

May 19, 2009

To: Senator Elizabeth Schneider, Chair
Representative Nancy Smith, Chair
Members, Joint Standing Committee on Business, Research, and Economic Development

From: Dale McCormick, Director

Re: ARRA Funding for the 2009 Tax Credit Assistance Program (TCAP)

Background – MH administers the federal tax credit program

MaineHousing administers the federal Low Income Housing Tax Credit Program on behalf of the State. The Internal Revenue Service is the federal administrator. This program was created during Senator George Mitchell's tenure as Majority Leader of the US Senate, which resulted in then-MaineHousing Director Elizabeth Mitchell playing a key role in the program's development.

The program encourages investment in affordable rental housing developments by offering the investors a tax credit over ten years. MaineHousing allocates the credits to developers who sell them to investors, usually through an intermediary such as Northern New England Housing Investment Fund which MaineHousing created in the early days of the program.

Problem – Credit prices are too low to cover costs

The current economic crisis has crippled the market for these tax credits. Investors do not need tax credits because they have far fewer profits to use the credits against. This has resulted in a drastic drop in the value of the credits (from about \$0.95 per \$1.00 two years ago to about \$0.70 per \$1.00 today) and in some cases, no market for the credits at all. As a result, projects are no longer financially feasible without additional assistance.

Solution – ARRA provides additional funding to fill the gap

The recovery act included two ways to solve the problem:

- provide subsidy (TCAP) to credit allocating agencies to make up the lost revenue and
- allow a portion of credits that either cannot be sold or can only be sold at such a low value that the development remains infeasible to be exchanged for \$0.85 per \$1.00 of credit (100% of the 2008 credits and 40% of the 2009 credits can be exchanged).

MH Proposal – Use the funds to quickly create as much affordable housing as possible within the law

The law requires us to award the TCAP funds competitively. The competition can provide an additional filter to our previously held annual competition; we do not have to repeat it. We are required to have a preference for projects that are expected to be completed by February 16, 2012.

We have opened the competition to all projects that have an existing credit award or are currently on our waiting list. The competitive factors are:

- readiness (municipal approvals, status of construction drawings, status of construction contract, and status of other financing),
- job creation, and
- prior competitive standing of the project in the original annual competition.

Our detailed proposal is attached. It is currently out for public comment.

Conclusion – Let's do as much as we can as fast as we can

We have tried to build on all the work that has already been done by the developers and MaineHousing. We have tried to further the goals of the recovery act by giving priorities to those who are ready to start right away and to those who will create the most jobs. We have tried to be fair to the developers by retaining the results of the previous competition. We have listened to the advocates and appreciate the input they provided in helping us form our strategic approach to this. We are in agreement on general approach if not on every one of the specific details.

We appreciate the Committee's interest in our programs. If you have any questions or comments about our proposal, please contact me or Peter Merrill.

**Maine State Housing Authority
2009 Tax Credit Assistance Program
Selection Process and Criteria**

Maine State Housing Authority (MaineHousing) is pleased to announce the availability of \$10,690,750 in Tax Credit Assistance Program (TCAP) funds. These funds are provided by the U.S. Department of Housing and Urban Development pursuant to the American Recovery and Reinvestment Act of 2009.

This program has been designed to give MaineHousing flexibility to combine TCAP funds with other resources available to MaineHousing, including without limitation, 9% low-income housing tax credits (LIHTC), Section 1602 tax credit exchange funds and FedHOME, to maximize the use and efficiency of all of these resources to fund additional low income housing tax credit projects.

In addition to the requirements set forth in this program guide, the following rules and guidelines, which can be found on MaineHousing's website at <http://www.mainehousing.org>, apply: MaineHousing's Rental Loan Program Guide (to the extent not addressed in or in conflict with this program), Chapter 16 of MaineHousing's Rules, Allocation of State Ceiling for Low-Income Housing Tax Credit, and Chapter 29 of MaineHousing's Rules, Multifamily Development and Supportive Housing Loans and Grants.

MaineHousing reserves the right to reject any and all applications, and to award all, a portion, or none of the available subsidy during any offering, depending on the quality and merits of the applications received.

Eligible Projects

Eligible projects include residential rental housing projects that are expected to be completed by February 17, 2012 and that:

- received an award of 9% LIHTC pursuant to a MaineHousing Qualified Allocation Plan (QAP) during the period from October 1, 2006 to September 30, 2009 and have not yet started construction; or
- are currently on MaineHousing's 2009 QAP waiting list for an allocation of 9% LIHTC.

For purposes of this program, an award is a Notice to Proceed.

Eligible Applicants

The recipient of an existing award of 9% LIHTC for an eligible project or the original applicant to the 2009 QAP for an eligible project currently on MaineHousing's waiting list is eligible to apply for the TCAP funds.

