NCSHA
National Council of State Housing Agencies

October 15, 2024

The Honorable Mike Kelly
Chair, Community Development Tax Team
House Ways and Means Committee

The Honorable Claudia Tenney
Vice Chair, Community Development Tax Team
House Ways and Means Committee

The Honorable Darin LaHood
Member, Community Development Tax Team
House Ways and Means Committee

The Honorable Blake Moore
Member, Community Development Tax Team
House Ways and Means Committee

The Honorable Mike Carey
Member, Community Development Tax Team
House Ways and Means Committee

Dear Representatives Kelly, Tenney, LaHood, Moore, and Carey:

The National Council of State Housing Agencies (NCSHA), on behalf of the nation's state Housing Finance Agencies (HFAs), greatly appreciates the opportunity to submit comments to the House Ways and Means Committee's Community Development Tax Team as it considers legislative solutions to our country's affordable housing challenges as part of tax action to extend the 2017 Tax Cuts and Jobs Act (TCJA).[1] The scheduled expiration of many of its provisions at the end of 2025 provides an opportunity to ensure the tax code helps more hard working American families, seniors on fixed incomes, and our nation's most vulnerable households to afford a safe and stable place to call home.

In establishing the Community Development Tax Team, Chairman Smith has signaled his understanding that tax action cannot ignore what has become one of the most pressing problems in generations—our country's insufficient supply of affordable housing. The affordability crisis is harming both homeowners and renters. Millions of potential homebuyers have been priced out of the market due to the dearth of available starter homes and mortgage interest rates that are trending higher than they have in decades. At the same time, the number of renters facing cost burdens has reached an all-time high, as rents have skyrocketed, and demand far outpaces supply in urban, suburban, and rural communities alike. The high cost of housing is driving up inflation, preventing families from saving, forcing seniors to choose between paying their rent or buying medication, and harming economic development as the workers businesses need cannot afford to live in the communities in which those companies are located. The housing crisis is unsustainable, and it is past time for Congress to act.

[1] NCSHA is a nonprofit, nonpartisan organization. None of NCSHA's activities related to federal legislation or regulation are funded by organizations that are prohibited by law from engaging in lobbying or related activities.

The tax code is the most powerful mechanism available for solving our nation's housing crisis. We have seen how it can be used to incentivize private investment in affordable housing through the Low Income Housing Tax Credit (Housing Credit) and tax-exempt Housing Bonds. These essential tax programs are model public-private partnerships with proven track records. They should be the basis for tax policy solutions to our challenges.

All five of you have been leaders in affordable housing by supporting the Housing Credit and Housing Bond programs through legislation like the Affordable Housing Credit Improvement Act (AHCIA; S. 1557 / H.R. 3238), the Affordable Housing Bond Enhancement Act (AHBEA; S. 1805), as well as the Neighborhood Homes Investment Act (NHIA; S. 657 / H.R. 3940). These three bills, which NCSHA has endorsed, are critical components of a comprehensive response to the housing crisis using the tax code.

NCSHA proposes that the Tax Team build on the Housing Credit and Housing Bonds by expanding their reach, modernizing their rules, and using these models to develop new tools that can meet the needs we cannot currently address with the programs we have now.

Invest to Expand Supply

The insufficient supply of affordable housing has been a major problem for low-income households for decades, but that problem has grown exponentially in recent years due to a perfect storm that combines years of inadequate investment, soaring construction costs, and stubbornly high interest rates. At the same time that production of affordable housing is challenged by these market forces, robust household growth and regulatory red tape at the local level are exacerbating these challenges. Moreover, where once insufficient supply of affordable housing was a problem most visible for those with the lowest incomes, it has become a growing obstacle for the middle class and a major hindrance to economic growth.

We are at a watershed moment that demands bold solutions. It is not enough to tinker around the edges by tweaking programs without making a major investment. For this reason, NCSHA urges you to go big on supply in two ways: temporarily remove the cap on private activity Housing Bonds and significantly increase the cap on Housing Credit authority.

