

111TH CONGRESS
2D SESSION

S. 3326

To provide grants to States for low-income housing projects in lieu of low-income housing credits, and to amend the Internal Revenue Code of 1986 to allow a 5-year carryback of the low-income housing credit, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 6, 2010

Ms. CANTWELL (for herself, Mr. KERRY, and Mrs. BOXER) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To provide grants to States for low-income housing projects in lieu of low-income housing credits, and to amend the Internal Revenue Code of 1986 to allow a 5-year carryback of the low-income housing credit, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Job Creation and Af-
5 fordable Housing Act of 2010”.

1 **SEC. 2. GRANTS TO STATES FOR LOW-INCOME HOUSING**
2 **PROJECTS IN LIEU OF LOW-INCOME HOUS-**
3 **ING CREDITS FOR BOND-SUBSIDIZED HOUS-**
4 **ING PROJECTS.**

5 (a) IN GENERAL.—The Secretary of the Treasury
6 shall make a grant to each State in an amount equal to
7 such State’s low-income bond-subsidized housing election
8 amount.

9 (b) LOW-INCOME BOND-SUBSIDIZED HOUSING
10 ELECTION AMOUNT.—For purposes of this section—

11 (1) IN GENERAL.—The term “low-income bond-
12 subsidized housing election amount” means, with re-
13 spect to any State, such amount as the State may
14 elect which does not exceed 85 percent of the State’s
15 bond-subsidized credit amount.

16 (2) BOND-SUBSIDIZED CREDIT AMOUNT.—The
17 term “bond-subsidized credit amount” means, with
18 respect to any State, the aggregate amount of low-
19 income housing credits which the State determines
20 would, but for section 42(i)(9) of the Internal Rev-
21 enue Code of 1986, be awarded under section
22 42(h)(4)(B) of such Code times 10 with respect to
23 qualified low-income buildings receiving an allocation
24 of qualified residential rental project bonds of such
25 State during 2010.

1 (3) QUALIFIED RESIDENTIAL RENTAL PROJECT
2 BONDS.—The term “qualified residential rental
3 project bond” means, with respect to any State, any
4 qualified bond (as defined in section 141(e) of the
5 Internal Revenue Code of 1986) if such bond—

6 (A) is issued as part of an issue 95 percent
7 or more of the net proceeds of which are to be
8 used to provide qualified residential rental
9 projects (within the meaning of section 142 of
10 such Code), and

11 (B) is taken into account under section
12 146 of such Code with respect to the State ceil-
13 ing applicable to such State.

14 (c) SUBAWARDS FOR LOW-INCOME BUILDINGS.—

15 (1) IN GENERAL.—A State receiving a grant
16 under this section shall use such grant to make sub-
17 awards to finance the construction or acquisition
18 and rehabilitation of qualified low-income buildings
19 which have received the corresponding allocation of
20 qualified residential rental project bonds referred to
21 in subsection (b)(2).

22 (2) SUBAWARDS SUBJECT TO SAME REQUIRE-
23 MENTS AS LOW-INCOME HOUSING CREDIT ALLOCA-
24 TIONS.—Any such subaward with respect to any
25 qualified low-income building may be in the form of

1 a grant or a loan of any duration and shall be made
2 in the same manner and shall be subject to the same
3 limitations (including rent, income, and use restric-
4 tions on such building) as an allocation of housing
5 credit dollar amount allocated by the State housing
6 credit agency of such State under section 42 of the
7 Internal Revenue Code of 1986, except that such
8 subawards shall not be limited by, or otherwise af-
9 fect, the State housing credit ceiling applicable to
10 such agency.

11 (3) COMPLIANCE AND ASSET MANAGEMENT.—A
12 State receiving a grant under this section shall per-
13 form asset management functions to ensure compli-
14 ance with section 42 of the Internal Revenue Code
15 of 1986 and the long-term viability of buildings
16 funded by any subaward under this section. A State
17 may collect reasonable fees from a subaward recipi-
18 ent to cover expenses associated with the perform-
19 ance of its duties under this paragraph, including
20 the reasonable costs of administering such sub-
21 awards. A State may retain an agent or other pri-
22 vate contractor to satisfy the requirements of this
23 paragraph.

