**Written Testimony of Michael J. Novogradac**

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**Before the United States Senate,**

**Committee on Finance**

**For the Hearing entitled,**

**"Tax Tools for Local Economic Development"**

**July 30, 2024**

Thank you, Chairman Wyden, Ranking Member Crapo and members of the committee for inviting me to speak today on leveraging the tax code for local economic development and the importance of community development.

As you consider tax legislation, we urge you to include the expansion and enhancement of existing tax code provisions that do just that, as well as consider enacting additional community development tax incentive tools. The historic tax credit (HTC), new markets tax credit (NMTC), opportunity zones (OZ) and tax-exempt private activity bonds (PABs) are proven economic and community development tax incentives with strong track records. These incentives have strong bipartisan support, and understandably so. They improve communities across the country, including particularly distressed areas, preserve historic properties, and create substantial economic activity, including creating and preserving jobs. As such, they deserve to be considered an integral part of tax legislation you are expected to consider in the coming months and next year. There are also several bipartisan proposals to create new community development tax incentives addressing challenges that existing incentives do not while sharing many of the design attributes that make 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 (Novogradac). 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 and other community development 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 focusing on affordable housing, community development, historic preservation, and renewable and clean energy. Furthermore, we conduct numerous in-person and online trainings focused on our practice areas, bringing together thousands of practitioners and advocates from across the country to learn how best to use community development tax and other incentives to achieve the goals established by Congress when enacting them.

I founded Novogradac in San Francisco on October 17, 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 Low-Income Housing Tax Credit (LIHTC or 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 800 employees nationwide in more than 25 offices in 15 states and the District of Columbia.

Novogradac also hosts seven policy 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 legislation, regulations, policies, and other guidance involving the related tax and other incentives. Specifically, we host the LIHTC Working Group, New Markets Tax Credit Working Group, the Opportunity Zones Working Group, the Income Limits Working Group, Neighborhood Homes Tax Credit Working Group, GAAP Accounting for Tax Credits Working Group and the Renewable Energy Working Group.

Personally, I serve on the executive committees of the Affordable Housing Tax Credit Coalition and the Housing Advisory Group; on the boards of directors of the National Housing Conference, New Markets Tax Credit Coalition, Partnership for Job Creation 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 tax incentives that benefit disadvantaged communities, from affordable housing to community development, historic preservation, renewable energy and much more.

## Tax Incentive Public-Private Partnerships

Before I discuss the various key economic and community development tax incentives individually, I would like to note the key design benefits of delivering such incentives through a tax credit or similar structure. Public-private partnerships involving tax incentives 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 incentive requirements, future tax benefits are generally lost, and prior tax benefits subject to recapture. The economic and community development tax credit model embodies the concept of "pay for success." If something goes wrong in the development or operational phase, private equity capital, ***not*** taxpayer dollars, is at risk.

The potential loss of future tax benefits, and collectible recapture of prior benefits is a key design feature of economic and community development tax incentives. With a tax incentive that is claimed and/or vests over time, the threat of the loss and recapture of tax benefits helps ensure the tax subsidy recipient 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 converting underutilized office properties to affordable housing and developing owner-occupied housing in distressed communities.

## Historic Tax Credit

The first community development tax incentive authorized by Congress (and the first community development tax incentive 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 established an HTC in 1979. Nearly 45 years later, it has demonstrated a strong track record of success.

The HTC is jointly administered by the U.S. Department of the Treasury/Internal Revenue Service and the U.S. Department of the Interior's National Park Service (NPS) in partnership with state historic preservation offices (SHPOs) nationwide. Under current law, the HTC is a 20% tax credit claimed over five years for qualified rehabilitation expenditures associated with the preservation of income-producing buildings on the National Historic Register or significant to and located in a registered historic district. Properties must go through a rigorous three-part evaluation process before qualifying for the HTC. As of FY 2023, more than 49,200 historic rehabilitation properties have been certified by the NPS.[1]

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 that from FY 1979 to FY 2022, the HTC has leveraged nearly $132 billion in private investments[2] for a total of more than $235 billion in HTC-related rehabilitation investment and created and preserved more than 3.2 million jobs.[3]

The HTC has contributed to the rehabilitation and creation of hundreds of thousands of rental homes–more than 314,200 homes rehabilitated, more than 356,000 new homes from adaptive reuse properties, and nearly 200,000 homes affordable to low- and moderate-income households, according to the National Park Service.[4]

The economic development spurred by the HTC returns money to the Treasury. Through FY 2022, the NPS and Rutgers University reported that the HTC has generated $50.3 billion in federal tax revenue from $44.3 billion in tax credits.[5]

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 PolicyMap's analysis of NPS data, more than half of HTC properties are in low- and moderate-income census tracts, and 75% of HTC properties are in economically distressed communities.[6]

Furthermore, a significant proportion of HTC properties are in majority-minority communities. According to the Historic Tax Credit Coalition, 40% of HTC properties placed in service in 2013-2022 (the latest years available for such analysis) are in predominantly majority-minority census tracts.[7]

See below for HTC data by state for FY 2023 and FY 2001 through FY 2023.

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[1] "Federal Tax Incentives for Rehabilitating Historic Buildings, Annual Report for Fiscal Year 2023" by National Park Service, February 28, 2024 https://www.novoco.com/public-media/documents/nps-htc-report-2023-annual-02282024.pdf.

[2] Ibid.

[3] "Annual Report on the Economic Impact of the Federal Historic Tax Credit for Fiscal Year 2022" by National Park Service and Rutgers University, February 28, 2024 https://www.novoco.com/public-media/documents/nps-htc-report-2022-economic-impact-02282024.pdf.

[4] NPS (2024).

[5] NPS and Rutgers (2024).

[6] "Federal Tax Incentives for Rehabilitating Historic Buildings, Annual Report for Fiscal Year 2018" by National Park Service, March 11, 2019. https://www.novoco.com/public-media/documents/nps_annual_report_2018_031119.pdf

[7] "Federal Historic Tax Credit Fact Sheet," Historic Tax Credit Coalition.

