HOUSING TAX CREDITS "101"

Learn the Basics: Housing Tax Credits 101
April 4-5, 2019 | Boston, MA

NIXON PEABODY

NOVOGRADAC™

BACKGROUND

- Part of 1986 Tax Reform to Encourage the Construction and Rehabilitation of Affordable Rental Housing
- Administered by the Treasury Department and Allocated by State Agencies
- Contained in Section 42 of the Tax Code
- Emphasis on Private Sector Involvement (i.e. Developing and Managing Properties)
- Objective: To Provide Investor Equity to Lower Debt Service, Thereby Lowering Rents
- Credit is a Dollar-for-Dollar Tax Reduction
- Credit Amount Based on the Cost of Constructing or Rehabilitating Housing Developments

NIXON PEABODY

NOVOGRADAC™

PROGRAM REQUIREMENTS

— Minimum Percentage of LIHTC Units (20/50, 40/60/ 25/60 or Income Averaging*)

— Minimum 30-Year Affordability Commitment

— Maximum Income Limited for Households Renting LIHTC Units

— Maximum Rents Limited for LIHTC Units

— Projects Subject to IRS and State Regulation/Compliance

* The Consolidated Appropriations Act of 2018 permanently established income averaging as an additional minimum set aside (more to follow)

NIXON PEABODY

NOVOGRADAC™

STATE ALLOCATION VOLUME LIMIT

— Credits Are Limited

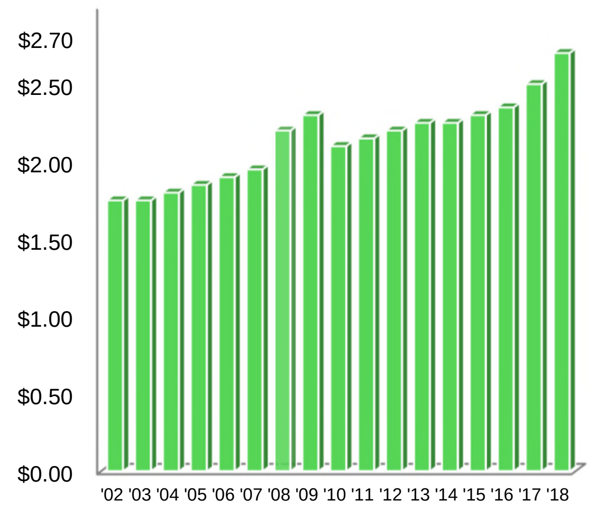
— In 2000, Congress Raised Cap from $1.25 to $1.50 in 2001, $1.75 in 2002, and Thereafter Adjusted for Inflation

— In 2008, Congress Raised Cap from $2.00 to $2.20 (2008/2009 only)

— The Consolidated Appropriations Act of 2018 temporarily increased the allocation authority for the 9% credit by 12.5% for four (4) years, beginning in 2018

— $2.75625 Per Person for 2019

— $3,166,875 State Minimum in 2019



NIXON PEABODY

NOVOGRADAC™

VOLUME LIMIT RULES

— Example:

- State With Three Million Population Has $8,268,750 in Credits in 2019

— Allocated Amount Is for One Year of Credit

— 10% Nonprofit Set-Aside

— 50% Test: Private Activity Tax-Exempt Bonds Subject to Bond Volume Cap; No Credit Allocation Needed

NIXON PEABODY

NOVOGRADAC™

QUALIFIED ALLOCATION PLANS

— State Must Adopt QAP to Allocate Credits

— Must Set Forth Allocation Priorities

— Must Give Preference to:

- Lowest Income Tenants
- Longest Period of Low-Income Use
- QCT Projects Contributing to a Concerted Revitalization Plan

— Must Take into Account Energy Efficiency and Historic Nature of Projects

— Must Provide Procedure for Notifying IRS of Non-Compliance

— Bond-Financed Projects Must "Satisfy" QAP

NIXON PEABODY

NOVOGRADAC™

PROJECT EVALUATION

— Credit May Not Exceed Amount State Agency Determines Is Necessary for Feasibility and Viability

— Agency Must Consider:

- Sources and Uses
- Amounts Expected to Be Generated by Tax Benefits
- Reasonableness of Development and Operating Costs

— Evaluation Occurs at the Time of Application, Allocation and Placement in Service

COMPLIANCE MONITORING

— State Credit Agencies Monitor Projects

— Check QAP for Specific Requirements

— Owners' Recordkeeping Requirements:

- Number of Low-Income and Total Units
- Income Certifications and Annual Re-Certifications (in some Cases, Other Than for 100% low-income) and Backup Verifications
- Qualified Basis and Eligible Basis Amounts
- Rent Amounts

— Owner Annual Compliance Certifications

NIXON PEABODY

NOVOGRADAC™

APPLICABLE PERCENTAGE

— 4% Credit vs. 9% Credit – Which Percentage Applies?

