

Texas Department of Housing and Community Affairs
Tax Credit Assistance Program (TCAP)

Frequently Asked Questions (FAQ)

9/18/2009
Updated
11/10/2009

1. **Q: When will the TDHCA Board consider TCAP Application Awards?**
A: The Board has already awarded the TCAP deals subject to staff threshold/scoring reviews, underwriting, and previous participation reviews. Round 1 awards for 2007/2008 HTC developments were conditionally approved at the September 2009 Board meeting and Round 2 awards for 2009 HTC developments were conditionally approved at the November 2009 Board meeting.

The current list of TCAP Applications approved by the TDHCA Board subject to review is available at: <http://www.tdhca.state.tx.us/recovery/detail-tcap.htm>

8/27/2009

2. **Q: Can I change my TCAP request after the application has been submitted to TDHCA?**
A: The total TCAP request cannot increase after application submission. However, changes can be made, at the Department's request, between initiatives. For example, an applicant may have mistakenly requested funding under Initiative 3, Tax Credit Replacement in the application when the intent was to make the request under Initiative 2, Permanent Loan Replacement. The change in the source of the request would be allowed.

9/17/2009

3. **Q: What lien position is required for TCAP funds?**
A: In the case of a TCAP permanent loan that is the largest source of debt, TDHCA will require a first lien. During the construction phase, TDHCA will take a subordinate lien position. Also, in the case that sources other than TDHCA funds are contingent payment loans, TDHCA will require a priority lien position.

8/27/2009

4. **Q: Will there be a case when TDHCA considers cash flow loans? Will TDHCA waive mandatory payments so long as all interest accrues, with a due date after the compliance period, if sufficient cash flow is not available?**
A: The Tax Credit Replacement Initiative in the TCAP program will be a cash flow loan with the potential for debt forgiveness. The Equity Bridge Loan Initiative in the TCAP program was developed to rely upon repayment from the equity investor rather than the property itself. The Permanent Loan Replacement Initiative is anticipated to be a fully repayable substitute and/or supplement of private for TCAP debt up to the level of available debt service. Thus, the expectation is that these loans will be capable of supporting full amortization and repayment.

It remains the intent of the Department that any TCAP funds provided as a result of the permanent loan replacement initiative be provided only if the development can be financially viable and the loan be projected to repay out of the normal debt service distribution. The Policy provides for a cashflow structure if the first lien is through an FHA insurance program such as the 221(d)4 program, but does not allow cashflow loans in other cases. It is possible that the Board will consider specific cases which include some form of cash flow loan, but the Board has had a clear preference for repayable loans and has directed staff by rule to not recommend such transactions and allow the Board to make such approvals based upon exceptional circumstances.

9/17/2009

5. **Q: If TCAP Permanent Loan Replacement funds are awarded, do we still need a permanent lender or would TDHCA be the permanent lender?**
A: TCAP permanent loan replacement funds are available to entirely replace the permanent lenders. In such a case, TDHCA would be the only permanent lender. However, applicants requesting larger amounts of TCAP funds may score lower than applicants requesting funding only to fill a gap in financing.

Texas Department of Housing and Community Affairs
Tax Credit Assistance Program (TCAP)

Frequently Asked Questions (FAQ)

- 9/17/2009 6. **Q: Do TCAP Equity Bridge loans have to be paid back before Year 10?**
A: Equity bridge loans are required to be repaid by Year 10. Funds awarded under this initiative are intended to be repaid during the credit period from tax credit equity funded via the investor limited partner. The Policy provides for additional points for repayment as early as year 6 of the credit period; however, penalties would not be charged for earlier repayment of funds provided repayment does not occur before February 16, 2012 or the end of the HUD Grant period, whichever is later.
- 8/27/2009 7. **Q: Under Initiative 3, Tax Credit Replacement, what will the 15 year opt-out agreement be?**
A: There is not anticipated to be an opt-out agreement as state law requires a 30-year affordability period for any funds provided by the Department.
- 10/5/2009 8. **Q: If the recommended TCAP Award at TDHCA underwriting is less than requested, will the applicants be notified?**
A: Yes.
- 9/18/2009 9. **Q: Can Environmental Clearances be approved prior to TCAP Application Awards?**
A: Environmental clearance can be completed for any of the TCAP deals at this point; it is simply a matter of getting through all of the necessary reviews as well as the required publishing periods.

