NORTH DAKOTA housing FINANCE AGENCY

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Tax Credit Exchange Program (TCEP)
Implementation Process

The American Recovery and Reinvestment Act of 2009 (ARRA) provides states with two programs to offset declining investor interest for Housing Tax Credits (HTC).

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

Both the TCAP and the TCEP are additional funding for projects that received an award of Housing Tax Credits in the 2007, 2008, or 2009 federal fiscal years.

North Dakota Housing Finance Agency (the Agency) is eligible to receive up to $4,860,574 in TCAP funds through the Department of HUD.

Under Section 1602 of ARRA, TCEP funds are available from the Department of Treasury to States to finance construction or acquisition and rehabilitation of qualified low-income building for low-income housing in lieu of low-income housing tax credits. The Agency is eligible to exchange 100% of credits returned in 2009 (from 2007 and 2008); 100% of unused 2008 credit authority and up to 40% of the 2009 per capita credit authority and National Pool credits.

Applications will be accepted on or before July 31, 2009 for TCAP, TCEP and for remaining 2009 HTC. Applications for these programs must be made using the 2009 HTC application form and the package must include correspondence indicating for which program(s) you wish to be considered. Further application rounds may be held if necessary to fully utilize available funds.

The Agency will use TCEP grant funds to make sub awards to finance the construction or acquisition and rehabilitation of qualified low-income buildings under Section 42 of the Code. The sub awards are subject to the same requirements as low-income housing credits under Section 42 of the Code. All funds must be used to make subawards by December 31, 2010 and so long as the project is at least 30% complete by that date, funds may continue to be disbursed until December 31, 2011. Funds not utilized for subawards by December 31, 2010 must be returned to the Department of the Treasury.

It is expected that the TCEP will temporarily fill the gap left by a diminished investor demand for low-income housing tax credits. The TCEP will allow projects for construction or acquisition and rehabilitation of low-income housing to continue where developers are unable to proceed due to lack of investors. In this way, the near term goal of creating and retaining jobs is achieved, as well as the long-term benefit of increasing the affordable housing supply.

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The North Dakota Housing Finance Agency will use the following process and criteria to administer the state's TCEP.

DISCLAIMER: This policy is based on guidance currently available and will be revised as necessary when additional guidance is issued by the Department of Treasury or Internal Revenue Service.

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 TCEP criteria will have the same meaning as under IRS Code Section 42, federal regulations, the 2009 Qualified Allocation Plan, Treasury's "Grantee Terms and Conditions", and legal agreements between the Agency and Owners.

II. APPLICATION AND EVALUATION

A. THRESHOLD ELIGIBILITY

1. The project must have either a) an award of 9% tax credits from the 2007, 2008 or 2009 cycles or b) an award of non-competitive 4% credits for multi-family bond projects; and the Owner must have either an equity investment or made good faith efforts to obtain one. For purposes of the TCEP criteria, "award" means the date of execution by both parties of a binding reservation of credits or letter of approval for bond financed projects.

2. The project and Owner must be eligible under applicable federal requirements.

3. Owners must be able to both expend one hundred (100%) of the TCEP award and place projects in service by December 31, 2011. In determining whether Owners will be able to meet this requirement, the Agency will consider:
   a) The anticipated building timelines, and
   b) Owners' and general contractors' recent history of timely construction.

4. The buildings have not been placed in service under Section 42.

B. APPLICATION PROCESS

1. The initial application deadline is July 31, 2009. If insufficient requests are received, additional funding rounds will be announced on our website. Developers with projects in the pipeline will receive direct notification of additional funding rounds, if necessary.

2. Applicants without equity must submit a written description of efforts to obtain an equity investment including a description of steps taken to secure an equity investor and identifying issues inhibiting investor interest in the project. The narrative must identify all investors contacted and potential investors that offered unacceptable terms and why

those terms and conditions were detrimental to the project's feasibility. The Agency will look for evidence that the applicant has made an exhaustive effort to obtain an equity investor and will make the determination whether the good faith test has been met. The Agency may contact equity providers for verification.

3. Normal application fees will apply.

III. GENERAL REQUIREMENTS

In addition to the terms of the TCEP Criteria, Applicants will comply with the 2009 Qualified Allocation Plan (QAP).

A. UNDERWRITING STANDARDS

In addition to normal underwriting standards,

1. TCEP funds replacing equity will be approximately equal to the anticipated equity in the project's final accepted application. In all cases the award and contribution amounts will be no more than the lesser of:
   a) 85% of the project's eligible basis, and
   b) The amount 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. Exchange contributions will be made as loans with thirty (30) year terms with no principal or interest payments.

3. Developer fee for projects without an equity investor will be paid as follows:
   a) twenty percent (20%) upon closing the TCEP mortgage;
   b) forty percent (40%) upon the Owner expending the entire Exchange contribution amount; and
   c) forty percent (40%) upon completing the final cost certification and maintaining ninety percent occupancy for ninety days.

4. Owners will need to provide updated commitment letters from all permanent funding sources (other than equity).

B. POST-AWARD AND CONTRIBUTION TERMS

1. TCEP agreements will specify construction schedules. Owners will have until November 1, 2010 to submit information to the Agency showing the ability to disburse 30% of TCEP funds by December 31, 2010. Further, unless a project is already completed, prior to October 1, 2011, Owners must show the ability to fully disburse remaining TCEP funds and place in service by December 31, 2011.

2. Applicant will be responsible for securing sources to cover any part of the TCEP contribution amount not expended by December 31, 2011. The Agency will make a

determination if doing so will be feasible, and if not, may initiate foreclosure proceedings to recapture TCEP contributions.

3. Remedies for default on the TCEP agreement or other noncompliance may include the Agency having the ability to do some or all of the following:

   a) Ineligibility of same entities or related parties to participate in Agency programs
   b) Change the structure of the ownership entity, including adding or removing members/parties
   c) Replace the management company
   d) Recapture as authorized under federal policies, and
   e) Other remedies as determined by the Agency

   Any amount subject to recapture becomes a debt owed to the United States payable to the General Fund of the Treasury and enforceable by all means against any assets of the Owner.

4. Owners will return the project's tax credit allocation by a date to be set by the Agency upon determination of eligibility for TCEP.

5. Owners will record a thirty year Declaration of Land Use Restrictive Agreement consistent with a regular HTC allocation under Section 42.

C. REPORTING AND COMPLIANCE

   1. Owners will report to the Agency after the end of each quarter on the number of:

      a) Construction jobs created and retained
      b) Non-construction jobs created and retained
      c) Total housing units newly constructed or rehabilitated,
      d) Low-income housing units newly constructed or rehabilitated, and
      e) Any other information necessary for the Agency's reporting

   2. Owners will follow Agency processes and procedures applicable to IRS Code Section 42 projects with an investor and any additional compliance requirements made necessary due to TCEP funding.