

Demystifying the Illinois Affordable Housing Tax Credit

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2024 Housing Matters:
Strengthening Communities in Illinois and Beyond

Breakout Workshop II – October 17, 2024



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- Joined Applegate in 2019
- Became Partner 2023
- Former senior counsel at Illinois Housing Development Authority



C.C. Huang

- Joined Applegate 2018
- Former Attorney-Advisor at U.S. Department of Housing and Urban Development

How about you?

Today's Workshop:

1. Legal Background and Program Overview
2. Key Concepts
3. Examples of how to use IAHTCs

Legal Background

- The Illinois Affordable Housing Tax Credit Program was established in 2001
- Section 7.28 of the Illinois Housing Development Act, 20 ILCS 3805/7.28
- Section 214 of the Illinois Income Tax Act, 35 ILCS 5/214
- Title 47, Chapter II, Part 355 of the Illinois Administrative Code

Program Overview

Illinois Housing Development Authority

- IAHTC Program Rules
- 75.5% of IAHTCs per fiscal year

City of Chicago

- 24.5% of IAHTCs per fiscal year

2024 IAHTCs = \$34.5M

Program Overview

- ✦ Encourages donations and private investment
- ✦ One-time tax credit on Illinois state income tax
- ✦ Affordable housing projects and nonprofit sponsors
- ✦ **50% of the lesser of the approved amount of donation value or the actual donation value**

Example #1: Private Donation

- ✦ Nonprofit affordable housing sponsor wants to encourage a land donation
- ✦ Potential donor has land appraised at \$500,000
- ✦ IAHTC Program could provide donor with a state tax credit equal to 50% of the appraised value of the land
- ✦ The nonprofit applies to IHDA for a reservation of \$250,000 IAHTCs
- ✦ Land is donated; IAHTC Certificate is issued

Necessary Elements

Eligible Project – 3 types

Sponsor – a not-for-profit organization

Donation(s)

Affordable Housing Project

Rental

at least 25% of the Units have rents that do not exceed 30% of the gross monthly income of a household earning the maximum income for a Low-Income Household (60% AMI)

Rental Income Restriction = 60% AMI

Rental Cost Restriction = 30% of 60% AMI

Affordable Housing Project

For Sale

as of January 1, 2022, to 120% AMI
Households who will pay no more than
30% of their gross household income for
mortgage, interest, taxes, and insurance
upon purchase

Purchase Income Restriction = 120% AMI
Purchase Cost Restriction = 30% of 120%
AMI for mortgage, interest, property
taxes, and insurance upon purchase

Single Family

- Construction or rehabilitation of Single Family Residences for sale or rental
- Rehabilitation of 2-4 Unit building for Unit sale or rental
- Rehabilitation of 4+ Unit building for Units sold as condominiums
- Below-market financing or construction subsidies for Single Family Residences
- Down payment and closing cost assistance

Employer-Assisted

- Down payment and closing cost assistance
- reduced-interest mortgages
- mortgage guarantee programs
- rental subsidies, or
- individual development account savings plans

Employer-Assisted

- Provided by the Sponsor to an employer's employees
- Restricted to housing near such work place
- Restricted to employees who qualify as Moderate-Income Households (less than 120% of AMI)

Technical Assistance

Any cost incurred by a Sponsor for:

- Planning for a Project; or
- Assistance with an Application (for IAHTCs); or
- Homeownership counseling services



Check-in
Question:

Having heard the different kinds of projects that are eligible for IAHTCs, do any of you have projects that would be eligible for IAHTCs?

IAHTC Program - Sponsor

Not-for profit organization

Affordable Housing Project:

One of its purposes must be the development of affordable housing

IAHTC Program - Sponsor

Not-for profit organization

Employer-Assisted Housing Project or
Technical Assistance:

One of its purposes must be the
development of affordable housing OR
homeownership education

IAHTC Program - Sponsor

Not-for profit organization

Purpose of constructing or
rehabilitating affordable housing

Ruled exempt from federal income
taxation by the IRS (most likely
501(c)(3))

IAHTC Program - Sponsor

Not-for profit organization

Designated as a community development corporation under Title VII of the Economic Opportunity Act of 1964

IAHTC Program - Sponsor

Limited liability company that has a
not-for-profit organization as its sole
member

Audience
Question:

Do the people who thought they had IAHTC-eligible projects still feel that way after hearing what a Sponsor is?

