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June 16, 2009

Ms. Marcia Sigal, Director  
Program Policy Division  
Office of Affordable Housing Programs  
Community Planning and Development  
U.S. Department of Housing and Community Development  
451 7<sup>th</sup> Street, S.W., Room 7164  
Washington, D.C. 20410

RE: TCAP Submission for State of Maryland Department of Housing and Community Development (MDHCD): Changes based on HUD's Review for Completeness

Dear Ms. Sigal:

Enclosed please find revisions to MDHCD's TCAP Submission Package that address HUD's comments received by email on June 15, 2009. A summary of the revisions follows.

1. Definition of Award of LIHTCs:

**HUD Comment:** "Definition #1" appears to be two definitions, whereas the TCAP Notice, CPD 09-03, requires that there be one definition of award (one for 9% credits, one for 4% credits, etc.). Is the reservation letter when the allocation is first made? Isn't the "carryover" allocation usually made a later date? Please clarify. If there are two definitions in "Definition#1", please select one date of award for 9% credits, awarded sometime between 10/1/06 and 9/30/09.applied to all projects.

"Definition #2" and "Definition # 3": Are these two different definitions for the same award of 4% credits made along with awards of tax-exempt bond financing? Please clarify. If not, is there something similar to a "Section 42 m" letter for projects which are awarded credits described in "Definition #2", such as the letter described in "Definition #3"? Can your agency arrange to have a letter or some other official notification (e.g. Board Resolution) that will indicate the date and how many LIHTCs were awarded to each project under "Definition #2"?

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Ms. Marcia Sigal  
Page Two

**MDHCD Response:** *Definition #1 revised to eliminate the reference to carryover allocation. Definitions #2 and #3 combined and award will be the issuance of the 42(m) letter for both MDHCD and locally issued TE bonds.*

2. Redistribution of funds from non-performing to more deserving projects

**HUD Comment:** The submission does not include information about how the agency will redistribute funds from non-performing projects to more deserving projects. Will the criteria used for the original allocation of TCAP funds be used for re-distribution, if any, of TCAP funds? Does your agency plan to keep a waiting list or have a rank order on the original TCAP award list?

**MDHCD Response:** *Tab C revised to add language specifically saying that MDHCD will maintain a wait list in ranking order from the July competition and that projects on the wait list, in ranking order, will be eligible to receive recaptured funds from a nonperforming project.*

Thank you for your assistance with this effort. We look forward to working with you as we implement TCAP. Please let me know if you have any questions. I can be reached at 410-514-7481 or at [sylvester@mdhousing.org](mailto:sylvester@mdhousing.org).

Sincerely,



Patricia Rynn Sylvester  
Director Multifamily Housing

PRS:km

## **TAB B - Description of Competitive Selection Criteria:**

*Clean Version*

### Requirement per HUD Notice CPD-09-03

As described below, the grantee must distribute the TCAP funds competitively under the requirements of the Recovery Act (i.e., give priority to projects that are expected to be completed by February 16, 2012) and pursuant to the existing Qualified Allocation Plan (QAP).

Each state housing credit agency must submit a written description of all the selection criteria and any weightings assigned that it will use to competitively award its TCAP funds. The state housing credit agency must also define an "award of LIHTCs" which can be as early as the date of public notice of the funding decision for a particular project. The same definition of an "award of LIHTCs" must be uniformly applied to all LIHTC projects for the purpose of determining project eligibility for TCAP funding.

### **B1. Award of LIHTC – Definition**

For the purposes of TCAP, MDHCD defines "Award of LIHTCs" as follows:

- (1) For allocated (9%) LIHTCs: when MDHCD has executed a reservation letter of LIHTCs for a project in accordance with its QAP;
- (2) For automatic (4%) LIHTCs: when MDHCD issues a Section 42(m) letter (as required per Section 42 of the IRC), which demonstrates that the project meets the requirements under the QAP for LIHTCs.

To be eligible for TCAP funds, an Award of LIHTCs must be made not earlier than October 1, 2006 and not later than July 7, 2009.

### **B2. Project Eligibility**

A rental housing project that requires additional funding to be completed and placed in service in accordance with the requirements of Section 42 of the IRC is eligible to compete for TCAP funding from MDHCD when the project:

- a) has an Award of LIHTCs as defined in B1 above;
- b) has submitted an application that was received by MDHCD on or before February 17, 2009; and
- c) has not closed on financing and/or commenced construction.

In accordance with HUD guidance, a project is ineligible for TCAP funding from MDHCD if it receives an Award of LIHTCs and subsequently returns the LIHTCs to MDHCD.

