

## MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY

### APPLICATION TO THE US DEPARTMENT OF HOUSING & URBAN DEVELOPMENT FOR TAX CREDIT ASSISTANCE PROGRAM FUNDING

#### A. Statement of Intent

- 1) The Michigan State Housing Development Authority (the Authority) intends to accept **all** funding available to it under the Department of Housing and Urban Development's (HUD) Tax Credit Assistance Program (TCAP). This includes the "base grant" amount previously published by HUD of \$63,974,711 and any prorata share of any TCAP funds that other states elect not to request.
- 2) The Authority already manages a variety of federal grant programs, many administered by HUD. These include the HOME Investment Partnership Program, the Emergency Shelter Grant Program, and the first generation of the Neighborhood Stabilization Program. Additionally, the Authority administers a portion of the State of Michigan's Community Development Block Grant program and has received funding for homeownership and foreclosure prevention counseling under both the HUD Super NOFA and the National Foreclosure Mitigation Counseling Program.

While not specifically federal grants, the Authority is also the Low Income Housing Tax Credit (LIHTC) allocation entity for the State of Michigan, the statewide Public Housing Authority, and both a Traditional and Project Based Contract Administrator for HUD's Office of Multifamily Housing Programs. The Authority is well versed in the full range of federally funded housing programs administered by HUD.

- 3) The Authority's 2009 Low Income Housing Tax Credit (LIHTC) allocation process is currently underway and is outlined in the 2009 Qualified Allocation Plan (QAP). In addition to ongoing applications for 4% LIHTC awards, the Authority's 9% LIHTC program in 2009 was split into two competitive funding rounds. The "general round" applications were due on May 1, 2009, and a "rolling round" began accepting applications on May 4, 2009.

A total of 80 developments applied for funding in the general round including 5 applications for supplemental credit awards to developments that had received prior awards but can demonstrate the need and eligibility for additional credit. Of the 75 developments seeking initial credit awards, 8 indicated they have "hard equity commitments" from LIHTC investors. The Authority awarded 100 additional points<sup>1</sup> to general round applications that could demonstrate, via at-risk deposits equal to 6% of the annual credit award being sought, binding commitments for the purchase of credits and that can close within 60 days of being issued a formal credit reservation.

As of the date of this writing, one application has been received in the rolling round. Among the threshold requirements of the rolling round is a "hard equity commitment" as defined

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<sup>1</sup> Including projects claiming points for hard equity, self scores in the May 2009 general round ranged from 152 to 341.

above. Under the QAP, in the event rolling round funding is not exhausted by September 30, 2009, credit ceiling set-aside for this round will be reallocated to provide additional awards within the general round.

Additionally, in anticipation of HUD's implementation of TCAP, the Authority published a Preliminary Implementation Plan for the American Recovery and Reinvestment Act (ARRA) (Exhibit 1) on March 25<sup>th</sup>. Under the plan, the Authority accepted Notices of Intent to Apply for TCAP funding (Exhibit 2) as part of the 2009 9% LIHTC applications and indicated that it would, for purposes of the LIHTC financial feasibility analysis, assume that any application relying on TCAP funding less than or equal to \$2.50 per \$1.00 of annual credit ceiling awarded (effective credit pricing support of \$0.25) would actually receive the TCAP funding requested. Additional points were awarded in the LIHTC competition for developments that demonstrate feasibility with less than the Authority's maximum TCAP award.

The Authority's Preliminary Implementation Plan and all guidance provided to potential applicants prior to HUD's release of the TCAP Notice assumed that all cross-cutting federal requirements would apply (see Questions & Answers posted to the Authority's website attached as Exhibit 3). Additionally, the Authority sponsored a one day training on cross-cutting federal regulations which was taught by Monte Franke (see training materials attached as Exhibit 4). The purpose of the training was to ensure that potential applicants understood the various implications of indicating intent to apply for federal funding, including the prohibition on taking choice limiting actions prior to a NEPA review and HUD Release of Funds and Grant Conditions and, prospectively, the notice requirements of the Uniform Relocation Act (since waived by HUD for purposes of TCAP).

