



## **Tax Credit Assistance Program (TCAP) Submission Packet May 2009 (Revised July 16, 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

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### **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”) and must continue to meet existing Section 42 completion deadlines but in no case be placed in service later than December 31, 2011. Final financing commitments from an equity investor and lender will be required to evidence the development’s readiness to proceed as a threshold for application and shall be the way the Department gives priority to projects that are expected to be completed by February 16, 2012.
  - c) Developments that maximize the use of prior awards and tax credit resources [i.e. minimizes the amount of TCAP funds needed]
- 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. A Good Faith Effort will be made to sell as many of the awarded credits as circumstances and market conditions allow. However, if a developer cannot use or sell all of the tax credits awarded to a project, adjustments can be made to the amount of credits allocated. Some credits will be required to remain with the development in accordance with HUD guidance. In any event, a written agreement that requires compliance with Low Income Housing Tax Credit and TCAP requirements for the period required by section 42 of the Internal Revenue Code must be entered into by the project owner. 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) For the purposes of TCAP, the Department defines an “Award of LIHTCs” to be the date and amount of an approval by the Department’s Governing Board (“Board”), at a public meeting, of an allocation for 9% Low Income Housing Tax Credits associated with the annual competitive awards or determination for 4% Low Income Housing Tax Credits associated with tax exempt bond transactions between October 1, 2006, and September 30, 2009. Only developments maintaining an Award of LIHTCs will be eligible for TCAP funding. The Department will uniformly apply these definitions in determining eligibility for TCAP funding.

**C. Commitment and Expenditure Deadlines.**

- 1) 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 24, 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.
- 2) 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:
- Closing must occur within 6 months from the date of the Board meeting at which the award is made;
  - 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;
  - Fifty percent of construction completion must occur within 12 months of the actual closing date;
  - 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.
- 3) The Executive Director may collectively provide up to one six-month extension to the end date of any Contract with a TCAP project. 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. However no extensions will be granted after August 1, 2011 such that the deadline exceeds the federal TCAP expenditure deadline of February 16, 2012.

- 4) 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.
- 5) Pursuant to section 49.10(b) of the QAP, if the entire State Housing Credit Ceiling [or TCAP funds] for the applicable calendar year has been committed or allocated in accordance with this chapter [the allocation plan for TCAP], the Board shall generate, concurrently with the issuance of commitment notices [the written acknowledgement of the award of tax credits previously announced by the Board] or subsequent TCAP allocation, a waiting list of additional Applications ranked by score in descending order of priority based on Set-Aside categories and regional allocation goals. The Board may also apply discretionary factors, as defined in the QAP, in determining the Waiting List. If at any time prior to the end of the Application Round, one or more Commitment Notices expire or a sufficient amount of the State Housing Credit Ceiling [or TCAP funds] becomes available, the Board shall issue a Commitment Notice to Applications on the waiting list subject to the amount of returned credits, the regional allocation goals and the Set-Aside categories, including the 10% Nonprofit Set-Aside allocation and 15% At-Risk Set-Aside allocation and 5% TRDO-USDA Set-Aside required under the Code, §42(h)(5).

#### **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](http://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.

