Tax Credit Assistance Program
Project Selection Process and Criteria

The American Recovery and Reinvestment Act (ARRA) included two provisions for Housing Credits:

- $2.25 billion for the Tax Credit Assistance Program (TCAP) , and
- the ability for agencies to exchange certain allocations for cash from the Treasury (Exchange).

The North Carolina Federal Tax Reform Allocation Committee (Committee) and Housing Finance Agency (Agency) will administer distribution of the state's $52,152,687 in TCAP funding pursuant to these Project Selection Process and Criteria (TCAP Criteria).

I. INTRODUCTION

The Agency will follow ARRA's overall purpose of creating and saving jobs in the near term by using the appropriation to start construction on shovel-ready activities.

Terms used in the TCAP Criteria will have the same meaning as under IRS Code Section 42, federal regulations, the 2009 Qualified Allocation Plan (QAP), Housing and Urban Development (HUD) CPD Notice 09-03, and legal agreements between the Agency and Owners.

II. APPLICATION AND EVALUATION

A. THRESHOLD ELIGIBILITY

1. The project must have an award of 9% tax credits from the 2009 cycle and require additional funding to be completed and placed into service. For purposes of the TCAP Criteria, "award" means approval by the Committee and posting on the Agency website www.nchfa.com/Rental/RDdevportfolio.aspx.
2. The project and Owner must be eligible under applicable federal requirements, including ceasing all activity as further described in Section II(B)(2) below.

B. APPLICATION PROCESS

1. The Agency will notify developers that have submitted full applications of the opportunity to apply for TCAP funding. The application form and deadline will be announced later.
2. In order to be eligible for TCAP funding, owners must not undertake any choice-limiting activity prior to successful completion of the environmental clearance review (i.e., HUD approval of the Request for Release of Funds). This prohibition begins June 2, 2009 and includes leasing or disposition of real property and any activity that will result in a physical change to the property including acquisition, demolition, movement, rehabilitation, conversion, repair, or construction. Performing a choice-limiting action prior to successful completion of the environmental clearance review may disqualify a project from receiving any federal funds, including TCAP.
3. Owners will have to make achievable representations with regard to construction timing.

C. SELECTION CRITERIA

The Agency will evaluate applications based on the following criteria, which are listed in order of importance:

1. Owners' relative ability to expend seventy five percent (75%) of the TCAP award before December 31, 2010 and place projects in service by December 31, 2011. The Agency will consider:
   - the anticipated building timelines, including any challenges (e.g. extensive sitework), and
   - Owners' and general contractors' recent history of timely construction.
2. Projects that are more likely to secure an equity investment will have priority. The Agency may consult with equity providers to determine this factor.
3. Projects that would start construction the earliest, as determined by the estimated time necessary for the following, will have priority:
   - complete federal requirements, including the environmental review,
   - prepare final construction drawings,
   - local government(s) to issue building permits,
   - execute a construction contract, and
   - secure a construction loan.

III. GENERAL REQUIREMENTS

In addition to the terms of the TCAP Criteria, Owners will comply with the 2009 QAP and Appendix B, including requirements for Rental Production Program (RPP) loans.

A. UNDERWRITING STANDARDS

Other than the following provisions, underwriting standards will be announced along with the TCAP/Exchange application.

1. Loans will be approximately equal to the anticipated equity and in all cases will be no more than the lesser of:
   (a) the project's eligible basis, and
   (b) what is necessary to ensure the project's financial feasibility and viability for thirty (30) years based on the Agency's IRS Code Section 42(m)(2) review.
2. TCAP loans will be for thirty (30) year terms with no interest or payments for the first three (3) years. After that time, for projects without an equity investor the terms will be the same as for RPP loans.
3. Developer fee for projects without an equity investor will be paid as follows:
   (a) twenty five percent (25%) upon the Owner expending seventy five percent (75%) of the TCAP award; and
   (b) twenty five percent (25%) upon Agency approval of the project's final cost certification.

   Owners will deposit the remaining fifty percent (50%) in a controlled bank account with funds released based on the Owner maintaining compliance. Twenty percent (20%) of the total deposited can be withdrawn each year for five (5) years starting in December of year after the project places in service.

B. POST-AWARD AND LOAN TERMS

1. TCAP Funding Commitments (Commitment) will specify construction schedules. If an owner fails to expend TCAP funds according to the Commitment, the Agency will assess whether the delay will affect its ability to meet federal requirements. Depending on the circumstances, the Agency may allow the Owner an opportunity to remedy the situation.

