Commonwealth of Massachusetts

DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT

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MASSACHUSETTS

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Tax Credit Exchange Program (TC-X)

Guidelines

August 11, 2009

Amended as of September 2009, October 2009, December 2009, and February 2010

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TC-X Guidelines

A. Introduction:

The American Recovery and Reinvestment Act of 2009 ("ARRA") was signed into law by President Obama on February 17, 2009. The Act provides funds to the U.S. Department of the Treasury (the "Treasury") and the U.S. Department of Housing & Urban Development ("HUD") to support certain low-income housing tax credit projects that have been delayed over time by equity market conditions. The Treasury, through the Internal Revenue Service, will administer funds for distribution to state housing credit agencies through Section 1602. HUD will administer the distribution of Tax Credit Assistance Program ("TCAP") funds on a formula basis to state credit agencies.

On May 4, 2009, the Treasury and HUD published notices governing the resources available to state housing credit agencies to help stalled credit projects. In the Commonwealth of Massachusetts, the Department of Housing and Community Development ("DHCD") is the state housing credit agency. This memorandum from DHCD establishes guidelines for the use of Section 1602 funds, or tax credit exchange funds, available from the Treasury to aid Massachusetts projects. DHCD already has issued guidelines for the use of TCAP funds to aid Massachusetts projects; those guidelines were approved by HUD on July 2, 2009. Consistent with the intent of ARRA, DHCD will emphasize readiness to proceed in the award of funds through both programs – the tax credit exchange program and TCAP.

DHCD reserves the right to modify these exchange program guidelines from time to time, to respond to changing market conditions and/or to better serve tax credit projects that have been unable to attract full equity investments.

B. Tax Credit Exchange Funds (Section 1602) in Massachusetts:

The Treasury notice states that "Section 1602 of the ARRA Tax Act appropriates funds for grants to States to finance construction or acquisition and rehabilitation of qualified low-income buildings for low-income housing in lieu of low-income housing tax credits." The notice further states that Treasury will award grants to states based on a calculation determined by the amount of the state's unused credit ceiling for calendar year 2008 as well as the amount of credit ceiling returned in 2009. The formula for determining the election amount is set forth in the Treasury notice and the notice is attached to this memorandum as part of Appendix A. The notice describes the process through which state credit agencies may exchange unused credit. The Treasury accepted the first applications from state agencies during May and June 2009 and published the minimum amount any agency could exchange during that time period. In accordance with the notice, Treasury will allow credit agencies to exchange additional amounts on an ongoing basis.

The Treasury notice established $50,814,102 as the maximum amount that is now known of four components contributing to the total authority that Massachusetts could exchange. As of this date, DHCD has formally requested $50,814,102 in exchange funds and has received approval for the exchange from the Treasury. DHCD intends to apply for additional exchange funds over time, with the final exchange amount ranging between $80 million and $120 million. The final amount cannot be determined until Treasury and/or the Internal Revenue Service issues further information and guidance. The final amount also will depend on which stalled projects qualify for TCAP assistance and which projects might be able to attract investors during the remaining months of 2009 or the first months of 2010.

In order to mirror as closely as possible the process through which DHCD is awarding TCAP funds, the Department will award exchange funds competitively, with the first competition expected to begin in August 2009. Although Treasury is not requiring states to award exchange funds competitively, DHCD will hold exchange fund competitions for the following reasons:

- The demand for exchange funds is certain to exceed the funds available; and,

- The selection process for exchange projects, as indicated, should mirror as closely as possible the selection process for TCAP projects, so that all stalled projects are treated fairly and equitably.

DHCD will follow the same principles and use the same competitive criteria to evaluate exchange applications as it uses for TCAP applications.

When finalized, DHCD will post the date of the first competition on the Department's Web site. DHCD will provide information on additional competitions at a later time.

All applications for exchange funds must be received at DHCD by the close of business on the date established as the deadline for the first competition. Applications that are received after the close of business on that date will not be reviewed. All exchange fund applications must be complete. Applications that are incomplete will not be reviewed.

In accordance with the intent of ARRA, DHCD will emphasize readiness to proceed as one of the most important selection criteria for exchange fund projects. Once exchange fund applications have been submitted, DHCD staff will review them in a certain order, beginning with any projects previously selected for credit and/or subsidy awards in 2007 ("2007 Projects"), followed by projects previously selected for such awards in 2008 ("2008 Projects"). DHCD intends to announce exchange fund awards on a rolling basis, as soon as the evaluation process for the 2007 Projects or the 2008 Projects has been completed. DHCD anticipates making the first exchange fund awards within three weeks of the application deadline. A sponsorship entity previously selected for awards of credit and subsidy in 2007 and 2008 that is concerned about timely placing its project in service

for purposes of the credit may apply for 2010 or later credits without jeopardizing the project's status as a 2007 Project or a 2008 Project, as applicable.

At this time, DHCD expects to award between 75% and 100% of the available exchange funds during the first competition expected to begin in August 2009. If DHCD awards less than 100% of the exchange funds available during the first competition, the remaining exchange funds, plus any funds obtained from additional exchanges, will be awarded during competitions likely to be scheduled between October 2009 and January 2010. Further, depending on the availability of exchange funds, DHCD reserves the right to consider delayed projects with 2009 Department awards ("2009 Projects"), as well as any remaining 2007 Projects or 2008 Projects that were not funded during the first exchange competition or during the first TCAP competition (see the TCAP guidelines posted on DHCD's web site at: http://www.mass.gov/Ehed/docs/dhcd/hd/taxcredit/finaltcapguidelines.pdf).

In addition, projects that received a TCAP award but were unable to meet the TCAP deadlines for closing and/or moving to construction may be considered for funding during exchange competitions, so long as the delay in closing/construction start was through no fault of the project sponsor, based on DHCD's determination.

After DHCD has made an exchange fund award to a project, the project sponsor will have 120 days to close on all financing, with a construction start to follow within 45 days thereafter. If a project sponsor fails to proceed to a full closing within 120 days, DHCD will withdraw the exchange fund commitment to the project. Similarly, if a project fails to move to a construction start 45 days after the full closing, DHCD will withdraw the exchange fund commitment. If either event occurs, the project sponsor may elect to submit the project again during a later exchange fund competition. However, the sponsor will have to provide in writing the reasons for the failure to meet the deadline(s) of the earlier exchange fund award, and DHCD will only consider the project for a subsequent award under the exchange fund (or TCAP) if DHCD determines that such reasons were unanticipated and beyond the control of the project sponsor.

DHCD will make exchange funds available to projects selected through the exchange competitions in the form of zero-interest subordinate loans. The Department anticipates that the loans will be structured as 30-year loans and will contain provisions for recapture in the event the project sponsor defaults on the terms of the exchange fund agreement with DHCD.

All exchange fund loans will be closed through the MassDocs process. DHCD will provide detailed information on the exchange fund disbursement process to sponsors of projects that receive awards. The disbursement process will likely incorporate a 20% hold-back of exchange funds pending completion of the project and submission of an acceptable cost certification as described below. Sponsors should note that, upon project completion, they will be required to submit full cost certifications, including certifications of construction costs. The cost certifications must be acceptable to DHCD or the Department will enforce its rights under the exchange fund loan documents to

recover funds that were not used appropriately. As set forth below, it will be a default under the exchange fund loan documents, requiring full or partial repayment of an award, if exchange funds are not all expended for eligible costs within required time periods. Eligible uses of exchange funds include Low Income Housing Tax Credit eligible basis costs, all as approved by and acceptable to DHCD. **Please note that recent written guidance from Treasury indicates that the amount of exchange funds that can be awarded to a project is limited to 85% of the tax credit eligible basis of the project, including any basis boost applicable to the project.** (See Appendix A for "Frequently Asked Questions" released by Treasury following publication of the May 4, 2009, exchange funds notice.)

The Department has been informed that some sponsors of stalled tax credit projects began construction on their projects without closing on all financing. If a sponsor began construction prior to closing on all project financing and now seeks exchange funds from DHCD, the sponsor must provide the Department with full documentation of the construction work completed prior to the application for exchange funds. If the application for exchange funds is successful, the sponsor will have to provide DHCD with full documentation related to any additional construction work – i.e., work undertaken in the period between application and award -- prior to DHCD closing on any exchange or subsidy funds. Specifically, the sponsor must provide DHCD with:

> All requisitions for construction work completed prior to an exchange award in the format typically required by DHCD. The requisitions must carry signature approvals from all parties typically required to approve.

All documentation related to early construction work as well as the construction product must be acceptable to DHCD. The cost of the Department's additional review on these projects must be borne by the sponsor and paid in advance of the review.

Any award of exchange funds to such projects will be conditioned upon DHCD's approval of the documentation described above and of the construction product. Any delay in the loan closing process related to approval of the documentation described above shall be attributed to the sponsor and, if a full loan closing does not occur within 120 days of an exchange award, will result in DHCD's withdrawal of the award. Upon project completion, the sponsor shall be required to submit a full cost certification of construction costs, including construction costs incurred prior to the exchange award and loan closing, as well as other project costs.

In accordance with the May 4, 2009 Treasury notice, state housing credit agencies must perform asset management functions to ensure that exchange fund projects comply with the Section 42 requirements that govern all low-income housing tax credit projects. DHCD may decide to contract for asset management services. Alternatively, it may require sponsors to contract for such services directly. Exchange fund project sponsors must cover the cost of all asset management functions performed by or on behalf of DHCD. Depending on any further guidance from Treasury or the Internal Revenue Service, DHCD will either (x) require projects to retain an asset management firm

acceptable to DHCD to provide asset management services throughout the tax credit compliance period pursuant to a scope of services to be furnished by DHCD, with all fees for such services to be paid from the project's development sources (other than exchange funds) or operating income, or (y) require projects to pay an asset management fee from the project's development sources (other than exchange funds) or operating income to DHCD in order to allow DHCD to retain an asset management firm to provide asset management services to DHCD. DHCD will provide project sponsors who intend to seek exchange funds with cost estimates that they may use in the revised development or operating pro forma they must submit as part of the exchange fund application (see Appendix B), although alternative cost proposals solicited by project sponsors for asset management services from third party providers will be evaluated by DHCD.

Consistent with the intent of the ARRA statute, DHCD will require all sponsors whose projects receive exchange funds to provide DHCD on a regular basis with certain data and reports. The quarterly reporting requirements include, but are not limited to, the following:

- Number of construction jobs created
- Number of construction jobs retained
- Number of non-construction jobs created
- Number of non-construction jobs retained
- Number of total housing units newly constructed
- Number of total housing units rehabilitated
- Number of low income housing units newly constructed
- Number of low income housing units rehabilitated

DHCD will require project sponsors to provide any and all information needed on demand, and will establish penalties for any project sponsors who fail to comply. From time to time, DHCD also may require sponsors to provide additional data for the Department's use. DHCD reserves the right to stop the flow of exchange funds to a project whose sponsor does not submit required reporting data when requested.

C. Threshold-for-Review Criteria for Exchange Fund Consideration:

To be eligible for an exchange fund award, DHCD requires that a project have a tax credit award. DHCD defines tax credit award as the first determination by DHCD that a project is eligible for tax credits, either 9% or 4%. In the case of the 9% credit, such determination is made through the issuance of a conditional reservation to the project. In the case of the 4% credit, such determination is normally made through the issuance of a so-called Section 42(m) letter to the project, but under Section III of the QAP can also be made through an eligibility determination letter, which can be issued on a rolling basis (a "4% Eligibility Determination").

Davis-Bacon Prevailing Wages:
Projects that are processed through the Tax Credit Exchange Fund program are not required to meet Davis-Bacon prevailing wage requirements, unless other project financing mandates Davis-Bacon compliance.

Maximum Number of Awards per Sponsor:
No sponsor may receive more than two Tax Credit Exchange Fund awards in the initial competition. A sponsor will be deemed to have received an award if it materially participates in a project either directly or through one or more affiliates.

9% Projects – Threshold-for-review criteria for exchange fund consideration
In order to be reviewed during DHCD's first exchange fund competition in the summer of 2009, 9% projects must meet these threshold-for-review criteria:

- The project sponsor applied for and received tax credit and soft-loan subsidy awards from DHCD in competitions concluded during 2007 and 2008. (This means that DHCD previously reviewed and approved at least one full One-Stop funding application from the project.)

- The project has been unable to proceed primarily due to equity market conditions.

- The sponsor can demonstrate a long-term, good-faith effort to obtain investment commitments for tax credits in lieu of the Tax Credit Exchange Fund award. The sponsor must fully document repeated and long-term efforts to attract syndicators and investors to the project.

Sponsors of preservation projects should carefully review the preservation set-aside priorities as described in DHCD's 2009 Qualified Allocation Plan.

The 9% projects that meet these threshold criteria will be eligible for consideration during DHCD's first exchange fund competition. As stated previously, if exchange funds remain after the first competition, or if DHCD exchanges further credit authority, the Department will hold additional exchange competitions between October 2009 and January 2010.

DHCD reserves the right to limit the total amount of an exchange fund award to any given project.

4% Projects – Threshold-for-review criteria for exchange fund consideration
In order to be reviewed during DHCD's first exchange fund competition in the summer of 2009, 4% projects must meet the following criteria:

- The project sponsor applied for and received a soft-loan subsidy award from DHCD in competitions concluded during 2007 and 2008; this means that DHCD previously reviewed and approved a full One-Stop funding application from the project.

- The project received Official Action Status from MassHousing or MassDevelopment during 2007 or 2008.

- The sponsor can demonstrate a long-term, good-faith effort to obtain investment commitments for tax credits in lieu of the Tax Credit Exchange Fund award. The sponsor must fully document repeated and long-term efforts to attract syndicators and investors to the project.

Sponsors of preservation projects should carefully review the preservation set-aside priorities as described in DHCD's 2009 Qualified Allocation Plan.

Four percent projects whose sponsors applied for soft-loan subsidy awards from DHCD but were denied funding are not eligible for exchange fund consideration during the first exchange fund competition. Four percent projects whose sponsors have not applied for soft-loan subsidy funds may be eligible for consideration during the first competition for tax credit exchange funds or during additional exchange fund competitions. The sponsor of a four percent credit project who has not previously submitted a full One Stop application to DHCD must submit one at the time of application for tax credit exchange funds.

DHCD reserves the right to restrict the total amount of an exchange fund award to any given project.

D. Competitive Selection Criteria:

Consistent with the intent of the ARRA statute, DHCD will evaluate readiness to proceed as one of the most important factors in the selection of exchange fund projects that meet the thresholds described above.

DHCD will evaluate all exchange fund applications that are complete, are submitted by the competition deadline, and meet the threshold requirements in Section C above, in accordance with the weighted criteria described in this section. Because projects have been delayed by equity market conditions, development and operating pro formas may have changed since the date of initial awards of credit and subsidy. However, the Department will not accept significant and unreasonable cost increases in any project line items, nor material changes to projects. If significant and unreasonable changes have occurred, DHCD will not award exchange funds to the project.

Weighted Selection Criteria:

Current readiness to proceed: **Maximum 65 points** (Maximum is 55 points for projects not required to complete environmental review by non-exchange sources of funding.)

• Zoning in place	10
• Federal environmental review completed, if necessary for other financing sources	10
• 100% working drawings and specifications as certified by architect	10
• Contractor selected and firm bid received	5
• Construction contract signed	10
• Building permit pulled	10
• All other applicable reviews completed and permits issued	10

Minimum Score Required: 35
(Minimum score is 25 points for projects not required to complete environmental review by non-exchange sources of funding.)

