More than $12 Billion in LIHTC Provisions and Nearly $6 Billion for Neighborhood Homes Tax Credits in Nov. 3 Draft of the Build Back Better Reconciliation Bill Would Finance Close to 1 Million Affordable Homes Over 2022-31

By Dirk Wallace and Peter Lawrence, Novogradac, November 9, 2021

Novogradac estimates the latest version of the $1.75 trillion Build Back Better (BBB) reconciliation legislation–released by the House Rules Committee Nov. 3–would finance 936,900 affordable homes over 2022-2031. That figure includes an estimated 811,900 affordable rental homes from the bill's primary low-income housing tax credit (LIHTC) unit financing provisions, as well as the 125,000 affordable owner-occupied homes that the proposed Neighborhood Homes Tax Credit would finance.

The legislation includes affordable housing and green energy proposals, summarized in the following post.

Nearly 1.9 Million People Could be Affordably Housed as a Result of the Primary LIHTC Unit Financing Provisions of the Nov. 3 BBB Reconciliation Bill
Based on research conducted by the National Association of Home Builders, Novogradac estimates the 811,900 homes financed by the primary LIHTC unit financing provisions could house nearly 1.9 million low-income people. The financing of these homes would also generate over a decade:

- More than **1.2 million jobs**,
- More than **$137 billion in wages and business income**, and
- More than **$47 billion in tax revenue**.

That tax revenue generated is $34.7 billion more than the estimated $12.7 billion in federal cost, according to the Joint Committee on Taxation. Through the financing of these additional affordable homes, the reconciliation bill would go a long way in assisting the millions of low-income households who are cost burdened, cannot find affordable housing, or are experiencing homelessness.

Proposed Increase in Affordable Rental Homes Financed Due to Reconciliation Bill LIHTC Provisions From 2022 to 2031

OVER 10 YEARS

25% Test	ELI Basis Boosts*	9% Allocation Increase**	Native American Boost	TOTAL
712,400	53,600	43,900	2,000	**811,900**

*This estimate includes ELI units for 4% and 9% developments.
**This excludes the 9% ELI units accounted for under ELI Basis Boosts category.
Source: House Rules Committee; Novogradac

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About these Estimates
The estimates presented in this post are part of Novogradac's ongoing analysis of rental housing provisions included in proposed legislation to enhance and expand the LIHTC

and private activity bond (PAB) rental home financing. For each estimate detailed below, several steps were taken to arrive at the additional affordable rental homes projected to be financed. In the case of each set of estimates, certain provisions provide the foundation upon which additional analysis is based. For 9% estimates, the analysis assumes the 2021 amounts, as adjusted by the temporary 12.5% allocation increase enacted in 2018 and expiring at the end of 2021 is the baseline from which the three years of allocation increases are applied. Additionally, all of the estimates assume that gap financing is scalable with the increased availability of LIHTC equity and PAB debt, which seems a reasonable proposition, given the more than $156 billion in U.S. Department of Housing and Urban Development, U.S. Treasury's Community Development Financial Institutions Fund, and U.S. Department of Agriculture rural housing supplemental funding available in the housing and community development spending portion of the Nov. 3 BBB reconciliation bill. The scalability of gap financing applies more so to 4% LIHTC properties than to the 9% LIHTC properties in the analysis that follows, because the 4% LIHTC is a shallower subsidy than the 9% LIHTC.

Reconciliation Provisions Would Support Increased LIHTC, PAB Activity

Temporarily Reduce the PAB Financed-By Threshold
The reconciliation bill would temporarily reduce the tax-exempt PAB financed-by threshold from 50% to 25% for buildings financed by obligations issued in calendar years (CY) 2022-2026, but not obligations issued prior to CY 2022 or after CY 2026. Novogradac estimates lowering the threshold from 50% to 25% could generate an additional 714,400 affordable rental homes financed by 2022-2026 multifamily PAB issuances. This estimate is updated by the recent 2020 Council of Development Finance Agencies 2019-2020 National Private Activity Bond Volume Report.

The analysis presumes the "freed" bond cap that would result from the reduction in the financed-by threshold would be used for affordable rental housing (as opposed to other allowable PAB uses) and that gap financing was scalable. The AHCIA proposed a permanent reduction of the financed-by threshold to 25%, thereby facilitating the financing of an estimated nearly 1.5 million affordable rental homes over a decade.

