

## HUD Tax Credit Assistance Program (TCAP) Guidance

### NCSHA Summary

#### Application Requirements

Any state Housing Credit agency (HFA) interested in accepting all or a portion of its TCAP allocation must submit a statement of intent to accept TCAP funds within 30 days of May 4, 2009 (i.e., by Wednesday, June 3). The statement must include information on:

- Whether the grantee intends to accept the entire amount of its TCAP formula allocation;
- Which, if any, other federal grant funds the HFA currently administers; and
- The status of its 2009 Housing Credit allocation process.

Each HFA must submit a written description of how it will competitively award its TCAP funds. The HFA must also define an “award of Housing Credits,” which can be as early as the date of public notice of the funding decision for a particular project.

Each HFA 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. 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.

Each HFA must submit information about how it is meeting the Recovery Act accountability and transparency requirements. HFAs must make their project selection process and criteria available to the public and accept comments from the public for a period of not less than five days.

#### Program Requirements

HOME statutory and regulatory requirements *do not* apply to TCAP funds, with the exception of environmental review requirements. HUD will issue guidance, including frequently asked questions on TCAP requirements, on a continuing basis, to facilitate project implementation and compliance with TCAP requirements.

Eligible Projects: TCAP-eligible developments are rental housing developments that received or will receive an award of Housing Credits under Section 42(h) of the Internal Revenue Code of 1986 during the period from October 1, 2006 to September 30, 2009, and require additional funding to be completed and placed into service in accordance with the Housing Credit program.

Bond-financed developments are TCAP-eligible.

If the only source of Credits for a project is Gulf Opportunity Zone (GO Zone) or Midwestern Disaster Area (MDA) Housing Credits, it is not an eligible TCAP project since these Credits were not awarded under Section 42(h) of the Housing Credit statute. Projects awarded GO

Zone or MDA Credits are eligible for TCAP if they have also been awarded Housing Credits under Section 42(h) [“standard” Credits].

Projects awarded standard 2009 Credits before September 30, 2009 that already received GO Zone or MDA Credits are eligible for TCAP funds. HFAs may provide a nominal amount of standard Credits, concurrent with the award of a TCAP grant, to a project which already has been awarded GO Zone or MDA Credits.

Eligible Uses of Funds: TCAP funds may be used for capital investment in eligible Housing Credit projects. Capital investment means costs that are included in the “eligible basis” of a Housing Credit project.

TCAP funds cannot be used for the administrative costs of TCAP grantees, including the cost of operating the program or monitoring compliance. Section 1604 of the Recovery Act specifically prohibits the use of grant funds for swimming pools.

TCAP funds may be awarded as grants or loans. 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.

Selection Process: HFAs are neither required nor expected to amend their QAPs.

HFAs are required to give priority to eligible projects that are expected to be completed within three years from the date of Recovery Act enactment (i.e., by February 16, 2012). This priority 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.

TCAP Commitment and Expenditure Deadlines: Each HFA must:

- 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).

Program Income: Program income is gross income received by the grantee generated by the use of TCAP funds during the grant period, including principal and interest from a loan made with TCAP funds, 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 IDIS system and use such funds in accordance with TCAP requirements. The grantee must expend all program income for eligible TCAP costs before additional appropriated TCAP grant funds are drawn from the 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 commitment and expenditure deadlines for TCAP funds.

All program income on hand when the grant period ends, or earned after the grant period, must be used for the development or operation of housing that remains affordable, for a period of not less than 15 years, to households whose annual incomes does not exceed 80 percent of area median family income. These restrictions apply only to the first use of any program income earned after the grant period. Once the program income is used to develop or operate affordable housing as defined above, any return on the TCAP program income funds is unrestricted.

### **Reporting and Transparency Requirements**

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 10, 2009, information similar to the following:

- The total amount of TCAP 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.

Each HFA 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.

### **Federal Grant Requirements**

TCAP funds are federal financial assistance and, therefore, are subject to requirements applicable to such funds. Grantees must comply with the Fair Housing Act, Title VI of the Civil Rights Act, the Age Discrimination Act of 1975, affirmatively furthering fair housing requirements, Section 504 of the Rehabilitation Act of 1973, the National Environmental Policy Act, the Lead-Based Paint Poisoning Prevention Act and the Residential Lead-Based Paint Hazard Reduction Act of 1992, Davis-Bacon prevailing wages, anti-lobbying restrictions, the Drug-Free Workplace Act of 1988, and various OMB regulations and circulars.

HUD has special question-and-answer fact sheets on its website to help grantees understand these requirements. For example:

- The Uniform Relocation Act is waived.
- Section 3 of the Housing and Urban Development Act of 1968 is waived.

- As of the date of the owner’s application for TCAP funds, the owner and its contractors are prohibited from undertaking any project “choice-limiting” activity until after the completion of the federal environmental review and the execution of the “Authority to Use Grant Funds” ([HUD 7015.16](#)) or equivalent letter. This includes *any activity* that will result in a physical change to the property including property acquisition, demolition, movement, rehabilitation, conversion, repair, construction, and leasing or disposition. *Performing a choice-limiting action may disqualify a project from receiving any federal TCAP funds* (emphasis HUD’s).

### **Training and Technical Assistance**

HUD’s notice recommends that grantees 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 HUD’s TCAP webpage.