

Nebraska Investment Finance Authority

Section 1602: Tax Credit Exchange Program

7/1/2009

I. Introduction

Section 1602 of the American Recovery and Reinvestment Act of 2009 (ARRA) established a program that will provide grants to State housing credit agencies in lieu of Low Income Housing Tax Credits (LIHTCs). Nebraska Investment Finance Authority (NIFA) as the State LIHTC agency may elect to exchange a portion of its 2009 LIHTC ceiling for a grant that can be used to make sub-awards to finance the construction or acquisition and rehabilitation of qualified low-income housing projects. The maximum amount that can be exchanged is based on the following formula:

85% of 10 times 100% 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 (excluding Midwestern Disaster Area (MDA) LIHTC's),

PLUS

85% of 10 times 40% of (c) \$2.30 multiplied by Nebraska's population and (d) unused housing credit carryover allocated to Nebraska in the 2009 National Pool.

The final LIHTC amount to be exchanged will be determined solely by NIFA and may be adjusted based on current circumstances and further guidance issued by the Treasury Department.

II. General Requirements

The following requirements must be met for a project to qualify for a sub-award of Section 1602 funds.

- A. The project must have received a 2008 or 2009 award of 9% LIHTC for the construction or rehabilitation of qualified low-income buildings under Section 42 of the Internal Revenue Code. An "award of 9% LIHTC" has been defined as the date NIFA's Board of Directors approves a conditional reservation for a project.

If Section 1602 funds remain after applications have been accepted for 2008 and 2009 LIHTC projects, the remaining funds may be available as gap financing in a subsequent Section 1602 application round for projects that receive a 2010 LIHTC award.

- B. The project must have an equity investor for all or a portion of its LIHTC award. If an equity investor is purchasing only a portion of the LIHTC, the applicant must demonstrate to the satisfaction of NIFA that a good faith effort has been made to obtain an equity investment for the entire LIHTC award.
- C. The project must continue to meet the threshold and scoring requirements included in the original LIHTC application submitted for such project.
- D. Project Owners must not be in breach of the term and conditions of their Carryover Allocation Agreement.
- E. Projects must comply with all requirements of Section 1602 of ARRA and Section 42 of the Internal Revenue Code (Code), including any subsequent guidance issued by the Treasury Department.
- F. NIFA will ensure that the sub-awards of Section 1602 funds will not exceed the amount necessary to ensure the financial feasibility of the project and its viability as a project throughout the credit period.

III. Application Criteria and Evaluation

- A. Application Process:
 - i. NIFA will post a notification and application on www.nifa.org and www.recovery.nebraska.gov with application submission and award dates.
 - ii. Section 1602 funds will be awarded competitively and pursuant to the terms and conditions of NIFA's LIHTC Qualified Allocation Plan.
- B. Funding Priorities: NIFA will award Section 1602 funds for the following:
 - i. To replace a portion of the equity investment in a project that cannot obtain an equity investor for the full LIHTC award.
 - ii. To provide gap financing for a project that has an equity investor for the full LIHTC award, but at a price lower than originally anticipated.
- C. Selection and Ranking Criteria: Projects will be evaluated on each of the criteria set forth in Priority #1, #2, and #3 below. Projects will be ranked using a scale of "High", "Medium" or "Low".

- i. Priority #1: Priority will be given to projects that can demonstrate the ability to expend their Section 1602 sub-award by December 31, 2010 and place the project in service by the required deadline under IRC Section 42. The following factors will be considered:
 - a. Construction timeline
 - b. Year of LIHTC award
 - c. Equity investor commitment for the LIHTC's
 - d. Status of financing
 - e. Status of approval from the local governing body
 - f. Status of construction contract
 - g. Previous participation and capacity of project developer \ owner
- ii. Priority #2: Priority will be given to projects that target particular distressed populations and/or lower rent levels. The following factors will be considered:
 - a. Rent targeting
 - b. Targeting of special populations, such as: special needs, homeless, veterans, workforce housing, elderly, or general LIHTC population
- iii. Priority #3: Projects will be evaluated and prioritized based on NIFA's underwriting criteria as outlined in the 2009 LIHTC Qualified Allocation Plan. Long-term sustainability of the project and the efficient use of Section 1602 funds for the State of Nebraska will be assessed and weighted accordingly. The following factors will be considered:
 - a. Amount of LIHTC investor equity
 - b. Debt service coverage ratio
 - c. Deferred developer fees
 - d. Amount of Section 1602 funds per unit

- iv. Tiebreakers: In the event of a tie between projects, the following criteria will be considered:
 - a. The geographic distribution of the Section 1602 funds
 - b. Housing market in the proposed community
 - c. Score received in the LIHTC application process

IV. Terms of Section 1602 Sub-award

- A. All projects receiving a Section 1602 sub-award will be required to execute an agreement that will stipulate a construction completion schedule.
- B. In the event a project is not meeting the construction completion schedule as specified in their Section 1602 agreement, NIFA will provide the project owner the opportunity to correct any outstanding issues and NIFA shall determine if the project can still meet its completion requirements.
- C. NIFA will redistribute any Section 1602 funds that are not dispersed in accordance with a project's agreement to other eligible projects using the selection criteria outlined in Section III, above. NIFA will closely monitor the progress of each project receiving Section 1602 funds to ensure that it will meet the Section 1602 deadlines for dispersing funds.
- D. NIFA will access an allocation fee of 1% of the Section 1602 sub-award.
- E. Project Owners will be required to report the following to NIFA at the end of each calendar quarter:
 - i. Number of construction jobs created and retained
 - ii. Number of non-construction jobs created and retained
 - iii. Total number of housing units constructed or rehabilitated
 - iv. Total number of low-income housing units constructed or rehabilitated
 - v. Any other federal reporting requirements per NIFA's request

- F. All projects receiving a Section 1602 sub-award will be subject to all procedures and requirements applicable to Section 42 of the Code, NIFA's Qualified Action Plan (QAP), and the project's Land Use Restriction Agreement.

V. Asset Management and Compliance

- A. Projects with a Section 1602 sub-award will be required to adhere to the compliance reporting requirements of Code Section 42 and NIFA's QAP.
- B. Project Owners will be required to contract for asset management services at their own expense and provide reports to NIFA as requested.
- C. Section 1602 funds are subject to recapture in the event of uncorrected noncompliance under Code Section 42. NIFA will initiate recapture pursuant to guidance issued by the Internal Revenue Service and the Treasury Department. Any recaptured Section 1602 funds become a debt owed to the General Fund of the U.S. Treasury Department and enforceable by all available means against any assets of the project Owner.