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Memorandum

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To: State Agency Clients

From: Anthony S. Freedman

Date: May 11, 2009

Re: Tax Credit Exchange Program – Provisions and Issues – Recent Treasury Guidance

Grants to State in Lieu of 2009 Allocations.

The centerpiece of the American Recovery and Reinvestment Act of 2009, PL 111-5 (the "Recovery Act"), for the low-income housing tax credit community is the provision under which housing credit agencies can "exchange" a portion of their 2009 housing credit ceiling for cash grants, which can be used by the agencies to make "subawards …to finance the construction or acquisition and rehabilitation of qualified low-income buildings." On May 4, 2009, the Treasury Department published a package including an "Application and Terms and Conditions" (the "Treasury Guidance"), pursuant to which it will accept applications from State housing credit agencies for exchange program monies.[1] This memorandum summarizes the basic provisions of the statute and the additional information made available in the Treasury Guidance, and raises a number of issues for housing credit agencies to consider as they plan to implement the new authority. At this writing, many questions remain about the program, and the discussion herein is necessarily subject to such further guidance as Treasury and the Internal Revenue Service may provide. Note that, simultaneously with the release of the Treasury Guidance, HUD released a Notice on the Tax Credit Assistance Program ("TCAP"), also established under the Recovery Act, and with a number of parallel requirements. TCAP is the subject of a companion memo to this one, and is occasionally referred to herein.

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[1] The Treasury Guidance is silent on the question of its regulatory status in the context of the various types of Internal Revenue Service pronouncements about tax law: regulations; revenue rulings; revenue procedures; technical advice memoranda; etc. Accordingly, this memorandum makes no assumption about how the Treasury Guidance will be treated for various purposes under the Internal Revenue Code, other than to assume that Treasury and the Service will act generally in accordance with it in making awards of exchange program funds to housing credit agencies and in monitoring subawards and activities by those agencies pursuant to the program.

Exchange Program - Statutory Provisions and Treasury Guidance.

The tax credit exchange authority is found at section 1602 of the Recovery Act , with a conforming provision at section 1404.[2] Unless otherwise noted, references herein will be to section 1602 of the Recovery Act, various provisions of the Treasury Guidance (primarily the Terms and Conditions set forth therein) and/or to section 42 of the Internal Revenue Code (the "Code"), as the context may require.

1. <u>The Secretary of the Treasury is authorized to make grants to housing credit agencies in amounts equal to the applicable state's "low-income housing grant election amount</u>."

- The funds come from Treasury to *state* housing credit agencies. *Individual projects and owners do not have any entitlement under the law to receive exchange funds*. Whether and how "subawards" are made to individual projects will be up to the housing credit agency.

- The Treasury Guidance provides that only a "designated State housing credit agency" – the agency in each state that files IRS Form 8610 – may apply for and receive exchange funds from Treasury.[3] In states with multiple housing credit agencies, the designated agency is responsible to Treasury for performance under the exchange program and must "coordinate with" other housing credit agencies in the state to enable them to elect to make the exchange of allocation authority and receive funding.

- Exchange funds are in the amount of credit ceiling exchanged multiplied by $0.85x10. Thus, if a housing credit agency gives up $10 million in credit ceiling, it will receive from the Treasury grant funds in the amount of $85 million to be used for projects. In customary parlance, this means that grant funds produce 85 cents on the dollar for tax credit ceiling turned in.

- The foregoing does not mean that any project which surrenders credit ceiling will automatically receive grant funds at 85 cents on the dollar. *The amount of any grant funds "subawarded" to a particular project will be determined by the housing credit agency, and can be in an amount that is not dependent upon the amount of credits allocated to or given up by that project*.

- The Treasury Guidance indicates that the first exchange funds to be made available to housing credit agencies will be in response to applications submitted on the appropriate forms (included in the guidance package) in the period May-June 2009.

2. <u>The "low-income housing grant election amount" – the amount of credit ceiling exchanged – is determined by the housing credit agency on the basis of the amount of its 2009 housing credit ceiling that it is willing to trade in, subject to certain limitations</u>.

