

# **American Recovery and Reinvestment Act of 2009 (ARRA)**

## **Low Income Housing Tax Credit Program**

### **Tax Credit Assistance & Section 1602 Programs**

State of Oregon  
Oregon Housing and Community Services

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## **Implementation Plan DRAFT**

May 13, 2009



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Matters!**

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## Introduction

The American Recovery and Reinvestment Act of 2009 was signed into law on February 17, 2009. This legislation includes two funding assistance programs for the Low Income Housing Tax Credit program specifically targeted to projects that have experienced difficulties to reach completion due to funding streams affected by the current economic environment. The programs are the Tax Credit Assistance Program (TCAP) and the Tax Credit Exchange Program (known as Section 1602). The programs are intended to be used as cash gap fillers on eligible 9% and 4% tax credit projects that may or may not have an equity investment commitment.

Oregon Housing and Community Services (OHCS) is the State of Oregon's designated housing finance agency tasked to administer the Low Income Housing Tax Credit Program according to OAR Chapter 813 Division 90 and insure compliance with Section 42 of the Internal Revenue Code. OHCS will be the direct grantee for TCAP and Section 1602 and will be responsible to implement and oversee the deployment of these ARRA resources in the State of Oregon. Determinations to award ARRA resources will be at the sole discretion of OHCS, and will follow the procedures of the competitive LIHTC award process and OHCS bond/4% credit underwriting criteria. This guidance is subject to revision by OHCS based upon present and future guidance from HUD, U. S. Treasury, as well as current best practices in the industry that OHCS may adopt toward the most efficient and effective deployment of these resources.

OHCS is committed to using this funding to meet the overall ARRA purposes to create and save jobs by providing the necessary funding to start construction on shovel ready activities.

OHCS maintains a close relationship with the LIHTC investment community in the region and understands their current presence in the market will determine the success of the LIHTC program in Oregon. TCAP and Section 1602 are one-time resources to be deployed for a limited period of time. However, the Oregon market needs exceed the ability of these resources to either assist every project or to respond to the needs of every project. Providers of equity continue to represent the immediate and long term future success of the LIHTC program.

OHCS intends to use TCAP funds to move forward LIHTC-awarded projects. According to TCAP statute and HUD advisory responses, TCAP requires that a project have at least a nominal amount of low income housing tax credits to meet the requirements of allocation associated with Section 42 of the Internal Revenue Code. OHCS will follow ARRA's overarching intent to create jobs by using the ARRA resources to initiate construction on shovel-ready projects.

### **NOTE 1:**

OHCS intends to apply for its entire allocation of TCAP funding and as the grantee for the State, OHCS is REQUIRED to expend 100% of these resources by February 16, 2012. Further, OHCS is REQUIRED to commit no less than 75% of its TCAP grant by February 16, 2010. As such, OHCS will look to the TCAP funds as the first funding that will be available to projects with an eligible award of tax credits.

**NOTE 2:**

If any OHCS Qualified Allocation Plan (QAP) requirement or CFC requirement is counter to the TCAP requirements, then TCAP requirements will take precedence and OHCS will waive its requirements. Should a project need such waiver, the project sponsor will request one in writing to the OHCS Director. Decisions issued by the Director with respect to any OHCS requirement waiver are final.

**NOTE 3:**

OHCS will make the final determination as to whether a project's gap will be funded by either TCAP, Section 1602 funding or any combination of the two, other OHCS resources and OHCS bonds. A project that does not meet the milestones set forth by ARRA and implemented by OHCS, is subject to retraction of the award. OHCS will redistribute the funding to a more deserving project, as determined by OHCS.

**ARRA LIHTC Gap Funding Program Definitions**

Stalled Project	Throughout this document OHCS refers to projects eligible for this program as <b>'stalled.'</b> A stalled project is any LIHTC project that has been offered a reservation of credits in 2008 and 2009 and has been unable for a variety of capital investment funding reasons, not in any way associated with construction cost overruns, to proceed with the acquisition, construction or rehabilitation of the project intended to be a low income housing project in the State of Oregon.
Award	A letter from the Department to the Sponsor offering to reserve credits.
Non Material Error	An error or inconsistency in the application that does not affect the decision to award the project TCAP or Section 1602 funding. Such an error can be a typo or an item that was not addressed to the satisfaction of OHCS but is not a scored item.
Commitment	The date of the execution of a written agreement between OHCS and the project sponsor which identifies ARRA gap funding assistance to the project has been committed and accepted. OHCS may elect to provide TCAP to eligible projects in the form of a grant or a loan. OHCS may elect to charge a commitment charge which is not an eligible use of ARRA funds.

