

SUPPLEMENTAL

BOARD MEETING OF MAY 21, 2009

C. Kent Conine, Chair



Gloria Ray, Vice-Chair
Leslie Bingham Escareño, Member
Tomas Cardenas, Member
Tom Gann, Member
Juan Muñoz, Member

**HOUSING PROGRAMS DIVISION
BOARD ACTION REQUEST
May 21, 2009**

Action Item

Presentation, Discussion and Possible Action to adopt a Plan and authorize its submission to HUD regarding the Tax Credit Assistance Program (TCAP)

Requested Action

Approve, deny or approve with modifications submission to HUD of the Plan regarding the Tax Credit Assistance Program (TCAP)

Background

President Barrack Obama signed into law the American Recovery and Reinvestment Act of 2009 on February 17, 2009, which provided for dedicated funds to assist in the development of properties that had been awarded low income housing tax credits (“LIHTCs”) between October 1, 2006, and September 30, 2009. These funds will be issued through the U.S. Department of Housing and Urban Development (HUD). HUD has announced that it will provide the State of Texas, through the Department, \$148,354,769 in TCAP funds. These funds are to be used to help provide additional financing at a level determined by the State to create jobs and provide affordable housing. All the funds must be used or returned to HUD by February 16, 2012.

The Department composed an internal workgroup to develop the plan for the use of these funds. Additionally, the Department held public input sessions in Austin to provide information on the TCAP and the Tax Credit Exchange Program and to allow stakeholders to provide input on the use and distribution of the funds. The input was taken into consideration in the final revisions made to the Plan.

This Plan provides a summary of the information and requirements contemplated in the proposed policy and policy supplement which are also reflected on today’s agenda. In order for the State to be eligible for the TCAP funds from HUD the plan must be submitted to HUD by June 3, 2009 after a five day public comment period. This plan was announced and posted on Friday, May 15, 2009 which is more than five days prior to the board meeting.

Pursuant to the proposed policy funds under TCAP will be awarded on a competitive basis as outlined in the policy and policy supplement. The Department will assign a team of reviewers and a standardized scoring instrument to evaluate and score each eligible application. The scoring instrument follows the content and order of the selection process in the policy. The Department’s Compliance and Asset Oversight Division will be consulted to determine if applicants have issues which will make the applicant’s application ineligible for funding.

Recommendation

Staff recommends the adoption and submission to HUD of the Plan regarding the Tax Credit Assistance Program (TCAP).



Tax Credit Assistance Program (TCAP) Submission Packet May 2009

A. Statement of Intent.

- 1) This TCAP Submission Packet (the “Plan”) is presented in response to CPD Notice 09-03. The Texas Department of Housing and Community Affairs (the “Department”) intends to accept the entire amount of the TCAP formula allocation which was anticipated to be \$148,354,769. The Department will accept any additional amount available due to the return of allocation from other states.
- 2) The Department currently administers funds from the United States Department of Housing and Urban Development (“HUD”) for the following programs: HOME Investment Partnerships Program, Community Development Block Grant, Section 8 Housing Choice Voucher Program, Emergency Shelter Grants Program, Neighborhood Stabilization Program, and the Homelessness Prevention and Rapid Re-Housing Program. In addition to HUD funds, the Department administers the Weatherization Assistance Program funded through the U.S. Department of Energy, and the Community Services Block Grant and Comprehensive Energy Assistance programs through the U.S. Department of Health and Human Services.
- 3) The Department has accepted and is currently reviewing Applications for the 2009 housing tax credit cycle and anticipates awarding allocations by July 31, 2009.
- 4) Information about the TCAP programs can be addressed to

Robbye Meyer
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
221 East 11th Street
PO Box 13941
Austin, TX 78711-3941
Phone: (512) 475-2213
Fax: (512) 475-0764
Email: robbye.meyer@tdhca.state.tx.us

B. Description of Competitive Selection Criteria.

- 1) Eligible Applicants. In addition to the eligibility requirements included in the Act and CPD Notice 09-03, the Department will require the following threshold elements for Applicants.
 - a) Developments receiving funds must continue to meet the threshold and scoring requirements as included in the original Application or most recent amendment approved by the Board.
 - b) Applicants, as defined in the QAP, must not be in material non-compliance for any Department program. The Department will check for material non-compliance at the time of Application. The Department may also check for material non-compliance at the time of execution of the Written Agreement and at closing to the extent that any of these subsequent events occur more than three months after the initial review at Application.
 - c) Applicants requesting funds must provide evidence of a Good Faith Effort to obtain equity commitments.
- 2) Priority for awarding of TCAP Funds. Developments will also be required to meet the following prioritization requirements.
 - a) Development can be completed by February 16, 2012, or earlier as may be required under existing funding source requirements.
 - b) Developments ready to proceed (“shovel ready”).
 - c) Developments that maximize the use of prior awards and tax credit resources.
- 3) Selection Criteria. Applications for TCAP will be further prioritized based upon the following criteria and initiatives.
 - a) Developments will have a base score equal to the score in the round they applied in accordance with regional allocation formula including set asides for at risk and rural populations. The maximum possible score for this criterion is the maximum available in the appropriate credit year and is based on the Selection Criteria in the Qualified Allocation Plan.
 - b) Private equity investor commits to provide “greater than market” funding, as evidenced by a firm commitment that reflects a price and equity amount equal to or greater than the credit price and equity amount reflected in the Board approved analysis for the additional allocation on November 13, 2008. Applications may be awarded points based on a scale from 0 to 300 based with higher points for greater percentage increases in pricing.
 - c) Funds awarded under the Equity Bridge Loan Initiative are intended to attract additional equity investment or preserve existing equity investment in tax credit developments by increasing the yield potential for top tier investors. The potential yield enhancement is derived from a reduced period of time between the final investment of equity and the realization of tax

benefits and savings realized from the interest rate savings on the bridge loan. The yield enhancement should result in stabilization of pricing and could lead to higher pricing if the market expectation of yield is exceeded. The funds awarded under this initiative may be up to one-half of the total equity contribution derived from the Award of LIHTC. Applications will be awarded points on a scale of 0 to 220 with higher points available for applications requesting less Bridge Loan funds and faster repayment of the funds.

- d) Funds awarded under the Permanent Loan Replacement/Equity Risk Reduction Initiative are intended to reduce the risk to the limited partner and primary lender by replacing a portion or all of the first lien debt with lower cost second lien, non-recourse debt from funds made available under this Policy. By reducing the obligation of the partnership to the first lien lender, the reduced risk of foreclosure or an event of default by the primary lender should have a positive impact on the investor limited partners' and first lien lender's risk assessment of a development and may attract renewed lender and syndicator interest in tax credit developments. The funds requested under this subsection shall be combined with the funds awarded under the Tax Credit Replacement Initiative (see subsection (e) below) for scoring purposes.
 - e) Funds awarded under the Tax Credit Replacement Initiative are intended to replace the loss of syndication proceeds created by an Applicant's inability to sell or otherwise utilize a portion of the Award of LIHTC. The returned credits may be a result of a determination by the Applicant that a portion of the original or supplemental allocation of credits provided as contingency in anticipation of cost increases which have not materialized. The returned credits may alternatively be a result of the inability to close on a partnership agreement with a limited partner investor after a Good Faith Effort to do so has been made. The funds requested under this initiative shall be combined with the funds requested under the Permanent Loan Replacement/Equity Risk Reduction Initiative and Applications may be awarded points based on a scale of 0 to 195 with higher points available to applications requesting less funding as a percentage of the total development costs.
 - f) An Application may be eligible for 200 points for limiting the use of the above initiatives.
 - g) Applications that received their Award of LIHTC for development in rural areas of the state may receive 100 points.
- 4) The Department defines an "Award of LIHTCs" to be an approval by the Department's Governing Board ("Board") of an allocation or determination of Low Income Housing Tax Credits between October 1, 2006, and September 30, 2009, and as may be adjusted based upon the Application for TCAP funds. The Department will uniformly apply this definition of housing tax credits for determining eligibility for TCAP funding.

C. Commitment and Expenditure Deadlines.

For applications with an Award of LIHTC made in 2007 or 2008, the Department will solicit Applications in June and July of 2009 with a deadline for submission of July 17, 2009 and anticipates initially awarding TCAP funds for these developments by September 3, 2009. For applications with an Award of LIHTC made in 2009, the Department will accept Applications after July 31, 2009 with a deadline for submission of October 1, 2009 and anticipates awarding all TCAP funds for these developments by December 17, 2009. The Department will enter into written agreements with project owners for the entire amount of the TCAP allocation by December 31, 2009. The commitment contracts will include performance benchmarks to ensure timely expenditure of funds by the property owners by February 16, 2011. In the event of noncompliance with performance benchmarks, the Department will deobligate and redistribute funds to eligible Applicants to ensure expenditure of 100 percent of TCAP funds by February 16, 2012.

D. Recovery Act Accountability and Transparency Requirement.

The Department is committed to an open and transparent process in the administration of all Recovery Act funds, including TCAP. In order to encourage public participation in the planning process, the Department hosted a roundtable on the topic of the Recovery Act housing tax credit funds on March 2, 2009. The Department regularly publishes current information regarding Recovery Act programs on the website dedicated to the Recovery Act at www.tdhca.state.tx.us/recovery.

The Department will post the description of the TCAP selection process and criteria on the Department's Recovery Act website on Friday, May 15, 2009 and will accept public comment for five days. The Department's Board will accept public comment at the May 21, 2009 meeting prior to consideration of the selection criteria. The Department will post information on all developments submitting Applications and receiving awards, including the total TCAP funds awarded for each development.

