THE AFFORDABLE HOUSING TAX CREDIT COALITION

TO: Biden-Harris Transition Team
FROM: Emily Cadik, Executive Director, Affordable Housing Tax Credit Coalition
DATE: December 7, 2020
RE: **Bipartisan Solutions to Address Our Nation's Affordable Housing Crisis**

The Affordable Housing Tax Credit Coalition (AHTCC) looks forward to working with President-Elect Joseph Biden, Vice President-Elect Kamala Harris, and the Biden-Harris Transition Team to ensure that every American has access to safe, stable, affordable housing and the opportunity that it provides.

Established in 1988, the AHTCC is a leading trade association of nearly 200 organizations and businesses that advocate for affordable housing financed using the Low-Income Housing Tax Credit (Housing Credit). AHTCC members represent the full spectrum of those involved in providing affordable housing, including syndicators, developers, investors, state allocating agencies, and affiliated businesses and non-profits, and together have financed or developed well over half of our nation's nearly 3.5 million Housing Credit apartments.

The AHTCC greatly appreciates the ambitious affordable housing platform set forth by the Biden-Harris campaign, and especially the proposal to strengthen and expand the Housing Credit. While the need for affordable housing is vast and growing at a staggering rate, we appreciate the acknowledgment that we already have proven tools at the ready to tackle this crisis.

Below we have detailed our legislative and regulatory priorities to help inform immediate policy decisions as they relate to affordable housing and the Housing Credit, and we look forward to working with the incoming Administration to advance these common-sense, bipartisan proposals.

Legislative Priorities to Expand and Preserve Our Affordable Housing Supply

The Housing Credit, which has financed virtually all new affordable rental housing over the past three decades, has been responsible for developing nearly 3.5 million affordable rental homes, and must be a critical component of any plan to address our nation's affordable housing crisis (see more about the Housing Credit in Appendix I).

We deeply appreciate President-Elect Biden and Vice President-Elect Harris' support for legislation to expand and strengthen the Housing Credit. Throughout his tenure as Senator and in the White House under the Obama Administration, President-Elect Biden supported legislation to create the Housing Credit, make the program a permanent part of the tax code, and expand and strengthen the program (see more in Appendix 2). Vice President-Elect Harris also co-sponsored legislation to expand and strengthen the program in the 115th Congress that allowed for the first expansion of the program in a decade, the Affordable Housing Credit Improvement Act (AHCIA).

Enact the Affordable Housing Credit Improvement Act

Bipartisan legislation to expand and strengthen the Housing Credit, the AHCIA (S. 1703/H.R. 3077 in the 116th Congress), introduced by Sens. Maria Cantwell (D-WA), Todd Young (R-IN), Ron Wyden (D-OR) and Johnny Isakson (R-GA) in the Senate and Reps. Suzan DelBene (D-WA), Jackie Walorski (R-IN), Don Beyer (D-VA) and Kenny Marchant (R-TX) in the House, has the support of more than half of the House of

Representatives and 40 percent of the Senate, and will be reintroduced in the 117th Congress. Under current law, the Housing Credit is estimated to finance the construction or preservation of approximately one million affordable homes over the next decade, but the AHCIA would **increase Housing Credit development by an additional 610,000 affordable rental homes** over the same timeframe.

Most immediately, a minimum 4 percent Housing Credit rate is critically needed to ensure Housing Credit development can continue in light of disruptions caused by the COVID-19 crisis, including the significant drop in federal borrowing rates; this provision alone would not only provide an immediate infusion of equity for stalled developments nationwide, it would also finance an estimated 137,000 additional affordable rental homes and 170,000 jobs over the next decade.

Key Provisions of the Affordable Housing Credit Improvement Act of 2019 include:

- Increase the annual Housing Credit allocation by 50 percent over current law[1],
- Create a minimum 4 percent Housing Credit rate to provide parity with the minimum 9 percent Housing Credit rate,
- Allow additional Housing Credits to ensure financial feasibility for properties serving extremely low-income and formerly homeless households, and properties in rural areas or Native American reservations,
- Align the tax code Housing Credit provisions with protections defined in the Violence Against Women Act, and
- Better enable the Housing Credit to provide homes for veterans of the armed forces.

