DRAFT WITH PUBLIC COMMENTS AND IFA RESPONSE

Tax Credit Assistance Program Project Selection Process and Criteria

I. Introduction

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (Public Law 111-5). The purpose of the Recovery Act is to jumpstart the nation's ailing economy with the primary focus of creating and saving jobs in the near term and investing in infrastructure that will provide long-term economic benefits. The American and Recovery Reinvestment Act (ARRA) of 2009 included two provisions for Low-Income Housing Tax Credits (LIHTC):

- Title XII of the Recovery Act appropriated $2.25 billion for the Tax Credit Assistance Program (TCAP); and
- The ability for allocating agencies to exchange certain allocations for cash from the Treasury (Section 1602).

Due to the primary focus, the Recovery Act establishes deadlines for commitment and expenditure of the TCAP funds. By statute, projects eligible to receive TCAP assistance 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, and require additional funds to be completed and placed into service in accordance with the requirements of Section 42 of the IRC.

TCAP funds must only be used for capital investments in eligible LIHTC projects. Capital investments means costs that are included in the eligible basis of a project under Section 42 of the IRC. Per the Recovery Act, TCAP assistance to projects must be made in the same manner and subject to the same limitations, including rent, income, and use restrictions.

The Iowa Finance Authority (IFA) will administer distribution of the state's $18,978,542 in TCAP competitively in accordance with this Project Selection Process and Criteria Document and pursuant to the Qualified Allocation Plan (QAP) in effect at the time of award of tax credits. IFA is required to commit not less than seventy-five 75 percent (75%) of its TCAP grant, or $14,233,908, by February 16, 2010, demonstrate that all project owners have expended 75 percent of the TCAP funds by February 16, 2011, and expend one hundred 100 percent (100%) of its TCAP grant by February 16, 2012. The Recovery Act also requires IFA to perform asset management functions or contract for performance of these services at an expense to a Project Owner; however, these expenses cannot be paid for with TCAP funds.

A five-day comment period will be provided beginning May 26, 2009 through May 31, 2009. All Recovery Act information will be made available on IFA's Recovery Act

website at:
http://www.iowafinanceauthority.gov/en/american_recovery_and_reinvestment_act/

Terms used in the TCAP criteria will have the same meaning as under IRS Code Section 42, federal regulations, the 2009 Second Amended Qualified Allocation Plan, Housing and Urban Development (HUD) CPD Notice 09-03, and legal agreements between IFA and the Ownership Entity.

II. Evaluation and Selection

A. Threshold Requirements

The project must have received or will receive an award of per capita nine percent (9%) credits under Section 42 from October 1, 2006 to September 30, 2009, and require additional funding to be completed and placed in service. For purposes of the TCAP Criteria, "award" means a determination to allocate credits by the IFA Board of Directors, and payment of the non-refundable reservation fee. The last day that applications for nine percent (9%) credits may be submitted for TCAP consideration under the 2009 Second Amended QAP is July 15, 2009. An award of credits to a project must be completed by September 30, 2009 to be eligible.

The project must require additional funding to be completed in accordance with the IFA TCAP underwriting standards. In addition to the TCAP underwriting guidance provided in this document, the project must comply with the underwriting criteria of the Qualified Allocation Plan in effect at the time of award of credits, as established by the Carryover Agreement.

If a project fails to meet the ten percent (10%) test deadline established by IFA policy and procedures and the executed Carryover Allocation, the project is not eligible for tax credits. Any previous TCAP or Section 1602 agreements will be rescinded and repayment of funds will be required, and the project will not be eligible in the future to obtain a TCAP loan or a Section 1602 grant.

Kris Saddoris, Conlin Properties
Section II. A. 3. Given that many of these projects are facing this carryover hurdle in September, they should be given priority in the review pipeline in order that you don't lose any credits.

IFA Response: IFA will extend the 10% test deadline from September 30 to November 16, 2009. An addendum to the 2008 Carryover Agreement will be sent to all affected projects. IFA will also add language that specifies that in order to be eligible for a TCAP loan, the project must be expected to be completed in 3 years from February 16, 2012.

John Errigo, Metroplains

Page 1 notes that TCAP funds must be used for basis-eligible costs. Page 2 notes that TCAP funds can be used to meet the 10% Test. However, land is a cost that's eligible for the 10% test, but ineligible for LIHTCs. Please reconcile this conflict.

IFA Response: 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. To the extent that TCAP funds are used to pay for capital investment, these funds can be used to meet the 10% test. Other sources must be used for costs that are not eligible for LIHTCs, such as land.

Phillip J. Stoffregen, Pedcor Investments
1. Threshold Requirements Section II(A)(3)-

The Authority should allow developers that have 2008 tax credits from the Midwestern Disaster Allocation (MDA) to return funds and get an exchange of 2009 MDA tax credits, in the same amount, in order to reduce pressure created by the 10% Carryover and placement in service deadlines and otherwise facilitate developers' abilities to syndicate tax credits. This has the added advantage of positioning IFA to participate in any potential exchange allowed for MDA credits as a result of legislative efforts we understand are under consideration by various members of Congress to rectify the status of returned MDA Credits as eligible for the section 1602 exchange program.

IFA Response: IFA will seek guidance from Treasury to determine if 2008 Midwestern disaster credits may be returned for an allocation of 2009 Midwestern disaster credit. However, projects must spend TCAP and Section 1602 funds within the mandated timeframes. Especially in the case of Section 1602 funds, in order to spend 100% of the funds by December 31, 2010, the project ownership should start construction as quickly as possible. IFA does not contemplate exchanging disaster credits for cash.

1. TCAP funds may be used to meet the Section 42 ten percent (10%) test for eligible costs.

2. TCAP funds may not be used for the cost of swimming pools.

3. Project owners must commit to comply with all Federal requirements including Fair Housing Act, Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1973, National Environmental Policy Act and Related Laws, The Lead-Based Paint Poisoning Prevention Act and the Residential Lead-Based Paint Hazard Reduction Act of 1992, Davis-Bacon Prevailing Wage, Anti-Lobbying Restrictions, The Drug-Free Workplace Act of 1988, and related OMB Regulations and Circulars.

Roger Brown, IFA LIHTC Compliance
Strike this as it is the only one that you provide the CFR citation in this paragraph, also, the citations are itemized in detail at III.D beginning page 8 of 10.

IFA Response: Strike reference to CFR.

Phillip J. Stoffregen, Pedcor Investments
2. Threshold Requirements Section II(A)(6)-

We had some concern that the requirement to comply with the Davis-Bacon Prevailing Wage would preclude us from using TCAP funds; however, we may be able to comply with the Davis-Bacon requirement if we reduce the number of units in our development. We query whether IFA would permit such a change in the development in order to for developers to apply for TCAP funds.

IFA Response: See Section 8.3 regarding material changes in the 2009 Second Amended QAP. Applicants for TCAP will not be allowed to materially change their original application for tax credits, including revision of any scoring criteria.

4. Owners must agree to not prepay any TCAP loan funds prior to February 17, 2012, unless approved and/or required by IFA.

5. The project has or will have received a nominal allocation of "per capita" tax credits through IFA. If a project received an allocation of Heartland Disaster Relief Credits, as specified in the IFA board resolution and Carryover Allocation Agreement, then the project must apply for additional "per capita" credits through Section 2.2.5.2 Reserved Set-Aside of the 2009 Second Amended Qualified Allocation Plan. Applicants for the Reserved Set-Aside must submit the appropriate application materials and application fee as established on the IFA website. At no time can the allocation of additional credits exceed the per project cap established in the Qualified Allocation Plan in effect at the time of tax credit allocation, as set forth in the Carryover Agreement(s). For the purposes of the TCAP criteria, "nominal" is defined as $1,000.

Phillip J. Stoffregen, Pedcor Investments
3. Threshold Requirements Section II(A)(8)-

All projects that are eligible to apply for TCAP funds should be given a nominal allocation of "per capita" tax credits by IFA. In the interest of time, developers should not be required to apply for the allocation and the nominal amount of per capita credits should be allowed to be in addition to the credits already allocated to a project irrespective of the fact that the total award may be nominally above the maximum annual credit cap previously in effect. At a minimum, IFA should make it clear that it will award a nominal amount of per capita credits to any deal that will be receiving TCAP monies.

