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**The Role of Tax Incentives in Affordable Housing**

U.S. Senate Committee on Finance

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Thank you, Chair Wyden, Ranking Member Crapo, and members of the committee.

The National Association of Affordable Housing Lenders is the alliance of major banks and mission-driven lenders and investors in affordable housing and inclusive community revitalization. NAAHL member banks provided more than \$180 billion in financing for low- and moderate-income people and communities in 2020. NAAHL member banks make most Low-Income Housing Tax Credit investments.

I have good news and bad news.

### **The Bad News**

First the bad news: Housing is less affordable now than it has been in 15 years.<sup>1</sup> Home prices rose 18.8% and rent climbed 17.6% in 2021.<sup>2</sup> Last October, about half of Americans (49%) called the availability of affordable housing in their local community a major problem. That is more than cited drug addiction (35%), COVID-19 economic and health impacts (34% and 26%), and crime (22%), according to Pew Research.<sup>3</sup> Housing is the single largest cost the average household faces.

Housing costs are not just a casualty of inflation, but also a driver of inflation. Home prices rose 11% in 2020,<sup>4</sup> when overall inflation was 1.4%.<sup>5</sup> Housing represents more than 30% of the CPI. As economists Mark Zandi and Jim Parrot recently wrote: “If policymakers are serious about reining in inflation, then they have little choice but to take on the shortfall in housing supply.... While the other drivers of inflation are set to ease in the coming months, the shortfall in housing isn’t going anywhere unless policymakers do something.”<sup>6</sup>

The affordability problem started in high-growth coastal markets but is now nationwide. From 2012 to 2019, supply worsened in 47 states and the District of Columbia. Among 310 metropolitan areas nationwide, supply was shrinking or shortages were growing worse in three-quarters of them heading into the pandemic. Boise, for example, was short 13,000 housing units in 2019, equivalent to about 5% of the region’s housing stock.<sup>7</sup>

This problem has been building for years because we have not been building enough housing for years, especially lower cost homes and apartments. “Total housing stock grew at an average annual rate of 1.7% from 1968 through 2000,” but only 0.7% over the last decade. The shortfall

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<sup>1</sup> <https://www.nar.realtor/blogs/economists-outlook/housingaffordabilitydrops-as-mortgage-payments-spike-51-from-may-2021>

<sup>2</sup> <https://www.politico.com/news/2022/03/18/housing-costs-inflation-00015808>

<sup>3</sup> <https://www.pewresearch.org/fact-tank/2022/01/18/a-growing-share-of-americans-say-affordable-housing-is-a-major-problem-where-they-live/>

<sup>4</sup> [https://www.mba.org/docs/default-source/research-and-forecasts/forecasts/forecast-commentary-april-2022.pdf?sfvrsn=a5365ab7\\_2](https://www.mba.org/docs/default-source/research-and-forecasts/forecasts/forecast-commentary-april-2022.pdf?sfvrsn=a5365ab7_2)

<sup>5</sup> [https://www.bls.gov/news.release/archives/cpi\\_01132021.htm](https://www.bls.gov/news.release/archives/cpi_01132021.htm)

<sup>6</sup> <https://www.washingtonpost.com/business/2022/01/31/if-policymakers-are-serious-about-tackling-inflation-they-need-address-soaring-housing-costs/>

<sup>7</sup> <https://www.nytimes.com/2022/07/14/upshot/housing-shortage-us.html>

over the past 20 years is as much as 6.8 million units.<sup>8</sup> And, although multifamily construction is now rising, it is mostly aimed at the luxury market, while the worst supply shortages are for lower cost housing.<sup>9</sup>

Moreover, in the past, supply increases at the top end of the market would “filter down” to ease affordability at all price points, but now we are seeing some markets where supply shortages are so great that prices for older properties are “filtering up.”<sup>10</sup>

In other words, we are literally paying the price for failing to produce and preserve enough housing, especially for low- and moderate-income people and communities, where the needs are greatest. Because the obstacles to housing production will take years to address, we must get started right away.

### **The Good News**

The good news is that we do know how to expand housing supply for the people and communities that need it most. The Low-Income Housing Tax Credit (Housing Credit) has produced more than 3.6 million affordable rental apartments,<sup>11</sup> virtually all the *affordable* production over the past 35 years. This total is equivalent to more than one-third of the entire multifamily stock with similar rents. The Housing Credit is widely considered the U.S. government’s best affordable housing production program ever. The proposed Neighborhood Homes Investment Act would apply the Housing Credit’s successful approach to a different challenge: to revitalize struggling communities and expand homeownership opportunities by building and rehabilitating starter homes.

