

**ALABAMA HOUSING FINANCE AUTHORITY  
TAX CREDIT ASSISTANCE PROGRAM  
2009 ALLOCATION PLAN**

**Introduction**

The American Recovery and Reinvestment Act (the “Act”) was signed into law on February 17, 2009. The Act creates two new sources of funding for affordable rental housing. First, it establishes a Tax Credit Assistance Program (“TCAP”), which will provide direct funding assistance to eligible tax credit projects. Second, Section 1602 of the Act establishes a tax credit exchange program (the “Exchange Program”), which permits states to substitute a cash grant in place of an eligible project’s low-income housing tax credits (“Housing Credits”) awarded under Section 42(h) of the Internal Revenue Code of 1986, as amended, (the “IRC”) in an amount not to exceed 85% of the Housing Credits exchanged times 10. Both of the new programs are intended primarily to supplement qualifying affordable housing developments that have been unable to secure adequate equity commitments in the current market.

This document sets forth the policy of Alabama Housing Finance Authority (“AHFA”) concerning allocation and use of the TCAP funds for the completion of affordable residential rental housing.

**TCAP Program Overview**

AHFA, as tax credit agency for TCAP for the State of Alabama, is required to establish a competitive process to allocate TCAP funds. AHFA must develop selection criteria to be used in determining the projects that require additional equity or replacement of equity in order to be financially feasible. The projects will be ranked and funded according to the criteria outlined in this plan. According to HUD, Alabama will receive TCAP funds in the amount of \$31,952,086. The funds must be expended quickly and a priority will be given to projects that are ready to move forward and have received an allocation of Housing Credits under Section 42(h) of the IRC by September 30, 2009. **AHFA must commit not less than 75 percent of its TCAP grant within one year of the enactment of the Act (i.e., by February 16, 2010); demonstrate that all project owners have expended 75 percent of the TCAP funds within two years of the enactment of the Act (i.e., by February 16, 2011); and expend 100 percent of its TCAP grant within three years of the enactment of the Act (i.e., by February 16, 2012). THESE DEADLINES ARE IMPOSED BY CONGRESS, AND AHFA HAS NO AUTHORITY TO EXTEND THEM.** See “Progress Requirements After Commitment of Funds” herein.

TCAP funds will be used primarily to fill the funding gap for projects that have been unable, after reasonable efforts, to obtain sufficient equity to complete the project due to the state of the investment market. The amount of TCAP funds to be allocated to any project will not exceed the amount, determined by AHFA, needed to make the project financially feasible. AHFA expects to underwrite TCAP funding at a level sufficient to include a 15% developer fee based upon a project’s reasonable costs as determined by AHFA. AHFA will allocate TCAP funds in the form of an interest-free construction loan that will convert to an interest-free permanent loan upon satisfaction of specified conversion conditions. TCAP loans will be subject to default if the project does not meet applicable compliance requirements. The amount, terms and default rate structure will be set by AHFA. General loan terms, owner criteria, and project requirements are outlined below and are subject to change upon additional guidance published by HUD or the Treasury.

This allocation plan distinguishes between projects that have syndicated Housing Credits and projects that do not have syndicated Housing Credits. For purposes of this allocation plan, a project will be treated as having syndicated Housing Credits only if it has entered into a written agreement with a Housing Credit investor to sell not less than 99% of its existing allocation of Housing Credits for not less than \$.50 per

dollar of Housing Credits. In order to qualify as a Housing Credit investor, an entity must (a) have purchased Housing Credits in at least three prior projects on or before January 1, 2009, or (b) be a publicly traded corporation, a bank or other federally regulated financial institution, a public utility, a state regulated insurance company, or a wholly owned subsidiary of any of the foregoing.

#### Loan Terms and Repayment:

TCAP funds will be allocated to the approved projects in the form of a construction loan that will convert to a permanent loan upon satisfaction of specified conversion conditions.

