



American Recovery and Reinvestment Act  
Implementation Strategy

Draft Date: May 18, 2009

## Overview

The American Recovery and Reinvestment Act of 2009 (Recovery Act or the Act) was signed into law on February 17, 2009. The Recovery Act contains a number of funding mechanisms targeted at stimulating economic activity throughout the country in a broad array of categories. Within the Act, there are two provisions directly targeted to the Low Income Housing Tax Credit (LIHTC) program, including:

- **The Tax Credit Assistance Program (TCAP):** an allocation of additional “Home-Like” funds designed to provide tax credit developments with gap financing; and,
- **The Tax Credit Exchange Program (TCEP):** An exchange provision that allows housing credit agencies to monetize housing tax credits for up to 85% of the 10 year credit amount.

As the state's housing credit agency, the Colorado Housing and Finance Authority (CHFA) is responsible for overseeing the implementation and administration of these programs and will have direct reporting requirements to a number of state and federal governmental agencies.

In general, CHFA's primary objective is to award these funds in a manner that is consistent with the spirit and intent of Congress and with the low-income housing tax credit (LIHTC) Qualified Allocation Plan. In our view that means deploying the stimulus funds into the system as quickly and efficiently as possible, while maintaining the same level of fiscal responsibility and oversight required in awarding tax credits.

CHFA's top priority will be to assist those “shovel ready” projects that have already received a reservation of tax credits but have stalled due to the current economic conditions and/or the drop in equity pricing in the tax credit markets. In addition, CHFA recognizes that the LIHTC program has been successful because of the vital partnership between the public and private sectors, and thus will seek to preserve these partnerships by encouraging developers to keep equity providers invested in the projects whenever possible.



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American Recovery and Reinvestment Act  
Tax Credit Assistance Program  
(TCAP)

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## Tax Credit Assistance Program (TCAP)

### Federal Eligibility Criteria

By statute, projects eligible to receive TCAP assistance are rental housing projects that received or will receive an **award** of LIHTCs under Section 42(h) of the Internal Revenue Code of 1986, as amended, (IRC) (26 U.S.C. 42), during the period from October 1, 2006 to September 30, 2009 (federal fiscal years 2007, 2008 or 2009), and require additional funding to be completed and placed into service in accordance with the requirements of Section 42 of the Internal Revenue Code (Section 42). Projects awarded LIHTCs that will also receive bond financing are eligible to receive TCAP funds.

- **Award of Credit** - The award of credit is defined as the date by which a reservation of 9% credit or an initial determination of 4% non-competitive credit is received. The date the status report announcing the award is posted on the CHFA website is considered to be the date of the award.

### Competitive Award Process

TCAP funds will be distributed competitively *and* pursuant to CHFA's Qualified Allocation Plan (QAP) as required by the Recovery Act. As part of the competitive process, CHFA will give priority to projects that are expected to be completed within three years of the enactment date of the Recovery Act (before February 16, 2012).

### Minimum Threshold Criteria

All Projects will be required to submit an updated application indicating the current financing gap along with a narrative describing the reason for the financing gap and the need for TCAP funds. As part of the required competitive award process, all applicants must meet the following threshold criteria in order to qualify for consideration of TCAP funds:

1. Must have received an award of credit (as defined above) between October 1, 2006 and September 30, 2009
2. Must demonstrate the ability to expend 75 percent of the TCAP funds by February 16, 2011 and 100 percent of TCAP funds by February 16, 2012;
3. Must demonstrate the ability to meet or be able to meet certain Federal Cross Cutting Requirements\* described in Appendix A;

4. Must demonstrate that the project's affordability mix that was the basis in whole or in part to receiving a reservation or initial determination of credit has not changed;
5. Must demonstrate that the project continues to meet the QAP's Criteria for Approval including: marketability, overall financial feasibility and viability, experience of the development team, and no outstanding noncompliance for existing projects of development or management team.

