance with all of the requirements of the Tax Credit Program. Specific definitions of all terms used in the following description may be found in the Allocation Plan and in the Code.

Property Eligibility Requirements

- Be located within the Commonwealth.
- Make all units available to the general public and allow units to be occupied in accordance with all federal, state, and local laws, including fair housing and accessibility laws.
- Be suitable for occupancy and comply with all applicable federal, state, and local building and health codes.
- Meet all requirements of the Internal Revenue Code (the "Code") and applicable federal laws relating to rental housing.
- Provide a permanent, decent, safe, and sanitary structure for year round residential use on a non-transient basis.
- Be located in a geographic area which does not have competing developments, including developments with rental assistance contracts resulting in an undue concentration of rent-restricted or market rate units in a specific location.
- Provide new units, substantially improve the quality of or preserve existing units, or preserve existing federally assisted/subsidized housing units.
- Address a demonstrated housing need.

Preservation of Agricultural Land

The Agency is committed to preservation of the Commonwealth's primary agricultural lands. Multifamily or single family housing developments proposed for certain priority agricultural lands as defined in Executive Order 2003-2 may not be eligible for Agency funding. Priority agricultural lands include lands that are currently in active non-timber agricultural use and that have been in such use for the preceding three years, lands that are subject to specific land use restrictions, and/or lands that are classified as unique or prime agricultural lands by applicable federal or state agencies.

The Agency will evaluate developments involving conversion of lands in these categories and may deny funding unless specific economic and environmental concerns support the conversion. The Agency will continue to actively encourage both single family and multifamily housing development in rural communities as long as the affected lands meet all applicable program funding criteria.

Equal Opportunity

The equal opportunity policy adopted by the Board of the Agency is as follows:

It is the policy of the Agency to actively encourage and ensure minority and female participation in the ownership, development, design, financing, construction, and management of multifamily housing developments that receive funding from the Agency.

To further this policy, the Agency has developed technical assistance and outreach effort to increase minority and women's business enterprise ("M/WBE") participation in Agency sponsored developments. The Agency will provide technical assistance to development owners and their development teams on how to identify and include minority and female vendors and establish ongoing working relationships with these enterprises. Agency staff

will also coordinate efforts with state and local M/WBE technical assistance providers and certification offices to apprise M/WBE firms of opportunities available from Agency programs.

Agency staff will review this Equal Opportunity Policy with program applicants and will monitor MBE/WBE outreach activities of funding recipients.

Fees and Cost Limitations

The Agency has developed a Development Cost Limits Schedule and a Fee Schedule. These schedules, included in the Application Instructions, are an applicant's guide for the fees and expenses that are normally incurred in developing a property. The fees and expenses outlined in these two schedules are the maximum amounts that may be included in the total development cost and, if applicable, the eligible basis of the development. Any cost, whether developmental or operational, that is deemed unreasonable may be adjusted by the Agency.

Maximum Per Unit Basis Limitations

The Agency has established Maximum Basis limits. The Application Instructions contain the Maximum Basis limits applicable to developments for each market area of the Commonwealth. A detailed explanation of the conditions under which an applicant may request a waiver of these limits is found in the Allocation Plan. Maximum Basis is calculated by applying the limits by the number of each applicable bedroom-size unit, as shown in the Application. To this amount is added the approved developer fee. This total may be adjusted for any federal subsidies, non-recourse debt, non-qualifying units of higher quality, and historic rehabilitation tax credits. In certain developments, these adjustments may be pro-rated. To request a waiver of the Maximum Basis limits, a development's high costs must be due to the existence of one or more of the factors outlined in the 2012 Allocation Plan. An applicant must formally request a high cost waiver at the time of application, supplying detailed information on the high cost conditions, cost estimates, and cost comparisons. This information will be reviewed by Agency staff and a specific waiver amount may be approved. This approved high cost amount will be added to the Maximum Basis amount. If a development also qualifies for Acquisition Tax Credits, the Acquisition Tax Credits will be in addition to the New Construction/Rehabilitation Tax Credit. There is no high cost waiver provision applicable to Acquisition Tax Credits.

Rural Development Section 515

For developments financed through the Rural Development Section 515 program, the Agency will recognize only those costs that have been approved by Rural Development. The Agency has entered into a Memorandum of Understanding with Rural Development regarding agreed upon procedures for processing developments involving both Rural Development funds and Tax Credits. These procedures will be applied when processing a Tax Credit request for a development with Rural Development funding and are available upon request.

