To amend the Internal Revenue Code of 1986 to improve the low-income housing credit and provide relief relating to the coronavirus emergency, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. Wyden (for himself and Ms. Cantwell) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend the Internal Revenue Code of 1986 to improve the low-income housing credit and provide relief relating to the coronavirus emergency, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Emergency Affordable Housing Act of 2020”.

SEC. 2. EXTENSION OF PERIOD FOR REHABILITATION EXPENDITURES.

(a) IN GENERAL.—Clause (ii) of section 42(e)(3)(A) of the Internal Revenue Code of 1986 is amended by in-
serting “(or 36-month period, if applicable)” after “24-month period”.

(b) CONFORMING AMENDMENT.—Subparagraph (A) of section 42(e)(4) of the Internal Revenue Code of 1986 is amended by inserting “(or 36-month period, if applicable)” after “24-month period”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to buildings receiving an allocation of housing credit dollar amount after December 31, 2016.

SEC. 3. EXTENSION OF BASIS EXPENDITURE DEADLINE.

(a) IN GENERAL.—Clause (i) of section 42(h)(1)(E) of the Internal Revenue Code of 1986 is amended by inserting “(the third calendar year, in the case of an allocation made before January 1, 2022)” after “second calendar year”.

(b) QUALIFIED BUILDING.—Clause (ii) of section 42(h)(1)(E) of the Internal Revenue Code of 1986 is amended—

(1) by striking “the date which is 1 year after the date that the allocation was made” and inserting “the applicable date”,

(2) by inserting “(or third, if applicable)” after “second” in the first sentence,
(3) by inserting “(or third)” after “second” in the second sentence,

(4) by striking “BUILDING.—For purposes of” and inserting “BUILDING.—

“(I) IN GENERAL.—For purposes of”, and

(5) by adding at the end the following new sub-clause:

“(II) APPLICABLE DATE.—For purposes of subclause (I), the applicable date is 1 year after the date that the allocation was made with respect to the building (2 years, in the case of allocations made before January 1, 2022).”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to buildings receiving an allocation of housing credit dollar amount after December 31, 2016.

SEC. 4. TAX-EXEMPT BOND FINANCING REQUIREMENT.

(a) IN GENERAL.—Subparagraph (B) of section 42(h)(4) of the Internal Revenue Code of 1986 is amended by adding at the end the following: “In the case of buildings financed by an obligation issued in calendar years ending before January 1, 2022, the preceding sentence
shall be applied by substituting ‘25 percent’ for ‘50 percent’.”.

(b) Effective Date.—The amendment made by this section shall apply to buildings placed in service in taxable years beginning after December 31, 2019.

SEC. 5. MINIMUM CREDIT RATE.

(a) In General.—Subsection (b) of section 42 of the Internal Revenue Code of 1986 is amended—

(1) by redesignating paragraph (3) as paragraph (4), and

(2) by inserting after paragraph (2) the following new paragraph:

“(3) Minimum Credit Rate.—In the case of any new or existing building to which paragraph (2) does not apply, the applicable percentage shall not be less than 4 percent.”.

(b) Effective Date.—The amendments made by this section shall apply to buildings which receive allocations of housing credit dollar amount or, in the case of projects financed by tax-exempt bonds as described in section 42(h)(4) of the Internal Revenue Code of 1986, which are placed in service by the taxpayer after January 20, 2020.
SEC. 6. INCREASES IN STATE ALLOCATIONS.

(a) In general.—Clause (ii) of section 42(h)(3)(C) of the Internal Revenue Code of 1986 is amended—

(1) by striking “$1.75” in subclause (I) and inserting “$4.56 ($3.58 in the case of calendar year 2021)”, and

(2) by striking “$2,000,000” in subclause (II) and inserting “$5,214,051 ($4,097,486 in the case of calendar year 2021)”.

(b) Cost-of-living adjustment.—Subparagraph (H) of section 42(h)(3) of the Internal Revenue Code of 1986 is amended—

(1) by striking “2002” in clause (i) and inserting “2020”,

(2) by striking “the $2,000,000 and $1.75 amounts in subparagraph (C)” in clause (i) and inserting “the dollar amounts applicable to such calendar year under subclauses (I) and (II) of subparagraph (C)(ii)”,

(3) by striking “2001” in clause (i)(II) and inserting “2019”,

(4) by striking “$2,000,000 amount” in clause (ii)(I) and inserting “amount under subparagraph (C)(ii)(II)”, and
(5) by striking "$1.75 amount" in clause (ii)(II) and inserting "amount under subparagraph (C)(ii)(I)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years beginning after December 31, 2020.

