



**Written Testimony of Michael Novogradac**  
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**Before the United States House of Representatives,**  
**Committee on Ways and Means**  
**For the Hearing entitled,**  
**“Leveraging the Tax Code for Infrastructure Investment”**  
**May 19, 2021**

Thank you, Chairman Neal, Ranking Member Brady and members of the committee for inviting me to speak today on leveraging the tax code for infrastructure investment and the importance of community development, and renewable and clean energy tax incentives in achieving many of the goals of infrastructure investment.

As you look to advance legislation to spur investment in infrastructure, we urge you to include the expansion and enhancement of existing tax code provision that do just that, as well as consider adding additional community development tax credit tools. The low-income housing tax credit (Housing Credit), new markets tax credit (NMTTC), historic tax credit (HTC), and the renewable energy investment tax credit (ITC) and production tax credit (PTC) are proven infrastructure incentives with strong track records. These incentives have strong bipartisan support, and understandably so. They improve communities across the country, including particularly distressed areas, provide clean energy, and create substantial economic activity, including creating and preserving jobs. As such, they deserve to be considered an integral part of any infrastructure legislation. There are also a number of bipartisan proposals to create new community development tax incentives addressing challenges that the existing ones do not while sharing many of the design attributes that made the existing ones successful.

Before I discuss each of these tax incentives in greater detail, let me provide the committee with my background and that of Novogradac & Company. I am the managing partner of Novogradac, a national certified public accounting and consulting company specializing in real estate and a wide variety of tax incentives. Our clients represent a broad range of industries, with a major emphasis in the affordable housing, community development, historic preservation, and renewable and clean energy sectors. We provide a wide range of financial and consulting services to publicly and privately held companies, nonprofits and governmental entities. We also host 12 conferences each year and numerous online trainings focused on our service areas, bringing together thousands of practitioners and advocates from across the country to learn how best to use these incentives to achieve the goals established by Congress when enacting them.

I founded Novogradac in October 1989 on the very day of the Loma Prieta earthquake. Beginning with my personal expertise in real estate taxation and accounting, I established the firm to better serve clients engaged in public-private partnerships, including a particular focus on using rehabilitation tax credits to preserve and rehabilitate historic buildings, and using the then recently enacted Housing Credit to finance high quality affordable rental housing. Over the years, the firm has expanded to serve clients in a broader range of public-private partnerships and has grown since its founding to more than 650 employees nationwide in more than 28 offices in 15 states and the District of Columbia.

Novogradac also hosts working groups of seasoned practitioners and advocates representing a wide variety of perspectives from nonprofit and for-profit developers, investors, lenders, community development financial institutions, attorneys, and other professionals analyzing and providing comments on key federal and state regulations, policies, and other guidance involving the related tax incentives. We host the LIHTC Working Group, New Markets Tax Credit Working Group, the Opportunity Zones Working Group and the Renewable Energy Working Group.

I serve on the executive committees of the Affordable Housing Tax Credit Coalition and the Housing Advisory Group, on boards of directors of the National Housing Conference, New Markets Tax Credit Coalition and Historic Tax Credit Coalition, and am an active member of the Opportunity Zones Coalition.

As demonstrated above, our organization has focused for decades on incentives that benefit disadvantaged communities, from affordable housing to community development, historic preservation, renewable energy and much more. Novogradac brings that same commitment of diversity and inclusion to its employees through our company culture, which is focused on education, acceptance, innovation and opportunity. In 2020, Novogradac established a social impact office to further support the firm and our clients in building out internal frameworks and programming focused on social and environmental risks and opportunities. As a part of that work, we have a renewed approach to diversity, equity and inclusion, which has been at the center of Novogradac's work since its founding. One example of this renewed commitment is our signing on as a founding member of the Open Access Fellowship created by members of the NMTC community to increase diverse representation in community development finance, with a focus on Black and Latinx communities.

### **Tax Credit Public-Private Partnerships**

Before I discuss the various key community development and clean energy tax incentives individually, I would like to note the key design benefits of delivering such incentives through a tax credit. Public-private partnerships involving tax credits are foundationally based on taxpayers investing equity capital during the higher risk development phase of a given activity in exchange for the expectation of beginning to receive tax and other economic benefits once property is placed in service, or other incentivized business activities have begun. The tax benefits are generally claimed and retained over time, to the extent a property or other business activities continue to provide the benefits for which the credits were intended to support. If a property or activity fails to comply with tax credit requirements, future tax benefits are generally lost, and prior tax benefits subject to recapture. The community development and clean energy tax credit model embodies the concept of "pay for success." If something goes wrong in the development or operational phase, private equity capital is at risk.

The potential loss of future tax benefits, and collectible recapture of prior benefits is a key design feature of community development and clean energy tax credits. With a tax credit that is claimed and/or vests over time, the threat of the loss and recapture of tax credits helps ensure the developer focus on delivering and continue to deliver as promised throughout the compliance period. Investors carefully perform due diligence on developments and proposed activities before agreeing to invest their equity capital, and continue monitoring partnership activities during the life of their investment. Any noncompliance can be enforced by the public sector on the investor.

This model of collectible recapture could also be applied to other capital-intensive public goods, such as developing housing for homeownership in distressed communities, rehabilitating older non-historic buildings, and even "traditional" infrastructure, as envisioned by the Move America Act.

### **Low-Income Housing Tax Credit**

The first community development incentive I would like to discuss is the Housing Credit. Authorized in the Tax Reform Act of 1986, the Housing Credit is the primary source of financing for the creation and preservation of affordable rental housing. Harvard University referred to it as the nation's most successful affordable rental housing production and preservation incentive in the nation's history<sup>1</sup>. It is the foundation upon which many other federal rental housing programs rely.

As a public-private partnership, in exchange for providing upfront equity financing to develop and preserve affordable rental housing, the Housing Credit gives investors a dollar-for-dollar reduction in their federal tax liability generally claimed over 10 years. The investors' equity contribution subsidizes low-income rental housing development and renovation, thus allowing subsidized units to rent to low-income families at income restricted rental rates. There are affordability and eligibility requirements that must generally be adhered to for a minimum of 30 years, often longer depending on state requirements. To avoid the loss of tax credits and recapture of previously claimed credits, owners and investors must maintain property compliance for 15 years.

The Housing Credit incentive is administered by credit allocating agencies, who are responsible for awarding their agency's allocation of Housing Credits. There are two types of Housing Credit percentages—the 9% Housing Credit and 4% Housing Credit, statutorily known as the “70% present value credit” and the “30% present value credit,” respectively. The credits differ in general purpose, the level of subsidy provided, and generally the process developers must go through to obtain the right to claim credits. The 9% credit is designed to subsidize 70% of the eligible low-income unit costs of new construction or rehabilitation of a property financed without tax-exempt private activity bonds. The 30% subsidy, on the other hand, is primarily used for the acquisition costs of existing properties, as well as the costs of new construction and renovation of existing properties financed with private activity bonds. Properties financed by multifamily private activity bonds (PABs) are not limited by a credit allocating agency's annual Housing Credit limit, rather, they are indirectly limited by a state's overall limit of PABs. All Housing Credit financed properties have federal income restriction requirements—tenants in Housing Credit homes generally can earn no more than 60% of area median income (AMI), though there is an average income test that allows tenant households earning up to 80% AMI as long as the average income of the families living in the property does not exceed 60% AMI. Due to the competitive nature of the Housing Credit allocation process, and the manner in which credit allocating agencies prioritize awards, Housing Credit properties, on average, serve families at median incomes and rent restricted rents below the 60% federal limit.

