

**Tax Credit Assistance Program (TCAP)
Tax Credit Exchange (TCE)**

**Implementation Plan
FINAL DRAFT – April 15, 2009
Ohio Housing Finance Agency (OHFA)**

A. Introduction

The American Recovery and Reinvestment Act of 2009 (ARRA) provides states with two new programs to offset declining investor interest for the Housing Tax Credits (HTC). The Tax Credit Assistance Program (TCAP) is additional funding for projects that have received an award of Housing Tax Credits in the 2007, 2008, or 2009 federal fiscal years. The second program is the Tax Credit Exchange (TCE). Housing credit agencies may elect to exchange up to 40 percent of the 2009 credit allocation and 100 percent of returned credits for grant funds at a rate of 85 percent of the 10 year credit amount. These funds are to be used to finance the construction or acquisition and rehabilitation of qualified (under Section 42 of the IRC) low-income developments. Both of these temporary new programs are designed to facilitate the development of housing projects as quickly as possible. OHFA can not guarantee that any one project will receive the ARRA funds and OHFA must ensure that the minimum amount of funding is allocated per project to ensure feasibility. Therefore, potential recipients of ARRA funds will be required to comply with additional requirements as described throughout these policy documents and in future guidance from OHFA.

In implementing these funds, OHFA will balance the following policy goals:

- Support and enhance the public-private investment partnerships.
- Achieve policy goals in the Qualified Allocation Plan (QAP) and OHFA Annual Plan.
- Efficiently allocate all resources to projects likely to succeed.
- Give priority to projects that produce immediate stimulus.
- Limit administrative burden for owners, unless necessary.

Funds will be distributed in the following priority order:

1. Projects awarded competitive HTC in 2007 or 2008 and have not yet closed with their credit investors.
- ~~2~~2. Projects that receive a reservation of competitive HTC in 2009 and have a reasonable chancean opportunity to find investors at a reasonable price.
- ~~3~~3. Projects awarded non-competitive (i.e. multifamily bond projects) HTC in 2007, 2008, or 2009 and have not yet closed on the bonds or with their credit investors prior to July 1, 2009.
- ~~3~~4. Projects that rank high in the 2009 competitive HTC funding round but do not receive credits, achieve policy goals for OHFA, and are feasible without HTC.

5. Additional projects awarded non-competitive (i.e. multifamily bond projects) HTC in 2007, 2008, or 2009 and have not yet closed on the bonds or with their credit investors after July 1, 2009 or were not funded with ARRA funds during first funding window for multifamily bond projects.

46. Additional funds for 2009 competitive HTC projects that are unable to find investors and projects that receive competitive HTC in 2010.

~~5. Projects financed with multifamily bonds.~~

B. Available Resources

1. Tax Credit Assistance Program (TCAP): \$83,484,547

2. Tax Credit Exchange (TCE): ~~\$85,021,500,000~~ through the exchange of ~~\$10,02,500,000~~ of Ohio's 2009 credit allocation. Based on the estimated pricing for the credits reported in the 2009 applications, OHFA can increase the amount of funds available for housing development by exchanging the maximum number of credits allowable in 2009. OHFA also reserves the right to exchange up to another \$7,500,000 in 2009 credits to fund projects in lieu of a reservation of 2009 HTC. Decisions will be made on a case by case basis in consultation with the funding recipients after the selection of projects. In addition, OHFA may exchange any returned credits received during the year. If all projects that have not closed return their credits, the potential amount of exchange funds based on these credits is approximately \$270,000,000.

