

Yesterday Applegate & Thorne-Thomsen listened to the live webcast from Treasury and HUD about the Tax Credit Exchange Program ("TCAP") and the Low-Income Housing Tax Credit ("LIHTC") Exchange Program. Our firm submitted questions some of which were answered during the call. For a list of questions submitted see <http://www.att-law.com/publications.html>. Below are noteworthy points from the call.

- Exchange subawards cannot be loans but must be granted to projects.
- Grants of an exchange subaward are not taxable.
- GO Zone and Midwestern Disaster Credits do not qualify for exchange funds of TCAP funds. However, such projects could get a nominal allocation of LIHTC at the time of the subaward in order to qualify.
- Crosscutting federal grant rules do not apply to Exchange projects but do apply to TCAP projects. However, in order to expedite construction HUD has waived both the Uniform Relocation Act rules and Section 3 of the Housing and Urban Development Act of 1968 (relating to requirements to employ low- and very low-income person).
- Buy American provisions do not apply to Exchange or TCAP projects.
- The Exchange program is now formally called the Section 1602 Program because it was section 1602 of the American Recover and Reinvestment Act of 2009
- TCAP funds cannot be used to pay debt service on bonds. TCAP funds must be used to pay Section 42 "eligible basis" costs.
- Credit agencies have discretion to determine what is a good faith effort for purposes of satisfying that an applicant made a good faith effort to find an investor for tax credits before requesting an exchange subaward.
- If a project returns its LIHTC award, it is no longer eligible for TCAP funds. But the project could be awarded a new allocation of LIHTC in order to make it apply.
- TCAP funds can only be given to project which have been awarded LIHTC. States decide what an "award" of LIHTC means for TCAP purposes. It could be as early as public notice of an award. A forward reservation of 2010 credits that is received by September 30, 2009 would also be a sufficient award.

There are still many open questions. Hopefully the HUD and Treasury are using an internet Q&A process and we hope for further guidance soon. If you would like to read a further description of the TCAP and Exchange program, please see our prior bulletin at <http://www.att-law.com/Library/ARRA%20Bulletin.pdf>. Additional information can be found at [www.hud.gov/recovery](http://www.hud.gov/recovery) and <http://www.treasury.gov/recovery/LIH-grants.shtml>. An archive copy of the webcast should be posted soon at <http://www.hud.gov/webcasts/index.cfm>.

If you have further questions, please contact one of the attorneys at Applegate & Thorne-Thomsen, P.C. This bulletin was drafted by Glenn Graff (312-491-3313 [ggraff@att-law.com](mailto:ggraff@att-law.com)).

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