

MONTANA BOARD OF HOUSING ARRA IMPLEMENTATION PLAN

The American Recovery and Reinvestment Act of 2009, Pub. L. 111 – 5, (“ARRA”) provides for two programs affecting low-income tax credit projects:

1. The Tax Credit Assistance Program (“Assistance Program”) provides funding for capital investment in Low Income Housing Tax Credit (LITHC) projects. Projects awarded tax credits between the dates of October 1, 2006 and September 30, 2009 are eligible for funding under this program.
2. Tax Credit Exchange Program (“Exchange Program”) provides funding for the construction, or acquisition and rehabilitation of “qualified low-income buildings” within the meaning of the LITHC rules. Exchange Program sub-awards may be made to projects with tax credit awards and to those without an award if the sub-award will increase the total funds available to the state for the development of affordable housing and the applicant first demonstrates a good faith effort to obtain tax credit equity investments.

Tax Credit Assistance Program

1. Availability of TCAP Funds

Under the Tax Credit Assistance Program, the Montana Board of Housing (MBOH) is allocated \$7,818,360. MBOH will make sub-awards to fill gaps for projects that have received, or will receive low-income housing tax credits between the dates of October 1, 2006 and September 30, 2009. Recipients of tax credits in any of those years may apply for a sub-award by submitting an application to MBOH on or before a date specified by the MBOH. An application for a sub-award must be consistent with the criteria contained in MBOH’s 2009 Qualified Allocation Plan (“QAP”).

2. Allocation of TCAP Funds.

Sub-awards will be allocated by the MBOH competitively as with Low Income Housing Tax Credits in accordance with the Qualified Allocation Plan for 2009. Projects that have received, or will receive an allocation of LIHTCs between the dates of October 1, 2006 and September 30, 2009 may apply for a TCAP sub-award to fill financing equity gaps.

MBOH will consider the following factors in making TCAP sub-awards:

- readiness to proceed of the project; and
- expected completion by February 16, 2012;

The MBOH may consider the following additional factors in making TCAP sub-awards:

- the geographical distribution of tax credit projects;
- the rural or urban location of the qualifying projects;
- the overall income levels targeted by the projects;
- rehabilitation of existing low income housing stock;
- sustainable energy savings initiatives;
- financial and operational ability of the applicant to fund, complete, and maintain the project through the extended use period;
- past performance of an applicant in initiating and completing tax credit projects; and
- cost of construction, land, and utilities.

MBOH will commit at least 75% of the funds by February 16, 2010 and will expend 100% of the funds by February 16, 2012.

Eligible projects were asked to submit letters of intent and information regarding their sources and uses of funds and developments status to MBOH no later than May 1. No project applications will be accepted until MBOH receives approval of its application from HUD. MBOH will publish application deadlines on its website.

TCAP sub-awards will be made by MBOH competitively to those projects best meeting the needs of low income people within the state of Montana as referenced to the allocation plan.

3. Project Requirements.

Projects must be completed, rented, and adhere to the requirements of IRC § 42 in their entirety for the length of the extended use period. Failure to comply with these provisions is grounds for recapture of funds.

Asset management of the project will be conducted by MBOH staff or a contractor hired by MBOH, unless conducted by a syndicator or investor/partner. Asset management reports will be provided as directed by MBOH staff. In the event that asset management functions will be required to be performed by MBOH or a contractor, a sub-award recipient will be required to pay a fee determined by MBOH to be reasonable and necessary to cover the expense of the asset-management functions.

A recipient of a TCAP sub-award is subject to MBOH, QAP, and IRC § 42 requirements and procedures.

A recipient will be required to enter into a written agreement with MBOH prior to receipt of any TCAP funds.

Sub-awards of TCAP funds will be posted on the MBOH web-site.

A recipient of a sub-award must expend at least 75% of its TCAP funds by February 16, 2011 and 100% by February 16, 2012. TCAP funds will not reduce eligible basis.

Failure of a recipient of a sub-award to execute and meet deadlines established in the written agreement will result in MBOH recapturing sub-awards and redistributing the funds to owners and projects that are on or ahead of schedule and that need additional funding. If a project is not meeting the deadlines in its schedule and cannot justify continued receipt of the funds, the funds will be recaptured and re-distributed to the next eligible project whose application was not funded. Unused funds will be turned back to HUD for redistribution.

Failure to meet deadlines contained in the written agreement between the applicant and MBOH can result in the recapture of funds.

Changes to a project's schedule must be submitted to MBOH staff for review and approval prior to any adjustment to the schedule. Further documentation or information may be requested by MBOH to meet HUD guidelines.

TCAP sub-awards will be made to those projects with LIHTC in the project. If a project has no LIHTC, it may be considered for Exchange funding.

