

The Tax Credit Assistance Program (TCAP)

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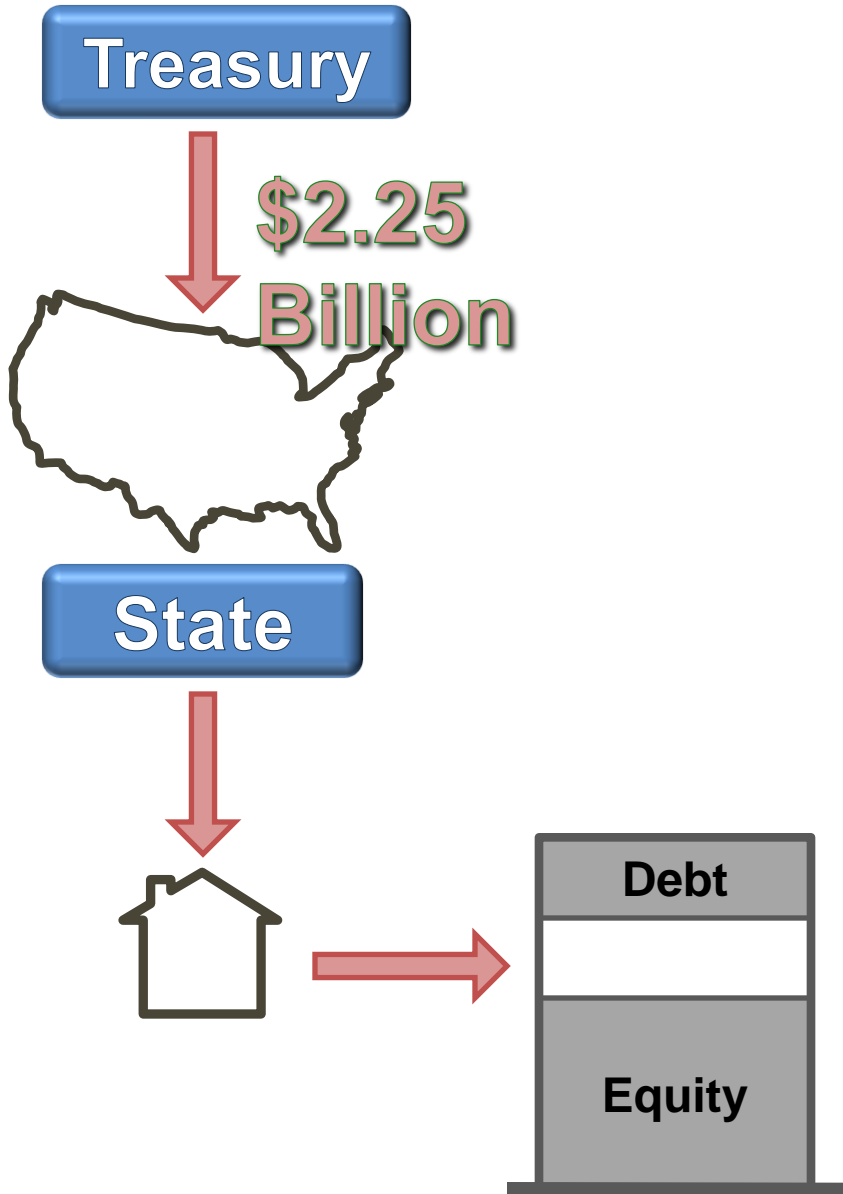
The Fifteenth Annual

GOVERNOR'S CONFERENCE

on Housing and Community Development

Tax Credit Assistance Program (TCAP)