Previous Novogradac analysis commissioned by the National Council of State Housing Agencies (NCSHA), in both a 2020 report and a 2021 update, analyzed the effects of lowering the threshold test. To estimate the number of rental homes that could be financed, Novogradac developed a pro forma model that establishes national baseline percentages for the sources and uses of financing for PAB financed LIHTC developments. This model is based on NCSHA Annual Factbook data available for 2016, 2017, 2018 and 2019 (the four most recent years available at the time of writing). The model is also informed by the review of final cost certification data from a national sample of PAB-financed developments. The pro forma model has distinct estimates for new construction, substantial rehabilitation and acquisition/rehabilitation developments.

Increase 9% Allocation

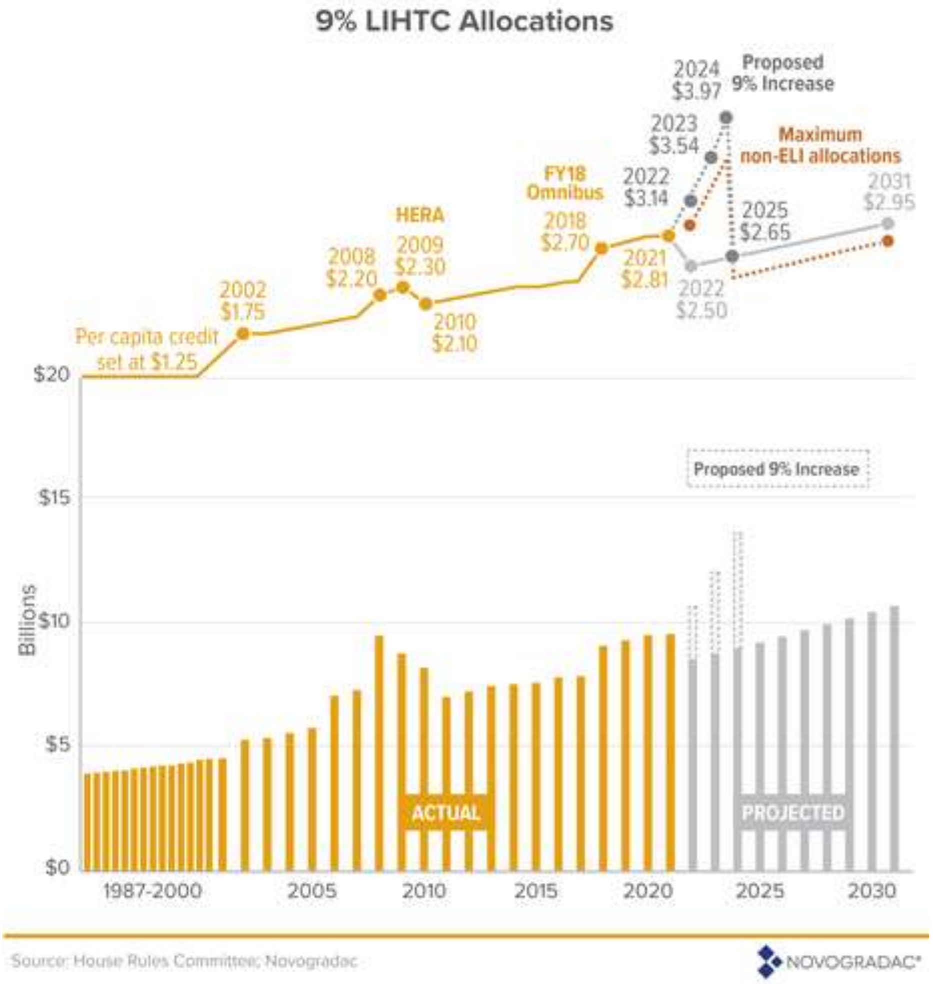
The reconciliation bill would increase 9% LIHTC allocation annually by 10% plus inflation in 2022-2024. Specifically, the reconciliation bill would increase the annual 9% LIHTC allocation from $2.81 per-capita with $3,245,625 small state minimum under current law, to:

- **$3.14** per capita and **$3,629,096** small state minimum in **2022**,
- **$3.54** per capita and **$4,081,825** small state minimum in **2023**,
- **$3.97** per capita and **$4,528,053** small state minimum in **2024**,
- **$2.65** per capita and **$3,120,000** small state minimum in **2025**, and
- Annual inflation adjustments based off the **2025** amounts thereafter.

