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AMERICAN RECOVERY & REINVESTMENT ACT, Questions and Answers

Agency: State Housing Development Authority

Question: I have a project that received an allocation of 9% credit in a prior year, with which I intend to apply for the 9% Tax Credit Exchange Program. Is there anything I should be doing to ensure that my project is ready for this process once the application materials are made available?

Answer (posted May 20, 2009): The Authority plans to publish specific application instructions and materials for the Exchange Program by mid-June. In the meantime, applicants who are considering applying for stimulus funds in the future are encouraged to review and update all application information including, but not limited to sources of financing, project costs and any necessary due diligence items. In addition, applicants are encouraged to review how their project will fit within underwriting criteria and guidelines that may have changed since their project originally received an award of credit.

Question: I applied in the May 2009 9% LIHTC application round, and I also submitted a Notice of Intent to apply for TCAP. I intend to use a conventional first mortgage loan, not a MSHDA direct loan. How do the Direct Lending parameters apply to me? Do I have to compete for the TCAP funds under the "Priority Selection Process?"

Answer (posted May 20, 2009): First, sponsors should be aware that the Authority will soon publish a formal application for the 9% Tax Credit Assistance Program that was announced in the Preliminary Implementation Plan. Because the HUD rules were not available at the time LIHTC applications were due, we could not accept a full TCAP application simultaneously.

While this should be a streamlined process, sponsors will need to submit additional due diligence items necessary for the Authority to review projects for TCAP eligibility.

The Direct Lending Parameters will apply to all developments seeking TCAP assistance for purposes of Sections I through V of the parameters. These are the sections pertaining to lending parameters, underwriting standards, and the like. Section VI pertaining to Application Processing will not directly apply to the 9% Tax Credit Assistance Program, but the Authority will outline a similar set of application processing steps and guidelines when it publishes the TCAP application.

Finally, and perhaps most notably, the Priority Selection Process in Section VII, does not apply to the 9% Tax Credit Assistance Program. Applicants seeking TCAP in an amount not to exceed effective LIHTC pricing support of \$0.25 per \$1.00 will not be subject to the Priority

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Selection Process.

It should be noted, however, that any applicants that have applied for a Direct Loan from the Authority and are requesting additional gap financing from the Authority will be subject to Section VI and Section VII of the parameters.

Question: I applied for a 9% LIHTC award in the May 2009 general round, but I think I will end up needing more than \$0.25 per LIHTC dollar in TCAP. Does MSHDA plan to allow increased TCAP requests?

Answer (posted May 20, 2009): Under the Authority's Preliminary Implementation Plan, we do not anticipate awarding more than \$0.25 in TCAP to 2009 9% LIHTC applicants unless they have applied for a taxable loan from the Authority and successfully compete within the Direct Lending Program's Priority Selection Process for additional gap financing, which could include HOME, TCAP, NSP, or other funding.

Applicants with the need for additional gap financing are encouraged to seek other sources such as local HOME or CDBG funding, Federal Home Loan Bank Affordable Housing Program awards, philanthropic support, etc.

However, as with other aspects of the Authority's implementation of ARRA programs, we will continue to monitor the effectiveness of our programs, policies, and processes and will consider adjustments and amendments as needed to ensure the timely, efficient, and effective use of ARRA funding.

Question: I have a 2008 reservation of 9% credits and intend to apply for the Tax Credit Exchange Program outlined in the Preliminary Implementation Plan. I intend to use a conventional first mortgage loan, not a MSHDA direct loan. How do the Direct Lending parameters apply to me? Do I have to compete for the Monetized Credit funds under the "Priority Selection Process?"

Answer (posted May 20, 2009): As with developments seeking TCAP assistance under the 9% Tax Credit Exchange Program, Sections I through V will apply to all Exchange Program transactions for purposes of lending parameters, underwriting standards, and the like.

Additionally, the Authority will publish Application Processing criteria specifically applicable to the Exchange Program concurrently with the upcoming publication of an Exchange Program Application for use by sponsors.