IFA Response: A project receiving an additional award of "per capita" credits can not do so without submitting to an underwriting review to determine the necessity of such an allocation. IFA is prepared to award a nominal "per capita" credit to projects participating in TCAP. Board approval of the "per capita" credit and TCAP loan can be concurrent.

Tom Monico, Thomas & Thomas Associates, Inc.
I think it is a fair approach to include those applicants that have received a Heartland Disaster Relief Credit award.

Dan Garrett, MHEG
Change the nominal amount from $1,000 to $100. If syndicators can't or won't take the credits, we are wasting $10,000 in credits or $7,000 equity.

IFA Response: No change recommended.

6. In order to be eligible for any TCAP loan, the Ownership Entity must waive their right to a qualified contract defined under 26 CFR 1.42-18. An exception may be made for a project that is a qualified Renter to Ownership Saving Equity (ROSE) program.

Robert Burns, Burns Housing
Item II.A.9
Please allow the normal Section 42 process to offer an option for a qualified contract at the beginning of year fifteen. IFA's proposal to waive the qualified contract restricts alternative options to bring in new equity or make a donation of the property because affordability requirements are already in place to extend through year 30.

There needs to be more discussion between all of the stakeholders regarding the qualified contract. I see it as problematic in its present form.

For now, leave it out of the TCAP rules. The process is getting much too complicated.

Tom Monico, Thomas & Thomas Associates, Inc.
Having the developer waive the right to a qualified contract in order to be eligible for TCAP funds seems overly punitive and not in the spirit of the ARRA and its purpose to jumpstart the nation's ailing economy and its primary focus of creating and saving jobs and investing in infrastructure. How does disallowing a qualified contract support these goals? I do not believe the ARRA was enacted to further IFA's own agenda. In addition, how will a developer be able to repay a TCAP loan if there is no qualified contract?

Midwest Housing Equity Group
This clause should be deleted. As worded it makes it difficult for an investor to get out on the back end. Will rights of first refusal for non-profits be allowed? While we fully support the Rights of First Refusal, it will give an unfair advantage to non-profit deals and in this tax credit market, unless the non-profit is extremely strong, it is difficult to syndicate or find investors for non-profit deals.

IFA Response: No change recommended. Waiver of the qualified contract does not limit the ownership's ability to sell the property at the end of the compliance period. IFA is within its' rights to use the ARRA funds to support housing that will retain its *affordability for 30 years. No ownership entity is required to accept the ARRA funds, nor entitled to receive them.*

7. IFA will require a deferral of twenty-five percent (25%) of the developer fee in excess of $300,000.

Phillip J. Stoffregen, Pedcor Investments
4. Threshold Requirements Section II(A)(10)

Requiring a deferral of a flat 50% of the Developer Fee would help stretch IFA's scarce resources among a larger number of units and be more consistent with what other States are doing in this vein. Making this change in conjunction with a relaxation of IFA's share of operational cash flow would get Developers to about the same place financially (from a present value perspective) and pay big dividends for the fate of assisted projects in the future as Developers have a larger and more meaningful stake in the operations of the projects.

Kris Saddoris, Conlin Properties
Section II. A. 10. Though I appreciate that your first stab is always the developer fee, if you want skin in the deal, then we all need to defer 25% of our fees including app fees, credit reservation fees, compliance fees, architect fees, asset mgmt fees, etc. This section seems inappropriate. I have not seen this requirement in any of the other state plans that I have reviewed. Basically you are forcing the developer to become a lender in order to utilize this funding option in an environment of tremendous pressure already in the development world. This needs to be deal-driven by the syndicator.
As stated in HUD's implementation guidance, "The Recovery Act requires grantees to distribute TCAP funds "*competitively under this heading and pursuant to their qualified allocation plan.*" (emphasis added) This deferral requirement was not a part of the 2007, 2008 nor 2009 QAPs.

However, given that most projects will most likely have increased costs as a result of the requirements under TCAP, which would allow an increased fee under those QAPs, it does seem appropriate to freeze developer fees at levels stated in the project's allocation application.

Jim Beal, RSM McGladrey
There will be significant concern on whether or not the deferred developer fee can be paid. In many deals, if there is tax credit equity in the deal, the investor will require that the project pay the developer fee, in any circumstance, before the end of the credit period, even if the general partner/developer has to make a contribution of equity to get it paid. If IFA requires a 25% deferral and the project cannot fund the payment of it from cash flow, the developer may get stuck putting money in to fund the developer fee being paid right back to him/her. This is a circular flow of funds. However, this scenario does create taxable income for the developer on money that was contributed (not deductible) to the deal.

Maryann Dennis, The Housing Fellowship

This requirement should be waived for community-based nonprofit developers. While I know it is important for developers to have an investment in projects, nonprofit developers consistently struggle with cash flow issues. The recent Affordable Housing Market Analysis of the Iowa City Metro Area, December 2007, commissioned by the City of Iowa City and completed by Mullin & Lonergan Associates states "Experienced affordable housing developers in the region are struggling against many barriers to create new affordable housing units for lower income households. Nonprofit organizations typically operate on shoestring budgets. Without ready access to pre-development assistance, nonprofit developers are very limited in their ability to explore the feasibility of a project.

The Housing Fellowship has experienced cash deficits. This has reduced our capacity to explore projects without borrowing funds and mortgaging properties. A lack of capital puts nonprofits at a disadvantage when competing with for profit developers that are able to provide personal guarantees. Deferral of additional fees for community-based nonprofits is an additional hardship and weakens our mission.

<u>Tom, Monico, Thomas & Thomas Associates, Inc.</u>
Requiring the deferral of a developer's fee as a prerequisite for TCAP eligibility would again appear to be an arbitrary and capricious act by IFA. Investors utilize the developer's fee as another source of reserves should a LIHTC development face problems. If this is reduced, then the development will be a less desirable investment for the limited number of investors.

John Errigo, Metroplains
I understand why IFA is requiring some deferred developer's fee, over a base amount. Is there a timeline on how long the developer's fee must remain deferred? Can it start to be repaid out of cash flow in year 1 or not until a later year?

Robert Burns, Burns Housing
Item II.A.10
Please delete this item entirely. In most limited partnership agreements from national syndicators, a deferred development fee must be paid before the end of year fifteen even if there is insufficient cash flow. The general partner must contribute sufficient cash equity so that the deferred developer's fee is paid in full. This protects the original assumption of the total developer's fee being included in eligible basis for calculating the total tax credits.

A for-profit general partner must contribute equity with after tax cash. When the developer fee is paid, the developer must pay state and federal income tax on the amount of the deferred fee.

Some developers must not realize these consequences as we have seen many other projects include a deferred developer's fee. That is their choice.

But it is not IFA's role to require such a transaction because it becomes quite restrictive and complicated. We do not see why IFA would want to require a deferred fee. What are you trying to accomplish? Do you want more incentives or are you creating a disincentive.

Dan Garrett, MHEG
Deferred fee should be done on a sliding scale based on the percentage of maximum of the fee requested. As written, this penalizes someone that is not taking the full allowable fee who is already trying to keep costs down.

IFA Response: In Section 4 of the 2009 Second Amended QAP, the developer fee is treated as the only allowed "gap filler" by IFA in the underwriting of the project. Since TCAP is also considered to be a "gap filler" through ARRA, it would be a logical extension that both sources should be considered when evaluating the financial needs of a project and in our attempt to use the ARRA funds to benefit the maximum number of units. However, in response to the public's concerns, IFA will change this threshold item to require a 25% deferral of developer fees after the first $500,000 in developer fees are paid. Further, IFA will allow the developer fee that is held by a syndicator or direct investor as a reserve, as specified in final syndication/investor agreement, to be considered the "deferral of developer fee." The 15-year proforma must show there is adequate cash flow to repay the deferred developer fee within the 15-year compliance period. The repayment of the TCAP loan will be structured to be paid by cash flow after payment of the deferred developer fee and the syndication fees.

B. Solicitation Process

1. IFA will publish a Request for Information from all eligible projects. Eligible project Ownership Entities will have fifteen (15) business days to provide requested information.

   John Errigo, Metroplains
   What's the anticipated date for IFA's Request for Information? Will that be for TCAP funds only , or also Exchange Funds?

