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EXECUTIVE

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To: Executive Director, State Housing Credit Agency
From: Catherine Bishop, National Housing Law Project
Date: May 22, 2009
Re: Implementation of Tax Credit Assistance Program (TCAP) and selection criteria

Catherine M Bishop

The National Housing Law Project (NHLP) is a charitable nonprofit national housing law and advocacy center working with attorneys, paralegals, advocates and tenant leaders nationwide to advance housing justice for low-income people. NHLP provides legal assistance, advocacy advice and housing expertise to legal services and other attorneys, low-income housing tenant and advocacy groups, and other intermediaries, as well as policymakers.

The American Recovery and Reinvestment Act of 2009 (ARRA) provided \$2.25 billion for a grant program to provide funds for capital investment in Low-Income Housing Tax Credit (LIHTC) projects. The HUD Notice CPD 2009-03, Implementation of the Tax Credit Assistance Program (TCAP) (issued May 4, 2009) provides that each state housing credit agency must submit an application to HUD by June 3, 2009. The application packet must include a written description of all the selection criteria and any weights assigned that it will use to competitively award its TCAP funds to LIHTC projects. These selection criteria must be posted for five (5) days for public comment. The National Housing Law Project (NHLP) requests that consideration be given to the following comments as they relate to the selection criteria and to the strategies adopted to implement TCAP.

Consideration or a Priority Should be Given to Developments that are Located in Areas Designated by Local Governments Where The Neighborhood Stabilization Funds Will be Expended.

The Housing and Economic Recovery Act (HERA) provided \$3.92 billion for the Neighborhood Stabilization Program (NSP), which provides emergency assistance to states and localities to redevelop abandoned and foreclosed home and residential properties. The HERA statute requires that grantees must prioritize use of funds in "areas of the greatest need," which includes those areas with the greatest percentage of homes in foreclosure, with the highest percentage of homes financed by subprime mortgages and those identified by the jurisdiction as likely to face a significant rise in the rate of home foreclosures. Significantly, HERA also provides that 25 percent of the NSP funds must be used to assist families at 50 percent of area median income or below. ARRA provided an additional \$ 2 billion of NSP funds to be distributed through competition. The ARRA statute provides that HUD in allocating the funds shall ensure that grantees are in areas with the greatest number and percentage of foreclosures.

Targeting projects to receive TCAP funds in areas identified by local jurisdictions to receive NSP funds is a good idea because:

- Local plans and efforts have identified areas of greatest need.
- Due to the local planning and effort, it will position the TCAP funded project to take advantage of local efforts and help ensure the success of the project in the long term.
- It will enable the use of NSP funds on a TCAP funded project.
- It may help to ensure that the property serves families below 50% of area median income.

Provide a Priority for Funding Developments with TCAP that Demonstrate a Plan to Employ the Lowest Income Individuals and Small and Disadvantaged Businesses

The CPD Notice 09-03 provides that “a major purpose of TCAP funds is to immediately create new jobs or save jobs at risk of being lost due to the current economic crisis.” The Notice further describes reporting requirements that estimate the number of jobs created and the number of jobs retained. Section 3 (12 U.S.C. § 1701u) is not applicable to the TCAP program. Nevertheless, some State Housing Credit Agencies and some developers of LIHTC properties are familiar with and have complied with Section 3, as they have done projects with HOME or CDBG funds. These developers should be encouraged to continue to implement Section 3 or a Section 3-like program, and would be so encouraged if the State Housing Credit Agency provided a preference to those developers that agreed to engage in a Section 3 or Section 3 like program – one which seeks to use the federal funds for construction or rehabilitation to employ the lowest income residents and contract with small and disadvantaged businesses. Moreover, ARRA provided a \$50 million increase for the YouthBuild program, which provides services to youth who gain academic and occupational credentials through the construction and rehabilitation of affordable housing. The State Housing Credit Agency should encourage LIHTC developers to use YouthBuild participants in projects funded with TCAP funds.

Identify Projects Funded with TCAP Funds

CPD Notice 09-03 requires State Housing Credit Agencies to identify all projects selected for funding, and post the amount of each TCAP award on its website. It is important the State Housing Credit Agency ensure that the list of projects remains on the web site for the life of the funding commitment for several reasons. First, in the short term, ARRA imposes commitment and expenditure deadlines. Failure to meet those deadlines will result in the federal government recapturing the funds. It will be important that the list be available for the three year period within which the funds must be expended so that the public may monitor whether the funds are expended within the timeframes.

Second, the list of TCAP properties should be available on the website for the life of the project and specially identified as a TCAP property because there are special rules regarding these developments that tenants and applicants for such housing should be made aware of throughout the life of the development. For example, TCAP properties are subject to Section 504 of the Rehabilitation Act of 1973 and the Lead-Based Paint Poisoning Prevent Act and the Residential Lead-Based Paint Hazard Reduction Act of 1992. Both of these Acts provide ongoing rights to tenants and applicants and are applicable to the development through its life. Not all LIHTC properties are subject to these laws and the public should be aware of the unique elements of a TCAP property throughout the life of the development. Such ongoing and permanent notification is consistent with the ARRA accountability and transparency requirements.

Make Reports Submitted to HUD Regarding TCAP Publically Available

ARRA imposes reporting requirements on State Housing Credit Agencies that use TCAP funds. Reports with specified information must be submitted to HUD on a quarterly basis. These reports should be posted on the State Housing Credit Agency website as they are submitted to HUD. (If requested by the public or local housing advocates, the reports should be expanded to respond to local concerns.) Such action is consistent with the ARRA accountability and transparency requirements.

NHLP incorporates and supports the comments, dated May 19, 2009, submitted to State Housing Finance (Credit) Agencies by the National Housing Trust.

Thank you for this opportunity to comment on your current TCAP plans. Please do not hesitate to contact us for additional information.