

NEW MEXICO AFFORDABLE HOUSING TAX CREDIT PROGRAM RULES

As approved by the MFA Board of Directors September 20, 2005,
Revised September 2006, June 2007, May 2009,
April 21st, 2010 (Effective July 1, 2010),
May 15th, 2013, and July 21, 2021

A. INTRODUCTION/PURPOSES

MFA uses three key documents to regulate the use of the New Mexico Affordable Housing Tax Credit Program also referred to herein as the “State Tax Credit Program”. This document, the *Program Rules*, is the first of these three documents. It is a set of broad policy statements to establish the fundamental program parameters. Although the program selection criteria, processing details, and requirements could change from year-to-year as a result of newly emerging priorities or prior years' experience, the underlying premises of the rules should remain much the same over time. The Program Rules are the domain of the MFA Board of Directors (“Board”) and express its general intentions concerning the use of the resources derived from the State Tax Credit Program. Any changes to the Program Rules in the future will require Board approval.

The second key program document, the *State Tax Credit Program Manual*, provides detailed direction to staff in the day-to-day operations of the program. It addresses application requirements, application processing and approval procedures, due diligence requirements, underwriting standards, limits and other criteria used to structure the award, documentation, file maintenance, interdepartmental coordination, Tax and Revenue coordination and reporting. It is updated from time to time as needed. In addition, all individual awards will continue to be approved through the staff and/or Board and Board committee process, consistent with MFA’s authorization policy.

The third key program document, the *Notice of Funding Availability (NOFA)*, provides notice to program sponsors of the availability of investment vouchers, manner of application, selection criteria and method.

B. THE PROGRAM – DESCRIPTION OF THE NEW MEXICO AFFORDABLE HOUSING TAX CREDIT PROGRAM

The New Mexico Affordable Housing Tax Credit Program, also referred to herein as the State Tax Credit Program, was created by approval of the Affordable Housing Tax Credit Act (“Act”) by the Legislature of the State of New Mexico in March 2005, signed into law by Governor Bill Richardson in April 2005, and amended July 2015. The New Mexico Affordable Housing Tax Credit Program provides state tax credits to any individual, tribal government, housing authority, corporation, limited liability company, partnership, joint venture, syndicate, association or nonprofit organization that provide donations to Affordable Housing Projects approved by the New Mexico Mortgage Finance Authority (MFA). The state offers credits on income taxes, gross receipts taxes and compensating taxes (excluding local option gross receipts tax imposed by a municipality or county, or the government gross receipts tax) to any eligible individual, business, or tribal government that donates land, buildings, materials, cash or services for an Affordable

Housing Project approved by MFA. In addition, MFA is authorized to issue vouchers for donations made directly to the New Mexico Affordable Housing Charitable Trust (Charitable Trust). The credit is equal to 50 percent of the value of the donation. MFA is responsible for adopting rules for the approval, issuance and administration of the investment vouchers.

C. DEPARTMENTAL RESPONSIBILITIES

Following standard agency practice, the program design, establishment of application and threshold requirements, review and selection of projects, structuring and underwriting of awards, documentation and processing of awards, and reporting to the state Taxation and Revenue Department, are the primary responsibility of MFA's Housing Development Department. They are carried out under the direction of the Director of Housing Development. Various ancillary activities that are essential to the program and to the Housing Development Department's activity, but which are carried out by other departments of MFA, include but may not be limited to the following:

- 1) Accounting for fees and expenses and borrower billing (Accounting);
- 2) Various compliance and monitoring activities to ensure that use restrictions are properly implemented and documented (Program Administration); and
- 3) Legal counsel preparation and/or review of documents.

It is the responsibility of the Housing Development Department to coordinate its activities with the other departments as needed. Management is the primary entity responsible for internal allocations of any needed resources to this program, and for problem solving and interdepartmental coordination activities.

D. DESIGN AND DEVELOPMENT

The MFA Board of Directors will establish priorities which will remain in effect until amended. These priorities may be based on prior years' experience, and/or emerging strategies and needs identified by the Board, staff, and the state.

E. OVERALL PROGRAM OBJECTIVES

The following apply to all of MFA's housing development activities, including the State Tax Credit Program.

