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Initially perceived by many of us as a vehicle amassing the world's greatest repository of data and content to derive instant answers and more creative writing, AI's transformative potential is now becoming evident. Municipal lawyering will clearly be affected, and IMLA members need to be prepared.

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Local Government's Growing Role in Housing Affordability

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INTRODUCTION

Municipalities across the nation are vigorously seeking solutions to combat housing unaffordability. Approved projects are frequently treated as political victories as opposed to manifestations of sound policy, which is no surprise. Housing solutions depend largely on budgetary support at every level of government affecting a municipality.[1] Fortunately, this effort has generally been an otherwise-rare example of bipartisanship; for example, the incoming Trump Administration rapidly issued an Executive Order titled "Delivering Emergency Price Relief for American Families and Defeating the Cost-of-Living Crisis."[2]

It is challenging to reconcile all words and actions, however. The new Administration's policies related to other issues, including taxes, immigration, and tariffs will have immense impacts on the ability to fund affordable housing projects.[3] From a municipal perspective, understanding affordable housing deals is becoming essential for at least two reasons: the potential for growing financing gaps, and the struggle for developers to find adequate labor and property management. Municipalities should expect that developers will begin arguing about the financial strains and uncertainties that exist in the newly changed market, but developers make money building projects, so we should not expect the market to dry up, and perhaps use this as a chance to find opportunity.

This article is not intended to be political but instead is aimed at providing information that municipalities can use to help in their negotiations with developers and to create affordable housing policies. To foresee and understand developers' arguments, we will discuss the potential impacts of the Trump Administration's policies on housing. In particular, the article will discuss the federal tax code's Low Income Housing Tax Credits (LIHTC) Program and the Pathways to Removing Obstacles (PRO) Housing Program offered through the United States Department of Housing and Urban Development (HUD).

I. Federal Programs

A. LIHTC

There are effectively two categories of solutions in affordable housing: zoning changes and financial incentives. Undeniably, zoning changes can help create more housing units, which will stabilize rent. However, the vast majority of affordable housing projects are funded through federal low-income housing tax credits (LIHTC) designed to provide equity contributions into the deal in exchange for affordability.[4] Given that LIHTC deals are controlled by the market, understanding the conditions that bolster or hinder LIHTC development can help municipalities predict issues developers will face, and give them a better negotiating position.

1. Historical Underpinnings

The LIHTC program, or "Section 42", was established as part of the 1986 Tax Reform Act.[5] The program is administered by the Internal Revenue Service (IRS) at the federal level.[6] Since its inception, the LIHTC program has been politically popular.[7] It supports the construction and development industry, which Republicans tend to like. It helps provide a social safety net to moderate income households, which Democrats tend to like. Finally, the funds that support the program are not subject to biennial Congressional appropriations. The IRS determines the aggregate amount of credits available across the country and allocates them on a pro rata basis to jurisdictions.[8] For these reasons, the program has remained politically viable and popular.

Note that although the program is entitled "Low-Income Housing Tax

Credit," it is not aimed at the most needy: the projects that are built and funded are specifically geared for persons earning at least 30% of an area's median income, and in many cases, the subsidized units can benefit people earning up to 60% of an area's median income.[9] And some developments will include market rate units, which are not directly subsidized by the LIHTC program.[10] Although there is no specific definition of what constitutes "low-income" and what constitutes "moderate-income," it's important to understand that the program does not incentive any operational costs, nor does it work well for individuals or families that make less than 30% of an area's median income.[11]

2. How LIHTC Works

Once the IRS allocates the amount of LIHTC each jurisdiction can award, the jurisdictions have wide autonomy in creating and administering the program. Each jurisdiction is required under Section 42 to create a "qualified allocation plan" or QAP.[12] The QAP for each jurisdiction indicates how competitive credits will be awarded to various projects.[13] Although it varies by jurisdiction, as a general matter, there are typically about 2x - 5x more projects that request LIHTC than can be awarded.[14]

