



## Tennessee Housing Development Agency

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### MEMORANDUM

TO: All interested parties

FROM: Multifamily Development Division

DATE: May 22, 2009

SUBJECT: TCAP Description Outline as approved by THDA Board

The following document is the Tax Credit Assistance Program Description Outline. The Program Description Outline was approved by the THDA Board of Directors on May 21, 2009. **THDA will be accepting comments from the public in regard to the Program Description Outline through 4:30 PM Central Time on Thursday, May 28, 2009.** Instructions for submitting comments are below. THDA staff will review and make available to the THDA Board of Directors all comments submitted in a timely manner.

THDA will be submitting its TCAP Application to HUD no later than Wednesday, June 3, 2009. Following HUD review of THDA's TCAP Application, THDA staff will prepare a full TCAP Program Description to be presented to the Policy & Programs Committee of the Board of Directors at a special meeting in June, 2009. The date and time of the special meeting are not yet determined. Staff anticipates that the full Program Description will contain specific information regarding application requirements and deadlines.

THDA staff hopes to have more specific details regarding the Section 1602 "monetization" program ready for presentation at the special meeting in June.

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To submit comments regarding the Program Outline for the Tax Credit Assistance Program:

By email: [eyandell@thda.org](mailto:eyandell@thda.org)

By facsimile: (615) 253-5865

By mail: Attention: Multifamily Development Division  
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**If using an express delivery service, please substitute ZIP code 37219-1598**

**TENNESSEE HOUSING DEVELOPMENT AGENCY  
TAX CREDIT ASSISTANCE PROGRAM ("TCAP") DESCRIPTION  
OUTLINE AS APPROVED BY THDA BOARD  
MAY 21, 2009**

**Please note that there is not definitive guidance regarding TCAP administration. As questions continue to be asked and answered, staff will require discretion to use judgment to address these issues.**

- I. Introduction & Overview
  - A. TCAP summary
  
- II. Funds Available
  - A. THDA eligible to receive up to \$39,032,515 in TCAP funds
  - B. THDA Model
    - 1. Reasonable Costs
    - 2. Private financing based on achievable rental income within Section 42 rent limits
    - 3. Sale of housing credits (equity / syndication)
    - 4. Gap financing funded by ARRA resources
  
- III. Federal Cross-Cutting Requirements – Use HOME Program as the model to meet requirements
  - A. Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at
    - 1. 24 CFR Part 100
    - 2. 24 CFR Part 107 (Equal Opportunity in Housing)
  - B. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)) (Nondiscrimination in Federally Assisted Programs)
    - 1. 24 CFR Part 1
  - C. Age Discrimination Act of 1975 (42 U.S.C. 6101-07)
    - 1. 24 CFR Part 146 "Nondiscrimination on the Basis of Age in HUD Programs or Activities Receiving Federal Financial Assistance."
  - D. Affirmatively Furthering Fair Housing
    - 1. Owners must establish and follow an affirmative fair housing marketing plan when marketing units
    - 2. Affirmative marketing steps include 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
  - E. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) ("Section 504")
    - 1. 24 CFR Part 8 "Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development."
  - F. National Environmental Policy Act and Related Laws (Environmental review responsibilities)
    - 1. 24 CFR Part 58
  - G. The Lead-Based Paint Poisoning Prevention Act and the Residential Lead-Based Paint Hazard Reduction Act of 1992
    - 1. 24 CFR Part 35
  - H. Davis-Bacon Act
    - 1. Contractors and subcontractors must pay prevailing wages to laborers and mechanics
    - 2. Prospective determination as of the date of the TCAP funding is possible
  - I. "Anti-Lobbying" Restrictions (31 USC 1352)
    - 1. 24 CFR Part 87
  - J. Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.)
    - 1. 24 CFR Part 21
  - K. OMB Regulations and Circulars

#### IV. Eligibility

##### A. Eligibility Requirements (must meet all 3 requirements)

1. Received an award of LIHTC under Section 42(h) no earlier than 10/01/2006 and no later than 09/30/2009
  - a. An award of LIHTC is defined as follows:
    - (i) For competitive awards, the date on which the scoring and ranking was posted to THDA's web site for the program year
    - (ii) For noncompetitive awards, the date developments will meet placed in service requirements after 1/1/09
  - b. No forward commitment of 2010 competitive LIHTC
2. Demonstrates need for additional funding to become completed and placed in service
  - a. determination based on all of the following:
    - (i) Difference between projected LIHTC pricing and actual LIHTC pricing
    - (ii) Reasonable construction budget
    - (iii) Total sources based on THDA Model specified in the Guiding Principles and in Section II B above
3. Demonstrates compliance with federal cross-cutting requirements – Includes not taking any choice-limiting activity once a TCAP application is made until successful completion of the environmental clearance review (i.e., HUD approval of the Request for Release of Funds) and modifying plans to include compliance with Section 504
  - a. Includes leasing or disposing of real property or any activity that will result in a physical change to the property including acquisition, demolition, movement, rehabilitation, conversion, repair, or construction - performing a choice-limiting action prior to successful completion of the environmental clearance review may disqualify a development from receiving TCAP funds
  - b. 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 (new construction, substantial rehabilitation)
4. Developments without LIHTC are ineligible