- 9% Credit Applies for New Construction or Substantial Rehabilitation of Properties Not Financed with Tax Exempt Bonds
- 4% Credit Applies to the Acquisition of An Existing Building (Acquisition Credits) and all New Construction/Substantial Rehabilitation of Properties Financed with Tax Exempt Bonds

INDUSTRY PARTICIPANTS

- Congress
- IRS/Department of Treasury
- State Tax Credit Agencies
- Developers/Owners
- Property Managers
- Syndicators/Investors
- GSEs
- Nonprofits
- State/Local Governments
- HUD
- Tenants
- Tax Professionals

NIXON PEABODY

NOVOGRADAC™

TAX CREDIT DEVELOPMENT TIMELINE

April 2019 Read State QAP. Analyze Prior Winners, Meet With Staff.

April 2019 Pick Site, Plan Type of Project.

May 2019 Develop Cash Pro Formas and Construction Budget. Investigate Loan Availability and Interest Rates. Request Market Study.

August 2019 Option Land (With Conditions Regarding Zoning, Approvals).

August 2019 Apply for Soft Loans/Grants, if Necessary.

October 2019 Receive Soft Loan Commitment.

January 2020 Apply for Tax Credits.

March 2020 Receive Reservation of Tax Credits (2020 Tax Credits).

NIXON PEABODY

NOVOGRADAC™

TAX CREDIT DEVELOPMENT TIMELINE (CONT'D)

March 2020 Work on Site Plan/Zoning Approvals. Submit Loan Applications.

June 2020 Obtain Site Plan and Zoning Approvals.

June 2020 Purchase Land. Select Equity Investor and Execute Commitment Letter for Debt/Equity.

December 2020 Obtain Carryover Allocation (for 2020 Credits).

January 2021 Close on Equity Investment and Construction Loan. Begin Construction.

December 2021 *Submit Cost Certification of 10% of Reasonably Expected Basis for Carryover Allocation* (State Deadlines Vary But 1 Year Under Federal Rule).

NIXON PEABODY

NOVOGRADAC™

TAX CREDIT DEVELOPMENT TIMELINE (CONT'D)

October 2022 Place All Buildings in Service (Required by 12/31/22).

November 2022 Finish Construction. Begin Leasing.

January 2023 Start First Year of Credit Period. Continue Leasing. Submit Cost Certification for Forms 8609.

April 2023 Achieve Full Lease-up and Beginning of Break-Even Period.

August 2023 Close Permanent Loan, Obtain IRS Forms 8609 and Achieve Final Equity Contribution.

NIXON PEABODY

NOVOGRADAC™

FEDERAL PLACEMENT IN SERVICE DEADLINE

General Rule: A Project Must Generally Be Placed in Service in the Year that the Housing Tax Credit Is Allocated by the State Tax Credit Agency

Carryover Exception: A Project that Receives a Valid Carryover Allocation May Be Placed in Service No Later Than the End of the Second Calendar Year After the Year that a Carryover Allocation Is Made

To Obtain Such an Extension, a Project Must Receive a Valid Carryover Allocation Agreement *and* Satisfy the "10% Test" in a Timely Manner

NIXON PEABODY

NOVOGRADAC™

DEFINING "REASONABLY EXPECTED BASIS" FOR 10% TEST PURPOSES

— "Reasonably Expected Basis" Means the Adjusted Basis of Land and Depreciable Property (Whether or Not it Is Included in Eligible Basis)

— Eligible Costs Include Building/Construction Costs, Related Personal Property and Land Costs

— Ineligible Costs Include Permanent Loan Fees, Reserves, Syndication Fees, Partnership Organizational Costs and Tax Credit Fees

— States May Impose Stricter Standards as Long as the Terms Do Not Violate the Federal Credit Rules

— 10% Test Is a "Cliff" Test

NIXON PEABODY

NOVOGRADAC™

UNDERSTANDING TAX CREDIT INVESTMENTS

NIXON PEABODY

NOVOGRADAC™

WHO CAN USE CREDITS?

- C Corporations Can Use Credits and Losses Against Ordinary Income and Taxes
- Limitations on "Closely-Held" Corporations
- *Credit May Be Used to Offset Alternative Minimum Tax (Effective for Buildings Placed in Service After 2007 and Rehabilitation Expenditures Incurred After 2007)*
- *One Year Carry Back; Twenty-Year Carry Forward*

NIXON PEABODY

NOVOGRADAC™

WHY INVEST IN AFFORDABLE HOUSING TAX CREDITS?

