

MISSOURI HOUSING DEVELOPMENT COMMISSION

2009 Gap Funding Round Application Guide

Rental Production Department

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The American Recovery and Reinvestment Act of 2009 (“ARRA”) provides two sources of financing for low-income housing tax credit (“LIHTC”) developments. These funds are intended to help stimulate the economy by creating and retaining jobs; one of the primary ways to fulfill this intention is to aid stalled LIHTC developments. MHDC recognizes and understands that some developments previously approved by the commission are suffering from either a reduced equity investment or a complete lack of an equity investor. In an effort to solve this problem, close approved developments, and create and retain jobs, MHDC is making ARRA resources available in a Gap Funding Round.

Eligibility

To be considered eligible for the Gap Funding Round a development must meet each of the following requirements:

- **Received an award of LIHTC between October 1, 2006 and December 12, 2008.** The date of initial commission approval of a development, for Gap Funding Round purposes, is its award date. Both 4% and 9% developments that were approved between the dates listed meet the first eligibility test.
- **Has not started construction.** To meet the second eligibility test an approved development cannot have started construction and must be aware of, and abide by, the prohibitions regarding choice limiting actions (see page 6 below).
- **Has not changed significantly in scope of work or development costs from conditional reservation.** The gap funds available are intended for developments that have reduced or non-existent LIHTC equity commitments. Because in very rare instances cost increases may be reasonable, MHDC will in its sole discretion decide when an increase in cost is acceptable for gap financing. Increases to the scope of work or upgrades in materials and amenities will not be permitted without proper justification, if at all.

Types of Funding

The two sources of financing available for the Gap Funding Round are the Tax Credit Assistance Program (“TCAP”) and the Section 1602 program. TCAP funds and funds from the 1602 program, known as Tax Credit Replacement (“TCR”) funds for the purposes of the Gap Funding Round, will be available to eligible applicants. MHDC’s priority is to use TCAP funds first and whenever possible. Applicants will not be able to request one funding source over the other. As you prepare an application, please keep the TCAP priority in mind and assume that if you are approved for funds, it will be TCAP funds.

Any descriptions and directions provided in this application guide are based upon the guidance that has to date been received from the appropriate state and federal agencies. Upon further guidance the rules and requirements may be changed. Accordingly, any TCAP or TCR structures, terms and conditions contained herein are subject to change.

TCAP

TCAP funds will be structured as loans. MHDC will structure TCAP loans with terms and conditions appropriate for each individual development, but in general loans will feature:

- A construction period term up to thirty-six months with an interest rate of 0.00% during construction.
- Twenty-year permanent terms, unless there is senior debt with a longer term.
- Thirty-year amortization for any first position amortizing debt.
- A 1.00% interest rate for first position amortizing loans, 0.00% for subordinate cash-flow loans.
- Prepayment allowable with MHDC consent.
- Tax credit equity pay in schedule: 10% at closing, 10% at 50% completion, and the remainder thereafter.
- A compliance reserve established at closing and held by MHDC.
- Waiver of the ability to seek a qualified contract until the end of the loan term.
- Other standard MHDC loan terms, conditions, requirements and processes.

TCAP loans are federal funds and are subject to the following cross-cutting requirements:

- Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations at 24CFR Part 100 and the regulations at 24 CFR Part 107 (Equal Opportunity in Housing).
- Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR Part 1.
- The Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR Part 146 “Nondiscrimination on the Basis of Age in HUD Programs or Activities Receiving Federal Financial Assistance.”
- Affirmatively Furthering Fair Housing. Each TCAP loan recipient must establish an affirmative fair housing marketing plan that meets MHDC’s requirements for an AFHMP HUD form 935.2A.
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8 “Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development.”
- National Environmental Policy Act of 1969 and Related Laws (Environmental review responsibilities) and implementing regulations at 24 CFR Part 58.

- The Lead-Based Paint Poisoning Prevention Act and the Residential Lead-Based Paint Hazard Reduction Act of 1992 and implementing regulations at 24 CFR Part 35.
- Davis-Bacon Prevailing Wages subchapter IV of chapter 31 of Title 40 U.S.C.
- Anti-Lobbying Restrictions in 31 U.S.C. 1352 and implementing regulations at 24 CFR Part 87 (“New Restrictions on Lobbying”).
- The Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.) as implemented at 24 CFR Part 21 “Government Wide Requirements for Drug-Free Workplace (Grants).”

In addition, the following requirements apply to TCAP:

- 75% of the funds must be expended by 2/16/2011.
- 100% of the funds must be expended by 2/16/2012.
- Section 42 of the IRC of 1986 (the “Code”) requirements apply to TCAP funds, including that TCAP must be used for costs that would be considered eligible basis under the Code. This necessitates that any award of TCAP be less than the eligible basis calculated pursuant to the Code.
- TCAP funds cannot be used for swimming pools.
- There will be reporting requirements for each TCAP project. The reporting requirements will be explained in future guidance.