### **Choice-Limiting Activity Restrictions**

\*The Federal Cross Cutting Requirements are those typically associated with HOME, CDBG and other federal funds. These requirements include, among other things, compliance with the National Environmental Policy Act (NEPA) which provides that once a developer applies for TCAP funds, committing TCAP funds to or undertaking any "choice-limiting" activity prior to successful completion of the environmental clearance review is prohibited. This includes any activity that will result in a physical change and/or acquisition, including leasing, or disposition of real property. Please refer to Appendix A for additional information.

### **Additional Competitive Selection Criteria for TCAP Funds**

In addition to the eligible and threshold criteria, projects that meet one or more of the follow criteria will be considered priorities for approval of TCAP funds:

- Projects that demonstrate the ability to close in 30-60 days if receive an award of Recovery Act stimulus funds
- Projects that already have federal cross cutting requirements (as described in Appendix A) in place
- Projects with financing gaps due to the current equity market and other economic conditions beyond the control of the developer
- Projects that can demonstrate the ability to close or complete construction the soonest (if beyond 60 days)
- Projects that have a commitment with an investor
- Projects that will stimulate the economy by creating jobs

**Application Deadlines** - Applications will be received beginning on a date specified by CHFA once the applications to administer Recovery Act funds have

been approved by the U.S. Departments of HUD (HUD) and Treasury (Treasury). Timeframes for submitting applications for Recovery Act funds will be established by CHFA and incorporated into this Implementation Plan and posted on CHFA's website once determined.

### **Changes to Projects**

Developers that have previously received a tax credit award must identify any material changes to the project as determined at CHFA's sole discretion, from the time the preliminary tax credit application was submitted as part of their application/request for Recovery Act funds. Such changes include changes to the site, scope, costs or design, and the developer must have received prior approval from CHFA for the changes. Changes in a project's characteristics that were the basis in whole or in part to receiving a reservation or initial determination of credit may result in the project being ineligible for TCAP funds.

### **Application Review**

CHFA staff will re-evaluate a project to determine whether it still meets the requirements of the QAP including but not limited to: marketability, financial feasibility and viability, strength of the development team, no outstanding noncompliance for existing projects of development or management team, and minimum proforma underwriting standards.

### **Site Evaluation**

After review of the TCAP application, CHFA staff may conduct a site visit if determined to be necessary to evaluate the continued suitability of the site. If performed, site visits include the evaluation of the following: proximity to schools, shopping, public transportation, medical services, parks/playgrounds; marketability; conformance with neighborhood character and land use patterns; site suitability regarding slope, noise (e.g., railroad tracks, freeways), environmental hazards, flood plain or wetland issues.

### **Application Review Meeting**

Upon submission by the applicant, and review by CHFA of the above information, CHFA staff will contact the applicant to discuss any issues or concerns with the information submitted or with the proposed site. In order for award decisions to be made in as timely a manner as possible, the applicant will have ten (10) business days to address any concerns or issues. If the requested information is not received by the deadline, staff decisions regarding a recommendation for an award will be made using only the information already submitted and could result in the denial of the application.

## **Award of TCAP**

After review of the items above and any additional requested information, staff will make a recommendation to the CHFA Tax Credit Committee for approval. Committee members will consist of the Chief Operating Officer, the Director of Commercial Lending, the Director of Asset Management, the Director of Marketing and Strategic Development, the Manager of Multifamily Loan Production, the Manager of Special Assets, the Manager of Program Compliance and, as a non-voting member, the General Counsel or assigned designee.

Projects that receive approval from the CHFA Executive Director or delegated designee will be given an award of TCAP funds. TCAP awards are valid so long as project owners continue to comply with all TCAP requirements and deadlines. Projects that do not comply with all TCAP requirements and deadlines or appear to be at risk of not complying with all TCAP requirements and deadlines will receive a deficiency letter from CHFA describing the nature of the deficiency along with actions and deadlines for curing the deficiency. Projects that do not cure the deficiencies to the satisfaction of CHFA by the established deadlines will be subject to the remedies described in the TCAP written agreement which may include a full or partial recapture of TCAP award funds.

