



## **Iowa Finance Authority**

### **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 percent (75%) of its TCAP grant, or \$14,233,908, by February 16, 2010, demonstrate that all project owners have expended seventy-five percent (75%) of the TCAP funds by February 16, 2011, and expend one hundred 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/](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**

1. 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 that IFA Board of Directors shall have passed a resolution allocating a specific amount of LIHTC to the project, and the project owner has paid the required reservation fee. The specific amount of LIHTC allocated to a project is based on the approved underwriting of the project's need for LIHTC by IFA LIHTC staff in accordance with IRC 42(m). The IFA Board of Directors meets monthly to authorize and approve the actions of the Iowa Finance Authority. Following the approval by the Board, a reservation letter and reservation fee invoice is sent to the ownership entity by email and by Federal Express, notifying the owner of the IFA Board's reservation of credits on behalf of the project. In order for the ownership entity of the project to retain the allocation of LIHTC, the ownership entity must pay a nonrefundable reservation fee of one percent (1%) of the ten (10) year tax credit amount within 30 calendar days. If IFA does not receive the reservation fee, then the allocation of tax credits is rescinded.

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. The Board approval of the allocation of LIHTCs and the payment of the required reservation fee must occur between October 1, 2006 and September 30, 2009 for the project to be eligible for TCAP funds.

2. In order to be eligible for the TCAP selection process, the project must expect to be completed no later than February 16, 2012, as indicated in the project's proposed construction schedule.
3. 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.

4. 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. IFA will extend the ten percent (10%) test deadline from September 30 to November 16, 2009. An addendum to the 2008 Carryover Agreement will be sent to all affected projects.

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 ten percent (10%) test. Other sources must be used for costs that are not eligible for LIHTCs, such as land.

5. TCAP funds may be used to meet the Section 42 ten percent (10%) test for eligible costs.
6. TCAP funds may not be used for the cost of swimming pools.
7. 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.
8. Owners must agree to not prepay any TCAP loan funds prior to February 17, 2012, unless approved and/or required by IFA.
9. 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. Board approval of the “per capita” credit and TCAP loan funds can be concurrent.

10. In order to be eligible for any TCAP loan, the Ownership Entity must waive its 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.
  
11. IFA will require a deferral of twenty-five percent (25%) of the developer fee in excess of \$500,000. 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 with 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 on the IFA website. Eligible project Ownership Entities will have fifteen (15) business days to provide requested information.
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, prohibited by 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.” Any choice-limiting actions taken following the receipt of the meeting request may cause the project to be ineligible for a TCAP loan.
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 project and if so, IFA will propose a suitable loan amount to the project. 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 this time, the project’s Ownership Entity will be sent a Letter of Solicitation. The Letter of Solicitation will specify the amount of the conditional commitment, subject to successful negotiation and availability of funds.
4. IFA will sign a “TCAP written agreement,” with the Ownership Entity. For the purposes of the TCAP selection process and criteria, the “TCAP written agreement” is the same document as the TCAP loan agreement. This agreement will set forth all of the TCAP program and crosscutting federal grant requirements applicable to the funding, and must make these requirements enforceable through the recordation of a restriction that is binding on all owners and successors. This written agreement cannot be executed until environmental clearance for the project is completed and the Request for Release of Funds is approved.
5. Following the completion of all necessary steps and activities as specified in the Letter of Solicitation, IFA will sign a TCAP loan agreement with the Ownership Entity. No TCAP funds may be disbursed until the TCAP loan agreement is signed and dated by both IFA and the ownership entity.
6. 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.

**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. Projects must meet the Threshold Criteria in Section II.A. to be competitively scored.

