

Summary of Comments on SC Housing's Draft State Tax Credit Policies and Responses July 9, 2020

The text below contains the substance of the comments on the state tax credit draft policy received by the June 26, 2020 deadline, and responses by SC Housing staff. We are offering these statements to help our partners better understand this new undertaking. The final policies are still under review.

Development Eligibility

1. Developments that can show the need for additional equity due to major cost overruns should be eligible.

SC Housing response: Agreed, the draft policies allow such developments to be eligible (presuming they also meet the other requirements).

2. SC Housing should allow applications to be filled out by the developers and submitted showing how their developments now work with the state tax credit.

SC Housing response: Agreed, that is the process proposed in the draft policies.

3. Exclude subsidized properties from eligibility based on reduction in rents.

SC Housing response: Regardless of the commenter's definition of subsidized, SC Housing does not intend to use the concept as a basis for making properties ineligible.

Application Process, QAPs, and Bulletins

1. If a development was awarded under the 2018 QAP, is it subject to all Authority issued Bulletins from 2018, 2019 and 2020?

SC Housing response: No, Bulletins relate to a particular QAP and application cycle.

2. Why are tax-exempt bond deals eligible regardless of when awarded? The law stipulates buildings place in service after January 1, 2020.

SC Housing response: Properties using bonds and 4% LIHTCs which place in service after January 1, 2020 were approved for bonds (i.e., awarded) in earlier calendar years.

3. Bond developments request LIHTCs with a placed in service application.

SC Housing response: Developments using tax-exempt bonds submit an application for an allocation for that resource and 4% LIHTCs. The applicable QAP is the one under which SC Housing approves the initial application, including the determination under IRC Section 42(m). If approved, the development moves forward and later submits a request for Form(s) 8609, usually several years later. Note SC Housing does not intend to allocate state tax credits to properties that already received a Form 8609.

4. Owners, Tax Payer, Awarded Applicants are all used interchangeably.

SC Housing response: The three terms each have distinct meanings. Since developers usually do not create the LIHTC ownership entity until after award, the term Applicant is more fitting for actions relating to the time period before then. Owner includes the limited liability companies and limited partnerships which receive the LIHTC and state tax credit allocations. Taxpayer includes the members and partners of the Owner.

Tax-Exempt Bonds

1. Does the state tax credit application vary if the tax-exempt bonds are issued by an entity other than SC Housing?

SC Housing response: The draft does not propose a different process based on the issuer.

2. Will developers be able to submit applications for bonds this year?

SC Housing response: Yes, the cycle will reopen in 2020. The exact timing and nature of the review are still under consideration.

3. South Carolina's tax-exempt bond program is underutilized.

SC Housing response: Actually SC Housing almost certainly will run out of its carryforward allocation of private activity bond volume for rental housing this year.

Cost Increases

1. What information or basis will SC Housing use to determine that the specific increases in hard construction costs are genuine?

SC Housing response: The draft describes the anticipated process. SC Housing staff will utilize its discretion to determine the necessary information to verify costs on a case by case basis depending on the particular circumstances surrounding each request.

2. Only at the completion of the development placed in service will the developer truly know if the budgeted construction contingency was adequate, excessive, or insufficient.

SC Housing response: In many cases the developer knows the increase in uses will exceed the contingency well in advance of completion. If a developer is unable to project the extent of cost overruns, then the subsidy previously allocated may be sufficient for financial feasibility.

3. Prior to the 2020 QAP developers were not required to notify SC Housing of increased expenditures.

SC Housing response: True. The final version will reflect the requirements in effect for the development. Generally speaking, in order for SC Housing to accurately assess the need of the state tax credit, the developer would have to substantiate that need in some way.

4. How will SC Housing engage third parties?

SC Housing response: Any contracts would follow the state's standard procurement process.

5. Will the additional third-party costs be included in the budget?

SC Housing response: The costs to engage third parties would be included in the development budget (should be <0.1% of the total for a typical property), but procured and contracted by SC Housing.

Developer Fee

1. The amount of allowable developer fee should remain consistent with what was stipulated in the QAP when the application was submitted.

SC Housing response: The draft policies propose allowing properties to receive 85% paid developer fee as a result of additional equity for the state tax credit. This percentage may be higher than the applicant accepted at award.

2. Instead of reducing developer fee, make it deferred. This way the project can still take basis.

SC Housing response: Correct that deferred fee may count towards eligible basis. However a property's sources must equal its uses, and so in some cases reducing the total amount of fee may be necessary.

Request Review

1. The term "consideration of local support" is concerning.

SC Housing response: The final policy will need to implement the statutory requirement to consider local support.

2. The policy needs a better definition of local support.

SC Housing response: The final version could list more specific requirements for developers to meet, although staff anticipates a more flexible approach.

3. Recommend that SC Housing make awards based on QAP scoring criteria.

SC Housing response: Agreed, with the recognition that the 2020 QAP was finalized prior to the state tax credit being enacted.

4. Given that the 2020 QAP had competitive provisions for points based on costs no development should receive an increase in developer fees or additional costs from what was initially submitted.

SC Housing response: Agreed.

5. The 2020 QAP has points for leveraging, specifically using less Authority funds. By SC Housing setting the mix of its sources of funds this would affect the point scoring.

SC Housing response: The state tax credit, like the federal LIHTC, counts as an SC Housing source and so adding it to the underwriting will not change any application's score.

6. Projects utilizing State Credits should maximize debt service coverage at 1.35X.

SC Housing response: The maximum DCR is 1.45 or \$900 in cash flow per unit in year 1.

Federal and State Tax Credit Considerations

1. Why give developers the option to take STC?

SC Housing response: Applicants in the 2020 competitive 9% cycle may not have an option. Owners from prior cycles will have a choice to take the state tax credit upon meeting the applicable requirements.

2. Reducing federal LIHTCs after limited partners are already admitted would be very problematic.

SC Housing response: Agreed. Avoiding reductions in federal LIHTCs already committed to an investor is a premise for the draft.

3. The law currently does not allow providing less state tax credit than the federal LIHTC.

SC Housing response: The statute says the state tax credit will be “an amount equal to” the federal. Staff anticipates some properties would benefit from the state tax credit, yet making the two credits the same would result in overfunding. This circumstance would not work well with the problem of reducing federal LIHTCs noted above.

4. Increase the requirement to notify SC Housing of different equity amounts to 10%.

SC Housing response: The purpose of this provision is to help avoid the need to reduce federal and state allocations on the Form 8609 and Eligibility Statement. A larger percentage would work against this goal.

5. There is a robust syndication market for Georgia state tax credits, trading in the \$0.55-\$0.65 range.

SC Housing response: Staff understands federal LIHTC syndication and will work with equity providers to implement the state tax credit. In particular, while recognizing considerations such as timing of installments are crucial, underwriting will require using an amount of investment per state tax credit. As such this information is helpful.

6. The market demand for SC LIHTC will be significantly less than it is in Georgia. Please note, most corporations have many other incentives and typically don't need many state credits. What saves the GA LIHTC is that it is the only credit that offsets insurance premium taxes. In SC, the Mill and Abandoned building credits also offset insurance premium taxes and those credits come in three and five year streams with no recapture provision.

SC Housing response: As noted above, information of this nature is helpful.