

September 16, 2021

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Speaker Pelosi:

This week, the House Ways and Means Committee marked up what we believe is the most important piece of tax legislation Congress has considered in decades for combating our nation's severe and growing affordable housing crisis. We applaud Committee Chairman Richard Neal (D-MA) for his leadership, not only for recognizing the success of the Low-Income Housing Tax Credit (Housing Credit) and expanding its resources, but also for ensuring 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*.

As such, we want to draw your attention to Housing Credit reforms in the Ways and Means legislation 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), sections 135505 and 135506, respectively.

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.

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 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.¹

Section 135505 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.

¹ Data collected from state Housing Credit Agencies by the National Council of State Housing Agencies.

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.

Section 135506 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. It 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.

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.²

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 Congress includes these two provisions in reconciliation legislation.

Sincerely,

California Housing Partnership
Capital Impact Partners
Cinnaire
Citizens' Housing and Planning Association
Community Economic Development Assistance Corporation
Council of Large Public Housing Authorities

² 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

CSH
Enterprise Community Partners
Florida Housing Coalition
Housing Partnership Network
IFF
Klein Hornig, LLP
LeadingAge
Local Initiatives Support Corporation/National Equity Fund
Low Income Investment Fund
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
Presbyterian Villages of Michigan
Preservation of Affordable Housing, Inc.
Public Housing Authorities Directors Association
Retirement Housing Foundation
Stewards of Affordable Housing for the Future
Supportive Housing Network of New York
The Community Builders
Volunteers of America
Wesley Housing Development Corporation

cc: The Honorable Richard Neal