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Navigating the Private Activity Bond Landscape

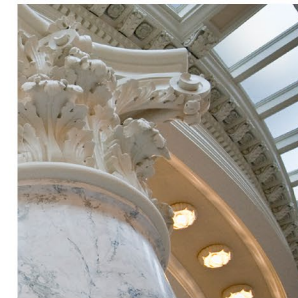
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National Council of State Housing Agencies



MRBs and Other Federal Homeownership Programs
FEBRUARY 1 – 3



Housing Credit
FEBRUARY 3 – 5



Section 8 and Other Federally Assisted Multifamily Housing
FEBRUARY 8 – 10



HOME and Housing Trust Fund
FEBRUARY 10 – 12



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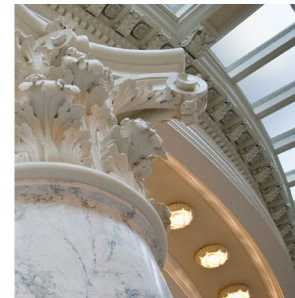
Richard Froehlich
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New York City Housing
Development Corporation



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Private Activity Bonds

- What are the limits?
 - volume limitation on a per capita basis
 - Volume Cap of \$110 per person (increases at inflation)
 - Minimum of \$325 million per state
 - requires a public hearing (TEFRA)
 - The public hearing requirement may bring “(NIMBY) issues from opponents
 - maximum bond maturity (50 years)
 - relating to life of project
 - qualifying expense requirements (95/5)
 - **Good Costs** include land & depreciable costs for income tax purposes that are paid or incurred after the date of inducement by issuer.
 - **Bad Costs** include costs incurred prior to Inducement by issuer, intangible assets, bond issuance costs and underwriting, as well as loan origination fees amortized over the permanent loan period

Private Activity Bonds for Housing

- **Qualified residential rental projects:**
- Bond proceeds are used to finance new construction or acquisition and rehabilitation of housing for persons with low and moderate incomes containing separate and complete living facilities
 - Facilities for living, sleeping, eating, cooking and sanitation
 - Open to general public for use on other than a transient basis
- **To be for low and moderate income persons:**
 - 20% of the units must be for people earning 50% of median income or 40% of the units must be for people earning 60% of median income
 - in NYC, it is 25% at 60% of median income because this is such a high-cost region

Tax Exempt Bonds Come with LIHTC: 50% Test

- In most instances pursuant to IRC Sec. 42(h) each building must receive an allocation of LIHTC from the state tax credit agency in order to qualify for tax credits
- A project may qualify for tax credits “as of right” if **50%** or more of the aggregate basis of such building (and the land on which the building is located) is financed by tax-exempt volume cap bonds (private activity bonds).
- The as of right credits are only allocated at the 4% level and is a less generous subsidy.
 - Reserves that may be required by an investor are not considered for purposes of determining the total development costs for the test.
 - The allocating agency determines if the bond financed project has met the requirements of the qualified allocation plan and needs the credits for the project’s viability.
 - The test is performed in initial sizing for bond issuance and when the project is completed.

Usage of Private Activity Bonds for Multifamily Housing Has Increased

- RAD and other preservation deals require substantial allocations of volume cap
- More competitive landscape means that HFAs may need to manage their pipelines more efficiently
- Competition for use of volume cap between multifamily and single-family homeownership programs
- 4 Percent credit fix will make multifamily bond deals even more attractive

4 Percent Fix

- More equity raised in multifamily bond deals
- Transactions will have more equity and require less additional subsidy if at all
- Some questions about interim rules and application to projects recently financed or committed
- Low interest rate environment makes bond deals attractive

Allocation Questions for HFAs

- Managing a competitive process
- Which transactions do you prioritize?
 - Preservation vs. New Construction?
- First in/First out?
- Target more extremely low and very low-income units?
- Limit need for subsidy?
- Maximize efficiency by creating most housing units per allocation of private activity bonds?
- Higher Cost Neighborhoods?