Application for Federal Assistance SF-424

Version 02

*1. Type of Submission: <input type="checkbox"/> Preapplication <input checked="" type="checkbox"/> Application <input type="checkbox"/> Changed/Corrected Application	*2. Type of Application * If Revision, select appropriate letter(s) <input checked="" type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision	*Other (Specify) _____
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3. Date Received:	4. Applicant Identifier:
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5a. Federal Entity Identifier:	*5b. Federal Award Identifier:
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State Use Only:

6. Date Received by State:	7. State Application Identifier:
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8. APPLICANT INFORMATION:

*a. Legal Name: State of Texas

*b. Employer/Taxpayer Identification Number (EIN/TIN): 74-2610542	*c. Organizational DUNS: 806781902
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d. Address:

*Street 1: 221 East 11th Street
Street 2: _____
*City: Austin
County: Travis
*State: Texas
Province: _____
*Country: USA
*Zip / Postal Code 78701-2410

e. Organizational Unit:

Department Name: Texas Department of Housing and Community Affairs	Division Name: HOME Program
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f. Name and contact information of person to be contacted on matters involving this application:

Prefix: Ms. *First Name: Robbye
Middle Name: _____
*Last Name: Meyer
Suffix: _____

Title: Director of Multifamily Finance

Organizational Affiliation:

*Telephone Number: 512-475-2213 Fax Number: 512-475-0764

*Email: robbye.meyer@tdhca.state.tx.us

Application for Federal Assistance SF-424

Version 02

***9. Type of Applicant 1: Select Applicant Type:**

A.State Government

Type of Applicant 2: Select Applicant Type:

Type of Applicant 3: Select Applicant Type:

*Other (Specify)

***10 Name of Federal Agency:**

US Department of Housing and Urban Development

11. Catalog of Federal Domestic Assistance Number:

14.258 _____

CFDA Title:

Tax Credit Assistance Program (TCAP) _____

***12 Funding Opportunity Number:**

14.258 _____

*Title:

Tax Credit Assistance Program (TCAP) _____

13. Competition Identification Number:

Title:

14. Areas Affected by Project (Cities, Counties, States, etc.):

State of Texas

***15. Descriptive Title of Applicant's Project:**

Tax Credit Assistance Program (TCAP)

Application for Federal Assistance SF-424		Version 02
16. Congressional Districts Of:		
*a. Applicant: TX-all		*b. Program/Project: TX-all
17. Proposed Project:		
*a. Start Date: June 15, 2009		*b. End Date: February 16, 2012
18. Estimated Funding (\$):		
*a. Federal	\$148,354,769	
*b. Applicant		
*c. State		
*d. Local		
*e. Other		
*f. Program Income		
*g. TOTAL	\$148,354,769	
*19. Is Application Subject to Review By State Under Executive Order 12372 Process?		
<input type="checkbox"/> a. This application was made available to the State under the Executive Order 12372 Process for review on _____ <input checked="" type="checkbox"/> b. Program is subject to E.O. 12372 but has not been selected by the State for review. <input type="checkbox"/> c. Program is not covered by E. O. 12372		
*20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes", provide explanation.)		
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
21. *By signing this application, I certify (1) to the statements contained in the list of certifications** and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U. S. Code, Title 218, Section 1001) <input checked="" type="checkbox"/> ** I AGREE ** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions		
Authorized Representative:		
Prefix: <u>Mr.</u>	*First Name: <u>Michael</u>	
Middle Name: _____		
*Last Name: <u>Gerber</u>		
Suffix: _____		
*Title: Executive Director		
*Telephone Number: 512-475-3930		Fax Number: _____
* Email: michael.gerber@tdhca.state.tx.us		
*Signature of Authorized Representative:		*Date Signed:

Application for Federal Assistance SF-424

Version 02

***Applicant Federal Debt Delinquency Explanation**

The following should contain an explanation if the Applicant organization is delinquent of any Federal Debt.

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 60 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form (including the continuation sheet) required for use as a cover sheet for submission of preapplications and applications and related information under discretionary programs. Some of the items are required and some are optional at the discretion of the applicant or the Federal agency (agency). Required items are identified with an asterisk on the form and are specified in the instructions below. In addition to the instructions provided below, applicants must consult agency instructions to determine specific requirements.

Item	Entry:	Item	Entry:
1.	Type of Submission: (Required): Select one type of submission in accordance with agency instructions. <ul style="list-style-type: none"> • Preapplication • Application • Changed/Corrected Application – If requested by the agency, check if this submission is to change or correct a previously submitted application. Unless requested by the agency, applicants may not use this to submit changes after the closing date. 	10.	Name Of Federal Agency: (Required) Enter the name of the Federal agency from which assistance is being requested with this application.
2.	Type of Application: (Required) Select one type of application in accordance with agency instructions. <ul style="list-style-type: none"> • New – An application that is being submitted to an agency for the first time. • Continuation - An extension for an additional funding/budget period for a project with a projected completion date. This can include renewals. • Revision - Any change in the Federal Government's financial obligation or contingent liability from an existing obligation. If a revision, enter the appropriate letter(s). More than one may be selected. If "Other" is selected, please specify in text box provided. <ul style="list-style-type: none"> A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration E. Other (specify) 	11.	Catalog Of Federal Domestic Assistance Number/Title: Enter the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested, as found in the program announcement, if applicable.
		12.	Funding Opportunity Number/Title: (Required) Enter the Funding Opportunity Number and title of the opportunity under which assistance is requested, as found in the program announcement.
		13.	Competition Identification Number/Title: Enter the Competition Identification Number and title of the competition under which assistance is requested, if applicable.
3.	Date Received: Leave this field blank. This date will be assigned by the Federal agency.	14.	Areas Affected By Project: List the areas or entities using the categories (e.g., cities, counties, states, etc.) specified in agency instructions. Use the continuation sheet to enter additional areas, if needed.
4.	Applicant Identifier: Enter the entity identifier assigned by the Federal agency, if any, or applicant's control number, if applicable.	15.	Descriptive Title of Applicant's Project: (Required) Enter a brief descriptive title of the project. If appropriate, attach a map showing project location (e.g., construction or real property projects). For preapplications, attach a summary description of the project.
5a.	Federal Entity Identifier: Enter the number assigned to your organization by the Federal Agency, if any.	16.	Congressional Districts Of: (Required) 16a. Enter the applicant's Congressional District, and 16b. Enter all District(s) affected by the program or project. Enter in the format: 2 characters State Abbreviation – 3 characters District Number, e.g., CA-005 for California 5 th district, CA-012 for California 12 th district, NC-103 for North Carolina's 103 rd district. <ul style="list-style-type: none"> • If all congressional districts in a state are affected, enter "all" for the district number, e.g., MD-all for all congressional districts in Maryland. • If nationwide, i.e. all districts within all states are affected, enter US-all. • If the program/project is outside the US, enter 00-000.
5b.	Federal Award Identifier: For new applications leave blank. For a continuation or revision to an existing award, enter the previously assigned Federal award identifier number. If a changed/corrected application, enter the Federal Identifier in accordance with agency instructions.		
6.	Date Received by State: Leave this field blank. This date will be assigned by the State, if applicable.		
7.	State Application Identifier: Leave this field blank. This identifier will be assigned by the State, if applicable.		
8.	Applicant Information: Enter the following in accordance with agency instructions:		
	a. Legal Name: (Required): Enter the legal name of applicant that will undertake the assistance activity. This is the name that the organization has registered with the Central Contractor Registry. Information on registering with CCR may be obtained by visiting the Grants.gov website.	17.	Proposed Project Start and End Dates: (Required) Enter the proposed start date and end date of the project.
	b. Employer/Taxpayer Number (EIN/TIN): (Required): Enter the Employer or Taxpayer Identification Number (EIN or TIN) as assigned by the Internal Revenue Service. If your organization is not in the US, enter 44-4444444.	18.	Estimated Funding: (Required) Enter the amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines, as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses.
	c. Organizational DUNS: (Required) Enter the organization's DUNS or DUNS+4 number received from Dun and Bradstreet. Information on obtaining a DUNS number may be obtained by visiting the Grants.gov website.	19.	Is Application Subject to Review by State Under Executive Order 12372 Process? Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the
	d. Address: Enter the complete address as follows: Street address (Line 1 required), City (Required), County, State (Required, if country is US), Province, Country (Required), Zip/Postal Code (Required, if country is US).		
	e. Organizational Unit: Enter the name of the primary organizational unit (and department or division, if applicable) that will undertake the		

	<p>assistance activity, if applicable.</p> <p>f. Name and contact information of person to be contacted on matters involving this application: Enter the name (First and last name required), organizational affiliation (if affiliated with an organization other than the applicant organization), telephone number (Required), fax number, and email address (Required) of the person to contact on matters related to this application.</p>	<p>State intergovernmental review process. Select the appropriate box. If "a." is selected, enter the date the application was submitted to the State</p>																								
20.		<p>Is the Applicant Delinquent on any Federal Debt? (Required) Select the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.</p> <p>If yes, include an explanation on the continuation sheet.</p>																								
9.	<p>Type of Applicant: (Required) Select up to three applicant type(s) in accordance with agency instructions.</p> <table border="1" data-bbox="198 436 867 987"> <tr> <td data-bbox="198 436 532 464">A. State Government</td> <td data-bbox="532 436 867 506">M. Nonprofit with 501C3 IRS Status (Other than Institution of Higher Education)</td> </tr> <tr> <td data-bbox="198 464 532 491">B. County Government</td> <td data-bbox="532 506 867 575">N. Nonprofit without 501C3 IRS Status (Other than Institution of Higher Education)</td> </tr> <tr> <td data-bbox="198 491 532 518">C. City or Township Government</td> <td data-bbox="532 575 867 621">O. Private Institution of Higher Education</td> </tr> <tr> <td data-bbox="198 518 532 546">D. Special District Government</td> <td data-bbox="532 621 867 648">P. Individual</td> </tr> <tr> <td data-bbox="198 546 532 573">E. Regional Organization</td> <td data-bbox="532 648 867 676">Q. For-Profit Organization (Other than Small Business)</td> </tr> <tr> <td data-bbox="198 573 532 600">F. U.S. Territory or Possession</td> <td data-bbox="532 676 867 703">R. Small Business</td> </tr> <tr> <td data-bbox="198 600 532 627">G. Independent School District</td> <td data-bbox="532 703 867 730">S. Hispanic-serving Institution</td> </tr> <tr> <td data-bbox="198 627 532 655">H. Public/State Controlled Institution of Higher Education</td> <td data-bbox="532 730 867 758">T. Historically Black Colleges and Universities (HBCUs)</td> </tr> <tr> <td data-bbox="198 655 532 682">I. Indian/Native American Tribal Government (Federally Recognized)</td> <td data-bbox="532 758 867 785">U. Tribally Controlled Colleges and Universities (TCCUs)</td> </tr> <tr> <td data-bbox="198 682 532 709">J. Indian/Native American Tribal Government (Other than Federally Recognized)</td> <td data-bbox="532 785 867 812">V. Alaska Native and Native Hawaiian Serving Institutions</td> </tr> <tr> <td data-bbox="198 709 532 737">K. Indian/Native American Tribally Designated Organization</td> <td data-bbox="532 812 867 840">W. Non-domestic (non-US) Entity</td> </tr> <tr> <td data-bbox="198 737 532 764">L. Public/Indian Housing Authority</td> <td data-bbox="532 840 867 867">X. Other (specify)</td> </tr> </table>	A. State Government	M. Nonprofit with 501C3 IRS Status (Other than Institution of Higher Education)	B. County Government	N. Nonprofit without 501C3 IRS Status (Other than Institution of Higher Education)	C. City or Township Government	O. Private Institution of Higher Education	D. Special District Government	P. Individual	E. Regional Organization	Q. For-Profit Organization (Other than Small Business)	F. U.S. Territory or Possession	R. Small Business	G. Independent School District	S. Hispanic-serving Institution	H. Public/State Controlled Institution of Higher Education	T. Historically Black Colleges and Universities (HBCUs)	I. Indian/Native American Tribal Government (Federally Recognized)	U. Tribally Controlled Colleges and Universities (TCCUs)	J. Indian/Native American Tribal Government (Other than Federally Recognized)	V. Alaska Native and Native Hawaiian Serving Institutions	K. Indian/Native American Tribally Designated Organization	W. Non-domestic (non-US) Entity	L. Public/Indian Housing Authority	X. Other (specify)	<p>21. Authorized Representative: (Required) To be signed and dated by the authorized representative of the applicant organization. Enter the name (First and last name required) title (Required), telephone number (Required), fax number, and email address (Required) of the person authorized to sign for the applicant.</p> <p>A copy of the governing body's authorization for you to sign this application as the official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)</p>
A. State Government	M. Nonprofit with 501C3 IRS Status (Other than Institution of Higher Education)																									
B. County Government	N. Nonprofit without 501C3 IRS Status (Other than Institution of Higher Education)																									
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L. Public/Indian Housing Authority	X. Other (specify)																									

