

American Recovery and Reinvestment Act of 2009 (ARRA)

Tax Credit Program for Washington State

Revised September 1, 2009

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I. Introduction

A. Program Description

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act (ARRA) which included two funding sources for Low-Income Housing Tax Credit projects: the Tax Credit Assistance Program (TCAP) and the Section 1602 Tax Credit Exchange Program (Exchange). The programs are very similar in that they can provide cash to fill funding gaps on eligible tax credit projects that may or may not have an equity investor. Both programs can be used to assist competitive 9% projects and 4% tax credit / bond projects.

The Washington State Housing Finance Commission (the Commission) is the designated State housing credit agency for Washington. As set forth under ARRA, it is therefore the role and responsibility of the Commission to direct the implementation and oversight of the ARRA - Tax Credit Program for Washington State. These Program Guidelines and Procedures were approved by resolution at a special meeting of the Commission on May 14, 2009. Commission Staff are authorized to administer, interpret and clarify the Guidelines and Procedures. Decisions to award ARRA resources rest solely with the Commission. These Guidelines and Procedures are subject to change by the Commission based on, among other things, developments in Federal and State law.

TCAP Funds

The TCAP program provides a direct appropriation of \$43,010,192 from HUD to the Commission. These funds must be awarded on a competitive basis to projects that receive an “award” of Low-Income Housing Tax Credits (Credit) between October 1, 2006 and September 30, 2009. The Commission defines an “award” of Credit as the execution of a Credit Reservation and Carryover Allocation Contract (RAC) for 9% projects or the issuance of valid a 42(m) letter for 4% tax credit / bond projects. All projects awarded TCAP funds must retain a nominal allocation of tax credits and are subject to all of the tax credit project requirements under Section 42 of the Code.

Credit Exchange

The Tax Credit Exchange Program allows the Commission to return up to 40% of its 2009 per capita authority and 100% of unused or returned credit to U.S. Treasury in exchange for \$0.85 per \$1 of credit. Exchange funds can be awarded to 2007, 2008 or 2009 projects with or without an allocation of credit; however projects are required make a “good faith effort” to find an equity investor before they are eligible for Exchange funds. Projects funded with Exchange funds are subject to the same requirements as Low-Income Housing Tax Credits under Section 42 of the Code.

“ARRA Resources”

The Commission is approaching the award of TCAP and Exchange funds in the same manner and using the term “ARRA Resources” to refer to both sources. However, TCAP funds are considered “federal financial assistance” which triggers the crosscutting federal requirements outlined in Section VI; Exchange funds do not trigger these requirements. To the extent possible, the Commission will be

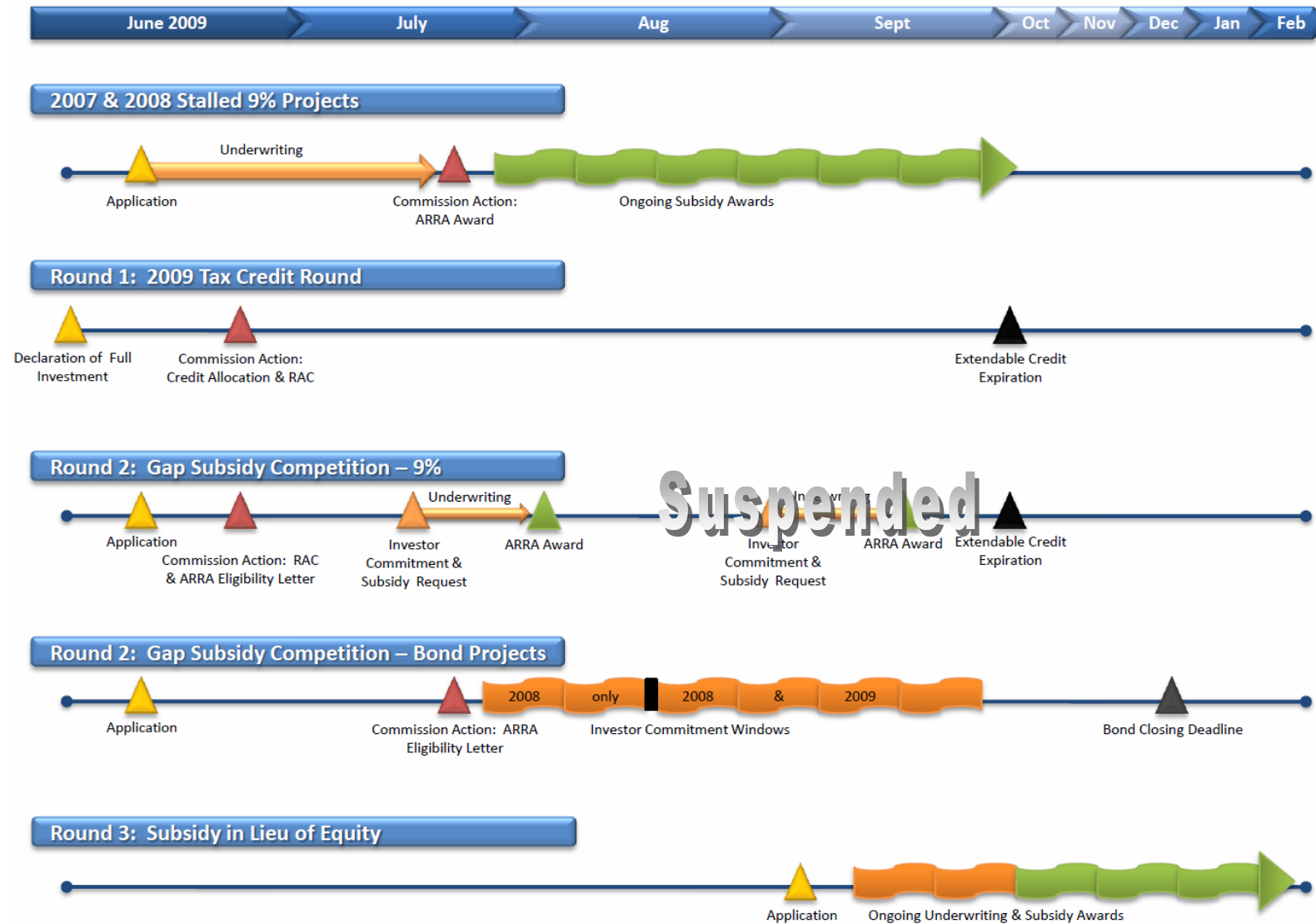
strategic in the placement of funds. For example, projects which already involve federal funds and therefore meet the requirements of the TCAP program will be awarded TCAP funds.

