

WEST VIRGINIA HOUSING DEVELOPMENT FUND  
LOW-INCOME HOUSING TAX CREDIT PROGRAM  
TAX CREDIT ASSISTANCE PROGRAM

COMPETITIVE SELECTION CRITERIA

**INTRODUCTION**

The American Recovery and Reinvestment Act of 2009 (Public Law 111-5) (“Recovery Act”) was signed into law on February 17, 2009. Title XII of the Recovery Act appropriated \$2.25 billion under the HOME Investment Partnerships Program to provide funds to assist the development of Low-Income Housing Tax Credit Program properties. This funding is known as the Tax Credit Assistance Program (“TCAP”). TCAP is a federal grant from the U.S. Department of Housing and Urban Development (“HUD”) to the State Housing Credit Agency, which in West Virginia is the West Virginia Housing Development Fund (“WVHDF”).

Pursuant to the foregoing, allocating agencies are required to develop and adopt a plan by which TCAP funds will be distributed. The WVHDF, as the allocating agency for the State of West Virginia (“State”), is responsible for administering the TCAP funds allocated to the State, in the amount of \$16,541,848.

The WVHDF must be able to commit not less than 75% of its TCAP funds within one year of the date of enactment of the Recovery Act (by February 16, 2010).

Property owners, in the aggregate, must have expended:

- at least 75% of the WVHDF’s TCAP funds within two years of the date of enactment (by February 16, 2011); and
- 100% of the WVHDF’s TCAP funds within three years of the date of enactment (by February 16, 2012).

The property must have received or will receive an award of tax credits (“Credit Award”) during the period of October 1, 2006 to September 30, 2009 (“TCAP-eligible Credit Award(s)”). For the purposes of the TCAP, the Credit Award date will be the date of the Selection Decision Letter, for properties who applied (will apply – 2009) for tax credits from the 2006, 2007 and/or 2008 (2009) State Housing Credit Ceiling and for properties who applied (will apply – 2009) for tax credits from outside of the 2006, 2007 and/or 2008 (2009) State Housing Credit Ceiling (tax-exempt bond financed properties). The TCAP-eligible Credit Award(s) made must remain and continue to remain valid (i.e. not returned, cancelled, or rescinded, except for the return, cancellation or rescinding of a de minimis amount of the TCAP-eligible Credit Award(s)). In addition, there cannot be any plans,

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intentions, or expectation to return more than a de minimis amount of the TCAP-eligible Credit Award(s) in the event any such property is selected to receive TCAP funds. If more than a de minimis amount of the TCAP-eligible Credit Award(s) is (are) returned after an award(s) of TCAP funds, any and all awarded TCAP funds will be recaptured and re-awarded to other eligible property(ies) that is (are) currently wait-listed for TCAP funds. In any such case, the WVHDF, in its discretion, will make any and all such determination(s) of what constitutes a de minimis amount of the TCAP-eligible Credit Award(s). The only exception to the return, cancellation or rescinding of a non-de minimis amount of the TCAP-eligible Credit Award(s) will be with respect to properties with a 2007 and/or 2008 TCAP-eligible Credit Award(s), which return all of such credits in 2009 in expectation of a TCAP-eligible Credit Award (and either a Carryover Allocation or an Allocation) of 2009 credits, which allocation will comprehend a later placed-in-service requirement, provided that the award of 2009 credits occurs no later than September 30, 2009.

In the event a TCAP-eligible Credit Award(s) is (are) returned, cancelled or rescinded in what the WVHDF determines to be a non-de minimis amount, the TCAP funds awarded to such property will be recaptured and re-awarded to other eligible property(ies) that is (are) currently wait-listed for TCAP funds. A TCAP-eligible Credit Award is essential to the receipt of TCAP funds.

In the event the equity provider, for any reason, is no longer a part of a property that is awarded TCAP funds, and an equity provider cannot be obtained for such property, the TCAP funds awarded to such property will be recaptured and re-awarded to other eligible property(ies) that is (are) currently wait-listed for TCAP funds. An investor is essential to the use of a TCAP-eligible Credit Award, and therefore, is also essential to the receipt of TCAP funds. If a property is unable to use their TCAP-eligible Credit Award and/or is unable to secure a substantial equity provider, the principals in this property need to re-evaluate such property's likelihood of financial feasibility and long-term viability.

