

September 23, 2021

The Honorable Charles Schumer  
Majority Leader  
U.S. Senate  
Washington, DC 20510

The Honorable Ron Wyden  
Chairman, Finance Committee  
U.S. Senate  
Washington, DC 20510

Dear Leader Schumer and Chairman Wyden:

The undersigned supporters of the Low-Income Housing Tax Credit (Housing Credit) write to thank you for your leadership on affordable housing and in particular your ardent support for the Housing Credit program. We strongly support the Housing Credit provisions in the reconciliation legislation the House Ways and Means Committee marked up last week and urge the Senate to maintain all of them in its deliberation on reconciliation legislation. The Ways and Means-reported bill not only recognizes the success of the Housing Credit and expands its resources, but would also ensure that the taxpayer and Congress get what they pay for when they invest federal resources in the Housing Credit: *affordability restrictions and tenant protections for no less than 30 years.*

In drafting this legislation, the Ways and Means Committee drew from Chairman Wyden's soon-to-be introduced Decent, Affordable, Safe Housing for All (DASH) Act, which includes provisions that would close the "qualified contract" loophole and protect nonprofits seeking to ensure the ongoing affordability of the Housing Credit properties they have developed by exercising their Right of First Refusal (ROFR). We wish to underscore our support for these two changes in the tax code and our gratitude to Chairman Wyden's for his long-standing leadership in this regard.

As you know, the tax code calls for Housing Credit homes to be affordable for no less than 30 years, yet because of loopholes and lack of clarity in the tax code used by those who value profit over ongoing affordability, we are losing tens of thousands of rental homes after as few as 15 years. These two provisions will stem those losses substantially.

Not only are these provisions the best policies for protecting residents and long-term affordability, but they would also save the federal government money. The Joint Committee on taxation scores closing the qualified contract provision as raising \$466 million in revenue over ten years and reforming the ROFR provision as raising \$751 million in revenue over ten years.<sup>1</sup>

#### Qualified Contracts

Under current law, an owner of a Housing Credit property, as early as 14 years after the property is placed in service, may request that the state Housing Credit agency find a buyer willing to pay "the qualified contract price" for the property. Unfortunately, the qualified contract price, set by a statutory formula, in nearly all cases significantly exceeds the market value of the property as affordable housing. As a result, it is rare for the state agency to find a willing buyer at that price. If the state fails to do so within one year of receiving the owner's request, the owner is free to either sell the property at

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<sup>1</sup> Estimated Budgetary Effects of the Revenue Provisions of Subtitles F, G, H, and J of the Budget Reconciliation Legislation Recommendations Related to Infrastructure Financing, Green Energy, Social Safety Net, and Drug Pricing, Joint Committee on Taxation, September 11, 2021

market value without any deed restrictions, or continue to own and manage the property charging market rents after a three-year rent protection period for existing tenants. As of the end of 2020, well over 93,000 affordable rental homes nationwide had been lost because of qualified contracts, with thousands more lost every year.<sup>2</sup>

Senator Wyden's DASH Act and the Ways and Means Committee-reported reconciliation bill would effectively stop this practice by repealing the qualified contract option as an early opt-out for newly financed properties and correcting the statutory price for purchase of existing properties so that it is based on fair market value of the property as affordable housing.

### Nonprofit Right of First Refusal

In recent years, we have observed troubling changes in the Housing Credit industry as outside capital buys up control of Housing Credit investor limited partnerships with the goal of extracting resources out of affordable housing properties after the end of the initial 15-year compliance period, contrary to the intent of Congress. Congress intended that mission driven nonprofit sponsors of Housing Credit properties, upon Year 15, would exercise their statutorily given ROFR and take full ownership of the properties they develop, but these outside investors are preventing that from happening. Instead, we are seeing a growing number of troubling legal disputes and litigation that drain nonprofit general partners' resources and threatens the long-term affordability of Housing Credit properties.

Specifically, by disputing the transfer of property to a nonprofit through the ROFR, private investors can extract unanticipated residual value from affordable housing properties. Recognizing that nonprofit general partners often do not have the resources to litigate these issues in court, these investors leverage a profitable cash payment or the sale of the affordable property in return for leaving the partnership, undermining the long-term viability of the properties.

Senator Wyden's DASH Act and the Ways and Means Committee-reported reconciliation bill would make it far more difficult for these outside investors to continue to exploit Housing Credit properties by changing the ROFR to a simple purchase option for newly financed properties. The language in these bills also clarifies that, for existing properties, the ROFR applies to all partnership interests, including assets relating to the building such as reserve funds, and that the nonprofit may exercise its ROFR with or without the approval of the limited partner and in response to any offer, including an offer by a related party.

It is not enough that we build more affordable housing. We must also protect the investments we have made already in affordable housing properties and stop premature losses. We thank you for your commitment to low-income households who desperately need affordable homes, and urge you to ensure that the Senate maintains these two provisions and all of the Housing Credit provisions contained in the Ways and Means-passed language in the final reconciliation legislation.

Sincerely,

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<sup>2</sup> Data collected from state Housing Credit Agencies by the National Council of State Housing Agencies.

California Housing Partnership  
Capital Impact Partners  
Cinnaire  
Citizens' Housing and Planning Association  
Community Affordable Housing Equity Corporation  
Community Economic Development Assistance Corporation  
Council of Large Public Housing Authorities  
CSH  
Enterprise Community Partners  
Evernorth  
Florida Housing Coalition  
Harborlight Community Partners  
Housing Partnership Network  
IFF  
Klein Hornig, LLP  
LeadingAge  
Local Initiatives Support Corporation/National Equity Fund  
Low Income Investment Fund  
Merritt Community Capital  
Mountain Plains Equity Group, Inc.  
Massachusetts Housing Investment Corporation  
National Affordable Housing Management Association  
National Affordable Housing Trust  
National Association of Affordable Housing Lenders  
National Association of Housing and Redevelopment Officials  
National Association of Local Housing Finance Agencies  
National Association of State and Local Equity Funds  
National Council of State Housing Agencies  
National Housing Conference  
National Housing Law Project  
National Housing Trust  
National Low Income Housing Coalition  
National NeighborWorks Association  
Ohio Capital Corporation for Housing  
Presbyterian Villages of Michigan  
Preservation of Affordable Housing, Inc.  
Public Housing Authorities Directors Association  
Purpose Built Communities  
Reinvestment Fund  
Renewal Housing Associates  
Retirement Housing Foundation  
Stewards of Affordable Housing for the Future  
Supportive Housing Network of New York  
The Community Builders  
The NHP Foundation

VCDC  
Volunteers of America  
Wesley Housing Development Corporation

cc:

The Honorable Debbie Stabenow  
The Honorable Robert Menendez  
The Honorable Benjamin L. Cardin  
The Honorable Michael F. Bennet  
The Honorable Mark. R. Warner  
The Honorable Maggie Hassan  
The Honorable Elizabeth Warren

The Honorable Maria Cantwell  
The Honorable Thomas R. Carper  
The Honorable Sherrod Brown  
The Honorable Bob Casey  
The Honorable Sheldon Whitehouse  
The Honorable Catherine Cortez Masto