During construction, AHFA expects generally to fund construction draws on a pro rata basis with the construction lender, but AHFA will otherwise coordinate funding of draws with construction lenders, as needed. AHFA will release TCAP funds for payment of construction costs no more often than monthly and only upon receipt of a requisition approved by the project owner, the construction lender and all construction consultants engaged by the lender and/or AHFA. AHFA reserves the right not to fund draws based upon standard exceptions for construction lenders, including without limitation, any default by the owner, the existence or alleged existence of any lien on the project (other than liens securing the construction loan or in favor of AHFA), budget imbalance, insufficient funds to complete, or payment disputes with subcontractors or suppliers. AHFA reserves the right to contract at the project owner's expense with third parties for administration of construction draws, including without limitation construction consultants or a project's construction lender.

The construction loan will convert to a permanent loan upon satisfaction of specific conditions to conversion. For projects with syndicated Housing Credits, AHFA's goal is for each TCAP construction loan to convert to a permanent loan not later than the project's placed in service date. Conversion conditions for all projects will include standard conversion conditions such as (a) satisfaction of all conditions for closing or conversion of the project's first mortgage financing, (b) receipt of a certificate of substantial completion from the project architect, (c) issuance of a permanent certificate of occupancy for all buildings in the project, (d) receipt of a satisfactory as-built survey, (e) receipt of a final endorsement to AHFA's title insurance policy insuring lien-free completion of the Project, the priority of AHFA's mortgage subject only to first mortgage financing, and updating the survey exception, if any, through the date of the final as-built survey, (f) receipt of an as-built appraisal satisfactory to AHFA, (g) receipt of a satisfactory form of tenant lease, (h) payment of all fees and expenses of AHFA, (i) a satisfactory, final report from all construction consultants engaged on the project, (j) satisfactory certificates from the general contractor, the architect any direct contractor, engineer or materialman that they have been paid in full for all work on the project, or alternatively, that upon payment to such person of a specified amount on the conversion date, such person will have been paid in full for all work on the project; (k) and receipt of evidence satisfactory to AHFA that (1) no event of default exists under the TCAP loan or other financing; (2) all water, sewer, gas, electrical, telephone and cable television mains necessary to service the Project are completed, owned, operable and serviced by the applicable utility company; (3) all streets and roads providing access to the Project are completed, dedicated and accepted for maintenance by the applicable governmental authority, (4) all curb cuts and easements necessary to provide access to the Project are in effect, duly recorded, if appropriate, and available for use; (5) the project, as built, complies with applicable zoning requirements, and (6) no unsatisfactory environmental condition exists at the project.

Upon satisfaction of the conversion conditions, a TCAP construction loan will convert to a permanent loan with a term of 15 years (20 years if combined with AHFA's HOME) (the "Compliance Period"). If the project remains in compliance with applicable program requirements for the entire Compliance Period, the full amount of the loan will be forgiven. If the project defaults under applicable program requirements during the Compliance Period, AHFA reserves the right to demand immediate payment of all

TCAP funds received by the project. In the event of default, AHFA reserves the right to impose a default rate of interest on the TCAP loan.

Eligible Projects:

Projects eligible to receive TCAP assistance are new construction rental housing projects that (a) received, or will receive, an allocation of Housing Credits under Section 42(h) of the IRC during the period from October 1, 2006 to September 30, 2009 (federal fiscal years 2007, 2008 or 2009), and (b) require additional funding in order to be completed and placed into service in accordance with the requirements of Section 42 of the IRC. AHFA defines the award of Housing Credits as the date on which the reservation/determination letter is issued.

Projects that are complete and have received the Internal Revenue Service Form 8609 are not eligible to apply for TCAP funds.

HUD has ruled that if a project's only allocation of tax credits is under the Gulf Opportunity Zone Act of 2005 ("GO Zone Credits"), the project is not eligible for TCAP funds because GO Zone Credits were not awarded under Section 42(h) of the IRC. However, HUD has indicated that a project that received GO Zone Credits can be eligible for TCAP funds if the project also receives an allocation of Housing Credits under Section 42(h) of the IRC. In an effort to enable projects with only GO Zone Credits to be eligible for consideration for TCAP funds, AHFA will endeavor to amend its existing Housing Credit allocation plan to allow awards of Housing Credits under Section 42(h) concurrently with an award of TCAP funds. Such allocations are dependent upon AHFA's ability to obtain all necessary approvals for this amendment of its existing Housing Credit allocation plan and are subject to further guidance from HUD or Treasury.

