NAHMAnalysis

NATIONAL AFFORDABLE HOUSING MANAGEMENT ASSOCIATION

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

National Affordable Housing Management Association – 400 N. Columbus Street, Suite 203 - Alexandria, VA 22314
Phone 703-683-8630 - Fax 703-683-8634 - www.nahma.org

April 4, 2017 NAHMAnalysis 2017-0404

Tax Reform and the Housing Credit

Background

After stalling with healthcare reform, Congress and the White House have recently pivoted to other major policy initiatives. The Trump Administration is refocusing domestic policy to address government funding challenges, reduce the federal budget deficit, invest in infrastructure, and reform the tax code. This recent emphasis on tax reform represents a threat to, as well as an opportunity for, the Low-Income Housing Tax Credit (LIHTC) – which is responsible for the vast majority of affordable housing developments built each year – and other tax incentives for housing and neighborhood revitalization.

NAHMA continues to rely on member participation in grassroots advocacy to educate Congress on the importance of the housing credit program. Although it is hard to predict when tax reform will occur, it is critical that housing credits be preserved as part of any legislative action taken during this year's busy congressional schedule.

This NAHMA Analysis reviews recent activities surrounding the housing credit and provides perspective on what to anticipate and how to engage in the coming months.

Housing Credits and Tax Reform

As the premier tool to incentivize private investment in affordable housing development, the LIHTC program has leveraged billions in private dollars across every state since its creation 30 years ago. As a result, the LIHTC program continues to enjoy staunch bipartisan support. However, turbulent political times have brought uncertainty to the investment market. Following the stalled battle to replace the nation's healthcare system – which further exposed cracks within political parties – targeted tax cuts may be more feasible than a comprehensive reform of the nation's tax code, leaving tax expenditures such as the LIHTC vulnerable to elimination. Many believe that overhauling the tax code could prove harder to accomplish than replacing health law and will require significant time. The uncertainty of tax reform is already negatively impacting NAHMA members' LIHTC deals.

Improving Housing and Neighborhood Investments through Tax Incentives

Despite the success of the LIHTC and other housing assistance programs, our country's housing unaffordability crisis has deepened over recent years: According to the Harvard Joint Center for

Housing Studies (JCHS), rents have increased faster than the median income while the overall number of renters rose sharply, resulting in a mixture of constrained supply and increased demand that has left over 11 million Americans facing extreme housing unaffordability (figure 1). Legislative efforts to expand and strengthen the LITHC program, coupled with tax incentives to increase private investment in distressed communities and in the broader affordable housing market, seek to address some of the unaffordability challenges.

In recent years, several bipartisan Senators and Representatives have sponsored legislation to overhaul the housing credit program and improve its effectiveness. In addition, a number of neighborhood revitalization incentives and other housing tax credit proposals have gained traction. Building on the success of enacting a permanent 9% credit rate for LIHTC developments in December of 2015, these efforts have generated more bipartisan support for affordable housing tax incentives and paved the way for legislation to gain momentum early in this 115th Congress.

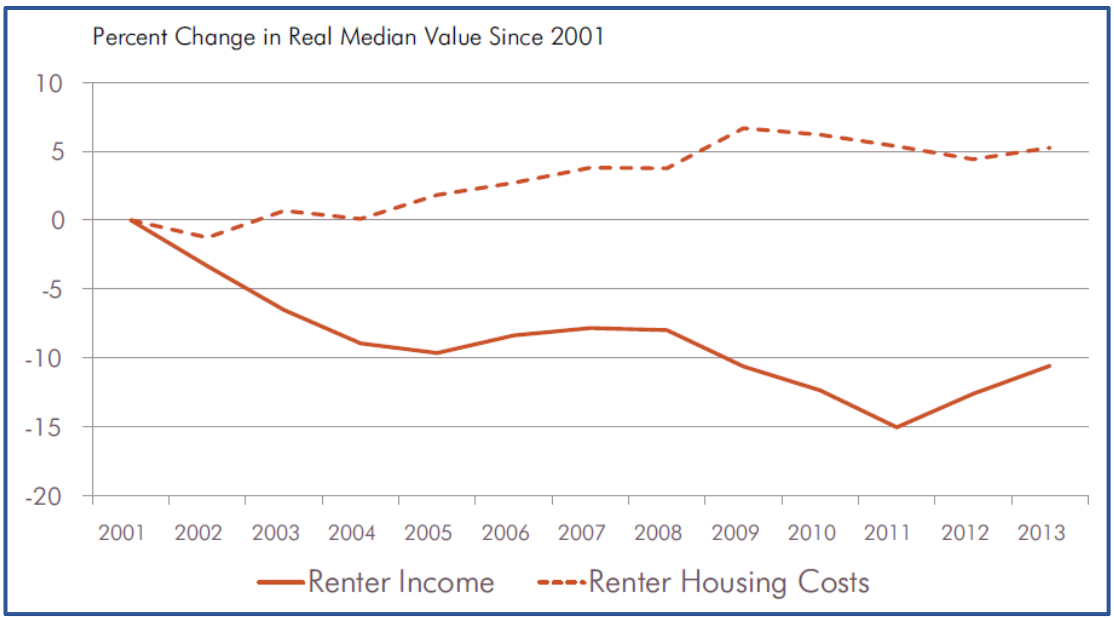

Figure 1 *Harvard Joint Center for Housing Studies: Projecting Trends in Severely Cost-Burdened Renters*