## **Eligible Uses of Funds**

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

## **Fees**

As allowed under the Recovery Act, CHFA will charge reasonable fees to cover the following costs:

- CHFA's administrative costs of the TCAP application, review and award process
- CHFA's asset management of the project as required by the Recovery Act

These fees have yet to be determined and will be based upon any costs above and beyond the normal reservation, allocation and compliance activities for tax credits. Once determined, the fee amounts will be made available to the public prior to taking applications. These fees cannot be paid from Recovery Act funds.

## **TCAP Controlling Documents, Disbursements and Expenditure Deadlines**

**Written Agreements** – CHFA will execute a legally binding written agreement with each project owner. The written agreement, *referred to in the HUD notice as the TCAP Written Agreement*, will set forth all of the TCAP program and crosscutting federal grant requirements applicable to the funding, and will make these requirements enforceable through the recordation of a restriction that is binding on all owners and successors, e.g., a covenant. 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. CHFA will retain a copy of the executed TCAP Written Agreement and make these agreements available for HUD review, upon request. The TCAP Written Agreement will also provide for remedies in the event of loan default or other noncompliance. These remedies may include the following:

- Declaring the development team and/or management agent as not in good standing
- Changing the structure of the ownership entity, including adding or removing members
- Replacing the management agent
- Initiating foreclosure proceedings, and
- Other remedies as determined by HUD or CHFA

**TCAP Funding Commitment** - CHFA will provide a TCAP Funding Commitment (Commitment) for a project that has received an award. The Commitment will specify the funding type and terms. Funds may be awarded as either a grant or a 'soft loan' with no interest or payments. The Commitment will also contain the conditions under which the funds will be disbursed including construction schedules. If an owner fails to expend TCAP funds according to the Commitment, CHFA will assess whether the delay will affect its ability to meet the federal deadlines. Depending upon the circumstances, CHFA may allow the owner an opportunity to remedy the situation.

If the construction or other delays will affect the project's and/or CHFA's ability to meet the federal deadlines, the Funding Commitment will immediately become null and void and CHFA will take the necessary steps to redistribute the funds to a another eligible project. These steps will include the following:

- Initiating foreclosure proceedings to recoup funds already expended, and
- Redistribute the remaining funds and/or recouped funds to other eligible projects based on the selection criteria of this Plan.

**Disbursement of Funds** -- The TCAP written agreement must be signed and dated by CHFA and the project owner before any TCAP funds are disbursed. Federal funds cannot be drawn from the U.S. Treasury in advance of the need to

pay an eligible cost. Consequently, TCAP funds cannot be drawn from the U.S. Treasury and placed in escrow or advanced in lump sums to project owners. Once funds are drawn from CHFA's U.S. Treasury account, they must be expended for an eligible TCAP cost within 3 days.

**Expenditure Deadlines** - As required under the Recovery Act, CHFA must comply with the following deadlines for both commitment and expenditures of TCAP funds:

- Commit not less than 75 percent of its TCAP grant within one year of the enactment of the Recovery Act 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 Recovery Act by February 16, 2011; and
- Expend 100 percent of its TCAP grant within three years of the enactment of the Recovery Act by February 16, 2012.

CHFA will track and report to HUD on a regular basis in HUD's Integrated Disbursement and Information System (IDIS) its progress in committing and expending TCAP funds. Any TCAP funds not expended by the end of the three-year performance period will be recaptured by HUD.

### **Program Income**

Program Income -- means gross income received by CHFA generated by the use of TCAP funds during the grant period. This includes, but is not limited to, principal and interest from a loan made with TCAP funds, or other income or fees received from project owners in connection with TCAP funds, and interest earned by CHFA on program income before its disposition. CHFA must record program income receipts in HUD's IDIS and use them in accordance with the TCAP requirements. CHFA must expend all program income for eligible TCAP costs before additional appropriated TCAP grant funds are drawn from the U.S. Department of Treasury. CHFA must continually monitor the amount of program income on-hand or anticipated, and be aware of these amounts when assessing their progress towards meeting the commitments and expenditure deadlines for TCAP funds.