Eligible uses of funds:

TCAP funds may be used for capital investment in eligible Housing Credit projects. Capital investment means costs that are included in the 'eligible basis' of a project under Section 42 of the IRC. TCAP funds cannot be used for the administrative costs of TCAP grantees, including the cost of operating the program or monitoring compliance, and Section 1604 of the Act specifically prohibits the use of grant funds for swimming pools.

The TCAP assistance provided to a project must be made in the same manner and subject to the same limitations (including rent, income, use restrictions and compliance monitoring) as required by the state housing credit agency with respect to an award of Housing Credits to a project (i.e., as required under Section 42 of the IRC and its implementing regulations), and all other requirements of the Act.

Security:

All obligations with respect to the loan will be secured by a first-priority or subordinate mortgage on the project site and all improvements, whether existing or proposed. In addition, a collateral assignment of rents and leases will be executed in connection with the property.

Guaranties:

TCAP construction loans will be full recourse to the project owner and will be guaranteed on a joint and several basis by all general partners of the project owner and by all individual owners, directly or indirectly, of general partners.

If a project has syndicated Housing Credits, and meets the conditions for conversion to a TCAP permanent loan, the TCAP permanent loan will be non-recourse to the project owner, and no guaranties will be required following the conversion.

If a project does not have syndicated Housing Credits, each TCAP permanent loan will be full recourse to the project owner and will be guaranteed on a joint and several basis by all general partners of the project owner and by all individual owners, directly or indirectly, of general partners. For these projects, all general partners and such individual owners will also be required to provide, for the full Compliance Period, an operating deficit guaranty and a guaranty of replacement reserves.

If a project owner is a limited liability company, the guaranties referenced in this Section will be required from all members who are not Housing Credit investors, and from all individuals who are owners, directly or indirectly, of such members.

If a project receives both TCAP funds and Exchange Program funds, the guaranties required in this section with respect to TCAP funds will be met only if the requirements for such guaranties in AHFA's allocation plan for Exchange Program funds have also been met.

#### Insurance:

Appropriate insurance will be required for each project serving as security for a TCAP loan. In addition, the applicant, developer and/or builder must evidence insurance coverage to include, but not be limited to, builder's risk insurance, general liability insurance, and loss of rents insurance.

#### Closing Costs:

The project owner is responsible for all closing costs incurred in connection with the TCAP loan(s), including all AHFA-appointed attorney's costs.

#### Written Agreements:

Prior to closing the TCAP construction loan, AHFA must execute a legally binding written agreement with the entity receiving TCAP funds, and it must be executed before any TCAP funds are disbursed. The written agreement must set forth (explicitly, or incorporated by reference) all requirements with respect to the TCAP and to federal grant crosscutting that are applicable to the project and must make these requirements enforceable through the recordation of a restriction that is executed, recorded and binding on all owners and successors, e.g., a declaration of land use restrictive covenants. **The written agreement for a project cannot be executed until environmental clearance for the project is completed and the Request for Release of Funds (RROF) is approved.** The terms of the agreement will require that the covenants remain in effect for the required Compliance Period and will require the owner to provide sufficient information to AHFA to report on the use of funds.

#### Construction Consultant:

AHFA will contract at the project owner's expense with an independent construction consultant who may, among other duties: (a) perform an up-front analysis of the construction budget to determine the reasonableness of costs as presented; (b) review the preliminary and final plans and specifications of the project (during and upon the completion of the project) for compliance with applicable local, state and federal building codes and ordinances; (c) review work in progress and the completed project for any material defects; and (d) review specifications and make comments and/or recommendations regarding the quality of materials to be used in connection with the project.

### Affirmatively Furthering Fair Housing:

AHFA will establish an affirmative fair housing marketing plan for its TCAP projects. Each project owner applying for TCAP must submit an affirmative fair housing marketing plan. Each project owner will be required to 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:

- Methods for informing the public, owners and potential tenants about Federal fair housing laws and the grantee's affirmative marketing policy;
- Requirements and practices each owner must adhere to in order to carry out AHFA's affirmative marketing procedures and requirements;
- 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);
- Records that will be kept describing actions taken by the owners to affirmatively market units and records to assess the results of these actions.

