Glossary – Low Income Housing Tax Credit

Low Income Housing Tax Credits (LIHTC)

(LIHTC - often pronounced "lie-tech", Housing Credit) is a dollar-for-dollar tax credit in the United States for affordable housing investments. It was created under the Tax Reform Act of 1986 (TRA86) and gives incentives for the utilization of private equity in the development of affordable housing aimed at low-income Americans. LIHTC accounts for the majority (approximately 90%) of all affordable rental housing created in the United States today. As the maximum rent that can be charged is based upon the Area Median Income ("AMI"), LIHTC housing remains unaffordable to many low-income (<30% AMI) renters. The credits are also commonly called Section 42 credits in reference to the applicable section of the Internal Revenue Code. The tax credits are more attractive than tax deductions as the credits provide a dollar-for-dollar reduction in a taxpayer's federal income tax, whereas a tax deduction only provides a reduction in taxable income. The "passive loss rules" and similar tax changes made by TRA86 greatly reduced the value of tax credits and deductions to individual taxpayers. Less than 10% of current credit expenditures are claimed by individual investors

4 Percent Credit

The 4 percent credit is the credit percentage available for existing housing or for federally subsidized new construction or rehabilitation (30 percent credit).

9 Percent Credit

The 9 percent credit is the credit percentage available for new construction or rehabilitation (70 percent credit).

20-50 Test

The 20-50 test is a minimum set-aside test used to determine if a building is a qualified low-income housing project. Under the test, a building is generally a qualified low-income building if at least 20 percent of the units are both rent restricted and are occupied by tenants whose income is less than or equal to 50 percent of area median gross income.

25-60 Test

The 25-60 test is a minimum set-aside test used to determine if a building is a qualified low-income housing project. Under the test, a building is generally a qualified low-income building if at least 50 percent of the units are both rent restricted and are occupied by tenants whose income is less than or equal to 60 percent of area median gross income. This test is applicable to New York City only, and is applied in lieu of the 40-60 minimum set-aside test.

**Source: Novogradac & Company LLP*

30 Percent Credit
The 30 percent credit is the credit percentage available for existing housing or for federally subsidized new construction or rehabilitation (4 percent credit).

40-60 Test
The 40-60 test is a minimum set-aside test used to determine if a building is a qualified low-income housing project. Under the test, a building is generally a qualified low-income building if at least 40 percent of the units are both rent restricted and are occupied by tenants whose income is less than or equal to 60 percent of area median gross income.

70 Percent Credit
The 70 percent credit is the credit percentage available for new construction or rehabilitation (9 percent credit).

Acquisition Cost
Acquisition cost is the cost of acquiring an existing building.

Acceleration
Acceleration is a provision included in many of the bond documents requiring the immediate payment of all the bond principal, generally caused by the borrower's default.

Adjusted Basis
Adjusted basis is the cost basis of a building adjusted for capital improvements minus depreciation allowable.

Adjusted Investor Equity
Adjusted investor equity is the aggregate amount of cash taxpayers invested increased by cost-of-living adjustment.

Applicable Federal Rate (AFR)
Applicable federal rate is a short term, mid-term and long-term debt rate that is re-determined on a monthly basis.

Applicable Fraction
Applicable fraction is the percentage of a building that is treated as low-income use and generally eligible for the LIHC. The applicable fraction is the lesser of the unit fraction or the floor space fraction.

Applicable Percentage
Applicable percentage describes the technical term for the credit percentage that a qualified low-income housing project is eligible for.

Arbitrage Yield Restriction
Arbitrage occurs when tax-exempt bond proceeds are invested in securities that yield a greater

return than the interest charged on the bonds. Restrictions exist on the amount of arbitrage bonds can earn without putting the tax-exempt status of the bonds in peril. In instances where the restriction is violated, exceptions exist that allow for the tax-exempt status of the bonds to remain intact.

Area Median Gross Income (AMGI)
Area median gross income is the gross income level that half the families in an area are below.

At-Risk Rule
The at-risk rule is the rule that limits the ability to include in eligible basis property purchased with nonrecourse financing. An exception exists for nonrecourse financing that meets the definition of Qualified Commercial Financing.

