

# Now & Next

## Affordable Housing Alert

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### **ASAP Housing Act introduced to end volume cap constraints**

By Meghan C. Altidor and Deborah VanAmerongen

New legislation to exempt affordable housing transactions from limits on volume cap would radically increase the production of affordable housing over the next 10 years.



#### **What's the impact?**

- The ASAP Housing Act was introduced in the House by Congressman Ritchie Torres of New York and, if enacted, would expand the number of affordable housing transactions that could be financed each year for the next decade.

On October 24, 2024, Congressman Ritchie Torres and New York affordable housing leaders gathered in the Bronx to [announce](#) the introduction of the Accelerated Supply of Affordable Production Housing Act (the [ASAP Housing Act](#)). The ASAP Housing Act proposes to amend the Internal Revenue Code of 1986 (the IRC) to create an exception for private activity bonds under Section 146(h) of the IRC. This exception would allow these types of bonds to be exempt from to a federal limitation on the amount of tax-exempt bonds that each state can issue each year based on its population.

Tax-exempt private activity bonds are a primary financing tool for affordable housing production, and the ASAP Housing Act ensures that projects that finance at least 50% with these bonds (known as the “50% Test”) are entitled to an automatic award of 4% in [Low-Income Housing Tax Credits](#) (LIHTCs).

The other primary type of low-income tax credits, the 9% LIHTC, requires a competitive award through a state allocation process, whereas the 4% LIHTC does not have that requirement. The bond/tax credit coupling in turn allows projects to leverage additional funding sources for affordable housing, such as private bank construction loans and state and local subsidies. The ASAP Housing Act would take effect on December 31, 2024, and apply to bonds issued from 2025 through 2034.

While transportation and qualified green building projects receive exceptions from federal limits on state volume caps on the issuance of tax-exempt private activity bonds, affordable housing projects do not. As a result, most states in the country have many more affordable housing projects that they would like to finance than they are able to. In New York in particular, volume cap constraints have created long queues of pending projects. The New York Housing Conference worked in partnership with Torres on this legislation, and [their estimate](#) is that this Act could at least double affordable housing production in New York over the next 10 years. This Act would treat affordable housing similarly to other public infrastructure projects that serve an ultimate public good.

As Torres noted in the legislation announcement, “[i]nstead of capping the volume of affordable housing, we should be capping the cost of housing. And the best way to cap the cost of housing is to unc cap the volume of housing.” The ASAP Housing Act would unlock the potential to speed up pre-closing timelines for bond-financed projects and create a 10-year exemption for projects with rents affordable to households earning up to 80% of the area median income.

Nixon Peabody will be eagerly tracking progress of the ASAP Housing Act to enactment, as we also track reform proposals for the 50% Test requirement.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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