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Comparison of Requirements for the Tax Credit Assistance Program and the Section 1602 Grants

Effective Date or Deadline

The deadline for state housing agencies to submit their Tax Credit Assistance Program (TCAP) applications to HUD is June 3, 2009.

The Treasury Department is accepting applications from state housing agencies for Low Income Housing Projects in Lieu of LIHTCs (or, Section 1602 Grants) until the Section 1602 program ends on December 31, 2010.

Background

The American Recovery and Reinvestment Act (ARRA) was signed into law on February 17, 2009 as P.L. 111-5. In order to stimulate the economy, Congress included several measures in this bill to assist the struggling housing sector.

Two separate programs were created in the ARRA legislation to fill the equity investment shortfall in Low Income Housing Tax Credit (LIHTC) projects. The first program, now known as the Tax Credit Assistance Program (TCAP) is administered at the federal level by HUD. It provides \$2.25 billion in appropriations through the HOME program, which states will competitively award to LIHTC projects. The second program, Section 1602 grants, allows state housing agencies to receive a grant equal to up to 85 percent of 40 percent of the state's 2009 low-income housing tax credit allocation in lieu of the low-income housing tax credits they would have received. The Treasury Department is administering the Section 1602 program at the federal level. State housing agencies are responsible for competitively awarding the Section 1602 grants to qualified low-income properties.

For more background information on the ARRA legislation, please see:

- [“E-NAHMA Analysis 2009-0209- Update on The Senate Stimulus Legislation;”](#) and
- [“E-NAHMA Analysis 2009-0212- Final Version of the Stimulus Bill \(HR 1\).”](#)

Summary

A detailed side-by-side comparison of the program requirements for TCAP and Section 1602 Grants follows NAHMA’s position statement. The information included in the matrix comes from guidance documents released by HUD and Treasury, as well as the May 6 joint HUD and Treasury webcast.

For more information on the TCAP program, see:

- [Implementation of the Tax Credit Assistance Program \(CPD Notice 09-03\)](#) ; and
- The [HUD Recovery Website](#).

To learn more about the Section 1602 program, see:

- The Application Terms and Conditions on the [Treasury-IRS Recovery Website](#); and
- The [Low Income Housing Grants in Lieu of Tax Credits Fact Sheet](#).

Finally, the joint HUD and Treasury webcast with the companion powerpoint slides are available on the HUD webcast archives page at: [Tax Credit Assistance Program, May 6, 2009](#).

Pros and Cons

For purposes of this NAHMA Analysis, it is easier to discuss the pros and cons of these programs together. Each of these programs is new and temporary. On the positive side, Congress has recognized the unprecedented challenges LIHTC properties are facing as a result of the financial crisis. ARRA created two new financing tools to help struggling shovel-ready properties move forward in spite of the economic turmoil in the financial markets. However, HUD and Treasury have spent precious time creating new regulatory guidelines to administer these programs because they are new. In order to expedite relief to the properties by avoiding the need for new regulatory regimes, NAHMA originally urged Congress to provide LIHTC gap financing through existing HUD-FHA programs. Considering the short timeframe available for LIHTC properties to use these programs and the need for immediate gap-financing, NAHMA is pleased that HUD and Treasury took the first steps to launch these programs. On the other hand, there are still outstanding questions about how these programs will be implemented at the state and federal levels. The longer such information gaps remain, the more reluctant some owners may be to apply for the funding.

Owners and agents who are successful in their TCAP or Section 1602 applications should also expect intense scrutiny about how these funds are used. The Obama administration has announced that they are taking unprecedented actions to ensure transparency in the use of ARRA funds, and to protect funding authorized through ARRA from waste, fraud and abuse. The likely result of this oversight will be intense paperwork and reporting requirements for successful applicants.

NAHMA's position

NAHMA looks forward to the return of a healthy, robust LIHTC program. In the meantime, it is our hope that TCAP and Section 1602 grants will allow shovel-ready projects to move forward as planned in spite of the current financial difficulties. NAHMA suggests that members who may be interesting in applying for TCAP or Section 1602 grants frequently check their state housing agencies' websites for announcements and application packages.

