

LIHTC MONTHLY REPORT

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Legislation Introduced to Increase Efficiency of Historic Rehabilitation Tax Credit

By Alex Ruiz, Managing Editor, Novogradac & Company LLP

On February 15, Reps. Stephanie Tubbs Jones, D-Ohio, and Phil English, R-Pa., senior members of the House Ways and Means Committee, introduced H.R. 1043, the "Community Restoration and Rehabilitation Act of 2007" to improve the existing historic preservation tax credit for the restoration and rehabilitation of vacant and underutilized historic buildings. Sens. Blanche Lincoln, D-Ark., Gordon Smith, R-Ore., and Mary Landrieu, D-La., also introduced companion legislation, S. 584.

The rehabilitation credit is the nation's largest federal incentive that promotes urban and rural revitalization through private investment in reusing historic buildings. The Community Restoration and Rehabilitation Act is a package of amendments that would further the mission of the rehabilitation tax credit by spurring greater investments in smaller commercial projects and Main Street commercial properties in older neighborhoods — particularly where there is a critical need for affordable housing and community revitalization. A key aspect of the bill highlights the usefulness of creating affordable rental housing in historic buildings. The law allows the credit to be paired with the low-income housing tax credit (LIHTC) in certain projects. According to the bill's supporters, in 2006 the rehabilitation tax credit alone produced a total of more than 15,000 units of housing, and in conjunction with the affordable housing credit about 40 percent of those units fell into the affordable range.

"H.R. 1043 is about economic revitalization and development," said Tubbs Jones. "Since its inception, the rehab credit has been responsible for 133 residential and commercial projects in the city of Cleveland, leveraging about \$760 million of private investment. Because of the credit, downtown Cleveland and neighborhoods like the Warehouse District, the Gateway District and East Fourth Street are being revitalized — pumping more invest-

ment into the region and revenue to the city and state. The Community Restoration and Rehabilitation Act will further the economic development of Cleveland and the state of Ohio."

Nationwide, the bill's sponsors say, the credit has generated more than \$36 billion in renovation and revitalization dollars since it was enacted in 1976. In Ohio, the credit has been responsible for 1,335 projects, leveraging \$1.77 billion of private investment while Pennsylvania has used the rehabilitation credit to finish nearly 2,000 projects and generate more than \$2 billion in private investment back into its local communities. As a disincentive to demolition, it allows the owner of a historic building to receive an income tax credit of 20 percent of the amount spent to rehabilitate a certified historic structure. There is also a 10 percent credit for older, non-historic buildings. With a 5-to-1 ratio of private investment to federal tax credits, the program has developed more than 31,000 projects nationwide. According to supporters of the legislation, last year the credit produced nearly \$3 billion in private investment nationally, and created more than 60,000 new jobs — approximately 49 new jobs per project.

"This legislation would improve the current historic tax credit and generate renewed interest in our local communities by creating incentives to renovate our forgotten warehouses, homes, factories and hotels and re-use them as places to live and work," said English.

More specifically, H.R. 1043 achieves the following:

- ♦ *Basis Reduction* — Sections 2 and 3 of the measure would address the current disincentive to using the historic rehabilitation tax credit that lowers tax benefits dollar-for-dollar according to the amount of credit in projects that use the credit. This is particularly problematic when the

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rehab credit is combined as an incentive along with the LIHTC. Section 2 would amend Internal Revenue Code (IRC) Section 42 pertaining to the LIHTC to increase by 125 percent the applicable percentage used to calculate LIHTCs for buildings eligible for both LIHTCs and the historic rehabilitation credit. Section 3 of the legislation would amend IRC Section 50 to reduce the basis reduction required for property subject to the historic rehabilitation credit from 100 percent of rehab credit earned to 50 percent of rehabilitation credit earned. This better conforms to other tax credits such as those for energy and reforestation.

- ♦ *Smaller Projects* — Section 4 of the bills would amend IRC Section 47 pertaining to the historic rehabilitation credit to increase the credit rate from 20 percent to 40 percent for smaller projects in which the qualified rehabilitation expenditures do not exceed \$2 million. Supporters say this would target the incentive to those "main street" type developments in which historic rehabilitation credit costs are currently too prohibitive.
- ♦ *More Housing* — Section 5 of the legislation would amend IRC Section 50 to permit the 10 percent portion of the historic tax credit allowed under IRC Section 47 in connection with the rehabilitation of older, "non-historic" buildings to be claimed with respect to residential rental property. It is currently prohibited for projects that include dwellings.
- ♦ *Re-Using "Older Buildings"* — Section 6 of the measures would change the definition of "older building" from "built before 1936" to any property "fifty years old or older" by amending IRC Section 47 to "index" the date by which a building must first have been placed in service in order to be eligible for the 10 percent portion of the rehabilitation credit.
- ♦ *Not-for-profit Uses* — Section 7 of the bills would ease the rules governing not-for-profit deals so that more community-oriented projects may move forward by amending IRC Section 47 to limit the types of leasing arrangements with not-for-profits and other tax-exempt entities.
- ♦ *Targeting in Disinvested Areas* — Section 8 would boost to 130 percent the qualified rehabilitation expenditures on which the rehabilitation credit can be claimed for buildings located in certain disinvested neighborhoods, difficult to develop areas and census tracts where the poverty rate is particularly high.
- ♦ *Application to Condominiums* — Section 9 of the legislation would broaden the tax credit's use to condominium developments and in so doing, provide new support for the revitalization of urban neighborhoods nationwide. The bill's provision removes a recapture clause — requiring the payback of tax credits upon conversion of a tax credit property into a condo development. Supporters say this clause has significantly limited the credit's use.

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"The goals that Congress intended for the historic rehab credit have not yet been fully realized," Lincoln said. "While the tax credit program has been a success, it should encourage even more private investment in historic buildings with a specific focus on community revitalization, particularly in low-income areas.

The Community Restoration and Rehabilitation Act has the support of the National Trust for Historic Preservation, Preservation Action, the National Conference of State Historic Preservation Officers, the American Institute of Architects, and the Affordable Housing Tax Credit Coalition. ♦

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