   IFA Response: IFA will publish a Request for Information (RFI) on or about June 10, 2009, unless otherwise instructed by HUD. The RFI will be used for both the TCAP and Section 1602 reviews.

2. Following a review of the information provided by eligible projects in response to the Request for Information, IFA will contact those projects that meet the threshold and competitive criteria established in its Tax Credit Assistance Program Project Selection Process and Criteria. At the time the Ownership Entity receives a meeting request from IFA, the Ownership Entity will be advised not to take any choice-limiting actions. Any choice-limiting actions taken following the receipt of the meeting request may cause the project to be ineligible for a TCAP loan.

Roger Brown, IFA LIHTC Compliance
Consider adding definition of 'choice limiting actions' from 24 CFR Part 58.22, because we never do define this and some participants may not be familiar with these particular requirements.

Bruce Larson, Gandolf Group
Item 2. Would you please explain more fully what is mean by "choice-limiting actions"? It would be helpful to give some examples.

Kris Saddoris, Conlin Properties
Section II. B. 2. I would suggest you define "choice-limiting decisions" or refer to the HUD notice.

IFA Response: Add "as restricted in 24 CFR Part 58, and described in HUD Notice CPD-09-03 as "any activity that will result in a physical change and/or acquisition, including leasing, or disposition of real property."

3. Following a meeting with the General Partner representative of the Ownership Entity, and the syndicator or direct investor(s), IFA will evaluate if a TCAP loan could benefit the ~~P~~project, and if so, IFA will propose a suitable loan amount to the ~~P~~project. At this time, the ~~P~~project's Ownership Entity will be sent a Letter of Solicitation.

Kris Saddoris, Conlin Properties
Section II. B. 3. I would suggest that you make the presence of the syndicator/direct investor mandatory at the meeting, with some type of signed verification of their current position in the deal.

What timeframe will be set for these stages?

I assume the "Letter of Solicitation" is similar to the "Conditional Commitment of Fund" noted in the TCAP Q &A on Environmental? Will the LOS be a conditional commitment?

I would suggest that an option be facilitated with IDED now to commence the environmental review (at the developer's risk) simultaneously with this rules process so that time can be saved for this year's construction season.

IFA Response: IFA will add, "Participation by the syndicator or direct investor(s) is mandatory. The syndicator or direct investor(s) must provide a signed verification of their current position related to the project." At the time the Ownership Entity receives a meeting request related to the TCAP discussion, the Ownership Entity will be advised not to take any "choice limiting" actions. The Letter of Solicitation will specify the amount of the conditional commitment, subject to successful negotiation and availability of funds.

Phillip J. Stoffregen, Pedcor Investments
5. Solicitation Process Section II(B)(8)-

Allow a signed LOI with a syndicator or direct investor to take the place of a face to face meeting that requires those parties to appear in Iowa for a meeting. At a minimum, allow a telephonic meeting as an acceptable alternative to a face to face meeting.

IFA Response: A telephonic meeting will be allowed in lieu of an in-person meeting.

4. IFA will sign a "TCAP written agreement", with the Ownership Entity. This agreement will set forth all of the TCAP program and crosscutting federal grant requirements applicable to the funding. This written agreement cannot be executed until environmental clearance for the project is completed and the Request for Release of Funds is approved.

Roger Brown, IFA LIHTC Compliance
Change ',' to '.'

5. Following the completion of all necessary steps and activities as specified in the Letter of Solicitation, IFA will sign a loan agreement with the Ownership Entity.

Once a project is eligible for disbursement of funds, funds drawn from the U.S. Treasury account by IFA must be expended for an eligible TCAP cost within three (3) days.

John Errigo, Metroplains
Because TCAP funds must be spend within 3 days of being disbursed, will IFA allow TCAP funds to be disbursed at multiple draws, like a monthly construction draws (Item B6)?

IFA Response: Yes.

C. Selection Criteria

IFA will review the approved application for LIHTC and the information submitted in response to the Request for Information based on the following criteria:

Readiness to Proceed

John Errigo, Metroplains
Can you clarify that "Federal" under Item C Readiness to Proceed includes Section 515 loans from Rural Development? I'm a bit biased because The Iowana has received an obligation of $1 million from Rural Development, but I think it's appropriate to favor projects with Rural Development funding because you'd be leveraging federal funds with other federal funds. In other words, if The Iowana is unable to proceed with Exchange Funds, TCAP Funds, or some combination, Creston and Iowa will lose $1 million in federal money that has already been committed to the purpose of creating affordable housing, and that seems like an undesirable outcome.

IFA Response: IFA will only provide points for Federal sources that require the implementation of all Federal grant requirements, as listed in HUD Notice CPD-09-03.

5 points	Owners' relative ability to expend seventy-five percent (75%) of the TCAP award before December 2010 and place projects in service by December 2011. IFA will consider: • The anticipated building timelines and proposed construction draw schedule, including a list of any challenges (e.g. extensive sitework); and • Owners' and general contractors' recent history of timely construction. If a project has completed construction but not yet received Form 8609, the impact on the existing tenants and surrounding community will be considered as an extenuating circumstance. Kris Saddoris, Conlin Properties Item #1 (ability to expend) seems most important of all the items (given the federal requirements for the fast track expenditure of these funds), and yet is has the lowest amount of points. It would seem appropriate to make it the highest priority in order to assure that ALL available TCAP/Exchange funds are used in Iowa. MN has given points on a sliding scale based on completion date. The last sentence of this item is unclear. Bruce Larson, Gandolf Group What is meant by the statement, "If a project has completed construction but not yet received Form 8609, the impact on the existing tenants and surrounding community will be considered as an extenuating circumstance." *IFA Response: IFA will change the score from 0 to 10 points, and will weight the maximum number of points to projects that demonstrate both a construction schedule that reflects the goals of the TCAP program, and has shown an organizational capacity for meeting construction deadlines in previously funded LIHTC projects, with the fewest delays and quickest relative completion times. If projects do not meet the construction timeline as established in the Request for Information response, IFA may implement remedies as established in III.B.2. Projects should carefully consider potential delays in the construction schedule and not commit to unrealistic timelines in order to receive points in this category.*

	In the last paragraph, IFA is considering the impact of a syndicator or investor withdrawing from a project after the project is completed and renting up.
20 points	Have received a previous award of HOME, Community Development Block Grant, or some other Federal resource, and as a result have received a HUD approval (Authority to Use Grant Funds, HUD 7015.16) of the Request for Release of Funds; and neither the project nor the environmental conditions have changed since the previous review. Bruce Nelson, Credit Capital The awarding of 15-20 points for projects that have received or applied for HOME, CDBG or other federal resources is geared toward properties receiving the Part 58 Environmental approval. We understand this priority, but feel that a project should also receive the maximum 20 points if (i) it has completed a majority of the 15 NEPA subsections applicable to Iowa projects as evidenced by third party reports prior to the time the application is due in July , and (ii) is willing to prosecute construction using Davis Bacon wages. This is similar to other State guidelines. Projects should not be penalized because they did not previously request HOME or CDBG federal assistance even though they otherwise could have qualified. Rob McCready, MetroPlains You may want to clarify that the 20 points for release of funds or the 15 points for HOME award are mutually exclusive. Phillip J. Stoffregen, Pedcor Investments Clarify which points are alternative points. For example, points are offered for prior HUD or local PJ approvals for 20 and 15 points . . . can all 35 points be scored by the same project? Similarly, points of 20, 15 and 10 are awarded for deals with syndication proceeds at 70%, 60% and 50% of non-debt monies . . .are these points exclusive to one another or can a single deal score 45 points in this category? Maryann Dennis, The Housing Fellowship 20 points - Readiness to proceed is understandably an important criterion. Projects that have received Notice of Release of Funds should be given top priority and awarded additional points. If a participating jurisdiction has completed the environmental review and all notices have been published and comment periods expired, a project will be more ready to proceed than those that have not completed the process. The Housing Fellowship lost 16 affordable rental homes in the flood of 2008 and we are anxious to replace those.

