

***American Recovery and Reinvestment Act of 2009 (ARRA) –
Concept Proposal for LIHTC and ARRA Resource Allocation***

Background:

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 Credit Exchange Program.

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 9% projects and 4% tax credit / bond projects.

Brief descriptions of the two programs are outlined below:

TCAP Funds (HUD)

- Direct appropriation of \$43,010,192 from HUD to the Washington State Housing Finance Commission (WSHFC). This represents Washington State's portion of the \$2.25 billion allocated to state HFA's based on the HOME formula.
- Eligible projects include those that have received an "award" of credits in federal fiscal years 2007, 2008 and 2009 (year ending September 30). An award may be either an allocation of 9% credit or a 42(m) letter for the 4% credit.
- Funds must be distributed to projects on a "competitive" basis.
- Strict timing requirements apply regarding allocation of funds to projects and spending of funds by project sponsors: Project sponsors must spend 75% of their awards by February 2011 and 100% by February 2012 or be subject to recapture
- These funds do not reduce a project's eligible basis.
- These funds have been determined to be federal funds, but "not HOME funds." Projects utilizing TCAP funds will be subject to certain federal funds requirements including National Environmental Policy Act (NEPA) review, Davis-Bacon wage rates, the Uniform Relocation Act, all anti-discrimination and equal opportunity statutes, and others. WSHFC awaits guidance as to the exact nature of these requirements.
- Unless stated otherwise, projects will be subject to LIHTC limitations on income, rent, use restrictions, etc.
- WSHFC will be required to report to HUD on a quarterly basis on projects funded using TCAP funds, including estimates of the number of jobs created and/or retained by the project.
- WSHFC is required to perform or contract for "asset management" which is in addition to the tax credit Compliance function currently required under TC program. An additional asset management fee will be charged.

Credit Exchange (Treasury)

- Legislation allows WSHFC to exchange up to 40% of its 2009 per capita authority and 100% of unused or returned credit for \$0.85 per \$1 of credit.
- Legislation requires that projects make a “good faith effort” to find an equity investor before they are eligible for Credit Exchange funds. WSHFC is required to establish a process to determine that “good faith effort” was made.
- Unless stated otherwise, projects will be subject to LIHTC limitations on income, rent, use restrictions, etc.
- We have not yet received final guidance as to whether Credit Exchange funds will be considered “federal funds” and therefore subject to the federal funds requirements as described above for the TCAP Program.
- WSHFC is required to perform or contract for “asset management” and an additional asset management fee will be charged.

WSHFC Objectives for Allocation of LIHTC and ARRA Resources:

- Priority will be given to projects that are already fully funded and “shovel ready”, requiring no ARRA subsidy funding.
- Program policies will encourage projects to keep equity investors in these deals so as to (1) access underwriting, asset management and other discipline and capabilities of the private sector, (2) preserve the future viability of the LIHTC program.
- Our intent will be to assist as many projects as possible, i.e., stretch the resource by establishing a “pricing floor” for all resources.
- Distribute ARRA funds quickly with TCAP funds distributed first, where possible. Priority will be given to projects that are already subject to federal requirements.
- Encourage the issuance of bonds.
- We will tap the expertise of other federal funds administrators in the state to assist us in the administration of the federal funds requirements.

Project Categories:

1. 2007 and 2008 Stalled 9% Projects*
2. 2009 “Competitive” 9% Projects
3. 2008 and 2009 4% tax credit / bond projects** seeking subsidy to supplement investor equity

2007 and 2008 Stalled Projects

ARRA Resources for Stalled Projects are intended to assist projects that have received 9% credit allocations in 2007 or 2008 but have been unable to proceed because they have been unable to find adequate equity investment. Only those projects holding a valid 2007 or 2008 allocation of tax credits as of January 1, 2009 are eligible for Stalled Project resources.

Note: Applicants who are seeking ARRA funds need to be aware that federal funding requirements will be triggered if ARRA funds are involved in the project. WSHFC awaits guidance from HUD and Treasury on the exact nature of these requirements.

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. 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 WSHFC 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 WSHFC.

Application Process:

Stalled projects seeking ARRA resources must submit a complete application by **TBD** deadline. To the extent the possible, the WSHFC will make use of existing project application submissions.

