Home Efficiency Rebates (IRA Section 50121) Case Study: Using Whole Home Energy Rebates to Preserve Affordable Multifamily Housing

February 2024

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Introduction

Sections 50121 & 50122 of the Inflation Reduction Act[1] (IRA) include $8.8 billion for home efficiency and electrification project rebates through two programs administered by U.S. Department of Energy (DOE): Home Efficiency Rebates Program (Sec. 50121) and Home Electrification and Appliance Rebates Program (Sec. 50122). The purpose of this document is to provide information to states, building owners, developers, and other stakeholders who are considering combining Home Efficiency Rebates Program funds and Low-Income Housing Credit[2] (LIHTC) equity.[3] Similar principles could be applied to the combination of Home Electrification and Appliance Rebates Program funds and LIHTCs. While the Home Efficiency Rebates support whole-home retrofits that save energy, the Home Electrification and Appliance Rebates provide point-of-sale consumer discounts to low- and moderate-income households for qualifying electric equipment and appliances.

The Home Efficiency Rebates Program has a requirement to allocate a portion of funds to low-income multifamily properties[4] and includes a categorical eligibility designation for LIHTC projects if at least 50% of the housing units are income-restricted.[5] For these reasons, states and program participants may seek ways to permissibly coordinate Home Efficiency Rebates and LIHTCs in existing building projects.[6] This document was informed by conversations with LIHTC developers and other industry stakeholders and is intended to inform and guide stakeholders in how to potentially coordinate the permissible uses of these forms of support within the existing applicable guidance. States and local actors are encouraged to determine the most appropriate way to maximize the impact of these separate forms of support in response to local needs and conditions.

Background on Home Efficiency Rebates

The IRA authorized $4.3 billion to states and territories for the Home Efficiency Rebates Program on a formula basis. DOE published the Home Energy Rebates Program Requirements & Application Instructions in July 2023, which were updated in October 2023. Applications from states and territories will be reviewed on a rolling basis and remain open until January 31, 2025. Project officers are directed to send a letter conveying their interest in these funds by August 16, 2024. The funding expires on September 30, 2031. Only state and territory energy offices are eligible to apply for Home Efficiency Rebates Program funding. States must submit applications in compliance with DOE's programmatic requirements and receive DOE approval

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[1] See 42 U.S.C 18795 & 18795a.
[2] See 26 U.S.C. 42.
[3] See Section 42 of the Internal Revenue Code.
[4] See Home Energy Rebates Program Requirements & Application Instructions, Section 3.1.3 Program Requirements: Low-Income Homes.
[5] See Federal Programs Approved for Categorical Eligibility for DOE Home Energy Rebates ("Recognized Programs"). The owners of a LIHTC project may be categorically eligible with respect to a building in the project if not less than 50 percent of the residential units in the building are low-income units within the meaning of 26 U.S.C. 42(i)(3) and meet the income threshold specified for low-or moderate-income in 42 U.S.C. 18795(d)(3).
[6] Home Efficiency Rebates cannot be applied to new construction projects.

before distributing rebates. Of the funds awarded by DOE, 80% of the total grant funding must be used to provide rebates for efficiency upgrades that are predicted to save at least 20% of the home's energy use.[7] State Energy Offices (SEOs) may use up to 20% of total grant funding for administrative purposes.[8] As defined in the Program Requirements & Application Instructions Section 2.1, eligible entity recipients for 50121 include the following: 1) Homeowners, 2) Aggregators (an entity that engages with multiple single-family homes and/or multifamily buildings for the purpose of combining or streamlining projects as allowed by the state), and 3) Multifamily building owners.

