



# Audit Report



OIG-17-041

DOMESTIC ASSISTANCE

Recovery Act: Audit of Arkansas Development Finance  
Authority's Payment Under 1602 Program

May 11, 2017

Office of  
Inspector General

Department of the Treasury

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## Abbreviations

1602 Program	Payments to States for Low-Income Housing Projects in Lieu of Low-Income Housing Credits for 2009
ADFA	Arkansas Development Finance Authority
IRC	Internal Revenue Code
OFAS	Office of the Fiscal Assistant Secretary
OIG	Office of Inspector General
QAP	Qualified Allocation Plan
Recovery Act	American Recovery and Reinvestment Act of 2009
Rock Creek	Rock Creek of Conway
Treasury	Department of the Treasury

*The Department of the Treasury  
Office of Inspector General*

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May 11, 2017

David A. Lebryk  
Fiscal Assistant Secretary

As part of our ongoing oversight of the Department of the Treasury's (Treasury) Payments to States for Low-Income Housing Projects in Lieu of Low-Income Housing Credits for 2009 (1602 Program),<sup>1</sup> authorized by Section 1602 of the American Recovery and Reinvestment Act of 2009 (Recovery Act),<sup>2</sup> we conducted audits of awards made to selected State housing credit agencies. The objective of these audits was to assess whether the agencies awarded funds under Treasury's 1602 Program complied with the program's overall requirements and the "Grantee Terms and Conditions" (together referred to as 1602 Program requirements). In this report, we provided our assessment of Arkansas Development Finance Authority's (ADFA) compliance with the 1602 Program requirements. Appendix 1 provides a more detailed description of our audit objective, scope, and methodology.

## Results in Brief

We found that ADFA did not fully comply with Treasury's 1602 Program requirements. Although ADFA substantially met the eligibility and compliance requirements set forth in both Section 42 of the Internal Revenue Code (IRC)<sup>3</sup> and Section 1602 of the Recovery Act for receiving its \$92,869,859 1602 Program award, it did not meet all subaward requirements related to one low-income housing project. Specifically, ADFA did not complete the

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<sup>1</sup> Treasury's Office of the Fiscal Assistant Secretary (OFAS) administers this program.

<sup>2</sup> Pub. L. No. 111-5, 123 Stat. 362-364 (Feb. 17, 2009). Under section 1602 of the Recovery Act, 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." The "Low-income Housing Grant Election Amount" is further discussed in footnote 6 of this report.

<sup>3</sup> 26 U.S.C. §42 "Low-Income Housing Credit"

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final financial feasibility underwriting for one project, Rock Creek of Conway (Rock Creek), at the time it was placed in service. Furthermore, although ADFA established compliance monitoring oversight, it did not perform a timely on-site inspection for Rock Creek within the second full calendar-year after being placed in service. Accordingly, we recommend that Treasury's Fiscal Assistant Secretary ensure that ADFA completes the final financial feasibility underwriting for Rock Creek and perform timely future on-site inspections as required by the 1602 Program requirements.

We found that ADFA did perform asset management for monitoring the long-term viability of 1602 Program funded projects. At the time of our review, there were no matters impacting the long-term viability of 1602 Program funded projects. ADFA also complied with 1602 Program reporting requirements in submitting quarterly project performance reports and annual certification reports to Treasury. That said, we also want to emphasize the need for continued diligence on the part of Treasury and ADFA to ensure compliance with the 1602 Program requirements over the remaining 15-year compliance period.

As part of our reporting process over the 1602 Program awardees, we provided ADFA an opportunity to comment on a draft of this report. In a written response, ADFA management agreed with our conclusions and stated that it will make its best effort to receive all deficient documentation to complete the financial feasibility underwriting for Rock Creek. Additionally, management noted that it is considering suspending the Rock Creek ownership entity, partners, and affiliates from future ADFA-funded projects due to the failure of the owners of Rock Creek to provide ADFA with the required documentation to complete this important process. ADFA also stated that it will ensure that timely on-site inspections of all 1602 Program funded projects are performed going forward. ADFA's response is provided in appendix 3.

After incorporating ADFA's response into a draft of this report, we provided the draft to Treasury management for comment. Treasury management concurred with our audit results; its response is provided as appendix 4.