Provisions from the AHCIA were also included in the Moving Forward Act (H.R. 2) infrastructure legislation passed by the House, and the Emergency Affordable Housing Act (S. 4078) introduced by Sens. Wyden (D-OR) and Cantwell (D-WA) in the Senate. The Senate Democratic Caucus also released an Economic Justice Act proposal earlier in 2020, which included a permanent minimum 4 percent Housing Credit rate.

We also encourage the Biden-Harris Administration to pursue paths to enact any provisions from the AHCIA that can be implemented through the regulatory rather than the legislative process.

Support Affordable Housing Through Any COVID-19 Relief

While the need for affordable housing has grown drastically as a result of the pandemic, the Housing Credit is also now facing serious operating, development and financing challenges brought on by the COVID-19 crisis that, without policy solutions, threaten the immediate development and operation of Housing Credit properties nationwide.

To provide both immediate emergency relief and to assist in the country's future economic recovery, the AHTCC and affordable housing industry partners are advocating for the below policies as part of COVID-19 response legislation, which have bipartisan support in Congress. More than 100 members of the House signed on to a bipartisan letter this summer urging the inclusion of Housing Credit provisions as part of COVID-19 relief legislation. These proposals were also included in the Moving Forward Act passed by the

[1] Current law, as passed in the Consolidated Appropriations Act of 2018 (Public Law No. 115-141, 3/23/2018) provides for a 12.5 percent annual Housing Credit allocation increase over prior levels, which is set to expire at the end of 2021.

House and the Emergency Affordable Housing Act introduced in the Senate. The details of our legislative priorities to respond to the COVID-19 crisis can be found in Appendix III.

Legislative Priorities for Immediate Emergency Relief:

- **Enact a minimum 4 percent Housing Credit rate**, which is the most immediate issue facing the Housing Credit. The so-called "4 percent" Housing Credit rate has fallen to an all-time low, now hovering between 3.07 and 3.09 percent, as a direct result of the cuts to federal borrowing rates in response to the crisis, creating financing gaps that are preventing sorely-needed properties from moving forward. This provision alone would provide an immediate infusion of equity for stalled developments nationwide, as well as finance an estimated 137,000 additional affordable rental homes and 170,000 jobs over the next decade, ensuring help throughout long-term recovery efforts. Acknowledging how declining rates hurt affordable housing production, in 2008 Congress created a minimum floor for the Housing Credit's corresponding 9 percent credit rate.
- **Allocate emergency rental assistance** to prevent evictions and stabilize households and properties.

Legislative Priorities for Long-Term Economic Recovery:

- **Increase the annual Housing Credit allocation** by 50 percent.
- **Lower the "50 Percent Test" Bond Financing Threshold to 25 Percent** to provide needed flexibility to access 4 Percent Housing Credits at a time when several issues are impacting the availability of bond financing.
  Provide additional Housing Credit basis boosts to supply needed equity for developments that would not otherwise be financially feasible.

Regulatory Priorities to Expand and Preserve Affordable Housing Supply

With the Housing Credit financing over 100,000 affordable homes each year, any regulations impacting the Housing Credit can have far-reaching effects on our nation's ability to produce and preserve affordable housing. The Housing Credit falls under the jurisdiction of the Internal Revenue Service (IRS) and the Treasury Department, though it is also impacted by regulations issued by the Department of Housing and Urban Development (HUD), regulators of the Community Reinvestment Act (CRA), the Federal Housing Finance Agency, and other agencies.

Propose a Single CRA Rule that Strongly Incentivizes Housing Credit Investment

CRA motivates the vast majority of Housing Credit investment – an estimated 73 percent – meaning any changes to CRA could have significant effects on investment in the Housing Credit, and ultimately on our ability to build and preserve affordable housing.

The Trump Administration's final rule on CRA reform issued by the Office of the Comptroller of the Currency (OCC) in May 2020 would greatly reduce Housing Credit investment, and we encourage the Biden-Harris Administration to reverse the rule. The OCC only oversees roughly 20 percent of banks, but those banks represent an estimated 70 percent of financial institution assets and the vast majority of institutions that invest in the Housing Credit. The OCC's final rule would have the effect of significantly reducing Housing Credit investment due to the repeal of the separate investment test and replacement with a ratio evaluation approach, which includes a very expansive list of CRA-eligible activities. More information about how the OCC rule would impact the Housing Credit can be found on our blog and our comments provided to the OCC and Federal Deposit Insurance Corporation's proposed rule.

