

**Guidelines for Issuance of Requests for Proposals**  
**In connection with the**  
**American Recovery and Reinvestment Act of 2009 (ARRA)**

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**I. Distribution of TCAP and Exchange Funding**

The TCAP and Exchange funding will be distributed by Florida Housing through the request for proposal (RFP) process, as follows:

**Step 1 (S-1) RFP FOR 9% LIHTC with or without TCAP**

- Funding is reserved for Applicants that had funding de-obligated pursuant to 67ER09-3, F.A.C. relating to the following funding sources: SAIL or RRLP.
- Funding awarded will consist of 9% LIHTCs with or without TCAP funds as gap financing.
- Applicants will be required to secure an investor to purchase the Housing Credits and will not be eligible for the 2009 ARRA Exchange process.
- Applicants which responded to RFP 2009-01 for 9% LIHTCs will be required to withdraw their submission to RFP 2009-01 prior to responding to this RFP.
- Developments will be subject to (i) the RFP, Rule Chapter 67-48, F.A.C. and Section 42 of the IRC for the Housing Credits and (ii) the RFP and the provisions of the Tax Credit Assistance Program for the TCAP funding.
- Consideration will be given to those Developments receiving TCAP funds for the increased cost, if any, due to Davis Bacon and other HOME-like reporting requirements.
- Applicants with supplemental funds awarded from a previous cycle that are awarded TCAP funding will have the supplemental funds de-obligated; however, a like amount of TCAP funding will be offered to offset the lost supplemental funds. **Any additional TCAP funding via this source is not subject to the TCAP funding limitations otherwise considered.** Assumption is made that those developments with supplemental funding to be de-obligated and replaced with TCAP funds shall set aside the same amount of additional ELI units with.
- Applicants will be allowed to change the number of units as shown in their Original Application to size the transaction within the following parameters:

The minimum amount of the new unit count shall be the lower of:

- (a) the maximum number of units permitted below,

- (b) the number of units indicated in the Original Application, or
- (c) the number resulting from taking the maximum HC Allocation permitted by Florida Housing for the county in which the proposed development is located, exclusive of any DDA or QCT bonus, multiplying it by 7.5, and then taking the resulting product and dividing it by \$114,021.23 (the amount of the Leverage A/B cut-off from the 2008 UAC), then taking the resulting quotient and rounding up to the nearest whole number.

In addition, if the proposed Development meets all of the following requirements, the resulting quotient prior to rounding will first be multiplied by 0.63:

- located in a Large County, and
- Applicant selected the High-Rise Development Design, and
- Applicant selected the New Construction Development Category, and
- the Applicant selected and qualified as an Urban In-Fill Development.

If the proposed Development meets all of the following requirements, the resulting quotient prior to rounding will first be multiplied by 0.785:

- located in a Large County, and
- Applicant selected the Mid-Rise with Elevator (a building comprised of 5 or 6 stories) Development Type and at least 90 percent of the total units are in these Mid-Rise building(s), and
- Applicant selected the New Construction Development Category, and
- the Applicant selected and qualified as an Urban In-Fill Development.

There is a maximum new unit count for the following two demographic categories:

- (a) developments designated with an Elderly Demographic will have a maximum unit count of 160 units unless the Proposed Development is to be located in either Miami-Dade County or Broward County, which will have a maximum unit count of 200 units, and
- (b) developments designated with a Farmworker or Commercial Fishing Worker Demographic which will have a maximum unit count of 80 units.

- Developments located in the Proposed 2009 Location A areas will not be considered.
- The information required by the Credit Underwriter to engage a market study and appraisal must be provided to the Credit Underwriter within 30 Days of the invitation to enter credit underwriting. All other items required for the Credit Underwriter's completion of the credit underwriting report must be provided to the Credit Underwriter within 60 Days of the date of the invitation to enter

credit underwriting. If an award of 9% LIHTCs only is made, then the Credit Underwriting Report must be approved by the Florida Housing Board on or before October 23, 2009. If an award of TCAP and 9% LIHTCs are made, then the Credit Underwriting Report must be approved by the Florida Housing Board on or before December 4, 2009. Should the environmental review process not be completed in connection with an award of TCAP, then Florida Housing will allow for the credit underwriting report to be approved by the Board subject to the environmental review.