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[2] The legislative language is set out at the end of this memo, as is the Treasury Department's web site for the Treasury Guidance.
[3] The list of designated agencies, together with the maximum amount of exchange funds such agencies may receive *from the per capita component only* of their housing credit ceiling, is included in the Treasury Guidance.

- While the funds may be used by the agency to make subawards to projects through 2010, only 2009 credit ceiling may be exchanged.

- The percentage of an agency's credit ceiling that may be exchanged is determined based upon the component of the state's credit ceiling from which the exchanged amount is derived. Credit ceiling that is derived from unused 2008 credit amounts carried forward or from credits recovered in

- calendar 2009 may be exchanged 100% for grant funds. With respect to credit ceiling derived from the 2009 per capita component or from the National Pool component, 40% may be exchanged for grant funds.

- According to the Treasury Guidance, special disaster and GO Zone credits may not be exchanged, but there may be a challenge to this determination on behalf of the affected states.[4]

- The Treasury Guidance permits housing credit agencies to make multiple applications to exchange credits *through 2010*.[5]

- States may make the first exchange of credit authority for exchange program funds (beginning in May-June 2009) using the per capita and unused 2008 credit ceiling components of their 2009 credit ceilings. Subsequent exchanges may be made from any component of the state's credit ceiling, as those components become known.

- Only credits that come from components of a state's credit ceiling may be exchanged. Credits that come by virtue tax-exempt financing may not be exchanged.

- There is currently no guidance as to whether or how any nonprofit set-aside would apply to grant funds.

3. <u>Housing credit agencies determine which projects receive subawards of grant funds and the amount of such subawards</u>.

- The statute and the Treasury Guidance provide that housing credit agencies are to make subawards to qualified low-income buildings "in the same manner and … subject to the same limitations (including rent, income, and use restrictions on such building) as an allocation of housing credit dollar amount allocated by such State housing credit agency." The limitations specifically include a requirement of consistency with section 42(m)(2), to the effect that a subaward may not exceed the amount necessary for a project's

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[4] The determination is made on the somewhat questionable basis that GO Zone and disaster credits are not awarded pursuant to section 42, a curious result in that under the Code, all low-income housing tax credits appear to come through section 42.

[5] Although it is not stated in the guidance, this implies that 2009 ceiling carried forward to 2010 and, perhaps, 2009 credits (and 2008 credits?) recovered in 2010 may retain their character as 2009 ceiling and be exchanged, rather than automatically becoming a part of the state's 2010 credit ceiling. Further clarification from IRS will be required on this point.

financial feasibility and viability throughout the credit period. (Project owners receiving exchange program funds are referred to as "subawardees" in the Treasury Guidance.)

- Neither the statute nor the Treasury Guidance suggests that a formal QAP amendment will be necessary in order for an agency to award exchange funds. Each agency, however, will have to consider its own administrative procedures act requirements in determining how to make awards.

- Only projects which contain "qualified low-income buildings" under section 42 may be eligible for subawards, and subawards may be made to such buildings with or without an allocation under section 42. This suggests that both bond-financed tax credit projects and projects receiving GO Zone or disaster credits may qualify for exchange program funds, although their credits cannot be exchanged, as can projects without any connection to the tax credit program.

- The Treasury Guidance provides that the credit agency must (i) establish "a written process" for determining that applicants for subawards have demonstrated good faith efforts "to obtain investment commitments for tax credits in lieu of" the exchange program funds and (ii) make a determination that the recipient of the subaward has made such a good faith effort.[6] Each state housing credit agency may establish its own standards for determining that good faith effort.

- The Treasury Guidance provides (and Treasury staff have stated) that exchange funds are to be granted, rather than loaned, to project owners. A number of housing credit agencies would prefer to lend exchange program monies, and are seeking to persuade Treasury to change its position on this matter.

- By law, subawards of grant funds do not reduce the "[b]asis of a qualified low-income building." Section 1404 of the Recovery Act. The legislative history is even clearer in stating that such grants do not reduce "tax basis." This rule would appear to apply to depreciable basis, as well as eligible basis.