In order to be eligible for TCAP funds, the recipient of an existing award of LIHTC for an eligible project must rescind the award so MaineHousing will have flexibility to maximize the use and efficiency of available resources.

No application will be accepted, processed, or approved by MaineHousing if the applicant, developer, project owner or any affiliate or principal thereof, or any entity controlled thereby, (i) in the last six months has been declared in default or has been 60 days or more delinquent on any loan with MaineHousing unless an approved payment or workout plan is in place and in good standing or (ii) has ever been the owner of a MaineHousing-financed project upon which MaineHousing has foreclosed a mortgage interest.

Eligible Use of Funds

TCAP funds may only be used to pay costs that are included in the “eligible basis” of a low-income housing tax credit project pursuant to MaineHousing’s 2009 QAP and Section 42 of the IRC.

TCAP funds and other resources available to MaineHousing will not be used to fund any gaps created by the loss of federal or state historic tax credit equity or other significant sources of funding for the project, for example, RD 515 funding or rental assistance, HUD 202 funding or rental assistance, NAHASDA funding or rental assistance, or AHP funding.

Application Process

All applications must be received by MaineHousing no later than 5:00 PM on [DATE WHICH IS 14 DAYS FROM THE DATE OF ISSUANCE OF THIS PROGRAM].

To apply for TCAP funds, eligible applicants must submit a letter requesting consideration for TCAP funding, a statement rescinding an eligible project’s existing award of 9% LIHTC, as applicable, and any documentation updating the application for the project submitted to the Rental Loan Program/QAP which may affect the applicant’s score under the selection criteria set forth below. MaineHousing will score the application for TCAP funds using the applicant’s existing application to the Rental Loan Program/QAP on file plus any updated documentation submitted by the applicant with its request for TCAP funding.

Selection Criteria and Funding Awards

MaineHousing will score eligible applications according to the following selection criteria.

A) Readiness

- 1) An eligible project will receive **5 points** if the project has all municipal approvals required to proceed with the project and any timeframe to appeal such approvals has expired with no appellate action being taken or all appeals have been resolved. The applicant must submit evidence thereof, if it has not already done so, in the form of a letter from the appropriate municipal official or body with its application, and the design of the project submitted to and approved by the municipality must be

acceptable to MaineHousing. The applicant must have met with MaineHousing’s Construction Services Manager concerning the design of the project before submitting the design to the municipality for approval. Notwithstanding MaineHousing’s approval of the level of design of the project approved by the municipality, the final design of the project, including all plans, details and specifications, are subject to MaineHousing’s approval.

- 2) An eligible project will receive up to **10 points** if the project has completed construction drawings and specifications as determined by MaineHousing as follows:

100% complete	10 points
90% complete	8 points
50% complete	4 points

- 3) An eligible project that has selected a contractor with an agreed upon contract amount based on 100% plans and specifications approved by MaineHousing as described above will receive **25 points**
- 4) An eligible project that has all necessary financing commitments, including construction lender, equity provider and any other non-MaineHousing sources, shall receive **20 points**. An applicant that is unable to find an equity partner after a good faith effort and can provide evidence to demonstrate those efforts can still be considered for these points if it has secured all other sources.

B) Job Creation

An eligible project will receive up to **50 points** as follows:

New construction, or adaptive reuse of a non-housing structure of forty or more units	50 points
New construction, or adaptive reuse of a non-housing structure of less than forty units	40 points
Acquisition and rehabilitation of existing housing units	30 points

C) Characteristics Pursuant to the QAP – Prior Competitive Standing

- 1) An eligible project that has received a Notice to Proceed will receive **40 points**.
- 2) An eligible project currently on the 9% QAP waiting list will receive points as follows:

Park Street School	30 points
Congress Court	25 points
Maine Hall	20 points

Spring Crossing	15 points
Yankee Way	10 points
Salem Street Apts.	5 points
Cascade Brook Apts.	0 points

MaineHousing will select applications, from the highest scoring application to the lowest scoring application, for funding subject to the availability of TCAP funds and other resources, including without limitation, 9% LIHTC, Section 1602 tax credit exchange funds and FedHOME.

MaineHousing reserves the right to award subsidy in an amount that is less than requested by an applicant. MaineHousing also reserves the right not to award all of the available resources to ensure funding is available to fill any gaps in projects that arise after an award is made. Successful applicants will receive a Notice to Proceed.

MaineHousing may award TCAP funds and/or any other available resources described above or any combination of TCAP funds and other resources. Recipients of resources other than TCAP funds must satisfy all applicable requirements of the other funding sources, for example, procedures and guidance issued by MaineHousing in connection with Section 1602 tax credit exchange funds if the project receives any exchange funds. The Notice to Proceed will identify the amount and source of resources awarded to the project and the conditions for receiving a funding commitment.