IAHTC Program - Donation

- ✦ Money (at least \$10,000 in the aggregate)
- ✦ Securities
- ✦ Real property
- ✦ Personal property

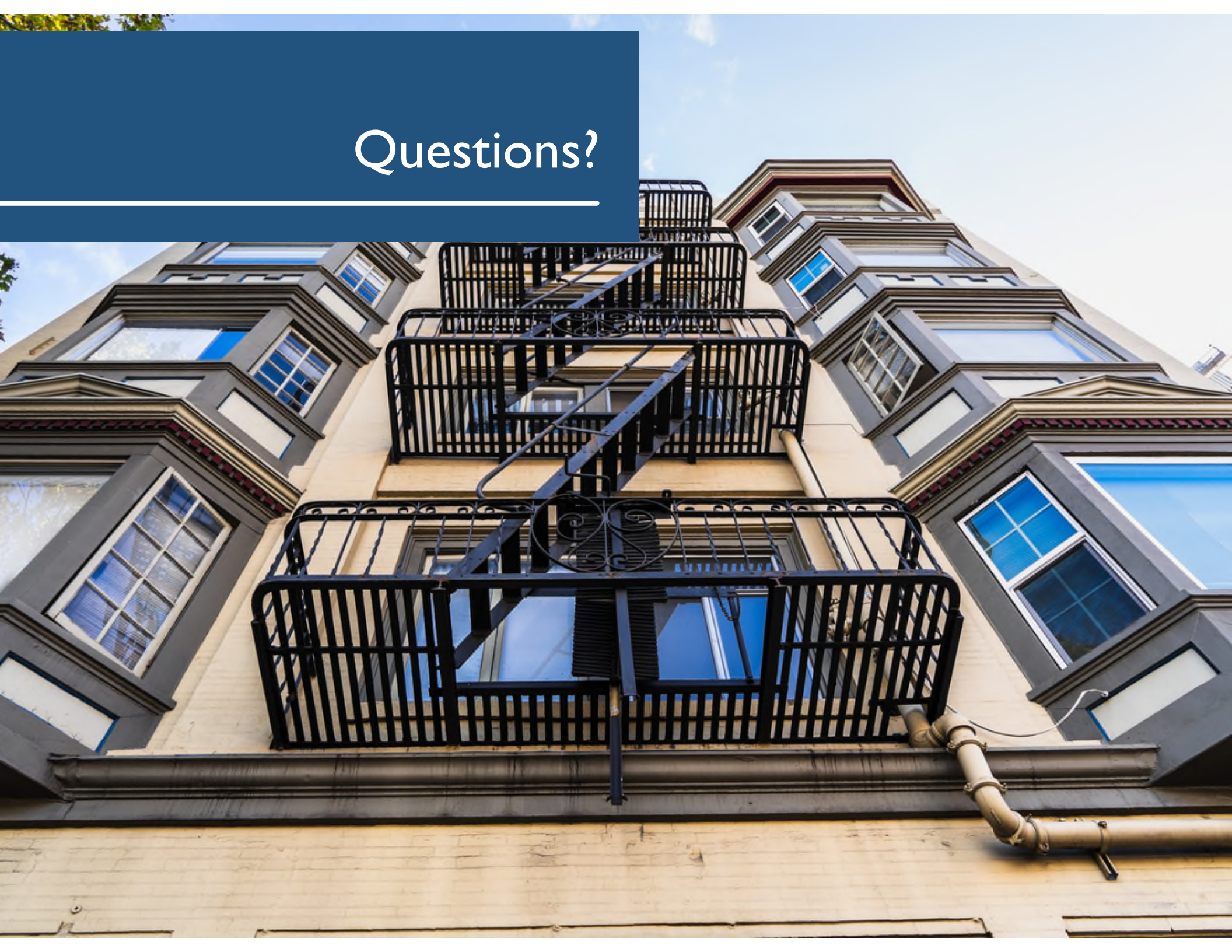
Provided **without consideration** to a Sponsor (i.e., for nothing in return)

Recap of Key Concepts

1. IAHTC is a state tax credit to encourage donations for affordable housing
2. IHDA and City of Chicago administer IAHTC Programs
3. If you are a NFP that:
 - a. Meets the IAHTC definition of “Sponsor” and
 - b. Receives an eligible donation for an eligible project

Then you may qualify for IAHTCs!

