



American Recovery and Reinvestment Act  
Implementation Plan

Revised: May 3, 2010

## Overview

The American Recovery and Reinvestment Act of 2009 (Recovery Act or the Act) was signed into law on February 17, 2009. The Recovery Act contains a number of funding mechanisms targeted at stimulating economic activity throughout the country in a broad array of categories. Within the Act, there are two provisions directly targeted to the Low Income Housing Tax Credit (LIHTC) program, including:

- **The Tax Credit Assistance Program (TCAP):** an allocation of additional "HOME-like" funds designed to provide tax credit developments with gap financing; and,
- **The Tax Credit Exchange Program (TCEP):** An exchange provision that allows housing credit agencies to monetize housing tax credits for up to 85 percent of the 10-year credit amount.

As the state of Colorado's housing credit agency, Colorado Housing and Finance Authority (CHFA) is responsible for overseeing the implementation and administration of these programs and will have direct reporting requirements to a number of state and federal governmental agencies.

In general, CHFA's primary objective is to award these funds in a manner that is consistent with the spirit and intent of Congress and with the low income housing tax credit (LIHTC) Qualified Allocation Plan (QAP). In our view that means deploying the stimulus funds into the system as quickly and efficiently as possible, while maintaining the same level of fiscal responsibility and oversight required in awarding tax credits.

CHFA's top priority will be to assist those "shovel ready" projects that have already received a reservation of tax credits but have stalled due to the current economic conditions and/or the drop in equity pricing in the tax credit markets. In addition, CHFA recognizes that the LIHTC program has been successful because of the vital partnership between the public and private sectors, and thus will seek to preserve these partnerships by

encouraging developers to keep equity providers invested in the projects whenever possible.

Notwithstanding anything herein to the contrary, in order to assure that the ARRA Implementation Plan (Implementation Plan or Plan) will allow CHFA to maximize the use of Recovery Act resources in Colorado, CHFA may in its sole discretion waive any section of the Implementation Plan (not otherwise required by Section 42 or the Recovery Act), which would under such circumstances, hinder the ability of CHFA to meet the intent of the Recovery Act.

This Implementation Plan will continue to be revised as further directives or guidance is received by the departments of HUD (HUD), Treasury (Treasury), or the Internal Revenue Service (IRS).



American Recovery and Reinvestment Act  
Tax Credit Assistance Program (TCAP)  
Revised TCAP Implementation Plan

Revised May 3, 2010

The TCAP portion of the Implementation Plan has been revised for the allocation of remaining and/or returned TCAP funds.

### **Eligible Projects**

Projects eligible to receive TCAP assistance are rental housing projects that received an award (reservation) of Low Income Housing Tax Credits (LIHTCs) under Section 42(h) of the Internal Revenue Code of 1986, as amended (IRC) (26 U.S.C. 42), during the period from October 1, 2006 to September 30, 2009 and have not received an issuance of IRS Forms 8609 for their buildings.

### **Minimum Threshold Criteria**

All Projects will be required to submit an updated application indicating the current financing gap along with a narrative describing the reason for the financing gap and the need for TCAP funds. As part of the required competitive award process, all applicants must meet the following threshold criteria in order to qualify for consideration of TCAP funds:

1. Must have received an award of credit (as defined above) between October 1, 2006, and September 30, 2009;
2. Must be a project for which IRS Forms 8609 have not been issued;
3. Must demonstrate the ability to expend 75 percent of the TCAP funds by February 16, 2011, and 100 percent of TCAP funds by February 16, 2012;
4. Must demonstrate the ability to meet all Federal Cross Cutting Requirements including successful completion of the environmental clearance review under the National Environmental Policy Act (NEPA), (see "Choice Limiting Activity Restrictions" and Appendix A of the ARRA Implementation Plan);

5. Must demonstrate that the project's affordability mix that was the basis in whole or in part to receiving a reservation or initial determination of credit has not materially changed;
6. Must demonstrate that the project continues to meet the QAP's Criteria for Approval including but not limited to: market conditions, readiness to proceed, overall financial feasibility and viability, experience of development team, total project costs per unit, proximity to existing tax credit projects, site suitability, and no outstanding noncompliance for existing projects of development or management team.

### **Choice-Limiting Activity Restrictions**

The Federal Cross Cutting Requirements are those typically associated with HOME, CDBG, and other federal funds. These requirements include, among other things, compliance with the National Environmental Policy Act (NEPA), which provides that once a developer applies for TCAP funds, committing TCAP funds to or undertaking any "choice-limiting" activity prior to successful completion of the environmental clearance review is prohibited. This includes any activity that will result in a physical change and/or acquisition, including leasing, or disposition of real property. Please refer to Appendix A of the Implementation Plan for additional information.

### **Additional Competitive Selection Criteria for TCAP Funds**

In addition to the eligible and threshold criteria, projects will be ranked as First, Second or Third Priority based upon the following criteria.

#### **First Priority Projects**

Projects that meet all four of following criteria will be considered First Priority for approval of TCAP funds:

1. Projects that have closed or demonstrate the ability to close within 30-60 days of a receipt of an award of TCAP funds;

2. Projects that have already complied with all Federal Cross Cutting Requirements (as described in Appendix A) ;
3. Projects that can demonstrate the ability to close or complete construction in the shortest time period;
4. Projects that have a commitment with a LIHTC investor.