B. Commission Goals for Allocation of LIHTC and ARRA Resources

The Commission will strive to balance the following policy goals in allocating LIHTC and ARRA resources:

1. Honor current 2009 Tax Credit Policies and priorities with careful attention to prioritizing Fully Funded projects, special needs housing, and geographic distribution of resources.
2. Secure tax credit investment in as many projects as possible while maintaining a minimum value for the credits.
3. Stretch ARRA resources to assist as many projects as possible.
4. Prioritize projects that can demonstrate full investment commitment.
5. Use ARRA resources to stimulate the full continuum of tax credit eligible housing.
6. Implement and award ARRA resources efficiently and effectively.

II. ARRA Timeline



A. Deadlines

2007 and 2008 Stalled Projects Competition

- Application Deadline: June 12, 2009
- Commission Board Approval: July 23, 2009
- 100% of Exchange Funds Expended: December 31, 2010
- 75% of TCAP Funds Expended: February 16, 2011
- Placed-in-Service: December 31, 2011

Round 1: 2009 Tax Credit Round

- Application Deadline: June 1, 2009
- Commission Board Approval: June 25, 2009
- RAC Execution: July 2009
- Waitlist Consideration: August 1, 2009
- Credit Allocation Expiration: October 1, 2009
- Carryover: 1 year from execution of RAC (July 2010)
- Placed-in-Service: December 31, 2011

Round 2: Gap Subsidy Competition – 9% Projects

- Application Deadline: June 12, 2009
- Commission Board Approval: June 25, 2009
- RAC Execution: July 2009
- Investor Commitment Deadlines: July 15, 2009 and ~~September 1, 2009~~
- Credit Allocation Expiration: October 1, 2009 with 6 month extension
- Carryover: 1 year from execution of ARAC
- 100% of Exchange Funds Expended: December 31, 2011
- 75% of TCAP Funds Expended: December 31, 2010
- Placed-in-Service: December 31, 2011

Round 2: Gap Subsidy Competition Set-Aside for Bond Projects

- Bond Cap Allocation Deadline: June 11, 2009
- Application Deadline: June 12, 2009
- Commission Approval of Eligible Projects: July 23, 2009
- 42(m) Letter issued no later than: July 23, 2009
- 2008 Investor Commitment Window: July 24 – August 14, 2009
- 2008 & 2009 Investor Commitment Window: August 17, 2009 – October 1, 2009
- Bond Closing Deadline: December 15, 2009
- 75% of TCAP Funds Expended: December 31, 2010

Round 3: Subsidy in Lieu of Investment Competition

Round 3 will begin once the Gap Subsidy Competition concludes or as deemed appropriate by the Commission, and in no event, shall begin later than September 2, 2009.

Round 3 Policies and Priorities are available at
<http://www.wshfc.org/arra/revisedRd2suspensionupdate.pdf>

III. Allocation Process: 2007 and 2008 Stalled 9% Projects

In the Stalled Projects Competition, ARRA resources will be used to assist projects that received 9% tax credit allocations in 2007 or 2008 that have been unable to proceed because they have been unable to find adequate equity investment. Awards of ARRA resources will be made to stalled projects in lieu of tax credit equity investment.

Eligibility

Eligible projects must:

- Hold a valid 2007 or 2008 allocation of tax credits as of January 1, 2009;
- Not have closed on tax credit equity with an investor;
- Demonstrate that they continue to satisfy the “Fully Funded project” criteria;
- Demonstrate a “good faith effort” to find equity investment as described below;
- Not have changed substantially from the original Tax Credit Application; and
- Demonstrate ability to complete project by December 31, 2011 and expend 100% of Exchange funds or 75% of TCAP funds by December 31, 2010.

Good Faith Effort to find Equity Investment

The Applicant will be required to provide a narrative describing what steps have been taken to secure equity investment and what issues were determined to be detrimental to investor interest in the project. The following details should be included:

- A list of syndicators and investors that received a copy of the project’s investment package
- Names and contact information of contacted syndicators and investors
- Summary of discussions with each contacted syndicator or investor

If the Applicant has received an unacceptable investment offer, the narrative must identify the investor and must explain in detail why that offer was not acceptable for the project including details on why specific terms and conditions (such as timing of equity, reserves, guarantees, developer fee deferral requirements, etc.) were detrimental to the project.

Commission staff reserves the right to corroborate facts presented and will request more information from the Applicant if they deem it necessary to demonstrate that a “good faith effort” was made. Final determination regarding “good faith effort” is at the sole discretion of the Commission.