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## Background

The low-income housing tax credit program codified in Section 42 of the IRC was authorized by the Tax Reform Act of 1986.<sup>4</sup> The tax credit is an incentive for individuals and corporations to invest in the construction or rehabilitation of low income housing. For projects meeting the program requirements, the tax credit provides the investor a dollar-for-dollar reduction in personal or corporate federal income tax liability for a 10-year period.

The Recovery Act intended to provide relief to the conditions caused by the economic crisis, at the time. Part of that relief, provided in Section 1602 of the Recovery Act, consisted of grants awarded to States<sup>5</sup> for low-income housing projects in lieu of low-income housing credit allocations. The purpose of Section 1602 was to fill the gap left by the reduced demand for low-income housing tax credits that would enable low-income housing projects to continue or begin in cases where developers could not obtain private investment, as well as, increase the availability of affordable housing. The Secretary of the Treasury is responsible for carrying out the requirements of Section 1602.

### Eligibility Under the 1602 Program

Under the Recovery Act, State housing credit agencies were allowed to exchange a portion of their low-income housing credits for Section 1602 funds. The maximum funds available to a State could not exceed its "Low-income Housing Grant Election Amount"<sup>6</sup> as determined under Section 1602. In turn, State

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<sup>4</sup> Pub. L. No. 99-514, Stat. 2189 (Oct. 22, 1986)

<sup>5</sup> According to Treasury's Grantee Terms and Conditions (Appendix 2) "... 2. Grantee Eligibility a. The grantee is the housing credit agency for one of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, or the Northern Mariana Islands which files Form 8610, Annual Low-Income Housing Credit Agencies Report with the Internal Revenue Service."

<sup>6</sup> "Low-income Housing Grant Election Amount" may not exceed 85 percent of the sum of (1) 10 times (a) the unused State housing credit ceiling (if any) for calendar year 2008 and (b) the amount of State housing credit ceiling returned in 2009, plus (2) 10 times 40 percent of (a) the greater of \$2.30 multiplied by the State population or \$2,665,000 and (b) unused housing credit carryover allocated to the State in the 2009 National Pool.

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housing credit agencies would disburse funds to eligible subawardees to help finance either the construction or the acquisition and rehabilitation of qualified low-income housing projects. Section 1602 also provided that subawarded projects be subject to the same eligibility and compliance requirements as the low-income housing credits found in Section 42 of the IRC. In addition to following the IRC Section 42 eligibility and compliance requirements, Section 1602 required that State housing credit agencies:

- (1) establish a process to ensure that applicants who were allocated low-income housing credits demonstrate “good faith efforts” to obtain investment commitments for credits elsewhere;
- (2) perform asset management functions to ensure subawardee compliance with Section 42 of the IRC and the long-term viability of projects;<sup>7</sup> and
- (3) recapture funds in the event of subawardees’ non-compliance payable to Treasury.

As part of its overall administration of Treasury’s 1602 Program, the Office of the Fiscal Assistant Secretary (OFAS) developed the “Grantee Terms and Conditions” to identify the eligibility and compliance requirements set forth in both Section 42 of the IRC and Section 1602 of the Recovery Act. State housing credit agencies and subawards funded by them are subject to these terms and conditions for the 15-year compliance period. Among the requirements, State housing credit agencies must provide financial status and project performance reports quarterly and other applicable reports to ensure their compliance with the terms and conditions of their 1602 Program awards. In its post subaward reporting guidance, OFAS required that State housing credit agencies certify annually that (1) the amount of Section 1602 funds subawarded to a project was equal to or less than 85 percent of the project’s eligible basis; and (2) funded projects remain qualified throughout the 15-year compliance period.

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<sup>7</sup> Low-income housing projects must be financially feasible and remain viable throughout the 15-year compliance period required by Section 42 of the IRC.



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Appendix 2 provides the detail contained in OFAS' "Grantee Terms and Conditions."

Since awards under the 1602 Program are not conventional grants but an exchange of low-income housing credits falling under the requirements of Section 42 of the IRC, they are not within the scope of the Single Audit Act<sup>8</sup> nor a part of the universe explicitly set by the Office of Management and Budget. Therefore, unless the State auditor specifically audits these awards, the awards to the respective States and their subawardees will not receive any audit coverage.