Applicants must provide the following updated project information:

- A letter to the Commission documenting the return of the project's 2007 or 2008 credit allocation
- Documentation of "good faith efforts" to find equity investment as described above
- Market study update
- Revised budget
- Pro forma with current utility allowances and rents
- Revised project schedule including a statement describing any work that has begun since the original application was submitted, i.e., closing on site acquisition, permits received, site work, etc.
- Assuming federal fund requirements apply, documentation of existing Federal Funds Requirements, if any (NEPA status, Davis-Bacon wages and URA costs in budget, etc.)
- Site control documentation and title report

- Certification Regarding Financial Solvency and Litigation Status
- Certificate of Existence/Authorization for the applicant
- Revised Organizational Chart
- **TBD** Due Diligence items

The WSHFC will underwrite (or contract with a third party to underwrite) the project to determine the amount of ARRA resources awarded. Awards may be made up to \$.85 per \$1 of returned credit allocation, but in no case shall awards exceed the amount of funds necessary to make the project feasible. Projects will be awarded ARRA resources at the **TBD** Commission Meeting. We await further guidance from HUD and Treasury on when the ARRA funds will be made available to projects.

An award of TCAP funds or gap subsidy may be made to a Stalled 2007 or 2008 project at the sole discretion of the Commission.

Awards of ARRA Resources in lieu of Equity Investment are subject to the following additional conditions:

- **TBD** Underwriting Criteria
- **TBD** “partnership agreement” type requirements (development guarantee, operational guarantee, reserve requirements, etc.)
- **TBD**% of developer fee must be deferred and/or not paid until occupancy stabilization has occurred.
- Recapture provision for noncompliance
- **TBD** Pay-in schedule
- Awards will be made in the form of a loan, secured by a deed of trust and will include **TBD terms** and conditions including loan and asset management fees.
- Project must not have changed substantially from the original Tax Credit Application and will be held to the commitments made in the original application.
- Total Project Cost, less costs associated with ARRA requirements, cannot have changed more than 10% from the original approved project budget.
- Projects will remain subject to LIHTC limitations on income, rent, use restrictions, etc.
- Projects may be subject to certain federal funds requirements. WSHFC awaits guidance from HUD and Treasury on the exact nature of these requirements.
- WSHFC will perform or contract for “asset management” and will charge an additional asset management fee.
- Unless WSHFC is told otherwise, the tax credit carryover and placed in service clock is eliminated when a project’s 2007 or 2008 allocation of tax credits are returned. However, WSHFC will require projects awarded ARRA subsidy to place in service by December 31, 2011.

2009 “Competitive” 9% Projects and 4% Bond Projects

Consistent with the Policies under which all 2009 9% competitive projects applied, those projects that applied as “not fully funded” are not eligible to participate in Rounds 1, 2 or 3. These projects will only be allocated credit or ARRA resources after all “fully funded” projects have been considered.

Round 1 – Full Equity Round - 2009 Competitive 9% Projects Seeking No Subsidy

Note: Round 1 Applicants who are able to proceed without seeking ARRA funds do not need to be concerned with any new federal funding requirements that would be triggered if ARRA funds were involved in the project.

Up to 30-45% of the 2009 per capita annual authority will be made available to those projects that applied for Tax Credits in the January 15, 2009 application round that can demonstrate the ability to attract investment without ARRA subsidy. If the 30-45% cap is reached, a waiting list will be created. Providing credit is available 120 days after policy approval, allocations will be made to the Round 1 Waiting List at the next Commission meeting.

The Policies for the “King County Cap” will be waived in Round 1. Projects that applied in January as “not fully funded” are NOT eligible to participate in Round 1.

In Round 1, all projects that applied in the January 2009 application round will be given 15 days after policy approval to declare whether they require ARRA subsidy to attract an equity investor to their project.

- Those projects that declare and can demonstrate that they have an investor commitment and need no subsidy will remain on the 2009 Tax Credit Allocation list and will be considered for an allocation of credit.
- Those projects that declare a need for ARRA subsidy will be asked to voluntarily withdraw from the Round 1 list in order to be eligible for the Subsidy Rounds.

After this part of the Round 1 process is complete, the revised 2009 Tax Credit list will contain only those projects that have declared and demonstrated that they can move forward without subsidy. Tax credit allocations will be awarded to those projects that remain on the list, in rank order, subject to our typical process for MTR review, RAC issuance and RAC fees.

These projects will proceed through our normal 9% tax credit allocation process with the exception that the RACs for these projects will include a “credit allocation expiration date” of September 30, 2009. On this date, a project’s allocation of credit will expire and will be deemed returned to the WSHFC. An extension of the “credit allocation expiration date” may occur at the sole discretion of the WSHFC.

If a project that receives an allocation under Round 1 fails to attract equity and wishes to be considered for subsidy dollars, the allocation of credit must be returned before the project can be considered for gap subsidy in Round 2. Only if the project fails to attract equity in Round 2 will it be eligible for Round 3.