2. If a construction delay will affect the Agency's ability to meet ARRA expenditure requirements the Agency will take necessary steps to redistribute TCAP funds to a more deserving project, including the following:
   - de-obligating the remaining TCAP funds,
   - initiating foreclosure proceedings to recoup amounts already expended, and
   - redistribute the de-obligated and/or recouped TCAP funds to other eligible projects based on the selection criteria in Section II(C).
3. Construction loans must allow for future advances and principal payments permitted at any time during the life of the loan.
4. Remedies for loan default or other noncompliance may include the Agency having the ability to do some or all of the following:
   - declare participants not in good standing,
   - change the structure of the ownership entity, including adding or removing members/partners,
   - replace the management company,
   - initiate foreclosure proceedings, and
   - other remedies as determined by the Agency.
5. Owners of projects without an investor will return all but a nominal amount of the project's tax credit allocation by a date determined by the Agency.
6. The Agency will assess an origination fee equal to one percent (1%) of the TCAP loan amount.
7. Owners will record a thirty (30) year Declaration of Land Use Restrictive Covenants (Declaration) pursuant to QAP Section VI(A)(9).
8. Owners will seek an equity investor to fully or partially replace the TCAP loan.

C. REPORTING AND COMPLIANCE

1. Owners will report to the Agency on:
   - all information applicable to HOME Investment Partnership Act funding,
   - project's completion status,
   - an estimate of the number of jobs created and the number of jobs retained, and
   - any other information necessary for the Agency's federal reporting requirements,

   after the end of each calendar quarter.
2. Owners will follow the Agency's processes and procedures applicable to IRS Code Section 42 projects with an investor and any additional compliance requirements made necessary due to TCAP funding.

D. CROSS-CUTTING FEDERAL REQUIREMENTS

Owners and projects must comply with all of the following.

1. Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24 CFR Part 100 and the regulations at 24 CFR Part 107 (Equal Opportunity in Housing).
2. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR Part 1.
3. The Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR Part 146 "Nondiscrimination on the Basis of Age in HUD Programs or Activities Receiving Federal Financial Assistance."

4. Affirmatively Furthering Fair Housing

   Owners must establish and follow an affirmative fair housing marketing plan when marketing units. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market to the available housing without regard to race, color, national origin, sex, religion, familial status or disability. The affirmative marketing requirements and procedures adopted must include:

   (a) Methods for informing the public, owners and potential tenants about Federal fair housing laws.

   (b) Requirements and practices each owner must adhere to in order to carry out affirmative marketing procedures and requirements,

   (c) Procedures to be used by owners to inform and solicit applications from persons in the housing market areas that are not likely to apply for the housing without special outreach. Special outreach, as appropriate, includes but is not limited to, the translation of marketing material for persons who are limited English proficient; the placement of translated marketing material in minority owned media; and the provision of meaningful access concerning the residential rental project (e.g. providing translated information about application procedures, tenancy and other project amenities).

   (d) Records that will be kept describing actions taken by owners to affirmatively market units and records to assess the results of these actions.

5. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) ("Section 504") and implementing regulations at 24 CFR Part 8 "Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development."

   Section 504 applies to all TCAP projects. For new construction projects and projects undergoing substantial rehabilitation, five percent (5%) of the units must be accessible to persons with mobility impairments and two percent (2%) of the units must be accessible to persons with hearing or vision impairments (See 24 CFR 8.22.) Substantial rehabilitation for a multifamily rental project is defined in Section 24 CFR 8.23 as a project with 15 or more units for which the alterations would equal more than seventy five percent (75%) of the replacement cost. Modifications to projects to comply with Section 504 requirements are eligible costs. However, compliance with Section 504 requirements may be infeasible or impracticable for some projects, depending on where they are in the development process. A new construction or substantial rehabilitation project is ineligible if it cannot be modified to meet the Section 504 requirements. For projects in which the rehabilitation would not be considered substantial, the Section 504 provisions are applicable only to the maximum extent feasible, i.e., not required if it would impose undue financial and administrative burden. (See 24 CFR 8.23.)

6. National Environmental Policy Act and Related Laws (Environmental review responsibilities) and implementing regulations at 24 CFR Part 58.

   Once an owner applies for TCAP funds, committing TCAP or any other funds to or undertaking any "choice-limiting" activity prior to successful completion of the environmental clearance review (i.e., HUD approval of the Request for Release of Funds), is prohibited. See 24 CFR Part 58 for general information about environmental review requirements at http://www.access.gpo.gov/nara/cfr/waisidx_04/24cfr58_04.html or http://www.hud.gov/offices/cpd/environment/index.cfm.

7. 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 are applicable to housing that receives Federal assistance.

8. Davis-Bacon Prevailing Wages

   Contractors and subcontractors required to pay prevailing wages to laborers and mechanics in compliance with the Davis-Bacon Act. In the case of projects already under construction, it may be possible to obtain a determination, under 29 CFR 1.6(g), that Davis-Bacon requirements apply prospectively to the construction project, as of the date of the TCAP award.

9. "Anti-Lobbying" Restrictions (Restrictions on lobbying in 31 USC 1352 and implementing regulations at 24 CFR Part 87 "New Restrictions on Lobbying".)

   This statute prohibits the use of funds appropriated by any act by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with covered Federal action.

10. The Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq., as implemented at 24 CFR Part 21 "Government-Wide Requirements for Drug-Free Workplace (Grants)".)

    This statute prohibits the receipt of a grant from any Federal agency unless the recipient agrees to provide and certify to a drug-free workplace.

11. OMB Regulations and Circulars (2 CFR Part 2424 "Non-procurement Debarment and Suspension.")