Low-income housing credit enhancements, neighborhood homes credit win bipartisan support from Senate taxwriters

Democrats and Republicans on the Senate Finance Committee this week generally agreed that several proposed enhancements to the current-law low-income tax housing credit and a proposed new credit to rehabilitate residential properties in certain economically distressed areas would be effective in expanding the nation's affordable housing stock.

The discussion arose during a July 20 Finance Committee hearing to consider the role of tax incentives in affordable housing. (House taxwriters held a similar hearing on July 13. For prior coverage, see *Tax News & Views*, Vol. 23, No. 23, July 15, 2022.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220715_3.html

Building on the low-income housing tax credit

Finance Committee members and witnesses who appeared at the hearing uniformly cited the low-income housing tax credit (LIHTC) as a highly effective incentive to promote public-private partnerships for building affordable housing developments and they expressed support for several measures aimed at expanding it.

The Affordable Housing Credit Improvement Act (S. 1136), sponsored by Finance Committee member Maria Cantwell, D-Wash., and taxwriter Todd Young, R-Ind., along with Chairman Ron Wyden, D-Ore., and Sen. Rob Portman, R-Ohio, would, among other provisions, increase the amount of LIHTCs allocated to each state; increase the number of affordable housing projects that can be built using private activity bonds; and make a number of improvements to the program to better serve targeted populations such as veterans, victims of domestic violence, formerly homeless students, Native American communities, and rural Americans.
URL: https://www.congress.gov/117/bills/s1136/BILLS-117s1136is.pdf

In response to a question from Sen. Young, all of the witnesses on the panel agreed that the proposal should be enacted into law. One of the witnesses—Benson Roberts of the National Association of Affordable Housing Lenders—commented that the proposal promotes "private market discipline" since the LIHTC is available only after a project is completed.

The Decent, Affordable, and Safe Housing for All (DASH) Act (S. 2820), sponsored by Chairman Wyden, would expand the current-law credit to make it more widely available and to allocate a larger portion of available funds to projects serving extremely low-income households. It also would create a refundable tax credit for participating owners of rental buildings who reduce rents for their low-income tenants, create a tax credit similar to the LIHTC for the development of housing for middle-income households, and provide a tax credit of up to $15,000 for first-time homebuyers.
URL: https://www.congress.gov/117/bills/s2820/BILLS-117s2820is.pdf

In an exchange with Wyden, witness Jerry Konter of the National Association of Homebuilders noted that there is "strong support" among home builders for the DASH Act's proposed credit for the development of middle-income housing projects. He agreed with Wyden that the provision would make it more affordable for individuals such as teachers and health care professionals to live in the communities where they work. Konter explained that these individuals are often squeezed out of home ownership opportunities—particularly in large urban areas—because they spend a disproportionate share of their income on rent and have difficulty saving for the necessary down payment to purchase a home.

The LIFELINE Act (S. 4181), whose sponsors include Finance Committee member Catherine Cortez Masto, D-Nev., and Chairman Wyden, as well as lawmakers not on the taxwriting panel such as Republican Sen. Susan Collins of Maine, would permit states, territories, or tribal governments to use state and local fiscal recovery funds to finance qualified low-income housing projects with loans obligated by December 31, 2024, and having maturities of 30 or more years.
URL: https://www.congress.gov/117/bills/s4181/BILLS-117s4181is.pdf

Wyden commented at the hearing that the proposal would "create more flexibility for states, local governments and tribes to use existing funds to get more affordable housing built."

"With costs where they are today, the alternative is a whole lot of unfinished construction and plans that stall out before they ever get going," he said.

Neighborhood homes credit

Also winning plaudits on both sides of the aisle was the Neighborhood Homes Investment Act (S. 98), a proposal sponsored by Democratic taxwriter Ben Cardin of Maryland and Ohio Republican Rob Portman, among others, that would provide tax credits to cover the gap between the cost of rehabilitating abandoned or deteriorating homes in economically distressed areas and their post-rehabilitation sales prices.
URL: https://www.congress.gov/117/bills/s98/BILLS-117s98is.pdf

The credit would be available subject to certain limits, including a cap of up to 35 percent of eligible development costs. Abandoned homes that have been rehabilitated must be sold to an owner-occupant for investors to receive the credits and home owners must be below certain income limitations. Sales prices are capped and qualifying neighborhoods must have elevated poverty rates, lower incomes, and modest home values. Special rules would apply to the rehabilitation of homes that are owner-occupied before and during the rehabilitation process.