The developer of a potential LIHTC project submits an application to the jurisdiction's LIHTC allocator. The application tends to be an expensive endeavor. For example, most applications will require, as a threshold matter, that the applicant has site control (i.e., the applicant can acquire property when it chooses to do so, without any ability for the seller to terminate the buyer's rights).[15] That site control must last long enough for the buyer to apply for and get an award of tax credits (i.e., months, if not a year or more), which tends to be much longer than the market would dictate a property be under contract. Further, the application typically requires some preliminary architectural rendering, zoning and entitlement work, site due diligence like title, survey, and environmental reviews, a market study to show viability, and a preliminary indication of the sources required to build the development.[16] None of those items are inexpensive to secure, especially if a developer only has a one-in-three chance of receiving an allocation.

3. Typical Project Structure/Gaps

Developers that secure an award can then move ahead with a financial closing. The developer must first find a tax credit investor to acquire 99.99% of the project owner's beneficial interest in exchange for 99.99% of the credit award.[17] Investors desiring to use the tax credit to offset other taxable income will offer proceeds to be paid to the developer during construction.

The amount investors are willing to pay will vary significantly based on the project's underlying financials, the project's location, whether the project helps the investor in complying with the Community Reinvestment Act,[18] the risk profile of the developer, and, perhaps most notably, macroeconomic trends. For example, in the Great Recession, where most large financial institutions had very little tax burden, the amount investors (typically, large financial institutions) were willing to pay for tax credits plummeted.[19] Meanwhile, in the lead-up to the Great Recession, the demand for tax credits in some markets (with large bank presences) was so high that investors would buy the credits for more than face value.[20] The impact of pricing is demonstrated in an example below.

In parallel track with securing an investor to purchase the developer's beneficial interest and obtain the tax credit, developers must also seek debt commitments to fund the project.[21] The amount of senior debt available to a tax credit development will necessarily be limited by the potential stream of income from the property. In a market rate deal, banks will underwrite the transaction based on market rents for the proposed development. In a LIHTC deal, banks need to underwrite based on the reduced amount of rent available due to the rent caps applicable to the project. In most cases, those rent caps are well below market rate rents. (That is, in fact, the point of the LIHTC program: to deliver below market rental units to qualifying individuals and families based on their income.) However, the rent limits typically attract senior loan amounts that do not provide enough dollars to actually build the development.

There are a variety of inputs that impact the total tax credit equity that can be raised by a project: whether a project is in a qualified census tract; the number of affordable units compared to the total units or the amount of square footage as compared to the total square footage of the building (the "Applicable Percentage"); and the "eligible" project costs. For the purpose of the example in this article, the assumption is that all of the

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units (100%) in the development are below-market affordable units, which creates an Applicable Percentage of 100%, and the project is not in a qualified census tract. For simplicity, "Qualified Basis" includes most construction costs except the cost of land and permanent financing.[22]

By way of example, if a project has a total development cost of $12,000,000 with $2,000,000 applied to cost of land and permanent financing, it has an eligible basis of $10,000,000. If the Applicable Percentage is 100% (all units are affordable), then the Qualified Basis is $10,000,000. The next step is dependent on whether the project is using 9% (competitive) tax credits, or 4% (non-competitive) tax credits. Put simply, the Qualified Basis is multiplied by either 9% or 4% to determine the annual credit, which is multiplied by ten to determine the total credit. Note that the compliance period for LIHTC is fifteen years, though the credit only last for ten years. In our example, a 9% credit would provide a $9,000,000 total tax credit, and a 4% credit would provide a $4,000,000 total tax credit. The total credit in either case is then multiplied by the percentage ownership interest acquired by the investor entity (usually 99.99%). So for our example, the 9% credit would yield an $8,999,100 tax credit for this project, while the 4% deal would yield a $3,999,600. This is the "Tax Credit" that now has to be sold at a market price.