The 2025 estimated amounts are based on the 2017 baseline as adjusted annually for inflation during 2018-2024 before the 12.5% allocation increase was enacted in 2018 (and is scheduled to expire at the end of 2021). Novogradac estimates these increases could finance 43,900 additional affordable rental homes over 2022-2031. This estimate excludes units in 9% LIHTC properties receiving the 50% extremely low-income (ELI) basis boost described below.

Novogradac estimates that 9% unit financing would decrease during 2025-2031 as compared to current law because both the 12.5% allocation increase from 2018 and the three annual 10% plus inflation increases during 2022-24 would expire in 2025 but the ELI set-aside described below would continue during 2025-2031. Because units underwritten for ELI households generally have more 9% allocation per unit than non-ELI units, Novogradac estimates about 9,000 fewer 9% units will be financed during 2025-31.

[Article continues below.]



Provide a Maximum 50% Boost for ELI units and Set Aside at least 8% of 9% LIHTC Allocations for Buildings with at Least 20% ELI Units

The reconciliation bill would provide a permanent maximum 50% basis boost for units serving ELI tenants if needed for financial feasibility that Novogradac estimates could finance an additional 53,600 affordable rental homes in 4% and 9% LIHTC properties over 2022-2031. This estimate includes ELI units in 9% properties not accounted for under the 9% allocation increase estimate above. The reconciliation bill states that not more than 92% of 9% LIHTC allocations can be for buildings that reserve less than 20% of their units underwritten for ELI households. ELI households are those earning at or below the greater of 30% of the area median income or the federal poverty line. To qualify for the proposed 50% basis boost, at least 20% of the units in the property would have to be underwritten and set aside for ELI households and the increased boost is available only for those units set aside for ELI households. The reconciliation bill further limits the availability of the 50% ELI basis boost to no more than 13% of 9% LIHTC allocations or properties financed by no more than 8% of each state’s PAB volume cap.

Given the deep subsidies required to make rental homes affordable to ELI households, additional tools—such as the targeted maximum 50% basis boost proposed—are needed to make properties financially feasible. The purpose of the 50% ELI basis boost is to reduce hard debt as much as possible to offset for the reduction in income generated by the lower rents charged to the ELI rental homes.

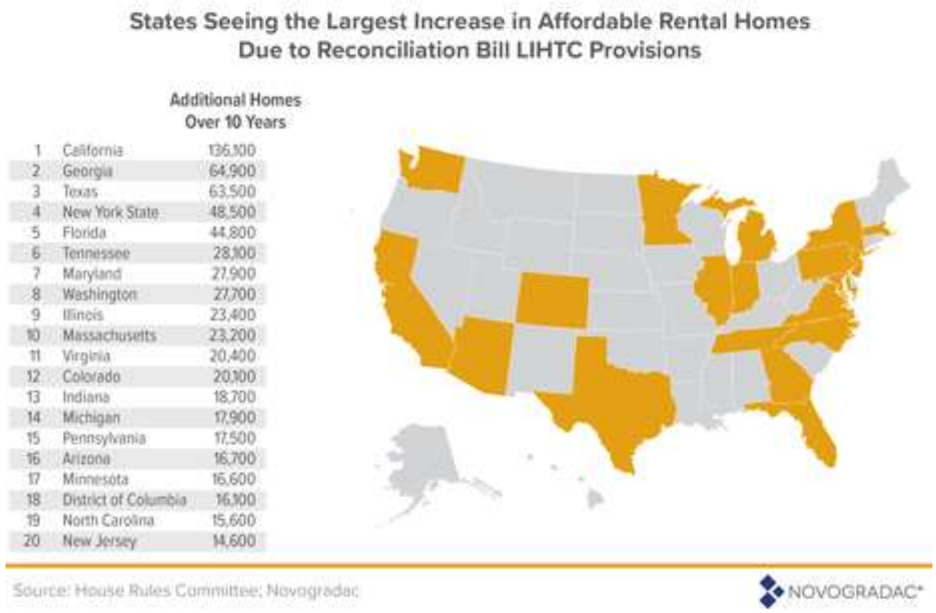
Novogradac estimated the number of rental homes that could be financed with the increased equity and lower debt service. In the case of 4% LIHTC properties, the ELI basis boost would likely be used in properties financed under the Rental Assistance Demonstration program, with its focus on preserving public housing properties by leveraging private investment, or other federally assisted properties serving ELI households.

