



FACT SHEET:

An Act Clarifying the Use of Massachusetts Low Income Housing and Historic Tax Credits July 16, 2009

Massachusetts Low Income Housing Tax Credit Overview

The Massachusetts Low Income Housing Tax Credit (LIHTC) was created in 1999 (Ch. 127 Acts of 1999). The program awards state tax credits to investors in multifamily rental projects that meet strict affordability requirements. It encourages private investment in affordable housing and allows developers to finance part of the cost of the development with equity invested by local corporations and individuals, thereby reducing the amount of debt financing and helping to keep rents low.

Originally established in 1999 for five years and renewed for an additional five years, the Legislature permanently extended the LIHTC in the 2008 Housing Bond Bill (Ch. 119 of the Acts of 2008). The program has helped to create over 3,500 homes and a significant amount of construction and property management jobs in both cities and suburbs across the Commonwealth.

Unfortunately, the economic downturn has significantly reduced the amount of investors willing to purchase tax credits because many are unwilling to assume the risk of the five-year credits. Corporations are unsure if they will have state tax liability over the next five years and these potential investors are fearful that they will not be able to transfer the five year credit if they do not have ample tax liability. Without these investors, the projects cannot advance and the Commonwealth loses out on additional much-needed rental housing and construction jobs. CHAPA is proposing the following changes to the LIHTC to return investors to the LIHTC market and stimulate the economy.

Attracting LIHTC Investors to Create Jobs and Housing - Section Summary

Section One and Section Seven remove a requirement that a LIHTC investor also has received a federal Low Income Housing Tax Credit. This requirement limits the pool of eligible investors and adds unnecessary legal costs despite not serving a public policy purpose.

Section Two and Section Eight provide a temporary change to respond to the current financial market by accelerating the five-year credit to three years for 2009, 2010 and 2011 tax credit allocations. Companies have a much greater ability to forecast tax liability for a three year period rather than a five year period in a down economy because financial projections in the

distant future are extremely difficult in these economic times. Therefore, reducing the tax credit length from five to three years will return investors to the LIHTC market because they will not have to rely on uncertain tax projections four and five years in the future. The additional investors will create more demand which will serve to push pricing (and therefore efficiency) of the credits higher. In addition, the compressed time period the tax benefits can be delivered significantly increases the return to the investor and also serves to push pricing (and therefore efficiency) of the credits higher. The projected additional yield¹ will exceed the cost to the Commonwealth² for compressing the tax credit from five years to three years.

Consequently, we anticipate a higher yield per dollar of tax credits awarded and therefore an increased level of housing resources made available to funded projects. This in turn lessens the burden on the Commonwealth's other housing program funds and enables additional projects and constructions job to be created without increasing the program's budgeted credit cap. Furthermore, there is precedent for an accelerated tax credit. For example, the historic tax credit is a one year credit and is not phased in over multiple years.

Section Three, Section Four, Section Ten and Section Eleven shift the risk of recapture from the investor to the developer to attract additional investors to the LIHTC market. Currently, if the investor does not follow the rules of the program, they are responsible for returning the value of the tax credit to the Commonwealth. However, this risk is actually assumed by the developer that sells the investor the credits through closing agreements. The proposed change puts the risk on the developer from the beginning of the process, which would make the LIHTC consistent with the current historic tax credit statute's recapture provisions. This would be helpful in attracting new LIHTC investors by making the credit easier to transfer and reducing the risk to the investor of the developer not following through on the program requirements.

Section Six and Section Thirteen eliminate the limitation that an investor cannot use LIHTC to offset greater than 50 percent tax liability. This change would make the LIHTC consistent with the historic tax credit.

Technical Correction to Maintain Active LIHTC Investors - Section Summary

Section Five and Section Twelve remove a prohibition on tax credit investors that received eleven years of tax credits that resulted from a technical error in the statute. There is no public policy purpose for this prohibition. Furthermore, the program is in its tenth year so resolving this issue is critical.

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¹ Projected increased yield of 11%

² Projected borrowing rate of 3%