Questions?



Applying for IAHTCs

- IHDA has a specific application and process
- City receives IAHTC applications as a part of applications for other Department of Housing funds and has a standalone application available
- Go to the IHDA IAHTC webpage or the City Department of Housing website for more information and the applications

The IAHTC Certificate

The IAHTC Certificate belongs to the Donor, who can use it to reduce their state income tax liability.

The Donor may choose to donate their IAHTC Certificate to the Sponsor/Project.

Ongoing Responsibilities

Affordable Housing Projects

Purchased Single Family
Residences

Material Participation

Affordable rental housing development

Sponsor must materially participate

2 options:

- Provide Services, or
- Ownership Interest in the Project owner

Material Participation

Service Option for Sponsor material participation:

- Personal services to tenants or prospective tenants, or
- Professional services to a Multifamily Housing Project (5 or more rental Units)

On a regular, continuous, and substantial basis for more than 300 hours during each year of Compliance Period

Material Participation

Ownership Option for Sponsor material participation:

- Own the eligible Project
- Own a controlling interest in the owner of the Project/serve as managing member or general partner
- Own a controlling interest in the managing member/general partner of Project owner

IAHTC Regulatory Agreement

- ✦ All IAHTC-supported Affordable Housing Projects
- ✦ Imposes income and occupancy restrictions (“Affordable Housing Restrictions”) on owner and project (signed and recorded)
- ✦ Compliance Period of minimum 10 years
- ✦ Agency must approve any transfers of ownership or ownership structure changes

IAHTC Recapture Agreement

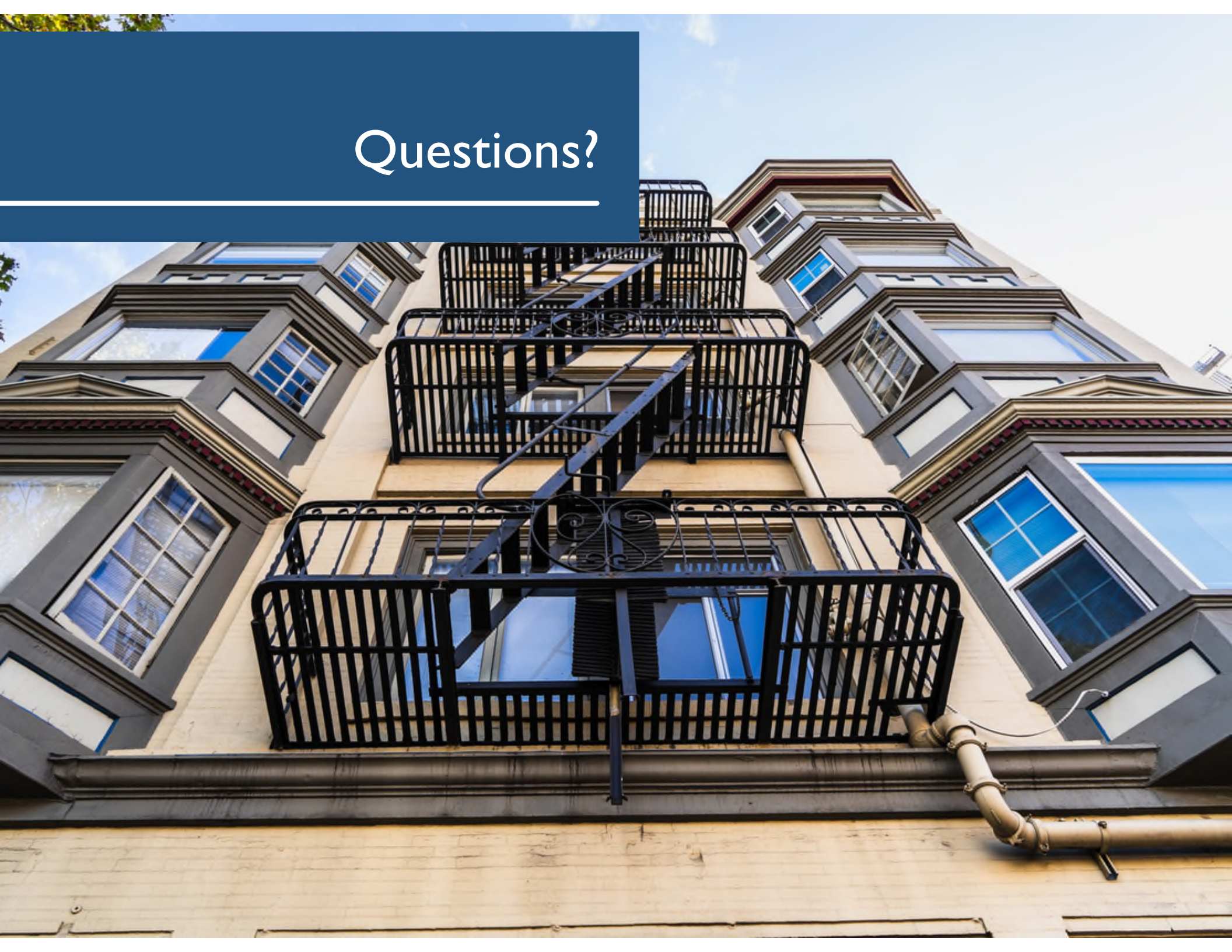
- ✦ Purchased Single Family Residences
- ✦ Affordable Housing or Employer-Assisted Housing
- ✦ Household who purchased the Single Family Residence must execute Recapture Agreement for benefit of the Sponsor
- ✦ Recapture Agreement is recorded
- ✦ 5-year Compliance Period
- ✦ Requires repayment if residence is sold

