

## MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY

### 9% EQUITY SUPPORT PROGRAM NOTICE

**JUNE 18, 2009**

**Background:** As a part of the American Recovery and Reinvestment Act of 2009 (ARRA), the Michigan State Housing Development Authority has applied for funding under the United States Department of Housing and Urban Development's Tax Credit Assistance Program (TCAP). This program is expected to provide nearly \$64 million in gap financing to support Low Income Housing Tax Credit (LIHTC) projects.

On March 25, 2009, the Authority published a Preliminary Implementation Plan addressing its plan to use both TCAP and Section 1602 Program (aka monetized credit) funding from the Department of Treasury to establish several state programs, including a "9% Tax Credit Assistance Program." In order to avoid confusion between the state-designated program and federal TCAP funding, the Authority is re-designating its program as the "9% Equity Support Program."

This memorandum, together with the attached application and exhibit checklist, is intended to formally announce the availability of funding for the 9% Equity Support Program.

**Program Outlook:** Applicants should be aware that the Authority will underwrite all developments seeking funding from the 9% Equity Support Program. Unlike the traditional 9% LIHTC program, ARRA imposes additional requirements on the Authority which create liabilities and public expectations that do not exist within the standing program.

The award of funds under the 9% Equity Support Program will be at the Authority's sole discretion. The Authority will approach these applications in a manner consistent with its Direct Lending programs. This outlook varies from the traditional 9% allocations outlook in several regards:

- The review of development team capacity is more rigorous and takes into account all Authority dealings with development team members. Sponsors or development team members with recent or unresolved performance, compliance, or financial issues may cause denial of an application. This will include any issues that have developed since the original award of LIHTC was made to a specific project;
- Underwriting is more stringent. Because the Authority is being asked to materially participate in the direct funding of projects, our review may be less deferential to those completed by other funders in the project. Safe harbor cost allowances within the Qualified Allocation Plan (QAP), on operating costs for example, may be determined insufficient for purposes of the 9% Equity Support Program; and
- As outlined in greater detail below, ongoing involvement from the Authority has increased. This includes interaction during the development construction and lease-up period as well as during the operational life of the project.

Like the 9% LIHTC program, however, the 9% Equity Support Program has limited funding. Projects that are not viable within the maximum equity support program award may be rejected.

There are several considerations that potential applicants should consider:

**Application Deadline:** All applications for the 9% Equity Support Program are due no later than 5:00pm on Thursday, July 16, 2009. However, for applications submitted under the 2009 rolling round after July 16, 2009, 9% Equity Support Program applications will be accepted simultaneously with LIHTC applications through August 31, 2009. Rolling round applications submitted after August 31<sup>st</sup> will not be able to request 9% Equity Support Program funding.

**Eligible Applicants:** Only sponsors that have submitted a competitive application for 9% LIHTC under the 2009 QAP, either in the May 1<sup>st</sup> general round or the subsequent rolling round, are eligible to apply.

**Eligible Recipients:** In order to receive funding under the 9% Equity Support Program, projects must be owned by an eligible borrower under the Authority's Act. In most cases this will require the establishment of a Limited Dividend Housing Association.

**Source of Funding:** While the Authority initially expects to fund the 9% Equity Support Program with funding from the federal TCAP grant it expects to receive, the Authority specifically reserves the right to fund any application to the 9% Equity Support Program with any source of funding available. To the extent the Authority determines another source of funding, such as the Neighborhood Stabilization Program or the Section 1602 Program, will be used to fund an application to the 9% Equity Support Program, applicants will be required to submit documentation as may be needed by the Authority to comply with the requirements and regulations associated with any other funding source the Authority intends to use.

**Maximum Funding:** The Authority does not intend to award funding to individual developments in excess of 25 cents per dollar of tax credit. Developments that require 9% Equity Support Program funding in excess of that indicated in the Notice of Intent to Apply for TCAP submitted with the LIHTC application may be rescored for QAP purposes.

**Form of Assistance:** The Authority will provide 9% Equity Support Program funds to a development in the form of a mortgage loan, typically subordinate only to an amortizing permanent mortgage. Loan terms, as outlined in the Direct Lending Parameters, will include a 50 year term, 3% simple interest, and payment from 25% of surplus cash available for distribution. Associated documents may include, but may not be limited to, a regulatory agreement, a mortgage, and personal and/or corporate guarantees from the sponsor and/or underlying individual owners of the ownership entity.

**Applicability of Direct Lending Parameters and 2009 QAP:** Applicants for the 9% Equity Support Program will be subject to the requirements, underwriting standards, and parameters of both the 2009 Qualified Allocation Plan the Authority’s Direct Lending Parameters.<sup>1</sup>

**Ongoing Oversight and Asset Management:** It is important to note that ARRA specifically requires the Authority to “perform asset management functions ... to ensure compliance with section 42 ... and the long-term viability of buildings funded by [TCAP].” In making such a requirement, Congress established specific expectations in excess of the compliance functions previously expected of the Authority as a LIHTC allocating agency. In developing this program, the Authority has determined that ARRA’s expectations of “asset management” exceed even those traditionally fulfilled by the Authority’s Office of Asset Management (OAM). Ensuring the long-term viability of funded projects requires that the Authority perform functions such as design review, construction and disbursement oversight, and reviews of project financial feasibility.

Developments receiving assistance under the 9% Equity Support Program, therefore, will be subject to a variety of oversight and asset management requirements of the Authority. Those include but may not be limited to design review, construction and disbursement oversight, and ongoing review by OAM. OAM oversight will be similar to that currently required of developments financed with an Authority permanent mortgage and will include submission of monthly income and expense reports, annual audits, annual budget reviews, and periodic capital needs assessments.

