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PRESENT A SEMINAR ON

THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

Affordable Housing Impacts

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THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009("ARRA")

Affordable Housing Impacts

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TCAP cont'd

enforcement, research and evaluation activities: *Provided further*, That funds set aside in the previous proviso shall remain available until September 30, 2012: *Provided further*, That any funds made available under this heading used by the Secretary for personnel expenses related to administering funding under this heading shall be transferred to "Personnel Compensation and Benefits, Community Planning and Development" and shall retain the terms and conditions of this account, including reprogramming provisions, except that the period of availability set forth in the previous proviso shall govern such transferred funds: *Provided further*, That any funds made available under this heading used by the Secretary for training or other administrative expenses shall be transferred to "Administration, Operations, and Management" for non-personnel expenses of the Department of Housing and Urban Development: *Provided further*, That any funds made available under this heading used by the Secretary for technology shall be transferred to "Working Capital Fund".

HOME INVESTMENT PARTNERSHIPS PROGRAM

TCAP

For an additional amount for capital investments in low-income housing tax credit projects, \$2,250,000,000, to remain available until September 30, 2011: *Provided*, That such funds shall be made available to State housing credit agencies, as defined in section 42(h) of the Internal Revenue Code of 1986, and shall be apportioned among the States based on the percentage of HOME funds appropriated in each State and the participating jurisdictions therein for Fiscal Year 2008: *Provided further*, That the housing credit agencies in each State shall distribute these funds competitively under this heading and pursuant to their qualified allocation plan (as defined in section 42(m) of the Internal Revenue Code of 1986) to owners of projects who have received or receive simultaneously an award of low-income housing tax credits under section 42(h) of the Internal Revenue Code of 1986: *Provided further*, That housing credit agencies in each State shall commit not less than 75 percent of such funds within one year of the date of enactment of this Act, and shall demonstrate that the project owners shall have expended 75 percent of the funds made available under this heading within two years of the date of enactment of this Act, and shall have expended 100 percent of the funds within 3 years of the date of enactment of this Act: *Provided further*, That failure by an owner to expend funds within the parameters required within the previous proviso shall result in a redistribution of these funds by a housing credit agency to a more deserving project in such State, except any funds not expended after 3 years from enactment shall be redistributed by the Secretary to other States that have fully utilized the funds made available in them: *Provided further*, That projects awarded low income housing tax credits under section 42(h) of the IRC of 1986 in fiscal years 2007, 2008, or 2009 shall be eligible for funding under this heading: *Provided further*, That housing credit agencies shall give priority to projects that are expected to be completed within 3 years of enactment: *Provided further*, That any assistance provided to an eligible low income housing tax credit project under this heading shall be made in the same manner and be subject to the same limitations (including rent, income, and use restrictions, in lieu of corresponding limitations under the HOME program) as required by the state housing

credit agency with respect to an award of low income housing credits under section 42 of the IRC of 1986: *Provided further*, That the housing credit agency shall perform asset management functions, or shall contract for the performance of such services, in either case, at the owner's expense, to ensure compliance with section 42 of the IRC of 1986, and the long term viability of buildings funded by assistance under this heading: *Provided further*, That the term eligible basis (as such term is defined in such section 42) of a qualified low-income housing tax credit building receiving assistance under this heading shall not be reduced by the amount of any grant described under this heading: *Provided further*, That the Secretary shall be given access upon reasonable notice to a State housing credit agency to information related to the award of Federal funds from such housing credit agency pursuant to this heading and shall establish an internet site that shall identify all projects selected for an award, including the amount of the award and such site shall provide linkage to the housing credit agency allocation plan which describes the process that was used to make the award decision: *Provided further*, That in administering funds under this heading, the Secretary may waive any provision of any statute or regulation that the Secretary administers in connection with the obligation that the Secretary administers the recipient of these funds except for requirements imposed by this heading and requirements related to fair housing, non-discrimination, labor standards and the environment, upon a finding that such waiver is required to expedite the use of such funds: *Provided further*, That for purposes of environmental compliance review, credit agencies for distribution that are made available to State housing agencies for distribution to projects awarded low income housing tax credits shall be treated as funds under the HOME program and shall be subject to Section 288 of the HOME Investment Partnership Act.

