June 2019

POLICY BRIEF: HOUSING DEVELOPMENT

# DEVELOPMENTS UTILIZING NON-COMPETITIVE TAX CREDITS WITH TAX EXEMPT BOND FINANCING

The Louisiana Housing Corporation (LHC or Corporation), through the issuance of Multifamily Revenue Bonds, provides financing to developers to acquire, construct and/or rehabilitate affordable housing for low- to moderate- income families and individuals.

The Low-Income Housing Tax Credit (LIHTC) Program provides tax incentives intended to increase the availability of low-income rental housing. The tax credit is a credit against regular tax liability for investments in affordable housing properties constructed, acquired and rehabilitated after 1986. 9% LIHTC are allocated via a competitive process that involves a scoring system and threshold requirements. 4% LIHTC for properties financed with tax-exempt bonds are awarded through a separate application process and allocated upon approval of the request for financing. HFAs review tax credit applications submitted by developers and allocate the credits. The IRS requires that state allocation plans prioritize projects that serve the lowest-income tenants and ensure affordability for the longest period.

## HISTORY

Private activity bonds (PABs) were established under the Tax Code of 1954. These bonds were known as Industrial Development Bonds until the Tax Reform Act of 1986 and other legislation changed their name.

The LIHTC Program was created by the Tax Reform Act of 1986 and is authorized at Section 42 of the Internal Revenue Code, 26 U.S.C. 42. The IRS provides additional guidance on the administration of and compliance for the Program through revenue rulings, technical advice, memorandums, notices, and private letter rulings.

## PROGRAM SUMMARY

Multifamily Mortgage Revenue Bonds (MRBs) are tax-exempt bonds that state and local governments issue through housing finance agencies (HFAs) to help finance the acquisition, construction, or rehabilitation of affordable rental housing development.

Multifamily housing developments with bond financing must set aside at least 40% of their apartments for families with a household income of 60% or less of area median income (AMI), or 20% of for families with income of 50% or less of AMI. The income-restricted apartments financed by these bonds must remain affordable for at least 15 years.

## QUALIFIED ALLOCATION PLAN

Prospective applicants apply for housing tax credits by submitting an application to the LHC. Competitive applications are received and evaluated under the Qualified Allocation Plan (QAP) at least once a year. Non-competitive applications are also governed by the QAP, but may be submitted at any time.

The QAP provides information on the calendar year program, including minimum project requirements, competitive criteria, and underwriting criteria. The amount of credits for which a project is eligible is based on the amount of qualified development costs incurred and the percentage of low-income units within the development. Each qualified tax credit development must include a minimum percentage of units to be set aside for eligible low-income tenants. These set-aside units must also be rent restricted.

## PROGRAM POLICY

The LHC is the only state entity with the authority and responsibility to administer LIHTC. MRBs are <u>not required</u> to be bundled with housing credits. Traditionally, non-competitive tax credits that utilize MRBs are administered by LHC due to the financial feasibility determination and long-term compliance and monitoring requirements of the tax credits. Once the taxpayer secures a tax credit reservation, the developer must leverage the financial resources for the development.

Applicants requesting to finance projects with tax-exempt bonds must complete a separate tax credit application which will be scored separately from the application for tax-exempt bonds. Applicants desiring



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to verify that a bond financed project satisfies QAP requirements must submit the application and all documents to the LHC electronically along with the non-refundable Market Study, Application and Analysis fees (and the Subsidy Layering Review Fee, if applicable) computed in accordance with the Non-Refundable Fee Schedule specified in the QAP. All fees must be received prior to the LHC initiating review of the application. Projects receiving an award of 4% LIHTCs will be subject to a 5% award fee at the time of the award.

Applications for bond-financed developments may be submitted at any time during the year. It is recommended that any applications for bond financed projects be submitted to the Corporation at least forty-five (45) days in advance of the meeting at which such project will be subject to approval by the Corporation's Board of Directors and completion of staff's internal review processes in accordance with the latest approved QAP.