Current financial status: **Maximum 40 points**

• Updated sources and uses acceptable to DHCD	10	
• Updated development and operating pro formas acceptable to DHCD	10	
• All financing in place*	10	
• Additional funds committed by municipal or private sources	5	(maximum)
○ $500,000 since previous award	3	
○ $1 million since previous award	5	
• Total amount of Exchange Funds requested:	5	(maximum)
○ Less than $3 million	5	
○ Less than $4 million	4	
○ Less than $5 million	3	
○ Less than $6 million	2	
○ More than $6 million	0	

Minimum Score Required: 30

*with the exception of equity commitments from tax credit syndicators/investors

To be considered for an exchange fund award, applications must receive a minimum of 35 points in readiness to proceed (25 points for projects not required to complete environmental review by non-exchange sources of funding) and 30 points in current financial status. Furthermore, in accordance with DHCD's Qualified Allocation Plan (QAP), any sponsor must be in good standing with the Department in order to receive an exchange fund award. Even if a project achieves the minimum score, if the project has no investor and is seeking exchange fund assistance to fill a resulting gap, DHCD will evaluate sponsor capacity and the sponsor's ability to develop and operate the project as DHCD makes exchange funding decisions. DHCD may require additional reserves, limited guarantees, and other commitments by sponsors to support and manage their projects in order to ensure that the exchange funds will be used appropriately. In addition, it will be a default under the documents evidencing an exchange fund loan if the required timelines for construction of the project and expenditure of the exchange funds are not met or if the exchange funds are not expended for eligible project costs.

As described in Section B of these guidelines, DHCD will review exchange fund applications in order, based on the year in which the project first received a DHCD award of credit and/or soft loan subsidy. For example, exchange fund applications for 2007 Projects will be reviewed before 2008 Projects. Further, upon completion of the review process for all 2007 Projects, DHCD will announce exchange fund awards to those projects, based on required minimum scores and total score received.

As soon as DHCD has completed the review process for the 2007 Projects, DHCD will begin reviewing the 2008 Projects. DHCD will follow the same process in reviewing, selecting, and announcing exchange fund awards to the 2008 Projects. However, project sponsors should note that there may not be sufficient funds to make full exchange fund awards to all 2008 Projects that apply in the first competition. If that is the case, sponsors who do not receive the requested exchange fund awards may submit applications instead to a later exchange fund competition.

DHCD reserves the right to limit the award of tax credit exchange funds to a given project to a maximum amount. As indicated previously, DHCD anticipates awarding a total of between 75% and 100% of the exchange funds available during the first competition. The Department anticipates holding additional competitions as it exchanges more credit through the Treasury process.

E. Underwriting Standards for Exchange-Fund-Eligible Projects

DHCD's standards for underwriting exchange-fund-eligible projects are included in Appendix C to these guidelines. All applications will be underwritten to determine the minimum amount of exchange funding necessary to fill a full or partial equity gap and allow the project to proceed to closing on all financing within 120 days. Project sponsors should carefully review the DHCD standards.

Please note that recent written guidance from Treasury indicates that the amount of exchange funds that can be awarded to a project is limited to 85% of the tax credit eligible basis of the project, including any basis boost applicable to the project.

Most or all project sponsors seeking exchange fund assistance have been unable to attract investors. As part of the exchange fund application, project sponsors must indicate a willingness to allow DHCD to appropriately adjust the existing tax credit award, including possible reduction to zero. If DHCD makes such an adjustment, DHCD will make an exchange fund award sufficient to replace the tax credit equity that cannot be raised. DHCD shall reduce awards if DHCD determines that a proposed investor's terms are unacceptable (as described in the underwriting standards attached as Appendix C) or that the project sponsor has been unable to find an investor on any terms.

9% projects:
Very few if any 9% projects eligible for the first exchange fund competition have been able to attract an investor on acceptable terms. During the exchange fund review process, DHCD will require sponsors to accept an appropriate adjustment to the existing 9% credit award on the projects with no investor or with investor terms that are unacceptable to DHCD and will incorporate the reduced credit amount into the underwriting process. Exchange-fund-eligible 9% projects with investors will be underwritten using the amount of credit to be purchased on terms acceptable to DHCD.

4% projects:
At the sponsor's request, during the exchange fund review process, DHCD will issue a 4% Eligibility Determination. Very few if any 4% projects eligible for the first exchange fund competition have been able to attract an investor on acceptable terms. Unless a project sponsor has submitted evidence of a firm commitment of equity on terms acceptable to DHCD, DHCD will require sponsors to accept an adjustment of the existing 4% credit award to zero, and will assume no equity investment in the underwriting process. Exchange-fund-eligible 4% projects with investors will be underwritten using the amount of credit to be purchased on terms acceptable to DHCD.

F. Application Requirements:

The application requirements for projects seeking exchange funds are set forth in Appendix B to these guidelines. Sponsors must submit three full sets of the required documents to:

Department of Housing & Community Development
Division of Housing Development
100 Cambridge – Suite 300
Boston, MA 02114

The full and complete application documents must be received at DHCD no later than close of business on the date of the exchange fund competition, as published on DHCD's Web site.

Appendix A

U.S. Treasury Notice Re: Section 1602 Program

U. S. Treasury Frequently Asked Questions and Answers

Application and Terms and Conditions:

Grants to States for Low-Income Housing Projects in Lieu of Low-Income Housing Credits for 2009 under the

AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

U.S. Treasury Department
Office of the Fiscal Assistant Secretary
May 2009

Grants to States for Low-Income Housing Projects in Lieu of Low-Income Housing Credits for 2009
under the
American Recovery and Reinvestment Act Of 2009

Under Section 1602 of the American Recovery and Reinvestment Tax Act of 2009 (Section 1602), State housing credit agencies are eligible to receive Section 1602 Grants to States for Low-income Housing Projects in Lieu of Low-income Housing Credits under section 42 of the Internal Revenue Code (the Code) for 2009. In doing so, the State housing credit agency is electing to take a portion of its 2009 State housing credit ceiling in the form of grant amounts and agreeing to the terms and conditions applicable to the Section 1602 program.

This application package contains the application form and Terms and Conditions for the Section 1602 program. The United States Department of the Treasury (Treasury) accepts applications from State housing credit agencies for the first portion of the funds as explained in the Submission Requirements section below, May through June 2009. Treasury welcomes questions about the program and the application process at 1602Questions@do.treas.gov. The email address for submitting an application is given below under the Submission Requirements section.

Background

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), an omnibus bill containing several parts including the American Recovery and Reinvestment Tax Act of 2009. The purpose of the Recovery Act is to preserve and create jobs and promote economic recovery in the near term and to invest in infrastructure that will provide long-term economic benefits.

Section 1602 of the American Recovery and Reinvestment Tax Act appropriates funds for grants to States to finance construction or acquisition and rehabilitation of qualified low-income building for low-income housing in lieu of low-income housing tax credits. Treasury will award Section 1602 grants to State housing credit agencies in an amount equal to their low-income housing grant election amount.

The grant election amount is the amount requested by the State which does not exceed 85 percent of:

(1) 10 times 100 percent of (a) the unused State housing credit ceiling (if any) of the State for calendar year 2008 and (b) the amount of State housing credit ceiling returned in 2009

Plus

(2) 10 times 40 percent of (c) the greater of $2.30 multiplied by the State population or $2,665,000 and (d) unused housing credit carryover allocated to the State in the 2009 National Pool

Additional housing credit dollar amounts for the Gulf Opportunity Zone (Go Zone) and the Midwestern and Hurricane Ike Disaster Areas (Disaster Areas), including amounts returned from additional housing credit amounts previously allocated in the Go Zone or Disaster Areas, do not apply to Section 1602.

The State housing credit agency receiving the grant uses the funds to make subawards to finance the construction or acquisition and rehabilitation of qualified low-income buildings with or without an allocation under Section 42 of the Code. The subawards are subject to the same requirements as low-income housing credits under Section 42 of the Code. Subawardees must demonstrate a good faith effort to obtain investment commitments utilizing credits before the State agency may make an award. The State housing credit agency may use the funds to make subawards through December 31, 2010. Any grant funds not used to make subawards before January 1, 2011 must be returned to the Treasury on January 1, 2011. Any interest earned in excess of $200 on grant funds held by the state housing credit agency before a subaward is made and that is not used for subawards before January 1, 2011 must be returned to the Treasury.

It is expected that the Section 1602 program will temporarily fill the gap left by a diminished investor demand for low-income housing tax credits. The Section 1602 program will allow projects for construction or acquisition and rehabilitation of low-income housing to continue where developers are unable to proceed due to lack of investors. In this way, the near term goal of creating and retaining jobs is achieved, as well as the long-term benefit of increasing the affordable housing supply.

Submission Requirements for State Housing Credit Agencies

A designated State housing credit agency, interested in accepting all or a portion of the Section 1602 grant amount, may submit the attached application and Terms and Conditions during the period May-June 2009. A designated State housing credit agency is one that files Form 8610, "Annual Low-Income Housing credit Agencies Report," for all agencies within the State. The List of Designated Agencies is provided below.

In addition to applications submitted in the period May-June 2009 applicants will be able to submit subsequent applications through 2010. Treasury is receiving applications from State housing credit agencies in May-June 2009 in order to respond to the immediate need caused by a diminished demand for low-income housing tax credits. However, for purposes of the grant amount calculation,only two of the four factors that comprise the 2009 State Housing Credit Ceiling are known at this time: Factor (a) the unused State

housing credit ceiling (if any) of the State for calendar year 2008 and factor (c) the greater of $2.30 multiplied by the State population or $2,665,000.

The other two factors are not fully known at this time: Factor (b) the amount of State housing credit ceiling returned in 2009 and factor (d) the unused housing credit carryover allocated to the State from a National Pool of unused credits. As factors (b) and (d) become known, Treasury expects to receive subsequent applications from the designated State housing credit agencies. Moreover, as conditions change throughout the year, the designated State housing credit agency may request additional funds provided the total of their requests does not exceed the maximum grant election amount prescribed by Section 1602.

To submit an application, the designated State housing credit agency sends a completed application electronically to: **1602Apply@do.treas.gov**. A complete application includes the filled-in and signed application form and the signed Terms and Conditions.

Treasury will provide grant funds only to those designated State housing credit agencies that provide complete applications. Treasury will review each application for eligibility and completeness within 10 working days of receipt. Treasury will notify the designated State housing credit agency if its application is found to be incomplete and will provide instructions to remedy the deficiency.

The application form requests, among other identifying data elements, the designated State housing credit agency's Data Universal Numbering System (DUNS) number from Dun and Bradstreet. If the agency does not already have a DUNS number, it may request one at no cost by calling the dedicated toll-free DUNS Number request line at 1-866-705-5711. An agency must also register with the Central Contractor Registration (CCR). To register, go to www.ccr.gov/startregistration.aspx.

Grant Agreements

After Treasury determines that an application is complete, it will send a grant agreement to the designated State housing credit agency. The grant agreement notifies the grantee (i.e., the designated State housing credit agency) that the grant has been awarded and incorporates the information contained in the designated State housing credit agency's completed application form and the Terms and Conditions. Treasury will then make funds available for the grantee to draw from as needed to make subawards.

If Treasury determines that the grantee has a history of unsatisfactory performance, is not financially stable, or has a management system that does not meet management standards set forth in Office of Management and Budget (OMB) Circular A-102, it may attach special conditions to the grant agreement.

Amendments to the Grant Agreements

When a designated State housing credit agency requests additional grant funds (as described under the Submission Requirements section above) and Treasury approves the request, Treasury will amend the grant award accordingly.

Application for Grants to States for Low-Income Housing Projects in Lieu of Low-Income Housing Credits for 2009

1. Applicant Information – Enter information about the designated State housing credit agency.

Agency name		Street address	
DUNS number		City	
EIN		State & zip code	

2. Contact Person – Enter information about the person to be contacted about this application.

Name		Organizational affiliation	
Phone & fax		E-mail address	

3. Initial Grant Amount Requested from Factors (a) and (c). Complete the chart below for an application submitted for the first time in April-June 2009. Factor (a) is the unused State housing credit ceiling (if any) of the State for calendar year 2008. The maximum amount to be entered in the first line below is the amount of the unused credit ceiling for 2008 times 10 times .85. The maximum amount to be entered in the second line below is the amount listed as Factor (c) in the List of Designated Agencies in this application package. Enter the amount of grant funds requested on the fourth line.

Maximum amount of Factor (a)	
Maximum amount of Factor (c) from List	
Total of Factors (a) and (c)	
Initial grant amount requested of Factors (a) and (c)	

4. Grant Amount Requested from Factor (b): Returned 2009 Ceiling – Complete the chart below for an application submitted after the returned 2009 amount is known in whole or in part. The maximum is the amount of State housing credit ceiling returned in 2009 times 10 times .85.

Maximum amount of Factor (b)	
Grant amount requested of Factor (b)	

5. Grant Amount Requested from Factor (d): 2009 National Pool Allocation – Complete the chart below for an application submitted after the National Pool allocation amount is known. The maximum is the National Pool allocation amount times .4 times 10 times .85

Maximum amount of Factor (d)	
Grant amount requested of Factor (d)	

6. Subsequent Grant Amount Requested – Complete the chart below for an application submitted when the grantee did not request the maximum amount from Factors (a), (b), (c), or (d).

Subsequent grant amount requested of Factor (a)	
Subsequent grant amount requested of Factor (b)	
Subsequent grant amount requested of Factor (c)	
Subsequent grant amount requested of Factor (d)	

Treasury use only		

7. Signature of Authorized Representative - Under penalties of perjury, I declare that I have examined this application and to the best of my knowledge and belief, it is true, correct, and complete. I declare that I am an authorized official for the designated State housing credit agency authorized to submit this application on behalf of agency. Further, the agency agrees the information in this application can be disclosed to the Internal Revenue Service.

Name		Title	
Phone		Email	
Signature		Date signed	

List of Designated Agencies

Use this list to fill in information in the second line of section 3 of the Application Form – the maximum amount of Factor (c). Factor (c) is based on the greater of $2.30 multiplied by the State population or $2,665,000. The calculations required by Section 1602 have already been applied to the amounts listed below. It is not necessary to make any further calculations.

This list contains the names of eligible applicants for the Section 1602 grant funds. These State housing credit agencies are eligible because they file Form 8610 for their State. If awarded Section 1602 grant funds, these agencies may enter into agreements with other housing credit agencies within their State to receive grant funds and carry out the Section 1602 program in the same manner as the designated State housing credit agency.

The list contains only one of the four factors in the maximum grant amount calculation. Factor (a) is based on the unused State housing credit ceiling (if any) of the State for calendar year 2008 and should be calculated as instructed on the Application Form. Factor (b) is based on the amount of State housing credit ceiling returned in 2009 and factor (d) is based on the unused housing credit carryover allocated to the State in the 2009 National Pool allocation. When the factors (b) and (d) become known, a State housing credit agency may request additional grant funds. As Treasury approves the requests, Treasury will amend the grant award accordingly.

Area	Designated State Housing Credit Agency	Factor (c)
AL	Alabama Housing Finance Authority	$36,456,058
AK	Alaska Housing Finance Corporation	$9,061,000
AQ	[American Samoa – no agency designated]	$9,061,000
AZ	Arizona Department of Housing	$50,831,408
AR	Arkansas Development Finance Authority	$22,329,150
CA	California Tax Credit Allocation Committee	$287,437,128
CO	Colorado Housing and Finance Authority	$38,626,546
CT	Connecticut Housing Finance Authority	$27,379,791
DE	Delaware State Housing Authority	$9,061,000
DC	DC Department Housing & Community Development	$9,061,000
FL	Florida Housing Finance Corporation	$143,327,619
GA	Georgia Housing and Finance Authority	$75,742,518
GU	Guam Housing and Urban Renewal Authority	$9,061,000
HA	Hawaii Housing Finance and Development Corporation	$10,073,708
ID	Idaho Housing and Finance Association	$11,916,241
IL	Illinois Housing Development Authority	$100,890,223
IN	IN Housing and Community Development Authority	$49,866,513
IA	Iowa Finance Authority	$23,479,980
KS	Kansas Housing Resources Corporation	$21,912,688
KY	Kentucky Housing Corporation	$33,385,496
LA	Louisiana Housing Finance Agency	$34,492,425
ME	Maine State Housing Authority	$10,294,686
MD	MD Community Development Administration	$44,054,729
MA	MA Department of Housing & Community Development	$50,814,102
MI	Michigan State Housing Development Authority	$78,226,760
MN	Minnesota Housing Finance Agency	$40,823,473
MS	Mississippi Home Corporation	$22,979,993
MO	Missouri Housing Development Commission	$46,228,751
MT	Montana Board of Housing	$9,061,000
NE	Nebraska Investment Finance Authority	$13,946,438
NV	Nevada Housing Division	$20,333,306
NH	New Hampshire Housing Finance Authority	$10,289,626
NJ	New Jersey Housing and Mortgage Finance Agency	$67,898,409

NM	New Mexico Mortgage Finance Authority	$15,517,664
NY	NY State Division of Housing & Community Renewal	$152,414,123
NC	North Carolina Housing Finance Agency	$72,119,277
ND	North Dakota Housing Finance Agency	$9,061,000
MP	[Northern Mariana Islands -- no agency designated]	$9,061,000
OH	Ohio Housing Finance Agency	$89,819,816
OK	Oklahoma Housing Finance Agency	$28,483,263
OR	Oregon Housing and Community Services	$29,638,269
PA	Pennsylvania Housing Finance Agency	$97,345,542
PR	Puerto Rico Housing Finance Authority	$30,920,569
RI	Rhode Island Housing and Mortgage Finance Agency	$9,061,000
SC	SC State Housing Finance & Development Authority	$35,032,036
SD	South Dakota Housing Development Authority	$9,061,000
TN	Tennessee Housing Development Agency	$48,600,424
TX	Texas Department of Housing and Community Affairs	$190,236,937
VI	Virgin Islands Housing Finance Authority	$9,061,000
UT	Utah Housing Corporation	$21,398,836
VT	Vermont Housing Finance Agency	$9,061,000
VA	Virginia Housing Development Authority	$60,754,276
WA	Washington State Housing Finance Commission	$51,214,932
WV	West Virginia Housing Development Fund	$14,189,140
WI	Wisconsin Housing & Economic Development Authority	$44,010,702
WY	Wyoming Community Development Authority	$9,061,000

Grants to States for Low-Income Housing Projects in Lieu of Low-Income Housing Credits for 2009

GRANTEE TERMS AND CONDITIONS

1. Authority

a. Section 1602 of the American Recovery and Reinvestment Tax Act of 2009 (Act) authorizes the United States Department of the Treasury (Treasury) to issue grants to State housing credit agencies in lieu of low-income housing credits.

b. The grantee has authority to receive Section 1602 grants.

