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**TENNESSEE HOUSING DEVELOPMENT AGENCY**

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**Tax Credit Assistance Program**

**2009 Program Description**

**(June 23, 2009 DRAFT)**

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TAX CREDIT ASSISTANCE PROGRAM  
PROGRAM DESCRIPTION**

**2009**

**Part I: Introduction**

The American Recovery and Reinvestment Act and the American Recovery and Reinvestment Tax Act (collectively, the "Act") which were signed into law on February 17, 2009, included two provisions involving low income housing tax credits ("tax credits"), the Tax Credit Assistance Program ("TCAP") and a tax credit exchange program under Section 1602 of the Act (the "Section 1602 Program").

This document sets forth the Tennessee Housing Development Agency ("THDA") program for use of TCAP funds (the "TCAP Program Description").

This Program Description is subject to revision based on changed circumstances, such as, but not limited to statutory changes and revised, new or additional guidance from federal agencies. THDA will announce and make information about such changes available on its website.

THDA encourages any developments with Tax Credits that can proceed without TCAP funding or other additional assistance to do so.

Terms used in this Program Description, not otherwise defined herein, will have the same meaning as in Section 42 of the Internal Revenue code of 1986, as amended ("Section 42"), all applicable federal statutes and regulations, the relevant THDA Low-Income Housing Tax Credit Qualified Allocation Plan (the "QAP"), Housing and Urban Development ("HUD") CPD Notice 09-03, agreements between THDA and HUD, and agreements between THDA and the owner of a development that receives TCAP funding.

TCAP amounts are expected fill the gap caused by lack of investor interest for tax credits. TCAP amounts can be used for developments that have or are expected to receive an award of tax credits, as specified further in this Program Description.

All TCAP funds awarded must be fully expended and drawn down on or before February 16, 2012.

**Part II: Funds Available**

- A. THDA has been awarded \$39,032,515 in TCAP funds.
- B. THDA's model for the financing structure of developments receiving TCAP funds incorporates the following elements (the "THDA Model"):
  - 1. Reasonable costs
  - 2. Private financing based on achievable rental income within Section 42 rent limits
  - 3. Sale of Tax credits (equity / syndication)
  - 4. Gap financing provided by resources made available under the Act
- C. THDA expects to fill financing gaps with TCAP funds, but only to a level necessary, as determined by THDA in its sole discretion, to achieve financial feasibility as affordable rental housing and for an amount not to exceed THDA approved eligible basis for the development.

THDA will evaluate each request for funds to determine which developments should receive TCAP funds, and the amount of funds, based on funding sources for the development and the progress of the development.

- D. ***The availability of all TCAP funding is subject to the availability of funds and to all applicable program requirements.***

<b>Part III: Federal Cross-Cutting Requirements</b>
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A. TCAP funds are federal financial assistance and, therefore, are subject to requirements applicable to such funds. Entities receiving TCAP funds from THDA must comply with the following requirements:

1. National Environmental Policy Act and Related Laws (environmental review and approvals) and implementing regulations at [24 CFR Part 58](#)

- (a) 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**. This includes any activity that will result in a physical change and/or acquisition, including leasing, or disposition of real property. See [24 CFR Part 58](#) for general information about environmental review requirements.

- (b) **Performing a choice-limiting action prior to successful completion of the environmental clearance review (i.e. HUD approval of the Request for Release of Funds) may disqualify a development from receiving TCAP funds or any other federal funds.**

- (c) ***No TCAP funds may be committed to a development before completion of the environmental review process.***

- (d) THDA’s process for environmental approval will follow that of the HOME Investment Partnership Program. Details may be found in Chapter 3 of the most recent THDA HOME Operations Manual, which is posted online at:

<http://www.thda.org/Programs/commpro/home/07manual.pdf>.

- (e) A development that is a target for TCAP funding that takes choice-limiting action and becomes ineligible for TCAP funding will not be eligible for any other ARRA/ARRTA resources including without limitation, Section 1602 funding.

- (f) For purposes of environmental review and approval, “choice limiting action” shall include, without limitation, 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.

- (g) Costs incurred for environmental review processes are eligible TCAP costs.

2. Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at

- (a) 24 CFR Part 100

- (b) 24 CFR Part 107 (Equal Opportunity in Housing)

3. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)) (Nondiscrimination in Federally Assisted Programs)
  - (a) 24 CFR Part 1
4. Age Discrimination Act of 1975 (42 U.S.C. 6101-07)
  - (a) 24 CFR Part 146 “Nondiscrimination on the Basis of Age in HUD Programs or Activities Receiving Federal Financial Assistance.”
5. 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.
6. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) 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”
    - (a) For new construction developments and developments 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.).
    - (b) **If a new construction development or a development that is undergoing substantial rehabilitation, is underway or has already been completed, and it cannot be modified to meet the accessibility requirements established by Section 504, the development is ineligible to receive TCAP assistance.**
    - (c) For developments undergoing rehabilitation that is not considered “substantial”, Section 504 applies only to the maximum extent feasible (ie not required if it would impose an undue financial and administrative hardship).

7. The Lead-Based Paint Poisoning Prevention Act and the Residential Lead-Based Paint Hazard Reduction Act of 1992
    - (a) 24 CFR Part 35
  8. Davis-Bacon Act
    - (a) Contractors and subcontractors must pay prevailing wages to laborers and mechanics
    - (b) Prospective determination as of the date of the TCAP funding is possible
  9. "Anti-Lobbying" Restrictions (31 USC 1352)
    - (a) 24 CFR Part 87
  10. Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.)
    - (a) 24 CFR Part 21
- B. Costs incurred for compliance with federal grant requirements, including without limitation, environmental review and Section 504 are includable in eligible basis and are eligible TCAP costs.
- C. THDA will require documentation to evidence compliance with the above requirements.

<b>PART IV. Eligibility</b>
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- A. Eligibility Requirements:
1. The development must have received an award of Tax Credits under Section 42(h) no earlier than 10/01/2006 and no later than 09/30/2009. An "award of Tax Credits" is defined as follows:
    - (a) For competitive awards, the date on which the scoring and ranking was posted to THDA's web site for the program year.
    - (b) For noncompetitive awards, a development will be deemed to have an "award of Tax Credits" if BOTH of the following conditions are met:
      - (i) THDA executed the noncompetitive Reservation Notice after 09/30/06 and before 10/01/2009; and
      - (ii) The Development is not yet required to satisfy placed in service requirements.
  2. Tax Credit pricing reported to THDA as of June 15, 2009 must be less than projected Tax Credit pricing reflected in the Initial Application for the development submitted to THDA.
  3. The Tax Credits awarded to the development must be sold to an equity investor or used by the developer.
  4. The development must meet all Section 42 requirements and the requirements of the relevant QAP.

5. All applicants must be eligible under applicable federal requirements and be in good standing with THDA and all applicable requirements.
6. All applicants must be in compliance with the reservation notice or carryover allocation agreement issued for their development, as applicable.
7. THDA must receive satisfactory evidence, as determined by THDA in its sole discretion, that demonstrates compliance with all federal cross-cutting requirements have or will be met.
8. THDA must receive satisfactory evidence, as determined by THDA in its sole discretion, that 75% of the TCAP funds can be expended no later than February 16, 2011.
9. THDA must receive satisfactory evidence, as determined by THDA in its sole discretion, that 100% completion of construction for the development can occur no later than February 16, 2012 and 100% of the TCAP funds can be expended no later than February 16, 2012.
10. All applicants and developments must meet tax credit and financial feasibility requirements and all other requirements of Section 42 and the QAP for the year in which the application is submitted.

Based upon THDA's existing criteria for Tax Credit developments, THDA will ensure that the TCAP funding amount is consistent with the requirements of the relevant QAP and Section 42(m). In particular, the Section 1602 funding amount shall not exceed the amount deemed necessary by THDA, in its sole discretion, to ensure the financial feasibility of the approved development.

**B. Good Faith Requirement:**

If only a nominal amount of Tax Credits awarded to the development can be sold to an equity investor or used by the developer, a development may still be eligible for TCAP funding if evidence satisfactory to THDA, in its sole discretion, that the applicant has made a good faith effort to secure an adequate equity commitment including, without limitation, a written description of efforts to obtain an equity investment, a list of all syndicators and investors contacted, together with telephone numbers and e-mail addresses, and copies of documentation evidencing responses from all syndicators and investors contacted is provided. THDA reserves the right to contact equity syndicators and investors for verification.

**C. Private Financing Requirement:**

Evidence satisfactory to THDA, in its sole discretion, that the applicant has made a good faith effort to secure the maximum amount of private financing based on potential rents including, without limitation, a written description of efforts to obtain maximum private financing, a list of all providers of private financing contacted, together with telephone numbers and e-mail addresses, and copies of documentation evidencing responses from all providers of private financing contacted. THDA reserves the right to contact providers of private financing for verification.