Terms of TCAP Funding

MaineHousing is required to expend all TCAP funds by February 17, 2012. Recipients of TCAP awards will be required to meet a specific schedule for expenditure of the TCAP funds awarded to the project to ensure this deadline is met. Failure to meet the schedule may result in a recapture of TCAP funds.

TCAP funds may be made available during the construction of the project if necessary to expend the funds in accordance with the schedule.

TCAP awards will be made in the form of a 30-year deferred loan. The first \$600,000 of any subsidy sources received, including TCAP funds, FedHOME funds and State HOME funds, will accrue interest at 3% over the life of the loan. Any amount of subsidy sources above \$600,000 will be at 0% interest.

The amount of subsidy awarded, including without limitation TCAP funds, will be determined by MaineHousing based on its underwriting criteria set forth in the Rental Loan Program, and in no event will be more than is necessary for the financial feasibility and long-term viability of the project, as determined by MaineHousing.

TCAP funding must be secured by a mortgage and security interest in the land and improvements, a general assignment of leases, rents and contracts, a UCC security interest in all fixtures and personal property associated with the project, a collateral assignment of capital contributions (if any), a security interest in all accounts, reserves and escrows established in connection with the project, indemnifications and any other collateral as may be required by MaineHousing. If the project will be

located on leased land, MaineHousing will require a leasehold mortgage and security interest and a subordination of the owner's fee interest in the land. If MaineHousing is providing amortizing debt or is not the primary mortgage lender, MaineHousing may agree to a junior security interest with respect to the TCAP funding. MaineHousing will require an intercreditor agreement on terms and conditions acceptable to MaineHousing with any other lenders providing funding for the project.

TCAP Funding Requirements

In addition to other requirements set forth in the Rental Loan Program, owners of projects receiving TCAP funds must enter into a legally binding restrictive covenant (TCAP Funding Agreement) which will be recorded in the appropriate registry of deeds and obligate the owner of the project, its successors and assigns, to comply with the following requirements.

1. The affordability and use restrictions pledged in the project's application to the applicable MaineHousing QAP for a period of 90 years.
2. The schedule for expenditure of the TCAP funds awarded to the project.
3. Environmental review under the National Environmental Policy Act and implementing regulations at 24 CFR Part 58.
4. Davis-Bacon Prevailing Wages, the Drug-Free Workplace Act of 1988 and implementing regulations at 24 CFR Part 21, and anti-lobbying restrictions under 31 USC 1352 and implementing regulations at 24 CFR Part 87.
5. Fair Housing Act and implementing regulations at 24 CFR Parts 100 and 107, Title VI of the Civil Rights Act of 1964 and implementing regulations at 24 CFR Part 1, Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR Part 8, The Age Discrimination Act of 1975 and implementing regulations at 24 CFR Part 146, and affirmative fair housing marketing requirements.
6. 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.
7. Developers, owners, management agents, contractors, subcontractors and material suppliers must not be presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any federal or state housing programs and may not have had a professional license to provide the nature of services they will provide for the project suspended or revoked.
8. All other requirements specified by HUD and MaineHousing.

No TCAP funds will be disbursed until the environmental review process is completed and MaineHousing has received a release of funds notice from HUD and the TCAP Funding Agreement has been fully executed by the project owner and MaineHousing.

Accountability, Transparency and Reporting

Applicants must submit all information required by MaineHousing to comply with the accountability, transparency and reporting requirements of the American Recovery and Reinvestment Act of 2009, including without limitation information about the project, the status of completion, the use of TCAP funds, and the number of construction and non-construction jobs created or retained by the project. Recipients of TCAP funds must have a Data Universal Numbering System (DUNS) number from Dun and Bradstreet. Entities can obtain a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1-866-705-5711. Recipients must also be registered with the Central Contractor Registration (CCR) system. To register, go to www.ccr.gov/startregistration.aspx

Contact Information

If you have any questions about this program or TCAP, please contact:

Daniel Brennan, Development Department Director
Maine State Housing Authority
353 Water Street
Augusta, Maine, 04330-4633

E-mail: dbrennan@mainehousing.org
Telephone at (207) 626-4600 or 1-800-452-4668 (voice) or 1-800-452-4603 (TTY)

MaineHousing Non-Discrimination Policy

MaineHousing does not discriminate on the basis of race, color, religion, sex, sexual orientation, national origin, ancestry, age, physical or mental disability, or familial status in the admission or access to, or treatment or employment in, its programs, and activities. MaineHousing will provide appropriate communication auxiliary aids and services upon sufficient notice. MaineHousing will also provide this document in alternative formats upon sufficient notice. MaineHousing has designated the following person responsible for coordinating compliance with applicable federal and state nondiscrimination requirements and addressing grievances: Mary Darling, Maine State Housing Authority, 353 Water Street, Augusta, Maine 04330-4633, Telephone Number (207) 626-4600 or 1-800-452-4668 (voice) or 1-800-452-4603 (TTY).