An Introduction to the Design of the Low-Income Housing Tax Credit

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Summary

The Low-Income Housing Tax Credit (LIHTC) is a federal provision that reduces the income tax liability of taxpayers claiming the credit. These taxpayers are typically investors in real estate development projects that have traded cash for the tax credits to support the production of affordable housing. The credit is intended to lower the financing costs of housing developments so that the rental prices of units can be lower than market rates, and thus, presumably, affordable.

The Housing and Economic Recovery Act of 2008, P.L. 110-289, includes a number of provisions that make temporary or permanent changes to the LIHTC program. For example, P.L. 110-289 increases the effective LIHTC rate applied to new construction completed prior to 2014 and increases the LIHTC allocation to states from $2.00 per capita to $2.20 per capita through 2009. The act also gives state housing credit agencies the authority to designate certain buildings as qualified for the enhanced LIHTC, clarifies the circumstances under which a building is to be considered federally subsidized, and expands the size of the community common areas that may be included in the eligible basis.

A recent proposal would make temporary changes to the LIHTC with the intent of assisting Midwest disaster victims. Specifically, the Midwestern Disaster Tax Relief Act of 2008 (S. 3222/H.R. 6587) would allow states to allocate additional credits to disaster areas for the years 2009, 2010, and 2011. The additional allocation would be equal to $4.00 multiplied by the state’s disaster area population.

This report will be updated as warranted by legislative changes.

Overview

The LIHTC was created by the Tax Reform Act of 1986 (P.L. 99-514) to provide an incentive for the acquisition (excluding land) and development or the rehabilitation of affordable rental housing. These federal housing tax credits are awarded to developers of qualified projects. Sponsors, or developers, of real estate projects apply to the corresponding state housing finance authority for LIHTC allocations for their projects.
Developers either use the credits or sell them to investors to raise capital (or equity) for real estate projects. The tax benefit reduces the debt and/or equity that the developer would otherwise have to incur. With lower financing costs, tax credit properties can potentially offer lower, more affordable rents.

The LIHTC was originally designed to deliver a 10-year subsidy equal to 30% or 70% of a project’s cost, dependent on the nature of a project. Rehabilitation and federally subsidized construction is intended to receive the 30% subsidy, whereas new construction is supposed to receive the 70% subsidy. Over time, the annual credit rate that has delivered the 30% rehabilitation construction subsidy has approximately equaled 4% of the project’s qualified basis, although the rate has fallen as low as 3.33%.\(^1\) At the same time, the annual credit rate implied by the 70% new construction subsidy has approximately equaled 9%, with a range of 7.89% to 9.27%.\(^2\) The method used to determine the actual credit rate a project receives depends in part on the prevailing market interest rate at the time the project is completed. Because the market interest rate changes monthly, so do the LIHTC rates.\(^3\)

The Housing and Economic Recovery Act of 2008 (P.L. 110-289) changed the method used to determine the credit rate for new construction projects completed before 2014. Under the new law, the credit rate assigned to new construction will not be less than 9%. If the interest rate that prevails at the time a project is completed is such that the credit rate as determined under the previous method is greater than 9%, then the project will receive the higher rate. On the other hand, if the market interest rate is such that the LIHTC rate is less than 9%, then the project will be assigned a credit rate of exactly 9%. P.L. 110-289 made no changes to the credit rate that rehabilitation and federally subsidized construction projects receive.

**The Allocation Process**

The process of allocating, awarding, and then claiming the LIHTC is complex and lengthy. The process begins at the federal level with each state receiving an annual LIHTC allocation in accordance with federal law. State housing agencies than allocate credits to developers of rental housing according to federally required, but state created, allocation plans. The process typically ends with developers exchanging allocated credits for equity with outside investors. A more detailed discussion of each level of the allocation process is presented below.

**Federal Allocation to States.** LIHTCs are first allocated to each state according to its population and are typically administered by each state’s Housing Finance Agency

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From 1986 through 2000, the initial credit allocation amount was $1.25 per capita. The allocation was increased to $1.50 in 2001, to $1.75 in 2002 and 2003, and indexed for inflation annually thereafter. The initial minimum tax credit ceiling for small states was $2,000,000, and was indexed for inflation annually after 2003.

Tax-exempt bonds are issued subject to a private activity bond volume limit per state. For more information, see CRS Report RL31457, Private Activity Bonds: An Introduction, by Steven Maguire.

U.S. Department of Treasury, Internal Revenue Service, Internal Revenue Code, Section 42(g)(1).

The types of projects eligible for the LIHTC are apartment buildings, single family dwellings, duplexes, or townhouses. Projects may include more than one building. Tax credit project types also vary by the type of tenants served. Housing can be for families and/or special needs populations including the elderly.