- During credit underwriting, the credit underwriter shall consider the market study, the Development's financial impact on Developments in the area previously funded by Florida Housing, and other documentation when making its recommendation of whether to approve or disapprove the TCAP funding and 9% LIHTC allocation. The Credit Underwriter shall review and determine whether there will be a negative impact to Guarantee Fund Developments within the primary market area or five (5) miles of the proposed Development, whichever is greater.
- During credit underwriting, the Credit Underwriter shall also review the appraisal and other market documentation to determine if the market exists to support both the demographic and income restriction set-asides committed to in the Response to RFP.
- For the Credit Underwriter to make a favorable recommendation, the submarket of the proposed Development must have an average occupancy rate of 92 percent or greater.
- Replacement Reserves will be a minimum of \$300/unit with a requirement to maintain a minimum amount of \$1,500 per unit at all times, allowing for an initial period to accumulate this minimum. Allowed uses for RR in order to fall below the minimum amount: life safety, structural and systems as determined by Florida Housing and its servicers. Traditional RR draws will be limited to items which can be depreciated.
- Any amount of TCAP funds to be awarded will be sized during credit underwriting.
  - (a) The first mortgage will be sized and limited to said sized amount. The sizing will be initially based on a first mortgage with an interest rate of 7.5% and a 30-year amortization, but will be determined by the actual interest rate and actual amortization of the first mortgage. Any development serving 100% homeless population shall assume to have no (traditional) first mortgage. The debt service requirements for the TCAP funds are provided herein on page 4. The amount of the development's first mortgage will be restricted to be the lesser of (i) an initial debt service coverage ratio ("DSC Ratio") of 1.30x, (ii) an initial net cash flow after debt service of \$1,000 per unit that also does not

exceed a DSC Ratio of 1.50x, or (iii) a minimum DSC Ratio of 1.25x over a 15-year proforma with annual increases of 2% for revenues and 3% for operating expenses. The aforementioned DSC Ratios reflect the combined required debt service for the first mortgage and the TCAP funds.

- (b) The sizing of the TCAP funds will assume a portion of the developer fee will be deferred, except for any development serving 100% homeless population where there will be no deferment. For transactions with TCAP funds, the deferred portion will be 15%.
  - (c) For any development serving 100% homeless population, the amount of the developer fee shall be 21% of eligible costs with an amount equal to 5% being set-aside into an operating reserve.
  - (d) The maximum TCAP limit is \$7,500,000 or \$50,000 per unit, whichever is less.
  - (e) The final amount of TCAP funds to be awarded will be based on a price for the housing credits of the greater of (i) actual market price, or (ii) \$0.66.
  - (f) The TCAP funds are intended to serve as gap financing. The amount of TCAP funds a proposed Development would qualify for will be equal to total development costs, less tax credit equity, less the first mortgage, less any other Corporation resources, less the deferred developer fee, less any local government subsidy funds, subject to maximum limitations provided herein.
- Developer fees for proposed developments with TCAP funds may be paid as follows: (a) no more than 25% may be paid at construction commencement, (b) no more than 25% may be paid at construction completion, and (c) no more than 35% may be paid at stabilization. The remainder of the developer fees may be paid from development cash flow or other non-Corporation sources. Homeless developments will have percentages of 25%, 25%, and 50%. If other non-Corporation sources are also funding developer fees, then Florida Housing reserves the right to decrease its portion of the funding to meet these maximum funding parameters, with any Corporation funding balance to be provided at stabilization.
  - Disbursements of TCAP funds shall be completed via a percentage of completion basis with monthly draws. The proposed Development shall take an initial draw of equity equal to 15% of the total equity from the housing credit syndicator, but prior to the second draw of equity or any disbursement from the first mortgage lender, all of the TCAP funds shall be disbursed first.
  - Additional fees will be associated with the use of TCAP funds.
  - At a minimum, 10% of units will be for ELI based on incomes in the proposed 2009 Rule 67-48.