2. Grantee Eligibility

a. The grantee is the housing credit agency for one of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, or the Northern Mariana Islands which files Form 8610, Annual Low-Income Housing Credit Agencies Report with the Internal Revenue Service.

b. The grantee shall be the sole recipient of the Section 1602 funds in the State and must coordinate with other housing credit agencies within the State (including any constitutional home rule cities) to determine how much of their 2009 credit ceiling the other agencies would elect to take in the form of a grant election amount and will provide to those agencies their proportionate share.

c. The grantee shall enter into written agreement with any other participating housing credit agencies within the State, binding the participating agency to comply with the terms and conditions applicable to the grantee or designated state agency in the sections 3 through 10 of these terms and conditions.

d. The grantee is the party responsible to Treasury for all grant matters.

3. Eligible Projects

a. The grantee shall only select projects for subawards which are qualified low-income buildings under Section 42 of the Internal Revenue Code (the Code).

b. The grantee must ensure that the subaward is consistent with the requirement of section 42(m)(2) of the Code that the subaward made for a project [building(s)] does not exceed the amount necessary to ensure the financial feasibility of the project and its viability as a project throughout the credit period.

4. Use of Grant Funds

a. The grantee is receiving an initial grant election amount. The grantee may apply for additional grant funds through 2010. If the Treasury Department approves the request, the Treasury Department will amend the award to increase the grant amount.

b. The grantee shall use all grant amounts to make subawards, or for transfer to other agencies to make subawards. The subawards shall be in the form of cash assistance and are not required to be repaid unless there is a recapture event with respect to the qualified low-income building. The grantee shall not use grant election amounts for any other purpose, including administrative costs. The grantee may collect reasonable fees from a subawardee to cover expenses associated with performance of its duties under Section 1602(c)(3) of the Act, Compliance and Asset Management. Reasonable fees are amounts customarily charged for the same or similar services and in no event may exceed costs.

c. The grantee may disburse grant funds to subawardees in 2009 and 2010. No grant funds may be disbursed to subawardees after December 31, 2010.

d. The subawards shall finance the construction or acquisition and rehabilitation of qualified low-income buildings in accordance with Section 1602(c) of the Act.

e. The grantee shall make subawards in the same manner and shall be subject to the same limitations as an allocation of housing credit dollar amount allocated under Section 42(m) of the Code, except for the additional determinations required in subsection g of this section.

f. Prior to making any subaward, the grantee shall establish a written process for making a determination that applicants for subawards have demonstrated a good faith effort to obtain investment commitments for tax credits in lieu of a subaward.

g. Prior to making any subaward, the grantee shall make a determination that the applicant for the subaward has demonstrated a good faith effort to obtain investment commitments for tax credits in lieu of the subaward.

5. Written Agreements and Disbursements to Subawardees

a. The grantee shall execute a legally binding written agreement with the entity receiving a subaward. The grantee and the subawardee must execute the written agreement before any Section 1602 funds are disbursed to the subawardee.

b.The written agreement must set forth (explicitly, or incorporated by reference) all Section 1602 program requirements, including the requirements of Section 42 of the Code, applicable to the subaward.

c. The written agreement shall impose conditions or restrictions, including a requirement providing for recapture, so as to assure that the qualified low-income building remains a qualified low-income building during the 15-year compliance period. The written agreement may include the extended low-income housing commitment under Section 42(h)(6)(B) of the Code.

d. The written agreement shall require the subawardee to provide sufficient information to the grantee to report on the use of grant funds as required by section 8 of these terms and conditions.

6. Asset Management
a. The grantee shall perform asset management functions so as to ensure compliance with Section 42 of the Code and the regulations thereunder (including Title 26 Code of Federal Regulations section 1.42.9), and the long-term viability of the buildings funded by a subaward under the Act in accordance with Section 1602(c)(3) of the Act.

7. Compliance with the 2009 State Housing Credit Ceiling
a. The grantee shall track (1) the credit equivalent of all grant election amounts to ensure that the 2009 State Housing Credit Ceiling is appropriately reduced as required by section 42(i)(9)(A) of the Code and (2) total grant election amounts to ensure that these amounts do not exceed the amount authorized by section 1602(b).

b. The grantee shall track the total of credits allocated under Section 42(h)(1) of the Code.

c. The grantee shall ensure that the credit equivalent of all elected grant amounts through 2010, plus the credits allocated under Section 42(h)(1) of the Code during 2009, do not exceed the State housing credit ceiling for 2009.

8. Reporting
a. The grantee shall provide periodic reports as required by Treasury. A financial status report and a project performance report is required on a quarterly basis, due 10 working days after the end of the quarter. Quarters end on March 31, June 30, September 30, and December 31.

b. The performance report has the following elements on each project receiving a subaward during the quarter:

- Name of recipient entity
- Name of project
- Brief description of project
- Location of project: city/county, State, zip code
- Number of construction jobs created
- Number of construction jobs retained
- Number of non-construction jobs created
- Number of non-construction jobs retained
- Number of total housing units newly constructed
- Number of total housing units rehabilitated
- Number of low-income housing units newly constructed
- Number of low-income housing units rehabilitated

c. The grantee shall submit any other reports that Treasury deems necessary to comply with Section 1602 of the Act and American Recovery and Reinvestment Act guidance.

9. Recapture

a. The grantee shall include in any subaward a requirement providing for recapture to assure that the building remains a qualified low-income building during the 15-year compliance period.

b. The grantee shall notify subawardees that any amount subject to recapture becomes a debt owed to the United States payable to the General Fund of the Treasury and enforceable by all available means against any assets of the recipient entity.

10. Financial Management

a. The grantee must expend and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the designated State housing credit agency must be sufficient to permit preparation of required reports and permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes. Effective control and accountability must be maintained for all grant funds.

b. The grantee shall open a new account (Grant Account) with a financial institution for the purpose of receiving grant election amounts, for making distributions of grant election amounts to other agencies within the State, and for making subawards.

c. The grantee must maintain program, financial, and accounting records sufficient to demonstrate that grant funds were used in accordance with the Section 1602 program and these terms and conditions. The Treasury as the awarding office, the cognizant Treasury inspector general, and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to facilities and to any pertinent books, documents, papers, or other records (electronic and otherwise) of grantees, which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

d. The grantee shall minimize the time between the receipt of grant funds and the disbursement of those funds to subawardees. Federal funds cannot be drawn by the grantee from the U.S. Treasury in advance of need. The grantee shall not place in escrow or advance lump sums to project owners. Once funds are drawn from the grantee's U.S. Treasury account, they must be expended as a subaward by the grantee within three days, or if grant funds are transferred by the grantee to another agency, as a subaward by that agency within three days following the date of transfer by the grantee.

e. The grantee shall promptly return to its Grant Account any subawards returned to the designated State housing credit agency from subawardees and shall expend returned amounts as subawards before additional grant amounts are drawn from the Treasury.

11. Disallowance, Suspension, and Termination

a. If the grantee materially fails to comply with any term of the award, whether stated in a Federal statute or regulation, the terms and conditions herein, in a State plan or application, a notice of award, or elsewhere, Treasury may take one or more of the following actions, as appropriate in the circumstances:

- Temporarily halt cash payments pending correction of the deficiency by the grantee
- Disallow all or part of the cost of the activity or action not in compliance
- Wholly or partly suspend or terminate the current award
- Withhold further awards for the program
- Take other remedies that may be legally available

In taking an enforcement action, Treasury will provide the grantee the opportunity for a hearing, appeal, or other administrative proceeding to which the grantee is entitled under any statute or regulation applicable to the action involved.

b. The grantee must immediately report any indication of fraud, waste, abuse, or potentially criminal activity pertaining to grant funds to Treasury and the cognizant Treasury inspector general.

12. Return of Unused Grant Funds

a. The grantee shall return to the Treasury any grant election amounts not disbursed to subawardees before January 1, 2011 including any interest earned in excess of $200 on grant funds held by the State housing credit agency before a subaward is made and that is not used for subawards before January 1, 2011.

Signature

Under penalties of perjury, I declare that I have examined the terms and conditions in this application and that the designated State housing credit agency agrees to and will ensure that these terms and conditions will be followed. I declare that I am an authorized official of the designated State housing credit agency and am authorized to bind the State housing credit agency to these Terms and Conditions.

Name		Title	
Phone		Email	
Signature		Date signed	

Section 1602: Grants to States for Low-Income Housing Projects in Lieu of Low-Income Housing Credits for 2009

FREQUENTLY ASKED QUESTIONS AND ANSWERS

The following questions and answers are intended to assist Section 1602 recipients to understand and comply with program requirements. They are organized in the same order as the Grantee Terms and Conditions.

These questions and answers are not a substitute for reading and understanding the Recovery Act, Terms and Conditions, Section 42 of the Internal Revenue Code, or other regulatory requirements.

When new questions and answers are posted, they will first appear in bold.

1. Application Process

1a. Question: Page 2 of the application package says that Treasury accepts applications from State housing credit agencies for the first portion of the funds in May and June 2009. Does this mean that an agency which does not apply in May or June loses the opportunity to do so subsequently?

Answer: A State housing credit agency which is listed as a Designated Agency on pages 7 and 8 of the application package may submit applications in 2009 and 2010. The application package used the May-June 2009 time frame to encourage agencies to begin as soon as possible to address the State's low-income housing needs and the priorities of the American Recovery and Reinvestment Act of 2009.

1b. Question: How many applications may the designated State housing credit agency submit to Treasury?

Answer: There is no limit to the number of applications the designated State housing credit agency may submit provided the total amount requested does not exceed the total amount of funds allowed for under Section 1602(b).

2. Awardee Eligibility

2a. Question: Why is there only one State housing credit agency designated per State as an eligible recipient of Section 1602 funds? How were these agencies chosen?

Answer: The low-income housing tax credits (LIHTCs) that a State may allocate every year are derived from that State's Housing Credit Ceiling. The State Housing Credit Ceiling is comprised of four components. The maximum amount of Section 1602 funds to a State keys off the four components that make up the 2009 State Housing Credit Ceiling. Historically, one State housing credit agency per State tracks the State Housing Credit Ceiling and annually reports credit information to the Internal Revenue Service. Since Section 1602 funds are inextricably linked to the State Housing Credit Ceiling, the Section 1602 program applies the same principles and uses the designated State housing credit agency as the recipient. This also

helps to ensure that total Section 1602 funds and credits allocated do not exceed the 2009 State Housing Credit Ceiling as the Designated Agency is responsible for tracking both Section 1602 funds and allocated credits.

3. Eligible Projects

3a. Question: May Section 1602 funds be used in developing a building where the building receives both credit allocations and Section 1602 funds?

Answer: Yes, a building may use both tax credits and Section 1602 funds. However, the developer must first demonstrate that the developer has made a good faith effort (in accordance with the procedure the State housing credit agency puts in place) to obtain investment commitments for tax credits for the portion that would be covered by the Section 1602 funds.

3b. Question: Does infusion of Section 1602 funds in a stalled LIHTC building change the placed-in-service date?

Answer: No. Whether or not any LIHTCs remain in a stalled building that utilizes 1602 funds, the placed-in-service date for the building does not change.

3c. Question: May Section 1602 funds be used in a development with tax exempt bonds?

Answer: Yes.

3d. Question: Is the Section 1602 program meant as a one-for-one exchange at the building level? For example, if a building has $500,000 of allocated LIHTCs, can the owner return credits to the applicable state allocating agency, in return for the same amount in Section 1602 funds?

Answer: The Section 1602 program is sometimes called the Exchange program. However, this does not mean that a building that has been allocated LIHTCs must exchange these LIHTCs in order to receive Section 1602 funds. The "Exchange program" refers to the exchange that takes place at the state level, where the Designated Agency exchanges all or part of the State Housing Credit Ceiling (to the extent permitted under Section 1602) for Section 1602 funds.

3e. Question: May Section 1602 funds be used in a project that was placed in service prior to 2009?

Answer: Section 1602 follows the requirements that govern credit allocations. Just as a building that had received a credit allocation and was placed in service prior to 2009 cannot return the allocation for a new allocation in 2009, the same building cannot return the credit allocation for Section 1602 funds. Similarly, a binding commitment to allocate credit in 2009 for a project placed in service prior to 2009 also does not qualify as the binding commitment relates to an allocation of credit, not Section 1602 funds (which were not available at the time the binding agreement was made).

3f. Question: May Section 1602 funds be used in a project that is substantially complete, and the project owner cannot obtain investor commitments for tax credits?

Answer: Provided the building was not been placed in service prior to 2009, Section 1602 funds may be subawarded to a substantially complete building, assuming all other requirements have been met. The Section 1602 funds could be used to repay equity or loans that have financed the construction of the building or for some other eligible costs.

4. Use of Awarded Funds

4a. Question: May State housing credit agencies make subawards in the form of loans to the subawardees?

Answer: As item 4.b of the Terms and Conditions indicates, State housing credit agencies make subawards in the form of cash assistance to the subawardees. The cash assistance would not be required to be repaid, unless there is a recapture event with respect to the low-income building. The cash assistance can be in the form of a loan which is non-interest bearing and non-repayable except in the event of noncompliance during the 15-year compliance period.

4b. Question: Items 4.e and 4.f of the Terms and Conditions require the State housing credit agency to establish and to implement a written process for determining that an applicant for a subaward has demonstrated a good faith effort to obtain investment commitments for tax credits in lieu of a subaward prior to making a subaward. Does Treasury have standards for the process?

Answer: Treasury is relying on State housing credit agencies to establish and to implement a fair and open process that meets the needs in their area and fits with local investment conditions.

4c. Question: Must every project, whether it has or has not received an allocation of LIHTCs, make a good faith effort to obtain investment commitments for LIHTCs before being considered for a subaward?

Answer: Yes.

4d. Question: Do the "Buy American" provisions in the American Recovery and Reinvestment Act of 2009 apply to the Section 1602 program?

Answer: No.

4e. Question: Do other cross-cutting Federal requirements apply to the Section 1602 program, such as the National Environmental Policy Act and Davis-Bacon?

Answer: The National Environmental Policy Act and Related Laws and Davis-Bacon Prevailing Wage Rates do not apply to qualified low-income buildings funded with subawards, unless otherwise applicable. Other cross-cutting Federal requirements, such as the Section 504 of the Rehabilitation Act of 1973, apply through statutory requirements and other regulations and rules governing Section 42 of the Internal Revenue Code.