Remove the cap on Housing Bonds on a Temporary Basis

Housing Bonds—including Mortgage Revenue Bonds (MRBs) and multifamily Housing Bonds—are critical financing tools used by state HFAs to finance low-interest mortgages for low- and moderate-income home buyers and to acquire, construct, and rehabilitate multifamily housing for low-income renters. Both fall under the "private activity bond" (PAB) volume cap, which limits these resources to no more than $125 per capita or $378,230,000 per state as of 2024. State and local governments also rely on this finite resource to finance a plethora of economic development projects such as water and sewer facilities, energy facilities, high -speed rail, broadband projects, carbon capture facilities, student loans, and more.

The PAB volume cap sets up a zero-sum game in which housing must compete with these other needs for what is an insufficient amount of bond authority in many states. In fact, approximately two-thirds of states—including Pennsylvania, New York, Illinois, Utah, and Ohio—have demand for PABs that either exceeds or equals their annual authority.

Given the gravity of the housing crisis and the need to make up ground lost due to decades of inadequate investment, we recommend that for a five year period of time Congress remove Housing Bonds from the PAB volume cap to optimize production of affordable multifamily housing and extend the American dream of homeownership to the many qualified first time homebuyers that are currently stuck in the rental market because of prohibitive mortgage interest rates.

While Housing Bonds fall under the PAB volume cap, Congress has long provided unlimited bond authority for other types of private activities. For example, bonds used to finance airports, docks and wharves, and nonprofit entities such as hospitals are not subject to the volume cap. We urge you to similarly prioritize affordable housing for a five-year period. Such a reprieve from the cap would allow states and local governments to take considerable action to alleviate the demand for affordable housing.

Raise the cap on Housing Credit authority

The AHCIA would restore a cut to the Housing Credit program and further expand that proven program by 50 percent. Congressman LaHood and Congresswoman Tenney are lead sponsors of this legislation, and the other members of the Community Development Tax Team are among its 271 House cosponsors.

The AHCIA, which was first introduced in the House in 2016, has been the launching point for several important changes to the Housing Credit enacted into law. While the bill has long garnered exceptional congressional support, Congress has not followed through on its signature provision of expanding the Housing Credit program's resources beyond a modest, temporary increase that expired in 2021.

With major tax legislation expected in the next Congress, you now have the opportunity to enact this cap increase. It is imperative that Congress find the political will to do so. The 50 percent increase is the bare minimum needed to meaningfully expand Housing Credit production.

Facilitate More Efficient Use of Existing Private Activity Bond Authority

As noted above, many states suffer from insufficient PAB authority to meet their need. They are further hampered by outdated federal rules that force them to use bond cap in an inefficient manner and deny them the flexibility they need to redirect resources to respond to market changes. We urge Congress to make two changes that would allow states to optimize their existing bond authority: Lower the bond financing threshold for 4 percent Housing Credit properties and require the Internal Revenue Service (IRS) to allow states to redesignate for affordable housing purposes carryforward PAB authority that would otherwise expire.

Lower the Bond Financing Threshold

One of the most important provisions of the AHCIA (Section 313) would lower the bond financing threshold from 50 percent of costs to 25 percent. Under current law, a development must have at least 50 percent of total costs financed with multifamily Housing Bonds if it is to be eligible for the full amount of 4 percent Housing Credit authority. This arbitrary rule not only forces states to use their finite bond authority in an inefficient manner, but also adds unnecessary cost to developments, as it results in owners paying higher issuance fees for excess bond debt the property cannot support over the long run and undertake a refinancing after the property has placed in service to right size the debt, even though the new mortgage is almost always at a higher interest rate than the original bond-financed mortgage.

The AHCIA lowers the bond financing test to 25 percent, which is more consistent with the actual amount of debt Housing Credit properties can typically support. This change would result in lower bond issuance fees—which contributes to the overall development cost—and potentially allow owners to maintain a smaller bond-financed mortgage at a lower interest rate than what the developer would otherwise get from conventional permanent financing. Most importantly, the change would allow states that are bond cap constrained to use their limited bond authority to best meet their unique needs for PAB-eligible projects, whether affordable housing or not.