In the longer-term, NAHMA believes additional legislation will be necessary to attract new investors to the LIHTC program. We will also continue to advocate for measures which will ensure long-term sustainability of these properties.

	Tax Credit Exchange Program (TCAP)	Section 1602 Grants to States for Low Income Housing Projects in Lieu of LIHTCs (Or, Section 1602 Grants)
Administering Federal Agency:	HUD	Treasury
When does the program end:	February 16, 2012	December 31, 2010
Deadline for State Agencies to apply for funding:	June 3, 2009	Treasury has urged State Housing Credit Agencies to apply in May and June 2009, but States may submit an application (and subsequent amended applications) until the program ends on December 31, 2010.
How much money is available, and how will it be distributed to State Agencies:	\$2.25 billion distributed to State housing credit agencies based on the percentage of FY 08 HOME appropriations received by states & participating jurisdictions in the state.	<p>Determined by a statutory formula based on 4 factors. Only factors (a) and (c) are known at this time, which is why states are permitted to make multiple applications as the other factors become known.</p> <p>The grant election amount is the amount requested by the State which does not exceed 85 % of:</p> <p>(1) 10 times 100 % of (a) the unused State housing credit ceiling (if any) of the State for calendar year 2008 and (b) the amount of State housing credit ceiling returned in 2009</p> <p>Plus</p> <p>(2) 10 times 40 % of (c) the greater of \$2.30 multiplied by the State population or \$2,665,000 and (d) unused housing credit carryover allocated to the State in the 2009 National Pool.</p>

	Tax Credit Exchange Program (TCAP)	Section 1602 Grants to States for Low Income Housing Projects in Lieu of LIHTCs (Or, Section 1602 Grants)
Type of award to properties:	<p>Grants or Loans awarded competitively pursuant to the existing QAP</p> <p>However, States that make loan awards could generate program income which must be spent before drawing down the awards.</p>	<p>Grants Only</p> <p>Properties will receive cash assistance which is not required to be repaid unless there is a recapture event.</p> <p>The grant to the property may not exceed the amount necessary to ensure financial feasibility of the project & its viability throughout the credit period.</p>
Eligible Properties	<p>Rental housing projects that received or will receive LIHTCs during the period from Oct. 1, 2006 to Sept. 30, 2009 (i.e. during federal FYs 2007, 2008, or 2009).</p> <p>A property is NOT eligible for TCAP assistance if it returned its LIHTCs; the statute requires TCAP projects to <i>have</i> LIHTCs.</p> <p>State agencies must give priority to projects that will be completed by Feb. 16, 2012. This standard must be the main selection criterion in any TCAP competition.</p>	<p>Qualified low-income buildings under Section 42 with or without a Section 42 allocation.</p>

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Eligibility of properties with GO-Zone or Midwestern Disaster Area Housing Credits	<p>ONLY if the property received or will receive a “nominal” amount of Section 42 (h) “standard” LIHTCs during Federal Fiscal Years 2007, 2008 or 2009 [October 1, 2006 to September 30, 2009].</p> <p>States will determine what constitutes a “nominal” amount of LIHTCs.</p>	NO
Eligible Uses for Funds	<p>Capital investment in LIHTC projects. Only costs that are included in eligible basis under Section 42.</p> <p>The statute specifically prohibits use of grant funds for swimming pools.</p> <p>May not be used for administrative expenses.</p>	<p>Construction, acquisition and rehabilitation of qualified low income buildings.</p> <p>May not be used for administrative expenses.</p>
Asset Management & Compliance Responsibilities of State Housing Agencies	States are responsible for conducting asset management or contracting for it to be done to ensure compliance with Section 42 of IRC and long-term viability of projects. Associated costs of asset management are not TCAP eligible & will be passed along to owners.	States may charge owners reasonable fees for asset management and compliance monitoring which do not exceed costs.

