

AMERICAN RECOVERY & REINVESTMENT ACT FEDERAL COMPLIANCE MANUAL

The purpose of this Manual is to help educate project applicants/potential ARRA awardees about the mandatory federal programs and regulations that must be adhered to when utilizing recovery funds. Exchange funds are not considered federal financial assistance; therefore, these provisions will not apply. Therefore, this Manual specifically covers those federal compliance measures applicable to the Tax Credit Assistance Program (TCAP) program.

Projects applying for or receiving TCAP Funds trigger cross-cutting federal requirements similar to those applicable to the HOME program. Thus, Project Owners must comply with several federal regulations including, but not limited to, the Environmental Review Process in accordance with the National Environmental Protection Act (NEPA), Davis Bacon & Related Acts (DBRA) and the Uniform Federal Accessibility Standards (UFAS). The applicability of these standards has specific implications for any applicant seeking TCAP funds that will need to be addressed in revising, preparing, and submitting applications.

Please note that as guidance is released by the appropriate federal agencies, the US Department of Housing and Urban Development (HUD) for TCAP and the Internal Revenue Service for the Exchange Program, this guidance may be updated to reflect such guidance.

FEDERAL PROGRAMS AND REQUIREMENTS

A. Environmental Requirements

National Environmental Policy Act and Related Laws (Environmental review and implementing regulations at 24 CFR Part 58)

The Recovery Act expressly applies Section 288 of the HOME statute, which requires the State to assume responsibility for environmental review under NEPA and related federal environmental authorities and regulations at 24 CFR Part 58 “Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities.” The “State”, as defined in the HOME program statute (42 USC 12704(2)), means, “any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive officer to act on behalf of the State with regard to the provisions of this Act.” Accordingly, the State is responsible for the environmental review. However, the State may designate the state housing credit agency to perform the environmental reviews for TCAP projects on behalf of the State. GHFA is the designated entity and DCA performs these reviews on behalf of GHFA.

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 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). LIHTC project owners are strongly advised to seek technical assistance and training regarding compliance with NEPA requirements.

Please note that no TCAP funds may be committed to a project before completion of the environmental review process (see HUD CPD Notice 09-03).

Please refer to the QAP, DCA Environmental Manual, the HOME and HUD Environmental Questionnaire Guidance, the HUD Training Guide, "Building HOME" Chapter 7 exhibit 7-4 and HUD CPD Notice 09-03 (TCAP) for further information.

Documentation submission requirements:

- New or Updated Phase I report
- HOME and HUD Questionnaire with supporting documentation,

Lead Based Paint

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.

Please refer to the DCA Environmental Manual, the DCA HOME Manual, the HUD Training Guide, "Building HOME" Chapter 7 exhibit 7-4, HUD CPD Notice 09-03 (TCAP) and <http://www.hud.gov/recovery/tcap-lbp-interp-guidance.pdf> (TCAP) for further information.

Flood Insurance

Applicants should review the 2009 QAP and Environmental Manual for DCA requirements related to building on a site designated as a special flood hazard area. In the event, that DCA does fund a project located in a flood zone, DCA requires flood insurance if the ARRA-funded project is located in a community for which flood insurance has been made available under the provisions of the Flood Disaster Protection Act of 1973 (42 U.S.C. Section 4001, et seq., or in a designated special flood hazard area (SFHA). At the sole discretion of DCA, properties at elevations where flooding is potentially a risk may also be required to obtain flood insurance.

The owner/developer is required to either provide documentation that the ARRA funded project is located outside of a designated SFHA or provide documentation before closing the ARRA loan or grant that flood insurance is in place and will be maintained.

Please refer to the DCA Environmental Manual and the HUD Training Guide "Building HOME", Chapter 7, exhibit 7-4 for further information.

Documentation submission requirements:

-Consultation with local planning/zoning officials to learn if flood insurance has been made available in the community through the Flood Disaster Protection Act of 1973;

-A copy of the flood insurance policy that references the property in question and meets or exceeds the minimum amount required by FIA guidelines (i) or (ii); and

-An agreement signed by the borrower that this policy will be maintained for the life of the ARRA loan. This may also be expressed as a clause in or an addendum to the policy.

B. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794) prohibit discrimination against any otherwise qualified handicapped individual from participation in any program or activity receiving federal financial assistance. All projects receiving ARRA funds must comply with Section 504 of the Rehabilitation Act.

Accessibility requirements are more fully set forth in the DCA Accessibility Manual. Please also refer to the HUD Training Guide "Building HOME" Chapter 7 exhibit 7-4 and HUD CPD Notice 09-03 (TCAP)

C. Labor Standards and Davis-Bacon (29 CFR 5.5a)

Labor Standards

If ARRA funds are provided (whether for construction or non-construction expenses) to projects involving the construction of affordable housing consisting of 12 or more units, then the contract relating to the new construction or rehabilitation must comply with the following labor standards:

- Davis-Bacon Act, 40 U.S.C. 276(a)-5
- Contract Work Hours and Safety Standards Act, 40 U.S.C. 327-332
- Copeland “Anti Kickback” Act, 40 U.S.C. 276(c) 1982.
- All applicable regulations and HUD Handbook #1344.1

Davis-Bacon

Each developer/owner must ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any covered contracts in excess of \$2,000 for construction, alteration or repair. ARRA recipients are required to attend a pre-construction conference. During this conference DCA’s Compliance Manager will distribute applicable forms and instructions relating to labor standards and answer any questions you may have. Records should be maintained to evidence compliance with all requirements.