Balloon Payment
A balloon payment is a single future payment of the entire bond principal when the borrower makes periodic interest-only payments.

Basis Point
A basis point is one-one-hundredth of a percentage point (.01%).

Below Market Federal Loan
A below market federal loan is any loan funded by federal funds if the interest rate payable on such loan is less than the applicable federal rate.

Bond Counsel
Bond counsel is the attorney representing the bond issuer and bondholders. The attorney provides an opinion that the interest on the bonds is exempt from federal taxation. He/she is responsible for the bond inducement resolution, bonds, the bond indenture, the financing agreement, the regulatory agreement and the tax opinion.

Bond Issuance Costs
Bond issuance costs are the costs incurred to issue the bonds, including legal fees, underwriting fees, rating agency fees, trustee fees, printing, etc.

Bond Issuer
A bond issuer is the governmental or non-profit entity responsible for issuing bonds.

Bond Purchase Agreement
A bond purchase agreement is an agreement between the borrower, issuer and underwriter allowing the underwriter to sell the bonds, subject to responsibilities, warranties, and agreements agreed to by the issuer.

Bond Trustee
The bond trustee is responsible for collecting the interest and principal payments and

forwarding these payments to bondholders. The trustee invests the bond proceeds, as applicable, and administers the indenture agreement.

Call Premium
A call premium is a payment made to the bondholder if the borrower pays off the bonds before they mature.

Call Protection
Call protection describes the provisions in a bond issuance that preclude the borrower from prepaying the bonds for a specified period of time.

Comfort Letter
A comfort letter is a letter provided by a certified public accountant when the bond purchase agreement is executed. This letter confirms that the issuer's (or borrower's) financial information included in the official statements is presented in conformity with generally accepted auditing standards and that no changes in the financial position of the borrower since the date of the last audited financial statements, other than those changes disclosed in the comfort letter or in the official statement, have occurred.

Compliance Period
The compliance period is the 15 year period over which a project must continue to satisfy the various LIHC requirements in order to avoid tax credit recapture. The compliance period begins with the first taxable year of the credit period.

Constitutional Home Rule Subdivision
Constitutional home rules subdivision describes a political subdivision with home rule powers under the state constitution. These subdivisions receive special treatment under the LIHC state allocation rules.

Credit Enhancer
The credit enhancer guarantees, for a fee, that the bondholders will receive scheduled bond payments.

Credit Period
The credit period is the 10-year period over which the LIHC is claimed. This period generally begins on the date a property is placed in service, but a taxpayer may elect to start the credit period as of the beginning of the year following the year the LIHC property is placed in service.

Credit Recapture Amount
Credit recapture amount is the amount of credit that is recaptured upon disposition of the LIHC project during the compliance period. The maximum recapture is two-thirds of the previously claimed credit and an interest charge applies.

Deep Rent Skewing Set-Aside
Deep rent skewing set-aside is a special set-aside test that applies for purposes of determining if existing tenants qualify as low-income tenants. This special test is elective and must be met in addition to the general set-aside test (i.e. 20-50, 40-60 and 25-60).

Defeasance
Defeasance describes the retirement of bonds through the issuance of new bonds.

Difficult Development Area
A difficult development area is any area designated by the U.S. Department of Housing & Urban Development, which has high construction, land or utility costs relative to area median gross income.

Eligible Basis
Eligible basis is a component of the qualified basis of an LIHC project. It is generally equal to the adjusted basis of the building, excluding land but including amenities and common areas.

Existing Building
An existing building is a building that has been previously placed in service.

Extended Low-Income Housing Commitment
An extended low-income housing commitment is any agreement between the taxpayer and the housing credit agency that extends the low-income housing requirements for a full 30 years.

Extended Use Period
The extended use period is the period beginning on the first day that the building is part of a qualified low-income housing project and ending on the date specified by the agency or 15 years after the close of the compliance period.

Federally Assisted Building
A federally assisted building is any building that is substantially assisted, financed or operated under laws in effect the date of enactment of the Tax Reform Act of 1986.

Federally Subsidized
Federally subsidized is a term used to describe a building that is financed with a below-market federal loan or with a loan for which the interest income earned by the holder of the loan is exempt from tax under Internal Revenue Code Section 13.