Application Process

A complete application must be received by June 12, 2009. To the extent the possible, the Commission will use information from the project’s existing tax credit application. The following updated project information will be required:

- A letter to the Commission documenting the return of all but a nominal amount of the project’s 2007 or 2008 credit allocation
- Stalled Projects Application Package

- Documentation of “good faith efforts” to find equity investment as described above
- A narrative explaining any changes to the project or changes to any line items in the budget
- A detailed timeline for development once funding is secured
- A schedule of expenditures that meets ARRA disbursement requirements
- Market Study update: Required for all projects except those with rental assistance on 100% of units
- Revised budget
- Pro forma with current utility allowances and rents
- Site control documentation and title report
- Certification Regarding Financial Solvency and Litigation Status
- Certificate of Existence/Authorization for the applicant
- Revised Organizational Chart
- Due Diligence items

Evaluation Criteria

Projects will be ranked in the Stalled Project Competition according to the allocation criteria below as selected in the project’s Tax Credit Application. These allocation point criteria represent the common criteria between the 2007 and 2008 program years.

- Additional Low-Income Housing Commitment
- Additional Low-Income Housing Use Period
- Housing Needs
- Nonprofit Sponsor
- Rehabilitation Projects/Community Revitalization Plan
- Developer Fees
- Historic Property
- Targeted Areas
- Leveraging of Public Resources
- Donation in Support of Local Housing Needs
- Eventual Tenant Ownership

Approval Process

Available resources will be awarded to 2007 and 2008 Stalled Projects in rank order providing the project meets the Commission’s ARRA underwriting standards and remains a viable project. Award of ARRA funds is at the sole discretion of the Commission. The Commission will underwrite (or will contract with a third party to underwrite) the project and will determine the amount of ARRA resources to be awarded to the project. Awards may be made up to \$.85 per \$1 of returned credit allocation, and in no case shall awards exceed the amount of funds necessary to make the project feasible.

ARRA resources will be awarded to the project at the July 23, 2009 Commission Meeting. The structure of the award will depend on the source of funds. TCAP awards will be made in the form of a soft,

deferred loan secured by a Deed of Trust. Exchanges awards will be made in the form of grants with recapture provisions for noncompliance that will be secured by a Deed of Trust.

Terms and Conditions

Projects receiving ARRA awards under the Stalled Projects Competition are subject to the following terms and conditions in addition to the ARRA Program Terms and Conditions outlined in Section VI:

- 2007 and 2008 projects will not be subject to the Evergreen Sustainable Development Standards as outlined in the 2009 Tax Credit Policies.

Deadlines

- Application Deadline: June 12, 2009
- Commission Board Approval: July 23, 2009
- Expenditure of 100% of Exchange Funds: December 31, 2011
- Expenditure of 75% of TCAP Funds: December 31, 2010
- Placed-in-Service: December 31, 2011

IV. Allocation Process: 2009 “Competitive” 9% Projects

Tax Credits will be allocated to 2009 competitive 9% projects in three distinct competitions.

1. The *2009 Tax Credit Round* will be held to allocate tax credits to 9% projects that are not seeking ARRA subsidy.
2. The *Gap Subsidy Competition* will be held for 9% Projects that seek ARRA subsidy to supplement investor equity.
3. The *ARRA Subsidy in Lieu of Investment Competition* will be held for projects unable to secure an equity investor.

Fully Funded Projects

Consistent with the Policies under which all 2009 9% competitive projects applied, those projects that applied as “not Fully Funded” (with the exception of those projects that applied under the Hope VI set-aside) are not eligible to participate in the *2009 Tax Credit Round*, the *2009 Gap Subsidy Competition* or the *ARRA Subsidy in Lieu of Investment*. These projects will only be considered for credit allocation or ARRA resources after all Fully Funded projects have been considered.

Set-Asides

In the *2009 Tax Credit Round*, the *2009 Gap Subsidy Competition* and the *ARRA Subsidy in Lieu of Investment Round*, projects that applied under the RD and Hope VI set-asides will receive priority until those set-asides have been fulfilled. The Commission also reserves the right to waive the King County Cap.

A. National Environmental Policy Act (NEPA) Requirements

By submitting an application for ARRA resources, you may invoke NEPA. Receipt of Tax Credit Assistance Program (TCAP) funds invokes compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321), NEPA related laws and authorities, and the implementing regulations (24 CFR part 58) prior to the commitment or expenditure of the TCAP funds. Further guidance on compliance with NEPA can be found on the Department of Housing and Urban Development website at <http://www.hud.gov/offices/cpd/environment/review/>. The Commission will issue separate guidance on how projects can engage in the NEPA review process.

As of the date of the project’s application for ARRA funds (June 12, 2009), the owner and its contractors are prohibited from undertaking any project “choice-limiting” activity until after the completion of the federal environmental review and the execution of the “Authority to Use Grant Funds” or equivalent letter. This includes *any activity* that will result in a physical change to the property including property acquisition, demolition, movement, rehabilitation, conversion, repair, construction, and leasing or disposition. *Performing a choice-limiting action may disqualify a project from receiving any federal TCAP funds.*

Completion of the environmental review process is **mandatory** before taking a physical action on a site, or making a commitment or expenditure of TCAP or non-TCAP funds for property acquisition, rehabilitation, conversion, lease, repair or construction activities. "Non-TCAP funds" means any other Federal, state, local, private, or other funds. Further, the Commission may not commit TCAP funds until HUD has approved the Request for Release of Funds and related certification (RROF) unless the activity has been determined exempt in accordance with 24 CFR §58.34 and §58.35(b).

B. Round 1: 2009 Tax Credit Round

This round is for Competitive 9% projects seeking no ARRA subsidy. Because no ARRA funds will be involved in these projects, projects will be subject only to LIHTC requirements and no new federal requirements will be imposed.

In the *2009 Tax Credit Round*, up to 45% of the 2009 per capita annual authority will be made available to projects that applied for Tax Credits in the January 15, 2009 application round that can demonstrate the ability to attract investment with no need for ARRA subsidy.