Extended Use Agreement/Restrictive Covenant Agreement

The Indenture of Restrictive Covenants Agreement (the "Agreement") sets forth the income and occupancy restrictions for the development for the entire compliance period or extended use period, whichever is greater. Furthermore, the Agreement requires that the applicable fraction of low-income units will remain the same for each taxable year in the extended use period. In addition to identifying the minimum set-aside election of the buildings, the Agreement will also include the Selection Criteria on which the development was ranked and obtained a reservation of Tax Credits. Tax Credits may not be claimed until the Agreement is executed and recorded. The Agreement must be recorded in the Office of Recorder of Deeds for the county in which the property is located prior to any recording or filing of financing documents for the development. The Agreement will be forwarded to the owner with a copy of the executed carryover Allocation Agreement, and must be returned with the Carryover Allocation 10% test documentation evidencing that it has been recorded prior to any other document. The original Agreement must be returned to the Agency.

The Agreement is binding on all successors to the owner.

Carryover Allocation Requirements

The Allocation Plan outlines the important deadlines and requirements associated with the execution of a Carryover Allocation Agreement.

If the building is to be placed-in-service by December 31, 2012, all documents shown under Placed-In-Service Requirements must be received by November 4, 2012, to enable the Agency to issue IRS Forms 8609 in 2012. In the event the development will not be placed-in-service by December 31, 2012, the following requirements must be met no later than August 15, 2012 and received by the Agency by Monday, August 22, 2012 unless the Agency makes a reservation of Tax Credits after July 31, 2012. If reservations are made after July 31, 2012, the Agency will provide a date for which the following requirements must be submitted:

- 1) The original Allocation Carryover Agreement will be forwarded to the developer for execution. The taxpayer identification number for the taxpayer executing the Agreement is required for a valid Carryover Agreement. **Please note that the taxpayer executing the Agreement must be the party that will meet the 10% expenditure test by August 14, 2013 in order for there to be a valid Carryover Allocation Agreement.**
- 2) The executed "Owner Certification of Property Ownership" Form with either a) the current deed(s) which indicate that the taxpayer is the owner of all buildings and land in the project, or b) an extended lease agreement. All documents must be fully executed.

In the event that property is not conveyed through a deed or lease, the Agency may, in its sole discretion, accept 1) an Attorney's Opinion Letter or a Certified Public Accountant Letter that certifies that the owner has carryover allocation basis for the development pursuant to the Code, or 2) an owner's certification which includes sufficient identification of the property (i.e. legal descriptions, surveys, title insurance) to assign building identification numbers. In making this certification, the owner accepts full responsibility for all discrepancies, errors, or omissions of properties and acknowledgement that subsequent adjustments may require IRS approval.

- 3) The settlement sheet(s) must be provided for each building or parcel of land in the development, and must be fully executed. In addition, evidence must be provided that each deed was recorded. In the event the property is not owned by the taxpayer, evidence of site control through August 14, 2012, must be provided including evidence of payment of all extension fees. **Ownership by the taxpayer of all properties is required by August 14, 2012, and must be submitted with the 10% package due August 24, 2012.**
- 4) If the property(s) was purchased through a Purchase Money Mortgage, a copy of the mortgage and mortgage note must be provided.
- 5) Asset Management/ Compliance Monitoring Fee equal to \$800 per unit.

The following requirements must be fulfilled no later than August 14, 2012, and received by the Agency by noon on August 24, 2012:

- 1) Financial Characteristics Form (Agency document).
- 2) For developments with commercial space that is a separate condominium, provide a Sources and Uses statement for each area.
- 3) Updated financing letters. If closing on the loan has already occurred, provide a copy of the executed mortgage note(s) in lieu of the updated letter. The updated financing letters or notes must be provided for all sources of financing shown on the application, including bridge loan if applicable. Do not send copies of the actual mortgages.
- 4) Firm commitment letter from investor and if it exists, a fully executed partnership agreement signed by all the partners (including the investors).
- 5) Certification of Subsidies.
- 6) The executed "Owner's Certification of Costs Incurred" Form including either "a" or "b" shown below.
 - a. For developments with 6 units or more, the owner's certification must be audited by an independent, third party, certified public accountant.
 - b. For developments with 5 units or less, in lieu of the certified public accountant's audit, the taxpayer may provide evidence of costs incurred in the form of copies of checks, receipts, or other records of payment. These items must total the amount indicated as expended on the "Owner's Certification of Costs Incurred."
- 7) Independent Auditor's Report
- 8) Copy of the executed Developer's Fee Agreement (Development Services Agreement). The agreement should specifically state the fee earned through August 14, 2012, in order to allow these costs for inclusion in the 10% of basis expenditures test.
- 9) Syndicator/Investor Certification – If the Developer's Fee included in the 10% of basis expenditure test exceeds 20% of the total Developer's Fee, the syndicator and/or investor must certify that the percentage claimed by the accountant is a percentage acceptable to them. The letter must refer to the percentage and the amount of the Developer's Fee that is acceptable as part of the 10% of basis expenditure test. If a development has already closed on all of the construction loans and construction is underway, a certification from the investor is not required.