3. 2009 Housing Tax Credits: At least \$15,022,500,000

~~Except for the Maximizing Outcomes Pool, which will not be funded, all pools will be reduced by 27 percent. The old and new amounts of 2009 HTC are as follows:~~

Pool	Old Amount	New Amount
Rural Development	\$1,000,000	\$731,707
Permanent Supportive Housing	\$3,000,000	\$2,195,121
Preservation A/B	\$4,500,000	\$3,292,682
Preservation C	\$2,500,000	\$1,829,268
Geographic Pool A	\$5,000,000	\$3,658,536
Geographic Pool B	\$2,500,000	\$1,829,268
Geographic Pool C	\$2,000,000	\$1,463,414
Maximizing Outcomes	\$2,500,000	\$0
TOTAL	\$23,000,000	\$15,000,000

4. NSP-Affordable Rental Housing Initiative: \$29,214,900

C. ARRA Funding Process - Part 1: 2007 and 2008 competitive HTC projects

1. Owners of all eligible projects will be contacted no later than April 22, 2009 and will be required to submit information regarding their financing and development status to OHFA no later than May 1. The timing for this process is contingent upon the release of additional guidance from HUD and IRS, and OHFA may adjust the dates accordingly based on this guidance. OHFA is unable to formally accept applications for TCAP or exchange HTC until formal procedures and appropriate agreements are in place with HUD and IRS.

2. Owners will be required to submit the following materials:

- a. An updated Affordable Housing Funding Application (AHFA) for the project.
- b. A narrative explaining any changes to the project or changes to any line items in the project budget.
- c. A detailed timeline for development once all funding is secured.
- d. An updated commitment letter from the syndicator or investor for the HTC. The letter must include the estimated closing date and any special closing conditions, such as additional operating reserves. If there is no syndicator and/or investor at a reasonable price, then owner must provide letters dated within the last 30 days from three syndicators or investors that have evaluated the project.
- e. In addition, OHFA may request additional information regarding construction costs, the market for the project, and/or financial capacity of the development team.

3. OHFA will prioritize projects based on the strength of the commitment of the syndicator and/or investor and the ability of the project to proceed. In addition, since the additional funding is designed to compensate for declining investor demand and not higher project costs, projects with increases in costs will receive a lower priority ranking. Although increases due to Davis-Bacon wage rates will be analyzed. Owners should have alternative funding sources in place to address any cost overruns. Additional funds will only be provided if the additional costs are reasonable and necessary as determined by OHFA. Projects will be ~~fully~~ reviewed and awarded funds based on the priority ranking.

4. OHFA will ~~contract with~~ assign independent an entity consultants with development and underwriting experience and internal OHFA analysts (“~~project ARRA underwriting contractor team~~”) to re-evaluate the project underwriting, market for the property, and capacity of the development team. In addition OHFA will contract with an entity (“project cost estimator contractor”) to evaluate the project costs for all 2008 HTC projects. Both the project cost estimator and ~~project underwriting contractor~~ ARRA underwriting team will evaluate the updated costs and fees and make recommendations for possible reductions. In addition, OHFA will not offer additional assistance to projects with significant issues as identified by the ARRA underwriting team ~~project underwriting contractor~~ unless these issues can be reasonably mitigated. All final decisions will be made by OHFA staff.

5. If an owner has an updated commitment from a syndicator or investor, additional gap financing is available to make up for the reduction in the price of the HTC. Funding awards will be made during the month of June. Again, the timing for this process is contingent upon the release of additional guidance from HUD and IRS, and OHFA may adjust the dates accordingly based on this guidance. Additional details:

- a. Awards will be in the form of soft loans or grants depending on the needs of project.
- b. The total amount of assistance provided will be based on the financial feasibility of the project and the ability of the investor to obtain a reasonable return for the purchase of the HTC.
- c. TCAP funds will be awarded to projects that were previously awarded HDAP-HOME funds. The HDAP-HOME funds will remain with the projects.
- d. TCE funds will be awarded to all other projects.
- e. For credit prices below \$.75, OHFA may determine that the new estimated price is too low and require an exchange of credits (see 6. below). These determinations will be made on a case by case basis and will be based on achieving OHFA's policy goals for the ARRA funds.
- f. OHFA may offer owners the ability to exchange their allocation of HTC for a 2009 allocation of HTC in order to reduce the completion risk for investors and provide additional incentive for investors to commit funds to the project.
- g. Owners will then have until November 1, 2009 to close the equity at the price. If an owner is unable to close at that date, the owner must immediately return all OHFA funds. OHFA will then re-evaluate the project and provide funding using the procedures described below (see 6.).

