

TCAP Written Agreement Requirements



I. Background

The TCAP grantee is responsible for managing the day-to-day operations of its TCAP program, ensuring that TCAP funds are used in accordance with all program requirements and written agreements, and taking appropriate action when performance problems arise. The use of sub-grantees or contractors does not relieve the grantee of this responsibility. Described below are the minimum requirements all grantees and sub-grantees must include in the written agreement with each project owner, and enforce, in order to comply with TCAP requirements.

II. Executing a Written Agreement

The TCAP grantee must enter into a written agreement with all project owners, and sub-grantees if applicable, before disbursing any TCAP funds. All sub-grantees are required to enter into a written agreement with all project owners before disbursing any TCAP funds. TCAP funds may only be sub-granted to another housing credit agency within the state. The written agreement must ensure compliance with all TCAP requirements in the [HUD CPD Notice 09-03](#), as amended (the Notice), and the TCAP grant agreement. For the purposes of this guidance, written agreement means the executed agreement between the TCAP grantee, or sub-grantee if applicable, and the LIHTC project owner. Loan documents or promissory notes cannot substitute for the TCAP written agreement. A separate TCAP written agreement must be executed by the TCAP grantee and each project owner receiving TCAP funds. The TCAP written agreement is separate from any other written agreement executed in conjunction with the project.

III. Required Components of a TCAP Written Agreement

At a minimum, all written agreements must include the following requirements. Grantees may impose additional requirements to carry out its TCAP program or to comply with individual state laws and regulations.

Project Description: The written agreement must clearly describe the project receiving TCAP funds, including:

- Complete project address;
- Name and contact information of the project owner;
- Total number of units;
- Total number of low-income LIHTC-qualified units;
- Total number of Section 504 accessible units;
- Total number of Energy Star qualified units;
- Amount and form of TCAP assistance (grant or loan);
- Amount and source of LIHTC (e.g., 4 or 9 percent credit awarded under Section 42(h) or “disaster” credits awarded under section 1400N of the Internal Revenue Code); and,
- Type of project (e.g., new construction or acquisition with rehab).

TCAP Written Agreement Requirements



Project Budget: The written agreement must contain the project's final sources and uses statement, including: total project development costs, total amount of TCAP funds for the project, and total anticipated LIHTC equity.

Use of TCAP Funds: The agreement must state the amount of TCAP funds provided to the project and set forth the terms of the award – grant or loan (interest rate, term, repayment schedule). The agreement must also include the uses of TCAP funds, consistent with the eligible uses in the Notice.

The agreement must ensure that TCAP funds are awarded in the same manner and subject to the same limitations (including rent, income, use restrictions and compliance monitoring) as required by the grantee with respect to an award of LIHTC to a project under Section 42 of the Internal Revenue Code.

Construction and Expenditure Schedule: The agreement must include a detailed construction schedule that establishes timeframes for meeting construction and expenditure timelines. The schedule must include sufficient detail to allow the TCAP grantee, or sub-grantee where applicable, to monitor project construction and TCAP expenditure rates to ensure compliance with the statutory TCAP expenditure deadlines, and any other milestones identified by the grantee in the TCAP materials submitted to HUD.

Fund Disbursement: The written agreement must specify that the project owner cannot request disbursement of TCAP funds until the funds are needed for payment of eligible costs. The written agreement must specify the documentation required by the grantee to support the amount of the payment requested. The amount requested cannot exceed actual costs incurred. TCAP funds cannot be placed into escrow accounts or advanced in lump sums to the project owners.

General Federal Grant Requirements: The written agreement must require each project owner to develop and manage the TCAP project in compliance with the following Federal grant requirements:

- A. **Fair Housing Act** (42 U.S.C. 3601-19) and implementing regulations at [24 CFR Part 100](#) and the regulations at [24 CFR Part 107](#) (Equal Opportunity in Housing).
- B. **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](#).
- C. **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."
- D. **Affirmative Marketing** When marketing TCAP units, the owner must comply with the TCAP affirmative fair housing marketing plan and procedures established by the TCAP grantee.