At this time, staff reviews of the LIHTC applications have begun, and cross-divisional underwriting and processing teams have been established to speed the review of applications for TCAP assistance. Concurrently with the preparation of this application to HUD, the Authority is also developing a formal TCAP Application, including due diligence and compliance document checklists, that incorporates HUD guidance on TCAP. In anticipation of the HUD grant award, the Authority expects to release this application to affected developers and begin receiving applications by June 1, 2009.

- 4) The Authority's contact person for TCAP will be

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## **B. Description of Competitive Selection Criteria:**

In its Preliminary Implementation Plan, the Authority outlined several priorities that would guide its planning efforts and implementation of ARRA provisions related to tax credit housing. Those included: a) maximizing the value of both TCAP and Section 1602 Program (a.k.a. monetized credit) funding to the state; b) spurring development activity and the associated economic impacts; c) developing projects that are more sustainable and more affordable; and d) recognizing the challenges that face the state as it continues to experience substantial economic restructuring.

These priorities continue to guide this application for TCAP funding from HUD. TCAP funds will be used in three program areas announced within the Preliminary Implementation Plan—the 9% Tax Credit Assistance Program, the 4% Tax Credit Assistance Program, and, potentially, in the 9% Tax Credit Exchange Program.

**Selection Criteria:** While TCAP assistance will be considered under two parallel project tracks, one for 9% LIHTC applications under the 2009 QAP and one for proposals seeking 4% or 9% LIHTC tied to Direct Loans from the Authority, all TCAP assisted projects will be subject to the same selection criteria as outlined below. In each case, the primary selection criteria will be based on a project's readiness to proceed and ability to be completed within timeframes necessary for the Authority to commit and expend TCAP funds within the appropriate timeframes.

Any project receiving TCAP funds will be subject to the following threshold requirements:

- 1) Projects must have been awarded, as defined herein, LIHTC under the 2007, 2008, or 2009 versions of the Authority's QAP. (Awards of LIHTC are, themselves, competitive under the applicable Qualified Allocation Plan and, as applicable, under the Authority's Direct Lending Program.); and
- 2) Projects must be underwritten by Authority staff based on the most current underwriting standards available (i.e. 2007 applications will be re-evaluated based on updated underwriting criteria) and after review of any required updates to market studies, operating cost estimates (including analysis of comparable properties), trade payment breakdowns (reflecting Davis Bacon wages), and other due diligence items the Authority determines may be needed to ensure the long term viability of the projects funded by TCAP.

Projects achieving these thresholds will be considered for TCAP funding. The competitive selection of TCAP recipients will be further based on a project's readiness to proceed with projects receiving TCAP awards on a first-come, first-served basis that takes into account the project's ability to:

- 1) Demonstrate compliance with appropriate cross-cutting federal regulations, including the National Environmental Policy Act (NEPA), Fair Housing, and Davis Bacon and Related Acts (DBRA);

- 2) Close on all financing and begin construction within 60 days of the initial TCAP commitment;
- 3) Demonstrate it is fully compliant with all local requirements, including compliance with necessary approvals for zoning, site plan, building permits, and tax abatement (if applicable) within 60 days of the initial TCAP commitment;
- 4) Begin construction within 30 days of closing on all financing; and
- 5) Demonstrate an ability to complete construction activity within 12 months of closing. Additionally, the Authority will focus its TCAP awards on projects that can reasonably be expected to complete construction no later than December 31, 2010, and in no case will the Authority issue an award to a project that cannot reasonably be expected to be completed prior to February 16, 2012.

Should further differentiation among projects be needed, the Authority will select projects based on the following additional criteria:

- 1) Preservation, as defined in the 2009 QAP; and
- 2) Least amount of TCAP subsidy per unit.