Currently tax credits are being sold for about $.84 on the dollar, which is, effectively, 84% of the Tax Credit. In our example, that means the total equity that can be raised is $7,559,224 in our 9% deal, and $3,359,664 for the 4% deal. In each case, the Tax Credit will not yield enough to cover the $10,000,000 Qualified Basis. Gaps are therefore a very real--and in recent years growing--part of a LIHTC transaction. Construction pricing increases (be it from supply shortages in the aftermath of COVID, or labor shortages in recent years, or potential disruptions in supply chains due to tariffs) create larger gaps for projects. Increases in utility costs and insurance premiums are causing permanent loan amounts to be scaled back, which creates a larger gap in LIHTC transactions. Each of these macroeconomic ripples sends shockwaves through individual LIHTC developments and jeopardizes their ability to get closed. For those reasons, gap financing on LIHTC transactions has become more critical than ever in helping to deliver affordable units to communities.

PRO Housing

In recognition, in part, of the gaps noted above, on January 14, 2025, HUD awarded just over $100 million in grants to municipalities across 15 states in an effort to "address[] local housing barriers such as outdated local regulations and land use policies, inadequate infrastructure, lack of available financing for development, and risks associated with extreme weather and an aging housing stock."[24] Just last year, HUD awarded $85 million for housing projects spanning 19 states and the District of Columbia.[25] Both grants are part of HUD's Pathways to Removing Obstacles to Housing (PRO Housing) program, which aims to remove barriers to affordable housing in urban and rural areas alike, such as those caused by outdated zoning and land use policy, lack of resources, or threats posed by natural hazards, to name a few.[26]

In its two short years of existence, HUD's PRO Housing program has created tangible impact for dozens of cities across the U.S. By way of example, the City of Milwaukee has used its Round 1 PRO Housing grant of $2.1 million to provide subsidies to developers of vacant lots and abandoned homes.[27] The PRO Housing program was oversubscribed for each of its funding rounds: in fiscal year 2023, $13 in funding was requested for every $1 available, and in 2024, $10 in funding was requested for every available $1.[28] Awards granted to communities ranged from $1,000,000 to $7,000,000.[29] Given the level of demand for grants, HUD intends to continue its PRO Housing program.[30]

In this very fast changing political world, PRO Housing funds could be eliminated as part of Federal budget cuts, but so far, these funds have not been stopped. Local governments, metropolitan planning organizations, and multijurisdictional entities who have affordable housing needs should stay informed on the program ahead of the next application cycle.

1. **Background on HUD PRO Housing**

HUD has received funding for the PRO Housing program through the Consolidated Appropriation Acts of 2023 and 2024 (Appropriation Act(s)), each of which awarded HUD with funds to carry out the competitive grant under the umbrella of its pre-existing Community Development Block Grant (CDBG) statutory framework.[31] The CDBG was formed under title I of the Housing and Community Development Act of 1974.[32] Under this Act, the objective of the CDBG program is to bolster urban communities by providing those with low to moderate income with "decent housing, a suitable living environment, and expanding economic opportunities."[33] Likewise, under the CDBG and as directed by Congress under the Appropriation Acts, the PRO Housing program prioritized applicants who have demonstrated a commitment to implementing affordable housing initiatives, have an acute need for affordable housing for populations with incomes below the area median income, and have identified a barrier to integrating affordable housing across communities that they intend to tackle with PRO Housing funding.[34]

2. Impact of the Program to Date

Milwaukee was one of the 21 communities awarded PRO Housing funding in fiscal year 2023. Though the funding is

being used to support a variety of initiatives (such as, *inter alia*, building the capacity of local developers, enabling the City to provide development subsidies, and utilizing city-owned public lots),[35] the money is mainly being used by Milwaukee to expand "Growing MKE," its citywide planning effort to increase housing supply.[36] Specific goals of Growing MKE include "supporting new housing that creates walkable urban neighborhoods, increasing transit options and access to jobs, and providing more quality, affordable housing choices."[37]