Provide 30% Basis Boosts for Native American Properties

The reconciliation bill would designate Native American areas as difficult development areas, as proposed by the reconciliation bill, would help to alleviate one of the difficulties specifically related to development in these areas. Because land belonging to reservations cannot be used to collateralize a loan, and also cannot be sold, it is difficult to obtain conventional debt for properties in Native areas. The additional LIHTCs that would result from this particular basis boost would help to address affordable housing needs on tribal lands by reducing the amount of debt a development would need to take on, thus also reducing the risk to the lender. Native American LIHTC properties also tend to have lower LIHTC equity pricing, thereby reducing the amount of equity available. As with the similar proposals in AHCIA, the basis boost provisions included in the reconciliation bill would expand upon existing boosts already allowed under current law. Basis boosts increase a property’s maximum LIHTC allocation, thus allowing that property to generate more LIHTC equity. This increase in equity makes new construction or rehabilitation of an existing property more financially feasible. The additional LIHTCs would help address that issue as well. This provision is effective for properties placed in service after Dec. 31, 2021.

Impact for States

Below are the states that Novogradac projects could gain the largest number of affordable rental homes over a decade if these provisions were enacted:



This table lists Novogradac's estimates of affordable rental homes, jobs and economic impact by state if these provisions were enacted:

[Article continues below.]

Estimates of Rental Homes, Jobs, Wages & Business Income and Tax Revenue Generated Under Reconciliation Bill LIHTC Provisions Over 10 Years

	Rental Homes	Jobs	Business Income	Federal, State and Local Taxes
Alabama	2,900	4,300	$490,037,900	$169,396,400
Alaska	800	1,200	$135,182,900	$46,730,000
Arizona	16,700	25,000	$2,821,942,600	$975,489,300
Arkansas	5,800	8,700	$980,075,900	$338,792,700
California	136,100	203,900	$22,997,987,300	$7,949,946,100
Colorado	20,100	30,100	$3,396,469,800	$1,174,092,000
Connecticut	7,200	10,800	$1,216,645,900	$420,570,300
Delaware	2,500	3,700	$422,446,500	$146,031,300
District of Columbia	16,100	24,100	$2,720,555,400	$940,441,800
Florida	44,800	67,100	$7,570,241,200	$2,616,881,600
Georgia	64,900	97,200	$10,966,711,100	$3,790,973,600
Hawaii	5,900	8,800	$996,973,700	$344,634,000
Idaho	1,700	2,500	$287,263,600	$99,301,300
Illinois	23,400	35,100	$3,954,099,200	$1,366,853,300
Indiana	18,700	28,000	$3,159,899,800	$1,092,314,400
Iowa	6,600	9,900	$1,115,258,800	$385,522,700
Kansas	2,100	3,100	$354,855,100	$122,666,300
Kentucky	12,800	19,200	$2,162,926,100	$747,680,500
Louisiana	5,100	7,600	$861,790,900	$297,903,900
Maine	400	600	$67,591,400	$23,365,000
Maryland	27,900	41,800	$4,714,502,900	$1,629,709,700
Massachusetts	23,200	34,800	$3,920,303,500	$1,355,170,800
Michigan	17,900	26,800	$3,024,716,900	$1,045,584,400
Minnesota	16,600	24,900	$2,805,044,700	$969,648,100
Mississippi	2,700	4,000	$456,242,200	$157,713,800
Missouri	3,000	4,500	$506,935,800	$175,237,600
Montana	1,600	2,400	$270,365,800	$93,460,100
Nebraska	1,300	1,900	$219,672,200	$75,936,300
Nevada	8,800	13,200	$1,487,011,700	$514,030,300
New Hampshire	900	1,300	$152,080,700	$52,571,300
New Jersey	14,600	21,900	$2,467,087,500	$852,823,000
New Mexico	6,200	9,300	$1,047,667,300	$362,157,700
New York State	48,500	72,700	$8,195,462,000	$2,833,008,000
North Carolina	15,600	23,400	$2,636,066,100	$911,235,600
North Dakota	800	1,200	$135,182,900	$46,730,000
Ohio	14,500	21,700	$2,450,189,700	$846,981,800
Oklahoma	6,800	10,200	$1,149,054,500	$397,205,200
Oregon	11,000	16,500	$1,858,764,600	$642,537,900
Pennsylvania	17,500	26,200	$2,957,125,500	$1,022,219,400
Rhode Island	1,800	2,700	$304,161,500	$105,142,600
South Carolina	5,900	8,800	$996,973,700	$344,634,000
South Dakota	900	1,300	$152,080,700	$52,571,300
Tennessee	28,100	42,100	$4,748,298,600	$1,641,392,300
Texas	63,500	95,100	$10,730,141,000	$3,709,196,000
Utah	13,800	20,700	$2,331,904,700	$806,093,000
Vermont	700	1,000	$118,285,000	$40,888,800
Virginia	20,400	30,600	$3,447,163,400	$1,191,615,700
Washington	27,700	41,500	$4,680,707,200	$1,618,027,200
West Virginia	600	900	$101,387,200	$35,047,500
Wisconsin	13,900	20,800	$2,348,802,500	$811,934,200
Wyoming	100	100	$16,897,900	$5,841,300
Guam	100	100	$16,897,900	$5,841,300
Northern Marianas	100	100	$16,897,900	$5,841,300
Puerto Rico	300	400	$50,693,600	$17,523,800
Virgin Islands	100	100	$16,897,900	$5,841,300

