

## STATE OF HAWAII

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM  
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION  
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Honolulu, Hawaii 96813  
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IN REPLY REFER TO:

09:FIN/1305

July 16, 2009

To All Interested Parties:

Subject: Section 1602 Program – State of Hawaii

The American Recovery and Reinvestment Act of 2009, signed into law by President Obama on February 17, 2009, provides for enhancement programs to the Low Income Housing Tax Credit ("LIHTC") Program. One such program, the Section 1602 Program (the "Section 1602 Program"), allows housing credit agencies, such as the Hawaii Housing Finance and Development Corporation ("HHFDC"), to exchange LIHTC for direct funds, for an eventual subaward to qualified affordable housing projects to finance construction or acquisition/rehabilitation.

HHFDC will administer allocation of the State of Hawaii's Section 1602 Program Funds pursuant to the following selection process and criteria.

Eligibility Criteria: Projects eligible for Section 1602 Program Funds in the State of Hawaii must meet each of the following criteria (See Attachment for detail regarding Hawaii's Section 1602 Program and LIHTC available for disbursement in 2009):

- Received an Award of 2007 or 2008 Federal Volume Cap LIHTC from HHFDC.
- Received an Award from HHFDC of 2009 Federal Volume Cap LIHTC that was designated as eligible for exchange under the Section 1602 Program ("2009 Exchange Eligible LIHTC"). Projects eligible to receive 2009 Exchange Eligible LIHTC will include (i) projects that submitted an application for 2009 Volume Cap LIHTC during the application round that closed on February 27, 2009 and (ii) projects that received, and continue to hold, an award of 2007 or 2008 Non-Volume Cap LIHTC.
- No material changes since receiving the Federal LIHTC award, as determined by HHFDC in its sole discretion.
- Commit to expend 100% of Section 1602 Program Funds by December 31, 2010.
- Commenced construction or demonstrate an ability to commence construction by March 31, 2010.

Selection Process: Project's holding an award of 2007 or 2008 Federal Volume Cap LIHTC are not subject to a selection process and may request for Section 1602 Funds under the process outlined in item 3 below. The award of 2009 volume Cap LIHTC, and the potential exchange of these credits for Section 1602 Funds, is a three-step process described below.

1. Application for 2009 Exchange Eligible LIHTC.

Projects that received, and continue to hold, an award of 2007 or 2008 Non-Volume Cap LIHTC may submit a request for 2009 Exchange Eligible LIHTC to HHFDC at 677 Queen Street, Suite 300, Honolulu, Hawaii 96813 no later than **4:00 PM HST on Friday, July 31, 2009.**

Written requests shall address the following:

- Completion of Sections I and III of the 2009/2010 consolidated application.
- Completion of Exhibits A – F of the 2009/2010 consolidated application.
- Updated information regarding building permits.
- Updated information regarding zoning approvals.
- Updated information regarding subdivision approvals.
- Any other updates regarding a project's ability to commence construction or project feasibility.
- Return of prior Non-Volume Cap Federal LIHTC award.

Projects which applied for 2009 Federal Volume Cap LIHTC in the round that ended on February 27, 2009 are encouraged (but not required) to submit updated information on the following:

- Building permits.
- Zoning approvals.
- Subdivision approvals.
- The project's ability to commence construction or project feasibility.

2. Award of 2009 Exchange Eligible LIHTC.

HHFDC has made only limited awards of 2009 LIHTC that were not eligible for exchange under the Section 1602 Program. These awards left HHFDC with only 2009 Exchange Eligible LIHTC available for allocation (see Attachment). Awards of 2009 Exchange Eligible LIHTC are tentatively scheduled for Thursday, September 10, 2009.

3. Approval to exchange 2007, 2008 and 2009 LIHTC for Section 1602 Program Funds.

Projects which are awarded 2007, 2008 and 2009 Exchange Eligible LIHTC may request to exchange their LIHTC award for Section 1602 Program Funds. Requests for Section 1602 Program Funds are currently being accepted. All requests must be delivered to HHFDC at 677 Queen Street, Suite 300, Honolulu, Hawaii 96813 no later than **4:00 PM HST on Friday, October 29, 2010**. (Note that this date is subject to change depending on the timing of disbursements from the Treasury and any changes in Treasury requirements).

