

Development Cost Relief Program
Program Guidelines and Application/Award Process
9/16/2022

Introduction:

The General Assembly of Pennsylvania established the Development Cost Relief Program ("DCRP") pursuant to Section 9 of Act 54 of 2022 (the "Act"). The General Assembly separately transferred \$150 Million of the United States Treasury American Rescue Plan Act ("ARPA") funds to the Pennsylvania Housing Finance Agency ("PHFA" or "Agency") to operate the DCRP under Section 3008 of the General Appropriation Act of 2022.

Purpose:

DCRP funds shall be used to continue affordable housing production in the Commonwealth of Pennsylvania. In accordance with the Act, "The Development Cost Relief Program is established in the agency to support the production of developments by addressing financial deficiencies attributable to the effects of the COVID-19 pandemic and other economic factors. Money appropriated for COVID Relief – ARPA – Development Cost Relief Program, shall be used."

Eligibility:

A development which meets **all** the following criteria may be eligible for an award of funding from DCRP:

1. Has applied for or has received a conditional or full allocation from the agency of, Low-Income Housing Tax Credits under section 42 of the Internal Revenue Code of 1986 during the 2019, 2020, 2021, 2022, or 2023 application cycles.
2. Has not, as of the effective date of the Act received a certificate of occupancy for each unit within the development.
3. Has experienced cost increases, or a loss in equity investment, as the result of conditions arising from or related to the effects of the COVID-19 pandemic, which in the sole judgement of PHFA necessitates the provision of additional funding to complete the development. Determining eligible costs is at the discretion of PHFA.

Additional Requirements and Disclosures:

1. To be considered for DCRP funds, at least a 25% deferred fee must be included in the budget submission. Community Housing Development Organizations ("CHDOs") and/or qualified nonprofit organizations which were awarded an allocation of LIHTCs through the Nonprofit Set Aside as defined in each annual Qualified Allocation Plan ("QAP") may apply for a waiver to reduce the deferred fee requirement from 25% to 5%.
2. For projects with 50 or fewer units, PHFA does not anticipate exceeding awards in excess of \$3.5M. For projects with more than 50 units, PHFA does not anticipate exceeding awards in excess of \$4M.
3. If a developer is requesting additional Agency resources, such as HOME or Housing Trust Fund ("HTF"), these sources must be included in the application. All additional funding is at the

discretion of PHFA and the Agency has the sole authority to determine which funding sources best fit each development. Additionally, in accordance with the Act, “[m]oney provided for the program under this section may not be used to supplant other [A]gency-committed resources except if the development risks noncompliance with the low-income housing tax credit program.”

4. PHFA may reduce or may deny a request based upon review of required materials and/or source availability or applicability.
5. PHFA reserves the right to ask for additional information prior to an award.
6. All funding decisions are at the sole discretion of PHFA. Additionally, PHFA reserves the right to decline specific hard or soft costs as eligible uses for the DCRP program.
7. If a project is awarded an allocation of funds, the developer must complete a revised Certification of Subsidy prior to a closing.
8. Awards may be made on a first come, first served basis. Awards are at all times, subject to the availability of funding.
9. There is a \$5,000 application fee due upon receipt of the application.

Administration and Application:

In accordance with the Act, “the Agency shall make available to an eligible development an application that requires information, as determined necessary by the Agency, to verify the need of the development and to determine the extent to which funding should be awarded, while ensuring that the development remains in compliance with the low-income housing tax credit program”. Therefore, the below procedures will be followed for the application of DCRP funds.

1. PHFA will accept rolling applications for DCRP funds until funding is fully committed and/or until commitment deadlines are reached.
2. PHFA will accept applications from developments that are under construction and from developments that have not yet closed, if the developments meet all the eligibility requirements listed above.
3. Developers must apply in accordance with the application instructions in Exhibit A.
4. Developers must submit an Attestation Form signed by both the Developer and Contractor (if applicable) attesting that the cost increases, or a loss in equity investment, as applicable, are the result of conditions arising from or related to the effects of the COVID-19 pandemic.
5. Additional documentation may be required regarding costs if the Developer and the Contractor are related entities.

Review and Award Process:

For Projects/Developments under construction, the review and award process will be as follows:

1. The Agency Technical Services Department will review the Change Orders, Construction Contract, and a comparison between construction costs at closing and current construction costs for cost reasonableness and accuracy. The developer should use PHFA form - 2.13 Loan Closing Construction Cost Breakdown.
2. An Agency Lending Analyst will review the revised project budget to ensure accuracy and that it reflects the increased construction costs. The Lending Analyst will make a recommendation regarding the final loan amount.

3. A Development Department Manager or Director will review the final recommendation and submit a memo to the Executive Director describing the increases to the budget and requesting final approval of the DCRP loan amount.
4. The Executive Director will approve or reject the request.
5. A final commitment letter (which is conditional until the closing) will be issued and a closing scheduled with the Legal Department.
6. PHFA will make final awards at its sole discretion.