If the 45% limit is reached, projects will be placed on a waiting list. Should credit be available on August 1, 2009, projects on the 2009 Tax Credit Waiting List will receive credit allocations in rank order providing they can still demonstrate the project has an engaged investor. The *2009 Tax Credit Round* may be expanded beyond this 45% limit at the sole discretion of the Commission.

Eligibility

Eligible projects are those that:

- Applied for 2009 Tax Credits by submitting an application on or before January 15, 2009;
- Applied as a Fully Funded project with the exception of those projects that applied under the Hope VI set-aside;
- Are able to satisfactorily complete the Minimum Threshold Review (MTR); and
- Can demonstrate equity investor interest to the satisfaction of the Commission.

Application Process

In the *2009 Tax Credit Round*, Applicants will be given until June 1, 2009 to declare in writing to the Tax Credit Director that they can demonstrate investor interest and that they need no ARRA subsidy for their project to go forward. The declaration must include the name and contact information of the proposed investor. Final determination regarding “demonstration of investor interest” is at the sole discretion of the Commission.

If an Applicant is unable to make this declaration because the project needs, *or may need*, ARRA subsidy to move forward, the Applicant will be asked to voluntarily withdraw from the 2009 Tax Credit Allocation List in order to be eligible to compete for ARRA resources in the subsidy competitions outlined below.

2009 Tax Credit Round Allocation Process

Once the declaration process is complete, the revised 2009 Tax Credit Allocation List will contain only those eligible projects that have declared and demonstrated that they can move forward without ARRA subsidy. These projects will proceed in the *2009 Tax Credit Round*. Projects will be ranked according to the Allocation Criteria selected in their January 2009 application. Projects that applied under the RD and Hope VI set-asides will be given priority for credit allocation until those set-asides have been fulfilled. There will be no other credit set-asides. The Commission reserves the right to waive the King County Cap.

Tax Credit Allocations and RAC Contracts

Tax credit allocations will be awarded to those projects that remain on the list, in rank order, subject to typical Commission process for MTR review, Credit Reservation and Carryover Allocation Contract (RAC) issuance and RAC fees. The Commission will take action to allocate credit to the *2009 Tax Credit Round* projects at the June 25, 2009 meeting.

RACs for 2009 Tax Credit projects will include a *credit allocation expiration date* of October 1, 2009. On this date, a project's allocation of credit will expire and will be deemed returned to the Commission. An extension of the *credit allocation expiration date* may occur at the sole discretion of the Commission.

Failure to Proceed

If a project that receives an allocation in the *2009 Tax Credit Round* fails to close on its equity investment, the allocation of credit must be returned to the Commission. The project may be eligible for gap subsidy at the sole discretion of the Commission and only to the extent that funds generated through the Exchange program are available. These projects are only eligible to compete in the ARRA Subsidy in Lieu of Investment Round at the sole discretion of the Commission.

Terms and Conditions

Except where noted above, the *2009 Tax Credit Round* remains subject to the 2009 Tax Credit Policies as approved in September 2008. Projects moving forward in the 2009 Tax Credit Round are not subject to the ARRA Program Terms and Conditions outlined in Section VI.

Deadlines

- Application Deadline: June 1, 2009
- Commission Board Approval: June 25, 2009
- Waitlist Consideration: August 1, 2009
- Credit Allocation Expiration: October 1, 2009
- Carry-over: 1 year from execution of RAC (July 2010)
- Placed-in-Service: December 31, 2011

~~C. Round 2: 2009 Gap Subsidy Competition (SUSPENDED)~~

The 2009 Gap Subsidy Competition will be held to consider those projects that seek ARRA subsidy dollars to supplement their tax credit equity investment. In this round, ARRA subsidy cannot be used to completely replace tax credit equity or to fill funding gaps created by loss or reduction of other funding sources. Rather, ARRA subsidy is only available to fill the gap caused by lower than expected equity pricing.

The Commission reserves the right to suspend the Gap Subsidy Competition once 60% of the 2009 per capita annual authority (\$9,037,929) has received investor commitment, inclusive of credit allocated in the *2009 Tax Credit Round*.

Eligibility

Eligible projects are those that:

- Applied for 2009 Tax Credits by submitting an application on or before January 15, 2009;
- Applied as a Fully Funded project with the exception of those projects that applied under the Hope VI set-aside;
- Have satisfactorily completed the Minimum Threshold Review (MTR);
- Can demonstrate ability to complete project by December 31, 2011 and expend 100% of Exchange funds or 75% of TCAP funds by December 31, 2010; and
- Have withdrawn from the *2009 Tax Credit Round*.

Application Process

To apply for the Gap Subsidy Competition, Applicants must submit the following:

- Letter withdrawing from *2009 Tax Credit Round*
- Gap Subsidy Application Package
- A narrative explaining any changes to the project or changes to any line items in the budget
- A schedule of expenditures that meets ARRA disbursement requirements

To the extent possible, the Commission will make use of existing project application submissions.

NOTE: BY SUBMITTING AN APPLICATION FOR ARRA RESOURCES, YOU MAY INVOKE NEPA REVIEW. PLEASE REFER TO SECTION IV (A) FOR MORE DETAIL.

Evaluation Criteria

Projects will be evaluated in the Gap Subsidy Competition based on their “readiness to proceed,” defined as the project’s ability to demonstrate an engaged investor on one of two investor commitment deadlines. On each of those deadlines, projects demonstrating investor commitments will be ranked competitively according to the following allocation criteria as defined in the 2009 Tax Credit Policies and selected in the project’s Tax Credit Application:

- Additional Low-Income Housing Commitment
- Additional Low-Income Housing Use Period
- Housing Needs

- Nonprofit Sponsor
- Special-Needs Housing Commitments
- At-Risk Properties
- Rehabilitation Projects/Community Revitalization Plan
- Developer Fees
- Historic Property
- Targeted Areas
- Leveraging of Public Resources
- Donation in Support of Local Housing Needs
- Eventual Tenant Ownership

On the first Investment Commitment deadline of July 15, 2009, there will be a minimum point score of 154 for all projects except those that applied under the RD or Hope VI set-asides. On the second Investment Commitment deadline of September 1, 2009, all Round 2 applicants are eligible to compete.

