

**DELAWARE STATE HOUSING AUTHORITY
TAX CREDIT ASSISTANCE PROGRAM (TCAP)
PROJECT SELECTION CRITERIA AND TCAP PROCESS**

The American Recovery and Reinvestment Act (ARRA) of 2009, PL 111-5, signed into law on February 17, 2009, includes \$2.25 billion in special HOME funds to be allocated to housing credit agencies in order to facilitate the production of projects awarded low-income housing tax credits in “fiscal years” 2007, 2008 and 2009 but could not go forward because they could not obtain equity.

Delaware State Housing Authority (DSHA) is the housing credit agency for the State of Delaware that administers the Low Income Housing Tax Credit (LIHTC). DSHA will administer the state’s TCAP program and will process and TCAP applications in accordance with the selection criteria listed below.

DSHA is the State Community Development and Planning Agency (CPD) for the State of Delaware’s HOME Program and Neighborhood Stabilization Program. DSHA is also the Consolidated Planning entity for Kent and Sussex County and administrator of Community Development Block Grant (CDBG), Emergency Shelter Grant (ESG), Housing Opportunities for Persons with Aids (HOPWA) for Kent and Sussex Counties in Delaware. Other Federal grant funds administered by DSHA include Project-Based Section 8 Rental Assistance for the entire State, Housing Choice Voucher Program, Public Housing Program, Capital Fund Program, Public Housing Homeownership Program and the Moving to Work Program in Kent and Sussex Counties.

Delaware State Housing Authority (DSHA) intends to accept the entire \$6,608,893 TCAP formula allocation. DSHA will follow ARRA’s overall purpose of creating and saving jobs in the near term by using the appropriation to start construction on shovel-ready projects.

I. INTRODUCTION

Terms used in the TCAP Criteria will have the same meaning as under IRS Code Section 42, federal regulations, the Qualified Allocation Plan (QAP), U.S. Housing and Urban Development (HUD) CPD Notice 09-03, and legal agreements between DSHA and Owners.

II. APPLICATION AND EVALUATION

A. THRESHOLD ELIGIBILITY

1. Eligible TCAP projects must have a binding tax credit award from DSHA between the dates of 10/01/06 and 9/30/09 and require additional funding to be completed and placed into service. For purposes of the TCAP Criteria, “award” means an executed DSHA Reservation letter or Carryover Agreement and the project has been an approved ranked property.
2. Eligible TCAP properties must have met DSHA’s QAP threshold and ranking requirements.
3. The project and Applicant must be eligible under applicable federal requirements, including ceasing all development activity as further described in Section II (B)(2) below.

4. The project complies with the terms of its Carryover Allocation Agreement or Reservation Letter and the Owner has made no material changes without DSHA's prior approval after the final accepted LIHTC application.
5. Eligible TCAP applicants must complete DSHA's TCAP Application within 60 days of DSHA's date of approval from HUD on DSHA's submission for TCAP funds. DSHA may accept applications after the 60-day period if there are uncommitted TCAP funds remaining.
6. Projects that receive TCAP funds must execute a legally binding loan agreement and such other legal documents as necessary with DSHA that will be recorded restrictions that are binding on the project, all Owners, assigns and their successors. DSHA's binding loan agreement will include typical LIHTC partnership requirements including, but will not be limited to, penalties, reserves, priority of distributions, guarantees, replacement of partners, and the required Federal regulations.

B. APPLICATION PROCESS

1. DSHA will notify Owners that have submitted completed LIHTC applications of the opportunity to apply for TCAP funding.
2. Immediately upon submitting an application for TCAP funding, Applicants are prohibited from undertaking any choice-limiting activity prior to successful completion of the environmental review clearance (i.e., HUD approval of the Request for Release of Funds). This prohibition begins June 2, 2009 and includes leasing or disposition of real property and any activity that will result in a physical change to the property including acquisition, demolition, movement, rehabilitation, conversion, repair, or construction. Performing a choice-limiting action prior to successful completion of the environmental review clearance may disqualify a project from receiving any federal funds, including TCAP.
3. Projects that have not gone to construction closing will be charged an Asset Management fee specifically for DSHA to perform asset management functions and assure compliance with Section 42 of the IRC for the LIHTC program. Asset Management fees may not be paid from TCAP funds. The Asset management fee will be a combination of: \$500 per unit, 1% of the amount of TCAP assistance and the reserved and/or allocated annual credits (either returned or exchanged) multiplied by 10.
4. Applicants will have to make achievable representations with regard to construction timing and expenditures of TCAP funds.
5. If DSHA received more applications for TCAP funding than funds available and more than one application ranks the same according to the above criteria the tie-breaker will be the application that received the highest LIHTC ranking score.

