

Program Bulletin – 2009 – 01

American Recovery & Reinvestment Act Tax Credit Assistance Program Implementation Plan

June 5, 2009 (Revised with comments)

On February 17, 2009, the President signed the American Recovery and Reinvestment Act of 2009 (“ARRA”) in an effort to combat the recession and stimulate the economy. The funding programs from ARRA provide Rhode Island Housing with resources to address the current dislocation of the Housing Tax Credit Program which has been the primary production program for affordable rental housing since 1986.

Rhode Island Housing values the public/private partnerships that have resulted from the past successful implementation of the Housing Tax Credit program. Together with our partners, thousands of affordable homes have been produced for Rhode Islanders. However, the downturn in the economy has dramatically reduced the number of investors in the Housing Tax Credit market and more specifically, the number of investors in Rhode Island resulting in a standstill in production of new multi-family housing. Rhode Island Housing expects that the ARRA resources will help alleviate some of the production decline.

Rhode Island Housing will receive \$11,933,403 in funding under the Tax Credit Assistance Program (“TCAP”). This Program Bulletin is intended to provide guidance to the development community in regard to TCAP requirements and Rhode Island Housing’s priorities and policies based upon the availability of the TCAP.

On May 4, 2009 the Department of Housing and Urban Development (HUD) issued guidance on the implementation of the TCAP. This guidance sets forth submission requirements, eligible uses of funds and federal program requirements outlined within this program bulletin. Supplemental guidance may be released by HUD.

Rhode Island Housing will accept comments on this Program Bulletin through May 21, 2009.

TCAP Summary

TCAP is a program designed to provide funds for capital investment in Housing Tax Credit projects. HUD will provide funds to Rhode Island Housing to facilitate the development of projects that have received or will receive reservations of tax credits between October 1, 2006 and September 30, 2009. For purposes of this program, Rhode Island Housing has defined “awards of LIHTCs” as any project that has (a) received a reservation of 9% tax credits during the period; or (b) any project receiving a

preliminary or firm commitment of tax-exempt financing and 4% tax credits during the period. Rhode Island Housing may elect to make grants or loans under the program in its sole discretion and within the parameters of applicable federal laws and regulations, the state QAP and this Program Bulletin.

The major purpose of the TCAP is to immediately create new jobs or to save existing jobs that are at risk of being lost due to the economic crisis. Given this purpose, the ARRA establishes deadlines for commitment and expenditure of the TCAP funding.

TCAP requires that all current Section 42 requirements be applied for the compliance period. This compliance will require the same affordability, physical viability and recapture provisions of a traditional housing tax credit transaction. Currently, it is the intention of Rhode Island Housing to perform the asset management function to monitor compliance with Section 42. Rhode Island Housing will develop a fee structure consistent with current industry practices for monitoring the initial lease-up of the property. A regulatory agreement will be recorded for each development funded under the program.

Rhode Island Housing must commit its TCAP funding by February 16, 2010. However, the objective of the program is to commit all funding and begin construction immediately. Projects funded through TCAP must expend 75% of the TCAP funding provided for the project no later than February 16, 2011. Projects funded through TCAP must be completed on or before February 16, 2012. Projects which do not meet benchmarks established through funding contracts will be subject to termination and recapture of funding. Such benchmarks shall include monthly evaluation of expenditure of funding and monthly evaluation of percentage of construction completion. Upon occurrence of a recapture of funds Rhode Island Housing will redistribute funds to projects immediately ready to proceed that will ensure expenditure of funding within the time guidelines set forth above. Rhode Island Housing will announce supplemental application periods on its website at www.rhodeislandhousing.org in order to reallocate recaptured or deobligated funds.

Submission Requirements

Rhode Island Housing will submit an application for \$11,933,403 to HUD by June 3, 2009. Upon receipt of a complete application from Rhode Island Housing, HUD will execute and issue a grant agreement. Interested applicants should review the application materials at www.rhodeislandhousing.org for guidance. Rhode Island Housing will not obligate funding under the program until receipt of a grant agreement from HUD.

Competitive Selection Criteria

Rhode Island Housing will utilize the priorities set forth within the state 2009 Qualified Allocation Plan (QAP) or the 2010 QAP upon adoption of the plan, and this Program Bulletin in making awards under the TCAP. Rhode Island Housing has developed an Allocation Plan to comply with the requirements of Section 42 of the Internal Revenue Code (the "Code") and to ensure that those developments receiving tax credits produce or preserve housing which helps to address the housing needs of the State. The QAP is updated annually. It establishes priorities under which the TCAP funds will be allocated.

TCAP Threshold Criteria and Priorities

Rhode Island Housing's selection process for allocating TCAP funds is designed to finance projects which address the State's housing needs identified in the Rhode Island Five Year Strategic Housing Plan as well as the criteria included in the state QAP. Rhode Island Housing will use the Threshold Criteria and Priorities outlined in this Program Bulletin as a guide in making awards of TCAP funds.

Threshold Criteria:

Developers must be able to demonstrate site control, readiness to proceed, creditworthiness and financial feasibility to be considered for TCAP funding. Failure to demonstrate these criteria will render the development ineligible for funding.

