

***FLORIDA HOUSING FINANCE CORPORATION***  
***Tax Credit Assistance Program***  
***Project Selection Process and Criteria***

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (the “Recovery Act”). The purpose of the Recovery Act is to jumpstart the nation’s ailing economy, with a primary focus on creating and saving jobs in the near term and investing in infrastructure that will provide long-term economic benefits.

Title XII of the Recovery Act appropriated \$2.250 billion under the HOME Investment Partnerships (HOME) Program and is commonly referred to as the Tax Credit Assistance Program (TCAP). Florida’s portion of this funding totals \$101,134,952. Under Section 1602 of the Recovery Act (Section 1602, or Exchange), State housing credit agencies are eligible to receive Section 1602 Grants to States for Low-income Housing Projects in Lieu of Low-income Housing Credits under Section 42 of the Internal Revenue Code for 2009.

Florida Housing Finance Corporation (“Florida Housing”) anticipates distributing TCAP funds competitively under the provisions of the Recovery Act and Florida Housing’s Qualified Allocation Plan.

***I. INTRODUCTION***

***A. THRESHOLD ELIGIBILITY***

1. TCAP-eligible developments are rental housing developments that received or will receive an award of Housing Credits (HCs) under Section 42(h) of the Internal Revenue Code of 1986 (IRC) during the period from October 1, 2006 to September 30, 2009, and require additional funding to be completed and placed into service in accordance with the HC program. The effective date of the award of HCs shall be the date of the invitation to Applicant to enter credit underwriting.
2. TCAP eligible developments and the owners must be eligible under applicable federal requirements, inclusive of the National Environmental Policy Act and Related Laws, Section 42 of the IRC for the HCs, and the provisions of the Tax Credit Assistance Program.

***B. APPLICATION***

1. Florida Housing will post to its website ([www.floridahousing.org](http://www.floridahousing.org)) a link for one or more Requests for Proposals (RFP’s) for the opportunity to apply for TCAP

funds. The project owner and development will be subject to the provisions provided within the RFP as well as the provisions of Rule Chapter 67-48, F.A.C., Florida Housing's 2009 Qualified Action Plan (QAP) and all applicable federal requirements in connection with the TCAP program.

### C. SELECTION CRITERIA

Florida Housing will evaluate applications based on the following criteria, which are listed in order of importance:

1. Proposed Developments that are expected to be completed no later than February 16, 2012.
2. Applicants that can expend at least 75% of the TCAP award by the earlier of December 31, 2010 or nine months from the closing date of the TCAP award and expend at least 100% of the TCAP award by the earlier of December 31, 2011 or 12 months from the closing date of the TCAP award. Florida Housing will consider the following criteria:
  - a. Ability to timely complete federal requirements, including NEPA;
  - b. Ability to deliver signed and sealed plans and specs;
  - c. Ability to deliver firm debt and equity commitments and timeliness of closing;
  - d. Ability to deliver an executed construction contract.
3. 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. The Credit Underwriting Report must be approved by the Florida Housing Board on or before December 4, 2009.

## II. GENERAL REQUIREMENTS

### A. UNDERWRITING STANDARDS

In addition to the following provisions, additional underwriting standards will be announced once Florida Housing receives additional HUD issued supplemental or interpretive guidance on program requirements.

1. TCAP funds will be provided as a grant, loan, forgivable loan, or some combination thereof.

2. The term of any applicable TCAP loan would cover up to 30 years with any applicable repayment terms to be determined.
3. 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 of the IRC, except for swimming pools.
4. The amount of the final TCAP award will be determined, in part, by the Proposed Development's financial feasibility and viability for at least an initial term of 15 years with the likelihood of being viable for 30 years based on Florida Housing's review of IRC Section 42(m)(2).
5. The developer fee for projects 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-Florida Housing 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 Florida Housing funding balance to be provided at stabilization.
6. Florida Housing will take into consideration market conditions of the primary market and submarket(s) of the Proposed Development, inclusive of the ability to support the demographic and income restriction set-asides, area occupancy rates, and the Proposed Development's financial impact on Developments in the area previously funded by Florida Housing.

#### B. POST-AWARD AND LOAN CONDITIONS

1. TCAP awards will provide for specified development schedules inclusive of progress dates that will ensure compliance with the Selection Criteria standards. If the owner of a Proposed Development (Owner) fails to meet the minimum development schedule deadlines with respect to the timely expenditure of TCAP funds, Florida Housing will assess whether the delay will affect its ability to comply with the federal expenditure guidelines. If Florida Housing decides the Owner can remedy the situation to Florida Housing's satisfaction, then the TCAP funds will not be redistributed. If the Florida Housing decides otherwise, the TCAP funds will be redistributed in the following manner:
  - a. De-obligate the non-expended TCAP funds committed to said Proposed Development, and redistribute said TCAP funds to another eligible project based on the Selection Criteria above, and

- b. Permit the Owner to replace the de-obligated non-expended TCAP funds with other source(s) of funds satisfactory to Florida Housing, or Florida Housing will take necessary actions to recover TCAP funds expended. If said recovered TCAP funds can be redistributed, then another eligible project will be provided the funds based on the Selection Criteria above. Otherwise, the recovered TCAP funds will be returned to HUD if recaptured during the three-year grant period.
2. Remedies for default or other non-compliance may include Florida Housing having the ability to do some or all of the following:
  - a. Declare the participants not in good standing,
  - b. Allow Owner to seek another source of funds to fully or partially replace the TCAP funds.
  - c. Initiate foreclosure proceedings, and
  - d. Other remedies as determined by Florida Housing.
3. Owners will record a Regulatory Agreement with a minimum term of 15 years. Florida Housing will also require the execution of a TCAP written agreement, that sets forth all of the TCAP program and crosscutting federal grant requirements applicable to the funding, and must make these requirements enforceable through the recordation of a restriction that is binding on all owners and successors, subject to further guidance from HUD.

#### C. REPORTING AND COMPLIANCE

1. Owners will report to Florida Housing at least quarterly on the follow information:
  - a. All information applicable to Tax Credit Assistance Program,
  - b. Completion status of the Proposed Development's construction,
  - c. An estimated number of jobs created and the number of jobs retained, and
  - d. Any other information necessary for Florida Housing's federal reporting requirements.
2. Owners will follow Florida Housing's processes and procedures applicable to IRC Section 42 developments with an investor and any additional compliance requirements made necessary due to TCAP funding.
3. Florida Housing will report to HUD, 10 days after the end of each calendar quarter starting on June 10th, 2009, information similar to the following:

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

#### D. CROSS-CUTTING FEDERAL REQUIREMENTS

TCAP funds are federal financial assistance and, therefore, are subject to requirements applicable to such funds. Owners and Proposed Developments must 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*. Owners must establish and follow an affirmative fair housing marketing plan for its TCAP projects 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;
  - Requirements and practices each owner must adhere to in order to carry out 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; and
  - 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](#).

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 the two websites listed below. *No TCAP funds may be committed to a project before completion of the environmental review process.* [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>.

LIHTC project owners 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. Guidance on the applicability of these requirements to TCAP projects will be provided separately.
- *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.
- *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 requirement applies to the project owners:
  - [2 CFR Part 2424](#) “Non-procurement Debarment and Suspension.”