24 (4) RECAPTURE.—A State receiving a grant
25 under this section shall impose conditions or restric-

1 tions, including a requirement providing for recap-
2 ture, on any subaward under this section so as to
3 assure that the building with respect to which such
4 subaward is made remains a qualified low-income
5 building during the compliance period. Any amounts
6 of recapture shall be proportional to the length of
7 time of the noncompliance compared to the 15-year
8 compliance period and the percentage of qualified
9 basis out of compliance compared to the total quali-
10 fied basis. Any such recapture shall be payable to
11 the Secretary of the Treasury for deposit in the gen-
12 eral fund of the Treasury and may be enforced by
13 means of liens or such other methods as the Sec-
14 retary of the Treasury determines appropriate. A
15 State housing credit agency may subordinate any
16 such lien (or other security interest) to other loans
17 made by third parties.

18 (d) REALLOCATION OF BOND AUTHORITY.—A State
19 housing credit agency shall establish a process in which
20 applicants that are allocated bonds and receive a subaward
21 pursuant to subsection (c) are required to demonstrate
22 good faith efforts to obtain purchasers for such bonds. If
23 a subawardee is unable to obtain purchasers or if the State
24 makes a determination that reallocation of bond authority
25 will increase the total funds available to the State to build

1 and rehabilitate affordable housing, a subawardee may re-
2 turn its bond allocation to the State without affecting its
3 subaward under subsection (c) and the State may reallo-
4 cate such bond authority only for qualified residential
5 rental projects. Reallocated bonds shall not be taken into
6 account for purposes of determining eligibility for low-in-
7 come housing credits under section 42(h)(4) of the Inter-
8 nal Revenue Code of 1986 or for purposes of determining
9 eligibility for grants under subsection (c).

10 (e) RETURN OF UNUSED GRANT FUNDS.—Any grant
11 funds not used to make subawards under this section be-
12 fore January 1, 2012, shall be returned to the Secretary
13 of the Treasury on such date. The portion of any
14 subaward which is not disbursed before such date shall
15 be returned to the Secretary of the Treasury on such date
16 unless the subawardee has paid or incurred before Janu-
17 ary 1, 2012, at least 30 percent of the subawardee's total
18 adjusted basis in land and depreciable property that is
19 reasonably expected to be part of the low-income housing
20 building with respect to which such subaward is made.
21 The portion of any subaward which is not disbursed before
22 January 1, 2013, shall be returned to the Secretary of
23 the Treasury on such date. Any subawards returned to
24 the State housing credit agency on or after January 1,
25 2012, shall be promptly returned to the Secretary of the

1 Treasury. Any amounts returned to the Secretary of the
 2 Treasury under this subsection shall be deposited in the
 3 general fund of the Treasury.

4 (f) DEFINITIONS.—Any term used in this section
 5 which is also used in section 42 of the Internal Revenue
 6 Code of 1986 shall have the same meaning for purposes
 7 of this section as when used in such section 42. Any ref-
 8 erence in this section to the Secretary of the Treasury
 9 shall be treated as including the Secretary’s delegate.

10 (g) APPROPRIATIONS.—There is hereby appropriated
 11 to the Secretary of the Treasury such sums as may be
 12 necessary to carry out this section.

13 **SEC. 3. COORDINATION OF LOW-INCOME HOUSING CREDIT**
 14 **WITH LOW-INCOME HOUSING GRANTS.**

15 (a) IN GENERAL.—Paragraph (9) of section 42(i) of
 16 the Internal Revenue Code of 1986 is amended by redesi-
 17 gnating subparagraph (B) as subparagraph (C) and by in-
 18 serting after subparagraph (A) the following new subpara-
 19 graphs:

20 “(B) DENIAL OF CREDIT FOR BOND-SUB-
 21 SIDIZED BUILDINGS RECEIVING SUBAWARDS
 22 WITH 2010 GRANT FUNDS.—No credit shall be
 23 determined under this section with respect to
 24 any qualified low-income building to the extent
 25 of the bond-subsidized credit amount deter-

1 mined with respect to such building under sec-
2 tion 2 of the Job Creation and Affordable
3 Housing Act of 2010 if any subaward is made
4 with respect to such building under such sec-
5 tion.”.

6 (b) GRANTS AND LOANS NOT TO REDUCE BASIS.—
7 Subparagraph (C) of section 42(i)(9) of such Code, as re-
8 designated by this section, is amended by striking “by the
9 amount of any grant described in subparagraph (A)” and
10 inserting “by reason of any grant or loan made under sec-
11 tion 1602 of the American Recovery and Reinvestment
12 Tax Act of 2009 or section 2 of the Job Creation and
13 Affordable Housing Act of 2010”.