Because the Authority intends to incorporate TCAP funding into its standing 9% LIHTC competition under the 2009 QAP and its awards of gap financing resources in its Direct Lending Program, additional competitive criteria under those programs will also apply indirectly to TCAP. As noted in Section C below, the Authority will carefully monitor the ongoing implementation, commitment, and expenditure of TCAP funding and may adjust the competitive criteria for TCAP and/or under its other standing program documents to ensure timely and efficient use of TCAP and other funding.

**Definition of LIHTC Award:** For purposes of the Authority's TCAP funding, an "award" of LIHTC will be defined as follows:

An award of LIHTC necessary to qualify a project for TCAP funding:

- i) Shall be made on or between the dates of October 1, 2006 and September 30, 2009;
- ii) Must be in a minimum amount of \$100 of annual credit;
- iii) May include either "4%" or "9%" LIHTC awards;
- iv) May include contingent awards of credit that may be revoked in the event a developer cannot meet the terms and conditions of the award, including but not limited to requirements that other sources of funding, including HOME, TCAP, NSP, etc., be identified and firmly committed to the project;
- v) May include additional awards of LIHTC resulting from increases in eligible basis that result in eligibility for additional credit amounts above and beyond a project's initial award; and

Furthermore, an award is deemed to occur on the date that a public announcement of either 4% or 9% credit awards are made, including contingent or additional awards as outlined above, publicly via publication on the Authority's website, press release, presentation at an Authority Board meeting, or other similar means.

Pursuant to HUD requirements, a good faith effort must be made to sell as many of the awarded credits as circumstances and market conditions allow. However, if a developer cannot use or sell all of the tax credits awarded to a project, adjustments can be made to the amount of credits allocated. In any event, a written agreement that requires compliance with Low Income Housing Tax Credit and TCAP requirements for the period required by section 42 of the Internal Revenue Code must be entered into by the project owner.

**Application Process:** Concurrent with and immediately following this submission to HUD, the Authority will proceed to develop, publish, and accept formal applications for TCAP assistance. The TCAP application process will be streamlined as much as possible and coordinated with the ongoing review of 2009 9% LIHTC applications already received by the Authority and/or with the ongoing acceptance and review of applications for tax exempt Direct Lending from the Authority. Each of these program areas—corresponding respectively to the 9% Tax Credit Assistance Program and 4% Tax Credit Assistance Program from the Authority’s Preliminary Implementation Plan—have specific application, processing, and due diligence requirements. As a result, the TCAP application process will require applicants to submit only those additional or updated items as may be necessary to determine a project’s eligibility for TCAP under applicable federal and state policies.

The Authority will also consider requests for supplemental financing with TCAP funding from projects i) that have already received a direct investment of Authority funding—including participation in the Direct Lending Program, receipt of HOME or Authority Funding, or receipt of Project Based Vouchers, ii) that have financing gaps due to cost increases unanticipated at the time of the Authority’s initial investment, iii) that are eligible for TCAP funding by virtue of having received an award of credits, as defined herein, within the appropriate time period, and iv) that already have or can meet applicable cross-cutting federal regulations associated with TCAP funding.

Any such award will be at the discretion of the Authority and will require a staff determination that the TCAP award is both necessary and sufficient to ensure the project’s long term viability and that other means of obtaining additional funding have been reasonably pursued and/or achieved. Requests for such funding will also be reviewed and acted upon on a first-come, first-served basis under the competitive selection criteria outlined above, including underwriting according to the Authority’s current standards, and any such awards will be publicly announced in a similar fashion to other TCAP awards.

### **C. Commitment and Expenditure Deadlines:**

**Prior Action:** As noted herein, the Authority began planning for the implementation of the TCAP and Section 1602 Programs prior to HUD and Treasury's release of funding notices. All of that planning has been focused on ensuring that we can meet the commitment and expenditure deadlines associated with these programs. As a fundamental part of that effort, the Authority has explicitly reserved the ability to continually track the effectiveness of its implementation, to adjust program parameters as needed to ensure timely and responsible use of funding, and to reallocate funding from one program area to another to ensure that funding is available to projects that can proceed rather than tied up with projects that are stalled.