Background on LIHTCs

LIHTCs incentivize and subsidize the construction and rehabilitation of affordable rental housing for low-income tenants. Building owners qualify for LIHTCs by constructing and operating a low-income housing project in conformity with the LIHTC requirements as described in Title 26, Section 42 of the U.S. Code (including limitations on tenant income, restrictions on gross rents, and periodically assessed habitability).[9] Tax credit investors may claim the tax credits on their federal income tax return each year for a period of 10 full years, even though projects generally must meet certain requirements for low-income use for 30 years (or longer depending on requirements by the credit allocating agency).[10]

There are two types of credits, commonly referred to as the 9% credit and the 4% credit. The annual tax credit is calculated by multiplying the project's eligible basis (eligible construction or renovation costs) by the percentage of the building that is to be used for low-income housing, by the applicable credit percentage (generally either 4% or 9%).[11]

The Internal Revenue Service (IRS) allocates credits annually to designated housing credit agencies (HCA) within states, the District of Columbia, territories of the United States, and in

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[7] See Home Energy Rebates Program Requirements & Application Instructions, Section 3.1.2.1. Modeled Home Efficiency Rebates and Section 3.1.2.2. Measured Home Efficiency Rebates. See 42 U.S.C. 1879(c)(2).

[8] IRA Section 50121 states that a "State energy office that receives a grant pursuant to this section may use not more than 20 percent of the grant amount for planning, administration, or technical assistance" related to the Home Efficiency Rebates. See 42 U.S.C. 18795(c)(4).

[9] Depending on the project owner's choice, at least 20% of the units must be occupied by tenants with no more income than 50% of area median income (AMI) for that family size, or at least 40% of units must be occupied either by tenants with income no more and 60% of AMI or by tenants with incomes between 20% and 80% of AMI, averaging to no more than 60% of AMI (AMI and tenant income are determined consistent with HUD's Section 8 determinations. HUD publishes updated AMI income limits at the county level annually at https://www.huduser.gov/portal/datasets/il.html). In all cases, maximum gross rent for a unit is 30% of the income limit for the unit.

[10] See credit period defined in 26 U.S.C. 42(f)(1). See extended use period defined in 26 U.S.C. 42(h)(6)(D).

[11] See the method of calculating the amount of low-income housing credit described in 26 U.S.C. 42(a). The statute specifies that the subsidy levels should be either 70% or 30% of present value. The applicable percentage to achieve that subsidy level shall be set by the Secretary of the Treasury. Subsequent legislation placed a 9% and 4% floor respectively on the two credits.

some cases, entities in local jurisdictions.[12] Each HCA must have a Qualified Allocation Plan (QAP) to lay out the agency's priorities and criteria for awarding credits to eligible projects.[13] The tax statute specifies three preferences and 10 selection criteria that every QAP must contain. In addition, QAPs typically add additional factors to reflect local priorities, such as deeper affordability or other factors like energy efficiency. In the case of the 9% credit, because the HCAs' pools of potential credits are almost always oversubscribed, applicants compete for tax credit awards. In some places the 4% credits are available on a rolling basis, and in other cases they are awarded competitively as well.

A building can be eligible to earn credits at a 4% rate if the building and the land on which it sits are financed at least 50% by private activity bonds (PABs) that are subject to a state's volume cap.[14] A state's volume cap is the annual limit on the tax-exempt PABs that the state may issue for all purposes, including for qualified residential rental projects that can qualify for LIHTCs. Analogous to LIHTC allocations, a state agency — which is not always the HCA — allocates a volume cap to proposed projects.

Once a project applicant has received an allocation of potential credits and/or of volume cap, it identifies investors that want to obtain an equity interest in the project to be developed (generally by becoming a partner in an entity that owns the project). LIHTC properties are required to remain compliant with the affordability requirements of the program for 30 years (some QAPs require a longer compliance period). The HCA is responsible for monitoring and compliance. The first 15 years are called the initial compliance period, and the second 15 years are called the extended use period. During the initial compliance period, the tax credit investor receives the tax benefits over the first 10 years. The tax credits can only be recaptured by the IRS during the initial compliance period, after which the tax credit investor may exit. After the initial compliance period, although the enforcement mechanism is weaker, the property owner is still required to maintain compliance for the life of the extended use period (unless the property owner successfully appeals to the HCA to opt out of its ongoing compliance requirements under certain circumstances through a qualified contract).[15]

The vast majority of LIHTC projects have multiple sources of project funding, in addition to LIHTC equity investment and tax-exempt debt in the case of a 4% transaction. This gap financing may take the form of "soft" debt frequently financed by state or local entities with their entitlement funds from HUD (such as Community Development Block Grants[16] or the