If the RD or Hope VI set-asides are not fulfilled in the *2009 Tax Credit Round*, projects that applied under those set-asides will be given priority until the set-asides have been fulfilled. There will be no other credit set-asides and the Commission reserves the right to waive the King County Cap in the Gap Subsidy Competition.

Approval Process

Staff will complete MTR reviews for all projects competing in the Gap Subsidy Competition and will recommend projects to the Commission Board for approval at the June 25, 2009 Commission meeting.

Tax Credit Allocation

After Board Approval, staff will draft an ARRA Credit Reservation and Carryover Allocation Contract (ARRA RAC) for each project. The ARRA RAC will allocate up to 15% of a project's requested credit. Once the project demonstrates evidence of a firm investor commitment on one of the two Investor Commitment Deadlines below, the ARRA RAC will be amended to allocate the project's full credit request. The Credit Reservation Fee will be based on the project's total credit request, and payment of 50% of this fee is due upon execution of the ARRA RAC.

The ARRA RAC will include a *credit allocation expiration date* of October 1, 2009. On this date, a project's allocation of credit will expire and will be deemed returned to the Commission. An extension of the *credit allocation expiration date* will occur only if the project secures investment and is awarded ARRA gap subsidy.

Investor Commitment Deadlines

On each of the Investor Commitment Deadlines (July 15, 2009 and September 1, 2009), projects that are ready to proceed will submit evidence of a firm investor commitment including a price for their tax credits and request a specific amount of gap subsidy. On each Investor Commitment Deadline, the projects ready to proceed will be ranked according to the scoring of their Gap Subsidy Competition

application. **Please note:** There is a minimum score of 154 points required to compete on the July 15, 2009 Investor Commitment Deadline except for those projects that applied under the RD or Hope VI set-asides.

Staff will underwrite each project to determine the amount of gap subsidy required to make the project financially feasible. ARRA gap subsidy will be awarded in rank order until credit and/or subsidy funds are exhausted. The structure of the award will depend on the source of funds. TCAP awards will be made in the form of a soft, deferred loan secured by a Deed of Trust. Exchange awards will be made in the form of a grant with recapture provisions for noncompliance that will be secured by a Deed of Trust.

All projects receiving an award of ARRA gap subsidy will also receive an amendment to their ARRA RAC to allocate the project's total credit request and to extend the *credit allocation expiration date* in their RAC by 6 months. Further extensions to the credit allocation expiration date may be made at the sole discretion of the Commission.

Terms and Conditions

Projects receiving ARRA awards under the Gap Subsidy Competition are subject to the ARRA Program terms and conditions outlined in Section VI – ARRA Program Terms and Conditions.

Deadlines

- Application Deadline: June 12, 2009
- Commission Board Approval: June 25, 2009
- Investor Commitment Deadlines: July 15, 2009 and ~~September 1, 2009~~
- Credit Allocation Expiration: October 1, 2009 with 6 month extension upon award of ARRA subsidy
- Carry-over: 1 year from execution of ARAC
- 75% of TCAP Funds Spent: December 31, 2010
- 100% of Exchange Funds Spent: December 31, 2011
- Placed-in-Service: December 31, 2011

D. Round 3: Subsidy in Lieu of Investment

2009 projects that have participated in the Gap Subsidy Competitions, both 9% competitive and 4% tax credit / bond projects, that have failed to obtain an equity investor are eligible to compete in an entirely new competition for a much higher level of ARRA resources to replace all of their anticipated investor equity.

Eligibility

Eligible 9% “competitive” projects must:

- Have received a tax credit allocation in the Gap Subsidy Competition (Round 2);
- Be able to demonstrate a good faith effort to find equity investment;
- Demonstrate ability to complete project by December 31, 2011 and expend 100% of Exchange funds or 75% of TCAP funds by December 31, 2010; and
- Have returned all but a nominal amount of their tax credit allocation and any previous award of ARRA subsidy.

Eligible 4% tax credit / bond projects must:

- Have received a 42(m) letter under the Gap Subsidy Set-Aside for Bond Projects;
- Be able to demonstrate good faith effort to find equity investment;
- Demonstrate ability to complete project by December 31, 2011 and expend 100% of Exchange funds or 75% of TCAP funds by December 31, 2010; and
- Maintain the amount of tax-exempt debt anticipated in their 2009 bond cap allocation.

Projects that receive an allocation of tax credits in the *2009 Tax Credit Round* (Round 1) and fail to close on equity investment may be eligible to participate in the Subsidy in Lieu of Investment Competition at the sole discretion of the Commission.

Good Faith Effort to find Equity Investment

Applicants will be required to provide a narrative describing what steps have been taken to secure equity investment and what issues were determined to be detrimental to investor interest in the project. The following details should be included:

- A list of syndicators and investors that received a copy of the project’s investment package
- Names and contact information of contacted syndicators and investors
- Summary of discussions with each contacted syndicator or investor

If the Applicant has received an unacceptable investment offer, the narrative must identify the investor and must explain in detail why that offer was not acceptable for the project including details on why specific terms and conditions (such as timing of equity, reserves, guarantees, developer fee deferral requirements, etc.) were detrimental to the project.

The Commission reserves the right to corroborate facts presented and will request more information from the Applicant if we deem it necessary to demonstrate that a “good faith effort” was made. Final determination regarding “good faith effort” is at the sole discretion of the Commission.