#### Arkansas Development Finance Authority

ADFA provides and supports affordable financing for the housing, economic, agricultural and governmental needs of Arkansas. ADFA is responsible for administering Arkansas's low-income housing tax credit program and allocates credits based on the selection criteria set forth in its Qualified Allocation Plan (QAP).



Stone Ridge at Conway  
(OIG photograph December 2013)

In 2009 and 2010, ADFA exchanged a portion of its low-income housing credits for \$92,869,859 under the 1602 Program, which was subawarded to fund 33 projects that were stalled due to the downturn in the low-income housing tax credit equity market. The funded projects yielded 1,336 housing units which were set aside as low-income for qualifying residents throughout Arkansas. Projects were certified for occupancy and placed in-service between March 2009 and December 2011.

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<sup>8</sup> Pub. L. 98-502, amended by Pub. L. 104-145, *Single Audit Act Amendment of 1996*

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## Finding

### **Arkansas Development Finance Authority Did Not Fully Comply with 1602 Program Requirements**

We found that ADFA did not fully comply with Treasury's 1602 Program requirements. Although ADFA substantially met the eligibility and compliance requirements set forth in both Section 42 of the IRC and Section 1602 of the Recovery Act for receiving its award, it did not meet all subaward requirements related to one low-income housing project, Rock Creek. Specifically, ADFA did not complete the final financial feasibility underwriting at the time the project was placed in service. Furthermore, ADFA did not perform a timely on-site inspection of the project within the second full calendar-year after being placed in service.

#### Awarding

ADFA requested and was awarded \$92,869,859 of 1602 Program funds, the amount equal to ADFA's "Low-Income Housing Grant Election Amount" requested in its application packages. In turn, ADFA subawarded and disbursed all 1602 Program funds to 33 eligible low-income housing projects in exchange for tax credits.

Also required by the 1602 Program requirements, ADFA subawarded funds to low-income housing projects which (1) qualified under Section 42 of the IRC; (2) demonstrated "good faith efforts" to obtain investments elsewhere, and (3) did not exceed the amounts necessary to make the projects financially feasible and viable throughout the 15-year compliance period.

#### Subawarding

ADFA identified 33 qualified low-income housing projects that were already allocated tax credits in 2009. These projects were stalled due to the downturn in the low-income housing tax credit equity market, and were subawarded 1602 Program funds in exchange for their low-income housing credit allocations. In identifying the 33 projects, ADFA applied the selection criteria set forth in its QAP as required by Section 42 of the IRC. The QAPs established the criteria used by the housing credit agency to determine the State's

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housing priorities that are appropriate to the local conditions, and along with other requirements, gives preference to allocating credit dollar amounts among selected projects.

However, we found that ADFA did not complete the final financial feasibility underwriting for Rock Creek when the project was placed in service on November 23, 2010. According to Section 42 of the IRC, "housing credit agencies are responsible for determining the feasibility or viability of projects at the following times: (1) the application for the housing credit dollar amount; (2) the allocation of the housing credit dollar amount; and (3) the date the building is placed in service."

Final underwriting is part of the final project certification and includes reviews of projected rental income, operational expenses, and final project cost certification, and an evaluation of the project's reserve amounts. ADFA started the review process but halted it because the developer did not pay the compliance monitoring fee for Rock Creek's closing package. By not completing the final underwriting, ADFA was unable to determine that the subaward amount did not exceed the amount necessary for Rock Creek's financial feasibility. Furthermore, ADFA was unable to determine the project's future viability since financial documents were not reviewed.

### Compliance and Asset Management

As required by Section 1602 of the Recovery Act, ADFA established compliance and asset management oversight functions to ensure that low-income housing projects comply with Section 42 of the IRC and remain viable during the 15-year compliance period.

