

South Carolina State Housing Finance and Development Authority Tax Credit Assistance Program Implementation Plan

I. Introduction and Purpose

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act (ARRA) of 2009. The purpose of the ARRA is to help combat the current recession, stimulate economic recovery, begin reinvesting in the nation's physical and economic infrastructure, and create and save jobs that will provide long-term economic benefits. The legislation includes two funding sources specifically for Low-Income Housing Tax Credit (LIHTC) developments: the Tax Credit Assistance Program (TCAP) and Grants in Lieu of Tax Credits (Exchange).

This Implementation Plan deals specifically with the Tax Credit Assistance Program. 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 to Low Income Housing Tax Credit developments. HUD awarded TCAP funds through a formula allocation to state housing credit agencies. The South Carolina State Housing Finance and Development Authority (the Authority) is eligible to receive \$25,384,973 in TCAP funding. It is the Authority's intent to request all available funding from HUD and as required by the statute to award TCAP funds on a competitive basis. The following plan outlines the priorities and policy determinations made by the Authority.

- 1.** Maximize the value of resources to the State of South Carolina. The Authority will implement policies that best support affordable housing in South Carolina, taking into account the leveraging of other funds and the efficiency of resource utilization. The Authority will reject those developments that either deflate the value of the resources made available through ARRA or negatively impact the long term viability of the tax credit program.
- 2.** Spur immediate economic activity and employment by focusing on developments that can be implemented quickly. Although not every stalled development will move forward, most can be restructured to begin immediate construction. ARRA mandates providing a preference for developments which are "shovel ready". The Authority defines a "shovel ready" development as a tax credit development that can begin and end construction within specified timeframes mandated by the Authority.
- 3.** Improve the quality, sustainability, and long term impact of developments utilizing ARRA resources. These one-time funds create a special opportunity to structure transactions that can overcome the difficult economic conditions currently facing South Carolina. It will also give the Authority and our affordable housing developers the opportunity to look at innovative ways to promote the long term improvement and viability of the tax credit program.

II. General Objectives

The Authority has reviewed the needs of the LIHTC program and has developed specific policy objectives which have been used in developing the TCAP Implementation Plan. The policy objectives include, but are not limited to the following:

1. The Authority will provide financial assistance with TCAP funds to developments awarded tax credits. The first priority will be to those developments awarded credits in the 2008 competitive tax credit funding cycle. Developments awarded tax credits prior to the 2008 competitive tax credit funding cycle, those developments utilizing 4% non-competitive tax credits with bonds, and proposed developments without a tax credit award are not eligible to receive TCAP funds. The Authority reserves the right to further determine whether any development requesting TCAP funds qualifies for additional funds.
2. All developments requesting TCAP funds will undergo additional underwriting analysis to determine the reasonableness of all budgeted items and to ensure that all funds are used in the manner intended by the ARRA. This underwriting will include a review by the Authority's third party construction cost consultant.
3. The Authority will determine TCAP funding and financing structures. Due to current housing market conditions the review of rents, taxes, utilities, and similar variables will be re-examined. Additional reviews of the development's pro forma will be done and modifications made as necessary to ensure that developments funded with TCAP funds are financially sound and able to handle periodic changes in the rent and expense structure.
4. Developments will be reviewed to ensure that there is no undue enrichment to any party participating in the development. This review may result in the limitation of unrestricted, net cash flow.
5. The Authority may require design modifications for the purpose of reducing overall costs, increasing energy efficiency, and/or improving the development's financing feasibility.
6. The Authority believes that the continued inclusion of syndicators in the funding of developments is a priority and is essential to the long term viability of the development as well as to the Tax Credit Program. It is also believed that competitive pricing of tax credits is essential to the continued viability of the tax credit development. Developers should be striving to find the highest syndication pricing available.
7. Developments are expected to meet stringent progress requirements and deadlines including the immediate commencement of construction, subject to environmental approval, and adhering to a construction schedule that meets IRS placed in service completion date requirements. Developments failing to meet these and/or other established deadlines will forfeit TCAP funding and be replaced with developments that can meet the established deadlines.
8. All previously committed funding sources, excluding State HOME funds, are expected to remain with the development. The Authority will be using TCAP funds to provide gap financing and is not meant to replace other committed funding sources, excluding State HOME.
9. The Authority intends to secure TCAP investments with a recorded regulatory agreement and a mortgage loan.

III. Accountability, Transparency and Reporting Requirements

The ARRA 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). All final requirements from HUD will be incorporated into the TCAP Grant Agreement, recorded regulatory agreement and, if applicable, the mortgage loan.

The Authority is committed to developing transparent selection criteria, allowing Authority staff to use discretion and flexibility in committing, obligating or expending TCAP funds. Such criteria will ensure that the funding furthers both job creation and retention, economic recovery and other purposes of the ARRA.

