

111TH CONGRESS  
2D SESSION

# S. 3326

To provide grants to States for low-income housing projects in lieu of low-income housing credits, and to amend the Internal Revenue Code of 1986 to allow a 5-year carryback of the low-income housing credit, and for other purposes.

---

IN THE SENATE OF THE UNITED STATES

MAY 6, 2010

Ms. CANTWELL (for herself, Mr. KERRY, and Mrs. BOXER) introduced the following bill; which was read twice and referred to the Committee on Finance

---

## A BILL

To provide grants to States for low-income housing projects in lieu of low-income housing credits, and to amend the Internal Revenue Code of 1986 to allow a 5-year carryback of the low-income housing credit, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Job Creation and Af-  
5 fordable Housing Act of 2010”.

1 **SEC. 2. GRANTS TO STATES FOR LOW-INCOME HOUSING**  
2 **PROJECTS IN LIEU OF LOW-INCOME HOUS-**  
3 **ING CREDITS FOR BOND-SUBSIDIZED HOUS-**  
4 **ING PROJECTS.**

5 (a) IN GENERAL.—The Secretary of the Treasury  
6 shall make a grant to each State in an amount equal to  
7 such State’s low-income bond-subsidized housing election  
8 amount.

9 (b) LOW-INCOME BOND-SUBSIDIZED HOUSING  
10 ELECTION AMOUNT.—For purposes of this section—

11 (1) IN GENERAL.—The term “low-income bond-  
12 subsidized housing election amount” means, with re-  
13 spect to any State, such amount as the State may  
14 elect which does not exceed 85 percent of the State’s  
15 bond-subsidized credit amount.

16 (2) BOND-SUBSIDIZED CREDIT AMOUNT.—The  
17 term “bond-subsidized credit amount” means, with  
18 respect to any State, the aggregate amount of low-  
19 income housing credits which the State determines  
20 would, but for section 42(i)(9) of the Internal Rev-  
21 enue Code of 1986, be awarded under section  
22 42(h)(4)(B) of such Code times 10 with respect to  
23 qualified low-income buildings receiving an allocation  
24 of qualified residential rental project bonds of such  
25 State during 2010.

1           (3) QUALIFIED RESIDENTIAL RENTAL PROJECT  
2 BONDS.—The term “qualified residential rental  
3 project bond” means, with respect to any State, any  
4 qualified bond (as defined in section 141(e) of the  
5 Internal Revenue Code of 1986) if such bond—

6           (A) is issued as part of an issue 95 percent  
7 or more of the net proceeds of which are to be  
8 used to provide qualified residential rental  
9 projects (within the meaning of section 142 of  
10 such Code), and

11           (B) is taken into account under section  
12 146 of such Code with respect to the State ceil-  
13 ing applicable to such State.

14 (c) SUBAWARDS FOR LOW-INCOME BUILDINGS.—

15           (1) IN GENERAL.—A State receiving a grant  
16 under this section shall use such grant to make sub-  
17 awards to finance the construction or acquisition  
18 and rehabilitation of qualified low-income buildings  
19 which have received the corresponding allocation of  
20 qualified residential rental project bonds referred to  
21 in subsection (b)(2).

22           (2) SUBAWARDS SUBJECT TO SAME REQUIRE-  
23 MENTS AS LOW-INCOME HOUSING CREDIT ALLOCA-  
24 TIONS.—Any such subaward with respect to any  
25 qualified low-income building may be in the form of

1 a grant or a loan of any duration and shall be made  
2 in the same manner and shall be subject to the same  
3 limitations (including rent, income, and use restric-  
4 tions on such building) as an allocation of housing  
5 credit dollar amount allocated by the State housing  
6 credit agency of such State under section 42 of the  
7 Internal Revenue Code of 1986, except that such  
8 subawards shall not be limited by, or otherwise af-  
9 fect, the State housing credit ceiling applicable to  
10 such agency.

11 (3) COMPLIANCE AND ASSET MANAGEMENT.—A  
12 State receiving a grant under this section shall per-  
13 form asset management functions to ensure compli-  
14 ance with section 42 of the Internal Revenue Code  
15 of 1986 and the long-term viability of buildings  
16 funded by any subaward under this section. A State  
17 may collect reasonable fees from a subaward recipi-  
18 ent to cover expenses associated with the perform-  
19 ance of its duties under this paragraph, including  
20 the reasonable costs of administering such sub-  
21 awards. A State may retain an agent or other pri-  
22 vate contractor to satisfy the requirements of this  
23 paragraph.