Section 1602 of the Recovery Act also required that State housing credit agencies impose conditions and/or restrictions, including recapture requirements, on subawardees to ensure low-income housing projects remain qualified during the 15-year compliance period. OFAS further stipulated in its 1602 Program requirements that recapture requirements be included in State credit housing agencies' written subaward agreements. Furthermore, State housing credit agencies were required by OFAS to have procedures

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in place for monitoring 1602 Program subawardees to identify and correct issues of noncompliance during the compliance period. In the event of noncompliance, State housing credit agencies must impose consequences such as possible State program debarment and the recapture of 1602 Program funds, payable to Treasury.<sup>9</sup>

In the case of ADFA, the requisite recapture provisions were included in its subaward agreements in the event of subawardee noncompliance. ADFA structured its 1602 Program subaward as tax credit exchange funds, subject to recapture in the event a low-income building does not remain qualified during the 15-year compliance period. Projects had completed the first year of the 15-year compliance period. ADFA performed compliance monitoring in the same manner it does for the State's low-income housing tax credit program. That is, in all but one case, ADFA performed timely on-site inspections of project buildings, common areas, grounds, and units for suitability of occupancy and any health and safety hazards. ADFA also reviewed project and tenant files for the number of units set aside as low-income housing, the number of occupants, the annual incomes of low-income residents, and rents charged, among other project compliance requirements. However, we found that ADFA did not perform a compliance monitoring site visit for Rock Creek by the December 31, 2012 due date. According to Section 42 of the IRC, "The Agency must conduct on-site inspections of all buildings in the project by the end of the second calendar year following the year the last building in the project is placed in service...and at least once every three years after that" ADFA officials stated that a timely compliance visit was not performed because the developer did not pay the compliance monitoring fee. The on-site visit was subsequently performed in May 2014.

Asset management was performed by a third-party contractor who reviewed budget, rent, occupancy and quarterly financial reports to determine fiscal health and long-term viability of low-income housing projects. The contractor found no matters impacting the long-term viability of low-income housing projects at the time of our review.

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<sup>9</sup> Treasury, "Section 1602 - Payments to States for Low-Income Housing Projects in Lieu of Low-Income Housing Credits for 2009 Recapture Guidance"

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ADFA's continued compliance monitoring and asset management reviews during the remaining years within the 15-year compliance period should ensure 1602 Program projects maintain qualified low-income buildings.

#### Quarterly and Annual Reporting

OFAS requires that State housing credit agencies submit financial status and project performance reports for each low-income housing project on a quarterly basis during the development stage as well as other reports deemed necessary to ensure compliance with provisions of Section 1602. In its post sub-award reporting guidance, OFAS also requires that State housing credit agencies provide two additional certification reports. The first report is to certify each project's placed in-service date and whether 1602 Program funds used were equal to or less than 85 percent of the project's eligible basis. The second report is required each year thereafter for the project's annual compliance throughout the 15-year compliance period once the project is placed in service.

We found that ADFA complied with OFAS' reporting requirements. That is, ADFA submitted quarterly project performance reports during each project's developmental stage and annual certification reports after the project was placed in service.

## **Recommendations**

We recommend that the Fiscal Assistant Secretary do the following:

1. Ensure ADFA completes the final financial feasibility underwriting for Rock Creek.

#### Management Response

Treasury generally concurs with this recommendation. ADFA stated that it will make its best effort to obtain the necessary documentation from the project's owner to complete the

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financial feasibility underwriting. Treasury will monitor ADFA's efforts in this regard.

OIG Comment

Management's commitment to monitor the completion of the financial feasibility underwriting meets the intent of our recommendation.

2. Ensure that going forward ADFA performs timely on-site inspections of all 1602 Program funded projects.

Management Response

Treasury will also continue to require ADFA to submit annual compliance reports for all Section 1602 funded projects and will monitor ADFA's compliance with 1602 Program requirements including those related to on-site inspections.

OIG Comment

Management's commitment to monitor ADFA's compliance with 1602 Program requirements meets the intent of our recommendation.

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We appreciate the courtesies and cooperation extended by your staff during this audit. Major contributors to this report are listed in appendix 5. A distribution list for this report is provided as appendix 6. If you have any questions, you may contact me at (202) 927-1011 or Nick Slonka, Audit Manager, at (202) 927-8772.

