



Texas Department of Housing and Community Affairs
**SUPPLEMENTAL INFORMATION TO THE BOARD POLICY ON
American Recovery and Reinvestment Act of 2009,
Tax Credit Assistance Program (“the Policy Supplement”)**

- 1) **Definitions.** Terms in this Policy that are also defined in 10 TAC §49.3 of the QAP have the same meaning as in the QAP unless redefined herein.
 - a) *Annualized Syndication Amount.* The total equity generated from the Award of LIHTC and documented in a tax credit limited partnership agreement divided by ten.
 - b) *Award of LIHTC.* The Notice requires a uniform definition of Award of LIHTC for the purposes of committing TCAP funds. An award is defined as an approval by the Department’s Governing Board (“Board”) of an allocation or determination of Low Income Housing Tax Credits between October 1, 2006, and September 30, 2009, and as may be adjusted based upon the application for funds under this Policy.
 - c) *Good Faith Effort.* Attempts by the Applicant to secure final financing commitments from an equity investor and lender (other than program funds from the Department) prior to application as evidenced by term sheets or letters of interest and paid due diligence or commitment fees to lenders or syndicators for due diligence efforts.
 - d) *Written Agreement.* (or “Contract”). A contract governing the award of TCAP funds between the Department and Applicant which may include the General Partner as well as the Limited Partner(s).

- 2) **Additional Requirements of Program Initiatives**
 - a) **Credit Pricing Incentive.** This initiative provides a scoring incentive for developments that are able to use the TCAP initiatives in this policy or other attributes of the development to obtain a higher syndication price and thus a greater amount of equity in the development than what was anticipated with the commitments from the Board action in November of 2008 or the original application as applicable and specified herein. In November of 2008 each development was given the opportunity to provide updated syndication commitments to reconcile with the market of falling credit prices.
 - b) **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 following criteria.

- i) The Department will require a position in the partnership agreement in order to ensure that the investor limited partner's equity pay-in schedule does not at any point result in more funds than are necessary.
- ii) Security for the Loan. The Department may require a guarantee from the investor limited partner of repayment of any loan made under this initiative regardless of any event of default or foreclosure on any other obligations entered into by the partnership.
- iii) A loan made under this initiative will be structured based on the election made under the Selection Criteria Section of this Policy and in accordance with the following clauses:
 - 1) Closing Date. Closing on funds committed under this subsection must be within six (6) months from the date that the Written Agreement is executed.
 - 2) Draw Schedule. Funds shall be drawn for eligible costs incurred according to the schedule of funding evidenced in the partnership agreement based upon a maximum of three draws as follows, except as provided in section (11)(a).
 - (a) 25% of the funds committed under this subsection at 25% completion of construction;
 - (b) 50% of the funds at 50% completion of construction; and
 - (c) 100% of the funds at completion of construction.
 - 3) Development Period. Completion of Construction and all costs reimbursed by funds committed under this subsection must be incurred prior to the date that the last building of the development is Placed in Service.
 - 4) Interest rate. The interest rate shall be equal to 0% for the entire period during which funds are drawn.
 - 5) Repayment Terms. A payment equal to the Annualized Syndication Amount as documented in the limited partnership agreement shall be made to the Department annually in consecutive years. The final payment shall be no later than December 31 of the 10th year of the credit period. Priority points may be elected for final payments that occur earlier. For example: An Applicant choosing 3/10 of the equity could make payments in years 8, 9, and 10 of the credit period, but would score higher if repayments started in year 6 and ended in year 8.
- c) **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 partner's 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 following criteria.
 - i) Security for the Loan. A lien and deed of trust against the property will be required. The required lien position for funds committed under this section shall be based on the total amount of each source relative to the Department's investment of funds. Additionally, the Department will require a superior position to any other contingent

repayment loans regardless of size. A loan made under this initiative may be structured as repayable from cashflow only if the first lien is an FHA or HUD insured mortgage or the Department has an existing MOU with the lender.