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[12] For 2024, each state receives $2.90 per capita in new potential credits to allocate, subject to a minimum of $3,360,000 for smaller states. The total ceiling available for a state to allocate each year also includes unused or returned potential credits from prior years.
[13] See Qualified Allocation Plan in 26 USC §42(m)(1)(B).
[14] See 50% rule in 26 USC §42(h)(4)(B). PABs are governmentally issued bonds for some private purpose. They may be tax exempt if they are issued for certain qualifying purposes and if they receive an allocation of volume cap.
[15] See compliance period in 26 USC §42(i)(1). See extended use period in 26 USC §42 (h)(6)(D). See qualified contracts in 26 USC §42 (h)(6)(F).
[16] For program information, see the HUD website: https://www.hudexchange.info/programs/cdbg/.

HOME Investment Partnerships[17] program funds). Other sources of gap financing may include state or local financing, deferred developer fees, or philanthropic dollars.[18]

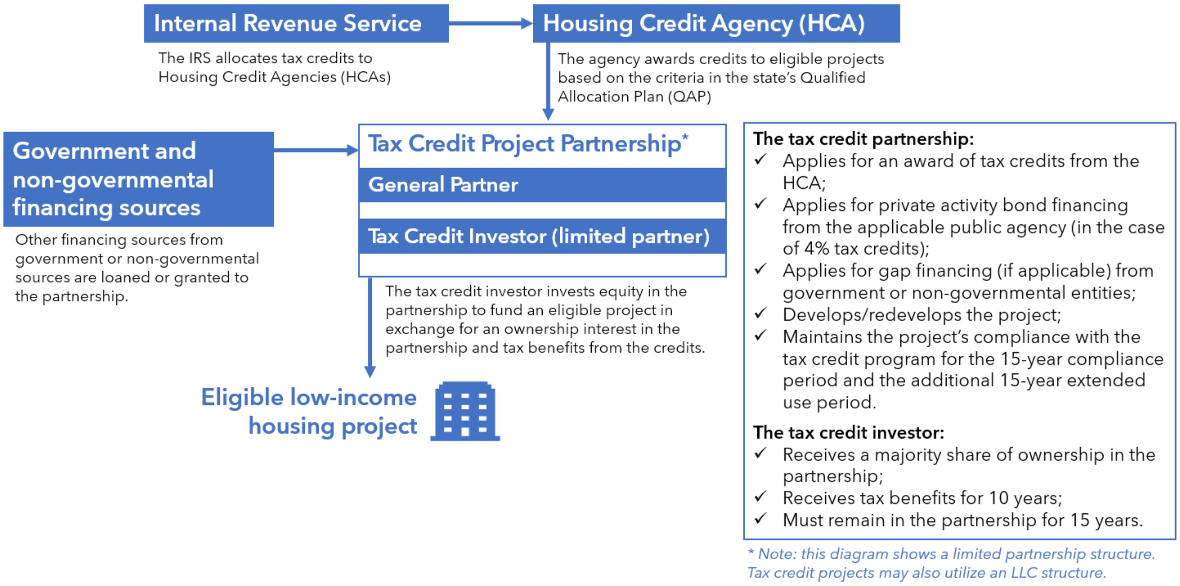

Figure 1. LIHTC stakeholder interaction (Source: SCEP, created for this material)

Focus on Affordability and Multifamily Housing within the Home Efficiency Rebates Program

Certain requirements of the Home Efficiency Rebates program require a portion of funds to serve low-income households, specifically low-income multifamily buildings. Several requirements, like those listed below,[19] serve to ensure and ease low-income household participation in SEO rebate programs:

- Rebate programs must be designed to deliver rebates to multifamily building owners.
- At least 10% of rebate funding will be allocated to serve low-income multifamily buildings.
- States will verify that single-family households' incomes are <80% AMI and multifamily buildings have >50% of households with incomes <80% AMI.
- Rebate programs will allow categorical co-enrollment based on other federal programs.

