Housing and Economic Recovery Act of 2008

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Housing and Economic Recovery Act of 2008

- Temporary increase in housing credit cap for 2008 and 2009
  - Credits increase from $2.00 to $2.20 per capita
  - Small states – increase by 10%

Housing and Economic Recovery Act of 2008

- Provides for $11 billion in additional tax-exempt housing bond volume cap for 2008

  - Bond cap increase allocated based on population

  - Unused bond cap can be carried forward and used through 2010 but must be used for housing issues.

Housing and Economic Recovery Act of 2008

- 9% credit rate floor
  - Credit rate of not less than 9%
  - Applies to non-federally subsidized new construction and substantial rehab
  - Effective for buildings placed in service
    - after July 30, 2008 and
    - on or before December 31, 2013

- 4% rate did not change - for bond financed projects and acquisition of existing buildings

Housing and Economic Recovery Act of 2008

- Eliminates concept of below-AFR federal loans from definition of federally subsidized properties
  - Requires use of 4% credit or reduction in basis for tax-exempt bond financing
  - Effective for buildings placed in service after July 30, 2008

Housing and Economic Recovery Act of 2008

- Federal Grants and Subsidies
  - Basis is not required to be reduced for rental, operating, or interest reduction payments supporting the operations of the project
  - Federal grants received prior to the compliance period that support the development and capital needs of the project will still reduce basis
  - Effective buildings placed in service after July 30, 2008

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- Acquisition Credits
  - Additional exception to ten year rule for projects that are substantially financed, assisted or operated under HUD, USDA or similar state housing programs
  - Allowable interest of previous owner increased from 10% to 50%
  - Effective for acquired buildings placed in service after July 30, 2008

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- State Designated Basis Boost
  - State Housing Credit Agency may designate a building or project as eligible for a basis boost
  - Qualifies building or project for 30% basis boost
  - Increase must be needed for building / project financial feasibility
  - Projects cannot be designated if in a federally determined QCT or DDA

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- Increase in required level of rehab
- Rehab must be greater of
  - $6,000 per unit or 20% of basis before rehab
  - Dollar threshold – annual inflationary adjustments after 2008
  - Effective for allocations made after July 30, 2008

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- Community Service Facilities
- Allowable basis for community service facilities increased to:
  - 25% of first $15 million of eligible basis, plus
  - 10% of remaining eligible basis of the project.
- Effective for buildings placed in service after July 30, 2008.

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- Clarification of General Public Use Doctrine
- A building will not fail the Public Use requirement solely because it provides preferences for tenants:
  - with special needs
  - who are members of a specified group under a federal or state program that supports housing for this group; or
  - who are involved in artistic or literary activities
- Effective for projects placed in service before, on, or after the date of enactment

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- Rural Projects

- Area Median Income will be determined by the greater of
  - Local Area Median Income, or
  - National Non-Metropolitan Median Income
    - (For 2008 - $49,300 for family of four)

- Does not apply to tax-exempt financed projects

- Effective for determinations of income made after July 30, 2008

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- Reductions in Area Median Income
- After 2008, AMI will not be permitted to drop from the previous year for bond and housing credit projects
- After 2008, AMI will increase with income changes, despite changes in HUD methodologies
- Prevents projects from seeing a decrease in allowable rents, once operating

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- Alternative Minimum Tax
- The low income housing tax credit and the historic credit will be able to offset alternative minimum tax
  - Bond interest no longer an AMT item
- Effective for buildings and rehabs placed in service after 2007
- May increase number of potential investors

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- Recapture Bond requirement upon a disposition of a building or interest therein is repealed
- Extends statute of limitations to three years beyond IRS notification of recapture event
- Effective for dispositions after July 30, 2008
- Effective for dispositions before July 30, 2008 if elected by taxpayer

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- Multifamily housing bonds may be refunded without new volume cap provide that:

- Refunding bond must be issued within
  - 6 months after original bond was repaid
  - 4 years of date original bond was issued

- Refunding bond must be due within 34 years after the issuance date of original bond

- Must be used to generate affordable housing

- No automatic credits

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- Mod Rehab Section 8 Subsidy and Tax Credits
- Prior law precluded use of tax credits on projects receiving Mod Rehab Section 8 subsidy
- New Act allows use of tax credits with this subsidy
- Effective to buildings placed in service after July 30, 2008

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- Ten Percent Test for carryover may be met by one year following allocation date
- State may require project meet sooner
- Effective for buildings placed in service after July 30, 2008

Housing and Economic Recovery Act of 2008

- Starting in 2009, the energy efficiency and historic nature of projects must be incorporated into the Qualified Allocation Plans and used as selection criteria for the allocation of credits.

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- Other provisions:
  - Housing credit rules carried over to tax-exempt bond financed projects, effective for bonds issued after July 30, 2008
    - Next available unit, definition of student, SRO
  - Basic Housing Allowance paid to military personnel not included as income in certain areas.
    - Currently 1 base qualifies - Fort Riley, Kansas
  - Aging-out foster children can qualify, even if students