

DRAFT
Tax Credit Assistance Program
Notice of Funding Availability

To be presented to the MFA Board of Directors June 2009

Background and Purpose

The American Recovery and Reinvestment Act (ARRA) of 2009 provided grant funding for capital investment in Low Income Housing Tax Credit (LIHTC, Housing Credit or Tax Credit) projects – the Tax Credit Assistance Program (TCAP). The intent of the program is to aid staled affordable housing rental projects. The funding will be distributed to state Housing Credit allocating agencies by formula. The portion of this funding that will be administered by MFA is \$13,876,558. MFA is required to distribute these funds to projects competitively and pursuant to its Qualified Allocation Plan (QAP). Projects that were awarded Tax Credits in 2007, 2008 and 2009 are eligible for funding and MFA must give priority to projects that are expected to be completed by February 2012.

The purpose of this Notice is to solicit applications from qualified applicants for eligible projects and outline the project selection process and criteria. Applicants are advised to review the IRS Code Section 42, American Recovery and Reinvestment Act of 2009, HUD Notice CPD-09-03 or the Qualified Allocation Plan directly for further detail or terms not defined herein.

Contact Person

Applicants are encouraged to direct questions regarding this Notice to:

Linda Bridge
New Mexico Mortgage Finance Authority
344 4th Street SW
Albuquerque, NM 87102
Phone: (505) 767-2262 or toll-free statewide (800) 444-6880
Fax: (505) 243-3289
E-mail: lbridge@housingnm.org

Application Submission and Due Date

MFA intends to hold three funding rounds, but reserves the right to add additional rounds as deemed necessary for full utilization of the funding. Applications will be accepted on the following dates:

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| First round | First tier projects | July 8, 2009 |
| Second round | Second tier projects | August 20, 2009 |
| Third round (pending availability of funds) | Third tier projects | September 4, 2009 |
| If funding remains after the third round, applications will be accepted at any time. | | |

Complete applications must be received at the MFA office by 5:00 p.m. mountain time on the application due date to be considered. Applications will NOT be accepted via facsimile. Only one complete, original hard copy is needed. The required forms will be provided electronically and may be downloaded from MFA’s web site at www.housingnm.org/developer/. All applications shall be marked “Tax Credit Assistance Program Application” in readily visible print. On receipt, MFA will date and time stamp the cover.

Applications may be delivered by U.S. mail, by courier service, or by hand to the following address:

New Mexico Mortgage Finance Authority
344 4th Street SW
Albuquerque, NM 87102
(505) 843-6880
Attn: Director of Housing Development

Complete applications will meet the following standards:

1. Bear the original signature of the applicant.
2. Include the application form, application checklist, and all mandatory items listed on the application checklist at the time it is submitted.
3. All applications must be self-contained.
4. Attachments should be provided in the order listed, be separated by cover sheets and tabs numbered according to the attachment checklist.

Failure to provide or complete any element of the application may result in rejection of the application. MFA may request additional information as deemed necessary for a fair and accurate evaluation; however, MFA is under no obligation to seek further information or clarification to complete its review of the application. The applicant will bear full responsibility for submitting its application in accordance with the requirements of this Notice.

Program Summary

MFA will make available TCAP awards for eligible LIHTC projects approved by MFA through the application process described herein.

Eligible Projects

TCAP eligible developments are rental housing developments that received or will receive an award of Housing Credits under Section 42(h) of the Internal Revenue Code of 1986 during the period from October 1, 2006 to September 30, 2009 and require additional funding to be completed and placed into service in accordance with the LIHTC program. Eligible projects must meet all requirements of the LIHTC program and the requirements outlined in the Qualified Allocation Plan. An “award of Housing Credits” is defined as:

1. Competitive round projects that received a Reservation or Carryover Allocation during the time period from October 1, 2006 to September 30, 2009, continue to have an award of credits and are compliant with all requirements of the Reservation or Carryover Allocation agreement and the Qualified Allocation Plan.
2. Tax exempt bond projects that received a Determination Letter during the time period from October 1, 2006 to September 30, 2009 and are compliant with all the requirements of the Qualified Allocation Plan.

To apply, eligible projects must have a letter of intent or firm commitment from a tax credit syndicator and ability to close on the equity within 120 days. In addition, the project must be able to demonstrate the ability to complete construction by the earlier of its placed in service requirement or February 2012.

Eligible Uses of Funds

TCAP funds may be used for capital investment in eligible LIHTC projects. Capital investment means costs that are included in the Eligible Basis of a Housing Credit project under Section 42 of the IRC. Further ARRA specifically prohibits the use of TCAP funds for swimming pools. Costs incurred by project owners to comply with federal grant requirements are eligible TCAP costs.

Structure of Awards

Awards will be structured as loans repayable from the cash flow of the project.

