

State of Nevada  
Division of Housing

Tax Credit Assistance Program (TCAP)

Application Submission and Project Rating and Ranking Criteria

*I. Purpose*

This notice sets forth the application submission requirements, eligible projects and uses of funds, and rating and ranking criteria for the Nevada Division of Housing (NHD) TCAP funding. NHD anticipates it will competitively allocate \$15,184,795 in TCAP monies to eligible projects.

*II. Background*

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5). The purpose of the ARRA is to jumpstart the nation's ailing economy, with a primary focus on creating and saving jobs in the near term and investing in infrastructure that will provide long-term benefits. Title XII of the ARRA appropriated \$2.25 billion under the HOME Investments Partnership Program heading for a program to provide funds for capital investments in Low Income Housing Tax Credit (LIHTC) projects. Of this amount, the State of Nevada will receive \$15,184,795. These funds will be administered by the NHD.

At the federal level, the Department of Housing and Urban Development (HUD) is administering this new program and will award TCAP funds to state housing credit agencies to facilitate development of projects that received or will receive LIHTC awards between October 1, 2006, and September 30, 2009. Although TCAP funds were appropriated under the HOME heading of the ARRA, HOME program requirements found in 24 CFR Part 92 and the Consolidated Planning requirements in 24 CFR Part 91 do not apply to TCAP. However, cross cutting federal regulations such as the requirement for an environmental review and use of Davis-Bacon or prevailing wage rates do apply.

In order to receive its allocation of TCAP, the NHD must develop a competitive funding mechanism that includes criteria for rating and ranking eligible projects. The NHD will have one funding cycle for TCAP monies. Applications for TCAP funding will be due on July 10, 2009. Applications will only be accepted from eligible projects. No TCAP funds will be provided to projects until HUD approves the NHD TCAP application submission and rating and ranking criteria, NHD enters into a signed agreement with HUD for TCAP funds, and project have completed the required environmental review process.

### *III. TCAP Submission Requirements*

#### **A. Eligible Projects**

Projects which received an award of LIHTC between October 1, 2006, and September 30, 2009 are eligible for TCAP funding. Bond financed projects receiving the 4% tax credit as well as competitive 9% tax credit projects are eligible to compete for TCAP monies. Projects that received an award of LIHTC and subsequently returned the award are NOT eligible to receive TCAP funds. Please note: This includes projects that returned LIHTC with a request that NHD exchange (monetize) tax credits. Projects must retain and sell a minimum of \$150,000 in LIHTC award to be eligible for TCAP funding.

An "award of LIHTC" is defined as:

- For bond financed projects – receipt of a Section 42(M) letter from NHD; and
- For 9% LIHTC projects – receipt of a valid reservation of LIHTC letter from NHD.

#### **B. Submission Deadline**

The NHD will have one competitive application cycle for award of TCAP funds. Applications for TCAP funding will be due on July 10, 2009. Applicants will be required to submit a cover letter detailing their request for TCAP funds, a maximum five-page project overview, and the other required information outlined in this notice to the individual identified below on or before **NOON** on the due date.

Submit applications to:

Dr. Hilary Lopez  
Chief of Federal Programs  
Nevada Housing Division  
1535 Old Hot Springs Road, Suite 50  
Carson City, Nevada 89706

A second full copy must be submitted to:

Mark Licea  
Loan Administration Officer  
Nevada Housing Division  
1771 E. Flamingo Road, Suite 103-B  
Las Vegas, Nevada 89119.

Faxed and electronic submissions will not be allowed. Applications must be formatted as outlined in this notice and incomplete applications will be disqualified.

### **C. Submission Criteria**

Applicants must submit the following items as their TCAP application:

- Cover letter detailing the amount of TCAP funds requested;
- Maximum five-page project narrative describing the project. Narrative must include sections on:
  - Project location and surrounding neighborhood
  - Number of units – market and restricted
  - Income and rent targeting for the project – list number of units by bedroom size by income and rent targeting
  - Type of project – senior, special need, family, etc.
  - Current status of funding sources for the project – must address the ability to sell tax credits for the project
  - Assessment of “shovel readiness” – i.e. when is construction anticipated to begin, have building permits been obtained
- Detailed line item budget outlining all project costs and amount of each line item covered by TCAP funds, LIHTC, and “other funding.” TCAP funds cannot be used to finance swimming pools;
- Copy of line item budget from original LIHTC or bond application;
- Up to date sources and uses statements for construction and permanent financing;
- Updated 15-year project pro-forma;
- Copy of reservation of LIHTC letter or Section 42(M) letter;
- Schedule of construction;
- Schedule of anticipated expenditures showing use of TCAP funds and indicating;
- Signed certification of ability of project owner to meet required TCAP commitment and expenditure deadlines;
- Signed certification of ability to adhere to other federal requirements as outlined in the TCAP submission and rating and ranking criteria notice;
- Marketing Plan for Affirmatively Furthering Fair Housing
- Rating and Ranking Self-Score Sheet; and
- Application fee made payable to Nevada Housing Division.