TCAP recipients must submit information as requested to the Authority for reporting requirements to HUD. All requested information will be provided on a quarterly basis. In addition, HUD and the Office of the Inspector General (OIG) staff must be given access, upon reasonable notice, to all records, information, data, reports, plans, projections, contracts, memoranda, correspondence and any other materials related to the use of TCAP funds. It is understood that all contractors, subcontractors, consultants, and any other entity or individual working on TCAP funded developments must agree to make available, at any time, during the term of the TCAP contract plus an additional three (3) years thereafter, any and all records, information, data, reports, plans, projections, contracts, memoranda, correspondence and any other materials related to the use of TCAP funds.

TCAP funds may be used only for capital investment in eligible LIHTC developments. All costs funded with TCAP funds must be costs included in the “eligible basis” of a project under Section 42 of the IRC. The Authority will require an independent CPA opinion on the eligible uses of TCAP funds as part of the final cost certification at placed in service.

TCAP recipients, contractors, subcontractors, consultants, and any other entity or individual working on developments funded with TCAP funds should be knowledgeable of and refer to both the federal and state websites that will be providing guidance on TCAP regulations and reporting requirements. Information will be posted periodically to these websites regarding all program changes, guidance and other instructional information that will be needed to use, track and report TCAP funds. Links to these websites will be available on the Authority’s TCAP web page.

Any and all change orders that arise during the course of project development and construction must first be reviewed and accepted by the Authority and its third party construction cost consultant.

IV. Federal Grant Requirements

TCAP funds are federal financial assistance and therefore subject to requirements applicable to such funds. Recipients receiving TCAP funds should be familiar with and MUST follow 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, recipients must establish an affirmative fair housing marketing plan for developments funded with TCAP and recipients must 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:
 - a) Methods for informing the public, owners and potential tenants about Federal fair housing laws and the recipient’s affirmative marketing policy;
 - b) Requirements and practices each owner must adhere to in order to carry out the affirmative marketing procedures and requirements;
 - c) 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);
 - d) 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
 - e) 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. The Recovery Act expressly applies section 288 of the HOME statute, which requires the State to assume responsibility for environmental reviews 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 development, providing TCAP funds to the development 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 development that is now receiving TCAP assistance from the state, and neither the development nor the environmental conditions have changed since the previous review, then no new environmental clearance is required. See 24 CFR 58.35(b)(7).

The Authority has assumed responsibility for the environmental review process for all 2008 funded developments. Developers will be notified by Authority staff as to when the environmental review process for their development has been completed.

- **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.
- **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 developments 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.

- **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 requirements apply to TCAP project owners:
2 CFR Part 2424 “Non-procurement Debarment and Suspension.”
- As per HUD, the Uniform Relocation Act and Section 3 of the Housing and Urban Development Act of 1968 are waived.

V. TCAP Funding Priorities

In order for the Authority to meet commitment and expenditure deadlines imposed by the ARRA it is imperative that developers requesting and receiving TCAP funding be able to start construction immediately. TCAP funds will be allocated competitively based on the highest scoring TCAP application to developments having already competed and been awarded 2008 tax credits based on the 2008 Qualified Allocation Plan and 2008 Tax Credit Manual. **In order to compete for TCAP funds, a development must have an executed and binding agreement for syndication. This is a threshold requirement and will not be waived.** The following criteria will be utilized to establish a priority selection order in which developments will receive TCAP funds.

1. Developers who can meet a February 16, 2012 completion date. This date is a completion priority date established by the ARRA. This date does not allow developers an extension of the IRS imposed completion date related to the date an allocation of credits was awarded. IRS completion dates relative to the year tax credits were awarded, if more restrictive, will be imposed by the Authority. **15 points**
2. Developments having the highest value per credit dollar of committed equity financing from a syndicator. Points will be determined by multiplying the value per credit dollar by 10 (i.e. an equity pricing factor of .75 per dollar = 7.5 points). **Up to 10 points**
3. Developments with an executed and binding construction loan agreement. **10 points**
4. Developments with an executed and binding agreement for permanent financing. **10 points**
5. Developers who have building permits issued. **10 points**

6. Developments that have no environmental issues and have been cleared through the National Environmental Policy Act. This means, all required environmental public notices have been posted, commenting timeframes are complete and the final HUD Request for Release of Funds has been received by the Authority. **5 points**
7. Developers who have taken ownership of the development site and have a recorded warranty deed. **10 points**
8. Developers who are familiar with and have previous experience in rehabilitating or constructing developments using federal funds (e.g. HOME, CDBG, etc.). **5 points**
9. Developers awarded credits in the 2008 tax credit funding cycle that can meet and submit a Ten Percent Expenditure Test by August 3, 2009. **15 points**

The Authority believes the above selection criteria would allow a 2008 funded development to begin construction immediately. It is understood by all parties that developers awarded TCAP funds would immediately, upon execution of the TCAP Reservation Agreement and any other regulatory documents requiring execution, begin construction. Those developers not having developments under construction, for any reason, within 60 days of the receipt of a TCAP award are subject to funding cancellation. The Authority may inspect the construction site at any time to determine the progress of the development.

