

Bill Differences

The Affordable Housing Credit Improvement Act

Sponsored by Senators Maria Cantwell (D-WA), Todd Young (R-IN), Ron Wyden (D-OR), and Rob Portman (R-OH) in the Senate and Representatives Suzan DelBene (D-WA-01), Jackie Walorski (R-IN-02), Don Beyer (D-VA-08), and Brad Wenstrup (R-OH-02) in the House, the *Affordable Housing Credit Improvement Act (AHCIA)*, [S. 1136](#) and [H.R. 2573](#), would make significant strides towards addressing our nation's severe shortage of affordable housing. It would expand and strengthen the Low-Income Housing Tax Credit (Housing Credit), our nation's most successful tool for encouraging private investment in the production and preservation of affordable rental housing. The legislation is estimated to finance an additional 2 million affordable rental units over 10 years. The Senate and House versions of the *AHCIA* are identical companion bills.

The legislation was initially introduced in the second session of the 114th Congress in the Senate and has been reintroduced in both chambers in every Congress since. Though the *AHCIA* introduced in the 117th Congress is largely the same as the version in 116th Congress, the bill's sponsors have made a small number of minor modifications to existing provisions, added one new provision that will further strengthen the Housing Credit and Housing Bonds, and removed two of the provisions in the previous version. This paper describes the material differences between the 117th Congress bills and the 116th Congress version of the legislation. Unless otherwise noted in this document, all provisions in the 116th Congress bills have carried over into the 117th Congress bills.

Section 101: Increase in State Allocations—Modification of Existing Provision

- **116th Congress:** The *AHCIA* in the 116th Congress included a five-year, phased-in 50 percent increase over current levels in both the per capita amount and small state minimum, which determine the amount of 9 percent Housing Credit authority each state is able to allocate in a given year—commonly referred to as the Housing Credit volume cap.
- **117th Congress:** Like the previous year's bill, the *AHCIA* in the 117th Congress would increase the Housing Credit volume cap by 50 percent; however, the increase would be phased in over two years instead of five, given the increased and urgent need for affordable housing.

Section 203: Streamline Student Occupancy Rules—Modification of Existing Provision

- **116th Congress:** Since Congress created the Housing Credit, the statute has included a prohibition on serving full time student households, with certain limited exceptions. While well intentioned, in practice the rule is extraordinarily complex to administer and prevents adult Housing Credit residents from furthering their education. The *AHCIA* in the 116th Congress would have simplified the Housing Credit "student rule" to better align it with the student rule applicable to HUD housing programs and provide an exception to the rule for student residents over the age of 24 so that they may pursue educational opportunities and a path to greater self-sufficiency. The bills also provided exceptions to households under the age of 24, consistent with the exceptions provided under the HUD student rule. For example, individuals of any age would be exempt from the student prohibition if they had been a homeless youth immediately before

attaining the age of majority, a veteran of the armed forces, or a parent, among other exceptions. It also provided an exception to the student rule for victims or threatened victims of domestic violence or sexual assault.

- **117th Congress:** The *AHCIA* in the 117th congress includes two small changes to the previous student rule provision by (1) adding victims of human trafficking to the list of exceptions to the student rule and (2) ensuring that any individual who had been homeless as a youth would not be disqualified from living in a Housing Credit property if they are a student, regardless of whether or not they were homeless immediately prior to attaining the age of majority.

Section 301: Reconstruction or Replacement Period After Casualty Loss—Modification of Existing Provision

- **116th Congress:** If a Housing Credit property experiences a casualty loss (e.g., a flood or fire) that causes residents to temporarily vacate the property, the owner is required to have the property back in service by December 31 of the calendar year – regardless of when during the year the loss occurred—to avoid the recapture of Housing Credits. This is especially problematic when the casualty loss occurs near the end of the calendar year, because the owner may be unable to meet the end of year deadline for repairs and risks losing Housing Credits for the entire year, even though the property was in service for most of that time. IRS regulations make an exception to this rule for casualty losses associated with a federally declared major disaster, for which they allow up to 25 months for restoration, at the discretion of the state Housing Credit agency. The *AHCIA* in the 116th Congress would have given the state agency the discretion to establish a reasonable period by which time the owner must have the property back in service for all casualty losses (not just those resulting from a major disaster), so long as that time period is no longer than 25 months.
- **117th Congress:** Like the previous year's bill, the *AHCIA* in the 117th Congress would provide discretion to state agencies to set the time period by which a property must be back in service after a casualty. However, given the difficulties faced in rare instances in which the entire infrastructure surrounding a property has been destroyed by a catastrophic event – for example, a major wildfire – the *AHCIA* in the 117th Congress provides further discretion to state agencies to extend the reconstruction and replacement time period for an additional 12 months beyond the 25-month period (a maximum of 37 months). The discretion is allowed only in cases of Federally declared disasters and the owner must agree to extend the project's compliance period by the amount of time provided for reconstruction and replacement beyond 25 months.

Section 313: Tax-Exempt Bond Financing Requirement—New Provision

- **117th Congress:** In order for a Multifamily Housing Bond-financed development to receive the full amount of 4 percent Housing Credits, at least 50 percent of project costs must be initially financed with tax-exempt multifamily bond authority from the state's Private Activity Bond (PAB) volume cap. In practice, most Housing Credit properties do not need that level of debt financing, and it creates inefficiencies and complexities in the program. Many states are now also "bond cap-constrained," meaning they have more demand for affordable housing than they are able to finance with their existing PAB volume cap authority. Thus, the 50 percent threshold has severely curtailed their ability produce and preserve housing. The *AHCIA* in the 117th Congress would lower the bond financing threshold to 25 percent, which is much more consistent with the permanent debt level properties typically support and would allow for the production and preservation of as much as 1.49 million more additional homes over 2022-31, assuming that all of the "freed" bond cap is used for rental housing and sufficient gap financing is available.

Sections 401 and 402: Reforms Relating to Native American Assistance/Selection Criteria under Qualified Allocation Plans and Inclusion of Indian Areas as Difficult Development Areas – Modification of Existing Provisions

- **116th Congress:** Because it may difficult for Native American tribes to access Housing Credits due in part to the extremely low incomes of households on tribal lands, the *AHCIA* in the 116th Congress required states to consider affordable housing needs of Native Americans as part of their selection criteria in determining which developments will receive Housing Credit allocations each year and made Indian areas eligible for the “difficult development area” 30 percent basis boost to provide additional Credit equity for these properties.
- **117th Congress:** These provisions remain in the 117th Congress the *AHCIA*, with the addition of a clarification to ensure Native Hawaiians are included in both sections. References to the Native American Housing Assistance and Self-Determination Act of 1996 were made to clarify the definitions of “Native Hawaiian” (25 U.S.C. 4221(9)), “Indian Areas” (25 U.S.C. 4103(11)), and “housing area” (25 U.S.C. 4221(5)).

Provisions Removed from the *Affordable Housing Credit Improvement Act*

- **4 percent minimum rate for acquisition and bond-financed developments:** The *Consolidated Appropriations Act of 2021* enacted into law this key provision of the *AHCIA*, establishing a minimum 4 percent rate for acquisition costs and for the Credits for which properties with bond financing are eligible. This important change is expected to allow for the production or preservation of roughly 130,000 additional units over 10 years.
- **Modification and Clarification of Rights Related to Building Purchase:** This provision would have replaced the nonprofit “right of first refusal” (ROFR) included in IRC Section 42 with a purchase option for newly financed properties and clarified that a property may be acquired directly or by purchase of a partnership interest. As discussions progress within the various segments of the affordable housing community on this issue, the provision was removed and may be pursued separately.