

# AFFORDABLE HOUSING CREDIT IMPROVEMENT ACT



The Low Income Housing Tax Credit (Housing Credit) is the primary source of financing for the construction and preservation of affordable housing. While it is an important resource, the Housing Credit, on its own, rarely serves the lowest-income people, those with the greatest, clearest needs. For this reason, any expansion of the Housing Credit must reform the program to ensure that the Housing Credit better serves our nation’s lowest-income renters.

NLIHC and NHLP support the Affordable Housing Credit Improvement Act ([S.1703](#), [H.R. 3077](#)), which includes a 50% expansion of the Housing Credit and important reforms to more deeply target these resources to those families who need it most. Additional reforms are needed to better serve renters and ensure long-term affordability.

## KEY REFORMS IN THE AFFORDABLE HOUSING CREDIT IMPROVEMENT ACT

### 1. Incentives to Serve Homeless and Extremely Low-Income Families

According to [The Gap: A Shortage of Affordable Rental Homes](#), there are just 37 affordable and available rental homes for every 100 of America’s poorest seniors, people with disabilities, families with children, and other individuals. Extremely low-income renters are more likely to be severely housing cost-burdened – paying more than half of their limited incomes on housing – than any other income group, accounting for 73% of all severely housing cost-burdened renters in the U.S. An additional half a million people experience homelessness on any given night. To help increase the supply of deeply affordable housing for America’s poorest families, the bill provides a 50% basis boost—thereby increasing the investment of Housing Credits—for developments that set aside at least 20% of units for households with extremely low incomes or those experiencing homelessness.

### 2. Encourage development in tribal communities

Native Americans in tribal areas 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. Despite the growing need for safe, decent homes, federal investments in affordable housing on tribal

lands have lagged for decades, particularly in more rural and remote areas. This bill designates tribal communities as “Difficult To Develop Areas,” making housing developments automatically eligible for a 30% basis boost to increase the investment of Housing Credits. The bill also requires states to consider the needs of members of Indian tribes when allocating Housing Credits.

### 3. Facilitate development in rural America

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. This bill designates ensures that rural communities are designated as “Difficult To Develop Areas,” making housing developments automatically eligible for a 30% basis boost to increase the investment of Housing Credits.

## OTHER NEEDED REFORMS

Additional reforms are needed to improve the Housing Credit program, including:

### 1. Ensure Data Transparency

HUD’s Housing Credit database, the primary data source about Housing Credit properties, does not include critical information regarding development’s ownership structure or state or locally-imposed affordability restrictions beyond the federal requirement of 30 years. States should be required to report to the Internal Revenue Service (IRS) and HUD information the general partner responsible for

the day-to-day management of the property, all changes in ownership, and property-level affordability restrictions as part of an effort to help preserve these investments.

In addition, long-term tracking of Housing Credit properties is often difficult because monitoring and enforcement after the compliance period (i.e., after Year 15) varies by state and, in many cases, is unknown. Improved tracking is needed to protect residents and federal investments.

## 2. Eliminate the Qualified Contract Loophole

Congress should eliminate the “Qualified Contract” loophole from the Housing Credit program. Under the Qualified Contract loophole, Housing Credit 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 at market value. The QC loophole has led to a substantial loss of affordable rental homes, harming low-income residents and wasting scarce federal investments.

## 3. Clarify and Strengthen Nonprofits’ Right of First Refusal

By statute, Congress provides nonprofit organizations with a “right of first refusal (ROFR)” to help facilitate their ability to purchase a Housing Credit 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 selling the property at a higher price, especially in hot housing markets. In doing so, investors undermine the goals of the Housing Credit program by putting the long-term financial health and condition of the properties at risk and draining public resources. Congress should act to stop harmful actions by investors by clarifying and strengthening the ROFR for nonprofit owners of Housing Credit properties.

## 4. Protections for Tenants

Unlike the HUD programs, tenants in Housing Credit properties have few protections. 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 Housing Credit 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. The lack of protections places tenants and applicants in a vulnerable position as they may be evicted or denied admission for arbitrary or unlawful reasons.



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