Unit Set Asides and Compliance Period

Projects must meet the unit Set-Asides and Extended Use Period committed to in the LIHTC application. These affordability requirements will be enforced with a Land Use Restriction Agreement.

Application Process and Project Selection Criteria

Preference will be given to projects that demonstrate the highest degree of readiness to proceed. Eligible projects have been divided into three tiers. Application deadlines and application requirements are determined by tier.

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| Tier One | 2008 projects that have a gap resulting from lower than anticipated tax credit pricing and as a result have not been able to close the partnership or closed but with only a temporary solution to fill the gap. Construction has not begun but projects are ready to proceed. |
| Tier Two | 2009 projects that have a letter of intent from a tax credit syndicator or equity investor and demonstrate readiness to proceed. |
| Tier Three | 2007 and 2008 projects that closed partnerships and have begun construction but have a funding gap. |

Tier One projects that do not submit applications for the first funding round may submit in later funding rounds but will be scored and ranked with the projects in that round. Tier Two projects may submit in later funding rounds but will be scored and ranked with the projects in that round.

Scoring/Selection Criteria

Each project will start with the score awarded to the project pursuant to the QAP when originally awarded credits. Applicant must provide certification that the project is ready to proceed on original application terms. If the project is proposing any changes that would negatively impact the original score the score will be adjusted downward accordingly. In addition to the original score (with adjustments), the project can receive additional points as outlined below:

| Category | Criteria | Points |
|---|--|--------|
| Approvals from local municipality to begin construction | Project has building permit | 20 |
| | Alternately, project has all approvals required to obtain building permit and has a readiness letter issued by the local municipality. | 10 |
| Contractor and final costs determined | Projects that have an executed contract with a general contractor terms of which comply with Davis-Bacon requirements | 20 |
| | Projects that have received bids from general contractors that comply with Davis-Bacon requirements | 10 |

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| | Projects that have bid documents prepared and ready to issue that comply with Davis-Bacon requirements | 5 |
| Compliance with environmental review requirements | Projects that have already completed the environmental review process with MFA or a Tribal government as the Responsible Entity and have received an Authority to Use Grant Funds or a Firm Approval Letter from HUD. | 20 |
| | Projects that have submitted an environmental assessment to a Responsible Entity other than MFA or a Tribal government and have received an Authority to Use Grant Funds. | 10 |
| | Projects that have submitted a completed environmental assessment to MFA and MFA has approved the combined FONSI and RFROF for publication. | 5 |
| Ability to close on equity | Projects that have a firm commitment from a tax credit syndicator or equity investor and demonstrate ability to close partnership within 60 days | 20 |
| Ability to close on all other financing | Projects that have firm construction and permanent financing commitments for development of the project | 20 |

Projects will be ranked by tier according to their scores and awards will be made to these projects, unless they are eliminated under subsequent processing, starting with the highest scoring projects, until all available funds are awarded.

Staff Analysis and Application Processing

Design Review

All properties must meet applicable state and local building codes, and handicapped accessibility requirements, as well as any applicable requirements from federal funding sources. In addition all projects must comply with MFA Mandatory Design Standards. Applicants must provide a certification from the project architect that there have not been changes from the time of the initial design review that would impact the project's ability to meet these design requirements and that the project continues to incorporate all commitments made in the initial application regarding design and building.

Development Team Review

Debarment from HUD or other federal programs, bankruptcy, criminal indictments or convictions, poor performance on prior MFA or HUD financed projects on part of any proposed development team member or owner or principal may result in rejection of an application by MFA.

At original application the project sponsor was evaluated for their capacity to complete the proposed project and the qualifications of each development team member were reviewed to determine capacity to perform in the role proposed. Any changes in the development team or status of a development team member since the original application should be disclosed and information on the new team members provided for MFA to complete this review. Considerations may include related experience, financial capacity, performance history, references, management and staff, among others. An application may be rejected or substitutions requested if the development team or any member thereof is unsuitable as determined by MFA.

Feasibility Analysis

Staff will underwrite the projects completely to ensure soundness, and will apply industry practice in assessing each project proposed. Factors considered in this analysis will include: market need, target market, target set-asides, unit mix and design, development and operating costs, adequacy of reserves, scope of work, terms and availability of other sources of financing, ability to repay debt, and housing cost to tenant/owner. Financial analysis guidelines can be found in more detail in the QAP. Developer and builder fees are expected to be within the percentages prescribed in the QAP and no more than the dollar amount as approved by MFA during the initial underwriting of the project. Deferred developer fees will be considered as needed for financial feasibility but only to the extent that cash flow demonstrates the ability to repay the fees within a 12 year time frame.

Staff will evaluate if current market conditions continue to support the development of the project. If it is determined that an updated market study is necessary to evaluate need, the cost will be charged to the applicant.

