

On Tuesday, February 17, 2009, President Obama signed the American Recovery and Reinvestment Act (ARRA) which was an unprecedented effort to stimulate the economy and save or create millions of jobs. The purpose of ARRA is to preserve and create jobs and promote economic recovery in the near term and to invest in infrastructure that will provide long-term economic benefits. The funding from ARRA in combination with the provisions passed through the 2008 Housing and Economic Recovery Act (HERA) provides Minnesota with the necessary tools and resources to bring “shovel ready” projects to production and close financing gaps in these projects created by reduced credit pricing and lack of syndicator equity.

**Funding Availability & Distribution**

The Minnesota Housing Finance Agency (Minnesota Housing) was designated by the Minnesota Legislature as the primary allocating agency of Housing Tax Credits (HTC) in Minnesota. Qualified local cities and counties, including the CDA, have also been designated by the Legislature as suballocators of the HTC.

The CDA will receive a portion of the state’s allocation (based on Minnesota State statutory formula for tax credits) to administer TCAP and Exchange Programs within Dakota County subject to HUD approval of the CDA’s selection criteria and process.

Applicants who have previously received HTC awards from the CDA will apply to the CDA directly. It is important to note that the CDA may have different selection priorities and timelines for award of the funds than Minnesota Housing or the other suballocators.

**Tax Credit Assistance Program (TCAP)**

TCAP Distribution	
MN Housing Administered – Greater MN	\$10,804,967
MN Housing Administered – Metro	\$ 8,444,192
Minneapolis	\$ 3,233,539
Saint Paul	\$ 2,410,081
Washington County	\$ 1,243,913
Dakota County	\$ 2,297,431
Total Metro and Greater Minnesota	\$28,434,123

The CDA will award TCAP funds in the form of a loan or grant, as determined by the CDA.

**Section 1602 Tax Credit Exchange Program (Exchange Program)**

The state may request a grant from the Treasury in an amount that does not exceed 85% of

- 1) 10 times 100 percent 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
- plus*
- 2) 10 times 40 percent of the sum of (c) the State’s 2009 housing credit ceiling based on population (i.e. 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.

The State of Minnesota forward selects its projects for awards of HTC and the majority of the 2009 State Housing Credit ceiling has been awarded to projects. In order for the CDA to return funds to the Treasury for cash grants in lieu of tax credits, project owners who have received an allocation of credits will need to voluntarily and irrevocably return a portion or all of their credits that they are unable to syndicate by completing and submitted the Return of Tax Credits form. Minnesota Housing intends to make available

to the CDA the proceeds of any exchange of tax credits initially committed or allocated by the CDA, and the CDA intends to use such proceeds to make subawards to projects within Dakota County. Projects that return their credits are not guaranteed a subaward and the CDA reserves the right to subaward less than \$.85 per dollar of tax credits to any project selected for exchange funds. The CDA will only award an amount necessary to make the project financially feasible.

Applicants who are unable to syndicate their housing tax credits will be expected to return their credits at the time of application. There will be no penalty for projects that voluntarily return their credits simultaneously with their application for funding or for those that are working with a syndicator in good faith that return their credits in a timely manner as to not put the state at risk of losing credits, TCAP or Exchange Program funds. Project owners that fail to return their credits in a timely manner and cause the State to lose credits, TCAP or Exchange Program funds will be subject to penalty including negative points in future application submission rounds and/or being barred from the tax credit program for a period of up to 10 years.

The CDA will subaward Exchange Program funds as a loan or grants to eligible projects.

### **Recapture Provision**

Projects receiving TCAP or Exchange Program funds from the CDA will be required to make significant progress towards closing within 180 days of selection. Applicants will be required to submit monthly progress reports to the CDA and the progress reports will be compared against the submitted project timeline showing construction benchmarks and timetables of when the applicant can expend 25/50/75/100% of the TCAP and/or Exchange Program funds. If the CDA determines that significant progress is not made towards project closing, any portion or all of the awarded TCAP and/or Exchange Program Funds may be recaptured by the CDA and redistributed to other eligible projects or returned to Minnesota Housing for redistribution.