**D. The following types of developments are not eligible for TCAP funding:**

1. Developments that have returned an award of Tax Credits
2. Developments that do not have an award of Tax Credits

3. Developments that have already placed in service or were required to meet placed in service requirements on or before 12/31/08
- D. Any Tax Credit development may apply for TCAP funding. Developments involving Public Housing Authorities, non-profit entities and others who are familiar with the cross-cutting federal requirements are encouraged to seek TCAP funding.
- E. The following types of developments with an award of Tax Credits are required to apply for TCAP funding:
  1. New 2009 developments
  2. Bond deals (with an award of non-competitive Tax Credits)
  3. Other developments with an award of Tax Credits that use other sources of federal funds
- F. Developments listed in Part IV E. above are not eligible for any other form of assistance, including without limitation, Section 1602 funding.

## PART V. Concessions

- A. Developments determined by THDA, in its sole discretion, to have a TCAP funding amount that is 15.0% to 19.9% of total development costs shall waive the right to give the written notice specified in Section 42(h)(6)(I).
- B. Developments determined by THDA, in its sole discretion, to have a TCAP funding amount that is 20.0% or more of total development costs shall do both of the following:
  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.

## PART VI. Application Submission

### A. Complete Application

1. To be considered complete, an application must meet **ALL** of the following requirements:
  - (a) Have content, formatting and pagination identical to that of the application form;
  - (b) Be computer generated or typed (**hand written Applications are prohibited**);
  - (c) Bear original signature(s);
  - (d) Include all required Attachments and supporting documentation, with all such Attachments and supporting documentation containing correct, complete, consistent, and current information, all as determined in THDA's sole discretion, as required in this Program Description and bearing original signatures;
  - (e) Have no missing information or any information that is erroneous, incomplete or inconsistent;

- (f) Include a complete original and one complete copy;
- (g) Be submitted by the application deadline specified in this Part VI.

B. Application Requirements

THDA will make available documentation that must be completed to request TCAP funding and submitted to demonstrate eligibility, good faith effort and selection criteria.

C. Application Delivery

An Application must be identified as a "Tax Credit Assistance Program Application" and be delivered to:

**Tennessee Housing Development Agency  
Suite 1200  
404 James Robertson Parkway  
Nashville, TN 37243-0900**

Applications may be delivered to THDA by mail, in person, by courier, or by other means of physical delivery. **(Applications by express delivery services should be sent to the address above but at Zip Code 37219-1598.)** Telecopy, facsimile, or other transmission or delivery of "copies" or "representations" of the Application or other documents **will not be accepted.**

THDA assumes no responsibility for late delivery or delivery to locations other than stated above. **Only those Applications arriving at the location stated above by the Application deadline specified in Part QQQ will be considered.**

D. Application Deadline

THDA will announce the date or dates for taking applications for TCAP funding.

E. Fees

To the extent permitted by TCAP requirements, THDA will charge various fees depending on the activities involved for specific developments, including without limitation, application, origination, document preparation, loan closing and/or other similar fees. The owner of each development that receives TCAP funding shall pay all closing costs incurred in connection with closing TCAP funding, including all THDA-appointed attorneys' fees and expenses, if any.

THDA will charge an asset management fee and a compliance monitoring fee for each development that receives TCAP program funding.

In the event THDA elects to engage a private entity to carry out activities for which fees will be charged, the cost of such services shall be charged to and paid by or on behalf of each development with TCAP funding.

<b>PART VII. Scoring System</b>
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Using the following scoring system, THDA will award points to developments that best meet listed criteria. THDA encourages the participation of equity providers by giving a priority to applicants that were able to secure an equity commitment for, at least, the original allocation of Tax Credits, but due to equity pricing are unable to complete the development. Applicants who are unable to secure equity or declined to sign a commitment letter will be given a lower priority. THDA will provide TCAP funding,

subject to the requirements of this Program Description, but only to the level deemed necessary, in THDA's sole discretion, to achieve financial feasibility based on THDA's underwriting criteria.

Applicants, Applications and developments that meet all eligibility requirements stated above will be evaluated according to the scoring criteria specified below based on the information provided in each Application.