**Readiness to Proceed**

<p>0 to 10 points</p>	<p>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:</p> <ul style="list-style-type: none"> <li>• The anticipated building timelines and proposed construction draw schedule, including a list of any challenges (e.g. extensive sitework); and</li> <li>• Owners' and general contractors' recent history of timely construction.</li> </ul> <p>The maximum number of points will be given to projects that demonstrate both a construction schedule that reflects the goals of the TCAP program, and 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.</p> <p>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.</p>
<p>50 points</p>	<p>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.</p> <p>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.</p> <p>Projects can receive points in this category or the next category, but not both.</p>

40 points	<p>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. Please note the project owner's costs for completing the environmental review may not be included in eligible basis for TCAP funds.</p> <p>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.</p> <p>Projects can receive points in this category or the previous category, but not both.</p> <p>Projects that have applied for a State HOME allocation but have not yet received a conditional commitment of funds are <u>not</u> eligible to receive points in this category.</p>
10 points	Local government(s) have issued signed building permits.
5 points	A construction contract has been fully executed.
0 to 25 points	<p>Strength of the Relationship with Syndicator/Investor: This category evaluates where the project is in relationship to the syndicator/investor's process for finalizing the purchase of tax credits. The syndicator or direct investor(s) must provide a signed verification to IFA of their current position related to the project. The general partner of the ownership entity and Syndicator/Investor must have completed the previous step and be in the process of completing the next step to earn points. For example, in order to score 5 points for Step 4, the Syndicator/Investor will have completed Step 3, and determined that the project has moved on to Step 4 in the approval process. A project will receive 25 points for Step 7 if the investor committee has given final approval to the project and the Syndication/Investment Agreement is being negotiated or has already been finalized. Points are not cumulative.</p> <ol style="list-style-type: none"> <li>1. Letter of Intent issued. (QAP threshold)</li> <li>2. IFA Award of Tax Credits – syndicator begins investment process.</li> <li>3. Syndicator/investor performs initial investment review including review of tax credit application, review of market, site inspection,</li> </ol>

	<p>review of development team and guarantors and compliance with current underwriting guidelines.</p> <p>4. Syndicator/investor performs detailed review on all aspects of the investment and prepares investment summary for approval by its internal review committee. (5 points)</p> <p>5. Final due diligence received and reviewed. Underwriting assumptions finalized. (10 points)</p> <p>6. Final approval from investor(s)/committee. (15 points)</p> <p>7. Closing of Syndication/Investment agreement. (25 points)</p> <p>Simultaneously to the signing of the TCAP loan agreement, Step 7 above must be completed.</p>
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**Location**

15 points	<p>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.</p>
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**Project Ownership**

10 points	<p>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.</p>
5 points	<p>The General Partner is a community housing development organization (CHDO) as defined in 24 CFR Part 92.2.</p>

**Best Use of Investment**

Request for TCAP funds do not exceed the following:

20 points	TCAP amount requested is \$10,000 or less per LIHTC unit
15 points	TCAP amount requested is \$15,000 or less per LIHTC unit
10 points	TCAP amount requested is \$20,000 or less per LIHTC unit
5 points	TCAP amount requested is \$25,000 or less per LIHTC unit

Points are not cumulative. 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.

**III. General Requirements**

In addition to the terms of the TCAP criteria, owners will comply with the QAP in effect at the time of the award of tax credits to the project.

**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 IFA’s IRS Code Section 42(m)(2) review of the operating proforma.
2. TCAP loans will be for twenty (20) 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.
3. Owners will record a thirty (30) year Declaration of Land Use Restrictive Covenants (Declaration).

**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 or other delay will affect IFA's ability to meet ARRA expenditure requirements, 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(C).

To redistribute TCAP funds to a more deserving project, IFA will do the following:

- Notify those owners whose projects are already under construction and have been approved for a TCAP loan to determine whether increased construction costs have created further funding gaps for their projects. If funding gaps exist, to the extent possible, the recouped TCAP funds will be reallocated to previously funded projects.
  - If unallocated TCAP funds remain, IFA will notify those owners who responded to the RFI but not awarded TCAP funds, and request current information. IFA will then determine, according to the selection criteria, if any project can proceed with a TCAP loan of available funds. The owner will be notified of all Federal cross-cutting measures, and appropriate compliance measures will be implemented immediately.
  - In the event that no other projects can use TCAP funds, IFA will issue a new Request for Information, following the Solicitation Process described in section II.B.
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.
  4. If the loan is in default, IFA will require repayment of all funds or other appropriate remedies:
    - 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.

### **C. Reporting and Compliance**

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](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 ensure compliance.