NAAHL urges Congress to pass the bipartisan Neighborhood Homes Investment Act (S. 98) and the Affordable Housing Credit Improvement Act of 2021 (S. 1136). Together, these bills would produce up to 2.5 million additional affordable homes.<sup>12</sup>

The Housing Credit and Neighborhood Homes have earned bipartisan support because they are based on the same broadly embraced principles:

#### *Private Market Discipline*

- Project sponsors use tax credits to raise capital from investors to finance home building and rehabilitation.
- Private investors – not the federal government – bear construction and marketing risks. Investors claim the tax credits only after development is successfully completed.
- Tax credits are limited to the minimum amounts required for financial feasibility.

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<sup>8</sup> <https://www.politico.com/news/2022/03/18/housing-costs-inflation-00015808>

<sup>9</sup> <https://www.bloomberg.com/news/articles/2022-07-13/rents-in-us-rise-at-fastest-pace-since-1986-buoying-inflation?srnd=premium>

<sup>10</sup> <https://www.huduser.gov/portal/pdredge/pdr-edge-featd-article-061520.html>

<sup>11</sup> <https://rentalhousingaction.org/>

<sup>12</sup> <https://rentalhousingaction.org/wp-content/uploads/2021/10/AHCIA-One-Page-Summary-September-2021.pdf>

and <https://static1.squarespace.com/static/589b48f8e3df28f7ed63b31b/t/622909ff205750275598eb8d/1646856704390/NHIA%2BSummary%2BMarch%2B2022.pdf>

- A competitive and efficient investment market minimizes investor returns and maximizes public impact.
- Investments leverage other project funds, further improving cost-effectiveness.

#### *State Administration*

- States have proven to be excellent stewards of the Housing Credit and other affordable housing programs. They define their specific needs and priorities; allocate tax credit authority on a competitive basis; and monitor compliance.
- The federal government's role is limited. The IRS develops regulations and monitors state and investor compliance.

#### *Targeting and Flexibility*

- The Housing Credit and Neighborhood Homes are targeted to ensure that rigorous policy goals are met while providing flexibility so states, communities, and the private market can address local needs, maximize efficient execution, and adapt to changing conditions.
- Metropolitan and rural communities are equitably served.

#### *Positive Economic and Community Impact*

- The Housing Credit's 3.6 million apartments have generated 5.7 million jobs, \$643 billion in wages and business income, and \$223 billion in tax revenue.
- Neighborhood Homes is projected to produce 500,000 homes over 10 years, generating \$100 billion in development activity, nearly 800,000 jobs, \$43 billion in wages and business income, and \$29 billion in tax revenue.
- Other benefits include crime reduction, more income diversity in low-income neighborhoods,<sup>13</sup> and the physical and economic stabilization of neighborhoods.

### **Neighborhood Homes Investment Act**

National home price data mask an incredible diversity among and within regional housing markets. In 2021, the median home value was more than \$1.6 million in San Jose but less than \$160,000 in Toledo.<sup>14</sup> Moreover, every state has struggling urban and rural communities where homes are in poor condition and the cost of rehabilitating them or building new homes exceeds their market value. Development is not financially feasible in these circumstances without governmental support.

The absence of quality housing for homeownership has been driving economic distress in these communities. Single-family homes are the predominant land use in most of these communities, so it is hard to revitalize them without attractive, affordable homes. We hear from rural communities that they cannot retain or attract growing businesses without quality

<sup>13</sup> [https://web.stanford.edu/~diamondr/LIHTC\\_spillovers.pdf](https://web.stanford.edu/~diamondr/LIHTC_spillovers.pdf)

<sup>14</sup> <https://cdn.nar.realtor/sites/default/files/documents/metro-home-prices-q1-2022-ranked-median-single-family-2022-05-03.pdf>

affordable housing for workers. We hear from urban neighborhoods that the absence of good housing drives out middle-income families, while concentrating poverty and limiting the disposable income required to support shopping, services, economic development, and a sustainable local tax base. Conversely, we also hear from urban and rural communities alike that new or improved housing can replace decline with revitalization.

