

WEST VIRGINIA HOUSING DEVELOPMENT FUND
LOW-INCOME HOUSING TAX CREDIT PROGRAM
TAX CREDIT EXCHANGE PROGRAM

COMPETITIVE SELECTION CRITERIA

INTRODUCTION

The American Recovery and Reinvestment Act of 2009 (Public Law 111-5) (“Recovery Act”) was signed into law on February 17, 2009. Section 1602 of the Recovery Act established a tax credit exchange program (“Exchange Program”). The Exchange Program allows the State Housing Credit Agency to elect to exchange portions of its 2009 State Housing Credit Ceiling for cash assistance from the U.S. Treasury (“Treasury”) in order to provide funds to assist in the financing of the development of certain Low-Income Housing Tax Credit Program properties. The Exchange Program is a federal grant from the Treasury to the State Housing Credit Agency, which in West Virginia is the West Virginia Housing Development Fund (“WVHDF”).

Pursuant to the foregoing, allocating agencies are required to develop and adopt a plan by which Exchange Program funds will be distributed. The WVHDF, as the allocating agency for the State of West Virginia (“State”), is responsible for administering Exchange Program funds. In December 2009, the WVHDF exchanged certain credits that were eligible to be exchanged. As a result, the WVHDF has been awarded \$25,165,944 in Exchange Program funds.

The WVHDF will use Exchange Program funds to make subawards. Subawards will be used to finance the construction, acquisition and/or substantial rehabilitation of qualified low-income buildings in accordance with Section 1602(c) of the Recovery Act. The amount of the subaward cannot exceed 85% of the amount of a building’s eligible basis as determined at the end of the first year of the credit period (as defined in Section 42(f)(1) of the Internal Revenue Code) and, also for this purpose, eligible basis includes any increase for buildings located in high cost areas under Section 42(d)(5)(B) of the Internal Revenue Code. The subawards will be in the form of cash assistance and are not required to be repaid unless there is a recapture event with respect to the qualified low-income building. The WVHDF will not use Exchange Program funds for any other purpose, including administrative costs. The WVHDF will collect reasonable fees from subawardees to cover expenses associated with the performance of its duties under Section 1602(c)(3) of the Recovery Act, Compliance and Asset Management. Reasonable fees are amounts customarily charged for the same or similar services and in no event may exceed costs.

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INTRODUCTION (Continued)

The WVHDF may disburse Exchange Program funds to subawardees in 2010. However, the WVHDF may only disburse Exchange Program funds in 2011 provided that:

- a subaward has been made to the subawardee on or before December 31, 2010; and
- the subawardee has, by December 31, 2010, paid or incurred at least 30% of the subawardee's total adjusted basis in the land and depreciable property that is reasonably expected to be part of the low-income housing property for which the disbursements are made (*"the 30% Requirement"*).

In addition, Section 32.1(b)(3) of 31 CFR Part 32, requires that any funds not disbursed to the subawardee by December 31, 2011, must be returned to the Treasury by January 1, 2012. Therefore, the subawardee must have expended 100% of the awarded Exchange Program Funds by December 31, 2011 (*"the Disbursement Requirement"*).

In general, eligible properties will be those that have a financing gap caused by the lack of an investor for the ownership interests in the property (including the tax credit and other investment benefits) or by virtue of the price paid by an investor being insufficient to close the financing gap, in order to ensure the financial feasibility of any such property.

The property must be able to comply with all Exchange Program requirements and any additional requirements imposed by the WVHDF.

Property owners will be required to return credits for which there is no investor to the WVHDF simultaneously with the satisfaction of *the 30% Requirement*, by no later than December 31, 2010.

Unless otherwise stated, the contents of this document apply equally to all eligible properties. Also, unless otherwise stated, the contents of this document apply equally to eligible properties involving new construction, acquisition and substantial rehabilitation, or substantial rehabilitation only.

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GUIDING PRINCIPLES

Exchange Program funds are to be used on properties that:

- either have an investor, or can demonstrate a good faith effort to obtain investment commitments for credits that have been allocated to the property or bound from the 2010 State Housing Credit Ceiling;
- were selected in 2007, received a Carryover Allocation Certificate(s) dated in 2007, and such Certificate(s) still remain valid (or for tax-exempt bond financed properties, which do not require credit allocations, those properties which were selected in 2007) (first priority); were selected in 2008, received a Carryover Allocation Certificate(s) dated in 2008, and such Certificate(s) still remain valid (or for tax-exempt bond financed properties, which do not require credit allocations, those properties which were selected in 2008) (second priority); or were selected in 2009, received either a Carryover Allocation Certificate(s) dated in 2009, or a Binding Agreement(s) for an allocation of 2010 State Housing Credit Ceiling dated in 2009, and such Certificate(s) or Agreement(s) still remain valid (or for tax-exempt bond financed properties, which do not require credit allocations, those properties which were selected in 2009) (third priority); or is another eligible property (fourth priority);
- can demonstrate that they have met or are able to meet ***the 30% Requirement*** (as specified above) by December 31, 2010, with the properties having already met ***the 30% Requirement*** having a higher priority; and
- can demonstrate that they are most shovel-ready to begin construction and/or substantial rehabilitation in order to meet the federal requirements for:
 - * ***the 30% Requirement*** (as specified above) by December 31, 2010, and
 - * ***the Disbursement Requirement*** (as specified above) by December 31, 2011.

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GUIDING PRINCIPLES (Continued)

Important Notes Relating to the Failure to Meet the Federal Requirements:

- If *the 30% Requirement* is not met by December 31, 2010, the property will not be eligible to receive any Exchange Program funds after December 31, 2010.
- If *the 30% Requirement* is met by December 31, 2010, and the property does not meet *the Disbursement Requirement* by December 31, 2011, the property will not be eligible to receive any Exchange Program funds after December 31, 2011. Also, any Exchange Program funds not disbursed to a subawardee on or before December 31, 2011 must be returned to the Treasury on January 1, 2012.

For the WVHDF's purposes to ensure compliance with the federal expenditure requirements, each property must meet *the 30% Requirement* by December 31, 2010, and must meet *the Disbursement Requirement* by December 31, 2011. Any information required or necessary to substantiate the satisfaction of these requirements must be provided in a compliant, accurate and timely fashion. Failure to do so will result in the involved property and its owner losing the award of Exchange Program funding.

THE DATES PROVIDED ABOVE ARE FEDERALLY REQUIRED. THE WVHDF WILL BE IMPOSING EARLIER DUE DATES TO ENSURE THAT THE FEDERAL REQUIREMENTS AND EVIDENCE OF HAVING MET THE FEDERAL REQUIREMENTS ARE COMPLETED PRIOR TO ANY FEDERAL DEADLINE.

GOOD FAITH EFFORT TO OBTAIN AN INVESTMENT COMMITMENT

The Recovery Act requires that State housing credit agencies establish a process in which applicants that are allocated credits are required to demonstrate good faith efforts to obtain investment commitments for such credits before the agency makes such subawards. If a property has a committed investor, that will be considered by the WVHDF to be prima facie evidence that a good faith effort has

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GOOD FAITH EFFORT TO OBTAIN AN INVESTMENT COMMITMENT (Continued)

been demonstrated. For properties without an investor, in order to demonstrate that the applicant has made a good faith effort to obtain an investment commitment for the credits the property has been allocated or bound from the 2010 State Housing Credit Ceiling, the applicant must:

- have posted on the Internet at www.taxinvestments.com the property for which the developer is requesting Exchange Program funds; and
- have submitted the property for which the developer is requesting Exchange Program funds, for consideration to syndicators and investors contained in a list which was e-mailed to developers on April 21, 2009.

COMPETITIVE SELECTION CRITERIA

First priority will be given to 2007 properties in order of highest score based upon the Competitive Selection Criteria (as set forth below). Properties considered “2007 properties” are those properties which were selected in 2007, received a Carryover Allocation Certificate(s) dated in 2007, and such Certificate(s) still remain valid (i.e. 2007 Carryover Allocation credits have not been returned to the WVHDF); or for tax-exempt bond financed properties, which do not require credit allocations, those properties which were selected in 2007.

Second priority will be given to 2008 properties in order of highest score based upon the Competitive Selection Criteria (as set forth below). Properties considered “2008 properties” are those properties which were selected in 2008, received a Carryover Allocation Certificate(s) dated in 2008, and such Certificate(s) still remain valid (i.e. 2008 Carryover Allocation credits have not been returned to the WVHDF); or for tax-exempt bond financed properties, which do not require credit allocations, those properties which were selected in 2008.

Third priority will be given to 2009 properties in order of highest score based upon the Competitive Selection Criteria (as set forth below). Properties considered “2009 properties” are those properties which were selected in 2009, received either a Carryover Allocation Certificate(s) dated in 2009, or a Binding Agreement(s) for an allocation of 2010 State Housing Credit Ceiling dated in 2009, and such Certificate(s) or Agreement(s) still remain valid (i.e. 2009 Carryover Allocation

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COMPETITIVE SELECTION CRITERIA (Continued)

credits have not been returned to the WVHDF, or 2009 Binding Agreement(s) has (have) not been cancelled); or for tax-exempt bond financed properties, which do not require credit allocations, those properties which were selected in 2009.