Finally, the Priority Selection Process will not apply to the award of monetized credits. Applicants applying for Monetized Credit sub-awards in an amount not to exceed the cash value of the credit reservation returned will not be subject to the Priority Selection Process.

Question: I have a prior award of 9% credits and intend to apply for the Tax Credit Exchange Program, but I think I will need more funding than is produced by the return of my credits for \$0.85. Does MSHDA plan to award additional funding to projects like this?

Answer (posted May 20, 2009): Under the Authority's Preliminary

Implementation Plan, we do not anticipate awarding more than ARRA funding—from either TCAP or Monetized Credit—to a specific development than can be produced by the returned tax credit reservation. For example, the return of a \$1 million credit reservation (each year for ten years) would produce \$8.5 million in Monetized Credit Funding. The Authority does not anticipate awarding more than \$8.5 million in ARRA resources to such a development.

Developers may have several options to successfully complete a transaction in such a case however. They may seek a tax exempt Direct Loan from the Authority, qualify for 4% LIHTC, and sell those credits to bring additional resources to a project. They may seek a taxable Direct Loan from the Authority and compete for additional gap financing resources under the Priority Selection Process.

Alternatively, developers may seek additional sources of financing from other sources such as local HOME or CDBG funding, Federal Home Loan Bank Affordable Housing Program, local philanthropy, etc.

Developers whose projects are no longer economically feasible within current underwriting criteria even at an exchange rate of \$0.85 are reminded that the Authority will accept returns of credit reservations without penalty.

Question: I have a 2008 reservation of 9% credits and intend to apply for the Tax Credit Exchange Program outlined in the Preliminary Implementation Plan. I also plan to apply for 4% tax credits and tax exempt financing from MSHDA's Direct Lending Program. How do the parameters apply to me? Do I have to compete for the Monetized Credit funds under the "Priority Selection Process?"

Answer (posted May 20, 2009): As long as the project does not need additional funding above the \$0.85 in monetized credit, the development will not be subject to the Priority Selection Process. However, the project will be subject to Sections I – VI of the Program Parameters.

Question: I have applied for Taxable Bond financing with 9% tax credits, and will need MSHDA gap financing on top of the \$0.25 in TCAP funding. How do the parameters apply to me? Do I have to compete for the soft gap funds under the "Priority Selection Process?"

Answer (posted May 20, 2009): Yes, all Direct Lending projects requesting soft gap funding from MSHDA above the limits of the Preliminary Implementation Plan will be subject to all sections of the parameters, including Section VII the Priority Selection Process.

Question: Will all 9% Tax Credit applications in the May 2009 round be subject to the Authority's Direct Lending underwriting?

Response (posted April 10, 2009): Development proposals that are not seeking ARRA funding from the Authority (i.e. TCAP, HOME, or other soft funding) will not be subject to the joint underwriting process envisioned by the preliminary plan. However, given the current equity market, the Authority anticipates that most May round proposals will seek some level of Tax Credit Assistance Program funding which we expect will expose the Authority to recapture risk similar to that associated with the HOME program. Therefore, most applications will be processed jointly between Tax Credit Allocations and Rental

Development.

Question: If a project receives Municipality funds (e.g. NSP or HOME), which design review and underwriting standards take precedent?

Response (posted April 10, 2009): Generally, developments will be required to independently meet the design requirements imposed by each funder, not one or another. Any project receiving TCAP or Monetized Credit funding from the Authority would be expected to meet the MSHDA Standards of Design.

However, MSHDA is keenly aware of the challenges and pitfalls requiring several dozen developments to go through the "standard" design review process simultaneously and is considering ways to streamline the process without sacrificing the benefits of this system.

Question: If the stimulus money is regarded as soft loans, there could be a valuation problem with the property at the end of 15 years (i.e. property is worth less than all the debt). How will MSHDA handle this?

This is similar to HUD's Mark-To-Market program where the rents are reduced and the debt is refinanced, thereby creating a lot of subordinate debt. HUD allows the subordinate debt to be forgiven if a non-profit purchases the property OR they allow an assignment of the subordinate debt to the new purchaser.