— Tax Benefits

- Predictable 10-Year Credit Stream Based on the Cost of Constructing or Rehabilitating Residential Rental Housing
- Depreciation Losses

— Economic Benefits

- Cash Flow and Sale/Refinancing Sharing (But Not Generally Underwritten)
- Asset Management Fee Revenue

NIXON PEABODY

NOVOGRADAC™

WHY INVEST IN AFFORDABLE HOUSING TAX CREDITS? (CONT'D)

— Social Benefits

- Community Reinvestment Act ("CRA") Qualification
- Shareholder Relations
- Social Responsibility
- Some Projects May Qualify as Green Investments

— Geographic Flexibility

- Can Provide Geographic Diversification
- Can Target for Local Priorities and Visibility

NIXON PEABODY

NOVOGRADAC™

COMMON INVESTMENT STRUCTURES

— **Direct Investment:** Investment Directly into the Project Partnership which Is the Owner of the Housing Development

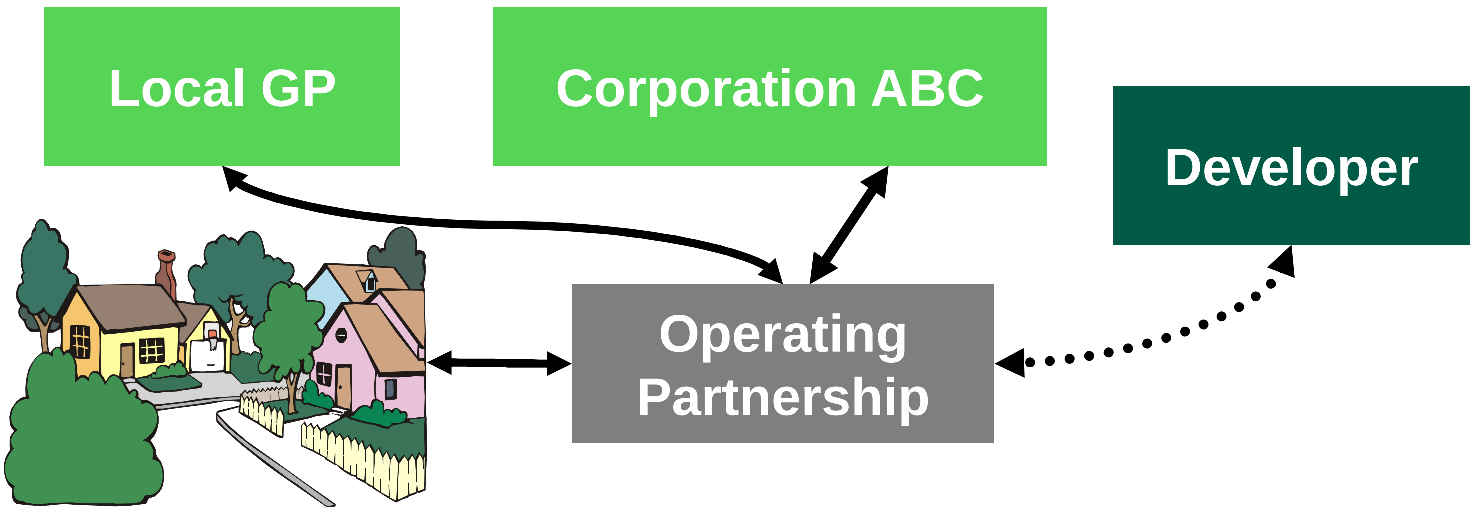
— **Propriety Investment:** Investment Through a Fund Managed by a Syndicator Without Other Investors for a Particular Housing Development

— **Multi-Investor Investment:** Investment through a Fund Managed by a Syndicator with Other Investors for a Particular Housing Development

— **Secondary Investment:** Purchased During the 10-Year Credit Period from Original Investor

— **Guaranteed Investment**: Certain Sponsors May Guarantee a Specific Yield and/or Against Specific Investment Risks