### 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, 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.). 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 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

### National Environmental Policy Act and Related Laws (Environmental review responsibilities) and implementing regulations at [24 CFR Part 58](#):

Owners may be unfamiliar with the NEPA requirements and the significant impact that the timing of certain decisions or actions may have on their ability to be awarded TCAP funds. The Act expressly requires projects that receive TCAP funds to comply with Section 288 of the HOME statute, which requires each State to assume responsibility for environmental review 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." ***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. **A project that engages in a choice-limiting action or has already engaged in a choice-limiting action will not be eligible to receive TCAP 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](http://www.access.gpo.gov/nara/cfr/waisidx_04/24cfr58_04.html) or <http://www.hud.gov/offices/cpd/environment/index.cfm>.

The project owner is responsible for all costs incurred by AHFA with respect to environmental review or compliance.

#### Davis-Bacon Prevailing Wages:

Under Section 1606 of Division A of the Act, contractors and subcontractors hired with Act funds are required to pay prevailing wages to laborers and mechanics in compliance with the Davis-Bacon Act.

#### Anti-Lobbying Restrictions:

Restrictions on lobbying in 31 USC 1352 and implementing regulations at 24 CFR Part 87 “New Restrictions on Lobbying” prohibit 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:

Statute 41 U.S.C. 701 et seq., as implemented at 24 CFR Part 21 “Government-Wide Requirements for Drug-Free Workplace (Grants)” prohibits the receipt of a grant from any Federal agency unless the recipient agrees to provide and certify to a drug-free workplace.

### **Request/Application Process for TCAP Funds**

AHFA has established a process for requesting TCAP funds. AHFA will make available the documents that must be completed in order to request TCAP funds. There are threshold requirements that must be met before any person can submit a request for TCAP funds, as follows:

- The project must have an allocation of Housing Credits or GO Zone Credits in 2007, 2008, or 2009
- If a project with Housing Credits allocated under AHFA’s 2007 or 2008 low-income housing allocation plans does not have syndicated Housing Credits, the project owner will be required in the application for TCAP funds to return all existing allocations of 2007 or 2008 Housing Credits. **Submitting an application and returning 2007 and/or 2008 Housing Credits does not guarantee receipt of TCAP or any other funds.** See “Selection Criteria” below.
- If a project (a) has a competitive allocation of Housing Credits under AHFA’s 2009 low-income housing tax credit allocation plan, (b) has an allocation of tax credits under the Gulf Opportunity Zone Act of 2005 (“GO Zone Credits”), or (c) has any other allocation of Housing Credits that was not required to be returned at the time of the owner’s application for TCAP funds, the project owner will be required to agree in the application to return its existing allocation of such Housing Credits or GO Zone Credits in whatever

amount is determined by AHFA, up to 100%, if the project's application for TCAP funds is successful.

- Evidence satisfactory to AHFA that the applicant has made a good faith effort to secure an adequate equity commitment.
- All applicants must be in good standing with AHFA and all applicable regulations.
- All TCAP applicants must be able to meet the environment review process.
- All TCAP applicants must be able to meet all Davis Bacon requirements.
- All TCAP applicants must be able to meet all fair housing and non-discrimination requirements.
- All applicants must meet Housing Credit and financial feasibility requirements.
- The project must not have engaged in any choice-limiting action, as defined by HUD.
- AHFA will not consider requests from applicants that could secure syndication for equity for \$.86 or more for the original allocation of Housing Credits from AHFA.

*Return of Existing Credits.* In general, AHFA expects to require the return of existing credits in a manner that maximizes utilization of all of the State of Alabama's TCAP and Exchange Program funds for those projects that qualify for allocation under AHFA's TCAP or Exchange Program allocation plans.

AHFA will announce the dates for taking requests/applications for TCAP funds.

### **Selection Criteria**

**AHFA will award TCAP funds based upon a competitive process by which all applicants are scored objectively according to the criteria specified in this document. Efforts to influence this process through the aid of lobbyists or other sources would be futile. Action of this type would be a violation of the allocation plan for TCAP funds and could subject offenders to civil or criminal liability.**

Through a point scoring system, AHFA will award points to projects that best meet the priority of moving forward. AHFA encourages the participation of equity providers by giving a priority to applicants that were able to secure an equity commitment for the original allocation of Housing Credits but due to equity pricing are unable to complete the project. Applicants that could not secure equity or declined to sign a commitment letter will be given a lower priority. AHFA will fill the gap of financing with TCAP funds, but only to a level necessary to achieve financial feasibility based upon AHFA's underwriting criteria. AHFA will evaluate each request for funds to determine which projects should receive TCAP funds based on the project's funding sources and the progress of the applicant's project.