Applicants for Section 1602 Program Funds must return and revoke their LIHTC award when submitting the written request. The amount of the LIHTC return must match the stated amount in the written request.

HHFDC will take into account the amount of Section 1602 Program Funds requested by the Project, the original LIHTC application, project feasibility, efforts to secure a syndicator/investor, and the ability to fully expend funds by December 31, 2010. HHFDC reserves the right to make a larger or smaller award of Section 1602 Program Funds based upon its assessment of the project and the funding sources available to HHFDC. Awards of Section 1602 Program Funds are limited to a maximum of:

$$(\text{The Project's Original Federal LIHTC Award}) \times (\$0.85) \times (10)$$

An applicant receiving an award of Section 1602 Program Funds will have to take note of the following program parameters and requirements (detailed in the Attachment):

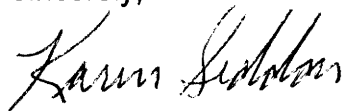
- Awards will be made in the form of a Grant.
- Awardees are required to enter into a legally binding written agreement, enforceable with a recorded declaration of restricted covenants.
- Compliance with Section 42 of the Internal Revenue Code.
- Awardees are subject to Asset Management oversight by HHFDC or a designated third party to ensure compliance with Section 42 of the Internal Revenue Code.
- Awardees are subject to Asset Management Fees assessed by HHFDC.
- Awards are subject to recapture in order to meet the December 31, 2010 expenditure deadline mandated by the Treasury.

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The above program parameters and requirements are subject to change as noted from the Treasury as well as from HHFDC.

Please make note of the Important Dates section of the Attachment. If you have any questions, please contact Patrick Inouye at (808) 587-0797, Jocelyn Iwamasa at (808) 587-0576, or Byron Chock at (808) 587-0569.

Sincerely,

A handwritten signature in cursive script that reads "Karen Seddon".

Karen Seddon  
Executive Director

Attachment

## **Attachment Section 1602 Program Program Outline and Application Process**

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009. This new law provides for enhancement programs to the Low Income Housing Tax Credit ("LIHTC") Program in an attempt to assist affordable housing projects that have stalled due to the recent downturn in the financial markets.

The U.S. Treasury Section 1602 Program (the "Section 1602 Program") allows housing credit agencies, such as the Hawaii Housing Finance and Development Corporation ("HHFDC") to exchange LIHTC for direct funds, for an eventual subaward to qualified affordable housing projects to finance construction or acquisition/rehabilitation. Recipients of funds from the Program "are required to demonstrate good faith efforts to obtain investment commitments for such credits before the agency makes such subawards." Funds for the Program are being made available through the U.S. Treasury Department (the "Treasury"). Projects receiving Section 1602 Program Funds must comply with Section 42 of the Internal Revenue Code. The Hawaii Housing Finance and Development Corporation ("HHFDC") is responsible for the management of Hawaii's Section 1602 Program. Section 1602 Program Funds must be fully expended by the program's expiration date of December 31, 2010.

Projects eligible for Section 1602 Program Funds in the State of Hawaii must meet each of the following criteria:

- Received an Award<sup>1</sup> of 2007 or 2008 Federal Volume Cap LIHTC from HHFDC.
- Received an Award<sup>1</sup> of 2009 Federal Volume Cap LIHTC from HHFDC that have been designated as eligible for exchange under the Section 1602 Program.
- No material changes since receiving the Federal LIHTC award, as determined by HHFDC in its sole discretion.
- Commit to expend 100% of Section 1602 Program Funds by December 31, 2010.
- Commenced construction or demonstrate an ability to commence construction by March 31, 2010.