For TCAP funds, according to HUD CPD Notice 09-03, in the case where projects are already under construction, it may be possible to obtain a determination that Davis-Bacon requirements apply prospectively to the construction contract as of the date of TCAP award.

Davis-Bacon requirements and procedures must include:

-Mandatory weekly payroll report submissions will be monitored closely to ensure compliance with applicable rules and regulations. In addition an updated list of all contractor and subcontractors working on the project will be required.

-DCA will provide the owner/developer with the local prevailing wage rates. For budgeting purposes wage rates can be located at <http://www.access.gpo.gov/davisbacon/allstates.html>

-Wage rates, DOL and ARRA posters must be prominently displayed at the job site (posters will be distributed at the preconstruction conference).

Please refer to the DCA HOME Manual, the HUD Training Guide, “Building HOME” Chapter 7 exhibit 7-4, HUD CPD Notice 09-03 (TCAP)

D. Relocation/Displacement of Tenants

Although it appears that HUD issued guidance excluding TCAP funds from HOME statutory requirements, DCA State requirements for relocation compliance as outlined in the DCA Relocation Displacement Manual section II continue to apply.

Please refer to the DCA HOME Manual, DCA Relocation Displacement Manual and the HUD Training Guide, “Building HOME” Chapter 7 exhibit 7-4.

E. Equal Employment Opportunity and Fair Housing

No person in the United States may, on the grounds of age, race, color, national origin, religion, sex, familial status or handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or part with ARRA funds.

ARRA fund recipients must comply with any and all federal, state and local laws relating to fair housing and equal opportunity, including but not limited to those listed below.

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.** HUD has responsibility to affirmatively further fair housing in the programs it administers. To meet this obligation, DCA has established an affirmative fair housing marketing plan for its TCAP projects and requires 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 include:
 - Methods for informing the public,
 - Owners and potential tenants about Federal fair housing laws and the grantee’s affirmative marketing policy. This includes:
 - Requirements and practices each owner must adhere to in order to carry out DCA’s 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.

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.

For more information, please refer to DCA HOME Manual, the HUD Training Guide “Building HOME”, Chapter 7, exhibit 7-4 and HUD CPD Notice 09-03 for further information.

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, 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 grantee and project owners:
 - 2 CFR Part 2424 “Non-procurement Debarment and Suspension.”

Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. §1701U et seq.). Although it appears that HUD issued guidance excluding TCAP funds from HOME statutory requirements, DCA State requirements for Section 3 compliance as outlined in the DCA HOME manual continue to apply. ARRA recipients are required to meet the minimum numerical goals set forth at 24 CFR Part 135.30:

- Employment goals are 30 percent of the aggregate number of new hires shall be Section 3 residents;
- Contract goals are 10 percent of the total dollar amount of all Section 3 covered contracts shall be awarded to Section 3 business concerns.

For more information, please refer to DCA HOME Manual, the HUD Training Guide “Building HOME”, Chapter 7, exhibit 7-4 and HUD CPD Notice 09-03 for further information.

G. Owner/Developer Eligibility Requirements

There are additional requirements related to owner/developer, and in some cases contractors and subcontractors, participation in the program. These requirements are outlined below.

Debarment and Suspension Requirements

ARRA funds may not be provided to any individual or entity that is presently debarred, suspended, proposed for debarment, declared ineligible, subject to limited denial of participation (LDP) or voluntarily excluded from participation in the ARRA program.

DCA will review all pertinent HUD and DCA debarment/suspension lists for the presence of any developer, owner, contractor, subcontractor, or other entity participating in the construction/rehabilitation of the ARRA-assisted project.

The owner must obtain written certification from any contractor, subcontractor, or other entity participating in the construction/rehabilitation of the ARRA assisted project verifying that the entity or individual is not presently debarred, suspended, proposed for debarment, declared ineligible, LDP'd or voluntarily excluded from participation in the ARRA program. The owner must submit written certifications to DCA as new entities become involved with the project. The Owner must also monitor its employees and contractors to ensure that all ARRA regulations relating to Debarment and Suspension are enforced.

Lobbying Prohibitions

“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.

Conflict Of Interest

No person who is currently an employee, agent, consultant, officer, elected or appointed official of DCA (hereinafter collectively referred to as Person) may obtain a financial benefit or interest from any ARRA-assisted activity; have an interest in any contract, subcontract or agreement relating to any ARRA-assisted activity; or obtain any proceeds from a contract, subcontract or agreement relating to any ARRA-assisted activity. The prohibition only applies to a Person who has ARRA-related responsibilities, or is in a position to participate in the decision making process or has access to inside information. This prohibition remains in effect for one year after the tenure of said Person has expired. This prohibition also applies to the Person's immediate family members and business associates.

If a potential conflict of interest exists involving any of the above-mentioned parties as described above, the potential conflict of interest must be disclosed to DCA, which must obtain a waiver from HUD prior to awarding funds to the project.

DCA's request to HUD for a waiver includes a description of the nature of the conflict; an assurance that all the interested parties have publicly disclosed the conflict; and an opinion from the Georgia Attorney General's office stating that any waiver of the conflict would not violate state or local law. DCA may request a waiver of a conflict of interest from the HUD Regional Office. If a potential conflict of interest exists between the above-mentioned parties, DCA may require the applicant to provide information and assist in the preparation of the waiver.

A certification is included in all applications stating that no conflict of interest exists, and a section of the application allows for the identification of any potential conflicts of interest.

For more information, please refer to DCA HOME Manual and HUD Building HOME Chapter 7 exhibit 7-4.