- TCAP funds will be a loan. The loan structure of TCAP funds will be non-amortizing with a balloon payment due in 15 years if the proposed Development is an acquisition/rehab, or 20 years if it is new construction. The TCAP loan will have a blended interest rate based on 1.0% for the portion owned by a for-profit sponsor and 0.0% for the portion owned by a non-profit sponsor. The debt service will be an annual payment that is not cash flow dependent with the first payment date no earlier than March 1, 2012.
- It is anticipated that no extensions will be granted to close the TCAP loan.
- TCAP Documentation shall include, but not be limited to, a note, mortgage, regulatory agreement, as well as standard SAIL-like guarantees (environmental indemnity, construction completion, etc.).
- A six- to 12-month Debt Service and Operating Expenses Reserves based on market and strength of sponsor. For example, a strong market with a weak sponsor may have 9-month DS and Operating reserves, whereas a strong market and strong sponsor may have six months. If both are weak: 12 months. Allowed to be a line item (not a sub-set of developer fee); however, if the reserve required by the first mortgage lender or an entity other than Florida Housing is higher than what is recommended by our credit underwriter, then the overage shall be a sub-set of developer fee.
- Awards will be ranked based on a Shovel Ready test.

**Step 2 (S-2) RFP for Exchange with or without TCAP and a Nominal Amount of 9% LIHTC**

- Funding is reserved for Applicants that were previously awarded an allocation of 9% LIHTCs that have not yet closed with a syndicator.
- Awards will be ranked first on: Shovel Ready test with sub-priority going first to Preservation developments, then to Homeless developments, and then all other demographic categories.
- Applicants that have returned their HC Allocation are eligible to apply for Exchange and/or TCAP funds. If TCAP funds are being applied for, the Applicant will need to also apply for a nominal amount (*between \$100 and \$500*) of 9% LIHTCs which shall be expected to be sold without a third-party syndicator.
- Applicants that have not returned their HC Allocation are eligible to return all of their HC Allocation and apply for Exchange and/or TCAP funds. If TCAP funds are being applied for, the Applicant will need to also apply for a nominal

amount (*between \$100 and \$500*) of 9% LIHTCs which shall be expected to be sold without a third-party syndicator.

- For Exchange only, the Exchange process will allow the proposed Development to receive an amount of up to \$0.85 for the returned HC Allocation. There will not be a syndicator in the transaction.
- Consideration will be given to those Developments receiving TCAP funds for the increased cost, if any, due to Davis Bacon and other HOME-like reporting requirements.
- Applicants with supplemental funds awarded from a previous cycle that are awarded Exchange or TCAP funding will have the supplemental funds de-obligated; however, a like amount of Exchange or TCAP funding will be provided to offset the lost supplemental funds. **Any additional TCAP funding via this source is not subject to the TCAP funding limitations otherwise considered.** Assumption is made that those developments with supplemental funding to be de-obligated shall set aside 20% ELI units.
- Applicants with SAIL funds awarded from a previous cycle that were not de-obligated shall continue to retain the SAIL funding.
- Applicants will not be allowed to resize the units of the proposed Development.
- Applicants will be given the opportunity to request additional TCAP funds given the following criteria:
  - If the proposed Development requested supplemental funding in a prior application cycle but were not funded due to Florida Housing's limited amount of available supplemental funds, then the proposed Development can request TCAP funds up to the amount not funded in the respective application cycle with the same additional ELI requirements.
- Developments in 2009 Location A areas will not be considered with the following exceptions:
  - (a) those certain Developments previously awarded in the 2007 and/or 2008 UACs that were funded under the HOPE VI housing credit goal, and;
  - (b) those certain Developments previously awarded in the 2007 and/or 2008 UACs that had designated the development within the Preservation Designated Development Category.
- The information required by the Credit Underwriter to engage a market study and appraisal must be provided to the Credit Underwriter within 30 Days of the invitation to enter credit underwriting. All other items required for the Credit Underwriter's completion of the credit underwriting report must be provided

