



**California Housing Consortium
Comments on TCAC ARRA draft regulations
Submitted April 7, 2009**

CHC's comments on the proposed TCAC regulations have been guided by the principles of consensus building amongst a diverse group of participants, simplification of the process, prudent use of federal stimulus dollars, good public policy, and a belief that stimulus funds should be used to bolster the tax credit program, not to supplant it. As a group representing nonprofit and for profit developers, syndicators, lawyers, accountants, and consultants, we have chosen to comment on only a few of the proposed changes and expect that individual members/organizations may comment on other items of particular interest and/or import to them.

We understand that you have put a great deal of thought into the proposed regulations. And while appreciating the difficult task that TCAC has in deciding how to administer these programs given the multitude of stakeholder ideas and the dearth of federal guidance to date, we urge you to consider simplifying the draft regulations as suggested below. We believe these suggestions would be easier for applicants to understand and TCAC to administer, would not diminish the potential long term viability of projects, and would create the opportunity for good projects to move forward, and for investors to participate in those projects.

2009 9% Applications

Hold Just One Round in 2009

No guidance has yet been issued by either HUD (with respect to the TCAP funds) or Treasury (regarding the Exchange funds). This guidance must be incorporated into section 10323 in a thoughtful and public way and could even require meaningful changes to the currently proposed regulations. The current schedule envisions final regs being adopted on April 30th application deadline of May 26 with first round awards on August 5th. As currently proposed, the second funding round awards would not be made until October 28th.

TCAP funds can only be awarded to projects with awards of 2009 credits that are made by September 30, 2009. It is important that the entire per capita 2009 credits be awarded to projects by the September 30th deadline so that such projects can be considered for initial TCAP awards as well as awards of TCAP funds that may revert to TCAC from either MHP projects or projects that can't move forward. While Exchange funds can be awarded to projects with or without credits and without a September 30, 2009 deadline, it would be a shame to have to return TCAP funds to Treasury because there were no projects meeting the restrictions of the legislation.

Furthermore, the timing of multiple rounds would make things more difficult both for applicants and for staff since the proposed 45 day time frame would not have expired for first round deals prior to the second round. And while recognizing that having two rounds is a preference that has been clearly and consistently heard from the development community over the years, 2009 is an extraordinary year and for that reason, and for 2009 only, there should be only one round.

We recognize that TCAC may need to make accommodation to take into consideration applicants that hope to be awarded funds from the City of Los Angeles, given the presumed timing of such awards but believe that TCAC and the City can mutually agree on a way to deal with this potential timing issue.

The remaining comments/proposals assume one round in 2009.

Increase the Time for Attracting an Investor after the Award of Credits except for Special Needs and Nonprofit Homeless set-aside developments receiving credit Reservations

Successful applicants in the primary competition should be allowed longer than 45 days to attract an investor (apart from Special Needs and Nonprofit Homeless set-aside deals as described below). The time it will take for a syndicator or investor even to conditionally commit to an investment has increased over the past several months. Without available lines of credit and with the dearth of investors, it will be nearly impossible for a developer to obtain a commitment within 45 days after receiving a credit Reservation. This would mean that many more projects with Reservations would be asking TCAC for Exchange or TCAP funds when, if they had a longer period to seek equity partners, they might be successful in that quest. Further, there are no statutory or regulatory constraints to allowing this longer time period since once the Reservations have been made, TCAC has until February 17, 2010 to award 75% of its TCAP funds and the only time constraint on the Exchange money is before January 2011. For these reasons, we believe that the period given to seek investors should be increased from forty-five (45) day to ninety (90) days.

This time period should not apply to Special Needs and Nonprofit Homeless set-aside developments that receive Reservations of credit. If those developments submit at least two (2) letters of disinterest/denial from potential investors at any time after the Reservation is issued, they should be able to access needed gap funding (either TCACP

or Exchange funds). This will enable these important public policy developments to get underway quickly and not spend additional time searching in vain for equity partners.

Determining Cash Awards to Projects without an Investor

Under the proposed regulations, projects that cannot find an investor after the 45 day deadline must return their credits and, utilizing their original applications, be scored in a second competition using different criteria to determine the priority for receiving ARRA funds.

Projects should be permitted to return their federal credit while retaining their state credit. This does not appear to be contemplated under the proposed regulations but there may be a market for state credit from investors with no appetite for federal credit and permitting this kind of partial exchange would require less gap filling with ARRA funds.

The proposed secondary competition overly complicates the process, is unnecessary, and could have unforeseen and unintended consequences in the long run. It complicates decisions developers must make in their initial applications with respect to leveraging and income/rent targeting, raises questions about projects' long term viability, and would act as a deterrent to investor interest in 2009 projects.

