GEORGIA HOUSING AND FINANCE AUTHORITY
TCAP FEE POLICY

This policy applies to fees which are applicable to TCAP selection, award and administration. It does not modify or change fees or costs which are normally paid for tax credit projects except as set forth in this policy.

DCA requires that all recipients of a TCAP Award pay an asset management fee equal to 3% of the permanent award. This award should be paid within 90 days of closing unless otherwise agreed to by DCA. DCA determined the reasonableness of this amount by reviewing the following:

- USDA and HUD Charges (generally 2-3 points)
- Third party consultant charges for similar services
- Fannie Mae basis for loan servicing (.25)
- GHFA basis for loan servicing (.37)
- HOME Administration (10%)
- CDBG Administration (10%)
- NSP Administration (10%)
- Conventional Loans (3-4%)
- Asset Management fees incurred by syndicators.
- Similar fees charged by other HFA's
- The actual costs and time required to manage the TCAP loan for the entire compliance period

DCA will provide the following administrative functions for all TCAP loans at no charge to the Project Owner:

- ***General management, oversight and coordination.*** Reasonable costs of overall program management, coordination, monitoring, and evaluation.
- ***Preparing reports and other documents*** related to the program for submission to HUD, including but not limited to all costs of 1512 reporting;
- ***Travel costs*** incurred for official business in carrying out the program;
- ***Administrative services***. Services such as general legal services, accounting services, and audit services;
- ***Staff and overhead*****.** Staff and overhead costs directly related to carrying out the project, such as work specifications preparation, loan processing, inspections, and other services related to assisting potential tenants.
- ***Federal Compliance Monitoring, such as*****:**
  - *NEPA:* Conducting "environmental reviews" of proposed projects to meet the requirements of the National Environmental Policy Act (NEPA) of 1969 (and related laws) before committing TCAP funds to projects**;**

- *Federal Labor Standards*: Monitoring to assure compliance with federal labor standards during construction, such as the Davis Bacon Act;
- *Lead-based Paint:* Monitoring projects during construction to ensure compliance with the Residential Lead-Based Paint Hazard Reduction Act of 1992 (where applicable)**.**

DCA employs a staff architect, construction manager, Federal Compliance Officer, Legal Affairs Manager, and a NEPA Environmental Officer. The cost associated with their employment is the sole responsibility of DCA.

Legal Fees

Legal fees incurred by DCA to perform its administrative functions, e.g., to pay for outside counsel fees associated with the commitment, award and closing of TCAP funds to a project (as a grant or a loan), are the sole responsibility of DCA and will not be passed onto the TCAP project. Cost incurred in the recording of the TCAP agreement is the responsibility of DCA.

Closing costs that are attributable to the project and not part of the grantee's administrative responsibilities, such as appraisals or local recording fees are "project costs" payable by the TCAP project owner.

TCAP FEDERAL COMPLIANCE COSTS

While the costs to carry out federal compliance monitoring (NEPA, Davis Bacon, Lead Paint,) required for the allocation and award of TCAP funds will be the responsibility of DCA, the project owner is solely responsible for the costs of making the project compliant with all applicable TCAP program requirements during the development of the project as well as during the TCAP grant period. In order to meet its monitoring responsibilities, DCA may require TCAP project owners to provide the information or documentation needed by the grantee to make compliance determinations. The project owner is responsible for the costs of providing the information or documentation to the grantee about such compliance. These costs may be allowable TCAP project costs. **See CPD Notice 09-03 for more guidance on eligible TCAP project costs.**

The following are some examples of federal compliance project costs which are the responsibility of the Project Owner:

- **NEPA and Related Laws**

Costs associated with supplying information necessary for DCA to conduct their environmental review of the project may be charged to the project, architectural and engineering studies, soil tests, research, documentation, and certifications regarding status of the site with respect to archeological findings, historic preservation, wetlands, flood plains, etc.

- **Davis Bacon Act / Labor Laws Compliance**

Project costs include expenses incurred to provide required reports to DCA, such as payroll forms, or other reports that will enable the grantee to determine that the construction contract contains the correct wage rate decisions or meets labor standards. Also, any costs incurred as a result of providing information required by the Recovery Act in regard to job creation would be a project cost.

- **Section 504 of the Rehabilitation Act of 1973**

Costs of design and/or engineering studies related to compliance with Section 504 of the Rehabilitation Act of 1973, including certifications from architects or engineers regarding the project design and construction specifications, are project costs.

- **Lead-Based Paint Hazard Control**

All costs associated with lead-based paint evaluations, risk assessments, engineering studies or other information that must be provided to DCA to demonstrate compliance, are project costs.

- **Legal Fees and Closing Costs**

Legal fees and closing costs incurred by TCAP project owners related to the development of a TCAP project are eligible project costs, however, these costs are payable with TCAP funds only if they meet the definition of eligible TCAP costs defined in CPD 09-03, which states that all costs included in the eligible basis of a LIHTC project (as defined by Section 42 of the Internal Revenue Code) are eligible TCAP costs.

ASSET MANAGEMENT

The Recovery Act requires that DCA perform asset management functions for TCAP projects “to ensure compliance with section 42 of the IRC of 1986, and the long term viability of buildings funded” by TCAP.

DCA may charge fees to TCAP project owners for the asset management activities described below. Because asset management for TCAP projects is statutorily required, asset management fees are the only fees charged to TCAP projects that are not considered program income. **24 CFR 85.22(a)(2) prohibits project owners from paying eligible asset management fees with TCAP funds, therefore project owners must identify other funding sources to pay these fees**.