***All applications for TCAP funds, regardless of final score, are subject to the availability of funds and to the ability of the applicant's project to meet the required regulations for the Exchange Program (where applicable), for Housing Credits (where applicable) and the TCAP.***

***Regardless of strict numerical ranking, the scoring does not operate to vest in an applicant or project any right to a reservation or allocation of TCAP funds in any amount. AHFA will in all instances reserve and allocate TCAP funds consistent with sound and reasonable judgment, prudent business practices and the exercise of its inherent discretion.***

## **Point Scoring System**

### ***Points Gained (Maximum of 60 points)***

#### *Equity (Maximum 20 points)*

20 points will be given to projects that have closed a partnership agreement with a Housing Credit investor. The agreement must be for a minimum of \$.50 and no more than \$.85 for the original allocation of Housing Credits from AHFA.

15 points will be given to projects that have an equity commitment from a Housing Credit investor. The commitment must be for a minimum of \$.50 and no more than \$.85 for the original allocation of Housing Credits from AHFA.

10 points will be given to projects that do not have an equity commitment with a Housing Credit investor and can provide written proof of rejection of the syndication of Housing Credits from at least three Housing Credit investors.

#### *Construction (Maximum 25 points)*

25 points will be given to projects that have completed construction and have a fully executed partnership agreement with a Housing Credit investor. The agreement must be for a minimum of \$.50 and no more than \$.85 for the original allocation of Housing Credits from AHFA.

20 points will be given to projects that have completed construction and do not have a Housing Credit investor due the equity provider breaching or terminating an executed syndication commitment.

15 points will be given to projects that have closed a construction loan and started construction on the project. Commencement of construction will be confirmed by evidence of construction draws funded by the construction lender.

10 points will be given to projects that have closed a construction loan but have not started construction.

5 points will be given to projects that have a construction loan commitment from a financial lending institution.

#### *Ready to Proceed (Maximum of 15 points)*

5 points will be given to projects that have a recorded deed to the property or have entered into an acceptable long-term lease with a term which began on or before date of the TCAP application.

5 points will be given to projects that have final stamped plans and specifications.

5 points will be given to projects that have secured building permits.

***Points Lost (Maximum of 25 plus missing item deductions)***

5 points will be deducted for projects that received an allocation outside of AHFA's competitive cycle.

10 points will be deducted for projects that have made changes to the original credit application that was approved for funding without AHFA's approval.

10 points will be deducted for project owners that have projects that are out of compliance with AHFA's policies and regulations.

1 point will be deducted for each missing or incomplete item in the application.

In the event of a tie the projects will be put into an order of preference by the following criteria:

1. 2007 competitively awarded Housing Credits
2. 2008 competitively awarded Housing Credits
3. 2007 competitively awarded GO Zone Credits (with qualifying Housing Credits)
4. 2008 competitively awarded GO Zone Credits (with qualifying Housing Credits)
5. 2007 awarded out-of-cycle Housing Credits
6. 2008 awarded out-of-cycle Housing Credits
7. 2009 competitively award Housing Credits
8. Any project receiving Tax Exempt Bond credits with a qualifying award of Housing Credits

If there still remains a tie, AHFA will fund the project that has the earliest submission date as evidenced by the time and date stamped by AHFA.

***The applicant must provide documentation of all scoring items satisfactory to AHFA.***

**Application Fees**

AHFA will not charge an application fee.

**Asset Management Fee**

*Amount of Asset Management Fee.* AHFA will be required to perform asset management on projects funded with TCAP funds. AHFA will charge a reasonable asset management fee on a per-unit basis not to exceed AHFA's actual costs for providing asset management services. Projects that have syndicated Housing Credits with a Housing Credit investor that will perform asset management services may be charged a rate less than projects that do not have syndicated Housing Credits. For projects that receive TCAP funds and do not have syndicated Housing Credits, all first year asset management fees will be due on or before the placed in service date. All unpaid fees will be considered a non-compliance issue for purposes of all AHFA programs and will constitute a default under the TCAP loan documents.