### **Second Priority Projects**

Projects that meet one or more, but not all of the four First Priority criteria above will be considered Second Priority projects.

### **Third Priority Projects**

Projects that need TCAP funds for the following reason will be considered Third Priority projects.

- Projects that are reducing other sources of funding to ensure economic viability of the project.

### **Changes to Projects**

Developers that have previously received a tax credit award must identify any material changes to the project from the time the preliminary or carryover tax credit application was submitted as part of their application/request for Recovery Act funds. The final determination of what is a material change will be made at CHFA's sole discretion.

Such changes include but are not limited to changes to the site, scope, costs, or design. The developer must have received prior approval from CHFA for the changes. Changes in a project's characteristics that were the basis, in whole or in part, for receiving a reservation or initial determination of credit may result in the Project being ineligible for TCAP funds.

## **Application Deadlines**

CHFA has re-opened the TCAP application process and is accepting applications effective immediately (May 7, 2010). A competitive round for applications will be held until June 7, 2010. All applicants who wish to compete for the remaining funds must submit an application no later than June 7, 2010 at 5:00 pm, Mountain Standard Time.

Applications will continue to be accepted after this competitive round if any TCAP funds remain available after awards are given from the competitive round. A notice of the final closing of the TCAP application process will be posted on CHFA's website once that date has been determined.

## **Application Review**

CHFA staff will re-evaluate a project to determine whether it still meets the requirements of the QAP including, but not limited to: marketability, financial feasibility and viability, strength of the development team, no outstanding noncompliance for existing projects of development or management team, and minimum proforma underwriting standards.

## **Site Evaluation**

After reviewing the TCAP application, CHFA staff may conduct a site visit to evaluate the continued suitability of the site. If performed, site visits may include the evaluation of the following: proximity to schools, shopping, public transportation, medical services, parks/playgrounds; marketability; conformance with neighborhood character and land use patterns; site suitability regarding slope, noise (e.g., railroad tracks, freeways), environmental hazards, flood plain or wetland issues.

## **Application Review Meeting**

Upon submission by the applicant, and review by CHFA of the above information, CHFA staff will contact the applicant to discuss any issues or concerns with the information submitted or with the proposed site. In order for award decisions to be made in as timely a manner as possible, the applicant will have ten (10) business days to address any of CHFA's concerns or issues. If the requested information is not received by the deadline, staff decisions regarding a recommendation for an award will be made using only the information already submitted and could result in a delay in CHFA's review of the application which may negatively impact the priority status of the project.

## **Award of TCAP**

After review of the items above and any additional requested information, staff will make a recommendation to the CHFA Tax Credit Assistance Program Committee for approval. Committee members will consist of the Executive Director, the Chief Operating Officer, the Chief Financial Officer, the Director of Commercial Lending, the Director of Asset Management, the Director of Marketing and Strategic Development, the Manager of Multifamily Loan Production, the Manager of Special Assets, the Manager of Program Compliance and, as a non-voting member, the General Counsel or assigned designee.

Projects that receive approval from the Committee will be given an award of TCAP funds. TCAP awards are valid so long as project owners continue to comply with all TCAP requirements and deadlines. Projects that do not comply with all TCAP requirements and deadlines or appear to be at risk of not complying with all TCAP requirements and deadlines will receive a deficiency letter from CHFA describing the nature of the deficiency along with actions and deadlines for curing the deficiency. Projects that do not cure the deficiencies to the satisfaction of CHFA by the established deadlines

will be subject to the remedies described in the TCAP written agreement and any other documentation related thereto which may include a full or partial recapture of TCAP award funds.

## **Eligible Uses of Funds**

TCAP funds must be used for capital investment in eligible LIHTC projects. Capital investment means costs that are included in the 'eligible basis' of a project under Section 42 of the IRC., costs of land acquisition, on-site demolition costs, and hazardous material remediation costs. Section 1604 of the Recovery Act specifically prohibits the use of grant funds for swimming pools. TCAP funds cannot be used for the administrative costs of CHFA including the cost of operating the program or monitoring compliance.

## **Fees**

CHFA is required under the Recovery Act to perform asset management functions to ensure compliance and the long-term viability of the projects. As allowed under the Recovery Act, CHFA will charge reasonable fees to cover the costs of CHFA's asset management of the projects as required by the Recovery Act

These fees will be based upon costs above and beyond the normal reservation, allocation, and compliance activities for tax credits. These fees cannot be paid from Recovery Act funds. The TCAP Asset Management Fees will be charged to the projects as follows:

- **Initial Fee:** \$300 per unit, not to exceed 1% of total TCAP funding
- **Years Two and Three:** (2011 and 2012): \$75 per unit per year
- **Thereafter:** \$40 per unit per year with a 3% annual increase

## **TCAP Controlling Documents, Disbursements and Expenditure Deadlines**

**TCAP Funding Commitment** - CHFA will provide a TCAP Funding Commitment (Commitment) for a project that has received an award. The Commitment will specify the funding type and terms. Funds will be awarded as a 'soft loan' with no interest or periodic payments. The Commitment will also contain the conditions under which the funds will be disbursed. If an owner fails to expend TCAP funds according to the written agreement, CHFA will assess whether the delay will affect its ability to meet the federal deadlines. Depending upon the circumstances, CHFA may allow the owner an opportunity to remedy the situation.