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[17] For program information, see the HUD website: https://www.hud.gov/program_offices/comm_planning/home.
[18] Many equity investors are banks that invest equity as a means to meet their requirements under the Community Reinvestment Act.
[19] See Home Energy Rebates Program Requirements & Application Instructions, Section 3.1.3 Program Requirements: Low-Income Homes.

Income Verification and Categorical Eligibility

The Home Efficiency Rebates Program guidance provides a path for states to automatically approve households enrolled in other federal programs that meet the income thresholds. States are encouraged to allow households to establish eligibility through a variety of means, including categorical eligibility, documentation of income, and self-attestation. Four options are available for whole building categorical eligibility, as detailed in the [Federal Programs Approved for Categorical Eligibility document] and Table 1.

Table 1. Recognized Housing Programs for Categorical Eligibility

Recognized Program	Level of Eligibility	Whole Building Eligibility for Rebates
Public Housing (housing owned and operated by Public Housing Authorities)[20]	Below 80% AMI	Single- and multifamily buildings owned and operated by Public Housing Authorities are fully eligible.
Privately owned multifamily buildings receiving project-based assistance (Section 8, Section 202, Section 811)[21]	Below 80% AMI	If at least 50% of housing units are subsidized through these programs, then the multifamily building is fully eligible.
Privately-owned multifamily buildings that house residents receiving tenant-based assistance	Below 80% AMI	If at least 50% of building occupants receive tenant-based assistance, then the multifamily building is fully eligible.
Low Income Housing Tax Credit[22]	Below 80% AMI	If at least 50% of housing units are income-restricted, then the multifamily building is fully eligible.

Guidance Regarding Multifamily Building Owners

For LMI multifamily properties that utilize Home Efficiency Rebates funding, DOE implemented compliance requirements for building owners for **at least two years** following the receipt of

[20] For information on Public Housing, see the HUD website: https://www.hud.gov/program_offices/public_indian_housing/programs/ph.
[21] For information on project-based vouchers, see the HUD website: https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/project. For information on Housing Choice vouchers, see to the HUD website: https://www.hud.gov/hcv. See Section 202: https://www.hud.gov/program_offices/housing/mfh/progdesc/eld202. See Section 811: https://www.hud.gov/program_offices/housing/mfh/progdesc/disab811.
[22] Please note that this is not tax advice and refer to guidance issued by the IRS for detailed information on the rules associated with tax credits.

the rebate.[23] Note that LIHTC properties where at least 50% of housing units are income restricted are categorically eligible and should already generally comply with these requirements[24] (unless there are less than two years remaining in the project's extended-use period). DOE guidance states that for Home Efficiency Rebates-funded multifamily projects,[25] the owner:

- Must agree to rent the dwelling unit to a low-income tenant,
- Cannot evict a tenant to obtain higher rent tenants based upon the improvements,
- Cannot increase the rent of any tenant of the building as a result of the upgrades,
- Must agree that if the property is sold within two years, all conditions apply to the new owner and must be part of the of the purchase agreement, and
- In the event the owner does not comply, the owner must refund the rebate. Enforcement and penalties are clear and sufficient to act as a deterrent for owner violations and provide for damages and attorney's fees recoverable by tenants.

Guidance Regarding Multiple Sources of Federal Funding

Program implementers must delineate multiple sources of federal funding for concurrent activities to demonstrate that a rebate is not impermissibly combined with other federal grants or rebates for the same single upgrade.[26] Specifically, under Home Efficiency Rebates program guidance,[27] effective financial leveraging must comply with two prohibitions:

1. The total combination of all immediate upfront funding sources (federal grants, federal loans, and non-federal funding) cannot exceed the total project cost, and
2. The Home Efficiency Rebates may not be combined with other federal grants or rebates for the same single upgrade. This restriction also applies to combining the Home Efficiency Rebates with the Section 50122 Home Electrification and Appliance Rebates for the same single upgrade.

