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FOR IMMEDIATE RELEASE

**LIHTC WORKING GROUP QUERIES TREASURY ON EXCHANGE
PROGRAM**

Fund Recapture, Casualty Loss and Building Disposition Addressed

San Francisco, Calif. — In a letter to the U.S. Department of the Treasury (Treasury), the LIHTC Working Group and the National Association of Home Builders' Housing Credit Group (NAHB) has asked Treasury to issue detailed written guidance on the requirements that low-income housing tax credit (LIHTC) projects and states face regarding the recapture provisions under Section 1602 of the American Recovery and Reinvestment Act of 2009 (Recovery Act).

Included in the request is guidance on provisions that include the amount of recapture, as well as recapture in situations in which a building experiences a casualty loss and when a building is sold.

“Treasury is applying an all or nothing approach to recapture of the Section 1602 funds, but we believe partial recapture should be allowed in certain circumstances,” says Michael Morrison, a partner in the San Francisco office of Novogradac & Company LLP. “We believe Treasury should allow for partial recapture of the Section 1602 funds similar to how they allow partial recapture of IRC Section 42 tax credits.”

Section 1602

The Recovery Act created the Section 1602 program (Exchange program). That program permits an eligible state housing credit agency to exchange for cash — up to 40 percent of its 2009 LIHTC ceiling and 100 percent of certain LIHTCs carried forward or returned to the agency — to finance the construction or acquisition and rehabilitation of a qualified low-income building.

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In part, the Exchange program stipulates that agencies shall impose conditions or restrictions, including a requirement for the recapture of the Section 1602 funds. It also says that an award of these funds shall be made in the same manner and subject to the same limitations as an allocation of tax credits under Internal Revenue Code (IRC) Section 42, which governs the LIHTC program. It is in that vein that the Working Group and NAHB have asked Treasury to allow for partial recovery of Section 1602 funds. Additionally, says Michael Novogradac, managing partner in the San Francisco office of Novogradac & Company LLP, the LIHTC Working Group believes any recapture should be done on a building-by-building basis, as is the case in IRC Section 42, and should not be property based.

Other issues — casualty loss and building disposition

The LIHTC Working Group and NAHB also address casualty loss and building disposition issues in their letter. They ask Treasury to allow an exception to the recapture provision when a project owner is facing a casualty loss (similar to IRC Section 42(j)(4)(E)), which would allow that owner to cure a problem within a reasonable period of time without having its Section 1602 funds recaptured.

And finally, the LIHTC Working Group and NAHB ask Treasury to allow building owners that dispose of a building during the building's compliance period to not have the 1602 funds recaptured if there is a reasonable expectation that the new owners will operate the building as a qualified low-income building throughout the compliance period (similar to IRC Section 42(j)(6)). "We believe that this carve-out should be included in Treasury's guidance on recapture, as it captures the intent of IRC Section 42," says Novogradac.

For a copy of the LIHTC Working Group's and NAHB's letter, please go to http://www.novoco.com/low_income_housing/resources/wg_public.php#comment

The LIHTC Working Group

Novogradac & Company LLP established the LIHTC Working Group to provide a platform for low-income housing tax credit industry participants to work together to resolve technical and administrative LIHTC program issues that are experienced by the members of the group. Members of the group participate on a conference call each month and participate in discussions and provide input regarding pending action items as agreed to by the members of the group. Comments and suggestions are agreed to and submitted in writing directly to the IRS and/or various state agencies based upon the group discussions.