

Tax Credit Alert

For low-income housing professionals

Essential how-to tips and business strategies for complying with HUD, IRS and state regulations

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CREDIT MARKET OUTLOOK

Bulldozers Idle? HUD Promises To Revive Housing Construction

Stimulus money is up for grabs in 52 states and territories

With major investors missing from the low-income housing tax credit (LIHTC) program, you may be among the many project owners looking for extra cash to offset the dwindling value of credits. The federal government hopes you'll look to HUD's Tax Credit Assistance Program (TCAP). Now, cash-strapped housing projects can vie for their portion of the Recovery Act's \$2.25 billion in TCAP money allocated to 52 state housing credit agencies, including those in Washington, DC and Puerto Rico. Read on to learn how.

WHO: Section 42-funded and need more cash? You're in luck.

You must use TCAP funds to complete construction of qualified housing projects that can begin immediately and finish up by February 2012. All TCAP projects must have LIHTCs, HUD states.

More specifically, TCAP-eligible projects are rental housing projects funded by LIHTCs under Section 42(h) of the Internal Revenue Code of 1986 (IRC) (26 U.S.C. 42) between October 1, 2006 and September 30, 2009 (federal fiscal years 2007, 2008 or 2009).

In addition, projects that receive credits under section 1400N of the IRC (e.g., Gulf Opportunity Zone (GO Zone) and Midwestern Disaster Area Housing Credits) during the same time period are eligible. Projects that rely on bond financing in addition to credits are also eligible.

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Compliance: According to HUD, state housing credit agencies “may reduce the amount of the credits originally awarded based on current market conditions,” but you can’t return the entire credit allocation to the agency. Projects must “comply with all other requirements of Section 42 throughout the compliance period and there must be equity investment(s) in the project for the credits,” says HUD.

WHAT: Capital investments only — that means, no swimming pools

You can use TCAP funds for land acquisition, on-site demolition and hazardous material remediation — any cost included in the “eligible basis” of a Section 42 project.

You may not use funds for managing your project. In other words, you can’t use grant money to cover administrative costs (even if you’ve expended them to monitor your compliance with grant rules), HUD points out. Nor can you use TCAP funds to pay for fees levied by a tax credit collecting agency to your project, such as those normally charged in conjunction with LIHTC applications, HUD notes. Interestingly, Section 1604 of the

COMPLIANCE

How To Cook Up The Right Recipe For A TCAP Contract

Once TCAP funding is in the bag, the project owner and the finance agency providing the funding must execute a contract. This agreement will require the owner to maintain records that demonstrate compliance and to submit regular reports to the agency. Key components of the written agreement include:

- **Project description** — e.g., the number of LIHTC-qualified units, the number of Section 504-accessible units, the amount and source of LIHTCs, and the amount and form of TCAP assistance
- **Project budget** — e.g., development costs, amount of TCAP funds, and anticipated LIHTC equity
- Description of **how TCAP funds will be used**
- **Construction and expenditure schedule** — e.g., detailed milestones that allow monitoring of the project owner’s compliance
- Details of the **fund disbursement procedure** — e.g., the rule that a project owner can’t ask for TCAP funds until they are needed for eligible costs

Source: U.S. Dept. of Housing and Urban Development ■

LEGISLATION

Clarification Expands Eligibility For Tax Credit Programs

Housing projects using only GO Zone or other disaster tax credits are now eligible for TCAP funds thanks to a reversal and clarification in FY 2009 supplemental appropriations bill H.R. 2346. In addition, the Senate and House have both introduced legislation to clarify that disaster tax credits are eligible for the Tax Credit Exchange Program (TCEP), the **National Multi Housing Council** reports. ■

Recovery Act makes a point of disallowing funding for swimming pools.

If you use TCAP money inappropriately, you’ll be required to pay it back. Same goes if you don’t complete the project. However, if your project ends up in foreclosure — despite your diligent asset management and reasonable attempts to ensure compliance and long-term viability — you won’t have to reimburse the government.