What will MSHDA do?

Response (posted April 10, 2009): The exact structure and terms of investments from ARRA resources are still under consideration. Tentatively, the Authority anticipates structuring TCAP awards as subordinate mortgages payable from a percentage of cash flow, probably under the same terms that HOME funds are currently loaned to Direct Lending transactions.

Monetized credits, on the other hand, have special tax characteristics under ARRA. Because the Authority cannot legally take a limited partner interest (nor is it interested in such a structure), monetized credit funds are likely to be structured as mortgage loans. However, we are considering terms that would be similar to equity. These could include:

- Forgiveness at the end of a 30 year compliance period (the initial 15 required of standard credits plus the state enforced 15 year extended affordability required by Section 42) with a structured opportunity for a new entity to assume the debt associated with a re-capitalization in 15 to 20 years;
 - Payment to the Authority of some share of cash flow;
 - An assignable option to purchase the property at a formula price based on the outstanding debt or a split of net sales proceeds after payment of outstanding debt.
-

Question: How should all stakeholders ensure that this process does not slow down the stimulative intent? What would the Authority like for Developers to do in order to help this plan be as expeditious as possible?

Response (posted April 10, 2009): Developers can help by providing

feedback and input to the Authority on the preliminary plan. In terms of specific transactions, developers should be considering the impact of cross-cutting federal regulations on their development, working with their development team to identify due diligence items that may need to be updated, and re-evaluating their proformas in light of the expectation that ARRA assisted developments fit within the Authority's Direct Lending Underwriting criteria.

Highlights of these criteria that may require proforma revisions include:

- Minimum DCR of 1.25;
- Minimum Vacancy Rate of 8%;
- Operating Reserve equal to 4 months debt service and operating expenses;
- Replacement Reserve deposits of \$250-\$350 per unit, per year (New construction: \$300 family; \$250 senior; \$50 additional for in-unit washers/dryer—Preservation: \$300);
- Initial RR deposit based on 20 year CNA.

Additionally, the Authority expects to stress test deals more vigorously, projecting cash flows based on rent increases of no more than 1% for 5 years, 6% utility inflation for 5 years, and potentially 4% increases in maintenance and administration expenses for the 20 year projection period.

Finally, while the stimulative effect of these developments is important, it is worth reiterating that not all pipeline projects can move forward simultaneously. The Authority will seek to reverse triage the pipeline, focusing initial efforts on developments that can be soundly and solidly underwritten most quickly, leaving more challenging development proposals with additional time to meet program requirements.

Question: Which QAP will an Owner have to abide by if they receive TCAP and/or Exchange Dollars? January 2008 reservations are currently subject to the 2007 QAP, which doesn't include Service Provider criteria. It makes sense to have the project abide by the rules of the initial allocating QAP since TCAP and Exchange Dollars go further under those rules. This would be less of an administrative burden on Service Providers and Developers.

Response (posted April 10, 2009): A definitive answer to this question may require guidance from HUD and Treasury, and the answers may vary between TCAP and Monetized Credit funding.

- TCAP funds awarded to 2009 9% LIHTC applicants would be consistent with the 2009 QAP.
- TCAP funds awarded to 4% Direct Lending projects would be subject to the QAP under which those applications were processed. Most would be subject to the 2009 QAP, but a few may still be under a prior year's QAP.

Reservations issued under the 2007 QAP, including those from the January 2008 funding round, are in a somewhat different class than 2008 QAP awards that have not been able to syndicate. The 2007 QAP was less effective in achieving many policy outcomes; those developments have had much more opportunity to syndicate than awards made late in 2008; and they will require the most extensive re-underwriting and due diligence updating.

The Authority is considering applying the 10% Permanent Supportive

Housing set-aside requirement to all non-elderly developments in the 9% Tax Credit Exchange Program, but if this requirement is applied, these developments will be given an opportunity to apply for Project Based Vouchers as appropriate.

Question: MSHDA has the authority to charge a subsidy layering review fee according to page 28 of the QAP. Therefore, will MSHDA be charging Developers a subsidy layering review fee for the use of TCAP and Exchange Dollars? If so, what is that fee and should we include it in our May funding round applications?