to the Credit Underwriter within 60 Days of the date of the invitation to enter credit underwriting. If an award of TCAP, Exchange and 9% LIHTCs is made, then the Credit Underwriting Report must be approved by the Florida Housing Board on or before December 4, 2009. Should the environmental review process not be completed in connection with an award of TCAP, then Florida Housing will allow for the credit underwriting report to be approved by the Board subject to the environmental review.

- During credit underwriting, the credit underwriter shall consider the market study, the Development's financial impact on Developments in the area previously funded by Florida Housing, and other documentation when making its recommendation of whether to approve or disapprove the TCAP funding and 9% LIHTC allocation. The Credit Underwriter shall review and determine whether there will be a negative impact to Guarantee Fund Developments within the primary market area or five (5) miles of the proposed Development, whichever is greater.
- During credit underwriting, the Credit Underwriter shall also review the appraisal and other market documentation to determine if the market exists to support both the demographic and income restriction set-asides committed to in the Response to RFP.
- For the Credit Underwriter to make a favorable recommendation, the submarket of the proposed Development must have an average occupancy rate of 92 percent or greater.
- Replacement Reserves will be a minimum of \$300/unit with a requirement to maintain a minimum amount of \$1,500 per unit at all times, allowing for an initial period to accumulate this minimum. Allowed uses for RR in order to fall below the minimum amount: life safety, structural and systems as determined by Florida Housing and its servicers. Traditional RR draws will be limited to items which can be depreciated.
- Any amount of Exchange and/or TCAP funds to be awarded will be sized during credit underwriting.
  - (a) The first mortgage will be sized and limited to said sized amount. The sizing will be initially based on a first mortgage with an interest rate of 7.5% and a 30-year amortization, but will be determined by the actual interest rate and actual amortization of the first mortgage. Any development serving 100% homeless population shall assume to have no (traditional) first mortgage. The debt service requirements for the TCAP funds are provided herein on page 9. The amount of the development's first mortgage will be restricted to be the lesser of (i) an initial debt service coverage ratio ("DSC Ratio") of 1.30x, (ii) an initial net cash flow after debt service of \$1,000 per unit that also does not exceed a DSC

Ratio of 1.50x, or (iii) a minimum DSC Ratio of 1.25x over a 15-year proforma with annual increases of 2% for revenues and 3% for operating expenses. The aforementioned DSC Ratios reflect the combined required debt service for the first mortgage and the TCAP funds.