- ii) **Loan Term and Amortization.** The loan term shall be parity of term with the first lien lender but shall not have a term of less than 15 years or greater than 40 years. The amortization shall be parity with the first lien but shall not be less than 20 years or greater than 40 years.
- iii) A loan made under this initiative will be structured based on the election made under the Selection Criteria Section of this Policy and in accordance with the following clauses:
 - 1) **Closing Date.** Closing on funds committed under this subsection must be within six (6) months from the date that the Written Agreement is executed.
 - 2) **Draw Schedule.** Funds shall be drawn for eligible costs incurred based upon a maximum of three draws as follows, except as provided in section (11)(a).
 - (a) 25% of the funds committed under this subsection at 25% completion of construction;
 - (b) 50% of the funds at 50% completion of construction; and
 - (c) 100% of the funds at completion of construction.
 - 3) **Development Period.** Completion of Construction and all costs reimbursed by funds committed under this subsection must be incurred prior to the date that the last building of the development is Placed in Service.
 - 4) **Interest Rate.** The interest rate shall be based on a rate required to yield a Debt Coverage Ratio (DCR) within a range of 1.15 to 1.35 but shall not exceed the interest rate on the permanent first lien debt or 5%, whichever is higher.
- d) **Tax Credit Replacement Initiative.** Funds awarded under this initiative are intended to replace the 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 following criteria.
 - i) If the Applicant agrees to return a portion of their Award of LIHTC, they may substitute the gap in equity using a credit price equal to the anticipated price from the syndicator of the remaining credit or if full replacement is anticipated, the lesser of \$0.85 per dollar of credit or the anticipated price in the last Board approved analysis (i.e. the later of original underwriting, amendment or additional allocation on November 13, 2008).
 - ii) **Security for the Loan.** A subordinate deed of trust against the property will be required.
 - iii) **Loan Term.** The term of the loan shall be equal to the 15 year Compliance Period required for the Award of LIHTC.
 - iv) Additionally, funds committed under this section shall be structured as follows:

- 1) Closing Date. Closing on funds committed under this subsection must be within six (6) months from the date that the Written Agreement is executed.
 - 2) Draw Schedule. Funds shall be drawn for eligible costs incurred based upon a maximum of three draws as follows, except as provided in section (11)(a).
 - (a) 25% of the funds committed under this subsection at 25% completion of construction;
 - (b) 50% of the funds at 50% completion of construction; and
 - (c) 100% of the funds at completion of construction.
 - 3) Development Period. Completion of Construction and all costs reimbursed by funds committed under this subsection must be incurred prior to the date that the last building of the development is Placed in Service.
 - 4) Interest rate. The interest rate shall be equal to 0%.
 - 5) Repayment Terms. Any loan under this initiative shall be anticipated to be deferred and forgiveness accrued but not granted until at the end of the Term. Notwithstanding the other provisions of the Policy, to the extent that any of the funds requested under this initiative can be anticipated to be repaid over the same term as the primary debt based on the Department's underwriting evaluation, staff shall recommend and the Board may require a loan structured with some repayment. Additionally, any on going cash flow and any proceeds from financial restructuring or sale must be provided as repayment of loan principal at a percentage in parity with any equity provider but not less than ten 10% and in proportion with the Department's investment.
- 3) Threshold Criteria.** The following Threshold Criteria are mandatory requirements at the time of application submission unless specifically indicated otherwise.
- a) Certification that all threshold and scoring under the QAP remain true and contemplated as part of the development;
 - b) Good Faith Effort Documentation
 - c) Submission of items impacted by the change in the development costs and financing structure contemplated herein. The Applicant must provide the following updated information using the forms in the 2009 Uniform Application and supplemental application documents:
 - i) Funding Request [Part C(3)];
 - ii) Rent schedule reflecting current rent and utility allowances [Vol. 1, Tab 2, Parts B & C];
 - iii) Annual operating expenses [Vol. 1, Tab 2, Part D];
 - iv) 30 Year Operating Proforma [Vol. 1, Tab 2, Part D];
 - v) Development Cost Schedule [Vol. 1, Tab 3, Part A];
 - vi) Offsite Cost Breakdown [Vol. 1, Tab 3, Part B];
 - vii) Site Work Costs [Vol. 1, Tab 3, Part C];
 - viii) Summary of Sources & Uses Costs [Vol. 1, Tab 4, Part A];