If any funds remain available after Exchange Program funds are awarded for 2007, 2008 and 2009 properties, Exchange Program funds will then be made available for other eligible properties (fourth priority), in a similar fashion using these guiding principles (as set forth above) and the related Competitive Selection Criteria (as set forth below).

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Documentation necessary to support the responses to the following criteria will be required to be submitted simultaneously with the submission of the formal (scheduled) request for Exchange Program funds.

Percentage of Reasonably Expected Basis Already Paid or Incurred
(Total Maximum Points Available: 300)

300 points will be awarded to a property that has paid or incurred at least 30% of the subawardee's total adjusted basis in the land and depreciable property that is reasonably expected to be part of the low-income housing property.

Ability to Meet Federal Requirements by the Exchange Program Deadlines
(Total Maximum Points Available: 400)

1. 150 points will be awarded to a property that has received written regulatory approval for:
 - the Transfer of Physical Assets;
 - assumption of existing debt; and/or
 - new debt to be funded and/or provided directly or indirectly (guaranteed or insured mortgage) by HUD and/or Rural Development.

OR

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COMPETITIVE SELECTION CRITERIA (Continued)

Ability to Meet Federal Requirements
by the Exchange Program Deadlines (Continued)

150 points will be awarded to properties that do not require any regulatory approval by HUD and/or Rural Development.

2. 80 points will be awarded to a property with written commitments from all intended sources of permanent financing (including any developer-provided financing) and equity, with the exception of Exchange Program funds. In addition, in order to receive the 80 points available, the property owner must have received a signed certification from the property's construction and permanent lender(s) that such lender(s) is (are), prior to or as of the date of said certification, ready for the property owner and developer to proceed with construction, acquisition and/or substantial rehabilitation of the property.
3. 50 points will be awarded to a property, the owner of which has established site control in the form of a recorded deed in the ownership entity's name for the subject property on or before August 31, 2010.
4. 50 points will be awarded to a property that has received a signed certification from the property's architect, engineer, contractor and owner that the plans and specifications for the construction and/or substantial rehabilitation of the property are complete.
5. 50 points will be awarded to a property that has an executed, fixed-price construction contract between the Property Owner and the General Contractor, specifying the end of construction and/or substantial rehabilitation, and the end of construction and/or substantial rehabilitation will occur on or before November 30, 2011. In addition, in order to receive the 50 points available, a written timeline and schedule for the start of construction and/or substantial rehabilitation must be submitted which provides the dollar amount and percentage of construction and/or substantial rehabilitation completion at the end of each calendar month until the scheduled end of construction and/or substantial rehabilitation, signed and certified by the Property Owner and the General Contractor. Also, the written timeline and schedule must indicate that:

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COMPETITIVE SELECTION CRITERIA (Continued)

Ability to Meet Federal Requirements
by the Exchange Program Deadlines (Continued)

- ***the 30% Requirement*** will be met by no later than November 30, 2010 (see note below); and
- ***the Disbursement Requirement*** will be met by no later than November 30, 2011.

Allowances for seasonal weather delays must be worked into the schedule.

Note: For any property selected to receive Exchange Program funds, under federal law, if ***the 30% Requirement*** is not met by December 31, 2010, the property will not be eligible to receive any Exchange Program funds after December 31, 2010.

6. A property will be awarded 2 points for each Low-Income Housing Tax Credit Program property in West Virginia where the principal(s) of both the developer and the ownership entity have placed all of the buildings in any such property in service within 14 months of the end of the calendar year in which each such property received its Carryover Allocation Certificate(s). A maximum of 20 points is available under this criteria.

RIGHT TO EXERCISE DISCRETION

The contents of this document represent the WVHDF's intended preferences for use of Exchange Program funds for eligible Low-Income Housing Tax Credit Program properties. However, in recognition of the uniqueness of each property, the WVHDF realizes the need to reserve the right to exercise reasonable and case-specific discretion of the provisions/contents of this document, based upon the WVHDF's assessment of the need for use of any such discretion. The determination to exercise discretion will be on a case-by-case basis and the WVHDF will only exercise such discretion which is fully within the legislation and guidance for the Exchange Program.

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DISCLAIMER

The purpose of this document is to provide the competitive selection criteria for selecting from eligible properties those properties that will be selected to receive an award of Exchange Program funds. This document is not intended to and should not, in any way, be construed or interpreted to be complete with respect to the WVHDF's receipt, award, commitment, disbursement and asset management of Exchange Program funds. This document is not intended to and should not, in any way, be construed or interpreted to provide all of the requirements that any recipient of Exchange Program funds from the WVHDF will have to comply.