## Historic Tax Credit Data by State

| | FY 2023 | | FY 2001-2023 | |
|---|---|---|---|---|
| | Part 3 Approved | QREs | Part 3 Approved | QREs |
| Alabama | 23 | $177,003,965 | 243 | $747,522,879 |
| Alaska | 0 | $0 | 8 | $25,704,177 |
| Arizona | 2 | $885,000 | 62 | $191,656,566 |
| Arkansas | 19 | $14,197,166 | 311 | $467,163,473 |
| California | 6 | $209,713,542 | 235 | $3,661,318,155 |
| Colorado | 6 | $45,170,661 | 124 | $497,231,883 |
| Connecticut | 27 | $118,332,549 | 202 | $1,581,897,959 |
| Delaware | 8 | $23,147,331 | 88 | $388,452,368 |
| District of Columbia | 0 | $0 | 76 | $1,245,346,702 |
| Florida | 6 | $27,768,935 | 255 | $1,234,389,504 |
| Georgia | 51 | $104,129,978 | 824 | $1,671,694,497 |
| Hawaii | 1 | $7,748,432 | 10 | $28,297,599 |
| Idaho | 2 | $15,876,623 | 22 | $53,705,429 |
| Illinois | 14 | $1,311,287,585 | 409 | $6,388,065,526 |
| Indiana | 12 | $292,864,596 | 301 | $1,524,527,049 |
| Iowa | 14 | $93,240,243 | 436 | $2,046,469,068 |
| Kansas | 13 | $42,335,219 | 321 | $808,378,758 |
| Kentucky | 27 | $46,672,288 | 536 | $931,345,821 |
| Louisiana | 101 | $334,512,119 | 1,476 | $4,404,049,585 |
| Maine | 10 | $105,312,456 | 147 | $634,621,075 |
| Maryland | 18 | $73,494,770 | 717 | $2,422,027,402 |
| Massachusetts | 40 | $634,717,993 | 786 | $6,061,128,324 |
| Michigan | 14 | $267,229,449 | 477 | $3,367,875,349 |
| Minnesota | 12 | $142,240,179 | 201 | $2,440,264,190 |
| Mississippi | 18 | $21,501,561 | 331 | $516,992,416 |
| Missouri | 92 | $306,107,617 | 2,054 | $7,511,151,628 |
| Montana | 2 | $9,578,074 | 56 | $81,412,256 |
| Nebraska | 5 | $40,949,709 | 142 | $676,408,517 |
| Nevada | 0 | $0 | 5 | $50,439,846 |
| New Hampshire | 2 | $15,217,419 | 36 | $243,516,947 |
| New Jersey | 4 | $112,911,120 | 195 | $1,732,819,705 |
| New Mexico | 1 | $138,659 | 31 | $105,785,399 |
| New York | 74 | $1,845,305,062 | 1,198 | $11,540,908,496 |
| North Carolina | 48 | $114,222,996 | 1,013 | $2,759,288,746 |
| North Dakota | 0 | $0 | 23 | $76,930,561 |
| Ohio | 55 | $404,615,411 | 1,562 | $6,073,365,335 |
| Oklahoma | 6 | $47,507,600 | 168 | $946,844,226 |
| Oregon | 1 | $26,300,000 | 157 | $956,646,951 |
| Pennsylvania | 50 | $440,421,193 | 1,090 | $6,620,203,424 |
| Rhode Island | 5 | $57,646,849 | 264 | $1,899,856,477 |
| South Carolina | 25 | $65,042,490 | 247 | $1,013,565,992 |
| South Dakota | 0 | $0 | 59 | $80,319,898 |
| Tennessee | 14 | $186,679,661 | 268 | $1,199,076,709 |
| Texas | 22 | $279,975,042 | 313 | $3,561,293,805 |
| Utah | 1 | $970,000 | 123 | $290,138,021 |
| Vermont | 10 | $13,678,727 | 329 | $352,187,783 |
| Virginia | 74 | $402,780,105 | 1,996 | $5,564,664,783 |
| Washington | 4 | $60,049,011 | 144 | $1,689,203,107 |
| West Virginia | 7 | $18,145,972 | 142 | $288,261,713 |
| Wisconsin | 21 | $253,191,105 | 372 | $2,201,081,887 |
| Wyoming | 0 | $0 | 18 | $20,861,904 |
| **Total** | **967** | **$8,810,816,462** | **20,603** | **$100,876,359,870** |

*Source: National Park Service; Novogradac*

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.[8]

The HTC also has an impressive history of high compliance, demonstrated by its exceedingly low recapture rate. In general, a transfer of ownership within the 5-year compliance period triggers tax credit recapture. Recapture can also result from mortgage foreclosure, if the building's architectural character is altered, or if the building is lost because of a natural disaster. However, the recapture exposure declines 20% per year over 5 years.

Novogradac undertook an HTC recapture survey for the National Trust for Historic Preservation. The study found a cumulative recapture rate of the HTC over the 2001-2011 measuring period was just 0.73%, reflecting a better than 99% project success rate. Note that the study's measuring period even includes the years of the Great Recession in the early part of the century, when other real estate assets had a much higher failure rate.[9]

However, despite its impressive track record, the HTC is unfortunately *less impactful* in the states you represent than it was when I began work in this field. This is because of changed rules, burdensome regulations, competition from energy-related tax incentives, and the fallout from a global pandemic.

On Aug. 27, 2012, the U.S. Third Circuit Court of Appeals issued its ruling in the Historic Boardwalk Hall (HBH) case. The court concluded that the investor in New Jersey's Historic Boardwalk Hall project did not have a meaningful stake in the success or failure of the partnership that owned the project and generated the HTC. As a result, the court concluded that the investor was not a bona fide partner, and it was not entitled to the claimed losses and tax credits. Because certain features of the investment structure resembled the features of many HTC investments, the decision chilled the HTC market.

Following HBH, the Historic Tax Credit Coalition sought guidance from, and provided input to, the Internal Revenue Service. This ultimately resulted in Revenue Procedure 2014-12 providing a conservative "safe harbor" for many issues significant to the HTC. While this revenue procedure helped free up a frozen industry, the conservative "safe harbor" has largely become the standard, which did weaken the value of the HTC. Note that while other tax credits also use similar structures to those used for the HTC, they often don't need to hew to the HTC safe harbor. For example, low-income housing and new markets tax credit projects are generally considered exempt from an investor needing a "profit motive" excluding tax benefits. Furthermore, renewable energy tax incentives now benefit from the ability to sell credits, or in many cases, seek "direct payment" so that tax issues related to an investor being a "partner" have far less, or no, importance. Although the fundamental structure of many tax credit transactions is similar, there has not been a similar case brought with regard to any other tax credit.

[8] "Understanding the Carbon Cost of Demolition" by Peggy Moretti, https://restoreoregon.org/2021/04/12/understanding-the-carbon-cost-of-demolition/.
[9] "Historic Rehabilitation Tax Credit Recapture Survey, Novogradac & Co. LLP, 2012 https://www.novoco.com/products/historic-rehabilitation-tax-credit-recapture-survey

Subsequently, the IRS issued guidance in 2016, determining that Internal Revenue Code (IRC) Section 50(d) income (associated with the master-tenant deal structure) was taxable to the investor without a corresponding increase in basis. This resulted in significant additional cost to investors in these transactions, again making the HTC less valuable when compared to transactions closed in the earlier years of the incentive.

In 2017, as part of the bill referred to as the Tax Cuts and Jobs Act of 2017, the 20% HTC, which was originally claimed in the year a building was placed in service, was changed to a five-year tax credit, claimed 4% a year for five years. This change reduced the equity value of the credit.

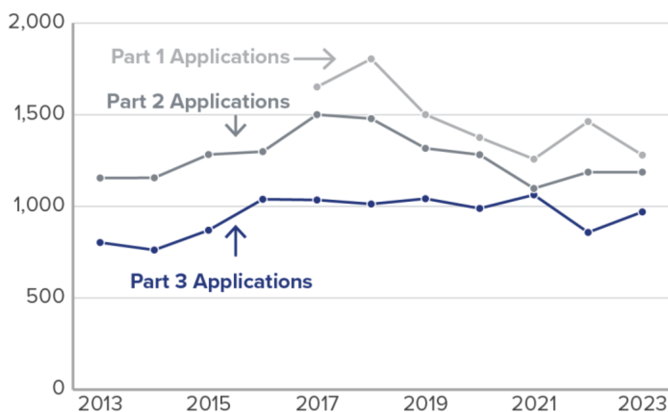
As a result of the lingering impacts of COVID-19, historic building owners face unprecedented challenges in rehabilitating their properties. The financial markets for capital used in historic preservation have not truly recovered, making it increasingly difficult for properties to access capital.

Furthermore, the Inflation Reduction Act substantially enhanced the comparative attractiveness of existing and newly created clean energy related tax credits, creating a comparative disadvantage for HTC in the market for tax credit investors. New features included: elective pay (essentially refundability) for government and tax-exempt-owned projects, and for certain clean energy tax incentives with for-profit owners; a new ability to sell clean energy tax credits without need for a traditional tax credit equity partnership or similar investor structure; significantly increased credit percentages in a variety of situations; and other tax benefits.