Projects that do not appear to be financially feasible in MFA's judgment will not be considered for funding. MFA may also make funding recommendations contingent on specific modifications to the project that MFA in its sound judgment considers necessary to enhance the feasibility or safety of the project.

Award Amount

After evaluation of all the factors describe above, MFA will determine the award amount based on the remaining financing gap. The amount of TCAP funding should be determined by the difference between the originally underwritten equity price and actual equity price. In addition, MFA will evaluate any other changes that occurred since original underwriting may contribute to a funding gap. Preferably an applicant has alternate funding sources in place to address cost overruns since the priority for TCAP funds is to address gaps resulting from lower tax credit pricing (except for increases in construction costs resulting from the implementation of Davis-Bacon wages). Based on availability of TCAP funds, MFA may award more TCAP funds than requested in exchange for canceling other subsidies MFA may have committed to the project.

Notification and Subsequent Requirements

Upon award of TCAP funds MFA will notify the applicant of the award and the requirements that must be met prior to entering into a written agreement. The written agreement that MFA will enter into with the project owner will outline the requirements of the TCAP, the federal grant requirements, and deadlines in which the project must utilize the funds. If a project is not in compliance with the deadlines in the agreement, the award may be rescinded and redistributed to another project. In addition, the requirements of TCAP will be enforceable through the recordation of a restriction that is binding on all owners and successors.

ARRA requires state housing credit agencies to perform asset management functions, at the owner's expense, to ensure compliance with Section 42 of the IRC and the long term viability of projects funded by TCAP. Projects that receive TCAP funding may be charged a reasonable annual fee (in addition to the tax credit compliance fee) to cover the cost of this function. The projects may be subject to additional reporting requirements such as monthly income and expense reporting, occupancy reporting, periodic capital needs assessments, and annual budget and audit reviews.

Federal Grant Requirements

Projects awarded TCAP funds are subject to the following federal requirements. Implications of the timing and cost of these requirements should be carefully considered and taken into account before submitting an application.

- **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).

- **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.
- **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.”
- **Affirmatively Furthering Fair Housing**: MFA will be required to establish an affirmative fair housing marketing plan for TCAP projects and require project owners to follow the plan when marketing TCAP units.
- **Section 504 of the Rehabilitation Act of 1973** (29 U.S.C. 794) 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.”
- **National Environmental Policy Act and Related Laws** (Environmental review responsibilities) and implementing regulations at 24 CFR Part 58. The written agreement can not be executed until environmental clearance for the project is completed and the Request for Release of funds is approved. 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 is prohibited. This includes any activity that will result in a physical change and/or acquisition, including leasing, or disposition or real property. Performing a choice-limiting action may disqualify a project from receiving any federal funds. If a federal environmental review has already been completed for a project, providing TCAP funds to the project may not require an additional environmental review. Potential applicants are encouraged to contact the MFA Environmental Review Officer for further guidance and to begin the process so as not to delay the construction of the project.
- **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.
- **Davis-Bacon Prevailing Wages**: Under section 1606 of Division A of the ARRA, contractors and subcontractors hired with Recovery Act funds are 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 requirement apply prospectively to the construction project, as of the date of the TCAP award. Potential applicants are encouraged to contact MFA for further guidance.
- **“Anti-Lobbying” Restrictions** (Restrictions on lobbying in 31 U.S.C. 1352 and implementing regulations at 24 CFR Part 87 “New Restrictions on Lobbying”.)
- **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)”.)
- **“Non-procurement Debarment and Suspension”** (2 CFR Part 2424)

Appeals Process

Any applicant who is aggrieved in connection with this Notice or the award of a reservation pursuant to this Notice may protest to the MFA. The protest must be written and addressed to the Contact Person. Appeal requests must be specific as to the decision being appealed, and they must be accompanied by a fee payment in the amount of \$1,500. The protest must be delivered to the MFA within fifteen (15) calendar days after the notice of reservation or rejection. Upon the timely filing of a protest, the Contact Person shall give notice of the protest to all Applicants who appear to have a substantial and reasonable prospect of being affected by the outcome of the protest. The Applicants receiving notice may file responses to the protest within seven (7) calendar days of notice of protest. A committee appointed by the MFA Board Chair shall review the protest and responses to the protest and shall make a recommendation to the Board of Directors regarding the disposition of the protest. The Board of Directors shall make a final determination regarding the disposition of the protest.

Consistent with the policy in the Qualified Allocation Plan, applicants or their representatives shall not communicate with the Board of Directors or appointed committee members regarding any project under consideration, except when specifically permitted to present testimony at an appeal related proceeding. A project will be deemed ineligible if the applicant or any person or entity acting on behalf of the applicant, attempts to influence members of the Board of Directors or an appointment committee during any portion of the award process, or does not follow the prescribed application and appeals process.