- The legislative history provides, further, that grants of exchange funds are not taxable income to recipients. Note that because the "not taxable income" reference is in the Joint Explanatory Statement of the Committee of Conference, rather than the law itself, IRS confirmation on the point would be welcome. However, Treasury staff seem sufficiently comfortable on the point not to raise it in the Treasury Guidance.

- There is no prescribed amount for any subaward; *e.g.*, no requirement that the amount equal 85 cents on the dollar for an allocation surrendered by a project or the difference between 85 cents and the amount of equity contributed by a project's investors. As

[6] The statute can be read to make this requirement applicable *only* to buildings receiving an award of exchange program funds *without* an allocation of tax credits, as the means by which the agency makes "a determination that such use [of exchange funds] will increase the total funds available to the State to build and rehabilitate affordable housing." The Treasury Guidance makes clear that this requirement applies to *any* project receiving exchange funds, and requires no separate "increase the total funds" determination.

previously noted, the agency is required to determine the amount of the subaward on the basis of a feasibility analysis.

- The Treasury Guidance provides that subawards must be used to finance the construction or rehabilitation of qualified low-income buildings. They may not be used *by the housing credit agencies* for any other purpose, including administrative costs. Note that the Treasury Guidance, as contrasted with the Notice published for TCAP, does not provide further specificity as to how *subawardees* may use exchange program funds or set forth any prohibitions.[7]

- Exchange program funds must be disbursed to subawardees no later than December 31, 2010.

- There appears to be no obstacle to using exchange funds in combination with investor equity and with TCAP funds, although HUD states that TCAP funds cannot be used for projects without tax credits.

4. <u>The housing credit agency is required to enter into a written agreement with subawardees before any exchange program funds may be disbursed</u>.

- Under the Treasury Guidance, these written agreements must incorporate all of the section 1602 program requirements, including the compliance, recapture and information gathering provisions discussed below. Agencies would also be wise to include provision for the asset management functions, also discussed below, in such agreements, since they are an integral element of program compliance and recapture remedies.

- The Treasury Guidance permits agencies to incorporate the extended low-income housing commitment requirement of section 42(h)(6)(B) in the written agreements, as well, although many agencies may choose to continue to use their standard extended use agreements for this purpose.

5. <u>The housing credit agency is required to impose "conditions and restrictions, including a requirement providing for recapture," to assure compliance with Section 42 requirements and the "long-term viability" of buildings funded with subawards throughout the compliance period</u>.

- This is best read as a mandate to the agency to establish a recapture scheme comparable to the recapture/loss of credits which helps to assure compliance by tax credit projects. The statute also notes that recapture "may be enforced by means of liens or such other methods as the Secretary of the Treasury determines appropriate." The Treasury Guidance takes this a step further by requiring agencies to notify subawardees that any amount subject to recapture "becomes a debt owed to the United States payable to … the Treasury and enforceable by all available means against any assets of the recipient entity." This suggests that Treasury will enforce the recapture obligation directly, although how it will do so – by tax lien? by contractual enforcement? – is not stated.

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[7] The TCAP Notice provides, for example, that TCAP funds "may" be used for costs includible in eligible basis and cannot be used for swimming pools. The use of the word "may" suggests that project owners may also use them for costs other than eligible basis items, although HUD staff have not sounded so flexible in discussing the program.

- Housing credit agencies' written agreements should provide for (i) compliance in accordance with section 42, (ii) an obligation to repay the grant to Treasury in the event of an agency determination of noncompliance, and (iii) a lien on the property which may be used to enforce the repayment obligation. Depending upon the scheme ultimately adopted by Treasury to enforce the recapture obligation, the agency may have the right – but need not be required – to enforce the obligation by itself.

- Among the questions raised by the foregoing – which are not answered in the Treasury Guidance to date – are the following: How severe must noncompliance be in order to trigger recapture? May recapture be provided for and enforced in part, in stages? What priority should the recapture lien have as compared to mortgage debt? Should/must the recapture lien be permitted to survive foreclosure? As with credit recapture and adjuster obligations in syndicated transactions, should the agencies require that the recapture obligation be guaranteed?

