

American Recovery and Reinvestment Act of 2009

Tax Credit Assistance Program and Tax Credit Exchange Program

State of Utah Program Guidelines

June 2, 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 Internal Revenue Code (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 reservation. For projects without a reservation, UHC must make a determination that the use of Exchange funds will increase funds to the State for affordable housing.

Except for projects without a reservation 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.

Exchange fund 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 Internal Revenue Code (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 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 ahead of equity and loans;
3. Adherence to the existing Qualified Allocation Plan; 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 lender(s) 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 certification that the HUD Environmental Review process for obtaining a current clearance letter from the appropriate jurisdiction is underway.
- ii. Maximizing of tax credit equity. Projects are not required to have an Investor commitment to purchase Housing Credits in order to apply. However, those projects that do demonstrate stronger Investor commitment and pricing will receive higher priority. As evidence of stronger Investor commitment, UHC will

consider factors such as higher credit pricing, and statements from the Investor indicating that they have performed in-depth underwriting of the project.

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 awarded 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 30 years. Exchange funds will be awarded in the form of a grant, evidenced by a written agreement between UHC and the project owner.
- vi. All executed loan and special regulatory agreements (i.e. LURA) 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 close with all lenders and their investor partners by dates certain in order to maintain a valid award of TCAP and Exchange funds. For projects with a 2008 reservation of 9 percent credits that date shall be November 30, 2009. For projects with a 2009 reservation 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 projects more likely to succeed through an additional round of applications.

All projects must expend 75 percent of their award no later than February 16, 2011.

C. Application Deadline and Timeframe for Awards

UHC has established a deadline for the first round of TCAP fund applications on Wednesday, June 24, 2009, 5:00p Mountain Time. UHC anticipates announcing the award of funds by its Board of Trustees at its July meeting, currently scheduled for July 30, 2009. UHC will comply with the deadlines established by the Recovery Act by awarding no less than 75 percent of its funds by February 16, 2010.

D. 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](#). Developers who desire to apply for TCAP should familiarize themselves with this policy immediately.
- **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:** UHC 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 for all TCAP and Exchange Projects

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. UHC will endeavor to utilize investor construction reports to the extent they are available in an effort to minimize expense to 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 not to exceed \$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 TCAP and Exchange 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. Approved Environmental reports and clearances;
6. Construction-related documentation: GC Contract/GMP, Resume, Financials, Construction Budget, Construction Schedule;
7. Building Permits;
8. Partnership or LLC formation documents;
9. Survey (As-Built Survey required upon construction completion);
10. Architect Agreement;
11. Plans and Specifications (including Site Plan);
12. Purchase Contract, Deed and Closing Settlement Statement;
13. Property Management Documentation – Management Agreement, Resume, Management Plan, Form of Tenant Lease;
14. Formation Documentation for Principals of Partnership/LLC;
15. Developer Formation Documentation;
16. Financial Statements for all Guarantors and principals of the Partnership/LLC;
17. Development Agreement;
18. Consultant Agreement;
19. All applicable insurance certificates – Builder’s Risk, Property, Liability, Fidelity Bond;
20. 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
TCAP 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 a fully executed partnership agreement with an equity provider and have closed with all other funding sources. The agreement must be for a minimum of \$0.70. 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 a partnership agreement but have not closed with all other funding sources) 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 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.

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 (as evidenced by a Notice to Proceed).

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.

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

Ready to Proceed. Maximum of 80 points.

50 points will be given to projects that have building permits, **OR** 35 points for a Letter of Permitability.

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.