TCAP Written Agreement Requirements



- E. **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.”
- F. **National Environmental Policy Act (NEPA) and Related Laws** The written agreement must enforce the laws referenced by, and requirements set forth in, 24 CFR Part 58.6, including ongoing requirements related to any required mitigation for the project resulting from the NEPA review and clearance, and flood insurance as required by the National Flood Insurance Reform Act of 1994, if applicable.

If the written agreement confers a conditional commitment of TCAP funds, the agreement must clearly state that this conditional commitment does not provide the project owner a legal claim to any amount of TCAP funds for a specific project or site unless and until the “Authority to Use Grant Funds (HUD 7015.16) or equivalent letter has been executed by HUD.

- G. **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](#) are applicable to rehabilitation project. *(if applicable to project, the status of applicability of lead-based paint regulations must be included, as determined by the grantee or subgrantee; in addition, on-going requirements established by these lead-based paint regulations must be included; see guidance related to these requirements with respect to the TCAP program on www.hud.gov/recovery)*
- H. **Davis-Bacon Prevailing Wages** The wage rate requirements of section 1606 of Division A of the American Recovery and Reinvestment Act of 2009. *(if applicable, the date of applicability of Davis Bacon requirements, as determined by the grantee or subgrantee; see guidance related to these requirements with respect to the TCAP program on www.hud.gov/recovery/).*
- I. **“Anti-Lobbying” Restrictions** (Restrictions on lobbying in 31 USC 1352 and implementing regulations at 24 CFR Part 87 “New Restrictions on Lobbying”.) Each person who requests or receives from a TCAP grantee a subgrant, contract, or subcontract exceeding \$100,000 at any tier under a TCAP grant must submit a certification, and a SF-LLL Disclosure of Lobbying Activities form (if required), at the time that person requests or receives TCAP funds.
- J. **2 CFR Part 2424 “Non-procurement Debarment and Suspension”** The project owner cannot award a contract to a contractor who is debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs. The grantee must include a term or condition in the written agreement requiring compliance with subpart C of 2 CFR Part 180, as required by 2 CFR Part 2424.
- K. **Required Signage:** Project signage must be posted in a manner consistent with criteria established by HUD.

Recordkeeping: The written agreement must specify that the project owner must maintain the particular records or reports that demonstrate compliance with requirements in the written agreement. The TCAP grantee, HUD and HUD Inspector General must be granted access to

TCAP Written Agreement Requirements



TCAP project records. All records must be maintained by the project owner for fifteen years (i.e. initial LIHTC affordability period) or for a longer period of time, such as the length of time required by the grantee in accordance with its implementation of the LIHTC requirements or other requirements established by the grantee for its TCAP program.

Reporting: The written agreement must require the project owner to submit reports to enable the TCAP grantee to comply with TCAP reporting requirements. The written agreement should specify the type of information and data required, as well as the format, frequency, and duration of submission in order for the grantee to comply with the reporting requirements established by HUD and OMB. These requirements may be amended from time to time by HUD or OMB. Current TCAP reporting requirements will be posted to the TCAP website soon.

Enforcement of Provisions: The written agreement must provide a means of enforcement of the TCAP requirements. In accordance with [CPD Notice 09-03](#) and the TCAP grant agreement, all requirements must be enforceable through the recordation of a restriction that is binding on all owners, and successors (e.g. covenant on the property) and that is enforceable by the grantee, sub-grantee, HUD and residents of the project. The written agreement must also specify remedies for breach of the TCAP written agreement requirements, including failure to meet construction and TCAP expenditure deadlines. The written agreement must also require repayment of TCAP funds expended for ineligible costs, for a project that was never completed, or for a project that failed to meet the LIHTC requirements of Section 42.

Asset Management: The TCAP grantee, or sub-grantee, must perform asset management of the project to ensure compliance with Section 42 of the Internal Revenue Code and the long term viability of the project. Fees for this required service may be charged to the project owner. At a minimum, the written agreement must set forth requirements related to reporting required to perform asset management, including necessary information related to financial and property management. In addition, the agreement must describe the actions that may be required for financial restructuring or management actions to ensure the long-term viability of the project. See Q&A on asset management posted on the TCAP website (coming soon).