	IFA Response: Because of the importance of beginning construction as quickly as possible and recognizing the delays inherent in the NEPA environmental review process, IFA is increasing the points in this category to 50.
15 points	Have received a previous conditional commitment of HOME, Community Development Block Grant or some other Federal resource, and as a result will have an environmental review performed by the State of Iowa or a participating jurisdiction in order to receive HUD approval (Authority to Use Grant Funds, HUD 7015.16) of the Request for Release of Funds no later than August 30, 2009. Please note the project owner's costs for completing the environmental review may not be included in eligible basis for TCAP funds. Tom Monico, Thomas & Thomas Associates, Inc. Why would IFA provide for additional 20 or 15 points if an applicant has already received or is awaiting other Federal funding through HOME, CDBG, etc? These developments were already rewarded and still have not been viable; why then reward failure? In the alternative, I would recommend that this category be amended to reflect than an applicant has satisfied all or a portion of the NEPA requirements. Greg McClenahan: I think the inclusion of HOME or other federal funds receipt is an appropriate criteria as it relates to the same cross-cutting federal requirements that will be included in the TCAP program and for that reason, will facilitate satisfaction of the requirements of TCAP. I would suggest that the criteria clarify that the federal resource award may be from state, city or other administering jurisdiction. Barb Krall, Senior Resources This is Senior Resources' comment on the draft "Tax Credit Assistance Program Project Selection Process and Criteria." We are eligible for HOME funds and tax credits and wish to remain competitive with projects which have actually received an award. We could move into the same status as those funded projects very quickly. This project has great need, tremendous community support (County donated the land, city has committed to do street work, etc.) and the location is in a very livable location on the west side of Muscatine. The building will be across the street from an arboretum and our Discovery Park with walkways. Post office, Goodwill, Dollar Store, restaurants, grocery store, gas stations are just some of what is located very near the facility and it is on the bus route. The ground is all clear and will be ready to go at any time.

	IFA Response: Because of the importance of beginning construction as quickly as possible and recognizing the delays inherent in the NEPA environmental review process, IFA is increasing the points in this category to 40. Projects that have applied for a State HOME allocation but have not yet received a conditional commitment of funds are not eligible to receive points in this category. IFA is also removing the reference to a completion date for the HUD Request for Release of Funds.
5 points	Final construction drawings have been prepared. Kris Saddoris, Conlin Properties Item #4 – how will you know they are final without the bldg permits? This item seems redundant. I would suggest it be removed, and double the bldg permit points. *IFA Response: Remove this category and add 5 points to building permits category.*
5 points	Local government(s) have issued signed building permits. Tom Monico, Thomas & Thomas Associates, Inc. I would recommend that IFA require a development to have a letter from the municipality stating that the municipality is ready to issue a permit except for the payment of a fee. This and other criteria seem weighted to assist developments that are already under construction. Phillip J. Stoffregen, Pedcor Investments Consider allowing the points for having obtained building permits to those projects which either have obtained them or which show that, subject only to the payment of the necessary fees, such permits are readily available to be obtained. Many "ready to proceed" developments will prudently delay expenditure of significant monies to acquire permits until there is greater certainty about whether the financing for the transaction is committed. *IFA Response: Add 5 points to this category.*
5 points	A construction contract has been fully executed. Tom Monico, Thomas & Thomas Associates, Inc. Does the executed constructed contract need to have the required dates inserted? Again, this would seem to be an impossible hurdle to overcome for developments that have not yet begun construction and are waiting on IFA to make decisions. Greg McClenahan, Evergreen Development: **Readiness to Proceed** (RTP): While readiness to proceed is a primary

	factor in allocation of TCAP funds, there is a risk of overweighing several of the scoring cells in this criteria and as a consequence, funding projects that use large per unit amounts of TCAP funds, which would result in far fewer units being constructed in the same approximate time frame. My specific concern is with the cells related to construction drawings, building permits and construction contract. While these cells are indicative of readiness, they are also items that typically are completed while other critical preconstruction and preclosing activity takes place. Given the inherent timelines in the proposed TCAP funding process and the ability to obtain permits, contracts and drawings while completing the TCAP requirements, a project with an existing building permit, construction permit and construction drawings may be ultimately no more quicker in the ground than a project currently without those elements. The projects that have existing permits, contracts and drawings most likely will have the greatest need for per unit TCAP funds, and the goal of maximizing units and conserving TCAP funds should be viewed with the an accurate assessment of just how much more quickly a project will be in the ground that has existing permits, contracts and drawings. Typically, due diligence, including permits, contracts and drawings can be completed in 60-120 days, and if that time frame is common for all projects, the significance of the RTP criteria related to permits, contracts and drawings may be easily over weighted in the selection process. I suggest that the factors of permits, contracts and drawing be included, but weighted less, say 2 points each, so combined they exceed 5 points, but less than 10 points. Consideration may also be given to requiring a more subjective plan of construction readiness, in lieu of permit, plans and contract, such as a detailed schedule of events, which could be scrutinized much like the syndicator relationship documents will be scrutinized. Since each project has variations on readiness, this approach may offer a more accurate picture of readiness, rather than a few select indicators. I think IFA could better assess conditions that may lead to delays in using TCAP funds by requiring a detailed schedule of events as opposed to the three items of permit, contract and plans. *IFA Response: Confirm that in order to receive points for this category the construction contract must be fully executed. Some of the categories under "Readiness to Proceed" favor projects that are already under construction. IFA recognizes that any gap in financing for projects under construction provides challenges that may be addressed using TCAP funds, and provides an opportunity to use the TCAP funds immediately for job creation.*
25 points	Strength of the Relationship with Syndicator/Investor: Project owner

	must have an agreement for syndication of tax credits or an agreement for direct investment, and must be in the process of having completed or have completed Step 4 below. Prior to or simultaneously to the signing of the TCAP loan agreement, Step 7 below must be completed. 1. Letter of Intent issued. (QAP threshold) 2. IFA Award of Tax Credits – syndicator works on commitment letter. 3. Due Diligence Request Letter sent from syndicator to developer. 4. Underwriting and Due Diligence Review by syndicator & investors. 5. Due Diligence response letter and manager review. 6. Final syndicator loan committee approval. 7. Closing of Syndication/Investment Agreement. Kris Saddoris, Conlin Properties Item #7 – (relationship with syndicator) – this item needs more clarification. I assume you are using these points to prioritize from the information provided from the request. If the deal is closed, it should not need TCAP funds and certainly would not have final approval. In my opinion, these items reflect how the world was a year ago, but not applicable in the current environment. I would encourage some good communication with your syndicators here. The requirement for closing should be in the Post Award section. Doug LaBounty, Community Housing Initiatives The selection criterion relating to the strength of relationship with syndicator should be considered more closely. Regarding #4, some syndicators may be willing to issue an underwriting/due diligence letter regardless of their ability/intent to invest in a project. Roger Brown, IFA LIHTC Compliance This appears to be cumbersome and confusing. If it is intended to be a scoring criteria we should not have any discussions of Step 7 'in a simultaneous' manner. Recommend scaling points for each of the steps achieved at time of application for TCAP. If Step 7 is done, award points, if not don't. <u>Rob McCready, MetroPlains</u> In the Syndicator Relationship section, you may want to change the term loan committee to investment committee when referring to the syndicator investment approval process. <u>Tom Monico, Thomas & Thomas Associates, Inc.</u> Providing points based on the amount of syndication proceeds would seem to rule out developments that have received tax credit awards and have not been syndicated. This would again provide more weight to

	these transactions that are already under construction and somehow failing. This would again seem to not favor “shovel-ready” transactions. IFA will not create jobs by providing funds for transactions already under construction. Perhaps IFA has conducted a review and found that this is where the greatest need exists, if not why then would these under-construction transactions be favored? Midwest Housing Equity Group: Change to the following: Strength of the Relationship with Syndicator/Investor: Project owner shall submit a current agreement from their syndicator/investor outlining their intent to invest in the Project and their status and timeline on making the investment. Project owner and Syndicator/Investor must be in the process of having completed or have already completed Step 4 below. Simultaneously to the signing of the TCAP loan agreement, Step 7 below must be completed. 1. Letter of Intent issued. (QAP threshold) 2. IFA Award of Tax Credits – syndicator begins investment process. 3. Syndicator performs initial investment review including review of tax credit application, review of market, site inspection, review of development team and guarantors and compliance with current underwriting guidelines. 4. Syndicator performs detailed review on all aspects of the investment and prepares investment summary for approval by its internal review committee. 5. Final due diligence received and reviewed. Underwriting assumptions finalized. 6. Final approval from investor(s)/committee. 7. Closing of Syndication/Investment agreement. In order to earn these points, we like your idea of being in stage #4 because that means the investor has completed its initial review (stage #3) and has made the decision that it’s a project that seems to meet their guidelines and they think they can get approved for investment. So the project has basically passed the investor’s first level of review. It seems like a good fit for the timing that we all have to deal with.