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

Approved by OMB

0348-0046

(See reverse for public burden disclosure.)

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. Report Type: <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, <i>if known</i> : Congressional District, if known:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime: Congressional District, if known:	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, <i>if applicable</i> : _____	
8. Federal Action Number, if known:	9. Award Amount, if known: \$ _____	
10. a. Name and Address of Lobbying Registrant <i>(if individual, last name, first name, MI):</i>	b. Individuals Performing Services <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only:		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.



Special Attention of:

All Secretary's Representatives
State Coordinators
All CPD Division Directors
All TCAP Grantees

Notice: CPD-09-03

Issued: May 4, 2009
Expires: May 3, 2010

SUBJECT: Implementation of the Tax Credit Assistance Program (TCAP)

I. PURPOSE

This notice sets forth the submission requirements, eligible uses of funds, and program requirements for the Tax Credit Assistance Program (TCAP). HUD will issue supplemental or interpretive guidance on program requirements, including the process for disbursing funds, recordkeeping, reporting, and applicable federal grant requirements, as they become available.

II. BACKGROUND

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (Public Law 111-5). The purpose of the Recovery Act is to jumpstart the nation's ailing economy, with a primary focus on creating and saving jobs in the near term and investing in infrastructure that will provide long-term economic benefits. Title XII of the Recovery Act appropriated \$2.250 billion under the HOME Investment Partnerships (HOME) Program heading for a grant program to provide funds for capital investments in Low-Income Housing Tax Credit (LIHTC) projects. HUD will award TCAP grants by formula to state housing credit agencies to facilitate development of projects that received or will receive LIHTC awards between October 1, 2006, and September 30, 2009. The Recovery Act requires TCAP funds to be distributed to each state housing credit agency based on the percentage of the FY 2008 HOME Program appropriation received by the state and local participating jurisdictions in the state. If an eligible housing credit agency declines its formula allocation, in whole or in part, those funds will be re-allocated to other eligible grantees in accordance with this distribution formula. Since a major purpose of TCAP funds is to immediately create new jobs or save jobs at risk of being lost due to the current economic crisis, the Recovery Act establishes deadlines for the commitment and expenditure of grant funds and requires state housing credit agencies to give priority to projects that will be completed by February 16, 2012. Although TCAP funds were appropriated under the HOME heading of the Recovery Act, HOME program requirements found in 24 CFR Part 92 and the Consolidated Planning requirements in 24 CFR Part 91 *do not* apply to TCAP funds.

III. TCAP SUBMISSION REQUIREMENTS AND GRANT AGREEMENTS

Submission Requirements

After reviewing the requirements put forth in this Notice, any state housing credit agency interested in accepting all or a portion of its TCAP allocation must submit the following information within 30 days of the publication date of this Notice. **Any state housing credit agency which fails to submit the required TCAP Submission Packet will be considered to have declined the receipt of its entire TCAP formula allocation. HUD will not award funds to any state housing credit agency that has not provided the following information:**

A. Statement of intent to accept TCAP funds, which must include:

- 1) A statement that indicates whether the grantee intends to accept the entire amount of its TCAP formula allocation. If the state housing credit agency elects to receive less than the full formula amount, the statement should provide the exact amount of TCAP funds that it will accept. Once HUD determines that the submission packet is complete, the amount requested by the grantee cannot be changed;
- 2) A statement detailing which, if any, other federal grant funds the state housing credit agency currently administers (LIHTCs are not federal grant funds);
- 3) A statement regarding the status of its 2009 LIHTC allocation process; and
- 4) The name and contact information, including email address, phone and fax number, of the individual designated as the agency contact for TCAP.

B. Description of Competitive Selection Criteria:

As described below, the grantee must distribute the TCAP funds competitively under the requirements of the Recovery Act (i.e., give priority to projects that are expected to be completed by February 16, 2012) and pursuant to the existing Qualified Allocation Plan (QAP).

Each state housing credit agency must submit a written description of all the selection criteria and any weightings assigned that it will use to competitively award its TCAP funds. The state housing credit agency must also define an “award of LIHTCs” which can be as early as the date of public notice of the funding decision for a particular project. The same definition of an “award of LIHTCs” must be uniformly applied to all LIHTC projects for the purpose of determining project eligibility for TCAP funding.

C. Commitment and Expenditure Deadlines:

Each state housing credit agency must describe the procedures it will use to ensure it will commit and expend its TCAP funds to meet the deadlines established in the Recovery Act (see below). In addition, it must specifically describe how it will redistribute funds to more deserving projects from projects which are not in compliance with deadlines established in the written agreement between the grantee and project owners.

D. Recovery Act Accountability and Transparency Requirements:

Each state housing credit agency must submit information about how it is meeting the Recovery Act accountability and transparency requirements (see below). To implement this requirement, the state housing credit agency must make its project selection process and criteria available to the public and accept comments from the public for a period of not less than five days. The state housing credit agency must submit to HUD its website address set up for this purpose, and a description of how it met the five-day comment period. It must also provide a description of how the agency plans to ensure that it will remain in compliance with these accountability and transparency requirements for the duration of the TCAP grant.

E. Additional Elements of the Submission:

Each state housing credit agency must submit Standard Form 424 (Application for Funds) signed by a legally authorized representative of the agency. Among other identifying data elements, the form requires all potential grant recipients to have a Data Universal Numbering System (DUNS) number from Dun and Bradstreet. Grantees eligible for TCAP funds should determine if they have a DUNS number and, if not, request one as soon as possible. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1-866-705-5711. A sample SF-424 is attached to this Notice. The Recovery Act also requires registration in the Central Contractor Registration (CCR). To register, go to www.ccr.gov/startregistration.aspx.

The TCAP Submission must include a transmittal letter on the letterhead of the state housing credit agency and signed by the Chief Executive Officer or Chief Operating Officer of the agency.

F. Deadline for Submissions:

State housing credit agencies must send three copies of the Submission Requirements packet by Federal Express or United Parcel Service, within 30 days of the publication of this Notice, to Marcia Sigal, Director, Program Policy Division, Office of Affordable Housing Programs, Community Planning and Development, U.S. Department of Housing and Urban Development, 451 7th St., S.W. Room 7164, Washington, D.C. 20410. The submission deadline will be met if the Submission Requirements packet is sent by overnight or express delivery and is placed in transit with Federal Express or UPS on or before 30 days from the publication date of this Notice. Due to security screening procedures, submissions sent by regular U.S. Postal Service mail may not be received timely. Fax and email transmissions will not be accepted.

HUD will fund only those state housing credit agencies that provide complete TCAP Submission Requirements packets. HUD will review each TCAP Submission packet for completeness within 10 days of receipt and notify any state housing credit agency if it is found to be incomplete and provide instructions for curing the deficiency.

Grant Agreements

After HUD determines that the grantee's TCAP submission is complete, HUD will execute a grant agreement with the state housing credit agency. The grant agreement will include all applicable requirements specific to the TCAP program, federal grant requirements and reporting requirements required by the Recovery Act. In accordance with 24 CFR 85.12, if HUD determines that a grantee has a history of unsatisfactory performance, is not financially stable or has a management system that does not meet management standards set forth in 24 CFR Part 85, HUD may declare the grantee as "high risk" and attach special conditions to the grant agreement.

IV. TCAP PROGRAM REQUIREMENTS

Although TCAP funds were appropriated under the HOME Program heading of the Recovery Act, HOME statutory and regulatory requirements *do not* apply to TCAP funds, with the exception of environmental review requirements discussed below.

The Recovery Act establishes certain requirements applicable to the TCAP program, including deadlines for commitment and expenditure, transparency, and distribution of funds. This Notice sets forth these requirements. Other federal laws, such as Fair Housing, apply by their own terms.

HUD will issue guidance, including frequently asked questions on TCAP requirements, on a continuing basis, to facilitate project implementation and compliance with TCAP requirements.

A. Eligible Grantees, Projects and Uses of Funds

Grantees: The housing credit agency of each of the 50 states, the District of Columbia, and the Commonwealth of Puerto Rico are the only eligible grantees for the TCAP program. These agencies are referred to collectively as either state housing credit agencies or grantees in this notice.

Eligible Projects: By statute, projects eligible to receive TCAP assistance are rental housing projects that received or will receive an award of LIHTCs under Section 42(h) of the Internal Revenue Code of 1986, as amended, (IRC) (26 U.S.C. 42), during the period from October 1, 2006 to September 30, 2009 (federal fiscal years 2007, 2008 or 2009), and require additional funding to be completed and placed into service in accordance with the requirements of Section 42 of the IRC. Projects awarded LIHTCs that will also receive bond financing are eligible to receive TCAP funds. However, if the only source of credits for a project is the Gulf Opportunity Zone or Midwestern Disaster Area Housing Credits, it is not an eligible TCAP project since these credits were not awarded under Section 42(h) of the IRC. The state housing credit agency must also define an "award of LIHTCs" which can be as early as the date of public notice of the funding decision for a particular project. The same definition of "award of LIHTCs" must be uniformly applied to all LIHTC projects for the purpose of determining project eligibility for TCAP funding.