### **D. Rating and Ranking**

Applications will be rated and ranked based on the following criteria:

Minimum threshold:

- All projects must meet the minimum threshold to be eligible for funding. The minimum thresholds are:
  - Ability to expend TCAP award AND complete the project within 24 months of receipt of reservation of LIHTC award and no later than, under any circumstance, February 16, 2012. NHD will determine ability to meet the

minimum threshold based on review of submitted schedule of construction, schedule of expenditures, and signed certification of ability of project owner to meet required TCAP commitment and expenditure deadlines, and readiness to proceed factors; and

- NHD subsidy layering review to determine valid need for, and amount of, TCAP funds for the project.

### ***Additional Points***

#### *Readiness to Proceed Preference*

- 10 points – Project has ownership of land, building permits, and evidence of secured public and private funding detailed in the sources and uses statement
- 5 points – Project has two of the above
- 1 point – Project has one of the above

#### *Equity Preference*

- 10 points – Project has closed a partnership agreement with an equity provider. The agreement must be for a minimum \$.70 for the original allocation of LIHTC from NHD.
- 5 points – Project has a signed LOI from an equity provider. The commitment must be for a minimum \$.70 for the original allocation of LIHTC from NHD.
- 1 point – Project has an equity commitment letter from an equity investor. The commitment letter must state a minimum \$.70 for the original allocation of LIHTC from NHD.

#### *Cost Reasonableness Preference*

- 5 points – Preference for projects that demonstrate need for TCAP is not related to construction cost and developer fee increases as evidenced by review of original v. new TCAP project budget

#### *Release of Funds Preference*

- 5 points – Projects that demonstrate use of TCAP can release other federal funding to local government agencies for use on other affordable housing projects otherwise unable to proceed or underfunded. Must submit letter from local government's designated staff person attesting to this fact.

#### *Project Year Preference*

- 5 points – Preference for projects receiving an award of LIHTC in 2008
- 3 points – Preference for projects receiving an award of LIHTC in 2009
- 1 point – Preference for projects receiving an award of LIHTC in 2007

Projects will be rated and ranked according to scoring. Projects with the highest scores will be awarded all, or a portion, of TCAP funds requested. NHD staff reserves the right

to award less than the full amount requested if the financing gap can be funded through exchange funds or if it is in the best interest of the State to provide funding to additional projects.

TCAP is provided as gap financing. As such, the maximum amount of TCAP that can be provided to a project must be less than or equal to \$3 million. (Exception: If the demand for TCAP funds is less than anticipated, the project cap may be increased with a corresponding increase in the required asset management fee.)

In the event of a tie, preference will be given to projects that received an award of LIHTC evidenced by a reservation letter or Section 42(M) letter between January 1, 2008 and December 31, 2008.

#### **E. Funding**

TCAP funds will be provided as a zero-percent interest, deferred loan to a project during construction. Upon completion of construction and determination of the final amount of TCAP funds, the loan will be converted to a two-percent interest, 30-year, amortizing, permanent loan with interest and payments due to NHD on an annual basis.

Loan terms may be revised for projects with deep income targeting (i.e. projects with the majority of units serving households with incomes at or below 40% area median income and/or rents limited to 40% LIHTC rents) and/or for projects with a debt to income ratio of over 1.15 after inclusion of TCAP monies.

#### **F. 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 project under Section 42 of the IRC. TCAP funds cannot be used to fund swimming pools.

The TCAP assistance provided to a project must be made in the same manner and subject to the same limitations (including rent, income, use restriction, and compliance monitoring) as required by the state housing credit agency with respect to an award of LIHTC to a project and all other requirements of ARRA.

Projects will be required to maintain the level of replacement reserves required under the Qualified Allocation Plan (QAP) in effect at time of LIHTC award for both 9% and 4% projects.

#### **G. Affordability Requirements and Affordability Period**

Projects receiving TCAP are subject to the same affordability period as required under their reservation of tax credits or in their bond declaration. The number of restricted units

cannot be less than the number of restricted units in the approved tax credit or bond application and the income and rent targeting must be the same as in the approved tax credit or bond application.