- (b) The sizing of the TCAP funds will assume a portion of the developer fee will be deferred, except for any development serving 100% homeless population where there will be no deferment. For transactions with TCAP funds, the deferred portion will be 15%.
  - (c) For any development serving 100% homeless population, the amount of the developer fee shall be 21% of eligible costs with an amount equal to 5% being set-aside into an operating reserve.
  - (d) The maximum TCAP limit is \$3,000,000 or \$30,000 per unit, whichever is less. These maximum limitations are exclusive of any additional TCAP funding as provided herein on page 6 (accepting additional lower AMI units).
  - (e) The TCAP funds are intended to serve as gap financing after Exchange funds are exhausted. The amount of TCAP funds a proposed Development would qualify for will be equal to total development costs, less qualified Exchange funds, less the first mortgage, less any other Corporation resources, less the deferred developer fee, less any local government subsidy funds, subject to maximum limitations provided herein.
  - (f) The Exchange funds will be sized in a similar fashion as the TCAP funds, but they will be the first funds to be sized. If all of the Exchange funds available to a development (\$0.85) are needed and a financing gap still remains, it will be filled with TCAP funds as provided above.
- An analysis of the Sponsor will be completed with more in-depth consideration to key topics than typically completed by Florida Housing, including liquidity, net worth, unrestricted assets, contingent liabilities, etc.
  - An analysis of the credit worthiness of the developer will be completed with more in-depth review than typically considered, including areas of past performance, default history, failed conversions, guarantor performance, and outstanding contingencies.
  - Developer fees for proposed Developments with only Exchange funds may be paid as follows: (a) no more than 25% may be paid at construction commencement, (b) no more than 25% may be paid at construction completion, and (c) no more than 25% may be paid at stabilization. The remainder of the developer fees may be paid from development cash flow. Proposed developments with any TCAP funding will have percentages of (a) no more than 25% may be paid at construction commencement, (b) no more than 25% may be paid at construction completion, and (c) no more than 35% may be paid at stabilization. The remainder of the developer fees may be paid from

development cash flow or other non-Corporation sources. Homeless developments will have percentages of 25%, 25%, and 50%. If other non-Corporation sources are also funding developer fees, then Florida Housing reserves the right to decrease its portion of the funding to meet these maximum funding parameters, with any Corporation funding balance to be provided at stabilization.

- Disbursements of Exchange or TCAP funds shall be completed via a percentage of completion basis with monthly draws. The proposed Development shall not take any disbursement from the first mortgage lender, until all of the TCAP funds are disbursed first, unless the first mortgage lender was used to acquire the land prior to closing the TCAP loan.
- Additional fees will be associated with the use of Exchange and/or TCAP funds.
- At a minimum, 10% of units will be for ELI based on incomes in the proposed 2009 Rule 67-48.
- Exchange funds will be a sub-award. TCAP funds will be a loan. The loan structure of TCAP funds will be non-amortizing with a balloon payment due in 15 years if the proposed Development is an acquisition/rehab, or 20 years if it is new construction. The TCAP loan will have a blended interest rate based on 1.0% for the portion owned by a for-profit sponsor and 0.0% for the portion owned by a non-profit sponsor. The debt service will be an annual payment that is not cash flow dependent with the first payment date no earlier than March 1, 2012.
- It is anticipated that no extensions will be granted to close the TCAP loan.
- TCAP Documentation shall include, but not be limited to, a note, mortgage, regulatory agreement; as well as standard SAIL-like guarantees (environmental indemnity, construction completion, etc.)
- Exchange Documentation shall include, but not be limited to, a Declaration of Restrictive Covenants, regulatory agreement as well as other guarantees such as environmental, construction completion, etc.
- A six- to 12-month Debt Service and Operating Expenses Reserves based on market and strength of sponsor. For example, a strong market with a weak sponsor may have 9-month DS and Operating reserves, whereas a strong market and strong sponsor may have six months. If both are weak: 12 months. Allowed to be a line item (not a sub-set of developer fee); however, if the reserve required by the first mortgage lender or an entity other than Florida Housing is higher than what is recommended by our credit underwriter, then the overage shall be a sub-set of developer fee.

- The Applicant requesting to exchange its HC Allocation for Exchange funds must demonstrate good faith efforts to obtain investment commitments by producing at least one letter of interest from a syndicator indicating (a) a tentative HC price that is less than the maximum Exchange price, or (b) the syndicator is not interested in investing in the proposed Development. The date of the letter can not be more than four (4) months prior to the date of the Application for Exchange funds.

**Step 3 (S-3) Eligibility for excess Exchange funds**

- Reserved for developments which anticipate being awarded a 9% HC Allocation in the 2009 Universal Application Cycle process.
- Florida Housing expects awards to be based on a straight leverage test using the amount of the subsidy per unit as the guide.
- The applicant will need to syndicate their HC Allocation.