- 1) Program resources will be used in the most efficient way possible, as reflected in efforts to maximize leverage through commitments of resources from other sources, and establish limits for awards to any given project.
- 2) Program funding will generally emphasize the greatest level of affordability possible where that is the prominent need. However, this may also allow for mixed-income projects where these are more responsive to local needs.
- 3) Program design will promote an equitable geographic distribution of funds throughout the state of New Mexico, subject to demand for the program and restrictions within the Act.
- 4) Program design will address housing production for special needs populations identified by MFA from time to time, including minority and/or underserved communities, people with disabilities, and people living within special socio-economic circumstances.

F. BASIC STATE TAX CREDIT PROGRAM PARAMETERS

- 1) The program will be operated in accordance with applicable state requirements, including *The Affordable Housing Tax Credit Act* and any subsequent regulations governing the state program.
- 2) Only sponsors of Affordable Housing Projects approved by MFA or MFA via the Charitable Trust, may solicit donations in exchange for the state tax credit, provided that sponsors may solicit and submit commitments for donations with their application as may be required under any NOFA
- 3) Affordable Housing Projects include MFA-approved single family housing, multifamily housing projects, transitional housing, and emergency shelters.
- 4) Donations may include land, buildings, materials, cash or services. Cash equivalents, such as store credit or waived invoices, will be considered a cash donation. Evidence of the value of the donation satisfactory to MFA will be required prior to issuing the donor investment voucher.
- 5) Donations received by the project sponsor in exchange for state tax credits may be used to fund land and building acquisition (including down payment and closing cost assistance for the acquisition of single family housing), construction, remodeling, improvement, rehabilitation, conversion or weatherization throughout the state.
- 6) There will be no minimum or maximum dollar limits for donations made directly to the Charitable Trust. Donations made directly to Affordable Housing Projects in an amount less than \$200 are not eligible for investment vouchers; the maximum donation made directly to Affordable Housing Projects which will be eligible for investment vouchers is \$2,000,000.
- 7) Any one applicant, or group of applicants, may not receive aggregate awards in excess of the lesser of \$1,000,000 or 25 percent of the annual amount of state tax credits available in the year the reservations are made.
- 8) Donors will receive an investment voucher for the lesser of 1) 50 percent of the value of their donations or 2) the amount of investment voucher requested. Investment vouchers issued on behalf of a given project cannot exceed the amount reserved for the project. Investment vouchers will be issued only after securing evidence of the donation irrevocably and unconditionally contributed, expended or devoted and, with the exception of donations made directly to the Charitable Trust, the project meeting certain readiness requirements including 1) site control, 2) obtaining other financing commitments, and 3) recording of a Land Use Restriction Agreement. Alternately, when donations are made to fund a downpayment assistance program for Affordable Housing Projects, the voucher will be issued to the donor after securing evidence of the donation irrevocably and unconditionally contributed to the sponsor and upon the sponsor entering into a written binding agreement with MFA. This agreement will govern the use of such funds only for eligible homebuyers, eligible Affordable Housing Projects, and outline compliance and reporting requirements.
- 9) Staff will underwrite the projects completely to ensure soundness, and will apply industry practice in assessing each project proposed. The level of analysis and specific requirements may vary based on the scale of individual projects. All such differences will be specifically addressed in the *Program Manual* to ensure consistent underwriting. Underwriting for downpayment and closing cost assistance provided by sponsors of single family affordable

housing may be delegated to qualified sponsors. Staff will base approval of a sponsor for such activity on the organizational and financial capacity of the sponsor and their administrative procedures in place for such a program.

- 10) Underwriting standards will be established from time to time for staff use and will be incorporated into the *Program Manual*.
- 11) All awards will be approved by staff and/or the Board and its designated committees, consistent with MFA's authorization policy.
- 12) MFA may charge fees for its services in operating the program. MFA will also collect payments from borrowers to cover the cost of third party services needed in underwriting.
- 13) Project eligibility will be fully documented with the use of reservation letters, binding agreements, investment vouchers, and Land Use Restriction Agreements (or acceptable alternative) in all cases, in addition to any other documentation required by MFA counsel.
- 14) The program will not have minimum set-aside requirements; however, the state tax credit award will be sized based on the amount of units that are designated affordable.
- 15) The set-aside requirements will be enforced with a Land Use Restriction Agreement (or acceptable alternative) for a minimum period of five years for single family housing and 10 years for multifamily housing. In cases in which donations are used to directly fund downpayment assistance, affordability shall be achieved by the recapture of assistance upon resale, refinance or transfer of ownership within the applicable Affordability Period (defined below). All recaptured funds shall be earmarked for affordable housing purposes only.