1. Affordable Housing Credit Improvement Act (S. 548 / H.R. 1661)

In March 2017, Senators Cantwell (D-WA) and Hatch (R-UT) and Representatives Tiberi (R-OH) and Neal (D-MA) re-introduced versions of the Affordable Housing Credit Improvement Act of 2017, which gained significant bipartisan support last year.

This year's comprehensive Senate legislation seeks to expand the LIHTC program, particularly for the very low-income and for Difficult Development Areas (DDAs), such as rural and Native American communities. In addition, both the House and Senate bills strengthen the LIHTC program by making permanent the 4% rate for bond-financed units and by giving states more flexibility to maximize credit efficiency.

Overall, the bills seek to improve the housing credit program through what can be summarized as three reform categories: expanding housing access; streamlining LIHTC policies; and preserving existing LIHTC developments:

Expanding Housing Access through Economic Feasibility

- Expand the Housing Credit by 50% over 10 years*
- Repeal the QCT Population Cap to expand the credit to more areas
- Increase Credits for Extremely Low-Income and Permit Income Averaging
- Limit Voucher Payments in Certain Developments to spread credits to more families
- Increase DDA Cap** and Expand Housing for Rural and Native Communities

Streamlining, Updating, and Clarifying LIHTC Policies

- Prohibit local approval and contribution requirements
- Clarify State Authority to define Community Revitalization Plan
- Standardize Income Eligibility for Rural Properties and Bond-Financed Developments
- Align the Housing Credit Student Rule with the HUD Student Rule
- Create Compatibility between Housing and Energy Tax Incentives*
- Clarify the Ability to Claim Housing Credits after Casualty Losses
- Rename the LIHTC to the "Affordable Housing Tax Credit" to reduce stigma

Preserving Existing LIHTC Developments

- Provide Flexibility for Existing Tenants' Income Eligibility
- Establish a Permanent Minimum 4% Housing Credit Rate
- Modify Rights related to Building Purchase and Nonprofit Sponsors
- Modify the "10 Year Rule" to Support Preservation
- Include Relocation Expenses in Rehabilitation Expenditures
- Ensure Affordability Restrictions Endure during Planned Foreclosures[1]**

**Differing provisions in Senate and House bills*
***New provisions in this year's legislation*

In her recent report, "Meeting the Challenges of the Growing Affordable Housing Crisis," Senator Cantwell estimates 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 current program parameters – and would create or preserve approximately 1.5 million jobs – an increase of close to 500,000 jobs over the next ten years. The House version of the bill, however, omits the proposed phased-in credit cap increase that would expand the LIHTC by 50% over ten years, potentially diminishing the returns of LIHTC reform.

NAHMA continues to strongly support the efforts of Senators Cantwell and Hatch and Representatives Tiberi and Neal to improve the LIHTC, which so far have gained 15 cosponsors in the Senate and 22 in the House. Please click here to find section by section analyses of the Senate and House versions of the bill.

2. Housing for Homeless Students Act of 2017 (S. 434 / H.R. 1145)

---

[1] Separately, Senator Blumenthal (D-CT) and Representative Ellison (D-MN) recently introduced the Permanently Protecting Tenants at Foreclosure Act of 2017 (S.325 / H.R.915), which proposes similar provisions.

In mid-February 2017, Representatives Ellison (D-MN) and Paulsen (R-MN) and Senators Franken (D-MN) and Portman (R-OH) introduced legislation that in the past has complemented the Affordable Housing Credit Improvement Act described above. The identical House and Senate bills, titled the Housing for Homeless Students Act of 2017, amends the IRS housing credit guidelines to qualify low-income building units that provide housing for homeless children, youth, and veterans who are full-time students. In order to become eligible for the LIHTC, the building units' student residents must have been homeless[2] during any portion of the preceding seven years (for children and youth) or five years (for veterans).

3. Investing in Opportunity Act (S. 293 / H.R. 828)

In an effort to encourage investment in economically distressed areas, a group of bipartisan legislators are breaking from the tax credit avenue to instead call for a tax deferment on capital gains reinvested in certain "opportunity zones." The legislation, titled the Investing in Opportunity Act, was introduced in early February, 2017 by Senators Book (D-NJ) and Scott (R-SC) and Representatives Tiberi (R-OH) and Kind (D-WI) and has gained significant bipartisan support in both chambers.