These requirements add some complexity, but other funding sources in a LIHTC capital stack (i.e., the set of funding sources that make up the financing for the capital project) may require documentation that they are the sole source of funding for a specific component of the construction scope. In order to comply with these requirements, project sponsors will need to

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[23] See Home Energy Rebates Program Requirements & Application Instructions, Section 3.1.3 Program Requirements: Low-Income Homes.
[24] See tenant income in 26 USC §42(g). See good cause eviction in 26 USC §42(h)(6)(E)(ii)(I). See limits on rent increases in 26 USC §42(g)(2). See long-term commitment to low-income housing in 26 USC §42(h)(6).
[25] See Home Energy Rebates Program Requirements & Application Instructions, Section 3.1.3 Program Requirements: Low-Income Homes.
[26] For more on combining Home Efficiency Rebates with other sources of federal funding and financing see, Guidelines for Leveraging Other Funding Sources with Home Energy Rebates | Department of Energy.
[27] See Home Energy Rebates Program Requirements & Application Instructions, Section 3.3.2 Program Requirements: Integrating with Other Programs.

ensure that the Home Efficiency rebate is the only source that is funding certain eligible costs and be able to provide documentation from the contractor to substantiate these costs.

Coordinating Home Efficiency Rebates and LIHTC

LIHTC projects can have complex structures and capital stacks. Over the years, practitioners have worked out successful ways of layering gap financing sources in a manner that has minimal impact on the project's eligible basis and impact on taxable income. It is important to understand these considerations to identify the most effective way to blend Home Efficiency Rebates based on the developer's requirements, state regulations, and local conditions.

Due to the fact that the LIHTC equity only covers a portion of the project costs, projects frequently require other sources of gap financing. Thus, LIHTC projects typically use state or local allocations of federal funds, such as Community Development Block Grants (CDBG)[28] or HOME Investment Partnerships Program (HOME) resources,[29] alongside other state and local subsidy and/or philanthropic sources to fill project gaps. Since the LIHTC rules require that federal grants reduce the project's eligible basis, these sources are typically structured as "soft" loans into the project as opposed to grants.[30] It is important to note that DOE does not allow SEOs or their subgrantees to loan funds to rebate recipients, and as such the Home Energy Rebate funds may reduce eligible basis on a LIHTC project. Applicants are encouraged to discuss this potential consideration with their accountant.[31]

Another key consideration is that the Home Efficiency Rebate funds, like any other source of funding in the LIHTC capital stack, may qualify as taxable income. This may depend on whether a member of the tax credit partnership is a for-profit or nonprofit entity. For example, it may be the case that a project may include a nonprofit as part of the partnership structure that can loan grant funds to the partnership as "soft" debt, potentially reducing the impact on taxable income. Rebate applicants are encouraged to talk with their accountant about the potential tax impacts of the rebate funds.

Several key considerations when thinking about blending Home Efficiency Rebates and LIHTC include:

- The Home Efficiency Rebates Program is only for existing buildings and cannot be used for new construction.
- Depending on the financing requirements of the project, building owners will have to assess the feasibility of receiving a rebate through the modeled or measured savings pathways. For instance, a requirement of the measured pathway is a calculation of actual energy savings no less than nine months after the final installation. States must take corrective action if actual savings results are less than 70% of estimated savings.

[28] See Community Development Block Grants program details on HUD website.
[29] See Home Investment Partnerships program details on HUD website.
[30] See 26 USC §42(d)(5)(A).
[31] DOE has heard from LIHTC developers that this issue may not be a major issue for them when projects have excess eligible basis (i.e., when the basis-eligible costs exceed the maximum allowable qualified basis).

The IRS tentatively determined the Home Efficiency Rebates are not considered gross income for consumers.[32] For-profit entities that own a multifamily building should work with their counsel and accountants to understand the potential legal and tax impacts of including Home Efficiency Rebates as part of a LIHTC project.

