

United States House of Representatives  
Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, DC 20515

June 1, 2009

The Honorable Timothy F. Geithner  
Secretary  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Dear Mr. Secretary:

I am writing to request certain modifications to Treasury guidance regarding utilization of the low income housing tax credit exchange program, authorized under the 'American Recovery and Reinvestment Act of 2009.'

I appreciate your prompt implementation of this program, through the promulgation of guidance to states for the utilization of the tax credit exchange program. This is very helpful for states in moving forward with the planning and execution of their housing tax credit program, to address serious dislocations in the housing tax credit market.


However, I believe a few modifications to the guidance that was issued would improve the effectiveness of the program. These modifications are consistent with the statutory language in the bill:

1. **Disbursement Date.** Treasury guidance states that "No grant funds may be disbursed to subawardees after December 31, 2010." However, the statute does not refer to "disbursements," but instead merely states that "Any grant funds not used to make subawards under this section before January 1, 2011 shall be returned. . ." Recasting the deadline as a final disbursement deadline for all funds is unnecessarily inflexible. Moreover, it is contrary to sound development, investment and financing principles. Disbursements should be made in stages as a property is built and leased, so that funds can be held back in the case of a problem. A 100% disbursement deadline by the end of next year has the effect of unreasonably requiring by that date either the full completion of the project or the premature release of all funds prior to project completion. I suggest that the disbursement deadline of December 31, 2010 be modified so that a certain percentage of funds (eg., 30% of project funds) must be disbursed by such date - with a final subsequent disbursement deadline for all funds (eg., December 31, 2011).
2. **Flexibility to Do Awards as Loans.** Treasury guidance states that the "grantee" (a state) "may disburse grant funds" in order to "finance the construction or

acquisition and rehabilitation [of projects].” However, the statute, while referring to the making of “grants“ to the states, includes no specific requirement that the subaward be in the form of a grant. Moreover, developers commonly use loans to finance development costs of housing tax credit properties. A loan option provides additional flexibility in a number of respects. Therefore, I would suggest that additional guidance be issued to clarify that loans are an acceptable form of a subaward.

3. **Recapture.** The statute states that “The State housing credit agency shall impose conditions or restrictions, including a requirement providing for recapture, on any subaward” to assure that the project remain a qualified low income building during the compliance period. Treasury guidance includes a requirement for recapture. However, I understand that in its implementation, Treasury is requiring a first lien to secure such recapture, which is potentially creating a problem with permanent lenders for such projects. I suggest the use of more flexible provisions to address this recapture requirement.

Thank you for your consideration of this request.



BARNEY FRANK  
Chairman