C. SELECTION CRITERIA

DSHA will evaluate applications based on the following criteria, which are listed in order of importance and priority:

1. Eligible TCAP properties must expend TCAP funds by December 31, 2010 and be “completed” with certificates of occupancy or Placed in Service by December 31, 2011.
2. Eligible TCAP properties that have received an award of tax credits and are “shovel-ready” and have an investor will be given priority. **The project owner must have sold as many credits at as high a price as market conditions allow.** Projects that are considered “shovel ready” to start construction are defined as projects that have completed all or the majority of the following:
 - Completed federal requirements, including the environmental review clearance and other cross cutting requirements;
 - Has final construction drawings and plans and specifications;
 - Has solicited three bids for the construction work;
 - Received building permits or letters from the local jurisdiction stating the project has been approved for a building permit;
 - Executed a construction contract, secured construction financing and have set a construction closing date.

TCAP Funds will be awarded in chronological order of “shovel-readiness”.

III. GENERAL REQUIREMENTS

In addition to the terms of the TCAP Criteria, Applicants must comply with DSHA’s 2009 QAP or the QAP with which they made their LIHTC original application and QAP Attachments as follows:

A. UNDERWRITING STANDARDS

1. Eligible TCAP Projects must comply with all DSHA rules, policies, requirements and underwriting criteria regardless of financing sources.
2. The maximum amount of DSHA’s TCAP loan will be \$2,750,000 (or such other amount as DSHA may determine is required) and be no more than the lesser of:
 - (a) The project’s eligible basis (as of the cost certification date), and
 - (b) What is necessary to ensure the project’s financial feasibility and viability for thirty (30) years based on DSHA’s IRS Code Section 42(m)(2) review. TCAP awards may not exceed Section 42 eligible basis.
3. TCAP loans will be for a thirty (30) year term with no interest or principal payments. DSHA will consider grants in lieu of loans to non-profit sponsors.
4. Owners will record a thirty (30) year Declaration of Land Use Restrictive Covenants (Declaration) pursuant to DSHA’s QAP.

5. Owners must meet all Section 42 requirements for income and rents as opposed to HOME requirements.

B. POST-AWARD AND LOAN TERMS

1. TCAP Funding Commitments/Loan Agreements (Commitment) will specify construction schedules and all DSHA, rules and regulations. If an Owner fails to expend TCAP funds according to the TCAP Commitment, DSHA will assess whether the delay will affect Owner's ability to meet federal requirements. Depending on the circumstances, DSHA may allow the Owner an opportunity to remedy the situation.
2. If a construction delay will affect DSHA's ability to meet ARRA expenditure requirements, DSHA will take necessary steps to redistribute TCAP funds to a more deserving project, including the following:
 - De-obligating the remaining TCAP funds;
 - Initiating foreclosure proceedings to recoup amounts already expended; and
 - Redistribute the de-obligated and/or recouped TCAP funds to other eligible projects based on the selection criteria in Section II (C).
3. Remedies for loan default or other noncompliance may include, but is not limited to, DSHA having the ability to do some or all of the following:
 - Declare participants not in good standing;
 - Declare owners and related entities (as determined by DSHA) ineligible to participate in DSHA programs.
 - Change the structure of the ownership entity, including adding or removing members/partners;
 - Replace the management company and contractors;
 - Initiate foreclosure proceedings; and
 - Other remedies as determined by DSHA, such as posting a Letter of Credit.
6. Owners of projects must make good faith effort to sell as many of the awarded credits as circumstances and market conditions allow. Owners of projects with a limited partner that has agreed to a partial credit allocation will be required to return the balance of the tax credit allocation by a date determined by DSHA.
7. Eligible TCAP projects may not pre-pay TCAP funds within three years after the date of the first receipt of TCAP funds. Owners will continue to seek an equity investor to fully or partially replace the TCAP loan. DSHA will not accept TCAP repayments until after closing out its grant agreement with HUD.

C. REPORTING AND COMPLIANCE

1. Owners will report to DSHA at times as determined by DSHA on:
 - All information applicable to TCAP and HOME Investment Partnerships Act funding, as applicable;
 - Failure to report as required will be considered as “noncompliance” and remedied accordingly.
2. Owners will follow DSHA’s processes, requirements, and procedures, the IRS Code for Section 42 projects and any additional compliance requirements made necessary due to TCAP funding.
3. DSHA will report to HUD on the following: total amount of TCAP funds received by DSHA; amount of TCAP funds expended or obligated to projects, including un-obligated balances; a detailed list of all projects for which TCAP funds were expended or obligated; project’s completion deadlines and status, and the estimated number of jobs created and number of jobs retained.