6. If an owner does not have a commitment from an investor and can document good faith efforts to obtain investors or if an owner can only sell credits for a price that OHFA determines to not be an efficient use of public subsidy, OHFA may exchange the credits and award grant dollars and/or TCAP to finance the project. This option will only be available to projects that do not pose a significant ~~financing~~ fiscal risk to OHFA, which will assume the role as the primary funding source. OHFA will be more risk--averse as the primary funder. Funding awards will be made during the month of June. Again, the timing for this process is contingent upon the release of additional guidance from HUD and IRS, and OHFA may adjust the dates accordingly based on this guidance. Additional details:

- a. Awards will be in the form of soft loans or grants depending on the financial feasibility of the project.
- b. The total amount of assistance provided will be based on the financial feasibility of the project.
- c. OHFA reserves the right to hold ~~up to 25%~~ a reasonable portion of the developer fee or require a bond or letter of credit during the 15-year compliance period in order to

- ensure compliance. ~~A payment schedule will be created prior to commitment of funds.~~
- d. Additional operating reserves will be added to the project budget from the TCE funds and will be controlled by OHFA. OHFA will work with other funders of the project in order to be consistent with lender requirements for reserves.
 - e. The owner/developer will be required to provide guarantees for the recapture of grant funds for non-compliance during the 15-year compliance period. OHFA will use standard HTC investor industry practices as a guide in creating the guarantee requirements.
 - f. HDAP awards will remain in place; however, commitments for OHFA's Housing Development Loan program may be revoked if they are unable to be restructured without a tax credit investor and still meet the program requirements.
7. In order to expedite the process and provide immediate stimulus, funding decisions will be made at the staff level with final approval by the Executive Director. An internal ARRA Committee with staff from various offices within OHFA will be formed to review funding decisions. Beginning the first week of June, status reports will be sent weekly via e-mail to the OHFA Board until all funding decisions have been made. Staff will give a presentation regarding the final decisions at the August meeting of the OHFA Board.

D. ARRA Funding Process - Part 2: 2007, 2008, or 2009 non-competitive HTC projects

1. OHFA will set-aside up to \$10,000,000 in TCAP to be used for projects awarded (i.e. received a letter of HTC eligibility) in 2007, 2008, or 2009 and have not yet closed on the bonds or with their credit investors prior to July 1, 2009. Developers of projects with funding gaps due to declining investor demand for the credits and bonds may apply for additional funding beginning May 1, 2009 and ending on July 1, 2009. Funds will be allocated based on receipt of complete application materials for quality, eligible projects. The timing for this process is contingent upon the release of additional guidance from HUD, and OHFA may adjust the dates accordingly based on this guidance.

2. Owners will be required to submit the following materials:

- a. An updated Affordable Housing Funding Application (AHFA) for the project.
- b. A narrative explaining any changes to the project or changes to any line items in the project budget.
- c. A detailed timeline for development once all funding is secured.
- d. An updated commitment letter from the syndicator or investor for the HTC. The letter must include the estimated closing date and any special closing conditions, such as additional operating reserves. If there is no syndicator and/or investor at a reasonable price, then owner must provide letters dated within the last 30 days from three syndicators or investors that have evaluated the project.

e. An updated commitment letter from the bond underwriter providing updated information regarding the status of the bonds and anticipated closing date. The bonds must be closed by November 1, 2009. If an owner is unable to close at that date, the owner must immediately return all OHFA funds.

f. In addition, OHFA may request additional information regarding construction costs, the market for the project, and/or financial capacity of the development team.

3. Only projects that are developed by an experienced development team, serve a significant housing need for the state or community, and can be closed within six months of approval will be eligible for funds. The financial feasibility and scope of work for the project will also be considerations for funding. The ARRA underwriting team will evaluate proposals in the order received. In addition, OHFA will not offer additional assistance to projects with significant issues as identified by the ARRA underwriting team unless these issues can be reasonably mitigated. All final decisions will be made by OHFA staff.

