

Novogradac & Company LLP Summary of Changes Affecting Low-Income Housing Tax Credits and Rehabilitation Tax Credits Resulting from H.R. 3221

Increase in Allocation Authority

- H.R. 3221 includes a provision to increase the allocation authority provided annually to each state from \$2 to \$2.20 per person or 10% for certain small population states for years 2008 and 2009. After 2009, allocations will revert to prior amounts as though this provision had not been enacted.

9% Unadjusted Applicable Percentage

- Newly constructed non-Federally subsidized buildings placed in service after enactment of the bill and before December 31, 2013 will have an unadjusted applicable percentage of 9% instead of an adjusted applicable percentage as under the current law.

Modification of Federally Subsidized Building

- “Any below market Federal loan” was removed as one of the ways a building could become classified as federally subsidized. This will allow more buildings to become eligible for the 70% credit.

Expansion of enhanced credit in high-cost area

- This provision adds a high-cost area eligible for an enhanced credit (130%). This addition includes any building designated by the State housing credit agency as requiring the enhanced credit for the building to be financially feasible. This is not subject to current limitations, which limits high cost areas to 20% of the population of each metropolitan or nonmetropolitan statistical area. State agencies are expected to determine which areas should be selected as difficult to develop areas and publicly express its reasons for area designation.

Increase in Expenditure Requirements

- Currently minimum expenditure requirements are the greater of: a) at least 10 percent of the adjusted basis of the building being rehabilitated or b) at least \$3,000 per low-income unit in the building being rehabilitated. The provision increases these requirements to the greater of a) not less than 20 percent of the adjusted basis of the building or b) at least \$6,000 per low-income unit. In addition, the \$6,000 in part “b” is subject to inflation.

Community Service Facility Eligibility for the Credit

- The provision allows an increase in community service facility space for small projects. Currently community service facility space may not exceed 10 percent of the eligible basis of the project. After the provision, community service facility space may not exceed the sum of: 1) 25% of so much of the eligible basis as does not exceed \$15 million and 2) 10 percent of the eligible basis over \$15 million.

Clarification of the Treatment of Federal Grants

- This provision is used to clarify the existing law. Currently the law states that the eligible basis must be reduced if federally funded grants are received relating to the project during the compliance period. The provision clarifies that “the eligible basis of a building shall not include any costs financed with the proceeds of a federally funded grant.”

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Related Persons

- Under current law, two persons are related if the same persons own more than ten percent interests or profits in multiple partnerships. The provision changes the percentage to fifty percent.

10-Year Period Rule

- Current law provides three exceptions to the “ten year rule,” which states that low-income housing credits are not allowed unless it has been at least ten years between the acquisition date and the later of: a) the placed in service date or b) the most recent nonqualified substantial improvement of the building. The first two exceptions, which include the Secretary of the Treasury signing waivers for various reasons, are deleted with the provision. The provision replaces these with an exception to the “ten year rule” for any: 1) Federally- or state-assisted building or 2) buildings acquired from insured depository institutions in default.
- This provision also simplifies “ten year rule” by stating that buildings are not eligible for LIHTC if the building had been placed in service within the last 10 years.

Buildings receiving HUD assistance

- The provision allows buildings that are receiving moderate rehabilitation assistance under the United States Housing Act of 1937 to also receive low income housing credits. Currently, credits are prohibited if rehabilitation assistance is received.

Carryover allocation rule

- The carryover allocation rule restrictions are modified so that an allocation that is more than ten percent of the taxpayer’s expected basis in the project is incurred as of 12 months after the allocation is made. Under current law, expected basis must be incurred as of the later of six months or the end of the calendar year in which the allocation is made.

Bond Posting Requirement

- Currently a change in ownership subject to recapture of previously received tax credits. One exception exists, where if the seller meets bond posting requirements from the Treasury and it can reasonably be expected that the building will continue as a low-income project for the remainder of the compliance period recapture may be avoided. The provision eliminates the bond posting requirement and only requires that there be a reasonable expectation that the building remain a qualified low-income building for the remaining compliance period.

Energy Efficiency and Historic Nature Criteria

- Current criteria require states to allocate credits based on project location, housing needs characteristics, project characteristics, sponsor characteristics, tenant populations with special needs or individuals with children, and project intended for eventual tenant ownership. The provision adds to this list the energy efficiency of the project and the historic nature of the project.