HOW: Look locally for competition criteria

State housing credit agencies must distribute TCAP grants “pursuant to their qualified allocation plan [QAP], as defined in Section 42(m) of the IRC,” HUD instructs. However, state agencies may also sub-grant their TCAP funding to local credit agencies to disburse. If there are multiple agencies within a state, projects may secure funding under any agency’s QAP.

Selection criteria — other than the fact that projects must be completed by 2012 — will vary from state to state and agency to agency, as each is free to design its own competition. Agencies may choose to distribute funds through either grants or loans. HUD requires its TCAP grantees to post on their websites the competitive selection criteria for securing TCAP funds.

Resource: HUD houses its TCAP information at www.hud.gov/recovery. See “Tax Credit Assistance Program” under “Programs.” If you click on “See Allocations by Grantee,” you can download a spreadsheet detailing the funding provided to each state housing agency. Regional allocation of TCAP money ranges from \$5 million to \$300 million.

To find state-specific information on TCAP funding, visit the **National Council of State Housing Agencies** (NCSHA) website: <http://www.ncsha.org/section.cfm/3/34/2945>. ■

CREDIT MARKET OUTLOOK

Hope For LIHTCs? New \$150 Million Fund Opens

At least one investment firm sees promise in today's housing tax credits.

Boston Capital, a real estate investment and advisory firm in Boston, has launched the Boston Capital Tax Credit Fund XXXII, a \$150 million diversified portfolio of affordable apartment properties in the U.S., according to a recent company statement. The fund follows the successful closing of a similar fund with a portfolio of 30 affordable apartment properties in 12 states and a total equity investment of \$120 million.

Why open a new fund now? "With the rise in LIHTC yields to the double digit, after-tax level and the drop in Treasury rates, yield spreads are back to levels not seen since 1993. These economic factors, in addition to the ability to use the credit to reduce alternative minimum tax (AMT), are attracting old and new economic investors to the LIHTC program," stated **Kevin Costello**, director of Boston Capital's institutional investing department.

Optimistic: The company expects "strong investor interest" in the fund. ■

PUBLIC FUNDING

Billions In Credit Exchanges To The Rescue

Find your TCEP-funded opportunities on this state-by-state list

The American Recovery and Reinvestment Act isn't just lending tax credit "assistance." It's also offering to buy up unused low-income housing tax credits. As part of the Tax Credit Exchange Program (TCEP), states can trade up to 40 percent of their unutilized 2009 LIHTC allocation for cash to feed hungry housing development projects. Thus far, the **U.S. Treasury Department** has disbursed funding from a \$3-billion pool to 29 housing agencies, as follows:

Recovery Act Awards For Affordable Housing Projects In Lieu Of Housing Tax Credits

Agency	Amount Awarded	Agency	Amount Awarded
Alabama Housing Finance Authority	\$36 million	Michigan State Housing Development Authority	\$78 million
Arkansas Development Finance Authority	\$29 million	Missouri Housing Development Commission	\$17 million
Colorado Housing and Finance Authority	\$18 million	Montana Board of Housing	\$16 million
Connecticut Housing Finance Authority	\$34 million	Nebraska Investment Finance Authority	\$4 million
Delaware State Housing Authority	\$4 million	New Hampshire Housing Finance Authority	\$28 million
DC Dept Housing and Community Development	\$34 million	New Mexico Mortgage Finance Authority	\$38 million
Georgia Housing and Finance Authority	\$76 million	Ohio Housing Finance Agency	\$21 million
Illinois Housing Development Authority	\$53 million	Puerto Rico Housing Finance Authority	\$100 million
Indiana Housing & Community Dev. Authority	\$164 million	Rhode Island Housing and Mortgage Finance Corp.	\$37 million
Iowa Finance Authority	\$73 million	Tennessee Housing Development Agency	\$53 million
Kansas Housing Resources Corporation	\$23 million	Vermont Housing Finance Agency	\$10 million
Louisiana Housing Finance Agency	\$114 million	Virgin Islands Housing Finance Authority	\$20 million
Maine State Housing Authority	\$14 million	Washington Finance Housing Commission	\$11 million
Maryland Community Development Admin.	\$44 million	Wisconsin Housing & Economic Dev. Authority	\$116 million
Massachusetts Dept. of Housing and Comm. Dev.	\$50 million		

Source: U.S. Department of Treasury

The above state agencies receiving direct cash assistance from the feds will in turn provide the fund to developers in support of affordable housing, the Treasury Department explained in a recent release.

