DRAFT

Tax Credit Exchange Program

Notice of Funding Availability

To be presented to the MFA Board of Directors June 2009

Background and Purpose

Section 1602 of the American Recovery and Reinvestment Tax Act (ARRTA) of 2009 authorized a Low Income Housing Tax Credit (LIHTC, Housing Credit or Tax Credit) Exchange Program that permits housing credit agencies to exchange a portion of their Housing Credits for cash grants from the Treasury Department that in turn would be provided as grants to project owners. Exchangeable Credits can include unallocated 2008 credits, credits returned in 2009 and up to 40% of the State's 2009 population-based credits. The grant from Treasury will be equal to 85% of the amount of Housing Credits exchanged times 10. After exchanging MFA would then make subawards to finance construction or acquisition/rehabilitation of qualified low-income buildings under Section 42 of the IRC. This program is intended to fill funding gaps in otherwise "ready to go" developments that have previously gone through the tax credit award process. Subaward recipients are required to demonstrate good faith efforts to obtain investment commitments for their credits before MFA would make a subaward under this Exchange Program. MFA's intent is not to design this program to compete with the existing structure for project's to seek private investment for the tax credits, but to use the program to augment these sources that may be lacking due to current market conditions. Funds generated by the Exchange Program must be distributed December 31, 2010.

Initial funding generated through the Exchange Program will be targeted to projects that due to diminished investor demand for Housing Credits had to return tax credit allocations in 2009 but are otherwise ready to begin construction. After funding eligible projects, any remaining funds will be added to the Tax Credit Assistance Program funds for projects that received a tax credit equity investment but have funding gaps.

The purpose of this Notice is to solicit applications from qualified applicants for eligible projects and outline the project selection process and criteria. Applicants are advised to review the IRS Code Section 42, Section 1602 of the American Recovery and Reinvestment Tax Act of 2009, or the Qualified Allocation Plan directly for further detail or terms not defined herein.

Contact Person

Applicants are encouraged to direct questions regarding this Notice to:

Linda Bridge
New Mexico Mortgage Finance Authority
344 4th Street SW
Albuquerque, NM 87102

Phone: (505) 767-2262 or toll-free statewide (800) 444-6880
Fax: (505) 243-3289
E-mail: lbridge@housingnm.org

Application Submission and Due Date

MFA intends to hold two funding rounds, but reserves the right to add additional rounds as deemed necessary for full utilization of the funding. Applications will be accepted on the following dates:

First round	First tier projects	July 8, 2009
Second round	Second tier projects	August 20, 2009
If funding remains after the third round, applications will be accepted at any time.		

Complete applications must be received at the MFA office by 5:00 p.m. mountain time on the application due date to be considered. Applications will NOT be accepted via facsimile. Only one complete, original hard copy is needed. The required forms will be provided electronically and may be downloaded from MFA's web site at www.housingnm.org/developer/. All applications shall be marked "Tax Credit Exchange Program Application" in readily visible print. On receipt, MFA will date and time stamp the cover.

Applications may be delivered by U.S. mail, by courier service, or by hand to the following address:

New Mexico Mortgage Finance Authority
344 4th Street SW
Albuquerque, NM 87102
(505) 843-6880
Attn: Director of Housing Development

Complete applications will meet the following standards:

1. Application fee of $500
2. Bear the original signature of the applicant.
3. Include the application form, application checklist, and all mandatory items listed on the application checklist at the time it is submitted.
4. All applications must be self-contained.
5. Attachments should be provided in the order listed, be separated by cover sheets and tabs numbered according to the attachment checklist.

Failure to provide or complete any element of the application may result in rejection of the application. MFA may request additional information as deemed necessary for a fair and accurate evaluation; however, MFA is under no obligation to seek further information or clarification to complete its review of the application. The applicant will bear full responsibility for submitting its application in accordance with the requirements of this Notice.

Program Summary

MFA will make available Exchange Program awards for eligible LIHTC projects approved by MFA through the application process described herein.

Eligible Projects

Exchange Program eligible developments are rental housing developments that received an award of Housing Credits under Section 42(h) of the Internal Revenue Code of 1986, have been unable to proceed due to lack of investors and as a result returned the Housing Credit allocation in 2009. Eligible Projects must demonstrate that a good faith effort was made to obtain investment commitments for Housing Credits in lieu of an award of Exchange Program funds. In addition, the project must be able to demonstrate readiness to proceed upon receiving Exchange Program funds.