SEC. 7. INCREASE IN CREDIT FOR CERTAIN PROJECTS DESIGNATED TO SERVE EXTREMELY LOW-INCOME HOUSEHOLDS.

(a) IN GENERAL.—Paragraph (5) of section 42(d) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

"(C) INCREASE IN CREDIT FOR PROJECTS DESIGNATED TO SERVE EXTREMELY LOW-INCOME HOUSEHOLDS.—In the case of any building—

"(i) 20 percent or more of the residential units in which are rent-restricted (determined as if the imputed income limitation applicable to such units were 30 percent of area median gross income) and are designated by the taxpayer for occupancy by households the aggregate household income of which does not exceed the greater of—

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“(I) 30 percent of area median gross income, or
“(II) 100 percent of an amount equal to the Federal poverty line (within the meaning of section 36B(d)(3)), and
“(ii) which is designated by the housing credit agency as requiring the increase in credit under this subparagraph in order for such building to be financially feasible as part of a qualified low-income housing project,

subparagraph (B) shall not apply to the portion of such building which is comprised of such units, and the eligible basis of such portion of the building shall be 150 percent of such basis determined without regard to this subparagraph.”.

(b) RESERVED STATE ALLOCATION.—Subparagraph (C) of section 42(h)(3) of the Internal Revenue Code of 1986 is amended—
(1) by striking “plus” at the end of clause (iii),
(2) by striking the period at the end of clause (iv) and inserting “, plus”,

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(3) by inserting after clause (iv) the following new clause:

“(v) an amount equal to 10 percent of the sum of the amounts determined under clauses (i), (ii), (iii), and (iv) (if any).”,

and

(4) by adding at the end the following: “Any amount allocated pursuant to clause (v) shall be accounted for separately and shall be allocated only to buildings to which subsection (d)(5)(C) applies.”.

(c) Effective Date.—The amendments made by this section shall apply to buildings which receive allocations of housing credit dollar amount or, in the case of projects financed by tax-exempt bonds as described in section 42(h)(4) of the Internal Revenue Code of 1986, which receive a determination of housing credit dollar amount, after the date of the enactment of this Act.

SEC. 8. INCLUSION OF INDIAN AREAS AS DIFFICULT DEVELOPMENT AREAS FOR PURPOSES OF CERTAIN BUILDINGS.

(a) In General.—Subclause (I) of section 42(d)(5)(B)(iii) of the Internal Revenue Code of 1986 is amended by inserting before the period the following: “, and any Indian area”.
(b) INDIAN AREA.—Clause (iii) of section 42(d)(5)(B) of the Internal Revenue Code of 1986 is amended by redesignating subclause (II) as subclause (IV) and by inserting after subclause (I) the following new subclauses:

“(II) INDIAN AREA.—For purposes of subclause (I), the term ‘Indian area’ means any Indian area (as defined in section 4(11) of the Native American Housing Assistance and Self Determination Act of 1996 (25 U.S.C. 4103(11))).

“(III) SPECIAL RULE FOR BUILDINGS IN INDIAN AREAS.—In the case of an area which is a difficult development area solely because it is an Indian area, a building shall not be treated as located in such area unless such building is assisted or financed under the Native American Housing Assistance and Self Determination Act of 1996 (25 U.S.C. 4101 et seq.) or the project sponsor is an Indian tribe (as defined in section 45A(c)(6)), a tribally designated hous-
ing entity (as defined in section 4(22) of such Act (25 U.S.C. 4103(22))), or wholly owned or controlled by such an Indian tribe or tribally designated housing entity.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to buildings placed in service after December 31, 2019.

SEC. 9. INCLUSION OF RURAL AREAS AS DIFFICULT DEVELOPMENT AREAS.

(a) IN GENERAL.—Subclause (I) of section 42(d)(5)(B)(iii) of the Internal Revenue Code of 1986, as amended by section 8, is amended by inserting “any rural area” after “median gross income”.