- Note that the direct enforcement authority given by the statute and the Treasury Guidance to the Secretary of the Treasury contrasts with the extended use agreement requirement of section 42(h)(6)(B), which relies upon state enforcement in accordance with local real estate law.

- Recaptured funds go to the Treasury. While a number of agencies have sought the ability to be able to reuse funds that are recovered prior to the end of 2010, that option is not discussed in the Treasury Guidance.

6. <u>The Treasury Guidance imposes significant information reporting requirements upon agencies, which are required to obtain "sufficient information" from subawardees in order to permit them to make the required reports to Treasury</u>.

- Financial status reports and "performance reports" are required from agencies on a quarterly basis, due 10 working days after the end of each calendar quarter, as well as such other reports as Treasury "deems necessary" to comply with section 1602 guidance.

- In addition to basic information about subawardees and projects (location, description, numbers of new and rehabilitated units, numbers of new and rehabilitated low-income units), the performance reports must identify the number of construction jobs created, number of construction jobs retained, number of non-construction jobs created and number of non-construction jobs retained.

- While it is not found in the reporting requirements section, the Treasury Guidance also requires agencies to maintain "program, financial and accounting records sufficient to demonstrate" that exchange program funds were used in accordance with applicable requirements.

7. <u>The housing credit agency is required to perform "asset management functions" to assure compliance with Section 42 requirements and the "long-term viability" of buildings funded with subawards</u>.

- The term “asset management functions” is not explained either in section 1602 or in the Treasury Guidance. However, it appears reasonably to include the various compliance, reporting and recapture obligations imposed upon housing credit agencies as grantees of exchange program funds.

- The agency can charge “reasonable fees” to the owner for these activities and can engage third parties to carry them out. The Treasury Guidance states that reasonable fees are “amounts customarily charged for the same or similar services” and cannot exceed costs.

- While the asset management obligation can, presumably, be discharged by an agency’s normal monitoring and compliance activities under Treasury Regulations §1.42-5 for buildings with an allocation of credits, agencies will have to prescribe procedures for buildings that do not receive credits. There is no reason to believe that the procedures could not be the same. However, as is explored herein, asset management functions can be substantially more complex than simply determining whether a project is in compliance with income and rent restrictions and physical standards.

- Given the extent of IRS compliance regulations and procedures, it is difficult to imagine Treasury or the Service saying substantially more on this topic in the context of the exchange program than is already in the Treasury Guidance.

8. <u>Timing</u>.

- Only calendar year 2009 credit authority may be exchanged.

- Grant funds must be used to make subawards by the end of 2010. The Treasury Guidance indicates that this requirement will be satisfied by the disbursement of funds to subawardees by that date. It does not speak directly to the question of when the *subawardees* must spend the funds.

- Note, however, that the Treasury Guidance states that “The grantee [credit agency] shall not place in escrow or advance lump sums to project owners.” This suggests that the agency must draw exchange program funds from the Treasury and then disburse them almost immediately to subawardees to pay for specific expenditure items. *This effectively means that all funds must be expended by project owners for construction or rehabilitation costs by the end of 2010*. As a result, credit agencies will have to monitor expenditures of subaward funds by project owners very closely and the exchange funds will often be the first money in a deal. Construction servicing may need to be made a part of the asset management function.

- It seems likely that Treasury will require reports as to expenditures of exchange program funds as part of the financial reporting described above.

9. <u>Unlike TCAP funds, governed by a separate section and division of the Recovery Act, it appears that exchange program funds are not subject to Davis-Bacon, National Environmental Policy Act (“NEPA”), Section 504, Uniform Relocation Act and various other requirements applicable to federal expenditures</u>. The Treasury Guidance does not speak to such “cross-cutting

requirements," and Treasury staff indicate that they are not applicable. The Fair Housing Act and other requirements that apply to tax credit projects or to rental developments generally would continue to apply.

10. Other important provisions of the Treasury Guidance.

- Agencies as grantees can only draw funds three days before they are payable to project owners. Interest earned by the agency on the funds, presumably pending disbursement, can be used to make additional subawards by the end of 2010.

- Treasury promises to review each agency application to exchange credit authority for "eligibility and completeness" within 10 working days following receipt. Upon determining that an application is complete, it will send a grant agreement to the particular agency.