- Due to the fact that grants may reduce eligible basis,[33] LIHTC developers/sponsors frequently convert grant funds into loans when invested into their project financing. However, DOE does not permit Home Efficiency Rebates funds to be invested as loans by SEOs or their subgrantees. Instead, there is flexibility in how the eligible rebate recipient elects to invest equivalent funds from other available sources into the LIHTC structure (e.g., a member of the partnership receives the rebate and then loans that amount to the partnership).
- The applicant (i.e., eligible recipient of a rebate) for the Home Efficiency Rebates could be the building owner (including members of the tax credit partnership),[34] an aggregator, or an energy efficiency implementor who could float the cost of the improvements and provide the discount upfront. This latter scenario is more common for single-family energy upgrades. This case study highlights a tax credit partnership applying for the rebate.
- In the Home Efficiency Rebates Program, a state may provide a rebate reservation system for eligible rebate recipients applying with the modeled pathway prior to construction. Rebate reservations provide a degree of certainty that the funds may be forthcoming once upgrades are completed and meet the necessary program requirements, and the eligible entity submits construction information to redeem the rebate funds. Ideally, state rebate reservation systems and processes will enable rebates to be considered during underwriting for construction loans.
- Although DOE does not allow SEOs or their subgrantees to loan the rebate funds to projects, SEOs may wish to coordinate closely with state housing agencies to align the Home Efficiency Rebates so that they can work effectively for low- and moderate-income multifamily project finance.
- There is a requirement for states to perform quality control on a sample of completed projects as part of the consumer protection plan.[35] Projects flagged due to quality

[32] See Home Energy Rebates Program Requirements & Application Instructions, Section 3.3.2 Program Requirements: Integrating with Other Programs.
[33] See 26 USC §42(d)(5)(A).
[34] As explained in an FAQ, Q: "Can a part-owner of a multifamily building apply for and receive a rebate as the building's owner?" A: "Yes, as long as the entity (e.g., partnership, LLC, etc.) that owns the building agrees in writing that the part owner who will apply for and receive the rebate (1) is authorized to do so, (2) will be the sole recipient of the rebate on behalf of the entity, and (3) is authorized to carry out the work on behalf of the entity." See Home Energy Rebates Frequently Asked Questions | Department of Energy.
[35] See Home Energy Rebates Program Requirements & Application Instructions, Section 3.2.5 Program Requirements: Consumer Protection through Quality Assurance.

issues would most likely result in the SEO being required to make administrative changes to ensure higher quality assurance standards are maintained moving forward.

Example of Blending Home Efficiency Rebates and LIHTC

There is no requirement for blending these federal programs, nor is there a required way of doing so. The following example is for information purposes only. SEOs should determine the most appropriate way to efficiently administer their program based on local conditions and ideally, in partnership with their state allocating agency or agencies that administer LIHTC. Applicants should work with their counsel and accountants to understand the potential legal and tax impacts of including Home Efficiency Rebates as part of a LIHTC project.

In the example shown below in Figure 2 and Table 2, a project receives a LIHTC allocation to preserve affordability and renovate an existing building. The renovation will provide a range of upgrades and repairs, including energy efficiency upgrades that may be eligible for Home Efficiency Rebates. The developer has identified an eligible scope of work for the project that maximizes the potential rebate amount of $8,000 per unit based on the modeled energy savings achieved. A member of the project's ownership entity applies to the SEO for a rebate reservation using the modeled pathway, prior to closing on its construction financing.[36]

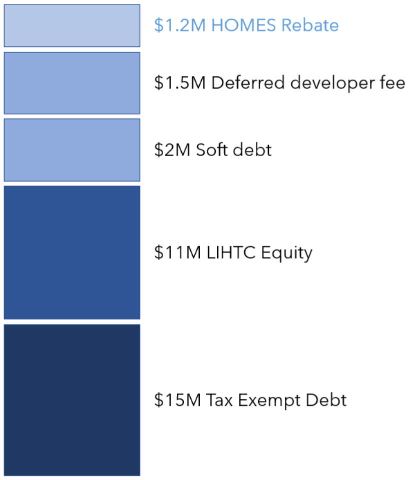

Figure 2. Sample LIHTC Capital Stack Including HOMES Rebate Funds

[36] As explained in an FAQ, Q: "Can a part-owner of a multifamily building apply for and receive a rebate as the building's owner?" A: "Yes, as long as the entity (e.g., partnership, LLC, etc.) that owns the building agrees in writing that the part owner who will apply for and receive the rebate (1) is authorized to do so, (2) will be the sole recipient of the rebate on behalf of the entity, and (3) is authorized to carry out the work on behalf of the entity." See [Home Energy Rebates Frequently Asked Questions | Department of Energy](https://www.energy.gov).