Many historic properties undergoing renovation have slowed due to local restrictions or labor shortages; meanwhile material and labor costs have skyrocketed, reaching new heights in the pandemic few in the construction industries ever thought possible and remain elevated.

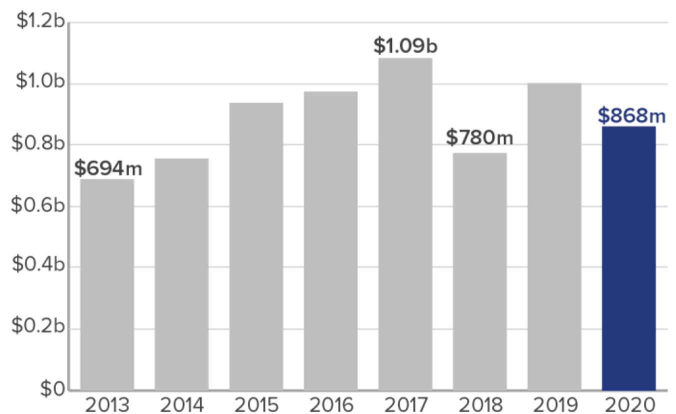
NPS, Treasury and HTCC data from 2018-2023 illustrates a more challenging environment for HTCs compared to pre-pandemic averages.

## Number of Historic Tax Credit Applications by Fiscal Year



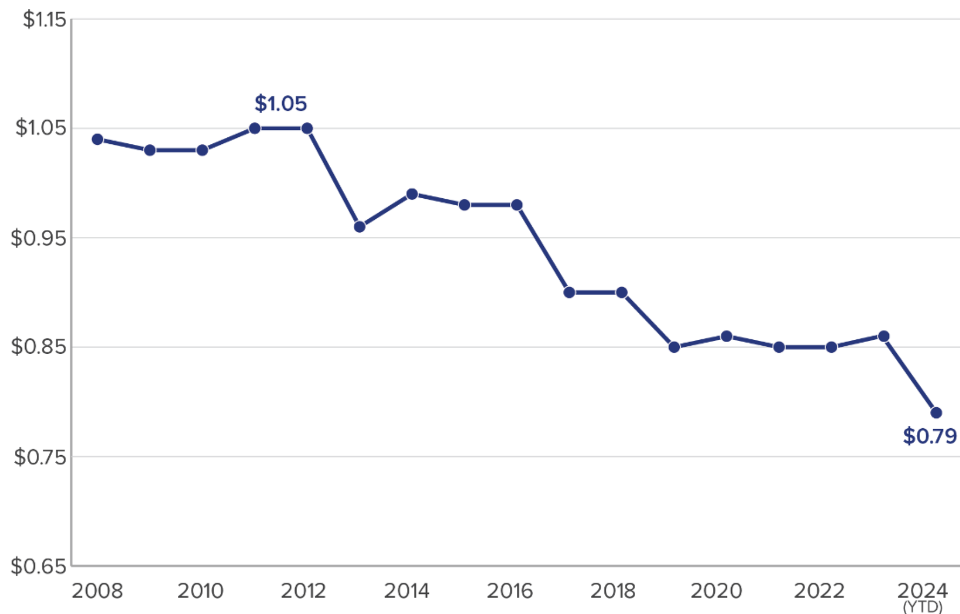

*Source: National Park Service; Novogradac*

## Total Historic Tax Credits




*Source: U.S. Department of Treasury, Internal Revenue Service; Novogradac*

### Historic Tax Credit Equity: Pricing Trends




Source: Historic Tax Credit Coalition; Novogradac

To help address these challenges and provide long-needed modernizations of the HTC, Senators Cardin and Cassidy introduced bipartisan and bicameral legislation, S. 639, the Historic Tax Credit Growth and Opportunity Act, and we commend the Senators' leadership on HTC.

The bill would:

- Eliminate the basis adjustment, making the HTC easier to pair with other community development tax credits, and providing more tax equity subsidy per tax credit dollar for each historic property;
- Provide a 30% HTC for small projects to allow them to be more financially feasible;
- Redefine substantial rehabilitation to mean 50% of adjusted basis, making more historic buildings eligible before they are literally falling down; and
- Eliminate the Disqualified Lease Rules so nonprofits, like YMCA and the Boys & Girls clubs, can more easily operate in historic buildings.

The HTC has not been meaningfully modernized since before 1986 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 Senate, and your colleagues in the House would make significant positive changes and ensure the HTC is a key tool for neighborhood revitalization in urban, suburban and rural communities nationwide.

#### Using Tax Incentives to Address Underutilized Non-residential Properties

One of the lingering impacts of the pandemic is the shift to hybrid work, which has resulted in increasing amounts of stress in many commercial real estate property markets, especially for office properties. Roughly $737 billion of office property loans are spread across large and regional banks, insurance companies and other lenders, according to CoStar, a

real estate research firm, and the Mortgage Bankers Association, and about $200 billion of those mortgages are set to mature this year, according to the Mortgage Bankers Association and CoStar, and another $260 billion is set to mature by the end of 2026, according to CommercialEdge[10], another real estate research firm. Among top markets, Atlanta has the highest concentration of maturing loans, with 48.3% of its office loan volume either having recently matured or due to mature through the end of 2026. Atlanta is followed by Denver (41.8%), Nashville (41.7%), Chicago (40.7%) and the Twin Cities (39.2%).[11] At the same time, Green Street Advisors reports that office property values have decreased by about 35% since March 2020, but they've yet to bottom out.[12]

Furthermore, a growing percentage of those office properties are vacant, and those vacancies appear to be concentrated in certain markets. While vacancy rates in U.S. office buildings nationwide are around 22%, roughly 60% of that vacant space was in 10%of all office buildings nationwide, according to Jones Lang LaSalle, a commercial real estate services firm.[13]

Moreover, the delinquency rate for office property loans that are part of commercial mortgage-backed securities was nearly 7.5% in June, up from about 4% a year earlier, according to Trepp,[14] a data and research firm. Fitch projects the office delinquency rate to further increase to 9.9%next year.[15] Foreclosures, which can take place months or more than a year after a property owner falls behind on payments, are also climbing. Nearly 30 buildings in Dallas, New York City, San Francisco and Washington, D.C. whose loans are part of commercial mortgage-backed securities were in foreclosure in April, up from a dozen in early 2023, according to Trepp.[16]

Much of the distress in office and other non-residential real estate markets is concentrated in metropolitan areas with particularly acute affordable housing challenges, which has prompted many cities to consider converting those properties into affordable housing. However, not every non-residential property is suitable for such conversions, and even for those properties that are suitable, it is costly to finance those conversions without some form of subsidy.

That is why I am encouraged to see the introduction of the bipartisan, bicameral Revitalizing Downtowns and Main Streets Act (S. 4693, H.R. 9002), led by Sen. Stabenow and Rep. Carey, which would authorize $15 billion through 2027 for a tax credit, inspired by the HTC, that would provide a 20% tax credit on qualified expenditures to finance the conversion of non-residential properties that were placed in service at least 20 years ago into affordable housing. Such properties would be required to:

- Set aside at least 20% of the units of a building for households that earn 80% or less of the area median income (AMI),
- Restrict annual rents for those units at no more than 30% of 80% AMI, and
- Adhere to the income and rent restrictions for at least 30 years.