(b) RURAL AREA.—Clause (iii) of section 42(d)(5)(B) of the Internal Revenue Code of 1986, as amended by section 8, is further amended by redesignating subclause (IV) as subclause (V) and by inserting after subclause (III) the following new subclause:

“(IV) RURAL AREA.—For purposes of subclause (I), the term ‘rural area’ means any non-metropolitan area, or any rural area as defined by section 520 of the Housing Act of 1949, which is identified by the quali-
fied allocation plan under subsection (m)(1)(B).”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to buildings placed in service after December 31, 2019.

SEC. 10. INCREASE IN CREDIT FOR BOND-FINANCED PROJECTS DESIGNATED BY HOUSING CREDIT AGENCY.

(a) IN GENERAL.—Clause (v) of section 42(d)(5)(B) of the Internal Revenue Code of 1986 is amended by striking the second sentence.

(b) TECHNICAL AMENDMENT.—Clause (v) of section 42(d)(5)(B) of the Internal Revenue Code of 1986, as amended by subsection (a), is further amended—

(1) by striking “STATE” in the heading, and

(2) by striking “State housing credit agency” and inserting “housing credit agency”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to buildings which receive a determination of housing credit dollar amount after the date of the enactment of this Act.

SEC. 11. REPEAL OF QUALIFIED CONTRACT OPTION.

(a) TERMINATION OF OPTION FOR CERTAIN BUILDINGS.—
(1) IN GENERAL.—Subclause (II) of section 42(h)(6)(E)(i) of the Internal Revenue Code of 1986 is amended by inserting “in the case of a building described in clause (iii),” before “on the last day”.

(2) BUILDINGS DESCRIBED.—Subparagraph (E) of section 42(h)(6) of such Code is amended by adding at the end the following new clause:

“(iii) BUILDINGS DESCRIBED.—A building described in this clause is a building—

“(I) which received its allocation of housing credit dollar amount before January 1, 2020, or

“(II) in the case of a building any portion of which is financed as described in paragraph (4), which received before January 1, 2020, a determination from the issuer of the tax-exempt bonds or the housing credit agency that the building is eligible to receive an allocation of housing credit dollar amount under the rules of paragraphs (1) and (2) of subsection (m).”.
(b) Rules Relating to Existing Projects.—Subparagraph (F) of section 42(h)(6) of the Internal Revenue Code of 1986 is amended by striking “the nonlow-income portion” and all that follows and inserting “the nonlow-income portion and the low-income portion of the building for fair market value (determined by the housing credit agency by taking into account the rent restrictions required for the low-income portion of the building to continue to meet the standards of paragraphs (1) and (2) of subsection (g)). The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph.”.

(e) Conforming Amendments.—

(1) Paragraph (6) of section 42(h) of the Internal Revenue Code of 1986 is amended by striking subparagraph (G) and by redesignating subparagraphs (H), (I), (J), and (K) as subparagraphs (G), (H), (I), and (J), respectively.

(2) Subclause (II) of section 42(h)(6)(E)(i) of such Code, as amended by subsection (a), is further amended by striking “subparagraph (I)” and inserting “subparagraph (H)”.

(d) Technical Amendment.—Subparagraph (I) of section 42(h)(6) of the Internal Revenue Code of 1986,
as redesignated by subsection (c), is amended by striking “agreement” and inserting “commitment”.

(c) Effective Date.—The amendments made by this section shall apply to buildings with respect to which a written request described in section 42(h)(6)(H) of the Internal Revenue Code of 1986 is submitted after the date of the enactment of this Act.

SEC. 12. PROHIBITION OF LOCAL APPROVAL AND CONTRIBUTION REQUIREMENTS.

(a) In General.—Paragraph (1) of section 42(m) of the Internal Revenue Code of 1986 is amended—

(1) by striking clause (ii) of subparagraph (A) and by redesignating clauses (iii) and (iv) thereof as clauses (ii) and (iii), and

(2) by adding at the end the following new subparagraph:

“(E) Local Approval or Contribution Not Taken Into Account.—The selection criteria under a qualified allocation plan shall not include consideration of—

“(i) any support or opposition with respect to the project from local or elected officials, or

“(ii) any local government contribution to the project, except to the extent
such contribution is taken into account as part of a broader consideration of the project’s ability to leverage outside funding sources, and is not prioritized over any other source of outside funding.”

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to allocations of housing credit dollar amounts made after December 31, 2020.

SEC. 13. ADJUSTMENT OF CREDIT TO PROVIDE RELIEF DURING COVID–19 OUTBREAK.