VI. General Requirements

The following are terms that apply to any development selected for an award of TCAP funds:

1. TCAP funds will be provided as a zero percent deferred loan with a term of 15 years. The Authority will record a standard mortgage on the property. The 15 year period will correspond to the initial IRS imposed 15 year compliance monitoring period. The total amount of TCAP assistance provided will be based on the financial feasibility of the development.
2. The Authority and development owner will enter into and subsequently record on the property a TCAP Regulatory Agreement. The TCAP Regulatory Agreement will outline all requirements the owner must agree to and the development is subject to during the 15 year compliance period. Violations during the 15 year compliance period could result in permanent debarment of the development owner from further participation in all Authority administered programs as well as a full or partial recapture of TCAP funds awarded.
3. TCAP funds can be drawn down during the course of construction.
 - a) Developers utilizing TCAP funds for construction financing must request an inspection for work in place.
 - b) The Authority will schedule an inspection and notify the developer as to whether the work in place passed inspection. Those failing an inspection will be notified of the deficiencies and allowed to make corrections. Another inspection must be requested once corrections have been made.
 - c) Approved inspections will result in the Authority requesting funds be disbursed from the U.S. Treasury. Federal funds cannot be drawn from the U.S. Treasury in advance of the need to pay approved costs. Funds cannot be drawn from the U.S. Treasury and placed in escrow or advanced in lump sums to development owners.

- d) Draw requests received from the U.S. Treasury will be transferred to the developer. A separate, non-interest bearing bank account must be set up exclusively for the receipt and disbursement of TCAP funds for the development. Funds transferred to this account by the Authority **must be disbursed within three days** and used ONLY to pay eligible development costs.
- 4. As required by the ARRA and HUD, the Authority may engage a third party asset manager for the development at the owner's expense. If possible, the Authority will enter into a Memorandum of Agreement (MOA) with the development's limited partner/syndicator in order to meet the asset management requirements.
- 5. The general contractor selected must provide the Authority a copy of his general contractor's license and certification that liability insurance is current.
- 6. The developer must ensure that any and all necessary language pertaining to compliance with Davis Bacon, Section 504 of the Rehabilitation Act of 1973, The Drug-Free Workplace Act of 1988, 2 CFR Part 2424 "Non-procurement Debarment and Suspension" etc. be written into any contracts with the general contractor and subcontractors.

VII. Returned, Recaptured or Excess TCAP Funds

Any TCAP funds that are returned, recaptured, or not initially allocated to 2008 funded tax credit developments may be utilized for developments funded in the 2009 competitive tax credit funding cycle. The following TCAP Funding Priorities will be used as the criteria for 2009 tax credit developments. At a time, to be determined by the Authority, developers receiving a 2009 award for tax credits will be notified of the opportunity to submit application requests for TCAP funds. Any development submitted for funding consideration in the 2009 tax credit application cycle must underwrite and be financially feasible as proposed without any TCAP funding. **In order to apply for TCAP funds, a development must have an executed and binding agreement for syndication. This a threshold requirement and will not be waived.**

- 1. Developers who can meet a February 16, 2012 completion date. This date is a completion priority date established by the ARRA. This date does not allow developers an extension of the IRS imposed completion date related to the date an allocation of credits was awarded. IRS completion dates relative to the year tax credits were awarded, if more restrictive, will be imposed by the Authority. **15 points**
- 2. Developments having the highest value per credit dollar of committed equity financing from a syndicator. Points will be determined by multiplying the value per credit dollar by 10 (i.e. an equity pricing factor of .75 per dollar = 7.5 points). **Up to 10 points**
- 3. Developments with an executed and binding construction loan agreement. **10 points**
- 4. Developments with an executed and binding agreement for permanent financing. **10 points**
- 5. Developers who have building permits issued. **10 points**
- 6. Developments that have no environmental issues and have been cleared through the National Environmental Policy Act. This means, all required environmental public notices have been posted, commenting timeframes are complete and the final HUD Request for Release of Funds has been received by the Authority. **5 points**
- 7. Developers who have taken ownership of the development site and have a recorded warranty deed. **10 points**

8. Developers who are familiar with and have previous experience in rehabilitating or constructing developments using federal funds (e.g. HOME, CDBG, etc.). **5 points**

2009 tax credit developments awarded TCAP funds that are not under construction, for any reason, within nine (9) months of the Carryover Allocation date are subject to TCAP funding cancellation.