

NJHMFA
SECTION 1602 TAX CREDIT EXCHANGE (TCX) PROGRAM
SELECTION CRITERIA

Section 1602 of the American Recovery and Reinvestment Tax Act of 2009 allows state housing credit agencies to elect to exchange a portion of its 2009 Housing Credit ceiling for cash assistance from Treasury in order to provide financial assistance to tax credit properties whose feasibility has been detrimentally impacted by the drop in the tax credit equity market.

The 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.

HMFA 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.

The following defines the criteria HMFA shall utilize in order to make subawards. Such criteria is subject to revision based on changed circumstances, such as continued guidance from federal agencies.

ELIGIBLE PROJECTS

Subawards or exchange proceeds may be made to finance the construction or acquisition and rehabilitation of qualified low-income buildings under Section 42 of the Internal Revenue Code that were not placed in service prior to 2009.

The project and Owner shall be eligible under applicable federal and state requirements.

HMFA reserves the right to require reserves and/or guarantees over and above those required by the project's syndicator/investor to ensure the long-term viability of the project and to ensure safeguards are in place in the event of recapture.

Deleted: Project owners utilizing TCX funds shall agree to waive their right under Section 42(h)(6)(I) of the Internal Revenue Code, which allows an owner to request the housing credit agency to find a buyer to maintain the property as low-income.¶

MAXIMUM AMOUNT OF EXCHANGE PROCEEDS PER PROJECT

Subawards shall be made in the same manner and shall be subject to the same limitations as traditional Housing Credit allocations. The subaward shall not exceed the amount necessary to ensure the financial feasibility of the project and its viability as a project throughout the credit period. 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). For this purpose, eligible basis includes any increase for buildings located in high cost areas under Section 42(d)(5)(B). Exchange proceeds shall be provided as either a grant or a 30-year loan which is non-interest bearing and non-repayable except in the event of noncompliance during the compliance period.

FEDERAL & STATE REQUIREMENTS

Projects that receive a subaward are subject to all applicable federal requirements, including Section 42 of the Internal Revenue Code. The project shall also be subject to the requirements of the Qualified Allocation Plan.

Federal cross-cutting requirements that apply through statutory requirements and other rules and regulation governing Section 42 of the Internal Revenue Code shall also apply to projects receiving exchange proceeds. 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 applicable to the project pursuant to some other federal program.

EXPENDITURE DEADLINES; REDISTRIBUTION OF FUNDS

Projects that receive a subaward shall expend all exchange proceeds no later than December 31, 2010.

To ensure the timely utilization of funds as described above, HMFA shall establish a project-specific schedule for the expenditure of exchange proceeds. Failure of subawardees to meet such deadlines may result in recapture of the exchange funds for redistribution to projects according to the selection criteria described below.

GOOD FAITH EFFORT

The developer must first demonstrate a good faith effort to obtain investment commitments for tax credits for the portion that would be covered by the Section 1602 funds.

For projects whose sources of funds include tax credit equity, good faith effort shall be deemed to be satisfied by the presence of an equity investor.

For projects whose sources of funds do NOT include tax credit equity, evidence of a good faith effort shall include a written description of efforts to obtain an equity investment, including all syndicators and investors contacted. A minimum of five syndicators/investors shall be contacted. The Agency reserves the right to contact equity providers on behalf of the project or for verification.

SELECTION CRITERIA/FUNDING PRIORITIES

HMFA will, subject to the other criteria outlined in this document, approve exchange proceeds in the following order until its Exchange authority has been exhausted:

1. 9% tax credit projects with an equity investor that have 2007, 2008 or 2009 credits whose financial feasibility is impacted by the drop in equity pricing and have all other funding sources firmly committed, including an identified tax credit equity investor. Such projects shall return the portion of credits that are not sold to the equity investor for purposes of accessing exchange proceeds. Projects selected under this criteria will be considered on a first-come-first-served basis.
2. Shovel ready 4% or 9% projects requesting gap financing that maintain a tax credit equity investor provided:
 - a. All other funding sources have been firmly committed, including an identified tax credit equity investor;
 - b. Project is ready to pull building permits (but for payment of the fee);

The application form listing the specific documentation requirements shall be issued at a later date. Gap financing awards shall be made starting with the project requesting the least amount of exchange proceeds per unit at the time of the award. In order to ensure the equitable distribution of exchange proceeds across the state and among projects types (new construction, substantial rehabilitation, preservation, etc.), HMFA reserves the right to limit the number of subawards to any one project type/location.

