

**GEORGIA HOUSING AND FINANCE AUTHORITY
THROUGH ITS ADMINISTRATOR
THE GEORGIA DEPARTMENT OF COMMUNITY AFFAIRS
TAX CREDIT ASSISTANCE PROGRAM DESCRIPTION
(Published May 12, 2009)**

The following Program requirements are published for public comment from the period of May 12, 2009 through May 18, 2009 at 5:00 p.m. Comments should be sent as follows:

Email: OAH.Recovery@dca.ga.gov
Address: Office of Affordable Housing, Georgia Department of
Community Affairs
60 Executive Park South, N.E. Atlanta, Ga 30329
Attn: Sandy Gamble

. Eligible Projects:

- Projects eligible to receive TCAP assistance under program regulations 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 IRC. Georgia's 2006 9% competitive round projects have all been successfully syndicated. The TCAP competition is limited to projects that have received or will simultaneously with TCAP funding receive a LIHTC award between October 1, 2007 and September 30, 2009 (federal fiscal years 2008, or 2009).
- An award of Low Income Housing Tax Credits will be defined as the earlier of the date of public announcements of funding decisions for a project or carryover allocation for 9% projects and the issuance of the DCA letter of determination for 4% tax exempt bond projects.

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 of the IRC.
- 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.

TCAP Fund Distribution

- The Recovery Act requires HUD to distribute TCAP funds to DCA based on the percentage of the FY 2008 HOME Program appropriation received by the state and local HOME participating jurisdictions in the state.
- The amount of funds available under the Georgia TCAP Program is \$54,481,680.
- DCA will proceed with the distribution of its TCAP funds in accordance with this Notice and the Recovery Act requirements after it has executed the required grant agreement with HUD.
- The Recovery Act requires DCA to distribute TCAP funds “competitively” and pursuant to the state qualified allocation plan” as defined in Section 42(m) of the IRC.

Selection Factors

- In the competitive TCAP selection process, DCA is required to give priority to eligible projects that are expected to be completed within 3 years from the date of Recovery Act enactment (February 16, 2012). Consequently, this standard will be the main selection criterion in all DCA TCAP competition.
- DCA will also use the following selection factors to determine which projects will receive TCAP funds:

Projects that meet the predetermined threshold of “ready-to-go” as set forth in the document submission requirements outlined in the DCA Implementation Plan.

Projects that maximize the best value and use of project resources.

Amount of financing required compared to the number of units will be considered.

Projects that are structured to improve the quality, sustainability, energy efficiency and long term impact of affordable housing in the proposed area.

Projects that have obtained syndicator financing with competitive pricing of credits.

Projects that have estimated reasonable proposed construction costs.

Proven capacity, experience and track record of Applicant.

Projects that are financially sustainable.

Projects that do not adversely affect a particular market.

Minimal risks associated with allocation of funds .

DCA will generally provide TCAP funds to eligible projects through loans although it expressly reserves the right to “grant” TCAP depending on the financial needs of the project.

Pursuant to the Recovery Act, DCA’s selection process will be ‘transparent’, as described below.

TCAP Application Process

DCA has published a separate Application Implementation Process for applying for TCAP funds as well as underwriting criteria. That process can be accessed on the OAH ARRA webpage.

TCAP Commitment and Expenditure Deadlines

The Recovery Act imposes both commitment and expenditure deadlines on DCA’s use of TCAP funds. Specifically, the Recovery Act requires that DCA:

Commit not less than 75 percent of its TCAP grant within one year of the enactment of the Recovery Act (i.e., 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 (i.e., by February 16, 2011); and

Expend 100 percent of its TCAP grant within three years of the enactment of the Recovery Act (i.e., by February 16, 2012).

DCA is required to track and report to HUD on a regular basis in IDIS its progress in committing and expending TCAP formula grant funds. Grant funds not expended by the end of the three-year performance period will be recaptured by HUD.

A **TCAP Funding Commitment** is recorded on the date of execution of the written agreement between DCA and project owner that provides TCAP assistance to a project.

TCAP Written Agreements and Disbursements

- DCA and Project Owners must execute a legally binding written agreement relating to use of TCAP funds. The written agreement, *called a 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.
- 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.
- The TCAP written agreement must be signed and dated by DCA and 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 the grantee's U.S. Treasury account, they must be expended for an eligible TCAP cost within 3 days.

The Recovery Act Accountability, Transparency and Reporting Requirements

The Recovery Act imposes significant accountability, transparency and reporting requirements for each program and expenditure under the Act, some of which are still being defined by the Office of Management and Budget (OMB). DCA will incorporate the final requirements into the TCAP written agreement with Project Owners.

These reporting requirements will include but not be limited to the following:

The total amount of TAP 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, and

An estimate of the number of jobs created and the number of jobs retained by the project.

Asset Management

The Recovery Act requires state housing credit agencies to perform asset management functions, or contract for performance of these services, at the owner's expense, to ensure compliance with Section 42 of the IRC and the long term viability of projects funded by TCAP. Costs associated with asset management are administrative costs and are not eligible to be paid with TCAP funds. Project Owners will be required to pay these costs from resources other than TCAP.

Redistribution of TCAP Funds

DCA 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, DCA must assess whether the delay will affect its ability to meet its TCAP deadlines, and take necessary steps to redistribute the funds to a more deserving project. Consequently, in the TCAP written agreement, DCA 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. DCA will closely monitor the progress of each TCAP project to ensure that it will meet TCAP expenditure deadlines, since failure to do so will result in recapture of funds by HUD.

Federal Grant Requirements

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, however, all DCA relocation requirements and Section 3 policies will continue in full force and affect unless expressly waived.

TCAP funds are federal financial assistance and, therefore, are subject to requirements applicable to such funds. Grantees 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

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.

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 the State to assume responsibility for 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 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, but the State may designate, if it so chooses, the state housing credit agency to perform the environmental reviews for TCAP projects on behalf of the State.

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 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).

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.

“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 project owners, pursuant to Executive Orders requiring federal agencies to impose the requirements on all Federal grants:

2 CFR Part 2424 “Non-procurement Debarment and Suspension.”

TRAINING AND TECHNICAL ASSISTANCE

DCA is aware that some project owners may lack the knowledge or experience needed to ensure that all federal compliance is properly completed. In these cases, the project owner may wish to consider contracting with persons or organizations that have the requisite knowledge and experience to train staff or assist in administering the program. Such steps may help avoid delays in committing and expending funds and findings of noncompliance. Costs incurred by project owners to comply with federal grant requirements are eligible TCAP costs.

For Further Information and Assistance:

Go to www.hud.gov/recovery for more information about Recovery Act requirements for TCAP and other programs.