

**Regarding Provisions of Public Law 110-289 (formerly known as HR 3221)**  
**A Public Policy summary prepared by NeighborWorks America**  
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Low Income Housing Tax Credit Modernization in HERA 2008

Public Law 110-289, also known as the Housing and Economic Recovery Act of 2008 (HERA), became law on July 30, 2008. Under HERA, Low Income Housing Tax Credits (LIHTC) have undergone the most significant modernization and changes since 1989. These Housing Credit changes address both long-standing issues as well as recent changes in the housing and investment markets. Most of the changes apply to buildings placed in service after “the date of enactment.” This means that projects that have already received allocations of Housing Credits but have not yet been placed in service can benefit. Some changes will require state implementation.

- **Alternative Minimum Tax (AMT) exemption.** Investments based on Housing Credits, Historic Rehabilitation tax credits, and tax-exempt multifamily and single family housing bonds would be exempt from the Alternative Minimum Tax (AMT). The AMT exemption applies to Housing Credit properties placed in service after December 31, 2007, historic rehabilitation expenditures in periods after December 31, 2007, and tax-exempt housing bonds issued after today. [See Sec. 3022]
- **Repeal recapture bond requirements.** Under current law, investors disposing of their interests in Housing Credit properties during the 15 year compliance period must post a bond to ensure that future recaptures of tax credits will be repaid, an unnecessary rule that makes investments less attractive. The bill repeals this requirement and replaces it with a change in the statute of limitations for recapture of tax so that the three year period does not begin to run until the IRS is notified by the taxpayer of a recapture event. The recapture bond repeal applies both with respect to future dispositions and to past dispositions if: (1) it is reasonably expected the building will continue to be operated as a qualified low-income building, and (2) the taxpayer elects to be subject to the new longer statute of limitations. This change would increase the liquidity of Housing Credit investments and could effectively reduce the investment holding period from 15 years to 10. [Sec. 3004(c)]
- **Increased Minimum Rehabilitation Spending.** Raises the minimum rehabilitation spending necessary to use credits to the lower of 20% of adjusted basis or \$6,000 per low-income unit (increased from current limits of 10% or \$3,000 per unit). Dollar amounts will adjust annually with inflation after 2010. Applies to credits allocated after date enacted (or buildings placed in service for 4% credit projects). [Sec. 3003(b)].
- **Increased Tax-exempt Bond Volume --Housing Credits.** Each state will have an additional \$0.20 per capita to allocate in 2008 and 2009; the 2008 amount would rise to \$2.20. The small state minimum allocation would also be increased by 10%. [Sec.3004].

Increased Project Equity of LIHTC

- The bill includes three major changes:
  - **A flat 9% credit rate floor.** The 70 percent present value credit rate is commonly called the “9 percent credit,” but because interest rates are low, its actual current value is less than 8 percent annually. The bill would set a 9 percent floor on this rate for new and substantially rehabilitated buildings placed in service after today and before December 31, 2013, provided of course that a state has allocated sufficient credits. This increase could increase credits for a development by about 15 percent, enough to offset all or most of the recent drop in LIHTC prices. No similar flat rate would apply to 30% present value credits. [Sec. 3002(a)]
  - **Allow states to increase eligible basis by 30%.** Under current law, only high cost regions (Difficult Development Areas) and low-income communities (Qualified Census Tracts) are eligible for the extra 30%. This amendment would permit states to extend the extra 30% to properties in other locations if required for financial feasibility according to standards each state would set in its qualified allocation plan. States would also explain publicly their reasons for allocating additional credits to a project. The additional eligible basis would not be available to bond-financed housing. [Sec. 3003(a)]
  - **Repeal most below-market federal loan penalties.** The bill redefines “below-market federal loans” as those funded by tax-exempt bonds. Sponsors would no longer have to use only the 30% present value tax credit or exclude other below-market federal loans (e.g., below-market HUD or USDA loans) from eligible basis. A technical explanation clarifies that eligible basis may include the proceeds of a loan (regardless of its interest rate) funded by a federal grant, such as HOME or CDBG. This change will allow more equity to go to many federally financed projects, as well as simplify financial planning. [Sec. 3003(d)]
- **Increased Targeting for Housing Credits**
  - **Ongoing rent, interest and operating subsidies** will be permitted without reducing the eligible basis on which Housing Credits are calculated. This is a critical priority for serving the homeless and very poor. A technical explanation of the bill by the Joint Committee on Taxation (JCX-63-08) clarifies that ongoing subsidies are not in any event to be treated as federal grants. No inference is intended with respect to buildings previously placed in service. [Sec 3003(d)5]
  - **General Public Use/targeted populations.** The bill clarifies that occupancy preferences and restrictions are permitted to favor tenants with special needs; who are members of a specified group under a Federal or State program or policy; or who are involved in artistic or literary activities. In 2007, IRS auditors began to challenge and prohibit targeting to some groups, asserting such housing fails to be available as required for “general public use”. This clarification applies to past as well as future housing. [Sec.3004(g)]