Eligible Uses of Funds

Exchange Program funds may be used to finance the construction or acquisition and rehabilitation of qualified low-income buildings in accordance with Section 1602(c) of ARRTA.

Structure of Awards

Awards will be structured as forgivable loans subject to recapture if a building does not remain a qualified low-income building during the Compliance Period and Extended Use Period.

Unit Set Asides and Compliance Period

Projects must meet the unit Set-Asides and Extended Use Period committed to in the original LIHTC application and enforced with a Land Use Restriction Agreement.

Application Process and Project Selection Criteria

Preference will be given to projects that demonstrate the highest degree of readiness to proceed. MFA will hold two initial funding rounds, the first for 2007 and 2008 Tax Credit projects that have returned Housing Credits in 2009 and the second for 2009 Tax Credit projects that return Housing Credits. Application deadlines and application requirements are set accordingly.

First Round	2007 and 2008 projects that returned the credit allocation in 2009 due to the diminished investor market for Housing Credits. Projects must demonstrate a good faith effort to have obtained a tax credit investor or received commitments below $.55 and demonstrate readiness to proceed contingent upon receiving funding.
Second Round	2009 projects that were not able to obtain a letter of intent from a tax

	credit syndicator or equity investor or received commitments below $.55. Projects must demonstrate a good faith effort to have obtained a satisfactory credit commitment and readiness to proceed. Potential applicants should note that MFA can only exchange up to 40% of the 2009 credit ceiling; therefore, funding may not be available for all applicants that return credits.

After the two rounds, MFA may begin to accept applications at any time if funding remains.

<u>Scoring/Selection Criteria</u>

Each project will start with the score awarded to the project pursuant to the QAP when originally awarded credits. Applicant must provide certification that the project is ready to proceed on original application terms. If the project is proposing any changes that would negatively impact the original score the score will be adjusted downward accordingly. The scope of the project should not have changed from the latest approved version of the project's application. In addition to the original score (with adjustments), the project can receive additional points as outlined below:

Category	**Criteria**	**Points**
Approvals from local municipality to begin construction	Project has building permit	20
	Alternately, project has all approvals required to obtain building permit and has a readiness letter issued by the local municipality.	10
Contractor and final costs determined	Projects that have an executed contract with a general contractor	20
	Projects that have received bids from general contractors	10
	Projects that have bid documents prepared and ready to issue	5
Ability to close on all other financing	Projects that have firm construction and permanent financing commitments for development of the project	20
Leverage	Projects that have non-MFA administered funding sources accounting for at least 25% of the total development costs.	5

For each funding round the projects will be ranked according to their scores and awards will be made to these projects, unless they are eliminated under subsequent processing, starting with the highest scoring projects, until all available funds are awarded.

Staff Analysis and Application Processing

Design Review

All properties must meet applicable state and local building codes, and handicapped accessibility requirements, as well as any applicable requirements from federal funding sources. In addition all projects must comply with MFA Mandatory Design Standards. Applicants must provide a certification from the project architect that there have not been changes from the time of the initial design review that would impact the project's ability to meet these design requirements and that the project continues to incorporate all commitments made in the initial application regarding design and building.

Development Team Review

Debarment from HUD or other federal programs, bankruptcy, criminal indictments or convictions, poor performance on prior MFA or HUD financed projects on part of any proposed development team member or owner or principal may result in rejection of an application by MFA.

At original application the project sponsor was evaluated for their capacity to complete the proposed project and the qualifications of each development team member were reviewed to determine capacity to perform in the role proposed. Any changes in the development team or status of a development team member since the original application should be disclosed and information on the new team members provided for MFA to complete this review. Considerations may include related experience, financial capacity, performance history, references, management and staff, among others. An application may be rejected or substitutions requested if the development team or any member thereof is unsuitable as determined by MFA.

Project sponsors will be required to provide completion guarantees during construction and performance guarantees throughout the 15 year compliance period and therefore will be evaluated for their financial capacity to provide adequate guarantees.