TCR

TCR funds will be forgivable loans. Each TCR loan will be structured with terms and conditions appropriate for each individual development, but in general forgivable loans will feature:

- A construction period term of up to 24 months.
- A forgivable loan term of 30 years. Release of loan requirements after year 15 will be considered on a case-by-case basis.
- Tax credit equity pay-in schedule (if applicable): 10% at closing, 10% at 50% completion, remainder thereafter.
- A compliance reserve established at closing and held by MHDC.
- MHDC must be granted the right of first refusal, which can be assigned to a third party of MHDC’s choice. All reserves stay with the property upon transfer.
- Other standard MHDC terms, conditions, requirements and processes as applicable.

TCR funds will be subject to the following requirements:

- TCR funds must be expended by 12/31/2010.

- The requirements of the Code apply to TCR funds.
- There will be reporting requirements for each project awarded TCR funds. The reporting requirements will be explained in future guidance.
- TCR awards may not exceed an amount that is necessary for the feasibility of the development pursuant to §42(m)(2)(A).

At this point TCR funds are not subject to the same federal cross-cutting requirements as TCAP funds. However, the appearance of fewer requirements for TCR does not mean further restrictions and requirements will not be forthcoming. MHDC's priority, as previously stated, is to award TCAP whenever possible. Only in rare and justified circumstances will TCR funds be used.

Application Requirements

In order to receive an award from the Gap Funding Round, the owner of an eligible project must submit an application. Submission of the following items is required.

1. **The Gap Funding Round Questionnaire.** A completed questionnaire is required of all Gap Funding Round applicants. The questionnaire provides an update of the current status and a timeline for future performance should gap funds be awarded. Time and effort should be spent to provide the most accurate information possible. The questionnaire will also allow the applicant to return any or all 9% LIHTCs that have been previously awarded. Returning credits does not guarantee that gap funds will be provided nor does it establish any kind of priority for gap funding. You may not receive, and are not entitled to, \$0.85 for each annual credit that you return. Applicants should only return credits for which they do not have a committed investor and do not have other options. Applicants returning a substantial amount of credits are encouraged to maintain some amount of credits which they may be able to use themselves. Under no circumstance will the amount of state LIHTC be greater than the amount of federal LIHTC allocated to a development. If you are returning all your federal 9% LIHTC, you will also have to return all your state 9% LIHTC. If you are returning a portion of your federal 9% LIHTC, you cannot keep more state LIHTC than the amount of the federal 9% LIHTC that you will be retaining.

Please provide an estimate of the number of jobs created and retained by the proposed development. For purposes of the questionnaire, this estimate shall include any new positions created and any existing filled positions that are retained to support or carry out the construction and operation of the property. The number shall be expressed as in terms of "full-time equivalent," calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule. While it may be difficult to determine an estimate this stage, your best approximation is appreciated.

2. **A Revised and Updated FIN-100.** Each applicant must submit an updated FIN-100 that reflects any changes made to the development since conditional reservation. Your updated construction budget must include costs that reflect Davis-Bacon prevailing wages and reporting. The sources must reflect sources that are committed. You do not need to create a source for the gap financing; enter in the committed sources and the gap will appear as deferred developer fee. The amount of the deferred developer fee is your gap amount and should be shown as such on the questionnaire. Please review the entire FIN-100 for changes, not just the development budget and development

sources tabs. For example, the development schedule must be updated with the assumption that the development will be approved for gap financing and will receive a conditional reservation on or about July 31, 2009.

3. **Two Versions of the FIN-115.** One version should reflect Davis-Bacon prevailing wages and reporting and the other should reflect costs without the Davis-Bacon requirements. If the standard wages are in excess of Davis-Bacon requirements and there would be no difference between the two FIN-115s, then you need only provide one FIN-115 and explain why the second is unnecessary. In every instance, MHDC is requiring the FIN-115 to be based upon a recent bid performed within ninety days of the application due date.
4. **Updated Debt and Equity Commitments.** All non-MHDC sources of financing must have a commitment letter dated within 45 days of the application due date. For example, tax-exempt bond transactions must include a financing commitment from a lender dated within 45 days of the application date. All commitments must include the contact information for that source. MHDC will contact the provider of each source during the review process.

In the case of tax credit equity commitment letters, the letter must include:

- The amount of annual tax credits that will be purchased. If the buyer is buying an amount of credits less than your current reservation, they must explain why they are buying less than the amount available.
- The price to be paid for each annual tax credit purchased.
- The timing of equity contributions.
- The amount of asset management fees.
- Estimated reserve requirements.
- A description of what asset management duties will be performed, including how often they will be performed.
- An indication of whether the equity for the project will be part of a fund or sold to a direct investor.
- A description of the general steps and timing necessary to complete a firm equity commitment and execute a limited partnership agreement or operating agreement.