- **Community service space** may occupy 25% of the first \$15 million of a project's eligible basis and 10% of additional eligible basis within very low-income urban, rural and suburban communities (Qualified Census Tracts). Current law allows a flat 10% of eligible basis for such facilities. This major expansion should accommodate a range of community services important to sustainable communities. [Sec. 3003(c)].
- **Rural income/rent ceilings** would be based on the greater of (1) Area Median Income as under current law or (2) the national non-metro median income. For this purpose, rural areas follow the USDA/Rural Housing Service definition. The provision applies to all properties for determinations made after today. This would be very helpful in especially low-income rural areas. This provision would not apply to bond-financed properties. [Sec. 3004(f)]
- **GO Zone bonus depreciation properties.** The new law removes the 12/31/08 deadline for starting construction on certain GO Zone properties eligible for a 50% bonus depreciation incentive. However, the new law retains the progress payment deadline of 1/1/10 and placement in service deadline of 12/31/10. [Sec. 3004]
- **Students formerly receiving foster care.** Students who formerly received foster care may occupy Housing Credit units, starting after today. [Sec. 3004]
- **Military housing allowance.** Tenant income will not include the basic housing allowance paid to military personnel with respect to Housing Credit buildings located in certain counties (and adjacent counties) where there is a military installation that has experienced personnel growth of more than 20% between 12/31/05 and 6/1/08. Complex effective dates apply. [Sec. 3005].

## Project Based Vouchers

Project-based vouchers (PBVs) should become easier to use. The bill permits an initial 15-year contract term, subject to annual appropriations, as well as 15-year renewal terms. The legislation also permits PBV rents up to the LIHTC ceiling rent; eliminates duplicative subsidy layering reviews; eliminates environmental reviews unless otherwise required; permits PBVs in cooperatives and in elevator buildings; and clarifies voucher rent reasonableness. [Sec 3003(f)]

## FHA Programs and LIHTC

FHA-insured mortgages should become easier to use. For LIHTC projects, the bill eliminates HUD's subsidy layering review unless otherwise required; eliminates cost certification requirements if the loan-to-cost ratio is under 80 percent; and bars HUD from requiring the escrow of tax credit proceeds or posting of letters of credit. The bill also eliminates duplicative inspections; directs HUD to rely on state monitoring; and establishes a pilot program for streamlined insurance reviews through delegated underwriters. [Sec. 2834].

For more details, see HERA on Thomas.gov, see specific cites above:

<http://thomas.loc.gov/cgi-bin/query/D?c110:5:./temp/~c110v0Pz6o::>

Source Documents: LISC Policy Website docs (Buzz Roberts, 2008)

<http://www.lisc.org/content/article/detail/7396/>

<http://www.lisc.org/content/publications/detail/7437/>

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