Round 2: 9% Gap Subsidy Round – 9% Projects that seek Subsidy to Supplement Investor Equity

Note: Round 2 and Round 3 Applicants who are seeking ARRA funds need to be aware that federal funding requirements will be triggered if ARRA funds are involved in the project. WSHFC awaits guidance from HUD and Treasury on the exact nature of these requirements.

Round 2, the 2009 Tax Credit Gap Subsidy Round, will be held to consider those projects that seek subsidy dollars to supplement their tax credit equity investment. Only those projects that submitted a 2009 Tax Credit application and withdrew from the original 2009 Tax Credit Allocation List, as described above under “Round 1” will be eligible to apply for gap subsidy in Round 2.

There will be no King County Cap or any tax credit set-asides in Round 2. Projects that applied in January as “not fully funded” are NOT eligible to participate in Round 2.

All projects that applied in the January 2009 application round will be given **15 days** from policy approval to declare whether they seek to be considered in this Gap Subsidy Round. Once they have declared, Applicants will be asked to submit an application and a **TBD** application fee for participation in Round 2 by **30 days** from policy approval. To the extent possible, the WSHFC will make use of existing project application submissions.

The following must be submitted as part of the application for Round 2:

- Letter withdrawing from 2009 Tax Credit Round (Round 1)
- **TBD** Round 2 application fee
- **TBD** Scoring
- **TBD** Other

Projects will be ranked according to the following criteria:

- **TBD**

The following project and applicant limits apply:

- **TBD**

Round 2 Allocation Process

Projects that have withdrawn from Round 1 will submit an application for Round 2 and pay an application fee. Staff will complete the MTR review and issue a letter stating that the project is eligible for a specified dollar amount of tax credits. This is a letter of eligibility, not a reservation or allocation. At the same time, all Round 2 projects will be allocated a **TBD%** of their credit request and pay **TBD%** of the RAC issuance fee. [The purpose for a partial allocation of credit is to maintain eligibility for all projects under TCAP and Exchange requirement.] These allocations will expire on **TBD**.

There will be two application deadlines for Round 2, dates TBD, at which time projects can submit evidence of a firm investor commitment and a request for a specified amount of gap subsidy. On each application deadline, the projects that apply will be ranked according to the scoring of their Round 2 application. Staff will underwrite the project to determine the amount of gap subsidy for which the project is eligible. Credit and ARRA gap subsidy will be awarded in rank order until credit and/or subsidy funds are exhausted.

The full tax credit allocation and ARRA gap subsidy will both be awarded to the project at the Commission meeting in the month following the application deadline. After approval by the Commission, a RAC will be issued for the full tax credit amount stated in the eligibility letter and the balance of the first half of the RAC issuance fee will be due. The project will also receive a TBD document awarding them the ARRA gap subsidy. [We await further guidance on when the ARRA funds will be made available to projects.]

The following conditions apply:

- Per dollar of credit pricing floor of \$0.65 for new construction and \$0.70 for rehabilitation
- Subsidy request is limited to \$.20 per dollar of credit, but in no case shall exceed the amount of funds necessary to make the project feasible.
- Projects are limited to the amount of credit requested in their original 2009 Tax Credit application.
- Projects will be held to commitments made in the original 2009 Tax Credit Application.
- ARRA awards will be made in the form of a loan, secured by a deed of trust and will include TBD terms and conditions including loan and asset management fees.
- Projects unable to close on their equity by TBD may be required to forfeit their allocation of tax credits.

Round 2 Bond Set-Aside: 4% Bond Projects that seek Subsidy to Supplement Investor Equity

Note: Applicants who are seeking ARRA funds need to be aware that federal funding requirements will be triggered if ARRA funds are involved in the project. WSHFC awaits guidance from HUD and Treasury on the exact nature of these requirements.

\$10 million in ARRA subsidy will be set aside for 4% tax credit / bond projects that have not closed and are seeking ARRA subsidy to supplement tax credit equity. In this round, ARRA subsidy cannot be used to completely replace tax credit equity, only to fill the gap caused by lower than expected equity pricing.

Eligible projects must hold a valid allocation of “bond cap” from CTED or the WSHFC in order to apply.

Projects applying for the Bond Set-Aside must submit their tax credit application with a minimum of 50 points no later than TBD deadline. An additional Round 2 Subsidy Application Form will also be required and will rank projects according to the following criteria:

- **Points TBD**

Staff will complete MTR reviews of applications and will issue 42(m) letters within 60 days of the application deadline.