(a) IN GENERAL.—At the election of a taxpayer who is an owner of an eligible low-income building—

(1) the credit determined under section 42 of the Internal Revenue Code of 1986 for the first or second taxable year of such building’s credit period ending on or after July 1, 2020, shall be 150 percent of the amount which would (but for this subsection) be so allowable with respect to such building for such taxable year, and

(2) the aggregate credits allowable under such section with respect to such building shall be reduced, on a pro rata basis for each subsequent taxable year in the credit period, by the increase in the credit allowed by reason of paragraph (1) with respect to such first or second taxable year.
The preceding sentence shall not be construed to affect whether any taxable year is part of the credit, compliance, or extended use periods for purposes of such section 42.

(b) Eligible Low-Income Building.—For purposes of this section, the term “eligible low-income building” means a qualified low-income building with respect to which—

(1) the first year in the credit period ends on or after July 1, 2020, and before July 1, 2022, and

(2) construction or leasing delays have occurred after January 31, 2020, due to the outbreak of coronavirus disease 2019 (COVID–19) in the United States.

(c) Election.—

(1) In General.—The election under subsection (a) shall be made at such time and in such manner as shall be prescribed by the Secretary of the Treasury (or the Secretary's delegate) and, once made, shall be irrevocable by the taxpayer and any successor in ownership.

(2) Partnerships.—In the case of an eligible low-income building owned by a partnership or S corporation, such election shall be made at the entity level.
(3) Certification.—An owner making such election shall provide to the housing credit agency, at the same time and in addition to such other information as may be required under section 42(l)(1) of the Internal Revenue Code of 1986 with respect to the building, a certification that the purpose of making such election is to offset any reductions in capital or additional costs arising by reason of the outbreak of coronavirus disease 2019 (COVID–19) in the United States. Such certification shall include any documentation which the housing credit agency may request.

(d) Definitions.—Any term used in this section which is also used in section 42 of the Internal Revenue Code of 1986 shall have the same meaning as when used in such section.

SEC. 14. CREDIT FOR LOW-INCOME HOUSING SUPPORTIVE SERVICES.

(a) In General.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 42 the following new section:
"SEC. 42A. CREDIT FOR CONTRIBUTIONS TO LOW-INCOME HOUSING SUPPORTIVE SERVICES.

(a) In General.—For purposes of section 38, the amount of the low-income housing supportive services credit determined under this section for the applicable taxable year is an amount equal to 25 percent of the qualified supportive housing contribution made by the taxpayer.

(b) Qualified Supportive Housing Contribution.—For purposes of this section—

(1) In General.—The term ‘qualified supportive housing contribution’ means the total amount contributed in cash by the taxpayer to a qualified supportive housing reserve fund with respect to a qualified low-income building, determined as of the date the building is placed in service.

(2) Qualified Supportive Housing Reserve Fund.—The term ‘qualified supportive housing reserve fund’ means, with respect to any qualified low-income building, a separate fund reserved exclusively for payment for qualified supportive services provided to tenants of the building pursuant to an extended supportive services commitment. The owner of such building shall designate an administrator to separately account for the amounts in the fund in such manner as the Secretary may prescribe.

(3) Limitations.—
“(A) IN GENERAL.—No amount attributable to any governmental grant, including grants provided by the government of any State, possession, tribe, or locality, shall be taken into account under paragraph (1).

“(B) DOLLAR LIMITATION.—The total qualified supportive housing contributions taken into account under this section with respect to any qualified low-income building shall not exceed—

“(i) $120,000, multiplied by

“(ii) the number of low-income units in the building which are occupied at the close of the applicable taxable year.

“(c) APPLICABLE TAXABLE YEAR.—For purposes of this section, the term ‘applicable taxable year’ means the 1st taxable year in the credit period with respect to the qualified low-income building described in subsection (b)(1).

“(d) QUALIFIED SUPPORTIVE SERVICES.—For purposes of this section, the term ‘qualified supportive services’ means services—

“(1) provided by the owner of a qualified low-income building (directly or through contracts with
a third party service provider) to tenants of the building,

“(2) which include health services (including mental health services), coordination of tenant benefits, job training, financial counseling, resident engagement services, or services the principal purpose of which is to help tenants retain permanent housing, or such other services as the Secretary may by regulation provide,

“(3) which are provided at no cost to tenants, and

“(4) usage of or participation in which is not required for tenants.