4f. Question: Which costs are eligible to be paid with Section 1602 funds?

Answer: Section 1602 follows the same requirements as LIHTCs. Section 1602 funds may pay for development costs to the same extent as allowed under Section 42 of the Internal Revenue Code. For example, the acquisition of land is ineligible under Section 1602, as it is under Section 42.

4g. Question: Are subawardees required to "trace" how the Section 1602 funds are used in the project?

Answer: No. Subawardees are not required to trace (i.e., track the sources and uses of each expenditure in the development project) the use of Section 1602 funds. This follows the practice of LIHTCs.

4h. Question: What is the maximum amount of a subaward?

Answer: The amount of the subaward cannot exceed 85 percent of the amount of a building's eligible basis as determined at the end of the first year of the credit period (as defined in Section 42(f)(1) of the Internal Revenue Code) and, also for this purpose, eligible basis includes any increase for buildings located in high cost areas under Section 42(d)(5)(B). The subawardee must maintain sufficient documentation to demonstrate that the allowable construction, acquisition, and rehabilitation costs of a qualified low-income building equal or exceed the amount of the subaward.

5. Written Agreements and Disbursements to Subawardees

5a. Question: May State housing credit agencies charge an application fee to potential subawardees?

Answer: No. The Section 1602 statutory language allows a State housing credit agency to collect reasonable fees from a subaward recipient to cover expenses associated with the performance of the agency's asset management responsibilities. The statutory language concerning fees does not include any other State housing credit agency's activities.

5b. Question: The LIHTC program benefits accrue to taxpayers over a ten-year period. Are the Section 1602 funds paid over a ten-year period?

Answer: The purpose of the Section 1602 program is to provide funds to develop low-income housing where there is a funding gap. Once the State housing credit agency has made a subaward to a project, the agency will make funds available to the project when there is a need to pay an invoice/bill. This procedure is similar to other Federal programs, such as HOME or the Community Development Block Grant program.

5c. Question: What kind of assurances can a State agency give a project owner who would like to participate in Section 1602 but does not want to give up a LIHTC allocation without an assurance Section 1602 funds will be subawarded in exchange?

Answer: The State agency has the discretion to subaward Section 1602 funds and any assurances are a matter between the State Agency and the project owner. As for whether the State agency will receive funds from Treasury, Treasury awards

Section 1602 funds to State credit housing credit agencies who are eligible to receive funds and complete the required application. There is no competition for the funds at the Federal level.

6. Asset Management

6a. Question: What is the compliance period for projects receiving Section 1602 funds?

Answer: Just as with LIHTCs, projects receiving Section 1602 funds must be in compliance for 15 years.

7. Compliance with the 2009 State Housing Credit Ceiling

7a. Question: If a project which has been awarded 2009 credit under the non-profit set-aside under Section 42(h)(5) of the Internal Revenue Code is unable to find an equity investor and requests to return the credit to the State housing credit agency for Section 1602 funds, does the subsequent subaward qualify as meeting the State's 2009 set-aside obligation?

Answer: Along with credit allocations, Section 1602 funds must be included in determining whether a state has met its non-profit set-aside requirement. A subaward is taken into account for purposes of the 10 percent non-profit set-aside requirement at the time the subaward is made to the owner of a project that involves a qualified non-profit organization described in Section 42(h)(5)(B) of the Internal Revenue Code. The State needs to calculate the credit equivalent of the Section 1602 funds in determining whether its set-aside obligation has been met. Under these facts, the subaward would count in determining whether the 2009 non profit set-aside requirement is met if the subaward is awarded to the project owner in 2009.

8. Reporting

8a. Question: Will Treasury provide guidance on how to report on jobs created and jobs retained?

Answer: Treasury will be sending out guidance on reporting in July.

8b. Question: If Section 1602 funds are provided to a building and the building has no LIHTCs, should the State housing credit agency and the subawardee complete Form 8609?

Answer: Yes. The State housing credit agency should complete boxes A, B, C, D, and E, and lines 5 and 6 in Part I of the Form 8609. The subawardee should complete lines 7, 8b, 9b, 10a, 10c, and 10d of Part II of the Form 8609 and send the completed form to the State housing Credit agency, not the IRS. If Section 1602 funds are provided to a building with LIHTCs (and therefore the subawardee is already required to file the form with the IRS), then the subawardee should be required to send a copy of the completed form to the State housing credit agency.

9. Recapture

9a. Question: Will the Section 1602 program use IRS Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition?

Answer: IRS Form 8823 should *not* be filed with the Treasury Department or the IRS to report noncompliance or building dispositions that result in recapture of subawards under Section 1602. State housing credit agencies should only use Form 8823 to notify the IRS of noncompliance or building dispositions where LIHTCs are involved. State housing credit agencies may, however, use the form internally to document recapture relating to buildings with subawards whether or not LIHTCs are involved.

9b. Question: When does a Section 1602 recapture event occur?

Answer:

A Section 1602 recapture event occurs any time within the 15-year compliance period (as defined in Section 42(i)(1) of the Internal Revenue Code) the applicable fraction of a building under Section 42(c)(1)(B) falls below the percentage of Section 1602 funds that comprise the eligible basis of the building (the Section 1602 percentage), or below the minimum set-aside elected for the building under Section 42(g)(1), whichever is greater. However, the preceding sentence does not apply if the applicable fraction specified in the extended use agreement with respect to the building under Section 42(h)(6)(B)(i) is lower than the Section 1602 percentage. Instead, a Section 1602 recapture event takes place any time within the 15-year compliance period the applicable fraction of the building under Section 42(c)(1)(B) falls below the applicable fraction specified for the building in the extended use agreement under Section 42(h)(6)(B)(i), or below the minimum set-aside elected for the building under Section 42(g)(1), whichever is greater.

For purpose of calculating the Section 1602 percentage, eligible basis includes any increase for buildings located in high cost areas under Section 42(d)(5)(B) of the Internal Revenue Code.

Example 1. Assume that $1.5 million of Section 1602 funds were awarded to a building with an eligible basis of $4.5 million. The building has 100 residential units of similar size and construction and is fully occupied by low-income tenants as of the close of the first year of the credit period (as defined in Section 42(f)(1) of the Internal Revenue Code). Assume also that the 20/50 minimum set-aside under Section 42(g)(1) was elected for the building and that the applicable fraction specified in the extended use agreement for the building is 100% (i.e., 100% of the total units are required to be maintained as low-income units). The Section 1602 percentage is .333 (i.e., $1.5m/$4.5m). A Section 1602 recapture event will not occur until the applicable fraction of the building under Section 42(c)(1)(B) decreases below .333 (i.e., less than 34 of the units are occupied by qualifying low-income tenants). Had instead the 40/60 minimum set-aside been elected for the building, then a Section 1602 recapture event will not occur until the applicable fraction of the building decreases below .40 (i.e., less than 40 of the units are occupied by qualifying low-income tenants), as the minimum set-aside elected for the building (i.e., .40) exceeds the Section 1602 percentage (i.e., .333).

Example 2. Assume the same facts as Example 1, but instead of 100%, the applicable fraction of the building under Section 42(c)(1)(B) of the Internal Revenue

Code is .50 (i.e., only 50 of the 100 units are occupied by low-income tenants as of the close of the first year of the credit period) and the applicable fraction specified in the extended use agreement for the building is also .50 instead of 100%. Assume further that Section 1602 funds awarded to the building are $3 million instead of $1.5 million. The Section 1602 percentage is .667 (i.e., $3m/$4.5m). Because .667 exceeds the .50 applicable fraction specified in the extended use agreement for the building, a Section 1602 recapture event will take place if the applicable fraction of the building under Section 42(c)(1)(B) falls below the .50 applicable fraction specified in the extended use agreement. In other words, a Section 1602 recapture event will occur under these facts if there is any decrease in the applicable fraction under Section 42(c)(1)(B) during the building's compliance period.

9c. Question: What amount is owed when a recapture event takes place?

Answer: The full amount of the Section 1602 subaward is owed minus 6.67 percent ($1/15^{th}$) for each full year of the building's 15-year compliance where a Section 1602 recapture event has not occurred.

9d. Question: Who pays the penalty when a recapture event takes place?

Answer: The Section 1602 legislation requires the State housing credit agency to impose conditions or restrictions on a subawardee to assure that the building remains a qualified low-income building during the compliance period. This would include any subsequent owner during the compliance period. The State housing credit agency is bound to enforce its provisions and return the recapture penalty to the Treasury.

9e. Question: Why doesn't the Section 1602 recapture procedures mirror the LIHTC recapture procedures in Section 42(j) of the Internal Revenue Code?

Answer: The procedures differ because differences between grants and LIHTCs make it difficult to apply credit recapture rules in the context of subawards.

10. Financial Management

10a. Question: How will Section 1602 funds be available to State housing credit agencies?

Answer: Treasury is using the Payment Management System operated by the Federal Department of Health and Human Services to make funds available to State housing credit agencies.

10b. Question: When must a State housing credit agency register in the Payment Management System?

Answer: Upon award, Treasury informs the Payment Management System. The awardee, then, receives instructions via email within two business days of the date of the award letter (or five business days of the date Treasury receives a completed Form 1199 if not already provided) describing how to access the Payment Management System to draw down Section 1602 funds.

10c. Question: What financial management forms must a State housing credit agency submit?

Answer: State housing credit agencies submit a Standard Form-272 ten days after the end of each calendar quarter. The SF-272 is part of the Payment Management System process.

11. Disallowance, Suspension, and Termination

11a. Question: How is Treasury able to suspend funding to a State housing credit agency?

Answer: The Payment Management System allows Treasury to place a temporary hold on individual accounts.

11b. Question: How will Treasury monitor the State housing credit agencies?

Answer: Treasury has developed a compliance monitoring checklist and expects to monitor (either remotely or on-site) in the first year every State housing credit agency participating in the Section 1602 program. In the following years, Treasury will monitor on a needs-assessment basis.

12. Return of Unused Award Funds – [Guidance forthcoming in subsequent postings.]

Appendix B

Application Requirements for Exchange Funds in Massachusetts

Three hard copies of full and complete application documents must be received at DHCD no later than close of business on the date of the exchange fund competition, as published on DHCD's web site two weeks prior to the deadline. Project sponsors also should refer to Section C of these guidelines.

Section I. Brief narrative describing the project:

Section II. Detailed narrative on readiness to proceed, including:

- Status of zoning
- Status of construction drawings and specifications, with architect's certification
- Status of construction bids
- Status of all project financing, including commitment letters from sources
- Status of all required reviews – environmental, historic, wetlands (if applicable), etc, with evidence of sponsor compliance

Section III. Financial information:

- Updated development and operating pro formas in One-Stop format (please include three hard copies, and one fully complete One Stop on compact disc)
- Updated commitment letters from all sources other than DHCD
- Narrative describing all efforts over time to attract syndicators/investors for project
- Recent financial statements of the project sponsor and an explanation of any adverse change in the financial status of the project sponsor since the date of the most recent financial statements previously submitted to DHCD

Section IV. Mandatory certifications:

Sponsor certifications that project conforms with all requirements of Treasury notice and Frequently Asked Questions re: Section 1602 and the requirements of Section 42 of the Internal Revenue Code, including but not limited to, the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973. In addition, sponsor must certify that the project conforms to the Massachusetts Affirmative Fair Housing Marketing Plan Guidelines set forth in Appendix D.

Additional sponsor certifications:

- That the project conforms with DHCD QAP
- That all project financing will close within 120 days of exchange fund commitment
- That sponsor accepts that exchange fund commitment will be withdrawn if closing does not timely occur

- That construction start will begin 45 days after closing
- That sponsor accepts that exchange fund commitment will be withdrawn if construction does not timely begin
- That all information is true and accurate
- That sponsor accepts that it will be required to return all 9% tax credits, or in the case of 4% tax credit project sponsors, to accept its ineligibility for any 4% tax credits, when applying for exchange funds, unless the sponsor provides evidence of an equity commitment acceptable to DHCD, in which case the credit award will be reduced to the amount to be purchased by an investor.
- That sponsor shall enter into a written agreement that requires compliance with the Low Income Housing Tax Credit and exchange fund program requirements for the period required by Section 42 of the Internal Revenue Code

Section V: Job Creation/Retention Matrix

Submission of job creation/retention matrix provided by DHCD

Processing Fees:

Project sponsors must continue to carry in their development budgets a tax credit processing fee that is based on the initial amount of the tax credit award to the project (9% projects) or the original amount of tax credits sought by the project sponsor (4% projects).

Appendix C

Underwriting Standards for Exchange Fund Projects

DHCD will underwrite every exchange fund application to determine the least amount of exchange funding necessary for financial feasibility. DHCD's underwriting standards relative to debt service coverage, trending, rents, vacancy rates, operating costs, soft costs, total replacement costs, and budgeted reserves are described in this appendix as well as in the Low Income Housing Tax Credit Program Guidelines (May 2009). Sponsors may contact DHCD tax credit staff for further information.

Please note that, in the case of an exchange fund award to a project without an investor, neither the applicable fraction (% low income) nor the concept of qualified basis applies. For exchange fund projects with an investor, these concepts do apply, as do the basis caps and per project limits.

If there are any cost savings identified at cost certification, DHCD reserves the right to reduce the amount of exchange fund assistance and/or the amount of tax credits awarded to a project.

Calculating the Least Amount of Tax Credits or Exchange Funds Necessary for Project Feasibility:

Federal law requires that the state credit agency allocate only the amount of credit necessary to make the project feasible. DHCD will apply the same principle to exchange fund awards.

To calculate the minimum amount of credit and/or exchange funds that a project must receive to ensure feasibility, DHCD will consider the sources and uses of funds and the total financing planned for the project, and/or the proceeds expected to be generated by the tax credit benefits. Some projects applying for exchange funds may have tax credit investors, and some will not. For projects without investors, DHCD will assume no credit will remain in the project.

DHCD must make a determination regarding the least amount of credit and/or exchange funds necessary at three different times in the credit allocation process: 1) at the time of the project's application, 2) at the time of the project's tax credit carryover allocation, and 3) at the time the project is placed in service or when the sponsor applies for IRS form 8609. DHCD may reduce the final allocation of exchange funds and/or tax credits as it appears on the 8609(s) for the project if:

- The project does not have enough basis to support the original tax credit allocation and/or does not have enough costs to support the exchange fund award; or
- The project costs have changed since the credit/exchange fund awards and are not acceptable to DHCD.

DHCD will use the following standards and guidelines to underwrite tax credit/exchange fund projects.

Project Cost and Trending Assumptions:

Development and operating pro formas will be reviewed closely for accuracy and feasibility. The development cost per unit relative to unit size and location will be considered in light of the best use of the tax credit and/or exchange fund resource. All soft costs, including consulting, engineering, architectural and syndication fees, will be analyzed for reasonableness:

- Soft costs should not exceed 15-20% of the total development costs
- Operating costs should be consistent with other projects with similar unit types located in the area.
- Total development costs (TDC) must be reasonable relative to the TDC originally approved by DHCD.
- Debt service coverage ratio should equal at least 1.15 and cannot exceed the current industry standard for tax credit projects, as approved by DHCD.
- Required replacement reserves must be at least $325 per unit per year and cannot be excessive, as approved by DHCD.
- The reserves for operating expenses should be capitalized as needed to maintain the debt service coverage ratio or to meet the requirements of permanent lenders and investors.

DHCD will evaluate the long-term operating pro forma submitted as part of the credit/exchange fund application, using the following annual trending assumptions:

Rents	Year 1	Years 2-3	Years 4-15
Low income, regulated rent units	2%	2%	2%
Project-based rental assistance units	2%	2%	2%
Rental assistance certificate units	2%	2%	2%
Market-rate units	2%	2%	2%

Operating expenses

- Water and sewer--should be trended annually as appropriate for the area of the proposed project.
- Real estate taxes-- should be trended annually by 2.5%.
- All other operating expenses--should be trended at 4% annually.

Vacancy rates

- Low income rental projects should use a minimum vacancy rate of 5%.
- Low income rental projects that have commercial space and market rate units should apply a minimum vacancy rate of 10% and 5% to the commercial space and market rate units, respectively.
- DHCD reserves the right to limit vacancy rate assumptions that appear high in relation to the market.

