North Carolina Housing Finance Agency

To: Interested parties

From: Rental Investment Group

Subject: Implementation of the Housing and Economic Recovery Act (HR 3221)

Date: August 5, 2008

The following are summary answers to questions and comments sent in response to the broadcast email from Friday, August 1st regarding HR 3221. (See the end of this document for the email text.)

1. Whether the new 9% rate is available after rate lock

HR 3221 provides that the tax credit rate "shall not be less than 9 percent" for projects placing in service after July 30, 2008. However, over 80% of awards from 2006 and 2007 locked in at reservation or carryover. The effect of the new law for such projects is unclear. Some tax advisors think the new law sets a floor of 9% regardless of past rate locks, but also that the IRS will need to issue guidance. When that may occur, if ever, is unknown. Without legal clarity, investors may not recognize a changed tax credit rate regardless of any interpretation by the Agency.

2. Result of using a 9% rate, if available, on the amount of equity

Simply applying the 9% rate alone would not increase a project's allocation. The following example demonstrates the credit calculations for a typical project funded in 2006 or 2007:

- \$408,000 = the award amount based on 8.50% and qualified basis of \$4,800,000 at time of award
- \$394,080 = locked-in rate of 8.21% × qualified basis as of award date
- \$410,500 = locked-in rate of 8.21% × current qualified basis of \$5,000,000 (reflects increase in costs)
- \$450,000 = new rate of 9% × current qualified basis

The owner has a maximum of \$408,000 in annual tax credits regardless of the credit rate. Under Section 42, the credits claimed on Form 8609 cannot exceed the amount of the allocation. Therefore the project would not generate any additional equity due to using a 9% rate.

3. Relief for 2006 and 2007 awards

The decision not to address previously funded projects was based in large part because those projects have already been addressed. Projects that expected to place in service in 2008 had the opportunity to apply for additional credits this year. As for the 2007 projects, in March and April of this year the Rental Investment Group took the following steps to address problems in the equity market:

- Contacted the owners of each 2007 project to find out the status of pricing and availability.
- Held a roundtable discussion with developers, investors, and lenders to discuss the situation.
- Reviewed all 45 projects to determine what, if anything, the Agency could do to help.
- Had individual meetings with owners to determine project-specific approaches to a hypothetical equity price of $0.80, including forward commitments of 2009 tax credits and allowing additional bank financing (for several reasons cost increases were not part of the evaluation).

There was no need to suspend either (A) penalties for returning allocations or (B) limits on submitting another application for the same project, as neither of these are policies in the North Carolina program.

4. Amount and use of returned tax credits

Only one award from 2007 was returned without re-applying. Owners of three other projects gave up their 2007 allocations but also submitted new applications for the same project. Under the federal stacking rules, these returns are added to the state's per-capita amount and allocated as 2008 tax credits along with the increase authorized by HR 3221 and will be awarded to applications applying this year.

5. Comments on the draft 2009 Qualified Allocation Plan (QAP)

Interested parties are welcome to submit comments for the 2009 QAP at any time, in any form:

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The first draft will be posted later this month.

For more information

Contact Scott Farmer (919) 877-5641 sfarmer@nchfa.com or Mark Shelburne (919) 877-5645 mshelburne@nchfa.com with questions or comments on these or related subjects.

Text of August 1st broadcast email

Many of you are aware that on Wednesday, July 30, President Bush signed into law the Housing and Economic Recovery Act which included a number of changes to the Housing Credit program.

The following is a summary of how the Rental Investment Group intends to address the Housing Credit allocation provisions in the Housing and Economic Recovery Act (HR 3221):

- Award the additional $0.20 per capita increase for 2008 along with the rest of the state's credit ceiling. The total will be $20 million in annual credits for this year.
- Set the reservation amounts for the 2008 awards using the 9% tax credit rate (unless reduced based on the Section 42(m) needs analysis).
- Projects allocated in 2006 or 2007 that have not yet locked in a tax credit rate will use 9% if placed in service after July 30, 2008. Whether the legislation supersedes previous rate locks made at reservation or carryover is not clear. The IRS has not yet issued guidance on whether they remain in effect, and there is no consensus among tax advisors at this time.
- The Agency does not have immediate plans to increase allocations for previously-awarded projects based on the new provisions in HR 3221.

This is not intended to be an all inclusive response to the new legislation as there are additional issues resulting from the legislation that will need to be incorporated in the 2009 Qualified Allocation Plan. We welcome your comments on these or any other aspect of the QAP.

For more information on HR 3221 see:
www.ncsha.org/uploads/NCSHA%20HR%203221%20Summary%20FINAL.pdf