

Summary of LIHTC Provisions in the Housing and Economic Recovery Act of 2008¹, H.R. 3221

On July 25, 2008, Congress gave final approval to the Housing and Economic Recovery Act of 2008, H.R. 3221, legislation which includes a number of measures to help restore the housing sector in this country. The tax title of the legislation, the Housing Assistance Tax Act, includes nearly two dozen provisions modifying the Low-Income Housing Tax Credit which are summarized below.

- 1) The state allocation volume cap is increased for 2008 and 2009 by \$0.20 per capita except for states subject to the small state minimum in which case the cap will be raised by 10%.
- 2) For buildings placed in service after the date of enactment and before December 31, 2013, the 70% present value credit will not be less than 9% per year.
- 3) The 70% present value credit will be available for property receiving below market federal loans, other than tax-exempt financing. This is effective for buildings placed in service after date of enactment.
- 4) For allocated credits, States will be able to provide 130% of the normal credit amount to buildings which are designated by the state housing credit agency as requiring an increase in the credit amount to be financially feasible. This is effective for buildings placed in service after date of enactment so properties that have already received an allocation may go back to the allocating agency for an increased allocation of credits. Buildings in high cost areas already qualify for the additional credits and will not qualify for an additional increase if they have already received the 130% credit maximum.
- 5) The rehabilitation requirement is increased to 20% of acquisition basis with a minimum of \$6,000 per unit, indexed for inflation. Because this is a restriction relative to current law, it is effective for allocations after date of enactment.
- 6) The community service space rule is liberalized to permit such space to equal up to 25% of the basis on the first \$15 million of a project, with 10% thereafter. This is effective for buildings placed in service after date of enactment.
- 7) The treatment of federal grants is clarified to make clear that the basis reduction rule applies to Federally-funded grants received prior to the compliance period. The explanatory language accompanying the bill clarifies that no basis reduction is required for Federally-funded assistance programs that involve ongoing payments used to support operation of the property; and for loans (regardless of interest rate) made from the proceeds of Federally-funded grants. This provision is effective for buildings placed in service after date of enactment, but additional report language specifies that no inference is created with respect to the treatment of Federally-funded assistance prior to the effective date.

¹ The tax title to the bill is entitled the Housing Assistance Tax Act of 2008

8) The related party rule which requires that there be no more than a 10% relationship between a taxpayer claiming Housing Credits and the seller of the property is modified to increase the related party test to 50%. This applies to properties placed in service after date of enactment.

9) The rule prohibiting the use of housing credits on properties transferred within the previous ten years is modified to create an exception for Federally- or state-assisted properties. This exception applies to properties substantially assisted, financed, or operated under section 8, section 221(d)(3), 221 (d)(4) or section 236 of the National Housing Act; section 515 of the Housing Act of 1949, or “any other housing program administered by the Department of Housing and Urban Development or by the Rural Housing Service”. State assisted properties are those substantially assisted, financed, or operated under any State law similar in purpose to any of the Federal laws listed above. This provision would apply to properties placed in service after date of enactment.

10) The prohibition on using housing credits with Section 8 mod rehab housing is repealed for properties placed in service after date of enactment.

11) The requirement that 10% of the expected basis of the building be expended within the calendar year of the allocation, or no more than six months of the allocation is modified to give developers up to one year after the allocation.

12) The recapture bond requirement is repealed and replaced with a change in the statute of limitations for recapture of tax so that the three year period does not begin to run until the IRS is notified by the taxpayer of a recapture event. The recapture bond repeal applies both with respect to future dispositions and to past dispositions if: a) it is reasonably expected the building will continue to be operated as a qualified low-income building, and b) the taxpayer elects to be subject to the new longer statute of limitations.

13) The list of selection criteria that must be taken into account is lengthened to include the energy efficiency of the project, and the historic nature of the project. This change is effective for allocations made after December 31, 2008.

14) The exception to the prohibition on renting Housing Credit property to students is expanded to include students who formerly received foster care. This is effective for determinations made after the date of enactment.

15) For the allocated credit, rural income will be measured by the higher of local median income as under current law, or national non-metro median income. This applies to income determinations made after date of enactment.

16) The general public use rule is codified and clarified to provide that it permits buildings to restrict occupancy or have preferences that favor tenants with special needs, or who are members of a specified group under a Federal or State housing program, or

who are involved in artistic or literary activities. This clarification is effective for buildings placed in service before, on, or after the enactment of the bill.

17) The General Accounting Office is directed to submit a report to Congress by December 31, 2012 that analyzes the implementation of the Housing Credit modifications in the bill, including the distribution of credit allocations as a result of the bill.

18) The method for measuring tenant income is modified to exclude basic housing allowances paid to military personnel with respect to Housing Credit buildings located in certain counties (and adjacent counties) where there is a military installation that has experienced personnel growth of more than 20% between December 31, 2005 and June 1, 2008.

19) States will be allowed to reissue tax exempt debt that is redeemed within four years of the original issue if it is redeemed as a result of the replacement of capital in a LIHTC project. This applies to repayments of loans received after the date of enactment of the bill.

20) The Housing Credit rules with respect to a) next available units, b) definition of student, and c) SROs are extended to the multifamily bond program, effective for bonds issued after the date of enactment.

21) For calendar years after 2008, the measurement of median income with respect to a property will not be permitted to decline from the measurement for the previous calendar year. In addition, for calendar years after 2008, the area median income for a Housing Credit property will rise with area median income, notwithstanding the freeze in median income measurements arising from the change in HUD methodologies.

22) The requirement for annual certification of tenant incomes is repealed for 100% low-income properties. This provision applies to years ending after the date of enactment.

23) Housing tax credits, rehabilitation tax credits, and housing bonds are exempted from the alternative minimum tax. This applies to housing bonds issued after the date of enactment, to housing tax credits on building placed in service after December 31, 2007, and to rehabilitation credits for rehabilitation expenditures taken into account for periods after December 31, 2007.