#### *IV. Commitment and Expenditure Deadlines*

The NHD is required to commit not less than 75 percent of its TCAP funds within one year of the enactment of the ARRA or by February 16, 2010. Additionally NHD must demonstrate that all project owners have expended 75 percent of the TCAP funds within two years of the enactment of the ARRA or by February 16, 2011 and that all project owners have expended 100 percent of TCAP funds within three years of the enactment of the ARRA or by February 16, 2012.

To ensure that NHD meets these deadlines, all project owners awarded an allocation of TCAP funds must certify that they will expend 100 percent of their TCAP award by December 31, 2012. To meet this requirement a project owner must have incurred approved, eligible expenses and received reimbursement from NHD for the expenses. TCAP funds will be provided on a reimbursement only basis.

Eligible expenses only include capital costs. TCAP funds cannot be used to reimburse project owners for any expenses above and beyond those included in the eligible basis of the project. Any expenses above and beyond those included in the eligible basis of the project must be funded through private contributions and/or other public funding, i.e. HOME or LIHTF monies.

The total eligible basis will be determined by NHD at project close-out prior to issuance of the 8609s. A NHD approved cost certification will be required to identify final eligible basis.

Funds not used in a timely manner or funding in excess of a project's eligible basis will be recaptured and redistributed to alternate projects. (See Section below on Redistribution of TCAP Funds)

#### *V. Redistribution of TCAP Funds*

##### **A. Timeliness of Expenditures**

If a project owner fails to expend TCAP funds in a timely manner, NHD will assess whether the delay will impact its ability to meet its TCAP deadlines and take steps necessary to redistribute the funds to a more deserving project.

As part of the TCAP application submission, applicants will specify a schedule for expenditure of TCAP funds for eligible capital costs. Any applicant that receives a TCAP award will need to meet the schedule for expenditures. Delays in the schedule of expenditures exceeding 45 calendar days will require written explanation of the delay and

remedy. Delays in the schedule of expenditures exceeding 60 calendar days will require written explanation of the delay and remedy and will require a re-evaluation of the total amount of TCAP provided to a project. Delays in the schedule of expenditures exceeding 90 days will result in an automatic reduction in the amount of TCAP funds to the project. The specific amount of reduction will be determined by NHD staff or its designee.

## **B. Recapture**

- NHD will recapture the full amount of TCAP funds initially awarded to a project that are above and beyond the eligible basis included in the final cost certification.
- NHD will recapture the full amount of TCAP funds distributed for ineligible costs.
- NHD will recapture the full amount of TCAP funds if the project fails to meet the project requirements outlined in the Project Agreement, Promissory Note, Deed of Trust, and Covenant of Requirements during the affordability period.
- NHD will recapture the full amount of TCAP funds if it determines information provided in the application was fraudulent or incorrect.
- NHD will recapture a portion of the TCAP funds if it determines that the applicant received additional monies from syndication of tax credits or additional financing other than disclosed in the application.

Recaptured funds will be redistributed to other projects, reallocated through a competitive process, or, if required, returned to HUD.

## *VI. Written Agreements and Covenants*

Project owners must execute a legally binding written agreement with NHD for the use of TCAP funds, called a TCAP written agreement. The agreement will set forth the eligible project expenses, the terms of funding, adherence to other federal requirements, and related matters. The agreement will reference the Declaration of Restrictive Covenants that will be recorded and binding on all owners and successors.

The TCAP written agreement must be signed and dated by NHD and the project owner and the Declaration of Restrictive Covenants recorded before any TCAP funds are disbursed. TCAP funds will be provided on a reimbursement basis.

Project owners will also be required to sign a Promissory Note and/or Deed of Trust.

Per HUD, a TCAP written agreement for a project cannot be executed until environmental clearance for the project is completed and the Request for Release of Funds (RROF) is approved by HUD. Any project costs incurred prior to execution of the TCAP written agreement will not be reimbursed. Any construction started or costs incurred prior to completion of the environmental clearance and approval of the RROF may jeopardize TCAP funding!

## *VII. Progress After Commitment of Funds*

Within 15-days after receipt of TCAP award letter, the project owner must:

1. Sign and return the TCAP award letter accepting the terms and conditions of TCAP; and
2. Return any LIHTC that the project will not be using.