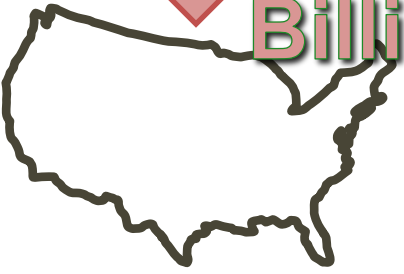




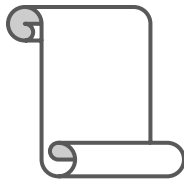
Treasury



\$2.25
Billion



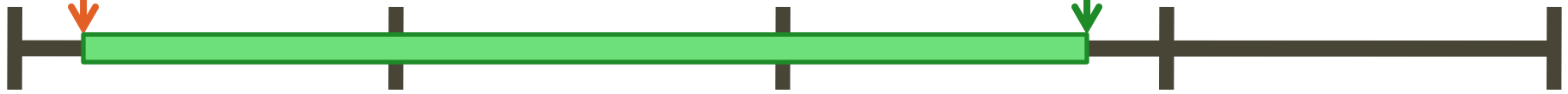
Funds available until 9/30/11



2/17/09



9/30/11



2009

2010

2011

2012

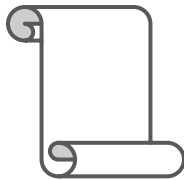
Treasury



\$2.25 Billion

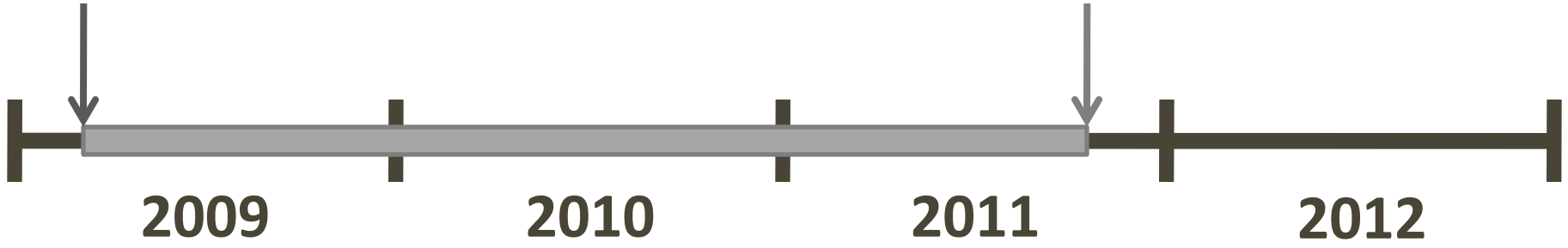
State

% of \$2.25 Billion =
% of HOME Allocation

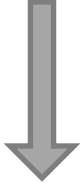


2/17/09

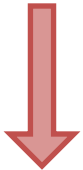
9/30/11



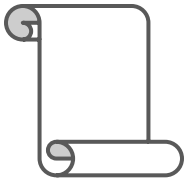
Treasury



State

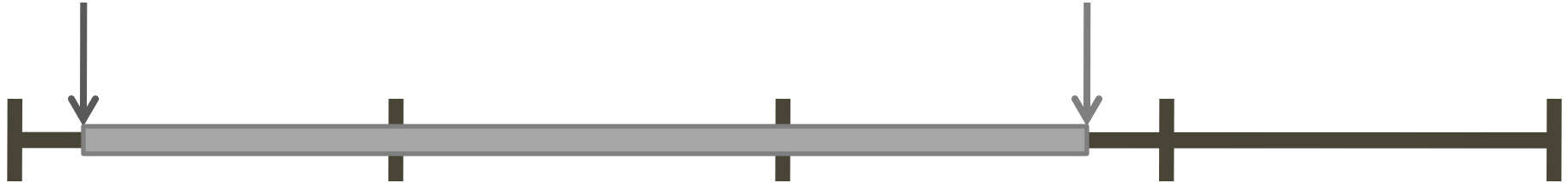


Competitive Process in QAP



2/17/09

9/30/11



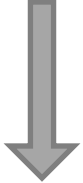
2009

2010

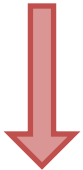
2011

2012

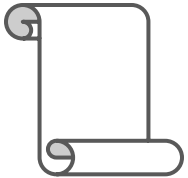
Treasury



State



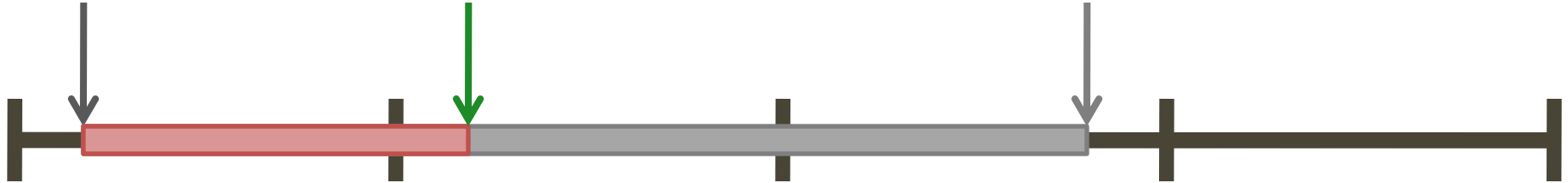