24 (4) RECAPTURE.—A State receiving a grant  
25 under this section shall impose conditions or restric-

1 tions, including a requirement providing for recap-  
2 ture, on any subaward under this section so as to  
3 assure that the building with respect to which such  
4 subaward is made remains a qualified low-income  
5 building during the compliance period. Any amounts  
6 of recapture shall be proportional to the length of  
7 time of the noncompliance compared to the 15-year  
8 compliance period and the percentage of qualified  
9 basis out of compliance compared to the total quali-  
10 fied basis. Any such recapture shall be payable to  
11 the Secretary of the Treasury for deposit in the gen-  
12 eral fund of the Treasury and may be enforced by  
13 means of liens or such other methods as the Sec-  
14 retary of the Treasury determines appropriate. A  
15 State housing credit agency may subordinate any  
16 such lien (or other security interest) to other loans  
17 made by third parties.

18 (d) REALLOCATION OF BOND AUTHORITY.—A State  
19 housing credit agency shall establish a process in which  
20 applicants that are allocated bonds and receive a subaward  
21 pursuant to subsection (c) are required to demonstrate  
22 good faith efforts to obtain purchasers for such bonds. If  
23 a subawardee is unable to obtain purchasers or if the State  
24 makes a determination that reallocation of bond authority  
25 will increase the total funds available to the State to build

1 and rehabilitate affordable housing, a subawardee may re-  
2 turn its bond allocation to the State without affecting its  
3 subaward under subsection (c) and the State may reallo-  
4 cate such bond authority only for qualified residential  
5 rental projects. Reallocated bonds shall not be taken into  
6 account for purposes of determining eligibility for low-in-  
7 come housing credits under section 42(h)(4) of the Inter-  
8 nal Revenue Code of 1986 or for purposes of determining  
9 eligibility for grants under subsection (c).

10 (e) RETURN OF UNUSED GRANT FUNDS.—Any grant  
11 funds not used to make subawards under this section be-  
12 fore January 1, 2012, shall be returned to the Secretary  
13 of the Treasury on such date. The portion of any  
14 subaward which is not disbursed before such date shall  
15 be returned to the Secretary of the Treasury on such date  
16 unless the subawardee has paid or incurred before Janu-  
17 ary 1, 2012, at least 30 percent of the subawardee's total  
18 adjusted basis in land and depreciable property that is  
19 reasonably expected to be part of the low-income housing  
20 building with respect to which such subaward is made.  
21 The portion of any subaward which is not disbursed before  
22 January 1, 2013, shall be returned to the Secretary of  
23 the Treasury on such date. Any subawards returned to  
24 the State housing credit agency on or after January 1,  
25 2012, shall be promptly returned to the Secretary of the

1 Treasury. Any amounts returned to the Secretary of the  
 2 Treasury under this subsection shall be deposited in the  
 3 general fund of the Treasury.

4 (f) DEFINITIONS.—Any term used in this section  
 5 which is also used in section 42 of the Internal Revenue  
 6 Code of 1986 shall have the same meaning for purposes  
 7 of this section as when used in such section 42. Any ref-  
 8 erence in this section to the Secretary of the Treasury  
 9 shall be treated as including the Secretary’s delegate.

10 (g) APPROPRIATIONS.—There is hereby appropriated  
 11 to the Secretary of the Treasury such sums as may be  
 12 necessary to carry out this section.

13 **SEC. 3. COORDINATION OF LOW-INCOME HOUSING CREDIT**  
 14 **WITH LOW-INCOME HOUSING GRANTS.**

15 (a) IN GENERAL.—Paragraph (9) of section 42(i) of  
 16 the Internal Revenue Code of 1986 is amended by redesi-  
 17 gnating subparagraph (B) as subparagraph (C) and by in-  
 18 serting after subparagraph (A) the following new subpara-  
 19 graphs:

20 “(B) DENIAL OF CREDIT FOR BOND-SUB-  
 21 SIDIZED BUILDINGS RECEIVING SUBAWARDS  
 22 WITH 2010 GRANT FUNDS.—No credit shall be  
 23 determined under this section with respect to  
 24 any qualified low-income building to the extent  
 25 of the bond-subsidized credit amount deter-

1           mined with respect to such building under sec-  
2           tion 2 of the Job Creation and Affordable  
3           Housing Act of 2010 if any subaward is made  
4           with respect to such building under such sec-  
5           tion.”.

6           (b) GRANTS AND LOANS NOT TO REDUCE BASIS.—  
7           Subparagraph (C) of section 42(i)(9) of such Code, as re-  
8           designated by this section, is amended by striking “by the  
9           amount of any grant described in subparagraph (A)” and  
10          inserting “by reason of any grant or loan made under sec-  
11          tion 1602 of the American Recovery and Reinvestment  
12          Tax Act of 2009 or section 2 of the Job Creation and  
13          Affordable Housing Act of 2010”.

