AFFORDABLE RENTAL HOUSING A.C.T.I.O.N.
A Call To Invest in Our Neighborhoods

The Affordable Housing Credit Improvement Act of 2017

Sponsored by Representatives Pat Tiberi (R-OH) and Richard Neal (D-MA), the Affordable Housing Credit Improvement Act of 2017 would enact numerous provisions to strengthen the Low-Income Housing Tax Credit (Housing Credit), our nation's most successful tool for encouraging private investment in the production and preservation of affordable rental housing.

For over 30 years, the Housing Credit has been a model public-private partnership program, bringing to bear private sector resources, market forces, and state-level administration. It has financed roughly 3 million apartments since 1986, providing more than 6.7 million low-income families, seniors, veterans, and people with disabilities homes they can afford. Virtually no affordable rental housing development would occur without the Housing Credit.

See below for a summary of the provisions in the Affordable Housing Credit Improvement Act.

Provision	Issue	Proposal
Permit income averaging in Housing Credit properties (Section 101)	Housing Credit apartments currently serve renters with incomes up to 60 percent of area median income (AMI), and rents are comparably restricted. While states are encouraged to give preference to developments that serve the lowest-income populations, it can be difficult to make such developments financially feasible, especially in rural areas with very low median incomes, in economically depressed communities pursuing mixed-income revitalization, and in high-cost markets, where it is difficult to target apartments to the lowest-income tenants without significant additional subsidy.	Create a new test, known as "income averaging," that would allow the 60 percent of AMI ceiling to apply to the average of all apartments in a property rather than to every individual Housing Credit apartment. The maximum income to qualify for any Housing Credit apartment would be limited to 80 percent of AMI, which is still considered low-income. The higher rents that households with incomes above 60 percent of AMI could afford have the potential to offset the lower rents that households below 40 or 30 percent of AMI could afford, allowing developments to maintain financial feasibility while providing a deeper level of affordability. JCT estimates a largely similar provision would cost $92 million over 10 years.
Standardize income eligibility for rural properties (Section 102)	Under current law, there is a discrepancy in tenant income limits for Housing Credit properties located in rural areas based on whether or not the property is financed with tax-exempt multifamily Housing Bonds.	Base income limits in rural projects on the greater of area median income or the national nonmetropolitan median income. This would standardize tenant income limit rules for Housing Credit projects in rural areas regardless of whether or not they are financed with Housing Bonds, making bond-financed developments more feasible in rural areas while streamlining program rules.

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Provide flexibility for existing tenants' income eligibility (Section 103)	When the Housing Credit is used to recapitalize properties for preservation, all existing tenants must have their incomes recertified for eligibility. However, problems have arisen in instances when tenants were eligible when they moved into the property, but have since had their income increase above the Housing Credit limits – this may reduce the eligible basis, and thus reduce the credits allowable for the rehabilitation. IRS guidance currently allows apartments occupied by over-income tenants to be included in eligible basis if the project was originally financed with Housing Credits. However, that guidance is not codified by law and does not apply to affordable housing originally financed with HUD or other affordable housing programs. In those cases, the amount of Credit the property is eligible for is reduced, which can make it financially infeasible to rehabilitate the property.	Allow existing tenants to be considered low-income for purposes of determining eligible basis if the tenant met the Housing Credit income requirement upon initial occupancy, provided their income has not risen above 120 percent of AMI. This would apply to all means-tested affordable housing undergoing recapitalization with Housing Credits, not just properties that were originally financed with Housing Credits. This eliminates the tension between allowing existing tenants to stay in their homes and recapitalizing affordable housing properties, so long as tenant incomes do not exceed a reasonable limit.
Simplify the Housing Credit Student Rule (Section 104)	When Congress created the Housing Credit, it sought to ensure that Credits were not used to develop dormitory housing for full-time students. However, the rule is overly complex, and has become even more so as Congress has enacted a growing list of exceptions to the Housing Credit student rule. Moreover, the Housing Credit student rule differs from the student rule applied to HUD-financed housing, which means that properties that have both Housing Credit and HUD funding sources must comply with two different student rules.	Simplify the current Housing Credit student rule and better achieve the intended targeting by replacing it with a new rule that makes households composed entirely of adult students under the age of 24 who are enrolled full-time at an institution of higher education ineligible to live in a Housing Credit apartment, with certain exceptions. The proposed student rule is aligned with the HUD student rule, which would simplify multiple subsidy compliance.
Limit voucher payments in certain Housing Credit developments (Section 105)	Under current law, owners may collect the full value of a Housing Choice Voucher from a tenant who is a voucher holder, even if the value of the voucher exceeds the Housing Credit rent limit for the tenant's unit. Any additional rental income is typically used to offset operating expenses, provide services for residents, or make capital improvements. While this may support the financial health of the property and its residents, those funds could otherwise be used to provide rental assistance to households on the wait list for vouchers.	Limit the rent charged to the maximum Housing Credit rent instead of the HUD-calculated fair market rent for apartments leased by voucher holders and benefiting from either income averaging (Section 201) or the basis boost (Section 309) for extremely low-income tenants, since both of these options already reduce rents for the lowest-income tenants. By limiting the rental income to the Housing Credit maximum rents, the excess rental assistance that the voucher would have provided can be used by the public housing authority that issued the voucher to serve other families.