The Affordability Period for downpayment assistance is defined as follows:

- If the amount of the donation that is being used for a unit is below \$5,000, it shall be considered impractical for MFA to impose an Affordability Period.
- If the amount of the donation that is being used for a unit is from \$5,000 to \$14,999, then the Affordability Period shall be not less than five (5) years.
- If the amount of the donation that is being used for a unit is from \$15,000 to \$40,000, then the Affordability Period shall be not less than ten (10) years.
- If the amount of the donation that is being used for a unit is greater than \$40,000 then the Affordability Period shall be not less than thirty (30) years.

The project sponsor, in its sole discretion, may increase the Affordability Period in any contract, note mortgage, loan agreement, Land Use Restriction Agreement, restrictive covenant agreements and/or any other agreement which the project sponsor may enter into with any beneficiary of the donation.

G. PROCESSING OF APPLICATIONS, AWARDS, AND INVESTMENT VOUCHERS

Staff will determine threshold and application requirements, process and underwrite or approve the underwriters for the awards, and perform a variety of other activities required to operate the program.

Reservations will be made in accordance with a NOFA issued with Board approval on a periodic basis. Applications will be received and evaluated on an open application cycle on a first come, first served basis subject to the availability of credits, unless it is determined by staff to be more appropriate to hold funding rounds. Reservations will be approved first by the Policy Committee, then as needed by a committee of the Board and by the Board consistent with MFA's authorization policy.

At a minimum applications will be required to address:

- 1) Name and location of proposed project, or in the case of downpayment and closing cost assistance, the geographic areas in which the assistance will be used and a description of the single family affordable housing, including price range and whether existing or new construction or both;
- 2) Contact information for the project sponsor and identification of all development or project sponsor team members;
- 3) Organization documents of project sponsor (if available);
- 4) History of sponsors experience in developing housing and/or providing downpayment and closing cost assistance and previous participation in low or moderate income housing projects;
- 5) Complete description of the proposed project;
- 6) Identification of the sources of financing for the proposed project, including letters of commitment where available;
- 7) Nature and amount of the anticipated donations;
- 8) Proposed set-aside levels and time period for which the affordable housing units shall be provided;
- 9) Total project cost;
- 10) Schedule for completion if applicable;
- 11) Amount of state tax credits requested;
- 12) Sponsor certification that all information contained in the application is true, accurate and complete;
- 13) Other certifications as required by the then current NOFA; and
- 14) Any additional information MFA may require.

Factors to be considered in the approval or disapproval of an application for affordable housing projects may include but are not necessarily limited to:

- 1) Availability of site and utilities;
- 2) Appropriateness of zoning;
- 3) Size of the development;
- 4) Level of rents or housing assistance;
- 5) Strength and experience of the sponsor, development team and management entity;
- 6) Market demand;
- 7) Time period available for qualified families;
- 8) Unit mix;
- 9) Geographic location;
- 10) Design;
- 11) Community support;

- 12) Correlation with redevelopment efforts;
- 13) Consistency with community or neighborhood development plans;
- 14) Project feasibility;
- 15) Preservation of affordable housing units;
- 16) Readiness and availability of donations.

Upon successful review of an application, MFA will issue a state tax credit reservation letter to a sponsor of a qualified Affordable Housing Project. The reservation letter authorizes the sponsor to solicit donations that would be eligible for state tax credits up to the credit amount authorized by the reservation letter. The project sponsor is responsible for providing evidence of all eligible donations and satisfactory valuation documentation. Upon receipt and review of the donation documents, and only after the project has met all other readiness requirements as outlined in the reservation letter, MFA will issue investment vouchers to the donors.

Alternately, MFA will issue investment vouchers directly to the donor of any qualified donations made to the Charitable Trust administered by MFA.

MFA shall notify Taxation and Revenue within 20 days of the issuance of an investment voucher. If a donor transfers all or a fraction of the certificate to an eligible individual or business, the donor shall provide notification to MFA and Taxation and Revenue within 10 days of such transfer.

Applicants who have a complaint concerning the disposition of a proposal shall have available an appeals process.

Staff will make every effort to award the full amount of state tax credits available each year. Any credit ceiling unreserved for a given program year cannot be carried forward into the next program year. If a reservation of state tax credits cannot be used for its intended purpose and is returned within the same program year, those state tax credits can be reserved for another project or donor in that same program year. Housing Development is responsible for tracking the availability of state tax credits.

Adopted by MFA's Board of Directors on July 21, 2021.