HOMELESSNESS PREVENTION FUND

For homelessness prevention and rapid re-housing activities, \$1,500,000,000, to remain available until September 30, 2011: *Provided*, That funds provided under this heading shall be used for the provision of short-term or medium-term rental assistance; housing relocation and stabilization services including housing search, mediation or outreach to property owners, credit repair, security or utility deposits, utility payments, rental assistance for a final month at a location, moving cost assistance, and case management; or other appropriate activities for homelessness prevention and rapid re-housing of persons who have become homeless: *Provided further*, That grantees receiving such assistance shall collect data on the use of the funds awarded and persons served with this assistance in the HUD Homeless Management Information System ("HMIS") or other comparable database: *Provided further*, That grantees may use up to 5 percent of any grant for administrative costs: *Provided further*, That funding made available under this heading shall be allocated to eligible grantees (as defined and designated in sections 411 and 412 of subtitle B of title IV of the McKinney-Vento Homeless Assistance Act (the "Act")) pursuant to the formula authorized by section 413 of the Act: *Provided further*, That the Secretary may establish a minimum grant size: *Provided further*, That grantees shall expend at least 60 percent

"(C) LIMITATION ON AMOUNT OF BONDS DESIGNATED.—The maximum aggregate face amount of bonds which may be designated by any Indian tribal government under subparagraph (A) shall not exceed the amount of national tribal economic development bond limitation allocated to such government under paragraph (1)."

(b) STUDY.—The Secretary of the Treasury, or the Secretary's delegate, shall conduct a study of the effects of the amendment made by subsection (a). Not later than 1 year after the date of the enactment of this Act, the Secretary of the Treasury, or the Secretary's delegate, shall report to Congress on the results of the study conducted under this paragraph, including the Secretary's recommendations regarding such amendment.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to obligations issued after the date of the enactment of this Act.

SEC. 1403. INCREASE IN NEW MARKETS TAX CREDIT.

(a) IN GENERAL.—Section 45D(d)(1) is amended—

(1) by striking "and" at the end of subparagraph (C),

(2) by striking "2007, 2008, and 2009," in subparagraph (D), and inserting "2007," and

(3) by adding at the end the following new subparagraphs:

(E) "\$5,000,000,000 for 2008, and

(F) "\$5,000,000,000 for 2009."

(b) SPECIAL RULE FOR ALLOCATION OF INCREASED 2008 LIMITATION.—The amount of the increase in the new markets tax credit made by subsection (a) shall be allocated in accordance with section 45D(f)(2) of the Internal Revenue Code of 1986 to qualified community development entities (as defined in section 45D(c) of such Code) which—

- (1) submitted an allocation application with respect to calendar year 2008, and
- (2)(A) did not receive an allocation for such calendar year, or
- (B) received an allocation for such calendar year in an amount less than the amount requested in the allocation application.

SEC. 1404. COORDINATION OF LOW-INCOME HOUSING CREDIT AND LOW-INCOME HOUSING GRANTS.

Subsection (i) of section 42 is amended by adding at the end the following new paragraph:

"(g) COORDINATION WITH LOW-INCOME HOUSING CREDIT AND LOW-INCOME HOUSING GRANTS.—

(A) REDUCTION IN STATE HOUSING CREDIT CEILING FOR POSSES OF THIS SECTION.—The amounts described in clauses (i) through (iv) of subsection (h)(3)(C) with respect to any State for 2009 shall each be reduced by so much of such amount as is taken into account in determining the amount of any grant to such State under section 1602 of the American Recovery and Reinvestment Tax Act of 2009.

(B) SPECIAL RULE FOR BASIS.—Basis of a qualified low-income building shall not be reduced by the amount of any grant described in subparagraph (A)."

NMTC

Section 42

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Exchange

instruments evidencing the entitlement to the credit rather than the tax credit bond.

"(f) REGULATIONS, ETC.—The Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this section, including methods for determining a shareholder's proportionate share of credits."

(b) CONFORMING AMENDMENTS.—

(1) Section 54(f) is amended by striking paragraph (4) and by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

(2) Section 54A(h) is amended to read as follows:

"(h) BONDS HELD BY REAL ESTATE INVESTMENT TRUSTS.—If any qualified tax credit bond is held by a real estate investment trust, the credit determined under subsection (a) shall be allowed to beneficiaries of such trust (and any gross income included under subsection (f) with respect to such credit shall be distributed to such beneficiaries) under procedures prescribed by the Secretary."