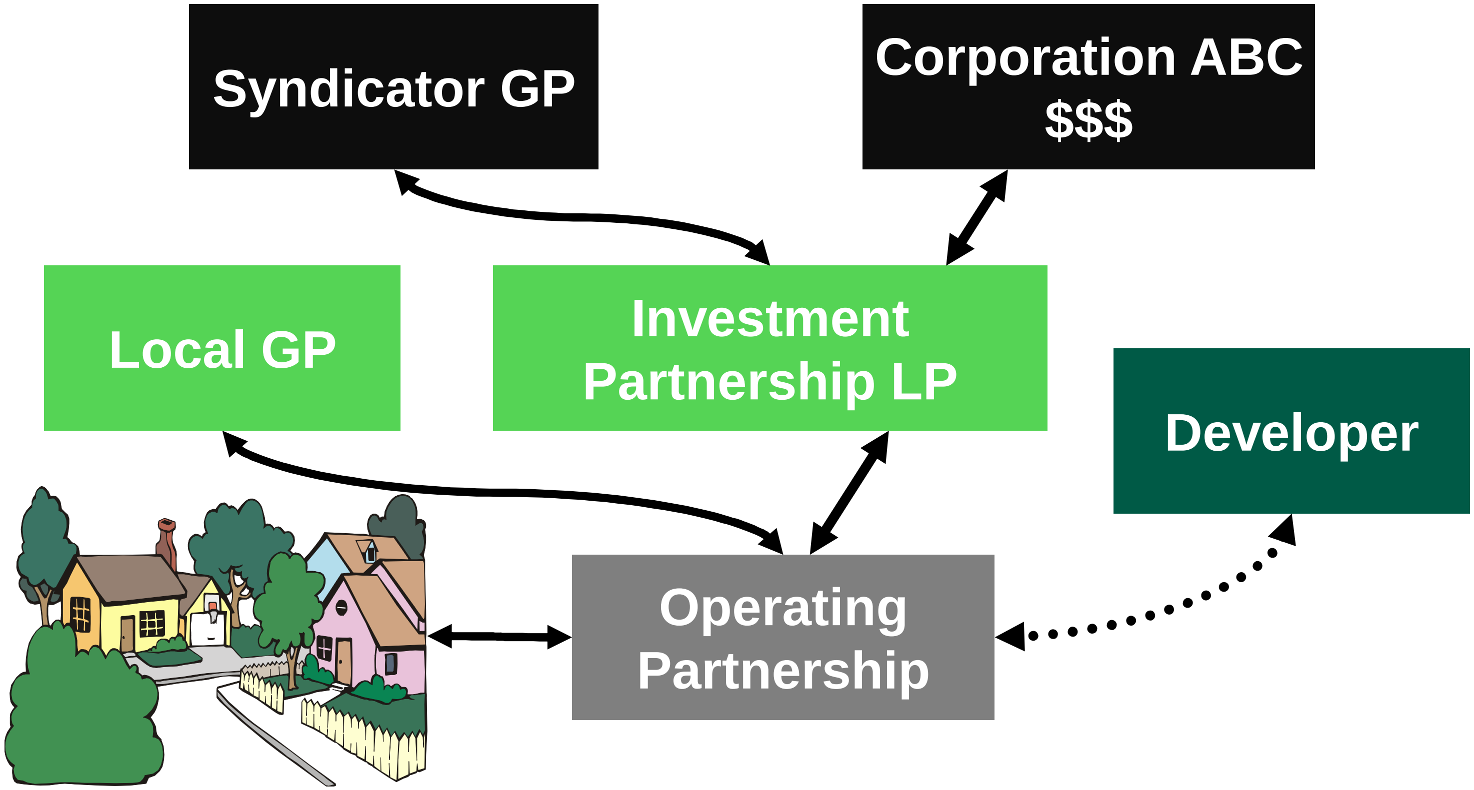
DIRECT INVESTMENT STRUCTURE



NIXON PEABODY

NOVOGRADAC

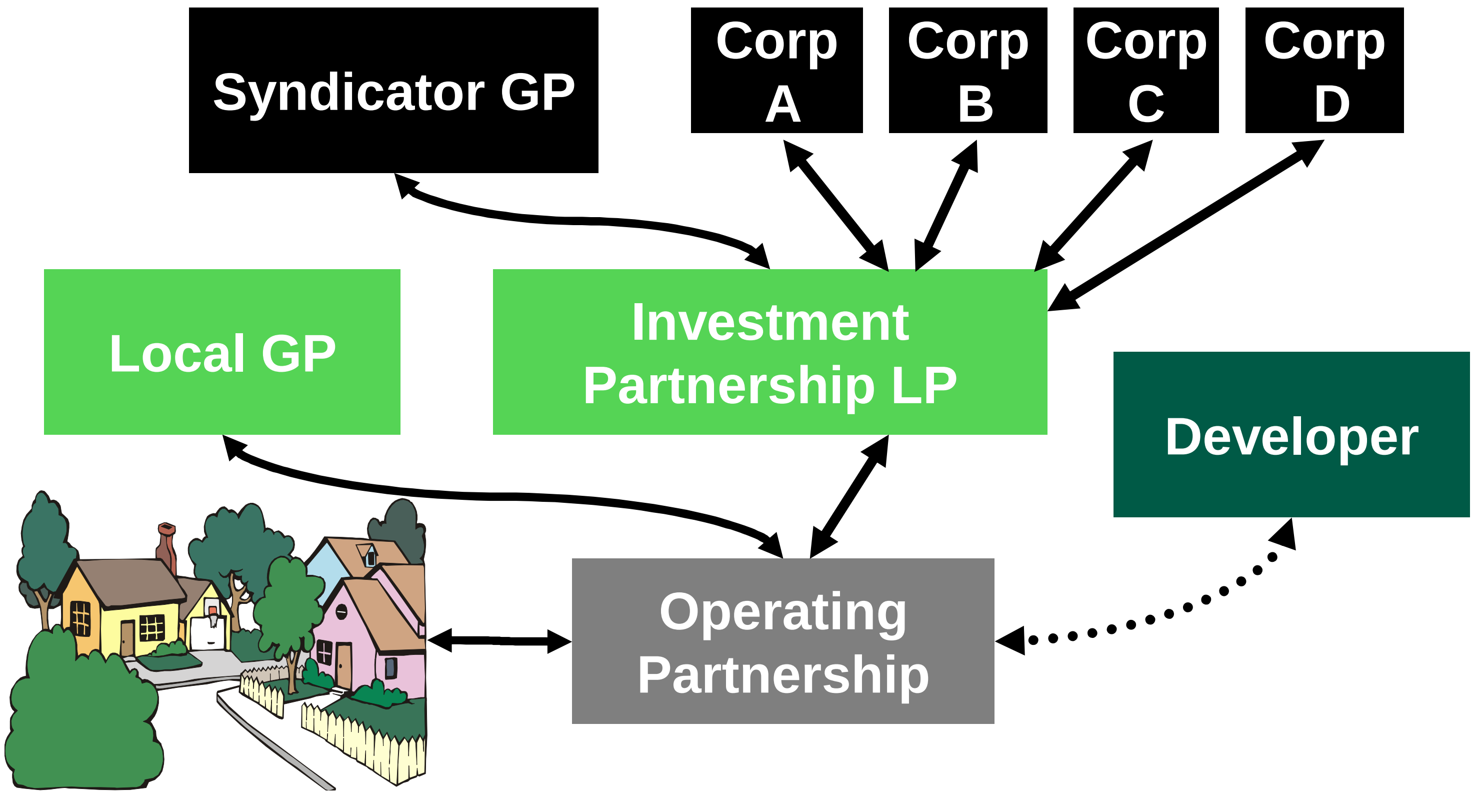
SYNDICATION STRUCTURE (PROPRIETARY INVESTMENT)