The property must be able to comply with all TCAP requirements and all applicable cross-cutting federal requirements, as listed in Exhibit A – Cross-Cutting Federal Requirements.

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Unless otherwise stated, the contents of this document apply equally to properties that received or receive in 2006, 2007, 2008, or 2009 a Credit Award(s) (on or after October 1, 2006 and no later than September 30, 2009) from the State's Housing Credit Ceiling or from outside of the State's Housing Credit Ceiling (tax-exempt bond financed properties which do not require credit allocations from the State Housing Credit Ceiling).

Also, unless otherwise stated, the contents of this document apply equally to properties involving new construction, acquisition and rehabilitation, or rehabilitation only.

**CAUTION:** As of the date of the owner's application to the WVHDF for TCAP funds, the owner and its contractors are prohibited from undertaking any property "choice-limiting" activity with respect to any such property until after the completion of the federal environmental review and the execution of the "Authority to Use Grant Funds" (HUD 7015.16) or equivalent letter. A "choice-limiting" activity 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 property from being eligible to receive any TCAP funds.

**GUIDING PRINCIPLES**

TCAP funds are **first** to be used on properties that:

- can demonstrate that they are most shovel-ready to begin construction in order to meet the federal requirements for expenditure of TCAP funds (at least 75% within two years of enactment and 100% within three years of enactment);
- have already received a TCAP-eligible Credit Award(s) (in calendar years 2006, 2007 and/or 2008), and such TCAP-eligible Credit Award(s) remains valid as described above, under the heading **Introduction**;

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- have a committed investor (see the selection criteria for a committed investor that appears on page six of this document), at a price per credit dollar that is deemed acceptable by the WVHDF for the credits awarded;
- have a financing gap that is based upon total development costs, including costs associated with the use of TCAP funds (specifically including, but not limited to the payment of Davis-Bacon wages, environmental (National Environmental Policy Act (“NEPA”)) and applicable cross-cutting federal requirements) {Note that TCAP funds can only be used on eligible basis items and specifically cannot be used for the environmental (NEPA) costs}; and
- have debt (lien/deed of trust), in an amount substantially the same as in their Carryover Allocation Request for 2006, 2007 and 2008 properties or in their Reservation Request for 2009 properties and properties that are 50% or more financed with tax-exempt bonds that received a TCAP-eligible Credit Award in 2006, 2007 or 2008, or will receive a TCAP-eligible Credit Award by September 30, 2009. Such debt should be structured with terms to the extent that the property’s operations can reasonably be expected to meet required debt service obligations. In other words, TCAP funds will not be used to eliminate debt that is reasonably sustainable from property operations.

For the WVHDF’s purposes to ensure compliance with the federal expenditure requirements, each property must be able to expend in excess of 75% of the TCAP funds awarded to such property by December 31, 2010, and must be able to expend 100% of the TCAP funds awarded to such property by August 31, 2011.

Any funds remaining available after TCAP funds are awarded for 2006, 2007 and 2008 properties, if any, will then be made available for properties receiving a TCAP-eligible Credit Award by September 30, 2009, in a similar fashion using these guiding principles (as set forth above) and the related Competitive Selection Criteria (as set forth below).

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**Documentation necessary to support the responses to the following criteria will be required to be submitted simultaneously with the submission of the formal (scheduled) request for TCAP funds.**

100 points will be awarded to a property that has a written timeline and schedule for the start of construction, and the dollar amount and percentage of construction completion at the end of each calendar month until the scheduled end of construction, signed and certified by the property owner and the general contractor. Appropriate allowances for seasonal weather delays (at least 30 to 60 days) must be worked into the schedule. In addition, the written timeline and schedule must indicate that 75% of the total construction costs are expected to be incurred on or before December 31, 2010 and that the end of construction and therefore, 100% of the construction costs are expected to occur or be incurred on or before August 31, 2011.