Rental rates

- All tax credit rents in a project's One-Stop application should be set at 90% of the maximum tax credit rents.

The Value of the Credit:

When analyzing projects for the least amount of credit and/or exchange funds necessary for financial feasibility, DHCD will assume that a project to be syndicated will obtain a net equity raise of $.75 unless the applicant provides documentation indicating otherwise. However, DHCD reserves the right to reject a raise lower than $.75.

Developer's Fee:

The maximum allowable developer's fee and overhead will be calculated according to the schedule set forth in the 2009 tax credit Qualified Allocation Plan (QAP). The QAP is available at **http://www.mass.gov/Ehed/docs/dhcd/hd/lihtc/09qapfinal.pdf** .

If the developer's fee or overhead for a project is determined to be unreasonable, DHCD reserves the right to reduce the permissible fee, even though that fee may otherwise meet program guidelines based on the project's size.

Identity-of-Interest:

Project sponsors also should refer to the 2009 Low Income Housing Tax Credit Program Guidelines to determine limits on builder's profit and overhead in identity-of-interest projects (p.11). Project sponsors also should review the 2009 Program Guidelines to determine allowable acquisition costs (p.11).

Rental Subsidies:

When underwriting tax credit/exchange fund projects, DHCD will allow Section 8 rents to exceed the allowable tax credit rents for the low-income units only if the sponsor can meet certain conditions. Sponsors should immediately contact the tax credit staff at DHCD to discuss the conditions.

Exhibit 1 to Appendix B
CALCULATING MAXIMUM AMOUNT ELIGIBLE CREDITS AVAILABLE

	9% Rehab/New Construction	4% Acquisition
Total Acquisition Cost		_____
Minus Land Cost		-_____
Acquisition Eligible Basis		=_____
Total Development Cost (including developer's fee and excluding acquisition)	_____	
Minus Non-Depreciable Expenses	-_____	
Minus Non-Qualified Financing Sources	-_____	
Minus Costs Allocated To Commercial Space	-_____	
Minus Federal Historic Rehab Credit Amount	-_____	
Rehab/New Construction Eligible Basis	=_____	
Eligible Basis(*)	_____	_____
Multiply by the Applicable Fraction(**)	X_____	X_____
Qualified Basis	=_____	=_____
Multiply by the Applicable Percentage	X_____	X_____
Maximum Eligible Annual Tax Credit	=_____	=_____

The total maximum eligible annual tax credit amount is equal to the sum of the acquisition and rehabilitation/new construction maximum eligible annual tax credit amounts. Multiply the total maximum eligible annual tax credit amount by 10 to determine the total maximum eligible tax credit amount available over the 10-year credit period.

TOTAL MAXIMUM ELIGIBLE ANNUAL TAX CREDIT _____ X 10 =_____

* The eligible basis of a new building and the eligible basis of rehabilitation expenditures in an existing building may be multiplied by 1.3 if the proposed project is located in an area determined by the IRS or DHCD to be difficult to develop.

** Applicable Fraction is the lesser of:

$$\frac{\text{\# of Low Income Units}}{\text{Total \# of Units}} \quad \text{OR} \quad \frac{\text{Square Footage of Low Income Units}}{\text{Total Residential Rental Square Footage}}$$

Appendix D

Affirmative Fair Marketing Housing Plan Guidelines

Consistent with standard practice, all applicants for exchange funds must comply with the requirements established in DHCD's Affirmative Fair Housing Marketing Plan Guidelines. A copy of the AFHMP are provided below and may also be accessed on DHCD's website at: http://www.mass.gov/dhcd

Affirmative Fair Housing Marketing Plan
(Including Resident Selection)

The Commonwealth of Massachusetts has a compelling interest in creating fair and open access to affordable housing and promoting compliance with state and federal civil rights obligations. Therefore, all privately assisted housing or housing for inclusion on the Subsidized Housing Inventory (SHI) shall have an Affirmative Fair Housing Marketing Plan (AFHMP). *The affordable Use Restriction documents of said housing must require that the AFHMP, subject to the approval of the subsidizing or funding agency, shall be implemented for the term of the Use Restriction.* Affirmative Fair Housing requirements apply to the full spectrum of activities that culminate with occupancy, including but not limited to means and methods of outreach and marketing through to the qualification and selection of residents. All AFHMP plans must, at a minimum, meet the standards set forth by the Department of Housing and Community Development (DHCD). In the case of M.G.L. c.40B projects, the AFHMP must be approved by the Subsidizing Agency.

The developer (Developer) is responsible for resident selection, including but not limited to drafting the resident selection plan, marketing, administering the initial lottery process, and determining the qualification of potential buyers and/or tenants. The Developer is responsible for paying for all of the costs of affirmative fair marketing and administering the lottery and may use in-house staff, provided that such staff meets the qualifications described below. The Developer may contract for such services provided that any such contractor must be experienced and qualified under the following standards.

Note: As used in these AFHMP Guidelines, "Developer" refers to the Project Developer and/or the entity with which the Developer has contracted to carry out any or all of the tasks associated with an AFHMP.

A. Developer Staff and Contractor Qualifications

The entity as well as the individual with primary responsibility for resident selection, whether in-house staff or a third-party contractor, must have substantial, successful prior experience in each component of the AFHMP for which the party will be responsible, e.g. drafting the plan, marketing and outreach activities, administering the lottery process and/or determining eligibility under applicable subsidy programs and/or qualifying buyers with mortgage lenders.

Subsidizing Agencies reserve the right to reject the qualifications of any Developer or contractor. However, generally, Developers or contractors that meet the following criteria *for each component*, as applicable, will be considered to be qualified to carry out the component(s) for which they are responsible:

- The entity has successfully carried out similar AFHMP responsibilities for a minimum of three (3) projects in Massachusetts *or* the individual with primary responsibility for the resident selection process has successfully carried out similar AFHMP responsibilities for a minimum of five (5) projects in Massachusetts.
- The entity has the capacity to address matters relating to English language proficiency.
- "Successfully" for the purposes of these Guidelines means that, with respect to both the entity and the relevant staff, (a) the prior experience has not required intervention by a Subsidizing Agency to address fair housing complaints or concerns; and (b) that within the past five (5) years, there has not been a finding or final determination against the entity or staff for violation of any state or federal fair housing law.

B. Affirmative Fair Housing Marketing Plan

The Developer shall prepare the following materials which shall comprise an AFHMP:

- Informational materials for applicants including a general description of the overall project that provides key information such as the number of market/affordable units, amenities, number of parking/garage spaces per unit, distribution of bedrooms by market and affordable units, accessibility, etc.
- A description of the eligibility requirements.
- Lottery and resident selection procedures.
- A clear description of the preference system being used (if applicable).
- A description of the measures that will be used to ensure affirmative fair marketing will be achieved including a description of the affirmative fair marketing and outreach methods that will be used, sample advertisements to be used, and a list of publications where ads will be placed.
- Application materials including:
  - The application form.
  - A statement regarding the housing provider's obligation not to discriminate in the selection of applicants, and such a statement must also be included in the application materials.
  - Information indicating that disabled persons are entitled to request a reasonable accommodation of rules, policies, practices, or services, or to request a reasonable modification of the housing, when such accommodations or modifications are necessary to afford the disabled person equal opportunity to use and enjoy the housing.[1]

[1] It is important to remember that legal obligations with respect to accessibility and modifications in housing extend beyond the Massachusetts Architectural Access Board requirements, including federal requirements imposed by the Fair Housing Act, the Americans with Disabilities Act, and the Rehabilitation Act. Under state law, in the case of publicly assisted housing, multiple dwelling housing consisting of ten or more units, or contiguously located housing consisting of ten or more units (see M.G.L. c. 151B, § 1 for definitions), reasonable modification of existing premises shall *be at the expense of the owner* or other person having the right of ownership if necessary for the disabled person to fully enjoy the premises. M.G.L. c. 151B, § 4(7A). See also 24 C.F.R. part 8 for Rehabilitation Act requirements of housing providers that receive federal financial assistance.

- An authorization for consent to release information.
- For homeownership transactions, a description of the use restriction and/or deed rider.

The Subsidizing Agency must approve the AFHMP before the marketing process commences. In the case of a Local Action Unit (LAU), DHCD and the municipality must approve the AFHMP.

The AFHMP shall be applied to affordable units[2] upon availability for the term of affordability and must consist of actions that provide information, maximum opportunity, and otherwise attract eligible persons protected under state and federal civil rights laws that are *less likely to apply*.

Outreach and Marketing

Marketing should attract residents outside the community by extending to the regional statistical area as well as the state.

- Advertisements should be placed in local and regional newspapers, and newspapers that serve minority groups and other groups protected under fair housing laws. Notices should also be sent to local fair housing commissions, area churches, local and regional housing agencies, local housing authorities, civic groups, lending institutions, social service agencies, and other non-profit organizations.
- Affordable units in the Boston Metro Area (Boston-Cambridge-Quincy MSA) must be reported to the Boston Fair Housing Commission's Metrolist (Metropolitan Housing Opportunity Clearing House). Such units shall be reported whenever they become available (including upon turnover).
- Affordable and/or accessible[3] rental units must be listed with the Massachusetts Accessible Housing Registry whenever they become available (including upon turnover). See http://www.chapa.org.
- Available affordable ownership units must also be listed with CHAPA's lottery website (see http://www.chapa.org) and with the Massachusetts Affordable Housing Alliance (MAHA) website (see http://www.mahahome.org).

- Marketing should also be included in non-English publications based on the prevalence of particular language groups in the regional area. To determine the prevalence of a particular language by geographical area, see for example http://www.doleta.gov/reports/CensusData/LWIA_by_State.cfm?state=MA .

All marketing should be comparable in terms of the description of the opportunity available, regardless of the marketing type (e.g., local newspaper vs. minority newspaper). The size of the advertisements, including the content of the advertisement, should be comparable across regional, local, and minority newspapers.

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[2] The advertising component of the AFHMP applies to all units.

[3] Note: The owner or other person having the right of ownership shall, in accordance with M.G.L. c. 151B, §4(7A), give at least fifteen days notice of the vacancy of a wheelchair accessible unit to the Massachusetts Rehabilitation Commission. Said statute also requires the owner or other person having the right of ownership to give timely notice that a wheelchair accessible unit is vacant or will become vacant to a person who has, within the past 12 months, notified the owner or person or person having the right of ownership that such person is in need of a wheelchair accessible unit.

Advertisements should run a minimum of two times over a sixty day period and be designed to attract attention. Marketing of ownership units should begin approximately six months before the expected date of project occupancy.

Pursuant to fair housing laws,[4] advertising must not indicate any preference or limitation, or otherwise discriminate based on race, color, disability, religion, sex, familial status, sexual orientation, national origin, genetic information, ancestry, children, marital status, or public assistance recipiency. Exceptions may apply if the preference or limitation is pursuant to a lawful eligibility requirement. All advertising depicting persons should depict members of classes of persons protected under fair housing laws, including majority and minority groups.

The Fair Housing logo ( ) and slogan ("Equal Housing Opportunity") should be included in all marketing materials. The logo may be obtained at HUD's website at: http://www.hud.gov/library/bookshelf11/hudgraphics/fheologo.cfm .

Availability of Applications

Advertising and outreach efforts shall identify locations where the application can be obtained. **Applications shall be available at public locations including one that has some night hours; usually, a public library will meet this need.** The advertisement shall include a telephone number an applicant can call to request an application via mail.

Informational Meeting

In addition, the lottery administrator must offer one or more informational meetings for potential applicants to educate them about the lottery process and the housing development. These meetings may include local officials, developers, and local bankers. The date, time, and location of these meetings shall be published in ads and flyers that publicize the availability of lottery applications. The workshops shall be held in a municipal building, school, library, public meeting room or other accessible space. Meetings shall be held in the evening or on weekend days in order to reach as many potential applicants as possible. However, attendance at a meeting shall not be mandatory for participation in a lottery.

The purpose of the meeting is to answer questions that are commonly asked by lottery applicants. Usually a municipal official will welcome the participants and describe the municipality's role in the affordable housing development. The lottery administrator will then explain the information requested on the application and answer questions about the lottery drawing process. The Developer should be present to describe the development and to answer specific questions about the affordable units. It is helpful to have representatives of local banks present to answer questions about qualifications for the financing of affordable units. At the meeting, the lottery administrator should provide complete application materials to potential applicants.

Homeownership – Establishing Sales Prices

Sale prices shall be established at the time of the initial marketing of the affordable units. Thereafter, the prices of homes can not be increased for lottery winners, even if interest rates and HUD income guidelines change.

For large, phased developments maximum sale prices of units sold in subsequent phases will be calculated prior to the start of marketing for each phase, or approximately 6 months prior to expected occupancy of the units. In such cases, each phase will require its own affirmative fair marketing efforts and lottery.

[4] 42 U.S.C. § 3604(c); M.G.L. c. 151B, § 4(7B).

C. Local Preference

If a community wishes to implement a local selection preference, it must:

- Demonstrate in the AFHMP the need for the local preference (e.g., the community may have a disproportionately low rental or ownership affordable housing stock relative to need in comparison to the regional area); and
- Demonstrate that the proposed local preference will not have a disparate impact on protected classes.

In no event may a local preference exceed more than 70% of the (affordable) units in a Project.

The Subsidizing Agency, and in the case of LAUs, DHCD as well as the municipality, must approve a local preference scheme as part of the AFHMP. Therefore, the nature and extent of local preferences should be approved by the Subsidizing Agency (or DHCD in the case of LAUs) prior to including such language in the comprehensive permit or other zoning mechanism.

Allowable Preference Categories

1. Current residents: A household in which one or more members is living in the city or town at the time of application. Documentation of residency should be provided, such as rent receipts, utility bills, street listing or voter registration listing.
2. Municipal Employees: Employees of the municipality, such as teachers, janitors, firefighters, police officers, librarians, or town hall employees.
3. Employees of Local Businesses: Employees of businesses located in the municipality.
4. Households with children attending the locality's schools, such as METCO students.

When determining the preference categories, the geographic boundaries of the local resident preference area should not be smaller than municipal boundaries.

Durational requirements related to local preferences, that is, how long an applicant has lived in or worked in the residency preference area, are not permitted in any case.

Preferences extended to local residents should also be made available not only to applicants who work in the preference area, but also to applicants who have been hired to work in the preference area, applicants who demonstrate that they expect to live in the preference area because of a bona fide offer of employment, and applicant households with children attending the locality's schools, such as METCO students.

A preference for households that work in the community must not discriminate (including have a disproportionate effect of exclusion) against disabled and elderly households in violation of fair housing laws.

Advertising should not have a discouraging effect on eligible applicants. As such, local residency preferences must not be advertised as they may discourage non-local potential applicants.

Avoiding Potential Discriminatory Effects

The local selection preferences must not disproportionately delay or otherwise deny admission of non-local residents that are protected under state and federal civil rights laws. The AFHMP should demonstrate what efforts will be taken to prevent a disparate impact or discriminatory effect. For example, the community may move minority applicants into the local selection pool

to ensure it reflects the racial/ethnic balance of the HUD defined Metropolitan Statistical Area as described below.[5] However, such a protective measure may not be sufficient as it is race/ethnicity specific; the AFHMP must address other classes of persons protected under fair housing laws who may be negatively affected by the local preference.

To avoid discriminatory effects in violation of applicable fair housing laws, the following procedure should be followed unless an alternative method for avoiding disparate impact (such as lowering the original percentage for local preference as needed to reflect demographic statistics of the MSA) is approved by the Subsidizing Agency. If the project receives HUD financing, HUD standards must be followed.

A lottery for projects including a local preference should have two applicant pools: a local preference pool and an open pool. After the application deadline has passed, the Developer should determine the number of local resident minority households there are in the municipality and the percentage of minorities in the local preference pool. If the percentage of minority local resident households in the local preference pool is less than the percentage of minorities in the surrounding HUD-defined area, the Developer should make the following adjustments to the local preference pool:

- The Developer should hold a preliminary lottery comprised of all minority applicants who did not qualify for the local preference pool, and rank the applicants in order of drawing.
- Minority applicants should then be added to the local preference pool in order of their rankings until the percentage of minority applicants in the local preference pool is equal to the percentage of minorities in the surrounding HUD-defined area.
- Applicants should be entered into all pools for which they qualify. For example, a local resident should be included in both pools.
- Minorities should be identified in accordance with the classifications established by HUD and the U.S. Census Bureau, which are the racial classifications: Black or African American; Asian; Native American or Alaska Native; Native Hawaiian or Pacific Islander; or other (not White); and the ethnic classification Hispanic or Latino.

