

## **Authorization to Award TCAP Funding Recommendations and Implement Exchange (1602) Program**

### **Executive Summary**

MHC staff requests authorization from the Board of Directors to:

1. Award TCAP allocations based on applications submitted.
2. Apply to the U. S. Treasury for an Exchange of Tax Credits in accordance with ARRA Section 1602.
3. Implement the Exchange program in conjunction with the TCAP and TCAF programs to maximize the use of all program funds.

### **Background**

TCAP and Exchange were created by Congress as part of ARRA to assist in funding the gap in LIHTC pricing created when markets for tax credits literally dried up due to a lack of investor interest. The programs were hurriedly made available to state HFAs without the appropriate guidance, creating much confusion among the industry as to the proper way to implement the programs and no way to determine the financial risk to the HFA. Within the past month HUD and the U. S. Treasury have issued rulings and clarifications as to the recapture of funds and administrative costs associated with the TCAP and Exchange programs that now make it feasible to proceed with their implementation in the MHC Tax Credit program. Subsequent to MHC staff's discussion with the September, '09 MHC Board's Tax Credit Committee, in which the liability for recapture of funds and administrative costs were discussed, a meeting was held with LIHTC developers seeking their input as to how MHC might implement the programs with the least exposure and risk to MHC. Additionally, syndicator, lender, other state HFAs, NCSHA and legal input have been considered in the proposed implementation of the programs listed below.

MHC staff is now comfortable with the manner in which the program should be implemented and recommends that the programs be offered to the LIHTC developers as quickly as possible.

## **TCAP & Exchange (1602) Recommendation**

### **TCAP**

A loan structured on the same format as the TCAF, (a gap financing program through MDA using CDBG funds administered by MHC), with the following modifications.

1. Developer guarantee and performance bond required during the construction term, if TCAP funds are used for land acquisition and/or construction.
2. Developer profit pledged to the loan on the following schedule during the compliance period.
  - A. Year 1 through 3 75%
  - B. Year 4 through 12 Pledge decreases 5% a year from A.
  - C. Year 13 through 15 Pledge maintained at 30%.

3. Loan has a forgivable provision if TCAP funds are used as a takeout of the construction loan, loan is current and development is LIHTC compliant for the compliance period based on the following schedule.
  - A. End of year 5 20% of the then outstanding balance.
  - B. End of year 10 20% of the then outstanding balance.
  - C. End of year 15 20% of the then outstanding balance.
4. 75% of the TCAP funds must be committed by February 2010.  
75% of the funds must be expended by February 2011.  
100% of the funds must be expended by February, 2012.
5. The market study originally submitted must be certified by the preparer as to the continued need for the housing and provide supporting documentation as to the number of families available to rent based on the income restrictions of the development in the market area. This certification must be provided by the date the NEPA is approved (Note: this is not required for the 2009 Cycle funded developments).
6. The TCAP loan must be subordinate to the construction loan and the permanent loan.
7. Syndicator/investor must agree to make available to MHC its asset management reports during the construction term and the compliance period as support for MHC's asset management activities.

### **Exchange (1602)**

1602 is a tax free grant and cannot be a loan. However, there must be a structure for MHC to recapture the funds due to non-compliance. This can take the form of a loan provided no interest or repayment is required during the compliance period, (construction term plus 15 years). To encourage investor involvement and to maximize the use of TCAP funds a combination of these two programs in a single development is recommended. A developer may request an award of TCAP funds be reduced based on a subsequent award of 1602 funds. Additionally the 10% non-profit component must be included in the disbursement of these funds.

A developer may return credits previously awarded and file a competitive application for the Exchange. There is no guarantee that a developer who turns in credits will be awarded credits from the competition. Credits will be exchanged at a price not to exceed \$0.80 based on the economic feasibility of the development and its market area economic strength. GO-Zone tax credits exchange is currently being considered by Treasury.

1602 funds will be awarded on a competitive basis, subject to the 10% non-profit requirement, based on: (1) scoring of the original LIHTC application prioritizing those which received Go-Zone tax credits (if applicable), then 2007, 2008, 2009 ACA; (2) ratio of 1602 funds to investor funds; (3) ratio of 1602 funds to TCAP/TCAF funds; (4) financial feasibility; (5) current shovel readiness of the development. If a tie-breaker is needed then: (1) need shown in the market study certifications; (2) best pricing offered by the syndicator/investor. Following scoring and awarding of TCAP and 1602 funds, MHC

reserves the right to meet with syndicator/investors to maximize their interest in the program by adjusting TCAP and 1602 awards to maximize development performance.

The loan structure should be like TCAF with the following modifications.

1. Developer guarantee and performance bond required if 1602 funds are used for land acquisition (currently under consideration by Treasury) or construction.
2. Developer profit pledged during the compliance period. The pledge will be reduced based on the following schedule provided the development remains in compliance and the development remains financially feasible.
  - A. Year 1 through 3 75%
  - B. Year 4 through 12 Pledge decreases 5% a year from A.
  - C. Year 13 through 15 Pledge maintained at 30%.
3. Loan has a forgivable provision provided the development is LIHTC compliant for the 15 year compliance period. For each full year of compliance, beginning at the end of year one (1), 1/15<sup>th</sup> of the grant will be forgiven. If a development ever falls out of compliance then the full remaining balance of the grant is due to be returned to the U. S. Treasury.
4. Grantee must demonstrate to MHC's satisfaction that a good faith effort has been made to obtain investment commitments at the highest possible price.
5. The market study originally submitted must be certified by the preparer as to the continued need for the housing and provide supporting documentation as to the number of families available to rent based on the income restrictions of the development in the market area. This certification must be provided by the date the NEPA is approved (Note: this is not required for the 2009 Cycle funded developments).
6. Syndicator/investor must agree to make available to MHC its asset management reports as support to MHC's asset management activities.
7. The 1602 loan must be subordinate to the Construction lender and the permanent loan.