4. In order to expedite the process and provide immediate stimulus, funding decisions will be made at the staff level with final approval by the Executive Director. An internal ARRA Committee with staff from various offices within OHFA will be formed to review funding decisions. Beginning the first week of June, status reports will be sent weekly via e-mail to the OHFA Board until all funding decisions have been made. Staff will give a presentation regarding the final decisions at the August meeting of the OHFA Board.

DE. ARRA Funding Process - Part 32: 2009 competitive HTC projects

1. After determining the ranking of the 2009 projects by pool, the ~~project-ARRA~~ underwriting ~~contractor team~~ will evaluate the high ranking projects likely to be funded and make recommendations regarding project costs, financial feasibility of the project, ability for the projects to proceed, and capacity of the development team.

2. ~~For projects that rank highly in the competitive process and are most likely to attract investors,~~ Based on the competitive ranking by OHFA staff and recommendations by the ARRA underwriting team, OHFA will reserve a combination of 2009 HTC, HDL, HDAP, NSP (if applicable), and ARRA funds to projects by August 1, 2009 in order to best maximize the effectiveness of the 2009 HTC. The minimum amount of funds needed to ensure financial feasibility and reasonably attract investors will be provided to each project. Funding determinations and financing structures will be made on a case by case basis. OHFA may reduce the amount of credits requested and replace investor equity with ARRA funds depending on the financial feasibility of the project and availability of ARRA funds. Owners that are unable to find investors for the HTC and notify OHFA no later than December 1, 2009, may be offered replacement funds, if available, for the HTC equity. This option will only be available to projects that do not have significant issues identified by the project underwriting contractor and do not pose a significant financing risk to OHFA. Requirements similar to those for the 2007/2008 TCE-only projects (C.6.) will apply to the 2009 TCE-only projects.

3. For a select number of projects that ~~rank highly in the competitive process, are not likely to attract investors at all or at an efficient price, and do not have significant issues identified by the project underwriting contractor,~~ are eligible for a reservation of 2009 HTC and are more likely accomplish OHFA's ARRA policy goals with funds from exchanged credits in lieu of HTC, OHFA will reserve, in consultation with the project owner, a combination of TCE funds, HDL, HDAP, and NSP (if applicable), ~~and ARRA funds~~ to these projects by September 1, 2009. This option will only be available to projects that do not pose a significant financing-fiscal risk to OHFA, which will assume the role as the primary funding source. OHFA will be more risk-averse as the primary funder. The minimum amount of funds needed to ensure financial feasibility and reasonably attract investors will be provided to each project. Funding determinations and financing structures will be made on a case by case basis. Requirements similar to those for the 2007/2008 TCE-only projects (C.6.) will apply to the 2009 TCE-only projects. OHFA may only exchange up to \$7,500,000 in 2009 HTC.
4. OHFA's goal is to fund at least 35 projects with a combination of 2009 HTC, HDAP, NSP, and ARRA funds.
5. All funding awards for HDAP, NSP (if applicable), and ARRA funds for the 2009 HTC projects must be approved by the OHFA Board. ~~These projects will be presented during the September and October OHFA Board meetings.~~
6. Owners will have until the later of 90 days after completion of the OHFA Environmental Review or February 1, 2010 ~~other date established by OHFA in the funding award~~ to close the construction loan, provide developer guarantees, provide a firm commitment for the tax credit investor (if applicable), and meet any other conditions imposed by OHFA. OHFA will re-evaluate the projects again ~~during February, 2010~~ and offer additional assistance if available and if needed due to a continued decline in investor demand for the HTC. If the owner is unable to meet this deadline, OHFA will require that all funding be returned and will award the funds (final amounts to be determined on feasibility analysis by OHFA) to a project on a waiting list to be developed after the 2009 funding round. Projects on the waiting list will be issued a conditional (based on availability of funds) award of HTC in order to meet the credit award requirements for the TCAP.