D. Household Size/Larger Households Preference

General

Household size should be appropriate for the number of bedrooms in the home. It is appropriate to set a minimum. A maximum household size for the units may be established provided that:

- Maximum allowable household size may not be more restrictive than the State Sanitary Code or applicable local bylaws, and may not violate state and federal civil rights laws.
- Maximum allowable household size may not be more restrictive than the Large Household Preference established below.

Larger Household Preference

[5] Note: This protective measure may not be dispositive with respect to discriminatory effects. For example, the non-local applicant pool may contain a disproportionately large percentage of minorities, and therefore adjusting the local preference pool to reflect demographics of the regional area may not sufficiently address the discriminatory effect that the local preference has on minority applicants. Therefore, characteristics of the non-local applicant pool should continually be evaluated.

Within an applicant pool first preference shall be given to households requiring the total number of bedrooms in the unit based on the following criteria:

a. There is at least one occupant per bedroom.[6]
b. A husband and wife, or those in a similar living arrangement, shall be required to share a bedroom. Other household members may share but shall not be required to share a bedroom.
c. A person described in the first sentence of (b) shall not be required to share a bedroom if a consequence of sharing would be a severe adverse impact on his or her mental or physical health and the lottery agent receives reliable medical documentation as to such impact of sharing.

Within an applicant pool second preference shall be given to households requiring the number of bedrooms in the unit minus one, based on the above criteria. Third preference shall be given to households requiring the number of bedrooms in the unit minus, two, based on the above criteria.

A "household" shall mean two or more persons who will live regularly in the unit as their principal residence and who are related by blood, marriage, law or who have otherwise evidenced a stable inter-dependent relationship, or an individual.

Lottery drawings shall result in each applicant being given a ranking among other applicants with households receiving preference for units based on the above criteria. Household size shall not exceed State Sanitary Code requirements for occupancy of a unit (See 105 CMR 400).[7]

E. Lotteries

The Lottery Application

Resident selection must generally be based on a lottery, although in some cases it may be based on another fair and equitable procedure approved by the Subsidizing Agency.[8] A lottery procedure is preferred over a "first-come, first-serve procedure," as the latter procedure may disadvantage non-local applicants.

The application period should be at least 60 days. To ensure the fairness of the application process, applicants should not be required to deliver application materials and instead should be permitted to mail them.

The lottery application must address a household's:

- income
- assets
- size and composition
- minority status (optional disclosure by the household)
- eligibility as a first-time buyer (for ownership units)
- eligibility for local preference

[6] Disabled households must not be excluded from a preference for a larger unit based on household size if such larger unit is needed as a reasonable accommodation.

[7] Note, however, that fair housing exceptions may apply: see HUD Fair Housing Enforcement—Occupancy Standard; Notice of Statement of Policy, Docket No. FR-4405-01 (1998).

[8] In the case of project based Section 8 properties where resident selection is to be performed by the housing authority pursuant to a Section 8 waiting list, a lottery procedure is not required.

The lottery administrator shall request verification (e.g., three prior year tax returns with the W2 form; 5 most recent pay stubs for all members of the household who are working, three most recent bank statements and other materials necessary to verify income or assets).

Applicants cannot be required to use a specific lender for their pre-approval letter or their mortgage.

Only applicants who meet qualification requirements should be included in the lottery.

Lottery Procedure

Once all required information has been received, qualified applicants should be assigned a registration number. **Only applicants who meet the eligibility requirements shall be entered into a lottery. The lottery shall be conducted after any appeals related to the project have been completed and all permits or approvals related to the project have received final action.**

Ballots with the registration number for applicant households are placed in all lottery pools for which they qualify. The ballots are randomly drawn and listed in the order drawn, by pool. If a project has units with different numbers of bedrooms, units are then awarded (largest units first) by proceeding down the list to the first household on the list that is of appropriate size for the largest unit available according to the appropriate-unit-size criteria established for the lottery. Once all larger units have been assigned to appropriately sized households in this manner, the lottery administrator returns to the top of the list and selects appropriately sized households for smaller units. This process continues until all available units have been assigned to appropriately sized applicant households.

If the project includes units accessible or adaptable for occupancy by disabled persons, first preference (regardless of applicant pool) for those units shall be given to such disabled persons, including single person households, in conformity with state and federal civil rights laws.

The lottery administrator should retain a list of households who are not awarded a unit, in the order that they were drawn. If any of the initial renters/buyers do not rent/purchase a unit, the unit shall be offered to the highest ranked household on that retained list. This list may generally be retained and used to fill units for up to one year. However, other factors such as the number of households remaining on the list, the likelihood of the continuing eligibility of such households, and the demographic diversity of such households may inform the retention time of the list, subject to the approval of the Subsidizing Agency.

After the initial lottery, waiting lists should be analyzed, maintained, and updated (through additional marketing) so that they remain consistent with the objectives of the housing program and are adequately representative of the racial, ethnic, and other characteristics of potential applicants in the housing market region.

(April 8, 2008 change to the third paragraph: addition of "(regardless of applicant pool)").

Lottery Example

This theoretical lottery has an OPEN pool that includes all applicants and a LOCAL PREFERENCE pool with only applicants from the local area.

- Total applicants in lottery: 100

- Total minority applicants: 20
- The community in which the lottery takes place falls within the HUD Boston Metropolitan Statistical Area which has a minority population of 20.7%.

1. Determine the number of applicants who claim a LOCAL preference according to approved criteria.
2. Determine the number of minority applicants in the LOCAL preference pool.
3. Determine the percentage of minority applicants in the LOCAL preference pool.

Total Applicants in Local Preference Pool	otal Minority Applicants in Local Preference Pool	% Minority Applicants in Local Preference Pool
60	10	16.7%

Since the percentage of minority applicants in the LOCAL preference pool is below the percentage of minority residents in the HUD defined statistical area (16.7% as opposed to 20.7%), a preliminary lottery is required.

4. The 10 minority applicants who do not have LOCAL preference are entered into a preliminary drawing and assigned a rank based on the order of their draw. Minority applicants are added to the LOCAL preference pool in order of their rank until the LOCAL preference pool has at least as great a percentage of minority applicants as the larger statistical area. In this example, 4 applicants will be added to the LOCAL preference pool to bring the percentage of minority applicants up to 21.8%.

Applicants in Supplemented Local Preference Pool	Total Minority Applicants in Supplemented Local Preference Pool	% Minority Applicants in Supplemented Local Preference Pool
64	14	21.8%

5. Draw all ballots from the adjusted LOCAL pool and assign rankings to each household. Preference for appropriately sized households will still apply and all efforts should be made to match the size of the affordable units to the legitimate need for bedrooms of each household.
6. Once all units for LOCAL residents have been allocated, the OPEN pool should proceed in a similar manner. All LOCAL residents should have ballots in both pools, and all minority applicants that were put in the LOCAL pool should remain in the OPEN pool as well.

F. Homeownership

1. Household Eligibility

A Subsidizing Agency housing program may establish eligibility requirements for homebuyers. In the absence of such provisions, the following requirements shall apply.

In addition to meeting the requirements for qualifying a Project or dwelling unit for the SHI (see Section II.A), the household shall not have owned a home within three years preceding the application, with the exception of:

a. displaced homemakers, where the displaced homemaker (an adult who has not worked full-time, full-year in the labor force for a number of years but has, during such years, worked primarily without remuneration to care for the home and family), while a homemaker, owned a home with his or her partner or resided in a home owned by the partner;
b. single parents, where the individual owned a home with his or her partner or resided in a home owned by the partner and is a single parent (is unmarried or legally separated from a spouse and either has 1 or more children of whom the individual has custody or joint custody, or is pregnant);
c. households where at least one household member is 55 or over;
d. households that owned a principal residence not permanently affixed to a permanent foundation in accordance with applicable regulations; and
e. households that owned a property that was not in compliance with State, local or model building codes and that cannot be brought into compliance for less than the cost of constructing a permanent structure.

Individuals who have a financial interest in the development and their families shall not be eligible.

2. Final Qualification and Closing

Once the lottery has been completed, applicants selected to purchase units must be given a reasonable pre-specified time period in which they must secure financing. The Developer should invite the lottery winners to a loan application workshop. The Developer should make prior arrangements with local financial institutions with respect to financing qualified purchasers. Often such institutions will give preliminary approvals of loans, which make the remainder of the process more efficient for all parties.

Before a Purchase and Sale Agreement is signed, the lottery agent should submit income and asset documentation of the applicant to the Subsidizing Agency (to DHCD and the municipality in the case of a LAU). Income verification should include tax returns and W-2s from the past three years, five most recent pay stubs, three months recent bank statements and 401 K reports, reliable documentation as to other sources of income and assets. The Subsidizing Agency (to DHCD and the municipality in the case of a LAU) will then verify that the household's annual income does not exceed 80% of the area median income, or such lower income limit as may have been established for the particular project. The Subsidizing Agency (to DHCD and the municipality in the case of a LAU) also will verify that household assets do not exceed the maximum allowed. Closing of the sale will also be contingent on the Subsidizing Agency's (to DHCD and the municipality in the case of a LAU) approval of the buyer's financing.

Non-household members should not be permitted as co-signers of the mortgage.

3. Resales

AFHMP requirements apply to the housing for its duration. The AFHMP must include a plan, satisfactory to the Subsidizing Agency (to DHCD and the municipality in the case of a LAU), to address AFHMP requirements upon resale. The proposal must, at a minimum, require that units for re-sale to eligible purchasers be listed with CHAPA and MAHA's homeownership lottery sites as described above and establish minimum public advertising requirements. The proposal cannot impose the AFHMP requirements upon a homeowner other than requiring compliance with requirements of a Use Restriction, reasonable public advertising, and listing with CHAPA and MAHA.

A "ready-buyer" list of eligible buyers maintained by the municipality or other local entity is encouraged. This list may be created through local, regional, and statewide lists and resources. As stated above, the list should continually be analyzed, maintained, and updated (through additional marketing) so that it remains consistent with the objectives of the housing program and is adequately representative of the racial, ethnic, and other characteristics of potential applicants in the housing market region.

Appendix E:
First Amendment to Tax Credit Exchange Guidelines – September 25, 2009

As of September 25, 2009, the Department of Housing and Community Development ("DHCD"), as the Massachusetts state housing credit agency, amends these **Tax Credit Exchange Program (TC-X) Guidelines** of August 11, 2009, to incorporate the following information:

On June 30, 2009, DHCD submitted its first exchange request, totaling $50,814,102, to the U.S. Department of the Treasury. DHCD established August 28, 2009, as the application deadline for the first funding competition for exchange funds. On that date, the Department received fifteen applications for exchange funds. At the conclusion of the review process, DHCD anticipates that it will approve awards totaling approximately $45 million to $50 million.

DHCD now has processed its second request for exchange funds through the Treasury. The amount of the second request is $27,314,299.50 . DHCD has established Friday, October 9, 2009, as the application deadline for sponsors who wish to apply for available exchange funds in the second funding competition. The eligibility criteria for the October 9 exchange competition are the same as the eligibility criteria established by DHCD for the August 28 competition and published in the body of these Guidelines. The scoring criteria for the October 9 competition are the same as the scoring criteria for the August 28 competition and published in the body of these Guidelines.

DHCD anticipates announcing funding decisions for applications submitted on October 9 within two to three weeks of the application deadline. DHCD further anticipates requesting additional exchange funds from the Treasury during October or November 2009. DHCD will schedule additional exchange funding competitions after making additional exchange requests to Treasury.

Other than the two exceptions described below, the August 11, 2009 Tax Credit Exchange Program (TC-X) Guidelines remain in full effect.

1) The limit on the amount of TC-X funds awarded to each project is hereby changed to 85% of qualified basis, instead of 85% of eligible basis including basis boost, if applicable. This amends the bolded sections on page 6 and 12 of the Guidelines and the second paragraph of Appendix C.

2) The U.S. Department of Treasury has clarified a few matters in its amendment to its Q&A dated September 14, 2009. Attached are the revised Grantee Terms and Conditions and revised Q&A, which hereby replace those sections of Appendix A of the August 11, 2009 Tax Credit Exchange Program (TC-X) Guidelines.

Grants to States for Low-Income Housing Projects in Lieu of Low-Income Housing Credits for 2009

GRANTEE TERMS AND CONDITIONS

1. Authority

a. Section 1602 of the American Recovery and Reinvestment Tax Act of 2009 (Act) authorizes the United States Department of the Treasury (Treasury) to issue grants to State housing credit agencies in lieu of low-income housing credits.

b. The grantee has authority to receive Section 1602 grants.

2. Grantee Eligibility

a. The grantee is the housing credit agency for one of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, or the Northern Mariana Islands which files Form 8610, Annual Low-Income Housing Credit Agencies Report with the Internal Revenue Service.

b. The grantee shall be the sole recipient of the Section 1602 funds in the State and must coordinate with other housing credit agencies within the State (including any constitutional home rule cities) to determine how much of their 2009 credit ceiling the other agencies would elect to take in the form of a grant election amount and will provide to those agencies their proportionate share.

c. The grantee shall enter into written agreement with any other participating housing credit agencies within the State, binding the participating agency to comply with the terms and conditions applicable to the grantee or designated state agency in the sections 3 through 10 of these terms and conditions.

d. The grantee is the party responsible to Treasury for all grant matters.

3. Eligible Projects

a. The grantee shall only select projects for subawards which are qualified low-income buildings under Section 42 of the Internal Revenue Code (the Code).

b. The grantee must ensure that the subaward is consistent with the requirement of section 42(m)(2) of the Code that the subaward made for a project [building(s)] does not exceed the amount necessary to ensure the financial feasibility of the project and its viability as a project throughout the credit period.

4. Use of Grant Funds

a. The grantee is receiving an initial grant election amount. The grantee may apply for additional grant funds through 2010. If the Treasury Department approves the request, the Treasury Department will amend the award to increase the grant amount.

b. The grantee shall use all grant amounts to make subawards, or for transfer to other agencies to make subawards. The subawards shall be in the form of cash assistance and are not required to be repaid unless there is a recapture event with respect to the qualified low-income building. The grantee shall not use grant election amounts for any other purpose, including administrative costs. The grantee may collect reasonable fees from a subawardee to cover expenses associated with performance of its duties under Section 1602(c)(3) of the Act, Compliance and Asset Management. Reasonable fees are amounts customarily charged for the same or similar services and in no event may exceed costs.

c. The grantee may disburse grant funds to subawardees in 2009 and 2010. The grantee may disburse grant funds to subawardees in 2011 provided the subaward has been made to the subawardee on or before December 31, 2010 and the subawardee has, by the close of 2010, paid or incurred at least 30 percent of the subawardee's total adjusted basis in land and depreciable property that is reasonably expected to be part of the low-income housing project for which the disbursements are made.

d. The subawards shall finance the construction or acquisition and rehabilitation of qualified low-income buildings in accordance with Section 1602(c) of the Act.

e. The grantee shall make subawards in the same manner and shall be subject to the same limitations as an allocation of housing credit dollar amount allocated under Section 42(m) of the Code, except for the additional determinations required in subsection g of this section.

f. Prior to making any subaward, the grantee shall establish a written process for making a determination that applicants for subawards have demonstrated a good faith effort to obtain investment commitments for tax credits in lieu of a subaward.

g. Prior to making any subaward, the grantee shall make a determination that the applicant for the subaward has demonstrated a good faith effort to obtain investment commitments for tax credits in lieu of the subaward.

