



April 28, 2009

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

Dear Mr. Secretary:

On behalf of the Housing Finance Agencies (HFAs) of the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, the National Council of State Housing Agencies (NCSHA) thanks the Administration for its support of additional resources to the HFAs to contribute to our housing and economic recovery. As you know, HFAs are primed to produce hundreds of thousands of affordable, sustainable homes for working families, while generating tens of thousands of new jobs and millions in tax revenue if they could simply put to work the billions of dollars in federal housing assistance at their disposal, including the Low Income Housing Tax Credit (Housing Credit) program.

NCSHA is grateful for the steps the Administration has already taken to enable state HFAs to bring thousands of "shovel-ready" Housing Credit rental developments to production by helping to secure in recent economic recovery legislation the resources necessary for HFAs to close financing gaps in these developments created by reduced Housing Credit pricing. As you know, Section 1602 of the American Recovery and Reinvestment Act (ARRA) allows Housing Credit allocating agencies to exchange a portion of their 2009 Housing Credit authority for grants from the Treasury Department to finance the construction or acquisition and rehabilitation of qualified low-income housing.

We are pleased that Congress has placed the responsibility for administering this program in Treasury's capable hands. Since Treasury already handles the Housing Credit program through the Internal Revenue Service (IRS) and the grants HFAs will receive from exchanged Credit authority will be provided under the same rules as the Housing Credit program, we believe it makes sense for Treasury to administer and oversee the exchange program.

We are pleased to hear that Treasury plans to publish initial program guidance soon. As you work toward finalizing this guidance, we want to thank you for considering our views and reiterate some of the major concerns we have raised in discussions with your staff.

First, we strongly discourage you from imposing any additional rules and restrictions on the use of funds received from the exchange program that ARRA does not explicitly require. Congress authorized HFAs to exchange Credits for grants to fill the equity gaps caused by the reduction of investment in Credits resulting from the financial and economic crisis the country faces today.

Therefore, funds received through this exchange to accomplish the same purposes as the Housing Credit should be provided under the same rules as those that apply to the Housing Credit.

We urge you to give HFAs the flexibility to use exchange funds as grants or loans to individual projects. There is no statutory or programmatic reason to restrict HFAs' ability to provide exchange funds to developments as loans. Providing financial assistance as loans facilitates and makes more effective state efforts to enforce program compliance and recapture funds. In addition, Credit property owners may face adverse state income tax consequences from assistance provided as grants. One state agency has informed NCSHA that it is not allowed to make grants; this prohibition may be true for additional states.

We also urge you to allow states to reuse loan repayments. ARRA states that exchange program funds that are "not used to make subawards" and "all subawards returned" by January 1, 2011 must be returned to Treasury. We do not think these limits restrict the states' ability to reuse repayments from loans used originally to assist developments before January 1, 2011. Exchange funds provided as a loan would have been "used" by the initially funded project. If the exchange funds were not "returned" to Treasury as described in Section 42(h)(3)(c)(iii), then ARRA does not require their return to Treasury.

Allowing states to reuse loan repayments, including after January 1, 2011, would allow them to assist more developments, offset some of their administrative expenses, and capture excess cash flow that would likely otherwise go to development owners.

HFAs also need to know how the exchange program's recapture provision will work. Please provide guidance on what standards Treasury will establish for liens or other security to make recapture possible. We urge you to give HFAs maximum flexibility and make clear that HFAs are not liable to repay misused funds themselves if they conduct good faith efforts to recapture funds from noncompliant recipients.

We also strongly encourage you to allow HFAs that received Gulf Opportunity Zone or Midwestern Disaster Area Credits to exchange Credits for grants. Developers with these Credits also face difficulty finding investors in the current economic climate. The disaster-impacted areas Congress provided these Credits to help still face extreme needs that cannot be met without utilizing the exchange program.

Thank you for your continued consideration of our views. We look forward to working with Treasury to implement this important component of the recovery plan.

Sincerely,



Barbara J. Thompson
Executive Director

cc: Eric San Juan, Tax Legislative Counsel, Treasury
Paul Handleman, Branch Chief, Passthroughs and Special Industries, Internal Revenue Service