

## Allowable Fees Under the TCAP Program

By Jim R. Kroger, CPA, and Jenny Ho, CPA, Novogradac & Company LLP

The U.S. Department of Housing and Urban Development (HUD) issued guidance on fees that the Tax Credit Assistance Program (TCAP) recipients (state credit agencies) may charge to sub-recipients (low-income housing tax credit properties). During the implementation of the TCAP program, state agencies will incur costs to distribute and monitor TCAP funds; and HUD has provided guidance on fees that state agencies can charge.

In general, HUD is allowing fees for compliance costs and asset management costs, but not for administrative costs. Fees that state agencies will incur must be distinguished by administrative costs, compliance costs and asset management costs.

### Administrative Costs

Examples of administrative costs include general management, oversight and coordination; report and other document preparation for submission to HUD; travel costs; and general legal, accounting and audit services. These costs that are incurred by the state agencies are not considered TCAP project costs and must be borne by the state agency.

### Compliance Costs

Examples of compliance costs include documentation and compliance with the National Environment Policy Act (NEPA) of 1969, Davis Bacon Act, Section 504 of the Rehabilitation Act of 1973, and Lead-Based Paint Hazard Control. These costs that are incurred by the state agencies are considered allowable TCAP project costs.

### Asset Management

State agencies must take on additional asset management duties for TCAP projects, overseeing compliance with Internal Revenue Code (IRC) Section 42 and the long term viability of the project. State agencies may charge TCAP

project owners an asset management fee for performing the following functions during development and construction, and during operation:

Development and Construction – Review of underwriting assumptions, market studies, architectural and engineering plans; monitoring of construction progress, conducting of construction inspections, etc.

Operation – Review of marketing plans, inspection of housing codes, review of tenant files for compliance with LIHTC and TCAP income targeting requirements, review of audits, analysis of annual operating budgets and cash flow projections, implementation of workout strategies for troubled projects, etc.

### State Agency

In a panel at the Novogradac & Company LLP Affordable Housing Conference last month at which fees allowed under Recovery Act provisions were discussed, Steve Lathom of the Michigan State Housing Development Authority said that fees charged under the TCAP program and the Section 1602 Exchange should be reasonable, although no maximum has been indicated by the Recovery Act. Michigan has defined asset management broadly to include all actions that ensure long-term viability of the project, design review, construction period oversight, financial oversight and reviews of project feasibility. Oversight includes monthly income/expense reporting, annual budget process and audit reviews, periodic capital needs assessments and management of project reserves. Asset management costs differ from administrative costs, which include general program oversight, planning and reporting and cross-cutting regulation compliance reviews.

Asset management fees are determined by the state agency.

*(continued on page 2)*

# Allowable Fees

(continued from page 1)

The asset management fees may be a one-time fee or an annual fee. Michigan has structured the asset management fee to be an annual fee of \$5,000 per project for TCAP projects and \$10,000 per project for Section 1602 Exchange projects. Despite the fact that fees are determined by the state, there is an expectation that a general consensus on HUD guidance will be reached by the state agencies.

## Conclusion

In general, HUD is allowing fees for compliance costs and asset management costs, but not for administrative costs. In addition, always check with the appropriate state agency to determine what fees will be charged to project owners. ❖

---

*This article first appeared in the November 2009 issue of the Novogradac Property Compliance Report and is reproduced here with the permission of Novogradac & Company LLP.*

© Novogradac & Company LLP 2009 - All Rights Reserved.

*Notice pursuant to IRS regulations: Any U.S. federal tax advice contained in this article is not intended to be used, and cannot be used, by any taxpayer for the purpose of avoiding penalties under the Internal Revenue Code; nor is any such advice intended to be used to support the promotion or marketing of a transaction. Any advice expressed in this article is limited to the federal tax issues addressed in it. Additional issues may exist outside the limited scope of any advice provided – any such advice does not consider or provide a conclusion with respect to any additional issues. Taxpayers contemplating undertaking a transaction should seek advice based on their particular circumstances.*

(continued on page 3)

### Property Compliance Report Editorial Board

**Publisher** ♦ Michael J. Novogradac, CPA

**Editor** ♦ Jane Bowar Zastrow

**Managing Editor** ♦ Alex Ruiz

**Contributing Writers** ♦ Stacey Lewis, Derek Luz,  
Jenny Ho, Thomas Staggs

**Technical Editor** ♦ James R. Kroger, CPA

**Production** ♦ James Matuszak

### Property Compliance Report Advisory Board

**Rose Guerrero** • California Tax Credit Allocation Committee

**Lorna Henri** • U.S. Communities Compliance Services

**Sharon Jackman** • SIG Services LLC

**Michael Kotin** • Kay-Kay Realty Corporation

**Patricia Murphy** • Texas Department of Housing and Community Affairs

**Mardi Roberts** • Washington State Housing Finance Commission

**Michael Snowdon** • MCA Housing Partners

**Gianna Solari** • Solari Enterprises

**Ruth Theobald Probst** • TheoPRO Compliance & Consulting Inc.

**Tasha Weaver** • Colorado Housing & Finance Authority

### Property Compliance Report Information

Address all correspondence and editorial submissions to:

Jane Bowar Zastrow

Telephone: 415.356.8034

Address inquiries regarding advertising opportunities to:

Emil Bagalso

Telephone: 415.356.8037

Editorial material in this publication is for informational purposes only and should not be construed otherwise. Advice and interpretation regarding the low-income housing tax credit or any other material covered in this publication can only be obtained from your tax advisor.

© Novogradac & Company LLP, 2009 All rights reserved. Reproduction of this publication in whole or in part in any form without written permission from the publisher is prohibited by law.

ISSN 1536-6863

Novogradac & Company LLP  
246 First Street, 5th Floor  
San Francisco, CA 94105  
E-mail: cpas@novoco.com



---

# Allowable Fees

*(continued from page 2)*

*This editorial material is for informational purposes only and should not be construed otherwise. Advice and interpretation regarding property compliance or any other material covered in this article can only be obtained from your tax advisor. For further information visit [www.taxcredithousing.com](http://www.taxcredithousing.com).*