/s/

Theresa Cameron  
Audit Director

In November 2013, we initiated our audit of the Arkansas Development Finance Authority (ADFA) as part of our audits of State housing credit agencies funded under Treasury's Payments to States for Low-Income Housing Projects in Lieu of Low-Income Housing Credit Allocations for 2009 (1602 Program). The objective of these audits is to assess whether State housing credit agencies awarded funds under Treasury's 1602 Program complied with the program's overall requirements and the "Grantee Terms and Conditions" (together referred to as 1602 Program requirements). To meet our objective we assessed whether ADFA properly received and subawarded 1602 Program funds, implemented compliance and asset management processes, and met Treasury's reporting requirements.

We statistically selected ADFA from the universe of 55 states and territories receiving 1602 Program funds. We caution, however, that our sample was randomly selected to avoid bias and not for the purpose of projecting results to the universe or concluding on the effectiveness of the 1602 Program. In the case of ADFA, we reviewed 11 of the 33 projects representing \$18,017,667 of the \$92,869,859 awarded to Arkansas. We also selected a non-statistical sample comprising at a minimum 50 percent of the disbursements made for each project.

In performing our work, we reviewed applicable laws and regulations governing the 1602 Program to include the Recovery Act and Section 42 of the Internal Revenue Code, as well as Treasury's policies and procedures. We also visited ADFA in Little Rock, Arkansas where we interviewed key personnel of ADFA; reviewed documents used to support Arkansas's "Low-Income Housing Grant Election Amount," selection of subawards, low-income housing projects' existence, and cash disbursements in our sample; and assessed conformance with compliance monitoring, asset management, and 1602 Program reporting requirements. Specifically, we reviewed and/or tested the following documents:

- ADFA's signed "Grantee Terms and Conditions" with Treasury providing all 1602 Program compliance requirements;
- ADFA's "Annual Low-Income Credit Agencies Report" (IRS Form 8610) supporting Arkansas's low-income housing credit allocation for calendar year 2009;

- ADFA “Qualified Allocation Plan” providing selection criteria for identifying eligible projects to be subawarded;
- project developers’ market studies supporting low-income housing development needs in specified Arkansas communities;
- project developers’ documents demonstrating that project developers made “good faith efforts” to obtain financing prior to receiving a subaward;
- ADFA’s financial feasibility studies demonstrating the financial solvency and viability of low-income housing projects;
- ADFA’s signed “Section 1602 Exchange Program Agreements” with low-income housing project developers specifying subaward amounts and 1602 Program terms and conditions;
- subawardee draw requests supporting cash disbursements;
- projects’ certificates of occupancy supporting existence of low-income housing units;
- projects’ certified public accountants cost certification reports verifying costs included as part of each project’s eligible cost basis;
- ADFA’s compliance monitoring and asset management reports; and
- ADFA’s quarterly financial and project performance reports and annual certification reports provided to Treasury ensuring that the Section 1602 subaward was less than 85 percent or equal to the project’s eligible basis, and that the projects remain qualified projects throughout the 15 year compliance period.

We also conducted site visits to three projects located in Conway and Stuttgart, Arkansas. We performed our fieldwork between December 2013 and October 2016.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.



**Grants to States for Low-Income Housing Projects in Lieu of Low-Income Housing Credits for 2009**

**GRANTEE TERMS AND CONDITIONS**

**1. Authority**

a. Section 1602 of the American Recovery and Reinvestment Tax Act of 2009 (Act) authorizes the United States Department of the Treasury (Treasury) to issue grants to State housing credit agencies in lieu of low-income housing credits.

b. The grantee has authority to receive Section 1602 grants.

**2. Grantee Eligibility**

a. The grantee is the housing credit agency for one of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, or the Northern Mariana Islands which files Form 8610, Annual Low-Income Housing Credit Agencies Report with the Internal Revenue Service.

b. The grantee shall be the sole recipient of the Section 1602 funds in the State and must coordinate with other housing credit agencies within the State (including any constitutional home rule cities) to determine how much of their 2009 credit ceiling the other agencies would elect to take in the form of a grant election amount and will provide to those agencies their proportionate share.

c. The grantee shall enter into written agreement with any other participating housing credit agencies within the State, binding the participating agency to comply with the terms and conditions applicable to the grantee or designated state agency in the sections 3 through 10 of these terms and conditions.

d. The grantee is the party responsible to Treasury for all grant matters.

