

**Edits to Piggyback Legal Documents
For Round Two (CDBG – 4% LIHTC)
May 2, 2008**

The Round Two 4% program will use the same template legal documents that are currently being used for the closings of Round One Piggyback transactions, except for the changes outlined below. OCD's attorneys are making revisions to the legal documents at this time. Revised template legal documents will be posted to this site as they become available

1. All Documents

- A. Change title to "Piggyback Round Two".

2. CDBG Gap Financing Loan Agreement (funding at completion)

- A. In the Whereas section
 - i. Reference the Program Summary rather than the QAP.
 - ii. Clarify that the Piggyback Program Description remains applicable, except as expressly modified by the Program Summary and the associated legal documents.
- B. Recital C – the application will come to OCD not LHFA.
- C. For 1.2.a.i and a.ii (OCD's 2/3 share of surplus cash above \$1000 per unit). There will be two choices but they will be different choices than in Round 1, and the choice will be made by OCD based on the application.
 - i. 1.2.a.i – the starting point for OCD's 2/3 share of surplus cash can be deferred for up to 15 years if the application demonstrates inability to repay deferred developer fee (including interest at the AFR) to the satisfaction of OCD.
 - ii. 1.2.a.ii – For all other projects, "**For project fiscal years beginning after December 31, 2007:**"
- D. Text below 1.2.a.ii – delete the text discussing deferred developer fee. Retain the text discussing Surplus Cash.

3. CDBG Loan Agreement (*pari passu* funding during construction)

- A. Same edits as CDBG Loan Agreement (funding at completion)

4. Subordination Agreement

- A. 1 Recitals and Defined Terms -- reference the Program Summary instead of the QAP and Program Description.

5. Award Acceptance Agreement

- A. 2nd paragraph
 - i. The application will come to OCD not LHFA.
 - ii. Reference the Program Summary instead of the QAP and Program Description.
 - iii. At the end, re capitalized terms, reference the legal docs instead of the QAP / Program Description.
- B. Bottom of page 1 – update the due date and address.
- C. A.2 – put these in a stand alone paragraph
 - i. Refer to the future LHFA award of bond authority and 4% LIHTCs.
 - ii. Stipulate that the CDBG award is null and void unless the LHFA award is made within [a reasonable period] following OCD’s issuance of the Award Acceptance Agreement.
- D. A.3 -- reference the Program Summary instead of the QAP and Program Description.
- E. B.2 -- reference the Program Summary instead of the QAP and Program Description.
- F. B.3 (PSH commitment) -- provide that units will be affordable at 20% AMI.
- G. B.4.a – see changes to CDBG Gap Financing Loan 1.2.a
- H. B.5 generally – restructure as two options (at completion / pari passu); the option will be identified in the Round Two application.
- I. B.5.a.1.A – remove references to the additional 6%. ~~“OCD will fund the full amount of the Gap Financing Loan and an additional six (6%) percent of the principal amount to offset the financing and carrying costs for the incremental increase in Applicant’s construction loan financing. The additional six percent (6%) shall be added to the principal amount of the Gap Financing Loan. This aggregate~~ The Gap Financing Loan amount will be subject to adjustment based on final cost certification and subsidy layering review, as set forth below and will be funded in one disbursement following construction of the Project, upon receipt by OCD of final certificates of occupancy (or their equivalents) for all buildings and units comprising the Project and upon compliance with the other conditions to funding set forth in the Loan Agreement;”
- J. Below B.5.A.1.B – remove the “TO RECEIVE” text; this option will be identified in the application in Round Two.

- K. B.6 – provide for two blanks. One is the number of units with tenant rents at 30% AMI, the second is number of units with tenant rents at 20% AMI. Contract Units is the total of the two.
- L. B.11 – update the construction start outside deadline to a reasonable date based on the draft program timeline.
- M. B.19 – update the outside closing date to a reasonable date based on the draft program timeline.

6. PBRA Contract

- A. Note – included below are the January 2008 clarifications to the Round One PBRA contract.
- B. Recital B -- reference the Program Summary instead of the QAP and Program Description.
- C. Recital C – application will come to OCD.
- D. 1.1.d AMI – add at the end “Area Median Income refers to the re-publication by LHFA of median incomes, by Parish and Metropolitan Statistical Area, adjusted by household size, currently originally published by HUD’s Office of Policy Development and Research and sometimes referred to by HUD as “Income Limits” data (not to be confused with Income Limits as defined below).”
- E. 1.1.m Income Limit
 - i. Add: “However, for Permanent Supportive Housing units, the Income Limit shall be 30% of Area Median Income even though the Affordability Percentage is 20%.”
 - ii. Add at the end: “Subject, however, to the provisions of Section 7.3.c hereof that provide for eligibility at higher income in certain circumstances.”
- F. 1.1.p – Add similar language referring to a potential owner-DSS agreement for PSH Homeless projects
- G. 1.5.a – replace “90%” with “at least 75%”.
- H. 3.1 Payment Standard
 - i. Will be 60% for all Round Two PBRA contracts.
 - ii. The example becomes: “Example: for a two bedroom unit and 60% AMI payment standard, if the annual area median income for a three person household is \$42,150, the Payment Standard would be $60\% \times \$42,150 = \$25,290 \div 12 = \$2,107.50 \times 30\%$ housing cost ratio = \$632.25 rounded to the nearest dollar = \$632.”

- I. 4.1 – add at the end, “The first Rental Assistance Payment will include a one-time supplement equal to 50% of the first month’s Rental Assistance Payment. The requirements set forth in Section 18.1 may be satisfied subsequent to the Effective Date.”
- J. 7.3.c, replace with “Should the waiting list for 30% AMI households ~~a particular income tier~~ be exhausted, the Owner may fill a Contract Unit with an applicant in the ~~next higher~~ 40% AMI income tier; provided, however, the Affordable Rent charged to the Eligible Household shall not increase.”
- K. At the end of Section 18, add “Once the Owner has met the requirements of this Section 18.1, OCD shall pay any Rental Assistance Payments that have become due but have not been paid, retroactive to the Effective Date.”

7. CDBG Regulatory Agreement

- A. Recital B -- application will come to OCD.
- B. Recital C -- reference the Program Summary instead of the QAP and Program Description.
- C. Recital E -- reference the Program Summary instead of the QAP and Program Description.
- D. 3.2.c PSH -- reference the Program Summary instead of the QAP and Program Description.
- E. 3.2.d [51% at 80% requirement] – re-word to clarify that, in this round, OCD is requiring permanent (i.e., duration of the CDBG Use Agreement) restriction of 51% at 80%.

8. Gap Financing Note

- A. 1.e Deferred Developer Fee – delete.
- B. 3.b Annual Installments – make all changes discussed in connection with Gap Financing Loan Agreement 1.2.a.

9. No Changes Needed

- A. Completion Guaranty
- B. Gap Financing Mortgage
- C. Operating Deficit Guaranty