*Prepayment of Asset Management Fee.* In addition to the Earned Developer Fee Holdback and other reserves, each project owner that receives TCAP funds for any portion of a project's allocated Housing Credits (i.e., projects that combine TCAP funds with syndicated Housing Credits) will be required to deposit, in a deposit account controlled by AHFA, an amount equal to the aggregate asset management fees that will become due to AHFA during the project's Compliance Period. The prepaid asset management fee will be due and payable in full on or before the placed in service date. AHFA will apply the prepaid amounts against all asset management fees (or other amounts due to AHFA) as and when due.

### **Owner Caps**

No owner shall receive TCAP funds for more than three projects that do not have syndicated Housing Credits, which includes projects funded in the 2007, 2008, and 2009 application cycles; provided, however, that if AHFA has made allocations of TCAP funds to all eligible projects and less than 100% of the State of Alabama's TCAP funds have been allocated due to application of the foregoing cap, AHFA reserves the right to award TCAP funds to more than three projects owned by the same owner that do not have syndicated Housing Credits.

### **Earned Developer Fee Holdback**

AHFA will require each project owner or developer that receives TCAP funds for 100% of a project's allocated Housing Credits (i.e., projects with no syndicated Housing Credits) to put at least 1/2 of the 15% developer fee in a cash deposit account controlled by AHFA. 100% of the holdback amount will be deposited in this account at the placed in service date. The holdback amount will be released to the project owner in equal, annual installments during each year of the Compliance Period, as defined above, if there are no non-compliance issues during the year. The holdback amounts released annually net of any unpaid fees or other amounts owed to AHFA.

### **TCAP Reserve Requirements**

*Operating Reserves.* Projects that receive TCAP funds must comply with the operating and replacement reserve requirements contained in the applicable year's Allocation Plan for Low-Income Housing Tax Credits and/or Action Plan for HOME Investments Partnership Funds, except as modified in the following paragraph.

*Replacement Reserve Modification.* AHFA will require each project that receives TCAP funding to fund its replacement reserve account on or before the closing date of the TCAP permanent loan in an amount equal to one year of AHFA's replacement reserve requirement.

All reserve accounts must be cash deposits. No letters of credit will be allowed to cover any reserve requirements.

### **Financial Feasibility**

AHFA will determine which funds and how much funds will be allocated to each project. AHFA will only award the amount of funds necessary to make a project financially feasible.

### **Progress Requirements After Commitment of Funds**

From the date of the commitment of funds, each applicant has progress requirements that must be met in order to meet the required time for the completion of the project and disbursement of funds. **Failure to comply with any one of the items may cause the commitment to be terminated.** Outlined below are the time constraints set forth in which to obtain the following items:

- 1.) Within 15 days of the date of the Commitment Letter, the applicant must:
  - (i.) Submit owner's Certificate of Existence from the Secretary of State (must be dated prior to execution of the commitment letter).
  - (ii.) Submit the original executed commitment letter from AHFA acknowledging acceptance of the terms and conditions of TCAP.
  - (iii.) Return any allocated 2009 Housing Credits or GO Zone Credits that AHFA has required to be returned under the terms of the TCAP application.
  
- 2.) Within 30 days of the date of the Commitment Letter, the applicant must:
  - (i.) Submit a legally binding commitment for construction and permanent financing which details the specific terms of funding and repayment and is not subject to further approval of the creditor's board or credit committee. ***If there is no syndication of Housing Credits, the construction loan must be for 100% of the cost to complete the project.***
  - (ii.) If applicable submit an executed binding commitment for syndicated Housing Credits, in form and content acceptable to AHFA.
  - (iii.) If the project is to be financed by HUD, submit evidence that an application for a Site Appraisal and Market Analysis (SAMA) or Multifamily Accelerated Process (MAP) has been made.
  - (iv.) If applicable submit the Syndicator Relevant Experience Form in an AHFA provided form.
  