If the property is in a qualified census tract or difficult development area as specified in the Housing Credit statue, and the income limit for the restricted units is reduced to 60% AMI, the conversion tax credit would be increased to 30%. Furthermore, if the property is part of a historic preservation project and in a rural area, the first $2 million of qualified

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[10] "July 2024 Office Market Report," CommercialEdge, https://www.commercialedge.com/blog/national-office-report/
[11] Ibid.
[12] "Property Prices Decline on Higher Rates" Green Street Advisors, November 6, 2023 https://insights.greenstreet.com/hubfs/GSCPPI20231106.pdf
[13] "More than 60% of office vacancy concentrated in 10% of building" Jones Lang LaSalle, June 21, 2023 https://www.us.jll.com/en/trends-and-insights/research/office-research-snapshot-06-21-2023
[14] TreppTalk, CMBS delinquencies, https://www.trepp.com/trepptalk/topic/cmbs-delinquencies
[15] "US Commercial Real Estate Office Performance Will Worsen through 2025"
FitchRatings https://www.fitchratings.com/research/structured-finance/us-commercial-real-estate-office-performance-will-worsen-through-2025-07-06-2024
[16] TreppTalk, CMBS delinquencies, https://www.trepp.com/trepptalk/topic/cmbs-delinquencies

conversion expenditures may receive a 35% credit instead of 20%. However, the bill also requires that qualified conversion expenditures be reduced by 50% of HTC eligible costs when the conversion credit is used in concert with the HTC.

As I mentioned above, the HTC has been successfully used to finance the adaptive reuse of historic properties or the rehabilitation of historic residential rental properties into more than 670,000 homes.

While the bill is very promising, I am concerned that some features of the bill could undermine the HTC as well as present complications with combining the conversion credit with the Housing Credit, and so I would like to offer a few recommendations to ensure that the bill works as intended.

There should be no basis reduction for Housing Credit in properties using the conversion credit. Given the role of state housing agencies in making conversion allocations, where such agencies already review the sources and uses of financing of proposed developments seeking Housing Credit allocations for financial feasibility, they would only allocate the amount of Housing Credit needed to make the property feasible, preventing the over-subsidization of such conversions. Similarly, we recommend no basis reduction for the conversion credit when used in conjunction with the HTCs. Given our experience in evaluating the costs associated with converting historic properties to affordable housing, the full amount of basis for all three tax incentives will likely be needed for many property conversions to be financially feasible. Furthermore, given the costs associated with verifying properties are eligible to receive HTCs and the fact that the conversion credit is claimed in the year the conversion expenditures are made while the HTC is claimed over five years, I am concerned that some developers may forego preserving the historic character of properties eligible for the conversion credit, resulting in the loss of historic properties.

## New Markets Tax Credit

The NMTC is an important community development tax incentive authorized under IRC Section 45D, which provides a 39% tax credit claimed over seven years for qualified equity investments (QEIs) in community development entities (CDEs) that make loans to and/or equity investments in qualified active low-income community businesses (QALICBs). 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. I have been closely involved with the implementation of the NMTC ever since it was established, and Novogradac convenes the largest conferences among community development practitioners solely focused on the NMTC.

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.[17] In general, under IRC Section 45D, to be eligible for subsidized NMTC financing, business and nonprofit activities must be attributable to census tracts located in low-income communities, defined as meeting one of the following criteria:

- The tract has a poverty rate of at least 20%, or
- 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, or
- 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, or
- The tract has a population under 2,000, is contiguous to one or more low-income communities, and is within an empowerment zone, or

[17] "NMTC Program Award Book, CY 2022" by U.S. Department of the Treasury, Community Development Financial Institutions Fund, https://www.novoco.com/public-media/documents/cdfi-cy-22-nmtc-award-book-09232023.pdf.

- 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 IRC Section 45D provides the above minimum eligibility criteria, the competitive allocation process has led to the vast majority (more than 84% in 2023[18]) of NMTC investments being made in "severely distressed" tracts. These are tracts that:

- have a poverty rate of at least 30%,
- have an unemployment rate of at least 1.5 times the national average, or
- 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 2008, Congress enacted changes to IRC Section 45D to ensure that at least 20% of the annual NMTC investments were made in nonmetro areas. Not only has this threshold been met annually, but also an increasing percentage of investment is being made in rural America. In 2023, more than 28% of NMTC investments were made in nonmetro areas, more than the percentage of eligible census tracts located in rural America.[19]

Since inception, the CDFI Fund has awarded $76 billion in NMTC allocation authority to CDEs nationwide through 1,563 awards, generating more than $135 billion in total investment financing for more than 8,500 NMTC investments in qualifying low-income community businesses. According to the CDFI Fund through 2022 (the latest data available), NMTC financing has been used to construct or rehabilitate nearly 260 million square feet of commercial real estate, consisting of more than 85 million square feet of manufacturing facilities, 107 million square feet of office space, and 67 million square feet of retail property.[20] And according to the New Markets Tax Credit Coalition, NMTC financing has led to more than 1.2 million permanent full-time and temporary construction jobs, at a federal cost of less than $20,000 per job.[21]

The NMTC finances a wide variety of low-income community businesses, including manufacturing businesses, large commercial developments, small-business expansions, mixed-use developments, hotels, arts centers, office buildings, charter schools, medical clinics, day care centers, and homes for sale. Some highlights of these investments include:

- Nearly 2,000 manufacturing and industrial businesses[22],
- More than 3,700 federally qualified heath care facilities, schools, day care centers, apprenticeship programs, treatment facilities and other community service providers,[23]
- More than 7,000 affordable owner-occupied homes and nearly 10,600 rental homes,[24]
- More than 3,600 investments involving loans and equity of $4 million or less,[25] and
- More than 140 small business incubators totaling $4.3 billion.[26]

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[18] "2024 Progress Report" New Markets Tax Credit Coalition, June 5, 2024 https://nmtccoalition.org/2024/06/05/nmtc-funded-322-projects-nearly-60000-jobs-across-the-u-s-in-2023/
[19] Ibid.
[20] "New Markets Tax Credit (NMTC) Public Data Release" CDFI Fund, June 2024 https://www.novoco.com/public-media/documents/cdfi-nmtc-public-data-release-2003-2022-07032024.pdf
[21] New Markets Fact Sheet https://nmtccoalition.org/advocacy-toolkit/fact-sheet/.
[22] Ibid.
[23] Ibid.
[24] New Markets Tax Credit (NMTC) Public Data Release, June 2024
[25] Ibid.
[26] New Markets Fact Sheet https://nmtccoalition.org/advocacy-toolkit/fact-sheet/

See below for tables with the latest data available on NMTC application demand, QEI issuance and QLICI amounts by state:

## NMTC Application Demand

| Round | Year | Applications Submitted | Allocation Authority Requested (in billions) | Numbers of Awardees | Allocation Authority Awarded (in billions) | % of Applicants Receiving Awards | NMTC Demand to Supply Ratio |
|---|---|---|---|---|---|---|---|
| 1 | 2002 | 345 | $25.8 | 66 | $2.5 | 19.1% | 10.3 : 1 |
| 2 | 2003 | 271 | $30.4 | 63 | $3.5 | 23.2% | 8.7 : 1 |
| 3 | 2005 | 208 | $23.0 | 41 | $2.0 | 19.7% | 11.5 : 1 |
| 4 | 2006 | 254 | $28.4 | 63 | $4.1 | 24.8% | 6.9 : 1 |
| 5 | 2007 | 258 | $27.9 | 61 | $3.9 | 23.6% | 7.2 : 1 |
| 6 | 2008 | 239 | $21.3 | 102 | $5.0 | 42.7% | 4.3 : 1 |
| 7 | 2009 | 249 | $22.5 | 99 | $5.0 | 39.8% | 4.5 : 1 |
| 8 | 2010 | 250 | $23.5 | 99 | $3.5 | 39.6% | 6.7 : 1 |
| 9 | 2011 | 314 | $26.7 | 70 | $3.6 | 22.3% | 7.4 : 1 |
| 10 | 2012 | 282 | $21.9 | 85 | $3.5 | 30.1% | 6.3 : 1 |
| 11 | 2013 | 310 | $25.8 | 87 | $3.5 | 28.1% | 7.4 : 1 |
| 12 | 2014 | 263 | $19.9 | 76 | $3.5 | 28.9% | 5.7 : 1 |
| 13 | 2015-2016 | 238 | $17.6 | 120 | $7.0 | 50.4% | 2.5 : 1 |
| 14 | 2017 | 230 | $16.2 | 73 | $3.5 | 31.7% | 4.6 : 1 |
| 15 | 2018 | 214 | $14.7 | 73 | $3.5 | 34.1% | 4.2 : 1 |
| 16 | 2019 | 206 | $14.7 | 76 | $3.5 | 36.9% | 4.2 : 1 |
| 17 | 2020 | 208 | $15.1 | 100 | $5.0 | 48.1% | 3.0 : 1 |
| 18 | 2021 | 199 | $14.7 | 107 | $5.0 | 53.8% | 2.9 : 1 |
| 19 | 2022 | 197 | $14.8 | | $5.0 | | 3.0 : 1 |
| **Total Requests** | | **4,931** | **$419.6** | | | | |
| **Total Awards** | | | | **1,563** | **$76.1** | | |

*Source: CDFI Fund; Novogradac*

## NMTC Qualified Equity Investment Report: Summary by Round
As of July 2024

| Round | Year | Date Award Made | Award Amount | Amount Finalized | Amount Remaining | Percentage Remaining |
|---|---|---|---|---|---|---|
| 1 | 2001-2002 | Mar. 14, 2003 | $2,485,699,042 | $2,485,699,042 | $0 | 0.0% |
| 2 | 2003-2004 | May 6, 2004 | $3,493,786,204 | $3,493,786,204 | $0 | 0.0% |
| 3 | 2005 | May 11, 2005 | $1,964,688,856 | $1,964,688,856 | $0 | 0.0% |
| 4 | 2006 | June 1, 2006 | $4,099,765,000 | $4,099,765,000 | $0 | 0.0% |
| 5 | 2007 | Oct. 5, 2007 | $3,892,249,021 | $3,892,249,020 | $0 | 0.0% |
| 6 | 2008 | Oct. 20, 2008 | $4,964,500,010 | $4,964,500,009 | $0 | 0.0% |
| 7 | 2009 | Oct. 30, 2009 | $4,987,650,000 | $4,987,649,999 | $1 | 0.0% |
| 8 | 2010 | Feb. 24, 2011 | $3,475,000,000 | $3,475,000,000 | $0 | 0.0% |
| 9 | 2011 | Feb. 23, 2012 | $3,622,919,753 | $3,622,919,753 | $0 | 0.0% |
| 10 | 2012 | Apr. 24, 2013 | $3,500,000,000 | $3,500,000,000 | $0 | 0.0% |
| 11 | 2013 | June 5, 2014 | $3,494,907,113 | $3,494,907,113 | $0 | 0.0% |
| 12 | 2014 | June 15, 2015 | $3,512,350,000 | $3,512,350,000 | $0 | 0.0% |
| 13 | 2015-2016 | Nov. 17, 2016 | $6,953,500,000 | $6,953,500,000 | $0 | 0.0% |
| 14 | 2017 | Feb. 13, 2017 | $3,500,000,000 | $3,500,000,000 | $0 | 0.0% |
| 15 | 2018 | May 23, 2019 | $3,500,000,000 | $3,500,000,000 | $0 | 0.0% |
| 16 | 2019 | Jul. 15, 2020 | $3,548,485,000 | $3,536,204,707 | $12,280,293 | 0.3% |
| 17 | 2020 | Sept. 21, 2021 | $5,000,000,000 | $4,761,626,788 | $238,373,212 | 4.8% |
| 18 | 2021 | Oct. 28, 2022 | $5,004,500,000 | $3,914,240,000 | $1,090,260,000 | 21.8% |
| 19 | 2022 | Sept. 22, 2023 | $5,000,000,000 | $2,228,776,243 | $2,771,223,757 | 55.4% |
| **Total** | | | **$75,999,999,999** | **$71,887,862,734** | **$4,112,137,263** | **5.4%** |

*Source: CDFI Fund; Novogradac*

## NMTC QLICI Amount by State
### As of FY 2022

| State | QLICI Amount | State | QLICI Amount |
|---|---|---|---|
| Alabama | $1,236,792,723 | Montana | $375,429,500 |
| Alaska | $328,755,629 | Nebraska | $493,621,197 |
| American Samoa | $19,300,000 | Nevada | $402,460,838 |
| Arizona | $941,730,657 | New Hampshire | $319,229,660 |
| Arkansas | $680,348,164 | New Jersey | $1,415,880,740 |
| California | $5,799,116,343 | New Mexico | $462,139,499 |
| Colorado | $813,555,978 | New York | $3,960,677,423 |
| Connecticut | $469,248,313 | North Carolina | $1,230,207,937 |
| Delaware | $135,470,069 | North Dakota | $120,530,892 |
| District of Columbia | $1,234,658,485 | Ohio | $3,571,959,273 |
| Florida | $1,989,485,846 | Oklahoma | $1,174,013,287 |
| Georgia | $2,120,902,698 | Oregon | $1,232,356,978 |
| Guam | $23,900,000 | Pennsylvania | $2,514,169,062 |
| Hawaii | $262,883,246 | Puerto Rico | $208,920,101 |
| Idaho | $313,222,600 | Rhode Island | $497,764,176 |
| Illinois | $2,570,356,606 | South Carolina | $1,075,911,214 |
| Indiana | $1,054,728,342 | South Dakota | $190,508,000 |
| Iowa | $549,147,928 | Tennessee | $1,283,844,070 |
| Kansas | $348,147,973 | Texas | $3,017,238,094 |
| Kentucky | $1,188,953,695 | United States Virgin Islands | $2,000,000 |
| Louisiana | $2,859,971,264 | Utah | $491,995,711 |
| Maine | $453,382,312 | Vermont | $298,020,951 |
| Maryland | $1,344,634,208 | Virginia | $935,513,693 |
| Massachusetts | $2,521,351,010 | Washington | $1,583,352,864 |
| Michigan | $1,780,483,275 | West Virginia | $255,043,433 |
| Minnesota | $1,705,519,485 | Wisconsin | $2,493,639,626 |
| Mississippi | $1,488,407,815 | Wyoming | $80,003,082 |
| Missouri | $2,690,312,981 | **Total** | **$66,611,198,946** |

*Source: CDFI Fund; Novogradac*

Recognizing this tremendous record of achievement, Congress acted in December 2020 to provide a five-year extension at $5 billion annually through 2025. I greatly appreciated Congress providing this extension, as it not only allowed this valuable tool to bring more private capital to low-income communities, it provided continuity for program stakeholders over the medium term.

Despite the additional investments this extension allowed, there is still tremendous unmet need for private capital investment in low-income communities. Since inception, applications for NMTC allocation authority have exceeded amounts available in each allocation round by about three to five times, including the $7 billion double round in 2015-16. Furthermore, even with the $5 billion available in the latest NMTC awards round, the CDFI Fund was only able to award 34% of the allocation authority requested by applicants, demonstrating demand for even more allocation authority than authorized under current law.[27] 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 S. 234, the New Markets Tax Credit Extension Act. We commend Sens. Cardin and Daines for their leadership on this bill and the NMTC in general. S. 234 would:

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

Such legislation would not only provide more allocation authority, but also long-term certainty, attracting more investors to enter the market. Demand for the incentive would likely increase as more investors enter the market, putting upward pressure on NMTC equity pricing, thereby further increasing the effectiveness and efficiency of the NMTC to bring private capital to low-income communities. Greater allocation 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, more minority- and tribal-owned CDEs would have a greater opportunity of receiving an award.

