Unified Funding 2009 Capital Project Questions and Answers

Q. The Summer 2008 HTF funding round allowed HTF funds to be used in conjunction with tax exempt bonds and 4% as-of-right low-income credit. Can HTF funds be used with the tax exempt bonds and 4% credit in the UF 2009 capital program application?

A. No. In UF 2009 funding round, you may <u>not</u> submit an application which includes HTF funds in conjunction with tax exempt bonds and 4% credit. The Summer 2008 HTF funding round was a special exception. The December 2008 Capital Programs Manual describes the prohibition in Section 2.01.03 B. It states "The use of HTF Program funds with tax exempt bonds and 4% low-income credit is not permitted." The Home for Working Families Program can be used with tax exempt bonds and 4% credit, in an Open Window application apart from the regular funding round.

Q. Can the New York State Low-Income Housing Tax Credit (SLIHC) be used in a project funded under the New York City Housing Development Corporation (HDC) recycled bonds program?

A. DHCR understands that NYS HDC has a new program using recycled tax exempt bond. Consistent with Internal Revenue Service tax credit rules, the program requires that a minimum of 20% of the units be reserved for households earning no more than 50% of the area median income (AMI), or 25% of the units be reserved for people earning no more than 60% of the AMI.

Pursuant to DHCR's Request for Proposals, SLIHC may be used to finance units in the project which service households with incomes of up to 90% AMI.

Q. What are the requirements for a private placement of the Federal Low-Income Housing Tax Credits (LIHC) with a direct investor.

A. Prospective LIHC applicants seeking a tax credit investor in the current credit market climate may work with a syndicator, which pools equity investment from a number of corporate investors, or may utilize a direct investor, such as a bank. Often, when a direct investor such as bank purchases the tax credit, it is providing the construction/permanent loan financing as well as the tax credit equity.

In terms of specific requirements for either type of tax credit investor, it is recommended that prospective applicants consult directly with the equity investor. DHCR staff are available to provide technical assistance and guidance in terms of which syndication firms and banks have recently been active in the credit market.

Q. In the past, equity offers signed by the equity investor with a counter signature by the applicant were considered a firm commitment. In light of the current market, will executed offers continue to be considered a firm commitment for scoring purposes?

A. DHCR will continue to consider an executed equity investment offer as a firm commitment for scoring purposes. However, in light of current credit market conditions, DHCR fully recognizes that an executed, "firm" credit equity pay-in amount offer is subject to change as an awarded project proceeds to construction closing. *(cont'd on Page 2)*

DHCR has taken steps to address this issue, including minimizing the scoring impact of credit equity pay-in offers which are below the average pay-in proposed for the funding round. Further, DHCR has set forth parameters providing guidance to the sponsors of awarded projects seeking additional tax credits due to credit equity loss. The credit equity loss/increase request guidelines are available on DHCR's website, at www.nysdhcr.gov/Programs/LIHC/LIHC_Add_Fund.htm.

DHCR also recommends that prospective applicants negotiating a credit offer with a direct investor or a syndicator seek a reasonable pay-in, commensurate with the market. DHCR is quite familiar with the current credit market and will evaluate the reasonableness of a proposed credit equity pay-in when conducting its feasibility review of a submitted application.

Applicants seeking further guidance on this issue are advised to contact their DHCR regional office for technical assistance.

Q. Other than Difficult Development Areas and Qualified Census Tracts, how will DHCR determine what areas or projects receive the 30% boost in basis which was recently made available to states based on a change in IRS rules?

A. The Federal Housing and Economic Recovery Act of 2008, enacted July 30, 2008 (the "date of enactment"), has provided state housing credit allocation agencies, such as DHCR, with temporary additional tools and resources to assist projects experiencing the loss of tax credit equity. These resources are described in Guidelines for Requesting Additional Funding Related to Decreases in Low-Income Housing Credit Equity Contributions, as noted in the above answer.

One provision of this legislation authorizes state credit allocation agencies to award up to a 30 percent basis boost to buildings the State may determine needs the boost to be economically feasible, for buildings placed in service after the date of enactment.

In light of the current credit market, DHCR is utilizing this rule change as one possible tool to assist awarded LIHC projects facing a loss in credit equity. DHCR will consider authorizing the 30 percent boost in basis to existing projects which need the boost to retain their economical feasibility and operating viability through the long-term regulatory period, to assist in providing sufficient financing for project-related construction costs and/or operating costs.