Currently, Growing MKE is taking aim at Milwaukee's zoning code. As drafted, detached accessory dwelling units are prohibited in single-family districts, mid-sized housing options (such as townhomes, triplexes, and fourplexes) are restricted in many of Milwaukee's residentially zoned districts, and 40% of residential parcels only allow for one housing unit.[38] Growing MKE plans to update the zoning code to address these barriers to developing affordable housing. Specific recommendations for the zoning code include: (i) expanding the types of housing allowed in residential neighborhoods; (ii) allowing housing on business corridors and multi-family zoning district; (iii) conforming building design standards to support walkable urban neighborhoods; and (iv) reducing or eliminating required parking minimums for new housing developments.[39] The City Plan Commission vote, originally set for July 2024, has been postponed as Growing MKE continues to solicit public feedback regarding its proposed set of zoning changes.[40]

Also among HUD's first round PRO Housing grant awardees was the city and county of Denver, which received just over $4,500,000 in funding.[41] Denver identified a variety of existing barriers to affordable housing in its application to HUD, such as "high cost of land and development, aging housing stock, inadequate infrastructure, displacement pressures, environmental hazards, and outdated policies when it came to land use and permitting."[42] Like Milwaukee, Denver intends to improve its zoning code with its PRO Housing award. Denver's three primary uses for the funding will be (i) reviewing development regulations and processes to identify opportunities to increase affordable housing supply; (ii) expanding city staffing to fast-track the review of affordable housing projects; and (iii) implementing a loan fund to finance infrastructure and utility projects.[43] In mid-2024, Denver Mayor Mike Johnston spoke of Denver's progress in expanding its affordable housing initiatives. Specifically, Johnston noted that that the city identified, built, and opened 1,200 units of transitional housing, which resulted in moving more than 1,600 people experiencing homelessness into transitional housing.[44]

A number of other communities across the country also intend to use their PRO Housing awards to modernize land use policies and zoning codes, incentivize new housing development and refresh existing housing stock and infrastructure. Oakland, California, whose has the largest per capita rate of homelessness among the 50 largest cities in the U.S., will use its $7,000,000 grant to create a rapid response homelessness housing program.[45] The Louisville-Jefferson County Metropolitan Area intends to use part of its $7,000,000 grant to expand factory-built housing.[46] And the City of Evanston, Indiana will bolster the development of affordable housing units on city-owned land with a portion of its $7,000,000 grant.[47] PRO Housing has a six-year performance period, meaning that projects awarded funding in fiscal year 2023 are anticipated to be completed by September 30, 2029, and projects awarded funding in fiscal year 2024 are anticipated to be completed by September 30, 2030.[48]

III. Muddled Message

Despite the Administration's support for reducing the cost of living in the Executive Order, "Delivering Emergency Price Relief for American Families and Defeating the Cost-of-Living Crisis,"[49] other policies challenge that objective. The Executive Order requires:

> the heads of all executive departments and agencies to deliver emergency price relief, consistent with applicable law, to the American people and increase the prosperity of the American worker. This shall include pursuing appropriate actions to: lower the cost of housing and expand housing supply; eliminate unnecessary administrative expenses and rent-seeking practices that increase healthcare costs; eliminate counterproductive requirements that raise the costs of home appliances; create employment opportunities for American workers, including drawing discouraged workers into the labor force; and eliminate harmful, coercive 'climate' policies that increase the costs of food and fuel."[50]

However, the major policy goals of the Administration are focused on immigration, tax cuts, and tariffs. So far, we have seen the beginnings of the effects of immigration and tariffs, but we can also gauge the potential impact of corporate tax cuts on the LIHTC program based on prior Trump Administration actions.