- ix) Financing Participants [Vol. 1, Tab 4, Part B], Financing Narrative, executed grant/subsidy, debt and equity commitments, and lender proforma;
 - x) Tax Assessor valuation and tax rates by taxing jurisdiction;
 - xi) Evidence of Site Control;
 - xii) Title Commitment;
 - xiii) Acquisition and/or Rehabilitation Information [Vol, 3, Tab 6];
 - xiv) Updated Property Condition Assessment (“PCA”) meeting the requirements of 10 TAC §1.36, if applicable; and,
 - xv) Environmental review information as required by the Department in accordance with the National Environmental Policy Act of 1969, as amended (NEPA) and 24 CFR Part 58. NOTE: No TCAP funds may be committed to a project before the completion of the environmental review process. Once an application is submitted for TCAP funds performing a choice-limiting action by an owner may disqualify a development from receiving any federal funds.
- 4) Selection Criteria.** The following Selection Criteria may be elected by an Applicant. An Applicant may not change their score or elect to participate in any initiatives not elected at the time of application.
- a) Base Points. An Applicant may elect base points equal to the final Department designated points on which the application's original Award of LIHTC was based, less any adjustments resulting from subsequent Board approved amendments.
 - b) Credit Pricing Incentive. An Applicant may elect points from the table below for a firm syndicator commitment (a commitment which has or is ready to close a partnership agreement subject only to the award of TCAP funds) that reflects a syndication equity and price equal to or greater than the syndication equity and credit price reflected in the Board approved analysis for the additional allocation on November 13, 2008 or for 2009 awards made subsequent to the posting of this Policy Supplement, the price and equity amount reflected in the original 2009 application.

Table 1. Credit Pricing Points

% above the prior commitment	Points
More than 10%	300
More than 5% to less than or equal to 10%	200
More than 0% to less than or equal to 5%	100
Equal to prior commitment	50

- c) Equity Bridge Loan Points. An Applicant requesting funds under the Equity Bridge Loan Initiative may elect points based on the amount of the requested funds and the term of the bridge loan using the following table (Table 2). The “Equity” used in this table shall mean the equity generated by the Award of LIHTC and paid by the Limited Partner for use of the LIHTCs.

Table 2. Equity Bridge Loan Points

		Year of Final Payment				
		6	7	8	9	10
Loan Amount	Less than or equal to 1/10th of the Equity	220	215	210	205	200
	Less than or equal to 2/10ths of the Equity	190		185	180	175
	Less than or equal to 3/10ths of the Equity	165			160	155
	Less than or equal to 4/10ths of the Equity	145				140
	Less than or equal to 5/10ths of the Equity	130				

- d) Permanent Loan Replacement/Equity Risk Reduction and Tax Credit Replacement Points. If an Applicant requests funds under the Permanent Loan Replacement/Equity Risk Reduction Initiative and/or the Tax Credit Replacement Initiative they may elect points from the following table (Table 3) based on the combined amount requested under these two initiatives.

Table 3. Replacement Points

Loan requested as percentage of Total Housing Development Costs (TDC)	Points
Equal to or less than 10% of TDC	195
Equal to or less than 20% of TDC	150
Equal to or less than 30% of TDC	120
Equal to or less than 40% of TDC	90
Equal to or less than 50% of TDC	60
Equal to or less than 60% of TDC	30
Equal to or less than 70% of TDC	5

- e) Single Purpose Points. An Applicant may elect 200 points if funds are requested under only one of the point categories in subsections (c) or (d) of this section.
- f) Rural Development Points. Applications that received their Award of LIHTC under any of the 13 Rural Subregions may elect 100 points.
- 8) Tie Breakers.** In the event that two or more applications receive the same number of points under section (7) of this Policy and each application is practical and economically feasible, the Department will prioritize the application requesting the least amount of TCAP funds as a percentage of the Total Housing Development Costs.
- 9) Application Deadline.** The application acceptance period for developments with Award of LIHTC's made in 2007 or 2008 will begin on June 15, 2009 and all such applications must be received on or before **5:00 p.m. Austin local time on July 17, 2009**. The application acceptance period for developments with Award of LIHTC's made in 2009 will begin on August 3, 2009 and all such applications must be received on or before **5:00 p.m. Austin local time on October 1, 2009**.
- a) The Department will accept applications from 8 a.m. to 5 p.m. Austin local time each business day, excluding federal and state holidays from the date this Policy is published on the Department's web site until the deadline. For questions regarding this Policy please contact Cameron Dorsey at 512-475-2669 or via e-mail at cameron.dorsey@tdhca.state.tx.us.
- b) Applicants must submit the Application materials on forms established by the Department and as detailed in the TCAP Application Submission Procedures Manual (TASPM). In addition to the application requirements in the TASPM, staff may use