The Federal Reserve has released their own Advance Notice of Proposed Rulemaking on CRA reform, which varies significantly from the OCC final rule released in May. We are hopeful that the Federal Reserve approach will provide an opportunity for all three regulators to work toward a single rule that expands and strengthens CRA, ensures that our nation's bank and non-bank financial services institutions are serving all communities, and enhances investment in affordable housing. We look forward to working with the Biden-Harris Administration to accomplish this goal. The AHTCC will be submitting comments to the Federal Reserve's proposed rule prior to the February 16, 2021 deadline.

Address Issues Relating to Amending Tax Returns and Forms 8609

The AHTCC has been pursuing a solution to address issues that have arisen related to when Housing Credits could be claimed relative to the receipt of the Low-Income Housing Credit Allocation and Certification (Form 8609), which could create delays that ultimately impact the amount of tax credit equity available for affordable housing properties.

Prior to 2018, Housing Credits earned in a prior year could be claimed by amending a previously filed return upon receipt of the Forms 8609, even if the receipt of the forms was after the extended due date for the partnership return. Due to the new Bipartisan Budget Act regime, returns must be adjusted through an Administrative Adjustment Request (AAR), and investors claim the Housing Credits included in an AAR on the return for the year in which the AAR is filed rather than the year in which the Housing Credits were generated. The new regime could ultimately impact the amount of tax credit equity available for affordable housing properties, at a time when affordable housing is needed more than ever.

In February, the AHTCC provided a letter to the IRS explaining the above issue, expressing concerns about its potential impact on equity provided for affordable housing development, and providing potential solutions. The AHTCC continues to engage with the IRS and we remain hopeful that this issue will be resolved through an instructions change using the reasonable cause approach.

Extend Housing Credit Deadlines in Response to Disruptions from the COVID-19 Crisis

The COVID-19 crisis has caused numerous disruptions to affordable housing development and operations, putting at risk the affordable homes which will be a foundation for our nation's recovery. In July 2020, the IRS issued IRS Notice 2020-53, which provided important deadline extensions and other accommodations for the Housing Credit, including extensions of the 10 percent test and rehabilitation expenditures deadlines, compliance and review moratoriums, and other flexibilities needed in order to take into account other challenges that have emerged, like social distancing policies. However, many of these deadlines are expiring at the end of 2020, and are in need of further extension.

The National Council of State Housing Agencies (NCSHA) sent a letter to the IRS and Treasury Department on November 16 requesting that the deadlines, waivers, and other program accommodations provided in IRS Notice 2020-53 be extended to September 30, 2021, at minimum. The letter also requests four additional accommodations:

- A 12-month extension of the placed-in-service deadline for all developments allocated Housing Credits in calendar years 2018 – 2021,
- A 12-month extension of the year-end deadline for property restoration for any property that suffers a casualty loss not associated with a major disaster during 2020,
- A 12-month extension for all open noncompliance corrective action periods, and
- Guidance clarifying Housing Credit allocating agencies may conduct telephonic hearings to satisfy public approval requirements for qualified allocation plans until September 30, 2021.

On November, 23, the AHTCC and 140 partner organizations sent a letter to the IRS and Treasury Department in support of NCSHA's requests. We are hopeful that the IRS and Treasury Department will grant these extensions and accommodations by the end of 2020 but, if not, immediate action may be necessary to ensure Housing Credit development can continue promptly and safely as the COVID-19 crisis – and its impact on affordable housing – continues.

Reform Housing Credit Average Income Test Regulations Proposed by the IRS

The Housing Credit Average Income Test (AIT), the third minimum set-aside for the Housing Credit, was instituted through the 2018 omnibus spending bill to allow the Housing Credit to better serve tenants with a broader range of incomes, including those who are extremely low income. Unfortunately, proposed regulations released by the IRS on October 29, 2020, would create significant challenges for property owners currently utilizing the AIT and is likely to prevent owners from choosing the option in the future. The affordable housing industry is currently analyzing the proposal and developing a better path forward, and the AHTCC will submit comments on the proposed rule.