75 points will be awarded to a property that received a TCAP-eligible Credit Award(s) in 2006, 2007 and/or 2008. The TCAP-eligible Credit Award(s) made must remain and continue to remain valid (i.e. not returned, cancelled, or rescinded, except for the return, cancellation or rescinding of a de minimis amount of the TCAP-eligible Credit Award(s)). In addition, there cannot be any plans, intentions, or expectation to return more than a de minimis amount of the TCAP-eligible Credit Award(s) in the event any such property is selected to receive TCAP funds. If more than a de minimis amount of the TCAP-eligible Credit Award(s) is (are) returned after an award(s) of TCAP funds, any and all awarded TCAP funds will be recaptured and re-awarded to other eligible property(ies) that is (are) currently wait-listed for TCAP funds. In any such case, the WVHDF, in its discretion, will make any and all such determination(s) of what constitutes a de minimis amount of the TCAP-eligible Credit Award(s). The only exception to the return, cancellation or rescinding of a non-de minimis amount of the TCAP-eligible Credit Award(s) will be with respect to properties with a 2007 and/or 2008 TCAP-eligible Credit Award(s), which return all of such credits in 2009 in expectation of a TCAP-eligible Credit Award (and either a Carryover Allocation or an Allocation) of 2009 credits, which allocation will comprehend a later placed-in-service requirement, provided that the award of 2009 credits occurs no later than September 30, 2009.

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75 points will be awarded to a property which has a closed (fully executed/signed) partnership agreement (operating agreement) with an equity provider.

**OR**

50 points will be awarded to a property which has a fully-executed written firm commitment equity agreement with the syndicator/equity provider, which includes, at a minimum, the annual credit amount, the per credit equity price, the total equity contribution, pay-in schedule, and a statement that the partnership agreement will be available for execution once written commitments for all sources of permanent financing are in place.

Note: The syndicator/equity provider must represent and be able to provide adequate evidence that they have the capacity and the committed investors (property-specific) to honor the written firm commitment equity agreement. Otherwise, no points will be awarded.

A property may only receive the 75 points available for the executed partnership agreement, or the 50 points available for a fully-executed written firm commitment equity agreement, not both.

Points will be awarded to a property with respect to the net equity price (as provided, in writing, by either the committed or possible equity provider), in cents per dollar of credit, on the following basis:

5 points for net equity price from \$0.50 to \$0.55 per dollar of credit;

10 points for net equity price from \$0.56 to \$0.60 per dollar of credit;

20 points for net equity price from \$0.61 to \$0.65 per dollar of credit;

25 points for net equity price from \$0.66 to \$0.70 per dollar of credit;

30 points for net equity price from \$0.71 to \$0.75 per dollar of credit;

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35 points for net equity price from \$0.76 to \$0.80 per dollar of credit;

40 points for net equity price from \$0.81 to \$0.85 per dollar of credit;

45 points for net equity price from \$0.86 to \$0.90 per dollar of credit; and

50 points for net equity price of at least \$0.91 per dollar of credit.

Note: If the written documentation provided by the equity provider is not in the form of a signed partnership agreement, the equity provider must represent and be able to provide adequate information that they have the capacity to honor the price per credit for the subject property's TCAP-eligible Credit Award(s). Otherwise, no points will be awarded.

20 points will be awarded to a property that has completed its Environmental Report in accordance with the requirements of the NEPA and related laws (24 CFR Part 58), and the results of such Environmental Report do not render the property ineligible for TCAP funds.

20 points will be awarded to a property that has received an Architect's certification that the property's design is compliant with Section 504 of the Rehabilitation Act of 1973 (24 CFR Part 8).

20 points will be awarded to a property with written permanent financing commitments from all intended sources of permanent financing, including developer-provided financing (deferred developers fee). The estimated loan amount, interest rate, loan and amortization term(s), and lien position must be provided for each source of permanent financing. Permanent financing commitments from one lender, when the intent is to actually utilize permanent financing from another lender are not acceptable for the purposes of awarding these points.

20 points will be awarded to a property that has approved (signed by the owner, project architect, general contractor, construction lender, and permanent lender) plans and specifications (with seals of the Architect and/or Engineer).