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Establish a permanent minimum 4 percent Housing Credit rate (Section 201)	When the Housing Credit was created, Congress set the credit rates (which determine how much Housing Credit equity can go into a particular project) at 9 percent for new construction and substantial rehabilitation and 4 percent for the acquisition of affordable housing and for multifamily Housing Bond-financed housing, which is how the "9 percent" and "4 percent" credit labels were derived. However, since then, Housing Credit rates have fluctuated according to a formula related to federal borrowing rates, which have sunk to historic lows, yielding much lower credit rates. As a result, there is 15 to 20 percent less Housing Credit equity available for any given affordable housing development today than the original rates provided. Recognizing the impact of declining rates on the program, Congress permanently enacted a minimum 9 percent credit rate in 2015, but there is still no corresponding minimum 4 percent rate.	Establish a minimum 4 percent rate for Credits used to finance acquisitions and Housing Bond-financed developments. This would provide more predictability and flexibility in Housing Credit financing, allowing developers to target more apartments to very- and extremely-low income households at rents they could afford and make more types of properties financially feasible, especially for affordable housing preservation. It would also provide parity with the corresponding minimum 9 percent Housing Credit rate, which has now been made permanent.
Clarify the ability to claim Housing Credits after casualty losses (Section 202)	If a Housing Credit property experiences a casualty loss like a flood or fire that causes residents to temporarily vacate the property, the owner is required to have the property back in service by December 31 of that calendar year – regardless of when during the year the loss occurred – in order to avoid recapture of Housing Credits. This is especially problematic when the casualty loss occurs near the end of the calendar year, because the owner risks losing Housing Credits for the entire year, even though the property was in service for most of that time. The only exceptions to this rule are for casualty losses resulting from federally declared disasters.	Clarify that there is no recapture and no loss of the ability to claim Housing Credits during a restoration period that results from any casualty loss (regardless of whether it results from a federally declared disaster), provided that the building is restored within a reasonable period as determined by the state Housing Credit agency, but not to exceed 25 months from the date of the casualty. This provides a more predictable and reasonable window to repair and reoccupy properties after damage.
Modify rights related to building purchase (Section 203)	As Housing Credit properties reach the end of their initial 15-year compliance period, investors have the option to transfer or sell their share in the project and exit the partnership, and in some cases nonprofit sponsors may seek to gain full control of the property. However, the transfer of properties to nonprofits has caused conflicts between investors and nonprofit sponsors in instances involving the disposition of cash assets, such as operating or replacement reserves, that are critical to the long-term viability of the property. This problem becomes of greater concern as more and more properties reach year 15.	Replace the existing right of first refusal, which was intended to allow nonprofit sponsors of Housing Credit properties to gain full control of the property at the end of the property's initial 15-year compliance period but has been problematic in practice, with a purchase option at the minimum purchase price allowed by current law. This change is intended to help nonprofit sponsors keep Housing Credit properties affordable for the long term.