Immigration

Immediately following President Trump's inauguration, he issued multiple Executive Orders[51] relating to immigration including "Protecting the Meaning and Value of American Citizenship,"[52] and "Protecting the American People Against Invasion."[53] The ultimate outcome of these orders on the construction industry (including disaster recovery work) has yet to

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be seen, but they seem likely to result in labor shortages, which will make affordable housing development more challenging and costly.[54]

Tariffs

The Trump Administration rapidly enacted tariffs on goods from Canada, Mexico, and China.[55] According to the Tax Foundation, "The tariffs on Canada and Mexico alone would increase taxes by $958 billion between 2025 and 2034 on a conventional basis, amounting to an average tax increase of more than $670 per US household in 2025."[56] The National Association of Homebuilders promptly issued a letter to the Trump Administration noting the negative effect tariffs have on housing costs:

> Since January 2021, inputs to residential construction saw price increases of just over 30%. Our sector relies heavily on a diverse and cost-efficient supply chain for building materials such as lumber, steel, gypsum and aluminum. While home building is inherently domestic, builders rely on components produced abroad, with Canada and Mexico representing nearly 25% of building materials imports. Imposing additional tariffs on these imports will lead to higher material costs, which will ultimately be passed on to home buyers in the form of increased housing prices. Further supply chain disruptions from increased tariffs coupled with increased demand for materials could also hinder rebuilding efforts in areas affected by natural disasters, which you have pledged to help rebuild as quickly as possible.[57]

Tax Policy

The value of tax credits depends on the level of taxation; when tax liabilities are lowered, the need to seek tax shelters is also lowered. Following the 2016 election, LIHTC value plummeted on speculation of substantial corporate tax cuts. The Tax Cuts and Jobs Act ultimately slashed the corporate income tax rate from 35% to 21%.[58] Pricing for tax credits dropped from $1.05 per dollar in December 2015 to $.91 by May of 2017.[59] Revisiting the example of tax credit financing above, a value of $1.05 would have created about $500,000 more of equity in the project and reduced the financing gap by the same amount. The value of a one dollar tax credit is currently in the mid-80 cent range. Similarly, the Administration's most recent tax reform proposal includes an additional drop in the corporate tax rate to 15%.[60] Just as in 2017, if another tax break becomes law, we should expect gaps in affordable housing tax credit financing to grow.

III. MUNICIPALITIES' ROLE WILL GROW

In the immediate future, we see policies that will greatly impact the cost of housing construction and financing. Local government will be increasingly pressured to make accommodation to developers in order to make projects work. What municipalities need to know is that greater financial investment in affordable housing is a good choice. They need to consider that tax credit deals work because there are low debt payments, and if developers are forced to add more debt, the deal will only become more challenging.

Developers make money on building projects through developer fees and rental revenues, so we should expect development to continue, even if it becomes more challenging. As the call for local investment increases, there will be opportunities for local government to get greater security in the deal to protect against potential community harm if a deal fails. Municipalities need to be ready to take advantage of those opportunities. ML

NOTES

1. See Drew Desilver, *A Look at the State of Affordable Housing in the U.S.*, Pew Rsch. Ctr. (Oct. 25, 2024), https://www.pewresearch.org/short-reads/2024/10/25/a-look-at-the-state-of-affordable-housing-in-the-us/ for a discussion of the various factors that contribute to housing unaffordability.
2. Executive Order, *Delivering Emergency Price Relief for American Families and Defeating the Cost-of-Living Crisis*, White House (Jan. 20, 2025), https://www.whitehouse.gov/presidential-actions/2025/01/delivering-emergency-price-relief-for-american-families-and-defeating-the-cost-of-living-crisis/.
3. *See, e.g.*, Andrew Dehan & Michele Petry, *How the Trump Administration's Tariffs and Deportations Could Affect the Housing Market*, Bankrate (Feb. 11, 2025), https://www.bankrate.com/real-estate/trump-policies-housing-market/.
4. *See* Ted M. Handel & David C. Nahas, *Leveraging the Low-Income Housing Tax Credits Program*, 26 L.A. Law. 23, 23 (2004).
5. Lance Bocarsly & Rachel Rosner, *The Low Income Housing Tax Credit: A Valuable Tool for Financing the Development of Affordable Housing*, 33 Practical Real Est. Law. 29, 30 (Jan. 2017).
6. *Id.*
7. *Id.* at 39.
8. *See 2024 Federal LIHTC by State*, Novogradac (last visited Feb. 12, 2025), https://www.novoco.com/resource-centers/affordable-housing-tax-credits/2024-federal-lihtc-information-by-state?gad_source=1&gclid=CjwKCAiA2JG9BhAuEiwAH_zf3tCWA05a-H50qWAEJf-3yxA1kEgd7Ow1pOJXbNn_E1G0oeMQ1HuDNRoC1JEQAvD_BwE. It is pro rata by population across each of the 50 states, Washington, D.C., and Puerto Rico. *Id.*
9. *See* Bocarsly & Rosner, *supra* note 5, at 32 (noting that the LITHC program