### **Asset Management**

CHFA will perform asset management functions, or contract for performance of these services, at the owner's expense, to ensure compliance with Section 42 and the long term viability of projects funded by TCAP. CHFA will notify owners of the fee amounts. Costs associated with asset management are administrative costs and are not eligible to be paid with TCAP funds.

## **Redistribution of TCAP Funds**

CHFA is responsible for redistributing its TCAP funds to ensure compliance with the commitment and expenditure deadlines established by the Recovery Act. If a project owner fails to expend TCAP funds timely, CHFA will assess whether the delay will affect the ability to meet the TCAP deadlines, and will take the necessary steps to redistribute the funds to another eligible project . The TCAP written agreement and TCAP Funding Commitment will specify a schedule for the expenditure of TCAP funds and outline the circumstances under which TCAP funds will be recaptured if the project owner fails to meet the schedule. CHFA will closely monitor the progress of each TCAP project to ensure that it will meet TCAP expenditure deadlines.

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American Recovery and Reinvestment Act  
Tax Credit Exchange Program  
(TCEP)

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## **Tax Credit Exchange Program**

### **Overview**

The Tax Credit Exchange Program (TCEP) allows state housing credit agencies the option of exchanging eligible portions of the state's housing credit ceiling for cash grants. Grants can then be used by the agency to make sub-awards to qualified projects, specifically for the construction or acquisition and rehabilitation of qualified low income buildings.

### **Funding Availability**

The Recovery Act provides a specific formula for determining the amount of Tax Credit Exchange funds that are available in each state. The funds come from Treasury to the housing credit agency. Please note that individual projects and developers do not have any entitlement under the law to receive exchange funds. Rather, sub-awards are made to projects based on a process to be established by the housing credit agency.

According to the formula, the Treasury Secretary is authorized to make a grant to each State HFA in the maximum sum of 85% of the following amounts:

- 100% of any prior year credit that is returned in calendar year 2009
- 100% of any unused credit from the 2008 credit ceiling allocation
- 40% of the 2009 state credit ceiling
- 40% of any credit received from the National Credit Pool

then multiplied times 10.

### **Federal Eligibility Criteria**

By statute, eligible recipients include qualified low income projects as defined in Section 42 with or without a tax credit allocation. For projects without an allocation, state HFAs must make a determination that the use of exchange funds will increase funds to the state for affordable housing. For projects with an allocation, project developers must demonstrate good faith efforts to obtain investment commitments for the credits. TCEP funds may be used in conjunction with the TCAP funds, at CHFA's sole discretion.

### **Tax Credit Exchange Process**

Since CHFA forward reserves it's annual credit ceiling, only developers who received reservations of credit in 2008 from CHFA's 2009 credit ceiling may apply

to return all or a portion of their credits. The exchange request must be accompanied by a completed Return of Tax Credits form which will be provided by CHFA. Developers will be required to certify on the form that they are voluntarily and irrevocably returning the credits and they have made good faith efforts to obtain investments for the credits.

Exchanging credits does not entitle developers to receive exchange grants for their projects. All potential candidates for TCEP grants must submit an application for TCEP grants which will be subject to review and approval by CHFA. CHFA will not award any more Recovery Act funds for a project than are necessary to ensure its financial feasibility and its viability as a qualified low income housing project throughout the 15-year compliance period. For example, a project that receives an award of TCEP funds will only receive the portion of the funds exchanged that CHFA determines is necessary for the project.

### **No Penalty for Voluntarily Returning Credits**

Developers will not be penalized if they voluntarily return an award of credit once they have demonstrated to the satisfaction of CHFA that they have made good faith efforts to obtain equity. However, developers who are eventually required to return their credit may not re-apply for credits for a minimum of 6 months.

### **Good Faith Efforts to Obtain Investments for Credits**

Documentation of good faith efforts must be made in order to qualify for returning credits and obtaining grants in lieu of credits. Documentation may include:

- Copies of correspondence including emails with all investors and syndicators the applicant has contacted
- A narrative detailing the efforts to obtain investments for the credits which should indicate that reasonable efforts have been made.