Support Continued GSE Investments in the Housing Credit

The Housing Credit greatly benefits from a strong network of national investors, including financial institutions, insurance companies and technology companies. In 2017 the Government Sponsored Enterprises (GSEs) also returned to investing in the Housing Credit after roughly a decade of hiatus, with each GSE currently limited to an annual investment limit of $500 million in the Housing Credit, or less than a 5 percent market share for each. Their investments have built even greater efficiency into the Housing Credit market by providing additional liquidity in underserved markets, and we encourage the Federal Housing Finance Agency to continue to take steps to support a robust Housing Credit market and to allow the GSEs to make Housing Credit investments that help provide homes for the communities that need them most.

To discuss the AHTCC's recommendations and priorities, please contact Emily Cadik, Executive Director, at emily.cadik@taxcreditcoalition.org or 202.935.1217.

Appendix I. About the Housing Credit

The Housing Credit has provided more affordable housing than any other federal tool

- Since its inception in 1986, the Housing Credit has financed the development of 3.5 million affordable rental homes according to the National Council of State Housing Agencies.
- These apartments have provided affordable homes to over 8 million low-income households, including veterans, senior citizens, people with disabilities, families with children, and low-wage workers.

The Housing Credit generates economic activity, tax revenue, and jobs

- Since 1986, the Housing Credit has generated $593 billion in wages and business income and $206 billion in tax revenue, and has supported 5.2 million jobs, according to the National Association of Home Builders.

The Housing Credit serves those who are most in need

- Approximately 45 percent of households served are extremely low-income, making 30 percent or less of area median income, according to HUD data.
- Households living in Housing Credit properties have a median annual income of less than $18,000. If forced to pay market-rate rent, many of these households would be just one unforeseen event away from losing their housing.

Housing Credit properties are safe, decent, and financially stable

- Due to strong private sector oversight stemming from the Housing Credit's public-private partnership model, properties are built to durable, high-quality standards with sophisticated financing.
- Since inception, the total foreclosure rate for all Housing Credit properties has been only 0.65 percent, which is lower than any real estate asset class, according to accounting firm CohnReznick.

The Housing Credit is designed to serve a diversity of regions

- The Housing Credit allows states to set their own affordable housing priorities and to award Housing Credits based on those priorities, e.g. senior housing, housing for veterans, housing in rural areas, or housing for special populations, such as extremely low-income households.
- Housing Credit properties are built in large and small urban areas, suburban communities, rural towns, and on tribal land.
- The Housing Credit has also been important for communities recovering from natural disasters – from the California wildfires to Hurricane Katrina to the floods in Iowa.

The Housing Credit can and should serve even more households

- 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, according to Harvard's Joint Center for Housing Studies.
- Meanwhile, there is a growing shortage of affordable housing: For every 100 extremely low-income households, there are only 36 affordable homes available, according to the National Low Income Housing Coalition.
- Virtually no new affordable housing can be constructed without the Housing Credit. As the affordable housing crisis continues to grow, it will be essential to expand and strengthen the Housing Credit.