Such term includes reasonable and necessary measures for the provision of such services, including measures to engage tenants in and coordinate such services and measures required to obtain the certification described in subsection (e)(4).

“(e) EXTENDED SUPPORTIVE SERVICES COMMITMENT.—The term ‘extended supportive services commitment’ means any agreement between the owner of a qualified low-income building and the housing credit agency which—

“(1) requires that amounts in a qualified supportive housing reserve fund are spent exclusively on
the provision of qualified supportive services to tenants of such building,

“(2) requires that the amounts in such fund be spent entirely during the extended use period, and provides for the manner in which such spending will be distributed across such period,

“(3) requires the designation of 1 or more individuals to engage tenants regarding and coordinate delivery of qualified supportive services,

“(4) requires the maintenance of an appropriate certification, as determined by the Secretary in consultation with the housing credit agencies, for qualified supportive services, subject to recertification at least once every 5 years,

“(5) requires appropriate annual reporting to the housing credit agency on expenditures and outcomes, as determined by such agency, and

“(6) is binding on all successors in ownership of such building.

“(f) Recapture of Qualified Supportive Housing Reserve Amounts.—

“(1) In general.—If the owner of a qualified low-income building is determined to be noncompliant with the extended supportive services commitment or extended low-income housing commitment
with respect to such building, any remaining amounts in the qualified supportive housing reserve fund with respect to such building shall be transferred to the housing credit agency.

“(2) USE OF REPAYMENTS.—A housing credit agency shall use any amount received pursuant to paragraph (1) only for purposes of qualified low-income buildings.

“(g) SPECIAL RULES.—

“(1) IN GENERAL.—Notwithstanding any other provision of this section, no credit shall be allowed under this section for any taxable year with respect to any qualified low-income building unless—

“(A) the building has received an allocation of the low-income housing credit under section 42 by a housing credit agency which is approved by the governmental unit (in accordance with rules similar to the rules of section 147(f)(2) (other than subparagraph (B)(ii) thereof)) of which such agency is a part,

“(B) the housing credit agency sets forth selection criteria to determine appropriate, evidence-based supportive services and provides a procedure that the agency (or an agent or other private contractor of such agency) will follow in
monitoring for noncompliance with the provisions of this section and in reporting such noncompliance to the Secretary,

“(C) an extended low-income housing commitment is in effect with respect to such building as of the end of such taxable year,

“(D) an extended supportive services commitment is in effect with respect to such building as of the end of such taxable year, and

“(E) appropriate books and records for itemized expenses and expenditures with respect to the qualified supportive housing reserve fund are maintained on an annual basis, and are available for inspection upon request by the housing credit agency.

“(2) Denial of double benefit.—The deductions otherwise allowed under this chapter for the taxable year shall be reduced by the amount of the credit allowed under this section for such taxable year.

“(h) Definitions.—Any term used in this section which is also used in section 42 shall have the same meaning as when used in such section.”.

(b) Credit to be part of general business credit.—
(1) In general.—Section 38(b) of the Internal Revenue Code of 1986 is amended by striking “plus” at the end of paragraph (32), by striking the period at the end of paragraph (33) and inserting “, plus”, and by adding at the end the following new paragraph:

“(34) the low-income housing supportive services credit determined under section 42A(a).”.

(2) Treatment as specified credit.—

Clause (iii) of section 38(c)(4)(B) of such Code is amended by inserting “, and the credit determined under section 42A” after “2007”.

(c) Treatment for purposes of tax on base erosion payments.—Paragraph (4) of section 59A(b) of the Internal Revenue Code of 1986 is amended by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively, and by inserting after subparagraph (A) the following new subparagraph:

“(B) the low-income housing supportive services credit determined under section 42A(a),”.

(d) Passive activity credits.—

(1) In general.—Section 469 of the Internal Revenue Code of 1986 is amended by striking “42”
each place it appears in subsections (i)(3)(C),
(i)(6)(B)(i), and (k)(1) and inserting “42 or 42A”.

(2) CONFORMING AMENDMENTS.—The headings of subsections (i)(3)(C) and (i)(6)(B) of section 469 of such Code are each amended by striking “CREDIT” and inserting “CREDITS”.

(e) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 42 the following new item:

“Sec. 42A. Credit for contributions to low-income housing supportive services.”.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to buildings placed in service after December 31, 2020.