Optimize Carryforward PAB Authority for Affordable Housing

Under current law, if a state does not use all its bond authority in the initial year in which it was received, it may carry forward that authority for up to three years. To do so, the state must file Form 8328 with the IRS designating how it will use bond cap it carries forward (carryforward authority). However, under IRS rules, the designation, once made, is irrevocable. If the carryforward authority is not used for the designated purpose within three years, it expires. Thus, if a state designates a set portion of its carryforward authority for a specific project that does not move forward for whatever reason, the state is unable to re-designate that carryforward authority for another purpose and loses this valuable resource.

The AHBEA would expand the amount of bond resources available for housing by permitting states to re-designate carryforward authority for either single-family or multifamily housing during the three-year period and permit HFAs to redesignate multifamily PAB carryover authority as MRB authority and vice-versa, so that when demand changes or interest rates rise or fall, they can more efficiently respond.

Strengthen the Housing Credit

In addition to increasing Housing Credit authority, the AHCIA and several other important bills would make key changes to the Housing Credit program that would further expand production and streamline red tape, prevent the early termination of Housing Credit properties from the affordable housing stock, and facilitate more private investment in the program. NCSHA supports all provisions in the AHCIA, but we would like to highlight those that are most important from the perspective of the state agencies that partner with the federal government in the program's administration.

Provide Greater Flexibility for States to Provide Basis Boosts

The AHCIA would allow states to provide basis boosts to certain properties that are ineligible for a basis boost under current law. A basis boost allows states to provide a limited amount of additional credit authority to properties that otherwise would not be financially feasible. In particular, 4 percent developments, particularly those located in rural and Native American areas or those with units targeted to serve extremely low-income (ELI) households, often need more credit authority than is otherwise available to such properties. NCSHA supports the AHCIA provisions to provide up to 30 percent more authority to 4 percent Housing Credit properties based on the state agency's determination of need (Section 308) and to all properties in rural areas and on Native American lands (Sections 501 and 401, respectively). NCSHA also supports the AHCIA provision (Section 307) that would allow states to provide up to a 50 percent basis boost to developments in which a portion of the units serve ELI households.

Close the Qualified Contract Loophole

While increasing supply is paramount to addressing the affordable housing crisis, it is also essential that we protect the investments the taxpayer has already made in existing Housing Credit properties by ensuring properties remain affordable for at least the full 30-year period required by the tax code. Unfortunately, a loophole in the code—the qualified contract provision—effectively allows owners to force state agencies to prematurely remove affordability restrictions on certain properties with no tax penalty to the owner. Qualified contracts have resulted in the early termination of approximately 115,000 units already, and we continue to lose between 6,000 and 11,000 units every year.

NCSHA supports a provision in the Decent Affordable Safe Housing for All (DASH) Act (S. 680 / H.R. 6970) that would prevent the loss of additional units by removing the qualified contract option from the tax code for future developments and establishing a fair market value price for qualified contract offers on existing developments should an owner decide to sell their property during the affordability period. This would allow the restrictions to transfer with the property should a sale proceed. The Joint Committee on Taxation provided a score for this change during the 117th Congress, estimating that it would raise $466 million in revenue if enacted.

Facilitate GSE Investment in Rural Housing Credit Properties

Lack of clarity related to whether the housing Government Sponsored Enterprises (GSEs) Fannie Mae and Freddie Mac might be considered Tax Exempt Controlled Entities (TECEs) because of their relationship to the government in accordance with the preferred stock purchase agreement with the U.S. Treasury Department is impeding their ability to invest in multi-investor Housing Credit funds. These multi-investor funds are the primary source of investment in many rural Housing Credit developments.

Numerous members of Congress on both sides of the aisle and in both chambers have joined NCSHA and other rural housing advocates in calling on the IRS and the Treasury Department to clarify that the GSEs are not TECEs, but Treasury has indicated it does not have the authority to do this. Unfortunately, it appears that congressional action is needed to fix this problem. We support Congressman LaHood's legislation, the Preserving Rural Investments Act (S. 4933 / H.R. 9267) that would facilitate their ability to invest in rural developments and urge you to include this technical fix in tax legislation.