discretion to determine if additional information that is typically required in the full application (including third party reports) is necessary or prudent in order to review for compliance with state or federal rules or due to changes in the market since last reviewed by the Department.

- c) Applications must be submitted by one of the following delivery methods:

via overnight delivery to:

**Texas Department of Housing and Community Affairs
Attn: TCAP
221 East 11th Street
Austin, TX 78701-2410**

or via the U.S. Postal Service to:

**Texas Department of Housing and Community Affairs
Attn: TCAP
Post Office Box 13941
Austin, TX 78711-3941**

10) Review and Assessment of Applications. Applications submitted for consideration for TCAP funding under this Policy will be reviewed according to the process outlined in this section.

- a) Eligibility Criteria Review. All Applications will be reviewed to confirm eligibility for funding.
- b) Threshold Criteria Review. Applications will be reviewed for Threshold. Applications not meeting Threshold Criteria will be notified of any Administrative Deficiencies, in each event the Applicant will be given an opportunity to correct such deficiencies. Applications not meeting Threshold Criteria after receipt and review of the Administrative Deficiency response will be terminated and the Applicant will be provided a written notice to that effect.
- c) Administrative Deficiencies. If an Application contains Administrative Deficiencies pursuant to 10 TAC §49.3(2) which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. Because the review for Eligibility, Selection, Threshold Criteria, and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made several times. The Department staff will request clarification or correction in a deficiency notice in the form of an email, or if an e-mail address is not provided in the Application, by facsimile, and a telephone call (only if there has not been confirmation of the receipt within 24 hours) to the Applicant and one other party identified by the Applicant in the Application advising that such a request has been transmitted. If Administrative Deficiencies are not clarified or corrected to the satisfaction of the Department by 5:00 p.m. Austin local time on the fifth business day following the date of the deficiency notice, then for competitive Applications under this Policy, five points shall be deducted from the Selection Criteria score for each additional day the deficiency remains unresolved. If Administrative Deficiencies are not clarified or corrected by 5:00 p.m. Austin local time on the seventh business day following the date of the deficiency notice, then the Application shall be terminated. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. Deficiency notices may be sent to an

Applicant prior to or after the end of the Application Acceptance Period. This Administrative Deficiency process applies to requests for information made by the Real Estate Analysis Division review.

- d) **Financial Evaluation.** The Department shall underwrite an Application to determine the financial feasibility and amount of need of the Development to arrive at an appropriate level of TCAP funds. Underwriting of a Development will include a determination by the Department, pursuant to the Notice, that the amount of TCAP funds recommended for commitment to a Development is necessary for the financial feasibility of the Development and its viability as a qualified rent restricted housing property. In making this determination, the Department will use the Underwriting Rules and Guidelines, 10 TAC §1.32.
- e) The Department may decline to consider any application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any applications which are received and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department strives, through its loan terms, to securitize its funding while ensuring the financial feasibility of a Development. The Department reserves the right to negotiate individual elements of any application.
- f) **Compliance Evaluation.** After the Department has determined which Developments will be reviewed for financial feasibility, those same Developments will be reviewed for evaluation of the compliance status by the Department's Compliance and Asset Oversight Division, in accordance with 10 TAC Chapter 60.
- g) **Alternative Dispute Resolution.** In accordance with §2306.082 Texas Government Code and 10 TAC §53.6, it is the Department's policy to encourage the use of appropriate Alternative Dispute Resolution procedures "ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Cod, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rules on ADR at 10 TAC §1.17.

