



Tax Credit Assistance Program Implementation Process

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

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

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

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

Under Section 1602 of ARRA, TCEP funds are available from Treasury to states in lieu of credits to finance construction or acquisition and rehabilitation of qualified low-income buildings for low-income housing. The Agency is eligible to exchange one-hundred percent (100%) of credits returned in 2009 (from 2007 and 2008); one-hundred percent (100%) of unused 2008 credit authority; and up to forty percent (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 credits. Applications for these programs must be made using the Agency's 2009 credit 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 the following process and criteria to administer the state's TCAP.

DISCLAIMER: This policy is based on guidance currently available and will be revised as necessary when additional guidance is issued by HUD 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 funds to start construction on shovel-ready activities.

Terms used in the TCAP criteria will have the same meaning as under Internal Revenue Code (the Code) Section 42, federal regulations, the 2009 Qualified Allocation Plan (QAP), HUD's CPD Notice 09-03, and legal agreements between the Agency and Owners.

II. APPLICATION AND EVALUATION

A. THRESHOLD ELIGIBILITY

1. Project must have received an award of credits from the Agency pursuant to a QAP between October 1, 2006, and September 30, 2009. An award of credits is defined as the date of execution by both parties of the binding formal reservation of credits.
2. Project must demonstrate that the award of credits was sold to an equity investor and that additional funding is required for project feasibility.

3. Project must demonstrate the capacity to meet all requirements of ARRA including but not limited to:
 - Fair Housing Act
 - Title VI of the Civil Rights Act of 1964
 - The Age Discrimination Act of 1975
 - Affirmatively Furthering Fair Housing
 - Section 504 of the Rehabilitation Act of 1973
 - National Environmental Policy Act and Related Laws
 - The Lead-Based Paint Poisoning Act and the Residential Lead-Based Paint Hazard Reduction Act of 1992
 - Davis-Bacon Prevailing Wages
 - Anti-Lobbying Restrictions

(See Section III. B. CROSS-CUTTING FEDERAL REQUIREMENTS)

If the applicant lacks capacity to fully comply with these federal requirements, partnering/contracting with an experienced entity will be required. In order to be eligible for TCAP funding, owners must not have undertaken any choice-limiting activity prior to successful completion of the environmental review process.

4. Project timetable must show the expected completion date to be no later than February 16, 2012.

B. APPLICATION PROCESS

1. Applications for TCAP funds are due by July 31, 2009. If insufficient requests are received, additional funding rounds will be announced on our website at a later date. Developers with projects in the pipeline will receive direct notification of additional funding rounds, if necessary.
2. Applicants must submit a 2009 credit application, found on the Agency website, and provide sufficient justification for the need for additional funding (i.e., equity contributions are substantially less than projected on prior applications).

C. SELECTION CRITERIA

1. Funds will be awarded competitively in accordance with the 2009 QAP and the Agency's TCAP application to HUD.
2. In the event of a tie, priority will be given to projects with the earliest anticipated completion dates.
3. During selection of projects for funding under TCAP, the Agency will consider the three deadlines established by ARRA.
 - At least seventy-five percent (75%) of grant funds must be committed by February 16, 2010;
 - At least seventy-five percent (75%) of grant funds must be spent by February 16, 2011; and
 - One-hundred percent (100%) of grant funds must be spent by February 16, 2012.
4. The Agency will post on its website a list of all projects selected for funding along with TCAP funding amounts.

III. GENERAL REQUIREMENTS

1. TCAP funds will not be awarded until successful completion of the environmental review process. Special consideration will be given to applications that have already completed this process.
2. Upon completion of the environmental review, the Agency will enter into a written agreement with the project owner. This written agreement:
 - Is required before TCAP funds are disbursed.
 - Sets all TCAP program and federal grant requirements.
 - Establishes specific construction schedules.
3. If an owner fails to expend TCAP funds according to the schedule in the written agreement and the 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 de-obligating the remaining TCAP funds and initiating foreclosure proceedings to recoup amounts already expended.
4. TCAP funding will be provided as a loan or grant, depending on role and strength of the equity investor. TCAP loans will have thirty-year (30) terms with no principal or interest payments for the first three (3) years and terms negotiated on a case-by-case basis as necessary to achieve financial feasibility for the remainder.
5. 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 and ineligible to participate in other Agency programs,
 - 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.
6. Normal credit application fees will apply. If TCAP is structured as a loan, an origination fee of one percent (1%) of the TCAP loan amount will be assessed.
7. Owners will record a thirty-year (30) Declaration of Land Use Restrictive Agreement consistent with a regular allocation under Section 42 of the Code.

A. REPORTING AND COMPLIANCE

1. Owners will report to the Agency after the end of each quarter on:
 - All information applicable to HOME Investment Partnership Act funding.
 - An estimate of the number of jobs created and the number of jobs retained.
 - Quarterly progress reports showing progress consistent with the timetable in the competitive application.
 - Failure to meet the pre-identified timetable may result in forfeiture of the TCAP award, at the sole discretion of the Agency.
 - Any other information necessary for the Agency's federal reporting requirements.

The Agency will track and report quarterly to HUD the progress in committing the funds to projects and expending of funds by projects (i.e., draws against the TCAP funds account).

2. Owners will follow the Agency's processes and procedures applicable to Section 42 of the Code projects and any other additional compliance requirements that may be mandated in forthcoming guidance on TCAP funding.
3. Projects must demonstrate a contractual arrangement with a syndicator for asset management, to the satisfaction of the Agency, to insure compliance with Section 42 of the Code and long-term viability.

B. 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 www.access.gpo.gov/nara/cfr/waisidx_04/24cfr58_04.html or 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 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 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”)