As Christopher Herbert, Managing Director at the Harvard Joint Center for Housing Studies, told the House Ways and Means Committee last week:

Expanded public subsidies are needed to increase the supply of deeply affordable housing available both for rent and to own. Particular attention should be given to efforts that expand the supply of affordable housing in lower-income communities where the depressed value of homes impedes both new construction and substantial rehabilitation of existing homes as the costs of these investments exceed current market values. Not only would these communities benefit from such investments, it would also provide residents of these areas with opportunities to own or rent good quality homes in their own neighborhoods. For this reason, the Neighborhood Homes Investment Act deserves serious consideration as a tool for expanding the supply of good quality homes and homeownership opportunities in these communities.<sup>15</sup>

The bipartisan Neighborhood Homes Investment Act is carefully targeted to these struggling communities, based on their lower incomes, elevated poverty, and low home values. About 22% of metro census tracts nationwide, and 27% of non-metro census tracts would qualify, with additional flexibility for certain other non-metro census tracts. Maps of eligible communities in each state are available at <https://neighborhoodhomesinvestmentact.org/>.

Neighborhood Homes meets these communities where they are by offering tax credits sized to cover the gap between the cost of developing homes and the price at which they can be sold. The credits would be capped at 35% of development costs for starter homes; prices would be limited so they are broadly affordable; and high-income buyers would be excluded. These guardrails promote revitalization without gentrification.

Neighborhood Homes is limited to homeownership, but it is otherwise very flexible. It can build new homes or acquire and rehabilitate homes for sale, and special provisions would also allow using credits to rehabilitate homes for current homeowners. It can be used for detached homes, townhomes, two- to four-unit homes, condominiums, and cooperatives. Manufactured homes are eligible, provided they are permanently attached to a foundation and are titled as real property. A minimum level of rehabilitation prevents merely superficial improvements.

The credit is also simple enough to accommodate even small-scale developments. Homes must only be in eligible communities, meet cost and sales price standards, and be occupied by eligible homebuyers (or existing owners). The tax credits are claimed when the homes are completed and owner-occupied. No further compliance is required of investors. If a

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<sup>15</sup> <https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/Testimony%20-%20Dr.%20Chris%20Herbert.pdf>

homeowner re-sells their home within five years, they would pay a declining portion of their profit to the state for use on future homes.

State housing agencies will administer the credits, by setting their own priorities and standards for costs and profits, running a competitive process for allocating the credits, and ensuring compliance. The states' experience and excellent record of administering Low-Income Housing Tax Credits qualifies them well to take on these responsibilities.

No current tax incentive is designed to fill this gap. Tax-exempt bonds and the mortgage interest deduction can lower effective mortgage payments, but they do not close development cost/sales price gaps. Opportunity Zones incentives require long-term investments, not the development and immediate sale of properties.

Neighborhood Homes has support from a wide range of national associations representing the housing industry, financial services, affordable housing and community development, civil rights, and state agencies.<sup>16</sup>

### **Low-Income Housing Tax Credits**

The Housing Credit is America's primary tool to create and preserve affordable rental housing.

There is a vast and growing demand for affordable housing. More than 10 million low-income households spend more than half of their monthly income on rent, cutting into other essential expenses like childcare, medicine, groceries, and transportation.<sup>17</sup> Meanwhile, there is a growing shortage of affordable housing. For every 100 extremely low-income households, there are only 37 affordable homes available. In total, there is a shortage of 7.1 million rental homes affordable and available for households making 50% of area median income and below, according to the National Low Income Housing Coalition.<sup>18</sup>

However, the need for affordable housing has skyrocketed. According to the Harvard Joint Center for Housing Studies' just-released "State of the Nation's Housing" report, last year brought the largest year-over-year increase in the cost of rental housing in over 20 years, with rent increases in some metro areas over 20%.