1. **Site control:** All sponsors must demonstrate site control in the form of a deed, current option, purchase and sales agreement, designation from a public authority, or a sound, feasible plan for obtaining site control that is acceptable to Rhode Island Housing in its sole discretion.
2. **Readiness to Proceed:** All sponsors must demonstrate readiness to proceed. Such judgments will be made in Rhode Housing's sole determination on the basis of evidence of availability or ability to secure in a timely manner all financing commitments required to achieve project feasibility; and likelihood of expeditiously moving the project to construction (based upon status of acquisition of property, land use and zoning approvals, evidence of building permits, and environmental/historical reviews). All projects must be completed no later than February 16, 2012.
3. **Creditworthiness and Good Standing:** Rhode Island Housing reserves the right to deny TCAP funds to any proposal where (i) any materially participating entity (owner or management agent) is not in good standing regarding compliance monitoring of other projects; or (ii) any partner, sponsor or other key development team member has been determined by Rhode Island Housing to be

not creditworthy. Creditworthiness takes into consideration management capabilities, character and capacity.

4. Financial Feasibility: Rhode Island Housing reserves the right to deny TCAP funds to any applicant of a proposal for which adequate funding sources have not been identified for all development costs. While commitments from these sources do not have to be secured before applying, the applicant must be able to demonstrate to Rhode Island Housing's satisfaction that the sources identified are reasonably likely to be available to the Developer within a time frame which facilitates readiness to proceed as noted above.

Awards of TCAP funding are limited to projects that have received or will receive awards of more than a nominal amount of LIHTCs between October 1, 2006 and September 30, 2009. For purposes of this program, an "award of LIHTCs" occurs when the Rhode Island Housing Board of Commissioners adopts a resolution (a) reserving 9% tax credits for the project during the period; or (b) providing for preliminary or firm commitment of tax-exempt financing and 4% tax credits for the project and determination that the project satisfies the requirements of the QAP for an allocation of tax credits for purposes of Code section 42(m)(1)(D) during the period.

Priorities:

The following outlines Rhode Island Housing's priorities, in addition to those set forth in the QAP, for use of TCAP funds in order to further the state's goal of producing new homes for Rhode Island families, particularly those families who are most at risk. As a general statement, the goal of the AARA is to stimulate the economy. Furthermore, Rhode Island needs construction jobs, the overall economic stimulus that home construction provides and healthy, affordable homes for our workforce today and tomorrow. Priority will be given to those developments that have all resources committed and are able to close and commence construction within 90 days of receiving these funds.

1. Developments that currently have an investor/syndicator but for which the pricing is less than the amount anticipated when the development previously received an award of LIHTCs resulting in a need for gap financing. Rhode Island Housing reserves the right to review the adequacy of all syndication offers.

(a) Evidence of good faith effort includes:

1. Date of initial award of tax credits
2. List of syndicators contacted. Include dates of contact.

3. Narrative of interaction with each syndicator (i.e. phone call, site visits, negotiation, execution of LOI and subsequent rescission, etc). Provide copies of written correspondence if applicable.
 4. Brief discussion, if applicable, of changes the deal may have undergone in an effort to meet potential syndicator requirements.
 5. Additional information as necessary illustrative of developer's efforts to secure a syndicator.
2. Developments that will result in an increase in the number of new housing units available for families.
 3. Existing developments previously funded through Rhode Island Housing that have immediate and urgent repair needs.
 4. Existing developments with expiring rental subsidies.
 5. Existing developments that have applied for refinancing under Rhode Island Housing's Preservation program.

Federal Requirements

Rhode Island Housing will enter into written agreements with recipients of TCAP funding. Recipients will be required to submit quarterly reports on project activity. The reporting guidelines will be established within the written agreement.

All projects funding under the TCAP are subject to 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. Section 504 of the Rehabilitation Act of 1972 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8 "Nondiscrimination Based on Handicap in Federally Assisted Program and Activities of the Department of Housing and Urban Development."
5. National Environmental Policy Act and Related Laws and implementing regulations at 24 CFR Part 58. No TCAP funding shall be committed to a project prior to the completion of an environmental review.
6. 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. All units funded under TCAP will be required to achieve lead safe status.

7. Davis-Bacon Prevailing Wages will be paid on all projects assisted in whole or in part with TCAP funding.
8. “Anti-Lobbying” Restrictions in 31 U.S.C. 1352 and implementing regulations at 24 CFR Part 87.
9. 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).”
10. 2 CFR Part 2424 “Non-procurement Debarment and Suspension.”

All recipients of TCAP funding will be required to affirmatively further fair housing. All recipients will be required to develop a fair housing marketing plan that includes actions to provide information and otherwise attract eligible persons in Rhode Island to lease TCAP funding units without regard to race, color, national origin, sex, religion, familial status or disability. Rhode Island Housing will annually review existing tenancy, waiting lists and marketing materials used by a recipient to comply with fair housing.

Transparency and Accountability Requirements

The ARRA establishes new requirements for recipients. Rhode Island Housing will be required to report information to HUD within 10 days of each calendar quarter the following information:

1. The total amount of recovery funds received from HUD.
2. The amount of funds received and expended on funded projects and a reconciliation of funds obligated but not expended.
3. A detailed list of the projects funded including a thorough description of the projects, benchmarks and completion dates, and jobs created and retained as a result of the project.

Rhode Island Housing will post all projects and TCAP awards on its website at www.rhodeislandhousing.org as such awards are made.

Application Process

Rhode Island Housing will post application materials for TCAP funding and submittal requirements on its website at www.rhodeislandhousing.org

Rhode Island Housing may update information on program requirements as guidance is provided by HUD.

Public Comments:

Rhode Island Housing posted the TCAP Program Bulletin on our website (www.rhodeislandhousing.org) on May 13 and accepted public comments until May 21,

2009. The following two comments were received and incorporated into this revised Program Bulletin dated May 22, 2009

1. On Page 2, added a paragraph stating that all Section 42 compliance requirements would be required.
2. On page 4, second sentence under Priorities, replaced a reference to Exchange Funds with TCAP Funds.