Commit
75%



2/17/09

2/17/10

9/30/11



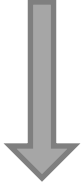
2009

2010

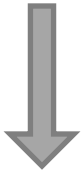
2011

2012

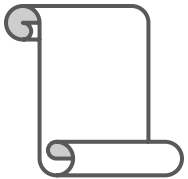
Treasury



State



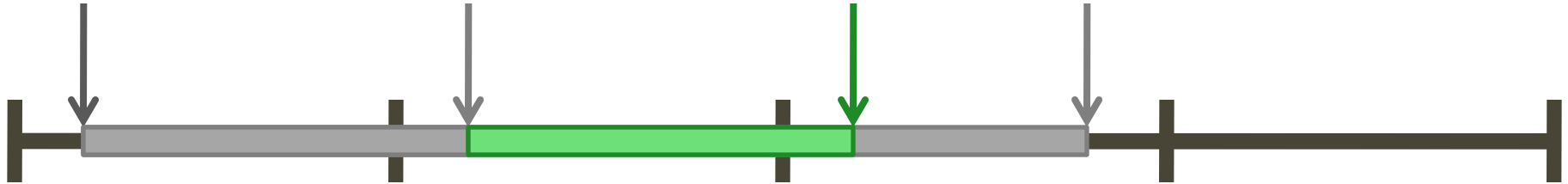
Expend
75%



2/17/09

2/17/10

2/17/11 9/30/11



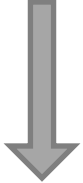
2009

2010

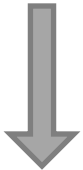
2011

2012

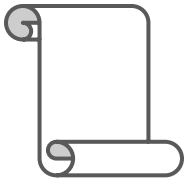
Treasury



State



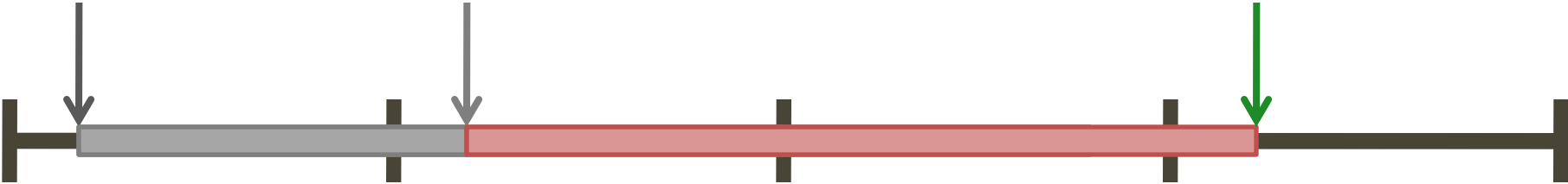
Expend
100%



2/17/09

2/17/10

2/17/12



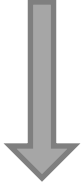
2009

2010

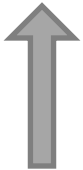
2011

2012

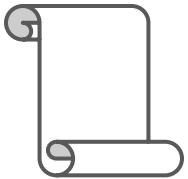
Treasury



State



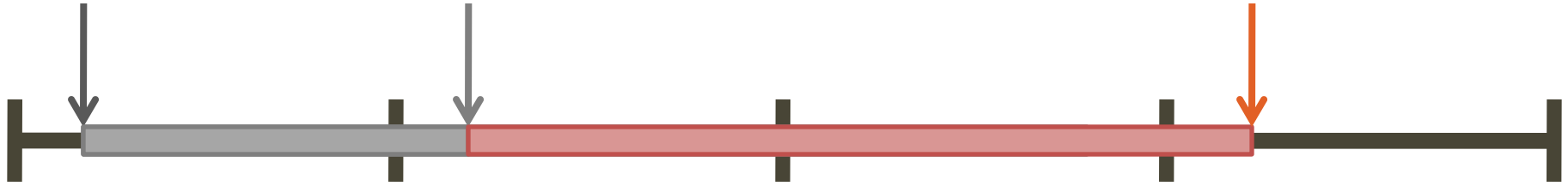
Any awards not expended are returned to the state to be reallocated to another project in that state