Bond Tools to Use in a Competitive Environment and Points for Advocacy

- Recycling bonds for non-tax credit deals
- Bifurcated Structures to focus volume cap on the low-income components of mixed income deals and include recycled bonds
- Please see Froehlich slide show for more details on tools
- Advocacy:
 - Reduce the 50% Test to a lower percentage
 - Increase Volume Cap allocations to a higher per capita amount
 - Allow recycling from multifamily projects to single family transactions

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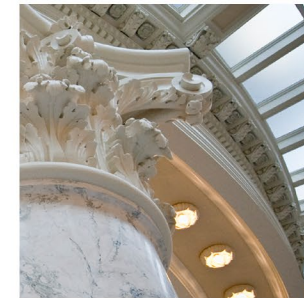
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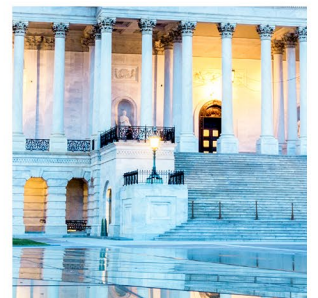
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Affordable Housing Resource Center

Surge in Rental Housing Private Activity Bonds Appears Sustainable

Journal of Tax Credits *Published by Michael Novogradac, Peter Lawrence on Monday, April 27, 2020 - 12:00am*

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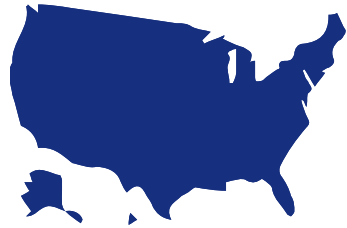
Tax-exempt private activity bonds (PABs) have long been a crucial aspect of the response to the nation's affordable rental housing crisis, and will be even more important as the effects of the COVID-19 pandemic unfold. Of the nearly 3.5 million affordable rental homes financed by low-income housing tax credit (LIHTC) equity since 1987, more than one third—about 1.2 million affordable rental homes—generated LIHTCs through PAB debt financing, according to the National Council of State Housing Agencies' (NCSHA) Annual Factbook. The annual share of rental homes constructed and preserved through the use of PABs has been rising notably since 2010, and dramatically since 2015. In 2018, the most recent year for which NCSHA has published data on units placed in service and receiving their necessary Internal Revenue Service tax forms, PAB-financed affordable rental housing production and preservation surged to more than 53 percent of all LIHTC-financed rental homes. This increase in the placement in service of rental homes financed by PABs is consistent with the rising annual issuance of PABs, as detailed below. While it was initially unclear, it appears now that this surge in rental housing PAB issuance is sustainable over the longer term.

The PAB resource is subject to an annual state volume cap, and use for rental housing competes with many other purposes, including: homeownership, mass commuting facilities, student loans, redevelopment of designated blighted areas, water and sewage treatment facilities, and hazardous waste facilities.