14          (c) EXCLUSION OF GRANTS FROM GROSS INCOME.—  
15          Paragraph (9) of section 42(i) of such Code, as amended  
16          by this section, is amended by adding at the end the fol-  
17          lowing new subparagraph:

18                       “(D) EXCLUSION OF GRANTS FROM GROSS  
19                       INCOME.—Any grant made under section 1602  
20                       of the American Recovery and Reinvestment  
21                       Tax Act of 2009 or section 2 of the Job Cre-  
22                       ation and Affordable Housing Act of 2010 shall  
23                       not be includible in the gross income or alter-  
24                       native minimum taxable income of the tax-  
25                       payer.”.

1 (d) EFFECTIVE DATE.—

2 (1) IN GENERAL.—Except as otherwise pro-  
3 vided in this subsection, the amendments made by  
4 this section shall apply to taxable years ending after  
5 December 31, 2009.

6 (2) EXCLUSION OF GRANTS FROM GROSS IN-  
7 COME.—The amendment made by subsection (c)  
8 shall apply to taxable years ending after December  
9 31, 2008.

10 **SEC. 4. FIVE-YEAR CARRYBACK OF LOW-INCOME HOUSING**  
11 **CREDIT.**

12 (a) IN GENERAL.—Subsection (a) of section 39 of the  
13 Internal Revenue Code of 1986 is amended by adding at  
14 the end the following new paragraph:

15 “(4) 5-YEAR CARRYBACK OF LOW-INCOME  
16 HOUSING CREDIT.—

17 “(A) IN GENERAL.—In the case of an ap-  
18 plicable low-income housing credit (within the  
19 meaning of section 38(c)(6)(C))—

20 “(i) this section shall be applied sepa-  
21 rately from the business credit (other than  
22 the low-income housing credit), and

23 “(ii) paragraph (1) shall be applied by  
24 substituting ‘each of the 5 taxable years’

1 for ‘the taxable year’ in subparagraph (A)  
2 thereof.”.

3 (b) **EFFECTIVE DATE.**—The amendment made by  
4 this section shall apply to taxable years beginning after  
5 December 31, 2007, and to carrybacks of credits from  
6 such taxable years.

7 **SEC. 5. CARRYBACK OF NEW INVESTMENTS.**

8 (a) **IN GENERAL.**—Section 42(f) of the Internal Rev-  
9 enue Code of 1986 is amended by adding at the end the  
10 following new paragraph:

11 “(6) **SPECIAL RULE FOR CERTAIN INVEST-**  
12 **MENTS IN 2010 AND 2011.**—

13 “(A) **IN GENERAL.**—In the case of a tax-  
14 payer who enters into an agreement described  
15 in section 38(c)(6)(D)(i)(I) (without regard to  
16 the applicable date), which satisfies the require-  
17 ment of section 38(c)(6)(D)(i)(II), after Decem-  
18 ber 31, 2009, and before January 1, 2012, then  
19 solely for purposes of determining the taxable  
20 year in which the low-income housing credit  
21 under this section may be taken into account  
22 for purposes of section 38, and the amount of  
23 the credit so taken into account—

24 “(i) the preceding paragraphs of this  
25 subsection shall not apply,

1           “(ii) the credit period with respect to  
2           the housing credit dollar amount to be allo-  
3           cated under such agreement shall be the 1  
4           taxable year in which the taxpayer enters  
5           into such agreement,

6           “(iii) subsections (b) and (c)(1) shall  
7           not apply, and

8           “(iv) the amount of the credit under  
9           this section which is taken into account in  
10          the taxable year described in clause (ii)  
11          shall be the housing credit dollar amount  
12          to be allocated under such agreement.

13          “(B) REQUIREMENTS OF SECTION UNAF-  
14          FECTED.—Except as provided in subparagraph  
15          (A), the provisions of this section shall apply to  
16          any building to which an agreement described  
17          in subparagraph (A) applies as if such subpara-  
18          graph had not been enacted.

19          “(C) RECAPTURE OF EXCESS CREDIT.—If,  
20          at the end of the credit period with respect to  
21          any building (without regard to subparagraph  
22          (A)), the amount of the credit taken into ac-  
23          count under subparagraph (A)(iv) with respect  
24          to such building exceeds the total amount of the  
25          credit which would have been allowed under this

1 section with respect to such building during  
 2 such credit period but for the application of  
 3 subparagraph (A), then the amount of such ex-  
 4 cess shall be recaptured as if it were included  
 5 in the credit recapture amount under subsection  
 6 (j).”.