Based on the U.S. Department of Housing and Urban Development (HUD) Housing Credit tenant survey data released April 2021, which covers Housing Credit properties placed in service in 2018, 47% of tenants in Housing Credit homes are extremely low-income (earning at or below 30% of AMI). Nearly 65% of tenants earned below 40% of AMI.<sup>2</sup> The HUD survey reports a median tenant income of \$17,522. This data reinforces the point that the Housing Credit is serving low-income households notably below the general federal limit of 60%.<sup>3</sup>

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<sup>1</sup> “The Disruption of the Low-Income Housing Tax Credit Program: Causes, Consequences, Responses, and Proposed Correctives” Joint Center for Housing Studies of Harvard University, December 2009, [https://www.jchs.harvard.edu/sites/default/files/media/imp/disruption\\_of\\_the\\_lihtc\\_program\\_2009\\_0.pdf](https://www.jchs.harvard.edu/sites/default/files/media/imp/disruption_of_the_lihtc_program_2009_0.pdf).

<sup>2</sup> “HUD LIHTC Tenant Report Highlights 47% of LIHTC Residents Earn at or Below 30% AMI” by Peter Lawrence, <https://www.novoco.com/notes-from-novogradac/hud-lihtc-tenant-report-highlights-47-lihtc-residents-earn-or-below-30-ami>.

<sup>3</sup> IRC § 42 (g)(1).

Combined, the 4% and 9% Housing Credit have financed more than 3.5 million affordable rental homes in all 50 states plus Washington, D.C., and the territories. The affordable rental homes created have served 8 million low-income households, according to the National Association of Home Builders.<sup>4</sup>

The Housing Credit benefits extend far beyond desperately needed affordable rental housing, as the Housing Credit boosts the economy and saves the government money<sup>5</sup>. Since its inception, 5.5 million jobs are supported as a result of the Housing Credit, and \$214 billion tax revenue has been generated as well as \$617 billion wages and business income, per the ACTION Campaign. Research has also shown that Housing Credit properties increase property values<sup>6</sup>, reduce poverty concentration<sup>7</sup>, provide access to better schools<sup>8</sup>, and decrease local crime rates<sup>9</sup>. Children who grow up in Housing Credit properties achieve higher rates of education and enjoy higher wages in adulthood.<sup>10</sup>

The Housing Credit also is an important preservation financing tool. The Housing Credit is often used to recapitalize existing affordable rental housing and extend the affordability and livability of federally assisted housing, such as homes originally financed by the U.S. Departments of Housing and Development and Agriculture. The Housing Credit finances housing in all areas, including urban, suburban, and rural communities. The Housing Credit serves rural populations by generating direct investment in affordable rental housing in areas where such housing is not otherwise financially feasible due to low rural median incomes.<sup>11</sup> The safe, stable, affordable rental housing that the Housing Credit finances contributes to the long-term economic growth and development of communities and the economic mobility of low-income individuals and families nationwide.

Yet, with all these achievements, the country still faces a growing affordable rental housing crisis that predates the COVID-19 pandemic. A plethora of available data and analyses illustrates how the country's low- and moderate-income households were faring. Pre-pandemic, nearly 11 million renter households were severely cost-burdened, meaning they spend more than half of their income on rent, per research from the Joint Center for Housing Studies (JCHS) of Harvard University.<sup>12</sup> At the same time, existing affordable housing is disappearing—the JCHS reports that nearly 4 million low-cost units were lost between

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<sup>4</sup> “Low-Income Housing Tax Credit Impact in the United States” ACTION Campaign, <https://static1.squarespace.com/static/566ee654bfe8736211c559eb/t/607763314b628a205aa010a4/1618436913622/ACTION-NATIONAL-2021.pdf>.

<sup>5</sup> “Housing Credit Improves Lives, Boosts Economy and Saves Government Money” by Michael Novogradac, July 14, 2016, <https://www.novoco.com/notes-from-novogradac/housing-credit-improves-lives-boosts-economy-and-saves-government-money>.

<sup>6</sup> “Who Wants affordable Housing in Their Backyard? An Equilibrium Analysis of Low Income Property Development” by Rebecca Diamond and Tim McQuade, 2017, [https://web.stanford.edu/~diamondr/LIHTC\\_spillovers.pdf](https://web.stanford.edu/~diamondr/LIHTC_spillovers.pdf).

<sup>7</sup> Ibid.

<sup>8</sup> “The Effects of the Low-Income Housing Tax Credit (LIHTC)” by NYU Furman Center, May 2017, [https://furmancenter.org/files/NYUFurmanCenter\\_LIHTC\\_May2017.pdf](https://furmancenter.org/files/NYUFurmanCenter_LIHTC_May2017.pdf).

<sup>9</sup> “Who Wants affordable Housing in Their Backyard? An Equilibrium Analysis of Low Income Property Development” by Rebecca Diamond and Tim McQuade, 2017, [https://web.stanford.edu/~diamondr/LIHTC\\_spillovers.pdf](https://web.stanford.edu/~diamondr/LIHTC_spillovers.pdf).

<sup>10</sup> “Longer Periods Living in LIHTC Housing as Children Associated with Better Long-Term Income and Educational Outcomes” by National Low Income Housing Coalition, January 6, 2020, <https://nlihc.org/resource/longer-periods-living-lihtc-housing-children-associated-better-long-term-income-and>.

<sup>11</sup> “Rental Housing for a 21<sup>st</sup> Century Rural America” Housing Assistance Council, [https://www.novoco.com/sites/default/files/atoms/files/hac\\_report\\_a\\_platform\\_for\\_preservation\\_090618.pdf](https://www.novoco.com/sites/default/files/atoms/files/hac_report_a_platform_for_preservation_090618.pdf).

<sup>12</sup> “America’s Rental Housing 2020” by Joint Center for Housing Studies of Harvard University, [https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard\\_JCHS\\_Americas\\_Rental\\_Housing\\_2020.pdf](https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2020.pdf).

1990 and 2017 and the nation continues to lose affordable rental homes annually due to the expiration of federal assistance, obsolescence and deterioration.<sup>13</sup> Analysis released March 2021 from the National Low Income Housing Coalition (NLIHC), *The Gap: A Shortage of Affordable Homes*, documents affordable rental housing shortfalls, finding that there is a shortage of nearly 7 million affordable and available rental homes for extremely low-income renters in this country.<sup>14</sup>

Though there are a number of programs designed to provide rental assist to benefit low-income renters, such as Housing Choice Vouchers, Section 8 Project-based Rental Assistance and public housing, more than 17 million families (over 75% of eligible lower-income households) are not able to access federal rental assistance programs designed to assist them.<sup>15</sup>

The Urban Institute (UI) published an article<sup>16</sup> and policy brief<sup>17</sup> showing that in order to serve all renter households experiencing affordability issues—this included renters who were cost-burdened before the pandemic hit and those who lost income as a result of the ensuing economic downturn—\$16 billion in monthly housing support would be needed. Where other research looks at need through just the lens of the pandemic, UI took the pre-pandemic housing crisis into account. Addressing this affordable housing shortage will require a holistic approach, including scaling up a number of programs.

The level of crisis displayed by the data above has been further exacerbated by the COVID-19 pandemic which has disproportionately affected vulnerable communities across the nation. Furthermore, many low-income households are at risk of eviction resulting from the economic fallout from the pandemic. Though protections were put in place to keep renters in their homes—for instance the federal eviction moratorium put in place by the Centers for Disease Control and Prevention along with state protections—this does not address the larger issues renters and property owners face. Research by Moody’s Analytics estimated that renters owe nearly \$60 billion in back rent.<sup>18</sup> Low-income renters were among those most likely to be negatively impacted by the pandemic as they tend work in industries shuttered as a result of the pandemic. As a hard to serve housing population, it will take more than eviction protections to assist these renters and the properties in which they live.

