BROKER'S GUIDE TO UNDERSTANDING AFFORDABLE HOUSING
1 CREDIT HOUR

I. **Public Housing – New York City Housing Authority (NYCHA) (5 MINUTES)**
   A. Owns and operates 178,000 public housing apartments
   B. Regulations may vary depending on if federal, state, or city funds were used to build the development
   C. Tenants pay 30% of their household income
   D. Tenants must earn below set income limits

II. **Section 8 Portable Vouchers (Housing Choice Voucher Program) (5 MINUTES)**
   A. Allows tenants to rent in privately-owned buildings and pay 30% of household income towards rent; Section 8 pays the difference between tenant's portion and the contract rent
   B. NYCHA and HPD each administer it. Tenants can apply to either for a voucher. If they get approved for a voucher, they must then find an apartment and the tenant, landlord, and NYCHA or HPD will enter an agreement
   C. The voucher allows tenants to apply to basically any building
   D. In NYC, for buildings with at least six apartments, it is illegal for a landlord to refuse to rent an apartment to a tenant based solely on his/her intention to pay using a rent subsidy

III. **Project-Based Section 8 Buildings (5 MINUTES)**
   A. Subsidized housing program for particular developments
   B. Tenants pay 30% of their income toward rent
   C. Approximately 90,000
   D. Similar to Section 8 portable vouchers, except that the Section 8 contract is for a particular building and cannot be moved to another apartment
   E. When government contracts to participate in the project-based Section 8 program, landlords may be able to "opt out" of the program and raise rents to market levels

IV. **Mitchell-Lama Rental Buildings (5 MINUTES)**
   A. Privately owned but under state contract to keep prices affordable to moderate and middle income families
   B. Contracts usually last for 20 years, then landlord has option to "opt out"
   C. If landlord "opts out" then then affordability protections will depend on when building complex was built
      - If before 1974, probably subject to rent stabilization laws
      - If after 1974, can increase rents to market rates
   D. Eligible tenants can participate in SCRIE and DRIE programs to freeze their rents.

V. **Mitchell-Lama Coop Buildings (5 MINUTES)**
   A. These buildings involve a form of resident ownership called "limited-equity"
   B. While in program, the building receives tax incentives and subsidies
   C. Limits a resident/owner's ability to profit from the sale of the apartment while the building is subject to the program's rules
   D. Instead of rent, residents pay maintenance fees for the upkeep of the property
   E. Very strict resale restrictions

F. At end of the contract period (usually 20 years), given option of converting to market-rate ownership

VI. **Low-Income Housing Tax Credits (LIHTC) – Provides dollar-for-dollar credit against AN INVESTOR's TAX LIABILITY FOR TEN YEARS (10 MINUTES)**

A. Federal Level

B. State Level

C. Developers

D. The U.S. Congress authorizes each state to allocate a certain number of Federal low-income housing tax credits (LIHTCs) and issue up to a specified amount of tax-exempt bond financing annually. Internal Revenue Service rules found at Section 42 of the Internal Revenue Code (IRC) govern the LIGTC program. Each state establishes its own additional requirements and priorities for the credits and administers the program.

E. **LIHTCs**

- The state reserves LIHTCs for approved affordable housing projects that meet certain affordability criteria for up to 30 years.
- These Federal tax credits are sold to investors as a way to raise cash equity for eligible affordable housing projects. In exchange for cash up-front, the investor receives a tax credit (dollar for dollar reduction in its Federal tax liability) each year for a period of ten years.
- The IRS enforces compliance with the LIHTC affordability restrictions for 15 years. The LIHTC compliance period is the 15-year period during which a project must continue to comply with the various LIHTC requirements to avoid any tax credit recapture.
- The compliance period begins with the first taxable year in the credit period. The extended use period is a date specified by either the LIHTC allocating agency or 15 years after the close of the compliance period.
- During this extended period, the use of the property is restricted to affordable low-income housing

VII. **Two forms of Federal LIHTCs**

A. 9 percent tax credits → for new construction and rehabilitation

- Also referred to as 70 percent present value LIHTCs because a seller will be able to sell

B. 4 percent tax credits → available for existing housing or federally subsidized housing and are generally used in conjunction with tax-exempt bond financing

- Also referred to as 30 percent present value LIHTCs

C. Note: in an acquisition and rehabilitation project, it's possible for the project to be planned in such a way that the 4 percent credit is applied to the acquisition of the existing building and the substantial rehabilitation qualifies for the 9 percent credit

VIII. **EXAMPLE**

A. Each year, for ten years, a tax credit equal to roughly 4% or 9% of a project's qualified basis (cost of construction) is claimed

B. The applicable credit rates are not always 4% or 9% but instead fluctuate based market interest so that the program has delivered a subsidy equal to 30% of the present value of a project's qualified basis in the case of the 4% credit, and 70% in the case of the 9% credit.