CHFA will in its sole discretion determine whether good faith efforts have been made. CHFA staff may also follow up with syndicators and investors to confirm whether good faith efforts have been made.

### **Minimum Threshold Criteria**

As part of the competitive award process, all applicants must submit an updated application indicating the current financing gap along with a narrative describing the reason for the financing gap and the need for TCEP funds. Additionally, all applicants must meet the following threshold criteria in order to qualify for consideration of TCEP funds:

1. Must have received a reservation or initial determination of credit;

2. Must demonstrate the ability to expend 100 percent of the TCEP funds by December 31, 2010 and place the buildings in service by December 31, 2011.
3. Must demonstrate that good faith efforts have been made to obtain investments of credits;
4. Must demonstrate that the project continues to meet the QAP's Criteria for Approval including: marketability, overall financial feasibility and viability, experience of the development team, and no outstanding noncompliance for existing projects of development or management team;
5. Must demonstrate that the project's affordability mix that was the basis in whole or in part to receiving a reservation or initial determination of credit has not changed;

### **Additional Competitive Selection Criteria for TCEP Funds**

In addition to meeting the eligibility and threshold criteria, projects that meet one or more of the follow criteria will be considered priorities for approval of TCEP funds:

- Projects that received reservations of 2009 9% competitive credit in 2008
- Projects that demonstrate the ability to close in 30-60 days if receive an award of Recovery Act stimulus funds
- Projects with financing gaps due to the current equity market and other economic conditions beyond the control of the developer
- Projects that can demonstrate the ability to close or complete construction the soonest (if beyond 60 days)
- Projects that have a commitment with an investor for a portion of the credits
- Projects that will stimulate the economy by creating jobs

### **Changes to Projects**

Developers that have previously received a tax credit award must identify any material changes to the project as determined at CHFA's sole discretion, from the time the preliminary tax credit application was submitted as part of their

application/request for Recovery Act funds. Such changes include changes to the site, scope, costs or design, and the developer must have received prior approval from CHFA for the changes. Changes in a project's characteristics that were the basis in whole or in part to receiving a reservation or initial determination of credit may result in the project being ineligible for TCEP funds.

### **Application Deadlines**

Applications will be received beginning on a date specified by CHFA once the applications to administer Recovery Act funds have been approved by HUD and Treasury. Timeframes for submitting applications for Recovery Act funds will be established by CHFA and incorporated into the Implementation Plan and posted on CHFA's website once determined.

### **Application Review**

CHFA staff will re-evaluate a project to determine whether it still meets the requirements of the QAP including but not limited to: marketability, financial feasibility and viability, strength of the development team, no outstanding noncompliance for existing projects of development or management team, and minimum proforma underwriting standards.

### **Site Evaluation**

After review of the TCEP application, CHFA staff may conduct a site visit if determined to be necessary to evaluate the continued suitability of the site. If performed, site visits include the evaluation of the following: proximity to schools, shopping, public transportation, medical services, parks/playgrounds; marketability; conformance with neighborhood character and land use patterns; site suitability regarding slope, noise (e.g., railroad tracks, freeways), environmental hazards, flood plain or wetland issues.

### **Application Review Meeting**

Upon submission by the applicant, and review by CHFA of the above information, CHFA staff will contact the applicant to discuss any issues or concerns with the information submitted or with the proposed site. In order for award decisions to be made in as timely a manner as possible, the applicant will have ten (10) business days to address any concerns or issues. If the requested information is not received by the deadline, staff decisions regarding a recommendation for an award will be made using only the information already submitted and could result in the denial of the application.

## **Award of TCEP**

After review of the items above and any additional requested information, staff will make a recommendation to the CHFA Tax Credit Committee for approval. Committee members will consist of the Chief Operating Officer, the Director of Commercial Lending, the Director of Asset Management, the Director of Marketing and Strategic Development, the Manager of Multifamily Loan Production, the Manager of Special Assets, the Manager of Program Compliance and, as a non-voting member, the General Counsel or assigned designee.