The incentive that is best suited to address this growing need for more affordable rental housing for low-income families is an enhanced and expanded Housing Credit. Though much more is needed to address this crisis, we applaud Congress for taking action late last year while the country was still in the grips of the pandemic, with the passage of the 4% minimum rate for the 30% present value Housing Credit,

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<sup>13</sup> “New JCHS Study Analyzes the Loss 4 million Low-Cost Rental Homes Through the Lens of Individual States” by Peter Lawrence, <https://www.novoco.com/notes-from-novogradac/new-jchs-study-analyzes-loss-4-million-low-cost-rental-homes-through-lens-individual-states>.

<sup>14</sup> “The Gap: A Shortage of Affordable Homes” by National Low Income Housing Coalition, [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>15</sup> “Three Out of Four Low-Income At-Risk Renters Do Not Receive Federal Rental Assistance” by Center on Budget and Policy Priorities, <https://www.cbpp.org/three-out-of-four-low-income-at-risk-renters-do-not-receive-federal-rental-assistance>.

<sup>16</sup> “To Stay Stably Housed, Renters Need \$16 Billion per Month in Housing Support during the COVID-19 Crisis” by Aaron Shroyer and Kathryn Reynolds, <https://www.urban.org/urban-wire/stay-stably-housed-renters-need-16-billion-month-housing-support-during-covid-19-crisis>.

<sup>17</sup> “How Much Assistance Is Needed to Support Renters through the COVID-19 Crisis?” by Sarah Stochak, Aaron Shroyer, Jung Hyun Choi, Kathryn Reynolds, and Laurie Goodman, [https://www.urban.org/sites/default/files/publication/102389/how-much-assistance-is-needed-to-support-renters\\_1\\_1.pdf](https://www.urban.org/sites/default/files/publication/102389/how-much-assistance-is-needed-to-support-renters_1_1.pdf).

<sup>18</sup> “Averting an Eviction Crisis” by Jim Parrott and Mark Zandi, <https://www.moodyanalytics.com/-/media/article/2021/averting-an-eviction-crisis.pdf>.

included in year-end tax legislation attached to the final fiscal year 2021 appropriations.<sup>19</sup> Our analysis shows an additional 130,000 affordable rental homes could be financed as a result of this change and we thank Congress, and our affordable housing champions for their action. We also thank Congress for including in this same year-end bill \$1.2 billion in additional Housing Credits for 11 states and Puerto Rico experiencing non-COVID-19 major disasters in 2020.

These accomplishments are the result of bipartisan, bicameral support and it will take Congress working together again to address the ongoing affordable housing crisis. In the House, we commend the leadership of Reps. Suzan DelBene, D-Washington; Jackie Walorski, R-Indiana; Don Beyer, D-Virginia; and Brad Wenstrup, R-Ohio on the Affordable Housing Credit Improvement Act (AHCIA) of 2021 and the Housing Credit in general. As with previous iterations of the AHCIA, this bill includes numerous provisions to expand and strengthen the Housing Credit, many of which were also included in Moving Forward Act. Looking at the major unit financing provisions, Novogradac analysis shows more than 2 million additional affordable rental homes could be financed over a 10-year period.<sup>20</sup> Along with financing additional homes, enacting the provisions below could yield nearly 3 million jobs, more than \$119 billion in federal state and local tax revenue and more than \$345 billion in business income nationwide (a breakdown of benefits by states and territories<sup>21</sup> is available). The major additional unit financing provisions are:

1. Lowering the multifamily PAB financing threshold from 50% to 25%. Known as the “50% test,” this threshold requires that PABs finance at least 50% of aggregate basis of land and building costs of affordable housing properties in order to qualify for the maximum amount of 4% Housing Credits. The provision would allow states the flexibility to better match the PAB allocation to the actual financing needs of properties while freeing up increasingly important PAB cap. Novogradac’s analysis finds that lowering this requirement from 50% to 25% could result in as many as **1,494,000 additional affordable rental homes** being financed over 2022-2031.
2. Increasing 9% Housing Credit allocations. The 9% Housing Credit allocation, under current law, is \$2.81 per capita with a \$3,245,625 small state minimum. AHCIA would provide a 25% allocation increase for 2021 and 2022, as well as an inflation adjustment for 2022. This proposal assumes Congress makes the temporary 12.5% increase in 9% Housing Credit allocations expiring this year permanent and the baseline upon which the increase in 2022 is applied. Allocations in 2023 and thereafter would be adjusted by inflation annually. More than **299,000 additional affordable rental homes** over 2021-30, could be financed according to Novogradac analysis.
3. Implementing three 4% Housing Credit basis boosts. The AHCIA would provide a discretionary boost, a rural boost and a Native American boost to bond-financed properties. Altogether, enacting these AHCIA 30% basis boost provisions primarily affecting 4% Housing Credit could finance nearly **222,000 additional affordable rental homes** over 2022-31.

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<sup>19</sup> Year-End Bill Includes FY 2021 Omnibus Spending, Permanent 4% Floor, Disaster LIHTC allocation, Five-Year NMTTC Extension, RETC Extensions; COVID-19 Relief Legislation Includes \$25 Billion in Emergency Rental Assistance, Extension of Eviction Moratorium” by Peter Lawrence, <https://www.novoco.com/notes-from-novogradac/year-end-bill-includes-fy-2021-omnibus-spending-permanent-4-floor-disaster-lihtc-allocation-five>.

<sup>20</sup> “2021 Affordable Housing Credit Improvement Act Could Finance More Than 2 Million Additional Affordable Rental Homes Over 10 Years” by Dirk Wallace and Peter Lawrence, <https://www.novoco.com/notes-from-novogradac/2021-affordable-housing-credit-improvement-act-could-finance-more-2-million-additional-affordable>.

<sup>21</sup> Ibid.



- a. The AHCIA would extend the discretion Housing Credit allocating agencies have to provide a 30% basis boost to properties financed by 9% Housing Credit to those financed by PABs using 4% Housing Credit.
- b. To increase the number of areas eligible for existing geographical basis boosts, the AHCIA would designate all nonmetropolitan areas and rural areas, using the same definition that governs U.S. Department of Agriculture (USDA) rural housing programs, as difficult development areas (DDA).
- c. Native American areas would also be designated DDAs, thus making them eligible for a 30% basis boost. The additional Housing Credits that would result from this particular basis boost would help to address affordable housing needs on tribal lands by reducing the amount of debt needed to make a development financially feasible.

The AHCIA includes more than a dozen additional provisions, including an important 50% basis boost for properties targeting extremely low-income (ELI) renters—those earning no more than 30% of the area median income or the federal poverty line, whichever is greater—making more deeply income-targeted developments more financially feasible. To receive the basis boost developers would need to set aside at least 20% of their units for extremely low-income households. In order to maximize the unit financing capacity of 9% Housing Credit, we would recommend Congress include the additional 10% set-aside increase in 9% Housing Credits that was proposed in the Moving Forward Act (H.R. 2/116<sup>th</sup>). The ELI boost would address the housing needs of the most difficult to serve populations, including the formerly homeless, seniors, veterans, and people with special needs, by substantially reducing the amount of permanent hard debt that those deeply income targeted units must service. Such deeply targeted units often cost more to operate than the rental income they may generate, so they cannot afford to pay interest and principal on long-term hard debt financing. The lower debt also allows for greater provision of services to help ensure that residents with special needs can remain successfully and stably housed.

To strengthen our nation’s economic recovery and community infrastructure, we recommend that Congress enact measures such as the AHCIA this year to expand and strengthen the Housing Credit—a proven, successful, and bipartisan tool for long-term economic and social development of communities nationwide.