<sup>1</sup> A project is considered to have an "Award" of Federal LIHTC once its Binding Agreement or Reservation Letter is fully executed and accepted by HHFDC and the LIHTC Good Faith Deposit is paid in full.

For the 2009 calendar year, HHFDC has \$2,819,614 in unused 2008 LIHTC and \$2,962,855 in 2009 per capita ceiling limit LIHTC; a total of \$5,782,469 available for allocation in 2009. Of this amount, HHFDC has determined that 100.0% of the 2008 unused LIHTC (\$2,819,614) and 35.3% of the 2009 LIHTC Ceiling (\$1,185,142) is eligible for exchange.

On February 27, 2009, the application round for 2009 Volume Cap LIHTC closed. HHFDC received a total of eight (8) applications requesting an aggregate of \$9,606,758 in LIHTC.

On July 9, 2009, the \$1,777,713 in 2009 LIHTC Ceiling that was considered ineligible for exchange was awarded to two (2) projects that (i) were the top scoring projects under the 2009/2010 Qualified Allocation Plan ("QAP") and (ii) commenced construction. The other six (6) applications for 2009 LIHTC were deferred. This left all of HHFDC's remaining \$4,004,756 Federal LIHTC eligible for exchange with the Treasury ("2009 Exchange Eligible LIHTC").

**Requests to Exchange LIHTC for Section 1602 Program Funds:**

Awardees holding 2007 and 2008 Volume Cap Federal LIHTC or 2009 Exchange Eligible LIHTC may submit requests to exchange LIHTC for direct funds. The deadline for submitting written requests is October 29, 2010 (subject to change depending on the timing of disbursements from the Treasury and any changes in Treasury requirements). Written requests are required to address the following:

- Requested amount of Section 1602 Program Funds.
- Evidence of Good Faith Effort by the project to find a Federal LIHTC Investor. Shall, at minimum, consist of a narrative outlining efforts made to secure investment in LIHTC that make the project financially feasible; including, but not limited to, copies of correspondence between owner and syndicator/investor, declination letters, or term sheets.
- Revised project budget, including line by line comparison with the budget originally approved by HHFDC and explanation of the changes.
- Revised project sources and uses, including a comparison with the sources and uses originally approved by HHFDC and explanation of the changes.
- Detailed construction and funds expenditure timeline.
- Evidence that the project has commenced construction or evidence that construction shall commence by March 31, 2010.

Applicants for exchange funds must return and revoke their LIHTC award when submitting the written request. The amount of the LIHTC return must match the stated amount in the written request.

**Allocation of 2009 Exchange Eligible LIHTC:**

As previously indicated, all of HHFDC Federal LIHTC available for allocation in 2009 is eligible for exchange under the Section 1602 Program. HHFDC has six (6) remaining applications for 2009 Federal LIHTC that were submitted in the application round that ended on February 27, 2009 with an aggregate request of \$7,661,038.

Based on the intent of the Section 1602 Program to assist stalled LIHTC projects and stimulate spending and development of projects that are "shovel ready", HHFDC has elected to allow projects that received, and continue to hold, an award of 2007 or 2008 Non-Volume Cap Federal LIHTC to compete for the 2009 Exchange Eligible LIHTC. These projects are required to return their prior LIHTC awards. The total amount of 2007 and 2008 Federal Non-Volume Cap LIHTC that has not been sold to a syndicator or investor is estimated at \$8,418,457.

Projects holding an award of 2007 or 2008 Non-Volume Cap Federal LIHTC that want to compete for 2009 Exchange Eligible LIHTC are required to submit the following:

- Completion of Sections I and III of the 2009/2010 consolidated application.
- Completion of Exhibits A – F of the 2009/2010 consolidated application.
- Updated information regarding building permits.
- Updated information regarding zoning approvals.
- Updated information regarding subdivision approvals.
- Any other updates regarding a project's ability to commence construction or project feasibility.
- Return of prior Non-Volume Cap Federal LIHTC award.