**TAB B - Description of Competitive Selection Criteria:**

Red-line version

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Requirement per HUD Notice CPD-09-03

Each state housing credit agency must describe the procedures it will use to ensure it will commit and expend its TCAP funds to meet the deadlines established in the Recovery Act. In addition, it must specifically describe how it will redistribute funds to more deserving projects from projects which are not in compliance with deadlines established in the written agreement between the grantee and project owners.

**Commitment and Expenditure Deadlines for TCAP Funds:** Under ARRA, MDHCD must:

- Commit not less than **75%** of TCAP funds by February 16, 2010
- Expend not less than **75%** of TCAP funds by February 16, 2011
- Expend **100%** of TCAP funds by February 16, 2012
- return to HUD all TCAP funds not expended by February 16, 2012

To meet these deadlines, MDHCD will initially award TCAP funds through the July 2009 TCAP Competitive Funding Round in accordance with the TCAP Selection Criteria and Weighting outlined in Tabs B and E. These criteria prioritize projects with the demonstrated ability to move forward quickly and use TCAP funds within the federally-mandated timeframes. MDHCD expects that the TCAP Awards made through the July Funding Round will enable it to meet the Commitment and Expenditure Deadlines for TCAP funds. DHCD will maintain a wait list in ranking order for applications received but not funded in the July Round. Projects on the wait list, in order of their ranking, will be eligible to receive recaptured funds from a nonperforming project. MDHCD also reserves the right to competitively award TCAP funds to other eligible projects that meet the selection criteria used for the July competition as necessary to ensure timely expenditure of TCAP funds.

Projects selected for TCAP funding will be required to execute a TCAP Written Agreement prior to initial closing. Any project that has not executed a TCAP Written Agreement by the date that it certifies in its application may have its award of TCAP funding revoked and re-allocated to another eligible project(s) from the wait list. The TCAP Written Agreement will specify a schedule for disbursement of TCAP funds. As required in HUD Notice CPD-09-03, the TCAP Written Agreement “will specify a schedule for the expenditure of TCAP funds and outline the circumstances under which TCAP funds will be recaptured if the project owner fails to meet the schedule.” Failure to expend TCAP funds as outlined in the TCAP Written Agreement will result in the recapture and redistribution of TCAP funds to another eligible Project from the wait list or, if necessary, a subsequent competition using the July selection criteria.

Building on its experience in financing over 30,000 units of rental housing over the past 20 years, MDHCD will closely monitor project progress and make adjustments as needed to ensure continuing compliance with the Commitment and Expenditure deadlines as projects move forward. A specific description of the procedures MDHCD will use to redistribute funds to more deserving projects from projects which are not in compliance with deadlines established in the written agreement between the grantee and project owners follows.

From TCAP award to initial closing on the TCAP financing, MDHCD will be actively involved in underwriting and loan closing. MDHCD has significant experience in providing gap financing to

Requirement per HUD Notice CPD-09-03

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Commitment and Expenditure Deadlines for TCAP Funds: Under ARRA, MDHCD must:

- Commit not less than 75% of TCAP funds by February 16, 2010
- Expend not less than 75% of TCAP funds by February 16, 2011
- Expend 100% of TCAP funds by February 16, 2012
- return to HUD all TCAP funds not expended by February 16, 2012

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**July 2009  
Tax Credit Assistance  
Program (TCAP)  
APPLICATION  
SUBMISSION  
PACKAGE**

*Multifamily Rental Financing*

*June 16, 2009 – Revised Final*



*The Maryland Department of Housing and  
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letter and spirit of the law for achieving equal  
housing opportunity in Maryland.*

## II. TAX CREDIT ASSISTANCE PROGRAM (TCAP)

**A) Competition, Selection Criteria and Funding Availability:** Through the July 2009 TCAP Funding Round, the Department will competitively allocate approximately \$31.7 million of TCAP funding received through ARRA. TCAP funds will be awarded according to the TCAP Project Selection Criteria detailed in Section IV, below. As specified in HUD Notice CPD-09-03 (issued on May 4, 2009), the main selection criterion used to allocate TCAP funds must be expected project completion by February 16, 2012, which is three (3) years after the enactment of ARRA.

**B) Purpose:** TCAP funds are made available to eligible projects to finance the construction, or acquisition and rehabilitation of multifamily rental housing projects with an "Award of LIHTCs" as defined in Section II.C, below.

**C) Award of LIHTCs and Eligible Projects:** For the purposes of TCAP, the Department defines "Award of LIHTCs" as follows:

- (1) For allocated (9%) LIHTCs: when THE DEPARTMENT has executed a reservation letter of LIHTCs for a project in accordance with its QAP;
- (2) For automatic (4%) LIHTCs: when the Department issues a Section 42(m) (as required per Section 42 of the Internal Revenue Code) letter which demonstrates that the project meets the requirements under the QAP for LIHTCs.

