

American Recovery and Reinvestment Act of 2009 ("ARRA")

The ARRA legislation signed by President Obama on February 17, 2009, provides two financing tools to assist the development of LIHTC projects that are stalled due to current market conditions: Gap Funds and Exchanged Funds ("EF").

Gap Funds (TCAP)

What we know:

- HUD will allocate funds to state housing agencies and has named the program the Tax Credit Assistance Program ("TCAP")
- MHDC will receive nearly \$38.7 million on behalf of Missouri to allocate through a competitive process
- HUD will publish program and federal requirements through a notice process
- MHDC will have 15 days to respond to the notice and 45 days to submit a description of the competitive process for allocating TCAP funds
- TCAP funds are available to developments awarded "existing" 9% LIHTC and 4% LIHTC from 10/01/06 through 09/30/09
- TCAP is subject to the same rent and income restrictions as LIHTC
- TCAP funds are HOME-like, requiring compliance with HOME environmental review, labor, and fair housing standards
- Information about developments receiving TCAP allocations will be posted on a HUD-sponsored website
- Annual deadlines are imposed for the commitment and expenditure of funds
- MHDC must reallocate funds recaptured from developments unable to meet timing requirements to "more deserving projects"
- Any TCAP funds not expended by 02/17/12 will be reallocated to states that have utilized all their funds
- State agencies must perform asset management reviews of developments financed with TCAP funds

What is unclear:

- When will the notice from HUD be published?
- When will the funds be made available to draw upon?
- Must HUD approve the release of funds on a project-by-project basis?
- Are projects with disaster credits eligible to receive TCAP funds?
- What is meant by the term "awarded" in the context of 4% deals?

Exchanged Funds

What we know:

- Treasury will issue guidance on the exchange process and rules for the use of EF
- Any unused and returned 2008 existing 9% LIHTC plus a percentage of the 2009 existing 9% housing credit ceiling may be returned to the Treasury in exchange for \$8.50 per credit (\$0.85 for \$1.00 of the 10-year stream of credits)
- The pool of EF can be used as gap financing in developments with LIHTC or to completely replace LIHTC
- Developers approved for federal LIHTC who are experiencing difficulty placing some or all of the credits may request to return some or all of their credits
- Developers returning federal credits are not automatically assured an allocation of EF, nor must they be given an amount equal to \$0.85 per credit returned if it exceeds the amount necessary for project feasibility
- Based on state statute, developments are only eligible for state LIHTC that is equal to or less than the amount of federal LIHTC
- Developments requesting EF after returning 100% of their LIHTC must meet MHDC-determined requirements to demonstrate good faith efforts have been expended to obtain investment commitments
- Allocations of EF must be made in the same manner as allocations of LIHTC
- EF are subject to the same rent and income restrictions as LIHTC
- State agencies must perform asset management reviews of developments financed with EF
- MHDC must impose and implement recapture requirements to assure compliance with program requirements
- Recapture may be enforced by liens; recaptured funds must be returned to the Treasury
- EF must be allocated before 01/01/2011; unused funds must be returned to the Treasury after that date

What is unclear:

- When will Treasury issue guidelines?
- When will the exchange funds be available?
- Is the exchange with Treasury a one-time event or may credits be exchanged as they are returned?
- It appears disaster credits are not eligible to be exchanged, but are disaster deals able to use EF?
- Can EF be combined with TCAP funds?