7 (b) EFFECTIVE DATE.—The amendments made by  
 8 this section shall apply to taxable years beginning after  
 9 December 31, 2009.

10 **SEC. 6. ALLOWING LOW-INCOME HOUSING CREDITS TO**  
 11 **OFFSET 100 PERCENT OF FEDERAL INCOME**  
 12 **TAX LIABILITY.**

13 (a) IN GENERAL.—Subsection (c) of section 38 is  
 14 amended by adding at the end the following new para-  
 15 graph:

16 “(6) ALLOWING LOW-INCOME HOUSING CREDIT  
 17 TO OFFSET 100 PERCENT OF FEDERAL INCOME TAX  
 18 LIABILITY.—

19 “(A) IN GENERAL.—In the case of applica-  
 20 ble low-income housing credits—

21 “(i) this section shall be applied sepa-  
 22 rately with respect to such credits,

23 “(ii) in applying paragraph (1) to  
 24 such credits—

1           “(I) the tentative minimum tax  
2 shall be treated as being zero, and

3           “(II) the limitation under para-  
4 graph (1) (as modified by subclause  
5 (I)) shall be the net income tax (as  
6 defined in paragraph (1)) reduced by  
7 the credit allowed under subsection  
8 (a) for the taxable year (other than  
9 the applicable low-income housing  
10 credits), and

11           “(iii) the excess credit for such tax-  
12 able year shall, solely for purposes of de-  
13 termining the amount of such excess credit  
14 which may be carried back to a preceding  
15 taxable year, be increased by the amount  
16 of business credit carryforwards which are  
17 carried to such taxable year, to which this  
18 subparagraph applies, and which are not  
19 allowed for such taxable year by reason of  
20 the limitation under paragraph (1) (as  
21 modified by clause (ii)).

22           “(B) INCREASE IN LIMITATION FOR TAX-  
23 ABLE YEARS TO WHICH EXCESS APPLICABLE  
24 LOW-INCOME HOUSING CREDITS ARE CARRIED  
25 BACK.—

1           “(i) IN GENERAL.—Solely for pur-  
2           poses of determining the portion of any ex-  
3           cess credit described in subparagraph  
4           (A)(iii) for which credit will be allowed  
5           under subsection (a)(3) for any preceding  
6           taxable year, except as provided in clause  
7           (ii), the limitation under paragraph (1) for  
8           such preceding taxable year shall be deter-  
9           mined under rules similar to the rules de-  
10          scribed in subparagraph (A).

11          “(ii) ORDERING RULE.—If the excess  
12          credit described in subparagraph (A)(iii)  
13          includes business credit carryforwards  
14          from preceding taxable years, such excess  
15          credit shall be treated as allowed for any  
16          preceding taxable year on a first-in first-  
17          out basis.

18          “(C) APPLICABLE LOW-INCOME HOUSING  
19          CREDITS.—For purposes of this subpart, the  
20          term ‘applicable low-income housing credits’  
21          means the credit determined under section 42—

22                 “(i) to the extent attributable to  
23                 buildings placed in service after the date of  
24                 the enactment of this subparagraph, and

1           “(ii) in the case of any other build-  
2           ings, for taxable years beginning in 2008,  
3           2009, and 2010 (and to business credit  
4           carryforwards with respect to such build-  
5           ings carried to such taxable years) to the  
6           extent provided in subparagraph (D).

7           “(D) PREVIOUSLY PLACED IN SERVICE  
8           BUILDINGS.—

9           “(i) IN GENERAL.—Subparagraph  
10          (C)(ii) shall apply to such credits for such  
11          a taxable year only—

12                 “(I) if the taxpayer has entered  
13                 into a binding commitment to invest  
14                 equity not later than the applicable  
15                 date, with respect to an investment in  
16                 a future project (which is binding on  
17                 the taxpayer and all successors in in-  
18                 terest) which specifies the dollar  
19                 amount of such investment, and

20                 “(II) to the extent such credits  
21                 do not exceed the dollar amount of  
22                 such proposed investment.

23           “(ii) APPLICABLE DATE.—For pur-  
24          poses of this subparagraph, the applicable  
25          date is—

1                   “(I) in the case of taxable years  
2                   beginning in 2008 and 2009, Sep-  
3                   tember 15, 2010, or

4                   “(II) in the case of a taxable  
5                   year beginning in 2010, the due date  
6                   (including extensions of time) for fil-  
7                   ing the taxpayer’s return for such tax-  
8                   able year.”.

9           (b) EFFECTIVE DATE.—The amendment made by  
10 this section shall apply to taxable years beginning after  
11 December 31, 2007, and to carrybacks of credits from  
12 such taxable years.

○