

**Date: May 12, 2009**  
**To: DCA Tax Credit Development Partners**  
**From: Laurel L. Hart, Office Director**  
**Re: Global Update**

Our office recognizes that this is an extremely challenging time for developers that participate in the tax credit program as well as DCA staff. Besides the challenges associated with the current economic environment, the well laid out procedures, policies and regulations that have traditionally defined this very complex program have been subject to unprecedented changes. At the same time that HERA and ARRA have given us unparalleled resources and opportunities, it has also created a dizzying array of unclear guidance, changing policies and unanswered questions. DCA appreciates the patience that everyone is exhibiting as we also navigate through these uncharted waters. We apologize if we are slow to return calls or answer questions. However, I am confident that we will be working through all unresolved issues in the immediate future.

In the 2009 preapplication process, DCA received 46 requests for compliance scores, 30 requests for tier one status, 45 requests for experience determinations, 25 requests for 30% boosts, 21 requests for increased developer fee, 18 requests for waivers of per unit costs, 14 requests for architectural waivers, and 5 environmental issues.

The following is a partial update on some of these tasks:

1. Initial NSP reservations have been determined and are posted.
2. Initial HOME consents have been determined and are posted.  
(Note that this list could change if DCA is notified that additional resources are available through NSP returned allocations or additional HOME made available through the revised congressional budget figures)
3. Preliminary decisions on per unit cost limits have been sent.  
(Applicants should note that the granting of waivers is made only under extraordinary circumstances. DCA has utilized the highest possible limits authorized by HUD. It is presumed that applicants should be able to structure projects in accordance with these per unit limits. Only detailed, specific information is considered during this review. The granting of a cost waiver does not mean that DCA has determined that the additional cost is an appropriate use of DCA resources.)
4. Review of requests for state designated basis boost, increased developer fees, and operating cost waivers are complete.
5. Experience and Compliance scores are complete and are being sent to applicants. These scores will also be posted on the DCA website by Friday.
6. Tier One determinations should be complete by the end of this week. Notifications are being sent as DCA reviews these documents.
7. Decisions on additional allocations to the 2008 waiting list have been made. Applicants that have not received notification of an allocation are released.

8. DCA has received two applications from DCA portfolio properties applying for credits under the 2009 Supplemental set aside. It has completed its review of both projects. One project has been allocated credits and the other project is waiting for final syndicator approval.
9. DCA has reviewed and approved modifications of five projects which have obtained final syndicator approval without the need for ARRA resources. Our office has four requests still under review.
10. DCA has received returned credits from 9 projects totaling \$5,256,574.
11. The six month requirement for 10% tests has been extended to one year. DCA is waiting for legal guidance on whether amended carryovers will need to be issued.
12. DCA is reviewing the possibility of obtaining additional resources under the following programs:
  - **NSP II under ARRA.** Applications must be made directly to HUD by the state. Additional guidance is being formulated and should be available next week.
  - **Weatherization funds from GEFA.** The department of energy is reviewing the possibility of setting aside a portion of weatherization funds made available under ARRA for use in weathering tax credit units. DCA is participating in reviewing program requirements to determine whether these funds would be useful to our properties.
13. DCA has received one request for TCAP funds in the first round. The second round deadline is this Friday.
14. HUD and Treasury published its guidance this last week answering some questions and opening up several new issues. (A summary of new guidance on ARRA is posted below). DCA's has posted the following documents in regard to this program:
  - TCAP Program Description
  - Loan Term Description
  - Application Process
  - ARRA DCA Q&A
  - ARRA HUD Q&A
  - Market Study Guidelines
  - Southern Polytech Collaboration to increase energy efficiency
15. DCA is completing its application for TCAP funds and grant application to HUD this week.

### **ARRA Update based on HUD and Treasury guidance:**

**Preliminary guidance from HUD and Treasury has been issued for the TCAP Assistance Program and the Exchange Program. Significant policy decisions include the following:**

- **TCAP:** Although TCAP funds were appropriated under the HOME Program heading of the Recovery Act, HOME statutory and regulatory requirements *do not* apply to TCAP funds, with the exception of the NEPA Environmental Requirements. HUD has expressly waived Relocation and Section 3 requirements for TCAP. DCA relocation requirements and Section 3 policies will continue in full

force and affect unless expressly waived. Federal Cross cutting requirements will continue to be applicable. (For a listing of these requirements, applicant's can review the TCAP Program Description.)

- **TCAP and Exchange:** The Buy American Provision has been determined to not be applicable to the TCAP and Exchange Program.
- **Exchange:** Unlike TCAP funds, governed by a separate section and division of the Recovery Act, it appears that exchange program funds are not subject to Davis-Bacon, National Environmental Policy Act ("NEPA"), Section 504, Uniform Relocation Act and various other requirements applicable to federal expenditures. The Treasury Guidance does not speak to such "cross-cutting requirements," and Treasury states that they are not applicable. The Fair Housing Act and other requirements that apply to tax credit projects or to rental developments generally would continue to apply.
- **TCAP:** 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.
- **TCAP:** The TCAP assistance provided to a project must be made in the same manner and subject to the same limitations (including rent, income, use restrictions and compliance monitoring) as required by DCA with respect to an award of LIHTC to a project (i.e., as required under Section 42 of the IRC and its implementing regulations), and all other requirements of the Act.
- **Exchange:** The statute and the Treasury Guidance provide that housing credit agencies are to make sub awards to qualified low-income buildings "in the same manner and ... subject to the same limitations (including rent, income, and use restrictions on such building) as an allocation of housing credit dollar amount allocated by such State housing credit agency." The limitations specifically include a requirement of consistency with section 42(m)(2), to the effect that a sub award may not exceed the amount necessary for a project's financial feasibility and viability throughout the credit period.
- **Exchange:** Exchange funds can be utilized in combination with investor equity and with TCAP funds, although HUD states that TCAP funds cannot be used for projects without tax credits.