Projects that receive approval from the CHFA Executive Director or delegated designee will be given an award of TCEP funds. TCEP awards are valid so long as project owners continue to comply with all TCEP requirements and deadlines. Projects that do not comply with all TCEP requirements and deadlines or appear to be at risk of not complying with all TCEP requirements and deadlines will receive a deficiency letter from CHFA describing the nature of the deficiency along with actions and deadlines for curing the deficiency. Projects that do not cure the deficiencies to the satisfaction of CHFA by the established deadlines will be subject to the remedies described in the TCEP written agreement which may include a full or partial recapture of TCEP award funds.

## **Eligible Uses of Funds**

While CHFA staff is awaiting additional guidance from Treasury, it appears that TCEP funds may only be used for costs that are included in the 'eligible basis' of a project under Section 42. TCEP funds cannot be used for the administrative costs of CHFA including the cost of operating the program or monitoring compliance, and section 1604 of the Recovery Act specifically prohibits the use of Recovery Act funds for swimming pools.

## **Fees**

As allowed under the Recovery Act, CHFA will charge reasonable fees to cover the following costs:

- CHFA's administrative costs of the TCAP/TCEP application, review and award process
- CHFA's asset management of the project as required by the Recovery Act

These fees have yet to be determined and will be based upon any costs above and beyond the normal reservation, allocation and compliance activities for tax credits. Once determined, the fee amounts will be made available to the public prior to taking applications. These fees cannot be paid from Recovery Act funds.

## **TCEP Controlling Documents, Disbursements and Expenditure Deadlines**

**Written Agreements** – CHFA will execute one or more legally binding TCEP written agreements with each project owner. The written agreements, will set forth all of the TCEP program and requirements applicable to the funding, and will make these requirements enforceable through the recordation of a restriction that is binding on all owners and successors, e.g., a covenant. CHFA will retain a copy of the executed TCEP written agreements and make these agreements available for the Department of Treasury for review, upon request. The TCEP written agreements will also provide for recapture of TCEP funds in the event that the project is no longer considered a qualified low income project as defined by Section 42. Other remedies in the event of noncompliance may include the following:

- Declaring the development team and/or management agent as not in good standing
- Changing the structure of the ownership entity, including adding or removing members
- Replacing the management agent
- Initiating foreclosure proceedings, and
- Other remedies as determined by CHFA or defined by the Treasury

**Any amount subject to recapture becomes a debt owed to the United States payable to the General Fund of the Treasury and enforceable by all available means against any assets of the Owner.**

**TCEP Funding Commitment** - CHFA will provide a TCEP Funding Commitment (Commitment) for a project that has received an award. The Commitment will specify the funding type and terms. Funds will likely be awarded as a grant. The Commitment will also contain the conditions under which the funds will be disbursed including construction schedules. If an owner fails to expend TCEP funds according to the Commitment, CHFA will assess whether the delay will affect its ability to meet the federal deadlines. Depending upon the circumstances, CHFA may allow the owner an opportunity to remedy the situation.

If the construction delay will affect the project's and/or CHFA's ability to meet the federal deadlines, the Funding Commitment will immediately become null and void and CHFA will take the necessary steps to redistribute the funds to another eligible project. These steps will include the following:

- Initiating foreclosure proceedings to recoup funds already expended, and
- Redistribute the remaining funds and/or recouped funds to other eligible projects based on the selection criteria of this Plan.

**Disbursement of Funds** -- The TCEP written agreement must be signed and dated by CHFA and the project owner before any TCEP funds are disbursed. Federal funds cannot be drawn from the U.S. Treasury in advance of the need to pay an eligible cost. Consequently, TCEP funds cannot be drawn from the U.S. Treasury and placed in escrow or advanced in lump sums to project owners. Once funds are drawn from CHFA's U.S. Treasury account, they must be expended for an eligible TCEP cost within 3 days.