Other terms used throughout this document will have the same meaning as under IRS Code Section 42, the 2009 Amended QAP, HUD CPD Notice 2009-03, US Treasury "Grantee Terms and Conditions" documents and legal agreements between OHCS and Sponsors/Owners.

**TCAP**

TCAP consists of \$27,343,971 in direct appropriation from HUD to OHCS. These funds are distributed from the HUD HOME account but are not directed to the HOME program and are not to be construed as such.

These funds are to be awarded competitively to projects that will or have received an award of Low Income Housing Tax Credits between October 1, 2006 and September 30, 2009, according

to the definition of award above. A prior competitive process is not sufficient to distribute these funds. Any project eligible as outlined in this plan may apply for this funding. TCAP is a federal funds program and is subject to the following federal requirements:

- National Environmental Policy Act and Related Laws (24 CFR Part 58)
- Section 504 of the Rehabilitation Act of 1973 (24 CFR Part 8)
- Davis-Bacon Prevailing Wages
- Fair Housing Act (42 U.S.C. 3601-19, 24 CFR Part 100, 24 CFR Part 107)
- Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d), 24 CFR Part 1)
- The Age Discrimination Act of 1975
- Affirmatively Furthering Fair Housing
- Lead-Based Paint Poisoning Prevention Act and the Residential Lead-Based Paint Hazard Reduction Act of 1992
- Anti-Lobbying Restrictions
- Drug Free Workplace Act of 1988
- OMB Regulations and Circulars

**Section 1602**

The Tax Credit Exchange Program (Section 1602) is administered by the U. S. Treasury and permits OHCS to return a certain amount of per capita competitive 9% credits from 2008 & 2009 allocations. Through the Housing and Economic Recovery Act of 2008, the IRS issued a temporary increase in the per capita credit ceiling factor amount by \$.20 per resident to \$2.30 for years 2008 & 2009. Section 1602 permits OHCS to return to the US Treasury credits based on the following formula of factors:

- (a) the unused State housing credit ceiling for 2008
- (b) the amount of state housing ceiling returned in 2009 (that includes any credits returned to the states from 2007 and 2008 authority)
- (c) forty percent of \$2.30 multiplied by the state population for 2009
- (d) forty percent the unused housing credit carryover allocated to OHCS in the 2009 National Pool allocation

As of this writing, the total amount of the formula, as it applied to Oregon is as follows:

<b>Factor</b>	<b>Total Amount</b>
(a) the unused State housing credit ceiling for 2008	\$0
(b) the amount of state housing ceiling returned in 2009 (that includes any credits returned to the states from 2007 and 2008 authority)	Unknown to date – OHCS is not in receipt of any prior year’s returned credits
(c) forty percent of \$2.30 multiplied by the state population for 2009	\$29,638,269
(d) forty percent the unused housing credit carryover allocated to OHCS in the 2009 National Pool allocation	Unknown to date – National Pool has not been issued to the States

## **OHCS Priorities for Allocation of TCAP & Section 1602**

The evaluation process will be geared to identify projects that are most ready to proceed as well as meet the following OHCS goals:

- Preservation of existing housing with an existing federal contract for project-based rental assistance
- OHCS maximization of resources for affordable housing through the use of OHCS Bond Program
- Projects which have an identified source of equity but continue to experience a financial feasibility gap to initiate construction
- Capacity of sponsor to undertake and complete project under the ARRA award parameters as administered by OHCS

## **General Eligibility**

Projects will be eligible for either TCAP or Section 1602 funding if they meet the following conditions:

1. Project holds an offer to reserve credits, issued by OHCS. These offer letters were issued between October 1, 2006 and September 30, 2009. The completion of the award process, according to the QAP is the issuance of 8609s. Any project that has been issued IRS form 8609 and/or is in the process of receiving form 8609 from OHCS is considered to have completed the award process and is not eligible for these funds.
2. A project which has not committed its credits to an investor or syndicator by executing a partnership agreement.
3. A project that has not changed materially from the original LIHTC application.
4. A project whose timeline indicates ability to:
  - Expend 75% of the TCAP funds by February 16, 2011
  - Complete the project by February 16, 2012
  - Expend 100% by February 16, 2012 per the HUD CPD Notice

## **OHCS ARRA LIHTC Gap Funding Program Process**

OHCS intends to use a self scoring process in conjunction with certification by sponsors. If necessary, third party certifications will be requested to insure that the requirements have been met. In the application, points will be attributed by applicants on the basis of either having met or not met the requirements of application. This system will be used for both TCAP and Section 1602. OHCS staff will review the point attribution and documentation provided for completion of the application.

OHCS will be evaluating the award of TCAP and Section 1602 funds in the same manner as the LIHTC program. OHCS will at a minimum have one competitive round to award TCAP and Section 1602 funds. If resources are still available OHCS will accept applications and rank project applications competitively through the competitive scoring criteria as outlined further in this document. OHCS may elect to award either on a first come, first serve basis or by holding a subsequent competitive round, in which at least one of these resources will be available. OHCS,

at its sole discretion, will determine which funding type each project will receive in light of what is most beneficial for the maximization of affordable housing in Oregon.

Any cash resources derived from Section 1602 will be awarded competitively as outlined below to maximize affordable housing in Oregon. OHCS is allowed to make awards of 1602 resources to qualified low income buildings with or without an allocation, under Section 42 of the IRC. Both 9% and 4% credits that meet the good faith test requirements as outlined in the Competitive Selection Criteria below will be eligible for this ARRA gap funding, as available.

## **Competitive Selection Criteria**

OHCS will not amend its 2009 Amended QAP to award one-time ARRA resources. OHCS LIHTC program goals are outlined in the 2009 Amended QAP on pages 8 and pages 23-24. Projects already offered a reservation of credits have been evaluated and identified as meeting both Section 42 requirements and Department's selection criteria. OHCS will review stalled projects for evidence of ability to expend resources effectively and complete the project within federally required timelines as implemented by OHCS.

The application will contain questions to meet each test identified below and request documentation to support the responses provided and to confirm the Sponsor has self scored each item according to the instructions and the documentation provided.

OHCS will provide Sponsors an opportunity to cure any application errors that are not material in nature to the award decision, prior to issuance of any award. The timing of the curing process will be no greater than 7 days.

### **I. OHCS Priorities Test (20 Points)**

- A. Preservation of existing housing with an existing federal contract for project-based rental assistance
- B. OHCS maximization of resources for affordable housing through the use of OHCS Bond Program

**Point Attribution:** Each OHCS priority is attributed 10 points.

### **II. Readiness Test (100 Points)**

#### **A. Investment Availability (20 points)**

1. Sponsor has identified equity investment and determined the interested investor or syndicator has set aside or will set aside by the time the application for TCAP is awarded a fund and equity for the specific project. Initial underwriting by the investor has begun and the investor is able to provide an estimated time by which a final equity investment decision will be made
  - a. Submit a letter from the investor or syndicator that certifies the project is included in a fund and capital investment dollars are dedicated to the project. The letter should include recognition that the investor's timing of the equity allows the project to meet the deadlines of any ARRA resources. OHCS may elect to identify and establish a per credit pricing floor for 4% and 9% projects.
  - b. Identify investor's funding timing requirements on the Project Schedule Update.

2. **THE GOOD FAITH TEST (Section 1602 requirement):** Should a project (4% or 9%) not have an equity investor, Sponsor will be required to provide the following:
  - a. Identify and describe steps taken to secure an equity investment. Identify when the process started and the dates of the steps taken.
  - b. Identify reasoning or detriment to investor interest in the project.
  - c. Identify the list of investors or syndicators who were provided a copy of the project's investment package.
  - d. Identify the list of investors or syndicators who were contacted as a potential interested party in the project. Include date (as available), name, contact information and a brief summary of the discussion.