Response (posted April 10, 2009): We are still working to develop standards in this regard, and the nature of fees charged will depend somewhat on the federal guidelines within which these programs will operate. Initially, the Authority is considering an "origination" fee equal to 2% of the gross TCAP or Monetized Credit funding awarded to a development which would offset the Authority's cost of underwriting, closing, oversight of construction and disbursements, and otherwise monitoring the development stage of a project. This would include subsidy layering reviews.

We are also considering a multi-tiered approach to asset management fees to cover the Authority's ongoing cost of monitoring the performance and financial health of a development. While it's not fully clear at this point, those tiers would include:

- Developments participating in the 9% Tax Credit Assistance Program that have actual syndication proceeds and ongoing oversight by a third party equity provider (likely annual fee per project: \$3,500-\$5,000);
- Developments participating in the 9% Tax Credit Exchange Program that also participate in the Authority's TEAM Direct Lending/4% LIHTC Program and projects Participating in the 4% Tax Credit Assistance Program (likely annual fee per project: \$0); and
- Developments participating in the 9% Tax Credit Exchange Program without concurrent participation with the Direct Lending program (likely annual fee per project: \$7,500-\$10,000).

Additionally, standard compliance monitoring fees would still be charged.

Question: How long will implementation take, in light of the approaching 10% tests for Carryover Allocations?

Response (posted April 10, 2009): Implementation of the four programs outlined in the draft preliminary plan will require federal guidance. As a result, it is difficult to specifically commit to hard dates at this time. TCAP guidance from HUD is expected sooner than Monetized Credit guidance from Treasury, so it is likely that funding associated with the 9% and Tax Credit Assistance Programs will be available before closings can occur under the 9% Tax Credit Exchange or the Reinvestment and Innovation Programs.

The 10% carryover is an IRS requirement of the Low Income Housing Tax Credit program and cannot be waived by the Authority. We recognize that the timing is difficult, leaving developers that received an allocation in May 2008 with a choice between returning their credits now without absolute clarity on the Exchange Program requirements, or

spending money on a project that may not ever attract tax credit equity. It is, however, the Authority's impression that once a reservation is returned for the Authority to monetize, the 10% carryover requirement will not be an issue, or at least will have a "new clock," under the Exchange Program.

Question: What reasonable assurances will MSHDA provide that once tax credits are returned, Developers will receive exchange dollars?

Response (posted April 10, 2009): The Authority intends to provide clear guidance to Developers about the underwriting standards, program terms, and processing expectations. We believe this should provide Developers with an adequate and transparent understanding of the likelihood that a specific development will qualify for the exchange program. However, in order to apply for the 9% Tax Credit Exchange Program, sponsors will be required to return their credit reservations.

Question: How will Syndication Prices outlined in the approved QAP apply with the use of TCAP and Exchange Dollars? Does an Exchange Dollar equal a Hard Equity Commitment?

Response (posted April 10, 2009): Monetized Credit funding, or "exchange dollars," does not equal a hard equity commitment. Under the draft preliminary plan, the Authority does not anticipate awarding Monetized Credit to developments competing in the 2009 QAP funding rounds in which a hard equity commitment yields substantial points. While the Authority anticipates providing TCAP funding to this class of development proposals, TCAP is not a hard equity commitment either.

Question: What is MSHDA doing to require that developers (for housing developments from 2007-2009) comply with Section 504? When will MSHDA reopen its QAP to include the 504 requirements? Section 504 of the Rehabilitation Act of 1973, in tandem with other similar requirements, requires among other things that certain accessible design features be included in federally assisted housing.

Answer (posted April 22, 2009): While federal guidance from HUD and Treasury are needed to answer definitively, the Authority is moving forward with planning efforts based on the assumption that both TCAP and Monetized Credit funding will trigger Section 504 compliance requirements and application of Uniform Federal Accessibility Standards. The Authority will ensure compliance in this regard through a design review process and construction oversight.