Eligible uses of funds: TCAP funds may be used for capital investment in eligible LIHTC projects. Capital investment means costs that are included in the ‘eligible basis’ of a project under Section 42 of the IRC. TCAP funds cannot be used for the administrative costs of TCAP grantees, including the cost of operating the program or monitoring compliance, and section 1604 of the Recovery Act specifically prohibits the use of grant funds for swimming pools.

The TCAP assistance provided to a project must be made in the same manner and subject to the same limitations (including rent, income, use restrictions and compliance monitoring) as required by the state housing credit agency with respect to an award of LIHTC to a project (i.e., as required under Section 42 of the IRC and its implementing regulations), and all other requirements of the Act.

B. TCAP Fund Distribution

The Recovery Act requires HUD to distribute TCAP funds to each state housing credit agency based on the percentage of the FY 2008 HOME Program appropriation received by the state and local HOME participating jurisdictions in the state. Following the submission and HUD’s acceptance of the materials described in above, HUD will execute a grant agreement with each grantee. The grantee may then proceed with the distribution of its TCAP funds in accordance with this Notice and the Recovery Act requirements.

The Recovery Act requires grantees to distribute TCAP funds “competitively under this heading and pursuant to their qualified allocation plan”, as defined in Section 42(m) of the IRC. The TCAP competition is limited to projects that have received or will simultaneously with TCAP funding receive a LIHTC award between October 1, 2006 and September 30, 2009 (federal fiscal years 2007, 2008, or 2009). Note that state housing credit agencies are neither required nor expected to amend their QAPs to comply with this program requirement. In states in which there are multiple housing credit agencies, a project may be selected pursuant to any housing credit agency’s qualified allocation plan (QAP). The TCAP grantee may also choose to sub-grant a portion of its TCAP grant to another housing credit agency within the state. The sub-grant agreement must contain all applicable TCAP and Federal grant requirements.

In their competitive TCAP selection process, state housing credit agencies are required to give priority to eligible projects that are expected to be completed within 3 years from the date of Recovery Act enactment (February 16, 2012). Consequently, this standard must be the main selection criterion in any TCAP competition. The grantee is otherwise free to design its competitive process and adopt any other selection criteria it chooses. For example, a grantee may choose to award TCAP funds to projects that: (1) meet a predetermined threshold of “ready-to-go”; and (2) have completed the required environmental review process (described below) because the project had already been awarded HOME or other federal financial assistance.

The grantee can also decide whether to provide TCAP funds to eligible projects through grants or loans. Each grantee should consider how these decisions, in the aggregate, may affect its ability to meet the statutory deadlines for commitment and expenditure of funds defined below. For example, if TCAP funds are provided to projects as loans, any repayment of principal or interest received during the three-year grant period is program income and must be expended before appropriated TCAP funds. (See below for a discussion of TCAP program income.)

Pursuant to the Recovery Act, the state housing credit agency's selection process must be 'transparent', as described below.

C. TCAP Commitment and Expenditure Deadlines

The Recovery Act imposes both commitment and expenditure deadlines on the grantee's use of TCAP funds. Specifically, the Recovery Act requires that the state housing credit agency:

- Commit not less than 75 percent of its TCAP grant within one year of the enactment of the Recovery Act (i.e., by February 16, 2010);
- Demonstrate that all project owners have expended 75 percent of the TCAP funds within two years of the enactment of the Recovery Act (i.e., by February 16, 2011); and
- Expend 100 percent of its TCAP grant within three years of the enactment of the Recovery Act (i.e., by February 16, 2012).

The grantee must track and report to HUD on a regular basis in IDIS its progress in committing and expending TCAP formula grant funds. Grant funds not expended by the end of the three-year performance period will be recaptured by HUD.

A **TCAP Funding Commitment** is recorded on the date of execution of the written agreement between the grantee and project owner that provides TCAP assistance to a project. (See Section IV.B. for additional information on the written agreement.) **Expenditure** means a charge against the TCAP program funds account. Expenditures may be reported on a cash or accrual basis.

D. TCAP Written Agreements and Disbursements

Written Agreements -- Grantees must execute a legally binding written agreement with each project owner. The written agreement, *called a TCAP written agreement*, must set forth all of the TCAP program and crosscutting federal grant requirements applicable to the funding, and must make these requirements enforceable through the recordation of a restriction that is binding on all owners and successors, e.g., a covenant. HUD will issue more specific guidance on the required content of a TCAP written agreement. The written agreement for a project cannot be executed until environmental clearance for the project is completed and the Request for Release of Funds (RROF) is approved. The grantee must retain a copy of the executed TCAP written agreement and make these agreements available for HUD review, upon request.

Disbursement of Funds -- The TCAP written agreement must be signed and dated by the grantee and project owner before any TCAP funds are disbursed. Federal funds cannot be drawn from the U.S. Treasury in advance of the need to pay an eligible cost. Consequently, TCAP funds cannot be drawn from the U.S. Treasury and placed in escrow or advanced in lump sums to project owners. Once funds are drawn from the grantee's U.S. Treasury account, they must be expended for an eligible TCAP cost within 3 days.

E. Program Income

Program Income -- means gross income received by the grantee generated by the use of TCAP funds during the grant period. This includes, but is not limited to, principal and interest from a loan made with TCAP funds, or other income or fees received from project owners in connection with TCAP funds, and interest earned by the grantee on program income before its disposition. The grantee must record program income receipts in HUD's Integrated Disbursement and Information System (IDIS) and use them in accordance with the TCAP requirements. The grantee must expend all program income for eligible TCAP costs before additional appropriated TCAP grant funds are drawn from the U.S. Department of Treasury. Grantees must continually monitor the amount of program income on-hand or anticipated, and be aware of these amounts when assessing their progress towards meeting the commitments and expenditure deadlines for TCAP funds.

F. The Recovery Act Accountability, Transparency and Reporting Requirements

The Recovery Act imposes significant accountability, transparency and reporting requirements for each program and expenditure under the Act, some of which are still being defined by the Office of Management and Budget (OMB). HUD will incorporate the final requirements into the TCAP grant agreement.

On February 18, 2009, OMB issued initial guidance on the implementation of Recovery Act programs, including initial reporting requirements for recipients of Recovery Act funding. All recipients of Recovery Act funds, including TCAP grantees, will be required to report to HUD, 10 days after the end of each calendar quarter starting on June 10th, 2009, information similar to the following:

- The total amount of TAP funds received;
- The amount of TCAP funds expended or obligated to projects or activities, including unobligated balances;
- A detailed list of all projects or activities for which TCAP funds were expended or obligated, including:
 - ✓ The name of the project,
 - ✓ A description of the project,
 - ✓ An evaluation of the completion status of the project, and
 - ✓ An estimate of the number of jobs created and the number of jobs retained by the project.

The Recovery Act imposes additional transparency and reporting requirements for TCAP. Each state housing credit agency must post on its website a description of its competitive selection criteria for awarding TCAP funds to eligible projects. In addition, the grantee must identify all projects selected for funding, and post the amount of each TCAP award on its website.

TCAP grantees must submit reports in a format and at such time as prescribed by HUD. In addition, HUD and Office of the Inspector General (OIG) staff must be given access, upon reasonable notice, to all information related to the selection, award and use of TCAP funds.

G. Asset Management

The Recovery Act requires state housing credit agencies to perform asset management functions, or contract for performance of these services, at the owner's expense, to ensure compliance with Section 42 of the IRC and the long term viability of projects funded by TCAP. Costs associated with asset management are administrative costs and are not eligible to be paid with TCAP funds.

H. Redistribution of TCAP Funds

The grantee is responsible for redistributing its TCAP funds to ensure compliance with the commitment and expenditure deadlines established by the Recovery Act. If a project owner fails to expend TCAP funds timely, the grantee must assess whether the delay will affect its ability to meet its TCAP deadlines, and take necessary steps to redistribute the funds to a more deserving project. Consequently, in the TCAP written agreement, the grantee must specify a schedule for the expenditure of TCAP funds and outline the circumstances under which TCAP funds will be recaptured if the project owner fails to meet the schedule. The grantee must closely monitor the progress of each TCAP project to ensure that it will meet TCAP expenditure deadlines, since failure to do so will result in recapture of funds by HUD.

V. FEDERAL GRANT REQUIREMENTS

TCAP funds are federal financial assistance and, therefore, are subject to requirements applicable to such funds. Grantees must comply with the following federal requirements:

- **Fair Housing Act** (42 U.S.C. 3601-19) and implementing regulations at [24 CFR Part 100](#) and the regulations at [24 CFR Part 107](#) (Equal Opportunity in Housing).
- **Title VI of the Civil Rights Act of 1964** (42 U.S.C. 2000(d)) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at [24 CFR Part 1](#).
- **The Age Discrimination Act of 1975** (42 U.S.C. 6101-07) and implementing regulations at [24 CFR Part 146](#) "Nondiscrimination on the Basis of Age in HUD Programs or Activities Receiving Federal Financial Assistance."
- **Affirmatively Furthering Fair Housing**

HUD has responsibility to affirmatively further fair housing in the programs it administers. To meet this obligation, each TCAP grantee must establish an affirmative fair housing marketing plan for its TCAP projects and require project owners to follow its plan when marketing TCAP units.

Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market to the available housing without regard to race, color, national origin, sex, religion, familial status or disability. The affirmative marketing requirements and procedures adopted must include:

- Methods for informing the public, owners and potential tenants about Federal fair housing laws and the grantee's affirmative marketing policy:

- Requirements and practices each owner must adhere to in order to carry out the grantee’s affirmative marketing procedures and requirements;
 - Procedures to be used by owners to inform and solicit applications from persons in the housing market areas that are not likely to apply for the housing without special outreach. Special outreach, as appropriate, includes but is not limited to, the translation of marketing material for persons who are limited English proficient; the placement of translated marketing material in minority owned media; and the provision of meaningful access concerning the residential rental project (e.g. providing translated information about application procedures, tenancy and other project amenities);
 - Records that will be kept describing actions taken by the grantee and by owners to affirmatively market units and records to assess the results of these actions; and
 - A description of how the grantee will annually assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.
- **Section 504 of the Rehabilitation Act of 1973** (29 U.S.C. 794) and implementing regulations at [24 CFR Part 8](#) “Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development.”

