



NOVOGRADAC

Journal of Tax Credits™

November 2022 ♦ Volume XIII ♦ Issue XI

Published by Novogradac

# The Renewable Energy Issue

**Tax Credit Alternatives in the Inflation Reduction Act**  
*Learn about credit sale and direct payment options for monetizing renewable energy tax credits*  
Page 72

**Developers, Owners Should Consider Solar for LIHTC Properties**  
*Many LIHTC developers and owners are beginning to incorporate solar using the 30% investment tax credit*  
Page 4

**Highlighting Energy Provisions in the Inflation Reduction Act of 2022**  
*A quick summary of provisions in the game-changing benefits of the IRA*  
Page 68

**RETC Stakeholders Hungry for Guidance from Treasury After Passage of Inflation Reduction Act**  
*Stakeholders seek further clarity regarding certain IRA provisions*  
Page 74



# Developers, Owners Should Consider Solar for LIHTC Properties



MICHAEL J. NOVOGRADAC, CPA

Low-income housing tax credit (LIHTC) properties are having their moment in the sun.

Clean energy provisions in the Inflation Reduction Act (IRA), signed into law in August, provide significant additional incentives to install solar panels on affordable housing rental properties. The magnitude of the added benefits means that every developer and owner should consider adding solar to their LIHTC properties, both those in service and those under development.

## Basics of IRA

Among the \$369 billion in clean and green energy provisions in the IRA are extensions of the renewable energy investment tax credit (ITC) and production tax credit (PTC), eligibility of storage for the ITC,

direct payment for certain clean and renewable tax credits, extensions of the Internal Revenue Code (IRC) Section 45L new energy efficient home credit and an expansion of the IRC Section 45Q carbon oxide sequestration credit.

Most notable for affordable housing stakeholders is the extension of the ITC at 30% (when complying with certain rules) and the potential for a 20% bonus credit when solar is installed on affordable multifamily housing that participates in a list of federal programs—which includes property financed by LIHTC equity. The right to claim the 20% bonus credit will be awarded annually by Treasury, beginning in 2023.

## Solar Investment Tax Credits

*sans LIHTC Basis Reduction*



**Sect. 48 - Renewable Energy Investment Tax Credit (ITC), + Bonus Credits**  
*... no basis reduction for: "purposes of determining eligible basis under section 42"*

Solar Tax Credits	30%
Qualifying Low-Income Residential Building or Benefit Project	20%
Domestic Content	10%
Energy Community	10%
<b>Total</b>	<b>70%</b>

Total annual awards are limited to 1.8 gigawatts nationally of solar and wind capacity, with any unused amounts carried into the following year.

The even bigger news is that LIHTC eligible basis is not reduced by the solar ITC, which means the costs may also be eligible for LIHTCs.

If you review the statutory language, you will observe that the IRA technically extends the ITC at 6%, with two ways for it to increase to a 30% credit. The first is by meeting prevailing wage and apprenticeship program standards, the second is when the solar property is for less than 1 megawatt (MW) of electricity. Many LIHTC properties will meet the first standard, almost all will meet the second (for example, one LIHTC property has 108kw of rooftop solar that serves 128 units and common areas, another property serves 155 units with a smaller installation, due to rooftop capacity limits, of 55kw).

Regarding the 20% bonus for affordable housing, technically there is a 10% credit for projects in a low-income community with a capacity of less than 5 MW and the 10% increases to 20% when used for affordable housing. The low-income residential building provision specifically requires that there be a benefit to the tenant, which is addressed later in this column.

Beyond the 30%, and the 20% bonus for affordable housing, two other IRA provisions increase the ITC percentage further. Those provisions relate to domestic content and energy communities. The 10% domestic content credit is available for projects that incorporate a minimum required amount of iron, steel or manufactured products produced in the United States. An additional 10% energy community credit is for properties located on brownfield sites or in economically distressed sites of former fossil fuel production—all phrases with specific definitions in the legislation.

### **New Construction Options**

Since there is no reduction in eligible basis for solar, a LIHTC property may qualify to claim 4% or 9%

LIHTCs on the eligible basis attributable to the solar property, which would aggregate to 40% or 90% over the compliance period. Assuming the lower percentage (the 4% LIHTC), is combined with a 30% ITC and 20% affordable housing bonus puts the credit percentage for that solar at 90%, with the possibility of an additional 10% or 20% for properties that meet the domestic content or/and energy community standards.

Consider one more addition. Properties in difficult development areas or qualified census tracts get an additional 30% basis boost on the LIHTCs, which changes the 4% LIHTC (for properties built with equity from private-activity bonds) to a 5.2% credit. A 9% LIHTC development would receive significantly more tax credits. Note, LIHTC developments are subject to financial feasibility reviews by allocating agencies to prevent excess subsidization.

In most cases, where solar ITC is added to an LIHTC development, the expectation is that the LIHTC investor will increase their equity contribution and be allocated the solar ITCs. If the LIHTC investor partner isn't interested or able, the developer has other options, such as forming a second partnership to own the solar property or leasing space to a solar developer who will do so.