However, the Authority does not plan to reopen the QAP for revisions at this time, and development proposals that can move forward without using TCAP or Monetized Credit funding will not be required to comply with Section 504 unless other funding sources in a transaction trigger compliance with cross cutting federal regulations.

Question: Will developers be required to submit hard equity commitments in order to obtain TCAP funds?

Answer (posted April 22, 2009): No, applicants in the May 1 window may indicate their intent to request TCAP funding whether or not they have hard equity commitments. However, federal regulations may well require that TCAP funds be used by a specific deadline separate from

the calendar for LIHTC. Therefore, projects winning TCAP awards may well be required to meet a more demanding schedule than that imposed by LIHTC alone. In such cases, an equity commitment would, of course, be beneficial.

Question: Can developments with 2007/2008 reservations that need to close a pricing gap receive TCAP assistance?

Answer (posted April 22, 2009): At this time, the Authority does not anticipate providing TCAP assistance to developments syndicating prior year credits at less than the Exchange Rate. As noted in the preliminary plan, doing so would diminish the value of these federal resources to the state, requiring both the use of limited gap financing and the net "loss" of value in credit that could have otherwise been exchanged at a higher rate.

As the Authority reviews the results of the Exchange Survey, this position may be reconsidered for specific deals based on the unique circumstances and timing of each proposal. However, regardless of the form or assistance—TCAP or Monetized Credits—the Authority expects to apply the same underwriting criteria.

Question: Will projects applying to the Tax Credit Exchange Program be simply re-underwritten or will there also be a rescoring process?

Answer (posted April 22, 2009): Tax Credit Exchange applicants will be re-underwritten to ensure that, given the increased role of the Authority in the transaction, the development team is acceptable, the development meets the Authority's underwriting criteria, due diligence still supports the transaction, and cross cutting federal regulations have been properly addressed and adhered to. Because Exchange Program applicants are limited to those returning credits, the Authority does not anticipate re-scoring this universe of development proposals unless further federal guidance requires we do so.

However, given the realities of the situation and the changes in both local markets and the economy over the past year and half, sponsors should be aware that not every development proposal with a prior award of credits is going to be considered viable or prudent. And not every proposal that applies for Exchange Program funding will be able to move forward simultaneously. We do intend to triage the applications and will move some faster than others based on their relative strength, the speed at which sponsors turn back credits, and unique circumstances involved in each deal (for example moving a deal with an impending loss of site control more quickly than one that may not be facing such a deadline).

Question: Can sponsors who already returned prior year's credits prior to the passage of ARRA apply for the Tax Credit Exchange Program?

Answer (posted April 22, 2009): No, credits previously returned from the 2007 round were re-awarded in the August 2008 round. Those credits cannot be exchanged with the federal government twice. Only those sponsors returning reservations after the passage of ARRA are eligible to apply for the 9% Tax Credit Exchange Program.

Question: If I return my 2008 credits, do I have to obtain a MSHDA

direct loan? Or do I only have to adhere to the MSHDA process review in order to obtain Exchange Dollars?

Answer (posted April 22, 2009): Sponsors interested in the 9% Tax Credit Exchange Program are NOT required to apply for a MSHDA Tax-Exempt loan. The Authority believes that participation will be desirable in many cases because of the ability to leverage 4% LIHTC equity in a way that both improves the financial position of the development and increases the net federal resources available to the state.

However, it is correct that all applicants for the Exchange Program, as well as those seeking TCAP funding, will be required to satisfy the Authority's Direct Lending Underwriting standards and the streamlined review process we are developing.

Question: Are there specific set-asides within MSHDA's plan for Permanent Supportive Housing?

Answer (posted April 22, 2009): There are not explicit set-asides or carve outs for permanent supportive housing in the preliminary ARRA implementation plan. Likewise there are not specific setasides or targets for other specific subsets of projects such as preservation, DHHP, nonprofit sponsors, etc.