Section 504 of the Rehabilitation Act of 1973 applies to all TCAP projects. For new construction projects and projects undergoing substantial rehabilitation, five percent of the units must be accessible to persons with mobility impairments and two percent of the units must be accessible to persons with hearing or vision impairments (See 24 CFR 8.22.) Substantial rehabilitation for a multifamily rental project is defined in Section 24 CFR 8.23 as a project with 15 or more units for which the alterations would equal more than 75 percent of the replacement cost for the facility.

Modifications to projects to comply with Section 504 requirements are eligible costs under TCAP. However, compliance with Section 504 requirements may be infeasible or impracticable for some projects, depending on where they are in the development process. If a new construction or substantial rehabilitation project is underway or has already been completed, and it cannot be modified to meet the accessibility requirements established by Section 504, it is ineligible to receive TCAP assistance.

For projects in which the rehabilitation would not be considered substantial, the Section 504 provisions are applicable only to the maximum extent feasible, i.e., not required if it would impose undue financial and administrative burden. See 24 CFR 8.23.

- **National Environmental Policy Act and Related Laws** (Environmental review responsibilities) and implementing regulations at [24 CFR Part 58](#).

Some state housing credit agencies and LIHTC owners may be unfamiliar with the NEPA requirements and the significant impact that the timing of certain decisions or actions may have on their ability to award TCAP funds. The Recovery Act expressly applies section 288 of the HOME

statute, which requires the State to assume responsibility for environmental review under the National Environmental Policy Act (NEPA) of 1969 and related federal environmental authorities and regulations at 24 CFR Part 58 “Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities.” The “State”, as defined in the HOME program statute (42 USC 12704(2)), means “any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive officer to act on behalf of the State with regard to the provisions of this Act.” Accordingly, the State is responsible for the environmental review, but the State may designate, if it so chooses, the state housing credit agency to perform the environmental reviews for TCAP projects on behalf of the State. ***No TCAP funds may be committed to a project before completion of the environmental review process.***

Once an owner applies for TCAP funds, committing TCAP or any other funds to or undertaking any “choice-limiting” activity prior to successful completion of the environmental clearance review (i.e., HUD approval of the Request for Release of Funds), is prohibited. This includes any activity that will result in a physical change and/or acquisition, including leasing, or disposition of real property. **Performing a choice-limiting action may disqualify a project from receiving any federal funds.** See 24 CFR Part 58 for general information about environmental review requirements at http://www.access.gpo.gov/nara/cfr/waisidx_04/24cfr58_04.html or <http://www.hud.gov/offices/cpd/environment/index.cfm>.

If a federal environmental review has already been completed for a project, providing TCAP funds to the project may not require an additional environmental review. For example, if the state housing credit agency or another agency or department of the State performed an earlier environmental clearance for HUD assistance on the project that is now receiving TCAP assistance from the state, and neither the project nor the environmental conditions have changed since the previous review, then no new environmental clearance is required. See 24 CFR 58.35(b)(7).

State housing credit agencies and LIHTC project owners are strongly advised to seek technical assistance and training regarding compliance with NEPA requirements. Environmental officers stationed in HUD field offices are ready to assist.

- **The Lead-Based Paint Poisoning Prevention Act and the Residential Lead-Based Paint Hazard Reduction Act of 1992** and implementing regulations at [24 CFR Part 35](#) are applicable to housing that receives Federal assistance.

Guidance on the applicability of these requirements to TCAP projects will be provided separately.

- **Davis-Bacon Prevailing Wages** Under section 1606 of Division A of the American Recovery and Reinvestment Act of 2009, contractors and subcontractors hired with Recovery Act funds are required to pay prevailing wages to laborers and mechanics in compliance with the Davis-Bacon Act. In the case of projects already under construction, it may be possible to obtain a determination, under 29 CFR 1.6(g), that Davis-Bacon requirements apply prospectively to the construction project, as of the date of the TCAP award. Labor Relations Specialists in HUD Field Offices are available to assist grantees with questions related to these requirements.

- **“Anti-Lobbying” Restrictions** (Restrictions on lobbying in 31 USC 1352 and implementing regulations at 24 CFR Part 87 “New Restrictions on Lobbying”.) This statute prohibits the use of funds appropriated by any act by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with covered Federal action.
- **The Drug-Free Workplace Act of 1988** (41 U.S.C. 701 et seq., as implemented at 24 CFR Part 21 “Government-Wide Requirements for Drug-Free Workplace (Grants)”.) This statute prohibits the receipt of a grant from any Federal agency unless the recipient agrees to provide and certify to a drug-free workplace.
- **OMB Regulations and Circulars** The following government-wide requirements are applicable to HUD grant programs, pursuant to Executive Orders requiring federal agencies to impose the requirements on all Federal grants:

The following requirements apply to TCAP grantees, not TCAP project owners:

- [24 CFR Part 85](#) “Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments;”
- 2 CFR Part 222 “Cost Principles for State, Local, and Indian Tribal Governments” ([OMB Circular A-87](#)); and
- [OMB Circular A-133](#) “Audits of Institutions of Higher Education and Other Nonprofit Institutions.”

The following requirement applies to the grantee and project owners:

- [2 CFR Part 2424](#) “Non-procurement Debarment and Suspension.”

VI. TRAINING AND TECHNICAL ASSISTANCE

HUD is aware that some state housing credit agencies may lack the knowledge or experience needed to administer federal grant programs. In these cases, it would be advisable for the grantee to partner with a State agency, such as the State HOME participating jurisdiction, to help train the staff of the state housing credit agency to perform required tasks. Alternately, the grantee may wish to consider contracting with persons or organizations that have the requisite knowledge and experience to train staff or assist in administering the program.

It may also be advisable for grantees to encourage or require project owners to retain subject matter experts to help them comply with federal requirements. Such steps may help avoid delays in committing and expending funds and findings of noncompliance. Costs incurred by project owners to comply with federal grant requirements are eligible TCAP costs. HUD intends to offer training and technical assistance to grantees regarding compliance with federal grant requirements. Information on these trainings will be posted on the TCAP webpage.

For Further Information and Assistance:

Go to www.hud.gov/recovery for more information about Recovery Act requirements for TCAP and other programs.

HUD will post additional requirements and guidance pertaining to the TCAP program on a continuing basis - go to <http://www.hud.gov/recovery/tax-credit.cfm>.

To pose questions to HUD about TCAP or related requirements, eligible grantees may send an email to TCAP@hud.gov.

LINKS TO DOCUMENTS REQUIRED IN SUBMISSION PACKET

[TCAP Formula Allocations](http://www.hud.gov/recovery/tax-credit.cfm) <http://www.hud.gov/recovery/tax-credit.cfm>

[SF 424 \(Standard Application\)](http://www.hud.gov/recovery/tax-credit.cfm) <http://www.hud.gov/recovery/tax-credit.cfm>

[SF-LLL \(Disclosure of Lobbying Activities\)](http://www.hud.gov/offices/adm/hudclips/forms/files/sflll.pdf)

<http://www.hud.gov/offices/adm/hudclips/forms/files/sflll.pdf>

**HOUSING PROGRAMS DIVISION
BOARD ACTION REQUEST
May 21, 2009**

Action Item

Presentation, Discussion and Possible Action to adopt Governing Board Policy regarding the Tax Credit Assistance Program (TCAP) Application and Award Process

Requested Action

Approve, deny or approve with modifications a resolution of Governing Board Policy regarding the Tax Credit Assistance Program

Background

The American Recovery and Reinvestment Act of 2009 provides for dedicated funds to assist in the development of properties that had been awarded low income housing tax credits (“LIHTCs”) between October 1, 2006, and September 30, 2009. These funds will be issued through the U.S. Department of Housing and Urban Development (HUD) under a plan to be approved by HUD which is a separate agenda item for approval and must be submitted by June 3, 2009.

As indicated in the prior Board item, HUD has announced that it will provide the State of Texas, through the Department, \$148,354,769 in TCAP funds. These funds are to be used to help provide additional financing at a level determined by the State to create jobs and provide affordable housing. All the funds must be used or returned to HUD by February 16, 2012.

The proposed Policy provides a resolution of Board direction on the program while the policy supplement provides the administrative details on how applications and funds will be processed.

The Policy prioritizes developments that are ready to proceed, leveraging of other resources, previous tax credit priority scoring, and development in Rural areas. Additionally, the Policy identifies four initiatives: Credit Pricing Incentive, Equity Bridge Loan Initiative, Permanent Loan Replacement/ Equity Risk Reduction Initiative, and Tax Credit Replacement Initiative.

The Credit Pricing Incentive provides a scoring incentive for developments that are able to use the TCAP initiatives in this policy or other attributes of the development to obtain a higher syndication price and thus a greater amount of equity in the development than what was anticipated with the commitments from the Board action in November of 2008 or the original application as applicable and specified herein. In November of 2008 each development was given the opportunity to provide updated syndication commitments to reconcile with the market of falling credit prices.

Funds awarded under the Equity Bridge Loan Initiative are intended to attract additional equity investment or preserve existing equity investment in tax credit developments by increasing the yield potential for top tier investors. The potential yield enhancement is derived from a reduced period of time between the final investment of equity and the realization of tax benefits and savings realized from the interest rate savings on the bridge loan. The yield enhancement should result in stabilization of pricing and could lead to higher pricing if the market expectation of yield is exceeded. The funds awarded under this initiative may be up to one-half of the total equity contribution derived from the Award of LIHTC.

Funds awarded under the Permanent Loan Replacement/Equity Risk Reduction Initiative are intended to reduce the risk to the limited partner and primary lender by replacing a portion or all of the first lien debt with lower cost second lien, non-recourse debt from funds made available under this Policy. By reducing the obligation of the partnership to the first lien lender, the reduced risk of foreclosure or an event of default by the primary lender should have a positive impact on the investor limited partner's and first lien lender's risk assessment of a development and may attract renewed lender and syndicator interest in tax credit developments.

Funds awarded under the Tax Credit Replacement Initiative are intended to replace the syndication proceeds created by an applicant's inability to sell or otherwise utilize a portion of the Award of LIHTC. The returned credits may be a result of a determination by the applicant that a portion of the original or supplemental allocation of credits provided as contingency in anticipation of cost increases which have not materialized. The returned credits may alternatively be a result of the inability to close on a partnership agreement with a limited partner investor after a Good Faith Effort to do so has been made.