caps rent at 30% of the median area income). The "qualified low income housing" standard only requires that the residential housing either (a) have at least 20% of its units occupied by families with incomes of 50% or less of the median area income or (b) have at least 40% of its units occupied by families with incomes of 60% or less. *Id.* at 33.
10. *Id.* at 34.
11. *See supra* notes 9-10 and accompanying footnotes.
12. Bocarsly & Rosner, *supra* note 5, at 33
13. *Id.*
14. *See, e.g.*, Donna Kimura, *LIHTC Demand Grows in Several States*, Affordable Hous. Fin. (Jan. 1, 2009), https://www.housingfinance.com/news/lihtc-demand-grows-in-several-states_o.
15. *See* 24 CFR § 578.25 (2025) ("Applicants … must prove to HUD's satisfaction that the applicant or subrecipient identified in the application is in control of the limited partnership or limited liability corporation that has a deed or lease for the project site.").
16. *E.g., Housing Tax Credits*, WHEDA (last visited Feb. 12, 2025), https://www.wheda.com/developers-and-property-managers/tax-credits/htc (discussing the LIHTC application process in Wisconsin).
17. *See About the LIHTC,* Novogradac (last visited Feb. 12, 2025), https://www.novoco.com/resource-centers/affordable-housing-tax-credits/about-lihtc ("...due to limitations and the lack of enough taxable income, most developers choose to find tax credit investors, who provide cash that is channeled into the development.").
18. The Community Reinvestment Act was passed as a way to encourage financial institutions to meet the credit needs of communities that they serve, including low- and moderate-income communities. For a general overview of the Community Reinvestment Act, see Bd. Gov'rs. Fed. Rsrv. Sys., *Community Reinvestment Act* (last updated March 28, 2024), https://www.federalreserve.gov/consumercommunities/cra_about.htm.
19. *The Tax Credit Market During the Great Recession*, Nat'l Hous. Conf. (last visited Feb. 12, 2025), https://nhc.org/policy-guide/low-income-housing-tax-credit-the-basics/the-tax-credit-market-during-the-great-recession/#:~:text=During%20the%20recession%2C%20two%20of,their%20need%20for%20tax%20credits.
20. *Id.* ("In March 2007, 9 percent tax credits were selling for 95 cents per tax credit dollar, however during the economic downturn they sold for as little as 60 to 68 cents per tax credit dollar.").
21. See generally Elizabeth Kneebone & Carolina K. Reid, *The Complexity of Financing Low-Income Housing Tax Credit Housing in the United States*, Terner Ctr. (April 2021), https://ternercenter.berkeley.edu/wp-content/uploads/2021/04/LIHTC-Complexity-Final.pdf for an overview of debt financing in LIHTC projects.
22. Bocarsly & Rosner, *supra* note 5, at 34.
23. The "automatic" 4 percent tax credit covers new construction that uses additional subsidies or the acquisition cost of existing buildings, while the "competitive" 9 percent tax credit supports new construction without any additional federal subsidies. Novogradac, *supra* note 18.
24. *FY24 Award Announcement*, U.S. Dept. Hous. & Urban Dev. (last updated Jan. 24, 2025), https://www.hud.gov/program_offices/comm_planning/pro_housing/FY24-Award-Announcement.
25. *FY23 Award Announcement*, U.S. Dept. Hous. & Urban Dev. (last updated July 1, 2024), https://www.hud.gov/program_offices/comm_planning/pro_housing/fy23awards.
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