However, this should not be taken as a retreat from the various public policy goals these various targets represent. Rather, the ARRA resources are all tied to supporting developments already subject to the QAP (or in the case of the Exchange Program prior QAPs). Both the QAP and the soon to be released Prioritization Process for awarding soft funding to Direct Lending applications contain various incentives promoting Permanent Supportive Housing and other policy goals. In short, the ARRA resources do not need their own carve out since they will, by design, support the QAP and its policy goals.

Question: Is there any reason for me to think that my project would be eligible to receive exchange funds if it does not meet the current MSHDA design review standards?

Answer (Posted April 23, 2009): The Authority is reviewing current design review standards and their applicability to projects that may apply for Exchange Funds, and we recognize the need for some flexibility in this regard. We expect that in some cases, alternative means of mitigating risk may be used—underwriting less “desirable” units within a specific building at lower rents for example—while in others modifications to building plans may be appropriate. The Authority encourages all owners to review their projects, how they will fit within existing program guidelines, and consider what modifications may be easily made to improve consistency with the standards of design. However, it is possible that certain types of projects may not fit within the design criteria and may not be eligible to receive tax credit exchange funds.

Question: Will any deviation from the published operating standards and trending factors be allowed?

Answer (Posted April 23, 2009): At this time, the Authority anticipates applying the published operating standards and trending factors to the

majority of projects applying for funds. However, in certain cases where historic data can support the use of alternative standards, the Authority will consider the use of those standards on a case-by-case basis. Additionally, if specific developments apply for 9% credits with a hard equity commitment and without the need for TCAP or other soft funding from the Authority, we will consider alternative standards if the sponsor provides evidence that the tax credit investor, lender, and other funding sources have jointly approved the use of that alternative standard.

Question: Will an owner applying for the 9% Tax Credit Assistance Program or the 9% Tax Credit Exchange Program be required to have a new Capital Needs Assessment (CNA) completed by MSHDA if the owner has already had a CNA completed by another preparer?

Answer (Posted April 23, 2009): MSHDA will consider the use of a CNA that is prepared by an alternate source. However, its acceptability will depend on various factors including, but not limited to: the date the assessment was prepared and MSHDA's assessment of the accuracy of the data in the report. These instances will be reviewed on a case-by-case basis. For developments already in the Authority's portfolio, we will also take the most recent CNA completed as part of our Asset Management process into account when reviewing the submitted CNA.

Developers who have not already ordered their CNAs and who plan to apply for ARRA funding from the Authority or who plan to apply within the Direct Lending programs should contact John Hundt to discuss the process for ordering a Preservation CNA through the Authority.

Question: Why didn't the Authority include references to the Fair Housing Act in its preliminary plan? Isn't that one of the cross cutting federal requirements specifically mentioned as not subject to any federal waiver in the ARRA legislation?

Answer (Posted April 23, 2009): We expect all developments receiving tax credits, with or without ARRA resources, to comply with all appropriate Fair Housing Requirements and other laws and standards generally applied to the development of low and moderate income housing developments. The cross cutting requirements specifically mentioned in the preliminary plan were those the Authority believed may be least familiar to developers that have not used federal funds in prior Low Income Housing Tax Credit deals and those with which compliance was most likely to have an immediate impact on the planning for or financial structure of a deal; it was not intended as an exhaustive list.

Question: Will MSHDA require my project to meet the 1.25 Debt Coverage Ratio for the entire 15-year Compliance Period?

Answer (Posted April 23, 2009): At this time, the Authority prefers to see a minimum 1.25 DCR for the duration of the Compliance Period but understands the impact that its income and expense trending factors will have on debt coverage ratios. In certain cases, project-specific details may warrant the use of an alternative standard or other means of mitigating risk such as higher operating reserves. These instances will be reviewed on a case-by-case basis.

Question: My MSHDA imposed tax credit commitment deadline is fast approaching. I'm interested in the Exchange Program but still need to understand more about it. Is my only choice to return the credits now?

Answer (Posted April 23, 2009): While the Authority is still interested in facilitating an expeditious return of credits that have been unable to syndicate, we are well aware of the angst this causes. Our intent has been to provide as much guidance as possible so sponsors can make informed decisions. As we await definitive federal guidance, any prior year 9% credit awards with MSHDA imposed commitment deadlines prior to the end of May will be provided with automatic extensions through May 31, 2009.