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Modify the "Ten Year Rule" (Section 204)	Housing Credits are currently not available for the acquisition of properties that were placed in service during the prior ten year period. This rule dates back to 1986, when Congress was concerned about "churning" real estate to take advantage of property appreciation due to the accelerated depreciation rules enacted in 1981. Thirty years later, with longer depreciation rules now in effect, the Ten Year Rule is no longer relevant. Instead, the rule unnecessarily limits the acquisition of properties that would otherwise be eligible for preservation with the Housing Credit. To address this concern, as part of the Housing and Economic Recovery Act of 2008, Congress provided an exception to the Ten Year Rule for certain federally or state-assisted buildings. However, the IRS has not issued regulations with respect to this change, and accordingly, few transactions have attempted to utilize this new exception.	Modify the prohibition on claiming acquisition Housing Credits for properties placed in service in the previous ten years by creating an option to instead limit the acquisition basis of the building to the lowest price paid for the building during the last ten years (with an adjustment for the cost of living), plus any capital improvements. This provision is intended to support preservation of properties in need of rehabilitation regardless of when they were placed in service.
Include relocation expenses in rehabilitation expenditures (Section 205)	When an occupied building is rehabilitated, it may be safer, more expedient, and more efficient if tenants are relocated while the work is being done. The IRS has taken the position that the cost of relocating tenants is deductible, and therefore cannot be capitalized. In the case of the Housing Credit, the result of this position is that relocation costs cannot be considered direct costs of the rehabilitation, and thus cannot be covered by Housing Credit equity. This makes rehabilitation far more difficult and time consuming, potentially adding unnecessary costs, while sacrificing resident safety. In some instances, these obstacles make the rehabilitation untenable.	Allow for tenant relocation costs incurred in connection with a rehabilitation of a building to be capitalized as part of the cost of the rehabilitation, consistent with the treatment of similar costs. As the Housing Credit is the most important source of capital for affordable housing rehabilitation and preservation, this provision would greatly assist preservation efforts.
Repeal the Qualified Census Tract (QCT) population cap (Section 206)	Currently, properties are eligible for up to a 30 percent basis boost if they are located in a Qualified Census Tract (QCT), meaning 50 percent or more of the households have median incomes at or below 60 percent of the area median income, or tracts with at least 25 percent poverty rates. However, no more than 20 percent of the population of any given metropolitan area may be located in census tracts that are eligible to receive the QCT designation, even if additional census tracts within that metropolitan area would otherwise qualify based on the QCT income standard.	Remove the QCT population cap, enabling properties in more areas to receive additional Housing Credit equity if necessary to make the project financially feasible. JCT estimates this provision would cost $151 million over 10 years.

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Clarify that states have the authority to determine the definition of a community revitalization plan with broad parameters (Section 207)	Under current law, states Housing Credit agencies must give preference to properties that are located in QCTs and the development of which contributes to a "concerted community revitalization plan." However, the statute does not specify which entity should define what constitutes a community revitalization plan.	Clarify that each state Housing Credit agency has the authority to determine what constitutes a concerted community revitalization plan for its state, taking into account any factors the agency deems appropriate, including the extent to which the plan 1) is geographically specific, 2) outlines a clear plan for implementation, 3) includes a strategy for securing commitments of investment in non-housing infrastructure, amenities or services, and 4) demonstrates the need for community revitalization.
Prohibit local approval and contribution requirements (Section 208)	Some state qualified allocation plans (QAPs) require developers to demonstrate local support for Housing Credit developments or provide points as part of a competitive scoring process for developments that demonstrate such support. These types of provisions can result in the unintended consequence of giving local governments "veto power" over projects, as withholding support is could result in the project not getting funded. This is especially problematic in high opportunity areas where local officials may not support the development of affordable housing.	Remove the provision that requires state agencies to notify the chief executive officer (or equivalent) of the local jurisdiction in which a proposed building would be located. Specify that the selection criteria in the QAP cannot include consideration of any support for or opposition to a project from local or elected officials or local government contributions to a project. States would be able to develop a competitive scoring process that encourages developers to obtain additional funding sources for their projects, including local financial contributions, so long as states do not prioritize local contributions over any other source of outside funding. The intent of this provision is to prevent "Not In My Backyard" (NIMBY) opposition from interfering with Housing Credit development, while still allowing states to maximize Credit efficiency.
Increase the amount of Housing Credits that developments serving extremely low-income tenants can receive (Section 209)	In order to serve the lowest-income tenants – those with incomes at or below the greater of 30 percent of area median income or the federal poverty line – developers must often eliminate or substantially reduce the need for debt on a property so that they are less reliant on rental income from tenants. Though state allocating agencies can award up to a 30 percent basis boost to provide additional Housing Credit equity to developments when needed for financial feasibility, this is often still not sufficient to bring down rents to levels that extremely low-income families can afford.	Provide up to a 50 percent basis boost (if needed for financial feasibility) for developments serving extremely low-income and homeless families and individuals in at least 20 percent of the apartments. This provision would only apply to the portion of the development reserved for these families and individuals, thereby allowing the Housing Credit to target more extremely low-income tenants at rents that are more affordable.

