Board Resolution No. 09-043

Texas Department of Housing and Community Affairs

Multifamily and HOME Divisions

American Recovery and Reinvestment Act of 2009,

Tax Credit Assistance Program ("TCAP") Policy ("the Policy")

President Barrack Obama signed into law the American Recovery and Reinvestment Act of 2009 on February 17, 2009, which provided for dedicated funds to assist in the development of properties that had been awarded low income housing tax credits ("LIHTCs") between October 1, 2006, and September 30, 2009. These funds are to be used to help provide additional financing at a level determined by the State to create jobs and provide affordable housing. All the funds must be used or returned by February 16, 2012.

The Governing Board of the Texas Department of Housing and Community Affairs, through the authority granted to it under the laws duly passed and authorized in Chapter 2306 of the Texas Government Code, hereby establishes the following policy to further the goals of the aforementioned laws and does hereby find that:

***Whereas,* the federal and state governments do desire to create economic development by assisting in productive job creation; and**

***Whereas,* the state needs to increase the amount of affordable housing to meet the demand of safe decent and affordable housing; and**

***Whereas,* economic development and stability in our communities benefits all Texans**

***Therefore,* the Governing Board of the Texas Department of Housing and Community Affairs has determined that the state should utilize all funds made available to the state by the Federal Government under the Tax Credit Assistance Program and resolves to make awards to further these goals consistent with the following criteria**:

Section I. Eligible Applicants

1. Only Applicants that received an Award of LIHTC for award years 2007, 2008 and/or 2009 and did not previously return the credits are, eligible for TCAP funding provided that the TCAP application is consistent with the most recent Board approved application except for changes to the development costs, financing structure, or additional TCAP related requirements.
2. Applicants requesting funds must provide evidence of a Good Faith Effort to obtain equity commitments.

3. Developments receiving funds must continue to meet the threshold and scoring requirements as included in the original application or most recent amendment approved by the Board.
4. Applicants, as defined in the QAP, must not be in material non-compliance for any Department program. The Department will check for material non-compliance at the time of application. The Department may also check for material non-compliance at the time of execution of the Written Agreement and at closing to the extent that any of these subsequent events occur more than three months after the initial review at application.
5. Per federal law, developments awarded only GO Zone or Ike credits are not eligible for TCAP funds.

Section II. Priority for awarding of TCAP Funds

1. Development can be completed by February 16, 2012, or earlier as may be required under existing funding source requirements.
2. Developments ready to proceed ("shovel ready").
3. Developments that maximize the use of prior awards and tax credit resources.
4. Developments that obtained the highest application scores in the round they applied in accordance with regional allocation formula including set asides for at risk and rural populations.
5. Developments located in a Rural area.
6. Desire to maintain private sector investment and leveraging of funds. The TDHCA shall add to the initial application scores by utilizing a formula developed by staff that reflects the following priorities:
    - Priority I—**Credit Pricing Incentive**. Private equity investor commits to provide "greater than market" funding, as evidenced by a price and equity amount equal to or greater than the credit price and equity amount reflected in the Board approved analysis for the additional allocation on November 13, 2008 or for 2009 awards made subsequent to the approval of this Policy, the price and equity amount reflected in the original 2009 application. (All such letters to be posted on TDHCA Website)
    - Priority II—**Equity Bridge Loan Initiative.** Funds awarded under this subsection are intended to attract additional equity investment or preserve existing equity investment in tax credit developments by increasing the yield potential for top tier investors. The potential yield enhancement is derived from a reduced period of time between the final investment of equity and the realization of tax benefits and savings realized from the interest rate savings on the bridge loan. The yield enhancement should result in stabilization of pricing and could lead to higher pricing if the market expectation of yield is exceeded. The funds awarded under this initiative may be up to one-half of the total equity contribution derived from the Award of LIHTC and are subject to the criteria in the policy supplement.

- Priority III—**Permanent Loan Replacement/Equity Risk Reduction Initiative**. Funds awarded under this initiative are intended to reduce the risk to the limited partner and primary lender by replacing a portion or all of the first lien debt with lower cost second lien, non-recourse debt from funds made available under this Policy. By reducing the obligation of the partnership to the first lien lender, the reduced risk of foreclosure or an event of default by the primary lender should have a positive impact on the investor limited partners' and first lien lender's risk assessment of a development and may attract renewed lender and syndicator interest in tax credit developments. The funds awarded under this subsection are subject to the criteria in the policy supplement.

- Priority IV—**Tax Credit Replacement Initiative.** Funds awarded under this initiative are intended to replace the loss of syndication proceeds created by an applicant's inability to sell or otherwise utilize a portion of the Award of LIHTC. The returned credits may be a result of a determination by the applicant that a portion of the original or supplemental allocation of credits provided as contingency in anticipation of cost increases which have not materialized. The returned credits may alternatively be a result of the inability to close on a partnership agreement with a limited partner investor after a Good Faith Effort to do so has been made. The funds awarded under this subsection are subject to the criteria in the policy supplement.

Section III. Affordability, Repayment, Ownership and Asset Management

Affordability. It is the intent of the Texas Department of Housing and Community Affairs to achieve the same levels of affordability that would have been achieved under state and federal law had only tax credits under 26 USC §42 been issued.

Repayment and Ownership. The Texas Department of Housing and Community Affairs desires to provide these funds in the form of loans, where possible, in a manner that treats third party lenders appropriately, giving due consideration for their relative risk position and other relevant factors. Repayment of funds may accrue and not be due until after December 31, 2011 or a date specified by the Department after the submission of the final financial report under the HUD TCAP Grant Agreement.

Where loans are not possible, TDHCA may request an ownership interest or similar relationship equivalent to the funds invested.

Asset Management. Any activity funded under this Policy will be required to enter into a written contract for asset management with the Department. In order to reduce the asset oversight burden on the property, the Department may enter into agreement(s) with the syndicator, lender or other third party to accomplish the asset management objectives of the Department and assure the long term viability of the development. The Department may require a fee for asset management and/or require reserves be established and maintained for the duration of the Compliance Period and Extended Housing Commitment.

The Governing Board hereby adopts this policy and directs staff to develop guidelines consistent with this policy to fully implement this resolution.

Passed this the 21st day of May, 2009 by a majority vote of __ ayes __ nays ___ abstentions will all members present except for __________________.

____

Kent Conine
Chair

____

Tim Irvine
Secretary to the Board