14 (c) EXCLUSION OF GRANTS FROM GROSS INCOME.—
15 Paragraph (9) of section 42(i) of such Code, as amended
16 by this section, is amended by adding at the end the fol-
17 lowing new subparagraph:

18 “(D) EXCLUSION OF GRANTS FROM GROSS
19 INCOME.—Any grant made under section 1602
20 of the American Recovery and Reinvestment
21 Tax Act of 2009 or section 2 of the Job Cre-
22 ation and Affordable Housing Act of 2010 shall
23 not be includible in the gross income or alter-
24 native minimum taxable income of the tax-
25 payer.”.

1 (d) EFFECTIVE DATE.—

2 (1) IN GENERAL.—Except as otherwise pro-
3 vided in this subsection, the amendments made by
4 this section shall apply to taxable years ending after
5 December 31, 2009.

6 (2) EXCLUSION OF GRANTS FROM GROSS IN-
7 COME.—The amendment made by subsection (c)
8 shall apply to taxable years ending after December
9 31, 2008.

10 **SEC. 4. FIVE-YEAR CARRYBACK OF LOW-INCOME HOUSING**
11 **CREDIT.**

12 (a) IN GENERAL.—Subsection (a) of section 39 of the
13 Internal Revenue Code of 1986 is amended by adding at
14 the end the following new paragraph:

15 “(4) 5-YEAR CARRYBACK OF LOW-INCOME
16 HOUSING CREDIT.—

17 “(A) IN GENERAL.—In the case of an ap-
18 plicable low-income housing credit (within the
19 meaning of section 38(c)(6)(C))—

20 “(i) this section shall be applied sepa-
21 rately from the business credit (other than
22 the low-income housing credit), and

23 “(ii) paragraph (1) shall be applied by
24 substituting ‘each of the 5 taxable years’

1 for ‘the taxable year’ in subparagraph (A)
2 thereof.”.

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 this section shall apply to taxable years beginning after
5 December 31, 2007, and to carrybacks of credits from
6 such taxable years.

7 **SEC. 5. CARRYBACK OF NEW INVESTMENTS.**

8 (a) **IN GENERAL.**—Section 42(f) of the Internal Rev-
9 enue Code of 1986 is amended by adding at the end the
10 following new paragraph:

11 “(6) **SPECIAL RULE FOR CERTAIN INVEST-**
12 **MENTS IN 2010 AND 2011.**—

13 “(A) **IN GENERAL.**—In the case of a tax-
14 payer who enters into an agreement described
15 in section 38(c)(6)(D)(i)(I) (without regard to
16 the applicable date), which satisfies the require-
17 ment of section 38(c)(6)(D)(i)(II), after Decem-
18 ber 31, 2009, and before January 1, 2012, then
19 solely for purposes of determining the taxable
20 year in which the low-income housing credit
21 under this section may be taken into account
22 for purposes of section 38, and the amount of
23 the credit so taken into account—

24 “(i) the preceding paragraphs of this
25 subsection shall not apply,

1 “(ii) the credit period with respect to
2 the housing credit dollar amount to be allo-
3 cated under such agreement shall be the 1
4 taxable year in which the taxpayer enters
5 into such agreement,

6 “(iii) subsections (b) and (c)(1) shall
7 not apply, and

8 “(iv) the amount of the credit under
9 this section which is taken into account in
10 the taxable year described in clause (ii)
11 shall be the housing credit dollar amount
12 to be allocated under such agreement.

13 “(B) REQUIREMENTS OF SECTION UNAF-
14 FECTED.—Except as provided in subparagraph
15 (A), the provisions of this section shall apply to
16 any building to which an agreement described
17 in subparagraph (A) applies as if such subpara-
18 graph had not been enacted.

19 “(C) RECAPTURE OF EXCESS CREDIT.—If,
20 at the end of the credit period with respect to
21 any building (without regard to subparagraph
22 (A)), the amount of the credit taken into ac-
23 count under subparagraph (A)(iv) with respect
24 to such building exceeds the total amount of the
25 credit which would have been allowed under this

1 section with respect to such building during
 2 such credit period but for the application of
 3 subparagraph (A), then the amount of such ex-
 4 cess shall be recaptured as if it were included
 5 in the credit recapture amount under subsection
 6 (j).”.