11) Contract Administration. Any activity funded under this Policy will be governed by a Written Agreement or Contract that identifies the terms and conditions related to the awarded funds. The Contract will not be effective until executed by all parties to the Contract. Any amendments must be in writing and are subject to the requirements of the Department's amendment process for the tax credit program and the requirements of this section.

- a) Unless otherwise changed by agreement of the parties in a Contract and approved by the Board, the terms found in Contract shall be consistent with the following:
 - i) Up to seventy-five percent of the developer fee shall be disbursed in accordance with the percentage completion of construction. The remaining twenty-five percent of developer fee shall not be disbursed until the later of the following:
 - (1) 100% completion of the Department's Cost Certification process; or

- (2) Sufficient sources of funds are available as determined by the Department.
- ii) Department authorized pre-award costs for pre-development costs, including but not limited to legal, architectural, engineering, appraisal, surveying, and market study fees, may be paid if incurred before the effective date of the Contract.
 - iii) The Department may withhold any draw until completion of a site/construction inspection as deemed necessary by the Department to ensure that construction progress is being made in accordance with the Contract.
 - iv) All applicable sections of the Department's rules for Loans and Contract Administration as reflected in 10 TAC Chapter 53 Subchapter G shall apply; where HOME funds are specifically referenced in this Chapter, the Department may interpret such language to also apply to the funds provided under this Policy.
- b) Unless otherwise changed by agreement of the parties in a Contract and approved by the Board, performance under the Contract will be evaluated with the following benchmarks:
- i) Closing must occur within 6 months from the date of the Board meeting at which the award is made;
 - ii) Construction must begin within 2 months of the actual closing date or 8 months from the date of the Board meeting at which the award is made, which ever is earlier;
 - iii) Fifty percent of construction completion must occur within 12 months of the actual closing date;
 - iv) Completion of construction and receipt of certificates of occupancy, or certification of completion by an architect for rehabilitation, must occur within 24 months of the date of actual closing.
- c) The Executive Director may collectively provide up to one six-month extension to the end date of any Contract. Any additional time extension granted by the Executive Director shall include a statement by the Executive Director relating to unusual, non foreseeable, or extenuating circumstances that warrant more than a six-month extension. If the extension is longer than six months and the Executive Director determines that a statement related to unusual, non-foreseeable, or extenuating circumstances cannot be issued, it will be presented to the Board for approval, approval with modifications, or denial of the requested extension.
- d) If the Development Owner fails to meet a benchmark requirement and does not seek, or is not granted, an extension of a benchmark, the awarded funds related to the lack of performance may be entirely or partially de-obligated at the Department's sole discretion.
- e) Individual benchmarks. Each benchmark reflected in Subsection (b) of this Section is an individual term and subject to the amendment processes. An interim benchmark extension may or may not extend the entire Contract at the Department's discretion.
- f) Waiver. The Board, in its discretion and within the limits of federal and state law, may waive any one or more of the requirements of the Contract if the Board finds that waiver is appropriate to fulfill the purposes or policies of Chapter 2306, Texas Government Code, or for good cause, as determined by the Board.
- g) Accounting Requirements. Within sixty (60) days after the Contract end date, the Administrator or Development Owner shall provide a full accounting of funds expended under the terms of the Contract in accordance with the Cost Certification requirements of 10 TAC §49.15(b). Failure of a Development Owner to provide full accounting of funds

expended under the terms of a Contract shall be sufficient reason for the Department to deny any future Contract to the Development Owner.

- 12) 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. Any such fee or reserve shall not be considered program income and/or 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.
- 13) Crosscutting Requirements.** Any activity funded under this Policy will be required meet all requirements of the Act and the Notice. Applicant's should be particularly aware of the requirements in Section V of the Notice including but not limited to Fair Housing, Civil Rights, Accessibility, Environmental Standards, Lead Based Paint, Labor Standards, and assist the Department in following the requirements of the OMB Regulations and Circulars as described in the Notice.

***NOTE:** This Policy does not include the text of the various applicable regulatory provisions that may be important to TCAP. For proper completion of the application, the Department strongly encourages potential applicants to review all applicable State and Federal regulations.*