TCAP financing will be considered by MBOH only for the purposes of ensuring financial feasibility and long-term viability.

4. Application Requirements.

A project applying for a TCAP sub-award must submit:

- a. An Updated Uniform Application and Tax Credit Supplement
 - ⇒ The basis for updated application will be the original basis submitted and approved by the Board for the allocation of LIHTCs.
- b. A cover letter requesting gap funding with justification.
 - ⇒ Changes incorporated in the update must be fully justified in the narrative of the cover letter.
 - ⇒ Changes must be reasonable respective of development and operational costs.
- c. The dates construction will commence and the project will be completed as provided in Part XIV Section B, Project Information, of the Uniform Application. **(It is imperative that this schedule be executed on or before the dates indicated to avoid recapture and redistribution of funds to other approved projects awaiting funding.)**

A fee equal to one percent (1%) of the amount awarded will be charged for a TCAP sub-award. Upon approval of the sub-award, the applicant will remit to the MBOH, the remainder of the Tax Credit Reservation fee and the one percent (1%) fee for the total TCAP financing awarded.

Tax Credit Exchange Program

1. Availability of Exchange Funds.

The MBOH may exchange tax credits returned in federal fiscal years 2008 or 2009 that cannot be sold to an investor. MBOH may also exchange 40% of federal fiscal year 2009 credits if deemed necessary to fund projects that prove ready to proceed. An Exchange will result in tax credits being converted to funds which are then sub-awarded to a project to meet an underwriting shortfall, - gap financing in the absences of a tax credit investor. Requests for Exchange of tax credits may be submitted when notice of submittal is provided by the MBOH . Coordination with staff is required prior to submission.

2. Allocation of Exchange Funds.

Contingent on availability, exchange funds may be sub-awarded to projects that are able to begin construction within ninety days. Sub-awards will be made by requests for draws, based on the applicant's budget approved by the MBOH, and supported by original invoices (bills).

3. Project Requirements.

A project requesting an exchange of tax credits for Exchange funds must submit at least two (2) copies of denial letters from syndicators or investors to verify that good faith efforts have been exhausted in attempting to locate investors.

A project in receipt of Exchange funds must be completed, rented, and adhere to the requirements of IRC § 42 in their entirety for the length of the extended use period. Failure to comply with **provisions is grounds for recapture of funds. It is imperative that this is understood at the time of application.**

Asset management of the project will be conducted by MBOH staff or a contractor hired by MBOH unless conducted by a syndicator or investor/partner. Asset management reports will be provided as directed by MBOH staff. In the event that asset management functions will be required to be performed by MBOH or a contractor, a sub-award recipient will be required to pay a fee determined by MBOH to be reasonable and necessary to cover the expense of the asset-management functions.

A project receiving Exchange funds will be subject to MBOH, QAP, and IRC § 42 requirements and procedures.

4. Application Requirements.

A project applying for a TCAP sub-award must submit:

- a. An updated Uniform Application and Tax Credit Supplement Time Schedules must be adhered to. Justification will be required if a project fails to meet scheduled dates.
- b. A cover letter requesting funds including funding requirement. What funding type or types preferred. Justification for changes in funding.
- c. The dates construction will be commenced and the project will be completed as provided in Part XIV Section B, Project Information, of the application. **(It is imperative that this time schedule be executed on or before the dates indicated.)** Failure to meet deadlines established by the applicant can result in the recapture of Exchange funds.
- d. At least 2 letters from syndicators/investors to demonstrate to the satisfaction of MBOH that good faith efforts have been made to obtain a commitment for the purchase of the applicant's tax credits, or to demonstrate that syndicator/investors commitment is at a lower rate or for a smaller percentage of the tax credits than expected.

No additional fee will be charged for Exchange funds.

Exchange financing will be considered by MBOH only for the purposes of ensuring financial feasibility and long-term viability.

NOTE: The Montana Board of Housing adopted, and the Governor approved, an amendment to Montana's Qualified Application Plan (QAP) in order to provide guidance to projects that may be eligible for sub-awards under the TCAP or Tax Credit Exchange Program administered by the United States Department of the Treasury. The QAP Amendment was adopted by the Board prior to the issuance of guidance by HUD or Treasury. The QAP Amendment is not intended to be comprehensive, but is intended only for general guidance to interested parties. As clearly provided in the QAP amendment, "[i]f a provision of the QAP is in conflict with any provision of ARRA, implementing regulations or HUD guidelines, the QAP provision is preempted and the ARRA provision, the implementing regulation or the HUD guideline will control."

Montana Board of Housing ARRA Implementation Plan for the Tax Credit Assistance Program and the Tax Credit Exchange Program is the document we intend to clarify issues in greater detail as we receive direction from HUD and Treasury on how the programs will operate.