

THE BUZZ

House and Senate Negotiators Agree to Further LIHTC Changes

By Buzz Roberts, Local Initiatives Support Corporation

A tentative agreement on low-income housing tax credit (LIHTC) modernization legislation between the U.S. House of Representatives and Senate negotiators would adopt almost all of the provisions approved by the House in May and make important improvements. The LIHTC package is part of a broader set of housing related tax changes, which in turn is part of a much larger housing stimulus bill that Congress has been negotiating for several months.

In the House, Ways and Means Committee Chairman Charles Rangel, D-N.Y., has consistently made the LIHTC a top priority in the housing tax title. But the Senate's concurrence was by no means certain, since its previous housing bills had not addressed LIHTC changes. Sens. Maria Cantwell, D-Wash., and Gordon Smith R-Ore., were the leading LIHTC advocates, with the crucial support of Senate Finance Committee Chairman Max Baucus, D-Mont., and Ranking Member Charles Grassley, R-Iowa.

There are several major changes from the House bill in the tentative House-Senate agreement as it stood when *Journal of Tax Credit Housing* went to print.

A flat 9 percent credit rate

The 70 percent present value credit rate is commonly called the "9 percent credit," but because interest rates are low, its actual current value is about 7.8 percent annually. The bill would set a 9 percent floor on this rate for buildings placed in service after enactment and before December 31, 2013, enough to increase credits for a development by about 15 percent. That would offset most or all of the recent drop in LIHTC prices. Early House and Senate LIHTC bills H.R.

5720 and S. 2666 had included this provision, but the House Ways and Means Committee dropped it because of Republican objections. Now it's back, at least through 2013.

Recapture bonds

H.R. 5720 and S. 2666 also proposed to repeal the requirement that investors divesting of their interests in LIHTC projects post a bond to cover potential recapture liability, an impediment to liquidity for investors that is especially important in these tumultuous times. However, an amendment in the Ways and Means Committee imposed a five-year sunset on this change, rendering it useless to potential investors considering a 15-year investment. The tentative House-Senate agreement removes the sunset, a major improvement.

More LIHTC, tax-exempt bond authority

The tentative agreement keeps the House proposal to increase LIHTC volume by 20 cents per capita (about 10 percent) for 2008 and 2009, but it also increases the small state minimum volume by 10 percent as well. The agreement would also increase tax-exempt housing bond volume by \$11 billion on a one-time basis, \$1 billion more than the House had approved.

Housing preservation

Two changes from the House bill will affect affordable housing preservation. First, the tentative agreement drops a House provision that would have allowed a 9 percent credit for building acquisition costs. Many observers worried that this change could drive up property acquisition prices or invite dubious appraisals. Second, the latest bill would allow LIHTCs for the acquisition of a wider range of

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governmentally assisted housing even if ownership had changed hands within the previous 10 years. Housing assisted under Section 8, FHA Section 221(d)(3), Section 221(d)(4) or Section 236, USDA Section 515, and state programs with similar purposes would be permitted. Together, these changes represent a much better balanced housing preservation policy.

Special needs targeting

For many years, some LIHTC projects have been targeted to serve various tenant populations with special needs or common interests, consistent with statutory direction and IRS and HUD rules. In 2007, however, IRS auditors began to challenge and prohibit targeting to groups such as farm workers, artists, abused and pregnant or parenting teenagers, and potentially even homeless veterans. The new policy applied retroactively as well as prospectively, without any public rulemaking process. The House bill clarified that advertising housing targeted groups is permissible, but it did not address occupancy restrictions and it affirmed IRS enforcement measures. The new House-Senate agreement clarifies that LIHTC properties can re-

strict occupancy to targeted groups with special needs or common occupations or interests, consistent with HUD antidiscrimination and certain other rules. This clarification applies to past as well as future housing.

Community service space

Under current law, as much as 10 percent of the eligible basis in an LIHTC project located in a qualified census tract may be used for community service space. However, this allowance is insufficient to provide—for example—a child-care center or primary health clinic. The House bill had bumped up this allowance to 15 percent of the first \$5 million of eligible basis plus 10 percent of additional eligible basis. At the Senate's request, the new agreement would increase the allowance to 25 percent of the first \$15 million of eligible basis and 10 percent of additional eligible basis. This should provide ample flexibility to accommodate social services essential to sustainable communities.

Military housing allowances

The basic housing allowance paid to military personnel will not be included in tenant income calculations in

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certain counties (and adjacent counties) where there is a military installation where personnel has grown more than 20 percent between December 31, 2005 and June 1, 2008.

GAO study

The congressional General Accountability Office (GAO) will analyze and report by the end of 2012 on implementation of the bill's LIHTC provisions, including the distribution of state allocations.

Conclusion

As the *Journal of Tax Credit Housing* went to press, Congress was working to pass the larger housing stimulus bill. Reports indicated that there were still some significant non-tax provisions to be further negotiated between the House and Senate but it appeared that the LIHTC modernization provisions were largely settled and stood a good chance of inclusion within the broader bill. ♦



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