**Additional potential Steps to utilize additional excess Exchange funds**

- If excess Exchange funds remain after RFP awards under S-1, 2 and 3; then we anticipate having another RFP round for Preservation/Rehab later in 2009 in addition to possibly having a round for 4% Bond developments.

**II. Definitions**

Unless otherwise defined below, the definitions included in Rule 67-48.002, F.A.C. apply.

“ARRA”	The American Recovery and Reinvestment Act of 2009”
“Applicant”	Any person or legally formed entity that is seeking funding from the Corporation by responding to a request for proposal.
“Application”	The Applicant’s response to a request for proposal for the purpose of providing the means to apply for funding available through the American Recovery and Reinvestment Act of 2009.
“Award of HC”	The effective date of the award of HC shall be the date of the invitation to Applicant to enter credit underwriting.
“Committee”	The review committee composed only of employees of

Florida Housing that is established pursuant to Fla. Admin. Code R. 67-49.007.

“Development Cost” The total of all costs incurred in the completion of a Development excluding developer fee and total land cost.

“Exchange” or “Exchange Program” The Tax Credit Exchange Program authorized under Section 1602 of the American Recovery and Reinvestment Act of 2009.

“Exchange Documents” \_\_\_\_\_.

“Exchange Extended Use Period” With respect to any building that is included in a Development funded through the Exchange Program, the period that begins on the first day of the Compliance Period in which such building is part of the Development and ends on the later of: (i) the date specified by the Corporation in the Regulatory Agreement or (ii) the date that is the fifteenth anniversary of the last day of the Compliance Period, unless earlier terminated as provided in Section 42(h)(6) of the IRC.

“Florida Housing” Florida Housing Finance Corporation, a public corporation and public body corporate and politic created by Section 420.504, Fla. Stat.

“Good Faith Effort” Any Applicant requesting Exchange funds shall demonstrate a good faith effort to obtain an investment commitment by producing at least one letter of interest from a syndicator indicating a tentative HC price that is less than \$0.85 per \$1.00 or the syndicator is not interested in investing in the Proposed Development. The date of the letter shall be no more than four (4) months prior to the date of submission of the Application for Exchange funds.

“Guarantee Fund Development” A Development funded in the Florida Affordable Housing Guarantee Program administered by Florida Housing pursuant to Section 420.5092 and Rule Chapter 67-39, F.A.C.

“Interested Party”	A person or entity that requests a copy of this Request for Proposals from Florida Housing.
“Original Application”	The Application originally submitted by the Applicant and for which an award of SAIL, RRLP, Competitive HC or a combination of SAIL and Competitive HC or RRLP and Competitive HC was received.
“Proposal”	A written submission by an Applicant that responds to this Request for Proposals.
“QAP” or “Qualified Allocation Plan”	With respect to the HC Program, the TCAP Program and the Exchange Program, the 2009 Qualified Allocation Plan which is adopted and incorporated herein by reference, effective upon approval by the Governor of the state of Florida, pursuant to Section 42(m)(1)(B) of the IRC and sets forth the selection criteria and the preferences of the Corporation for Developments which will receive Housing Credits, TCAP funding, Exchange funding, or a permissible combination of these funds. The QAP is available on the Corporation’s Website under the 2009 Universal Application link labeled Related References and Links or by contacting the Housing Credit Program at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329.
“RA” or “Regulatory Agreement”	An agreement which sets forth the set-aside requirements and other Development requirements under the TCAP and Exchange Programs.
“RFP”	This Request for Proposals, including all exhibits referenced in this document and all other documents incorporated by reference.
“Set-Aside”	The number of units in a Development necessary to satisfy the percentage of units set-aside at 60 percent of the Area Median Income (AMI) or less as committed to by the Applicant.
“Shovel-Ready”	As it relates to the TCAP program, a Development that is ready to complete the credit underwriting review process, where the Applicant (i) has site control, (ii) has firm debt and equity commitments, (iii) can commence construction

on or before six months after the execution of the Carryover agreement, (iv) can expend 75% of the TCAP award on or before February 1, 2011; and (v) can complete construction and place-in-service on or before February 1, 2012.