### *Notifications:*

Project owner must notify NHD in writing within five (5) calendar days of any of the following events:

1. Site change or significant change in project specifications;
2. Change in ownership – a change in the parties involved in the ownership entity. Project must receive NHD approval prior of any changes in ownership or TCAP funds will be terminated;
3. Change in the syndication structure such as a change in the role of the syndicator, a change in syndicator, or in the timing of distribution of funds;
4. Change in the management company – Project must receive NHD approval prior to any change in management companies; and
5. Project going into foreclosure or any notice of default.

The above list of actions requiring notification is not all-inclusive and additional items may be included in the TCAP written agreement.

## *VIII. Program Income*

Any proceeds or income derived from TCAP monies must be returned to NHD as program income unless NHD provides written approval to the project owner to retain the funds. Program income does not include developer fee. Program income includes items such as reimbursement from contractors for overcharge of items and/or reduced costs from change orders.

## *IX. Federal Grant Requirements*

### **A. Project Accountability and Transparency Requirements**

To ensure compliance with the ARRA project accountability and transparency requirements, the NHD will post on its website [www.nvhousing.state.nv.us](http://www.nvhousing.state.nv.us) the TCAP submission and rating and ranking criteria. Additionally, NHD will post information on this website listing all applications received for TCAP funding, preliminary project scoring, and final project scoring and TCAP award amounts.

Project owners will be required to submit quarterly project progress reports indicating construction progress (percent completed), percent of TCAP funds expended, and number of jobs administrative and/or construction jobs created or retained as a result of TCAP monies. Project owners will be responsible for gathering job creation and retention information from contractors and subcontractors.

Quarterly reports must be submitted to Mark Licea, Loan Administration Officer, at NHD's Las Vegas Office at 1771 E. Flamingo, Suite 103-B, Las Vegas, Nevada, 89119.

The first quarterly report from project owners will be due by the last day of end of the quarter within which TCAP awards are issued. Reports, or a NHD compiled progress overview report, will be posted on the NHD website and submitted to HUD within 10 days after report submission. NHD will post and submit its first quarterly report to HUD by June 10, 2009. The report will include, at a minimum, the total amount of TCAP funds applied for, amount received and obligated, and amount expended by project.

#### **B. Other Federal Requirements**

TCAP funds are federal financial assistance and, therefore, are subject to requirements applicable to such funds. Projects receiving an allocation of TCAP must comply with the following federal requirements:

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 – Project owners must establish an affirmative fair housing marketing plan for its TCAP project and must follow this plan when marketing TCAP units.
5. 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."
6. National Environmental Policy Act and Related Laws (Environmental Review responsibilities) and implementing regulations at 24 CFR Part 58. Project owners that start construction or expend funds prior to NHD issued environmental clearance risk losing TCAP monies.

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 – under Section 1606 of Division A of the ARRA, contractors and subcontractors hired with ARRA funds are required to pay prevailing wages to laborers and mechanics in compliance with the Davis-Bacon Act.
9. “Anti-Lobbying” Restrictions and implementing regulations at 24 CFR Part 87 “New Restrictions on Lobbying.”
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).”)
11. OMB Regulations and Circulars – 2 CFR Part 2424 “Non-procurement Debarment and Suspension.” Project owners must ensure their contractors, subcontractors, and property management company does not appear on the federal debarment list. This can be checked online at <https://www.epls.gov>. Project owners must print the online results for each contractor, subcontractor and management company and keep the printout in their project file for NHD inspection.

Applicants are encouraged to research these requirements to ensure their ability to comply.

### **C. Monitoring**

NHD staff or its designee may, with 48 hours notice, conduct an onsite monitoring of project files and/or construction to ensure program compliance. This notice may be waived if NHD believes fraud or other non-compliant activities are occurring which require immediate investigation. All construction files must be kept on-site at the local project owner’s address of record and all tenant files must be kept on-site at the property.

NHD’s Chief of Federal Programs in northern Nevada and Loan Administration Officer in southern Nevada or their designee may conduct the construction and file inspections and project owners must submit a draw meeting schedule.

Unit and tenant file inspections will be conducted by an NHD Compliance Audit Investigator or its designee.