There will be two application deadlines for the Bond Round, dates **TBD**, at which time projects can submit evidence of a firm investor commitment and a request for a specified amount of gap subsidy. Projects will be ranked according to the scoring of their Round 2 application and staff will underwrite the project to determine the amount of gap subsidy for which the project is eligible. Subsidy will be awarded in rank order until the set-aside subsidy funds are exhausted. Subsidy will be awarded to the project at the Commission meeting in the month following the application deadline. The project will then receive a **TBD document** awarding them the gap subsidy and the first half of the credit issuance fee will be due. [We await further guidance on when the ARRA funds will be made available to projects.]

The following conditions apply:

- a. Eligibility contingent on completion of MTR
- b. Projects must be able to demonstrate their ability to close by December 15, 2009.
- c. If the bond set-aside is exhausted, the WSHFC reserves the right to increase the set-aside should funds be available.

Round 3: 2009 9% and 4% Stalled Projects –ARRA Resources in lieu of Equity Investment

Note: Round 3 Applicants who are seeking ARRA funds need to be aware that federal funding requirements will be triggered if ARRA funds are involved in the project. WSHFC awaits guidance from HUD and Treasury on the exact nature of these requirements.

2009 projects that have failed to obtain an equity investor will be able to compete in an entirely new competition for a much higher level of ARRA resources to replace all of their anticipated investor equity.

9% projects are only eligible if they have received a tax credit allocation under Round 2 and are able to demonstrate a good faith effort to find equity investment. Those projects will be required to return their tax credit allocation if unsuccessful in closing on their equity by **TBD** deadline in order to compete in the Round 3 competition. Projects that receive an allocation of tax credits in Round 1, yet fail to secure sufficient equity, are eligible for Round 3 only if they demonstrate a good faith effort to find investment with gap filling subsidy in Round 2.

4% tax credit / bond projects that received a 42(m) letter and an award of ARRA subsidy under the Bond Round (described above) are also eligible to compete in Round 3, but must also be able to demonstrate a good faith effort to find investment. Bond projects must retain the amount of debt anticipated in their 2009 bond cap allocation.

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. 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 WSHFC 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 WSHFC.

Projects must apply for Round 3 by submitting the following:

- TBD Round 3 application fee
- Good Faith Effort Documentation (as described above)
- A letter returning the project’s Tax Credit Allocation to WSHFC (if the project is holding one)
- TBD Other

Projects will be ranked according to the following criteria:

- TBD

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. We will be unable to determine the total amount of ARRA subsidy available for Round 3 until after TBD date.

Awards of ARRA subsidy under Round 3 will be subject to the same conditions listed above in the 2007/2008 Stalled Projects proposal.

Scenarios for 2009 9% Projects

The purpose of these scenarios is to lend some context to our discussions of the use of ARRA resources for 2009 9% projects. Scenario 1 addresses the possibility of low investor interest in projects, allocating only 60% of the 2009 per capita credit to projects with equity investors and maximizing the monetization opportunity at 40%. Scenario 2 assumes a great deal of investor interest in projects, allocating all available credit and minimizing the monetization opportunity.

Available Resources:

2009 Per Capita Credit Authority (\$2.30 x 6,549,224)	\$	15,063,215
2008 Unused Credit	\$	540,665
2007 Credit Returned	\$	748,631
20% Forward Commitment 2010 (approximate)	\$	2,816,166
<u>Tax Credit Authority</u>	<u>\$</u>	<u>19,168,678</u>
TCAP Funds	\$	43,010,192
less \$10M Bond Set-Aside	\$	(10,000,000)
<u>TCAP Funds for 9% Projects</u>	<u>\$</u>	<u>33,010,192</u>

Assumptions:

- (1) Bond set-aside at \$10 Million is fully subscribed.
- (2) 2007 & 2008 projects are either exchanging credit or need no subsidy. All TCAP funds used for 2009.
- (3) Credit Request is based on median credit request of \$736,440.
- (4) ARRA funds are provided to plug pricing gaps in Round 2 at \$0.05 / dollar of credit request.
- (5) ARRA funds in lieu of investment in Round 3 is based on maximum of \$.85 / dollar of credit request.