The Rural Jobs Act, S.1455, introduced by Sens. Wicker and Warner, would authorize separate annual NMTC allocation authority for two years at $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 investments would need to be directed to persistent poverty or high out-migration rural counties.

The Tribal Tax and Investment Reform Act, H.R. 8318, introduced by Reps. Gwen Moore and Schweikert, should also be considered for inclusion in tax legislation. It would authorize an additional $175 million of NMTC allocation authority annually for tribal community businesses, an important recognition of the need for private capital in such communities.

The additional allocation authority from these bills would help address the disproportionate impact of the pandemic on low-income communities, particularly rural and Native American ones.

I would like to note that the CDFI Fund recently announced its intent for the next round of the NMTC Program to issue a Notice of Allocation Availability that will combine the CY 2024 and CY 2025 rounds into one round of $10 billion.[28] It is anticipated to open this fall. I would like to thank the CDFI Fund Director Raghavan as well as Sens. Daines and Cardin for urging Treasury to take this step. Not only will this action enable more CDEs to receive an allocation, but it will lead to more investment to be generated sooner than under the original schedule and ensure that Treasury releases all authorized allocation authority by the end of 2025, as Congress originally intended.

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[27] CY 2022 NMTC Award Book, CDFI Fund https://www.novoco.com/documents116597/cdfi-cy-22-nmtc-award-book-09232023.pdf
[28] "Message from CDFI Fund Director Pravina Raghavan" CDFI Fund, July 15, 2024 https://www.cdfifund.gov/director-messages/43

### How NMTC and the Opportunity Zones incentive are complementary, not substitutes

As Congress considers tax legislation in 2025, the expiration of the NMTC and the looming capital gains investment deadline for Opportunity Zones may prompt some tax policymakers to consider whether both incentives designed to bring private capital to low-income communities are complementary, or duplicative, such that only one of them should be extended. The need for private capital in low-income communities is broad and deep. The recovery from the worst recession since the Great Depression and the pandemic has been highly uneven, and many low-income communities remain economically stagnant or in continued decline despite national economic recovery. The social and economic costs of allowing that decline and stagnation to continue is significant and Congress should act to address them using both private sector led incentives. The NMTC and Opportunity Zones are ***not*** duplicative; they are complementary tax incentives to bring private capital to these underserved low-income communities as I explain below.

As mentioned above, the NMTC has an impressive record of achievement, and the subsidy it provides enables a particular property or business to be financially feasible. While also targeting low-income communities, the Opportunity Zone incentive unlocks different sources of investor capital to address community and economic challenges in those areas without the use of a tax credit. The incentive includes three core elements:

- It creates a frictionless way for investors (primarily non-corporate) to use capital gains to invest in distressed communities with other investors in special purpose Opportunity Funds.
- It focuses investment in specific Opportunity Zones identified by states where such capital would be targeted.
- It incentivizes long-term investor commitments in high-risk distressed communities lacking capital by limiting taxes on gains, if any, from those investments.

Because the Opportunity Zones incentive is a tool for the reinvestment of capital gains, it is particularly well-designed for an economic environment where investors are holding financial assets with large unrealized capital gains. It is essentially a way of repatriating that capital on the sidelines into productive investments in distressed low-income communities.

The following points describe why each tax incentive is important, complementary and not duplicative.

1. **There continues to be an overwhelming need for investments in underserved low-income communities. We need more economic development tools, not fewer.** As successful as NMTCs have been since enacted in 2000, at their currently authorized level, they can at best leverage approximately $10 billion of investments annually in these communities – just a tiny fraction of the total needs in low-income communities. From inception in December 2017 to December 2022, the Opportunity Zones incentive has raised nearly $85 billion, according to the Joint Committee on Taxation. Even with both incentives, there is still a sizable investment gap in low-income communities, especially for the most distressed ones.

2. **The Opportunity Zone incentive and NMTCs work best as complementary tools**. Both the Opportunity Zones incentive and NMTCs are not designed to fully subsidize projects or businesses, but rather encourage private investments in projects and businesses that otherwise would not occur. The Opportunity Zones incentive brings a more nimble and larger scale investment, but a shallower incentive to any one investment. The NMTC brings a deeper financing incentive for any one single investment, but total investment is limited to the amount annually authorized. Both incentives assist in helping close funding gaps.

3. **The NMTC and Opportunity Zone incentive drive capital to areas where the other would not in any given year.** One of the great aspects of the Opportunity Zones incentive is that states designated Opportunity Zones where Opportunity Zone investments must be targeted, and the investment in those areas are not capped by a national limit on allocation authority. But states only were able to designate 25% of their low-income census tracts as Opportunity Zones, meaning that inevitably most low-income communities in a state are not in Opportunity Zones.

NMTCs continue to be a critical financing tool in those low-income eligible communities that are not designated as Opportunity Zones by the state.

4. **The Opportunity Zone incentive and NMTC differ in the form of investment**. By design, the Opportunity Zones incentive is exclusively an equity investment while the NMTC largely relies on using the incentive to provide below-market debt financing. Given this design difference, the Opportunity Zones incentive and NMTC draw on different taxonomies of investment funds. The NMTC generates below-market debt financing, which is used to close financing gaps for projects and operating businesses. The OZ incentive provides patient long-term cash equity to low-income community businesses, which is the foundation upon which additional financing is generated.

5. **NMTCs and the Opportunity Zone incentive largely draw from different investor pools.** The tax credit offered through the NMTC makes this a perfect vehicle for institutional corporate investors with large tax liabilities, and most of the NMTC investors are in fact large banks that can also receive Community Reinvestment Act credit for their investments. The Opportunity Zones incentive on the other hand, is better suited to individual investors with capital gains holdings, who would otherwise be unlikely to pool their resources for community revitalization.

6. **If NMTCs are allowed to expire, approximately $10 billion annually in high impact community development investment will be lost.** Furthermore, the types of investments that NMTC financed are unlikely to be replicated by the Opportunity Zone incentive given that it is a shallower incentive and finances different types of low-income community businesses.

7. **If the Opportunity Zone incentive is abandoned in favor of the NMTC, then billions in non-corporate investor capital on the sidelines won't be invested in low-income communities**. Absent an unprecedented increase in authority, the NMTC will never be able to consistently reach every low-income community in need at scale, and each of those low-income communities has a variety of needs for capital. The Opportunity Zone incentive can tap under-utilized capital where it is needed most.

In summary, the prospect that one incentive may be extended at the cost of the other will be a loss for low-income communities that are struggling to secure private capital investments and address the long-standing and critical community and economic development needs of those communities nationwide. It is critical that both community development tax incentives be maintained.

## Opportunity Zones

I would like now to focus on the latest enacted community development tax incentive, the Opportunity Zones (OZ) incentive. While I have worked with HTCs for more than 40 years and was an early implementer of the NMTC after it was enacted 24 years ago, my background on the OZ incentive began before it was enacted. In 2015, Rep. Pat Tiberi, who was a longtime champion of the Housing Credit and NMTC, reached out to me about a proposal to provide an incentive to capture capital gains and turn them into private capital investments in low-income communities. He wanted to ensure that the proposal would be additive and work well with other affordable housing and community development incentives. Novogradac collaborated with the Economic Innovation Group to help draft the Investment in Opportunity Act, the legislation to implement the proposal, in the House and here in the Senate, led by Sens. Tim Scott and Cory Booker, and was eventually enacted as part of the Tax Cuts and Jobs Act.