### **Middle-Income Housing Tax Credit (MIHTC)**

Housing Credit-eligible renters are not the only households experiencing difficulty finding and maintaining affordable housing. To address the need of the households earning just above the Housing Credit income limits, the middle-income housing tax credit (MIHTC) was introduced in earlier Congresses, and is expected to be reintroduced this year. The face of renters has been changing, with the percentage of renters among households that typically would be first-time homeowners—those aged 34-64 and households with children—increasing from 1994 to 2018 as reported by JCHS.<sup>22</sup> While households earning less than \$15,000 still represent the most severely cost-burdened cohort, even among moderate and middle-income renter households, JCHS’ analysis found an increase in the number of cost-burdened households. Among the various income cohorts, the largest percentage increase in cost-burdened renter households from 2011 to 2018 occurred among households earning \$30,000-\$44,999 annually, where there was an increase of 5.4 percentage points to 56%. The change in the composition of renter households has changed the ways in which developers meet supply, with new rental housing targeting

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<sup>22</sup> “America’s Rental Housing 2020” by Joint Center for Housing Studies of Harvard University, [https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard\\_JCHS\\_Americas\\_Rental\\_Housing\\_2020.pdf](https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2020.pdf).

the higher end of the income scale, leaving those eligible for Housing Credit housing and those earning slightly more than 60% of AMI, struggling to find housing they can afford.

Using the Housing Credit as a model, the MIHTC would address the needs of households who fall just beyond the allowable Housing Credit renter incomes (60% of AMI). Under previously proposed MIHTC legislation, states would receive tax credits based on population-for 2019, the allocation would have been \$1 per capita with a \$1.14 million small state minimum. An additional 5 cents per capita above this allocation would have been reserved for middle-income housing developed in rural areas. To qualify for the credit, a rental property would need to meet two affordability standards:

- A property would have to reserve at least 60% of the units to be occupied by households with incomes at or below the AMI; and
- Rents for those units could not exceed 30% of AMI.

Novogradac analyzed the effect of enacting a MIHTC, looking at nine markets across the country that represented a wide variety of metropolitan areas. This analysis, based on actual properties identified in each location, found the MIHTC works in a variety of markets, providing the equity funding needed to finance the production of rental homes affordable to households with family incomes above the Housing Credit limits, but not more than the

AMI. As more households join the ranks of cost-burdened renters, the inclusion of an MIHTC proposal in future infrastructure proposals would provide states with the financing needed to create homes affordable to this increasingly overlooked segment. If states do not receive enough worthy applications after a year, any unused allocations could supplement their Housing Credit allocations.

### **Private Activity Bonds**

When financing community development and infrastructure projects, one of the key tools is qualified PAB. A type of tax-exempt municipal bond, PABs are revenue-backed bonds issued by a state or local authority on behalf of an approved activity. Bonds are considered “qualified,” and thus interest earned on the bonds is generally exempt from federal income taxes, when they are issued for one of several defined purposes. Tax exemption generally allows a project to access capital at a lower interest rate than would be paid on conventional loans.

Some categories of private activity bonds are not subject to an annual or state cap, but many types of private activity bonds, particularly those addressing community infrastructure needs, are. Under IRC section 146, each state is authorized to allow the issuance of a set amount or “volume cap,” of tax-exempt bonds set aside for private activities. Residential rental housing is one such eligible activity, along with homeownership, mass commuting facilities, funding and refinancing student loans, redevelopment of designated blighted areas, water and sewage treatment facilities, hazardous waste facilities, and a few others. In 2021, the private activity bond volume cap for each state is the greater of \$105 per capita or \$324,995,000. The formula is recalculated annually for changes in the consumer price index and population. PABs are a significant source of financing for affordable rental housing, but the volume cap means there is competition among the eligible activities for this limited resource.

### *Importance for housing*

PABs can be used for low-income first-time homebuyers either through mortgage revenue bonds, which help finance low-cost mortgages, or through mortgage credit certificates, for which private activity bond resources may be converted to help reduce mortgage payments for eligible low-income homeowners.



Residential rental housing developments that are financed (whether new construction or acquisition and rehabilitation) in part by PABs are eligible for 4% Housing Credits, as explained above.

Nationally, the vast majority of PABs are used for housing—the most recent annual report on bond use by the Council of Development Finance Agencies (CDFA), reports that in 2018, 91.5% of PABs went to housing, including 30.4% of PABs directed to homebuyers and 61.1% went to multifamily rental housing.<sup>23</sup> It has not always been the case that such a high percentage of bond usage was directed towards multifamily housing. In 2010, we saw an increase in the percentage of bonds used for multifamily housing; until that time, multifamily housing never made up more than 33% of the national cap use. From 2010 to 2016 bond usage for housing jumped significantly, rising to 60% in 2016 and for each year since then the percentage has remained above 60%. In dollar terms, PAB use for multifamily rental housing spiked from \$6.6 billion in 2015 (likely an undercount, since several states didn't report their data) to \$14 billion in 2016. That pace continued, with \$15.3 billion issued for multifamily in 2017 and \$14.7 billion in 2018. The period 2016 to 2018 saw \$44 billion in bond issuance for multifamily rental housing.<sup>24</sup> While the 2019 data is not publicly available, we understand 2019 multifamily issuance was similar to 2018.

Developers seeking this resource must arrange bond financing from a government agency who has the authority to issue residential rental housing bonds. Government agencies generally apply to a bond allocating agency for an allocation of PAB issuance authority.

Recent legislation has included approaches to boost usage of PABs, most notably the 10% increase to annual state volume cap on PABs included in H.R. 2, as well as the proposal to lower the 50% threshold test (discussed previously). As noted in several of our publications, the demand for PABs has increased at such a pace that a growing number of states are starting to reach their bond cap limit available for residential rental housing.<sup>25</sup> Because of the vital role PABs in concert with Housing Credits play in the financing of affordable rental housing, increasing the bond cap limit would support the development of additional affordable rental homes.

### **Neighborhood Homes Investment Act**

Just as the MIHTC proposal adopts the successful architecture of Housing Credit to address the growing affordable rental housing needs targeted to household with incomes just above the Housing Credit income limits, Rep. Higgins has introduced another promising new community development financing tool that promotes homeownership in distressed communities, which the existing community development incentives are not designed to address.

Every state has neighborhoods where single-family homes are in poor condition and property values are too low to support new construction or substantial renovation. The lack of affordable homes in suitable condition in these communities makes it difficult to attract or retain moderate income homebuyers, causing property values to decline and stagnate.

The Housing Credit finances rental housing for low-income households, but is not designed to build or rehabilitate owner-occupied homes. Tax-exempt mortgage bonds and mortgage credit certificates

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<sup>23</sup> “CDFA Annual Volume Cap Report” by Council of Development Finance Agencies, <https://www.cdfa.net/cdfa/cdfaweb.nsf/ordredirect.html?open&id=VolumeCapReport2018.html>.

<sup>24</sup> “Surge in Rental Housing Private Activity Bonds Appears Sustainable” by Michael Novogradac and Peter Lawrence, <https://www.novoco.com/notes-from-novogradac/surge-rental-housing-private-activity-bonds-appears-sustainable>.

<sup>25</sup> “Looming PAB Crunch a Result of More Demand, Less Supply” by Michael Novogradac, <https://www.novoco.com/notes-from-novogradac/looming-pab-crunch-result-more-demand-less-supply>.

assist low-income homeowners by reducing mortgage payments, but they cannot cover the development financing gap. The HTC cannot be used for homeownership. While NMTC financing can be used for home ownership, it is primarily used for financing businesses and other mission driven activities, including manufacturing, charter schools, medical clinics, day care centers, and office and industrial properties.

The legislation introduced by Rep. Higgins and supported by Rep. Kelly, H.R. 2143, the Neighborhood Homes Investment Act (NHIA) would fill this gap in the community development financing toolkit by creating a new federal tax credit that covers the gap between the cost of building or renovating homes and the price at which they can be sold, thus making renovation and new home construction possible. The NHIA would also help existing low- and moderate-income homeowners in these neighborhoods to rehabilitate their homes. The NHIA would complement the existing community development incentives—Housing Credit, tax-exempt housing bonds, HTC and NMTC—not duplicate them.

