REFORMS TO THE LOW-INCOME HOUSING TAX CREDIT

NATIONAL LOW INCOME HOUSING COALITION

nhlp NATIONAL HOUSING LAW PROJECT

National Alliance to End Homelessness

The Low-Income Housing Tax Credit (LIHTC) is the primary source of financing for the construction and preservation of affordable housing. While it is an important resource, LIHTC, on its own, rarely builds or preserves homes affordable to households with the lowest incomes, those with the greatest and clearest needs. Moreover, LIHTC tenants and applicants have few protections to ensure they are treated fairly.

Any expansion of LIHTC in a tax extenders package must be paired with key reforms, including those proposed in the Build Back Better Act and other key legislation, to ensure that the program better serves people experiencing or at risk of homelessness.

REFORMS TO HELP END HOMELESSNESS AND HOUSING POVERTY

1. Incentives to Serve Extremely Low-Income Households and Those Experiencing Homelessness

The shortage of affordable and available rental housing is most acute for extremely low-income renters, who earn no more than 30% of the Area Median Income or the federal poverty limit. Nationally, there is a shortage of 7 million homes affordable and available to these households. For every 10 of America's lowest-income households, there are fewer than 4 homes affordable and available to them. No state has an adequate supply of affordable and available homes for these renters. In fact, extremely low-income households are the only income group in America facing an absolute shortage of affordable homes. Without affordable housing options, 72% of America's lowest-income renters spend more than half of their limited incomes on housing, putting them at increased risk of evictions and, in worst cases, homelessness. Another half a million people experience homelessness on any given night.

Despite the clear need, LIHTC too rarely serves extremely low-income households and those experiencing homelessness. To help increase the supply of deeply affordable housing for America's lowest-income households, **Congress must include in any tax extenders package**:

- **A 50% basis boost for housing developments where at least 20% of units set aside for households with extremely low incomes or those experiencing homelessness,** as proposed in the Build Back Better Act. By expanding the current basis boost from 30% to 50%, Congress can allow LIHTC to better target extremely low-income tenants at rents that are affordable to them. This reform would also facilitate the development of more affordable housing for populations with special needs, such as formerly homeless individuals and people with disabilities.
- **An 8% set-aside of tax credits to help offset the costs to build these homes, as proposed in the Build Back Better Act.** To ensure that more housing developments built using LIHTC serve extremely low-income households, Congress should set aside 8% of the program's resources for developments where at least 20% of units set aside for households with extremely low incomes or those experiencing homelessness.

2. Reforms to Encourage More Housing Development in Tribal Nations

Indigenous people living in tribal nations have some of the worst housing needs in the United States. They face high poverty rates and low incomes, overcrowding, lack of plumbing and heat, and unique development issues. Financing properties in these areas is particularly challenging. Despite the growing need for safe, decent homes, however, federal investments in affordable housing on tribal lands have lagged for decades, particularly in more rural and remote areas.

To address the significant housing needs in tribal nations and for indigenous people, **Congress should include in any tax extenders package:**

- **Changes to designate tribal communities as "Difficult To Develop Areas (DDAs)," as**

proposed in the Build Back Better Act. Most tribal areas do not qualify under current DDA standards. This reform, as proposed in the Affordable Housing Credit Improvement Act, would make housing developments in tribal communities automatically eligible for a 30% basis boost. In turn, this change would make it more financially feasible for developers to build affordable homes in these areas.

- **A requirement for states to consider the needs of Native Americans when determining which housing developments will receive LIHTC allocations each year.** This reform, as proposed in the Affordable Housing Credit Improvement Act, will help address the needs of Indigenous people, who are disproportionately impacted by the housing crisis and are more likely to experience homelessness than other households.

3. Reforms to Create More Affordable Homes in Rural Communities

Rural communities face unique barriers to developing affordable rental homes, including lower incomes, higher poverty rates, and lack of access to private capital. As a result, far too many rural families live in rental homes that are unaffordable or are in substandard condition.

To address housing needs in rural America, **Congress should include in any tax extenders package:**

- **Changes to designated rural communities as "Difficult To Develop Areas (DDAs),"** making housing developments in rural America automatically eligible for a 30% basis boost. This reform was included in the Affordable Housing Credit Improvement Act."

REFORMS TO HELP PRESERVE LONG-TERM AFFORDABILITY

1. Eliminate the Qualified Contract Loophole

Congress should eliminate the "Qualified Contract" loophole from the LIHTC program, as proposed in the Build Back Better Act. Under the Qualified Contract loophole, LIHTC owners can avoid federal and state affordability restrictions after just 15 years, rather than the 30-year minimum requirement if the state is unable to find a qualified buyer to purchase the property. Because the statutorily-determined contract price frequently exceeds market value, it is often extremely difficult for states to find a buyer. As a result, the property is released from any affordability requirements and the owner is free to raise rents or sell the property. The QC loophole has led to a substantial loss of affordable rental homes, harming low-income residents and wasting scarce federal investments.

2. Clarify and Strengthen Nonprofits' Right of First Refusal

Congress should clarify and strengthen the "right of first refusal (ROFR)" for nonprofit owners of LIHTC properties, as proposed in the Build Back Better Act. By statute, Congress provides nonprofit organizations with a ROFR to help facilitate their ability to purchase a LIHTC development after the investor has claimed all its tax credits and before the program's rent restrictions expire. For most of the program's history, nonprofits have exercised the ROFR without issue. In recent years, however, some private investors have challenged the ROFR in hopes of preventing the preservation sale or extracting additional payments from the nonprofit general partner, especially in hot housing markets. In doing so, investors undermine the goals of the LIHTC program by putting the long-term financial health and condition of the properties at risk and draining public resources.

3. Ensure Data Transparency

Congress should provide HUD access to IRS data on LIHTC properties to as part of an effort to help preserve LIHTC investments. HUD's LIHTC database, the primary data source about LIHTC properties, includes critical information needed to protect residents and preserve federal investments. However, the database is incomplete and some datapoints can be unreliable. While HFAs report critical property-level data to IRS, federal law does not allow IRS to share this data with HUD. Without access to IRS data, HUD can ask HFAs for missing information, but HFAs have limited capacity to respond to such requests, and HUD has few tools to enforce compliance with data reporting requirements. Without more accurate and complete data, long-term tracking of LIHTC properties and the ability to preserve these homes is more difficult.

REFORMS TO STRENGTHEN RENTER PROTECTIONS

1. Protections for Tenants

   Congress should extend renter protections to tenants living in LIHTC properties. Tenants in LIHTC properties have few protections, placing tenants and applicants in a vulnerable position as they may be evicted or denied admission for arbitrary or unlawful reasons. Although tenants cannot be evicted absent "good cause," there is no statutory or regulatory definition as to what this constitutes. Additionally, there is no mandated administrative or pre-judicial review or grievance process, nor are there any requirements as to the content, timing, or service of a notice to terminate a tenancy. Applicants for LIHTC properties also have few protections; owners are not required to be transparent as to tenant selection criteria and are not mandated to utilize any particular process, such as waiting lists.

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