	IFA Response: Adopt the 7 steps as re-written by Midwest Housing Equity Group. Require a signed verification from the syndicator/direct investor(s) of their current position in the deal. Provide points on a sliding scale, with 5 points for completion of Step 3 and movement to Step 4,, 10 points for completion of Step 4 and movement to Step 5,, 15 points for completion of Step 5 and movement to Step 6, and 25 points for completion of Step 6 and movement to or completion of Step 7, for a maximum number of 25 points. Greg McClenahan, Evergreen Development: The category related to syndication relationship is very non-specific, but perhaps that is appropriate and gives IFA the ability to make case-by-case evaluations of syndication relationships at the time of the initial meeting to evaluate the TCAP eligibility.

Location

15 points	The project is located in a county for which the Federal Emergency Management Administration has identified $3 million or more in housing need as of August 11, 2008, and in which county fewer than 500 rental units in the aggregate have been allocated Federal Low-Income Housing Tax Credits during the past three (3) consecutive tax credit rounds beginning with the 2006 Qualified Allocation Plan. Applying the above criteria, the following counties are eligible for this element: Linn, Louisa, Black Hawk, Johnson, Muscatine, Butler, and Bremer.

Kris Saddoris, Conlin Properties
Item #8 – (flood counties) – please insure that a current market study supports projects in these counties.

Dan Garrett, Midwest Housing Equity Group
We understand the need for the disaster counties, however the TCAP regulations need to insure that the TCAP money will not go to poor or overbuilt markets.

Bruce Nelson, Credit Capital
Projects that received Disaster Relief/Flood Zone credits in 2008 - 2009 should get additional points or otherwise have priority for TCAP gap filler funds (subject to the above maximum) since those credits are not 'exchangeable' under IRS guidelines (pending). We believe you have already addressed the Threshold issue by allowing these projects to apply for a 'nominal' amount of credits in the second 2009 Round.

Rob McCready, Metro Plains

By providing 10 points, you may end up funding all projects in one city that has primarily non-profit sponsor projects to the exclusion of another city that has primarily for profit sponsors. Because of this, the set aside concept, like the QAP works well. If you insert a set aside rather than a scoring mechanism you may eliminate this potential from occurring. If not, you might consider lowering the points to 5.

Tom Monico, Thomas & Thomas Associates, Inc.
The selection criteria regarding the strength of relationship with syndicator/investor and the FEMA identification again would seem to heavily favor those developments that are already under construction and not apply to those transactions that are "shovel-ready" as the ARRA indicated. Why else would IFA designate certain counties rather than simply using the approved 2007-2009 awardee list?

IFA Response: Adequate market is a threshold requirement under Section 5.11 of the 2009 Second Amended QAP, and Section 42 CFR. IFA has identified areas of the state where availability of affordable housing was most impacted by the 2008 disasters.

Project Ownership

10 points	Project has received or will receive an allocation of LIHTC under Section 2.2.1 of the 2009 Second Amended Qualified Allocation Plan, Section 2.2.1. of the 2008 Qualified Allocation Plan, or Section 2.6 of the 2007 Qualified Allocation Plan.

Doug LaBounty, Community Housing Initiatives
Pursuant to Section 42 and to the QAP, consider adding a nonprofit setaside to insure nonprofit projects have access to TCAP.

Rob McCready, Metro Plains
By providing 10 points, you may end up funding all projects in one city that has primarily non-profit sponsor projects to the exclusion of another city that has primarily for profit sponsors. Because of this, the set aside concept, like the QAP works well. If you insert a set aside rather than a scoring mechanism you may eliminate this potential from occurring. If not, you might consider lowering the points to 5.

IFA Response: No change recommended.

Best Use of Investment

The greater of the following:

20 points	Syndication proceeds amount to seventy percent (70%) or more of total construction sources, exclusive of mortgage debt
15 points	Syndication proceeds amount to sixty percent (60%) or more of total

	construction sources, exclusive of mortgage debt
10 points	Syndication proceeds amount to fifty percent (50%) or more of total construction sources, exclusive of mortgage debt

Greg McClenahan:
Best Use of Investment (BUI): It would seem the objective for IFA in administering the disaster credits, the TCAP funds, and the per capita credits along with the exchange program would be to yield the greatest number of affordable housing units for Iowans. To do that, allocation of TCAP funds should attempt to leverage as many other sources of funds as possible while at the same time fully utilizing the total amount of disaster credits available over 2008-2010. The proposed BUI criteria focuses just on syndication pricing, exclusive of mortgage debt, when perhaps a more specific criteria would be the per unit TCAP contribution. For example, priority would be given to projects that can proceed with lesser amounts of per unit TCAP funds, so as to extend the $19,000,000 pool to as many units as possible. Say, four levels of points, starting at 20 points for under $5,000, 15 points for under $7,500, 10 points for under $10,000 and 5 points for under $15,000. Such an approach would better serve to recognize other funding sources, including mortgage funds, than the current criteria, which focuses only on syndication proceeds. A per unit TCAP focus would be a better gauge of investment frugality than % of syndication proceeds / construction sources.

The current language phrase, "exclusive of mortgage debt" is ambiguous unless it specifies whether the mortgage debt must be market rate or whether it includes subsidized, below market rate secondary mortgages. Again, using per unit TCAP contribution eliminates this type of definition issue.

Rob McCready, Metro Plains
In order to leverage the TCAP funds to encourage the most units be built, you could add a scoring section related to the percentage of TCAP funds used to fund the project. This encourages developers not to ask for more than is needed to maximize points. It also encourages utilization of other sources of funds, including local city funds, IDED funds, RD funds etc. This also encourages general cost containment. I would suggest points at 15%, 20%, 25% and 30% or more. If this is considered, you may want to allow contingent award letters, as some of the funds have yet to be allocated; HOME funds to IDED being a case in point.

Kris Saddoris, Conlin Properties
Item #10 – (Syndicator proceeds) – I suggest you use a calculation number somewhere already existing in the application as the basis for "total construction sources". I assume perhaps the Page 15 calcs? This doesn't mention other sources besides debt/equity.

I would suggest a minimum here, at least for the first round.

IFA Response:

Revise scale from syndication proceeds to amount of TCAP loan requested per LIHTC unit:
20 points for under $10,000 per unit
15 points for under $15,000 per unit
10 points for under $20,000 per unit
5 points for under $25,000 per unit

The amount specified in the Request for Information response is the maximum amount of TCAP loan allowed per unit if the project seeks "points" in this category.

Other public comments:
Maryann Dennis, The Housing Fellowship
The Housing Fellowship believes that IFA should adopt a preference or award additional points to promote projects sponsored by Iowa community based housing development organizations. The characteristics, needs and nuances of a community are best known by residents. Community based housing organizations utilize local Boards of Directors to design policies and practices, employ residents and typically establish good working relationships with their local government. Affordable housing that is locally managed is better received in communities and is an asset to proposed activities.

IFA Response: Add 5 points for projects sponsored by a community housing development organization (CHDO) as defined in 24 CFR Part 92.2.

Brian NG, National Affordable Housing Coordinator, Energy Star for Homes
This email is intended to emphasize key efforts made to promote energy efficiency in affordable housing and to recommend that energy efficiency criteria be applied to your Agency's allocation of TCAP funds. HUD has shown great support of energy efficiency through its Memorandum of Understanding with EPA and DOE (http://www.hud.gov/energy/) and its encouragement in using ENERGY STAR qualified appliances and products in HUD funded housing as well as constructing ENERGY STAR qualified housing (www.energystar.gov).

As the funds for TCAP are coming from the American Recovery and Reinvestment Act (ARRA) via HUD, HFAs should pay particular attention to the HUD Notice published on May 4, 2009 which states that "No TCAP funds may be committed to a project before completion of the environmental review process." This environmental review process, per 24 CFR Part 58 and NEPA requirements, should include a review of energy efficiency as it is directly related to the environmental impact of each project.

