LOW-INCOME HOUSING TAX CREDIT PROVISIONS

The American Recovery and Reinvestment Act of 2009

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"TCAP"
Tax Credit Assistance Program

- **Gap Financing**
- **$2,250,000,000 to be available to state housing credit agencies until September 30, 2011.**

Funds to be apportioned amongst state credit agencies based on percentage of HOME funds apportioned to each state and participating jurisdictions for FY 2008.

- This is a different formula than the per capita amount available to states under the population formula used for Section 42.
- Some states, mainly the larger ones with more populated areas, are better off under this formula, others not.

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Distribution of Funds by Housing Credit Agencies

- **Funds must be distributed competitively.**
- **Funds must be distributed pursuant to QAP.**
- **Funds available to owners who either have received or receive simultaneously an award of tax credit under Section 42(h) of IRC (can be either 9% or tax-exempt bond deals.)**
- **Funds do not result in reduced eligible basis.**

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Timing of Awards and Expenditures

- **75% of funds must be committed by housing credit agencies within 1 year of enactment.**
- **75% of funds must be expended by owners within 2 years of enactment.**
  - Failure by an owner to expend within this time frame will result in redistribution by the credit agency to "a more deserving project" in the state.
- **100% of funds must be expended within 3 years of enactment.**

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Eligibility to Receive Funds

- **Any funds not expended after 3 years from enactment will be redistributed by the Secretary to states that have fully utilized their funds.**
- **States must give priority to projects expected to be completed within 3 years of enactment.**
- **Projects awarded tax credits under Section 42(h) of the IRC during fiscal years 2007, 2008, or 2009 are eligible to receive this gap financing.**

Restrictions that Apply

- **Some HOME restrictions apply, including:**
  - Fair Housing
  - Non-discrimination
  - Labor Standards
  - Environmental standards

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Other Restrictions

- **HUD Secretary may waive other HOME related restrictions.**
- **All state agency restrictions relating to the tax credit award must be adhered to, including rent, income, and other use restrictions.**
- **State credit agency must perform asset management or contract for such services to assure compliance with Section 42 requirements – at owners' expense.**

Reporting to HUD

- **HUD Secretary shall be given access to information “related to the award of Federal funds” after reasonable notice to state credit agency.**
- **HUD must establish an Internet site identifying projects selected to receive awards.**
  - Including the amount of the awards and with links to the states’ QAPs describing the process used to make the award decisions.

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TCAP Recap

- **Gap financing**
- **Available only to 07’, 08’,09’ deals that simultaneously receive (or have already received) a tax credit award.**
- **Must be distributed “competitively” pursuant to QAP.**
- **Funds do not reduce basis.**
- **Time frames for committing and using money.**
- **Some HOME rules apply.**

Challenges

- How best to use funds?
- How to underwrite deals?
- Should funds be structured as loans or grants?
- What does distributing funds competitively mean in this context?
- Changes to QAP to accommodate requirements.

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Tax Credit Exchange Program

- **Section 1602 authorizes the Treasury Secretary to make a grant to each housing credit agency, at the agency's election, in the maximum amount of 85% of the following amounts:**
  - 40% of the sum of the states' annual per capita credit amount (the greater of \$2.20 per state resident for 2009 or \$2,557,500) **and**
  - any amount it received from the national pool times 10; **PLUS**
  - 100% of 2009 credit ceiling attributable to a state's unused credit ceiling for 2008 **and** 100% of a state's credit ceiling returned in 2009 times 10.

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Credit Exchange

40% of annual per capita credit for 2009

+ 40% of state's share of national pool credit

+ 100% of unallocated 2008 credit

+ 100% of credit returned in 2009

X 10

X $.85

- ***Remember, any amount exchanged will reduce the amount of credit available to allocate.***

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Rules Governing Exchanged Credit

- **Sub awards may be made for construction or acquisition/rehab of qualified low-income buildings, with or without an allocation of tax credits.**
- **Sub awards may only be made to qualified low-income buildings without tax credit allocations if the credit agency determines that "such use will increase the total funds available to the state to build and rehabilitate affordable housing."**

Good Faith Requirement

- In making this determination, state credit agencies must establish a process by which those allocated credits are required to demonstrate “good faith efforts” to obtain investment commitments for credit before the agency makes an award of funds.

Awards Subject to LIHTC Requirements

- **Sub awards are subject to the same limitations of rent, income, and use restrictions as allocations made under Section 42, EXCEPT that they are not limited to or otherwise affected by the state's housing credit ceiling.**
- **Funds will not reduce eligible basis. The conference agreement indicates that the grants are not taxable income.**

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Compliance and Asset Management

- State credit agencies must perform “asset management” functions to ensure compliance with Section 42 requirements for any sub awards made with these funds.
- They may collect reasonable fees from the recipient to cover expenses to perform its duties hereunder.
- The credit agency may contract for these responsibilities.

Recapture

- State credit agencies must impose conditions on the sub awards, including a requirement for recapture if the buildings are not in compliance during the compliance period.
- Any recapture is payable to the Secretary of the Treasury.

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Return of Unused Funds

- **If a housing credit agency does not use its exchanged funds before January 1, 2011, unused funds will be returned to the Treasury.**

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Concerns

- Exchange is only available in 2009.
- Funds can be used for qualified low-income buildings that do or do not have an allocation of housing tax credits.
- What good faith efforts to obtain investment dollars must a project owner first show in order to obtain exchange funds without having housing tax credits?
- How will states decide whether to exchange credit and how much to exchange?

Concerns Continued

- Should funds be structured as grants or loans?
- What criteria will be established for the awarding of exchange funds?
- What will the interplay between “gap financing” and “exchange” funds be?
- How quickly can these programs be implemented by states?

Massachusetts
TCAP Example

- **TCAP Financing based on HUD formula is:**

$2,250,000,000 (total amount for all states)

x 2.6461% (MA's percent of HOME funds)

= $59,537,250

Massachusetts

Tax Credit Exchange Program

2009 per capita credit of $14,189,461
+ National pool credit of 139,923
= $14,329,384

X 40%
= $5,731,753.60

x 10
= $57,317, 536

x $.85
= 48,719,905

plus 85% of 10 times any credit returned in 2009

Massachusetts Continued

- **Total Funding could equal:**
  - $59,537,250 in gap financing
  - plus $48,719,905 in exchange funds
  - total of **$108,257,155** (not including any funds exchanged from returned credit)
  - $8.6 million in credit to allocate instead of $14.3 million.

California
TCAP Example

- **California could get gap financing equal to**

$2,250,000,000 (total available to country)

X 14.4740% (from HOME formula)

=$325,665,000

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California
Tax Credit Exchange Program

- **CA could exchange 40% x 10 x $.85 of its per capita amount of $80,417,073 for a total of $273,418,048 before considering any returned credit during 2009.**
- **Thus, combining gap and exchange credit without accounting for any returned credit, California could have approximately $600 million in cash to assist affordable rental housing.**
- **Remember, however, that it would have only 60% of its per capita ceiling to allocate in credit, or approximately $48.25 million instead of $80.4 million.**

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Other Affordable Housing Provisions

- **$2 billion to fully fund project-based Section 8 contracts.**
- **$4 billion in capital funds for PHAs ($3 billion according to formula; $1 billion competitive.)**
- **$250 million for public housing and HUD assisted multifamily "green" or sustainable investments.**