(3) The table of sections for part 1 of subchapter M of chapter 1 is amended by inserting after the item relating to section 853 the following new item:

"Sec. 853A. Credits from tax credit bonds allowed to shareholders."

shall apply to taxable years ending after the date of the enactment of this Act.

Subtitle G—Other Provisions

SEC. 1601. APPLICATION OF CERTAIN LABOR STANDARDS TO PROJECTS FINANCED WITH CERTAIN TAX-FAVORED BONDS.

Subchapter IV of chapter 31 of the title 40, United States Code, shall apply to projects financed with the proceeds of—

- (1) any new clean renewable energy bond (as defined in section 54C of the Internal Revenue Code of 1986) issued after the date of the enactment of this Act,
- (2) any qualified energy conservation bond (as defined in section 54D of the Internal Revenue Code of 1986) issued after the date of the enactment of this Act,
- (3) any qualified zone academy bond (as defined in section 54E of the Internal Revenue Code of 1986) issued after the date of the enactment of this Act,
- (4) any qualified school construction bond (as defined in section 54F of the Internal Revenue Code of 1986), and
- (5) any recovery zone economic development bond (as defined in section 1400U-2 of the Internal Revenue Code of 1986).

SEC. 1602. GRANTS TO STATES FOR LOW-INCOME HOUSING PROJECTS IN LIEU OF LOW-INCOME HOUSING CREDIT ALLOCATIONS FOR 2009.

(a) IN GENERAL.—The Secretary of the Treasury shall make a grant to the housing credit agency of each State in an amount equal to such State's low-income housing grant election amount.

(b) LOW-INCOME HOUSING GRANT ELECTION AMOUNT.—For purposes of this section, the term "low-income housing grant election amount" means, with respect to any State, such amount as the

Exchange program

Exchange Program cont'd

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State may elect which does not exceed 85 percent of the product of—

- (1) the sum of—
 - (A) 100 percent of the State housing credit ceiling for 2009 which is attributable to amounts described in clauses (i) and (iii) of section 42(h)(3)(C) of the Internal Revenue Code of 1986, and
 - (B) 40 percent of the State housing credit ceiling for 2009 which is attributable to amounts described in clauses (ii) and (iv) of such section, multiplied by
- (2) 10.

(c) SUBAWARDS FOR LOW-INCOME BUILDINGS.—

(1) IN GENERAL.—A State housing credit agency receiving a grant under this section shall use such grant to make subawards to finance the construction or acquisition and rehabilitation of qualified low-income buildings. A subaward under this section may be made to finance a qualified low-income building with or without an allocation under section 42 of the Internal Revenue Code of 1986, except that a State housing credit agency may make subawards to finance qualified low-income buildings without an allocation only if it makes a determination that such use will increase the total funds available to the State to build and rehabilitate affordable housing. In complying with such determination requirement, a State housing credit agency shall establish a process in which applicants that are allocated credits are required to demonstrate good faith efforts to obtain investment commitments for such credits before the agency makes such subawards.

(2) SUBAWARDS SUBJECT TO SAME REQUIREMENTS AS LOW-INCOME HOUSING CREDIT ALLOCATIONS.—

Any such subaward with respect to any qualified low-income building shall be made in the same manner and shall be subject to the same limitations (including rent, income, and use restrictions on such building) as an allocation of housing credit dollar amount allocated by such State housing credit agency under section 42 of the Internal Revenue Code of 1986, except that such subawards shall not be limited by or otherwise affect (except as provided in subsection (h)(3)(D) of such section), the State housing credit ceiling applicable to such agency.

(3) COMPLIANCE AND ASSET MANAGEMENT.—

The State housing credit agency shall perform asset management functions to ensure compliance with section 42 of the Internal Revenue Code of 1986 and the long-term viability of buildings funded by any subaward under this section. The State housing credit agency may collect reasonable fees from a subaward recipient to cover expenses associated with the performance of its duties under this paragraph. The State housing credit agency may retain an agent or other private contractor to satisfy the requirements of this paragraph.

(4) RECAPTURE.—

The State housing credit agency shall impose conditions or restrictions, including a requirement providing for recapture, on any subaward under this section so as to assure that the building with respect to which such subaward is made remains a qualified low-income building during the compliance period. Any such recapture shall be payable to the Secretary of the Treasury for deposit in the general fund of the Treasury and may be enforced by means

Exchange Program cont'd

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of liens or such other methods as the Secretary of the Treasury determines appropriate.