As it relates to the Exchange program, a Development that is ready to complete the credit underwriting review process, where the Applicant (i) has site control, (ii) has firm debt and equity commitments, (iii) can commence construction on or before six months after the execution of the Exchange Documents, and (iv) can complete construction and place-in-service on or before \_\_\_\_\_.

“Sub-award” That certain funding award made under the provisions of the Exchange Program.

“TCAP” or “TCAP Program” The Tax Credit Assistance Program authorized in the American Recovery and Reinvestment Act of 2009.

“TCAP Development Expenses” \_\_\_\_\_

“TCAP Extended Use Period” With respect to any building that is included in a Development funded through the TCAP Program, the period that begins on the first day of the Compliance Period in which such building is part of the Development and ends on the later of: (i) the date specified by the Corporation in the Regulatory Agreement or (ii) the date that is the fifteenth anniversary of the last day of the Compliance Period, unless earlier terminated as provided in Section 42(h)(6) of the IRC.

“Threshold Item” A mandatory requirement of the RFP.

“Very Low-Income” If using taxable financing for the first mortgage, total annual gross household income which does not exceed 50 percent of the median income adjusted for family size, or 50 percent of the median income adjusted for family size for households within the metropolitan statistical area (MSA), within the county in which the Family resides, or within the state of Florida, whichever is greater; or if used in a Development using Housing Credits, TCAP funds,

Exchange funds, or a permissible combination of these funds, income which meets the income eligibility requirements of Section 42 of the IRC.

### **III. TCAP General Program Procedures, Restrictions and Reporting Requirements**

#### **A. Developments Eligible for TCAP**

Developments that received or will receive an award of Low-Income Housing Tax 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 require additional funding to be completed and placed in service in accordance with the requirements of Section 42 of the IRC.

Developments awarded HC that will also receive bond financing are eligible to receive TCAP funds.

#### **B. Use of TCAP Funds**

TCAP funds will be awarded as a loan or grant.

TCAP funds may be used for costs that are included in the eligible basis of a Development and is subject to the HC rent, income, use restrictions and compliance monitoring; all as required under Section 42 of the IRC.

TCAP funds may not be used for administrative costs or to cover the cost of swimming pools.

#### **C. TCAP Reporting**

HUD is requiring that within 10 days after the end of each calendar quarter starting on June 10, 2009, information similar, but not limited to, the following must be reported to the Office of Management and Budget:

- The total amount of TCAP funds received;
- The amount of TCAP funds expended or obligated to projects or activities, including unobligated balances;
- A detailed list of all projects or activities for which TCAP funds were expended or obligated, including:
  - The name of the project
  - A description of the project
  - An evaluation of the completion status of the project
  - An estimate of the number of jobs created by the project
  - An estimate of the number of jobs retained by the project

*Florida Housing is awaiting additional guidance from HUD in connection with the reporting requirements.*

#### **D. Federal Requirements**

TCAP funds are subject to the requirements applicable to federal financial assistance and Applicants will be required to comply with the following federal requirements:

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).

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](#).

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."

Affirmatively Furthering Fair Housing – Florida Housing will establish an affirmative fair housing marketing plan for its TCAP Developments. Applicants receiving TCAP funds will be required to follow the plan when marketing the 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 by Florida Housing will 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 the grantee'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 grantee and by owners to affirmatively market units and records to assess the results of these actions; and

A description of how the grantee will annually assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.

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.

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

The Recovery Act expressly applies section 288 of the HOME statute, which requires 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. 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. 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. For example, if the state housing credit agency or another agency or department of the State performed an earlier environmental clearance for HUD assistance on the project that is now receiving TCAP assistance from the state, 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).