Like the Housing Credit, states would allocate NHIA tax credit authority on a competitive basis and monitor compliance. States would receive annual tax credit authority totaling about \$2 billion nationwide. The Internal Revenue Service would draft regulations, collect national NHIA data, and monitor state agency performance, just as it does for the Housing Credit.

Upon receiving an award from the state, project sponsors would raise capital from investors to finance home building and rehabilitation, similar to how sponsors do under the Housing Credit. NHIA credits would cover the gap between development costs and sales prices, up to 35% of eligible costs.

Private investors—not the federal government—would bear construction and marketing risks. Investors would claim the tax credits only after construction, inspection, and transfer to the owner-occupant.

Homes would be located in communities where the need for private sector investment is greatest—those with high poverty rates, low median family incomes and low home values.

As currently designed, 24% of metro census tracts nationwide, and 25% of non-metro census tracts, would qualify for NHIA investments. States would also be allowed to use up to 20% of their allocation to serve additional non-metro census tracts and/or existing homeowners in gentrifying census tracts. Maps of eligible NHIA communities in each state may be found on the Neighborhood Homes Coalition site.<sup>26</sup>

Homeowners or homebuyers with incomes up to 140% of the area or state median income are eligible. Tax credits are limited to 35% of eligible costs up to the amount of the valuation gap. Sales prices are limited to four times the metro area or state median family income (MFI). Example: if MFI is \$65,000, the sales price limit is \$270,000. Higher limits apply to homes with two to four units.

A homeowner who sells a NHIA home within five years will repay part of the gain (profit) to the state to support additional similar activity: 50% in year 1, phased down to 10% in year 5.

Limitations on eligible neighborhoods, tax credit amounts, sale prices, homeowner incomes and short-term resales all support neighborhood revitalization without gentrification.

#### *Estimated Impact over 10 years*

According to the Neighborhood Homes Coalition over the 10 years after enactment, the NHIA would lead to:

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<sup>26</sup>Neighborhood Homes Investment Coalition. <http://districts.reomatch.com/NHIC.asp>.

- 500,000 homes built or substantially rehabilitated,
- About \$100 billion of total development activity,
- 785,714 jobs in construction and construction-related industries,
- \$42.9 billion in wages and salaries, and
- \$29.3 billion in federal, state and local tax revenues and fees.

### **New Markets Tax Credit**

The NMTC is an important community development tax incentive authorized under IRC section 45D, which provides a 39% tax credit for qualified equity investments in community development entities that make loans to and/or equity investments in qualified active low-income community businesses. The NMTC was established as part of the bipartisan Community Renewal Tax Relief Act of 2000, and is administered by the U.S. Treasury's Community Development Financial Institutions (CDFI) Fund.

Since its inception, the NMTC has incentivized significant private investment leading to the growth and revitalization of thousands of low-income communities. According to Treasury, for every \$1 invested by the federal government, the NMTC incentive generates more than \$8 of private capital.<sup>27</sup> In general, under Section 45D, to be eligible for subsidized NMTC financing, business and nonprofit activities must be attributable to census tracts located in low-income communities as defined in the code:

- The tract has a poverty rate of at least 20%.
- If the tract is not located within a metropolitan area, the median family income for such tract does not exceed 80% of statewide median family income.
- If the tract is located within a metropolitan area, the median family income for such tract does not exceed 80% of the greater of statewide median family income or the metropolitan area median family income.
- The tract has a population under 2,000, is contiguous to one or more low-income communities, and is within an empowerment zone.
- A tract is in a "high-migration county" (i.e., a county with net out-migration of at least 10% when comparing the latest census to two decades before), and it does not exceed 85% (rather than 80%) of statewide median family income.

While Section 45D provides the above minimum eligibility criteria, the competitive allocation process has led to the vast majority (80% in 2019) of NMTC investments being located in "severely distressed" tracts. These are tracts that:

- (1) have a poverty rate of at least 30%,
- (2) have an unemployment rate of at least 1.5 times the national average, or

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<sup>27</sup> "NMTC Program Award Book, CY 2019" by U.S. Department of the Treasury, Community Development Financial Institutions Fund, [https://www.novoco.com/sites/default/files/atoms/files/2019\\_nmtc\\_awards\\_book\\_071520.pdf](https://www.novoco.com/sites/default/files/atoms/files/2019_nmtc_awards_book_071520.pdf).

- (3) have a median family income that is at or below 60% of the statewide median family income (for nonmetropolitan-area investments) or the greater of the statewide or metro area median family income (for metropolitan-area investments).

In 2019, more than 23% of NMTC investments were in nonmetro areas, slightly more than the percentage of eligible census tracts located in rural America.

Since inception, the CDFI Fund has awarded NMTC allocation authority to 1,254 distinct community development entities (CDEs) across the nation, providing \$61 billion in NMTC allocation authority and triggering \$110 billion in total investment financing for more than 7,000 NMTC investments in qualifying low-income businesses. According to the CDFI Fund through 2019 (the latest data available), the NMTC has supported the construction of 57 million square feet of manufacturing facilities, 94 million square feet of office space, and 67 million square feet of retail property. And according to the New Markets Tax Credit Coalition, NMTC financing has led to more than 1 million jobs, including more than 480,000 permanent full-time jobs created along with more than 544,000 temporary construction jobs.<sup>28</sup>

Unlike the Housing Credit, which is focused on financing affordable rental housing, the NMTC finances a wide variety of low-income community businesses, including manufacturing businesses, hotels, arts centers, office buildings, charter schools, medical clinics, day care centers, large commercial developments, small-business expansions, mixed-use developments, and homes for sale. Some highlights of these investments include:

- More than 1,500 manufacturing and industrial businesses,
- More than 2,500 federally qualified health care facilities, schools, daycare centers, apprenticeship programs, treatment facilities, and other community service providers,
- More than 1,100 investments involving loans and equity of \$500,000 or less, and
- More than 140 small business incubators totaling \$4.3 billion.<sup>29</sup>

Recognizing this tremendous record of achievement, Congress acted last December to provide a five-year extension of this incentive at \$5 billion annually through 2025. We greatly appreciate Congress providing this extension, as it not only continues this valuable tool for bringing private capital to low-income communities, it provides some level of business certainty for program stakeholders over the medium term.

Despite this extension, however, there is still tremendous unmet need for private capital. Low-income communities have been disproportionately affected by the pandemic, and suffered from a lack of private investment dating from the 2008-2009 recession and beyond.

Congress can help address this need by passing the New Markets Tax Credit Extension Act (H.R. 1321). We commend Reps. Sewell, Reed, and Jason Smith for their leadership on this bill and the NMTC in general. H.R. 1321 would:

- Make the NMTC an indefinite provision of the code,
- Maintain it at its \$5 billion annual allocation authority and index it to inflation like the Housing Credit, and
- Allow the NMTC to reduce the alternative minimum tax (AMT).

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<sup>28</sup> Ibid.

<sup>29</sup> New Markets Tax Credit Coalition, April 2021.

Such legislation would not only provide more allocation authority, but also long-term certainty, encouraging more investors to enter the market, thereby further increasing the effectiveness and efficiency of the NMTC to bring private capital to low-income communities. Such certainty could also help increase the ability of applicants who previously were highly qualified yet unsuccessful, or never applied before, to receive an award for the first time. In particular minority- and tribal-owned community development entities would have a greater opportunity of receiving an award.