Projects receiving TCAP or Exchange Program funds will be required to meet the conditions of selection as detailed in the projects Commitment and if applicable, Carryover Agreement. The funds will be subject to recapture if the project does not remain a qualified low-income building and meet the restrictions of the Declaration of Land Use Restrictive Covenants during the 15 year compliance period and extended use agreement under Section 42(h)(6)(B) of the Code.

### **Guiding Principal**

To produce as much quality affordable housing as possible and stimulate the economy by creating as many jobs as quickly as possible while optimizing the use of all rental housing resources available.

Maximizing the use of the ARRA funds will require taking a comprehensive view of all resources available which will require re-underwriting each project and looking at potential uses of equity, TCAP funds, exchange funds, appropriated and partner funds, etc.

The CDA reserves the right to award TCAP and/or exchange funds or adjust existing CDA funding program awards in an effort to maximize the use of the federal and CDA funds.

### **Eligible Projects**

Rental housing projects that received or will receive an award of Low Income Housing Tax Credits (LIHTC) under Section 42(h) of the Internal Revenue Code of 1986, as amended, during the period from October 1, 2006 to September 30, 2009, are eligible to apply for TCAP and/or Exchange Program funding. Developers must make a good faith effort to sell as many of the awarded credits as circumstances and market conditions allow. However, if a developer cannot use all of the tax credits awarded to a project, adjustments can be made to the amount of credits allocated. In any event, a written agreement that requires compliance with LIHTC and TCAP requirements for the period required by Section 42 of the Internal Revenue Code must be entered into by the project owner. Note that projects which return all tax credits previously awarded will not be eligible for an award of TCAP funds, but may be eligible for a subaward of Exchange Funds if it can be established to the CDA's satisfaction that a good faith effort was made to syndicate the tax credits.

The date of the "award" of tax credits is defined as the date the CDA Board of Commissioners approves

the selection of the project for Housing Tax Credits (HTC).

Projects will be required to meet the conditions of the original selection as detailed in the project's Reservation and Binding agreement and if applicable, Carryover Agreement, whether or not all tax credits are returned. A Declaration of Land Use Restrictive Covenants covering the rent restrictions and occupancy requirements must be placed on the building(s).

For projects awarded 4% HTCs by the CDA in conjunction with tax exempt bond financing, the award date is defined as the date of the issuance of the 42(m) letter by the CDA. Tax exempt bond projects with Minnesota Housing or another suballocator as the allocator of the credits will need to apply to Minnesota Housing or such suballocator if eligible in accordance with Minnesota Housing requirements for TCAP or exchange funds.

### **Eligible Use of Funds**

TCAP Funds may be used for capital investment in eligible HTC projects. Capital investment means costs that are included in the 'eligible basis' of a project under Section 42 of the Internal Revenue Code.

Exchange Program funds may be used to finance the construction or acquisition and rehabilitation of qualified low-income buildings in accordance with Section 1602(c) of the ARRA.

### **Award of Funds**

In an effort to maximize the use of the funds and simplify the process for applicants, applicants shall apply for the amount of the gap created by the reduced price or lack of equity investment and the CDA shall determine whether TCAP or Exchange program funds will be awarded to each project. Only the minimum amount needed to make the project financially feasible will be awarded. The sponsor/owner shall work closely with equity syndicators to structure the project proforma to ensure long-term viability and financial feasibility as an HTC project while maximizing the use of the scarce federal funds. Syndicator investment in each project is strongly encouraged. The CDA reserves the right not to award TCAP/Exchange funds.