The ENERGY STAR program strongly encourages all state HFAs to consider adding selection criteria for the allocation of TCAP funds that address energy efficiency and more specifically, ENERGY STAR qualified products and the construction of ENERGY STAR qualified homes. Many state HFAs already include these criteria in their QAPs, but for those who do not, we recommend using ARRA funds to promote greater energy efficiency in affordable housing, which will make this housing stock more affordable for its residents and tenants.

IFA Response: Projects awarded LIHTC under the 2009 Second Amended QAP must meet energy efficiency criteria as part of the threshold requirements, as established in Appendix 1, G, 23. Most new construction must be Energy Star certified, and an energy audit must be performed on all rehabilitation projects.

III. General Requirements

In addition to the terms of the TCAP criteria, owners will comply with the 2009 Second Amended QAP.

Roger Brown, IFA LIHTC Compliance
Why? What if the allocation was received under the 2007 OR 2008 QAP?

IFA Response: Revise to reflect applicable QAP.

A. Underwriting Standards

1. Loans will be no more than the lesser of:
   (a) The project's eligible basis, and
   (b) What is necessary to ensure the project's financial feasibility and viability for fifteen (15) years based on the Agency's IRS Code Section 42(m)(2) review of the operating proforma.

Bruce Nelson, Credit Capital

There should be a cap on the maximum amount of TCAP funds awarded to any one property based on the amount of credits awarded and the private equity it is able to attract. Otherwise, deserving properties which are otherwise ready to go would get little or no TCAP financing help while other projects with minimal CDBG or Home funds would get a windfall. By incentivizing as many projects as possible to get firm equity commitments, IFA will maximize it's TCAP and other resources. Project owners should be rewarded for being able to solicit a firm equity offer based on property location, development experience, track record, financial strength, etc. We would, therefore, propose a maximum TCAP award of $.15 per total credit dollar award ($1.50 per first year credit dollar) for project's meeting IFA's Readiness to Proceed Selection Criteria. This is also consistent with other State TCAP gap filling guidelines.

IFA Response: See change in scoring under "Best Use of Investment."

Tom Monico, Thomas & Thomas Associates, Inc.

I notice that no maximum amounts of funding are listed. This would seem to indicate that IFA would possibly only be able to fund a few transactions. IFA has established caps on all of its other programs and funding vehicles, why not TCAP?

IFA Response: No change recommended.

John Errigo, Metroplains

Is there an opportunity to fully fund a project with TCAP funds? Using the Iowana as an example, we would return the Disaster Credits, apply for and receive $1,000 in 9% credits, and then fill the rest of the gap with TCAP funds.

IFA may not be thinking about combining Exchange Funds with TCAP Funds. Using the Iowana as an example, let's say that we receive Exchange funds (cash) in lieu of Disaster Credits (more on that later). But, let's also say that because there are no longer Disaster Credits or 9% credits in the mix, investors lose interest in the Historic Tax Credits as a stand-alone piece. Could we use TCAP funds in lieu of Historic Tax Credits (the lost equity?

For IFA to allocate Exchange Funds (cash) to a project, does that project need to return 9% credits or can we return disaster credits? If disaster credits are ineligible to be exchanged for cash, what's the process contemplated for returning disaster credits, applying for and receiving 9% credits and then returning 9% credits for cash?

IFA Response: A project cannot be fully funded with TCAP funds per HUD instruction. Theoretically a project could return disaster credits, receive a $1,000 per capita allocation, and fill the rest of the gap with TCAP funds, however since IFA seeks to maximize the use of the Federal funds it is unlikely that IFA would consider this a prudent investment. If a project is eligible for Federal historic tax credits and submitted the original application with Federal HTCs as a source of funds, IFA will not use TCAP in lieu of HTCs. For Section 1602 program, disaster credits cannot be exchanged. There is currently no process for returning disaster credits in exchange for "per capita" credits so that the developer may exchange the "per capita" credits for a cash grant. IFA intends, to the greatest extent possible, to provide Section 1602 grant funds to projects that have or are likely to obtain a syndicator or direct investor for the disaster credits awarded to projects.

2. TCAP loans will be for seventeen (17) year terms at zero percent (0%) interest with no payments allowed prior to February 17, 2012 (unless approved or required in accordance with Section II.A.(7) hereof). Cash flow payments shall begin in the fifth year following the date the last building was placed in service. Payments shall be calculated as fifty percent (50%) of net cash flow less deferred developer fee. All remaining principal is due at maturity.

Doug LaBounty, Community Housing Initiatives
Because IFA has elected to structure assistance as a long-term loan, there may very well be problems associated with outstanding debt exceeding the value of the project, which causes tax issues. Can this be a structured as a grant to a nonprofit general partner (and put into the project as equity)?

It will be difficult to get investors comfortable with allowing 50% of net cash flow to be on the TCAP loan. They would much rather have the money remain in the project. If IFA elects to keep this provision, please provide detail on what constitutes net cash flow (replenishment of reserves before paying TCAP, incentive management fees before TCAP, etc.).

Phillip J. Stoffregen, Pedcor Investments

7. Underwriting Standards Section III(A)(2)-

Clarify that TCAP loans will be non-recourse, secured by a soft and non-foreclosable mortgage (except in the event the requisite cash flow supported payments required thereunder are not paid), which mortgage will be junior and subordinate to all other senior secured debt on the project. Clarify also that limited partner tax credit adjusters, cash flow to pay taxes, partner or affiliate loan repayments, asset management fees, interest on partner or affiliate loans, interest on deferred fees and incentive management fees in addition to deferred development fees are permitted uses of cash flow which may be paid ahead of TCAP loan repayments.

The 17 year term can be problematic in those cases where the the first year of the credit period is deferred to the following year to maximize credit delivery to limited partners. We believe the Authority's interests would be best served by making the TCAP loan maturity 30 years but with a required repayment from the appropriate percentage of distributable proceeds upon any earlier sale from distributable cash flow available to the partners of the project partnership (after payment of limited partner tax credit adjusters, cash flow to pay taxes, partner or affiliate loan repayments, asset management fees, interest on partner or affiliate loans, interest on deferred fees, incentive management fees and deferred development fees). At a minimum, a 20 year term would be more helpful to assure the loan does not become due prior to the expiration of the initial 15 year compliance period and to provide a reasonable period of time thereafter to sell or refinance the project.

Jim Beal, RSM McGladrey
In the underwriting standards – A.2 – may want to be more clear in the actual loan document (not sure it's required in the application process) about definition of available cash flow for the reduction of the principal on this loan. Does this mean that the developer fee could begin to be paid earlier than the fifth year? I assume it does. I also assume that this means that the developer fee after the fifth year is paid prior to computing available cash for the repayment of this note.

Tom Monico, Thomas & Thomas Associates, Inc.

Why is IFA requiring repayment of TCAP funds? I understood that any repayments were forwarded on to the U.S. Treasury. TCAP funds were meant to fund gaps, thus this would seem to be the most difficult money to repay.

Greg McClenahan, Evergreen Development:
Underwriting Standards:

If the intent is for the TCAP loans to be available for construction and continuing through the 15 year compliance period, I would suggest the term be 18 years, to better accommodate a 2 year construction period and a time after the compliance period to make ownership transition. Will the 0% interest suffice for purposes of the loan being a loan and not a grant, as opposed to a 1% deferred interest rate.

I suggest you have a more precise definition of "net cash flow". What may be deducted from cash flow to get to net cash flow – questions often arise regarding replacement reserves, capital improvements, investor services fees, asset management fees, and incentive management fees. Perhaps it is satisfactory to define this in the loan document as opposed to the TCAP selection process plan.

Hopefully IFA is anticipating the TCAP loans will be secondary loans, otherwise, there will be extraordinary issues of priority and subordination rights with first mortgage lenders.

IFA Response: Change loan term to 20 years. IFA has chosen to provide loans to projects instead of grants so that when the funds are paid back, they can be used to further affordable housing efforts in the future. Detailed loan terms will be provided in the loan documents.

3. Owners will record a thirty (30) year Declaration of Land Use Restrictive Covenants (Declaration) pursuant to QAP Section VI(A)(9).