(d) RETURN OF UNUSED GRANT FUNDS.—Any grant funds not used to make subawards under this section before January 1, 2011, shall be returned to the Secretary of the Treasury on such date. Any subawards returned to the State housing credit agency on or after such date shall be promptly returned to the Secretary of the Treasury. Any amounts returned to the Secretary of the Treasury under this subsection shall be deposited in the general fund of the Treasury.

(e) DEFINITIONS.—Any term used in this section which is also used in section 42 of the Internal Revenue Code of 1986 shall have the same meaning for purposes of this section as when used in such section 42. Any reference in this section to the Secretary of the Treasury shall be treated as including the Secretary's delegate.

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

SEC. 1603. GRANTS FOR SPECIFIED ENERGY PROPERTY IN LIEU OF TAX CREDITS.

(a) IN GENERAL.—Upon application, the Secretary of the Treasury shall, subject to the requirements of this section, provide a grant to each person who places in service specified energy property to reimburse such person for a portion of the expense of such property as provided in subsection (b). No grant shall be made under this section with respect to any property unless such property—

- (1) is placed in service during 2009 or 2010, or
- (2) is placed in service after 2010 and before the credit termination date with respect to such property, but only if the construction of such property began during 2009 or 2010.

(b) GRANT AMOUNT.—

(1) IN GENERAL.—The amount of the grant under subsection (a) with respect to any specified energy property shall be the applicable percentage of the basis of such property.

(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term "applicable percentage" means—

- (A) 30 percent in the case of any property described in paragraphs (1) through (4) of subsection (d), and
- (B) 10 percent in the case of any other property.

(3) DOLLAR LIMITATIONS.—In the case of property described in paragraph (2), (6), or (7) of subsection (d), the amount of any grant under this section with respect to such property shall not exceed the limitation described in section 48(c)(1)(B), 48(c)(2)(B), or 48(c)(3)(B) of the Internal Revenue Code of 1986, respectively, with respect to such property.

(c) TIME FOR PAYMENT OF GRANT.—The Secretary of the Treasury shall make payment of any grant under subsection (a) during the 60-day period beginning on the later of—

- (1) the date of the application for such grant, or
- (2) the date the specified energy property for which the grant is being made is placed in service.

(d) SPECIFIED ENERGY PROPERTY.—For purposes of this section, the term "specified energy property" means any of the following:

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Tax Credit Assistance Program

Program Description

The Tax Credit Assistance Program (TCAP) provides grant funding for capital investment in Low Income Housing Tax Credit (LIHTC) projects via a formula-based allocation to State housing credit allocation agencies. The housing credit agencies in each State shall distribute these funds competitively and according to their qualified allocation plan. Projects awarded low income housing tax credits in fiscal years 2007, 2008, or 2009 are eligible for funding, but housing credit agencies must give priority to projects that are expected to be completed by February 2012. Seventy-five percent of TCAP funds must be committed by February 2010, 75 percent must be expended by February 2011, and 100 percent of the funds must be expended by February 2012.

Eligible Applicants

The 52 State Housing Credit Agencies that administer the Low-Income Housing Tax Credit Program are the only eligible applicants (the 50 states plus the District of Columbia and the Commonwealth of Puerto Rico). No other organizations, entities, or individuals are eligible for funding. Funding is by formula allocation to the 52 eligible state agencies.

Funding Amounts

Total Funding: \$2,250,000,000
Total Funds Allocated: \$2,250,000,000
Total Funds Obligated: \$0
Total Funds Expended: \$0

[See allocations by state](#)

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BREAKING TAX NEWS BULLETIN

President Obama Signs Stimulus Bill That Includes Help for Affordable Housing

On February 13, 2009, both the House and Senate passed the American Recovery and Reinvestment Act of 2009 (the "Stimulus Act" or the "Act"). President Obama signed the bill into law on February 17, 2009.

The major tax change for the low-income housing tax credit ("LIHTC") industry is the new grant program.

- LIHTC Credit Exchange. The Act allows States to exchange certain 2008 or 2009 LIHTC for grants that would then be used for buildings that would qualify under Section 42. Grants could be used in conjunction with an allocation of LIHTC or could be used on qualifying projects that go forward without using any LIHTC.