If the construction or other delays will affect the Project's and/or CHFA's ability to meet the federal deadlines, CHFA will suspend making any further disbursements and take the necessary steps to redistribute the funds to a another eligible project. These steps will include the following:

- Initiating foreclosure proceedings to recoup funds already expended, and
- Redistribute the remaining funds and/or recouped funds to other eligible projects based on the selection criteria of this Plan.

**Written Agreements** - CHFA will execute one or more legally binding written agreements with each project owner. The written agreements will set forth all of the TCAP program and crosscutting federal grant requirements and completion and expenditure deadlines applicable to the funding, and will make these requirements and deadlines enforceable through the recordation of a restriction that is binding on all owners and successors and runs with the land. The Written Agreement for a project cannot be executed until environmental clearance for the project is completed and the Request for Release of Funds (RROF) is approved. CHFA will retain a copy of the executed TCAP Written Agreement and make these agreements available for HUD review, upon request. The TCAP Written Agreement will also provide for remedies in the event of loan default or other noncompliance. These remedies may include but are not limited to the following:

- Declaring the development team and/or management agent as not in good standing;
- Changing the structure of the ownership entity, including adding or removing members;
- Replacing the management agent;
- Initiating foreclosure proceedings; and

- Other remedies as determined by HUD or CHFA

**Disbursement of Funds** - The TCAP written agreement must be signed and dated by CHFA and the project owner before any TCAP funds are disbursed. Federal funds cannot be drawn from the Treasury in advance of the need to pay an eligible cost. Consequently, TCAP funds cannot be drawn from the Treasury and placed in escrow or advanced in lump sums to project owners. Once funds are drawn from CHFA's Treasury account, they must be expended for an eligible TCAP cost within 3 days.

**Expenditure Deadlines** - As required under the Recovery Act, CHFA must comply with the following deadlines for both commitment and expenditures of TCAP funds:

- Commit not less than 75 percent of its TCAP grant within one year of the enactment of the Recovery Act by February 16, 2010;
- Demonstrate that all project owners have expended 75 percent of the TCAP funds within two years of the enactment of the Recovery Act by February 16, 2011; and
- Expend 100 percent of CHFA's TCAP grant within three years of the enactment of the Recovery Act by February 16, 2012.

CHFA will track and report to HUD on a regular basis in HUD's Integrated Disbursement and Information System (IDIS) its progress in committing and expending TCAP funds. Any TCAP funds not expended by the end of the three-year performance period will be recaptured by HUD.

**Monitoring and Site Reviews** - CHFA will monitor the Project's compliance with meeting the expenditure requirements and deadlines and may perform site reviews as needed to ensure compliance. Project owners will be required to demonstrate that the TCAP funds were used for capital investment items and are expended within three days of disbursement from Treasury.

### **Program Income**

Program Income means gross income received by CHFA generated by the use of TCAP funds during the Grant Period as defined below. This includes,

but is not limited to, principal and interest from a loan made by CHFA with TCAP funds, or other income or fees received from project owners in connection with TCAP funds, and interest earned by CHFA on program income before its disposition. CHFA must record program income receipts in HUD's IDIS and use them in accordance with the TCAP requirements. CHFA must expend all program income for eligible TCAP costs before additional appropriated TCAP grant funds are drawn from the Treasury. CHFA must continually monitor the amount of program income on-hand or anticipated, and be aware of these amounts when assessing its progress towards meeting the commitments and expenditure deadlines for TCAP funds.

- **Grant Period** - The Grant Period is defined as the period beginning on the date in which CHFA receives its award of TCAP funds and ending on the date in which CHFA has submitted its final financial status report to HUD for the closeout of the grant indicating that all unused TCAP funds are expended or February 16, 2012, whichever is earlier.

### **Asset Management**

CHFA will perform asset management functions, or contract for performance of these services, at the owner's expense, to ensure compliance with Section 42 and the long term viability of projects funded by TCAP. CHFA will notify owners of the fee amounts. Costs associated with asset management are administrative costs and are not eligible to be paid with TCAP funds.

### **Redistribution of TCAP Funds**

CHFA is responsible for redistributing its TCAP funds to ensure compliance with the commitment and expenditure deadlines established by the Recovery Act. If a project owner fails to expend TCAP funds in a timely manner, CHFA will assess whether the delay will affect the ability to meet the TCAP deadlines, and will take the necessary steps to redistribute the funds to another eligible project. The TCAP written agreement and TCAP Funding Commitment will specify a schedule for the expenditure of TCAP funds and outline the circumstances under which TCAP funds will be recaptured if the project owner fails to meet the schedule. CHFA will closely monitor the progress of each TCAP project to ensure that it will meet TCAP expenditure deadlines.