



DRAFT FOR PUBLIC COMMENT

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:

- 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 2009 2nd Amended Qualified Allocation Plan. IFA is required to commit not less than 75 percent 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 100 percent of its TCAP grant by 2-16-2012. 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 [Web site](#).

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 (QAP), 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 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 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.
2. 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 2009 Second Amended Qualified Allocation Plan.
3. 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.
4. TCAP funds may be used to meet the Section 42 ten percent (10%) test for eligible costs.
5. TCAP funds may not be used for the cost of swimming pools.
6. 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 (24 CFR Part 58), 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.
7. Owners must agree to not prepay any TCAP loan funds prior to February 17, 2012, unless approved and/or required by IFA.

8. 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.
9. In order to be eligible for any TCAP loan, the Ownership Entity must waive their right to a qualified contract. An exception may be made for a project that is a qualified Renter to Ownership Saving Equity (ROSE) program.
10. IFA will require a deferral of twenty-five percent (25%) of the developer fee in excess of \$300,000.

B. Solicitation Process

1. IFA will publish a Request for Information from all eligible projects. Eligible project ownership entities will have 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 IFA deems to meet the threshold and competitive criteria established in its Tax Credit Assistance Program Project Selection Process and Criteria. At the time 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.
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. At this time, the Project’s Ownership Entity will be sent a Letter of Solicitation.
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.
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.

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 3 days.

C. Selection Criteria

The 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

5 points	<p>Owners’ relative ability to expend 75 percent 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"> • 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. <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>
20 points	<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>
15 points	<p>Have received a previous award 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.</p>
5 points	<p>Final construction drawings have been prepared.</p>
5 points	<p>Local government(s) have issued building permits.</p>
5 points	<p>A construction contract has been executed.</p>

25 points	<p>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.</p> <ol style="list-style-type: none"> 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.
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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>
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Best Use of Investment

The greater of the following:

20 points	Syndication proceeds amount to 70 percent or more of total construction sources, exclusive of mortgage debt
15 points	Syndication proceeds amount to 60 percent or more of total construction sources, exclusive of mortgage debt
10 points	Syndication proceeds amount to 50 percent or more of total construction sources, exclusive of mortgage debt

III. General Requirements

In addition to the terms of the TCAP criteria, Owners will comply with the 2009 Second Amended 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.
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.
3. Owners will record a thirty (30) year Declaration of Land Use Restrictive Covenants (Declaration) pursuant to QAP Section VI(A)(9).

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, the IFA will assess whether the delay will affect its ability to meet federal requirements. Depending on the circumstances, the 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 the 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
 - redistribute 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.
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.

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 the 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 the 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 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.