

March 11, 2010

TO: State Directors  
Rural Development

ATTN: Multi-Family Housing  
Program Managers

FROM: Tammye Treviño (Signed by Tammye Treviño)  
Administrator  
Housing and Community Facilities Programs

SUBJECT: Low-Income Housing Tax Credit, Tax Credit Assistance, and Tax Credit  
Exchange Program Funds for Multi-Family Housing Properties Clarification

This unnumbered letter rescinds and replaces the unnumbered letter dated November 20, 2009, entitled, "Low-Income Housing Tax Credit, Tax Credit Assistance, and Tax Credit Exchange Program Funds for Multi-Family Housing Properties," and reflects additional information recently brought to Multi-Family Housing's (MFH) attention.

This replacement letter clarifies the impact on Rural Development Multi-Family Housing properties using Tax Credit Exchange Program (TCEP) Grants and Tax Credit Assistance Program (TCAP) funds provided by state tax credits or housing finance agencies (State Housing Agency) through the Low Income Housing Tax Credit (LIHTC) program as part of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5) (ARRA).

The ARRA allocates monetary assistance for equity and capital investment gaps in financing which have threatened the completion of previously approved low-income housing developments. The funding under ARRA is also a result of the collapse of private equity markets. The funds may be in conjunction with or in lieu of federal tax credits. Individual State Housing Agencies are now awarding ARRA funds to Multi-Family Housing projects through the TCAP and the TCEP "Exchange." These programs each operate under different program requirements and are administered by different federal departments. TCAP is administered by the United States Department of Housing and Urban Development (HUD). TCEP "Exchange" is administered by the United States Department of Treasury (Treasury). Due to ARRA requirements and extensions, use of these funds for Rural Development properties requires Rural Development to continue processing and closing pending transfers expeditiously to meet deadlines set by the respective State Housing Agencies.

EXPIRATION DATE:  
February 28, 2011

FILING INSTRUCTIONS:  
Housing Programs

Rural Development offers reasonable flexibility by cooperating with borrowers, applicants, and state agencies to meet these deadlines while complying with Rural Development program requirements and authorities. In order to maximize the use of ARRA funding, Multi-Family Preservation and Direct Loan Division (MPDL) will provide appropriate assistance and guidance to field staff upon request.

#### GUIDELINES:

##### 1. Use of ARRA funds:

The goal of MPDL is to use ARRA funds whenever possible. State Housing Agencies administering the LIHTC program have now issued guidance on the use of ARRA funds. In some cases closing deadlines may be extremely short and compliance with funding requirements may be difficult within normal processing guidelines. Please advise your MPDL Team Leader if you need assistance either meeting the deadlines or underwriting your transactions.

##### 2. TCEP "Exchange" funds:

Unlike the TCAP funds (which may be awarded as either a loan or grant), Treasury's implementation of Section 1602 of ARRA states that TCEP "Exchange" funds will be used for purposes consistent with the provisions allowed under the LIHTC (Section 42) provisions of the Internal Revenue Code. TCEP ("Exchange") funds are not required to be repaid, unless there is a recapture due to noncompliance with the restrictions for LIHTCs. In some states, the cash assistance provided by "Exchange" funds may be in the form of a loan which is non-interest bearing and non-repayable at any time, except in the event of recapture during the 15-year compliance period.

a. Several state agencies require filing a restrictive lien against the project to assure compliance with the mandatory use restrictions. This lien is not conclusive of a loan. If a lien is employed as an enforcement device by the state agency, it is not required that the lien take precedence over other liens on such buildings. Treasury permits state agencies the discretion to use methods they deem appropriate to assure that the buildings funded using TCEP "Exchange" funds remain qualified low income buildings during the compliance period and recapture penalties, upon enforcement, are satisfied.

b. Although the TCEP "Exchange" funds are provided by Treasury to the respective state agencies as grant funds, we continue to receive questions regarding their use as equity under the Rural Development authorities. Loan applicants who receive sub-awards through the TCEP "Exchange" will be processed under 7 CFR 3560.63 (c), in the same manner as other loans receiving low-income housing tax credit benefits in determining equity contributions. All other appropriate underwriting principles and standards prescribed in the respective Notice of Funds Availability (NOFA), Notice of Solicitation

Availability (NOSA) and program authorities will apply including loan limitations, appraisal determinations, Conventional Rents for Comparable Units (CRCU) computations, and Return to Owner (RTO) determinations.

c. You must contact your MPDL Team Leader for advice if there are any expectations of paying unfunded but anticipated deferred developer fees through an increased Return on Investment (ROI) because there are not sufficient "Exchange" funds being provided by

The State Housing Agency. Alternatives to using an increased ROI include exploring additional funding opportunities available thru the State Housing Agency, including HOME funds. A reduction in costs or other modifications by any of the other funding sources should be looked at to determine any adverse impacts to the proposed transaction.

d. If the State Housing Agency provides TCAP funds as a loan (deferred or otherwise) to the project or if the TCAP or TCEP award requires funding of a third party reserve for potential recapture of the advance, the loan will be underwritten using the rates and terms required under the terms of the award. State Directors should assure appropriate MFH program directors or staff contacts their State Housing Agency to clarify the specific terms of all TCAP or TCEP awards.

### 3. TCAP loans and deferrals:

a. If the State Housing Agency defers payment of the TCAP loan, the Rural Development loan package must include documentation of the rates and terms as described in the firm commitment issued by the State Housing Agency. The documentation must include a complete description of any potential collection methods. If an escrow account or other collection method is required to avoid jeopardizing project operations during the period of Rural Development financing, collections for such payments will be deposited into and tracked as a separate account within the project's reserve account according to the terms of the TCAP award.

b. Any transaction that has already been approved by MPDL will generally not be re-underwritten unless the terms have substantially been altered or changed, which make the transaction no longer feasible or consistent with program requirements. States should consult with their team leader with any questions.

### 4. Statutory and regulatory requirements:

Treasury has clarified that qualified low-income buildings using only exchange or TCEP funds are not subject to the National Environmental Policy Act and related laws, and Davis-Bacon Act for prevailing wage rates, unless otherwise applicable through statutory requirements and other regulations and rules governing Section 42 of the Internal Revenue Code. All projects receiving

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TCAP funding are subject to Davis Bacon Act requirements pursuant to section 1606 Division A of ARRA.

5. State responsibilities:

State Directors should consult with appropriate Office of the General Counsel personnel to discuss time constraints for closing and other issues which may delay pending MFH transfers or closings. The State Director is responsible for resolving issues that may prevent or restrict Rural Development's efforts to comply with the intent of ARRA in their State.

We appreciate your cooperation in this matter and any questions should be directed to MPDL Team Leaders:

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