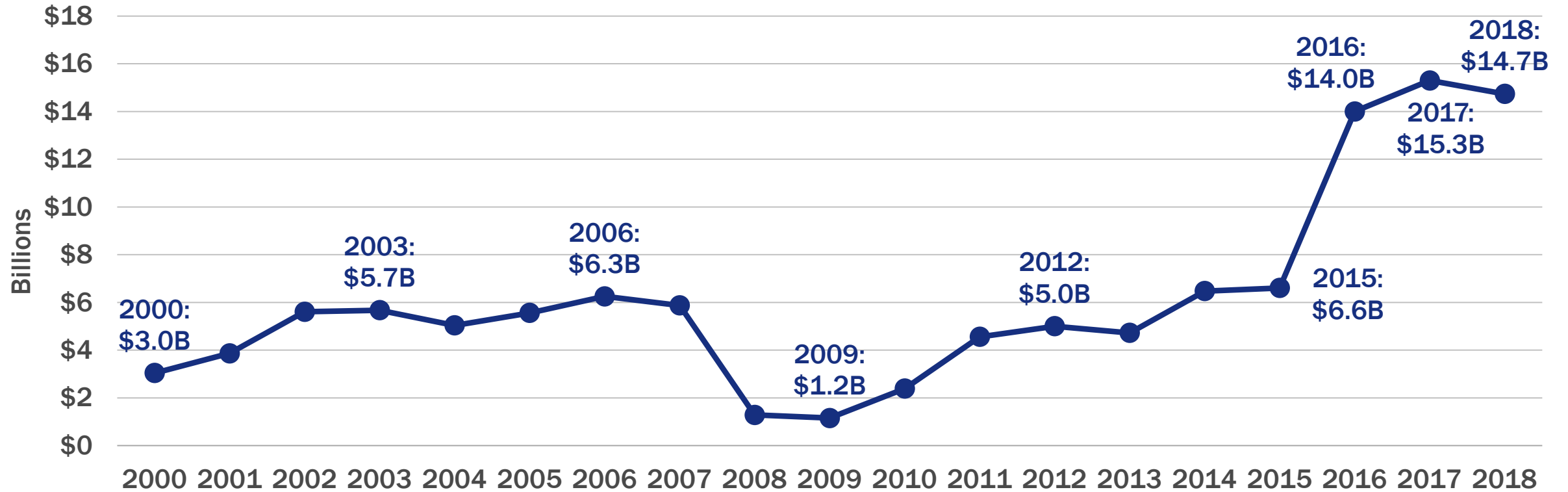
In 2020, the volume cap for each state is the greater of \$105 multiplied by the state population or \$321,775,000. The formula recalculates annually for inflation and changes in population.

The vast majority of PAB use nationally is for housing: According to the most recent annual report on PAB use by the Council of Development Finance Agencies (CDFA), in 2018, \$7.4 billion was issued to help low-income first-time homebuyers and \$14.7 billion was issued to finance multifamily rental housing. More than \$22 billion of the total \$24.1 billion in PAB issuance, or 91.5 percent, went to housing.

Historical PAB Issuance for Rental Housing



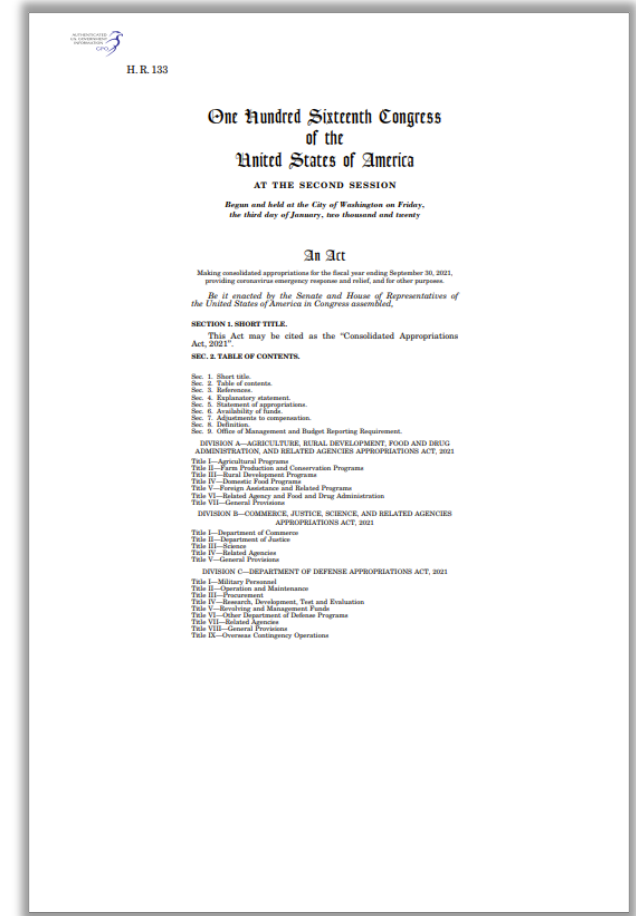
National Rental Housing Bond Use More than Doubles Since 2015



