Limited tax talk as Ways and Means subcommittee looks at housing and higher-education costs

House taxwriters focused on relatively targeted tax proposals – including several that enjoy bipartisan support – during two recent Ways and Means Oversight Subcommittee hearings to explore how to make housing and higher education more affordable for lower- and middle-income families.

Housing

The tax policy discussion at a July 14 hearing on "expanding housing access to all Americans" addressed individual incentives to encourage home ownership as well as business-focused tax incentives to expand the affordable housing stock; but the policy proposals for the most part did not lead to sustained debate among the subcommittee members.

Individual incentives: Three subcommittee Democrats – Chairman Bill Pascrell of New Jersey, Tom Suozzi of New York, and Judy Chu of California – criticized a provision in 2017's Tax Cuts and Jobs Act (TCJA, P.L. 115-97) that limits the deduction for state and local taxes (SALT) to $10,000, arguing that the cap creates a barrier to housing affordability. The deduction had been unlimited before the TCJA became law and tends to be used more heavily in jurisdictions with expensive housing markets and steep property and income taxes. None of the three Democrats advocated for a specific proposal to repeal or roll back the cap.

In an exchange with Chu, witness Gerald Howard of the National Association of Home Builders agreed that the $10,000 limit should be re-evaluated. He stopped short of calling for a repeal of the cap, noting that such a move might be perceived in some circles as a federal subsidy for higher-tax jurisdictions, but he stated that it should be possible for Congress to strike a bipartisan compromise to recalibrate the current-law provision.

Howard also told Chu that the TCJA's expansion of the standard deduction has blunted the effectiveness of the current-law deduction for mortgage interest as an incentive to promote home ownership – particularly among younger individuals, people of color, and potential first-time buyers. The deduction in its current form, he said, provides the greatest benefit to upper-income individuals who are already well positioned to purchase a home even without tax incentives. Recasting the deduction as a credit would better target the tax benefits of home ownership to low- and middle-income individuals, he added.

Another witness – Lilian Faulhaber, a professor at the Georgetown University Law Center – took no position on whether the mortgage-interest deduction should be replaced; however, she told the panel that when considering design choices for tax incentives, lawmakers should bear in mind that deductions tend to disproportionately benefit upper-income taxpayers while credits, particularly if they are refundable, are more valuable for those at the lower end of the income spectrum.

Business-focused incentives: On the business side of the tax code, Chairman Pascrell cited the low-income housing tax credit as a "tool that can encourage investment in multi-family housing" and suggested that it could be strengthened to increase the stock of affordable rental property.

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Republican subcommittee member Jackie Walorski of Indiana touted the Affordable Housing Credit Improvement Act of 2021 (H.R. 2573), a proposal she introduced with Democratic taxwriters Suzan DelBene of Washington and Don Beyer of Virginia that would:
URL: https://www.congress.gov/bill/117th-congress/house-bill/2573/text?q=%7B%22search%22%3A%5B%22affordable+housing+credit+improvement+act%22%5D%7D&r=1&s=3

1. Increase the number of credits available to states by 50 percent for the next two years,
2. Permanently extend a temporary boost in the per capita state housing credit ceiling that was enacted in 2018 and is scheduled to expire at the end of this year,
3. Increase the number of affordable housing projects that can be built using private activity bonds, and
4. Make other changes to the program that are intended to better serve certain special-needs populations as well as individuals living in rural areas. (A Senate companion bill is sponsored by Finance Committee members Maria Cantwell, D-Wash., and Todd Young, R-Ind.)

For his part, subcommittee ranking member Mike Kelly, R-Pa., cited the Opportunity Zone provisions enacted in the Tax Cuts and Jobs Act as another important business-focused tool to expand the affordable housing supply. (The Opportunity Zone program allows for tax-deferred capital gains and additional benefits for certain investments in economically distressed communities.)

Kelly asked witness John Persinger of the Erie Downtown Development Corporation (EDDC) about some of the unique advantages that Opportunity Zones have over other economic development incentives such as the low-income housing tax credit, the new markets tax credit and the historic tax credit.

Persinger explained that the EDDC did not qualify for the low-income housing credit program since its aim was to diversify downtown Erie's housing stock by rehabilitating middle-income and market-rate units. He also noted that it can be difficult to get credit allocations for programs like the new markets tax credit and the historic tax credit in small and mid-sized cities and that the compliance requirements associated with these credit programs often involve hefty legal and consulting fees that can make them cost-prohibitive.

"Opportunity Zone projects are not limited to low-income housing, …do not require us to wait on an allocation of tax credits from the federal government, …[and] do not require us to hire expensive consultants to help find tax credit buyers…," he said. "All that we needed was investable projects and investors with capital gains."