Application Process

To apply for the Subsidy in Lieu of Investment Competition, Applicants must submit the following:

- Subsidy in Lieu of Investment Application Package
- Good Faith Effort Documentation (as described above)
- A letter to the Commission returning the project’s Tax Credit Allocation and any Gap Funding awarded or received
- Updated pages to Tax Credit applications reflecting the removal of the tax credit partnership
- A narrative explaining any changes to the project or changes to any line items in the budget
- A detailed timeline for development once all funding is secured
- A schedule of expenditures that meets ARRA disbursement requirements

NOTE: By submitting an application for ARRA resources, you may invoke NEPA Review. Please refer to Section IV (A) for more detail.

Evaluation Criteria

The Commission will determine the prioritization of eligible projects seeking subsidy in lieu of equity investment after review and analysis of projects awarded credit and ARRA resources in the 2009 Tax Credit Round (Round 1) and the Gap Subsidy Competition (Round 2). The Commission will balance the outcomes of those previous competitions with the stated objectives of the 2009 Tax Credit Policies to determine how projects in this round will be prioritized. [As of August 14, 2009 Round 3 priorities have been set and are available at http://www.wshfc.org/arra/revisedRd2suspensionupdate.pdf.](http://www.wshfc.org/arra/revisedRd2suspensionupdate.pdf)

If the RD set-aside was not fulfilled in Rounds 1 and 2, projects the applied under that set-aside will be given priority until the set-aside has been fulfilled. The Commission reserves the right to waive the King County Cap.

Projects will be awarded ARRA subsidy at a maximum rate of \$0.85 per dollar of credit surrendered (or per dollar of credit eligibility in the case of a bond project); however, in no case shall the subsidy amount exceed the amount of funds necessary to make the project feasible. Due to the limited amount of ARRA resources, not all projects that apply will be funded. The Commission will be unable to determine the total amount of ARRA subsidy available for the Subsidy in Lieu of Investment Competition until September 2009. Available funds will likely include both TCAP and Exchange funds.

Terms and Conditions

Projects receiving ARRA awards under the Subsidy in Lieu of Investment Competition are subject to the ARRA Program Terms and Conditions outlined in Section VI.

Deadlines

Round 3 will begin once the Gap Subsidy Competition concludes or as deemed appropriate by the Commission and in no event shall begin later than September 2, 2009. The Commission will issue guidance about the application process later in the year.

V. Allocation Process: 4% Tax Credit / Bond Projects

A. 2009 Gap Subsidy Competition Set-Aside for Bond Projects

An initial \$6 million in **TCAP funds** will be set aside for 4% tax credit / bond projects seeking ARRA subsidy to supplement tax credit equity. ARRA subsidy cannot be used to completely replace tax credit equity, only to fill a gap caused by lower than expected equity pricing. If the \$6 million ARRA subsidy bond set-aside is exhausted, the Commission reserves the right to increase the set-aside should funds be available.

Eligibility

Eligible projects are those that:

- Hold a valid allocation of “bond cap” from CTED or the Commission as of June 11, 2009;
- Select a minimum of 50 allocation criteria points on their application;
- Are able to satisfactorily complete the MTR process after application;
- Can demonstrate ability to complete project by December 31, 2011 and expend 100% of Exchange funds or 75% of TCAP funds by December 31, 2010; and
- Have not yet closed on tax credit equity with an investor.

Application Process

To apply for the Gap Subsidy Competition Set-Aside for Bond Projects, Applicants must submit the following by June 12, 2009:

- Complete Tax Credit Application with a minimum of 50 allocation criteria points
- Evidence of current and valid “bond cap” allocation
- Tax Credit Application Fee
- Sources and Uses Statement inclusive of expected ARRA Subsidy Request
- A detailed timeline for development once funding is secured
- A schedule of expenditures that meets TCAP disbursement requirements
- Projects planning to compete in the 2008 Investor Commitment Window must submit evidence of a previous 2008 “bond cap” allocation.

NOTE: BY SUBMITTING AN APPLICATION FOR ARRA RESOURCES, YOU WILL INVOKE NEPA REVIEW. PLEASE REFER TO SECTION IV (A) FOR MORE DETAIL.

Evaluation Criteria

Projects will be evaluated in the Gap Subsidy Competition Set-Aside for Bond Projects based on their “readiness to proceed,” defined as the project’s ability to demonstrate an engaged investor and that the project is Fully Funded with all funding commitments in place. In the event of tie, projects will be ranked according to the requested subsidy per unit. The lower subsidy per unit request will receive priority.

Approval Process

Commission staff will complete MTR reviews of applications and will issue 42(m) letters for all eligible projects. These projects will then be presented to the Commission at the July 23, 2009 board meeting for approval to award ARRA funds at the discretion of the Executive Director.

Investor Commitment Windows

ARRA gap subsidy will be awarded to 4% tax credit / bond projects on rolling basis through two Investor Commitment Windows. Once funds in the Set-Aside for Bond Projects are exhausted, no further projects will be considered.

On any business day during these two windows, eligible projects that have engaged an equity investor can submit to the Commission evidence of a firm investor commitment including a price for their tax credits and request a specific amount of gap subsidy. At this time, projects must also be able to demonstrate that they are Fully Funded with all funding commitments in place.

The 2008 Investor Commitment Window will open on July 24, 2009 and close on August 14, 2009. Only those projects that were awarded bond volume cap in 2008 but failed to close due to the tax credit equity market will be allowed to submit evidence of investor and funding commitments during this time period.

The 2008 and 2009 Investor Commitment Window will open August 17, 2009 and close October 1, 2009. All projects that submitted an application for the Gap Subsidy Competition Set-Aside for Bond Projects will be eligible for ARRA funds during this window if they are able to satisfactorily demonstrate investor and funding commitments.