Financing Agreement
The financing agreement is entered into between the bond issuer, trustee and borrower. The agreement covers how the bonds will be issued, serviced by the trustee and paid for by the borrower.

**Source: [Novogradac & Company LLP]*

Float
Float is interest earned on bond payments made to the trustee that have yet to be remitted to the bondholders. The borrower generally makes debt service payments monthly while bondholders are paid semi-annually. The interest reduces the amount the borrower has to pay to service the bonds, effectively reducing the interest rate.

Floor Space Fraction
The floor space fraction is obtained by dividing the total floor space of the low-income units in the building by the total floor space of all residential units in the building (whether or not occupied).

Grant
A grant is funds received from a private foundation or charitable group, federal, state or local government that do not have to be repaid.

Gross Income
Gross income is all income from whatever source derived, including the value of property or services as well as cash.

Gross Rent
Gross rent excludes any amounts received from a rental assistance program, utility allowance or fee paid to the owner of the unit owner by any governmental assistance program.

Housing Credit Agency
The housing credit agency is a state or local housing agency that has the authority to allocate and commit federal low-income housing tax credits to a building.

Imputed Income Limitation
The imputed income limitation would apply to a unit based on an assumed family size that is a function of the number of bedrooms in the unit.

Indenture
The indenture is an agreement between the bond issuer and the trustee containing the terms and procedures for payment of the bonds.

Inducement Resolution
An inducement resolution is the resolution passed by the bond issuer communicating the intent to issue bonds for a specific activity.

Low-Income Occupancy Percentage
See Applicable Fraction.

**Source: [Novogradac & Company LLP]*

Low-Income Unit
A low-income unit is (1) rent restricted and (2) has individuals occupying it who meet the income limitation applicable under the elected minimum set-aside test.

Mandatory Redemption
Mandatory redemption is a provision allowing a borrower to prepay bonds regardless of call provisions, due to special circumstances (e.g. foreclosure or condemnation).

MBS Trustee
The MBS trustee holds the MBS that collateralize the bonds. The MBS trustee remits the proceeds from the MBS to bond trustee, who then pays the bondholders.

Minimum Set-Aside Test
The minimum set-aside test is generally used to determine if a building is a qualified low-income housing project. There are three different minimum set-aside tests with varying applicability. The tests are 20-50 test, the 40-60 test, and the 25-60 test. (See 20-50 test, 40-60 test and 25-60 test).

Mortgage Backed Security (MBS)
Mortgage Backed Security is collateral provided by credit enhancers that is used to guarantee the bonds.

Negative Arbitrage
Negative arbitrage occurs when undisbursed bond proceeds earn a lower interest rate than the bond interest rate.

New Building
A new building is a building whose original use begins with the taxpayer. A new building also includes qualifying substantial rehabilitation costs incurred with respect to existing buildings.

Nonqualified Nonrecourse Financing
Nonqualified nonrecourse financing is nonrecourse financing that is not qualified commercial financing. This definition is used for purposes of low-income housing tax credit at-risk rules.

Nonqualified Substantial Improvement
Nonqualified substantial improvement is a term used to determine if an existing building is eligible for the acquisition credit; is any substantial improvement for which Section 167 (k) was elected or pre- 1986 Tax Reform Act depreciation rules apply.

Official Statement
The official statement is a marketing prospectus used by underwriters to sell the bonds. The official statement summarizes the terms of the bonds and other information relevant to the investment decision.

**Source: Novogradac & Company LLP*

Placed-In-Service Date
The placed-in-service date generally marks the beginning of the credit period. It is defined as the date the property is ready for occupancy.

Pledge
The pledge grants a security interest or lien to provide security for the repayment of the bond principal and interest.

Private Placement
Private placement is the sale of bonds directly from a bond issuer to an investor without the use of an underwriter. An investment banker may act as a placement agent in this type of transaction.

Private Placement Memorandum
A private placement memorandum is a document used in connection with a private placement transaction, instead of the official statement,

Qualified Basis
Qualified basis is the base that is multiplied by the credit percentage to determine the annual credit. The qualified basis equals the applicable fraction times the eligible basis.