**3. Eligible Projects**

a. The grantee shall only select projects for subawards which are qualified low-income buildings under Section 42 of the Internal Revenue Code (the Code).

b. The grantee must ensure that the subaward is consistent with the requirement of section 42(m)(2) of the Code that the subaward made for a project [building(s)] does not exceed the amount necessary to ensure the financial feasibility of the project and its viability as a project throughout the credit period.

**4. Use of Grant Funds**

a. The grantee is receiving an initial grant election amount. The grantee may apply for additional grant funds through 2010. If the Treasury Department approves the request, the Treasury Department will amend the award to increase the grant amount.

b. The grantee shall use all grant amounts to make subawards, or for transfer to other agencies to make subawards. The subawards shall be in the form of cash assistance and are not required to be repaid unless there is a recapture event with respect to the qualified low-income building. The grantee shall not use grant election amounts for any other purpose, including administrative costs. The grantee may collect reasonable fees from a subawardee to cover expenses associated with performance of its duties under Section 1602(c)(3) of the Act, Compliance and Asset Management. Reasonable fees are amounts customarily charged for the same or similar services and in no event may exceed costs.

c. The grantee may disburse grant funds to subawardees in 2009 and 2010. The grantee may disburse grant funds to subawardees in 2011 provided the subaward has been made to the subawardee on or before December 31, 2010 and the subawardee has, by the close of 2010, paid or incurred at least 30 percent of the subawardee's total adjusted basis in land and depreciable property that is reasonably expected to be part of the low-income housing project for which the disbursements are made.

d. The subawards shall finance the construction or acquisition and rehabilitation of qualified low-income buildings in accordance with Section 1602(c) of the Act.

e. The grantee shall make subawards in the same manner and shall be subject to the same limitations as an allocation of housing credit dollar amount allocated under Section 42(m) of the Code, except for the additional determinations required in subsection g of this section.

f. Prior to making any subaward, the grantee shall establish a written process for making a determination that applicants for subawards have demonstrated a good faith effort to obtain investment commitments for tax credits in lieu of a subaward.

g. Prior to making any subaward, the grantee shall make a determination that the applicant for the subaward has demonstrated a good faith effort to obtain investment commitments for tax credits in lieu of the subaward.

#### **5. Written Agreements and Disbursements to Subawardees**

a. The grantee shall execute a legally binding written agreement with the entity receiving a subaward. The grantee and the subawardee must execute the written agreement before any Section 1602 funds are disbursed to the subawardee.

b. The written agreement must set forth (explicitly, or incorporated by reference) all Section 1602 program requirements, including the requirements of Section 42 of the Code, applicable to the subaward.

c. The written agreement shall impose conditions or restrictions, including a requirement providing for recapture, so as to assure that the qualified low-income building remains a qualified low-income building during the 15-year compliance period. The written agreement may include the extended low-income housing commitment under Section 42(h)(6)(B) of the Code.

d. The written agreement shall require the subawardee to provide sufficient information to the grantee to report on the use of grant funds as required by section 8 of these terms and conditions.

## **6. Asset Management**

a. The grantee shall perform asset management functions so as to ensure compliance with Section 42 of the Code and the regulations thereunder (including Title 26 Code of Federal Regulations section 1.42.9), and the long-term viability of the buildings funded by a subaward under the Act in accordance with Section 1602(c)(3) of the Act.

## **7. Compliance with the 2009 State Housing Credit Ceiling**

a. The grantee shall track (1) the credit equivalent of all grant election amounts to ensure that the 2009 State Housing Credit Ceiling is appropriately reduced as required by section 42(i)(9)(A) of the Code and (2) total grant election amounts to ensure that these amounts do not exceed the amount authorized by section 1602(b).

b. The grantee shall track the total of credits allocated under Section 42(h)(1) of the Code.

c. The grantee shall ensure that the credit equivalent of all elected grant amounts through 2010, plus the credits allocated under Section 42(h)(1) of the Code during 2009, do not exceed the State housing credit ceiling for 2009.