For additional information, please contact

Cynthia Vallejo
(512) 475-0430
Cynthia.Vallejo@tdhca.state.tx.us

- 9/2/2009 10. **Q: Do I have to submit an Environmental Review Supplement?**
A: The only instance in which an Environmental Review Supplement is not required at application is if the Applicant can provide a HUD Part 58 environmental clearance from TDHCA. Such clearance from an entity other than the Department will not be accepted as a replacement for the Environmental Review Supplement.
- 8/27/2009 11. **Q: Will 2008 deals using TCAP be given priority environmental review status to enable them to meet 10% test expenditures as the development may need to purchase land, materials, (and other "choice limiting activities") etc. in order to perfect the 10% expenditure prior to Dec 1, if no date extensions are available?**
A: There are several programs with environmental clearance requirements which have other additional impending deadlines. The Department is working diligently to address all of them and certainly is aware of the deadlines for 2008 tax credit developments. Spending 10% to meet the 10% test is something that should have occurred 11 months from the date of carryover execution, a federal requirement. This deadline should have been considered prior to applying for TCAP funds as the expectation for approval of award was approximately the same time as this deadline thus the 10% effectively should have already been spent or environmental clearance secured in order to utilize this funding source.

Texas Department of Housing and Community Affairs
Tax Credit Assistance Program (TCAP)

Frequently Asked Questions (FAQ)

- 9/1/2009 12. **Q: How will Davis-Bacon requirements affect my development?**
A: Davis-Bacon applicability is triggered when the Development consists of twelve (12) or more units funded with TCAP. The Owner must comply with the following TDHCA established labor standards procedures and benchmarks *prior* to the start or *continuation* of construction.
1. **Designate Labor Standards Officer (LSO)** – copy of form is attached
 2. Participation in **Preconstruction Conference** whose primary focus is to cover Davis-Bacon compliance – participation by TDHCA is required unless a *waiver* is granted. A waiver is granted when an owner/developer has demonstrated history with Davis-Bacon enforcement and administration
 3. Receipt of a **Notice To Proceed (NTP) - Ten-Day Call** from TDHCA is required. The NTP authorizes start or continuation of construction and serves to **lock-in** Davis-Bacon prevailing wages required to be used at the Project for the remainder of construction.

It is important to note that compliance with the above-mentioned labor standards benchmarks are tied to disbursements. In addition, TCAP loan closing must be confirmed by the Department before the Notice To Proceed is released.

For additional information, please contact

Carmen Roldan
(512) 475-2215
Carmen.Roldan@tdhca.state.tx.us

- 10/5/2009 13. **Q: TDHCA has indicated that they will be completing a pre-closing review of the development before commencement of construction. Does TDHCA have a specific due diligence/document review checklist that can be distributed? If so, when can we start submitting the material for review?**
A: Yes, the due diligence requirements are listed in the Written Agreement at:
<http://www.tdhca.state.tx.us/recovery/detail-tcap.htm>

The Development Owner will be contacted by a TDHCA closing specialist to coordinate the submission of the due diligence documents.

- 9/21/2009
Updated
11/10/2009 14. **Q: What is the timeline for issuance of TCAP commitments?**
A: Staff does not anticipate issuing an award letter or commitment prior to the issuance of the Written Agreement for TCAP funding.

The Written Agreement has been finalized. Prior to issuing the Written Agreement, the following conditions must be met

- 1) Completion of threshold and scoring review;
- 2) Update to previous participation material non-compliance scores with no material issues;
- 3) Re-evaluation of the financial feasibility through underwriting.

Round 1 (2007/2008 HTC) applications have completed the threshold and scoring review. The majority also have no material noncompliance issues and many have completed underwriting.

Round 2 (2009 HTC) applications have completed the threshold and scoring review. Many also have no material noncompliance issues. TDHCA underwriting is currently underway.

