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House Ways and Means Committee Proposes Expansion of Affordable Housing Financing Incentives in the Reconciliation Package

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by Jessica Grossarth Kennedy and Marie V. Phelan

On September 10, 2021, the House Ways and Means Committee (the "Committee") released proposed legislation providing for an expansion of affordable housing financing incentives in their portion of the $3.5 trillion reconciliation package. As the Low-Income Housing Tax Credit (LIHTC) is integral for financing the production and preservation of affordable rental homes, this legislation is notable because expansion of the incentives will significantly increase the number of households that can be assisted. The proposed legislation, which the Committee will mark up this week, includes a number of proposals to expand the incentives that involve the following topics (amongst others):

Increases in State Allocations of 9% low income housing tax credits,

- Tax-exempt Bond Financing Requirement, and
- Buildings Designated to Serve Extremely Low-Income Households.

The Committee's section-by-section summary related to the above topics is below. **Section-By-Section Details for Select Sections of Subtitle F - Infrastructure Financing and Community Development**

<u>Subpart A – Low Income Housing Tax Credit</u>

Sec. 135501. Increases in State allocations. The provision increases the 9% housing credit and the small state minimum by 50 percent and phases in this increase over five years. In calendar years 2026 through 2028, the amounts are adjusted for inflation. The increases include the 12.5% expansion in the 9% housing credit passed in 2018. The provision is effective for calendar years after December 31, 2021.

Sec. 135502. Tax-exempt bond financing requirement. This provision temporarily reduces the 50% requirement for financing with tax exempt bonds to 25% to qualify for the 4% low income housing tax credit, to enable housing credit deals to unlock more 4% credits. The provision is effective for buildings financed by the proceeds of certain tax-exempt bonds issued in calendar years 2022, 2023, 2024, 2025, 2026, 2027 or 2028 (and not financed by previous bonds issued in tax years 2019-2021) for buildings placed in service in taxable years after December 31, 2021.

Sec. 135503. Buildings designated to serve extremely low-income households. The provision provides a 50% basis boost for low income housing tax credit (LIHTC) buildings that designate at least 20% of their occupied units for extremely low-income tenants and limit rent to no more than 30% of the greater of: 30% of area median income or the federal poverty line. The provision is funded by a set-aside equal to 10% of a state's housing credit allocation (and the set-aside is in addition to this allocation). Certain buildings eligible for the 10% set-aside are also eligible to receive an enhanced low-income housing tax credit. The enhanced credit provision applies to LIHTC buildings receiving either the 9% or 4% housing credit. For purposes of the 9% credit, however, a housing credit agency may not allocate more than 15% of the portion of the state's housing credit ceiling amount to such buildings after the date of enactment. Furthermore, for purposes of the 4% credit, a state may not issue more than 10% of its private activity bond volume cap to such buildings. The enhanced credit terminates after December 31, 2031. The provision is effective for allocations and determinations of housing credit dollar amount after December 31, 2021.

The attorneys of Pullman & Comley's Public Finance practice are following these legislative developments closely. If you have any questions or need additional information on this topic, please contact Marie V. Phelan or Jessica Grossarth Kennedy.