5. Written Agreements and Disbursements to Subawardees

a. The grantee shall execute a legally binding written agreement with the entity receiving a subaward. The grantee and the subawardee must execute the written agreement before any Section 1602 funds are disbursed to the subawardee.

b.The written agreement must set forth (explicitly, or incorporated by reference) all Section 1602 program requirements, including the requirements of Section 42 of the Code, applicable to the subaward.

c. The written agreement shall impose conditions or restrictions, including a requirement providing for recapture, so as to assure that the qualified low-income building remains a qualified low-income building during the 15-year compliance period. The written agreement may include the extended low-income housing commitment under Section 42(h)(6)(B) of the Code.

d. The written agreement shall require the subawardee to provide sufficient information to the grantee to report on the use of grant funds as required by section 8 of these terms and conditions.

6. Asset Management

a. The grantee shall perform asset management functions so as to ensure compliance with Section 42 of the Code and the regulations thereunder (including Title 26 Code of Federal Regulations section 1.42.9), and the long-term viability of the buildings funded by a subaward under the Act in accordance with Section 1602(c)(3) of the Act.

7. Compliance with the 2009 State Housing Credit Ceiling

a. The grantee shall track (1) the credit equivalent of all grant election amounts to ensure that the 2009 State Housing Credit Ceiling is appropriately reduced as required by section 42(i)(9)(A) of the Code and (2) total grant election amounts to ensure that these amounts do not exceed the amount authorized by section 1602(b).

b. The grantee shall track the total of credits allocated under Section 42(h)(1) of the Code.

c. The grantee shall ensure that the credit equivalent of all elected grant amounts through 2010, plus the credits allocated under Section 42(h)(1) of the Code during 2009, do not exceed the State housing credit ceiling for 2009.

8. Reporting

a. The grantee shall provide periodic reports as required by Treasury. A financial status report and a project performance report is required on a quarterly basis, due 10 working days after the end of the quarter. Quarters end on March 31, June 30, September 30, and December 31.

b. The performance report has the following elements on each project receiving a subaward during the quarter:

- Name of recipient entity
- Name of project
- Brief description of project
- Location of project: city/county, State, zip code
- Number of construction jobs created
- Number of construction jobs retained
- Number of non-construction jobs created
- Number of non-construction jobs retained
- Number of total housing units newly constructed

- Number of total housing units rehabilitated
- Number of low-income housing units newly constructed
- Number of low-income housing units rehabilitated

c. The grantee shall submit any other reports that Treasury deems necessary to comply with Section 1602 of the Act and American Recovery and Reinvestment Act guidance.

9. Recapture

a. The grantee shall include in any subaward a requirement providing for recapture to assure that the building remains a qualified low-income building during the 15-year compliance period.

b. The grantee shall notify subawardees that any amount subject to recapture becomes a debt owed to the United States payable to the General Fund of the Treasury and enforceable by all available means against any assets of the recipient entity.

10. Financial Management

a. The grantee must expend and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the designated State housing credit agency must be sufficient to permit preparation of required reports and permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes. Effective control and accountability must be maintained for all grant funds.

b. The grantee shall open a new account (Grant Account) with a financial institution for the purpose of receiving grant election amounts, for making distributions of grant election amounts to other agencies within the State, and for making subawards.

c. The grantee must maintain program, financial, and accounting records sufficient to demonstrate that grant funds were used in accordance with the Section 1602 program and these terms and conditions. The Treasury as the awarding office, the cognizant Treasury inspector general, and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to facilities and to any pertinent books, documents, papers, or other records (electronic and otherwise) of grantees, which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

d. The grantee shall minimize the time between the receipt of grant funds and the disbursement of those funds to subawardees. Federal funds cannot be drawn by the grantee from the U.S. Treasury in advance of need. The grantee shall not place in escrow or advance lump sums to project owners. Once funds are drawn from the grantee's U.S. Treasury account, they must be expended as a subaward by the grantee within three days, or if grant funds are transferred by the grantee to another agency, as a subaward by that agency within three days following the date of transfer by the grantee.

e. The grantee shall promptly return to its Grant Account any subawards returned to the designated State housing credit agency from subawardees and shall expend returned amounts as subawards before additional grant amounts are drawn from the Treasury.

11. Disallowance, Suspension, and Termination

a. If the grantee materially fails to comply with any term of the award, whether stated in a Federal statute or regulation, the terms and conditions herein, in a State plan or application, a notice of award, or elsewhere, Treasury may take one or more of the following actions, as appropriate in the circumstances:

- Temporarily halt cash payments pending correction of the deficiency by the grantee
- Disallow all or part of the cost of the activity or action not in compliance
- Wholly or partly suspend or terminate the current award
- Withhold further awards for the program
- Take other remedies that may be legally available

In taking an enforcement action, Treasury will provide the grantee the opportunity for a hearing, appeal, or other administrative proceeding to which the grantee is entitled under any statute or regulation applicable to the action involved.

b. The grantee must immediately report any indication of fraud, waste, abuse, or potentially criminal activity pertaining to grant funds to Treasury and the cognizant Treasury inspector general.

12. Return of Unused Grant Funds

a. The grantee shall return to the Treasury by January 1, 2011 any grant election amounts not used to make subawards by December 31, 2010. This requirement does not prevent the State housing credit agency from continuing to disburse funds to subawardees after December 31, 2010 provided:

(1) A subaward has been made to the subawardee on or before December 31, 2010;

(2) The subawardee has, by the close of 2010, paid or incurred at least 30 percent of the subawardee's total adjusted basis in land and depreciable property that is reasonably expected to be part of the low-income housing project; and

(3) Any funds not disbursed to the subawardee by December 31, 2011 must be returned to the Treasury by January 1, 2012.

Signature

Under penalties of perjury, I declare that I have examined the terms and conditions in this application and that the designated State housing credit agency agrees to and will ensure that these terms and conditions will be followed. I declare that I am an authorized official of the designated State housing credit agency and am authorized to bind the State housing credit agency to these Terms and Conditions.

Name		Title	
Phone		Email	
Signature		Date signed	

Section 1602: Grants to States for Low-Income Housing Projects in Lieu of Low-Income Housing Credits for 2009

FREQUENTLY ASKED QUESTIONS AND ANSWERS

The following questions and answers are intended to assist Section 1602 recipients to understand and comply with program requirements. They are organized in the same order as the Grantee Terms and Conditions.

These questions and answers are not a substitute for reading and understanding the Recovery Act, Terms and Conditions, Section 42 of the Internal Revenue Code, or other regulatory requirements.

When new questions and answers or revised answers are posted, they will appear in bold.

September 14, 2009: New postings appear in bold for questions 3b, 3g, 4a, 4e, 4f, 5a, 6a, 9d, 9f, 9g, 10c, and 12a.

1. Application Process

1a. Question: Page 2 of the application package says that Treasury accepts applications from State housing credit agencies for the first portion of the funds in May and June 2009. Does this mean that an agency which does not apply in May or June loses the opportunity to do so subsequently?

Answer: A State housing credit agency which is listed as a Designated Agency on pages 7 and 8 of the application package may submit applications in 2009 and 2010. The application package used the May-June 2009 time frame to encourage agencies to begin as soon as possible to address the State's low-income housing needs and the priorities of the American Recovery and Reinvestment Act of 2009.

1b. Question: How many applications may the designated State housing credit agency submit to Treasury?

Answer: There is no limit to the number of applications the designated State housing credit agency may submit provided the total amount requested does not exceed the total amount of funds allowed for under Section 1602(b).

2. Awardee Eligibility

2a. Question: Why is there only one State housing credit agency designated per State as an eligible recipient of Section 1602 funds? How were these agencies chosen?

Answer: The low-income housing tax credits (LIHTCs) that a State may allocate every year are derived from that State's Housing Credit Ceiling. The State Housing Credit Ceiling is comprised of four components. The maximum amount of Section 1602 funds to a State is based on the four components that make up the 2009 State Housing Credit Ceiling. Historically, one State housing credit agency per State tracks

the State Housing Credit Ceiling and annually reports credit information to the Internal Revenue Service. Since Section 1602 funds are linked to the State Housing Credit Ceiling, the Section 1602 program applies the same principles and uses the designated State housing credit agency as the recipient. This also helps to ensure that total Section 1602 funds and credits allocated do not exceed the 2009 State Housing Credit Ceiling as the Designated Agency is responsible for tracking both Section 1602 funds and allocated credits.

3. Eligible Projects

3a. Question: May Section 1602 funds be used in developing a building where the building receives both credit allocations and Section 1602 funds?

Answer: Yes, a building may use both tax credits and Section 1602 funds. However, the developer must first demonstrate that the developer has made a good faith effort (in accordance with the procedure the State housing credit agency puts in place) to obtain investment commitments for tax credits for the portion that would be covered by the Section 1602 funds.

3b. Question: Does infusion of Section 1602 funds in a stalled LIHTC building change the placed-in-service date?

Answer: No. **When any LIHTCs remain in a stalled building that utilizes 1602 funds, the placed-in-service date for the building does not change. The placed-in-service rules that apply to buildings with LIHTCs also apply to buildings with Section 1602 funds.**

3c. Question: May Section 1602 funds be used in a development with tax exempt bonds?

Answer: Yes.

3d. Question: Is the Section 1602 program meant as a one-for-one exchange at the building level? For example, if a building has $500,000 of allocated LIHTCs, can the owner return credits to the applicable state allocating agency, in return for the same amount in Section 1602 funds?

Answer: The Section 1602 program is sometimes called the Exchange program. However, this does not mean that a building that has been allocated LIHTCs must exchange these LIHTCs in order to receive Section 1602 funds. The "Exchange program" refers to the exchange that takes place at the state level, where the Designated Agency exchanges all or part of the State Housing Credit Ceiling (to the extent permitted under Section 1602) for Section 1602 funds.

3e. Question: May Section 1602 funds be used in a project that was placed in service prior to 2009?

Answer: Section 1602 follows the requirements that govern credit allocations. Just as a building that had received a credit allocation and was placed in service prior to 2009 cannot return the allocation for a new allocation in 2009, the same building cannot return the credit allocation for Section 1602 funds. Similarly, a binding

commitment to allocate credit in 2009 for a project placed in service prior to 2009 also does not qualify as the binding commitment relates to an allocation of credit, not Section 1602 funds (which were not available at the time the binding agreement was made).

3f. Question: May Section 1602 funds be used in a project that is substantially complete, and the project owner cannot obtain investor commitments for tax credits?

Answer: Provided the building was not been placed in service prior to 2009, Section 1602 funds may be subawarded to a substantially complete building, assuming all other requirements have been met. The Section 1602 funds could be used to repay equity or loans that have financed the construction of the building or for some other eligible costs.

3g. Question: May a State agency be an owner in a building receiving Section 1602 funds?

Answer: No, there is an inherent conflict in awarding Section 1602 funds for a project in which the State agency has ownership. However, State agencies are permitted to have a one percent or less de minimis ownership in a building with Section 1602 funds.

4. Use of Awarded Funds

4a. Question: May State housing credit agencies make subawards in the form of loans to the subawardees?

Answer: As item 4.b of the Terms and Conditions indicates, State housing credit agencies make subawards in the form of cash assistance to the subawardees. The cash assistance will not be required to be repaid, unless there is a recapture event with respect to the low-income building. The cash assistance can be in the form of a loan which is non-interest bearing and non-repayable **at any time**, except in the event of **recapture** during the 15-year compliance period.

4b. Question: Items 4.e and 4.f of the Terms and Conditions require the State housing credit agency to establish and to implement a written process for determining that an applicant for a subaward has demonstrated a good faith effort to obtain investment commitments for tax credits in lieu of a subaward prior to making a subaward. Does Treasury have standards for the process?

Answer: Treasury is relying on State housing credit agencies to establish and to implement a fair and open process that meets the needs in their area and fits with local investment conditions.

4c. Question: Must every project, whether it has or has not received an allocation of LIHTCs, make a good faith effort to obtain investment commitments for LIHTCs before being considered for a subaward?

Answer: Yes.

4d. Question: Do the "Buy American" provisions in the American Recovery and Reinvestment Act of 2009 apply to the Section 1602 program?

Answer: No.

4e. Question: Do other cross-cutting Federal requirements apply to the Section 1602 program, such as the National Environmental Policy Act and Davis-Bacon?

Answer: The National Environmental Policy Act and Related Laws and Davis-Bacon Prevailing Wage Rates do not apply to qualified low-income buildings funded with subawards, unless otherwise applicable. Cross-cutting Federal requirements, **which would otherwise apply to LIHTC buildings,** apply through statutory requirements and other regulations and rules governing Section 42 of the Internal Revenue Code.

4f. Question: Which costs are eligible to be paid with Section 1602 funds?

Answer: Section 1602 follows the same requirements as LIHTCs. Section 1602 funds may pay for costs **to the same extent as equity raised from LIHTCs** under Section 42 of the Internal Revenue Code.

4g. Question: Are subawardees required to "trace" how the Section 1602 funds are used in the project?

Answer: No. Subawardees are not required to trace (i.e., track the sources and uses of each expenditure in the development project) the use of Section 1602 funds. This follows the practice of LIHTCs.

4h. Question: What is the maximum amount of a subaward?

Answer: The amount of the subaward cannot exceed 85 percent of the amount of a building's eligible basis as determined at the end of the first year of the credit period (as defined in Section 42(f)(1) of the Internal Revenue Code) and, also for this purpose, eligible basis includes any increase for buildings located in high cost areas under Section 42(d)(5)(B). The subawardee must maintain sufficient documentation to demonstrate that the allowable construction, acquisition, and rehabilitation costs of a qualified low-income building equal or exceed the amount of the subaward.

5. Written Agreements and Disbursements to Subawardees

5a. Question: May State housing credit agencies charge an application fee to potential subawardees?

Answer: No. The Section 1602 statutory language allows a State housing credit agency to collect reasonable fees from a subaward recipient to cover expenses associated with the performance of the agency's asset management responsibilities. **Within this context, reasonable fees to reimburse an agency for its compliance monitoring responsibilities are, like fees charged for asset management responsibilities, permissible. However, the statutory language concerning fees does not specifically extend to any other State housing credit agency's fee.**

5b. Question: The LIHTC program benefits accrue to taxpayers over a ten-year period. Are the Section 1602 funds paid over a ten-year period?

Answer: The purpose of the Section 1602 program is to provide funds to develop low-income housing where there is a funding gap. Once the State housing credit agency has made a subaward to a project, the agency will make funds available to the project when there is a need to pay an invoice/bill. This procedure is similar to other Federal programs, such as HOME or the Community Development Block Grant program.

5c. Question: What kind of assurances can a State agency give a project owner who would like to participate in Section 1602 but does not want to give up a LIHTC allocation without an assurance Section 1602 funds will be subawarded in exchange?

Answer: The State agency has the discretion to subaward Section 1602 funds and any assurances are a matter between the State Agency and the project owner. As for whether the State agency will receive funds from Treasury, Treasury awards Section 1602 funds to State credit housing credit agencies who are eligible to receive funds and complete the required application. There is no competition for the funds at the Federal level.

6. Asset Management

6a. Question: What is the compliance period for projects receiving Section 1602 funds?

Answer: Just as with LIHTCs, buildings receiving Section 1602 funds **are subject to a 15-year compliance period. Similarly, there must be in effect an extended use agreement between the taxpayer and agency for the period prescribed under section 42(h)(6)(D).**

7. Compliance with the 2009 State Housing Credit Ceiling

7a. Question: If a project which has been awarded 2009 credit under the non-profit set-aside under Section 42(h)(5) of the Internal Revenue Code is unable to find an equity investor and requests to return the credit to the State housing credit agency for Section 1602 funds, does the subsequent subaward qualify as meeting the State's 2009 set-aside obligation?

Answer: Along with credit allocations, Section 1602 funds must be included in determining whether a state has met its non-profit set-aside requirement. A subaward is taken into account for purposes of the 10 percent non-profit set-aside requirement at the time the subaward is made to the owner of a project that involves a qualified non-profit organization described in Section 42(h)(5)(B) of the Internal Revenue Code and it is intended by the agency and owner that the project be included among those projects that satisfy this requirement. The State must calculate the credit equivalent of all Section 1602 subawards and LIHTC allocations made during 2009 pursuant to Section 42(h)(5) to ensure compliance with this set-aside requirement. Under these facts, the subaward would count in determining whether the 2009 non profit set-aside requirement is met if the subaward is awarded to the project owner in 2009 and it is intended by the agency and owner that the requirements of Section 42(h)(5) apply to the project.

8. Reporting

8a. Question: Will Treasury provide guidance on how to report on jobs created and jobs retained?