That proposal has led to one of the largest and most successful community development tax incentives in U.S. history, generating $84.7 billion in Qualified Opportunity Fund (QOF) investments according to the Joint Committee on Taxation,

even more that the $76 billion in NMTC allocation authority awarded to date despite being in existence for less than seven years, 17 fewer years than the NMTC.

The OZ incentive provides capital gains tax benefits for qualifying investments in qualifying low-income communities, with such communities selected by the governors of each state. The OZ incentive rewards long-term patient capital: the longer an investor maintains the investment in a QOF, the greater the tax benefit realized and the longer the low-income community can take advantage of the private capital. So many low-income communities are starved of investment, but they are particularly deprived of long-term investment.

While OZ tax benefits can be claimed by individual and corporate taxpayers, most of the investment comes from non-corporate taxpayers, who don't typically participate in other community development tax incentives, bringing an untapped resource of private capital on more favorable terms to low-income communities.

Unlike most community development tax incentives, there is no fixed dollar cap on utilization. Qualifying investments must be economically additive to low-income communities by investing in new property or substantially improved existing property, and the bar to qualify as substantial is high. Such improvement must constitute more than 100% of the basis of the existing property.

The OZ incentive offers investors three incentives for putting their capital to work in economically distressed communities:

1. **A deferral:** An investor can defer capital gains taxes until 2026 by investing the amount of the capital gain into a QOF.
2. **A reduction:** The deferred capital gains liability is effectively reduced by 10% if the investment in the QOF is held for at least 5 years and another 5% if held for at least 7 years.
3. **A permanent exclusion:** After paying the initially deferred capital gains tax, any capital gains on subsequent investments made through a QOF accrue tax-free if the investor stays invested in the fund for at least 10 years.

What are the results of the OZ incentive? Through the end of 2020, which is the most recent comprehensive data available, nearly half of all designated OZ census tracts had seen investment, including as high as 76% of the zones in Oregon.[29] The average OZ census tract has a 28% poverty rate, more than double the national poverty rate (11.5%) and has median household income that is only 59% of the national median.[30] OZ investment is going to communities that are substantially more economically distressed than the rest of the country. Ranked from lowest to highest levels of need, they average in the 87th percentile for poverty, 81st for median household income, and 80th for unemployment.[31]

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[29] Coyne, David, and Craig Johnson, "Use of the Opportunity Zone Tax Incentive: What the Data Tell Us" U.S. Department of the Treasury, July 2023 https://home.treasury.gov/system/files/131/WP-123.pdf

[30] Ibid.

[31] Fikri, Kenan, August Benzow, and John Lettieri "Examining the Latest Multi-Year Evidence on the Scale and Effects of Opportunity Zones Investment" March 2023 https://eig.org/wp-content/uploads/2023/03/Examining-the-Latest-Multi-Year-Evidence-on-Opportunity-Zones-Investment.pdf

Early evidence from independent research indicates OZ investment has led to meaningful increases in housing[32], jobs[33], and businesses[34]. OZ communities experienced larger improvements in poverty[35], incomes[36], and vacancies[37] than their undesignated but eligible low-income community peers. In addition to boosting the supply of housing,[38] OZ designations improved local home values by 3.4% from 2017 to 2020 with no observed increase in median rents[39]. OZ have also generated positive economic spillover effects on neighboring areas[40]. Importantly, independent research illustrates the "large and immediate" impact of OZ designation on the likelihood of development activity and the positive economic spillovers from OZ tracts into neighboring non-OZ areas, which can even be observed at a citywide scale.[41]

By the end of 2020, essentially two years after it had been enacted, Treasury reported that:

- $48 billion in OZ investment had reached approximately 3,800 low-income communities. This represented 48% of the total number of designated OZ communities nationwide.[42]
- This capital was raised from 21,000 individual and 4,000 corporate OZ investors, feeding into 7,800 QOFs[43].

Novogradac has maintained the largest and most comprehensive survey of these QOFs. As of the second quarter of 2024, it has reported:

- **Overall findings**: Through June 30, QOFs tracked by Novogradac have raised $38.30 billion. We track 1,897 QOFs, of which 1,479 report a specific equity amount raised. In the second quarter, there was $446.9 million in new equity reported. California is nearing $5 billion in QOF investment planned, the most of any state, and Los Angeles has the most planned investment of any city.
- **Residential, commercial rule**: Residential and commercial are the major areas of investment. Novogradac can track where $29.87 billion of investment (not funds raised) has been made. Of that, $13.00 billion is residential only and $3.51 billion is commercial only. Properties where commercial and residential are combined account for another $8.57 billion, which means that residential only, commercial only and residential-commercial investment totals $25.08 billion (84% of the total for which we know the investment).
- **Housing is significant**: Novogradac can track 185,436 homes have been built by funding from QOFs in our survey. Nashville, Washington, Phoenix, Austin, Cleveland, Los Angeles and Charlotte have all seen more than 5,000 homes built with QOF funding. There have been at least 100 homes built with QOF funds in 171 cities. Affordable housing is being built, as 22,737 homes are in developments that include affordable housing (defined as below market rate or affordable to households earning 80% AMI and lower).
- **Investment is widespread**: The survey documents QOF investment planned in 335 cities and in every state except Alaska.