To ensure that TCAP funds are committed and expended within the program deadlines, we have already: i) accepted Notices of Intent to Apply for TCAP funding as part of the application for 9% LIHTC awards in both the general (application deadline May 1, 2009) and rolling (applications accepted through September 30, 2009); ii) formed cross-divisional internal processing teams with staff from the Authority's LIHTC Allocations Unit, its Rental Development & Homeless Initiatives underwriting staff, and its closing attorneys; these teams will jointly process applications for TCAP financing; and iii) published revisions to the Authority's Direct Lending underwriting and subsidy allocation processes and parameters (Exhibit 5) that incorporate TCAP funding.

**Intent to Provisionally Allocate TCAP and LIHTC: Provide for Revocation of TCAP Awards:** Given the uncertain investment environment both nationally and regionally, the Authority anticipates that some developments with LIHTC awards will still be unable to find equity investments necessary to complete a development. This dynamic will require that we maintain flexibility in the commitment and expenditure of TCAP funding to comply with the commitment and expenditure deadlines.

The Authority intends to provide a two-stage award process for TCAP. Initial project specific commitments will be made concurrently with 9% LIHTC awards resulting from the 2009 QAP—estimated to occur in July or August—and concurrently with 4% LIHTC awards resulting from tax exempt Mortgage Loan Feasibility determinations throughout the summer months. In both cases, the Authority will consider making provisional allocations of both TCAP funding and LIHTC awards that exceed the total funds available. Provisional allocations will become final and result in receipt of TCAP funds upon the project producing a hard equity commitment as defined by the QAP.<sup>2</sup>

Developments that are unable to produce hard equity commitments within 120 days of their initial TCAP award may have their awards revoked, and the revocation of TCAP awards may result in the loss of LIHTC awards, Authority Mortgage Loan Feasibility or Commitment determinations, and/or the loss of other soft funding commitments from the Authority. Awards

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<sup>2</sup> Unfortunately, the market for LIHTC equity is such that the Authority expects some developments receiving TCAP commitments and LIHTC awards will be unable to attract sufficient investor interest to be viable. In the unanticipated event that all developments receiving contingent LIHTC awards and initial TCAP reservations are able to sell their credits, the Authority intends to use 2010 LIHTC credit ceiling and future HOME, NSP, or other soft funding available to backfill any provisional allocations of LIHTC or TCAP in excess of available funding.

that are revoked, subject to the availability of funding, will be re-issued to the next project in line in the first-come, first-served selection criteria outlined above.

**Ongoing Review, Process Improvements, and Reallocation of Funding:** The Authority will monitor all TCAP awards on no less than a quarterly basis, generally concurrently with the preparation of reports to HUD on TCAP progress. Each development receiving TCAP will have project specific construction and disbursement schedules agreed to between the Authority and the project sponsor at closing. Developments that have received awards of TCAP but that have not been able to achieve the performance benchmarks required to close on their TCAP awards or have failed to progress in a timely fashion after closing will be re-considered. At that time, the Authority may revoke awards, amend awards, or otherwise reallocate funds to other projects on the same first-come, first-served selection basis as outlined above. In practice, a waiting list of projects that have met the requirements for an award of TCAP will be maintained. The Authority will also review projects that are progressing in a timely fashion and will amend TCAP awards as appropriate to ensure they remain financially viable.

The Authority will also monitor the overall effectiveness of its TCAP implementation and may adjust, modify, or waive various program parameters in an effort to respond to market conditions, availability of funding, and other such factors. Additionally, we expect to continue to coordinate TCAP and Section 1602 Program funding in a comprehensive series of programs addressing the needs of affordable rental developments qualified for LIHTC.

It should also be noted that the Authority's Direct Lending programs will be used as the model for closing, disbursement, and asset management for TCAP assisted projects. This program infrastructure already includes asset management functions required by ARRA which include but are not limited to careful review of building plans prior to closing, ongoing construction inspections by Authority staff, tracking of disbursements through the Authority's Finance Division, review of financial performance during lease-up, and ongoing oversight of operating budgets, financial performance, and adequacy of reserves throughout the life of the loan.

