

**REQUEST FOR ACTION BY MEMBERS OF
THE NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY**

Action Requested:

1. Request for amendments and/or waivers to certain subsections under N.J.A.C. 5:80-33 et seq. in order to accommodate stimulus programs under the American Recovery and Reinvestment Act, specifically the Tax Credit Assistance Program, the Tax Credit Exchange Program and the Capital Fund Recovery Competition Program.

Key Points:

The American Recovery and Reinvestment Act of 2009, 111 P.L. 5 (H.R. 1) ("ARRA") promulgated two programs that HMFA is administering to assist the struggling tax credit equity market - the Tax Credit Exchange Program ("TCX") and the Tax Credit Assistance Program ("TCAP"). These sources of gap financing have been critical to ensuring the continued production of affordable housing in NJ during the economic downturn. With goals including job creation and economic stimulation, these programs have very strict commitment, expenditure, monitoring and reporting requirements. Failure to commit and expend these funds by their respective deadlines shall result in forfeiture of this assistance to the federal government for potential use by other states.

In order to 1) effectively administer these programs and 2) assist projects in securing and closing with an equity investor in order to complete timely construction under the ARRA programs, tax credit staff requests approval of the following changes to the Qualified Allocation Plan ("QAP"):

- The tiebreaker at N.J.A.C. 5:80-33.10(a)1 shall be amended to state "If competing projects within a cycle have a tie score, a tax credit reservation shall be awarded to the project with the least amount of tax credits per tax credit unit."
- N.J.A.C. 5:80-33.22(a) shall be amended to add the following statement: "After projects have been awarded based on their competitive rankings, the Tax Credit Committee shall have the authority to adjust the amount of TCAP, TCX and tax credits awarded to a project in order to fully exhaust ARRA subsidies."
- The provision at N.J.A.C. 5:80-33.13(a)1v which requires a deferral of 50% of the developer fee in order to receive hardship credits shall not apply to projects that receive TCAP funds.
- Projects that receive TCX funds under Priority #1 of the TCX selection criteria shall not be subject to the provision at N.J.A.C. 5:80-33.37(e), which precludes a sponsor that received an exchange from applying for tax credits for a new project for the next tax credit cycle.

HOPE VI and Replacement Housing Factor Fund projects have been prioritized at N.J.A.C. 5:80-33.4(a)1 and 5(a)1 in order to leverage capital funding programs from HUD's Office of Public and Indian Housing that must be expended within a very limited timeframe or face recapture. Staff proposes these set-asides be amended to include similarly situated projects that receive Capital Fund Recovery Competition ("CFRC") funds.

These changes shall be effectuated through any or all of the following methods, as recommended by the Attorney General's Office: waivers to the Qualified Allocation Plan, rulemaking proposal, and/or re-proposal and adoption of pertinent amendments to the QAP. Should such changes be effectuated through waivers, Agency regulations authorize such waivers when they "would not contravene the provisions of [the Agency's statute] and upon a finding that, in granting the waiver, the Board will be promoting the statutory purposes of the Agency." N.J.A.C. 5:80-19.1. The statutory purposes of the Agency include maximizing the creation of affordable housing in the State, enhancing the productive capacity of the private sector in meeting the housing needs of the State's residents, and assisting in the revitalization of the State's urban areas. Additionally, there appears to be nothing in the applicable provision of the Internal Revenue Code regulating LIHTC, 26 U.S.C. §42, that would prevent the limited waivers as now requested. Agency Staff is of the opinion that approval of the requested waivers would in no sense contravene the Agency's statutory purposes but be more likely to promote them. The waivers, if granted, shall quickly encourage leveraging of limited funding sources, which in turn is expected to allow a greater number of units to access such funds, thereby creating a greater number of affordable units in the state. Significantly, the Act requires that the Agency commit not less than 75% of TCAP funds made available to it under this program within one year of the date of the Act's enactment (i.e., February 17, 2010), and requires project owners to expend 75% of their awards hereunder within two years of the date of the Act's enactment (i.e., February 17, 2011). The Act further requires 30% of the reasonably expected basis of TCX projects to be expended by December 31, 2010 and 100% of TCX awards to be expended by December 31, 2011. Therefore, time is of the essence in receiving, awarding, and using these funds.

The waivers would only be in effect until the earlier of Agency re-proposal and adoption of pertinent amendments to the QAP or when all TCAP and TCX funds are exhausted.