Each TCAP grantee should establish the asset management fee amount(s) and structure that is most likely to assist the grantee and TCAP project owners to successfully develop TCAP projects timely, and in compliance with TCAP program requirements. Differing fee levels for differing levels of asset management services are allowable, as long as the fee structure is transparent and applied uniformly to all TCAP projects.

Asset management activities for a project may begin when TCAP funds are first committed to a TCAP project. The following is the list of asset management activities which will be performed by DCA. These activities are organized by project stage. Note: not every activity on this list must be performed for every project, as some activities will not be applicable or necessary to every project.

- **Development/Construction Activities**

  - Review of underwriting assumptions to ensure adequacy of debt service coverage, reserve levels, and other underwriting benchmarks;
  - Review of market studies for proposed developments to ensure reasonableness of assumptions and proposed market capture rates;
  - Review of drawing, architectural and engineering plans & specifications for compliance with federal requirements, project design review for compatibility with market studies, etc.;
  - Review of capital needs assessments of rehabilitation developments to ensure adequacy and reasonableness of assessments and proposed scope of rehabilitation;
  - Monitor construction to ensure the development is progressing as scheduled (e.g. actual construction start date compared to original projections, projected construction end date compared to original projections);
  - Monitor construction draws and change orders to analyze actual development costs and compare to original budget. Monitor contingency/change orders to ascertain if the construction budget is not workable;
  - Conduct periodic construction inspections and quality reviews if needed. Confirm construction completion guarantees;
  - Confirm receipt of certificate of occupancy for development; and
  - Conduct reviews to confirm compliance with LIHTC and TCAP requirements related to construction and design of the project, such as Section 504 of the Rehabilitation Act of 1973 or the Lead-Based Paint Poisoning Prevention Act and the Residential Lead-Based Paint Hazard Reduction Act of 1992.

- **Property Management and Operations**

  Perform Review/Assessment of:

  - Marketing plans and leasing procedures;
  - Occupancy rates/vacancy turnover performance;

- Livability services, such as building security and amenities (e.g. pools, business center, laundry rooms);

- Energy efficiency measures/utility cost controls;

- Maintenance performance, including preventative maintenance;

- Inspection reports regarding local housing code compliance or other codes related to maintaining a valid certificate of occupancy or other necessary licenses;

- General operating procedures, including procedures for prompt correction of any physical and tenant noncompliance, disaster contingency plans, etc.;

- Inspections and evaluations of physical plant in conjunction with capital repair and replacement planning evaluation of building;

- Compliance related to TCAP requirements, and actions taken by DCA and project owner to address findings of non-compliance made by the TCAP grantee or a federal agency; and

- Documentation of compliance or findings of non-compliance with other applicable federal, state or local laws related to property management, such as occupancy or property standards, fair housing laws, etc.

➢ **Financial Management**

Review Project Financial Management for:

- Appropriate risk management techniques and insurance coverage;

- Proper budgeting, accounting and internal controls;

- Audit compliance, e.g.-ensure delivery of independent audits, review draft audits prepared by independent auditors;

- Timeliness of required project compliance reports submitted by owners to TCAP grantees with respect to LIHTC and TCAP requirements, and any findings of non-compliance by the grantee or a federal agency;

- Establishment of lease-up, operating, emergency and replacement project reserves, also management of operating reserves and replacement reserves (including approval of expenditures); and

- Analyses of annual operating budget, debt coverage, cash flow trends, and other financial information, such as operating cost analyses, comparisons of actual costs vs. budget, prior year operations, and comps, such as state averages.

- **Long-Term Viability Assessment**

Periodic viability analyses, to include:

- Establishment of benchmarks to classify projects as “troubled”;
- Trend analyses of development, property and financial management assessments described above;
- Project cash flow or other analyses to ascertain long term financial viability,e.g. evaluation of debt or other financial restructuring alternatives;
- Ongoing analysis of market conditions and vacancy rates, analysis of ongoing marketability and capital needs of development; comparisons of actual absorption rate, rental revenue, and lease up to original projections;
- Review of project compliance reports related to LIHTC and TCAP requirements, including projections regarding the ability of project to maintain compliance with LIHTC and TCAP affordability period requirements; the grantee’s and project owner’s actions to address non-compliance issues; and
- Recommendations and implementation of workout strategies for a troubled projects.

DCA can charge fees to LIHTC projects which will also receive TCAP funds. However, fees charged by the tax credit allocating agency to LIHTC project, such as fees normally charged in conjunction with applications for LIHTC awards, cannot be paid for with TCAP funds. **All fees customarily charged by DCA for its administration of the tax credit program must be paid by the Applicant but cannot be paid from TCAP funds.**

Program Income

Fees associated with LIHTCs are not considered TCAP program income, as these fees are not generated by the use of TCAP funds in a project. Furthermore, fees charged in connection with TCAP, other than asset management fees, are program income, because they are attributable to TCAP funds. However, unlike LIHTC fees, TCAP program income cannot be used for administrative costs incurred by the TCAP grantee.

DCA must use program income for eligible TCAP uses. Specifically, program income must be used for capital investment, as defined in CPD Notice 09-03 in eligible TCAP projects (i.e., projects that have received or will receive a LIHTC award between October 1, 2006 and September 30, 2009). Program income cannot be used to pay for costs of DCA to administer TCAP, including the cost of operating the program or monitoring for compliance.

The Recovery Act requires DCA as TCAP grantees to perform asset management functions, at the owner's expense, to ensure compliance with Section 42 of the Internal Revenue Code. These fees are not considered TCAP program income as reasonable and customary fees charged by DCA to the project owner for the purpose of satisfying the statutory asset management requirement are not considered program income. Income generated through imposition of TCAP asset management fees cannot be used to offset general organizational expenses associated with the administration of TCAP, but must solely be used to cover expenses associated with the administrative expenses incurred in the performance of asset management functions.