If the applicant is returning some or all of their tax credits, the applicant must demonstrate their efforts to obtain an equity commitment. These efforts must include:

- A written explanation for why you are returning your credits. This must include whom you have contacted about buying the credits (including the name and number of the individual with whom you spoke and/or corresponded), when you contacted them, and a summary of the conversation. If you received a letter of intent or commitment letter which you did not accept, please explain the reason for the rejection.
- Copies of any written correspondence between you and any potential investors.

- A description of the impediments to the project attracting a buyer for all the awarded credits.
5. **Updated Financial Statements.** The most recent financial statements for the general partner(s), developer(s) and guarantor(s) are required. All financial statements must include a description of the assets and liabilities of the person(s)/entity in question.
 6. **Environmental Review Information.** All Gap Funding Round applicants are subject to the same environmental review that recipients of MHCD HOME funds must undergo¹. Applicants will fit into one of several different categories:

Developments approved for LIHTC in December 2008

Please contact your underwriter to determine the status of the environmental review process for the development.

- If you have not previously completed a Section 106 review for the development, you must submit a copy of your application to the Missouri Department of Natural Resources (“DNR”) for a Section 106 determination with your Gap Funding Round application. If you have received a response from DNR, please include that, too.
- If you have completed the full environmental review prior to January 1, 2009, include a statement from the environmental professional identifying whether there has been a change to the site or its environmental impact since the completion of the review.

Developments approved for LIHTC prior to December 2008

Indicate in the appropriate places on the Gap Funding Questionnaire when you will submit the proper documentation. If any of the required documents are available, please include them with your Gap Funding Round application.

All Developments

All applicants must note that while a development may receive approval and a conditional reservation as a result of the Gap Funding Round process, no gap funds will be committed to a project before the environmental review process is completed. In addition please be aware of the following statement from the Department of Housing and Urban Development (“HUD”):

“Once an owner applies for TCAP funds, committing TCAP or any other funds to or undertaking any ‘choice-limiting’ activity prior to successful completion of the environmental clearance review (i.e., any HUD approval of the Request for Release of Funds), is prohibited. This includes any activity that will result in a physical change and/or acquisition, including leasing, or disposi-

¹ Please see the Environmental Review Requirement at:
http://www.mhdc.com/rental_production/developers_guide/documents/Environmental_Review_Guidelines_Form_1400_20081208.pdf.

tion of real property. **Performing a choice-limiting action may disqualify a project from receiving any federal funds.**² (Underlining and bolding from the original)

7. **Gap Funding Round Certification Form.** The owner and developer, if not the same, must execute a certification regarding the application and potential award and use of ARRA resources. Failure to include an executed certification form will result in a rejection of the Gap Funding Round application.
8. **CD-R of Exhibits 1-7.** A CD-R with electronic copies of all Gap Funding Round exhibits is required. The FIN-100 and FIN-115 should include both a PDF and Excel version of those forms. All other exhibits must be included as PDF versions on the CD-R.

Selection Process

Each application will be reviewed and evaluated to determine the amount of gap funding necessary and whether the development remains viable. As part of the review, the provider of each of the applicant's financing commitments will be contacted. Applicants will also be contacted regarding questions that arise during the review process. The review process will focus on the amount of the gap and the structure and viability of the development. Having previously been approved is not a guarantee that gap funds will be provided. Substantial changes due to current market conditions may be too great to be overcome with gap financing. It may not be in the best interest of the owner, MHDC or the citizens of Missouri to continue with some proposals.

For developments seeking to return LIHTC, MHDC shall determine whether an applicant has met the requirement to have made a good faith effort to obtain full investment for the project. Any misrepresentation by an applicant may result in the rejection of the application and affect future participation in MHDC's multifamily programs.

Selection Criteria

The following selection criteria will be used to decide which projects receive Gap Funding Round awards. The criteria are not weighted individually, but they will be used to filter prioritization. For example, any application for a project that is expected to be completed prior to February 16, 2012 will be given priority over any application for a project that is not expected to be completed before February 16, 2012. All applications that will be completed before February 16, 2012 are then evaluated based on the next criteria, in this case a complete application; those that meet that criteria are then evaluated on the next criteria. This continues until a priority list is achieved.

1. **Developments that will be completed on or before February 16, 2012.** Owners of developments that do not expect construction completion prior to February 16, 2012 should contact MHDC prior to submitting an application. There are other important dates that may come prior to the February 16, 2012 date listed; the expectation of all developments is that they move forward in a timely manner.

² From HUD Notice: CPD-09-03 page 8 found at:
http://portal.hud.gov/pls/portal/docs/PAGE/RECOVERY/PROGRAMS/TCAP_RESOURCES/TCAP%20FUNDING%20NOTICE.PDF

2. **Developments that have submitted a properly and fully completed application.** Applications that are not complete or which contain incomplete information will not be given priority consideration. Depending on the level of incompleteness, they may be rejected from further consideration.