2/17/09

2/17/10

2/17/12



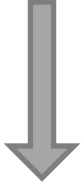
2009

2010

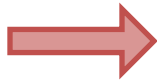
2011

2012

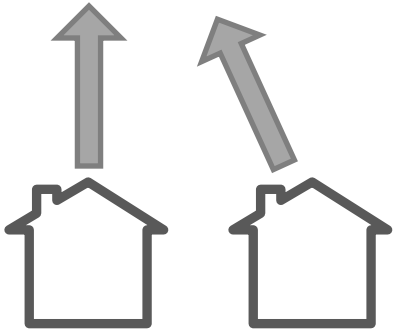
Treasury



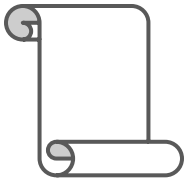
State



State



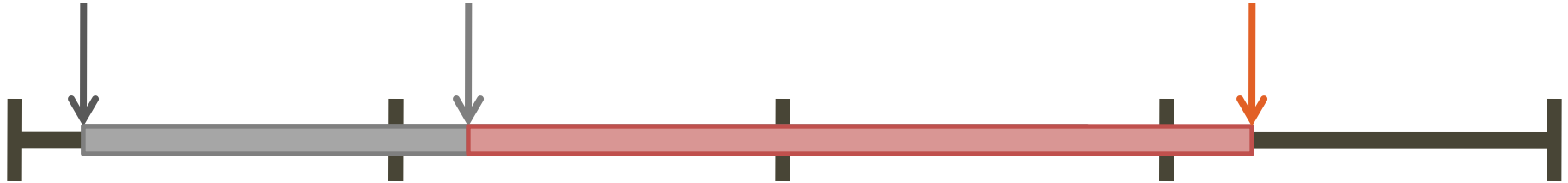
Any amounts that are not used by 2/17/12 will be allocated to **another state** which used up all of its amounts under this program.



2/17/09

2/17/10

2/17/12



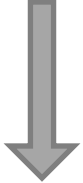
2009

2010

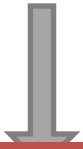
2011

2012

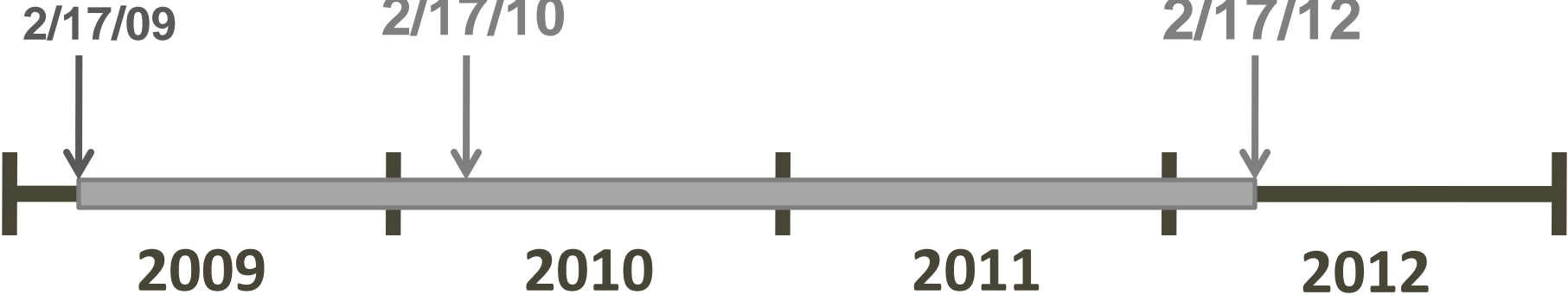
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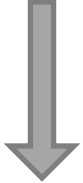
State



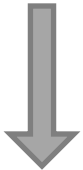
Projects awarded credits under Section 42(h) for
FYE **2007, 2008, or 2009** are **eligible**.