Appendix II. President-Elect Biden's Record of Support for the Housing Credit

Legislation	Action by President-Elect Biden	Impact on the Housing Credit
H.R.3838(99th)-Tax Reform Act of 1986	Senator Biden voted Yea and the bill was enacted	Established the Housing Credit
S.2411(100th)-A bill to amend the Internal Revenue Code of 1986 to extend the low-income housing credit through 1990	Senator Biden co-sponsored on 09/09/1988	Would have extended the Housing Credit
S.980(101st)-Low-Income Housing Credit Act of 1989	Senator Biden co-sponsored on 06/22/1989	Would have made the Housing Credit permanent and further strengthened the program
H.R.3299(101st)-Omnibus Budget Reconciliation Act of 1989	Senator Biden voted Yea and the bill was enacted	Extended the Housing Credit through the end of 1990 and strengthened the program
S.308(102nd)-A bill to amend the Internal Revenue Code of 1986 to permanently extend the low-income housing credit	Senator Biden co-sponsored on 02/26/1991	Would have made the Housing Credit permanent
H.R.3909(102nd)-Tax Extension Act of 1991	Passed the Senate with Unanimous Consent and the bill was enacted	Extended the Housing Credit through June 30, 1992
H.R.2264(103rd)-Omnibus Reconciliation Act of 1993	Senator Biden voted Yea and the bill was enacted	Made the Housing Credit permanent
S.1017(106th)-Affordable Housing Opportunity Act of 1999	Senator Biden co-sponsored on 06/15/1990	Would have increased Housing Credit allocations
S.677(107th)-Housing Bond and Credit Modernization and Fairness Act of 2001	Senator Biden co-sponsored on 09/19/2002	Would have defined the term "area median gross income" for the Housing Credit
S.595(108th)-Housing Bond and Credit Modernization and Fairness Act of 2001	Senator Biden co-sponsored on 03/23/2004	Would have defined the term "area median gross income" for the Housing Credit
H.R.4440(109th)-Gulf Opportunity Zone Act of 2005	Passed the Senate with Unanimous Consent and the bill was enacted	Created additional Housing Credit authority for regions impacted by the Gulf Coast hurricanes
H.R.3221(110th)-Housing and Economic Recovery Act of 2008	Senator Biden voted Yea and the bill was enacted	Increased Housing Credit allocations, set a minimum 9 percent Housing Credit rate, and further strengthened the program
H.R.1424(110th)-Emergency Economic Stabilization Act of 2008	Senator Biden voted Yea and the bill was enacted	Provided additional Housing Credit authority for disaster relief in 12 states
H.R.1(111th)-American Recovery and Reinvestment Act of 2009	Signed into law by President Obama	Strengthened the Housing Credit
H.R.8(112th)-American Taxpayer Relief Act of 2012	Signed into law by President Obama	Extended the minimum 9 percent Housing Credit rate
H.R.5771(113th)-Tax Increase Prevention Act of 2014	Signed into law by President Obama	Extended the minimum 9 percent Housing Credit rate
H.R.2029(114th)-Consolidated Appropriations Act of 2016	Signed into law by President Obama	Permanently extended the 9 percent minimum Housing Credit rate

Appendix III. Legislative Priorities for Immediate Emergency Relief and Long-Term Economic Recovery in Response to the COVID-19 Crisis

Legislative Priorities for Immediate Emergency Relief

Enact a Minimum 4 Percent Housing Credit Rate

- Enacting a minimum 4 percent Housing Credit rate would make critically needed affordable housing developments financially feasible in light of the drastically reduced Housing Credit rate, which recently fell to historic lows and is now hovering around 3.07 percent. The rate drop is a direct result of cuts to federal borrowing rates provided as part of the crisis response. Because the rate has fallen so low, many Housing Credit developments in the pipeline – and the jobs that this construction would support – are at risk of not moving forward.
- Setting the minimum rate is vital to the country's affordable housing delivery system, as approximately half of all Housing Credit homes are provided through the 4 percent Housing Credit. A minimum 4 percent rate would provide more than 137,000 additional affordable homes over the next decade. Setting a minimum 4 percent rate would also provide parity to the 9 percent Housing Credit rate, for which Congress first enacted a minimum rate in response to the 2008 economic crisis.
- This change should apply for buildings placed in service after January 20, 2020 (the beginning of the COVID-19 "incident period" as determined by the Federal Emergency Management Administration).
- This provision is included in the AHCIA, Economic Justice Act, Emergency Affordable Housing Act, and Moving Forward Act.