As already noted, the Housing Credit has financed the development of 3.6 million affordable rental homes in urban, suburban, and rural areas since its inception in 1986. In 2019 and 2020, the Housing Credit produced or preserved roughly 130,000 apartments annually.<sup>19</sup>

In total, the Housing Credit has housed over eight million low-income households,<sup>20</sup> including low-wage workers, veterans of the armed forces, senior citizens, formerly homeless families

<sup>16</sup> <https://neighborhoodhomesinvestmentact.org/coalition>

<sup>17</sup> [https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard\\_JCHS\\_State\\_Nations\\_Housing\\_2021.pdf](https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_State_Nations_Housing_2021.pdf)

<sup>18</sup> [https://reports.nlihc.org/sites/default/files/gap/Gap-Report\\_2021.pdf](https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2021.pdf)

<sup>19</sup> <https://drive.google.com/file/d/1HC75I9CQ4WpvAbs5tcZKNeyiKSIPs9tJ/view>

<sup>20</sup> <https://rentalhousingaction.org/wp-content/uploads/2021/10/ACTION-NATIONAL-2021-NEW-LOGO-01-2.pdf>

and individuals, people recovering from opioid addiction, and people with disabilities.<sup>21</sup> The median income for households living in Housing Credit properties is less than \$18,200, and approximately 52% of households are extremely low-income, making 30% or less of the area's median income, according to the Department of Housing and Urban Development.<sup>22</sup> If forced to pay market-rate rent, many of these households would be just one unforeseen event away from losing their housing.

The Housing Credit works in all types of communities, including large and small urban areas, suburban communities, rural towns, and on tribal land. Roughly 22% of properties are in non-metropolitan counties, where it has historically been challenging to develop affordable housing. The Housing Credit has also been important for communities recovering from natural disasters – from California wildfires to Hurricane Katrina to the floods in Iowa.

“Housing Credit properties are financially sound and stable for the long term,” according to the accounting firm CohnReznick. “Our survey showed only a 0.57% cumulative foreclosure rate, which to the best of our knowledge is lower than any real estate asset class. This included only one new reported foreclosure in 2020, despite the challenges of COVID-19. The industry’s remarkably low foreclosure rate is attributable primarily to the effective public-private partnership and oversight, the pent-up demand for affordable housing, and the industry’s collaborative efforts to enhance underwriting and asset management quality.”<sup>23</sup>

The Housing Credit remains vastly oversubscribed. In 2020, Housing Credit developers requested nearly 2.5 times as many Housing Credits as there was available allocation. Further, a growing number of states, including California, New York, Massachusetts, Washington, Georgia, Tennessee, and close to 20 others, are already using or close to using all of their bond volume cap, which limits their ability to finance 4% Housing Credit developments.

Here are the most important steps Congress should take to support Housing Credits:

- Restore the temporary 12.5% increase in Housing Credit allocation authority enacted in 2018, which expired at the end of 2021. We are losing production now because of this expiration.
- Increase state allocation authority by 50% over two years. This expansion would boost production and preservation nationwide.
- Allow Housing Credits in conjunction with tax-exempt multifamily bonds if bond proceeds exceed 25% of expected project costs, a reduction from 50% under current law. This change would allow private activity bonds to support more affordable housing.
- Reform the Qualified Contract rules to prevent the premature loss of affordability and nonprofit Right-of-First-Refusal rules to extend public-mission control of Housing Credit properties. These provisions would actually raise federal revenues by \$1 billion,

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<sup>21</sup> <https://www.taxcreditcoalition.org/the-housing-credit/>

<sup>22</sup> <https://www.huduser.gov/portal/Datasets/lihtc/2019-LIHTC-Tenant-Tables.pdf>

<sup>23</sup> <https://drive.google.com/file/d/1HC75I9CQ4WpvAbs5tcZKNeyiKSIPs9tJ/view>

according to the Joint Committee on Taxation.<sup>24</sup> I am appending a more detailed explanation of why these changes are urgently needed.

This concludes my testimony. I would be happy to answer your questions.

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<sup>24</sup> <https://www.ict.gov/publications/2021/jcx-46-21/>

## **Appendix: Reforming Low-Income Housing Tax Credit Provisions for Qualified Contracts and the Nonprofit Right of First Refusal**

As policymakers deal with the extreme challenges posed by a shortage of affordable housing, the most efficient, cost-effective means of addressing this crisis is to adopt policies that prevent the loss of existing affordable housing.