**Point Attribution:** All Investment Availability points are earned if either (1) or (2) are fully met. If any item is missing from either (1) or (2), all points are lost.

**B. Lender Availability (construction & perm) (20 points)**

1. Verification that lender appraisal has been ordered. OHCS may request a copy of the appraisal to evaluate the project.
2. Identify timeline of lender committee approval and final commitment of funds, as provided to Sponsor by the construction lender on the Project Schedule Update.
3. Identify on Project Schedule Update when construction funding will be available to be drawn.
4. Identify timing when permanent lender due diligence is completed.
5. Identify timeline when permanent lender final committee approval is anticipated.

**Point Attribution:** Each Lender Availability item (1-5) is worth four (4) points for a maximum of 20 points.

**C. Shovel Readiness (50 points)**

1. Permits Certification: Project architect to certify that project has applied for or is ready to apply for permits within 45 days of award of ARRA funding should funding be made available to the project. OR, if project is an acquisition/rehab and permits are not being requested the same as for a new construction project, certification by all financing partners that the scope of work has been approved and, except for gap funding, the project is ready to proceed.
2. Firm Construction Contract Certification: Contractor's certifications that construction cost estimates are firm. A draft construction contract should be attached in support of this requirement.
3. HUD Requirements:
  - a. Davis Bacon Certification: Certification from the contractor that construction cost estimate includes Davis Bacon wages and reporting requirements. Costs for this requirement should be clearly identified and totaled.
  - b. Environmental Report Completion: If the project has already completed an environmental report according to the National Environmental Policy Act and



Related Laws (24 CFR Part 58), outline the date of completion on the Project Schedule Update.

- c. Section 504: If project is designed to meet Section 504 of the Rehabilitation Act of 1973 (24 CFR Part 8), provide architect's certification that project's design includes Section 504 requirements.

**Point Attribution:** Requirements (1) and (2) will be attributed 10 points each. Each sub requirement to meet the HUD requirements as outlined above will be attributed 10 points each.

#### **D. All Other Funding Resources Remain Committed (10 Points)**

1. Sponsor to provide certification that all other funding sources remain available and are fully committed to the project. Sponsor to provide documentary update of the status of 'other resources.'

**Point Attribution:** All points for this section are earned if certification is provided as determined by OHCS. If certification is not provided all points are lost.

### **III. Sponsor Capacity and Community Impact Test (30 Points)**

- A. As related to the project for which the application is being submitted, Sponsor is required to submit certification to attest that there are no pending lawsuits or adverse activity against the property Owner/ Sponsor/Applicant or any other party integral to the project or to site control, which would contribute to delay in the completion of the project. Lawsuits not related to or affecting the project are outside the purview of this requirement.
- B. Sponsor to submit certification that it is not the owner or operator of any project in foreclosure or default.
- C. Sponsor to certify that none of the projects it owns or operates have had an OHCS uncorrected inspection/management review that was less than "satisfactory" in the last three years.

**Point Attribution:** Each requirement will be attributed 10 points. OHCS has to evaluate and award these resources to projects that will not be impeded by a sponsor's operational constraints. Any of the items outlined above may impede the timing of the positive impact the project would otherwise have.

### **IV. Tie breakers**

If multiple projects are ranked at the same score, scoring ties will be broken using the following priority system:

1. Project which provides the greatest number of units having project-based rental subsidy (RD or HUD) will move forward
2. Project that has an award of credits that predates all the other awards

## Commitment and Expenditure Requirements Timeline

Date	Action
June 2, 2009	Submission of TCAP Application to HUD
June 15, 2009 (estimated)	Receipt by OHCS of TCAP grantee contract from HUD
June 2009 (estimated -- date may be subject to change)	Issuance of Competitive Application for ARRA LIHTC gap funding
July 2009 (estimated -- date may be subject to change)	OHCS begins accepting ARRA LIHTC gap funding Applications
TBD	Ranking Completed and Recipients Notified
TBD	TCAP Regulatory Agreements signed by OHCS and Project Owners
February 16, 2010	Last day for award of 75% of TCAP resources
February 16, 2011	Demonstrate Sponsors expenditures of 75% of the TCAP funds
February 16, 2012	Expend 100% of TCAP funds