### **X. Appeals Process**

Applicants will have five (5) business days from NHD posting of final project scores and preliminary TCAP award amounts at [www.nvhousing.state.nv.us](http://www.nvhousing.state.nv.us) to submit a written request for a scoring appeal. The written request must outline the reasons for the appeal and provide documentation from the applicant’s application supporting the request. The appeal must be directed to:

Dr. Hilary Lopez  
Chief of Federal Programs  
Nevada Housing Division  
1535 Old Hot Springs Rd, Suite 50  
Carson City, Nevada 89706.  
Or via email at [hlopez@nvhousing.state.nv.us](mailto:hlopez@nvhousing.state.nv.us)

Electronically submitted requests will be accepted as long as they contain all the required information. Upon receipt of the appeal, a staff hearing will be scheduled. Applicants dissatisfied with the outcome from the staff hearing may submit a subsequent written appeal within five (5) business days of receipt of the staff decision to:

Chas Horsey  
Administrator  
Nevada Housing Division  
1535 Old Hot Springs Rd, Suite 50  
Carson City, Nevada 89706  
Or via email at: [chorsey@nvhousing.state.nv.us](mailto:chorsey@nvhousing.state.nv.us)

Electronically submitted requests will be accepted as long as they contain all the required information. Upon receipt of the appeal, an administrator hearing will be scheduled. Decisions made by the Administrator are final and binding.

#### *XI. Fees*

##### **A. Application Fee**

Applicants will be required to submit a \$1,250.00 application fee for review and scoring of an application. Fees must be made by check payable to the Nevada Housing Division. This fee will also cover the cost of NHD completing the required HUD environmental compliance certification should the project receive TCAP funding.

##### **B. Asset Management Fee**

Applicants will be required to pay \$15,000 to cover the costs associated asset management during project construction and over the course of the affordability period. (Exception: As specified in Section III, D)

##### **C. Compliance Monitoring Fees**

Projects receiving an award of TCAP funds will be required to undergo annual unit and tenant file monitoring to ensure compliance with TCAP income, rent, and unit requirements. Project owners will be required to pay an initial \$30 per unit to set-up the

project for compliance monitoring in the NHD's IDIS system. Additional ongoing monitoring fees will not be required as the monitoring will take place as part of the annual LIHTC compliance monitoring. However, note that TCAP units may not be subject to the annual waiver of income recertification after the tenant's first anniversary as allowable under the IRS Section 42 program. Therefore, project owners and/or their management company may be required to fully certify annual income for tenants in designated TCAP units.

#### **D. Legal Fees**

Any legal fees associated with drafting TCAP agreements, Promissory Notes, Deeds, and Covenants will be passed on to TCAP awardees on a proportional basis. For example, if it costs \$5,000 for NHD to have legal counsel draft the TCAP agreement, Promissory Note and Deed of Trust and five projects received TCAP awards, each project will be required to submit \$1,000 to cover the costs associated with these items.

Legal fees associated with project appeals will be billed to the project owner at a rate of \$475 per hour and will require a 50 percent deposit before NHD will engage their legal counsel to review the matter.

#### **E. Recordation Fees**

Project owners are responsible for any and all local fees associated with recordation of NHD Deeds and Covenants. These fees will be payable directly to the local recorder's office.

#### *XII. Public Comment and Plan Finalization*

In accordance with HUD requirements, this notice is being published for five days for public comment. The public comment period begins on May 21, 2009, and ends at 5 p.m. on May 26, 2009. In addition, in an effort to better understand concerns and comments in regard to the TCAP submission and rating and ranking criteria, NHD will hold a meeting via video conference to solicit comment from interested parties. The meeting will be held on May 28, 2009, from 9-11 a.m. at the NHD's Carson City and Las Vegas offices. These offices are located at:

1535 Old Hot Springs Rd, Suite 50  
Carson City, Nevada 89706

1771 E. Flaming Rd, Suite 103-B  
Las Vegas, Nevada 89119

Persons desiring to submit comment on this TCAP submission and rating and ranking criteria must submit written comments via post, fax, or email no later than 5 p.m. on May 26, 2009. Comments may be submitted via post to Dr. Hilary Lopez at the Carson City address located above or via fax at 775-687-4040 or via email to [hlopez@nvhousing.state.nv.us](mailto:hlopez@nvhousing.state.nv.us).

NHD staff will finalize the TCAP submission and rating and ranking criteria on or by June 1, 2009 based upon HUD TCAP requirements, consideration of comments received, and staff

input. A final version of the TCAP submission and rating and ranking criteria will be posted by June 2, 2009 at [www.nvhousing.state.nv.us](http://www.nvhousing.state.nv.us).

***Note: Changes may be made to this plan after finalization based upon new and/or clarifying program guidance issued by HUD to ensure program compliance. Changes to this plan may impact the fee schedule for LIHTC projects if it is deemed necessary to collect fees to cover increased project/wage management and compliance costs (outlined in this plan) outside of the TCAP program.***

DRAFT - May 21, 2009