- A. Completion of construction maximum 31 points
  - 1. No later than 02/06/2012.....5 points
  - 2. No later than 12/31/2011.....15 points
  - 3. No later than 06/30/2011.....25 points
  - 4. No later than 02/28/2011.....31 points

Completion of construction will be based on an approved expenditure schedule and a fully executed construction contract (in the form of AIA Document A101, 1997 Edition, Standard Form of Agreement Between Owner and Contractor, together with AIA Document A201 the Conditions of the Contract for Construction 1997 Edition).

- B. Ability to close sale of LIHTC at or above \$0.70 maximum 30 points
  - 1. At least \$0.600 up to \$0.649 .....10 points
  - 2. At least \$0.650 up to \$0.699 .....20 points
  - 3. \$0.700 and above .....30 points

Equity pricing will be based on information provided to THDA as of June 15, 2009 and supported by a firm, executed equity commitment from an equity provider

- C. Smallest financing gap maximum 24 points
  - 1. TCAP request of 20.0% or more of total cost.....5 points
  - 2. TCAP request of 15.0% to 19.9% of total cost.....15 points
  - 3. TCAP request of less than 15.0% of total cost.....24 points
- D. Ability to begin construction within 120 days of TCAP award maximum 15 points
  - 1. Fully executed construction contract.....10 points
  - 2. Fully executed construction contract plus building permits .....15 points
- E. Tie Breaker
  - 1. Syndication Price – highest price gets priority

***The applicant must provide documentation of all scoring and eligibility items satisfactory to THDA, in THDA's sole discretion.***

TCAP funding will be made only to developments that meet all eligibility requirements and the good faith requirement, as determined by THDA in its sole discretion. THDA anticipates making TCAP funding available to developments, beginning with the highest scoring applications based on the selection criteria described herein, until all TCAP funds are exhausted.

## PART VIII. Disbursement of Funds

- A. TCAP funds will be made available to applicants with eligible developments in the form of loans (“TCAP Loans”). In general, the TCAP Loans will require recapture and redistribution of TCAP funds in the event the approved expenditure schedule is not or, in THDA’s sole discretion, cannot be met. TCAP Loans will also bar prepayment during the three (3) year period beginning with the execution of the TCAP Loan documents and ending with the date upon which TCAP funding is closed out on the HUD IDIS system.
- B. TCAP funding will be made available as follows:
1. THDA will disburse TCAP funds to the development as needed to ensure compliance with the TCAP Expenditure Deadlines specified in Part IX below. Disbursements will only be made when funds are needed to pay eligible costs and upon receipt of necessary documentation as determined by THDA in its sole discretion.
  2. THDA will coordinate the funding of draws with the construction lender. THDA will release TCAP funds for payment of construction costs no more often than monthly and only upon receipt of a requisition approved by the development owner, the construction lender and all construction consultants engaged by the lender and/or THDA. THDA reserves the right not to fund draws based upon standard exceptions for construction lenders, including without limitation, any default by the owner, the existence or alleged existence of any lien on the project (other than liens securing the construction loan or in favor of THDA) or payment disputes with subcontractors or suppliers. THDA reserves the right to contract, at the expense of the development owner, with third parties for administration of construction draws, including without limitation construction consultants or a construction lender.
- C. All obligations with respect to TCAP funding shall be secured by a deed of trust that may be a first lien or may be subordinate to a construction deed of trust, if approved by THDA in its sole discretion. The property proposed for the development and all improvements, whether existing or proposed, shall be subject to the lien of the deed of trust. A collateral assignment of rents and leases and personal guaranties are also required. Additional collateral may be required at the sole discretion of THDA, based on the nature of the transaction involved.
- D. The owner of an approved development shall execute a legally binding written agreement prior to any disbursement of any TCAP funds. The written agreement will set forth (explicitly, or incorporated by reference) all TCAP requirements, federal cross-cutting regulations, Section 42 requirements, relevant QAP requirements applicable to the approved development. The written agreement shall impose conditions or restrictions, including a requirement providing for recapture, so as to assure that the approved development remains in compliance for the entire 15-year compliance period. The written agreement shall also contain a firm, realistic expenditure schedule including, without limitation dates for commencement of construction/groundbreaking, 50% completion, and 100% completion. The written agreement shall require the owner to provide sufficient information to THDA to report on the use of funds. THDA expects that it will be required to use the state approved language for all TCAP Written Agreements.
- E. In connection with the closing of TCAP funding, THDA will require all documents, representations and warranties normally and customarily associated with a full recourse loan, including without limitation, note, deed of trust, guarantees, assignments and various other agreements, certifications, opinions and any other documentation as determined necessary by THDA, in its sole discretion. All such documents will be non-negotiable.