Projects that applied for 2009 LIHTC in the round that ended on February 27, 2009 do not need to submit any updated information. However, these projects are highly encouraged to submit the following:

- Updated information regarding building permits.
- Updated information regarding zoning approvals.
- Updated information regarding subdivision approvals.
- Any other updates regarding a project's ability to commence construction or project feasibility.

Requests by 2007 and 2008 Non-Volume Cap Awardees and updates by 2009 LIHTC applicants must be delivered to HHFDC at 677 Queen Street, Suite 300, Honolulu, HI 96813 no later than 4:00 PM HST on Friday, July 31, 2009.

Projects requesting 2009 Exchange Eligible LIHTC shall be scored in accordance with the 2009/2010 Qualified Allocation Plan. The scoring shall be used as a tool to help determine the hierarchy of the projects requesting awards. However, as noted in the QAP, the scoring is a component of the overall evaluation, and not the sole determining factor for awarding LIHTC. HHFDC will also heavily consider a project's readiness to commence construction, project feasibility, development and operating budgets, development experience, and other related factors in determining 2009 Exchange Eligible LIHTC awards. Should a former Awardee of 2007 or 2008 Non-Volume Cap LIHTC be awarded 2009 Exchange Eligible LIHTC and subsequently finds a syndicator/investor, HHFDC reserves the right to exchange the award for Non-Volume Cap LIHTC.

**Exchange Request Approval:**

Approval for a project to receive Section 1602 Program Funds is at HHFDC's sole discretion. HHFDC will take into account the project's written request for Section 1602 Program Funds, the original LIHTC application, project feasibility, efforts to secure a syndicator/investor, and the ability to fully expend funds by December 31, 2010.

**Exchange Funding:**

HHFDC will take the applicant's requested amount of Section 1602 Program Funds into consideration. However, HHFDC reserves the right, in its sole discretion, to make a larger or smaller award based on its assessment of the project and the funding sources available to HHFDC.

The maximum amount of Section 1602 Program Funds that a project can receive is limited to:

$$(\text{The Project's Original Federal LIHTC Award}) \times (\$0.85) \times (10)$$

HHFDC has determined that Section 1602 Program Fund awards shall be made in the form of a Grant. Project owners are responsible for determining and accommodating a Grant's potential impact on a project prior to making a written request for Section 1602 Program Funds.

Should HHFDC in its sole discretion determine that an Awardee is unable to fulfill its requirement to expend Section 1602 Program Funds by the December 31, 2010 deadline, HHFDC reserves the right to recapture Section 1602 Program Funds and redistribute these funds to a more deserving project in order to meet Treasury requirements prior to expiration of the Section 1602 Program.

**Asset Management:**

The Section 1602 Program requires HHFDC to perform asset management functions to ensure compliance with Section 42 of the Internal Revenue Code. Asset management functions may require HHFDC to become more involved in the management, compliance, financial and operating performance of the project. As such, projects should expect increased oversight and input from HHFDC.

HHFDC may elect to perform asset management functions in-house or contract with an outside third party. Correspondingly, HHFDC may require initial, as well as ongoing, asset management fees. These fees have yet to be determined.

**Written Agreement:**

Awardees of Section 1602 Program Funds are required to enter into a legally binding written agreement with HHFDC, which shall outline program requirements. Additionally, this agreement and its corresponding requirements may be made enforceable with the recordation of a declaration of restrictive covenants that shall bind all owners and successors. The binding written agreement and declaration of restrictive covenants has not been drafted.



**Important Dates (subject to change):**

- July 31, 2009 - Deadline for 2007 & 2008 Non-Volume Cap LIHTC Awardees to submit requests for 2009 Exchange Eligible LIHTC. Deadline for existing applicants of 2009 Volume Cap LIHTC to submit updated information.
- September 10, 2009 - Tentative date to award 2009 Exchange Eligible LIHTC.
- March 31, 2010 - Deadline to commence construction to qualify for Section 1602 Program Funds.
- October 29, 2010 - Deadline to apply for Section 1602 Program Funds.
- December 31, 2010 - Deadline to fully expend Section 1602 Program Funds.