NIXON PEABODY

NOVOGRADAC

SYNDICATION STRUCTURE (MULTI-INVESTOR)



NIXON PEABODY

NOVOGRADAC

STRUCTURING TAX CREDIT INVESTMENTS:

KEY BUSINESS TERMS AND INVESTOR RISKS/PROTECTIONS

OVERVIEW OF MAJOR INVESTMENT RISKS

— **Tax:** Recapture of a Portion of Previously-Allocated Credits and Future Credits for Projects that Do Not Comply with Income, Rent and Other Project Restrictions During the Initial Fifteen-Year Compliance Period

— **Construction and Lease-up:** Units Must Be Completed and Rented to Qualifying Tenants to Receive Credits

— **Operational:** Loss of Property Through Foreclosure Would Result in Similar Recapture and Loss of Future Credits

— **Sponsor Risk:** Weak or Overextended Sponsor

KEY BUSINESS TERMS

— Projects Owned by Limited Partnership or Limited Liability Company

— Limited Partner Typically Receives 99.99% of Tax Credits, Depreciation, Losses and Profits

— Limited Partner Makes Capital Contributions in Multiple Installments (Generally 4 or 5), Based on Negotiated Development, Financing and Performance Benchmarks

— General Partner Guarantees Completion/Stabilization, Amount and Timing of Credits, and Funding of Deficits

— Investor Protections (Removal/Repurchase/Adjusters)

NIXON PEABODY

NOVOGRADAC™

STRUCTURING TAX CREDIT INVESTMENTS: KEY INVESTOR PROTECTIONS

— Tax Credit Adjusters

- Eligible Basis Adjuster
- Timing Adjuster
- Compliance Adjuster

— Construction Completion/Stabilization Guaranty

— Operating Deficit Funding Guaranty

— Removal of General Partner/Admission of Additional General Partner

— Removal of Management Agent

NIXON PEABODY

NOVOGRADAC™

STRUCTURING TAX CREDIT INVESTMENTS: KEY INVESTOR PROTECTIONS (CONT'D)

— Reporting Requirements/Removal of Accountants

— Repurchase of Investor Interest

— Removal of General Contractor

— Operating/Replacement Reserves

— Personal Guarantees

NIXON PEABODY

NOVOGRADAC™

CALCULATING CREDITS

NIXON PEABODY

NOVOGRADAC

CREDIT OVERVIEW

— Annual Credit Amount = Applicable Percentage X Qualified Basis

— Annual Credit Amount Available for 10 Years

— Credit Period Begins When a Building Is Placed in Service Unless the Taxpayer Elects to Defer the Start of the Credit Period to the Next Taxable Year

— First Year Credit Reduced to Reflect Qualified Occupancy During First Credit Year

NIXON PEABODY

NOVOGRADAC™

UNDERSTANDING THE 4% AND 9% CREDITS

— Qualifying for the 4% Credit

- Acquisition of Building
- Tax-Exempt Bond Financing

— Qualifying for the 9% Credit

- New Construction/Rehabilitation if Building Is Not "Federally Subsidized" (Which Now Means Financed by Tax-Exempt Bonds)
- "Below Market Federal Loans" No Longer Disqualify Building from 9% Credit

NIXON PEABODY

NOVOGRADAC™

Start With Eligible Basis, Then Qualified Basis

ELIGIBLE BASIS: GENERAL RULES

— New Construction = Adjusted Basis (Generally, Development Cost Less Land)

— Acquisition = Acquisition Cost of Building

— Substantial Rehabilitation = Capitalized Rehabilitation Expenditures (24-Month Rule)

— Must Subtract Federal Grants

— Excludes Commercial Space But Includes Common Areas

— 130% Increase in Qualified Census Tracts (“QCTs”) and Difficult Development Areas (“DDAs”), and Areas Specially Designated by Credit Agencies

NIXON PEABODY

NOVOGRADAC™

ELIGIBLE BASIS: WHAT IS INCLUDED?