- 3.) Within 60 days of the date of the Commitment Letter, the applicant must:
  - (i.) Provide final stamped plans and specifications.
  - (ii.) Provide a site specific soils report.
  - (iii.) Provide an ALTA/ACSM Certified Survey bound within the plans and specifications.
  - (iv.) Provide standard form of agreement between owner and architect.
  - (v.) Provide the utility letters.
  
- 4.) Within 90 days of the date of the Commitment Letter, the applicant must:
  - (i.) Provide certified organizational documents.
  - (ii.) Provide a copy of the complete to-be-built appraisal.
  - (iii.) Provide construction cost estimate summary.
  - (iv.) Provide detailed construction schedule.
  - (v.) Provide standard form of agreement between owner and contractor (AIA form)
  
- 5.) Within 120 days of the date of the Commitment Letter, the applicant must:
  - (i.) Submit a copy of executed construction note or agreement.
  - (ii.) Take full possession of the site as evidenced by warranty deed or acceptable long-term lease.
  - (iii.) Provide original recorded Declaration of Land Use Restrictive Covenants.
  - (iv.) Submit a copy of the building permit.
  - (v.) Provide proof of construction commencement evidenced by copy of Owner's Notice to Proceed to project's General Contractor.
  - (vi.) Provide Title Insurance Policy.

(vii.) Provide IRS Form #SS-4 Assignment of Employer Identification Number.

- 6.) **According to HUD guidelines, each project owner must spend 75% of awarded TCAP funds not later than February 16, 2011 and spend 100% of awarded TCAP funds not later than February 16, 2012. AHFA HAS NO AUTHORITY TO EXTEND THESE STATUTORY DEADLINES, AND FAILURE TO MEET THESE SPENDING DEADLINES WILL RESULT IN OWNER'S LOSS OF TCAP FUNDING. Project owners are urged to provide all items to AHFA as soon as possible in order to facilitate meeting these funding guidelines.**

Should the following actions occur, AHFA's commitment of TCAP funds may be terminated:

- 1.) Site change;
- 2.) Change in ownership--a change in the parties involved in the ownership entity (e.g., addition of a new general partner/member or removal of an existing general partner/member) without prior written consent of AHFA. Examples of situations in which consideration may be given for a change in ownership include, but are not limited to: death or bankruptcy. Any person or entity, including syndicators, that attempts to circumvent this requirement, may be subject to debarment from all AHFA programs;
- 3.) Change in syndication structure--a change in the role of the syndicator or in the distribution of funds/allocation to others through syndication as stated in the application without prior written consent of AHFA;
- 4.) Change in unit design, square footage, unit mix, number of units, number of buildings, etc., without prior written consent of AHFA, which will be granted primarily when the change is required by local regulatory codes;
- 5.) Change in the general contractor without prior written consent of AHFA;
- 6.) Change in the management company without prior written consent of AHFA;
- 7.) Change in the architect without prior written consent of AHFA;
- 8.) Instances of excessive or flagrant non-compliance on applicant's existing projects;
- 9.) Any staff or development team member (listed in the application) who has instances of excessive or flagrant non-compliance with AHFA, Housing Credit, HOME, or Tax Exempt Bond regulations on existing projects;
- 10.) Any staff or development team member (listed in the application) who is presently debarred, suspended, proposed for debarment or suspension, declared ineligible or voluntarily excluded from any transactions or construction projects involving the use of federal funds or Housing Credits;
- 11.) Applicant has a project with AHFA that is in foreclosure or has been foreclosed;
- 12.) Any material adverse change relating to the project or owner; and/or
- 13.) Any AHFA fee returned due to insufficient funds.

The above list of negative actions is not all-inclusive. The commitment letter itself will list other necessary requirements. AHFA may terminate the commitment if any factual information supplied in connection with the project is fraudulent, misleading, or materially incorrect. Determination of whether information is fraudulent, misleading, or materially incorrect will be determined by AHFA in its sole discretion.

### **Reallocation of TCAP Funds**

In the event a project fails to meet a progress requirement or violates another requirement that causes its TCAP funds to be returned, AHFA will reallocate the funds to a qualifying project that did not receive

TCAP funds or a project that received TCAP funds and has met all progress requirements and needs additional funds.