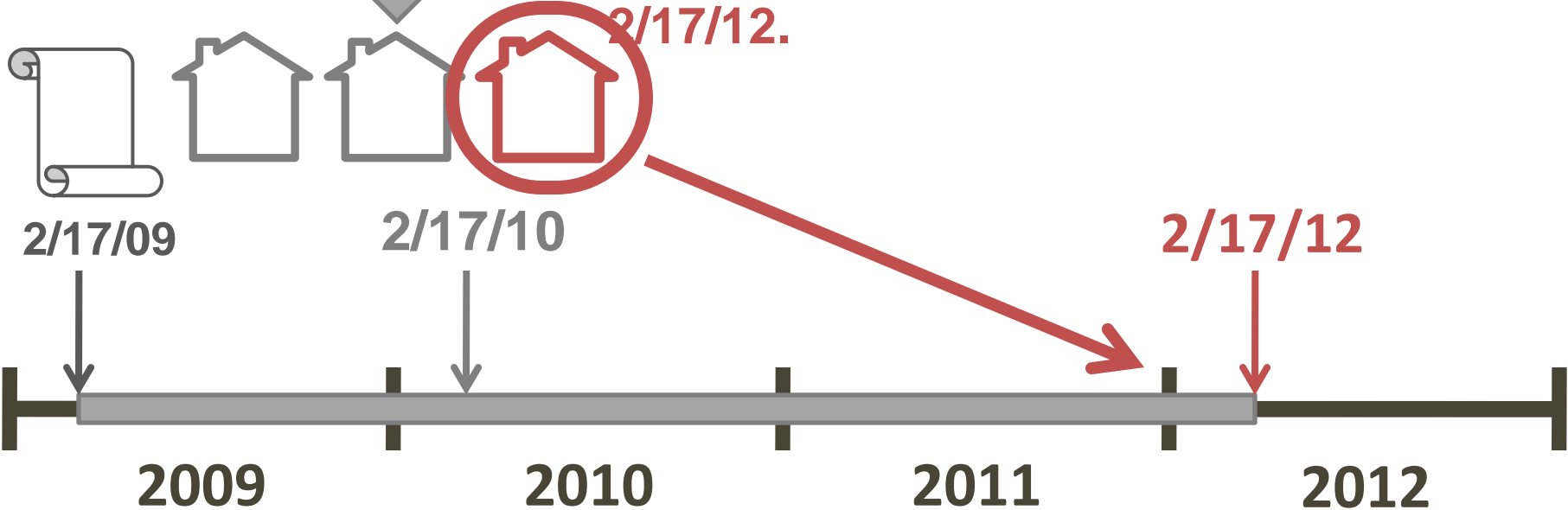
Treasury

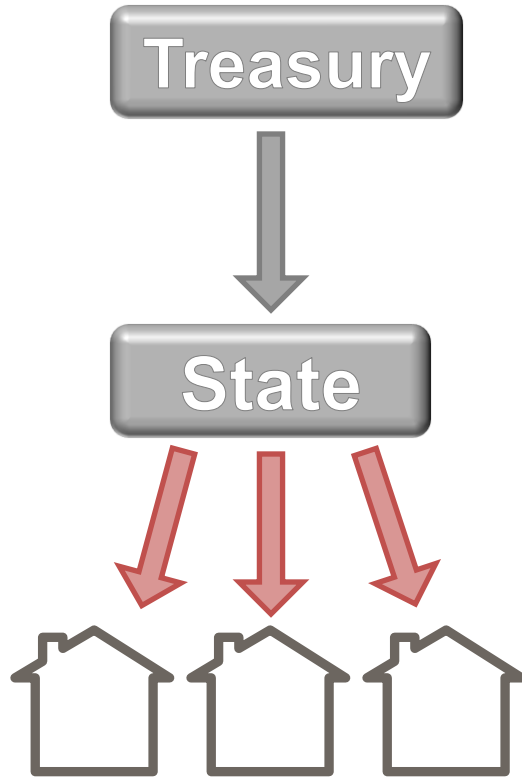


State



State agencies must give priority to projects that are **scheduled to be completed by 2/17/12.**

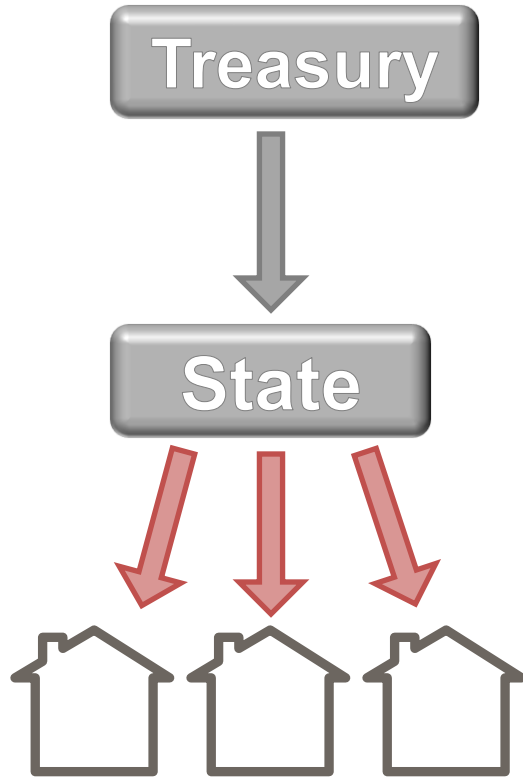




Awards are subject to same limitations of **Section 42** including:

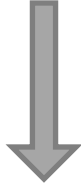
- Rent
- Income
- Use restrictions

Any **grant** allocated under this provision **does not reduce eligible basis.**



For purposes of *environmental compliance review*, all funds allocated under this program are deemed funds under the **HOME program** and are subject to Section 288 of the HOME investment partnership act.

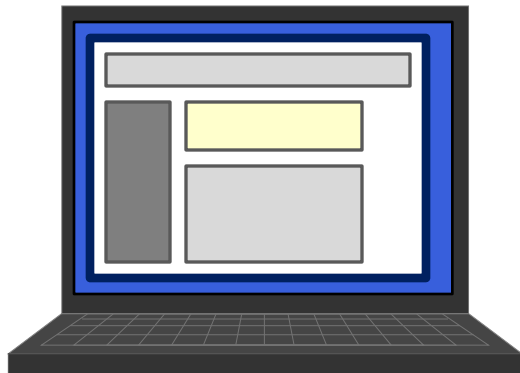
Treasury



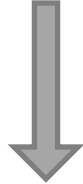
State

Asset management functions will have to be performed by the credit agencies to ensure compliance and long term viability.

State agency must create a **web site of all awards** and have info available to Treasury



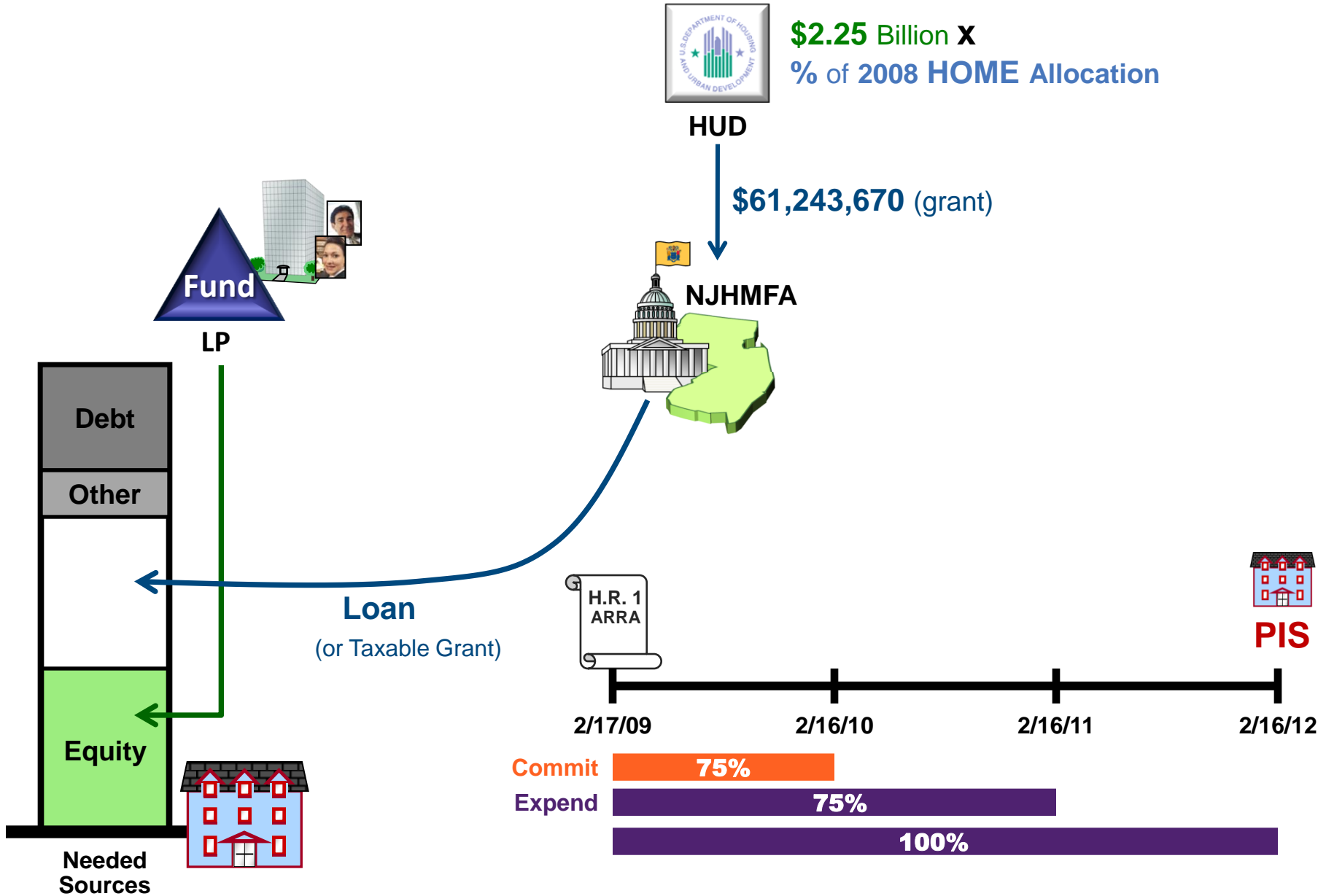
Treasury



State

Treasury may waive all other provisions of statute (except fair housing, labor standards, non-discrimination, and the environment) if it helps expedite the use of these funds.

Tax Credit Assistance Program (TCAP)



Attention Developers: Beware of TCAP Tax Pitfalls and Be Aware of Credit Exchange Tax Benefits

Low-income housing tax credit (LIHTC) allocating agencies (credit agencies) are currently busy evaluating applications by affordable housing developers for two LIHTC specific funding programs. These programs, contained in the American Recovery and Reinvestment Act of 2009 (Recovery Act), are the Tax Credit Assistance Program (TCAP) managed by the U.S. Department of Housing and Urban Development (HUD), and the Section 1602 Exchange Program (exchange program) managed by the U.S. Department of the Treasury. While both programs will bring significant resources to help restart the construction of affordable housing projects, this article discusses some of the tax pitfalls of TCAP funds and the tax benefits of exchange program funds of which developers should be aware. This article also explains how the viability of some TCAP funded developments may depend on whether credit agencies also award those developments exchange funds.

Description of the TCAP and Exchange Programs