7 (b) EFFECTIVE DATE.—The amendments made by
 8 this section shall apply to taxable years beginning after
 9 December 31, 2009.

10 **SEC. 6. ALLOWING LOW-INCOME HOUSING CREDITS TO**
 11 **OFFSET 100 PERCENT OF FEDERAL INCOME**
 12 **TAX LIABILITY.**

13 (a) IN GENERAL.—Subsection (c) of section 38 is
 14 amended by adding at the end the following new para-
 15 graph:

16 “(6) ALLOWING LOW-INCOME HOUSING CREDIT
 17 TO OFFSET 100 PERCENT OF FEDERAL INCOME TAX
 18 LIABILITY.—

19 “(A) IN GENERAL.—In the case of applica-
 20 ble low-income housing credits—

21 “(i) this section shall be applied sepa-
 22 rately with respect to such credits,

23 “(ii) in applying paragraph (1) to
 24 such credits—

1 “(I) the tentative minimum tax
2 shall be treated as being zero, and

3 “(II) the limitation under para-
4 graph (1) (as modified by subclause
5 (I)) shall be the net income tax (as
6 defined in paragraph (1)) reduced by
7 the credit allowed under subsection
8 (a) for the taxable year (other than
9 the applicable low-income housing
10 credits), and

11 “(iii) the excess credit for such tax-
12 able year shall, solely for purposes of de-
13 termining the amount of such excess credit
14 which may be carried back to a preceding
15 taxable year, be increased by the amount
16 of business credit carryforwards which are
17 carried to such taxable year, to which this
18 subparagraph applies, and which are not
19 allowed for such taxable year by reason of
20 the limitation under paragraph (1) (as
21 modified by clause (ii)).

22 “(B) INCREASE IN LIMITATION FOR TAX-
23 ABLE YEARS TO WHICH EXCESS APPLICABLE
24 LOW-INCOME HOUSING CREDITS ARE CARRIED
25 BACK.—

1 “(i) IN GENERAL.—Solely for pur-
2 poses of determining the portion of any ex-
3 cess credit described in subparagraph
4 (A)(iii) for which credit will be allowed
5 under subsection (a)(3) for any preceding
6 taxable year, except as provided in clause
7 (ii), the limitation under paragraph (1) for
8 such preceding taxable year shall be deter-
9 mined under rules similar to the rules de-
10 scribed in subparagraph (A).

11 “(ii) ORDERING RULE.—If the excess
12 credit described in subparagraph (A)(iii)
13 includes business credit carryforwards
14 from preceding taxable years, such excess
15 credit shall be treated as allowed for any
16 preceding taxable year on a first-in first-
17 out basis.

18 “(C) APPLICABLE LOW-INCOME HOUSING
19 CREDITS.—For purposes of this subpart, the
20 term ‘applicable low-income housing credits’
21 means the credit determined under section 42—

22 “(i) to the extent attributable to
23 buildings placed in service after the date of
24 the enactment of this subparagraph, and

1 “(ii) in the case of any other build-
2 ings, for taxable years beginning in 2008,
3 2009, and 2010 (and to business credit
4 carryforwards with respect to such build-
5 ings carried to such taxable years) to the
6 extent provided in subparagraph (D).

7 “(D) PREVIOUSLY PLACED IN SERVICE
8 BUILDINGS.—

9 “(i) IN GENERAL.—Subparagraph
10 (C)(ii) shall apply to such credits for such
11 a taxable year only—

12 “(I) if the taxpayer has entered
13 into a binding commitment to invest
14 equity not later than the applicable
15 date, with respect to an investment in
16 a future project (which is binding on
17 the taxpayer and all successors in in-
18 terest) which specifies the dollar
19 amount of such investment, and

20 “(II) to the extent such credits
21 do not exceed the dollar amount of
22 such proposed investment.

23 “(ii) APPLICABLE DATE.—For pur-
24 poses of this subparagraph, the applicable
25 date is—

1 “(I) in the case of taxable years
2 beginning in 2008 and 2009, Sep-
3 tember 15, 2010, or

4 “(II) in the case of a taxable
5 year beginning in 2010, the due date
6 (including extensions of time) for fil-
7 ing the taxpayer’s return for such tax-
8 able year.”.

9 (b) EFFECTIVE DATE.—The amendment made by
10 this section shall apply to taxable years beginning after
11 December 31, 2007, and to carrybacks of credits from
12 such taxable years.

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