There's one more option for nonprofit developers. Under the IRA, there is a direct-pay option for the ITC, so nonprofit developers may be able to claim the credits and apply for a direct payment from the IRS.

Caveat: The above is an overview and many issues still need to be worked through, some of which are discussed below.

### **Existing Portfolio Options**

While proposed LIHTC developments can more readily incorporate solar into their plans, owners of existing LIHTC properties can also benefit themselves and their tenants by adding solar. It's a little more complicated, but the ability to claim 50% (or much more) of the expenditures in ITCs for installing solar on an existing property makes it worth examining.

One carry-over from new-construction LIHTC: if the LIHTC investor isn't interested in the solar credits, a property owner can consider forming a separate partnership to install and own the solar panels or lease the space to a third-party solar developer. Also note that nonprofits have the direct payment option mentioned earlier.

Under the scenarios involving a separate partnership or leasing the space, the owner should confirm who in the partnership controls the roof (or wherever the solar would be added) and whether approval from any partners is needed. If so, negotiations should address both financial and liability issues.

### Issues to Address

Adding solar to existing or planned LIHTC developments is an attractive option, but as mentioned, there are challenges.

First is the question of how to allocate the annual 1.8GW of solar authority. The IRA gave the Secretary of the Treasury responsibility to develop the procedures for allocating the increased credit, so stakeholders should prepare and be ready to adjust to the standards by which such approvals will be granted. This process may be highly competitive, with more project applicants than allocation available, so it could be a competition among developers to receive an award.

Every developer also needs to consider how to connect solar and its effect on utility allowances.

**How to connect:** Regulations for solar power vary from state to state and even within states, so affordable housing developers who add solar must familiarize themselves with how they'll connect to the grid. Are they able to provide power directly to their building? Is the property in a net metering state? Are there other regulatory issues in the local area?

Understanding the regulations and requirements for solar power is crucial and varies greatly from place to place. For many developers, this is reason to subcontract solar installation to an experienced developer. How you answer the connection question—including the utility allowance discussion below—will affect the economics of the property, so take time to consider the options.

**Utility allowance:** The IRA requires that to receive the 20% bonus credit for affordable housing, the financial benefits of the electricity produced by such facility must be allocated equitably among occupants of the dwelling units of such building. Exactly what constitutes sufficient benefit and how it is measured is unclear and Treasury guidance is needed. The Novogradac LIHTC Working Group is asking Treasury for clarification.

### Next Steps

With the passage of the IRA, many LIHTC developers and owners are beginning to incorporate solar using the 30% ITC (with eligibility for the LIHTC on the full costs) into their developments, while remaining hopeful that they'll also be eligible for bonus credits once clarifying guidance is issued. Other LIHTC developers and owners—who may need the bonus credits for financial feasibility—are in a prepare-while-waiting stance, as they anticipate guidance.

As mentioned, there will be competition for the 1.8GW annual cap, so developers—whether for-profit or nonprofit—should be ready as soon as possible.

Developers of housing covered by federally assisted affordable housing programs other than the LIHTC should also be preparing. Owners and developers should run various financial models to evaluate the benefits of the solar credits and consult with experts to help navigate the options concerning the partnership, power company and utility allowance. ❖

---

© Novogradac 2022 - All Rights Reserved.

This article first appeared in the November 2022 issue of the Novogradac Journal of Tax Credits. Reproduction of this publication in whole or in part in any form without written permission from the publisher is prohibited by law.

*Notice pursuant to IRS regulations: Any discussion of U.S. federal or state tax issues contained in this article is not intended to be used, and cannot be used, by any taxpayer for the purpose of avoiding penalties under the Internal Revenue Code; nor is any such advice intended to be used to support the promotion or marketing of a transaction. Any discussion on tax issues reflected in the article are not intended to be construed as tax advice or to create an accountant-client relationship between the reader and Novogradac & Company LLP and/or the author(s) of the article, and should not be relied upon by readers since tax results depend on the particular circumstances of each taxpayer. Readers should consult a competent tax advisor before pursuing any tax savings strategies. Any opinions or conclusions expressed by the author(s) should not be construed as opinions or conclusions of Novogradac & Company LLP.*

*This editorial material is for informational purposes only and should not be construed otherwise. Advice and interpretation regarding property compliance or any other material covered in this article can only be obtained from your tax advisor. For further information visit [www.novoco.com](http://www.novoco.com).*