Resource: For more information on TCEP, visit www.treas.gov/recovery/LIH-grants.shtml. ■

EQUITY & UNDERWRITING

Use Land Sales To Augment Investor Funds

Infrastructure funding is the 'real challenge' for this housing project

A Pacific Northwest housing project offers a lesson in funding makeovers with a creative funding mix. You'll find the following recipe particularly useful when low-income housing tax credits (LIHTCs) money is short.

The project: In April 2001, the **Tacoma Housing Authority** received a \$35-million HOPE VI grant from HUD to make over the public housing project in Salishan, WA. But the federal money amounted to little more than start-up capital. Of the project's estimated \$225-million total cost, the HUD grant accounted for just 15 percent. The rest came from investor participants in the LIHTC program, as well as real estate sales. While the majority of project money is coming from private investments, the real estate sales are an important additional funding source.

How it works: The Salishan project includes market-value homes — part of the Housing Authority's goal to develop the neighborhood into a mixed-use community, with both rental and owned homes — and loan opportunities attractive to banks and large corporate lenders. For example, bank loans for 180 parcels that the

Housing Authority intends to sell will finance the project's second phase.

Drawback: Home sales — and LIHTCs — cover housing only, not the underlying water, sewer and power systems, the renovation cost of which has driven up the overall expenses considerably. In the Housing Authority's 2000 HOPE VI grant application, it estimated infrastructure costs for the entire Salishan redevelopment would reach \$19.7 million. Unfortunately, infrastructure costs for the first phase of the project alone topped that estimate by 50 percent. The difficulty of finding approximately \$15 million to build the infrastructure for the third phase put that portion of the project temporarily on hold. "Infrastructure funding has been the real financial challenge," says **Michael Mirra**, the head of the Housing Authority. "The charm wears off when you ask for a dollar to build a sewer."

The upshot: Complicated as the funding is, the commitment of private money should work in Salishan's favor. The more people who are invested in making the development work, the better chance it has to succeed, Mirra says. ■

MARKET STUDY

Promise Of Tax Credit Cash Convinces California Developer To Serve Seniors

A Berkeley, California developer is desperately seeking cash to transform a "dilapidated, vacant lot" and has proposed to make use of low-income housing tax credits (LIHTCs) and the city's Housing Trust Fund to do it, according to the *Berkeley Daily Planet*. But with money tight, it's amending its original project design.

CityCentric Investment has received zoning board permission to convert a previously mixed-use building into affordable senior housing, the paper reported. The permission was granted based on a new design that reduced the total floor area of the building by 9,000 square feet, increased the ground-floor commercial space by approximately 1,600 square feet, and cut the number of parking spots by about two-thirds.

The current recession forced the developer to turn the project into a facility for low-income seniors to take

advantage of LIHTCs, according to the article. "It is trying in this deteriorating economy to fund the building project. At least five parcels of land in Berkeley don't have money to build their projects," stated CityCentric head **Ali Kashani**. ■

Dollars & Cents:

- **Project:** 5-story residential and commercial building at 1200 Ashby Ave. in Berkeley, Calif.
- **Total project cost:** \$30 million
- **Funding requested:** \$1.4 million from Berkeley's Housing Trust Fund to be supplemented by LIHTC funding
- **Developer:** CityCentric Investments
- **Housing type:** 98 units for low-income seniors

EQUITY & UNDERWRITING

Gain Traction In The Face Of Dropping LIHTC Prices

Expert advice: Secure long-term financing partners to stay afloat

If rising development costs and problematic refinancing keep you up at night, you are not alone. **Eli** helps you survive the credit value plummet.