Not wanting to lose in the secondary competition, applicants may propose rent structures that may not keep up with expenses over time. These developments would be less attractive to investors, meaning that more developments may not find equity partners, in turn putting a greater demand on Exchange funds and leaving TCAC as the sole investor in such projects.

Second, the inverse relationship of gap funds requested to Total Project Cost encourages developers to propose a financing structure with which they would not otherwise be comfortable. This may have the effect of weakening the financial structure of the project, including perhaps proposing more hard debt than otherwise would be considered, again discouraging investor participation and potentially creating a less viable deal. The regulations adopted only several weeks ago encourage soft funds, keeping the need for hard debt at a reasonable level. The inverse relationship scoring criterion would encourage applicants to assume a low equity price in their applications, further skewing the leveraging points there-under.

Third, giving differing points to special needs, rural, at-risk, family, and senior projects may not be necessary to achieve the desired balance. We have already suggested that special needs projects can be funded virtually immediately after receiving a credit Reservation. We urge you to consider utilizing the order and the set-aside amounts in Section 10325(d), for Non-profit (except for Nonprofit Homeless set-aside), Rural, Small Development, and At-Risk categories. Once the percentages of ARRA funds ascribed to the set-asides have been utilized to assist these projects, the remainder would be grouped together with all other projects in order of their scoring and ranking in the initial competition.

ARRA funds should be used to assure the long term viability of projects, not to push projects to potentially unsustainable levels. These funds should be used to supplement the current program, not to supplant it.

2007/2008 9% projects

Allow Projects with an Interested Investor to Retain their Credits

Proposed regulations require any developer with 2007 or 2008 credits to return them whether or not they have a viable offer from an investor that is contingent only on filling a financing gap. In the spirit of maintaining the public/private partnership wherever possible, a developer should be able to choose whether to stay with its investor and, if necessary, receive gap financing up to \$0.15 per credit to cover the shortfall, or turn in its credits. While the investor credit price will not garner \$0.85 on the dollar, it has an immeasurable value in maintaining the public/private partnership Congress intended and will require less “gap” funding.

Extend the Original Placed-In-Service dates

Proposed regulations do not allow deviation from the original 24 months from allocation year to be placed-in-service. This is not mandated by ARRA and is counter-intuitive to allowing the most shovel-ready deals to start construction. By the time the regulations are in effect, even the second round 2008 projects may not have sufficient time to place in service by the original date. Lenders will not go forward if there is no leeway in the proposed tight timeframe for placing-in-service and the developer will have to re-compete in the 2009 cycle under new rules that may not fit the older project. Projects should be granted extensions commensurate with a reasonable construction period so they can get under construction and meet the stimulus mandate of ARRA. Projects have until February 17, 2011 to expend 75% of any TCAP funds they receive and another year to expend 100%. Subject to Treasury guidance, Exchange funds have to be “used” by January 1, 2011 which may mean they only have to be awarded to projects by that date. Even if it means spent, the time frame would allow the funds to be used early in the construction period to assure they are “used”.

2007/2008/2009 Bond Deals

Competition Amongst Bond Deals can be Simplified

Bond deals from any of the three years that have an investor commitment conditioned only on gap financing should be allowed first priority within the bond deal competition for Exchange or TCAP funds.

Only those with a current bond allocation can compete and the competition should be based on 1) the income targeting upon which they won bonds and credits, deepest targeting receiving the highest points, and 2) the order in which they received credit

reservations, oldest ranking highest. Readiness to proceed could be another ranking criterion. Since only bond deals with reservations of credits on or before September 30, 2009 can receive TCAP funds, those projects receiving bonds and credits after the cut-off period for the older bond deals (e.g., June 1, 2009) should take lowest priority for whatever amount of funds are available to bond deals overall. Bond deals should not be ranked by Project Type.

Loan Terms

The Right of First Refusal should be the **greater of** market value or debt.

2nd Tie Breaker

In keeping with the stimulus bill's emphasis on "shovel ready" projects and recognizing the importance of showing the Congress, the GAO, and the citizens of California that TCAC is supportive of this important goal, TCAC should add a second tie-breaker as follows: Projects that will have a building permit within 30 days of receiving a credit Reservation. If an applicant claims that it will meet this criterion and does not, its Reservation will be rescinded after the 30 day period.

Debt Service Coverage ratios for underwriting

In keeping with good underwriting and standards adopted by virtually all lenders, syndicators, and other state credit agencies, TCAC should increase the minimum debt service coverage ratio used in its underwriting to require 1.15 for family and senior applications and 1.20 for special needs applications.