PHFA
PENNSYLVANIA HOUSING FINANCE AGENCY

Supplemental Guidance – Noncompliance with Allocation Plan Selection Criteria, Post Award

Update – April 28, 2016

Over the last several months, we have received requests from developers holding a reservation or allocation of low income housing tax credits (tax credits) seeking relief or modification of certain selection criteria for which the Agency originally awarded tax credits. While we understand that from time to time unforeseen issues may arise during the development process which make it either impossible or infeasible to meet selection criteria, the Agency relies on these representations in making an award. The 2016 tax credit Allocation Plan (as well as previous years' plans) provides the following:

Noncompliance – The Agency may deduct up to 10 points from the score for proposals involving either an Applicant (or any related entity) that owns a managing or controlling interest in a Pennsylvania Tax Credit development or a management agent of such development who has unresolved IRS Form 8823 noncompliance issues, has not met the requirements of the Restrictive Covenant Agreement, has failed to submit a timely Placed-in-Service/Cost Certification package which resulted in a loss of Tax Credits to the Agency, ***or failed to meet the selection criteria for which an allocation of Tax Credits was made.***

Based on the foregoing, for those developments that fail to meet the selection criteria that were certified to in an application, including but not limited to: development characteristics, resident population, provision of services, number of accessible units, development team members, zoning (specifically, not meeting all zoning requirements by the specified date (i.e. November 11, 2016 for Program Year 2016) and commitment of funds, the Agency **will assess negative ranking points on future application(s)** submitted by any applicant/ownership entity (or any related entity) listed on the initial application. The negative point assessment will be applied to **all** applications submitted **for the next Program Year** in which the applicant(s)/entities(s) apply to the Agency for funding. For those developments which are not able to achieve the cost savings points, developers will have the option to 1.) **accept negative ranking points**, as described above, for the next Program Year in which the applicant(s)/entities(s) apply to the Agency for funding or 2.) at cost certification **agree to limit costs to the maximum allowable** in the cost savings points category.

As a reminder, in addition to looking at the application several times during processing (carryover allocation and 10% test), we also review the selection criteria at cost certification and conduct a physical inspection of the property. In the event the Agency discovers that the selection criteria are not met at that time, the Agency will assess negative ranking points to future applications as described above, from the date of discovery.

Our hope in providing this guidance is to alleviate any confusion on how we address, and in the future will address, any development **currently holding** an allocation that fails to meet the selection criteria for which the allocation of Tax Credits was made. However, please keep in mind that future applications will be subject to the Agency guidelines in affect for the year in which they receive a conditional reservation.

If you have any specific questions, please feel free to contact Linda Stewart, Manager of Tax Credits at lstewart@phfa.org.