THE BOND BUYER

New Bills Would Promote Multifamily Housing, Reinstate Advance Refunding

By

Brian Tumulty

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Two bills expanding the use of tax-exempt bond financing have been reintroduced in Congress with a good chance of being incorporated into infrastructure legislation.

One three-pronged bill includes a restoration of tax-exempt advance refunding, a tripling of the cap on bank-qualified debt, and the reinstatement of Build America Bonds under another name.

The other has several provisions for expanding the use of tax-exempt Private Activity Bonds for financing multifamily housing.

The legislation would maximize PAB financing for multifamily housing, according to Emily Cadik, executive director of the Affordable Housing Tax Credit Coalition. ***Affordable Housing Tax Credit Coalition***

The three-pronged Local Infrastructure Financing Tools Act was introduced Friday by Rep. Terri Sewell, D-Ala.

It not only restores tax-exempt advance refundings, it also would increase to $30 million from $10 million the limit on issuers seeking to sell bonds to banks under favorable terms as bank-qualified.

Bank-qualified debt, also known as BQ debt and bank eligible, allows the bank to deduct the carrying cost of that debt as a business cost.

The $10 million limit has been in place since 1986, except for a two-year period in 2009-2010 when the American Recovery and Reinvestment Act raised the limit to $30 million. ARRA also applied the limitation to individual borrowers rather than conduit issuers, which the law snapped back to afterward.

The changes made under ARRA led to an explosion of bank-financed borrowing by small governments such as fire departments as well as nonprofits such as small colleges and hospitals.

Sewell's BABs-like direct-pay bonds would be called American Infrastructure Bonds.

As with BABs, the bond issuer would receive a direct payment from the federal government to cover a percentage of the interest costs associated with these taxable bonds.

The direct-pay subsidy, which would start at 42%, would lower the cost of borrowing for local governments and nonprofits and attract additional investors who may not invest in tax-exempt bonds.

Sewell circulated a "dear colleague" letter to other House members Friday seeking cosponsors.

The other bill, meanwhile, already has a cadre of cosponsors.

The bipartisan Affordable Housing Credit Improvement Act of 2021 was introduced Thursday in the Senate by Sens, Maria Cantwell, D-Wash.; Todd Young, R-Indiana; Ron Wyden, D-Ore.; and Rob Portman, R-Ohio.

The House version is sponsored by Reps. Suzan DelBene, D-Wash.; Jackie Walorski, R-Indiana; Don Beyer D-Va.; and Brad Wenstrup, R-Ohio.

The legislation would maximize PAB financing for multifamily housing, according to Emily Cadik, executive director of the Affordable Housing Tax Credit Coalition.

Currently, more than half of a multifamily housing project must be financed with PABs in order to qualify with the 4% federal Low Income Housing tax credit. The proposed legislation would cut the PAB minimum financing requirement in half.

“There’s a growing number of states that are using up or close to using up, all of their bond volume cap,” Cadik said. “So especially in those states, this is a way to increase the amount of 4% credit that can be awarded without straining the bond cap as much.”

The volume cap has been an issue for some time in New York, California, Washington, and Massachusetts, Cadik said. More recently, it is an issue in Georgia and Tennessee.

Overall there are more than a dozen states that are constrained by their volume caps.

The infrastructure bill passed by the House last summer included the 25% PAB financing reduction as well as an overall increase in the state volume caps by 10%.

“I’m not aware that there’s been any legislation in this Congress yet to lift the bond cap but I wouldn’t be surprised if that were also on the table as part of infrastructure,” she said.

In December Congress enacted an enhancement to the 4% Low Income Tax Credit that establishes the federal tax credit at a true 4% rate.

And in 2018, Congress increased the housing credit allocation by 12.5% through 2021 as well as an “income averaging,” a provision that provides flexibility to serve a broader range of low-income tenants.

Those measures, Cadik said, have significantly boosted the number of new multifamily housing projects and led to the increasing number of states that are hitting their annual volume cap for PABs.

“There’s a growing number of states that are using up or close to using up all of their bond volume cap, so especially in those states this is a way to increase the amount of 4% credit that can be awarded without straining the bond cap as much,” she said, referring to the 25% PAB financing proposal.

And there are other alternatives for the remainder of the financing. “In many areas, there are other types of financing that are very available and don’t come with the constraints that bond financing may bring,” said Cadik.

Brian Tumulty

Reporter, The Bond Buyer

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