Pursuant to the proposed policy funds under TCAP will be awarded on a competitive basis as outlined in the policy and policy supplement. The Department will assign a team of reviewers and a standardized scoring instrument to evaluate and score each eligible application. The scoring instrument follows the content and order of the selection process in the policy. The Department's Compliance and Asset Oversight Division will be consulted to determine if applicants have issues which will make the applicant's application ineligible for funding.

Recommendation

Staff recommends the adoption of Governing Board Policy regarding the Tax Credit Assistance Program.

Board Resolution No. 09-043
Texas Department of Housing and Community Affairs
Multifamily and HOME Divisions
American Recovery and Reinvestment Act of 2009,
Tax Credit Assistance Program (“TCAP”) Policy (“the Policy”)

President Barrack Obama signed into law the American Recovery and Reinvestment Act of 2009 on February 17, 2009, which provided for dedicated funds to assist in the development of properties that had been awarded low income housing tax credits (“LIHTCs”) between October 1, 2006, and September 30, 2009. These funds are to be used to help provide additional financing at a level determined by the State to create jobs and provide affordable housing. All the funds must be used or returned by February 16, 2012.

The Governing Board of the Texas Department of Housing and Community Affairs, through the authority granted to it under the laws duly passed and authorized in Chapter 2306 of the Texas Government Code, hereby establishes the following policy to further the goals of the aforementioned laws and does hereby find that:

Whereas, the federal and state governments do desire to create economic development by assisting in productive job creation; and

Whereas, the state needs to increase the amount of affordable housing to meet the demand of safe decent and affordable housing; and

Whereas, economic development and stability in our communities benefits all Texans

Therefore, the Governing Board of the Texas Department of Housing and Community Affairs has determined that the state should utilize all funds made available to the state by the Federal Government under the Tax Credit Assistance Program and resolves to make awards to further these goals consistent with the following criteria:

Section I. Eligible Applicants

1. Only Applicants that received an Award of LIHTC for award years 2007, 2008 and/or 2009 and did not previously return the credits are, eligible for TCAP funding provided that the TCAP application is consistent with the most recent Board approved application except for changes to the development costs, financing structure, or additional TCAP related requirements.
2. Applicants requesting funds must provide evidence of a Good Faith Effort to obtain equity commitments.

3. Developments receiving funds must continue to meet the threshold and scoring requirements as included in the original application or most recent amendment approved by the Board.
4. Applicants, as defined in the QAP, must not be in material non-compliance for any Department program. The Department will check for material non-compliance at the time of application. The Department may also check for material non-compliance at the time of execution of the Written Agreement and at closing to the extent that any of these subsequent events occur more than three months after the initial review at application.
5. Per federal law, developments awarded only GO Zone or Ike credits are not eligible for TCAP funds.

Section II. Priority for awarding of TCAP Funds

1. Development can be completed by February 16, 2012, or earlier as may be required under existing funding source requirements.
2. Developments ready to proceed (“shovel ready”).
3. Developments that maximize the use of prior awards and tax credit resources.
4. Developments that obtained the highest application scores in the round they applied in accordance with regional allocation formula including set asides for at risk and rural populations.
5. Developments located in a Rural area.
6. Desire to maintain private sector investment and leveraging of funds. The TDHCA shall add to the initial application scores by utilizing a formula developed by staff that reflects the following priorities:
 - **Priority I—Credit Pricing Incentive.** Private equity investor commits to provide “greater than market” funding, as evidenced by a price and equity amount equal to or greater than the credit price and equity amount reflected in the Board approved analysis for the additional allocation on November 13, 2008 or for 2009 awards made subsequent to the approval of this Policy, the price and equity amount reflected in the original 2009 application. (All such letters to be posted on TDHCA Website)
 - **Priority II—Equity Bridge Loan Initiative.** Funds awarded under this subsection are intended to attract additional equity investment or preserve existing equity investment in tax credit developments by increasing the yield potential for top tier investors. The potential yield enhancement is derived from a reduced period of time between the final investment of equity and the realization of tax benefits and savings realized from the interest rate savings on the bridge loan. The yield enhancement should result in stabilization of pricing and could lead to higher pricing if the market expectation of yield is exceeded. The funds awarded under this initiative may be up to one-half of the total equity contribution derived from the Award of LIHTC and are subject to the criteria in the policy supplement.

- **Priority III—Permanent Loan Replacement/Equity Risk Reduction Initiative.** Funds awarded under this initiative are intended to reduce the risk to the limited partner and primary lender by replacing a portion or all of the first lien debt with lower cost second lien, non-recourse debt from funds made available under this Policy. By reducing the obligation of the partnership to the first lien lender, the reduced risk of foreclosure or an event of default by the primary lender should have a positive impact on the investor limited partners' and first lien lender's risk assessment of a development and may attract renewed lender and syndicator interest in tax credit developments. The funds awarded under this subsection are subject to the criteria in the policy supplement.
- **Priority IV—Tax Credit Replacement Initiative.** Funds awarded under this initiative are intended to replace the loss of syndication proceeds created by an applicant's inability to sell or otherwise utilize a portion of the Award of LIHTC. The returned credits may be a result of a determination by the applicant that a portion of the original or supplemental allocation of credits provided as contingency in anticipation of cost increases which have not materialized. The returned credits may alternatively be a result of the inability to close on a partnership agreement with a limited partner investor after a Good Faith Effort to do so has been made. The funds awarded under this subsection are subject to the criteria in the policy supplement.

Section III. Affordability, Repayment, Ownership and Asset Management

Affordability. It is the intent of the Texas Department of Housing and Community Affairs to achieve the same levels of affordability that would have been achieved under state and federal law had only tax credits under 26 USC §42 been issued.

Repayment and Ownership. The Texas Department of Housing and Community Affairs desires to provide these funds in the form of loans, where possible, in a manner that treats third party lenders appropriately, giving due consideration for their relative risk position and other relevant factors. Repayment of funds may accrue and not be due until after December 31, 2011 or a date specified by the Department after the submission of the final financial report under the HUD TCAP Grant Agreement.

Where loans are not possible, TDHCA may request an ownership interest or similar relationship equivalent to the funds invested.

Asset Management. Any activity funded under this Policy will be required to enter into a written contract for asset management with the Department. In order to reduce the asset oversight burden on the property, the Department may enter into agreement(s) with the syndicator, lender or other third party to accomplish the asset management objectives of the Department and assure the long term viability of the development. The Department may require a fee for asset management and/or require reserves be established and maintained for the duration of the Compliance Period and Extended Housing Commitment.

The Governing Board hereby adopts this policy and directs staff to develop guidelines consistent with this policy to fully implement this resolution.

Passed this the 21st day of May, 2009 by a majority vote of ___ ayes ___ nays ___ abstentions will all members present except for _____.

Kent Conine
Chair

Tim Irvine
Secretary to the Board

**HOUSING PROGRAMS DIVISION
BOARD ACTION REQUEST
May 21, 2009**

Action Item

Presentation, Discussion and Possible Action to approve guidelines for the implementation of Tax Credit Assistance Program (“TCAP”) Policy

Requested Action

Approve, deny or approve with modifications the Policy Supplement for the implementation of the Tax Credit Assistance Program.

Background

The American Recovery and Reinvestment Act of 2009 provides for dedicated funds to assist in the development of properties that had been awarded low income housing tax credits (“LIHTCs”) between October 1, 2006, and September 30, 2009. These funds will be issued through the U.S. Department of Housing and Urban Development (HUD) under a plan to be approved by HUD which is a separate agenda item for approval and must be submitted by June 3, 2009.

As indicated in the prior Board items, HUD has announced that it will provide the State of Texas, through the Department, \$148,354,769 in TCAP funds. These funds are to be used to help provide additional financing at a level determined by the State to create jobs and provide affordable housing. All the funds must be used or returned to HUD by February 16, 2012.

The proposed Policy Supplement provides the administrative details on how applications and funds will be scored and processed. The Policy Supplement includes threshold criteria, selection criteria, details regarding application submission, review process, and guidelines for contract administration and asset management.

The threshold criteria will emphasize the existing tax credit application and will document changes to the development costs and financing structure. Applications will be accepted in two time periods with applications from prospective 2009 tax credit awardees due after their tax credit awards are made. The application acceptance period for developments with Award of LIHTC’s made in 2007 or 2008 will begin on June 15, 2009 and all such applications must be received on or before 5:00 p.m. Austin local time on July 17, 2009. The application acceptance period for developments with Award of LIHTC’s made in 2009 will begin on August 3, 2009 and all such applications must be received on or before 5:00 p.m. Austin local time on October 1, 2009.

Selection Criteria has been divided into six scoring components that emphasize the seven priorities in the Plan and Policy. The Department will assign a team of reviewers and a

standardized scoring instrument to evaluate and score each eligible application. The scoring instrument follows the content and order of the selection process in the policy. The Department's Compliance and Asset Oversight Division will be consulted to determine if applicants have issues which will make the applicant's application ineligible for funding.

Recommendation

Staff recommends the adoption of the Policy Supplement for the implementation of the Tax Credit Assistance Program.



Texas Department of Housing and Community Affairs
SUPPLEMENTAL INFORMATION TO THE BOARD POLICY ON
American Recovery and Reinvestment Act of 2009,
Tax Credit Assistance Program (“the Policy Supplement”)

- 1) **Definitions.** Terms in this Policy that are also defined in 10 TAC §49.3 of the QAP have the same meaning as in the QAP unless redefined herein.
 - a) *Annualized Syndication Amount.* The total equity generated from the Award of LIHTC and documented in a tax credit limited partnership agreement divided by ten.
 - b) *Award of LIHTC.* The Notice requires a uniform definition of Award of LIHTC for the purposes of committing TCAP funds. An award is defined as an approval by the Department’s Governing Board (“Board”) of an allocation or determination of Low Income Housing Tax Credits between October 1, 2006, and September 30, 2009, and as may be adjusted based upon the application for funds under this Policy.
 - c) *Good Faith Effort.* Attempts by the Applicant to secure final financing commitments from an equity investor and lender (other than program funds from the Department) prior to application as evidenced by term sheets or letters of interest and paid due diligence or commitment fees to lenders or syndicators for due diligence efforts.
 - d) *Written Agreement.* (or “Contract”). A contract governing the award of TCAP funds between the Department and Applicant which may include the General Partner as well as the Limited Partner(s).