## **8. Reporting**

a. The grantee shall provide periodic reports as required by Treasury. A financial status report and a project performance report is required on a quarterly basis, due 10 working days after the end of the quarter. Quarters end on March 31, June 30, September 30, and December 31.

b. The performance report has the following elements on each project receiving a subaward during the quarter:

- Name of recipient entity
- Name of project
- Brief description of project
- Location of project: city/county, State, zip code
- Number of construction jobs created
- Number of construction jobs retained
- Number of non-construction jobs created
- Number of non-construction jobs retained
- Number of total housing units newly constructed
- Number of total housing units rehabilitated
- Number of low-income housing units newly constructed
- Number of low-income housing units rehabilitated

c. The grantee shall submit any other reports that Treasury deems necessary to comply with Section 1602 of the Act and American Recovery and Reinvestment Act guidance.

## **9. Recapture**

- a. The grantee shall include in any subaward a requirement providing for recapture to assure that the building remains a qualified low-income building during the 15-year compliance period.
- b. The grantee shall notify subawardees that 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.

## **10. Financial Management**

- a. The grantee must expend and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the designated State housing credit agency must be sufficient to permit preparation of required reports and permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes. Effective control and accountability must be maintained for all grant funds.
- b. The grantee shall open a new account (Grant Account) with a financial institution for the purpose of receiving grant election amounts, for making distributions of grant election amounts to other agencies within the State, and for making subawards.
- c. The grantee must maintain program, financial, and accounting records sufficient to demonstrate that grant funds were used in accordance with the Section 1602 program and these terms and conditions. The Treasury as the awarding office, the cognizant Treasury inspector general, and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to facilities and to any pertinent books, documents, papers, or other records (electronic and otherwise) of grantees, which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.
- d. The grantee shall minimize the time between the receipt of grant funds and the disbursement of those funds to subawardees. Federal funds cannot be drawn by the grantee from the U.S. Treasury in advance of need. The grantee shall not place in escrow or advance lump sums to project owners. Once funds are drawn from the grantee's U.S. Treasury account, they must be expended as a subaward by the grantee within three days, or if grant funds are transferred by the grantee to another agency, as a subaward by that agency within three days following the date of transfer by the grantee.
- e. The grantee shall promptly return to its Grant Account any subawards returned to the designated State housing credit agency from subawardees and shall expend returned amounts as subawards before additional grant amounts are drawn from the Treasury.

## **11. Disallowance, Suspension, and Termination**

- a. If the grantee materially fails to comply with any term of the award, whether stated in a Federal statute or regulation, the terms and conditions herein, in a State plan or application, a

notice of award, or elsewhere, Treasury may take one or more of the following actions, as appropriate in the circumstances:

- Temporarily halt cash payments pending correction of the deficiency by the grantee
- Disallow all or part of the cost of the activity or action not in compliance
- Wholly or partly suspend or terminate the current award
- Withhold further awards for the program
- Take other remedies that may be legally available

In taking an enforcement action, Treasury will provide the grantee the opportunity for a hearing, appeal, or other administrative proceeding to which the grantee is entitled under any statute or regulation applicable to the action involved.

b. The grantee must immediately report any indication of fraud, waste, abuse, or potentially criminal activity pertaining to grant funds to Treasury and the cognizant Treasury inspector general.

## **12. Return of Unused Grant Funds**

a. The grantee shall return to the Treasury by January 1, 2011 any grant election amounts not used to make subawards by December 31, 2010. This requirement does not prevent the State housing credit agency from continuing to disburse funds to subawardees after December 31, 2010 provided:

- (1) A subaward has been made to the subawardee on or before December 31, 2010;
- (2) The subawardee has, by the close of 2010, paid or incurred at least 30 percent of the subawardee's total adjusted basis in land and depreciable property that is reasonably expected to be part of the low-income housing project; and
- (3) Any funds not disbursed to the subawardee by December 31, 2011 must be returned to the Treasury by January 1, 2012.

## **Signature**

Under penalties of perjury, I declare that I have examined the terms and conditions in this application and that the designated State housing credit agency agrees to and will ensure that these terms and conditions will be followed. I declare that I am an authorized official of the designated State housing credit agency and am authorized to bind the State housing credit agency to these Terms and Conditions.