Table 2. Example Project Approach Workflow

Eligible rebate recipient May be any member of a tax credit partnership, with the consent of the other members	**State Energy Office or Designated Subgrantee**
1. Applies for rebate reservation, using the modeled pathway	2. Issues a rebate reservation letter if the model is approved and demonstrates at least a 20% energy savings
3. Closes on construction financing, including the cost of the work to be funded by the rebates	
4. After improvements are complete, submits post-construction information to claim rebate funds	5. Processes the request and remits rebate funds within four weeks to the eligible rebate recipient
6. Loans or grants rebate funds to the tax credit partnership to take out a portion of the construction loan prior to conversion to permanent financing	

The project includes the costs of the investments, which will generate the rebate in the construction financing. The repayment of the construction loan will then rely on both the permanent financing and the Home Efficiency Rebate proceeds. After construction is complete, the rebate recipient applies to the SEO for its rebate, and the SEO funds the rebate within four weeks. The eligible rebate recipient then redeems the rebate post-construction and uses it as a take-out source for the construction loan.

Key considerations:

- This is a straightforward way of receiving the rebate.
- In this transaction, the rebate would likely reduce the project's eligible basis.[37]
- In addition, since the general partner is a for-profit, and the funds are coming in post construction, the rebate may have tax implications.
- Including the cost of the Home Efficiency Rebates eligible activities in the construction loan may increase interest payments or other costs to the partnership.
- Rebate funds would need to come into the project prior to permanent loan conversion if they are used as a take-out source for the construction loan.
- The sponsor would likely need a firm rebate reservation before the construction closing, as the sponsor's guaranties associated with the lending and equity investment

[37] Basis calculation typically excludes grants, rebates, energy credits, and other nonqualified financing.

transactions (or deferral of developer fee) would be called upon to close the gap if rebate funds end up not being available.

Additional Approaches

There are some ways to modify the above example to reduce some of the negative impacts for the partnership:

- If a member of the ownership entity is a nonprofit or if there is a nonprofit or public housing authority as ground lessor, the project sponsor could explore whether the transaction could be structured so that one of these entities is the eligible recipient of the Home Efficiency Rebate funds, and the nonprofit or public housing authority could loan into the project funds equivalent to the amount received through the rebate.
- A state housing agency could also potentially provide low-interest or zero-interest subordinate bridge lending specifically for these rebates to reduce the potential cost and risk to the project sponsor.
- The project's ownership entity could work with an energy efficiency contractor who will perform the construction based on a price which incorporates the discount upfront, in which case the energy efficiency contractor would apply for the rebate on behalf of a building owner and would be entitled to keep the rebate funds.

Conclusion

The Home Efficiency Rebates Program provides an unprecedented opportunity to finance home energy upgrades in single-family and multifamily properties across the U.S. The program explicitly includes requirements for funding low-income multifamily properties, and as such may be a desirable source for LIHTC project sponsors to seek to layer into their capital stacks. LIHTC capital stacks are frequently complex, with multiple sources of federal, state, and local subsidy, tax-exempt debt, and sometimes philanthropic sources. The tax credit industry is accustomed to finding creative solutions to accommodate new sources.

DOE encourages states and potential applicants to explore ways to combine other sources of funds with the Home Efficiency Rebates when permissible.[38] Due to some requirements of the Home Efficiency Rebates Program, it may pose challenges for LIHTC project sponsors, relating to its impact on eligible basis, taxable income, the expense of bridge lending, and timing of the funds. However, ultimately the potential benefits may outweigh the challenges. DOE has issued this document to help states identify the range of potential considerations in blending Home Efficiency Rebates and LIHTC.

[38] DOE is in the process of developing guides for braiding with existing programs, as permitted within the limitations set in the law/IRA. DOE will also be providing technical assistance to states that seek support in program braiding.