3. Shovel ready 4% or 9% projects that are unable to secure a tax credit equity investor that meet the requirements of 2a and b above. 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). Additionally, HMFA may finance qualified low income buildings without an allocation of tax credits only if it makes a determination that such use will increase the total funds available to the State to build and rehabilitate affordable housing. Projects selected under this criteria will be considered on a first-come-first-served basis.

HMFA may deem a project ineligible to receive exchange proceeds should there be significant changes to the development team, project scope, project viability and/or market conditions since the project's initial award of credits.

ASSET MANAGEMENT

HMFA shall perform asset management functions, or contract for performance of these services, at the owner's expense, to ensure compliance with Section 42 of the IRC and the long term viability of projects funded by exchange proceeds. As part of these asset management functions, HMFA shall maintain a publicly-accessible website that allows interested persons to determine to whom the exchange proceeds have been awarded and, as applicable, recaptured and re-allocated. This website shall be located at: <http://www.nj-hmfa.com>.

RECAPTURE

Upon receipt of a subaward, Owner shall execute a legally binding written agreement with the HMFA setting forth the program requirements applicable to the subaward, including a requirement providing for recapture to assure that the qualified low-income building remains a qualified low-income building during the 15-year compliance period.

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. In such case, 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 purposes 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.

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 Owner.

Remedies for default on the exchange proceeds include but are not limited to:

- Negative points on any future tax credit applications involving the Owner or related party;

- Changing the structure of the ownership entity, including adding or removing partners/members;
- Replacement of the management company;
- Recapture as authorized under Section 1602 of ARRA; and
- Other remedies as determined by HMFA.

REPORTING REQUIREMENTS

HMFA and owner shall provide periodic reports as required by Treasury. A financial status report and a project performance report is required on a quarterly basis, due 5 working days before the end of the quarter. Quarters end on March 31, June 30, September 30, and December 31. Reporting requirements shall include, but are not limited to:

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

Interested parties may send written comments on this proposed selection criteria to:

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Director, Tax Credit Services
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Comments are to be received by the Agency by 1:00 EDT on August 19, 2009.

**NJHMFA SECTION 1602 TAX CREDIT EXCHANGE (TCX) PROGRAM
APPLICATION PROCESS AND SELECTION CRITERIA**

ADDENDUM

In accordance with the selection criteria approved by the HMFA Board on August 20, 2009, applications for TCX funds from shovel ready 4% projects meeting Priority #2 shall be considered in the following manner:

- Applications shall be accepted from November 9, 2009 until February 19, 2010.
- TCX subsidy shall be limited to \$100,000 per affordable unit, not to exceed \$6 million per project.
- A project is eligible for TCX subsidy when all of the following requirements have been met:
 - All requirements to request a Section 42(m) determination letter as outlined in the QAP
Note: Projects that have not yet received a commitment for bond financing shall submit 2 copies of the UNIAP (one for the Tax Credit Division and one for Multifamily). Bear in mind that while the absolute last day to apply for TCX funds is February 19, 2010, the underwriting and Board approval process for mortgage commitment should be considered in determining when to apply and whether a project can meet the April 5, 2010 closing deadline listed below.
 - Submission to HMFA of building permits or a letter from the municipal building official stating that but for payment of the fee, the project is eligible to pull building permits
 - Signed partnership agreement or a reservation of funds from an investor, evidenced by an investor letter that confirms the availability and designation/earmarking of funds for the project.
- A TCX reservation shall be issued to projects that meet the above requirements, starting with the project requesting the least amount of exchange proceeds per unit at the time of the award. Note: Board approved selection criteria permits HMFA to limit the number of awards to any one project type/location in order to ensure the equitable distribution of exchange proceeds across the state and among projects types.

* This notice may be amended as a result of changes in economic conditions, federal legislation and/or amendments to the Qualified Allocation Plan.

- The TCX reservation shall automatically expire if closing on the TCX funds and tax credit equity do not occur by **April 5, 2010**.
- Projects that received TCX funds shall be required to spend 30% of reasonably expected basis no later than December 31, 2010.
- Any TCX funds not closed by the above deadline shall be made available for a 9% tax credit round. Applications for this round shall be accepted until noon on February 19, 2010, with awards expected in mid-April 2010. The currently effective QAP shall be utilized for this cycle; however, the 1st tiebreaker for competing projects within a cycle shall be the lowest amount of low-income housing tax credits (unadjusted for the 130 percent difficult development area or qualified census tract bonus) per low-income bedroom.

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