

THE BOND BUYER

IRS under pressure to allow veterans preference for multifamily bond financing

By

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WASHINGTON — The Internal Revenue Service is facing increasing pressure to clarify that the public use requirement for tax-exempt private activity bonds that finance multifamily housing can be applied to preferences for military veterans.

If the IRS fails to provide a regulatory fix, two members of Congress may address the issue legislatively in bicameral affordable housing legislation that had wide bipartisan support in the last Congress.

Market groups and others have said that the lack of clarity from the IRS is preventing projects from moving forward.

Six U.S. senators from California, Hawaii, Nevada and Texas sent a letter last week to Internal Revenue Commissioner Charles Rettig warning him the issue “is blocking the development of new affordable housing for veterans in our states.”



Jennifer Schwartz, director of tax and housing advocacy for the National Council of State Housing Agencies

The letter, initiated by Sen. Dianne Feinstein, D-Calif., includes one Republican, Sen. John Cornyn of Texas, and four other Democrats, Kamala Harris of California, Mazie Hirono of Hawaii, and both of Nevada’s senators, Catherine Cortez Masto and Jacky Rosen.

Their letter blames “the IRS’ new interpretation [as] the only impediment to breaking ground for a veteran housing project in Windsor, California.”

“In addition, the future expansion and development plans of other veteran housing facilities — including in Texas, Hawaii, and Nevada — may be impaired without access to these tax-exempt bonds,” the letter said.

Two earlier letters from the National Association of Bond Lawyers sent to the IRS and the Treasury Department in December and January sought a similar clarification.

David Walton, one of the attorneys on the NABL Tax Committee, told The Bond Buyer in January that until a clarification is issued, “bond lawyers are requiring that the rental units be open to all who qualify” without any preferences for special groups such as veterans.

Walton, who is based in San Francisco, said California has at least 70 housing projects in which 25% or more of the units are restricted to veterans with most of the under construction or awaiting construction.

In an email Wednesday, Walton stated that NABL has not, to his knowledge, received a direct response to its letters.

But at an NABL conference held in Florida last week, John Cross from the Office of Tax Policy at the Treasury Department acknowledged during a panel discussion that Treasury and the IRS had received the NABL letter and are aware of the problem.

Jennifer Schwartz, director of tax and housing advocacy for the National Council of State Housing Agencies, said her organization continues to believe the IRS could remedy the problem administratively.

“However, if they fail to do so, we hope that Congress will act to clarify that special needs housing preferences, including preferences for veterans, are not a violation of the public use requirements under the bond program,” Schwartz said in an email.

NCSHA and other advocacy groups have been encouraging Sen. Maria Cantwell, D-Wash., and Rep. Suzan DelBene, D-Wash., to include a fix in their

reintroduction of the Affordable Housing Credit Improvement Act, which they hope happens soon.

In the last Congress, the bill had 182 House cosponsors roughly evenly split between 99 Democrats and 83 Republicans and 45 Senate cosponsor split between 32 Democrats, 11 Republicans and both independents who caucus with the Democrats.

The bill proposed several improvements in the 4% federal tax credit that's used for affordable multifamily housing and often paired with multifamily PABs as part of the overall financing.

There were 54,517 multifamily housing units either constructed, acquired or rehabilitated with tax exempt PABs in 2017, according to the National Council of State Housing Agencies.

Schwartz said there has been "a sizeable uptick in the number of bond-financed units in recent years" from 36,485 in 2014 to 49,380 in 2015, 52,040 in 2016 and 54,517 in 2017.

PAB financing of multifamily housing currently represents about half of that sector.