— Depreciable Basis of Residential Rental Housing Eligible for Tax Credits

— **INCLUDES**

- Impact Fees
- Onsite Roads, Sidewalks and Parking Lots
- Cost of Utility Hookup
- Landscaping if Adjacent to Building
- Final Grading of Building Site
- Common Area
- Full-Time Manager's Unit
- Community Space (with Some Limitations)

NIXON PEABODY

NOVOGRADAC™

ELIGIBLE BASIS: WHAT IS EXCLUDED?

— **EXCLUDES**

- Land and
  Land-Related Costs
- Historic Tax Credits Taken on Residential Part of Project
- Fees and Costs Related to Permanent Loan Financing
- Syndication-Related Costs
- Tax Credit Fees
- Reserves
- Post-Construction
  Working Capital
- Federal Grants
- Non-Residential Costs

NIXON PEABODY

NOVOGRADAC™

ELIGIBLE BASIS: COMMON AREAS

— Eligible Basis Includes Cost of Common Areas and Tenant Facilities to the Extent Such Facilities Are Made Available to All Residents Without Additional Charge

— Common Areas Include Community Rooms, Garages, Laundry Rooms and Pools/Playgrounds

— Common Areas/Tenant Facilities Must Be Used “Exclusively” by Tenants of the Tax Credit Property

— Community Service Facility Exception: Cost of Construction of “Community Service Facility” May Be Included in Eligible Basis Even if Non-Residents Use the Facility

NIXON PEABODY

NOVOGRADAC™

ELIGIBLE BASIS: MANAGER UNITS

- Eligible Basis Includes Cost of Constructing Units Occupied by a Full-Time Resident Manager/On-Site Maintenance Personnel
- Manager Units Are Excluded From the Applicable Fraction When Determining a Building's Qualified Basis

NIXON PEABODY

NOVOGRADAC™

ELIGIBLE BASIS IN MIXED USE BUILDINGS

— Mixed Use Buildings May Qualify for Tax Credits but the Eligible Basis Must Be Reduced by the Cost of Any Non-Residential Rental Property

— Cost of Common Areas Allocated Between Residential and Non-Residential Use According to Any “Reasonable Method” that Properly Reflects the Proportional Benefits to Be Derived by the Residential/Non-Residential Property

— Common Approach: Allocating Cost of Common Elements Based on Relative Square Footage of Residential/Commercial Property

UNDERSTANDING THE 130% BASIS BOOST

— Qualified Census Tracts

— Difficult Development Areas

— A State-Designated Difficult Development Area

- 2008 Housing Act
- Not Applicable to Bond-Financed Properties
- If Needed to Make Building Financially Feasible

— Applies to New Construction/Rehabilitation Expenditures

NIXON PEABODY

NOVOGRADAC™

QUALIFIED BASIS

— Qualified Basis = Eligible Basis X Applicable Fraction

— Applicable Fraction Is the Lower of:

- Number of Occupied Low-Income Units Divided by the Total Number of Residential Units, or
- Floor Space Fraction

— Calculated Building by Building

APPLICABLE PERCENTAGE

— With Qualified Basis Defined, Now Define Applicable Percentage

— Two Credit Rates:

- 4% Credit = 3.27% for April 2019 (Floating)
- 9% Credit = “Not Less Than 9.00%”

— Owner Elects to Set Applicable Percentage Either (i) When Receiving a Binding Commitment From the State (or When Tax-Exempt Bonds Are Issued), or (ii) When Building Is Placed in Service

LOCKING THE CREDIT PERCENTAGE: ADDITIONAL CONSIDERATIONS

- A Valid Election Is Irrevocable and Applies for the Entire 10-Year Credit Period
- Election Is Made on a Building Basis
- Credit Percentage Applies to Future Allocations of Tax Credits for Such Building

EXAMPLE OF TAX CREDIT CALCULATION

— 100 Unit Project/70 Low-Income Units

— Total Development Costs (Including Land) = $5,500,000

— Land Cost = $500,000

— Eligible Basis = $5,000,000

— Qualified Basis = $3,500,000 ($5,000,000 X 70%)

— Applicable Percentage = 9.00%

— Annual Credit = $315,000 ($3,500,000 X 9.00%)

