

# American Recovery and Reinvestment Act of 2009

## Tax Credit Assistance Program and Tax Credit Exchange Program

### State of Utah Program Guidelines

*Draft, May 21, 2009*

#### I. Introduction

##### A. Program Description

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act (the Recovery Act) which included two funding sources for Low Income Housing Tax Credit projects. The Tax Credit Assistance Program (TCAP) and the Tax Credit Exchange Program (Exchange) both provide capital investment funds to fill gaps that resulted from the deteriorated market conditions relative to the sale of tax credits. These funds must also serve to stimulate economic activity that would most notably take the form of job creation.

Utah Housing Corporation, as the designated State housing credit agency for Utah, is the only eligible grantee for UHC programs, and as such bears the responsibility to direct the implementation and oversight of the TCAP and the Exchange. These Program Guidelines will be approved by resolution of the Board of Trustees of the Utah Housing Corporation.

##### TCAP Funds

The TCAP provides a direct appropriation of \$11,639,074 to the State of Utah from the Department of Housing and Urban Development (HUD), which will maintain federal oversight of the program. These funds will be distributed competitively to projects on a loan basis and must be used in a manner that is consistent with the existing Qualified Allocation Plan. Eligible recipients include multi-family developments that have been awarded Low Income Housing Tax Credits (Housing Credits) between the dates of October 1, 2006 and September 30, 2009. Both 4 and 9 percent projects are eligible. For purposes of eligibility, the date of an award of credits shall be the date that the UHC Board of Trustees voted to approve the project reservation.

TCAP assistance provided to a project will be made in the same manner and subject to the same limitations (including rent, income, use restrictions and compliance monitoring) as required by UHC with respect to an award of Housing Credits to a project (i.e., as required under Section 42 of the IRC), and all other requirements of the Recovery Act.

Projects that have already been issued IRS Forms 8609 and have closed with an Investor Member will not be eligible for TCAP funds.

#### Credit Exchange

The Exchange Program allows UHC to return up to 40 percent of its 2009 housing credit ceiling and all unused or returned credit to the Department of the Treasury at a rate of \$0.85 per \$1.00 of credit.

The maximum amount of credit that UHC may elect to exchange shall not exceed 85 percent of the following amounts:

100% of any prior year credit that is returned in calendar year 2009,  
100% of any unused credit from the 2008 credit ceiling allocation,  
40% of the 2009 state credit ceiling, and  
40% of any credit received from the National Credit Pool,

then multiplied by 10.

These funds will be awarded in the form of a grant that is subject to recapture during the 15 year compliance period. The amount of Exchange funds to be allocated to any project will not exceed the amount, determined by UHC, needed to make the project financially feasible. The amount, terms and structure will be set by UHC.

Eligible recipients include qualified low income projects as defined in IRC Section 42 with or without a tax credit allocation. For projects without an allocation, UHC must make a determination that the use of Exchange funds will increase funds to the State for affordable housing.

Except for projects without an allocation of Housing Credits which have been approved by UHC, all projects desiring to participate in the Exchange will be required to sell at least 50 percent of their allocated credits to a private investor at a minimum rate of \$0.70.

Projects that have already been issued IRS Forms 8609 and have closed with an Investor Member will not be eligible for Exchange funds.

#### B. Goals for Allocation of TCAP and Exchange Funds

UHC will endeavor to allocate funds from both programs in a manner consistent with the following objectives:

1. Funding of developments that will provide an economic stimulus particularly in the form of job creation;
2. Swift deployment of capital investment funds;

3. Adherence to the existing Qualified Allocation Plan with attention to prioritizing lower income units and special needs set asides; and
4. Maximization of private investment in affordable housing projects.

## **II. TCAP Eligibility and Competitive Selection Criteria**

### **A. Threshold items:**

- Projects must hold a valid reservation of Housing Credits that was awarded between October 1, 2006 and September 30, 2009.
- Projects will be held to all commitments made in the original Housing Credit application.
- TCAP funds must be used for capital investment, defined as those expenses included in the eligible basis of a project.
- Projects must demonstrate the ability to complete the project not later than February 16, 2012.

### **B. Competitive Selection Criteria**

Projects applying for TCAP funds will be scored and ranked according to the following criteria. To the extent possible, UHC will use as a baseline the score from the project's original application for Housing Credits. Please see Attachment B, Point Scoring System, for more information.