Compliance Period

- Affordable Housing Projects: minimum 10 years
- For-sale Single Family or Employer-Assisted Housing: 5 years



Questions?



Example 2: Cash for Homes

NFP purchases vacant lots at low price

NFP collects \$500,000 in cash donations to support building for-sale, affordable housing on the lots

NFP applies to IHDA for \$250,000 IAHTCs

IHDA allocates \$250,000 IAHTCs to NFP

Example 2: Cash for Homes

Some Donors keep their IAHTCs, but some Donors donate their IAHTCs to NFP and its housing project

Donated IAHTCs can be sold for more funds

Purchaser of IAHTCs must make a minimum donation to the NFP

Example 2: Cash for Homes

NFP can use the cash, the purchaser donation, and the proceeds from selling donated IAHTCs to build affordable homes to sell

To get the IAHTCs, the NFP executes and records the IAHTC Regulatory Agreement on the vacant lots

Example 2: Cash for Homes

When Single Family Residences are built, NFP also provides homebuyer counseling and downpayment assistance

When homes are purchased, the Household executes the IAHTC Recapture Agreement in favor of the NFP

Questions?

Example 3: IAHTCs + LIHTC

Local government donating land to NFP for affordable housing

Land is worth \$500,000

NFP applies for and receives allocation of \$250,000
IAHTCs

Example 3: IAHTCs + LIHTC

Local government is also donating the IAHTCs to the affordable housing project

NFP finds a bank who will pay \$0.80/IAHTC

To receive the IAHTC Certificate, the bank must also make a minimum donation of \$10,000 to the NFP

Example 3: IAHTCs + LIHTC

NFP now has:

Donated land from local government

\$200,000 from sale of \$250,000 IAHTCs

\$10,000 donation from bank who bought the IAHTCs

Example 3: IAHTCs + LIHTC

For a LIHTC transaction, the project must be owned by a special purpose entity (“SPE”) who will own, build, and operate the affordable housing project

(the LIHTC investor becomes a 99.99% limited partner/investor member in return for equity investment)

Example 3: IAHTCs + LIHTC

For a LIHTC transaction, the NFP would sell the donated land to the SPE for its full appraised value (\$500,000) and typically take back a seller note for the land

For a LIHTC transaction, the NFP would also loan the \$210,000 generated by selling the IAHTCs to the SPE

Example 3: IAHTCs + LIHTC

The SPE, presumably controlled by the NFP, would have land upon which to build the affordable housing

The SPE would also have \$210,000 in financing to use on construction costs

The NFP would be the lender of a \$500,000 seller note and \$210,000 sponsor loan

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