The attached Tax Update Bulletin discusses how the new credit exchange program works and provides commentary regarding the numerous questions created by the new program. The Tax Update Bulletin also discusses other tax changes in the Act that are applicable to the housing and tax credit industry including:

- Ability to Use Tax-Exempt Bonds or Subsidized Energy Financing with Energy Credit Property
- Grants In Place of Investment Credit for Energy Credit Property
- Ability to Elect to Take Investment Tax Credit in place of Renewable Energy Production Credit
- Extension of Renewable Energy Production Credit
- Reinstatement of 50% Bonus Depreciation
- Additional New Markets Tax Credit ("NMTC") Allocations
- Debt Restructuring Help Through New Rules for Debt Forgiveness and Reacquisitions

Also attached is a Fact Sheet providing some information about some of the non-tax appropriations portion of the Stimulus Act that will impact the housing industry. These include:

- \$2.25 billion of HOME funds to fill gaps in LIHTC projects
- \$2 billion Project-Based Rental Assistance for Section 8, 202/811 projects
- \$250 million for Energy Retrofits for Section 8, 202/811 projects
- \$4 billion Public Housing Capital Fund
- \$1 billion CDBG
- \$2 billion for Neighborhood Stabilization Program
- \$1.5 billion Homeless Prevention



A copy of this Bulletin, the Fact Sheet and the Act are available at <http://www.att-law.com/publication.html>. References to "Code" in refer to the Internal Revenue Code of 1986, as amended.

Additional Information – For questions related to the new legislation, please contact Glenn Graff at 312-491-3313 or ggraff@att-law.com.

Tax Opinion Disclaimer – Please note that this Bulletin and the Fact Sheet are only summaries of a long and complex statute. Please contact your tax advisor with respect to applying the new rules. The Bulletin and Fact Sheet are not intended to be used, and may not be used by any direct or indirect recipient, for the purpose of (i) avoiding any penalties that may be imposed on such recipient, or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

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TAX UPDATE BULLETIN

**EXPLANATION AND COMMENTARY ON SELECT HOUSING
AND TAX CREDIT PROVISIONS OF THE STIMULUS ACT,
THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (THE "ACT")**

1. Exchange Low-Income Housing Tax Credits ("LIHTCs") for Grants (Act Sections 1404 and 1602)

For 2009 the U.S. Treasury will provide a grant to state housing credit agencies ("Credit Agency") and the Credit Agencies can then make subawards of the grant funds to projects. The grant amount is equal to the following formula:

$$\text{Grant Amount} = 10 \times 85\% \times \text{LIHTC Amount Elected by State}$$

Comment – This is equivalent to a project receiving \$0.85 per LIHTC from a tax credit investor

- a. Limit on Amount Exchanged – A Credit Agency can elect to exchange LIHTC up to the following amounts: (i) 100% of unused housing credit ceiling for 2008, (ii) 100% of any previously allocated LIHTCs returned to the State in 2009, (iii) 40% of a State's 2009 LIHTC allocation, and (iv) 100% of a State's share of the National Pool.

Comment – Allowing 100% of returned credits to be converted to grants, should help projects which have received 2008 credits but have been unable to find a tax credit investor. With the cooperation of the State, such projects should be able to return their 2008 Credits and instead receive a grant.

Comment – Because of the technical nature of the exchange provisions of the Act and how such provisions interact with the supplemental disaster area LIHTC created in the Emergency Economic Stabilization Act of 2008 ("EESA"), it appears that the Act does not allow a State to exchange any of the supplemental 2009 disaster area LIHTC. Furthermore, it is unclear if pre-2009 allocations of disaster area LIHTC under EESA (or even GO Zone LIHTC) can be returned in 2009 under IRS regulations. If such LIHTC could be returned, for example by the return of a carryover allocation of disaster area LIHTC, then such LIHTC would be eligible for 100% exchange under (ii) above. However, in an informal discussion with the IRS their position was that because GO Zone and disaster area LIHTC are lost if not allocated by the end of the relevant year, the result is that such supplemental LIHTC could not be returned in a subsequent year and therefore such supplemental LIHTC are ineligible for exchange. The IRS acknowledged that this area was unclear. Clarification of these areas will likely be a top priority for states with special allocations of disaster area LIHTC or GO Zone LIHTC

- b. Subawards of Grants – Grants are awarded to the Credit Agency and the Credit Agency then makes a subaward of the grant funds to finance the construction or acquisition and rehabilitation of Section 42 qualified low-income buildings.

Comment – Can grant funds be used for reserves and other project costs which are not construction, acquisition or rehabilitation?