Answer: Treasury will be sending out guidance on reporting in July.

8b. Question: If Section 1602 funds are provided to a building and the building has no LIHTCs, should the State housing credit agency and the subawardee complete Form 8609?

Answer: Yes. The State housing credit agency should complete boxes A, B, C, D, and E, and lines 5 and 6 in Part I of the Form 8609. The subawardee should complete lines 7, 8b, 9b, 10a, 10c, and 10d of Part II of the Form 8609 and send the completed form to the State housing Credit agency, not the IRS. If Section 1602 funds are provided to a building with LIHTCs (and therefore the subawardee is already required to file the form with the IRS), then the subawardee should be required to send a copy of the completed form to the State housing credit agency.

9. Recapture

9a. Question: Will the Section 1602 program use IRS Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition?

Answer: IRS Form 8823 should *not* be filed with the Treasury Department or the IRS to report noncompliance or building dispositions that result in recapture of subawards under Section 1602. State housing credit agencies should only use Form 8823 to notify the IRS of noncompliance or building dispositions where LIHTCs are involved. State housing credit agencies may, however, use the form internally to document recapture relating to buildings with subawards whether or not LIHTCs are involved.

9b. Question: When does a Section 1602 recapture event occur?

Answer:

A Section 1602 recapture event occurs any time within the 15-year compliance period (as defined in Section 42(i)(1) of the Internal Revenue Code) the applicable fraction of a building under Section 42(c)(1)(B) falls below the percentage of Section 1602 funds that comprise the eligible basis of the building (the Section 1602 percentage), or below the minimum set-aside elected for the building under Section 42(g)(1), whichever is greater. However, the preceding sentence does not apply if the applicable fraction specified in the extended use agreement with respect to the building under Section 42(h)(6)(B)(i) is lower than the Section 1602 percentage. Instead, a Section 1602 recapture event takes place any time within the 15-year compliance period the applicable fraction of the building under Section 42(c)(1)(B) falls below the applicable fraction specified for the building in the extended use agreement under Section 42(h)(6)(B)(i), or below the minimum set-aside elected for the building under Section 42(g)(1), whichever is greater.

For purpose of calculating the Section 1602 percentage, eligible basis includes any increase for buildings located in high cost areas under Section 42(d)(5)(B) of the Internal Revenue Code.

Example 1. Assume that $1.5 million of Section 1602 funds were awarded to a building with an eligible basis of $4.5 million. The building has 100 residential units of similar size and construction and is fully occupied by low-income tenants as of the close of the first year of the credit period (as defined in Section 42(f)(1) of the Internal Revenue Code). Assume also that the 20/50 minimum set-aside under Section 42(g)(1) was elected for the building and that the applicable fraction specified in the extended use agreement for the building is 100% (i.e., 100% of the total units are required to be maintained as low-income units). The Section 1602 percentage is .333 (i.e., $1.5m/$4.5m). A Section 1602 recapture event will not occur until the applicable fraction of the building under Section 42(c)(1)(B) decreases below .333 (i.e., less than 34 of the units are occupied by qualifying low-income tenants). Had instead the 40/60 minimum set-aside been elected for the building, then a Section 1602 recapture event will not occur until the applicable fraction of the building decreases below .40 (i.e., less than 40 of the units are occupied by qualifying low-income tenants), as the minimum set-aside elected for the building (i.e., .40) exceeds the Section 1602 percentage (i.e., .333).

Example 2. Assume the same facts as Example 1, but instead of 100%, the applicable fraction of the building under Section 42(c)(1)(B) of the Internal Revenue Code is .50 (i.e., only 50 of the 100 units are occupied by low-income tenants as of the close of the first year of the credit period) and the applicable fraction specified in the extended use agreement for the building is also .50 instead of 100%. Assume further that Section 1602 funds awarded to the building are $3 million instead of $1.5 million. The Section 1602 percentage is .667 (i.e., $3m/$4.5m). Because .667 exceeds the .50 applicable fraction specified in the extended use agreement for the building, a Section 1602 recapture event will take place if the applicable fraction of the building under Section 42(c)(1)(B) falls below the .50 applicable fraction specified in the extended use agreement. In other words, a Section 1602 recapture event will occur under these facts if there is <u>any</u> decrease in the applicable fraction under Section 42(c)(1)(B) during the building's compliance period.

9c. <u>Question</u>: What amount is owed when a recapture event takes place?

<u>Answer</u>: The full amount of the Section 1602 subaward is owed minus 6.67 percent ($1/15^{th}$) for each full year of the building's 15-year compliance where a Section 1602 recapture event has not occurred.

9d. <u>Question</u>: Who pays the penalty when a recapture event takes place?

<u>Answer</u>: The Section 1602 legislation requires the State housing credit agency to impose conditions or restrictions on a subawardee to assure that the building remains a qualified low-income building during the compliance period. **These conditions or restrictions would also apply to** any subsequent owner during the compliance period. The State housing credit agency is bound to enforce its provisions and return the recapture penalty to the Treasury.

If the State agency is unable to collect the recapture amount from a liable party, Treasury would not require the State agency to return the recapture penalty provided the State agency took all appropriate actions to collect the funds from the liable party.

9e. Question: Why doesn't the Section 1602 recapture procedures mirror the LIHTC recapture procedures in Section 42(j) of the Internal Revenue Code?

Answer: The procedures differ because differences between grants and LIHTCs make it difficult to apply credit recapture rules in the context of subawards.

9f. Question: Is there a cure period in the event of noncompliance?

Answer: State agencies may, in their discretion, work with subawardees in the event of noncompliance to put in place a plan, with milestones and schedules, to remedy an incidence of noncompliance. If the building does not return to compliance within the time period prescribed by the State agency, the penalty amount would be due within a reasonable period of time, such as 90 days, from the closing date of the State agency's cure period.

9g. Question: Does Treasury require a first lien on buildings to ensure recapture?

Answer: Treasury does not require liens on buildings utilizing 1602 funds. Similarly, if a lien is employed as an enforcement device, it is not required that the lien take precedence over other liens on such buildings. State agencies have the discretion to use methods they deem appropriate to assure that the buildings funded by Section 1602 remain qualified low-income buildings during the compliance period and that recapture penalties, upon enforcement, are satisfied.

10. Financial Management

10a. Question: How will Section 1602 funds be available to State housing credit agencies?

Answer: Treasury is using the Payment Management System operated by the Federal Department of Health and Human Services to make funds available to State housing credit agencies.

10b. Question: When must a State housing credit agency register in the Payment Management System?

Answer: Upon award, Treasury authorizes funding in the Payment Management System. The awardee, then, receives instructions via email within two business days of the date of the award letter (or five business days of the date Treasury receives a completed Form 1199 if not already provided) describing how to access the Payment Management System to draw down Section 1602 funds.

10c. Question: What financial management forms must a State housing credit agency submit?

Answer: State housing credit agencies submit a Standard Form-272 **forty-five** days after the end of each calendar quarter. The SF-272 is part of the Payment Management System process.

11. Disallowance, Suspension, and Termination

11a. Question: How is Treasury able to suspend funding to a State housing credit agency?

Answer: The Payment Management System allows Treasury to place a temporary hold on individual accounts.

11b. Question: How will Treasury monitor the State housing credit agencies?

Answer: Treasury has developed a compliance monitoring checklist and expects to monitor (either remotely or on-site) in the first year every State housing credit agency participating in the Section 1602 program. In the following years, Treasury will monitor on a needs-assessment basis.

12. Return of Unused Award Funds

12a. Question: How is Treasury implementing 31 CFR Part 32.1, published in the Federal Register on August 31, 2009?

Answer: The interim final rule is effective on the date of publication in the Federal Register. State agencies that have received awards prior to publication of the rule may rely on it.

Treasury took two actions. For those State housing credit agencies with Section 1602 awards now, Treasury amended the terms and conditions of their award. Treasury modified the terms and conditions in the on-line application form for use by future State housing credit agency applicants.

Appendix F:
Second Amendment to Tax Credit Exchange Guidelines – October 22, 2009

As of October 22, 2009, the Department of Housing and Community Development ("DHCD"), as the Massachusetts state housing credit agency, amends these Tax Credit Exchange Program (TC-X) Guidelines of August 11, 2009, as amended on September 25, 2009, to set forth additional eligibility criteria for certain applicants in the Third Competition for TC-X awards:

Background:

The First Competition:
On June 30, 2009, DHCD submitted its first exchange request, totaling $50,814,102, to the U.S. Department of the Treasury. DHCD established August 28, 2009, as the application deadline for the first funding competition for exchange funds. On that date, the Department received 15 applications for exchange funds. At the conclusion of the review process, DHCD approved $50,645,661 in exchange awards to ten projects.

The Second Competition:
On September 18, 2009, DHCD submitted its second exchange request, totaling $27,314,301 to the U.S. Department of the Treasury. DHCD established October 9, 2009 as the application deadline for the second funding competition for exchange funds. On that date, the Department received seven applications for exchange funds. DHCD expects to announce shortly the awardees of exchange funds in the second competition.

The Third Competition:
On October 20, 2009, DHCD submitted its third exchange request, totaling $27,907,047 to the U.S. Department of the Treasury. DHCD has established November 6, 2009, as the application deadline for the third funding competition for exchange funds.

All interested parties should note the following: The threshold eligibility criteria for the third funding competition will differ from the threshold eligibility criteria for the first and second exchange competitions. Certain low-income housing tax credit projects that received credit and subsidy awards from the Department during 2009 will be eligible to apply for the limited exchange funds available during the third competition. To be eligible for consideration, projects with 2009 awards must meet the following criteria:

- The sponsor must be a non-profit developer or a joint venture between a non-profit and a for-profit.

- The sponsorship entity must not have changed since the time of the DHCD credit and/or subsidy award.

- All units in the project must be tax credit units and must have been proposed as tax credit units at the time of the DHCD credit and/or subsidy award;

- The sponsor must have obtained a commitment of private equity from a syndicator or direct investor which will result in a net equity raise to the project of at least $4 million at a raise per credit dollar, and on terms, acceptable to DHCD;

- The sponsor must apply for no more than $4 million in exchange funds. The exchange amount requested must be sufficient to permit the sponsor to proceed to a full loan closing within 120 days of an exchange award

Any non-profit sponsored projects that were eligible for exchange consideration prior to the date of this amendment remain subject to the same eligibility criteria for the third exchange competition. The scoring system for the third competition is the same for all applicants as the scoring system for the first and second exchange competitions. (Please note that DHCD applied the same scoring system to all TCAP applications as well.) DHCD will review applications to the third competition in chronological order, beginning with the projects that received tax credit and/or subsidy awards in 2007, followed by the 2008 projects, and then the 2009 projects.

At this time, DHCD anticipates submitting further exchange requests to the U.S. Department of the Treasury in November and/or December 2009. The Department will notify interested parties as to any changes in these Tax Credit Exchange Guidelines for future funding competitions.

Closing and Construction Start Deadlines: As set forth in the Tax Credit Exchange Program (TC-X) Guidelines of August 11, 2009, as amended on September 25, 2009, applicants must demonstrate that financing will close within 120 days of the TC-X award and that construction will start within 45 days thereafter. Awardees that fail to meet this timing requirement will forfeit the TC-X award. As the closing process has begun for awardees of TC-X, DHCD's counsel have learned of potential delays caused by public funding requirements that are beyond the TC-X awardee's control. DHCD reserves the right to permit up to 150 days for a TC-X project to close on all financing if delay arises due to events occurring after the date of the TC-X award that are outside the awardee's control.

Appendix G:
Third Amendment to Tax Credit Exchange Guidelines – December 1, 2009

As of December 1, 2009, the Department of Housing and Community Development ("DHCD"), as the Massachusetts state housing credit agency, amends these Tax Credit Exchange Program (TC-X) Guidelines of August 11, 2009, as previously amended in September and October 2009, to announce a fourth competition for TC-X funds with applications due on December 10, 2009. No changes are made to the TC-X Guidelines of August 11, 2009, as previously amended in September and October 2009.

Appendix H:
Fourth Amendment to Tax Credit Exchange Guidelines – February 19, 2010

As of February 19, 2010, the Department of Housing and Community Development ("DHCD"), as the Massachusetts state housing credit agency, amends these Tax Credit Exchange Program (TC-X) Guidelines of August 11, 2009, as previously amended in September, October, and December 2009, to set forth additional eligibility criteria for certain applicants in the competitions for TC-X awards after this amendment date:

Background:

The First Competition:
On June 30, 2009, DHCD submitted its first exchange request, totaling $50,814,102, to the U.S. Department of the Treasury. DHCD established August 28, 2009, as the application deadline for the first funding competition for exchange funds. On that date, the Department received 15 applications for exchange funds. At the conclusion of the review process, DHCD approved $50,345,661 in exchange awards to ten projects.

The Second Competition:
On September 18, 2009, DHCD submitted its second exchange request, totaling $27,314,301, to the U.S. Department of the Treasury. DHCD established October 9, 2009 as the application deadline for the second funding competition for exchange funds. On that date, the Department received seven applications for exchange funds. At the conclusion of the review process, DHCD approved $30,435,803 in exchange awards to five projects.

The Third Competition:
On October 20, 2009, DHCD submitted its third exchange request, totaling $27,907,047 to the U.S. Department of the Treasury. DHCD established November 6, 2009, as the application deadline for the third funding competition for exchange funds. On that date, the Department received six applications for exchange funds. At the conclusion of the review process, DHCD approved $22,539,940 in exchange awards to three projects.

The Fourth Competition:
DHCD established December 10, 2009, as the application deadline for the fourth funding competition for exchange funds. On that date, the Department received two applications for exchange funds. Neither application received an exchange award.

The Fifth Competition:
On December 23, 2009, DHCD submitted its fourth exchange request, totaling $4,310,469, to the U.S. Department of the Treasury. DHCD has established March 5, 2010, as the application deadline for the fifth funding competition for exchange funds. All applications must be received at DHCD by close of business on March 5, 2010.

All interested parties should note the following: The threshold eligibility criteria for the fifth funding competition will differ from the threshold eligibility criteria for the previous four exchange competitions. Certain low-income housing tax credit projects that received credit and subsidy awards from the Department during 2009 will be eligible to apply for the limited exchange funds available during the fifth competition. To be eligible for consideration, projects with 2009 awards must meet the following criteria:

- The sponsorship entity must not have changed since the time of the DHCD credit and/or subsidy award.
- All units in the project must be tax credit units and must have been proposed as tax credit units at the time of the DHCD credit and/or subsidy award;
- The sponsor must have obtained a commitment of private equity from a syndicator or direct investor which will result in a net equity raise to the project of at least $4 million at a raise per credit dollar, and on terms, acceptable to DHCD;
- The exchange amount requested of DHCD must be sufficient to permit the sponsor to proceed to a full loan closing within 120 days of an exchange award;

DHCD reserves the right to limit the amount of any exchange award during the fifth competition, based on availability of funds.

Any projects that were eligible for exchange consideration prior to the date of this amendment remain subject to the same eligibility criteria for the fifth exchange competition. The scoring system for the fifth competition is the same as the scoring system used by DHCD during the previous exchange competitions. (Please note that DHCD applied the same scoring system to all TCAP applications as well.) DHCD will review applications to the fifth competition in chronological order, beginning with the projects that received tax credit and/or subsidy awards in 2007, followed by the 2008 projects, and then the 2009 projects.

At this time, DHCD does not anticipate submitting any further exchange requests to the U.S. Department of the Treasury. The Department will notify interested parties if DHCD decides to submit additional exchange requests during 2010.

Closing and Construction Start Deadlines: As set forth in the Tax Credit Exchange Program (TC-X) Guidelines of August 11, 2009, as amended on September 25, 2009 and October 22, 2009, applicants must demonstrate that financing will close within 120 days of the TC-X award and that construction will start within 45 days thereafter. Awardees that fail to meet this timing requirement will forfeit the TC-X award. As the closing process has begun for awardees of TC-X, DHCD's counsel have learned of potential delays caused by public funding requirements that are beyond the TC-X awardee's control. DHCD reserves the right to permit up to 150 days for a TC-X project to close on all financing if delay arises due to events occurring after the date of the TC-X award that are outside the awardee's control.