September XX, 2021

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

Dear Speaker Pelosi:

The undersigned supporters of the Low-Income Housing Tax Credit (Housing Credit) write to thank you for your leadership on affordable housing and your ardent support for the Housing Credit program in particular. We strongly support the Housing Credit provisions in the reconciliation legislation the House Ways and Means Committee approved last week – particularly our top priority of reducing the bond threshold from 50% to 25% to address California's tax-exempt bond shortage – and are urging the Senate to maintain all of them in its deliberation on reconciliation legislation.

The purpose of this letter, however, is to underscore our support for, and ask your help to ensure inclusion in the final reconciliation bill of, two lower-profile but critical Housing Credit provisions approved by the Ways and Means Committee that would (1) make it more feasible for nonprofit organizations to exercise their Right of First Refusal (ROFR) to ensure long-term public benefit; and 2) close the "qualified contract" loophole that has allowed profit-motivated entities to wrest control of Housing Credit properties in other states. These provisions 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.*

As you know, the tax code calls for Housing Credit homes to be affordable for no less than 30 years (California requires 55 years of affordability), 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 nationally 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.[1]

<u>Nonprofit Right of First Refusal</u>

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[1] 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

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 drains 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.

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.

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.[2]

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[2] Data collected from state Housing Credit Agencies by the National Council of State Housing Agencies.

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.

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 final reconciliation bill includes these two provisions in addition to all of the other Housing Credit provisions contained in the Ways and Means-passed language.

Sincerely,

California Housing Partnership
Local Initiatives Support Corporation
National Housing Law Project