Subcommittee Republican Brad Wenstrup of Ohio agreed that Congress needs to provide a flexible array of economic development incentives so that a community can pick the program that best meets its unique needs. (He noted that the city of Cincinnati was able to leverage new markets tax credits and historic tax credits to successfully redevelop a formerly blighted business and residential district.)

Subcommittee Democrat Lloyd Doggett of Texas agreed with Persinger that the consulting fees associated with economic development credits can be prohibitively expensive and that the existing credits need to be reviewed. He also cautioned, though, that the Opportunity Zone rules should be revisited – and possibly tightened – to ensure that the program is actually providing economic benefits to distressed communities and

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not simply passing along tax breaks to developers and investors for projects they likely would have undertaken even without these incentives.

Ranking member Kelly also touted the Neighborhood Homes Investment Act (H.R. 2143), a bill he introduced earlier this year with Ways and Means Democrat Brian Higgins of New York, which would create a new business-related tax credit to finance home building and rehabilitation in neighborhoods that meet certain eligibility criteria relating to poverty rates, income, and home values.
URL: https://www.congress.gov/bill/117th-congress/house-bill/2143/text?q=%7B%22search%22%3A%5B%22neighborhood%22%5D%7D&r=2&s=2

The credit would be limited to 35 percent of the lesser of the qualified development cost (i.e., the cost of construction, substantial rehabilitation, demolition, and environmental remediation of residential properties) or 80 percent of the national median sale price for new homes, and would apply to single-family homes containing four or fewer residential units, condominiums, or houses or apartments owned by cooperative housing corporations.

Higher education

The panel likewise kept a relatively narrow tax focus during a June 29 hearing to address the rising cost of higher education.

Pell Grants and AOTC: Democrat Lloyd Doggett highlighted the Tax Free Pell Grants Act, a proposal he recently introduced with subcommittee ranking member Mike Kelly and Democratic taxwriter Danny Davis of Illinois that would:

- Provide that Pell Grant proceeds would not be treated as taxable income when used to cover qualifying nontuition expenses such as room and board. (Current law limits tax-free treatment to grant proceeds used to pay for tuition, books, and fees.)
- Expand the list of qualifying nontuition expenses to include items such as computers and child care.
- Eliminate an anomaly in current law that can limit the availability of the American Opportunity Tax Credit (AOTC) when Pell Grant proceeds are used to cover tuition expenses.

Several witnesses at the hearing – who represented think tanks and academia – endorsed those proposals, noting that nontuition expenses represent a significant chunk of the overall cost of attending college and that child care costs present challenges to the growing number of working adults enrolling in higher-education programs, particularly at the community college level.

Witness Susan Whealler Johnston of the National Association of College and University Business Officers commented that the interaction of the Pell Grant rules with the grant offset provision in the AOTC adversely affects roughly 725,000 students every academic year. Another witness, Susan M. Dynarski of the University of Michigan, commented that as a general rule lawmakers need be on guard against potential adverse interactions between education-related tax credits and federal direct student aid provisions.

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'Institutional' tax credit?: Rep. Davis, who is not a member of the subcommittee but was waived on to participate in the hearing, said in an exchange with Johnston that he would like to create a tax credit that would be available to institutions that focus on ensuring that low-income students graduate with low levels of student loan debt. He acknowledged, though, that such an undertaking would be "tricky" since nonprofit institutions do not have tax liabilities.

Johnston replied that the Pell Grant program is the "most efficient" way of delivering federal aid to low-income students, but said that a tax credit related to the investments institutions are making in grant aid would be "intriguing" and should be explored further. She added that such a credit might be especially attractive for institutions subject to the unrelated business income tax (UBIT).

Suggested changes to current law: Dynarski and Johnston also called for specific changes to current tax laws related to higher education, although these comments did not spark a sustained discussion among committee members.

Dynarski told the panel in her opening statement that the bulk of the existing tax incentives to make higher education more affordable – the AOTC, the Lifetime Learning Credit, deductions for tuition payments and interest on student loans, and tax-preferred section 529 education savings accounts – provide the greatest benefits to more affluent families who are already well positioned to pay for higher-education expenses but do little to expand access to higher education for the lowest-income students. She argued for the creation of a single, fully refundable credit for tuition, fees, room, and board that would be available "at the time of college enrollment when it can make a difference."

Johnston urged Congress to repeal the nonprofit institution investment income tax – a 1.4 percent excise tax imposed on the net investment income of certain private colleges and universities that was enacted in the TCJA. In her written testimony, she stated that the tax "results in fewer dollars available for scholarships, students, research, and college and university operating expenses."

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