Qualified Census Tract
A Qualified Census Tract is any census tract in which 50 percent or more of the households have an income which is less than 60 percent of area median gross income.

Qualified Commercial Financing
Qualified commercial financing is the exception to the at-risk rules. To qualify, financing must generally be nonrecourse, the lender must generally be actively engaged in the business of lending, the lender must not have previously owned the property, and the lender must not earn a fee in connection with the acquisition of the property.

Qualified Contract
A qualified contract is a bona fide contract to acquire a LIHC project for the sum of the existing debt, adjusted investor equity and other capital contributions, less project cash distributions.

Qualified Low-Income Building
A qualified low-income building is part of a qualified low-income housing project throughout the compliance period and for which prior law depreciation rules do not apply.

Qualified Low-Income Housing Project
A qualified low-income housing project is a residential rental project that satisfies the elected minimum set-aside test.

Qualified Non-profit Organization
A qualified non-profit organization, which is described in Section 501 (C)(3) or (4), is exempt from tax under Section 501(a). Its exempt purpose is to foster low-income housing, among other purposes.

Rating Agency
A rating agency determines or "rates" the investment risk of bonds. Examples include Standard & Poor's and Moody's Investors Service.

Rebate
A rebate is payment of the excess arbitrage proceeds to the federal government to retain the tax-exempt status of the bonds. Special rules allow a borrower to avoid a rebate of arbitrage proceeds.

Regulation D
Regulation D is a securities law regulation that explains the rules for three private offering exemptions from the general rules that requires securities registration.

Regulatory Agreement
A regulatory agreement is an agreement entered into between the borrower, bond issuer and trustee specifying the income rent and income restrictions a project owner must comply with for the bonds to retain their tax exempt status.

Rehabilitation Expenditures
Rehabilitation expenditures are amounts incurred in improving or making additions to property in connection with the rehabilitation of an existing building.

Rent-Restricted Unit
A rent-restricted unit is a unit for which the rent charged to tenants is limited to 30 percent of the income limitation applicable under the elected minimum set-aside test.

Scattered Site Project
A scattered site project is a qualified low-income housing project located on multiple sites.

Secondary Market
The secondary market is the subsequent sale of bonds from bondholder, after the original sale of the bonds by the bond issuer.

Section 167(k) Election
Section 167(k) is any election available before the Tax Reform Act of 1986 which allowed building owners to amortize rehabilitation costs over 60 months.

**Source: Novogradac & Company LLP*

State Housing Credit Ceiling
The state housing credit ceiling is the maximum LIHC amount a state may allocate in a given year. It is calculated at $1.75 per resident.

Substantial Improvement
Substantial improvement is used in connection with determining the eligibility of an existing building for the LIHC. It is any amount incurred during a 24-month period equal to or exceeding 25 percent of the adjusted basis of the building as of the first day of such period.

Supportive Service
Supportive service is any service provided under a planned program of services designed to enable residents to remain independent and avoid placement in a hospital, nursing home or intermediate care facility.

Tax Shelter Registration
Certain partnerships or other investments with significant tax benefits must register as tax shelters with the Internal Revenue Service and certain state tax agencies.

TEFRA Hearing
The Tax Equity and Fiscal Responsibility Act (TEFRA) Hearing is the bond issuer's public notice, public hearing and approval by elected officials of a bond issuance.

Underwriter
The underwriter is an investment bank that underwrites and markets the bonds to investors.

Underwriter's Counsel
Underwriter's counsel is an attorney who verifies that the documents used to market the bonds comply with the applicable securities regulations.

Unit Fraction
The unit fraction is the fraction obtained by dividing the number of low-income units in a building by the total number of units in the building (whether or not occupies).

Utility Allowance
The utility allowance is the amount, determined by the Secretary of the Department of the Treasury, to be the average cost of tenant utilities.

Volume Cap
The volume cap is the maximum amount of LIHCs and tax-exempt bonds each state is allowed to allocate annually. The tax credit volume cap is $1.75 per state resident. The bond volume cap is $75 per person per state, with a $225 million minimum per state. Beginning in 2003, the volume cap will be indexed to inflation.

**Source: [Novogradac & Company LLP]*