Modernize the Mortgage Revenue Bond and Mortgage Credit Certificate Programs

The MRB and Mortgage Credit Certificate (MCC) programs are the traditional means by which HFAs help families become first time homebuyers. HFAs use MRBs to reduce mortgage interest rates for lower-income households. With MCCs, HFAs are able to provide MRB-eligible homebuyers that do not receive an MRB mortgage with a tax credit alternative to help them afford to buy a home. However, it has been decades since Congress adjusted their statutory guidelines to optimize outcomes and adjust outdated rules that limit their reach.

The bipartisan AHBEA would make much needed modifications to the MRB and MCC programs to bring them into the 21st century and ensure that states can continue to use them to help American families afford homeownership. NCSHA supports all provisions in the AHBEA, but in particular we would like to highlight the following.

Increase the MRB Financing Limit for Qualified Home Improvement Loans

In addition to home purchase loans, MRBs can also be used to finance home improvement loans for critical repairs and/or energy efficiency upgrades for low- and moderate-income homeowners. However, the MRB home improvement loan limit, set by statute at just $15,000, has not been increased since 1980. This limit effectively makes MRB home improvement loans nonviable.

To ensure that states can use MRBs to help lower income homeowners finance improvements such as installation of a new roof or HVAC system, modifications to help seniors age in place, repair of damage caused by disasters when insurance payments are not available, or to make other repairs that could be the difference between a household remaining in or losing their home, we urge you to raise the MRB home improvement loan limit to at least $50,000 and index it for inflation, as is done in the AHBEA.

Allow MRBs to be Used for Refinancing Loans

Federal tax law generally requires that MRB proceeds be used to finance new mortgages; thereby preventing HFAs from using MRBs to refinance existing mortgages. This means HFAs cannot utilize MRBs to assist homeowners who are facing difficult circumstances and need to refinance their mortgage to remain in their homes. It also means that HFAs will be unable to help working families who purchased a home during the recent high-interest market refinance into a lower-rate loan that could save them hundreds, if not thousands, of dollars a year. Studies show that low- and moderate-income households often struggle to secure a mortgage refinance in the private market.

Congress should amend federal tax law to allow MRBs to be used for refinancing so that low-and moderate-income families can have the same opportunity to refinance as other homeowners.

Repeal Outdated MRB Ten-Year Rule

Finally, Congress should make a simple but impactful change to the MRB program that is currently not included in AHBEA. Tax law requires MRB issuers, once the MRB has been outstanding for ten or more years, to use payments on MRB-financed mortgages to retire the existing MRB obligations rather than make new mortgages for lower-income families.

The Ten-Year Rule is unfair and obsolete. It prevents states from financing millions in MRB loans at a time when such loans are critical to helping working families purchase a home. It is particularly costly in today's environment, with increasing demand for volume cap limiting the amount of MRBs states can issue.

We urge Congress to significantly expand the amount of MRB mortgage financing available to low- and moderate-income households by repealing the Ten-Year rule for repayments on mortgages financed by MRBs outstanding that are received after the repeal's enactment.

Establish the Neighborhood Homes Tax Credit

NCSHA supports the NHIA, which would establish a federal tax credit targeted to the new construction or substantial rehabilitation of affordable, owner-occupied housing located in distressed neighborhoods. There simply is not enough available for-sale housing in many communities. This lack of supply is one of the major barriers to homeownership. The NHIA tackles this challenge while also revitalizing communities that desperately need help.

At a time when our nation is facing an acute shortage of affordable for-sales homes, pricing many working families out of the market, more must be done to expand the supply of affordable homes. The NHIA would establish an innovative public-private partnership based on the Housing Credit model to boost single-family supply and help low-and moderate-income households realize the dream of homeownership. A simple revision to the legislation would enable states to support affordable homebuilding everywhere they and their home builders see a need for it.

Thank you for the opportunity to provide feedback to the Community Development Tax Team. Please do not hesitate to reach out for more information about any of the recommendations herein.

Sincerely,

Stockton Williams

Stockton Williams
Executive Director