Witness Andrea Bell of Oregon Housing & Community Services commented in response to a question from Sen. Cardin that the proposal would help to address the "persistent racial wealth gap" in the US by making housing credits more widely available in communities of color.

Witness Benson Roberts also noted in his exchange with Indiana Republican Sen. Todd Young that the neighborhood homes credit and the low-income housing tax credit "share common DNA" in that the incentives are delivered only when a project is completed. Under both programs, the government is "paying for success," he said.

Young called on Congress to pass the measure.

Factors affecting housing prices

Although there appeared to be bipartisan consensus on the merits of various tax incentives to promote affordable housing, Chairman Wyden and Finance Committee ranking member Mike Crapo, R-Idaho, offered diverging views on some of the factors that are driving up housing costs.

Impact of private equity: In his opening statement at the hearing, Wyden contended that large private equity companies are buying up properties nationwide and creating a demand/supply gap that has led to a spike in rents and in the prices of homes available for purchase.

"They're jacking up rents. They're using algorithms to outbid aspiring American homeowners. Why do these big guys want to get into the American housing market? Because there are upward of 330 million people in this country, and there aren't nearly enough homes for all of them. Huge demand, limited supply—typical people on a budget are going to come out on the losing end of that deal every time," Wyden said.

Later in the hearing, Wyden argued that some private equity investors are taking advantage of a provision in the "qualified contract" exception under the low-income housing tax credit rules that, in certain cases, permits developers to sell an LIHTC-financed project at market value after 15 years. (Ordinarily, developers who receive a credit under the LIHTC program are required to rent their properties to qualifying low-income residents at reduced rents for a period of 30 years.)

Witness Benson Roberts of the National Association of Affordable Housing Lenders commented in an exchange with Wyden that the formula in the LIHTC rules that determines whether the qualified contract exception is applicable was developed in 1989 and has become outdated. Revising that formula and closing the qualified contract exception "loophole" is "critically important," Roberts said.

Net investment income tax and inflation: Crapo, for his part, singled out efforts by House and Senate Democrats to expand the current-law 3.8 percent net investment income tax to apply to active trade or business income of certain taxpayers as something that would exacerbate inflation generally and drive up housing prices, particularly in the rental market.

Witness Jerry Konter of the National Association of Homebuilders indicated in response to a question from Crapo that taxing active trade or business income would represent a new cost to developers that would be passed on to consumers. The impact of such a change would be "especially acute" for renters, he said.

The Build Back Better Act—the roughly $1.75 trillion tax-and-spending package that cleared the House last November—includes a provision that would expand that tax to include, in addition to all investment income, all trade or business income for individuals with more than $500,000 in modified adjusted gross income (for joint filers), $250,000 (married filing separately), or $400,000 (all other individual taxpayers). A similar provision reportedly was slated for inclusion in a potential Senate Build Back Better bill that was being

negotiated by Senate Majority Leader Charles Schumer, D-N.Y., and Sen. Joe Manchin, D-W. Va., but discussions over that emerging package abruptly broke down on July 14 when Manchin indicated that he was reluctant to support significant new tax increases or proposals to address climate change because of their potential inflationary impact. (For prior coverage, see *Tax News & Views*, Vol. 23, No. 23, July 15, 2022. See separate coverage in this issue for additional details on the current status of Build Back Better legislation in the Senate.)
URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220715_1.html

In an exchange with Crapo on the impact of inflation on housing prices generally, Dana Wade of Walker & Dunlop, a Bethesda, Md.-based firm that provides financing for affordable housing projects, commented that "persistently high inflation" would lead to "persistently high rent prices" and would decrease the value of available housing tax incentives.

Revamping incentives for individuals

Witness Jerry Konter also urged Congress in his opening statement to consider modifications to several incentives for home ownership that currently are available to individuals under the tax code. (A description of all the current-law incentives for residential real estate is available from the Joint Committee on Taxation staff.)
URL: https://www.jct.gov/publications/2022/jcx-16-22/

Konter noted that the expansion of the standard deduction under the Tax Cuts and Jobs Act of 2017 (TCJA, P.L. 115-97) has led to a drop in the number of taxpayers taking advantage of the deduction for mortgage interest paid. Moreover, he said, the mortgage interest deduction itself is outdated and should be replaced with a 15 percent credit for mortgage interest and real estate taxes paid.

He also called on Congress to consider indexing for inflation the cap on the capital gains exclusion that applies when a taxpayer sells a primary residence and removing the $10,000 cap on the deduction for state and local income and property taxes enacted in the TCJA.

Taxwriters did not comment on Konter's recommendations.

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