

THE BUZZ

For LIHTC, A Stimulus But Not Yet a Recovery

By Buzz Roberts, Local Initiatives Support Corporation

The massive economic recovery bill signed into law last month will help stalled low-income housing tax credit (LIHTC) projects get off the ground. That is a major and necessary achievement, intended as a short-term measure until the investment market returns to stability. However, the bill does not directly address the obstacles to attracting more investment capital. Unless the investment market stabilizes, measures intended as stop-gaps may need to be extended, calling into question the LIHTC's long-term viability.

The good news is that the bill includes two sources of cash to move developments forward over the next few months. First, as Michael Novogradac describes in another article on page 8, the states can trade in 40 percent of their 2009 LIHTC allocation authority and all of their unused 2008 authority for cash: about \$3 billion according to Congressional estimators, and perhaps more.

Second, the bill includes \$2.25 billion in special HOME funds for LIHTC deals, much as this column had speculated in January. Sen. Kit Bond, R-Mo., and Sen. Christopher Dodd, D-Conn., led a coalition to add this to the Senate bill, and the final bill refined it. Though basic HOME rules would apply, Congress made several constructive changes designed to move the funds quickly and consistent with long-standing LIHTC rules and procedures.

- ♦ The funds will be available only through state LIHTC allocation agencies, and not through localities or other state agencies. Funds will be distributed among the states according to the formula used for FY 2008 HOME funding that takes into account the amounts for both state governments and the local jurisdictions within each state. This should be rela-

tively easy for the U.S. Department of Housing and Urban Development (HUD) to calculate quickly.

- ♦ The states will distribute the funds competitively according to their LIHTC qualified allocation plans; to sponsors that have received LIHTC allocations or receive them simultaneous with the HOME funds but in any case between October 1, 2006 and September 30, 2009. The states must give priority to projects expected to be completed within three years of the bill's date of enactment, which was February 17, 2009.
- ♦ The states must commit at least 75 percent of the funds within one year from the enactment date and developers must spend 75 percent of the funds within two years and all of the funds within three years. If a sponsor fails to meet deadlines, the state can recapture and redistribute funds to other projects for use within three years of enactment. After the three years, HUD will recapture unused funds for redistribution to states that have used all of their funds.
- ♦ Although the funds generally follow HOME rules, LIHTC requirements for rent, income and use restrictions override the corresponding HOME requirements, and other state LIHTC requirements apply. In addition, to expedite the use of these funds, HUD may waive any statutory or regulatory requirement it administers, except for those related to fair housing, non-discrimination, labor standards and the environment. HOME rules apply to environmental reviews.
- ♦ The HOME funds can take the form of a grant or loan for a property. A grant will not reduce a property's eligible basis, but it would still be treated as taxable income to the recipient. For example, a grant could

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be made to a tax-exempt nonprofit, which could in turn lend the funds to an investment partnership.

- ♦ The states must perform asset management responsibilities or contract for them, at the sponsor's expense, to ensure compliance with LIHTC rules and the developments' long-term viability.
- ♦ Each state will provide information to HUD and set up a web site identifying all projects selected for awards and the qualified allocation plan for making awards. This requirement is in keeping with the bill's broader commitment to transparency.

Less fortunately, however, the bill did not address obstacles to private investment. Two main approaches were under consideration: to increase the capacity of investors to use tax credits by allowing investors to carry back for up to five years tax credits earned in 2008 and 2009, and to allow investment yields to rise while cushioning the impact on project sponsors by accelerating — or front loading — the tax credits on new investments.

The carry-back would have helped the LIHTC market

in two ways. First, current investors that cannot use tax credits would face less pressure to sell their portfolios into an already weak market, and thereby disrupt it further. Second, current investors could clear out their stock of unused tax credits, making it easier for them to make new investments on the expectation of their future profitability. For the LIHTC, the carry-back might have been even more effective in recruiting new investments if it were applied to future investments or were available only to investors committing to make new investments.

In any event, the Senate Finance Committee approved the carry-back but it was dropped just before final Senate passage. Here, the LIHTC was just one of numerous business tax credits slated for similar treatment. However, the total cost of \$11 billion was too steep to keep, especially once a primary policy driver for the carry-back — renewable energy — was addressed in other, less costly ways.

The accelerator would have allowed investors to claim 60 percent of a property's LIHTCs in the first three years, and

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the other 40 percent over the remaining seven years of the credit period. Sen. Maria Cantwell, D-Wash., and several colleagues did get a version of the accelerator added to the bill the Senate approved. To minimize the cost, however, the provision did not apply to bond-financed properties and certain orphan deals without tax credit investors. Creating two classes of LIHTC deals — one eligible for the accelerator, the other ineligible — dampened the enthusiasm of some practitioners. The provision dropped out of the final bill.

But the story may not, and should not, end there. Congress will be back soon to consider a housing bill that could provide another chance to consider LIHTC investment incentives. And the Obama Administration could use its executive authority to encourage investments, especially since it is providing extraordinary financial support to financial services companies that have tradition-

ally provided the great majority of LIHTC investments. Stay tuned. ❖



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