The Rural Jobs Act, H.R. 3538, introduced by Reps. Sewell and Jason Smith in the previous Congress, would increase annual NMTC allocations for two years by \$500 million a year, targeted to cities or towns with no more than 50,000 residents and any urbanized area contiguous to such a city or town. Under the bill, at least 25% of the equity investments would need to be directed to persistent poverty or high migration rural counties.

The New Markets Stabilization Act, H.R. 8965, introduced by Reps. Sewell and Reed in the previous Congress, should also be considered for inclusion infrastructure legislation. In addition to allowing the NMTC to offset all of a taxpayer's regular liability and increase the period the NMTC could be carried back from one to five years, the bill would provide \$4.5 billion in additional allocation authority over four years:

- \$500 million for the 2019 round,
- \$2 billion for the 2020 round (yet to be awarded),
- \$1.5 billion for the 2021 round (yet to be awarded), and
- \$500 million for the 2022 round (yet to be awarded).

Such additional allocation authority would help address the disproportionate impact of the pandemic on low-income communities, particularly communities of color. I will also note that the Moving Forward Act included a proposal modeled after the existing NMTC statute that requires the CDFI Fund to ensure a proportional amount of NMTC investments are made in nonmetropolitan counties and extend that provision for a proportional amount of NMTC investment made in tribal communities, an important recognition of the need for private capital in such communities.

### **Historic Tax Credit**

The first community development tax credit authorized by Congress (and the first community development tax credit that I worked with as I started my career) is the federal historic rehabilitation tax credit (historic tax credit or HTC). The HTC has its roots in the National Historic Preservation Act of 1966, which created the National Register of Historic Places, which helped coordinate and support public and private efforts to identify, evaluate and protect historic and archeological resources. A decade later, in 1976, the federal government began providing tax incentives for historic building renovations in the form of accelerated depreciation. Congress introduced an HTC in 1979. More than 40 years later, it has demonstrated a strong track record success.

The HTC is administered by U.S Department of the Interior's National Park Service (NPS) in partnership with state historic preservation offices (SHPOs) nationwide. The HTC is a 20% tax credit taken over five years for qualified rehabilitation expenditures associated with the preservation of income-producing buildings on the National Historic Register or located in a registered historic district. Properties must go

through a rigorous three-part evaluation process before qualifying for the HTC. More than 46,300 historic rehabilitation properties have been certified by the NPS.<sup>30</sup>

HTC investments have spurred the rehabilitation and preservation of historic structures of every period, size, style, and type in a wide variety of urban, suburban, and rural small-town communities located in all 50 states, the District of Columbia, and Puerto Rico. Since its inception, the NPS (in partnership with Rutgers University) estimated the HTC has leveraged more than \$109 billion in private investments for a total of more than \$173 billion in HTC-related rehabilitation investment and created nearly 3 million jobs.

The HTC has contributed to the rehabilitation and creation of hundreds of thousands of rental homes—nearly 300,000 homes rehabilitated, more than 320,000 new homes from adaptive reuse properties, nearly 180,000 homes affordable to low- and moderate-income households.

The economic development spurred by the HTC returns money to the Treasury. Through 2019, the NPS reported that the HTC has generated \$38.1 billion in federal tax revenue from \$32.9 billion in tax credits.<sup>31</sup>

The credit spurs economic activity, creates jobs, especially higher wage skilled trade positions, and preserves our country's tangible and cultural heritage, especially in economically distressed areas. According to the Historic Tax Credit Coalition, more than half of HTC properties are located in low- and moderate-income census tracts, and the NPS reports more than 74% of HTC properties are located in economically distressed communities.<sup>32</sup>

Furthermore, a significant proportion of HTC properties are located in majority minority communities. According to the Historic Tax Credit Coalition, 40% of HTC properties placed in service in 2013-2017 (the latest years available for such analysis) are located in predominantly minority census tracts.<sup>33</sup>

Once a historic building is lost due to neglect and lack of access to affordable capital, it can never be truly replaced, and a community loses a part of its history and sense of community. Every year, the National Trust for Historic Preservation notes a growing list of signature properties in a wide variety of communities in danger of being lost forever.

The HTC is also a climate friendly tool. The greenest building is one that is already built and can be brought back to productive economic use. Reuse of existing buildings not only conserves the embodied energy of the existing materials of these buildings but also helps to curb urban sprawl and the accompanying development of former green spaces. This in turn mitigates the fossil fuel use from long daily automobile commutes. According to ECONorthwest's calculations, renovating versus tearing down a 10,000 SF commercial building generates CO2 emissions savings of 1,383 metric tons, or the equivalent of 484,127 gallons of gasoline burned.<sup>34</sup>

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<sup>30</sup> "Federal Tax Incentives for Rehabilitating Historic Buildings, Annual Report for Fiscal Year 2020" by National Park Service, <https://www.novoco.com/sites/default/files/atoms/files/nps-htc-tax-incentives-annual-2020-03092021.pdf>.

<sup>31</sup> "Annual Report on the Economic Impact of the Federal Historic Tax Credit for Fiscal Year 2019" by National Park Service and Rutgers University, <https://www.nps.gov/tps/tax-incentives/taxdocs/economic-impact-2019.pdf>.

<sup>32</sup> Ibid.

<sup>33</sup> "Federal Historic Tax Credit Fact Sheet," Historic Tax Credit Coalition.

<sup>34</sup> "Understanding the Carbon Cost of Demolition" by Peggy Moretti, <https://restoreoregon.org/2021/04/12/understanding-the-carbon-cost-of-demolition/>.

However, despite its impressive track record, the HTC is unfortunately *less impactful* in the communities you represent than it was when I began work in this field. This is because of changed rules, burdensome regulations, and now the weight of a global pandemic.

As a direct result of COVID-19, historic building owners face unprecedented challenges in rehabilitating their properties. The financial markets for capital used in historic preservation have slowed, making it increasingly difficult for properties to access capital.

Many properties undergoing renovation have slowed or stopped due to local restrictions or labor shortages; meanwhile material and labor costs have skyrocketed. Lumber costs have reached new heights few in the construction industries ever thought possible.

Preliminary 2020 data from NPS shows that 14 of the top 20 states in HTC usage have seen a significant drop in the number of newly qualified properties compared to pre-pandemic averages. Such data lags the actual activity so what is really going on is likely much worse.

In a recent national survey, HTC stakeholders nationwide said virtually every single HTC property has been adversely affected by the pandemic.

- In two-thirds of properties, COVID impacts have contributed to a 50% increase in total development costs, and
- 90% of properties had impacts of more than 25%.

We commend the recent introductions by Reps. Earl Blumenauer, Darin LaHood, Terri Sewell, and Brian Higgins, of H.R. 2294, the Historic Tax Credit Growth and Opportunity Act, which would address these COVID issues and make some long-needed improvements to the HTC.

The bill would:

- Temporarily increase the credit from 20% to 30% through 2024 to combat the effects of the pandemic;
- Permanently keep the 30% level for small projects to allow them to be more financially feasible;
- Eliminate the basis adjustment, making the HTC easier to pair with other community development tax credit, and providing more tax equity subsidy per tax credit dollar;
- Redefine substantial rehabilitation to mean 50% of adjusted basis, making more buildings eligible before they are literally falling down; and
- Eliminate the Disqualified Lease Rules so nonprofits can more easily operate in historic buildings.

These proposals were also included as a part of the Moving Forward Act in the 116<sup>th</sup> Congress. The HTC has not been meaningfully improved since 1980 yet has built a strong track record of success. It could be much more powerful in helping to restore historic properties throughout America, especially in small towns. These proposals that have been long championed by many on the committee, other colleagues in the House, and your colleagues in the Senate would make significant positive changes and ensure the HTC is a key tool for neighborhood revitalization.