- Various sanctions are proposed for an agency grantee that "materially fails" to comply with the terms of an award. However, contrary to a concern that had been expressed by some agencies initially, it does not appear that the inability of an agency to recapture funds from a non-complying project owner will make the agency responsible for those funds.[8] Instead, as noted above, recapture appears primarily to be a Treasury responsibility.

Implementation Issues for Housing Credit Agencies.

The following list of issues and options is intended to stimulate discussion among program administrators and participants. One of the principal contributors to the success of the low-income housing tax credit program has been the ability of states to explore a variety of approaches to find those best suited to their particular housing objectives and market conditions. The same factors should drive multiple approaches to the exchange program – with the significant exception that approaches have to be developed and implemented quickly under difficult market conditions. Moreover, because the exchange program is intended to be a temporary measure to maintain production of affordable housing while the equity market for tax credits is rebuilt, housing credit agencies may wish to use exchange funds (and the HUD TCAP funding) in ways that will help support, rather than supplant, private equity.

1. What credits should be exchanged?

- Unallocated credits carried forward from 2008 are the most obvious group. These can be exchanged immediately for cash at the equivalent of $0.85 on the dollar, which amounts can be used to support other tax credit projects in the state. The additional funds can provide support for tax credit properties – from outstanding 2007 or 2008 allocations, or for new 2009 allocations – which have commitments of investor funds, but which funds are insufficient to permit the property to be completed. Used in this fashion, the exchange funds serve to increase the yield to equity investors, while enabling projects to move forward. (Note that TCAP funds could also be used in this fashion, but (i) will

[8] At this writing, however, the Service has not been willing to make a definitive statement on this point.

likely have to be loaned to projects, rather than granted, in order to avoid creating taxable income to the recipients, and (ii) would come with Davis-Bacon and other HUD requirements.)

- Prior years' (2007 and 2008) carryover allocations without equity commitments or with inadequate equity commitments are another potential target group. Those projects without equity commitments (assuming they can meet the "good faith efforts" requirement) can be offered the opportunity to "trade in" their allocations for exchange funds. Note that any such trade in need not be done on a strict $0.85 on the dollar basis – in the current environment, developers may not be counting on credits to generate that much equity. Instead, an agency could agree to trade in an allocation for $0.75 on the dollar, keeping the additional $0.10 generated available to support other properties. Projects with inadequate equity commitments – e.g., at $0.65 on the dollar – might be able to trade in half their credits for cash at $0.85 on the dollar, providing an average of $0.75 on the dollar.

- More comprehensive arrangements with equity providers are also possible. Syndicators and/or investors can offer to provide $X of equity for projects in a state, on the condition that the agency provide $Y in exchange funds (or exchange plus TCAP funds). The effect would be to leverage the available equity, increase returns to investors and rely primarily upon private asset management and project compliance capabilities.

- A thorough pipeline analysis is a critical component of any agency's response, both for purposes of identifying those 2007 and 2008 allocations that lack equity and may need an exchange of credit authority, and for exploring opportunities to bolster, rather than replace, available private equity for current year allocations. The Treasury Guidance specifically contemplates that multiple decisions can be made later in 2009 – and apparently into 2010 – to exchange credits recovered from 2007 and 2008 allocations.

- Rather than being driven by sponsors who simply want the exchange funds in order to maximize their sources, agencies would be wise to take a comprehensive view of the resources available in their markets, including particularly private equity, and plan to derive maximum advantage from these. This will require taking a comprehensive view of the relative uses of equity, exchange funds and TCAP funds, together with any limitations – regulatory and tax – upon their use.

2. <u>Asset and Project Management</u>.

- Use of exchange and TCAP funds can get housing credit agencies involved in the development and funding process to a greater extent than they ordinarily are – even as housing finance agencies. Agencies will have to make fundamental decisions about the order of payment among equity, mortgage debt and exchange funds. For example, the willingness to disburse exchange funds early can help to attract equity to transactions, first, by increasing yield to investors, and second, by providing greater safety for these investments. More broadly, agencies will have to determine whether and how to contract for or perform construction servicing.

