To: **Biden-Harris Transition Agency Review Teams for the Department of the Treasury, the Department of Housing and Urban Development, and the Department of Agriculture**

From: **The A Call To Invest In Our Neighborhoods (ACTION) Campaign**

Date: **December 7, 2020**

Re: **Opportunities to Increase the Supply of Affordable Housing through the Low-Income Housing Tax Credit**

On behalf of the A Call To Invest in Our Neighborhoods (ACTION) Campaign, the undersigned members of the ACTION Campaign's Steering Committee look forward to working with the Biden Administration to address our nation's severe shortage of affordable housing using the Low-Income Housing Tax Credit (Housing Credit) program. The ACTION Campaign is a nationwide coalition representing over 2,300 national, state, and local organizations and businesses advocating to protect, expand and strengthen the Housing Credit.

The Housing Credit is our nation's most successful tool for encouraging private investment in the production and preservation of affordable rental housing. Since it was created in 1986, the Housing Credit has financed nearly 3.5 million affordable apartments, providing home to roughly 8 million low-income households in cities, suburbs, and rural areas, while transferring risk from the taxpayer to the private sector. With more than 10 million households already paying more than half of their rent before the COVID-19 pandemic began, and the need for affordable housing growing at a staggering rate since then, producing and preserving affordable housing is more important than ever.

President-Elect Biden has long recognized the critical role the Housing Credit plays in the production and preservation of affordable housing. As such, President-Elect Biden has pledged to invest an additional $10 billion in the Housing Credit—a proposal the ACTION Campaign strongly supports.

In addition to this significant and sorely needed investment, there are ways the Biden Administration could further increase affordable housing production and preservation with the Housing Credit, both by supporting congressional action and through regulatory changes the new Administration could make once it takes office. To that end, we request the opportunity to meet as soon as possible with the Biden Administration about the following recommendations to expand and strengthen the Housing Credit.

Legislative Action

We urge the Biden Administration to **support the Affordable Housing Credit Improvement Act** (AHCIA, S. 1703 and H.R. 3077 in the 116th Congress). This comprehensive legislation to expand and strengthen the Housing Credit has broad bipartisan support in Congress. As of this writing, 41 Senators and 232 members of the House of Representatives have cosponsored the bill. It also has the consensus support of the affordable housing community, including state Housing Credit administrators, affordable and fair housing advocates, nonprofit and for-profit developers, investors, and other practitioners.

The AHCIA not only would increase Housing Credit authority—allowing us to make significant strides towards addressing the shortage of affordable housing—but would also make important programmatic changes to simplify program requirements, increase flexibility, support preservation, facilitate development for hard to reach populations, address fair housing concerns, and promote energy efficiency.

The COVID-19 pandemic and resulting economic downturn is threatening the housing stability of millions of low-income Americans. While the ACTION Campaign is committed to advancing the AHCIA, we also urge the incoming Biden Administration to press Congress to take immediate targeted action to support Housing Credit production, which has been impacted directly by the pandemic.

Housing Credit properties that are financed with tax-exempt private activity bonds (commonly referred to as 4 percent Credit properties) are particularly vulnerable in the current economic climate for two reasons. First, the amount of equity for which these properties are eligible is determined by the so called "credit rate," which fluctuates monthly based on federal borrowing rates. Federal borrowing rates, which have been depressed for some time, reached record lows this year, as the Federal Reserve lowered rates in order to protect the U.S. economy. This has had the unintended impact of reducing the Housing Credit equity individual bond-financed developments are able to receive, threatening their viability.

Second, current law requires that tax-exempt bonds finance at least 50 percent of project costs in order for a property to qualify for 4 percent Housing Credits. However, the pandemic has disrupted supply of construction materials, the availability of construction workers, and development timelines, which has led to increased costs, putting some deals at risk because they now are unable to meet this 50 percent threshold.

For these reasons, we urge the new Administration to press Congress to **enact a minimum 4 percent Housing Credit rate** for bond-financed properties and allow developments to access 4 percent Housing Credits by **lowering the "financed-by" test from 50 percent to 25 percent**.