What's going on: The market demand for low-income housing tax credits (LIHTCs) is lower than the supply, so “with the profit shrinkage that large financial institutions are experiencing, we’re witnessing a repricing of risk and widening of spreads globally,” explains **David Smith**, CEO of **Recap Advisors** in Boston and founder of the non-profit organization the **Affordable Housing Institute (AHI)**. This isn’t just a dip in LIHTC pricing, but a correction — the price of LIHTC has been reset, he says.

Forecast: Plan for this sort of LIHTC pricing indefinitely, counsels Smith. “If you are getting more than 80 cents on the dollar, you should consider yourself lucky; take the bid and move on,” he says.

For developers: Expect to raise less equity per LIHTC dollar. Your main objective is to close deals quickly on equity commitments, particularly if you are long in inventory, Smith offers. For those developers who aren’t overwhelmed with inventory and who have some liquid capital, past attention to operations management is likely to pay off. You’ll have the opportunity to acquire ownership of properties from other people who need to pay for a funding gap.

For owners: If you have deals in the pipeline, plan to restructure these agreements and look for new underwriting. Also, anticipate that you may have trouble closing your newest deal. Even if you have what appears to be a well-run portfolio, if your “engine — the development arm — starts to slow down, it will impact your existing portfolio.

To get by in this reduced-price LIHTC market, you must make your projects more attractive to investors. Present a stronger balance sheet and be prepared to make more guarantees, says Smith. Also, anticipate a longer-term operating deficit as you pledge more of your future wallet to operating support of the properties you want syndicated.

Furthermore, remember that equity syndication should not be viewed as an auction market, but rather a relationship-type business, Smith posits. Despite the auction-type environment of the recent past, strong partnerships are making a comeback, he adds.

Smart: Find a partner with whom you anticipate doing deals over a long time period. Commit to buoying each other through market uncertainty instead of shopping each deal around to get two cents more on the dollar, Smith advises. Shared interest makes these relationships work. Start by pledging to be forthright and equitable with one another as you work to get deals financed, Smith sums up. ■

MARKET STUDY

Texas Town’s Good Word Spurs Project Funding

The **Texas Department of Housing and Community Affairs** recently awarded **Abilene Senior Village Apartments** \$1.1 million in tax credits, according to *ReporterNews.com*. And apparently a letter of support from the Abilene city council was a help in securing that funding.

The developer, **Louis Williams & Associates**, has built senior housing in other Texas cities. For this latest project, which will cost an estimated \$10 million, the city’s support won’t be in the form of funding. However, a letter from city officials “did help out” during the competition for tax credits, Louis Williams said. Without the credit award “we would not have been able to proceed,” he added.

In addition to providing much-needed affordable housing for seniors, the project will work with local businesses,

according to *ReporterNews*. “We’ll be hiring all local and buying all local materials,” Williams said. ■

Dollars & Cents:

- **Project:** Abilene Senior Village Apartments in Abilene, Texas
- **Tax credit funding:** \$1.1 million (11% of the total estimated cost)
- **Developer:** Louis Williams & Associates
- **Housing type:** 92 one- and two-bedroom units
- **Resident type:** 62 years old and up; yearly income of no more than approximately \$24,000
- **Rent:** \$400/mo (1 bedroom); \$600/mo (2 bedroom)

MARKET STUDY

New York City Kicks Off TCAP Housing Construction

\$14 million California project to begin this fall

Not surprisingly, the largest Tax Credit Assistance Program (TCAP) awards have gone to states with large urban centers: New York and California have received \$253 million and \$326 million, respectively. Now housing projects on both coasts stand poised to make use of that money.