There are two issues with the Low-Income Housing Tax Credit program that require the attention of Congress. These issues have been before Congress for several years, but enactment has been elusive despite the support of Chairman Wyden and Chairman Neal. These are the Qualified Contract provision in section 42(h)(6)(E)(i)(II) and the nonprofit Right of First Refusal in section 42(i)(7). According to the National Council of State Housing Finance Agencies, we have lost more than 100,000 affordable housing units because of the Qualified Contract provision. Meanwhile, outside investors have come into the Housing Credit program, obtained control of limited partnership interests, and have used ambiguities in the Right-of-First-Refusal law – and the lack of IRS guidance – to make demands on nonprofit housing providers which have taken hundreds of millions of dollars from nonprofit controlled properties. It is well past time for Congress to act to amend section 42 to eliminate these abuses.

### **Qualified Contracts**

A fundamental feature of the Housing Credit program is that federal tax subsidies are provided to enable the development of properties that are rented to qualifying low-income residents at reduced rents for a period of 30 years, including a 15-year tax compliance period and another 15 years of extended use subject to deed restriction. This is the essential structure of the program and it is commonly understood. However, there are two little-known exceptions to the requirement that Housing Credit properties remain affordable for 30 years: 1) in the case of foreclosure; and 2) where a Qualified Contract is presented to the state Housing Credit agency. Under the qualified contract provision, an owner of a Housing Credit property may, after year 14, approach the Housing Credit allocating agency to request a qualified contract. This request begins a one-year period during which the allocating agency seeks a qualified buyer to purchase the property and maintain it as affordable for the duration of the extended use period. The required purchase price for a Qualified Contract is stipulated by section 42 and was designed to prevent back-end windfalls to owners and investors by limiting them to an inflation-adjusted return on the original equity contribution.

While the original intent of this provision was to create a limited return and some liquidity for investors at a time when the Housing Credit was an unproven program, for some properties it has come to function as a nearly automatic affordability opt-out after just 15 years of affordability. This is because the qualified contract formula price in nearly all cases significantly exceeds the market value of the property as affordable housing. As a result, it is rare for the allocating agency to find a buyer willing to pay the qualified contract price. If the allocating agency fails to identify a qualified buyer within one year, the property is released from the affordability requirements of the Housing Credit program. At that point, the owner is free to

either sell the property at market value without any deed restriction or continue to own and manage the property charging market rents after a three-year rent protection period for existing tenants.

In recent years, rental markets across the country have heated up considerably, resulting in sharply higher market rents. This means that in many markets, Housing Credit properties could demand far higher rents if they did not have the affordability restrictions required by the program. Some owners are now seeking a way to lift the affordability restrictions on their properties even though such action was not expected when the property was originally financed with Housing Credit subsidies. These owners did not build Housing Credit properties on the basis that they would be able to get out of the affordability restrictions after 15 years because there was no expectation at the time of construction that the statutory formula would result in an above-market price, and thus function as an “opt-out.” This was an after-the-fact realization.

Many states have changed their policies to require a waiver of Qualified Contract rights for new developments but in other states developers have resisted attempts to close this loophole, particularly with the 4% credit used in the bond program. In these states, a federal subsidy designed to ensure a minimum of 30 years of rent affordability is instead a 15-year rent affordability program.

Housing Credit properties located in high opportunity areas or areas that have gentrified since the property was placed in service are most at risk. These neighborhoods are often the most difficult to develop new affordable housing in and/or are experiencing high rates of displacement of low-income households, so preserving existing affordable housing is extremely important.

Recent analyses indicate that the Qualified Contract process is resulting in the premature loss of more than 10,000 low-income homes annually, and often more. As of 2021, over 100,000 apartments nationwide have already been lost, and the losses continue each year.

Affordable housing and tenant advocates are deeply concerned that unless the qualified contract process is corrected, the number of Housing Credit properties lost before fulfilling their intended 30-year affordability period will continue to grow at an accelerating rate.

The House-passed Build Back Better legislation includes language closing this loophole identical to bipartisan legislation introduced in the last Congress by Chairman Wyden and Senator Young, S. 1956, along with other Senators. This legislation would repeal the Qualified Contract loophole for future developments while correcting the statutory price for the purchase of existing properties so that it is based on the fair market value of the property as affordable housing.

Closing the qualified contract loophole would not only protect lower-income residents, but it would also save the federal government money. According to the Joint Committee on Taxation, the provision in the BBB bill would raise \$457 million over ten years.