##### B. Developments That Must Use TCAP First

1. Non-Profits
2. Public Housing Authorities (PHAs)
3. Bond deals (non-competitive LIHTC)
4. New 2009 deals
5. Eligible developments that have not commenced construction
6. Owners of developments in this Section IV B #1-#5 without an investor that receive TCAP funding will return all but a nominal amount of LIHTC allocated to the development
7. Any developments described in this Section IV B #1-#5 that can proceed without AARA/AARTA resources, including TCAP funds or Section 1602 funds, are encouraged to do so
8. To the extent the full amount of TCAP funding is exhausted before all developments described in this Section IV B #1-#5 above receive assistance determined to be necessary, funds under Section 1602 may be made available

##### C. Developments That May Use TCAP

1. Exchange Developments pursuant to Part XVIII of the 2009 QAP
2. Competitive 2007 award recipients not exchanging pursuant to Part XVIII of the 2009 QAP
3. Competitive 2008 award recipients
4. Competitive 2009 award recipients
5. Noncompetitive 2007, 2008, or 2009 award recipients
6. Owners of developments in this Section IV C #1-#5 without an investor that receive TCAP funding will return all but a nominal amount of LIHTC allocated to the development
7. Any developments described in this Section IV C #1-#5 that can proceed without AARA/AARTA resources, including TCAP funds or Section 1602 funds, are encouraged to do so
8. To the extent the full amount of TCAP funding is exhausted before all developments described in Section IV B #1-#5 above and this Section IV C #1-#5 receive assistance determined to be necessary, funds under Section 1602 may be made available

- D. Relationship to Section 1602
  - 1. TCAP funds shall be used first for developments described in Section IV B #1 - #5 above. To the extent TCAP funding is exhausted, developments described in Section IV B #1 - #5 above will be considered for funding under Section 1602, however, they will be considered after all other eligible applicants for Section 1602 funding are considered
  - 2. Developments that elect to apply for TCAP funding will be considered for Section 1602 funding, if insufficient TCAP funding is available

V. Concessions

- A. Developments requesting a TCAP fund amount that is 15.0% to 19.9% of total development costs will be required to:
  - 1. Waive the right to give the written notice specified in Section 42(h)(6)(I)
- B. Developments requesting a TCAP fund amount that is 20.0% or more of total development costs will be required to:
  - 1. Waive the right to give the written notice specified in Section 42(h)(6)(I); and
  - 2. Set aside a minimum of 20% of the units for households with incomes no higher than 50% of the area median income with rents maintained at or below 50% of area median income – this is in addition to any units set aside for purposes of lowest income preference points in the Initial Application under the relevant QAP

VI. Application Submission

- A. Requirements
- B. Physical delivery
- C. Deadline
- D. Fees
  - 1. Application - (if not program income)
  - 2. Asset Management
    - a. Annual
    - b. Upfront

VII. Scoring System

			<u>Weight</u>
A.	Completion of construction		31.0%
1.	No later than 02/06/2012	(least preference)	
2.	No later than 12/31/2011		
3.	No later than 06/30/2011		
4.	No later than 02/28/2011	(greatest preference)	
B.	Ability to close sale of LIHTC at or above \$0.70		30.0%
1.	At least \$0.600 up to \$0.649	(least preference)	
2.	At least \$0.650 up to \$0.699		
3.	\$0.700 and above	(greatest preference)	
C.	Smallest financing gap		24.0%
1.	TCAP request of 20.0% or more of total cost	(least preference)	
2.	TCAP request of 15.0% to 19.9% of total cost		
3.	TCAP request of less than 15.0% of total cost	(greatest preference)	
D.	Ability to commence construction within 120 days of TCAP award		15.0%
1.	Fully executed construction contract	(least preference)	
2.	Item 1. above plus building permits	(greatest preference)	
E.	Tie Breaker		
1.	Syndication Price – highest price gets priority		

VIII. Disbursement of Funds

- A. Written Agreements
  - 1. Firm, realistic expenditure schedule for each development
    - a. Commencement of construction/groundbreaking
    - b. 50% completion
    - c. 100% completion
  - 2. Recapture if schedule not met
  - 3. Default and remedies
- B. Form of Funds
  - 1. Grants – must have recapture mechanism
- C. Disbursement of Funds, Developer Fee – in same proportion and at the same time as syndication proceeds are disbursed

IX. Expenditure Deadlines

- A. THDA must commit at least 75% no later than February 16, 2010
- B. Owners must expend at least 75% no later than February 16, 2011
- C. 100% must be expended no later than February 16, 2012

X. Redistribution of Funds

- A. THDA must redistribute recaptured TCAP funds to ensure compliance with commitment and expenditure deadlines

XI. Reporting/Compliance Requirements

- A. Owners must report the following information:
  - 1. completion status
  - 2. estimates of the number of jobs created and the number of jobs retained
  - 3. any other information as needed to meet federal reporting requirements
- B. All developments will be subject to Section 42, the relevant year QAP and all TCAP requirements

XII. Approval (e.g. Governor, Board, Executive Director)