Affordable Housing Credit Improvement Act – Changes for 115th Congress

1. New Provision Addressing Planned Foreclosures

Current law provides that a building is eligible for tax credits only if an extended low income housing commitment is in effect that requires the owner to maintain the number of low-income units in the building for a period of 15 years after the close of the initial 15 year compliance period (providing for a total of at least 30 years of affordability). A loophole in the law has allowed owners to get out of their long-term use commitments by devising an arrangement where a related party holds a note on the property, and then takes the property through foreclosure in connection with the note. Once the related party holder of the note has acquired the property, it is permitted to terminate the long-term use agreement, raise rents and convert the property from affordable housing to market rate apartments.

Under current law, the Treasury may prohibit this termination if they determine that the "acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate" the long term use agreement. However, there are practical limitations for Treasury to exercise its authority and Treasury is not the appropriate entity to have this authority to make this determination since its compliance obligations end after year 15.

Proposed change – Close this loophole by amending section 42(h)(6) to give to state housing finance agencies the authority that Treasury now has to make a determination that the foreclosure (or deed in lieu of foreclosure) is an "arrangement" to terminate the extended use period. The proposal would provide state agencies 60 days to review these transactions.

2. New Provision Raising the Cap on Difficult to Develop Areas (DDAs)

Section 306 of the draft legislation repeals 20 percent cap on qualified census tracts, allowing all census tracts that meet the HUD guidelines to qualify for a 30 percent basis boost in projects located in those areas. HUD maintains a similar 20 percent cap on Difficult to Develop Areas, which are areas with high construction, land and utility costs relative to its Area Median Gross Income.

Proposed change – This proposal would raise the 20 percent cap on DDAs to 30 percent, allowing more affordable housing projects to be built in higher-cost, high-opportunity neighborhoods.

3. Additional Criteria for Community Revitalization Plans

Under the current statute, state qualified allocation plans (QAPs) must give preference to projects that contribute to a concerted community revitalization plan (CCRP), among other requirements. Section 307 of the draft bill assigns housing credit agencies the responsibility for making this determination but offers no guidelines or definition for CCRPs.

Proposed change – This proposal would amend this provision to include criteria that states should consider when determining if projects contribute to a CCRP, including whether the plan is geographically specific, includes a plan for implementation and goals for progress, includes a strategy for obtaining public and private commitments in other, non-housing infrastructure or other improvements beyond Housing Credit developments, and demonstrates the need for revitalization.

4. Local approval

Section 308 of the bill requires the Secretary of the Treasury to issue guidance prohibiting any state QAP from including local approval or local contribution requirements.

Proposed change – This proposal simplifies this provision by writing these prohibitions into statute instead of requiring Treasury to issue guidance. The proposal allows local contributions to be considered by state QAPs but only to the extent that they contribute to an overall measure of a projects ability to leverage outside investment and are considered on a level playing field with all other funding sources.

5. Technical corrections

Sections 309 and 310 of the draft to refer to “state housing credit agencies," even though some states have multiple allocating agencies, some of which are local.

Proposed change – Change this reference to "housing credit agencies."