

THE BUZZ

Beyond Section 42: How the New Housing Bill Affects LIHTC Projects

By Buzz Roberts, Local Initiatives Support Corporation

The Housing and Economic Recovery Act of 2008 (H.R. 3221), which Congress has just approved, is the most far-reaching housing bill in many years. While the media have focused on its provisions affecting subprime lending and foreclosures, the low-income housing tax credit (LIHTC) world has watched the bill's numerous important changes to the LIHTC law. Separately, however, the bill also includes several other provisions that will significantly affect many LIHTC deals. Here are some of the most relevant of these other provisions.

Directly affecting LIHTC projects is a package of House-originated provisions designed to coordinate U.S. Department of Housing and Urban Development (HUD) and U.S. Department of Agriculture (USDA) programs better with the LIHTC. These provisions address several areas.

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.

Project-based vouchers (PBVs) should be 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.

The bill requires HUD to delegate to willing states or localities the processing of Section 202 elderly housing projects once HUD selects them to receive support. The bill also makes McKinney-Vento Shelter-Plus-Care funding somewhat more flexible.

LIHTC tenant characteristics will become more transparent. The bill requires state agencies to collect annual data on concerning race, ethnicity, family composition, age, income, housing voucher utilization, disability status and rents. State agencies are to use existing reporting processes to the extent possible and minimize burdens on property owners.

More broadly, the bill requires HUD to expedite approval of projects using LIHTCs; work with the IRS to simplify coordination with LIHTCs and tax-exempt housing bonds; and consult with stakeholders and report to Congress. Similarly, the bill requires USDA to speed the processing of Section 515 project transfers for preservation and rehabilitation, and coordinate with the IRS on such projects.

A more prominent part of the housing bill will strengthen the regulation of Fannie Mae, Freddie Mac and the Federal Home Loan Banks. A new Federal Housing Finance Agency will succeed the current regulators – HUD's Office of Federal Housing Enterprise Oversight and the Federal

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Housing Finance Board. This part of the bill will also affect LIHTC resources.

Fannie and Freddie would also have to contribute 4.2 basis points of their total new business purchases toward certain public purposes — roughly estimated at \$700 million annually. The initial use would be to fund a Treasury account to defray the government's projected losses on a new program the bill establishes to use FHA mortgage insurance to refinance troubled homeowners. But starting in 2010, this money would be transitioned to support two new affordable housing activities: a Housing Trust Fund and a Capital Magnet Fund.

The new Housing Trust Fund will subsidize the production and preservation of affordable housing, primarily to serve poor renters. Mandatory contributions from Fannie Mae and Freddie Mac could reach \$450 million by 2012. HUD would provide formula grants to states to administer the trust fund. The new Capital Magnet Fund would provide Community Development Financial Institutions (CDFIs) and not-for-profit housing organizations with

grants to attract private capital for low-income housing and community development. Mandatory contributions from Fannie Mae and Freddie Mac could reach \$250 million by 2012. The Treasury Department's CDFI Fund would administer the program on a competitive basis.

The new regulating agency will set revised goals for Fannie and Freddie to purchase mortgages to finance affordable multifamily housing as well as single-family mortgages. The multifamily goal applies to mortgages on low-income housing, with additional requirements for mortgages on very low-income housing and reporting requirements on smaller mortgages. State or local bond financing (both taxable and tax-exempt) can count toward the goal if Fannie or Freddie guarantees the bond or purchases a bond. However, the agency may award less credit for purchasing investment grade bonds that do not provide a new market or add liquidity to an existing market. Moreover, equity investments in LIHTC projects would not count toward meeting the goal. A range of enforcement tools would be available to the regulator.

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In addition to the affordable housing goals, the bill, for the first time, would also establish for Fannie and Freddie a “duty to serve underserved markets.” No specific volume target would be set, but Fannie and Freddie would be expected to “provide leadership to the market in developing loan products and flexible underwriting guidelines to facilitate a secondary market to for very low-, low- and moderate-income families.” These duties apply the preservation of housing assisted under various HUD and USDA rental housing programs, as well as to mortgages on affordable manufactured housing and on mortgages in rural areas. The new agency may also add duties to serve other underserved markets. Again, a range of enforcement tools would be available.

Finally, the bill slightly broadens the authority of banks

to make “public welfare investments”, including LIHTC investments. Until now, each bank investment had to primarily benefit low- and moderate-income people or communities. Although most LIHTC investments met this standard, a bank could not make a direct investment in a LIHTC project located outside a low- or moderate-income area if only a minority of the units serve low-income tenants. The new law will allow such investments. ❖

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