Scenario 1: Limited Number of Projects with Investor Interest

Round 1: Full Equity Investment - No ARRA Subsidy

	Credit Request	
Project 1 (Greenbridge)	\$	1,506,322
Project 2 (1st and Cedar)	\$	1,212,960
Project 3 at Median Credit Request	\$	736,440
Total Credit Allocated - Round 1	\$	3,455,722
% of 2009 Per Capita Authority Allocated		23%

Round 2: Gap Subsidy to Supplement Investor Equity

	Credit Request		ARRA Gap Request*
Project 4 at Median Credit Request	\$	736,440	\$ 368,220
Project 5	\$	736,440	\$ 368,220
Project 6	\$	736,440	\$ 368,220
Project 7	\$	736,440	\$ 368,220
Project 8	\$	736,440	\$ 368,220
Project 9	\$	736,440	\$ 368,220
Project 10	\$	736,440	\$ 368,220
	\$	5,155,080	\$ 2,577,540
Total Credit Allocated Rounds 1 & 2	\$	8,610,802	
% of 2009 Per Capita Authority Allocated		57%	
% of 2009 Per Capita Authority Unused		3%	

* ARRA Gap Request = \$0.05 / dollar of Median Credit Request

Round 3: ARRA Funds in Lieu of Investment

TCAP Funds	\$	33,010,192.00
Exchange Resources		
40% of 2009 Per Capita Credit at \$0.85	\$	51,214,931.68
2007 & 2008 Unused/Returned Credit at \$0.85	\$	10,959,016.00
Less ARRA \$ used in Round 2	\$	(2,577,540)
Total ARRA Funds	\$	92,606,600
	Subsidy to Project*	
Project 11	\$	6,259,740
Project 12	\$	6,259,740
Project 13	\$	6,259,740
Project 14	\$	6,259,740
Project 15	\$	6,259,740
Project 16	\$	6,259,740
Project 17	\$	6,259,740
Project 18	\$	6,259,740
Project 19	\$	6,259,740
Project 20	\$	6,259,740
Project 21	\$	6,259,740
Project 22	\$	6,259,740
Project 23	\$	6,259,740
Project 24	\$	6,259,740
Project 25	\$	4,970,240
	\$	92,606,600

* Subsidy to Project = Median Credit Request of \$736,400 x \$0.85 x 10

Total Projects Funded in Rounds 1, 2 & 3 **25 of 34**

Scenario 2: Maximum Number of Projects with Investor Interest

Round 1: Full Equity Investment - No ARRA Subsidy

	Credit Request	
Project 1 (Greenbridge)	\$	1,506,322
Project 2 (1st and Cedar)	\$	1,212,960
Project 3 at Median Credit Request	\$	736,440
Project 4	\$	736,440
Project 5	\$	736,440
Project 6	\$	736,440
Project 7	\$	736,440
Project 8	\$	736,440
Total Credit Allocated - Round 1	\$	7,137,922
% of 2009 Per Capita Authority Allocated		47%

Round 2: Gap Subsidy to Supplement Investor Equity

	Credit Request		ARRA Gap Request*
Project 9 at Median Credit Request	\$	736,440	\$ 368,220
Project 10	\$	736,440	\$ 368,220
Project 11	\$	736,440	\$ 368,220
Project 12	\$	736,440	\$ 368,220
Project 13	\$	736,440	\$ 368,220
Project 14	\$	736,440	\$ 368,220
Project 15	\$	736,440	\$ 368,220
Project 16	\$	736,440	\$ 368,220
Project 17	\$	736,440	\$ 368,220
Project 18	\$	736,440	\$ 368,220
Project 19	\$	736,440	\$ 368,220
Project 20	\$	736,440	\$ 368,220
	\$	8,837,280	\$ 4,418,640

If 20% of 2010 credit is forward committed:

Project 21	\$	736,440	\$ 368,220
Project 22	\$	736,440	\$ 368,220
Project 23	\$	736,440	\$ 368,220
Project 24	\$	736,440	\$ 368,220
	\$	2,945,760	\$ 1,472,880

Total Credit Allocated Rounds 1 & 2	\$	18,920,962
2009 Credit Remaining to Monetize	\$	247,716
% of 2009 Per Capita Authority Allocated		98%
% of Returned / Unused Credit Allocated		100%
% of 2010 Credit Forward Committed		20%

* ARRA Gap Request = \$0.05 / dollar of Median Credit Request

Round 3: ARRA Funds in Lieu of Investment

TCAP Funds	\$	33,010,192
Exchange Resources		
2% of 2009 Per Capita Credit at \$0.85	\$	2,105,582
Less ARRA \$ used in Round 2	\$	(5,891,520)
Total ARRA Funds	\$	29,224,254

	Subsidy to Project*	
Project 25	\$	6,259,740
Project 26	\$	6,259,740
Project 27	\$	6,259,740
Project 28	\$	6,259,740
Project 29	\$	4,185,294
	\$	29,224,254

* Subsidy to Project = Median Credit Request of \$736,400 x \$0.85 x 10

Total Projects Funded in Rounds 1, 2 & 3 **29 of 34**