

# United States Senate

WASHINGTON, D.C. 20510

April 24, 2009

The Honorable Timothy Geithner  
Secretary of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Dear Mr. Secretary:

We are writing to you regarding an urgent matter affecting the recovery of our States from natural catastrophes that occurred in recent years. Specifically implicated is the ability of the States victimized by the Midwest floods of last summer, those hit by Hurricane Ike in September as well as the States within the Gulf Opportunity Zone (“GO Zone”) to build and rehabilitate critically needed affordable rental housing using the Low-Income Housing Tax Credit (“Housing Credit”). We request written guidance on the question posed below.

The American Recovery and Reinvestment Act (“ARRA”) established a temporary program whereby State Housing Credit agencies may exchange a portion of their 2009 Housing Credit ceiling for grants with which the agencies may make subawards to finance the development of qualified affordable housing projects. A question has arisen as to whether special credits authorized for the 2008 disaster area and the GO Zone are eligible to be exchanged.

There is undoubtedly a critical shortage of decent, safe and sanitary affordable rental housing in the areas that were struck by last year’s disastrous floods and storms and in the GO Zone, which continues to recover from the devastating 2005 hurricane season. Congress authorized the Disaster Relief Credits and GO Zone Housing Credits to help address this situation. Unfortunately, a number of the developments which were awarded these disaster credits have been unable to proceed due to a shortfall of investment capital resulting from the current credit crisis. A number of project sponsors would like to return their pre-2009 Housing Credit awards to their State allocating agencies and exchange those credits for cash grants authorized under ARRA. However, until the Treasury Department clarifies that such returned Disaster Relief Credits and GO Zone Housing Credits can be included in the Exchange Program, State agencies may be unwilling to make the exchange available for these properties.

Therefore, we are seeking your assistance in having Treasury issue guidance that a portion of the Disaster Relief Credits and GO Zone Housing Credits may be exchanged. The amount exchangeable should equal the amount of such credits previously allocated by a State Housing Credit agency prior to 2009 and returned to the State in 2009.

ARRA provides that the Treasury shall make a grant to a State Housing Credit agency in an amount equal to the State’s “low-income housing grant election amount.” Although ARRA did not specifically mention previously allocated, but returned Disaster Relief Credits or GO Zone Housing Credits in the computation of the Exchange Amount, and the statute is not entirely clear on this point, we hope that the Treasury Department would issue guidance clarifying that the Exchange Amount includes such returned credits so that this housing can be produced.

By including the Tax Credit exchange in ARRA, Congress recognized the acute shortage of investment capital for affordable housing developments across the country and sought a solution to help finance the most stimulative projects. We recognize that Congress elected not to include current year Disaster Relief Credits or GO Zone Housing Credits in the computation of the amount of Housing Credits that could be exchanged. However, we hope you will conclude that there is no statutory reason to exclude from the Exchange Program those projects which return disaster credits awarded prior to 2009.

As a matter of public policy, we urge you to recognize that Congress desired to stimulate the construction of affordable rental housing and we believe – absent a compelling legal reason that prohibits their inclusion – that these properties should be allowed to participate in the exchange program. Otherwise, much of this housing is unlikely to be built or rehabilitated, thereby exacerbating the affordable housing crises in our States.

Thank you for your attention to this matter.

Sincerely,

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