Regulatory Action

The Biden Administration will also have the opportunity to strengthen the Housing Credit using its regulatory authority. The following are examples of regulatory reforms the new Administration's team at the U.S. Department of Treasury and the Internal Revenue Service (IRS) could make that would allow the program to better serve low-income households:

- **Publish New Regulations to Align Housing Credit Program Rules with the Violence Against Women Act (VAWA).** When VAWA was reauthorized in 2013, the Housing Credit became a "covered program," extending VAWA protections to Housing Credit residents. However, IRS has not published regulations clarifying the interaction between VAWA and Housing Credit requirements, without which, certain aspects of VAWA compliance in Housing Credit properties are ambiguous.

- **Modify current Housing Credit casualty loss guidance to allow for more reasonable rebuilding periods.** IRS policy (Office of Chief Counsel Memorandum Number 200913012) requires owners of Housing Credit properties that experience a casualty loss, such as a flood or fire, to have the property back in service by December 31 of the calendar year, regardless of when during the year the loss occurred, in order to avoid recapture of Housing Credits. This is especially problematic when the casualty loss occurs near the end of the calendar year because the owner may not have sufficient time to make repairs before the end of year deadline. The only exception to this rule IRS provides is for casualty losses resulting from presidentially declared major disasters, in which case IRS delegates the authority to set the timeframe for repair to the state Housing Credit agency, which may provide up to 25 months from the date of the casualty loss. IRS should delegate this authority to the state Housing Credit Agency for all casualty losses, regardless of whether they occurred due to a major disaster and provide further flexibility for the state Housing Credit agency to waive the 25-month period and provide a longer timeframe for repair in extreme circumstances.

- **Include relocation expenses in rehabilitation expenditures to ensure tenants' safety.** In 2015, IRS issued an update to the Form 8823 Audit Technique Guide taking the general position for all real estate that the cost of relocating residents is deductible, and therefore cannot be capitalized. Prior to that, Housing Credit developers included the cost of relocation under their rehabilitation expenditures when preserving affordable housing with the Housing Credit, as it may be safer, more expedient, and more efficient if residents are relocated during rehabilitation. Because of this change in policy, relocation costs are no longer eligible to be covered by Housing Credit equity, making rehabilitations more difficult and time consuming, and potentially adding unnecessary costs while sacrificing resident safety. IRS should provide an exception for Housing Credit rehabilitation, allowing costs incurred in connection with a rehabilitation of a building, including relocation, to be capitalized.

- **Strengthen oversight by preventing "planned foreclosures" of Housing Credit developments.** By law, Housing Credit properties must remain affordable for at least 30 years. The first 15-year period is regulated through the tax code under threat of recapture of tax credits; the second 15-year period is regulated through an extended use agreement administered by the state Housing Credit agency. Under current law, if a property is acquired by foreclosure during the second 15-year period, the affordability restrictions terminate unless the Secretary of the Treasury determines that the acquisition was part of an arrangement to terminate those restrictions and not a legitimate foreclosure. However, in practice, it is very difficult for the Treasury Secretary to make such a determination about individual properties. Therefore, Treasury should delegate this authority to state Housing Credit agencies, which are better able to make a determination as to whether a foreclosure was is simply for the purpose of terminating affordability restrictions or if it was otherwise warranted.

We would appreciate the opportunity to meet with the Biden Administration's team at the Treasury Department once key individuals are in place to speak about these and other regulatory steps the ACTION Campaign would recommend.

There are also a number of regulatory issues outside of Treasury's and IRS's purview that have a substantial impact on affordable housing generally and the Housing Credit specifically, including Community Reinvestment Act regulations, initiatives at the Department of Housing and Urban Development and Department of Agriculture's Rural Housing Service, and actions taken by the Federal Housing Finance Authority and the Government Sponsored Entities. We welcome the opportunity to work with the Biden Administration to ensure that they all contribute to a robust affordable housing system.

Thank you for this opportunity to provide feedback on how the Biden Administration could support the Housing Credit. We stand ready to assist you in any way.

ACTION Campaign Co-Chairs
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