

NEBRASKA INVESTMENT FINANCE AUTHORITY
Low Income Housing Tax Credit Program
Summary of The American Recovery and Reinvestment Act of 2009

The President signed into law The American Recovery and Reinvestment Act of 2009 (the “Act”) on February 17, 2009. The Act provides State housing credit agencies with programs to help fill financing gaps caused by the collapse of the low-income housing tax credit (“LIHTC”) market and to jumpstart stalled LIHTC projects.

GAP FINANCING PROGRAM

The Act provides for \$2.25 billion in HOME funds to be apportioned amongst the State housing credit agencies based on the percentage of HOME funds apportioned to each state for 2008 (the “HOME Funds”). Projects awarded/to be awarded LIHTCs in 2007, 2008 and 2009 are eligible to receive the HOME Funds (including tax-exempt bond projects).

A. Distribution of the Home Funds:

- (i) HOME Funds must be distributed through NIFA’s competitive process in accordance with its Qualified Allocation Plan (“QAP”).

B. Timing of HOME Fund Awards and Expenditures:

- (i) 75% of the HOME Funds must be committed by NIFA by 2/17/2010.
- (ii) Project owners must expend 75% of their HOME Fund award by 2/17/2011. If a project owner fails to expend 75% by 2/17/2011, NIFA is required to redistribute the HOME Funds to another project.
- (iii) Project owners must expend 100% of their HOME Fund award by 2/17/2012.
- (iv) HOME Funds will not reduce the LIHTC eligible basis of a project.
- (v) HOME Funds must be used in conjunction with a LIHTC award that is made by September 30, 2009.
- (vi) If the HOME Funds are awarded as loans, it is not clear what happens to any funds that are repaid to NIFA.

C. HOME Restrictions:

- (i) Environmental compliance review requirements under Section 288 of the HOME Investment Partnership Act.
- (ii) Fair Housing
- (iii) Non-discrimination

- (iv) Labor Standards (including Davis Bacon)
- (v) HUD Secretary may waive other HOME related restrictions (further guidance will be issued by HUD).

D. §42 Restrictions:

- (i) The §42 rent, income, and use restrictions will apply

E. Compliance and Asset Management

- (i) NIFA is required to perform “asset management” functions to ensure projects that have received HOME Funds are in compliance with §42.
- (ii) NIFA must provide information “related to the award of HOME funds” to HUD.
- (iii) HUD will establish a website identifying projects that have received an award of HOME Funds which will also include a link to NIFA’s QAP

LIHTC EXCHANGE PROGRAM

The Act authorizes and directs the Treasury Department to make a grant to NIFA in an amount elected by NIFA that does not exceed 85% of the product of:

- (i) 10 times
- (ii) the sum of
 - (a) 100% of the 2008 LIHTC carryover (excludes disaster credits);
 - (b) 100% of any LIHTC allocation returned during 2009 (waiting clarification on whether returned Disaster Relief Tax Credits are included);
 - (c) 40% of the per capita LIHTC for 2009; and
 - (d) 40% of NIFA’s share of the 2009 LIHTC national pool (if any)

NIFA’s 2009 LIHTC ceiling will be reduced by the amount of LIHTC exchanged under the program.

Any exchange grant of funds not used to make Subawards before January 1, 2011 and any grant moneys from Subawards returned on or after January 1, 2011 must be returned to the Treasury Department.

A. Types of Projects eligible to receive Subawards of the Exchange Funds (“Subaward”)

- (i) New construction or acquisition/rehabs with or without an allocation of LIHTC’s.

- (ii) NIFA is required to determine that a project without an allocation of LIHTC's is a qualified low-income building (as defined under §42) and that a Subaward "will increase the total funds available to Nebraska to build and rehabilitate affordable housing."
- (iii) In making this determination, NIFA must establish a process by which a project demonstrates "**good faith efforts**" to obtain investor commitments prior to NIFA making a Subaward to that project.

B. Subawards Subject to LIHTC Requirements

- (i) Projects receiving a Subaward will be subject to the same rent, income and use restrictions under §42.
- (ii) Subawards will not reduce the LIHTC eligible basis of project.
- (iii) Project owners will not have to report the Subaward as taxable income.

C. Compliance and Asset Management

NIFA is required to perform "asset management" functions to ensure projects that have received Subawards are in compliance with §42.

D. Recapture of Subaward

- (i) Recapture of the Subaward is required if the project is not in compliance with §42 during the compliance period.
- (ii) Any recaptured funds must be repaid to the Treasury Department.