- The reporting obligations imposed upon agencies are extensive and must be integrated into the asset management procedures and documentation.

- Agencies need to consider whether the use of exchange funds requires them to take a more stringent approach to feasibility determinations, partnership/LLC documentation, project reserves and escrows, budget projections, syndicator/investor commitments, etc. In transactions with a combination of private equity and exchange funds, the exchange funds can leverage equity, while relying primarily upon private asset management. In transactions with exchange funds alone or exchange plus TCAP funds, the agency's financial investment and asset management responsibilities are substantially greater.

- The obligation to assure compliance, particularly in projects that do not have private equity, will substantially increase agency monitoring obligations. Agencies will not only have to assess project compliance periodically, but will need to put in place procedures or personnel who will be responsible for compliance during rent-up. In this respect, asset management is substantially more than compliance monitoring. It requires establishing a regime to assure that managers are trained properly, that problems are detected and resolved on an ongoing basis, and that tools are available to provide mid-course corrections. Moreover, further discussions need be held with Treasury and the Service to ascertain the extent to which agencies can intervene in the development and management process as problems are discovered, so as to correct before recapture is required.

- Asset management also extends to monitoring and correcting a property's physical condition and assessing its performance within an operating budget.

- Agencies will have to consider whether they are equipped to undertake this kind of ongoing asset management role or whether it is more efficiently contracted out. The question is particularly important if the program has the relatively short duration intended for it – but the long compliance obligation that is built into any tax credit project.

3. <u>Legal Rights, Remedies and Documentation</u>.

- Although the exchange program statute imposes a duty upon agencies to provide for recapture in the event of noncompliance, the development of an effective set of recapture remedies, which encourage compliance but do not discourage either lending or private investment, will be a difficult task. For example, each agency will have to consider the question of lien priority: assuming that exchange funds are granted to the owner and secured, as suggested by the exchange legislation, by a lien to support a repayment obligation, should that lien take precedence over mortgage indebtedness?

- Remedies in the event of noncompliance also pose complex questions: assuming that the agency gets a lien to support the repayment obligation, whether senior or subordinate to the mortgage debt, is it willing to foreclose and take over the property in order to enforce recapture or compliance – and what happens to the compliance obligation post-foreclosure or recapture? What remedies should the agency provide for short of recapture and foreclosure? If private equity is in the project, how much latitude should the agency permit the investor and/or syndicator, prior to taking action on its lien?

- Project and owner documentation will have to address the asset management function, if it is to be established effectively. This may involve the agency more deeply in the initial negotiation and development of ownership documentation than is customary. It also may involve the building in of intermediate remedies, such as the ability to remove the general partner or managing member in the event of noncompliance, as well as the use of guaranties and escrows to support the compliance function.

- Agencies may contemplate taking an ownership interest in the project owner in order to increase their options for dealing with noncompliance. However, holding an ownership interest may create tax issues and raise questions of conflict with the monitoring function. A preferable alternative might be to provide an interest to a contract asset manager – analogous to the interests often held by special limited partners in syndicated transactions.

- Given the need for a "written agreement" to embody the obligations imposed on agencies with respect to project owners, it may be desirable for agencies to begin contemplating the form and content for those agreements immediately.

The Treasury Guidance, including the full application package, can be found at the following web site:

http://www.treasury.gov/recovery/docs/LIH_application-package.pdf

More extensive information may be found at:

http://www.treasury.gov/recovery/LIH-grants.shtml

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TAX CREDIT EXCHANGE PROVISIONS OF AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

SEC. 1602. GRANTS TO STATES FOR LOW-INCOME HOUSING PROJECTS IN LIEU OF LOW-INCOME HOUSING CREDIT ALLOCATIONS FOR 2009.

(a) In General- The Secretary of the Treasury shall make a grant to the housing credit agency of each State in an amount equal to such State's low-income housing grant election amount.