— 10-Year Credits = $3,150,000

NIXON PEABODY

NOVOGRADAC™

EQUITY CALCULATION

- Pricing Typically Based on Total Credits Available to Investor (and Timing of Delivery) and Market Conditions
- Expressed as “Cents Per Tax Credit Dollar”
- In Above Example, if Investor Will Pay $0.98 Per Tax Credit Dollar, Equity = $3,086,691 ($3,150,000 X 99.99% X 0.98)
- Equity Generally Paid in Several Installments (Often 4 or 5 Installments) Based Upon Negotiated Benchmarks
- If Bond-Financed 4% Deal, Equity = $1,121,498 (($5,500,000 - $500,000) X 70% X 3.27% X 10 X 99.99% X 0.98)

NIXON PEABODY

NOVOGRADAC™

UNDERSTANDING THE AFFORDABILITY COMMITMENT

— 30-Year Affordability Commitment

- 15-Year Tax Credit Compliance Period
- 15-Year Extended Use Period

— Extended Use Agreements

— Early Termination of 30-year Affordability Commitment

- Foreclosure (or Instrument in Lieu of Foreclosure)
- Qualified Contract Process

QUALIFIED CONTRACT PROCESS

- Available under Section 42; Many States Require Waiver (Deferral) of Right in Order to Receive Credits
- State to Find Buyer if Requested by Owner After 14th Year Pursuant to Qualified Contract
- Contract Price = Outstanding Debt + Adjusted Investor Equity + Other Capital Contributions – Cash Available for Distribution
- If No Buyer Found Within One Year, Owner May Opt Out of Tax Credit Program (Subject to 3-Year Transition Period)
- IRS Issued Proposed Regulations in June 2007; Comments Received and Under Review; Public Hearing Held; Final Regulations Not Yet Available

NIXON PEABODY

NOVOGRADAC™

UNDERSTANDING INCOME AND RENT RESTRICTIONS

— Income Restrictions

— Rent Restrictions

INCOME RESTRICTIONS

— Minimum Set-Aside Election of:
  - 20% of Units at 50% of Area Median Income (“AMI”);
  - 40% of Units at 60% of AMI; or
  - New Alternative – “Income Averaging”

— Election Upon Placement in Service

— Must Meet Minimum Set-Aside by End of First Credit Year

— HUD Publishes Area Income Figures Annually

NIXON PEABODY

NOVOGRADAC™

INCOME AVERAGING

- Consolidated Appropriations Act of 2018 makes it possible for units to qualify as "low income units" with incomes as high as 80% of Area Median Income ("AMI")
- Under the new rules, at least 40% of the low income units must **average** 60% of AMI, provided that no low income unit's occupants may exceed 80% of AMI
- An owner will literally designate units at any of the following percentages: 20, 30, 40, 50, 60, 70 or 80, provided that all of the units taken together will **average** out to not more than 60%
- Floor size does **not** affect this computation

NIXON PEABODY

NOVOGRADAC™

OPEN QUESTIONS/ISSUES WITH INCOME AVERAGING

- Are the states obligated to adopt income averaging?
- Will income averaging apply to pre-2018 deals that have not received IRS Forms 8609?
- Will state QAPs need to be modified to permit income averaging?
- Is IRS guidance necessary to implement this new rule?
- Are 80% units allowed to “float” during the compliance period?
- Does income averaging apply to rent limits as well as income limits?
- Additional questions and open issues?

NIXON PEABODY

NOVOGRADAC™

RENT RESTRICTIONS

— Rent (Including Utilities) Cannot Exceed 30% of Qualifying Income for Assumed Family Size; Based on Bedrooms Per Unit

— Rent Limits Change Annually With Publication of New Area Median Incomes

— Rent Will Not Decrease Below Original Floor

— Gross Rent Does Not Include Section 8 (or Similar Rental Subsidies)

— Gross Rent Must Include Utility Allowance for Tenant-Paid Utilities (i.e., Deduct From Rent to Owner)

NIXON PEABODY

NOVOGRADAC™

ACQUISITION/REHABILITATION OF EXISTING PROPERTIES

NIXON PEABODY

NOVOGRADAC™

4% CREDIT FOR ACQUISITION

— Based on the Acquisition Cost of an Existing Building

— Purchase From an Unrelated Party (50% Related Party Rule)

— Ten-Year Rule

— Certain Placements in Service Ignored

- Carryover Basis
- Acquired From Decedent
- Placement in Service by Governmental Unit or Nonprofit Entity
- Foreclosure
- *Projects Substantially Assisted, Financed or Operated Under HUD or RHS Housing Programs or Similar State Housing Programs for Buildings Placed in Service After 7/30/08 (Replaces the Treasury Waiver)*

SUBSTANTIAL REHABILITATION REQUIREMENT

— To Be Eligible for Acquisition Credit, Must Fulfill Substantial Rehabilitation Requirement

