



To: Owners and managers of TCAP, TCE, and NSP Financed Projects
From: Brian Carnahan, Director, Office of Program Compliance
RE: TCAP, TCE, and NSP Compliance Guidance
Date: 12-14-09

Introduction

The Tax Credit Assistance (TCAP), Tax Credit Exchange (TCE), and the Neighborhood Stabilization Programs (NSP) have been critical to continued development of affordable housing. In creating programs to assist with the continued development of housing and the stabilization of neighborhoods, Congress imposed few specific compliance requirements. To remain in compliance, projects funded with TCAP or TCE funds, even if there are no tax credits in the project, should remain in compliance if the projects operate as “traditional” tax credit projects with OHFA gap financing. In addition to meeting all tax credit rules and regulations, projects should implement any restrictions in OHFA funding agreements. This memo provides some additional guidance and outlines OHFA’s expectations for TCAP, TCE, and NSP projects.

The guidance provided in this memo is subject to change as additional information is received from the U.S. Department of Housing and Urban Development and the U.S. Department of Treasury.

Tax Credit Projects with TCAP and/or TCE

Project/owner responsibilities

1. Implement the requirements of all funding agreements, covenants, and other funding conditions.
2. Submit all appropriate tax credit and gap financing owner reports and certifications annually
3. The project syndicator must meet with OHFA quarterly to review the performance of all TCAP projects.

OHFA Responsibilities

1. Monitor projects according to the monitoring schedule established for the tax credit program, unless the project is also financed with HOME funds from OHFA, in which case the project will be monitored according to HOME program requirements.
2. Issue IRS Forms 8823 as appropriate. Noncompliance with the tax credit program may also result in a recapture of the funds granted through the TCE program. Projects financed with TCE Program funds may be subject to recapture as defined in Section 1602 in the American Recovery and Reinvestment Tax Act of 2009, if, after a reasonable correction period, the owner is unable to restore the building(s) to compliance. Recapture could be the appropriate penalty if, for example, the project falls below the minimum set-aside or fails to maintain its applicable fraction. In the event of a recapture, the full amount of the TCE award must be returned, minus 6.67 percent (1/15th) for each full year of the building’s 15-year compliance period where a recapture event has not occurred.

TCE-Only Projects

Project/Owner Responsibilities

1. Implement the requirements of all funding agreements, covenants, and other funding conditions.
2. Submit all appropriate tax credit and gap financing owner reports and certifications annually
3. Work cooperatively with OHFA's asset management contractor

OHFA Asset Management Contractor Responsibilities

1. Conduct asset management according to the contract with OHFA. Asset management requirements imposed by OHFA will be similar to those for tax credit projects with an investor.

OHFA Responsibilities

1. Conduct quality assurance/control to ensure the contractor is fulfilling its obligations to OHFA.
2. Provide information regarding program requirements.
3. Noncompliance may result in a recapture of the funds granted through the TCE program. Projects financed with TCE Program funds may be subject to recapture as defined in Section 1602 in the American Recovery and Reinvestment Tax Act of 2009, if, after a reasonable correction period, the owner is unable to restore the building(s) to compliance. Recapture could be the appropriate penalty if, for example, a project falls below the minimum set-aside or fails to maintain its applicable fraction. In the event of a recapture, the full amount of the TCE award must be returned, minus 6.67 percent (1/15th) for each full year of the building's 15-year compliance period where a recapture event has not occurred.

Note: OHFA will not conduct regular inspections of TCE-only projects. The site visits conducted by the contractor will be sufficient to ensure compliance with all program requirements.

Tax Credit Projects with NSP

Project/owner responsibilities

1. Implement the requirements of all funding agreements, covenants, and other funding conditions.
2. Submit all appropriate tax credit and gap financing owner reports and certifications annually
3. The project syndicator must meet with OHFA quarterly to review the performance of all NSP projects

OHFA Responsibilities

1. Monitor projects a minimum of every 3 years, or more frequently depending upon other OHFA resources provided.
2. Provide information regarding program requirements.

NSP-Only Projects

Project/Owner Responsibilities

1. Implement the requirements of all funding agreements, covenants, and other funding conditions. Follow OHFA policies and procedures for long term compliance with the HDAP Program.
2. Submit all appropriate gap financing owner reports and certifications annually

OHFA Responsibilities

1. Monitor projects a minimum of every 3 years.
2. Provide information regarding program requirements.