ARRA Award

Staff will underwrite each project to determine the amount of gap subsidy required to make the project financially feasible. The project will then receive a Commitment Letter for the ARRA gap subsidy, and the first half of the Credit Issuance Fee will be due.

Terms and Conditions

Projects receiving ARRA awards under the Gap Subsidy Competition Set-Aside for Bond Projects are subject to the following terms and conditions in addition to the ARRA Program Terms and Conditions outlined in Section VI:

- All funds in the Gap Subsidy Competition Set-Aside for Bond Projects will be TCAP funds.
- Subsidy Limits:
 - Each project is limited to a maximum subsidy request of \$1,000,000.
 - Each applicant is limited to 2 projects that total no more than \$2,000,000 in subsidy request.
 - The Commission reserves the right to waive these subsidy limits.
- Projects must be able to demonstrate their ability to close on their bonds by December 15, 2009. Failure to do so will result in a forfeiture of a project's ARRA award.

Deadlines

- Bond Cap Allocation Deadline: June 11, 2009
- Application Deadline: June 12, 2009
- Commission Approval of Eligible Projects: July 23, 2009
- 42(m) Letter issued no later than: July 23, 2009
- 2008 Investor Commitment Window: July 24 – August 14, 2009
- 2008 & 2009 Investor Commitment Window: August 17, 2009 – October 1, 2009
- Bond Closing Deadline: December 15, 2009
- 75% of TCAP Funds Spent: December 31, 2010
- Placed-in-Service: December 31, 2011

B. Subsidy in Lieu of Investment

Projects that are unsuccessful in attracting an equity investor in the Gap Subsidy Competition Set-Aside for Bond Projects are eligible to compete in the Subsidy in Lieu of Investment Competition as outlined in Section IV (C).

VI. ARRA Program Terms and Conditions

A. ARRA Program

All projects awarded ARRA resources under the ARRA - Tax Credit Program are subject to the following terms and conditions:

- **Section 42:**
 - All projects receiving ARRA funding will remain subject to LIHTC limitations (income, rent, use restrictions, etc.) and timing requirements (10% Carryover, placed in service) as required under Section 42 of the Code and its implementing regulations.
 - Projects will be held to all commitments made in their original Tax Credit Application.
 - Projects are limited to the amount of credit requested in their original Tax Credit application.
- **Credit Pricing Floor:** Projects receiving investment for their tax credits will be subject to a minimum pricing floor of \$0.65 per dollar of credit.
- **Subsidy Limits:** Gap Subsidy requests are limited to \$0.20 per dollar of credit. Subsidy in Lieu of Investment is limited to \$0.85 per dollar of credit. The Commission reserves the right to waive the maximum subsidy request limit, but in no case shall the subsidy award exceed the lesser of eligible basis or the amount of funds necessary to ensure the financial feasibility of the project and its viability as a project.
- **Underwriting Standards:** Projects must meet Commission underwriting standards including reserve requirements. A percentage of the Developer Fee may be required to be deferred and/or held back until occupancy stabilization has occurred.
- **Funds Disbursement:** Once awarded, funds cannot be drawn down in advance of the need to pay an eligible cost. Once funds are received, they must be spent within three days. The Commission will provide additional detail to the disbursement process in future guidance.
- **Recapture:** All executed loan and grant agreements shall reflect recapture provisions for defaults on the regulatory agreement. The terms of recapture shall be proportionate to the scale and duration of the uncorrected noncompliance relative to the 15-year initial compliance period.
- **Reporting:** Projects will be required to submit quarterly reports to the Commission including, but not limited to, information on the use of ARRA funds; an 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.
- **Asset Management:** Under ARRA, the Commission is required to perform or contract for asset management at the owner's expense to ensure compliance with Section 42 of the Code and the long term viability of the projects funded.

B. TCAP Awards

Projects awarded TCAP funds are subject to the following terms and conditions in addition to the ARRA Program requirements above:

- **Credit Allocation:** Per HUD guidance, TCAP projects are required to retain a nominal allocation of credit in order to be eligible for TCAP funds regardless of the amount of subsidy awarded. In order to maintain eligibility for TCAP funds, there must be equity investment in at least a nominal amount of the project's tax credit allocation.
- **Form of Award:** The TCAP award will be a soft, deferred loan secured by a Deed of Trust. Additionally, all TCAP recipients must enter into a legally binding "TCAP Written Agreement" with the Commission that will outline all TCAP program requirements and crosscutting federal requirements. Specific guidance as to the content of this agreement will be provided by HUD. The Agreement cannot be executed until the NEPA review has been completed.
- **Disbursement Requirements:** Projects receiving TCAP funds must spend 75% of their award by December 31, 2010 and 100% of their award by December 31, 2011. The TCAP Written Agreement will specify a schedule for the expenditure of TCAP funds and outline the circumstances under which TCAP funds will be recaptured should the project owner fail to meet the schedule.
- **Eligible Uses:** TCAP funds may only be used to pay for costs that can be included in the "eligible basis" of a project under Section 42, costs of land acquisition, on-site demolition costs and hazardous material remediation costs. TCAP funds may not be used to pay asset management fees.
- **Crosscutting 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](#).