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20 points will be awarded to a property that has an executed, fixed-price construction contract between the Property Owner and the General Contractor, specifying the end of construction and the end of construction is expected to occur on or before August 31, 2011; and such construction contract contains appropriate provisions for the payment of Davis-Bacon wages, and record-keeping, reporting and other compliance requirements associated with Davis-Bacon.

Note 1: The fact that the TCAP end of construction date is later than the Low-Income Housing Tax Credit Program placed-in-service date requirement associated with a property with a 2007, 2008, or 2009 Carryover Allocation Certificate(s) does not in any way alter nor serve to extend the applicable Low-Income Housing Tax Credit Program placed-in-service date requirement.

Note 2: The General Contractor's books and records will be required to be audited of the actual costs of construction and compared to the detailed estimate of costs in accordance with HUD's requirements. The General Contractor for each TCAP-funded property will need to become familiar with HUD's contractor audit requirements.

10 points will be awarded to a property that has a Contractor's certification that the executed, fixed-priced contract is based upon a detailed construction cost estimate that includes the appropriate Davis-Bacon wages. The cost of Davis-Bacon wages should be clearly identified and totaled in the detailed construction cost estimate. A copy of the wage-rate decision used must be provided.

10 points will be awarded to a property that has received, in writing, a Notice(s) to Proceed to Construction from the construction and permanent lender(s).

10 points will be awarded to a property, the owner of which has established site control in the form of a recorded deed in the ownership entity's name for the subject property prior to the enactment of ARRA on February 16, 2009.

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20 points will be awarded to a property where the principal(s) of the developer and ownership entity have each participated in 6 or more Low-Income Housing Tax Credit Program properties that are located in West Virginia, that have already been placed-in-service, and that have received the Allocation Certifications (IRS Form 8609) for all of the building(s) and credit types associated with each such property from the WVHDF.

A property will be awarded 2 points for each Low-Income Housing Tax Credit Program property where the principal(s) of both the developer and the ownership entity have placed all of the buildings in any such property in service within 18 months of the end of the calendar year in which each such property received its Carryover Allocation Certificate(s), regardless of the state in which any such property is located.

For any state other than West Virginia, the principal(s) of the developer and the ownership entity will have to prepare and provide a list of such properties (such list including, for each property, the name, location, building identification number(s), date of Carryover Allocation(s), and the placed-in-service date(s) for each building in each such property). This list will need to be signed by the principal(s) of the developer and the ownership entity, and by an official of the applicable Housing Credit Agency(ies) where any of these properties are located. A maximum of 30 points will be available under this criterion.

20 points will be awarded to a property, where the principal(s) of the ownership entity have been subjected to an A-133 Federal Compliance Audit within the past six audit years in connection with the expenditure of HUD funds which involved requirements similar to those associated with TCAP (including, but not limited to Davis-Bacon Act, NEPA (environmental), and other cross-cutting federal requirements), provided that the resulting A-133 Federal Compliance Audit did not contain any audit findings or material weaknesses.

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**RECAPTURE AND RE-AWARD OF TCAP FUNDS**

In the event a property owner fails to meet the requirements of HUD or the WVHDF with respect to an award of TCAP funds, or fails to comply with the terms and conditions of such award, such as through noncompliance with the income and rent restriction applicable to the Low-Income Housing Tax Credit Program, or in the event a TCAP-eligible Credit Award(s) is (are) returned, cancelled or rescinded in what the WVHDF determines to be a non-de minimis amount, the TCAP funds awarded to such property will be subject to recapture. A TCAP-eligible Credit Award is essential to the receipt of TCAP funds.

In the event the equity provider, for any reason, is no longer a part of a property that is awarded TCAP funds, and an equity provider cannot be obtained for such property, the TCAP funds awarded to such property will be subject to recapture. An investor is essential to the use of a TCAP-eligible Credit Award, and therefore, is also essential to the receipt of TCAP funds. If a property is unable to use their TCAP-eligible Credit Award and/or is unable to secure a substantial equity provider, the principals in this property need to re-evaluate such property's likelihood of financial feasibility and long-term viability.

In the event the property owner fails to expend awarded TCAP funds in a regulatory compliant **and** timely fashion, as will be specified in the TCAP Agreement between the property owner and the WVHDF, the property owner will be in default of the terms of the TCAP Agreement and the TCAP funds awarded to such property will be subject to recapture.