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Allow states to award a "basis boost" to Housing-Bond financed developments (Section 210)	Current law provides state agencies the discretion to award up to a 30 percent basis boost to developments financed with Housing Credits from the state's credit ceiling, regardless of whether those developments are located in a QCT or a Difficult Development Area (DDA), if the state determines the additional equity is necessary for financial feasibility. However, the same rule does not currently apply to developments financed with Housing Bonds.	Allow states to provide up to a 30 percent basis boost for Housing Bond-financed properties if necessary for financial feasibility, providing parity between Housing Bond-financed developments and those that use allocated Housing Credits.
Make the Housing Credit compatible with certain energy efficiency tax incentives (Section 211)	A key energy tax incentive – the Section 48 Investment Credit used to finance solar panels – requires basis reductions when used with the Housing Credit. This means that when affordable housing developers claim the solar tax incentives, less Housing Credit equity can go into the property. The trade-off makes these incentives very difficult to use with the Housing Credit and creates a conflict between affordable housing and renewable energy measures.	Eliminate the basis reduction for Housing Credit projects that also claim the Section 48 Investment Credit, allowing developers to build housing that is affordable and also benefits from the renewable energy measures made possible by this tax incentive.
Restriction of planned foreclosures (Section 212)	By law, Housing Credit properties must remain affordable for at least 30 years. The first 15 year period is regulated through the tax code under the threat of recapture of tax credits; the second 15 year period is regulated through an extended use agreement administered by the state Housing Credit agency. Under current law, if a property is acquired by foreclosure during the second 15 year period, the affordability restrictions terminate unless the Secretary of the Treasury determines that the acquisition was part of an arrangement to terminate those restrictions and not a legitimate foreclosure. In practice, it is very difficult for the Treasury Secretary to make such a determination about individual properties.	Ensure that affordability restrictions endure in the case of illegitimate foreclosure by providing state agencies, rather than the Treasury Secretary, the authority to determine whether the foreclosure was an arrangement. This provision would further require the owner or successor acquiring the property to provide states with at least 60 days written notice of its intent to terminate the affordability period so that the state has time to assess the legitimacy of the foreclosure.
Increase of population cap for Difficult Development Areas (Section 213)	Currently, properties are eligible for up to a 30 percent basis boost if they are located in a DDA, meaning areas with high construction, land, and utility costs relative to area median gross income. No more than 20 percent of the aggregate population of the entire country may be located in census tracts that are eligible to receive the DDA designation.	Increase the DDA population cap from 20 to 30 percent, enabling properties in more areas to receive additional Housing Credit equity if necessary to make the project financially feasible. This provision would make production and preservation of Housing Credit properties in higher cost areas more financially feasible.

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Create a selection criteria for housing that serves the needs of Native Americans (Section 301)	Native Americans face a particularly acute affordable housing crisis, yet it has been difficult in some areas of the country for tribes to access Housing Credits.	Require states to consider the affordable housing needs of Native Americans in their states by establishing a QAP selection criteria.
Qualify Indian areas as Difficult Development Areas (Section 302)	While some projects in Indian areas may qualify as DDAs and are thus eligible for up to a 30 percent basis boost, most tribal areas do not qualify under current DDA standards.	Modifying the definition of DDAs to automatically include projects located in an Indian area, making these projects eligible for increased Housing Credit equity if needed to make them financially feasible.
Change the official name of the Low Income Housing Tax Credit (Section 401)	The official name of the Low Income Housing Tax Credit sometimes exacerbates NIMBY opposition to proposed developments financed by the Housing Credit.	Change the official name to the Affordable Housing Tax Credit.