Name		Title	
Phone		Email	
Signature		Date signed	



AARON S. BURKES  
PRESIDENT

WRITER'S DIRECT DIAL: (501) 682-3339  
WRITER'S DIRECT FAX: (501) 682-5939  
Aaron.Burkes@adfa.arkansas.gov

April 12, 2017

Theresa Cameron  
Director, Financial Assistance Audits  
Treasury – Office of Inspector General  
875 15th Street, NW  
Washington, D.C. 20005

Re: OIG Draft Audit Report – Section 1602 Program  
Arkansas Development Finance Authority

Dear Ms. Cameron:

Thank you for providing a draft copy of the OIG Audit Report concerning the award of Section 1602 to the Arkansas Development Finance Authority ("ADFA").

The Audit Report found that ADFA generally met the eligibility and compliance requirements set forth in both Section 42 of the I.R.C. and Section 1602 of the American Recovery and Reinvestment Act of 2009; however, ADFA did not meet all requirements. Specifically, the OIG found that ADFA did not complete the final financial feasibility underwriting for one low-income housing project at the time it was placed in service and did not perform a timely on-site inspection.

The final financial feasibility underwriting for Rock Creek of Conway ("Rock Creek") has not been completed. ADFA will make its best effort to receive all deficient documentation to complete financial feasibility underwriting for Rock Creek. Additionally, ADFA is considering suspending the ownership entity, partners, and affiliates from future ADFA-funded projects due to the failure of the owners of Rock Creek to provide ADFA with the required documentation to complete this important process.

ADFA did not perform a timely on-site inspection of Rock Creek. While an inspection was eventually performed; it was not performed in a timely manner. ADFA

P.O. Box 8023 ♦ Little Rock, Arkansas 72201 ♦ 501-682-5900 ♦ [www.arkansas.gov/adfa](http://www.arkansas.gov/adfa)



Appendix 3  
Arkansas Development Finance Authority Response

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April 13, 2017  
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ensures that it will perform timely on-site inspection of all 1602 Program funded projects going forward.

We appreciate the professionalism of the OIG team that conducted the audit. If you need any further assistance, please do not hesitate to contact us.

Regards,



Aaron S. Burkes  
President



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

MAY 9 2017

Theresa Cameron  
Department of the Treasury  
Office of Inspector General  
875 15th Street, NW  
Washington, DC 20005

Dear Ms Cameron:

Thank you for the opportunity to review and comment on the Office of the Inspector General's draft report titled "Audit of Arkansas Development Finance Authority's (ADFA) Payment Under 1602 Program." We concur with the report's finding that ADFA generally complied with the terms and conditions of the Section 1602 program but did not fully comply with respect to one project. Specifically, with respect to a project known as Rock Creek, ADFA failed to complete the final financial feasibility underwriting at the time the project was placed in service in November, 2010 as required by the program and did not perform a timely on-site inspection.

The report recommends that the Fiscal Assistant Secretary (OFAS) (1) ensure ADFA completes the final financial feasibility underwriting for Rock Creek and (2) ensure that going forward ADFA performs timely on-site inspections of all 1602 Program funded projects. OFAS generally concurs with these recommendations. ADFA has stated that it will make its best effort to obtain the necessary documentation from the project's owner to complete the financial feasibility underwriting. OFAS will monitor ADFA's efforts in this regard. OFAS will also continue to require ADFA to submit annual compliance reports for all Section 1602 funded projects and will monitor ADFA's compliance with the program's requirements including the requirements related to on-site inspections.

We appreciate your work on the report and value your feedback.

Sincerely,

Kristine S. Conrath  
Deputy Assistant Secretary  
Fiscal Operations and Policy



Appendix 5  
Major Contributors To This Report

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Nicholas Slonka, Audit Manager  
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Kevin Guishard, Referencer

Department of the Treasury

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Assistant Secretary for Management  
Fiscal Assistant Secretary  
Deputy Assistant Secretary, Fiscal Operations and Policy  
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Office of Management and Budget

OIG Budget Examiner

Arkansas Development Finance Authority

Executive Director

United States Senate

Committee on Banking, Housing, and Urban Affairs  
Committee on Finance  
Committee on Homeland Security and Governmental Affairs

United States House of Representatives

Committee on Oversight and Government Reform  
Financial Services Committee

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