C. Exchange Awards

Projects awarded Exchange funds are subject to the following terms and conditions in addition to the ARRA Program requirements above:

- **Form of Award:** The Exchange Award will be in the form of a grant that is not required to be repaid unless there is a recapture event. Before disbursement of funds is possible, the Commission and the project owner must enter into a legally binding written agreement which will set forth all Section 1602 Tax Credit Exchange Program requirements, including the requirements of Section 42 of the Code, applicable to the award.
- **Disbursement Requirements:** ~~All exchange awards must be disbursed by December 31, 2010.~~ Funds may not be drawn down in advance of need for eligible expenditure. The Recipient must pay for or incur the cost of at least 30% percent of the Project’s total adjusted basis in land and depreciable property that is reasonably expected to be part of the low-income housing project by December 31, 2010. All Exchange funds must be drawn down by December 31, 2011.
- **Eligible Uses:** Treasury has not placed specific restrictions on the use of Exchange funds; they can be used to finance any project cost related to the construction, acquisition and rehabilitation of qualified low-income buildings.
- **Maximum Award:** Grant funds shall not exceed 85 percent of the amount of a building’s eligible basis as determined at the end of the first year of the credit period (as defined in Section 42(f)(1) of the Code), and including any increase for buildings located in high cost areas under Section 42(d)(5)(B).
- **Crosscutting Federal Funds Requirements:** None.

D. Governing Policies

Unless otherwise stated herein to the contrary, all 2009 Tax Credit Program Policies apply.

The definitions of capitalized terms used throughout this document carry the same definitions described in the 2009 Tax Credit Program Policies. In addition, this document and any supporting documents relating to the allocation of ARRA resources use terms that are defined or used in Section 42 of the Code.

Notwithstanding any other provisions hereof, these Guidelines and Procedures shall be amended to conform to any more restrictive requirements of applicable amendments to the ARRA legislation, any proposed or final regulations, or any applicable legislative enactment or final decision by a court of competent jurisdiction.

E. Disclosure

The Commission reserves the right to retain all applications and documentation submitted.

Materials and information submitted are subject to public disclosure unless otherwise exempt from disclosure under the Washington Public Records Disclosure Act (RCW 42.17 et seq.). No assurances can be given that any materials provided can be protected from public review and copying.

F. Protest Procedures

Decisions regarding allocations will be made on behalf of the Commission by the Director of the Tax Credit Division and will be appealable solely to the Executive Director of the Commission.

All protests must be in writing. Such protests must state all facts and arguments on which the protesting party is relying as the basis for its action. Copies of the protest must be mailed or hand-delivered to the office of the Commission. The protest must be received by the Commission no later than 5:00 PM Prevailing Pacific Time on the fifth (5th) business day following the applicant's receipt of the notice of rejection, whether oral or written. Only those who are eligible to submit an application under the criteria established by the Commission may protest the rejection of an application.

The Executive Director of the Commission will consider the record and all facts available and issue a decision within five (5) business days from receipt of the protest unless additional time is required, in which case the protesting party will be notified by the Commission. The decision of the Executive Director will be final.

VII. ARRA Fees

A. Application Fees

2007, 2008 and 2009 9% Competitive Projects: The application fee paid when the original tax credit application was submitted shall be considered the application fee for projects applying to the 2009 Tax Credit Round, the Gap Subsidy Competition and the Subsidy in Lieu of Investment Competition.

Gap Subsidy Competition Set-Aside for Bond Projects: Projects applying under the Bond Set-Aside must submit with their Tax Credit Application the Application Fee as outlined in the 2009 Tax Credit Policies.

B. Reservation Fee (9% Competitive Projects)

2008 Stalled 9% Projects: The first half of the Reservation Fee was paid upon execution of the Project's RAC in July 2008. The deadline for paying the second half of the Reservation Fee will be extended to December 1, 2009 for projects funded in the Stalled Projects Competition.

2009 Tax Credit Round (Round 1): Projects receiving an allocation of credit in Round 1 will be subject to the Reservation Fee as outlined in the 2009 Tax Credit Policies. The first half of the Reservation Fee is due upon RAC execution (expected July '09); the second half of the fee will be due at Carryover.

Gap Subsidy and Subsidy in Lieu of Investment Competitions (Rounds 2 and 3): Projects will be subject to the Reservation Fee as outlined in the 2009 Tax Credit Policies when they receive an allocation of credit in Round 2. The Reservation Fee will be based on the total credit request, not the percentage of credit allocated in the ARRA RAC. The first half of the Reservation Fee is due upon ARRA RAC execution (expected July '09). The second half of the Reservation fee will be due one year from the date of the ARRA RAC execution regardless of whether the project is funded in Round 2 or Round 3.

If the project does not move forward in Round 2 or Round 3, the project may be eligible for a refund of the Reservation Fee paid less \$2500.

C. Credit Issuance Fee (4% Tax Credit / Bond Projects)

Projects awarded ARRA subsidy in the Gap Subsidy Competition Set-Aside for Bond Projects must pay the first half of the Credit Issuance Fee upon mutual acceptance of the ARRA Subsidy Commitment Letter. The second half of the Credit Issuance Fee is due no later than the issuance of the project's Form 8609.

D. Compliance Fee

All projects whether funded with tax credits, ARRA funds or a combination of the two, are subject to the Annual Compliance Monitoring Fees as outlined in the 2009 Tax Credit Policies.

E. Asset Management Fee

TBD – The Commission is currently engaging in a RFP process to select an entity or entities to perform asset management. The asset management fee will be determined by the outcome of the RFP process. An estimate of this fee will be provided as soon as possible.

VIII. Additional Guidance Forthcoming

Additional procedures regarding the implementation of the ARRA program will be developed by staff, approved by the Tax Credit Director, and published by the Commission during 2009. Specific topics to be addressed include:

- Application forms and submission requirements
- NEPA Review Process
- Project underwriting standards and required due diligence submissions
- TCAP and Exchange written agreements and closing requirements
- TCAP and Exchange Reporting and auditing requirements
- Construction monitoring and draw process
- Asset management requirements and process for projects with and without investors
- Final fee structure
- Commission Affirmative Fair Housing Marketing Plan for TCAP projects

Staff will make decisions as quickly and transparently as possible. Final policies and guidelines will be published on the Commission's website (www.wshfc.org/tax-credits).