## **Nonprofit Right of First Refusal**

As nonprofit sponsored Housing Credit properties reach the end of their initial 15-year compliance period, investors (the limited partners) in the property's original partnership generally want to sell their interests, and the nonprofit sponsors (the general partners) want to gain full control of the property in order to maintain the affordable housing use restrictions indefinitely. However, in some cases the transfer of properties to nonprofits is causing conflicts between investors and nonprofit sponsors as a result of a difference in how the parties interpret provisions in section 42 which have not been clarified by the IRS. These disputes would be minimized, and the original intent of the law carried out, through legislation clarifying section 42(i)(7).

Section 42(i)(7) was designed to permit nonprofit sponsors (as well as government agencies and tenant organizations) to obtain full ownership of Housing Credit properties at the end of the tax compliance period through a Right of First Refusal (ROFR). Under the statute, a safe harbor is created that permits the general partner and limited partner to negotiate a partnership agreement that permits a nonprofit to purchase the Housing Credit property at the end of the compliance period for a "minimum purchase price" calculated by adding the outstanding debt on the property and any taxes attributable to that sale.

Housing Credit limited partnership agreements where a nonprofit serves as the general partner almost always include the ROFR language as permitted under the safe harbor in section 42(i)(7). In fact, in a 2007 Memorandum for exempt organization determinations, the IRS takes the position that nonprofit general partners must have a ROFR in Housing Credit deals in which they serve as the general partner. Since the ROFR provision was enacted more than 30 years ago, the operating assumption of all parties to a Housing Credit deal is that after 15 years the investor will exit the property as the nonprofit general exercises its ROFR rights and take full ownership of the property.

In most cases, the ROFR has worked as intended to transfer ownership to the nonprofit in whose name the ROFR is granted, typically an affiliate of the general partner. However, in recent years, outside entities without any connection to the Housing Credit program have been acquiring control of investor interests, after all credits have been claimed, with the purpose of resisting the expected investor exit in order to leverage cash payments not contemplated in the partnership agreement or payments that would be superseded by the exercise of the ROFR. In such disputes, these outside investors – often backed by private equity interests – have typically taken the position that the section 42(i)(7) ROFR is simply a common law right of first refusal and they do not have to recognize the rights established in the partnership agreement without a bona fide offer from an unrelated third party that the investor has singular authority to accept. In essence, they have rejected a bargained-for right in the partnership agreement held by the nonprofit. Most nonprofits do not have the resources to litigate these issues in court, so a stalemate ensues that the investors use to leverage a cash payment or a sale of the property in return for the investor leaving the partnership. The payment of such scarce funds undermines the continued viability of the property as affordable housing in contravention of public policy.

This situation arises because of ambiguities in federal law that are reflected in unclear partnership agreement language with respect to the requirements and scope of the execution of the ROFR. This had led to scores of legal disputes, and, in many cases, costly litigation which has produced conflicting opinions by state and federal court judges ill-suited to sort through these types of tax issues. There is no consistent court interpretation of what is required by section 42(i)(7) which serves to only accentuate the current legal ambiguities.

This problem becomes of greater concern as more properties reach year 15. Regardless of the contractual issues that arise in these disputes, the efforts by these outside interests to take advantage of the Housing Credit program to demand a residual return in excess of the agreed upon return is contrary to the intent of the program and at odds with the understanding of the original parties to the partnership when the property was first financed.

Legislation supported by Chairman Wyden, but not yet passed by the Senate would address this issue. First, by changing the safe harbor to permit the partnership agreement to include an option in the name of a nonprofit for deals entered into after date of enactment, and second by clarifying existing law with respect to existing agreements. These clarifications would not change the terms of any existing agreements but would clarify ambiguous language that the courts have struggled to interpret. Specifically, the law would be clarified that: (a) a ROFR may be exercised without the approval of the limited partner and in response to any offer to purchase the property, including an offer by a related party, (b) that the reference to the property that is purchased includes all assets of the partnership, and (c) that the purchase can be of the partnership interest as well as of the property.

These legislative clarifications reflect the work of The Tax Credit Equity and Financing Committee of the American Bar Association on Affordable Housing and Community Development Law which going back several years has requested, to no avail, that the IRS clarify the law. This issue was placed on the 2017 Priority Guidance Plan, but no action has been taken.

It is long past time for Congress to act to stop the exploitation of the Housing Credit program by outside investors who are taking advantage of an unclear law to generate windfall returns at the expense of nonprofit affordable housing. This provision, like the Qualified Contract provision, would save the federal government significant money, \$553 million over ten years according to the Joint Committee on Taxation.