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 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 ten-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.

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.** An omission from the Application Checklist may result in the immediate rejection of the Application.

If the Applicant (or any related entity or material participant) is involved or has been involved in an Agency funded development (including Tax Credit properties) that is: delinquent in payments to the Agency, has materially defaulted on any of its obligations including, meeting required submissions and deadlines, or has misrepresented any material information on a previous applications, the Agency may reject 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 Tax Credits allocations 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.
- Shall consist of 24 or more low-income units that are under common ownership, management, and financing as a single undertaking. (Preservation may be exempt from this unit minimum subject to Agency approval.)
- Shall not include more than 50% market rate units.
- Not displace existing tenants or result in an increase in rents greater than 7% of current rental payment for existing residents. Applicants proposing developments with existing tenants must comply with applicable relocation and displacement procedures.
- For All applications, including both 4% and 9% Tax Credits, the Construction and/or Rehabilitation costs must exceed 40% of the Replacement Value.
- Limit commercial space in a development to 25% of gross income and/or gross area of the development. (However, it is recommended that commercial income not constitute more than 10% of the effective gross income. An exception would apply if the proposed owner guarantees the income for the tax credit compliance period via cash or a letter of credit.) All commercial tenants are subject to the Agency's approval. Additionally, program funds cannot be used in the development of commercial space.
- Be located in a geographic area which does not have competing developments or an over-concentration of affordable housing.
- 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.
- Be ready to proceed to closing in an expeditious timeframe.
- The Applicant shall certify that, at construction completion, the Applicant will design and implement a policy prohibiting the use of prohibited tobacco products in all living units and interior areas including but not limited to hallways, rental and administrative offices, laundry and common areas as well as outdoor areas within 25 feet of all the buildings in the development, outdoor gathering spaces and tot lots.
- Refer to Architect’s Submission Guide on the Agency’s website for specific design requirements.

Preservation of Agricultural Land

The Agency is committed to the 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 efforts 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 and encourages participation through the Allocation Plan Selection Criteria. 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.

USDA Rural Development 538 Guaranteed Rural Rental Housing Program

The Guaranteed Rural Rental Housing Program ("RD 538") allows developers of affordable housing to get a loan guarantee for the debt used to finance a project. USDA RD can guarantee:

- Up to 90% of the loan amount for for-profit entities; and
- Up to 97% of the loan amount for non-profit entities.

Rents cannot exceed 30% of 115% of the Area Median Income at initial occupancy, and units must be occupied by households that do not exceed this limit. Any rural area with a population of up to 20,000 is eligible for the program.

The Agency does not administer the RD 538 program, but is an RD-approved lender and has utilized this program in the past. Developers interested in this program should first contact RD at (717) 237-2186. They can then meet with the Agency or another approved lender and work jointly on an application for RD538 loan guarantee, which is completed by the lender and submitted to RD.

Indenture of Restrictive Covenants/Restrictive Covenant Agreement

The Indenture of Restrictive Covenants (the "Indenture") sets forth the income and occupancy restrictions for the development for the entire Agency Compliance Period/extended use period. Furthermore, the Indenture 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 Indenture 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 Indenture is executed and recorded. The Indenture 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. It will be forwarded to the owner with a copy of the executed Carryover Allocation Agreement (or as part of the Agency's closing), and the original, recorded must be returned to the Agency if not prior to, with the Carryover Allocation 10% test documentation evidencing that it has been recorded prior to any other document. The original recorded Indenture must be returned to the Agency.

The Indenture is binding on all successors to the owner.

Developments consisting of the preservation of existing Tax Credit properties will execute a new Indenture of Restrictive Covenants, however to the extent the development is in its extended use period, the existing Agency Indenture/Agreement will remain on the property.

Carryover Allocation Requirements

The Allocation Plan outlines important deadlines and requirements associated with the execution of a Carryover Allocation Agreement. If your project is not placed in service by the end of the year in which the project is awarded credits, a carryover allocation must be executed. All Carryover requirements will be posted to the Agency's website once available. *Please Note: Prior to the current Carryover requirements being made available, you can review previous Carryover requirements to familiarize yourself with the requirements and process.*

If at the time the 10% test documentation is required construction is complete and the certified public accounting firm is completing the cost certification, submission of the 10% test documentation may be waived. In the event a waiver is approved, the cost certification and Placement-In-Service Package must be submitted within 90 days from the date the 10% test documentation was due, or the placed-in-service date of the last residential building, whichever is earlier, or extension fees will be assessed.

Placed-in-Service Requirements

Upon completion of the development, a cost certification must be performed. The Agency requires the submission of the Placed-in-Service Package 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. 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. A cost certification once submitted cannot be revised. The Placed-in-Service Package with specific requirements and deadlines can be found on the Agency's website at www.phfa.org.

Owners who are not able to submit a complete Placed-in-Service Package including all documentation required 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. For more details concerning extensions and the calculation of the fees, refer to the Placed-In-Service package. In the event a package is found to be incomplete or have material omissions, the Agency, in its sole discretion, may return the incomplete package for resubmission. Agency extension fees will continue to accrue until receipt of a complete package.

Upon submission of all the required documents, review, and satisfaction of all Agency requirements, the IRS Form 8609 (Low-Income Housing Credit Allocation Certification) will be issued. For developments that have received financing through the Agency, the cost certification required by the Loan Program and all requirements must be received by the Agency's Finance Division prior to the release of the IRS Form 8609.

Annual Recertification Exemption

The Housing and Economic Recovery Act of 2008 (HERA) eliminates the annual income recertification requirement for 100% qualified Tax Credit developments. The Agency adopted this provision effective January 1, 2009. Owners of 100% qualified 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, rent, and information relating to accessible units. All vacancies must be reported in real time on PAHousingSearch.com. Properties that are less than 100% qualified 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. The Agency may impose additional requirements for Developments utilizing Income Averaging. Please see the additional guidance included on the Agency's website at www.phfa.org.

HUD Tenant Data Collection

HERA 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.