Example 1: Four developments in New York City will rely on a \$60-million TCAP award to create 739 affordable

Dollars & Cents: (Example 1)

- **Project:** The 9-story Hobbs Court on E. 102nd Street and The Ciena at E. 100th Street in Harlem
- **Total project cost:** \$143.5 million
- **Non-federal funding:** \$21.7 million and a \$71.4-million loan from the NYC Housing Development Corp.; a \$1.9-million private investment; \$700,000 from the NY State Energy Research and Development Authority for energy-efficiency
- **Tax credit funding:** \$38.8 million in LIHTC equity, in addition to TCAP money
- **Developer:** Phipps Houses and Urban Builders Collaborative
- **Housing type:** 340 residential apartments
- **Resident type:** yearly income of no more than \$32,000 (individual) or \$46,000 (family of 4)

housing units and more than 2,800 jobs, reports *RealEstate-Rama.com*. One of the projects, located in Harlem, will replace 17 unused structures with two, new residential apartment buildings equipped with community facility space, elevators, underground parking and outdoor space for residents, according to the article. The two buildings are expected to be complete in the fall of 2011. The project's sites were originally Federal Housing Administration-foreclosed properties that the New York City Housing Authority has been operating as project-based Section 8 housing, the article states. Former tenants will have the opportunity to return as residents of the new development.

Other projects around New York state are looking for their slice of the \$253 million TCAP pie. **Omni Housing Development LLC** has redeveloped 1,170 affordable housing units in and around Albany during the past ten years. The company is now seeking \$2.4 million in TCAP funding to stay afloat, reports *The Business Review*. Why? One \$11 million renovation project on which Omni wants to move forward has garnered written offers to purchase tax credits at around 70 cents for every \$1 of tax credit.

Example 2: TCAP building will soon get underway in California as well. **Cedar Gateway Developments** in San Diego will restart construction in November, thanks to a \$14-million award, according to a HUD release. The project will provide 65 housing units for low-income families. ■

REQUEST FOR COMMENTS

♦ A 2010 NMTC Award Could Add Up To A Whopping \$250 Million

In preparation for the upcoming FY2010 New Markets Tax Credit Program allocation round, the **Community Development Financial Institutions Fund** is accepting written comments on the application and application process. The Fund is seeking input on the applications' appropriateness given current economic conditions. For instance, it is deliberating how to evaluate applicants' qualified low-income community investment (QLICI) commitments, including whether the application should continue to present commitment options in percentage terms or instead provide a range of flexible product commitments based on a discount of interest rates below market. In addition, the Fund questions whether to retain the 2009 award cap of \$125 million or raise the cap significantly, to \$250 million, for example. **Deadline:** October 2, 2009. **Resources:** Visit www.cdfifund.gov. To view the NMTC application, go to: <http://www.cdfifund.gov/docs/nmtc/2009/2009%20NMTC%20Allocation%20Application.pdf>.

♦ Got An Idea To Ease Tax Form Headaches? Speak Up Now

Although it has made no changes to the form, the **IRS** is seeking comments on Form 8586, Low-Income Housing Credit, which computes the tax credit due for housing construction costs. The agency is interested in ways to "enhance the quality, unity, and clarity of the information to be collected" and to minimize the burden of providing the information the form requires. **Deadline:** October 19, 2009. **Resources:** See <http://edocket.access.gpo.gov/2009/pdf/E9-19966.pdf>. To view Form 8586, go to: <http://www.irs.gov/pub/irs-pdf/f8586.pdf>. ■

INDUSTRY NOTES

GAO Says: New Markets Tax Credits Don't Favor Minorities

The finding that minority-owned Community Development Entities (CDEs) are significantly less successful in obtaining New Markets Tax Credits (NMTC) awards was the subject of recent testimony before the Subcommittees of Ways and Means and Financial Services.

Between 2005 and 2008, minority CDEs had a success rate of 9 percent with the NMTC applications they submitted, whereas non-minority CDEs were successful with 27 percent of their applications, the **Government Accountability Office** (GAO) found. Application scoring is the primary determinant for which entities receive NMTC awards, and minority CDE applications scored lower than others in all four application sections.

Advice: If Congress wants to see increased participation by minority CDEs in the NMTC program, the GAO says Congress could consider requiring that the **Community Development Financial Institutions Fund** offer additional NMTC application assistance to minority CDEs. ■

CREDIT CORNER

Parking Garage May Be Eligible For Energy-Friendly Deduction

The Energy Policy Act of 2005 includes the Commercial Building Tax Deduction, a tax incentive for improving the energy efficiency of commercial buildings. Building owners who install energy-efficient lighting, heating, cooling, ventilation, hot water and building envelope systems may deduct associated costs. The maximum amount deductible is \$1.80 per square foot of building floor area for buildings that achieve a 50-percent energy savings target. If your building falls below that target, you may still qualify for a partial deduction, according to the IRS. The upgraded systems must be ready for use by December 31, 2013.

