Emergency Affordable Housing Act of 2020
Sponsored by Senators Wyden and Cantwell
Summary of Provisions

Sec. 1. Short title. The Emergency Affordable Housing Act of 2020.

Sec. 2. Extend Deadline for Rehabilitation Expenditures. The provision allows up to 3 years (compared to up to 2 years under current law), following an allocation of housing credits, to make rehabilitation expenditures for a LIHTC project. Provision applies to buildings receiving an allocation of housing credits after December 31, 2016 and before January 1, 2022. This is a new provision.

Sec. 3. Extend Deadline for Basis Expenditures. The provision allows up to 3 years (compared to 2 years under current law), following an allocation of housing credits, for a LIHTC building to be placed in service and remain eligible for the credits so allocated. Also allows an additional year for the taxpayer to incur costs equal to 10% of reasonably expected basis. Provision applies to buildings receiving an allocation of housing credits after December 31, 2016 and before January 1, 2022. *This is a new provision.*

Sec. 4. Relax the "50% Test" for 2 years. Currently, tax-exempt bonds must comprise 50% of the financing for an affordable housing project, if they are used in conjunction with 4% housing credit bonds. This provision temporarily reduces the 50% requirement to 25%, to enable housing credit deals to unlock more 4% credits. The provision is effective for taxable years after December 31, 2019 and before January 1, 2022. *This is a new provision.*

Sec. 5. Minimum Credit Rate for the 4% Credit: The current market-based interest rate for the 4% housing credit is just 3.07% (for June, 2020), which undermines the financing for many 4% credit projects at a time when the nation needs as much affordable housing production as possible. The 9% credit has had a minimum 9% rate since 2008. The provision, which is permanent, would set a minimum rate of 4% for affordable housing projects that received a housing credit allocation after December 31, 2019. *This is based on a provision in the Affordable Housing Credit Improvement Act (of 2019 (AHCIA), S. 1703.*

Sec. 6. Expand the 9% Credit. The provision makes permanent the 12.5% expansion in the 9% housing credit passed in 2018 *and* increases the 9% housing credit and the small state minimum by 50 percent on top of this. The provision phases in this increase over 2021 and 2022, then indexes amounts to inflation. The provision is effective for calendar years after December 31, 2020. *This is based on a provision in AHCIA.*

Sec. 7. Provide 50% Basis Boost for Projects Serving Extremely Low-Income Households. The provision provides a 50% larger housing credit for LIHTC buildings that designate at least 20% of their occupied units for extremely low-income households and limit rent to no more than 30% of the greater of: 30% of area median income or the federal poverty line. The provision is funded by a set-aside equal to 10% of a state's housing credit allocation (and the set-aside is in addition to this allocation). The provision is permanent and applies to LIHTC buildings receiving either the 9% or the 4% housing credit after the date of enactment. *This is based on a provision in AHCIA.*

Sec. 8. Inclusion of Indian Areas as Difficult Development Areas. The provision modifies the definition of a Difficult Development Area (DDA) to automatically include projects located in an Indian area, making these projects eligible for the 30 percent basis boost. (The DDA inclusion is limited to buildings that were assisted or financed under the Native American Housing Assistance and Self Determination Act of 1996 or the project sponsor is a qualifying Indian tribe.) This provision would allow these developments to receive more housing credit equity than would otherwise be available to them. The provision applies to buildings placed in service after December 31, 2019. *This is based on a provision in AHCIA.*

Sec. 9. Inclusion of Rural Areas as Difficult Development Areas. The provision gives states the ability to provide up to a 30 percent basis boost to properties in rural areas if needed for financial feasibility, by qualifying rural areas as Difficult Development Areas. Rural areas are defined as nonmetropolitan counties and rural areas designated in a state's QAP and defined by Section 520 of the Housing Act of 1949. This would allow these developments to receive more housing credit equity than would otherwise be available to them. The provision applies to buildings placed in service after December 31, 2019. *This is based on a provision in AHCIA.*

Sec. 10. Increase in Credit for Bond-Financed Projects Designated by Housing Credit Agency. The provision allows states to provide up to a 30 percent basis boost for 4% credit projects that are financed with tax-exempt bonds if necessary for financial feasibility, providing parity between 4% credit bond-financed developments and funded by 9% credits. The provision applies to buildings that receive housing credits after the date of enactment. *This is based on a provision in AHCIA.*

Sec. 11. Repeal Qualified Contracts to Preserve LIHTC Affordable housing. LIHTC properties must ordinarily remain affordable for 30 years. However, the "Qualified Contracts" loophole allows LIHTC operators to sell their properties after 15 years to private developers who will rent units at market rate. This loophole results in the loss of at least 10,000 affordable housing units per year. This provision eliminates the qualified contract option for taxpayers receiving LIHTC credits after December 31, 2020. For taxpayers who received LIHTC credits before January 1, 2020 and who submit a written request for a qualified contract after the date of enactment, the provision repeals the current inflation adjustment formula – requiring instead a fair market value purchase price that must factor in current rent-restricted units. *This is based on the Save Affordable Housing Act of 2019, S. 1956.*

Sec. 12. Prohibition of Local Approval and Contribution Requirements. This provision removes the requirement for state housing agencies to notify local or elected officials in which a proposed building would be located. The provision further bars a state's qualified action plan from prioritizing local support (including contributions) or opposition regarding an application for a LIHTC project. The provision applies to allocations of housing credits made after December 31, 2020. *This is based on a provision in AHCIA.*

Sec. 13. Adjustment of Credit to Provide Relief During COVID-19 Outbreak. The COVID-19 outbreak has halted construction and lease-up on many LIHTC projects, delaying the receipt of housing credits, and putting the feasibility of such housing projects at risk. This provision allows the taxpayer to elect to receive a first year credit equal to 150 percent of the allowable amount, to be reduced pro rata in subsequent years. Eligible LIHTC buildings are those that have (1) a first year in the credit period ending between July 1, 2020 and July 1, 2022 and (2) pandemic-related construction or leasing delays that have occurred since January 1, 2020, (requiring certification by the taxpayer to the housing credit agency). *This is a new provision.*

Sec. 14. Credit for Low-Income Housing Supportive Services. The provision provides a tax incentive for a one-time capitalization of a reserve fund to provide supportive services at eligible LIHTC buildings. Specifically, it creates a new Sec. 42A tax credit equal to 25% of amounts contributed by a taxpayer to a qualified supportive housing reserve fund (limited to $120,000 times the number of occupied low-incomes units per low-income building). Taxpayers claiming the credit cannot also claim any other tax deduction for the amounts contributed.

A qualifying fund is a separate fund reserved exclusively for paying for supportive services provided to tenants of the building. Qualifying supportive services include health services (including mental health services), coordination of tenant benefits, job training, financial counseling, resident engagement services, or services aimed at helping tenants retain permanent housing. The fund and its provision of services must be maintained throughout the extended use period of the building and these funds must be spent down entirely during this period. The taxpayer must maintain a certification for the supportive services provided and must report annually to the housing credit agency on expenditures and outcomes. The provision applies to buildings placed in service after December 31, 2020. *This is a new provision.*