Allocate Emergency Rental Assistance to Stabilize Households and Existing Affordable Housing Properties

- For many households whose incomes have been reduced or lost entirely due to the COVID-19 crisis, unemployment benefits will not be enough to pay the rent while also meeting other needs, like health care and food, and the financial burden has only increased for those whose initial benefits have expired. While eviction moratoriums may keep families in their homes for the near-term, the accrual of rent payments over time may only put them at greater risk of eviction in the future. In fact, according to estimates from the National Council of State Housing Agencies, when the Centers for Disease Control and Prevention's eviction moratorium expires at the end of the year, renters will owe up to $34 billion in back-rent and more than 8 million households will be at risk of eviction. Additional rental assistance is needed to fill the gap between households' current income and what they need to stay in their homes while still meeting their daily needs.
- Affordable housing properties have also been impacted by reduced operating budgets as a result of the crisis. The policies enacted to keep people in their homes during the crisis, like eviction moratoriums, will also require counterbalancing measures to fund operating expenses, pay or resume paying debt service, and replenish operating reserves on affordable properties in the absence of cash flow from rent. Additional emergency operating funding may also be needed as properties respond to the unprecedented health crisis. Without assistance, owners may not be able to fulfill their obligations to ensure a safe living environment or provide the services that are

helpful to support self-sufficiency and educational attainment, such as job training or after-school programming.

- As one of the most flexible affordable housing funding sources, providing additional HOME Investment Partnership Program (HOME) funds would help stabilize low-income families, cover increased operating costs associated with addressing COVID-19 related expenses, replenish operating reserves that are being depleted as cash flow from rent declines, and stimulate the preservation and production of additional affordable homes.
- Additional rental assistance is included in the Moving Forward Act and additional legislation.

Legislative Priorities for Long-Term Economic Recovery

Increase the 9 Percent Housing Credit Allocation by 50 Percent

- Even before the COVID-19 crisis, the 9 percent Housing Credit was severely over-subscribed – many more applications for affordable housing developments are submitted than are able to receive Housing Credit financing due to the limited state allocations. Increasing the 9 percent Housing Credit allocation would help to address the heightened need for affordable homes that is resulting from the economic crisis. As the nation's primary tool for financing affordable housing, additional Housing Credit resources must be a critical component of any plan to increase affordable housing production or preservation. We propose a 50 percent increase, which would provide hundreds of thousands of crucially needed affordable homes for low-income households across the country.
- This provision should be phased in over two years at 25 percent per year and adjusted for inflation, beginning in 2021. Once the immediate obstacles directly related to the current crisis are resolved, the Housing Credit community will be prepared to focus on a significant increase in rental housing production in response to the heightened need.
- This provision is included in the AHCIA, Emergency Affordable Housing Act, and Moving Forward Act.

Lower the "50 Percent Test" Bond Financing Threshold to 25 Percent for 4 Percent Housing Credit Properties

- Lowering the "50 Percent Test" to 25 percent would reduce the amount of limited Private Activity Bond financing required to access 4 percent Housing Credits, providing needed flexibility at a time when several issues are impacting the availability of bond financing, including delays and added costs due to the COVID-19 crisis. These unexpected and increased project costs are putting affordable housing at risk as the expected bond allocation for a development may no longer represent 50 percent of the total cost, which would have the effect of substantially decreasing the 4 percent Housing Credit equity available for the property and rendering it financially infeasible.
- In addition to ensuring that 4 percent Housing Credit properties are able to meet the bond financing threshold and trigger the full amount of 4 percent Housing Credits possible, lowering the threshold would substantially increase the amount of properties that can receive 4 percent Housing Credits, especially in states that have reached or are nearing their Private Activity Bond spending cap. According to a report from Novogradac & Co. and the National Council of State

Housing Agencies, lowering the test to 25 percent could provide as many as 1.4 million additional affordable homes over the next decade.

- This change should apply for Housing Credit properties financed using Multifamily Private Activity Bonds that are placed in service after January 20, 2020.
- This provision is included in the Emergency Affordable Housing Act and Moving Forward Act.

Provide Additional Housing Credit Basis Boosts

- Providing Housing Credit basis boosts would supply needed equity for developments that would not otherwise be financially feasible.
- We propose the following basis boosts:
    - 30 percent basis boost for developments financed using Multifamily Private Activity Bonds, bringing parity with the current basis boost available for Housing Credit properties financed without Multifamily Private Activity Bonds,
    - 50 percent basis boost for developments serving extremely low-income tenants,
    - 30 percent basis boost for developments in rural areas, and/or
    - 30 percent basis boost for developments in Native American communities.
- These provisions are included in the AHCIA, Emergency Affordable Housing Act, and Moving Forward Act.