Implementation of the Minimum 4 Percent Housing Credit Rate

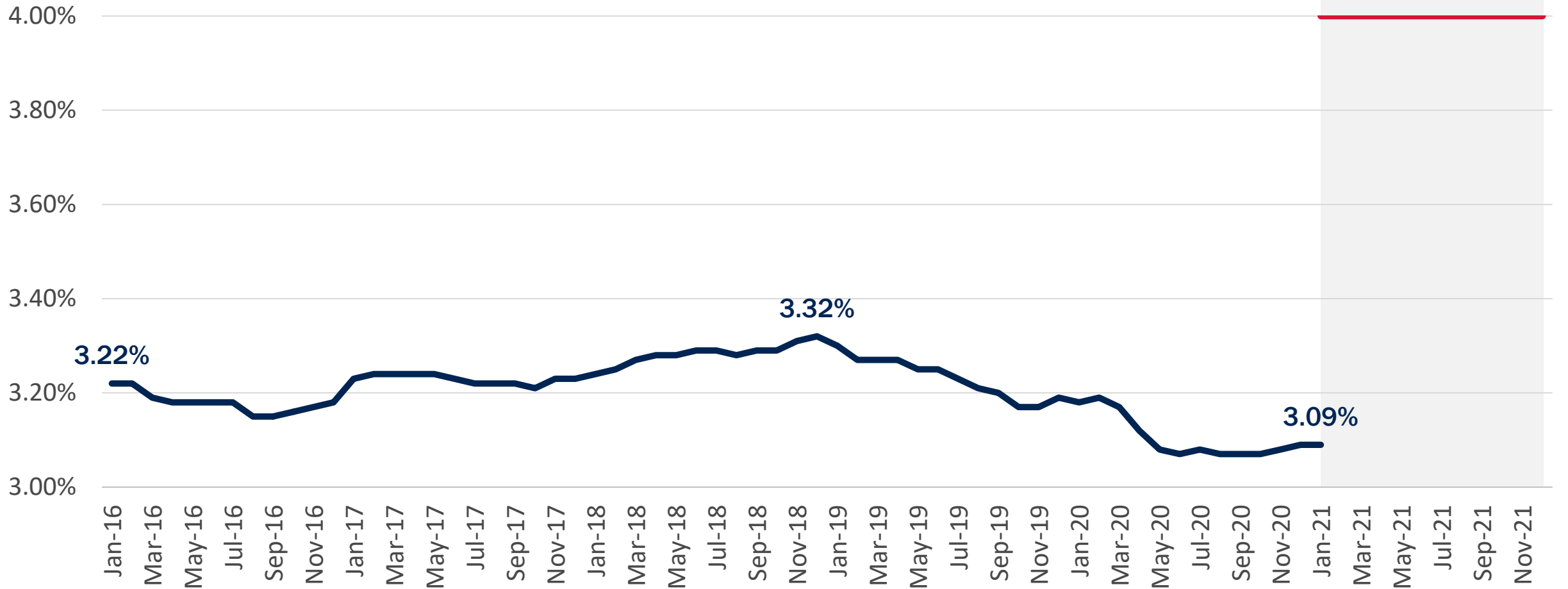
Minimum 4 Percent Rate

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30% Rate: January 2016-December 2021



Effective Date Language: Need for Clarification

MINIMUM CREDIT RATE.—In the case of any new or existing building to which paragraph (2) does not apply and which is **placed in service** by the taxpayer after December 31, 2020, the applicable percentage shall not be less than 4 percent.

“**EFFECTIVE DATE**—The amendments made by this section shall apply to—

- (1) any building which receives an allocation of housing credit dollar amount after December 31, 2020, and
- (2) in the case of any building any portion of which is financed with an obligation described in section 42(h)(4)(A), any such building if any such obligation which so finances such building is **issued** after December 31, 2020.”