## **REHAB Act**

In addition to HTC-GO, we would like to discuss another related proposal, that would revive, enhance and more narrowly target an expired preservation tool. Many communities have older buildings that are not eligible for the HTC but are in a state of disrepair. Given that resources to rehabilitate such buildings are scarce and difficult to access, such communities face pressure to let them be demolished and replaced with new buildings, or they are left standing, vacant or nearly so, contributing to neighborhood blight. Furthermore, while there are existing resources for rental housing, small business and commercial property financing, and transportation, tying them together for equitable transit-oriented development is a challenge for many developers and communities.

Introduced by Rep. Blumenauer and supported by Rep. Kelly, H.R. 1483, the REHAB Act attempts to address these challenges communities face of equitable development, affordable housing, and the climate crisis by providing:

- A 15% tax credit for expenditures related to the rehabilitation of non-historic buildings that are more than 50-years old, including adjacent development on the same block, provided that the project is within a half-mile of an existing or planned public transportation center, and
- A bonus credit of 25% for expenditures associated with the provision of affordable housing and public infrastructure.

While existing community development incentives have a tremendous record of support at targeting their specific needs, combining them in equitable transit-oriented development is often impossible for many communities. By focusing on the rehabilitation of existing older buildings that are near public transportation, residents can more easily access jobs and services via transit. Encouraging affordable housing investments in transit-rich areas will transform areas that are often some of the least affordable. Taken together, provisions in the REHAB Act have the potential to encourage preservation, accessibility, and affordability communities. Properly designed, the REHAB Act would be an effective complement to the HTC and other community development incentives.

## **Renewable and Clean Energy Incentives**

Renewable energy tax credits (RETCs) and clean energy tax credits play a critical role in expanding the use of clean energy in order to combat climate change. Currently there are a number of Internal Revenue Code (IRC) sections that Congress uses to encourage investment in a variety of clean energy technologies, such as solar, wind (onshore and offshore), biomass, carbon sequestration, fuel cells, energy storage and many more. There are primarily two types of federal tax credits used to incentivize the deployment of renewable energy: The renewable energy production tax credit pursuant to IRC section 45 (PTC) and the energy investment tax credit provided for in Section 48 (ITC). The PTC is a tax credit that is claimed over a 10-year period based on the amount of electricity generated and multiplied by a rate published annually by the federal government. PTCs are most commonly used by wind farms, biomass plants, geothermal facilities, hydropower projects among others. The ITC was a 30% tax credit, and largely remained at that percentage from 2015 until 2019. The ITC is currently a 26% one-time tax credit earned when the power plant begins generating electricity and calculated as a percentage of the plant's eligible construction costs. ITCs are most commonly associated with solar facilities, qualified fuel cells, combined heat and power property and others.

RETCs are claimed by the owners of qualified facilities. Owners of qualified facilities often include corporations and institutional bank type investors. The investors make equity investments into renewable

energy power plants which entitle the investors to claim the tax credits. The sponsors, or developers, of these power plants use the investor equity to pay for a portion of the plant's construction costs which allow the plants to be economically feasible.

Since the enactment of RETCs, the renewable energy industry has grown exponentially. Through 2019 alone, RETCs have helped fuel growth in clean energy such that renewables as a source of electricity generated per year in the United States of America (U.S.) increased by seven percent between 2011 and 2019.

In terms of dollars invested and gigawatts of renewable energy installed, looking back to just the last five years, tax equity investors provided more than \$55 billion in investment into new clean energy projects which helped finance more than 37 gigawatts (GW) of renewable energy projects.<sup>35</sup>

And looking more broadly but within just the solar industry, the Solar Energy Industries Association (SEIA) estimates there is more than 97 GW of cumulative solar electric capacity, enough clean energy to power close 18 million average American homes.<sup>36</sup>

However, it's important to keep this growth in perspective. For example, solar energy still only represents about 3% of energy generation in the United States<sup>37</sup>. And solar is not being built fast enough to address climate concerns. In fact, the Solar Energy Industries Association indicates that the pace of growth is falling significantly short -- by 2031, the United States needs to be building each and every year the amount of solar that we have built cumulatively through 2020.<sup>38</sup>

The rapid growth to date in clean energy production has not only helped in the battle to decarbonize our energy supply, but it has also helped employ hundreds of thousands of Americans. The solar industry itself supported more than 230,000 jobs in 2020.<sup>39</sup> Overall the current renewable energy industry supports more than 300,000 American jobs with respect to power plants that have enough capacity to power more than 48 million American homes and helps avoid approximately 52 million cars' worth of CO2 emissions every year.<sup>40</sup>

Nevertheless, the deployment of more clean renewable energy technology in the future will be critical in the fight against climate change. And the key to winning this fight involves federal policies that help encourage further investment in renewable energy. Based on a report published by the American Council on Renewable Energy (ACORE), the number one driver in terms of increasing development of clean renewable energy projects involves supportive policies, including tax incentives.<sup>41</sup> 2019 was a record year of private investment as the percentage used to calculate the ITC was scheduled to decrease from 30% to 26% starting in 2020.<sup>42</sup> As a result, solar developers rushed to commence construction before 2020 to

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<sup>35</sup> BloombergNEF, 2020.

<sup>36</sup> Solar Energy Industries Association (SEIA), <https://www.seia.org/initiatives/whats-megawatt>.

<sup>37</sup> Solar Energy Industries Association (SEIA), <https://www.seia.org/solar-industry-research-data>.

<sup>38</sup> Solar Energy Industries Association (SEIA), <https://www.seia.org/blog/taking-next-step-toward-our-clean-energy-goals>.

<sup>39</sup> "Solar Jobs Support 231,000 Families, Must Grow 4X to Reach Biden's Clean Energy Target" by Solar Energy Industries Association (SEIA), May 6, 2021, <https://www.seia.org/news/solar-jobs-census-2020>.

<sup>40</sup> American Clean Power Association (ACPA), <https://cleanpower.org/facts/>.

<sup>41</sup> "Expectations for Renewable Energy Finance in 2020-2023" by American Council on Renewable Energy (ACORE), July 2020, <https://acore.org/wp-content/uploads/2020/07/Expectations-for-Renewable-Energy-Finance-in-2020-2023.pdf>.

<sup>42</sup> Ibid.

preserve eligibility for the 30% ITC. This led to a noticeable decrease in new project construction in 2020 demonstrating that solar project development is buoyed by federal tax credits.<sup>43</sup>

Recognizing this tremendous record of achievement, Congress acted last December to provide tax credit extensions and enhancements to several renewable energy technologies. The major tax credit extensions that Congress passed in December of 2020 include the following:

- Solar projects as well as fuel cell projects both received a two-year extension to commence construction in order to qualify for the 26% ITC.
- Onshore wind projects received a one-year extension to commence construction in order to qualify for the PTC.
- Offshore wind projects that commence construction after 2016 and before 2026 can qualify for a 30% ITC.
- Other PTC technologies that were previously required to commence construction before the end of 2020 now have until the end of 2021 to commence construction in order to qualify for PTCs.
- New power plants of up to 50 megawatts that use waste heat from buildings and other equipment can qualify for a 30% ITC as long as construction commences before 2024.
- IRC section 179D commercial property deduction was made an indefinite part of the code, while updating the energy standards required in order to be eligible for deduction. This incentive applies to commercial and multifamily housing buildings of four or more stories above grade, and will help reduce the carbon footprint of the building sector.
- IRC section 45L new energy efficient home credit was extended through this year, continuing a key incentive in the development of single-family and multifamily properties of three stories or less above grade.

We applaud Chairman Thompson and Neal for their leadership on the renewable and clean energy tax incentives as well as the GREEN Act, which led to the enactment of these key extensions and enhancements. These provisions have helped to protect the advancements in clean energy and will sustain the renewable energy industries at a key moment in the nation's transformation of its energy economy.

