NAHMAnalysis
NATIONAL AFFORDABLE HOUSING MANAGEMENT ASSOCIATION

Ensuring NAHMA Members Receive the Latest News and Analysis of Breaking Issues in Affordable Housing

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August 16, 2016 NAHMAnalysis 2016-0816

Renewed Focus on the Low-Income Housing Tax Credit

Background

Over the past few years, NAHMA requested members participate in grassroots advocacy to educate Congress on the importance of permanently establishing the minimum credit rates at nine percent for development and four percent for rehabilitation in the Low-Income Housing Tax Credit (LIHTC) program. Congress was slow to act on these LIHTC reforms. However, the LIHTC has benefitted from the long-standing support of a few lawmakers. Recent bi-partisan interest for new legislation, tax reform proposals, and Government Accountability Office (GAO) reports, have brought new focus on the program and the tenants which rely on it for housing assistance. This recent attention has reinvigorated supporters of the LIHTC as there are now avenues opening to both expand and improve the tax credit. This NAHMA Analysis will review all of the recent activities surrounding the LIHTC and provide perspective to members on what to anticipate in the coming months.

LIHTC Legislation and Tax Reform

A major victory for the LIHTC occurred in December of 2015. Lawmakers in Congress simultaneously passed the federal appropriations package for fiscal year 2016 and a tax extenders package to continue a number of tax relief provisions that were set to expire. As part of this tax extenders deal, the minimum credit rate for LIHTC development was permanently set at nine percent. Industry advocates were ecstatic – this change had long been requested in order to ensure investor confidence in the program.

Although the 2015 tax extenders deal made the nine percent credit rate permanent, it did not make the four percent credit for preservation activities permanent. Furthermore, the legislation did nothing to enhance other components of the credit nor did it expand access. However, two Senators have recently introduced legislation to overhaul the LIHTC and improve its effectiveness beyond establishing the permanent credit rates.

Senator Maria Cantwell (D-WA) has been a staunch advocate for LIHTC and worked to raise awareness for the need for additional LIHTC units and enhancement of the tax credit. In the 113th Congress, Senator Cantwell introduced legislation that would have made both the nine percent and four percent credit rates permanent. This bill was the first to propose a permanent credit rate in order to end the floating rate system, and she was later joined in her efforts by Representative Pat Tiberi (R-OH), who introduced an identical bill in the House of

Representatives. Neither bill was enacted into law, but these efforts did generate more bipartisan support for the LIHTC.

Earlier this year, Senator Cantwell's office released a report detailing the rental housing crisis gripping the country. Titled "Addressing the Challenges of Affordable Housing and Homelessness: The Housing Tax Credit", the report highlighted how essential the LIHTC is in alleviating some of the challenges faced by renters. "Between 1986 and 2013, more than 13.3 million people have lived in homes that have been financed by the LIHTC" the report says, "In all, every year nationwide, the LIHTC helps generate $3.5 billion in federal, state, and local taxes, while also generating $9.1 billion in economic activity. Over 30 years, the credit has helped leverage over $100 billion in private capital used for affordable housing." Through this report, the Senator hopes to increase the attention for her and Senator Orrin Hatch (R-UT) call to expand the LIHTC.

Affordable Housing Credit Improvement Act

In May 2016, Senators Cantwell (D-WA) and Hatch (R-UT) introduced the Affordable Housing Credit Improvement Act of 2016. This legislation seeks to expand LIHTC allocation authority by 50 percent, phased in by ten percent per year for the next five years. The bill would also permanently set the four percent minimum credit rate for property rehabilitation and allow for tenant income mixing.

Following the release of their initial bill, Senators Cantwell and Hatch resubmitted the Affordable Housing Credit Improvement Act of 2016 with additional provisions to further enhance the LIHTC in June. Combined with the 50 percent increase, permanent four percent credit rate and income mixing, the updated provisions in the bill include:

- A purchase option that will allow a non-profit or government sponsor to acquire properties when the current 15 year compliance period expires. With this change, the senators believe that more affordable units may be preserved;
- New incentives for projects that target homeless or extremely low income individuals and families. These projects will be eligible to receive a 50 percent credit boost in order to assist them with the financial need of these tenants;
- Properties would be able to claim clean energy credits such as the Energy Efficient New Homes Credit, the Energy Efficient Commercial Building Deduction, and the Energy Investment Tax Credit. All of these tax credits are currently unavailable to LIHTC properties;
- States would be required to consider the needs of Native American communities during allocation and provide additional support to projects located in Indian areas by automatically making them eligible for an additional 30 percent credit boost if necessary for financial feasibility;
- Standardization of tenant income limit rules for projects in rural areas;
- Clarification that property owners may claim LIHTCs after casualty losses to ensure a reasonable amount of time for repair and reoccupy after damage. This provision is maintained regardless of whether the damage results from a presidentially declared disaster; and
- Aligns the LIHTC student more closely with the HUD student rule; this change is similar to a previous bill introduced by Senator Al Franken in May of 2015 (Housing for Homeless Students Act).

Finally, the Affordable Housing Credit Improvement Act would change the name of the tax credit from the Low-Income Housing Tax Credit to the “Affordable Housing Tax Credit”. Senators Cantwell and Hatch estimate that this bill would help create or preserve approximately 1.3 million affordable units over a 10 year period – an increase of 400,000 more units than is possible under the current program parameters.

Overall, NAHMA strongly supports the efforts of Senator Cantwell and Hatch to improve the LIHTC. These bipartisan efforts demonstrate that members of both political parties understand the importance of the LIHTC for low-income renters.

Tax Reform

Although the bipartisan Affordable Housing Credit Improvement Act proposes significant benefits for the tax credit, there are some lawmakers who believe that the LIHTC should not continue to operate at all. This is most apparent in a recent tax reform priorities “blueprint” from members of the House Tax Reform Task Force, released on June 24. The tax reform blueprint titled “A Pro-Growth Tax Code for All Americans” promotes a broad agenda being pursued as part of House Speaker Paul Ryan’s (R-WI) “A Better Way” agenda to reform the tax system and federal assistance programs.

The blueprint promotes the elimination of many corporate tax expenditures and it is unfortunately silent as to what would then happen to the LIHTC. While omission of the LIHTC from the blueprint does not necessary mean that lawmakers seek to end the program, it is discouraging that a broadly-supported tax expenditure like the LIHTC is not mentioned. The Tax Reform Task Force describes the blueprint as “the beginning of our conversation about how to fix our broken tax code” and that Task Force members will be using this blueprint to draft legislation to be ready for action in 2017.

Although it is hard to predict when real tax reform will occur, it is critical that the LIHTC be preserved as part of any legislative action taken by Congress in the coming years. Without the LIHTC, little can be done to address the housing needs of low-income families and individuals since there is little incentive for the private market to develop units for these renters.

GAO Reports

In addition to legislative proposals, the LIHTC has been receiving more attention from lawmakers, but it has also been subject to congressional scrutiny. LIHTC has been the topic of two separate reports from the Government Accountability Office (GAO). These reports are part of 3-part examination of LIHTC, focused on the federal and state oversight of the program.

The first report, titled “Joint IRS-HUD Administration Could Help Address Weaknesses in Oversight”, was published by the GAO on July 15, 2015. This report focused on the Internal Revenue Service’s oversight of the LIHTC and the 56 state housing finance agencies (HFA), which administer the program. Overall, this first GAO report was critical of the IRS for “minimal” oversight of the LIHTC and HFAs. The GAO pinned this poor oversight on the IRS’s view that the LIHTC is “a peripheral program in IRS in terms of its mission and priorities for resources and staffing.”

The GAO noted that the poor oversight of HFAs is particularly apparent in the reviews of Qualified Action Plans (QAPs). HFAs award tax credits in accordance with the submitted QAPs, which outline states’ affordable housing priorities and selection procedures for projects. The

GAO faulted IRS officials for stating that they did not regularly review QAPs as part of their compliance monitoring of the HFAs. Since the IRS has not conducted regular reviews of QAPs to determine how HFAs interpreted the code to select projects, or if the QAPs included the required compliance monitoring, the Agency does not know the extent of compliance monitoring by HFAs. The GAO highlighted this oversight failure as a limitation of the IRS's ability to determine if the HFAs appropriately awarded credits to projects.

IRS cited multiple reasons for not conducting regular reviews of QAPs and audits of HFAs, including that they did not regard a regular review of QAPs as a part of their compliance responsibilities and that the agency does not have a sufficient number of LIHTC staff or other assigned resources to conduct more audits of HFAs. However, the GAO again faulted the IRS here because the IRS is the only federal agency responsible for overseeing LIHTC program compliance, but it does not set goals or assess performance adequately.

