

HFAs Move Forward with TCAP, Exchange Program

By Jennifer Dockery, Staff Writer, Novogradac & Company LLP

In late May, the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of the Treasury (Treasury) began distributing to state housing finance agencies the funds provided through the Tax Credit Assistance Program (TCAP) and the Grants to States for Low-Income Housing Projects in Lieu of Low-Income Housing Credits for 2009 program (exchange program). As of June 12, HUD had awarded Ohio \$83 million in TCAP funds and planned to announce additional awards in the coming weeks. Treasury had also awarded \$469 million to 10 states' housing finance agencies (HFAs) in exchange for their underutilized low-income housing tax credits (LIHTCs).

"All the states have submitted applications for TCAP. I'm very confident that over the course of the next year all the states will participate in the exchange program," said Garth Rieman, director of housing advocacy and strategic initiatives for the National Council of State Housing Agencies (NCSHA).

In drafting their TCAP and exchange program plans, states had to balance HUD's and Treasury's guidance against the realities of the markets in their states, Rieman said.

Loans vs. Grants

For TCAP, HUD allows states to make the subawards in the form of loans or grants. While a larger number of states have chosen to award the funds as loans, a significant number of HFAs plan to grant the money to stalled LIHTC properties. Montana and Wisconsin plan to award TCAP funds as grants, citing a desire to avoid program income and to distribute the subawards as quickly as possible. South Dakota, Washington and Maine will loan the funds to stalled properties because they said that the loan structure gives them more control over the properties.

"We thought we had better security if it was structured that way, rather than as a grant," said Dan Simpson, public information manager for the Maine State Housing Authority. MaineHousing plans to provide forgivable loans with a 0 percent interest rate. HFAs that do not plan to forgive the TCAP-funded loans, bar developers from repaying the loans until after TCAP has ended on February 16, 2012.

In the rules that it released on May 4 for the exchange program, Treasury said that HFAs could distribute exchange program funds to stalled projects only as grants. By early June, Treasury had indicated that it might also allow states to distribute the exchange funds as loans, but had not announced a formal policy. Earlier in the year, many states had drafted plans to loan exchange funds to stalled projects, so they welcomed the potential change.

Additional Responsibilities

Most state HFAs say they are not concerned with the federal crosscutting requirements that the TCAP funds will trigger. Some states, including Ohio, plan to award TCAP funds to properties that have already received federal grant funding and have met the crosscutting requirements. Other states, including North Carolina, plan to award TCAP funds to the properties at the same time they award the tax credits.

"Crosscutting rules are easier to manage when everyone knows what applies up-front. Also, some owners of 2008 projects may have a tough time waiting for environmental reviews," said Mark Shelburne, counsel and policy coordinator for the North Carolina Housing Finance Agency.

State HFAs also seem prepared for the asset management responsibilities of the two programs, although they would like additional guidance from HUD and Treasury on the reporting requirements. Wisconsin Housing and Economic Development Authority (WHEDA) plans to handle

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the asset management functions in-house. Mississippi Home Corporation (MHC) plans to hire an outside firm to fulfill the reporting and management requirements. Washington State Housing Finance Commission (WSHFC) plans to handle some of the asset management functions itself and hire a management company to perform the remaining duties.

GO Zone, MDA and Beyond

Many affordable housing industry professionals were disappointed when Treasury and HUD announced that Gulf Opportunity Zone (GO Zone) and Midwestern Disaster Area (MDA) credits would not qualify for TCAP or the exchange program.

"While we're aware that we can allocate a nominal amount of our regular tax credit allocation to a GO Zone tax credit deal to make it eligible for the stimulus funding, due to the number of deals we have under development in the GO Zone, it will still be difficult to make them all financially feasible," said David Hancock, MHC's assistant vice president of research.

Since the announcement, NCSHA and other industry groups have lobbied Treasury, HUD and Congress to have the rule changed. On May 21, the Senate added a provision to S. 1054 that would allow properties with GO Zone and MDA credits to receive funds from the Recovery Act programs without including a nominal amount of "traditional" LIHTCs in the deal. The Senate had passed the bill making supplemental appropriations for the fiscal year ending September 30, 2009, and for other purposes and returned it to the House in early June.

Other states face situations unique to their region. In Michigan, the population has decreased significantly in the past year, and so has the need for new affordable multifamily developments. Rather than use the TCAP and exchange program funding to spur the development of new properties, the Michigan State Housing Development Authority (MSHDA) plans to award the funds to older LIHTC properties throughout the state.

"We'd like to use [the funds] to invest in existing developments. We think that fits the broad efforts of the stimulus package. We don't need a lot of new units. This is an op-

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portunity to rethink how we've been doing things," said Stephen Lathom, MSHDA's development operations and policy manager.

As the credit market has dried up, it has become harder to close deals in rural areas. For the Montana Department of Commerce (MDOC) this has been especially problematic because of the state's low population. Gerald Watne, MDOC's multifamily program manager, said that he expected two properties in the state to be fully funded with tax credits. The rest of the properties will have TCAP and exchange program funds in them.

"There's no appetite for rural projects and Montana as a whole is a rural project. We're trying to use every resource that may be available. Projects we would otherwise not have been able to see proceed we will now see come to fruition," Watne said.

Moving Forward

As the HFAs await their awards from HUD and Treasury, they are reviewing properties that may be eligible for the funds. Maine has put together a list of properties to which it plans to award TCAP funds, while Washington asked developers to submit applications for the program funds. South Dakota plans to hire a syndication firm to facilitate its exchange program deals. Because HUD and Treasury left the HFAs some flexibility in how to distribute the funds, each HFA has drafted individualized plans for its state and each plan meets the American Recovery and Reinvestment Act's goals of spurring afford-

able housing production and creating jobs.

"The states' general attitude is that while they might like to change a few elements of Treasury's and HUD's programs, they feel like they can work with the guidance they've been given," Rieman said.

In the coming months, HFAs would most like to see additional Treasury guidance on the exchange program's recapture process, and guidance from HUD about the LIHTCs that must be included in TCAP properties.

"What is a nominal amount of credit on TCAP? HUD is now saying not only a nominal amount, but that it must have an investment behind it. It's a possible inhibitor to getting these things done. If we bog these things down, we really are going to lose sight of what the stimulus is trying to achieve," said Steve Walker, director of WSH-FC's tax credit division.

Most agencies consider the TCAP and exchange programs anomalies and do not believe that they will have any long-term effects on the LIHTC program, but believe that the programs will benefit affordable housing developments that need help getting built in the current economy.

"We're excited to have the funds. Before the legislation passed, I didn't know what was going to happen with these properties. We're the busiest we've been in 13 years," said Kevin Clark, housing credit allocation manager for the Ohio Housing Finance Agency. ❖

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