#### **D. Recovery Act Accountability and Transparency Requirements:**

The Authority has been proactive in its approach to ARRA provisions relating to TCAP and the companion Section 1602 Program being administered by the Department of Treasury. On March 25<sup>th</sup>, in an effort to provide guidance to the development community and the public, the Authority developed and released a Preliminary Implementation Plan addressing the ARRA provisions related to LIHTC.

In addition to the publication of the Preliminary Implementation Plan, the Authority took several additional actions:

- 1) A special email address ([mshdarecovery@michigan.gov](mailto:mshdarecovery@michigan.gov)) for public comment, questions, and feedback was established and will continue to be used.
- 2) Written comments have been and will continue to be posted to the Authority's website (currently located at <http://www.michigan.gov/mshda/0,1607,7-141-5546-211383--00.html>).
- 3) A Question & Answer section (Exhibit 3) related the Authority's implementation of ARRA provisions has also been developed to provide responses to comments and questions received, to ensure that the broadest distribution of such guidance is achieved, and to provide updates based on changing circumstances.
- 4) We held a Public Listening and Feedback Session on April 13<sup>th</sup>. That session was attended by more than 150 individuals representing various segments of the development community, and at least 75 additional participants listened to the session via teleconference. A recording of the session is available on the Authority's website, and detailed notes are attached (Exhibit 6).
- 5) The Authority has provided frequent updates via email distribution to the development community. These updates usually highlight recent policy decisions, actions by the Authority, or other information that has been posted to the website. Updates are distributed to an Authority distribution list of more than 400 individuals and are provided to two statewide trade associations, the Michigan Housing Council and the Community Economic Development Association of Michigan.

Finally, since the publication of the TCAP Notice by HUD, the Authority has published a draft version of the TCAP Submission Packet for public review and comment. The draft Submission Packet was posted to the website on May 20.

The Authority intends to use the website in this manner to post policy, program, and funding notices to the public, to collect and disseminate public comment, and to otherwise serve as a clearinghouse for ongoing implementation of the TCAP and other ARRA programs. The Authority will also use this website to publicly post specific application materials, additional details on its competitive selection processes and program criteria, notices of TCAP awards, and descriptions of projects receiving TCAP awards.

The Authority will also publicly post the required quarterly reports to HUD on its website for public review. As outlined in the notice, that reporting will include information such as total amount of TCAP received by the state and TCAP funds committed to and expended on specific projects. Additionally, we will publish project descriptions, completion status, job information, and the like.

Currently, the Authority's website related to TCAP and Treasury's Section 1602 Program can be found at: <http://www.michigan.gov/mshda/0,1607,7-141-5546-211383--,00.html>. Alternatively, simply access the Authority's website at <http://michigan.gov/mshda> and click on the link for the American Recovery & Reinvestment Act.

Because the section of the website related to ARRA's multifamily and tax credit provisions was developed quickly to accommodate distribution of the plan, we focused on getting information up quickly rather than developing a full scale structure and format for the site. The Authority is working to improve the formatting of the Recovery portion of its website. This will involve integrating other ARRA provisions including NSP-2, CDBG-R, and the like. Depending on when it is accessed, the TCAP information may be moved slightly. Tentatively, we hope to implement an address of <http://michigan.gov/mshda/recovery> which will then direct users to program and project types sub-pages.

**List of Exhibits:**

- Exhibit 1: Authority's Preliminary Implementation Plan for ARRA Resources, as published on March 25, 2009
- Exhibit 2: Notice of Intent to Apply for TCAP Funding used by applicants for 2009 9% LIHTC awards
- Exhibit 3: Copy of website published Questions & Answers as of May 26, 2009
- Exhibit 4: Copy of materials used in April 24, 2009 Cross Cutting Federal Regulations training by Monte Franke.
- Exhibit 5: Direct Lending Parameters as presented to the Authority Board on May 20, 2009
- Exhibit 6: Notes from Public Listening Session regarding the Preliminary Implementation Plan held on April 13, 2009