Source: House Rules Committee; Novogradac

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Other Important Provisions
In addition to these major unit-financing provisions analyzed above, the reconciliation bill would also:

- Allow **section 48 renewable energy investment tax credit (ITC) not to reduce LIHTC basis**, which would facilitate the financing of solar panels on LIHTC properties. This provision would be effective for facilities placed into service after Dec. 31, 2021.
- Provide an **additional 20% credit for the solar ITC** if the solar facility is placed in service in connection with a qualifying **low-income residential building**, or an **additional 10% credit** if the facility is located in a **low-income community**, as defined by the NMTC statute (section 45D). The score for this proposal is incorporated in the score for the ITC extension and modification. The annual capacity limitation would be 1.8 gigawatts for each calendar year 2022 through 2031 and zero for calendar years thereafter. The annual capacity limitation would be increased by the amount of any unused allocations from the preceding calendar year, but not beyond 2033
- **Limit the use of qualified contracts** by repealing the option for future allocations or allocations determined after Jan. 1, 2022, and changing the formula that determines the qualified contact purchase price on existing properties to fair market value, taking into consideration the rent restriction on the qualified low-income portion of the property, effective for qualified contract requests made to the allocating agency after date of enactment; and
- **Modify the existing statutory right of first refusal (ROFR) and clarify of rights relating to building purchase** by changing the ROFR safe harbor into a purchase option safe harbor. For existing agreements, the provision would clarify, for purposes of the safe harbor, that the right to acquire the building includes the right to acquire all of the partnership interests relating to the building. It would also clarify that the right to acquire the building includes the right to acquire assets held for the development, operation or maintenance of the building. For existing agreements, the provision would also clarify that the ROFR safe harbor may be satisfied by the grant of a purchase option. A ROFR may be exercised in response to an offer by a related party; a bona fide third-party offer is not needed. A ROFR may be exercised without the approval of any owner of a credit project. Finally, the provision would amend the minimum purchase price to exclude exit taxes. For new properties, the purchase option provision would be effective for agreements entered into or amended after date of enactment, and for existing properties, the clarification on the ROFR safe harbor would be effective retroactively.

Next steps
The House is scheduled to consider the legislation the week of Nov. 15 after the rules for considering the bill on the House floor were approved Nov. 5. The House is not in session the week of Nov. 8, as it often does not schedule votes during the week of Veteran’s Day (Nov. 11). The passage of House floor rules for the legislation was made possible by an agreement between House moderate Democrats, especially those in the

Problem Solvers and Blue Dog caucuses, and House progressive Democrats. That agreement also allowed the Infrastructure Investment and Jobs Act, the bipartisan infrastructure legislation to be voted upon Nov. 5 and subsequently pass the House toward enactment after President Biden signs the bill as expected.

One key component of the agreement was the importance of the forthcoming score of the legislation by the Congressional Budget Office, which may or may not confirm the cost estimates provided by the White House. However, even the cost estimates differ, House moderate Democrats pledged to work with leadership to resolve these differences and consider the legislation. Such a resolution may postpone House consideration of the bill until the week of Thanksgiving.

If the bill passes the House before Thanksgiving, the Senate is expected to take up the legislation directly on the floor the week of Nov. 29. Before it can be voted upon, the Senate Parliamentarian must review the entire bill for compliance with the Byrd Rule governing budget reconciliation bills in the Senate. Such a review may lead to certain proposals being dropped and other changes being made. If so, the House would need to consider the bill again if the Senate passes such a revised bill. It may take until Christmas or New Year’s before final legislation could be enacted. Stay tuned.