Tax Credit Assistance Program (TCAP) under the American Recovery and Reinvestment Act, 2009 Waiver of Statutory Requirements

Requirement: Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u; 42 U.S.C. 3535(d))

Project/Activity: On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (Public Law 111-5). The purpose of the Recovery Act was to jumpstart the nation's ailing economy, with a primary focus on creating and saving jobs in the near term. Section 2, Division A, Title XII of the Recovery Act appropriated $2.250 billion under the HOME Investment Partnerships (HOME) Program heading for a grant program to provide funds for capital investments in Low-Income Housing Tax Credit (LIHTC) projects. HUD will award Tax Credit Assistance Program (TCAP) grants to state housing credit agencies to facilitate development of projects that received or will receive LIHTC awards between October 1, 2006, and September 30, 2009. Since a major purpose of TCAP funds is to immediately create new jobs or save jobs at risk of being lost due to the current economic crisis, the Recovery Act establishes deadlines for the commitment and expenditure of grant funds and requires state housing credit agencies to give priority to projects that will be completed by February 16, 2012. Although TCAP funds were appropriated under the HOME heading of the Recovery Act, HOME program requirements do not apply to TCAP funds.

Nature of Requirement: Section 3 is implemented in HUD's regulations at 24 CFR Part 135. The regulation reads:

> "To ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons." [135.1]

Finding: The TCAP program grants authority to the Secretary of Housing and Urban Development to "waive any provision of any statute or regulation that the Secretary administers in connection with the obligation by the secretary or the use by the recipient of these funds . . . upon a finding that such waiver is required to expedite the use of such funds."

Because of the crucial time concerns regarding the use of the TCAP funds, the Secretary finds that a waiver is necessary to expedite the use of the funds. This waiver suspends the application of Section 3 requirements to these funds. While on its face, Section 3 is applicable only to the greatest extent feasible, compliance with this requirement could hinder the timely expenditure of TCAP funds and therefore frustrate the purpose of the Recovery Act.

Granted By: Shaun Donovan, Secretary

Signature: _____

Date Granted: MAY 4 2009