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Individuals who previously received Foster Care

- This provision allows student housing to qualify as low-income housing for students who were previously part of a foster care program. Two other exceptions currently exist that allow student housing to qualify for low-income housing credits. They are for students receiving assistance under Social Security or students participating in a job training programs and receiving Job Training Partnership Act or similar assistance. These two exceptions remain unchanged with the provision.

Measurement of area median gross income

- Under the current law, projects placed in service during 2006, 2007 or 2008 and located in a nonmetropolitan area within the Gulf Opportunity Zone are able to use the greater of the area median gross income standard or a national nonmetropolitan median gross income standard. The provision is expanding this option of income standard to all rural areas to allow projects to have more eligible tenants.

Clarification of General Public Use

- This provision specifies that a project shall not fail to meet the general public rule because of a special occupancy requirement such as tenants with special needs, who are members of a specified group under a federal or state program that supports housing for a specified group, or who are involved in artistic or literary activities. The general public rule that currently applies, and will continue to apply, includes that a project must abide by housing discrimination policies; and the project does not restrict occupancy based on membership in a social organization, or employment by specific employer.

GAO studies

- Currently there are no GAO studies planned of the low-income credit. The impacts of the changes brought on by this Act are required to be examined by the Comptroller General of the United States and a report shall be submitted to Congress by December 31, 2012.

Basic Housing Allowances

- The current law requires persons who receive a housing allowance from the military to include that amount in income for low-income housing eligibility. Under the provision, which is applicable only to qualified buildings, the allowance is not included. Qualified buildings are defined as buildings located any county which contains a qualified military installation and any counties adjacent. In addition, a qualified military installation is any facility with at least 1000 members of the Armed Forces.

Multi-Family Housing Bonds

- States are allocated an amount of tax-exempt bonds to be distributed to low-income projects. Currently, when these are repaid the state cannot reissue them to another low-income project to finance eligible basis. Under the provision, States are able to reissue tax-exempt bonds that have been repaid to other low-income projects as long as the bonds are reissued within six months of receipt of repayment.

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Next Available Unit Rule

- Under current law, certain restrictions apply when using tax-exempt bonds to finance a qualified residential rental project. To satisfy the next available unit rule, when the income of a tenant rises above the restricted rent level, the next unit in the project must be rented to a new eligible tenant. The provision changes this to be more aligned with the rule for low-income housing credits, which requires the next unit to be rented to a new eligible tenant in the low-income building, instead of the entire project.

Student Rules

- Under current law, there are separate requirements for low-income housing credits and tax-exempt bonds. Students that are single parents and are not dependents of another individual, and their children are not a dependent of another individual qualify as eligible to be a low-income housing tenant. In tax-exempt bond projects, if all the occupants are students they must be able to file a joint tax return to qualify. The provision amends the current tax-exempt bond rules to be the same as the low-income housing rules.

Single-Room Occupancy Units

- This provision aligns requirements for certain single-room occupancy units that are used on a permanent basis and are financed using tax-exempt bonds with the current rules for low-income housing credit projects.

HUD Hold Harmless Policy

- The provisions provide that any determination of area median gross income may not be less than the median gross income for the same project in the prior year. In addition, projects that are affected by the HUD hold harmless policy the area median gross income will be the greater of: a) the amount determined without regard to the special rule for HUD hold harmless impacted projects, or b) the sum of the area median gross income determined under the HUD hold harmless policy with respect to the project for 2008 plus any increase in area median gross income after 2008.

Annual Recertification Requirement

- Currently low-income credit, tax-exempt bonds, and HUD projects must all file a yearly certification with the Secretary of the Treasury to ensure that projects remain eligible. The provision waives the annual recertification for low-income credit and tax-exempt bonds as long as no residential unit in the project is occupied by tenants who fail to satisfy the applicable income limits. However, some HUD projects remain required to file a recertification each year.

Repeal of Alternative Minimum Tax Limitations

- Among other changes related to the exclusion of tax exempt interest on certain housing bonds from alternative minimum tax, the provision allows for low income housing tax credits attributable to buildings placed in service after December 31, 2007 and rehabilitation tax credits attributable to qualified rehabilitation expenditures properly taken into account for periods after December 31, 2007 to be used against alternative minimum tax liabilities.