TCAP funds may be loaned or granted to LIHTC projects. If the funds are granted to the project, then the owner will generally have taxable income from the receipt of the funds. Because most owners will be subject to income tax, it is likely that such owners would prefer to have the funds loaned to the project. Loans of TCAP funds, if respected as loans for tax purposes, do not generate taxable income to the borrower. To be respected as loans for tax purposes, the borrower of TCAP funds must be able to demonstrate

that there is a reasonable expectation that the loan can be repaid in full at maturity. A failure to demonstrate an ability repay a TCAP loan may cause the loan to be treated as a grant, thus resulting in taxable income in the year of receipt of the funds. Developers should note that whether the funds are taxable or not, TCAP statutory language provides that TCAP funds do not reduce the LIHTC eligible basis of a project.

The tax nature of exchange funds is different. First, Treasury has stated that credit agencies that receive subawards of exchange funds cannot loan such funds to projects but must instead grant the funds. (Note that the form of the grant may be a loan, but Treasury guidance clearly implies that the "loans" must have repayment provisions that are sufficiently contingent, along with other loan provisions that cause the loan to be treated as a grant for income tax purposes.) Second, based on the legislative history of the Recovery Act it is believed that exchange grants are not taxable income to their recipients. Finally, it is believed that such grants do not reduce either eligible basis or depreciable basis. The Internal Revenue Service (IRS) has been asked to confirm the non-taxable nature of the grants and their ability to be included in basis. While the IRS is still reviewing the issue, informal discussions with the IRS personnel indicate that forthcoming guidance will confirm that receipt of the grants will not cause taxable income and that eligible and depreciable basis are not reduced by exchange grant proceeds. It is hoped that such guidance will be issued near the end of August 2009.

(continued on page 2)

Editor's note: This article is part of a larger article discussing the Recovery Act that will be published in the Summer 2009 (18:4) issue of the ABA Journal of Affordable Housing & Community Development Law and is used here with the permission of American Bar Association.