Resource: For more information, including answers to FAQs, visit the **Commercial Building Tax Credit Coalition** website at www.efficientbuildings.org. (For instance, the site notes that parking garages are a space type covered by ASHRAE 90.1.) ■

INDUSTRY NOTES

Follow This Model To Proper Use Of Recovery Act Funds

When it comes to making good use of the federal government's cash for public housing, the keywords are, not surprisingly, "energy" and "jobs". The **Palo Vista Garden Community** in Oakland, CA is one of seven housing developments to receive funding through the **Oakland Housing Authority's** (OHA) \$10.6 million Recovery Act Public Housing Capital Fund grant, according to a HUD press statement. The property is using its share of the money to (1) mount solar panels that will supply 95 percent of the energy needed to light its 100-unit senior complex, (2) install solar heating for apartments, (3) re-roof all the units, and (4) install energy-efficient windows.

The OHA project is "a model of the effective use of Recovery Act funds, creating as many as 50 jobs for local residents while increasing energy efficiency and reducing utility costs for both public housing residents and the government," said HUD Deputy Secretary **Ron Sims**.

Adding up: The OHA's \$10.6 million is part of the \$3 billion the federal government has set aside for distribution among 3,100 public housing authorities nationwide, HUD explained. Another \$1 billion in Public Housing Capital Funds is also being awarded competitively. **Resource:** View Capital Fund Grant information by state on the clickable map provided at: www.hud.gov/offices/pih/programs/ph/capfund/grants/arra/index.cfm. ■

RESOURCES

- HUD has released its **proposed Fair Market Rents** (FMRs) for fiscal year 2010. Go to: <http://www.huduser.org/datasets/fmr.html>.
- U.S. Department of Treasury offers **new LIHTC Program FAQs** for Section 1602 recipients. Go to: <http://www.treas.gov/recovery/docs/FAQs.pdf>
- Accounting firm Novogradac & Company provides a free **rent and income limit calculator**, which now includes 2009 data. The calculator allows you to enter affordable housing program, location and scenario information to make its calculations. Go to: <http://calc.novoco.com/rentincome/z1.jsp> ■

TAX CODE DECODER**New Utility Allowances For Sub-Metered Units**

The IRS has amended rules for charging utility costs to tenants in buildings that use sub-metering to measure energy and water use.

Direct payment rule: If a tenant, and not the building owner, directly pays the cost of any utility, the gross rent includes a utility allowance. Tenants who pay utility costs based on actual consumption in a sub-metered rent-restricted unit are considered to be paying utility costs directly. Also, tenants who pay one bill for both water and sewerage use (in cases where sewerage costs are charged to tenants based on actual consumption) are considered to be paying sewerage costs directly, according to the IRS's new rule.

Allowance determination: For **Rural Housing Service (RHS)**-assisted buildings, buildings that house tenants receiving RHS rental assistance payments, HUD-regulated buildings and buildings with rent-restricted units occupied by HUD-assisted tenants, the applicable RHS or HUD rules apply, the IRS confirms. But for tenants in rent-restricted units in other building types: (1) utility rates must be limited to the utility company rates incurred by the building owner and (2) a reasonable sub-metering administrative fee (i.e., no more than an aggregate amount per unit of \$5/month) will not be considered gross rent.

Update: July 2009 LIHTC Percentages Are...

IRS Revenue Ruling 2009-20 lists low-income housing tax credit (LIHTC) percentages under Section 42(b)(1) for July 2009 as follows:

- 70% present value LIHTC 7.82%
- 30% present value LIHTC 3.35%
- for non-federally subsidized new buildings placed in service between July 30, 2008 and December 31, 2013 not > 9%

Source: Internal Revenue Service (www.irs.gov). ■

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