Therefore, it is imperative that the recipient of an award of TCAP funds initially establish a realistic and conservative construction schedule and timeline, monitor progress on a weekly and monthly basis in order to stay on or ahead of their construction schedule, upon which, in part, their property was selected to receive an award of TCAP funds. An anticipated construction and disbursement schedule for TCAP funds will be incorporated into each TCAP award agreement, which will also include sanctions for failure to adhere to the construction and disbursement schedule. The WVHDF will be requiring weekly and monthly progress reports, and measuring actual performance to the construction schedule and timeline, and the State and federal expenditure requirements. It is also imperative that the recipient (and their partners) of an award of TCAP funds must possess or acquire the necessary expertise to comply with the regulatory

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requirements associated with TCAP funds (specifically including, but not limited to Davis-Bacon Act, NEPA (environmental), and other applicable cross-cutting federal requirements).

There may be other circumstances under which the WVHDF may recapture TCAP funds awarded to a property and re-award such TCAP funds to other eligible property(ies) that is (are) currently wait-listed for TCAP funds. The foregoing is not and should not be interpreted to be an exhaustive listing of all of the circumstances giving rise to the recapture of TCAP funds from a property that received an award of TCAP funds.

The authority and obligation of the WVHDF to recapture TCAP funds will be established in each TCAP award agreement and secured by an appropriate lien on the property. Lien priority for recapture will be established by the WVHDF in such fashion as not to impair the property owner's ability to obtain financing and equity. However, in many cases, the recapture of TCAP funds will threaten the financial feasibility and long-term viability of the property from which they are recaptured. Therefore, TCAP participants should structure their business arrangements carefully so as to comply with all applicable requirements. TCAP funds that are recaptured will be re-awarded to other eligible property(ies) that is (are) currently wait-listed for TCAP funds.

With respect to references appearing above as to the recapture and re-award of TCAP funds, the re-award of TCAP funds will be based upon the highest scoring property on the TCAP waiting list, unless the TCAP funds available do not result in such property being able to achieve financial feasibility, in which case such property will be passed over. This process will continue until the TCAP funds can be re-awarded to a wait-listed property that is able to achieve financial feasibility as a result of the amount of re-awarded TCAP funds.

**RIGHT TO EXERCISE DISCRETION**

The contents of this document represent the WVHDF's intended preferences for use of TCAP funds for eligible Low-Income Housing Tax Credit Program properties. However, in recognition of the uniqueness of each property, the WVHDF realizes the need to reserve the right to exercise reasonable and case-

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specific discretion of the provisions/contents of this document, based upon our assessment of the need for use of any such discretion. The determination to exercise discretion will be on a case-by-case basis and the WVHDF will only exercise such discretion which is fully within the legislation and guidance for the TCAP.

**DISCLAIMER**

**The purpose of this document is to provide the competitive selection criteria for selecting from eligible properties those properties that will be selected to receive an award of TCAP funds. This document is not intended to and should not, in any way, be construed or interpreted to be complete with respect to the WVHDF's receipt, award, commitment, disbursement and asset management of TCAP funds. This document is not intended to and should not, in any way, be construed or interpreted to provide all of the requirements that any recipient of TCAP funds from the WVHDF will have to comply. Interested parties may type: HUD TCAP into your internet search engine box for guidance on federal TCAP requirements.**

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**CROSS-CUTTING FEDERAL REQUIREMENTS**

- **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** Property owners must follow the affirmative fair housing marketing plan established by the WVHDF when marketing units.
- **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”
- **National Environmental Policy Act and Related Laws** (Environmental review responsibilities) and implementing regulations at 26 CFR Part 58
- **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
- **Davis-Bacon Prevailing Wages**
- **“Anti-Lobbying” Restrictions** (Restrictions on lobbying in 31 USC 1352 and implementing regulations at 24 CFR Part 87 “New Restrictions on Lobbying”)

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**CROSS-CUTTING FEDERAL REQUIREMENTS** (Continued)

- **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** (2 CFR Part 2424 “Non-procurement Debarment and Suspension”)