- 2) **Additional Requirements of Program Initiatives**
 - a) **Credit Pricing Incentive.** This initiative provides a scoring incentive for developments that are able to use the TCAP initiatives in this policy or other attributes of the development to obtain a higher syndication price and thus a greater amount of equity in the development than what was anticipated with the commitments from the Board action in November of 2008 or the original application as applicable and specified herein. In November of 2008 each development was given the opportunity to provide updated syndication commitments to reconcile with the market of falling credit prices.
 - b) **Equity Bridge Loan Initiative.** Funds awarded under this subsection are intended to attract additional equity investment or preserve existing equity investment in tax credit developments by increasing the yield potential for top tier investors. The potential yield enhancement is derived from a reduced period of time between the final investment of equity and the realization of tax benefits and savings realized from the interest rate savings on the bridge loan. The yield enhancement should result in stabilization of pricing and could lead to higher pricing if the market expectation of yield is exceeded. The funds awarded under this initiative may be up to one-half of the total equity contribution derived from the Award of LIHTC and are subject to the following criteria.

- i) The Department will require a position in the partnership agreement in order to ensure that the investor limited partner's equity pay-in schedule does not at any point result in more funds than are necessary.
- ii) Security for the Loan. The Department may require a guarantee from the investor limited partner of repayment of any loan made under this initiative regardless of any event of default or foreclosure on any other obligations entered into by the partnership.
- iii) A loan made under this initiative will be structured based on the election made under the Selection Criteria Section of this Policy and in accordance with the following clauses:
 - 1) Closing Date. Closing on funds committed under this subsection must be within six (6) months from the date that the Written Agreement is executed.
 - 2) Draw Schedule. Funds shall be drawn for eligible costs incurred according to the schedule of funding evidenced in the partnership agreement based upon a maximum of three draws as follows, except as provided in section (11)(a).
 - (a) 25% of the funds committed under this subsection at 25% completion of construction;
 - (b) 50% of the funds at 50% completion of construction; and
 - (c) 100% of the funds at completion of construction.
 - 3) Development Period. Completion of Construction and all costs reimbursed by funds committed under this subsection must be incurred prior to the date that the last building of the development is Placed in Service.
 - 4) Interest rate. The interest rate shall be equal to 0% for the entire period during which funds are drawn.
 - 5) Repayment Terms. A payment equal to the Annualized Syndication Amount as documented in the limited partnership agreement shall be made to the Department annually in consecutive years. The final payment shall be no later than December 31 of the 10th year of the credit period. Priority points may be elected for final payments that occur earlier. For example: An Applicant choosing 3/10 of the equity could make payments in years 8, 9, and 10 of the credit period, but would score higher if repayments started in year 6 and ended in year 8.
- c) **Permanent Loan Replacement/Equity Risk Reduction Initiative.** Funds awarded under this initiative are intended to reduce the risk to the limited partner and primary lender by replacing a portion or all of the first lien debt with lower cost second lien, non-recourse debt from funds made available under this Policy. By reducing the obligation of the partnership to the first lien lender, the reduced risk of foreclosure or an event of default by the primary lender should have a positive impact on the investor limited partner's and first lien lender's risk assessment of a development and may attract renewed lender and syndicator interest in tax credit developments. The funds awarded under this subsection are subject to the following criteria.
 - i) Security for the Loan. A lien and deed of trust against the property will be required. The required lien position for funds committed under this section shall be based on the total amount of each source relative to the Department's investment of funds. Additionally, the Department will require a superior position to any other contingent

repayment loans regardless of size. A loan made under this initiative may be structured as repayable from cashflow only if the first lien is an FHA or HUD insured mortgage or the Department has an existing MOU with the lender.

- ii) **Loan Term and Amortization.** The loan term shall be parity of term with the first lien lender but shall not have a term of less than 15 years or greater than 40 years. The amortization shall be parity with the first lien but shall not be less than 20 years or greater than 40 years.
- iii) A loan made under this initiative will be structured based on the election made under the Selection Criteria Section of this Policy and in accordance with the following clauses:
 - 1) **Closing Date.** Closing on funds committed under this subsection must be within six (6) months from the date that the Written Agreement is executed.
 - 2) **Draw Schedule.** Funds shall be drawn for eligible costs incurred based upon a maximum of three draws as follows, except as provided in section (11)(a).
 - (a) 25% of the funds committed under this subsection at 25% completion of construction;
 - (b) 50% of the funds at 50% completion of construction; and
 - (c) 100% of the funds at completion of construction.
 - 3) **Development Period.** Completion of Construction and all costs reimbursed by funds committed under this subsection must be incurred prior to the date that the last building of the development is Placed in Service.
 - 4) **Interest Rate.** The interest rate shall be based on a rate required to yield a Debt Coverage Ratio (DCR) within a range of 1.15 to 1.35 but shall not exceed the interest rate on the permanent first lien debt or 5%, whichever is higher.
- d) **Tax Credit Replacement Initiative.** Funds awarded under this initiative are intended to replace the syndication proceeds created by an applicant's inability to sell or otherwise utilize a portion of the Award of LIHTC. The returned credits may be a result of a determination by the applicant that a portion of the original or supplemental allocation of credits provided as contingency in anticipation of cost increases which have not materialized. The returned credits may alternatively be a result of the inability to close on a partnership agreement with a limited partner investor after a Good Faith Effort to do so has been made. The funds awarded under this subsection are subject to the following criteria.
 - i) If the Applicant agrees to return a portion of their Award of LIHTC, they may substitute the gap in equity using a credit price equal to the anticipated price from the syndicator of the remaining credit or if full replacement is anticipated, the lesser of \$0.85 per dollar of credit or the anticipated price in the last Board approved analysis (i.e. the later of original underwriting, amendment or additional allocation on November 13, 2008).
 - ii) **Security for the Loan.** A subordinate deed of trust against the property will be required.
 - iii) **Loan Term.** The term of the loan shall be equal to the 15 year Compliance Period required for the Award of LIHTC.
 - iv) Additionally, funds committed under this section shall be structured as follows:

- 1) Closing Date. Closing on funds committed under this subsection must be within six (6) months from the date that the Written Agreement is executed.
 - 2) Draw Schedule. Funds shall be drawn for eligible costs incurred based upon a maximum of three draws as follows, except as provided in section (11)(a).
 - (a) 25% of the funds committed under this subsection at 25% completion of construction;
 - (b) 50% of the funds at 50% completion of construction; and
 - (c) 100% of the funds at completion of construction.
 - 3) Development Period. Completion of Construction and all costs reimbursed by funds committed under this subsection must be incurred prior to the date that the last building of the development is Placed in Service.
 - 4) Interest rate. The interest rate shall be equal to 0%.
 - 5) Repayment Terms. Any loan under this initiative shall be anticipated to be deferred and forgiveness accrued but not granted until at the end of the Term. Notwithstanding the other provisions of the Policy, to the extent that any of the funds requested under this initiative can be anticipated to be repaid over the same term as the primary debt based on the Department's underwriting evaluation, staff shall recommend and the Board may require a loan structured with some repayment. Additionally, any on going cash flow and any proceeds from financial restructuring or sale must be provided as repayment of loan principal at a percentage in parity with any equity provider but not less than ten 10% and in proportion with the Department's investment.
- 3) Threshold Criteria.** The following Threshold Criteria are mandatory requirements at the time of application submission unless specifically indicated otherwise.
- a) Certification that all threshold and scoring under the QAP remain true and contemplated as part of the development;
 - b) Good Faith Effort Documentation
 - c) Submission of items impacted by the change in the development costs and financing structure contemplated herein. The Applicant must provide the following updated information using the forms in the 2009 Uniform Application and supplemental application documents:
 - i) Funding Request [Part C(3)];
 - ii) Rent schedule reflecting current rent and utility allowances [Vol. 1, Tab 2, Parts B & C];
 - iii) Annual operating expenses [Vol. 1, Tab 2, Part D];
 - iv) 30 Year Operating Proforma [Vol. 1, Tab 2, Part D];
 - v) Development Cost Schedule [Vol. 1, Tab 3, Part A];
 - vi) Offsite Cost Breakdown [Vol. 1, Tab 3, Part B];
 - vii) Site Work Costs [Vol. 1, Tab 3, Part C];
 - viii) Summary of Sources & Uses Costs [Vol. 1, Tab 4, Part A];

- ix) Financing Participants [Vol. 1, Tab 4, Part B], Financing Narrative, executed grant/subsidy, debt and equity commitments, and lender proforma;
 - x) Tax Assessor valuation and tax rates by taxing jurisdiction;
 - xi) Evidence of Site Control;
 - xii) Title Commitment;
 - xiii) Acquisition and/or Rehabilitation Information [Vol, 3, Tab 6];
 - xiv) Updated Property Condition Assessment (“PCA”) meeting the requirements of 10 TAC §1.36, if applicable; and,
 - xv) Environmental review information as required by the Department in accordance with the National Environmental Policy Act of 1969, as amended (NEPA) and 24 CFR Part 58. NOTE: No TCAP funds may be committed to a project before the completion of the environmental review process. Once an application is submitted for TCAP funds performing a choice-limiting action by an owner may disqualify a development from receiving any federal funds.
- 4) Selection Criteria.** The following Selection Criteria may be elected by an Applicant. An Applicant may not change their score or elect to participate in any initiatives not elected at the time of application.
- a) **Base Points.** An Applicant may elect base points equal to the final Department designated points on which the application's original Award of LIHTC was based, less any adjustments resulting from subsequent Board approved amendments.
 - b) **Credit Pricing Incentive.** An Applicant may elect points from the table below for a firm syndicator commitment (a commitment which has or is ready to close a partnership agreement subject only to the award of TCAP funds) that reflects a syndication equity and price equal to or greater than the syndication equity and credit price reflected in the Board approved analysis for the additional allocation on November 13, 2008 or for 2009 awards made subsequent to the posting of this Policy Supplement, the price and equity amount reflected in the original 2009 application.

Table 1. Credit Pricing Points

% above the prior commitment	Points
More than 10%	300
More than 5% to less than or equal to 10%	200
More than 0% to less than or equal to 5%	100
Equal to prior commitment	50

- c) **Equity Bridge Loan Points.** An Applicant requesting funds under the Equity Bridge Loan Initiative may elect points based on the amount of the requested funds and the term of the bridge loan using the following table (Table 2). The “Equity” used in this table shall mean the equity generated by the Award of LIHTC and paid by the Limited Partner for use of the LIHTCs.