- 10) Copy of the recorded deed demonstrating transfer of ownership to owner for each building and/or parcel of land that is part of the development (if not previously submitted).
- 11) Copy of the fully executed Settlement Statement for each building and/or parcel of land included in the development (if not previously submitted).
- 12) If the property (s) was purchased through a Purchase Money Mortgage, provide a copy of the mortgage note. (if not previously submitted)
- 13) The Design Architect's Certificate of Compliance and Design Requirements for Accessible Housing must be executed by the Architect and Taxpayer.
- 14) Original executed and recorded Restrictive Covenant Agreement.
- 15) If the general contractor was not identified in the initial Application, the owner must identify and provide qualifications of the general contractor for review and approval by the Agency.
- 16) Development Information Form (Agency document).
- 17) In accordance with the Agency's Accessible Unit Policy, if the application was awarded points for providing accessible units, provide a list of community agencies who will partner with the developer to identify persons with disabilities who are searching for accessible units.

Failure to meet all of the above requirements will result in an immediate recapture of the Year 2012 Tax Credit reservation.

Placed-in-Service Requirements

Upon completion of the development, a cost certification must be performed. The Placed-in-Service Package must be received by the Agency no later than 90 days after the last residential building receiving Tax Credits in the development is considered **placed-in-service** pursuant to IRS Advance Notice 88-116. **Please note for rehabilitation buildings, the placed in service date for the rehab work is the close of the 24 month period when the rehab is substantially complete and not earlier. The Placed-in-Service package is due to the Agency within 90 days of the placed-in-service date shown by the owner on the certification form.** Owners who are not able to submit the cost certification, including all documentation required by the Placed-in-Service Package within the 90-day period, may request an extension, but will be required to pay extension fees. The maximum extension that will be granted to any development will be **30 days**, unless the owner is deferring the start of the Tax Credit period, as defined in Section 42 (f)(1) of the Code. **Refer to the Placed in Service package located on the Agency's web site for the specific requirements.**

The Agency has developed a cost certification guide to assist applicants in completing the cost certification. This guide is not an authoritative pronouncement on those costs that may be Tax Credit basis eligible or ineligible, but rather serves as a tool for completing the cost certification.

The Placed-in-Service Package requirements can be found on the Agency's website at www.phfa.org. All of the required documents must be forwarded to the Agency for review and approval prior to the issuance of IRS Form 8609 (Low-Income Housing Credit Allocation Certification).

Upon submission, review, and satisfaction of all requirements, IRS Form 8609 will be issued. For developments that have received financing through the Agency, the cost certification required by the Loan Program must be received by the Agency's Finance

Division prior to the release of the IRS Form 8609. It is the owner's and syndicator's (investor's) responsibility to review the cost certification prior to its submission to the Agency to ensure that all costs and sources of funds are properly included and categorized.

Annual Recertification Exemption

The Housing and Economic Recovery Act of 2008 (HERA) eliminates the annual income recertification requirement for 100% qualified low income tax credit developments. The Agency adopted this provision effective January 1, 2009. Owners of 100% properties are required to certify each year on the Owners Certification of Continuing Program Compliance that no unit was occupied by an ineligible household. In addition, owners must provide annual updates for all units regarding household composition, student status and rent. Properties that are less than 100% qualified low income tax credit developments must continue to recertify on an annual basis. Also, additional funding sources, such as Section 8 and HOME, have annual recertification requirements that must be adhered to.

HUD Tenant Data Collection

The Housing and Economic Recovery Act (HERA) of 2008 requires each state Credit allocating agency to provide HUD with information on the race, ethnicity, family composition, age, income, use of federal rental assistance, disability status, and monthly rental payments of households residing in each property receiving Tax Credits. All developments receiving Tax Credits must participate in this data collection effort and will be expected to provide the required information.