- i. Ready to proceed. A project's "ready to proceed" status will be assessed based on its progress with construction plans and its ability to close with an investor partner and other lenders quickly. Applicants will be required to provide Letters of Commitment from all funding sources specifying the expected closing date and outstanding conditions, as well as a current HUD Environmental Review clearance letter from the appropriate jurisdiction.
- ii. Maximizing of tax credit equity. Projects are not required to have an Investor commitment to the deal in order to apply. However, those projects that can demonstrate stronger Investor commitment and pricing will receive higher priority.

## **III. TCAP and Exchange Program Terms and Conditions**

### **A. Awards of Recovery Act resources are subject to the following terms and conditions:**

- i. Projects will be held to all commitments made in their original Housing Credit Application. UHC reserves the right to approve or deny any proposed changes from the original application.

- ii. Projects will remain subject to Housing Credit limitations, including but not limited to income, rent, use restrictions, and compliance monitoring, as required under IRC Section 42 and its implementing regulations.
- iii. Projects receiving investment for their tax credits will be subject to a minimum pricing floor of \$0.70 per dollar of credit.
- iv. Due to the limited availability of funds, UHC reserves the right, in its sole discretion, to award part or all of a project's request, or to deny it in total.
- v. TCAP funds will be given in the form of a loan, secured by a deed of trust and a special regulatory agreement (i.e. LURA). Loans will be at zero percent and will become payable in a balloon payment after over 30 years. All payments will be deferred for the loan term.
- vi. All executed loan and regulatory agreements will reflect recapture provisions for defaults on the regulatory agreement.
- vii. Projects shall be required to submit periodic reports as required to UHC including, but not limited to, information pertaining to the use of TCAP and Exchange funds, evaluation of the completion status of the project and an estimate of the number of jobs created and the number of jobs retained by the project.

B. Failure to Proceed

Projects must be able to hard close directly into a fund (not on a line of credit) with their investor partners by dates certain in order to maintain a valid award of TCAP and Exchange funds. For projects with a 2008 allocation of 9 percent credits that date shall be November 30, 2009. For projects with a 2009 allocation of 9 percent credits that date shall be November 30, 2010. Projects that have placed in service prior to June 1, 2009 are not subject to the above deadlines. All 4 percent bond projects must demonstrate the ability to place in service no later than February 16, 2012. Projects that forfeit their awards under these conditions may reapply if additional funds become available. These dates will ensure UHC's ability to expend all TCAP funds in accordance with the deadlines established in the Recovery Act and redistribute returned funds to more deserving projects through an additional competitive round of applications.

C. Federal Funds Requirements

Projects receiving TCAP funds will be subject to the federal requirements listed below.

- **National Environmental Policy Act and Related Laws** (Environmental review responsibilities) and implementing regulations at 24 CFR Part 58.
- **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."

- **Davis-Bacon Prevailing Wages**
- **Fair Housing Act** (42 U.S.C. 3601-19) and implementing regulations at 24 CFR Part 100 and the regulations at 24 CFR Part 107 (Equal Opportunity in Housing).
- **Title VI of the Civil Rights Act of 1964** (42 U.S.C. 2000(d)) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR Part 1.
- **The Age Discrimination Act of 1975** (42 U.S.C. 6101-07) and implementing regulations at 24 CFR Part 146 “Nondiscrimination on the Basis of Age in HUD Programs or Activities Receiving Federal Financial Assistance.”
- **Affirmatively Furthering Fair Housing:** The Commission is required to establish an affirmative fair housing marketing plan for its TCAP projects and will require project owners to follow this plan when marketing TCAP units.
- **The Lead-Based Paint Poisoning Prevention Act and the Residential Lead-Based Paint Hazard Reduction Act of 1992** and implementing regulations at 24 CFR Part 35.
- **“Anti-Lobbying” Restrictions:** Restrictions on lobbying in 31 USC 1352 and implementing regulations at 24 CFR Part 87 “New Restrictions on Lobbying”.
- **The Drug-Free Workplace Act of 1988** (41 U.S.C. 701 et seq.) as implemented at 24 CFR Part 21 “Government-Wide Requirements for Drug-Free Workplace (Grants)”.
- **OMB Regulations and Circulars:** “Non-procurement Debarment and Suspension” at 2 CFR Part 2424.