Texas Department of Housing and Community Affairs
Tax Credit Assistance Program (TCAP)

Frequently Asked Questions (FAQ)

- 9/21/2009 15. **Q: What is the due date for return of a Written Agreement?**
A: Staff anticipates that applicants will have one week from the date sent to return the Written Agreement.
- 11/10/2009 16. **Q: What is the timeline for Closing on TCAP Loans?**
A: The TCAP Loan Documents are in the final stages of being drafted. Prior to Closing on the TCAP Loans, the following conditions must be met
- 1) Completion of threshold and scoring review;
 - 2) Update to previous participation material non-compliance scores with no material issues;
 - 3) Re-evaluation of the financial feasibility through underwriting; and
 - 4) TDHCA environmental clearance.
- Round 1 (2007/2008 HTC) applications have completed the threshold and scoring review. The majority also have no material noncompliance issues and many have completed underwriting. TDHCA environmental clearance is currently underway.
- Round 2 (2009 HTC) applications have completed the threshold and scoring review. Many also have no material noncompliance issues. Underwriting and TDHCA environmental clearance are currently underway.
- Closings will be scheduled on a rolling basis for those developments that have met the four conditions listed above.
- 10/5/2009 17. **Q: Is TDHCA planning to be admitted as a Special Limited Partner on TCAP transactions?**
A: Rather than admittance as a Special Limited Partner, the Department is contemplating a Pledge and Security Agreement. Under this agreement, the general partner would pledge its ownership interest in the Development Owner as additional security for performance by the Development Owner of all of its obligations under the TCAP Loan Documents.
- 8/27/2009 18. **Q: Is there any Federal guidance regarding Carryover/10% test date extensions for developments utilizing TCAP?**
A: The Department is not aware of any guidance for TCAP that changes or extends the carryover/10% test dates. Federal guidance requires the continued use of some tax credits in order to qualify for TCAP funds. Therefore, meeting the established deadlines for the existing tax credit allocation remains very important to maintain eligibility for TCAP funds.
- 10/5/2009 19. **Q: 2008 tax credit deals have to have 25% of construction completed by December 1 to meet the Commencement of Substantial Construction deadline; HOME rules indicate construction cannot start until the HOME loan closes. Can we get an extension for the Commencement of Substantial Construction deadline?**
A: All Tax Credit deals that receive a TCAP Loan still have to meet the Substantial Construction deadline; however, the deadline may be extended by the Executive Director or the Board.

Texas Department of Housing and Community Affairs
Tax Credit Assistance Program (TCAP)

Frequently Asked Questions (FAQ)

- 3/31/2010 20. **Q: If I am a consultant on some deals and owner on others, will I get one log-in for the TDHCA Housing Contract System or will all the deals show up under a single user login?**
- A:** The two types of user names are as follows:
- **CADM:** means you are a contract administrator as designated by the development owner. You will be able to create contract activities, itemize budgets, and enter draws. This role can also submit contract activities and draws for approval.
 - **CONS:** means that you are a consultant. You will be able to do data entry in the system for contract activities, budget itemization, and draws. This role, however, cannot submit contract activities and draws for approval. This distinction will become clearer later in the presentation.
- Because of the difference in roles and ability to submit items for approval, you will receive two user names with those contracts you own being accessed separately from those for which you are a consultant.
- 9/27/2009 21. **Q: Why are there only three instances to draw down TCAP funds?**
- Updated
11/10/2009 **A:** The Department is administering the additional \$148M in TCAP funds without any ability to collect fees to pay for the administration of such funds and therefore has attempted to minimize the amount of paper work for developers and reviews required of staff by minimizing the number of draws for TCAP funds. A single draw was considered but due to the federal requirements that the funds be provided only for actual incurred costs, a one draw structure would have had to occur at the end of construction. In the end the Department chose to limit the number of draws in order to reduce the paperwork burden for all parties, but still provide more relief than a one time draw after construction.
- As of October 12, 2009, the Department is considering the addition of a fourth draw. HUD Notice CPD-09-03 – REV, Implementation of the Tax Credit Assistance Program (TCAP), requires state housing credit agencies to “Demonstrate that all project owners have expended 75 percent of the TCAP funds within two years of the enactment of the Recovery Act (i.e., by February 16, 2011).” This requirement puts an additional burden on the Department, and ultimately the owner, to ensure that the funds are being spent by this deadline. While many projects may be complete by this deadline, staff believes it is important to include this federal benchmark in the award documents and allow an additional draw at that time to assist with compliance.
- The fourth draw to be disbursed at 75% construction completion was approved at the October 2009 Board meeting.
- 3/31/2010 22. **Q: Where do we find the excel spreadsheets for TCAP that have the draw request items? Only from inside Contract Management System?**
- A:** Yes, the TCAP Request for Disbursement Workbook will be attached to the contract within the TDHCA Housing Contract System. Once the Development Owner has submitted a complete Due Diligence Packet, a notification will be sent out that the workbook has been attached to the contract.