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Applicability of Section 42 requirements	TCAP assistance must be made in the same manner & subject to the same limitations that apply to LIHTC projects (including rent, income, use restrictions and compliance monitoring) as required under Section 42.	YES. Section 1602 grants shall be made in the same manner and subject to the same limitations as an allocation of LIHTCs under Section 42.
Efforts to receive investment commitments on LIHTC	No apparent federal requirement.	States must determine applicants for Sec. 1602 grants “have demonstrated a good faith effort to obtain investment commitments for tax credits in lieu of a subaward.” States will determine what constitutes a “good faith effort.”
Reporting requirements	States will submit quarterly reports to HUD describing: <ul style="list-style-type: none"> ○ Total amount of TAP funds received; ○ Amount of TCAP funds expended or obligated to projects or activities, including unobligated balances; ○ A detailed list of all projects or activities for which TCAP funds were expended or obligated, including: Name & description of the project; Evaluation of the completion status of the project; and Estimated numbers of jobs created & retained by the project. Additionally, each state agency must post on its website: <ul style="list-style-type: none"> ○ A description of its competitive selection criteria for awarding TCAP funds to eligible projects; and ○ All projects selected for funding & the amount of each TCAP award. 	States must provide quarterly financial status & project performance reports to Treasury. Performance reports include: <ul style="list-style-type: none"> ○ Name of recipient & project; ○ Description of project & location; ○ Numbers of construction jobs created & retained; ○ Numbers of non-construction jobs created & retained; ○ Numbers of total housing units newly constructed & rehabilitated; ○ Numbers of low-income housing units newly constructed & rehabilitated

	Tax Credit Exchange Program (TCAP)	Section 1602 Grants to States for Low Income Housing Projects in Lieu of LIHTCs (Or, Section 1602 Grants)
Considered federal financial assistance:	YES	NO
Applicability of cross-cutting federal regulations:	<p>YES. These awards trigger:</p> <ul style="list-style-type: none"> ○ Fair Housing Act (24 CFR Part 100 & 24 CFR Part 107 Equal Opportunity in Housing); ○ Title VI of the Civil Rights Act of 1964 (24 CFR Part 1, and LEP obligations); ○ The Age Discrimination Act of 1975 (24 CFR Part 146 “Nondiscrimination on the Basis of Age in HUD Programs or Activities Receiving Federal Financial Assistance;” ○ Affirmatively Furthering Fair Housing (marketing plan and translated materials for LEP persons); ○ Davis-Bacon Prevailing Wages (Projects already under construction may be able to obtain a determination, under 29 CFR 1.6(g) that Davis-Bacon requirements apply prospectively as of the TCAP award date.); ○ Section 504 of the Rehabilitation Act of 1973 (24 CFR Part 8); 	<p>The Sec. 1602 grants are not considered federal financial assistance.</p> <p>Fair Housing laws apply to multifamily rental properties.</p>

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Applicability of cross-cutting federal regulations (continued):	<ul style="list-style-type: none"> ○ National Environmental Policy Act of 1969 (24 CFR Part 58 “Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities.” States must complete an environmental review before they can award TCAP to the property); ○ Lead –Based Paint Poisoning Prevention Act and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (24 CFR Part 35 applicable for target housing); ○ Anti-Lobbying Restrictions (24 CFR Part 87 “New Restrictions on Lobbying” prohibits use of appropriations to lobby agencies or Congress); ○ Drug-Free Workplace Act of 1988 (24 CFR Part 21 “Government Wide Requirements for Drug-Free Workplace [Grants]). 	
Recapture	Clarification is necessary. The guidance says that States must closely monitor the progress of each TCAP project to ensure that it will meet TCAP expenditure deadlines, since failure to do so will result in recapture of funds by HUD.	States will notify properties that any amount subject to recapture becomes a debt owed to the United States, payable to the General Fund of the Treasury & enforceable by all available means against any assets of the recipient entity.