#### IV. Project Expenses

##### A. Construction Management Expense

UHC will contract with a third party professional to provide construction reports on a monthly basis. Projects receiving awards will be obligated to pay these costs, which are to be determined. If projects have begun or completed construction, a one time construction review will be performed on the project by a third party professional, the cost of which will be borne by the project.

##### B. Asset Management Fee

UHC is required to perform asset management functions for the duration of the compliance period for all projects utilizing Exchange and TCAP funds. If any third party asset management fee is incurred by UHC the cost will be borne by the project.

UHC will require a fee of \$100 per unit per annum, inflating 3 percent annually, for the duration of the initial compliance period. This fee in aggregate must be capitalized and paid to UHC at closing.

##### C. Other Expenses

All legal (including legal fees incurred by UHC), title, closing, and other project related expenses will be borne solely by the project.

**Attachment A**  
**Fund Disbursements**

A. Requirements for closing of funds:

1. Executed Construction Loan documents;
2. Closing on all project sources;
3. Receipt of a commitment for a permanent loan with a locked, fixed interest rate;
4. Title Insurance with applicable endorsements;
5. Market Study and Appraisal which are current within six months of closing;
6. Approved Environmental reports;
7. Construction-related documentation: GC Contract/GMP, Resume, Financials, Construction Budget, Construction Schedule;
8. Building Permits;
9. Partnership or LLC formation documents;
10. Survey (As-Built Survey required upon construction completion);
11. Architect Agreement;
12. Plans and Specifications (including Site Plan);
13. Purchase Contract, Deed and Closing Settlement Statement;
14. Property Management Documentation – Management Agreement, Resume, Management Plan, Form of Tenant Lease;
15. Formation Documentation for Principals of Partnership/LLC;
16. Developer Formation Documentation;
17. Financial Statements for all Guarantors and principals of the Partnership/LLC;
18. Development Agreement;
19. Consultant Agreement;
20. All applicable insurance certificates – Builder’s Risk, Property, Liability, Fidelity Bond;
21. Additional documents as determined by UHC.

- B. All TCAP and Exchange proceeds shall be disbursed on a draw basis to fund capital expenses. Draw requests must be supported by AIA forms G702 and G703 or the equivalent, and certified by the Architect, the Owner, and UHC.

## **Attachment B** **Point Scoring System**

In addition to the points scored on the originally submitted Housing Credit application, points will be awarded according to the following criteria:

***Equity (Applicant may claim points from one of the following three). Maximum of 20 points.***

20 points will be given to projects that have closed a partnership agreement with an equity provider. The agreement must be for a minimum of \$0.70 and no more than \$0.85 for the original allocation of Housing Credits from UHC. If State of Utah credits are a source of funding, the closing must include the purchase of the State credits. Projects that have soft closed (executed closing documents without receipt of any of the Investor Member's capital contributions) or closed on a line of credit may not claim these points.

15 points will be given to projects that have an executed equity commitment from an equity provider. The commitment must be for a minimum of \$0.70 and no more than \$0.85 for the total allocation of Housing Credits from UHC. If State of Utah credits are a source of funding an equity commitment must include those credits.

10 points will be given to projects that do not have an equity commitment with an equity provider but can provide a Letter of Interest at a minimum of \$0.70 and no more than \$0.85.

***Construction (Applicant may claim points from one of the following four). Maximum of 25 points.***

25 points will be given to projects that have closed a construction loan and started construction on the project.

20 points will be given to projects that have closed a construction loan but have not started construction.

10 points will be given to projects that have a construction commitment from a financial lending institution.

5 points will be given to projects that have final stamped architectural drawings and specifications.

***Ready to Proceed. Maximum of 100 points.***

50 points will be given to projects that have building permits.

20 points will be given to projects that have a HUD Environmental Review clearance letter issued by the appropriate State of Utah agency or the appropriate participating jurisdiction.

15 points will be given to projects that have a deed to the property or have entered into an acceptable long-term lease.

15 points will be given to projects that have an executed Guaranteed Maximum Sum contract with the General Contractor.

***Tie-Breaker System***

In the event of a scoring tie, the first level tie-breaker shall be a comparison of tax credit purchase pricing. The project with the highest price per credit will win. If a tie remains after the first level tie-breaker, the tie-breaker system as described in the 2009 Qualified Allocation Plan will be implemented. Please refer to Section 3. G. of the Qualified Allocation Plan.