EF. ARRA Funding Process - Part 34: additional funds for 2009 and 2010 competitive HTC projects and multifamily bond projects

If there are ARRA funds remaining unreserved after September 1, 2009, the funds will be set-aside as a contingency to provide additional assistance to the 2009 projects and/or 2010 competitive HTC projects, if needed. ~~If funds remain after OHFA's review of the 2009 projects in February, 2010, then OHFA will use the funds to assist the 2010 competitive HTC projects.~~ Depending on the amount of ARRA funds available and economic conditions, OHFA may also elect to use a portion of the ARRA funds for projects awarded non-competitive (i.e. multifamily bond projects) HTC in 2007, 2008, or 2009 and have not yet closed on the bonds or with their credit investors after July 1, 2009 or were not funded with ARRA funds during first funding window for multifamily bond projects. ~~multifamily bond projects.~~ Only projects that are developed by an experienced development team, serve a significant housing need for the state, and can be closed within six months of approval will be eligible. The financial feasibility and

scope of work for the project will also be considerations for funding. OHFA will provide additional guidance in October, 2009.

FG. Program Fees and Project Reserves

A. Estimated TCAP Asset Management Fees: Equal to 6 percent of the TCAP award. Fee amount is based on current administrative fee limit for Ohio's Housing Trust Fund and is lower than the standard 10% administrative fee for the HOME program. Final fee may be higher or lower based on actual costs to OHFA and services needed for the project.

B. Estimated TCE Asset Management Fees: Equal to \$.05 multiplied by the 10-year amount of exchanged credits. This amount is based on industry practice for HTC syndicators. Final fee may be higher or lower based on actual costs to OHFA and services needed for the project.

C. Estimated TCE Project Reserves: Equal to \$.05 multiplied by the 10-year amount of exchanged credits. This amount is based on industry practice for HTC syndicators. Final reserve may be higher or lower based on financial needs for the project. The TCE Project Reserves are designed to cover operational deficits during the 15-year compliance and 15-year extended use periods and will be controlled by OHFA. Unused reserves will be reallocated to eligible projects.

In addition, OHFA reserves the right to charge an annual asset management to be paid from project cash flow if needed to cover costs.

GH. Fee Limits and Cost Certification

Additional restrictions regarding contractor costs and cost certification will apply to any project receiving ARRA funds. These restrictions are as follows:

1. Limits for Contractor Fee, Contractor Overhead and General Requirements will be calculated as follows:

- Contractor Fee = 6 percent of hard construction costs
- Contractor Overhead = 2 percent of hard construction costs
- General Requirements = 6 percent of hard construction costs

2. The profit and overhead for subcontractors with an identity of interest with the general contractor or subcontractors that complete 25% or more of the work included in the construction contract will be included in the overall Contractor Fee and Contractor Overhead line items for the project.

3. OHFA may place limits on construction contingency reserve and other reserves or require repayment of these funds are not used.

4. Owners will be required to use the enhanced cost certification forms that include an additional breakdown of construction costs and identification of work completed by subcontractor. Draft forms will available on the OHFA website.

III. Additional Guidance Forthcoming

Additional procedures and policies regarding the implementation of ARRA funds will be developed by staff, approved by the Executive Director and published by OHFA during 2009. Specific topics to be addressed in order of priority:

1. Enhanced Project Underwriting Standards (to be used by the project underwriting contractor)
2. Additional Federal Requirements for TCAP and TCE
3. Deal Structuring and Long-term Compliance Requirements for Projects Without HTC Investors
4. Financing Closing Requirements and Draft Closing Documents
5. Reporting and Auditing Requirements for TCAP and TCE
 - Requirements for Governor's Office, State Auditor, Federal OBM, GAO, HUD, and IRS
6. Construction Monitoring and Funding Draw Process
7. Asset Management Process
8. Loan Servicing Process
9. Allocation of ARRA Funds Remaining After September 1, 2009

Staff will make decisions as quickly and transparently as possible. Feedback will be solicited from customers and stakeholders, and draft policies and guidelines will be available on OHFA's website (www.ohiohome.org) for comment prior to formal approval.