Texas Department of Housing and Community Affairs
Tax Credit Assistance Program (TCAP)

Frequently Asked Questions (FAQ)

- 8/27/2009
Updated
3/31/2010
23. **Q: Will TDHCA rely on the Construction Lender to manage the draw process? If so, is there a Master Funding Agreement that the construction lenders can begin reviewing? [Doesn't the construction lender also get involved in approving TCAP draws?](#)**
A: Our most current guidance from HUD is that TCAP draws will need to be traced to eligible costs. The approved policy calls for just three draws based upon the percentage of completion; although, as of October 12, 2009, a fourth draw is being considered. Due to the constraints placed on TCAP, particularly the requirement to reimburse only eligible costs, the Department does not currently have plans to engage in Master Funding Agreements with construction lenders for the management of draws under TCAP.
- [The construction lender does not approve TCAP draws. Only the Development Owner and the Department will be directly involved in the TCAP draw process. However, the construction lender will be notified by email at the address listed in the TCAP Written Agreement that a TCAP draw request has been submitted by the Development Owner.](#)
- 3/31/2010
24. **Q: [If we use the construction lender to pay TCAP eligible costs, can we also submit those costs to TCAP to get reimbursed?](#)**
A: Yes. The construction lender will be notified by email at the address listed in the TCAP Written Agreement that a TCAP draw request has been submitted by the Development Owner. In this scenario, the intent is that the TCAP funds will be used to pay-down the construction loan.
- 3/31/2010
25. **Q: [How are funds issued after approval by TDHCA?](#)**
A: [The funds will be issued by the Comptroller's Office through direct deposit to the account indicated by the Development Owner on the submitted Direct Deposit Authorization form. Only one account may be setup for each TCAP development.](#)
- 9/21/2009
Updated
11/10/2009
26. **Q: [Does TDHCA intend on charging asset management fees to TCAP recipients? What is the amount of the asset management fee?](#)**
A: Yes, and asset management fee will apply to TCAP Awardees. The Department will be sending out a Request for Proposals (RFP) for third party asset management services. The asset management fee will be determined based on negotiations with the third party provider. Currently, the TDHCA underwriting analysis assumes a per unit asset management fee of \$50 as an operating expense.
- 8/27/2009
27. **Q: [Is TDHCA going to rely on Construction Lenders' Asset Management divisions or will TDHCA provide that service?](#)**
A: TDHCA is outsourcing Asset Management, including oversight during construction. If available, the TDHCA Asset Manager will rely on reports and information from the Construction Lender's Asset Manager.
- 10/5/2009
28. **Q: [TDHCA has indicated that a 3rd party Asset Manager will be engaged to oversee construction activity. Has that entity been engaged and when can we start direct dialogue with them on specific developments?](#)**
A: The Department has not entered into such an arrangement yet, it is likely that closing will occur before the 3rd party asset manager is identified.

Texas Department of Housing and Community Affairs
Tax Credit Assistance Program (TCAP)

Frequently Asked Questions (FAQ)

9/21/2009
Updated
11/10/2009

29. **Q: How will the remaining TCAP funds be allocated in Round 2 (2009 9% deals)?**

A: Staff is preparing this issue for clarification at the October Board meeting. There are two ways to address the regional allocation of the remainder of the funds:

1. The original regional allocation amounts less the proportionate share of subregional over allocations for the first round, or
2. The remaining TCAP funds, completely reallocated to each region or subregion.

Currently, staff anticipates recommending that oversubscribed subregions in Round 1 should not receive allocations in Round 2 unless a Round 1 allocation is returned or a collapse of funding is necessary due to undersubscription or lack of eligible applications. As of September 22, subregions 1 (urban), 3 (rural), 5 (urban), 8 (urban), 9 (rural), 12 (urban), and 13 (urban) remain overfunded from Round 1, and, therefore these regions would not be eligible, initially, in Round 2 to receive an additional allocation (unless the Board directs otherwise).

Option 1 was approved by the TDHCA Board and implemented for Round 2 TCAP conditional award recommendations.