Roger Brown, IFA LIHTC compliance

a) Can the LURA be longer than 30 years if necessary?

b) To which QAP are you referring? THE QAP in effect at the time of allocation?

Tom Monico, Thomas & Thomas Associates, Inc.
With these new criteria, I think it only fair that applicants be allowed to revise their initial LIHTC application to reflect the disparities between the two selection processes. For instance, if a LIHTC application was approved without receiving any points in a category such as waiving the right to a qualified contract and now that same applicant would have to revise that position if they were to apply for TCAP funds. Thus if the applicant is now forced to change their position in order to be eligible for TCAP funds, they should be able to revise their LIHTC scoring to show this revision and be able to lower points in other categories. This approach, although more work for IFA staff, would allow the applicant to make their transaction more viable and remain attractive to the investment community.

IFA Response: Reference to the QAP section will be removed. TCAP loan participants will not be allowed to change the scoring commitments established in their initial LIHTC application.

B. Post-Award and Loan Terms

1. The TCAP Loan Agreement will specify construction schedules. If an owner fails to expend TCAP funds according to the commitment, IFA will assess whether the delay will affect its ability to meet federal requirements. Depending on the circumstances, IFA may allow the owner an opportunity to remedy the situation. However, under no circumstances can the payout of TCAP funds exceed the Federal time limits.

2. If a construction delay will affect IFA's ability to meet ARRA expenditure requirements, the IFA will take necessary steps to redistribute TCAP funds to a more deserving project, including the following:
   - De-obligating the remaining TCAP funds~~,~~;
   - Initiating foreclosure proceedings to recoup amounts already expended~~,~~; and
   - Redistributing the de-obligated and/or recouped TCAP funds to other eligible projects based on the selection criteria in Section II(D).
3. Remedies for loan default or other noncompliance may include the IFA having the ability to do some or all of the following:
   - Declare participants not in good standing;
   - Change the structure of the Ownership Entity, including adding or removing members/partners;
   - Replace the management company;
   - Initiate foreclosure proceedings; and
   - Other remedies as determined by IFA.

Dan Garrett, Midwest Housing Equity Group

Items 2 and 3 gives IFA a lot of power. Syndicators and investors will be at substantial foreclosure risk unless they are allowed to be consulted on these issues. Syndicators and investors may shy away from doing deals if the language is left as written.

IFA Response: IFA has the ability to provide flexibility in the loan terms dependent on the value of investment in the project as established in the syndication agreement and the specific terms therein.

4. IFA will seek full recapture of the loan in these circumstances:
   - Project never becomes a qualified LIHTC project.
   - Owner fails to complete construction.
   - Owner fails to obtain a syndication agreement.
   - Project experiences prolonged uncorrected compliance.
   - Project fails to meet the requirements of Section 42 for the compliance period.
   - Other remedies as determined by IFA.

Jim Beal, RSM McGladrey

1. In item #4 under post-award terms – strike the word "recapture" since it has specific meaning within tax credits – say that they loans will be in default and IFA will see specific remedies for repayment if….etc.

IFA Response: Change http://www.hud.gov/offices/cpd/environment/index.cfm to incorporate Jim Beal's comments.

C. Reporting and Compliance

Dan Garrett, Midwest Housing Equity Group

Make this "award criteria." This will require the GP/developer to prove they have the ability to perform the stringent requirements under the TCAP rules. Also allow the GP/Developer to "contract out the services."

IFA Response:

See Section II.A.6.

1. The owner shall provide periodic reports as required by HUD. A financial status report and project performance report is required on a quarterly basis. A reporting schedule will be established by IFA. The owner will also submit any other reports that HUD deems necessary to comply with any requirements of HUD or ARRA Accountability, Transparency, and Reporting Requirements. The performance report, at a minimum, has the following elements for each project receiving TCAP loan funds:
   - Name of recipient entity.
   - Name of project.
   - Brief description of project.
   - Location of project: 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.
2. Owners will follow IFA's processes and procedures applicable to IRS Code Section 42 projects with an investor and any additional compliance requirements made necessary due to TCAP funding.

D. Cross-Cutting Federal Requirements

Owners and projects must comply with all of the following~~.~~:

1. 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).
2. 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 which includes Limited English Proficiency (refer to Federal Register, FR-4878-N-02 published January 22, 2007).

3. 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."

4. Affirmatively Furthering Fair Housing

   Owners must establish and follow a written affirmative fair housing marketing plan when marketing 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:

   (a) Methods for informing the public, owners and potential tenants about Federal fair housing laws.

   (b) Requirements and practices each owner must adhere to in order to carry out affirmative marketing procedures and requirements~~,~~.

   (c) 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).

   (d) Records that will be kept describing actions taken by owners to affirmatively market units and records to assess the results of these actions.

5. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) ("Section 504") 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 applies to all TCAP projects. For new construction projects and projects undergoing substantial rehabilitation, five percent (5%) of the units must be accessible to persons with mobility impairments and two percent (2%) 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 fifteen (15) or more units for which the alterations would equal more than seventy-five percent (75%) of the replacement cost. Modifications to projects to comply with Section 504 requirements are eligible costs. However, compliance with Section 504 requirements may be infeasible or impracticable for some projects, depending on where they are in the development process. A new construction or substantial rehabilitation project is ineligible if it cannot be modified to meet the Section 504 requirements. 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.)

6. 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. 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.

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.

8. Davis-Bacon Prevailing Wages

   Contractors and subcontractors 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.

9. "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.

10. 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.

11. OMB Regulations and Circulars (2 CFR Part 2424 "Non-procurement Debarment and Suspension.")

E. Training and Technical Assistance

1. If a project owner is not familiar with the federal requirements, the project owner must retain subject matter experts to help comply. Costs incurred by project owners to comply with federal grant requirements are eligible TCAP costs.

2. I assume that you will want to disburse your funds first and will want to do this during construction. Will there be procedures forthcoming on the requirements for construction draws, lien waivers, etc?

IFA Response: Yes.

Rob McCready, MetroPlains

In general, the sooner that projects know about TCAP the better. A Scenario for Cedar Rapids that would work well is this: Apply for TCAP on June 19th, awarded on June 30th. Then, we'll proceed to closing with the syndicator in July through September. If that is closing breaks down for some reason, then to have until September 30th or October 31st to apply for exchange funds would be a reasonable amount of time to determine whether it's going to close. If it doesn't close, we can force an investor to provide a firm commitment and forego any opportunity to apply for exchange funds by those dates. Obviously IFA needs to allocate the exchange funds quickly but I don't want to have to commit to accepting exchange funds before we have a chance to attract private equity. If we need to apply for exchange funds in order to avoid missing out on a competitive process, then I will be forced to do that.

IFA Response: No change recommended.

Greg McClenahan, Evergreen Development:

General Comments

Without being privy to the diversity of the pending projects needing TCAP funds, it seems the use of "nominal" per capita credits with disaster credits will provide the best opportunity to maximize the impact of TCAP funds, while also preserving per capita credits for use through the exchange program. To the extent possible, enough per capita funds from 2008 and 2009 should be retained to maximize the ability to exchange credits for projects that will not benefit from TCAP funds, which would be those projects that are the most unmarketable to investors.

IFA Response: IFA has adequate "per capita" credits available to accomplish this task.

Kris Saddoris, Conlin Properties

Scoring items perhaps overlooked:

1. Price per unit. Given the very limited funding now available in the state, a cap on per unit price seems applicable, lower than the amount in the QAP ($237,000/unit), to insure that you can construct as many units as possible with the $90 million. I would suggest a 25-50% reduction. TCAP funds/unit is a scoring item for NIFA.

IFA Response: Refer to Scoring Criteria for "Best Use of Investment."

2. Zoning

IFA Response: This is a LIHTC threshold criteria.

3. Ability to close within 120 days of Commitment – from WHEDA plan

IFA Response: IFA will not sign a loan document until the syndication agreement is closed. Letter of solicitation will provide conditions in which the offer will be rescinded.

4. Ability to start construction the earliest – also WHEDA

5. Phase I completed

6. Organizational capacity – from MN – they give sliding scale points based on prior projects. This seems a good indication of the ability meet the tight expending requirements.

IFA Response: Refer to first item under Scoring Criteria for "Readiness to Proceed."

Other comments:

Upward/Downward adjusters are not addressed.