**Expenditure Deadlines** - As required under the Recovery Act, CHFA is required to comply with the following deadlines for expenditures of TCEP funds:

- Expend 100 percent of CHFA's TCEP funds by December 31, 2010;
- Demonstrate that all project owners have expended 100 percent of the TCEP funds by December 31, 2010; and
- Return any TCEP grant funds not used before January 1, 2011 to Treasury

### **Program Income**

Program Income -- means gross income received by CHFA generated by the use of TCEP funds during the grant period. This includes, but is not limited to, principal and interest from a loan made with TCEP funds, or other income or fees received from project owners in connection with TCEP funds, and interest earned by CHFA in excess of \$200 on program income before its disposition. CHFA must expend all TCEP program income for eligible TCEP costs before additional appropriated TCEP grant funds are drawn from the U.S. Department of Treasury. CHFA must continually monitor the amount of program income on hand or anticipated, and be aware of these amounts when assessing their progress towards meeting the commitments and expenditure deadlines for TCEP funds.

### **Asset Management**

CHFA will perform asset management functions, or contract for performance of these services, at the owner's expense, to ensure compliance with Section 42 and the long term viability of projects funded by TCEP. CHFA will notify owners of the fee amounts. Costs associated with asset management are administrative costs and are not eligible to be paid with TCEP funds.

### **Recapture of TCEP Funds**

CHFA is responsible for imposing conditions or restrictions, including a requirement providing for recapture, on any TCEP award so as to assure that the project remains a qualified low income project as defined in Section 42 during the 15-year

compliance period. CHFA will closely monitor the compliance of each TCEP project to ensure that it will meet TCEP requirements.

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Appendix A

Tax Credit Assistance Program (TCAP)  
Federal Cross-Cutting Requirements

## Overview

Based on HUD Notice CPD-09-03, TCAP funds are considered federal financial assistance and, therefore, are subject to federal compliance requirements applicable to such funds. Project owners and/or CHFA must comply with the following federal requirements:

**1. Fair Housing Act** (42 U.S.C. 3601-19) and implementing regulations at 24 CFR Part 100 and the regulations at 24 CFR Part 107 (Equal Opportunity in Housing).

**2. Title VI of the Civil Rights Act of 1964** (42 U.S.C. 2000(d)) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR Part 1.

**3. The Age Discrimination Act of 1975** (42 U.S.C. 6101-07) and implementing regulations at 24 CFR Part 146 "Nondiscrimination on the Basis of Age in HUD Programs or Activities Receiving Federal Financial Assistance."

**4. Affirmatively Furthering Fair Housing**

HUD has responsibility to affirmatively further fair housing in the programs it administers. To meet this obligation, CHFA must establish an affirmative fair housing marketing plan for its TCAP projects and require project owners 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 CHFA's affirmative marketing policy;
- Requirements and practices each owner must adhere to in order to carry out CHFA'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 CHFA and by owners to affirmatively market units and records to assess the results of these actions; and
- A description of how CHFA will annually assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.

**5. 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 and projects undergoing substantial rehabilitation, 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.) Substantial rehabilitation for a multifamily rental project is defined in Section 24 CFR 8.23 as a project with 15 or more units for which the alterations would equal more than 75 percent of the replacement cost for the facility.

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 or substantial rehabilitation 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.

For projects in which the rehabilitation would not be considered substantial, the Section 504 provisions are applicable only to the maximum extent feasible, i.e., not required if it would impose undue financial and administrative burden. See 24 CFR 8.23.

**6. National Environmental Policy Act (NEPA) and Related Laws**

TCAP funds may not be committed to a project before completion of the environmental review process.

The Environmental review process under the 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.” must be completed. CHFA or its designee will perform the environmental review.

Note: 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. Performing a choice-limiting action may disqualify a project from receiving any federal 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>.

If a federal environmental review has already been completed for a project, providing TCAP funds to the project may not require an additional environmental review. If another agency or department of the State performed an earlier environmental clearance, and neither the project nor the environmental conditions have changed since the previous review, then no new environmental clearance is required. See 24 CFR 58.35(b)(7).