### **Selection Criteria**

All projects must demonstrate:

- Project financial feasibility
- Continuing project specific market feasibility
- Readiness to proceed
- Owner and management company capacity

Projects that are able to show financial and market feasibility, readiness to proceed and organizational capacity, to the satisfaction of the CDA in its sole discretion, will be ranked and selected based on the extent they meet the competition selection criteria as described in the ARRA TCAP & Exchange Program self-scoring worksheet.

The CDA may decide at its discretion to maintain a waiting list if sufficient funding is no longer available. If the CDA decides to maintain a waiting list, all applications would be considered at the same time to determine selection when funds become available. If the waiting list is exhausted, the CDA may accept additional applications.

- The CDA may elect not to give partial funding to a higher-ranking application but provide the funding to the next ranking application that can use the balance of the funding.
- If two or more proposals have equal number of points, the following will be used to determine selection
  - First tie breaker - Priority will be given to the project that can be completed before February 16, 2012
  - Second tie breaker – Priority will be given to a project with the greater number of points under the Qualified Allocation Plan selection criteria
  - Third tie breaker – Priority will be given to projects with the greater number of points in the Leverage of Equity Investment selection criteria; and, if a tie still remains;
  - Fourth tie breaker will be by lot.

## **Application Submission Requirements**

The application package must be received no later than 5:00 p.m. on Monday, August 3, 2009 at:

Dakota County CDA  
1228 Town Centre Drive  
Eagan, MN 55123

Applicant must provide one original application package and one copy compiled in the following order:

1. Updated Minnesota Housing Application Form/HTC 1 (must be submitted electronically to [abrennan@dakotacda.state.mn.us](mailto:abrennan@dakotacda.state.mn.us) no later than 5:00 p.m. on Monday, August 3, 2009).
2. CDA TCAP & Exchange Programs Self-Scoring Worksheet
3. Return of Tax Credits Form (if applicant is returning tax credits)
4. Narrative describing proposed funding structure including a description of the ability or inability to meet federal fund cross/cutting requirements as identified in the TCAP guidance Notice CPD-09-03.
5. Description of any proposed change to the ownership structure
6. Demonstration of financial feasibility including a 15 year cash flow proforma and updated verification of service funding, if applicable.
7. An updated project schedule showing at a minimum project construction benchmarks and timetables of when the applicant can expend 25/50/75/100% of the ARRA funding
8. Demonstration of continuing market feasibility including
  - a. Market Qualifications Form
  - b. Market study or update to existing market study completed in accordance with the Minnesota Housing Market Study Guidelines\*\*
9. 3 years of General Partner financial statements – audited or accountant compilation
10. Commitment from Syndicator for equity investment or demonstration of good faith efforts to obtain investment commitments for reserved/awarded credits
  - a. The owner must demonstrate good faith efforts to obtain investment commitments by submitting:
    - i. Narrative description of efforts to obtain investment commitments, and
    - ii. Two letters from syndicators/investors\* that indicate
      1. The maximum amount of tax credits the Syndicator/Investor is willing to syndicate (the project is a blend of credits and TCAP or Exchange); or
      2. The equity price the Syndicator/Investor is willing to syndicate is less than \$.65; or
      3. The Syndicator/Investor is not interested in the project at any equity price.

\* The owner is expected to make every effort to obtain two letters from syndicators/investors. If the owner is unable to produce two letters, the CDA will review and confirm the efforts described in the narrative.

\*\* Given the short notice period for applications, the CDA will accept applications without a Market Study as long as the applicant can demonstrate that (i) a study was commissioned and is underway; and (ii) will be completed within 30 days of submitting the application.

Note: Projects must use, sell, or syndicate a nominal amount of Housing Tax Credits in the project to be eligible to receive TCAP funds.

## **Amendments to the Selection Process and Criteria**

The CDA Tax Credit Assistance and Exchange Programs Selection Process and Criteria are subject to modification or amendment at any time as a result of revisions to the federal law and/or guidance and/or any further guidance from Minnesota Housing, HUD or the Treasury.