Effective Date Language: Need for Clarification

Client Questions

Meaning of:

- “any building any portion”*
- “any such obligation...issued”*
- “placed in service”*

1

Draw-Down Bonds:

- Issuances in 2020 and 2021
- Bond allocation counts against 2020 volume cap

2

Supplemental 2021 Allocation:

- Issuance 2021
- Bond allocation counts against 2021 volume cap

3

In Service Acq./Rehab.:

- Acquisition in 2020
- PIS in 2021
- 2021 Bond allocation and issuance

Effective Date Language: Need for Clarification

Minimum 4 Percent Rate

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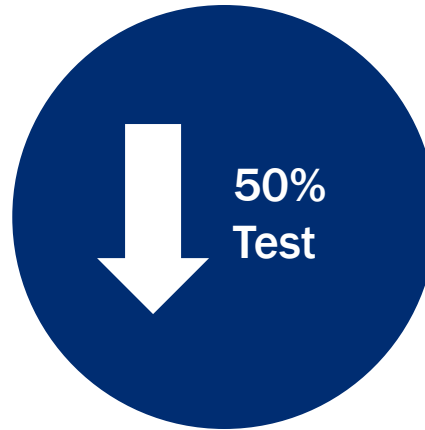


- Congressional View
- Internal Revenue Service
- State Agencies

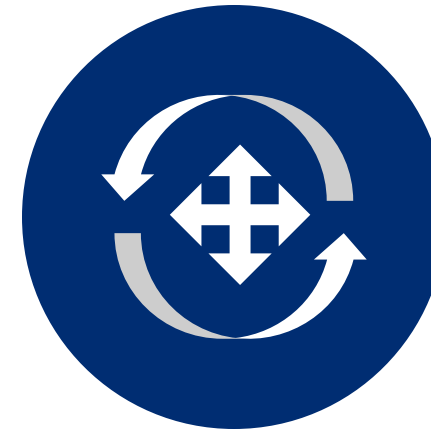
Priorities



**Increase private
activity bond
volume cap**



**Lower 50%
financed-by test**



**Expand bond
recycling**




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ANALYZING THE IMPACT OF
**LOWERING THE 50% TEST
 FOR 4% TAX-EXEMPT
 BOND FINANCED
 PROPERTIES**



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“The analysis determined that lowering the financed by test for PAB test from the current law threshold of 50% to 40% would “free” nearly \$37.5 billion in PAB cap over 2021-30 that could be allocated for more affordable rental housing or other PAB-eligible uses.”

Totals over 2021-2030

	40 Percent Test	33 Percent Test	25 Percent Test
“Freed” Bond Cap	\$37.5 billion	\$63.7 billion	\$93.7 billion
Additional Homes Financing Capacity			
50 percent scalable gap financing	177,665 homes	366,098 homes	710,660 homes
100 percent scalable gap financing	355,330 homes	732,195 homes	1,421,320 homes

Note: Numbers currently listed do not take into account minimum 4%.

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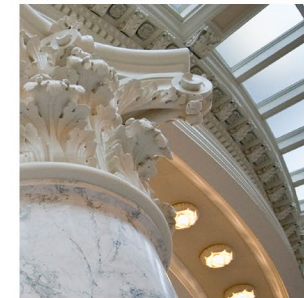
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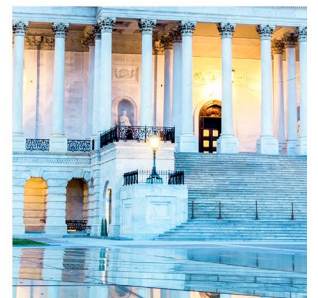
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**Presentation
on**



**New York City Housing Development Corporation
and the use of Private Activity Bonds**

February 4, 2021

Benefits of Recycled Bonds

- In states where there is a scarcity of volume cap recycling creates additional financing capacity.
- Allows Issuers to prioritize their use of new money volume cap allocated for multifamily housing to be used on projects which need “as of right” LIHTC, maximizing public benefits.
- Recycling is a tool to encourage more affordability in mixed income projects. Such projects need to satisfy the normal tax-exempt bond rules of affordability in order to qualify for the tax-exempt financing.
- Permits more efficient use of volume cap for 80/20 financings with a portion of the bonds that are in excess of the 50% requirement (for LIHTC) utilize recycled cap.
- Permits more efficient use of volume cap and leveraging private financing through use of “bifurcated” condominium structure.