(b) Low-Income Housing Grant Election Amount- For purposes of this section, the term `low-income housing grant election amount' means, with respect to any State, such amount as the State may elect which does not exceed 85 percent of the product of--

(1) the sum of--

(A) 100 percent of the State housing credit ceiling for 2009 which is attributable to amounts described in clauses (i) and (iii) of section 42(h)(3)(C) of the Internal Revenue Code of 1986, and

(B) 40 percent of the State housing credit ceiling for 2009 which is attributable to amounts described in clauses (ii) and (iv) of such section, multiplied by

(2) 10.

(c) Subawards for Low-Income Buildings-

(1) IN GENERAL- A State housing credit agency receiving a grant under this section shall use such grant to make subawards to finance the construction or acquisition and rehabilitation of qualified low-income buildings. A subaward under this section may be made to finance a qualified low-income building with or without an allocation under section 42 of the Internal Revenue Code of 1986, except that a State housing credit agency may make subawards to finance qualified low-income buildings without an allocation only if it makes a determination that such use will increase the total funds available to the State to build and rehabilitate affordable housing. In complying with such determination requirement, a State housing credit agency shall establish a process in which applicants that are allocated credits are required to demonstrate good faith efforts to obtain investment commitments for such credits before the agency makes such subawards.

(2) SUBAWARDS SUBJECT TO SAME REQUIREMENTS AS LOW-INCOME HOUSING CREDIT ALLOCATIONS- Any such subaward with respect to any qualified low-income building shall be made in the same manner and shall be subject to the same limitations (including rent, income, and use restrictions on such building) as an allocation of housing credit dollar amount allocated by such State housing credit agency under section 42 of the Internal Revenue Code of 1986, except that such subawards shall not be limited by, or otherwise affect (except as provided in subsection (h)(3)(J) of such section), the State housing credit ceiling applicable to such agency.

(3) COMPLIANCE AND ASSET MANAGEMENT- The State housing credit agency shall perform asset management functions to ensure compliance with section 42 of the Internal Revenue Code of 1986 and the long-term viability of buildings funded by any subaward under this section. The State housing credit agency may collect reasonable fees from a subaward recipient to cover expenses associated with the performance of

its duties under this paragraph. The State housing credit agency may retain an agent or other private contractor to satisfy the requirements of this paragraph.

(4) RECAPTURE- The State housing credit agency shall impose conditions or restrictions, including a requirement providing for recapture, on any subaward under this section so as to assure that the building with respect to which such subaward is made remains a qualified low-income building during the compliance period. Any such recapture shall be payable to the Secretary of the Treasury for deposit in the general fund of the Treasury and may be enforced by means of liens or such other methods as the Secretary of the Treasury determines appropriate.

(d) Return of Unused Grant Funds- Any grant funds not used to make subawards under this section before January 1, 2011, shall be returned to the Secretary of the Treasury on such date. Any subawards returned to the State housing credit agency on or after such date shall be promptly returned to the Secretary of the Treasury. Any amounts returned to the Secretary of the Treasury under this subsection shall be deposited in the general fund of the Treasury.

(e) Definitions- Any term used in this section which is also used in section 42 of the Internal Revenue Code of 1986 shall have the same meaning for purposes of this section as when used in such section 42. Any reference in this section to the Secretary of the Treasury shall be treated as including the Secretary's delegate.

(f) Appropriations- There is hereby appropriated to the Secretary of the Treasury such sums as may be necessary to carry out this section.

SEC. 1404. COORDINATION OF LOW-INCOME HOUSING CREDIT AND LOW-INCOME HOUSING GRANTS.

Subsection (i) of section 42 is amended by adding at the end the following new paragraph:

`(9) COORDINATION WITH LOW-INCOME HOUSING GRANTS-

`(A) REDUCTION IN STATE HOUSING CREDIT CEILING FOR LOW-INCOME HOUSING GRANTS RECEIVED IN 2009- For purposes of this section, the amounts described in clauses (i) through (iv) of subsection (h)(3)(C) with respect to any State for 2009 shall each be reduced by so much of such amount as is taken into account in determining the amount of any grant to such State under section 1602 of the American Recovery and Reinvestment Tax Act of 2009.

`(B) SPECIAL RULE FOR BASIS- Basis of a qualified low-income building shall not be reduced by the amount of any grant described in subparagraph (A).'.