We intend to provide further information on our plans for the 9% Tax Credit Exchange Program, even in the absence of definitive rules from Treasury, over the next several weeks so that developers can better understand the shape and direction of Authority policy.

To be clear, this automatic extension does NOT affect federally imposed carryover tests, so some sponsors are still in the difficult position of deciding between spending additional dollars on a project that may not ever sell its credits or returning the credits now for a spot in line for the still developing 9% Tax Credit Exchange Program. Additionally, this decision does not affect reservations with commitment deadlines already scheduled for June 1 or later.

Question: Since TCAP is a federal funding source similar to HOME, can I get points for "Federal, State, or Local Funding" in the Scoring Summary?

Answer (Posted April 27, 2009): No, federal TCAP will not qualify for points as federal, state, or local funding in scoring summary. While TCAP is a federal funding source, it's specifically tied to LIHTC production and intended to offset the disruptions in the syndication market. Leverage is important, but the real goal is maximizing sources other than LIHTC or TCAP. Since the Authority is providing additional points to sponsors who do not need TCAP assistance, awarding points to a proposal because it does use TCAP would be illogical.

Question: I understand that using TCAP will trigger various federal requirements, including Environmental Review under NEPA. What is the timing of this review, and how does that mesh with the tax credit program's requirement for 120 days of site control?

Answer (Posted April 27, 2009): The lack of clear federal guidelines for TCAP makes this issue tricky. From a standpoint of just your application for a tax credit reservation, the 120 day site control requirement is unchanged.

In a situation where the Authority is providing HOME funds to a transaction, if a site's environmental condition is straight forward and "clean," 120 days should also be adequate to complete the NEPA review process. Contamination, the presence of wetlands, noise impacts, SHPO review, or other issues can stretch this process out significantly.

Since the Authority does not yet have the TCAP guidelines from HUD, it is unclear how this timeline will line up with the minimum 120 day land

control required to apply for tax credits. In order to make even a tentative award subject to a NEPA review, HUD must publish guidance, the Authority will have to develop any formal plans required by HUD, HUD may need to approve those plans, formal TCAP applications may need to be submitted by sponsors, and NEPA reviews will need to be completed.

We intend to do everything we can to speed the NEPA review process for applications seeking TCAP funding, including processing the local and state level record reviews needed. But we cannot publish or submit requests for release of funds to HUD until the TCAP guidance is issued and the Authority is cleared to proceed with its program.

As a practical matter, the Authority recommends that sponsors seek to negotiate longer site control options rather than counting on the minimum 120 days tax credit standard being adequate.

Sponsors must be aware that once they have indicated intent to request TCAP (or other federal) funding, taking "choice limiting actions" including acquiring the property may render a proposal ineligible for federal funding.

Question: Why does a developer who is not seeking any TCAP funding still have to complete the TCAP Notice of Intent Apply form? If I don't need TCAP, does the whole development team still need to sign the form?

Answer (Posted April 27, 2009): The TCAP Notice of Intent to Apply form is filling multiple purposes. It determines the maximum TCAP allowed under the preliminary plan, indicates the TCAP request the developer intends to make, and determines how many additional points will be awarded for requesting less than the maximum TCAP. Developers who are not seeking any TCAP funding still need to complete the form in order to document the additional 50 points that such an application will receive.

The form is also intended to make clear to key members of the development team that cross-cutting federal requirements are presumed to apply to TCAP funding and that those cross-cutting requirements may affect their work vis-à-vis the development proposal. This purpose of the form is moot for proposals that do not need TCAP assistance, so **in the limited case of projects not seeking any TCAP assistance**, only the owner/applicant will need to sign the TCAP Notice of Intent to Apply form. In such instances, the architect and contractor need not sign the form.

Sponsors should still be aware that if their proposal relies on other sources of federal funding—such as Project Based Vouchers or local HOME or CDBG—these cross-cutting requirements may still apply.