At the conclusion of this report, the GAO recommended several changes to the IRS including an increase of reliable data on credit allocations and certifications, leveraging the experience and expertise of another agency with a housing mission (such as HUD), and making HUD a joint program administrator of the LIHTC.

Later in May of 2016, the GAO released a second report, titled "Some Agency Practices Raise Concerns and IRS Could Improve Noncompliance Reporting and Data Collection." This report raised concerns over some practices used by state and local allocating agencies, which are responsible for awarding their tax credits to qualifying projects that meet their QAP, determining the value of the tax credits awarded to projects, and monitoring project compliance.

Some concerns that the GAO raised include:

- More than half of the QAPs that the GAO analyzed did not explicitly mention all selection criteria and preferences that are required;
- Fair housing concerns were raised by HUD because allocating agencies notified local governments about proposed projects (as required), but some also required letters of support from local governments. HUD stated that local support requirements (such as letters) could have a discriminatory influence on the location of affordable housing; and
- Allocating agencies are not required to document the justification for increasing the eligible basis used to determine allocation amounts. The GAO found that the criteria used to award increases varied, with some allocating agencies allowing boosts for specific types of projects and one allowing boosts for all projects in its state.

In this second study, the GAO examined 58 QAPS from state and local allocating agencies in 2013, analyzing the plans from all 50 states as well as the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands. The concerning findings in the study did not apply to every state and local allocating agencies. For example, Michigan's scoring criteria attachment to their LIHTC application included several requirements that were not found in their QAP. However, in Nevada, an examined QAP did not include selection criteria related to waiting lists, but this requirement was still met since the state included an attachment to their application package that requires the developer to make the public aware of the project's availability for tenants on waiting lists.

To combat broad inconsistencies, the GAO again provided recommendations in their report. First, the GAO recommended that the IRS Commissioner should collaborate with the allocating agencies to clarify when allocating agencies should report information, such as noncompliance or project concerns, and that the IRS Commissioner should collaborate with the Department of the Treasury in drafting clarifications to help ensure that any new state or local guidance is consistent with Treasury regulations.

The GAO also recommended that in order to improve the IRS's processes for identifying the most significant noncompliance issues, the Agency should evaluate how it could use HUD's Real Estate Assessment Center (REAC) databases. With this information, the GAO notes that the IRS could reassess reporting categories and to determine which categories of noncompliance information have to be reviewed for a potential audit.

Despite the concerns raised by the GAO, it is important to mention that both reports highlight that the LIHTC is the largest federal effort for increasing the supply of affordable rental housing in the United States. This distinction is crucial because GAO reports often occur at the request of lawmakers who may have expressed concerns or questioned the effectiveness of certain programs administered by the federal government (Senator Chuck Grassley [R-IA] made the request for these reports). Although the GAO cites errors in the IRS's administration of the program, the benefits that are provided to low-income Americans through the LIHTC are not lost. The GAO is poised to release one additional report on the LIHTC and development cost in early 2017.

Call for Advocacy and Action

As the owners and managers of LIHTC properties, NAHMA members know LIHTC is without question one of the most essential tools used to develop new affordable housing units and rehab existing units. As HUD's budget authority continues to be dominated by rental assistance obligations, little is left for the Department to invest in new housing development or to preserve aging properties. The LIHTC in comparison has leveraged billions of private dollars to invest in affordable housing. Members must ensure this option remains available.

Comprehensive tax reform is still far from reality, but NAHMA members can begin to guide the conversation now by advocating and promoting the LIHTC. Lawmakers are always eager to hear from their constituents on specific examples of how congressional action has improved their state or district. NAHMA members must play a key role in building congressional support for LIHTC. Members can do this by educating their elected officials of the importance of LIHTC, showing who LIHTC units are serving within their district, and inviting them to tour an LIHTC property. Combined, these efforts help sow the seeds for congressional support of LIHTC.

NAHMA members can use NAHMA Maps to identify the specific number of LIHTC properties within a state or congressional district. These resources are invaluable to senators and house representatives. They provide congressional members with a clearer picture on the services reaching their constituents and demonstrate how their support for legislation, such as the Affordable Housing Credit Improvement Act of 2016, can make a measurable impact. The conversation on the future of the LIHTC is happening now, and NAHMA members must share their expertise to ensure the tax credit continues to exist.