Feasibility Analysis

Staff will underwrite the projects completely to ensure soundness, and will apply industry practice in assessing each project proposed. Factors considered in this analysis will include: market need, target market, target set-asides, unit mix and design, development and operating costs, adequacy of reserves, scope of work, terms and availability of other sources of financing, ability to repay debt, and housing cost to tenant/owner. Due to the lack of tax credit investors in these transactions, MFA will have an increased risk position in financing these projects with Exchange Program funds. As a result, these projects will be held to more stringent feasibility analysis requirements than standard tax credit processing. In addition to the standard guidelines in the QAP the following will also apply.

1. Developer and builder fees are expected to be within the percentages prescribed in the QAP and no more than the dollar amount as approved by MFA during the initial underwriting of the project.
2. Deferred developer fees will be required. Up to fifty percent (50%) of the fee will be paid out during construction and lease up. A minimum of 50% of the fee will continue to be held by MFA and released for on-going compliance during the 15 year compliance period.
3. Staff will re-evaluate the current market conditions to determine if the economic conditions have weakened the demand for the proposed project since the time it was originally approved. If it is determined that an updated market study is necessary to evaluate need, the cost will be charged to the applicant.
4. MFA may engage third party consultants to complete various reviews, such as: project compliance with section 42, title, survey, construction costs, plans and specifications, construction documents, and construction monitoring. These costs will be passed along to the project owner.
5. The aggregate minimum debt service for all debt must be a minimum 1.25:1.
6. MFA may increase reserve requirements based on evaluation of the project sponsor, market and other factors. Reserves will be held by MFA.

Projects that do not appear to be financially feasible in MFA's judgment will not be considered for funding. MFA may also make funding recommendations contingent on specific modifications to the project that MFA in its sound judgment considers necessary to enhance the feasibility or safety of the project.

Award Amount

After evaluation of all the factors describe above, MFA will determine the award amount based on the remaining financing gap. The amount of the award for a project can not exceed the amount necessary to ensure the financial feasibility of the project and its viability as a project throughout the Compliance Period.

Notification and Subsequent Requirements

Upon award of Exchange Program funds MFA will enter into a written agreement with the project owner. The agreement will outline the requirements of the Exchange Program, requirements of Section 42 of the IRC, deadlines in which the project must utilize the funds, and reporting requirements. If a project is not in compliance with the deadlines in the agreement the award may be rescinded and redistributed to another project. In addition the written agreement will provide for recapture to assure that the qualified low-income building remains a qualified low-income building during the 15-year compliance period and include the extended low-income housing commitment. Any amount subject to recapture becomes a debt owed to the United States payable to the

General Fund of the Treasury and enforceable by all available means against any assets of the recipient entity. Requirements of the Exchange Program will be enforceable through the recordation of a restriction that is binding on all owners and successors.

ARRTA requires state housing credit agencies to perform asset management functions, at the owner's expense, to ensure compliance with Section 42 of the IRC and the long term viability of projects funded by the Exchange Program. Projects that receive Exchange Program funding may be charged a reasonable annual fee (in addition to the tax credit compliance fee) to cover the cost of this function. The projects may be subject to additional reporting requirements such as monthly income and expense reporting, occupancy reporting, periodic capital needs assessments, and annual budget and audit reviews.

Appeals Process

Any applicant who is aggrieved in connection with this Notice or the award of a reservation pursuant to this Notice may protest to the MFA. The protest must be written and addressed to the Contact Person. Appeal requests must be specific as to the decision being appealed, and they must be accompanied by a fee payment in the amount of $1,500. The protest must be delivered to the MFA within fifteen (15) calendar days after the notice of reservation or rejection. Upon the timely filing of a protest, the Contact Person shall give notice of the protest to all Applicants who appear to have a substantial and reasonable prospect of being affected by the outcome of the protest. The Applicants receiving notice may file responses to the protest within seven (7) calendar days of notice of protest. A committee appointed by the MFA Board Chair shall review the protest and responses to the protest and shall make a recommendation to the Board of Directors regarding the disposition of the protest. The Board of Directors shall make a final determination regarding the disposition of the protest.

Consistent with the policy in the Qualified Allocation Plan, applicants or their representatives shall not communicate with the Board of Directors or appointed committee members regarding any project under consideration, except when specifically permitted to present testimony at an appeal related proceeding. A project will be deemed ineligible if the applicant or any person or entity acting on behalf of the applicant, attempts to influence members of the Board of Directors or an appointment committee during any portion of the award process, or does not follow the prescribed application and appeals process.