The 30 percent boost in basis has not been made available for new projects seeking LIHC financing under UF 2009.

Q. The UF 2009 RFP indicates that for projects financed by NYS Low-Income Housing Tax Credit Program (SLIHC) only, no more than 40 percent of the SLIHC-assisted units can be targeted to households with incomes at 60 percent or less of area median income. Does the same restriction apply to projects which are financed by both the Federal Low-Income Housing Credit Program (LIHC) as well as SLIHC?

A. Pursuant to DHCR's UF 2009 RFP, we have no limitation on how many SLIHC-assisted units can serve households at 60 percent or less of AMI in projects which also propose using 9 percent LIHC allocated by DHCR. Indeed, DHCR has permitted this usage for a couple of years now since it serves the purpose of maximizing the availability of credit, especially for hard-pressed downstate projects.

Q. As a follow-up to the above-referenced question, does this allowance extend to projects, including those funded under out Homes for Working Families Program, which we are utilizing SLIHC financing in conjunction with a 4 percent LIHC allocation provided by another agency (such as NYS Housing Finance Agency or NYC Department of Housing Preservation and Development)?

A. Yes. HWF and other project financed 4 percent LIHC issued by another allocating agency may propose an unlimited number of SLIHC-assisted units at 60 percent or less of AMI.

However, please note that an applicant utilizing such a financing combination must still apply to DHCR for the SLIHC allocation, that our LIHC Qualified Allocation Plan (QAP) threshold eligibility requirements apply, and that DHCR will score the project for its competitiveness under the SLIHC program. In addition, since tax-exempt bonds continue to be considered a source of federal financing, the SLIHC (in the same manner as LIHC) will come into the proposed project at the lower 4 percent (30 percent current value) credit rate which still floats on a monthly basis.

Q. The UF 2009 Request for Proposals (RFP) indicates that DHCR has set-aside no more than $1 million in Low-Income Housing Credit for high acquisition cost projects. Is this set-aside still effective?

A. Yes, the set-aside for high acquisition costs projects is still effective.

Pursuant to the UF 2009 RFP, DHCR has set-aside no more than $1million for high acquisition cost projects, which are basically projects which preserve existing low-income housing developments and include acquisition costs at 25 percent or more of the project's total development costs. Projects qualifying under this set-aside need to meet both the definition of High Acquisition Cost Project (Section 2040.2(j) of the (QAP) and Preservation Project (Section 2040.2 (q)).

Prospective applicants considering requesting LIHC under this set-aside should keep in mind that no more than $1 million is currently available statewide for all such projects, regardless of the larger, overall LIHC per nit and per project caps set forth in the RFP. While DHCR will consider and review all such applications submitted, DHCR reserves the right to make funding determinations on the basis of the availability of LIHC under the set-aside.

Q. Would veterans fall into the (special needs) preference category?

A. Currently, veterans are not identified as one of the nine Unified Funding 2009 special needs categories. However, veterans may qualify as an occupant of a special needs set-aside unit under one of the other nine special needs categories. For example, a veteran with a physical disability would be considered an eligible tenant of a special needs unit set-aside for persons with physical disabilities.

Q. How firm do commitments (from supportive service providers) need to be?

A. The executed Housing Services Agreement (www.nysdhcr.gov/Forms/SpecialNeeds/) between project owner and supportive service provider (support agency) is necessary to fulfill the requirements of Exhibit 10 of the HTFC Funding Commitment Letter. This model agreement contains language which codifies the agreement between the two parties to provide adequate support for special needs tenants to live independently.

Q. Why are certain urban communities not eligible for funding under the Urban Initiative Program:

A. While Section921 of the Private Housing Finance Law indicates that the Urban Initiative Program may serve communities having a population of 20,000 or more, the re-appropriation governing use of the funds specifies that funds currently available may only be used in communities of 53,000 or more.

Q. Some counties seem to have very few if any Minority and Women owned businesses. Will DHCR offer additional assistance in helping to identified M/WBE businesses?

A. DHCR's Office of Fair Housing and Equal Opportunity is prepared to offer guidance to potential applicants and awardees under the various capital programs, on a variety of topics pertaining to Affirmative Action and Equal Opportunity, as well as Fair Housing.