WHEDA is requiring a deposit of 0.5%, which is refundable at closing.

Please insure that the projects are financially solid for the 15 years. Some states are increasing the reserve requirements.

Please bear in mind the short construction season in Iowa as you set timeframes. It is critical that these projects get out of the ground this fall if you require PIS in 2010. Processes should be set to support that effort.

Phillip J. Stoffregen, Pedcor Investments
Thank you for providing the development community with this opportunity to comment on the draft Tax Credit Assistance Program Project Selection Process and Criteria. First and foremost, great job on the TCAP Policy in terms of keeping things straightforward, simple and with as little overlay of additional rules and regulations and requirements beyond the basics needed to protect IFA's interests and fulfill the federal requirements of the TCAP program.

Secondly, in collaboration with other Indiana-based developers, we submitted a number of comments of an overall policy nature to the Indiana Housing & Community Development Authority ("IHCDA") regarding their 2009 Tax Credit Exchange and Assistance Program Policy and Procedures (the "Policy"). We thought it would be helpful to pass along those overall policy oriented comments that are relevant to IFA's forthcoming policies for its Tax Credit Assistance and Exchange Funds programs along with our comments specific to IFA's proposal. Our comments, as they relate to Iowa Finance Authority, are as follows:

Policy Comments

1. Maximize the Authority's Funds-

   The Authority should strive to maximize the amount of funds available. As such, the Authority should disallow the future sale of 2007 and 2008 allocated credits whenever it is possible for the Authority to exchange these credits for 85 cents with the Treasury. A wholesale return of 2007 and 2008 exchangeable credits by developers is not advocated or necessary to achieve this goal. Rather, 2007 and 2008 exchangeable credits should be swapped simultaneous (or possibly subsequent) to the syndication of such credits with a commensurate amount of non-exchangeable credits. This Policy will enhance the value of 2007 and 2008 exchangeable credits by insuring a price of 85 cents relative to the current market price of approximately 50 to 70 cents.

   The Authority should allow developers that have 2008 tax credits from the Midwestern Disaster Allocation (MDA) to return funds and get an exchange of 2009 MDA tax credits, in the same amount, in order to reduce pressure created by the 10% Carryover and placement in service deadlines and otherwise facilitate developers' abilities to syndicate tax credits. This has the added advantage of positioning IFA to participate in any potential exchange allowed for MDA credits as a result of legislative efforts we understand are under consideration by various members of Congress to rectify the status of returned MDA Credits as eligible for the section 1602 exchange program.

2. Homogenize MDA and Section 42 Allocations & Reservations-
   2008 and 2009 deals that have tax credits from the Midwestern Disaster Allocation (MDA) should be offered as a matter of course a "nominal amount" of Section 42 credits so that they are eligible for TCAP funds.

3. Differentiate Among Funding Requests-

   As a matter of policy, we believe it is it is important to differentiate between major and minor requests for Authority funds. By differentiating with regard to the Authority's level of financial support, individual funding requests will receive a befitting level of underwriting, asset management, and structuring support in lieu of a "one size fits all approach."

   Conceptually there's a difference between a funding request which has no limited partner involvement and a funding request which has some limited partner involvement. Limited partner involvement reduces the Authority's monetary investment, significantly mitigates its financial risk, and reduces its need for involvement in the upfront underwriting and ongoing asset management. These effects will be directly proportional to the limited partner's ownership interest in any partnership. Therefore we suggest that in circumstances where the aggregate limited partner capital exceeds a funding request, the Authority would relax its involvement and oversight role in the transaction. However in circumstances where the aggregate limited partner capital is less than a funding request, the Authority would take on a greater oversight role in the transaction.

   Our suggestion is that the Policy be revised to distinguish and define a developer's funding request with regard to the amount of limited partner involvement. Specifically a "Major Funding Request" could be defined as a developer's request of Authority funds whereby the Authority's funds provided to the developer exceed the amount of aggregate limited partner capital. A "Minor Funding Request" could be defined as a developer's request of Authority funds whereby the Authority's funds provided to the developer are less than the amount of aggregate limited partner capital.

Importantly these definitions should be used to determine the applicability of various Policy provisions. Our suggestion, given the significant financial involvement of the limited partners, is to provide Minor Funding Requests with an exemption from (a) the requirement that a percentage of annual operating cash flow be directed to repayment of TCAP or Section 1602 moneys (and in lieu thereof only require that a Pro Rata share (see definition below) of the distributable cash flow available to the partners of the project partnership as a result of a sale or refinancing be directed toward repayment of any loan), and (b) the automatic 30 year extended use commitment. On the other hand, Major Funding Requests will be expected to incorporate these Policy provisions given the lesser financial involvement of the limited partners (if at all) relative to funds provided by the Authority.

4. Prioritize Funding Requests-

The Authority should provide an incentive to developers who have already or will mitigate the Authority's monetary investment and exposure by attracting limited partner capital. We suggest you consider the following funding priorities.

First Priority	2007, 2008, and 2009 Minor Funding Requests.
Second Priority	2007 and 2008 Closed Transactions
Third Priority	2007, 2008, and 2009 Major Funding Requests.

This priority system will anticipate and provide a solution to funding conflicts inherent to the depletion of the Authority's funds derived from Section 1602, TCAP, or other sources. The priority system is most relevant when Authority funds are nearing depletion. At this point there will be more demand than supply with regard to Authority funds. Therefore the above priority system is being recommended as a potential solution for a future rationing problem.

5. Sharing Economic Benefits of a Project with the Authority-

Irrespective of whether Authority funds are derived from Section 1602 or TCAP funds, whether the funds are granted or loaned, the Authority expects some benefit from its investment. Nevertheless, professionals from all quarters of the tax credit industry agree that the success of the program over the long run is due in part to continued financial rewards accruing to the developer/GP. This financial incentive is an important ingredient to the long term success of affordable housing. For the most part, Authority funds from TCAP or Section 1602 are being used to supplement for Minor Funding Requests or largely replace for Major Funding Requests limited partner equity previously supported by tax credits. For this reason, and in order to recognize the benefit of Authority funds, our suggestion is that the Authority share in sale and refinance proceeds and on-going operational cash flow in a manner consistent with the sharing arrangement historically required and enjoyed by limited partners. This will leave in place the important financial incentive for Developers/GP's to maintain the developments with a true ownership and long term outlook vs. the alternative of there being virtually no economic upside to protect if Authority tax credit replacement loans take up too great a percentage of the operating cash flow and sale/refinance proceeds.

In order to facilitate future negotiations with limited partners in a dynamic industry, it would greatly assist and simplify structuring discussions to know with certainty how much of the sale and refinance proceeds the Authority would like to share in. Once known, the developer will have the flexibility to respond to the various, and sometimes idiosyncratic, structuring needs of limited partners.

Our suggestion for purposes of determining the Authority's share of sale or refinance proceeds simulates the Authority's funds as a limited partner capital while also presupposing, regardless of the actual facts, that sale and refinance proceeds will be split 80% -20% between the general partner and limited partners respectively. The following text is an example of a waterfall provision preserving the Authority's sale and refinance benefits:

> The Authority will receive its "Pro rata Share" of "Distributable Proceeds" from a sale, refinancing or other capital event. "Distributable Proceeds" means the amount of money remaining after payment of all amounts owed by the partnership to others and to partners for tax credit adjusters, loan repayments, interest and unpaid fees, etc. "Pro Rata Share "means an amount equal to 20% of (1) Distributable Proceeds times (2) the ratio of its funds to the aggregate amount of its funds and originally contributed limited partner capital of the partnership.
>
> For Major Funding Requests the same concept should be adapted and applied to annual operational cash flow.

6. Other Important Commentary-

Refresh Credits- The Authority, to the greatest extent possible should juggle its inventory of credits in a way which will provide a reasonable extension of time to developers with closed credit transactions to assist their fulfillment of Section 42 credit timelines.

In an effort for the Authority to be able to respond as quickly as possible, the Policy should include the provision that the Authority's staff will have the ability to waive or modify policies in this program or the QAP when in the best interest of the Authority to further their mission. For example, allowing a deferred developer fee in excess of 50% where the project pro forma supports its full repayment within 13 or 15 years after completion may be appropriate in certain circumstances.

IFA Response: No changes recommended.