Enhanced LIHTCs are available for difficult development areas (DDAs) and qualified census tracts (QCTs) as an incentive to developers to invest in more distressed areas: areas where the need is greatest for affordable housing, but which can be the most difficult to develop.\(^8\) In these distressed areas, the LIHTC can be claimed for 130% (instead of the normal 100%) of the project’s total cost excluding land costs. This also means that available credits can be increased by up to 30%. P.L. 110-280 allows an HFA to classify any building it sees fit as difficult to develop and hence, eligible for the enhanced credit.

**Developers and Investors.** Upon receipt of a LIHTC allocation, developers typically exchange the tax credits for equity. For-profit developers can either retain tax credits as financing for projects or sell them; nonprofit developers sell tax credits. Taxpayers claiming the tax credits are usually real estate investors, not developers. The tax credits cannot be claimed until the real estate development is complete and operable. This means that more than a year or two could pass between the time of the tax credit allocation and the time the credit is claimed. If, for example, a project were completed in June of 2008, depending on the filing period of the investor, the tax credits may not begin to be claimed until some time in 2009.

Trading tax credits, or selling them, refers to the process of exchanging tax credits for equity investment in real estate projects. Developers recruit investors to provide equity to fund development projects and offer the tax credits to those investors in exchange for their commitment. When credits are sold, the sale is usually structured with a limited partnership between the developer and the investor, and sometimes administered by syndicators who must adhere to the complex provisions of the tax code.\(^9\) As the general partner, the developer has a very small ownership percentage but maintains the authority to build and run the project on a day-to-day basis. The investor, as a limited partner, has a large ownership percentage with an otherwise passive role.

Typically, the investor does not expect the project to produce income. Instead, investors look to the credits, which will be used to offset their income tax liabilities, as their return on investment. The investor can also receive tax benefits related to any tax losses generated through the project’s operating costs, interest on its debt, and deductions such as depreciation and amortization.

The type of tax credit investor has changed over the life of the LIHTC. Upon the introduction of the LIHTC in 1986, public partnerships were the primary source of equity investment in tax credit projects, but diminished profit margins have driven some

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\(^8\) Internal Revenue Code Section 42(d)(5)(C).

\(^9\) Syndicators are intermediaries who exist almost exclusively to administer tax credit deals. In the early years of the LIHTC, syndicators were more prevalent. In later years, as the number of corporate investors in the LIHTC grew and interacted directly with developers, the role of syndicators diminished.
syndicators out of the retail investment market. Although there are individual tax credit investors, in recent years, the vast majority of investors have come from corporations, either investing directly or through private partnerships. Neither individuals nor corporations can claim the LIHTC against the alternative minimum tax.

Different types of investors have different motivations for investing in tax credits. An estimated 43% of investors are subject to the Community Reinvestment Act (CRA), and investment in LIHTCs is favorably considered under the investment test component of the CRA. Other investors include real estate, insurance, utility, and manufacturing firms, many of which list the rate of return on investment as their primary purpose for investing in tax credits. Tax sheltering is the second-most highly ranked purpose for investing.

The LIHTC finances part of the total cost of many projects rather than the full cost and, as a result, must be combined with other resources. The financial resources that may be used in conjunction with the LIHTC include conventional mortgage loans provided by private lenders and alternative financing and grants from public or private sources. Individual states provide financing as well, some of which may be in the form of state tax credits modeled after the federal provision. Additionally, some LIHTC projects may have tenants who receive other government subsidies such as housing vouchers.

**Legislative Developments**

The Housing and Economic Recovery Act of 2008, P.L. 110-289, includes a number of provisions that made temporary or permanent changes to the LIHTC program. As discussed earlier in this report, P.L. 110-289 guarantees that the LIHTC rate applied to non-federally subsidized new buildings completed prior to 2014 will not be less than 9%. The act also increases the LIHTC allocation to states from $2.00 per capita to $2.20 per capita for 2008 and 2009. P.L. 110-289 changes the LIHTC program to allow state housing credit agencies to designate certain buildings as qualified for the enhanced LIHTC. Lastly, the act clarifies the circumstances under which a building is considered to be federally subsidized and expands the size of the community common areas that may be included in the eligible basis.

The Midwestern Disaster Tax Relief Act of 2008 (S. 3222/H.R. 6587), introduced in the 110th Congress, would temporarily change the LIHTC program to assist victims in the Midwest suffering from the summer 2008 disasters, which were the result of recent

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13 The Housing and Economic Recovery Act of 2008 (H.R. 3221) was passed in the Senate on July 11, 2008 and in the House on July 23, 2008.
severe weather. Specifically, the bill would allow affected states to allocate additional LIHTCs to disaster areas for the years 2009, 2010, and 2011. The increased allocation would be determined as $4.00 multiplied by the state’s disaster area population.

14 For more information about this bill, see CRS Report RS22941, Disaster Tax Relief for the Midwest, by Erika Lunder.