To be eligible for TCAP funds, an Award of LIHTCs must be made not earlier than October 1, 2006 and not later than July 7, 2009.

**A project is eligible for TCAP funding when it: a) has an Award of LIHTCs; b) has submitted an application that was received by the Department on or before February 17, 2009; and c) has not closed on financing and/or commenced construction.**

**In accordance with HUD guidance, a project is ineligible for TCAP funding if it receives an Award of LIHTCs and subsequently returns the LIHTCs to the Department.**

**D) TCAP Written Agreement:** TCAP funding will be awarded to Eligible Projects under terms and conditions outlined in the TCAP Written Agreement. The TCAP Written Agreement will be executed between the Department and the project owner, and will include, at a minimum, the following:

- rent, income and use restrictions;
- compliance monitoring requirements;
- federal rules and grant requirements;
- deadlines for expenditure of TCAP funds; and
- accountability, transparency and reporting requirements of ARRA

The TCAP Written Agreement may not be executed until the NEPA environmental clearance for the project is completed and the Request for Release of Funds (RROF) is approved. No TCAP funds may be released to a project until the TCAP Written Agreement is fully executed. The TCAP Written Agreement will be revised, at such time and at any time additional requirements are provided from HUD.



**E) Commitment and Expenditure Deadlines for TCAP Funds:** Under ARRA, the Department must:

- Commit not less than **75%** of TCAP funds by February 16, 2010
- Expend not less than **75%** of TCAP funds by February 16, 2011
- Expend **100%** of TCAP funds by February 16, 2012
- return to HUD all TCAP funds not expended by February 16, 2012

To meet these deadlines, the Department will initially award TCAP funds through the July 2009 TCAP Competitive Funding Round in accordance with the TCAP Selection Criteria and Weighting outlined in Section IV, below. These criteria prioritize projects with the demonstrated ability to move forward quickly and use TCAP funds within the federally-mandated timeframes. The Department expects that the TCAP Awards made through the July Funding Round will enable it to meet the Commitment and Expenditure Deadlines for TCAP funds. DHCD will maintain a wait list in ranking order for applications received but not funded in the July Round. Projects on the wait list, in order of their ranking, will be eligible to receive recaptured funds from a nonperforming project. The Department also reserves the right to competitively award TCAP funds to other eligible projects that meet the selection criteria used for the July competition as necessary to ensure timely expenditure of TCAP funds.

The Department will closely monitor project progress and make adjustments as needed to ensure continuing compliance with the Commitment and Expenditure deadlines as projects move forward.

The Department will reserve the right to adjust, withdraw or recapture all or a portion of TCAP funding to ensure federal expenditure requirements are met. Projects selected for TCAP funding will be required to execute a TCAP Written Agreement prior to initial closing. Any project that has not executed a TCAP Written Agreement by the date that it certifies in its application (see Section III, below) may have its award of TCAP funding revoked and re-allocated to another eligible project(s) from the wait list. The Department has experience in making similar adjustments for its State-funded loan programs. If necessary, the Department can reduce TCAP awards to projects not meeting their obligations and move these funds to TCAP eligible projects that are proceeding on schedule. Projects that lose their TCAP funding may be eligible to apply for other State-controlled resources with a less stringent timetable for expenditure.

Construction period funding disbursements will be established in a manner that complies with all expenditure and draw requirements. The TCAP Written Agreement will specify a schedule for disbursement of TCAP funds. As required in HUD Notice CPD-09-03, the TCAP Written Agreement “will specify a schedule for the expenditure of TCAP funds and outline the circumstances under which TCAP funds will be recaptured if the project owner fails to meet the schedule.”

If a project fails to expend TCAP funds in a timely manner, the Department will assess the reasons for the expenditure problems and whether the delay will affect its ability to meet the TCAP deadlines. The Department will work closely with the projects to resolve expenditure issues quickly but reserves the right in its sole discretion to recapture TCAP funds per the TCAP Written Agreement. Projects should be familiar with their TCAP Written Agreement and recognize that failure to comply with the schedule and terms of the TCAP Written Agreement could result in the recapture of TCAP funding for the project.



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Lt. Governor

RAYMOND A. SKINNER  
Secretary

CLARENCE J. SNUGGS  
Deputy Secretary

# FAX Cover sheet

Date 6-16-09  
Number of pages including cover sheet 13

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From: Pat Sylvester  
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Fax: 410-987-8763

**REMARKS:**

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REMARKS:

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