- F. The Developer fee for developments without an equity investor will be paid as follows:
1. Twenty percent (20%) when TCAP funding is closed.
  2. Forty percent (40%) when the full amount of TCAP funding is expended.
  3. Forty percent (40%) when the final cost certification for the development is approved by THDA and ninety percent (90%) occupancy has been achieved for ninety (90) consecutive days.
- G. THDA will coordinate with the syndicator, equity investor and/or entity providing private financing regarding required reserves, including without limitation, replacement reserves, operating reserves, compliance reserves. THDA reserves the right to require reserves, as it determines necessary in its sole discretion, for developments without a syndicator or equity investor or if THDA determines, in its sole discretion, that required reserves are inadequate. All reserve accounts must be cash deposits. No letters of credit will be allowed to cover any reserve requirements. **The written agreement for a development cannot be executed until environmental clearance for the development is completed and the Request for Release of Funds (RROF) is approved.**
- H. TCAP funds may be used for capital investment in eligible Tax Credit developments. Capital investment means costs that are included in the "eligible basis" of a development under Section 42. TCAP funds cannot be used for swimming pools.
- I. If an owner fails to expend TCAP funds according to the Written Agreement, THDA will assess whether the delay will affect its ability to meet federal requirements. Depending on the circumstances, THDA may allow the owner of a development with TCAP funding an opportunity to remedy the situation. If a construction delay will affect THDA's ability to meet TCAP expenditure requirements, THDA will take necessary steps to redistribute TCAP funds to a more deserving project, including, without limitation, the following:
1. de-obligating the remaining TCAP funds,
  2. initiating foreclosure proceedings to recoup amounts already expended, and
  3. redistribute the de-obligated and/or recouped TCAP funds to other eligible projects based on the selection criteria in Part VII above.

<b>PART IX. Expenditure Deadline</b>
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- A. THDA will commit at least 75% of the total amount of TCAP funding available no later than February 16, 2010.
- B. An owner who receives a commitment of TCAP funds, must expend at least 75% of the total amount of TCAP funding committed to their Tax Credit development no later than February 16, 2011.
- C. An owner who receives a commitment of TCAP funds, must 100% complete construction and must expend 100% of the total amount of TCAP funding committed to their Tax Credit development no later than February 16, 2012.
- D. THDA will set deadlines and documentation requirements prior to these deadline to ensure that they are met.

## **PART X. Redistribution of Funds**

- A. THDA must redistribute recaptured TCAP funds to ensure compliance with commitment and expenditure deadlines. Redistribution will be based on the ranking established pursuant to the scoring criteria as specified in Part VII above.

## **PART 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 THDA determines, in its sole discretion, is needed to meet federal reporting requirements
- B. All developments will be subject to Section 42, the relevant year QAP and all TCAP requirements
1. Owners will follow THDA's processes and procedures applicable to Section 42 projects with an investor and any additional compliance requirements made necessary due to TCAP funding.
- C. In the event of a failure to comply with TCAP requirements during construction and thereafter, THDA may, in its sole discretion, take any of the following actions:
1. Temporarily halt disbursements until the material failure is corrected
  2. Disallow all or any part of the cost of any activity or action that is not in compliance with Section 1602 Program requirements
  3. Suspend or terminate, in whole or in part, the Section 1602 Program funding
  4. Withhold Section 1602 Program funding to developments with related parties
  5. Change the structure of the ownership entity (including adding or removing parties)
  6. Replace the management company
  7. Recapture the full amount of the Section 1602 Program funding
  8. Enforce guarantees
  9. Take any and all other legal remedies as may be available including, without limitation, seeking specific performance

## **PART XII. Other Requirements**

- A. THDA may elect to contract with independent individuals or independent entities to conduct some or all of the activities required or determined necessary hereunder to ensure compliance with the Act, Treasury Guidance, Section 42, the relevant QAP and all applicable federal statutes and regulations. The owner of a development that receives Section 1602 Program

funding will be expected to bear all fees and costs associated with the entity or entities performing functions with respect to the approved development.

- B. THDA reserves the right to modify this program description, in its sole discretion, in response to statutory changes, changed or modified Treasury Guidance or other federal guidance applicable to the Section 1602 Program, or as needed to correct oversights, misstatements or lack of clarity.