Furthermore, the Treasury Department finalized regulations with respect to carbon capture and sequestration projects that qualify for tax credits under section 45Q of the IRC. Essentially these tax credits are available to carbon capture and sequestration projects over a 12-year period for facilities that capture at least 500,000 tons of CO<sub>2</sub> per year.<sup>44</sup> While the industry applauds the above extensions and enhancements, additional tax credit extensions and incentives are needed in order to address the Administration's clean energy objectives and help stop the worst consequences of climate change. The below are some of the most notable features of the Administration's clean energy objectives:<sup>45</sup>

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<sup>43</sup> "Sustainable Energy in America Factbook 2020", BloombergNEF, 2020, <https://www.bcse.org/wp-content/uploads/2020-Sustainable-Energy-in-America-Factbook.pdf>.

<sup>44</sup> "Tax Credits for Carbon Capture", presentation by Keith Martin, February 15, 2021, <https://www.projectfinance.law/media/media/5610/carbon-capture.pdf>.

<sup>45</sup> The Biden Plan for Clean Energy Revolution and Environmental Justice, <https://joebiden.com/climate-plan/>.

- To work with Congress to enact legislation in 2021 that puts America on an irreversible path to achieve economy-wide net-zero emissions no later than 2050.
- Make a historic investment in clean energy and innovation.
- Accelerate the deployment of clean technology throughout our economy.
- Create 10 million good-paying, middle-class, union jobs.
- Accelerate the development and deployment of carbon capture sequestration technology.
- Accelerate the deployment of electric vehicles to drive towards 100% clean energy and zero-emissions vehicles.
- Grid-scale storage at one-tenth the cost of lithium-ion batteries.
- Zero net energy buildings at zero net cost.

History has proven that without reliable federal policies that incentivize investment in renewable and clean energy, new investments halt and the production of such energy facilities falters. While the current RETC provisions are effective at maintaining short term growth, additional incentives are needed to address the existential threat tied to the worst consequences that could result from climate change. Examples of additional incentives include but are not limited to:

- Additional extensions of existing ITCs and PTCs.
- Additional incentives to facilitate the financing of renewable clean energy storage and transmission.
- Increased incentives for making renewable, clean and low-cost energy available to lower income households and communities.

### **Deep and Durable Investor Market**

While the design of investable tax credits has led to a strong record of success, as previously illustrated for each of the incentives, community development and clean energy tax credits depend on a deep and durable investor market to maximize the amount of tax credit equity raised.

Over much of the past 40 years, there has been strong investor interest in investable tax credits and other incentives, especially during economic expansions. As Congress considers expanding community development and clean energy tax credits, it should also consider ways to increase the value of tax credits, further expand and deepen the pool of investors, and enhance the ability of taxpayers to use tax credits.

Some of the community development and clean energy tax credits require investors to reduce their basis in the investment or property that the incentive is inducing. Eliminating any basis adjustment for community development and clean energy tax credits would increase the value of such tax credits and generate more subsidy per tax credit dollar. It would also create policy parity among the various tax incentives, enabling them to be as competitive as they can be in the market for investors.

A competitive market, where investors are competing to invest in community development and clean energy tax credits, leads to more equity subsidy per tax credit dollar, ultimately resulting in more affordable rental housing, below-market financing of low-income community businesses, historic preservation, renewable energy capacity and support of other key goals Congress established for each of

the targeted incentives. The lower the barriers to entry are, the greater the number of investors who will participate, and on average, the more each investor will be willing to invest per tax credit dollar.

Several code provisions limit the ability of many taxpayers to invest in tax credits, such as the alternative minimum tax (AMT) under Internal Revenue Code (IRC) section 55, the base erosion anti-abuse tax (BEAT) under IRC section 59A, at-risk limits under IRC sections 465 and 49 and the passive activity rules under IRC section 469. Indeed, Congress has allowed the Housing Credit under IRC section 42, HTC under IRC section 47 and ITC under section 48 to reduce AMT liability. Allowing other community development and clean energy tax credits to reduce the AMT would help expand the pool of investors interested in those credits as well as provide policy parity.

Similarly, only 80% of Housing Credit, the PTC under IRC section 45, and the ITC can be taken against BEAT liability through 2025, and after that, cannot reduce BEAT liability at all. Other community development tax credits cannot reduce BEAT liability at all. However, an investor subject to BEAT that can only take 80% of a tax credit is not competitive in the marketplace, and will likely not invest at all, removing affected investors from the pool, and ultimately lowering the amount of capital able to be deployed to further the goals of the incentive. Congress should either revise the BEAT statute to allow 100% of community development and clean energy tax credits to be taken against BEAT liability, or if the policy is more fundamentally changed, any successor to BEAT should allow such tax credits to be taken against such liability.

Furthermore, if Congress chooses to revise code provisions addressing a global minimum tax or establish a minimum tax on corporate book income, it should ensure that 100% of community development and clean energy tax credits be allowed to be taken against such minimum tax liability.

Congress can strengthen the durability of investor demand by loosening the limit to the extent that general business credits, like the community development and clean energy tax credits, can reduce their regular tax liability. This is particularly important as a countercyclical measure when regular tax liability for investors suddenly drops and existing investments for which investors had planned to claim tax credits may breach the current 75% limit. Allowing investors to exceed the 75% limit in these circumstances would keep them in the market for new tax credits, and in turn, sustain the level of capital deployment. Congress could further strengthen the durability of investor demand by increasing the period that investors may “carryback” these tax credits. Congress has previously allowed taxpayers to carryback general business credits for three years, unlike only one year under current law. Increasing the carryback period would strengthen investment demand, particularly during periods of lower growth or recession.

By way of example, last year Reps. Sewell and Reed introduced H.R. 8965, the New Markets Stabilization Act, legislation that would modify the 75% limit and allow a five-year carryback period for the new markets tax credit under IRC Section 45D.

As Congress considers various direct pay options for renewable and clean energy, an adequate oversight process should be adopted.

Also, of critical note, another policy central to investor demand is the Community Reinvestment Act (CRA). While it is not in the jurisdiction of the Ways and Means Committee, it is nonetheless a crucial policy underlying the effectiveness and efficiency of community development tax incentives. By some reports, approximately 75%-85% of annual Housing Credit investor demand, virtually all NMTC investor demand, and a notable portion of HTC investor demand comes from CRA-motivated financial institutions. As such, it is a crucial policy contributing to the success of community development tax credits. Federal bank regulators are currently undergoing a rulemaking process to update the CRA regulations. Depending on

how those regulations are rewritten, the CRA could crucially continue to sustain and perhaps even increase demand for community development tax credits.

## **Conclusion**

Chairman Neal, Ranking Member Brady, and members of the Committee, thank you again for inviting me to testify here today on the importance of leveraging the tax code to increase meaningful infrastructure investment. The enhancement and expansion of community development and clean energy tax credits will further improve communities across the country, including particularly distressed areas, provide affordable housing and clean energy, and create substantial economic activity, including creating and preserving well-paying jobs.

The existing incentives I have discussed, and additional ones being proposed, have strong bipartisan and bicameral support and there are many areas where both parties and both Houses of Congress have already come together. Similar proposals on private activity bonds, Housing Credit, Neighborhood Homes Investment tax credit, NMTC, HTC, and renewable and clean energy tax incentives were included last year in the Moving Forward Act, comprehensive infrastructure financing legislation that will likely serve as a model for any infrastructure legislation you will consider this year.

As you consider legislation to invest in infrastructure, we urge you to include the expansion and enhancement of the existing tax code provisions I have testified to here today, as well as some additional targeted community development incentives. We stand ready to work with you and your colleagues in Congress on the use of community development and clean energy incentives to advance infrastructure investment. Thank you for the opportunity to appear before you today.