For Projects that are not yet closed, the review and award process will be as follows:

1. The developer may apply for DCRP as part of the 60-day closing package submission to the Agency. The submission should include a cover letter identifying the project gap and related request for DCRP funding. There is also a DCRP checklist which should be submitted.
2. The Agency Technical Services Department will review the most recent construction bid, draft construction contract, and Attestation Form for cost reasonableness and accuracy.
3. Once a 60-day closing package and accompanying checklist is submitted, the Agency Lending Analyst will review and recommend a final DCRP loan amount. Please note that if there are additional Agency resources such as HOME or HTF, another checklist will be used.
4. The project will be presented and discussed at a PHFA internal pre-commitment meeting.
5. A Development Department Manager or Director will review the final recommendation and submit a memo to the Executive Director describing the increases to the budget and requesting final approval of the DCRP loan amount.
6. The Executive Director will approve or reject the request.
7. A final commitment letter (which is conditional until the closing) will be issued and a closing scheduled with the Legal Department.
8. PHFA will make final awards at its sole discretion.

Loan Terms:

According to the Act, “[t]he Agency shall use the same closing process and terms for an award of money from the fund as is used for an award from the Pennsylvania Housing Affordability and Rehabilitation Enhancement [PHARE] Program for a low-income housing tax credit recipient development.” In accordance with Low Income Housing Tax Credit Program requirements, the DCRP funds must be lent to the project in the form of a **cashflow only loan**.

The terms of the Cashflow Only Loan will be as follows:

Interest Rate: 0%

Term: At least 40 years

Affordability Period: At least 35 years

Repayment: Principal payments will be made from surplus of revenues over expenses in accordance with the requirements in the Note.

Lien Position: The DCRP loan may be in last position for projects that are already closed and have received funding for construction costs. However, if the project obtains financing contemporaneous or subsequent to the DCRP commitment, the DCRP funding shall be in a senior lien position to the other funding unless PHFA determines that it is in the best interest of the Agency to subordinate the DCRP funds.

The DCRP loan will be secured according to PHFA existing lien recording practice for projects that have not yet closed.

At the closing, a loan agreement, contractor/developer COVID attestation, note, and mortgage will be executed. Additional documents may be required as established by the Agency and as may be identified a loan closing index.

Disbursement of Funds:

Once the loan is closed, the funds will be disbursed to pay for construction costs through the PHFA-approved draw-down process in accordance with the Agency's disbursement procedures. The Agency shall act as disbursement agent for all project funds.

Exhibit A

Application for DCRP Funds

To apply for DCRP funds, please submit the following information to the assigned Lending Analyst and to Debbie Clark (dclark@phfa.org).

For All Requests:

1. Submit a cover letter explaining the following (For projects that have not yet closed, this can be done when the 60-day closing package is submitted):
 - a. Current status of the project
 - b. Current construction bid
 - c. For projects already under construction, submit change orders
 - d. A summary describing the reason for increased construction costs and soft costs
 - e. 2.13 Loan Closing Construction Cost Breakdown form
 - f. A summary of additional fundraising efforts and a description of new sources fundraised
 - g. The amount of the request for DCRP funds
 - h. An attestation signed by both the general contractor and the owner attesting that the cost increases or the reduction of equity are related to the COVID Pandemic.
2. Submit revised pages 153-167 of Tab 2 of the 2021 Multifamily Core Application (Tab 2) to demonstrate the need for additional DCRP funds. The Sources of Funds should demonstrate a developer fee reinvestment of at least 25%. All soft cost increases should be explained.
3. For projects requesting DCRP funds to help pay for the gap caused by a reduction in equity, please submit the following:
 - a. Tab 23 Executed Limited Partnership Agreement (LPA) with equity limited partner for federal LIHTC.
 - b. If the LPA has not been executed, include a current letter (within the past 30 days) from the interested equity limited partner with the current pay-in rate.
 - c. Include a statement as to why equity pricing has declined.
4. Submit applicable timelines as follows:
 - a. Developments Closed & Under Construction: Describe the percentage complete of construction and when the certificate of occupancy is expected to be received.
 - b. Developments Not Yet Closed: Describe the steps required to get to a closing and the related timeline. Please highlight any major hurdles.
5. Submit additional information as outlined in the DCRP checklist.

PLEASE NOTE THAT FOR PROJECTS THAT HAVE NOT YET CLOSED, THE DEVELOPER CAN SUBMIT ITEMS 1 THROUGH 5 AS PART OF THE SUBMISSION OF THE PRE-COMMITMENT CLOSING PACKAGE.

6. In addition to each of the above submission requirements, the Agency reserves the right to require additional information, documentation or certifications including, but not limited to, appraisals, opinions of counsel, certifications of certified public accountants and invoices to evaluate any Application.