Applicants unfamiliar with the HUD environmental requirements are strongly advised to seek technical assistance and training regarding compliance with NEPA requirements. Environmental officers stationed in HUD field offices are ready to assist.

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.

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 grantees with questions related to these requirements.

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.

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.

#### **E. Training and Technical Assistance**

Applicants are encouraged to retain subject matter experts to assist them in complying with federal requirements, which may help avoid delays in committing and expending funds and findings of noncompliance. Costs incurred by Applicants to comply with federal requirements are eligible TCAP costs.

### **IV. Exchange Program (Section 1602 of ARRA) General Program Procedures, Restrictions and Reporting Requirements**

#### **A. Developments Eligible for Sub-awards**

Developments which are qualified low-income buildings under Section 42 of the IRC. A subaward (award of Exchange funds) must be consistent with the requirement of Section 42(m)(2) of the IRC in that the Sub-award made for a Development [building(s)] does not exceed the amount necessary to ensure the financial feasibility of the Development and its viability as a Development throughout the credit period.

**B. Use of Exchange Funds**

Exchange funds will be granted to an eligible Applicant as a Sub-award to finance the construction or acquisition and rehabilitation of qualified low-income buildings.

The Sub-award will be in the form of cash assistance and will not be required to be repaid unless there is a recapture event with respect to the qualified low-income building.

Fees will be charged to the Sub-award Applicant to cover expenses associated with performance of its duties under Section 1602(c)(3) of the Act; Compliance and Asset Management.

Prior to making a Sub-award, Florida Housing shall make a determination that an Applicant for a Sub-award has demonstrated a Good Faith Effort relative to the syndicator.

**C. Exchange Written Agreements and Disbursements to Sub-awardees**

The Regulatory Agreement will set forth all Exchange Program requirements, including the requirements of Section 42 of the IRC, applicable to the Sub-award, and shall impose conditions or restrictions, including a requirement providing for recapture, so as to assure that the qualified low-income building remains a qualified low-income building during the 15-year Compliance Period.

The Regulatory Agreement shall also include a requirement for the sub-awardee to provide sufficient information to Florida Housing to report on the use of the Exchange funds as required by Treasury.

**D. Reporting**

Each Development receiving a Sub-award must file a financial status report and a project performance report on a quarterly basis, due 10 working days after the end of the quarter. Quarters end on March 31, June 30, September 30, and December 31.

The performance report shall include, but may not be limited to, the following elements for each Development receiving a Sub-award during the quarter:

Name of the recipient entity  
Name of the Development

Brief description of the Development  
Location of the Development: city/county, State, zip code  
Number of construction jobs created  
Number of construction jobs retained  
Number of non-construction jobs created  
Number of non-construction jobs retained  
Number of total housing units newly constructed  
Number of total housing units rehabilitated  
Number of low-income housing units newly constructed  
Number of low-income housing units rehabilitated

As part of its acceptance of the Exchange funding, the Applicant agrees to provide any additional information which the Treasury deems necessary to comply with Section 162 of the Act and American Recovery and Reinvestment Act guidance.

*Florida Housing is awaiting additional guidance in connection with the reporting requirements.*

**E. Recapture**

Each Sub-award will include a requirement providing for recapture to assure that the building remains a qualified low-income building during the 15-year Compliance Period.

As part of its acceptance of the Exchange funding, the Sub-award Applicant understands that 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 Sub-award Applicant.

**V. Compliance and Asset Management**

**A. Asset Management**

Florida Housing shall perform asset management functions so as to ensure compliance with Section 42 of the IRC and the regulations there under (including Title 26 Code of Federal Regulations section 1.42.9), and the long-term viability of the buildings funded by (i) a Exchange Sub-award under the Act in Accordance with Section 160-2(c)(3) of the Act , or (ii) a TCAP loan, or (iii) a combined Exchange Sub-award and TCAP loan.

**VI. Fees -** *Waiting for further direction from HUD and Treasury to finalize this section.*