3. **Developments that continue to meet and perform competitively in regards to the QAP selection criteria listed below:**
 - Development Characteristics
 - Market Characteristics
 - Development Team Characteristics
 - Feasibility
 - Community Impact

4. **Developments that have, in the sole opinion of MHDC, meaningful financing commitments and that could, but for the gap being requested, proceed to closing and construction.** MHDC will contact the provider of each financial commitment. Based on that conversation MHDC will estimate the likelihood of the financing closing and where in the process each development is. Those developments which have the strongest commitments and greatest likelihood of closing will be given priority.

5. **Developments will given priority based on which of the following tiers they belong:**
 - *Tier One:* developments with federal pricing greater than or equal to **.70**
 - *Tier Two:* developments with federal pricing at least **.67** but less than **.70**
 - *Tier Three:* developments with federal pricing at least **.65** but less than **.67**
 - *Tier four:* developments with federal pricing less than **.65**

Reservation

Using the process and criteria listed above, staff will recommend gap funding awards at the commission meeting currently scheduled for July 31, 2009. Once awards have been approved, successful applicants will receive a Gap Funding Round conditional reservation. The reservation will provide further information, including the requirements and deadlines for funding. There will be a deadline for the return of the reservation, and certain milestones must be reached in order for the reservation to remain in effect. All awardees will be required to proceed in a timely manner to firm commitment and a closing with MHDC. There may be additional requirements for the firm submission beyond what is required from your previous conditional reservation for LIHTC. MHDC's goal is to award, commit and close developments with gap funding as quickly as is feasible. This in large part will depend on your efforts to meet any requirements and the quality and accuracy of documents provided for this purpose.

Closing

As a result of the restrictions of ARRA and the program requirements of each source, all Gap Funding Round awards will require a closing with MHDC before construction begins. Based upon current federal

guidance, MHDC shall award gap funds with the expectation that they will be drawn first, with the exception of the equity pay-in requirement described above. The nature of that closing will vary by the structure of the deal, but involvement of MHDC and its legal department will be required. If you have not previously undergone a construction closing with MHDC, or have not done so in the last two years, you should contact MHDC prior to submitting an application for gap funds.

Construction Compliance

All developments receiving gap funds will be subject to MHDC inspection, construction disbursement, and cost certification requirements. If you have not previously received a construction-phase loan from MHDC, please contact MHDC prior to submitting an application for gap funds.

Asset Management and Recapture

MHDC will perform, at the owner's expense, asset management functions to ensure compliance with the Code and the long term viability of buildings receiving funds provided in the Gap Funding Round. Information regarding asset management requirements, procedures and fees will be forthcoming.

Developments receiving Gap Funding Round awards are subject to the same requirements as awards made under the Code. This includes recapture for non-compliance. MHDC will provide further guidance regarding recapture in the conditional reservation and/or firm commitment.

Reporting and Redistribution

Developments receiving TCAP or TCR funds will be given deadlines for firm submission and closing in order to assure compliance with federal requirements for commitment and disbursement. Monthly progress reports must be submitted to evidence movement toward these goals. If MHDC deems that significant progress is not made toward closing, the gap funds may be recaptured by the agency and redistributed to other eligible and deserving developments.

Gap fund recipients will also be required to complete quarterly reports either through MHDC, state, or federal web reporting systems to meet ARRA transparency requirements. Detailed information will be provided at a future date.

Participation

HUD has waived the Section 3 requirement for TCAP funds. However, MHDC encourages the participation of Section 3 businesses and individuals and MBE/WBE/DBE contractors and professionals in the development of affordable housing. Please visit:

http://www.mhdc.com/rental_production/section3/index.htm for important information about Section 3.

Further Guidance

Due to the nature of the two sources of gap funding available, not all the details of the programs are known. It is expected that further guidance will be provided by both HUD and the Treasury Department. This guide is meant only to disseminate the information known at this time and is therefore subject to change. Waiting for all the details of the programs to be provided is neither efficient nor feasible. MHDC will provide stakeholders any information affecting Gap Funding Round applications as soon as it becomes available.

The guidance and requirements of the Qualified Allocation Plan and the Developer's Guide are still in effect and should be considered when submitting an application for the Gap Funding Round.

Conditionality

Any reservation or commitment made by MHDC to an applicant under the TCAP or TCR programs is expressly conditioned upon MHDC's receipt of TCAP and TCR funds from HUD and the Treasury Department. Furthermore, any provision of this application is subject to change, as MHDC deems necessary in their sole discretion, to comply with any HUD or Treasury Department programmatic requirements which may be provided subsequent to the public dissemination of the application.