Table 2. Equity Bridge Loan Points

		Year of Final Payment				
		6	7	8	9	10
Loan Amount	Less than or equal to 1/10th of the Equity	220	215	210	205	200
	Less than or equal to 2/10ths of the Equity	190		185	180	175
	Less than or equal to 3/10ths of the Equity	165			160	155
	Less than or equal to 4/10ths of the Equity	145				140
	Less than or equal to 5/10ths of the Equity	130				

- d) Permanent Loan Replacement/Equity Risk Reduction and Tax Credit Replacement Points. If an Applicant requests funds under the Permanent Loan Replacement/Equity Risk Reduction Initiative and/or the Tax Credit Replacement Initiative they may elect points from the following table (Table 3) based on the combined amount requested under these two initiatives.

Table 3. Replacement Points

Loan requested as percentage of Total Housing Development Costs (TDC)	Points
Equal to or less than 10% of TDC	195
Equal to or less than 20% of TDC	150
Equal to or less than 30% of TDC	120
Equal to or less than 40% of TDC	90
Equal to or less than 50% of TDC	60
Equal to or less than 60% of TDC	30
Equal to or less than 70% of TDC	5

- e) Single Purpose Points. An Applicant may elect 200 points if funds are requested under only one of the point categories in subsections (c) or (d) of this section.
- f) Rural Development Points. Applications that received their Award of LIHTC under any of the 13 Rural Subregions may elect 100 points.
- 8) Tie Breakers.** In the event that two or more applications receive the same number of points under section (7) of this Policy and each application is practical and economically feasible, the Department will prioritize the application requesting the least amount of TCAP funds as a percentage of the Total Housing Development Costs.
- 9) Application Deadline.** The application acceptance period for developments with Award of LIHTC's made in 2007 or 2008 will begin on June 15, 2009 and all such applications must be received on or before **5:00 p.m. Austin local time on July 17, 2009**. The application acceptance period for developments with Award of LIHTC's made in 2009 will begin on August 3, 2009 and all such applications must be received on or before **5:00 p.m. Austin local time on October 1, 2009**.
- a) The Department will accept applications from 8 a.m. to 5 p.m. Austin local time each business day, excluding federal and state holidays from the date this Policy is published on the Department's web site until the deadline. For questions regarding this Policy please contact Cameron Dorsey at 512-475-2669 or via e-mail at cameron.dorsey@tdhca.state.tx.us.
- b) Applicants must submit the Application materials on forms established by the Department and as detailed in the TCAP Application Submission Procedures Manual (TASPM). In addition to the application requirements in the TASPM, staff may use

discretion to determine if additional information that is typically required in the full application (including third party reports) is necessary or prudent in order to review for compliance with state or federal rules or due to changes in the market since last reviewed by the Department.

- c) Applications must be submitted by one of the following delivery methods:

via overnight delivery to:

**Texas Department of Housing and Community Affairs
Attn: TCAP
221 East 11th Street
Austin, TX 78701-2410**

or via the U.S. Postal Service to:

**Texas Department of Housing and Community Affairs
Attn: TCAP
Post Office Box 13941
Austin, TX 78711-3941**

10) Review and Assessment of Applications. Applications submitted for consideration for TCAP funding under this Policy will be reviewed according to the process outlined in this section.

- a) Eligibility Criteria Review. All Applications will be reviewed to confirm eligibility for funding.
- b) Threshold Criteria Review. Applications will be reviewed for Threshold. Applications not meeting Threshold Criteria will be notified of any Administrative Deficiencies, in each event the Applicant will be given an opportunity to correct such deficiencies. Applications not meeting Threshold Criteria after receipt and review of the Administrative Deficiency response will be terminated and the Applicant will be provided a written notice to that effect.
- c) Administrative Deficiencies. If an Application contains Administrative Deficiencies pursuant to 10 TAC §49.3(2) which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. Because the review for Eligibility, Selection, Threshold Criteria, and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made several times. The Department staff will request clarification or correction in a deficiency notice in the form of an email, or if an e-mail address is not provided in the Application, by facsimile, and a telephone call (only if there has not been confirmation of the receipt within 24 hours) to the Applicant and one other party identified by the Applicant in the Application advising that such a request has been transmitted. If Administrative Deficiencies are not clarified or corrected to the satisfaction of the Department by 5:00 p.m. Austin local time on the fifth business day following the date of the deficiency notice, then for competitive Applications under this Policy, five points shall be deducted from the Selection Criteria score for each additional day the deficiency remains unresolved. If Administrative Deficiencies are not clarified or corrected by 5:00 p.m. Austin local time on the seventh business day following the date of the deficiency notice, then the Application shall be terminated. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. Deficiency notices may be sent to an

Applicant prior to or after the end of the Application Acceptance Period. This Administrative Deficiency process applies to requests for information made by the Real Estate Analysis Division review.

- d) **Financial Evaluation.** The Department shall underwrite an Application to determine the financial feasibility and amount of need of the Development to arrive at an appropriate level of TCAP funds. Underwriting of a Development will include a determination by the Department, pursuant to the Notice, that the amount of TCAP funds recommended for commitment to a Development is necessary for the financial feasibility of the Development and its viability as a qualified rent restricted housing property. In making this determination, the Department will use the Underwriting Rules and Guidelines, 10 TAC §1.32.
- e) The Department may decline to consider any application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any applications which are received and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department strives, through its loan terms, to securitize its funding while ensuring the financial feasibility of a Development. The Department reserves the right to negotiate individual elements of any application.
- f) **Compliance Evaluation.** After the Department has determined which Developments will be reviewed for financial feasibility, those same Developments will be reviewed for evaluation of the compliance status by the Department's Compliance and Asset Oversight Division, in accordance with 10 TAC Chapter 60.
- g) **Alternative Dispute Resolution.** In accordance with §2306.082 Texas Government Code and 10 TAC §53.6, it is the Department's policy to encourage the use of appropriate Alternative Dispute Resolution procedures "ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Cod, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rules on ADR at 10 TAC §1.17.

11) Contract Administration. Any activity funded under this Policy will be governed by a Written Agreement or Contract that identifies the terms and conditions related to the awarded funds. The Contract will not be effective until executed by all parties to the Contract. Any amendments must be in writing and are subject to the requirements of the Department's amendment process for the tax credit program and the requirements of this section.

- a) Unless otherwise changed by agreement of the parties in a Contract and approved by the Board, the terms found in Contract shall be consistent with the following:
 - i) Up to seventy-five percent of the developer fee shall be disbursed in accordance with the percentage completion of construction. The remaining twenty-five percent of developer fee shall not be disbursed until the later of the following:
 - (1) 100% completion of the Department's Cost Certification process; or

- (2) Sufficient sources of funds are available as determined by the Department.
- ii) Department authorized pre-award costs for pre-development costs, including but not limited to legal, architectural, engineering, appraisal, surveying, and market study fees, may be paid if incurred before the effective date of the Contract.
 - iii) The Department may withhold any draw until completion of a site/construction inspection as deemed necessary by the Department to ensure that construction progress is being made in accordance with the Contract.
 - iv) All applicable sections of the Department's rules for Loans and Contract Administration as reflected in 10 TAC Chapter 53 Subchapter G shall apply; where HOME funds are specifically referenced in this Chapter, the Department may interpret such language to also apply to the funds provided under this Policy.
- b) Unless otherwise changed by agreement of the parties in a Contract and approved by the Board, performance under the Contract will be evaluated with the following benchmarks:
- i) Closing must occur within 6 months from the date of the Board meeting at which the award is made;
 - ii) Construction must begin within 2 months of the actual closing date or 8 months from the date of the Board meeting at which the award is made, which ever is earlier;
 - iii) Fifty percent of construction completion must occur within 12 months of the actual closing date;
 - iv) Completion of construction and receipt of certificates of occupancy, or certification of completion by an architect for rehabilitation, must occur within 24 months of the date of actual closing.
- c) The Executive Director may collectively provide up to one six-month extension to the end date of any Contract. Any additional time extension granted by the Executive Director shall include a statement by the Executive Director relating to unusual, non foreseeable, or extenuating circumstances that warrant more than a six-month extension. If the extension is longer than six months and the Executive Director determines that a statement related to unusual, non-foreseeable, or extenuating circumstances cannot be issued, it will be presented to the Board for approval, approval with modifications, or denial of the requested extension.
- d) If the Development Owner fails to meet a benchmark requirement and does not seek, or is not granted, an extension of a benchmark, the awarded funds related to the lack of performance may be entirely or partially de-obligated at the Department's sole discretion.
- e) Individual benchmarks. Each benchmark reflected in Subsection (b) of this Section is an individual term and subject to the amendment processes. An interim benchmark extension may or may not extend the entire Contract at the Department's discretion.
- f) Waiver. The Board, in its discretion and within the limits of federal and state law, may waive any one or more of the requirements of the Contract if the Board finds that waiver is appropriate to fulfill the purposes or policies of Chapter 2306, Texas Government Code, or for good cause, as determined by the Board.
- g) Accounting Requirements. Within sixty (60) days after the Contract end date, the Administrator or Development Owner shall provide a full accounting of funds expended under the terms of the Contract in accordance with the Cost Certification requirements of 10 TAC §49.15(b). Failure of a Development Owner to provide full accounting of funds

expended under the terms of a Contract shall be sufficient reason for the Department to deny any future Contract to the Development Owner.

- 12) Asset Management.** Any activity funded under this Policy will be required to enter into a written contract for asset management with the Department. In order to reduce the asset oversight burden on the property, the Department may enter into agreement(s) with the syndicator, lender or other third party to accomplish the asset management objectives of the Department and assure the long term viability of the development. The Department may require a fee for asset management and/or require reserves be established and maintained for the duration of the Compliance Period and Extended Housing Commitment. Any such fee or reserve shall not be considered program income and/or may accrue and not be due until after December 31, 2011 or a date specified by the Department after the submission of the final financial report under the HUD TCAP Grant Agreement.
- 13) Crosscutting Requirements.** Any activity funded under this Policy will be required meet all requirements of the Act and the Notice. Applicant's should be particularly aware of the requirements in Section V of the Notice including but not limited to Fair Housing, Civil Rights, Accessibility, Environmental Standards, Lead Based Paint, Labor Standards, and assist the Department in following the requirements of the OMB Regulations and Circulars as described in the Notice.

***NOTE:** This Policy does not include the text of the various applicable regulatory provisions that may be important to TCAP. For proper completion of the application, the Department strongly encourages potential applicants to review all applicable State and Federal regulations.*