THE BOND BUYER

Hope dims for multifamily bond tax fix

By

Brian Tumulty

Published

December 19, 2018, 1:59pm EST

WASHINGTON — Hope is fading that Congress will enact a tax fix for bond-financed multifamily housing projects that include a preference for military veterans and establish an independent Office of Appeals at the Internal Revenue Service before adjourning for the year.

Both measures are part of a year-end tax bill the House planned to vote on Thursday. It appears increasingly likely the Senate will ignore the bill as the 115th Congress works toward enacting a temporary spending measure to keep the government operating through Feb. 8.

Senate Majority Leader Mitch McConnell, R-Ky., announced Wednesday the introduction of the stop-gap spending bill that Democratic leaders in the Senate and House said they would support.

“This is a missed opportunity to pass full-year funding bills now,” Speaker-designate Nancy Pelosi, D-Calif., said in a press statement. “However, Democrats will be ready to fully, responsibly fund our government in January, and we will support this continuing resolution.”

The temporary spending bill would avert a partial government shutdown at midnight Friday of some federal agencies, including the Treasury and IRS.

Even if there was a shutdown, it would not stop the trading of state and local government securities, which are purchased by bond issuers with proceeds subject to yield restrictions and arbitrage rebate requirements under the Internal Revenue Code.

Treasury halts the trading of SLGS only when the national debt limit has been reached. A budget deal reached by Congress in February has suspended the nation’s debt ceiling until March 1, 2019.

The debt ceiling may become part of the next round of negotiations on the 2019 budget in early February.

The more immediate issue for the muni market involves bond-financed multifamily housing projects.

House Ways and Means Committee Chairman Kevin Brady, R-Texas, told reporters last week he hopes the Senate will pass at least some of the tax provisions.

The muni-bond multifamily housing measure is noncontroversial, and the IRS reforms passed the House earlier this year by an overwhelming margin.

Multifamily housing projects such as Tabora Gardens Senior Apartments in California, which used $13.1 million in multifamily private activity bonds for part of its financing, are increasingly getting caught up by the legal problem.

More than 30 of the 85 units of Tabora Gardens Senior Apartment in Antioich, California, have been designated for military veterans, according to the California Department of Housing and Community Development.

In all, California has 70 housing projects in which at least 25% of the units are restricted to veterans. Most of the projects are under construction or awaiting construction under the state's Veterans Housing and Homelessness Prevention Program.

Congressional inaction could threaten PAB financing for those projects, multifamily projects, and others around the nation with veterans' preferences.

Jennifer Schwartz, director of tax and housing advocacy for the National Council of State Housing Agencies, said in an interview she’s pessimistic the tax fix will pass this week, although she is “not giving up hope.”

“We will continue to work toward a solution on a fix for the public use rule for veterans and other housing priorities in the next Congress,” Schwartz said.

About half of the multifamily housing units built nationally that use the federal Low Income Housing Tax Credit are financed with tax-exempt private activity bonds. The other half use a 9% federal tax credit that does not allow PAB financing.

Federal law doesn’t explicitly say that veterans qualify for a special needs exception to the public use rules governing the tax-exemption for multifamily PABs.

In 2008 Congress enacted a provision of the federal housing tax credit — Section 42G9 — that said preferences for specified groups under a federal or state program are permitted and not a violation of public use requirement.

But Congress has not explicitly cross referenced the applicability of Section 42G9 to Section 142 dealing with tax exempt facility bonds which include multifamily housing.

Treasury officials have indicated they don’t want to issue a private letter ruling to clear up the problem, which leaves the solution to be either through congressional legislation or a published guidance such as a revenue notice.