



Louisiana Housing Finance Agency

2415 Quail Drive, Baton Rouge, Louisiana 70808

MEMO

To: Development Community

From: LIHTC Staff and Counsel

Re: Adjustment of TCAP Loan and 1602 Exchange Guarantees/Liquidity Requirements

Date: December 3, 2009

The LIHTC Staff and Counsel have received further guidance from the United States Treasury Department (the “**Treasury**”) concerning the exposure of the Agency to an advance of TCAP Funds to a project that fails to be completed and fails to achieve 42(g) status.

Pursuant to discussions with Ms. Jean Whaley, the designated Treasury contact for the 1602 Exchange Program, it was confirmed that the Agency is **not** at risk of repaying 1602 Funds to Treasury so long as the Agency undertook “appropriate” actions following a “recapture event.” Ms. Whaley confirmed that a recapture event may occur prior to the commencement of the compliance period for a project and that appropriate action may include filing a civil lawsuit to collect 1602 funds if the Agency did not advance 1602 Funds pursuant to a note and mortgage.

Based upon comments received by the Development Community, LAAHP President, LHFA’s Multifamily Chairman and further review of alternatives to the unconditional Developer Net Asset and Liquidity Requirements, LIHTC Staff and Counsel recommend the following adjustments to the Net Asset and Liquidity Requirements.

Adjustment of Guarantees for TCAP and 1602 Exchange Projects

(A) Net Assets: Eliminate unconditional Net Asset requirement entirely if a payment and performance bond is provided with a rated insurance company during construction and development asset management subject to AMEC Model and closing documents evidencing the following requirements at closing:

(i) fully funded six month initial operating reserves, including (a) operating expenses, (b) initial deposit and monthly deposit to reserves for replacement and (c) debt service at closing, and

(ii) operating deficit guaranty equal to sum of (a) twelve months of operating expenses, (b) initial deposit reserves for replacement and six subsequent monthly deposits to such reserves for replacement and (c) twelve months of level debt service on hard debt. As an alternative, a letter of credit equal to the amounts specified in (ii) may be provided and in lieu of a letter of credit, Developer may deposit its Developer Fee in escrow to satisfy the operating reserve and/or operating guaranty specified in (A) if the Developer's net assets are equal to at least twenty-five percent of such deposit.

Exceptions to the foregoing for the underwriting and asset management of projects under development and construction will be reviewed on a case by case basis, subject to review and recommendations of the Agency's LIHTC underwriter, asset manager and staff.

(B) Liquidity Requirement: Eliminate unconditional Liquidity requirement entirely if the Net Asset adjustment specified in (A) is implemented.

Adjustment To Previous Communicated Timelines

Guarantee: According to the TCAP Conditional Commitment Agreement, the Taxpayer is to provide in accordance with Section 6 a specific guarantee. The required submission date for 2007/2008 TCAP Projects was November 1, 2009 and 2009 Projects was November 13, 2009. However, in order to allow sufficient time for all developers to meet this requirement and retain their TCAP commitment, the Agency is willing to allow the guarantee to be supplied at the time of the TCAP closing.

Detailed Plans and Specifications: At least 45 days prior to the commencement of construction or substantial rehabilitation of a project the owner must submit certification from the architect meeting the provisions outlined in the QAP. In lieu of a set deadline date, the agency is willing to allow some flexibility and will stipulate the date according to each project schedule and dependent upon the closing of TCAP or 1602 Exchange Funds as applicable.

Pre-2009 Projects requesting 1602 Exchange Funds: The Agency has received numerous questions concerning processes for the awarding of 1602 Exchange Funds for 2007/2008 Projects. This is to advise that Staff is scheduled to make recommendations to the Board of Commissioners at its December 9, 2009 meeting. For the projects that are awarded 1602 Exchange Funds, developers will be required to submit a Voluntary Return of Credits form (the "**VCR form**") so that the Agency may request Exchange Funds from

Treasury at that time. It will be imperative that developers submit the VRC form expeditiously by no later than December 11, 2009.

Carryover Requirements: According to the QAP, currently projects must deliver to the Agency all carry forward allocation documentation on or before December 15, 2009. It is anticipated, however, that this date will be considered for extension at the BOC meeting of December 9, 2009.