— Expenditures During a 24-Month Period Selected by the Taxpayer Must Equal the Greater of:

- $6,000 Per Low-Income Unit (to Be Adjusted for Inflation), or
- 20% of Adjusted Basis

— Separate New Building

— 4% (Tax-Exempt Bond Financed) or 9% Credit on the Expenditures

NIXON PEABODY

NOVOGRADAC™

RECAPTURE OF TAX CREDITS

RECAPTURE

— Recapture on Non-Compliance:

- Accelerated Portion of Credit Recaptured (1/3 of Credit First 10 Years, Decreasing Through Year 15)
- If Minimum Set-Aside Fails, All Accelerated Credits Recaptured
- Otherwise, Unit-by-Unit (Extent of Decrease in Qualified Basis)

— Full Recapture on Transfer of Project or Interest Therein

- De Minimis (1/3 Ownership) Exception

NIXON PEABODY

NOVOGRADAC™

CALCULATING RECAPTURE COST

— Recapture Tax (Up to 1/3 of Credits Previously Claimed)

— Additional Interest Charge

— No Right to Receive Future Tax Credits

NIXON PEABODY

NOVOGRADAC™

AVOIDING RECAPTURE: OLD RULE

— Recapture May Be Avoided Upon the Disposition of a Building (or Interest Therein) if:

- Taxpayer Reasonably Expects the Building to Remain Low Income and in Compliance with LIHTC Program, and
- Taxpayer Posts a Recapture Bond (or Pledges Securities)

— Purpose/Utility of Recapture Bond Requirement

— Recapture Bond Requirement Eliminated by Housing and Economic Recovery Act of 2008

AVOIDING RECAPTURE: NEW RULE

- The Requirement that a Bond Be Posted Upon the Disposition of a Building (or Interest Therein) to Avoid Credit Recapture Is **Repealed**
- Recapture Bonds Are Replaced With an Extended Period for the Statute of Limitations – Three Years Following Taxpayer's Notification to the Treasury that a Recapture Event Has Occurred

NIXON PEABODY

NOVOGRADAC™

AVOIDING RECAPTURE: NEW RULE (CONT'D)

- Effective for Dispositions after 7/30/08 and for Dispositions Before 7/30/08 if Taxpayer Elects the Application of the New Provisions
- The Result Is that Outstanding Bonds May Be Retired if the Taxpayer Elects Application of These Provisions
- Revenue Procedure 2008-60

NIXON PEABODY

NOVOGRADAC™

SECTION 42 PROVISIONS RELATING TO QUALIFIED NONPROFIT ORGANIZATIONS

NIXON PEABODY

NOVOGRADAC™

NONPROFIT SET-ASIDE

— Each State Tax Credit Agency Must Set Aside at Least 10% of Its Annual Credit Ceiling Each Year for Projects Involving Qualified Nonprofit Organizations

— Many States Provide Preferences for Nonprofit Sponsored Projects by Assigning “Points” to Projects with Nonprofit Involvement

— Whenever There Is Nonprofit Involvement, Need to Determine Whether the Tax Credit Agency Actually Awarded Credits from the Nonprofit Set-Aside

NIXON PEABODY

NOVOGRADAC™

NONPROFIT SET-ASIDE (CONT'D)

- Nonprofit Organization Must Be Exempt from Federal Income Tax Under Section 501(c)(3) or 501(c)(4) of the IRC
- One of the Organization's Exempt Purposes Must Include the Fostering of Low-Income Housing
- Nonprofit Cannot Be "Affiliated With Or Controlled By" a For-profit Organization
- Nonprofit Must Own an Interest in the Project (Directly or Indirectly)
- Nonprofit Must Materially Participate in the Development and Operation of the Project Throughout the Compliance Period

NIXON PEABODY

NOVOGRADAC™

RIGHT OF FIRST REFUSAL UNDER IRC SECTION 42(I)(7)

— Added to IRC Section 42 in 1990 to Facilitate Nonprofit Ownership of Tax Credit Properties at the End of the 15-Year Compliance Period

— Eligible Holders and Minimum Purchase Price Are Specifically Set Forth in IRC Section 42(i)(7)

NIXON PEABODY

NOVOGRADAC™

FOR MORE INFORMATION, PLEASE CONTACT:

Tom Giblin
Partner
Nixon Peabody LLP
Boston, MA

P (617) 345-1102
tgiblin@nixonpeabody.com

Matt Mullen
Partner
Nixon Peabody LLP
Washington, DC

P (202) 585-8128
mmullen@nixonpeabody.com

Charles Rhuda III
Partner
Novogradac & Company LLP
Boston, MA

P (617) 330-1920
charlie.rhuda@novoco.com

Deborah VanAmerongen
Strategic Policy Advisor
Nixon Peabody LLP

P (212) 940-3054
dvanamerongen@nixonpeabody.com

NIXON PEABODY

NOVOGRADAC™