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MEMORANDUM

TO: Recipients of TCAP Funding

FROM: Ed Yandell, Director of Multifamily Development
Lynn Miller, Deputy Executive Director and General Counsel

DATE: August 24, 2009

SUBJECT: Davis-Bacon Requirements

Several issues arose as a result of the information presented at the August 20, 2009 TCAP/Section 1602 Workshop held by THDA regarding compliance with Davis-Bacon Prevailing Wage Requirements. The following addresses some of these issues, however, for more complete information, click on "HUD TCAP Recover Portal" in the column on the left side of the web page on which this memo is posted, then, under the heading "Questions and Answers", click on the heading titled "NEW Davis-Bacon Prevailing Wage Requirements Q & As". Also, please consult with a knowledgeable professional about all Davis-Bacon requirements and issues.

- Davis-Bacon prevailing wage requirements apply to TCAP funding. They do not apply to Section 1602 funding.
- For TCAP eligible tax credit developments for which a construction contract was awarded and/or construction commenced prior to the "notice" date for TCAP funding (i.e. prior to July 10, 2009), Davis-Bacon requirements may apply prospectively rather than retroactively.
- For TCAP eligible tax credit developments for which a construction contract was not awarded and/or construction was not commenced prior to the "notice" date for TCAP funding (i.e. prior to July 10, 2009), Davis-Bacon requirements apply to the construction contract and construction when it is commenced.
- The "notice" date for TCAP funding, which identifies the TCAP eligible tax credit developments eligible for prospective Davis-Bacon application, is the date the TCAP grantee "announces and invites applications for TCAP assistance." For THDA purposes, the "notice" date is July 10, 2009, which is the date THDA, as the TCAP grantee, announced and invited applications for TCAP assistance by posting a notice and an application on the THDA website.

- For TCAP eligible tax credit developments eligible for prospective Davis-Bacon application, Davis-Bacon requirements are effective beginning on the date THDA approves TCAP funding for a particular development. A Conditional Commitment Letter from THDA is not approval of TCAP funding. TCAP funding is approved as of the date of the TCAP Written Agreement between THDA and the development owner.
- The TCAP Written Agreement will be dated and executed in connection with the closing of the TCAP funding.
- The applicable wage decision and HUD-4010 must be included in construction contracts to be effective as of the date THDA approves TCAP funding for a TCAP eligible tax credit development.
- TCAP eligible tax credit developments that are 100% complete prior to July 10, 2009 (ie no construction work of any kind remains to be performed after July 10, 2009), are not subject to Davis-Bacon requirements.