C. For both the 4% and 9% credit it is the subsidy levels (30% or 70%) that are explicitly specified in the Internal Revenue Code (IRC), not the credit rates
  - Range of rates since 1986:
    - 4% = 3.15 to 3.97%
    - 9% = 7.35 to 9.27% (however, as of 2008, there is now a 9% floor)

D. EXAMPLE 2
  - Assume there's a *new* affordable housing complex with a qualified basis of $1million. Since the project is new construction, it would qualify for 9% credit and generate a stream of tax credits equal to $90,000 (9% x $1million) per year for 10 years ($900,000 in total). Under the appropriate interest rate, the present value of the $900,000 stream of tax credits should be equal to $700,000, resulting in a 70% subsidy.

IX. Typical LIHTC Ownership Structures (5 MINUTES)

A. Almost all LIHTC projects are developed as single-asset entities, typically either:
  - Limited Liability Companies (LLCs)
    - Typically one partner (or "member") is designated as the "managing member" who makes day-to-day decisions.
    - The tax credit investor(s) typically is not involved in day-to-day decision making, but is involved in major decisions such as sales or refinancing
  - Limited Partnerships (LPs)
    - Similar to LLC's except the manager is called the "general partner" and the investor(s) is called a "limited partner"
    - The general partner will make the day to day decisions, while the limited partner(s) will be passive investors

B. The Allocation Process
  - Involves Federal and State levels, as well as developers and investors
  - Federal Allocation to States
    - LIHTCs are allocated to each state according to its population
    - For 2018, states were originally to receive LIHTC allocation of $2.40 per person.
      - The 2018 Consolidated Appropriations Act (P.L. 115-141) will improve that amount by 12.5% each year through 2021
      - The state allocation limits do not apply to the 4% credits which were automatically packaged with tax-exempt bond financed projects
    - Each state's Housing Finance Agency (HFA) is responsible for administering the tax credit program
  - State Level
    - State HFAs allocate credits to developers of rental housing according to federally required, but state created/implemented Qualified Action Plans (QPAs)

        - States are required to give priority to projects that serve the lowest income households and remain affordable for longest period of time
        - Developers apply by proposing projects to state agencies
        - Developers can be nonprofit or for-profit organizations
   C. Allocations
      - An allocation simply means tax credits are set aside for a developer. In order to claim a tax credit it must complete the project within in two years of allocation
      - "Placed in Service" → credits cannot be claimed until the project is completed and occupied

X. **Eligibility for LIHTC (5 MINUTES)**
   A. Must meet satisfy the Income Test <u>and</u> Gross Rents Test
   B. Income Test – must irrevocably elect one of three income level tests:
      - 20-50 Test
        - At least 20% of units must be occupied by individuals with income of 50% or less of the area's median gross income (AMI), adjusted for family size
      - 40-60 Test
        - At least 40% of units must be occupied by individuals with income of 60% or less of the AMI, adjusted for family size
      - Income Averaging Test
        - At least 40% of the units are occupied by tenants with an average income of no greater than 60% of AMI
          - AND
        - No individual tenant has an income exceeding 80% of AMI
   C. Gross Rents Test
      - Must ensure rents do not exceed 30% of the elected 50% or 60% of AMI, depending on which income test option the project elected.
   D. Types of Projects Eligible:
      - Apartment buildings
      - Single family dwellings
      - Duplexes and Townhouses
        - Note: Projects may include more than one building

XI. **Enhanced LIHTCs (5 MINUTES)**
   A. To incentivize development to invest in more distressed areas
   B. Developers that invest in difficult development areas (DDAs) and qualified census tracts (QCTs) may be able to claim LIHTC for 130% (instead of the normal 100%) of the project's total cost excluding land costs
      - This means available credits can be increased by up to 30%

XII. **NYS Low Income Housing Tax Credit Program (SLIHC) (5 MINUTES)**
   A. Modeled after the federal LIHC and administered pursuant the IRC and DHCR's QAP with the following exceptions:
      - SLIHC assisted units must serve households whose incomes are at or below 90% of the AMI (vs. 60% standard for federal program)
      - SLIHC provides dollar-for-dollar reduction in state taxes

- The SLIHC Credit allocation is not calendar year-specific
- The SLIHC program has its own selection criteria which are set forth in the SLIHC regulations

OTHER STATE PROGRAMS:

XIII. New York State HOME (NYS HOME) (5 MINUTES)

A. Is a program administered by New York State Housing Trust Fund Corporation (HTFC)
B. Uses Federal HOME Investment Partnership Program funds to expand the supply of decent, safe, and affordable housing within the State
C. Provides funds to counties, towns, cities, private developers, and community based non-profit housing organizations to acquire, rehabilitate, or construct housing, or to provide assistance to low-income renters and home buyers

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