Bifurcated Structures

- Creatively using condominium structure as a tool for mixed income financings where only the low-income units are financed with private activity bonds and LIHTC.
- Mixed income developers have the following priorities:
 - Qualify for tax abatements (in NY §421(a) Real Property Tax)
 - Finance qualifying units with LIHTC
 - Lower financing costs by utilizing tax-exempt bond financing
- In a Bifurcated Deal:
 - All units targeting low-income tenants are owned in a single condominium unit by a single purpose entity and financed using Tax-Exempt Bonds
 - All other units (*e.g.*, market-rate, commercial) are owned in a separate condominium unit or units by a different entity. These are financed using Taxable Bonds or traditional bank loans.

Bifurcated Structures (Cont'd)

- By financing only the low-income units instead of all units with tax-exempt bonds, the amount of volume cap needed to meet the 50% test is greatly reduced.
- There is no need for deep rent skewing and annual income certification since all of the units in the tax-exempt financed condo are low income and satisfy the LIHTC requirements.
- Under federal law, only the low-income condo is considered a low income building and the market component is irrelevant, but for New York law, the development is considered to be one unified project and will qualify for the property tax exemption.

Case Study: Bronx Commons (Melrose, The Bronx)

305 total units

- 16 units reserved for Formerly Homeless
- 166 Low-Income units affordable to households between 30% and 60% AMI
- 122 Middle-Income units with rents between 70% and 90% AMI
- 1 superintendent

The Bifurcated Structure saved approximately \$30 million in volume cap



Case Study: Bronx Commons (Melrose, The Bronx)

Construction Sources	
HDC 1 st Mortgage	\$61,770,000
<i>HDC Volume Cap</i>	\$48,555,000
<i>HDC Recycled Bonds</i>	\$13,214,000
HDC 2 nd Mortgage	\$26,386,513
HPD 3 rd Mortgage	\$40,177,800
HPD 4 th Mortgage (Our Space)	\$2,240,000
HPD Reso A Mortgage	\$7,857,000
Accrued Interest	\$4,347,881
Private Funds for BMHC	\$811,483
LIHTC Equity	\$2,367,903
WHEDco Sponsor Loan	\$300,000
Deferred Developer's Fee	\$16,127,000
Deferred Reserves	\$1,897,684
Citi DOJ Subsidy	\$1,000,000
Total Construction Sources	\$165,283,265
Uses	
Acquisition Cost	\$275,003
Construction Cost	\$120,716,499
Soft Cost	\$27,064,763
Developer's Fee	\$17,227,000
Total Uses	\$165,283,265

Permanent Sources	
HDC 1 st Mortgage	\$21,525,000
HDC 2 nd Mortgage	\$26,386,513
HPD 3 rd Mortgage	\$40,177,800
HPD 4 th Mortgage (Our Space)	\$2,240,000
HPD Reso A Mortgage	\$7,857,000
Accrued Interest	\$4,347,881
NYS CIF	\$1,000,000
Private Funds for BMHC	\$811,483
SLIHC Equity	\$4,420,000
LIHTC Equity	\$45,831,939
Deferred Developer's Fee	\$5,336,703
Solar Credit	\$548,945
WHEDco Sponsor Loan	\$300,000
Citi DOJ Subsidy	\$1,000,000
Developer Equity	\$3,500,000
Total Permanent Sources	\$165,283,265