### **Change in or Denial of TCAP Funds**

The evaluations listed below may result in a possible change in the amount of TCAP funds allocated to a project or denial of the total commitment altogether due, but not limited to, one of the following reasons:

- 1.) Information in the application submitted is determined to be incorrect or fraudulent;
- 2.) Changes in the actual cost of the project;
- 3.) Applicant obtains additional subsidies or financing other than those disclosed in the application;
- 4.) Applicant obtains additional syndication proceeds other than those disclosed in the application;
- 5.) Subsequent governmental regulations; and/or
- 6.) Applicant's failure to notify AHFA promptly of any material adverse changes in the original application. Material adverse changes include, but are not limited to, applicant's loss of site control, rights of way, ingress and egress, adverse change in the financial condition of the applicant, and applicant's inability to perform tasks proposed in the application by the deadline set by the applicant and further set or agreed to by AHFA.

### **Compliance Monitoring**

These compliance monitoring procedures apply to all buildings placed in service in Alabama that have received allocations of TCAP funds. The compliance monitoring procedures and requirements are as follows:

- A. AHFA will verify that the owner of a low-income housing project is maintaining records for each qualified low-income building in the project. These records must show, for each year in the Compliance Period, the information required by the record-keeping provisions contained in Reg. §1.42-5(b)(1), incorporated herein by reference.
- B. AHFA will verify that the records documenting compliance with Section 42 for each year as described in Paragraph A above are retained for at least six years after the due date (with extensions) for filing the federal income tax return for that year. AHFA will also verify that the records for the first year of the credit period are being retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period of the building.
- C. AHFA must receive from the owner of a low-income housing project written certification, under penalty of perjury, as provided in Reg. §1.42-5(c)(1), TCAP, Exchange Program and other applicable HOME Regulations, which certification provisions are incorporated herein by reference. Owners if applicable must also supply a copy of the Schedule A (Form 8609) Annual Statement filed with the federal income tax return of the ownership entity. Both of these documents are to be submitted annually by May 1.
- D. AHFA will review the certifications described in Paragraph C above for compliance with the requirements of Section 42, TCAP and Exchange Program.

- E. AHFA will inspect at least 20% of the low-income housing projects each year and will inspect the low-income certification, the documentation the owner has received to support that certification, and the rent records for each low-income tenant in at least 40% of the low-income units in those projects. AHFA will determine which tenants' records are to be inspected, in accordance with Reg. §1.42-5(c)(2)(iii). AHFA will also conduct a physical inspection of at least 20% of the low-income units in projects selected for tenant file review.
- F. The owner must allow AHFA to perform an on-site inspection of any low-income building in the project through the end of the Compliance Period. This inspection is separate from any review of tenant files under Paragraph E and will include habitability requirements.
- G. AHFA will promptly notify the owner in writing if AHFA does not receive the certification described in Paragraph C, or is not permitted to inspect and review as described in Paragraphs D, E, and F, or otherwise discovers that the project does not comply with Section 42. In such event, the owner will be allowed a correction period to supply missing documentation or to correct noncompliance. This correction period begins the earlier of: (1) the date the notification is mailed or (2) the date of the inspection.
- H. During the Compliance Period, the owner will furnish to AHFA within 90 days of the close of each fiscal year a consolidated statement of financial position, an income and expense statement, and a rent roll of the project for that fiscal year. These items are to be certified by the owner.
- I. Compliance with requirements of Section 42 is the responsibility of the owner of the building for which the Housing Credit is allowable. AHFA's obligation to monitor for compliance with the requirements of Section 42 does not make AHFA or the State of Alabama liable to any owner or to any shareholder, officer, director, partner, member or manager of any owner or of any entity comprising any owner for an owner's non-compliance therewith.
- J. Owners and managers must attend AHFA's compliance training within 150 days after the earlier of (a) the closing of a TCAP construction loan or (b) initial disbursement of Exchange funds from AHFA.
- K. Failure to comply with all of the accessible and adaptive design and construction requirements of the Fair Housing Act may result in loss of TCAP funds.
- L. Provide AHFA with any and all information requested for the purpose of meeting all reporting or public disclosure requirements imposed by Treasury, HUD, Governor's Office, and any other governmental agencies.