**Fees:** The following fees will apply to all 9% Equity Support Program applications and funded developments:

Application Fee:	None, but applicants will be responsible for any third-party costs incurred by the Authority associated with the review of a 9% Equity Support Program proposal.
Initial Asset Management Fee:	2% of funding awarded under the 9% Equity Support Program
Annual Asset Management Fee:	<i>TBD: For planning purposes at this point, sponsors should budget for \$5,000 per project per year, inflating at 3% annually. Developments with direct loans from the Authority are already subject to these asset management functions and therefore may budget a \$0 fee.</i>

Pursuant to the 2009 QAP, standard LIHTC compliance fees equal to \$450 per unit will also apply.

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<sup>1</sup> Sections VI, Application Processing, and VII, Priority Selection Process, will not apply to developments seeking funding from the 9% Tax Credit Exchange Program; Sections I through V of the Direct Lending Parameters will apply.

**Development Timing:** In order to satisfy disbursement requirements imposed by HUD, developments seeking funding under the 9% Equity Support Program must demonstrate to the Authority's satisfaction that all TCAP funding awarded to a project may be properly incurred and reimbursed by the Authority prior to February 16, 2012. Any funds not disbursed by that date will be revoked. The Authority reserves the right to impose earlier deadlines and intends to award funds primarily to projects that can demonstrate an ability to properly expend all TCAP funding by December 31, 2010.

**Competitive Selection Criteria:** The primary selection criteria for the 9% Equity Support Program will be based on a project's readiness to proceed and ability to be completed within the timeframes necessary for the Authority to commit and expend TCAP funds within the appropriate timeframes.

Any project receiving 9% Equity Support Program funds will be subject to the following threshold requirements:

- 1) Projects must have been awarded LIHTC under the 2009 QAP; and
- 2) Projects must be underwritten by Authority staff based on the most current underwriting standards available, and after review of any required updates to market studies, operating cost estimates (including analysis of comparable properties), trade payment breakdowns (reflecting Davis Bacon wages), and other due diligence items the Authority determines may be needed to ensure the long term viability of the projects funded by TCAP.

Projects achieving these thresholds will be considered for 9% Equity Support Program funding. The competitive selection of recipients will be further based on a project's readiness to proceed with projects receiving awards on a first-come, first-served basis that takes into account the project's ability to:

- 1) Demonstrate compliance with appropriate cross-cutting federal regulations, including the National Environmental Policy Act (NEPA), Fair Housing, and Davis Bacon and Related Acts (DBRA);
- 2) Close on all financing and begin construction within 60 days of the initial TCAP commitment;
- 3) Demonstrate it is fully compliant with all local requirements, including compliance with necessary approvals for zoning, site plan, building permits, and tax abatement (if applicable) within 60 days of the initial TCAP commitment;
- 4) Begin construction within 30 days of closing on all financing; and
- 5) Demonstrate an ability to complete construction activity within 12 months of closing. Additionally, the Authority will focus its 9% Equity Support Program awards on projects that can reasonably be expected to complete construction no later than December 31, 2010, and in no case will the Authority issue an award to a project that cannot reasonably be expected to be completed prior to February 16, 2012.

Should further differentiation among projects be needed, the Authority will select projects based on the following additional criteria:

- 1) Preservation, as defined in the 2009 QAP; and
- 2) Least amount of subsidy per unit.

**Provisional Awards:** Any award under the 9% Equity Support Program will be provisional and contingent upon the demonstration of a “hard equity commitment” as defined by the 2009 QAP. Because the Authority intends to consider making provisional awards in excess of total soft funding available, provisional awards will further be contingent upon the availability of funding. In practice this means that 9% Equity Support Program projects that fail to achieve hard equity commitments ahead of other projects may lose both their equity support and, because projects will no longer be financially feasible, LIHTC awards.

**Recovery Act Transparency, Accountability, and Reporting Requirements:** ARRA contains new and unprecedented levels of oversight, scrutiny, and reporting. Applicants should be aware that the Authority is responsible for reporting on a variety of project features and outcomes including job creation and retention, development costs, projects awarded, and the like. While we are working to incorporate these data features into standard reporting processes such as the Authority’s Equal Employment Opportunity Plans, federal requirements are still being developed and may not be fully available when funds are initially committed to projects. As a result, sponsors must agree to provide any data, reporting, and information needed by the Authority to comply with current or future, state or federal reporting requirements imposed as a result of the Recovery Act implementation.

**Ongoing Implementation Flexibility:** As with other aspects of implementing the ARRA provisions, the Authority recognizes the difficult environment for affordable multifamily housing development. We will continue to be as proactive and transparent as possible in the implementation of the 9% Equity Support Program, but applicants should plan for continued changes, updates, and modifications to this and other ARRA related programs.

The Authority reserves the right to make program changes and waivers as needed to ensure that the 9% Equity Support Program is quickly, efficiently, and effectively implemented. Developers with questions or concerns about the applicability of this program to their projects are encouraged to contact the Authority to discuss the specific status of their projects.

The Authority also intends to publish updates, addenda, and/or questions and answers related to the 9% Equity Support Program in an effort to clarify remaining issues, respond to feedback, or otherwise communicate with the development community. Interested parties should monitor the Recovery Act portion of the Authority’s website on a regular basis for more information (from the main page at [www.michigan.gov/mshda](http://www.michigan.gov/mshda) click on the American Recovery and Reinvestment Act link).

**Public Input and Feedback:** Questions and comments on the 9% Equity Support Program can be submitted via email to [mshdarecovery@michigan.gov](mailto:mshdarecovery@michigan.gov).

**Attachments:**

1. 9% Equity Support Program Application
2. 9% Equity Support Program Exhibit Checklist