



# Addressing the Exposures of the Low-Income Housing Tax Credit

A topic of continual discussion with our Affordable Housing clients is the Low-Income Housing Tax Credit (LIHTC). This critical tool is fundamental to success in the industry, but as it is currently administered, it creates significant exposures that must be addressed – both with proper insurance coverage and also with appropriate lobbying efforts to hopefully foster future change to alleviate some of the risk.

## *Exposures and Risks of the Low-Income Housing Tax Credit*

The Low-Income Housing Tax Credit is quite complex and requires diligent compliance. Failure to fully comply can lead to the recapture of the accelerated portion of the credits previously taken, as well as the loss of future tax credits. Therefore, it is critical that organizations and investors in the affordable housing industry work closely with insurance brokers and tax advisors well versed in the LIHTC program.

Property losses are another exposure with the potential for significant financial ramifications for those receiving credits under the LIHTC program – above and beyond the costs associated with a typical loss. While the IRS and U.S. Congress have provided relief in the case of a declared disaster, the current legislation is problematic because it treats other property losses differently. If a LIHTC community experiences a property loss, such as a major fire damaging multiple units, this could lead to the recapture or loss of the tax credit. Theoretically, an owner could have a unit that is in compliance for nearly the entire year but have a fire in December (that is not restored by December 31) and therefore loses tax credits for those units for the entire year.

## *Do You Have the Right Insurance Coverage?*

When it comes to property insurance, the obvious need is to cover direct losses, such as rebuilding damaged units (construction costs). However, the indirect costs associated with a property loss (i.e. loss of rents, tax credits, etc.) must also be appropriately addressed in your insurance program.

For LIHTC communities, there is also coverage available to specifically address LIHTC-related exposures and cover the potential loss of any credits. This coverage is not included in standard policies, so it is important to work with insurance professionals who understand these risks and have intimate knowledge of the market in order to obtain the best possible coverage.

## *Action Items for LIHTC Communities*

In light of the risks and exposures inherent in the participation in the LIHTC program, recipients should take the following steps to protect their assets:

- Be diligent in compliance, record keeping, safety and upkeep
- Ensure appropriate and adequate insurance coverage is in place
- Lobby through local, state and national associations for the revision of IRS Code 42 to expand protections available for all property losses

If you have any questions regarding the LIHTC program, please contact us to learn more about [customized coverage options](#).

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