According to the Economic Innovation Group's Distressed Communities Index, more than 50 million Americans live in distressed communities that continue to struggle with economic recovery (figure 2). Under the bill, state Governors could designate parts of census-defined low-income areas as opportunity zones eligible for tax deferred investment. The bipartisan legislation encourages pooled resources and mitigated risk, thereby increasing the scale of investments and the likeliness of success in underserved areas. In addition, the capital gains tax on long-term investments would be subject to a modest decrease or exemption, rewarding "patient capital" and further improving the odds of neighborhood "turn-around."

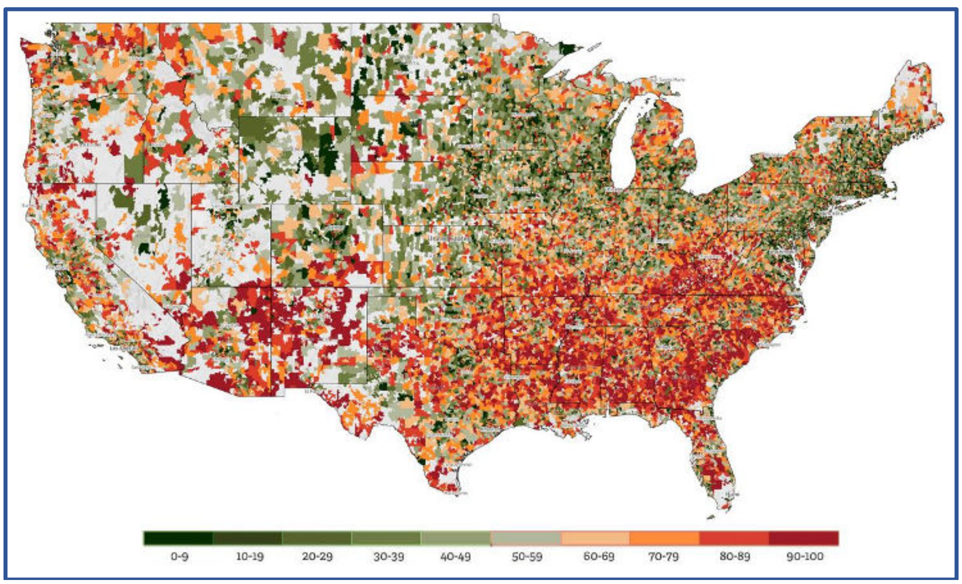

Figure 2 *The EIG's Distressed Community Index (DCI) scores geographic locations based on economic well-being metrics. The higher the score, the greater the distress.*

[2] Separately, Senators Portman (R-OH) and Feinstein (D-CA) and Congressmen Stivers (R-OH) and Loebsack (D-IA) recently introduced the Homeless Children and Youth Act (S. 611 / H.R. 1511), which expands access to homelessness assistance programs and alleviates confusion between agencies by adjusting HUD's definition of "homelessness."

4. Other Notable Legislative Efforts

- **Middle-Income Housing Tax Credit Act of 2016 (S. 3384)**

  Senator Wyden's (D-OR) Middle-Income Housing Tax Credit Act is based on the existing LIHTC program, but applies a tax credit for the development of housing for middle-income households (100% or less of the area median income). The bill seeks to prevent middle-income households from slipping into poverty due to rising housing costs, while also aiming to relieve pressure on lower-income housing markets by expanding options for moderate incomes. The credits, allocated to states based on population, would be converted to low-income credits if unused. It is unclear if Democrats plan to reintroduce similar legislation this year.

- **Common Sense Housing Investment Act (H.R. 948)**

  Representative Ellison's (D-MN) Common Sense Housing Investment Act replaces the mortgage interest deduction (MID) with a 15% tax credit on interest paid on up to $500,000 of a mortgage on a primary and secondary residence. Savings from the restructured MID would be funneled into the Housing Trust Fund and into an expansion of the LIHTC. Similar legislation has enjoyed democratic support in previous years.

Overall, the congressional momentum toward tax incentives for affordable housing and revitalized neighborhoods demonstrates a bipartisan willingness to invest in housing and community revival despite the current climate of partisanship, budget constraints, and tax cuts. NAHMA will work with our committees to keep members up to date on the progress of these bipartisan bills.

Call for Advocacy and Action

As the owners and managers of LIHTC properties, NAHMA members know that LIHTC is without question one of the most essential tools used to develop new affordable housing units and rehab existing units: HUD's budget authority continues to be dominated by rental assistance obligations, leaving little leftover for the Department to invest in preservation or new construction activities; in comparison, the LIHTC has leveraged billions of private dollars to invest in affordable housing and has the potential to be expanded.

Tax reform proposals from both Congress and the White House are expected to emerge in the coming weeks, but NAHMA members can begin to guide the conversation now by advocating for and promoting the LIHTC. In order to educate Senators and Representatives on the importance of the LIHTC, members can refer to our recent grassroots alerts for strategies, such as setting up Hill visits in Washington, D.C. or inviting lawmakers for a property site visit during the upcoming April recess, as well as resources, such as NAHMA Maps, which illustrates affordable housing developments at congressional district levels.

The conversation on tax reform is happening now, and NAHMA members must share their expertise to ensure the housing tax credit continues to serve communities across the country.