D. CROSS-CUTTING FEDERAL REQUIREMENTS

Owners and projects must comply with all of the following.

1. 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).
2. 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.
3. 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.”
4. Affirmatively Furthering Fair Housing

Owners must establish and follow an affirmative fair housing marketing plan when marketing units. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market to the available housing without regard to race, color, national origin, sex, religion, familial status or disability. The affirmative marketing requirements and procedures adopted must include:

- (a) Methods for informing the public, owners and potential tenants about Federal fair housing laws.
- (b) Requirements and practices each owner must adhere to in order to carry out affirmative marketing procedures and requirements,
- (c) Procedures to be used by owners to inform and solicit applications from persons in the housing market areas that are not likely to apply for the housing without special outreach. Special outreach, as appropriate, includes but is not limited to, the translation of marketing material for persons who are limited English proficient; the placement of translated marketing material in minority owned media; and the provision of meaningful access concerning the residential rental project (e.g. providing translated information about application procedures, tenancy and other project amenities).

(d) Records that will be kept describing actions taken by owners to affirmatively market units and records to assess the results of these actions.

5. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (“Section 504”) 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.”

Section 504 applies to all TCAP projects. For new construction projects and projects undergoing substantial rehabilitation, five percent (5%) of the units must be accessible to persons with mobility impairments and two percent (2%) of the units must be accessible to persons with hearing or vision impairments (See 24 CFR 8.22.) Substantial rehabilitation for a multifamily rental project is defined in Section 24 CFR 8.23 as a project with 15 or more units for which the alterations would equal more than seventy five percent (75%) of the replacement cost. Modifications to projects to comply with Section 504 requirements are eligible costs. However, compliance with Section 504 requirements may be infeasible or impracticable for some projects, depending on where they are in the development process. A new construction or substantial rehabilitation project is ineligible if it cannot be modified to meet the Section 504 requirements. For projects in which the rehabilitation would not be considered substantial, the Section 504 provisions are applicable only to the maximum extent feasible, i.e., not required if it would impose undue financial and administrative burden. (See 24 CFR 8.23.)

6. National Environmental Policy Act and Related Laws (Environmental review responsibilities) and implementing regulations at 24 CFR Part 58.

Once an Owner applies for TCAP funds, committing TCAP or any other funds to or undertaking any “choice-limiting” activity prior to successful completion of the environmental clearance review (i.e., HUD approval of the Request for Release of Funds), is prohibited. See 24 CFR Part 58 for general information about environmental review requirements at http://www.access.gpo.gov/nara/cfr/waisidx_04/24cfr58_04.html or <http://www.hud.gov/offices/cpd/environment/index.cfm>.

7. 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 are applicable to housing that receives Federal assistance.

8. Davis-Bacon Prevailing Wages

Contractors and subcontractors are required to pay prevailing wages to laborers and mechanics in compliance with the Davis-Bacon Act. In the case of projects already under construction, it may be possible to obtain a determination, under 29 CFR 1.6(g), that Davis-Bacon requirements apply prospectively to the construction project, as of the date of the TCAP award.

9. “Anti-Lobbying” Restrictions (Restrictions on lobbying in 31 USC 1352 and implementing regulations at 24 CFR Part 87 “New Restrictions on Lobbying”.)

This statute prohibits the use of funds appropriated by any act by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress,

an officer or employee of Congress, or an employee of a Member of Congress in connection with covered Federal action.

10. 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)”.)

This statute prohibits the receipt of a grant from any Federal agency unless the recipient agrees to provide and certify to a drug-free workplace.

11. OMB Regulations and Circulars (2 CFR Part 2424 “Non-procurement Debarment and Suspension.”)

E. RECOVERY ACT ACCOUNTABILITY AND TRANSPARENCY REQUIREMENTS:

1. DSHA will publish its TCAP Selection Process and Criteria on DSHA’s website http://www.destatehousing.com/services/dv_tcap.shtml and will send all TCAP information to DSHA’s List Serve Interested Parties of the LIHTC program in Delaware. DSHA will make the TCAP Selection Process and Criteria available to the public and accept comments for a five-day period. The TCAP award projects/recipients and funding amounts will be posted on the website. All quarterly reports will be posted to this website for review of the public.
2. DSHA will remain in compliance with the accountability and transparency requirements for the duration of the TCAP grant by posting information to the website for review of the public as needed. All TCAP applications, policies and procedures are available for review by the public.

7/7/2009