While an award of 4% credits is not competitive, LHC will verify that all projects submitted for 4% credits have the appropriate development team in place, meet all threshold requirements, and meet LHC's underwriting requirements. Bond-financed projects are required to have a minimum selection criterion score per the latest approved QAP. LHC reserves the right to reject any application that fails to meet threshold requirements. LHC has the final determination concerning eligibility of a project for a LIHTC award to for tax-exempt bond financed developments.

Bond Financed Applications may be submitted for projects located in any parish throughout the State. Cost and profit limits may be waived by the Governor in any executive order allocating private activity volume cap or by the Corporation's Board of Directors, following staff review and recommendation for approval that such additional costs are justifiable and reasonable under the circumstances or are attributable to unique development characteristics (e.g. location in a difficult to develop area, limited commercial space or tenant services, or common areas essential to the character of the development). Absent an approved waiver of these limits, bond-financed projects are required to meet the cost limits established by the applicable QAP.



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In addition to the requirements indicated above, the applicant must also meet the following requirements:

1. 4% LIHTCs will only be awarded with the approval and with subsequent closure of tax-exempt bonds through the Corporation. LHC may waive this requirement, provided the development meets the LHC's highest priorities and the development is not feasible without a financing structure that requires tax exempt bond issuance through another entity.
2. LHC reserves the right to require a legal opinion stating that the development is eligible to receive an allocation of Housing Tax Credits pursuant to Section 42(h)(4) of the Internal Revenue Code.
3. A representative of the developer or management company must meet with the LHC Asset Management Department and Multi-Family Housing Production Department within six months following issuance of the 42m letter of eligibility to review management practices and establish a timetable for the placed-in-service review.

Development-specific conditions will be listed in the LIHTC (42m) letter of eligibility. Taxpayer/Owners of bond-financed projects must enter into an appropriate regulatory agreement and compliance monitoring agreement prior to receiving Forms 8609.

After construction, LHC's Housing Development Team will ensure that the development meets the LIHTC eligibility requirements. The LIHTC property must comply throughout the compliance period or credits will be subject to recapture, including, but not limited to, annual certification that apartments are being rented to qualified low-income tenants.

## COLLABORATIVE HOUSING PLANS WITH LOCAL FINANCE AUTHORITIES

Local Finance Authorities provide mortgage financing for low-to-moderate income families and also have the authority to issue MRBs within the boundaries of their authority. The LHC has reviewed opportunities to support the local finance authorities and leverage those resources with the resources available from the LHC. Local Finance Authorities interested in issuing their



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bonds along with the LHC's 4% tax credits will be required to enter into a Cooperative Endeavor Agreement with LHC and a housing plan that must include the following:

1. Housing development approach with identified housing goals and objectives
2. Complete detailed description of all available funding sources.
3. Application in-take to include review and approval process.
4. Detailed development descriptions, and long-term compliance and monitoring capacity.
5. Current compliance and monitoring capacity or long-term compliance and monitoring budget and fee schedule of payments to LHC to cover applicable asset management cost.
6. Construction management approach that includes roles, responsibilities and communication plan to address construction delays, change orders and cost over-runs.
7. Demonstration of alignment with the priorities outlined within both the municipality's Consolidated Plan and the LHC's strategic plan.
8. Requirement that all developments meet a minimum thirty-year affordability period

## LHC's CURRENT MRB AND 4% PORTFOLIO

LHC's asset management portfolio consist of 52 developments blended with both MRBs and 4% LIHTC. 47% of these developments are leveraged with federal funding sources such as HOME, CDBG, or National Housing Trust Fund. On average, LHC's Board of Directors approves 10 developments per year with 4 %LIHTC, MRBs and other federal funding sources leveraged in the development.

As of January 1, 2016, through December 31, 2018, LHC has awarded more than $17.5 million in 4% LIHTC creating approximately 3,500 units. LIHTC developments typically have affordability and long-term monitoring requirements for up to 35 years.

To learn more about LHC's programs and services, visit us at www.lhc.la.gov.



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