## EDITORIAL BOARD

PUBLISHER

**Michael J. Novogradac, CPA**

EDITORIAL DIRECTOR

**Alex Ruiz**

TECHNICAL EDITORS

**Thomas Boccia, CPA**  
**Chris Key, CPA**  
**Diana Letsinger, CPA**

**Matt Meeker, CPA**  
**John Sciarretti, CPA**  
**Stacey Stewart, CPA**

## COPY

SENIOR EDITOR

**Brad Stanhope**

SENIOR MARKETING MANAGER

**Teresa Garcia**

SENIOR COPY EDITOR

**Mark O'Meara**

SENIOR WRITER

**Nick DeCicco**

CONTRIBUTING WRITERS

**Frank Altman**  
**Megan Christensen**  
**John Dalton**  
**Cindy Hamilton**

**Amy Hook**  
**Stephanie Naquin**  
**Brent Parker**  
**Thomas Stagg**

## ART

CREATIVE DIRECTOR

**Alexandra Louie**

GRAPHIC DESIGNER

**Brandon Yoder**

## CONTACT

CORRESPONDENCE AND EDITORIAL SUBMISSIONS

**Teresa Garcia**  
**teresa.garcia@novoco.com**  
**925.949.4232**

ADVERTISING INQUIRIES

**Christianna Cohen**  
**christianna.cohen@novoco.com**  
**925.949.4216**

ALL MATERIAL IN THIS PUBLICATION IS FOR INFORMATIONAL PURPOSES ONLY AND SHOULD NOT BE CONSTRUED AS PROFESSIONAL ADVICE OFFERED BY NOVOGRADAC OR BY ANY CONTRIBUTORS TO THIS PUBLICATION.

ADVICE AND INTERPRETATION REGARDING THE LOW-INCOME HOUSING TAX CREDIT OR ANY OTHER MATERIAL COVERED IN THIS PUBLICATION CAN ONLY BE OBTAINED FROM YOUR TAX AND/OR LEGAL ADVISOR.

## ADVISORY BOARD

### OPPORTUNITY ZONES

<b>Dan Altman</b>	SIDLEY AUSTIN LLP
<b>Glenn A. Graff</b>	APPLGATE & THORNE-THOMSEN
<b>Jill Homan</b>	JAVELIN 19 INVESTMENTS
<b>Martin Muoto</b>	SOLA IMPACT

### LOW-INCOME HOUSING TAX CREDITS

<b>Jim Campbell</b>	SOMERSET DEVELOPMENT COMPANY LLC
<b>Tom Dixon</b>	LUMENT
<b>Richard Gerwitz</b>	CITI COMMUNITY CAPITAL
<b>Elizabeth Bland Glynn</b>	TRAVOIS INC.
<b>Rochelle Lento</b>	DYKEMA GOSSETT PLLC
<b>John Lisella III</b>	U.S. BANCORP COMMUNITY DEV. CORP.
<b>Derrick Lovett</b>	MBD COMMUNITY HOUSING CORP.
<b>Rob Wasserman</b>	U.S. BANCORP COMMUNITY DEV. CORP.

### PROPERTY COMPLIANCE

<b>Jen Brewerton</b>	DOMINIUM
<b>Kristen Han</b>	WNC
<b>Michael Kotin</b>	KAY KAY REALTY CORP.

### HOUSING AND URBAN DEVELOPMENT

<b>Victor Cirilo</b>	NEWARK HOUSING AUTHORITY
<b>Flynann Janisse</b>	RAINBOW HOUSING
<b>Ray Landry</b>	DAVIS-PENN MORTGAGE CO.
<b>Denise Muha</b>	NATIONAL LEASED HOUSING ASSOCIATION
<b>Monica Sussman</b>	NIXON PEABODY LLP

### NEW MARKETS TAX CREDITS

<b>Frank Altman</b>	COMMUNITY REINVESTMENT FUND
<b>Maria Bustria-Glickman</b>	US BANK
<b>Elaine DiPietro</b>	BLOOMING VENTURES LLC
<b>Chimeka Gladney</b>	ENTERPRISE COMMUNITY INVESTMENT INC.
<b>Tracey Gunn Lowell</b>	U.S. BANCORP COMMUNITY DEV. CORP.
<b>Ruth Sparrow</b>	FUTURES UNLIMITED LAW PC
<b>William Turner</b>	WELLS FARGO

### HISTORIC TAX CREDITS

<b>Irvin Henderson</b>	HENDERSON & COMPANY
<b>Merrill Hoopengardner</b>	NATIONAL TRUST COMMUNITY INVESTMENT CORP.
<b>Bill MacRostie</b>	MACROSTIE HISTORIC ADVISORS LLC
<b>Marty Richardson</b>	OLD NATIONAL BANK
<b>Claudia Robinson</b>	BANK OF AMERICA
<b>Donna Rodney</b>	MILES & STOCKBRIDGE
<b>John Tess</b>	HERITAGE CONSULTING GROUP

### RENEWABLE ENERGY TAX CREDITS

<b>Jim Howard</b>	DUDLEY VENTURES
<b>Elizabeth Kaiga</b>	DNV GL
<b>Forrest Milder</b>	NIXON PEABODY LLP

© Novogradac 2022 All rights reserved.

ISSN 2152-646X

Reproduction of this publication in whole or in part in any form without written permission from the publisher is prohibited by law.