- 7. The Lead-Based Paint Poisoning Prevention Act and the Residential Lead-Based Paint Hazard Reduction Act of 1992** and implementing regulations at 24 CFR Part 35 are applicable to housing that receives Federal assistance.
- 8. Davis-Bacon Prevailing Wages** Under section 1606 of Division A of the American Recovery and Reinvestment Act of 2009, contractors and subcontractors hired with Recovery Act funds are required to pay prevailing wages to laborers and mechanics in compliance with the Davis-Bacon Act. In the case of projects already under construction, it may be possible to obtain a determination, under 29 CFR 1.6(g), that Davis-Bacon requirements apply prospectively to the construction project, as of the date of the TCAP award. Labor Relations Specialists in HUD Field Offices are available to assist with questions related to these requirements.
- 9. “Anti-Lobbying” Restrictions** (Restrictions on lobbying in 31 USC 1352 and implementing regulations at 24 CFR Part 87 “New Restrictions on Lobbying”.) This statute prohibits 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.

**10. The Drug-Free Workplace Act of 1988** (41 U.S.C. 701 et seq., as implemented at 24 CFR Part 21 "Government-Wide Requirements for Drug-Free Workplace (Grants)".) This statute prohibits the receipt of a grant from any Federal agency unless the recipient agrees to provide and certify to a drug-free workplace.

**11. OMB Regulations and Circulars** The following government-wide requirements are applicable to HUD grant programs, pursuant to Executive Orders requiring federal agencies to impose the requirements on all Federal grants: The following requirements apply to TCAP grantees (CHFA), not TCAP project owners:

- 24 CFR Part 85 "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments;"
- 2 CFR Part 222 "Cost Principles for State, Local, and Indian Tribal Governments" (OMB Circular A-87 ); and
- OMB Circular A-133 "Audits of Institutions of Higher Education and Other Nonprofit Institutions."

The following requirement applies to the CHFA and project owners:

- 2 CFR Part 2424 "Non-procurement Debarment and Suspension."



Appendix B

American Recovery and Reinvestment Act  
Reporting Requirements

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## Accountability, Transparency and Reporting Requirements

The Recovery Act imposes significant accountability, transparency and reporting requirements for each program and expenditure under the Act.

CHFA, will be required to report to HUD, 10 days after the end of each calendar quarter starting on June 10th, 2009 (the HUD CPD-09-03 Notice gives this date – presumably the intended start date is July 10, 2009). Similarly, CHFA will be required to report to Treasury on a quarterly basis as well. The information to be reported will include:

- The total amount of TCAP and TCEP funds received;
- The amount of TCAP and TCEP funds expended or obligated to projects or activities, including unobligated balances;
- A detailed list of all projects or activities for which TCAP and TCEP funds were expended or obligated, including:
  - The name of the project;
  - A description of the project;
  - Location of the project: city/county, state, zip code;
  - An evaluation of the completion status of the project;
  - An estimate of the number of construction and non-construction jobs created and the number of jobs retained by the project; and
  - Number of low income and market units rehabbed or newly constructed.

CHFA is additionally required to immediately report any indication of fraud, waste, abuse, or potentially criminal activity pertaining to grant funds to Treasury and the cognizant Treasury inspector general.

CHFA will post on its website a description of the competitive selection criteria for awarding TCAP and TCEP funds to eligible projects. CHFA will identify all projects selected for funding and post the amount of each TCAP and TCEP award.

## Reporting Requirements for Project Owners

CHFA will require monthly progress reports from owners detailing at a minimum the following:

1. Name and description of the project
2. The total amount of TCAP and TCEP funds awarded
3. The amount TCAP and TCEP funds drawn down and date expended
4. The balance of TCAP and TCEP funds not drawn down
5. The budget and actual line item costs expended that are included in eligible basis
6. The status of construction and completion of project including number of low income and market units completed
7. The estimate of number of construction and non-construction jobs created and retained by the project

CHFA will provide the required reporting forms to meet this requirement.

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Appendix C

Other????