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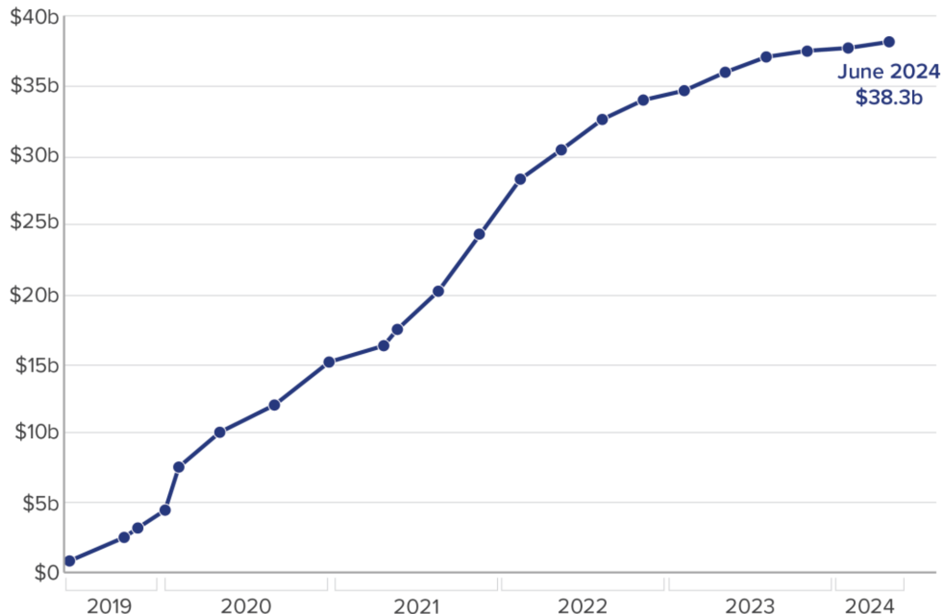
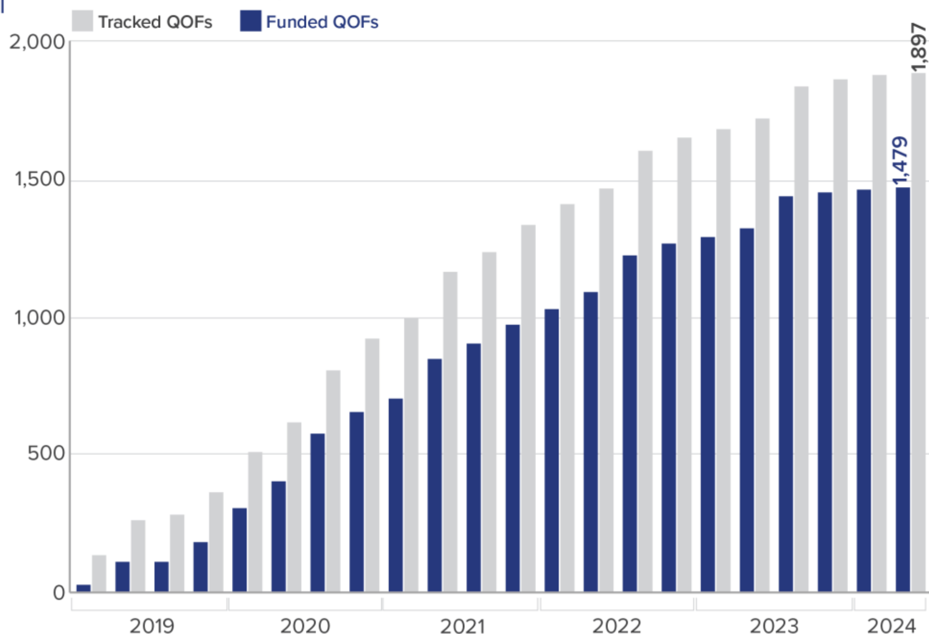
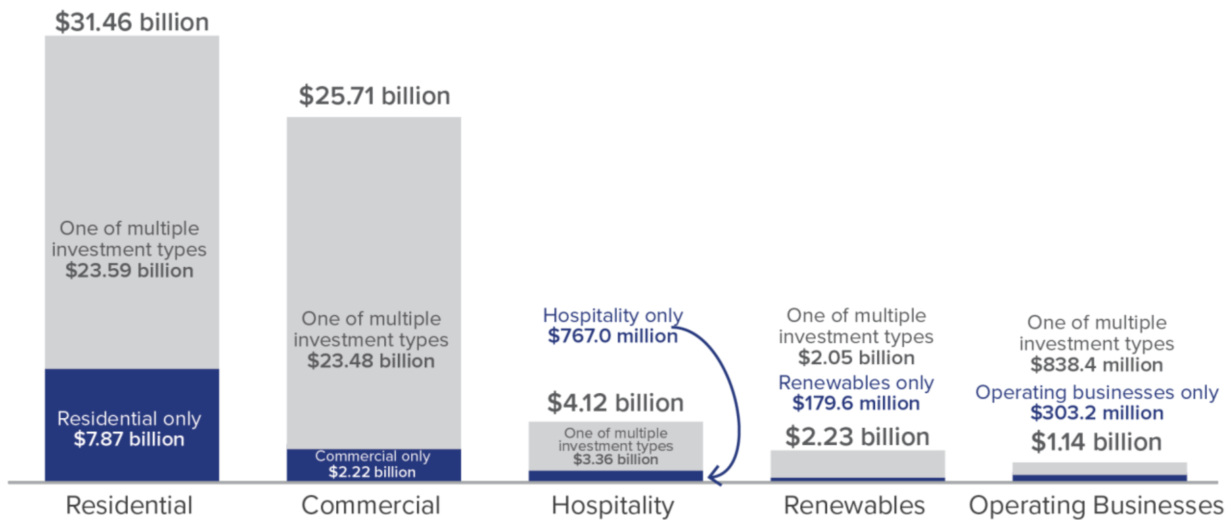
[32] Arefeva, Alina, Morris Davis, Andra Ghent, Minseon Park, "The Effect of Capital Gains Taxes on Business Creation and Employment: The Case of Opportunity Zones," January 30, 2024 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3645507
[33] Ibid.
[34] Carson, Erik and Kenan Fikri, "The Data Is In: Opportunity Zones pass their first checkup in the ACS," March 6, 2024 https://eig.org/housing-unit-growth-in-opportunity-zones/
[35] Ibid.
[36] Ibid.
[37] Ibid.
[38] Wheeler, Harrison, "Locally Optimal Place-Based Policies: Evidence from Opportunity Zones" November 2022 https://hbwheeler.github.io/files/JMP_HW.pdf
[39] Fikri, et al., March 2023
[40] Ibid.
[41] Arefeva, Alina, et al., January 2024
[42] Coyne and Johnson, July 2023
[43] Ibid.

- **It works for big and small investments**: 916 QOFs are focused on investment for a single property and have raised a median of $3.5 million each. There are 347 QOFs in Novogradac's survey that focus on multiple properties (some on many OZ properties) and they have a median equity raise of $17.3 million.



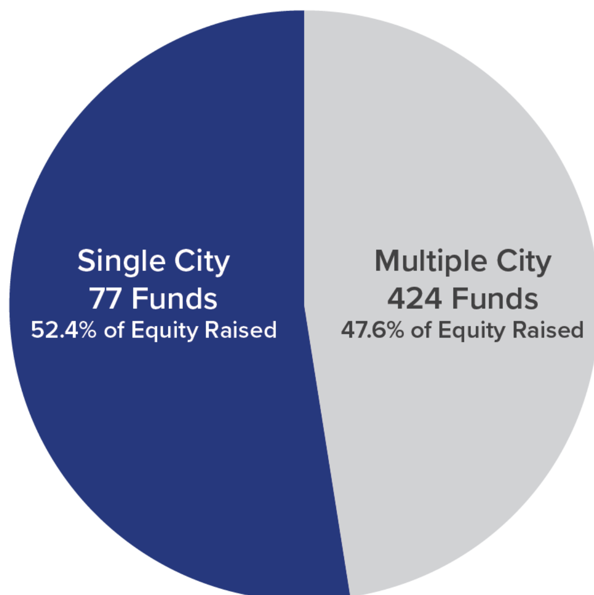


## Qualified Opportunity Funds: Total Equity Raised by Category




*Source: Novogradac*

## Funded Qualified Opportunity Funds: Geographic Focus




*Source: Novogradac*

Based on these results and our practitioner experience, what would I recommend Congress do regarding the OZ incentive going forward?

## Make Opportunity Zones More Transparent

While the OZ incentive has bipartisan and bicameral support, all stakeholders agree that adding reporting and transparency requirements as included in the Small Business Jobs Act (H.R. 3937), and the Opportunity Zones Transparency, Extension, and Improvement Act (OZTEIA, H.R. 5761 and S. 4065 in the 117th Congress) is common-sense and would restore an important feature of the policy. Such reporting and transparency requirements were a part of the original Investing in Opportunity Act authorization legislation but were taken out of the Tax Cuts and Jobs Act for procedural reasons. H.R. 3937 and H.R. 5761 would enable Treasury to collect key information on the location of OZ investments, the types of businesses and projects attracting investment, the number of jobs created and other key data. This information will enable Congress to adjust the incentive to further improve investment in underserved opportunity zones and will demonstrate the viability of the policy as a community development financing tool.

## Enable Smaller and Even More Flexible Investment

OZTEIA would allow for a "fund of funds" model in OZ investing. QOFs would be able to invest in other QOFs, which would create opportunities for smaller, regionally focused, impact-oriented funds to raise capital and overcome scale challenges with institutional investors to receive needed financing. OZTEIA has several requirements that must be met for this model to be available, such as the "Qualified Feeder Fund" being formed as a partnership and investing at least 95% of its assets into another QOF.[44]

## Promote Greater OZ Investment in Rural Communities

While many rural communities have received OZ investment to date, there are obstacles to making OZ investment in rural communities. Expanding the number of eligible rural opportunity zones and amending treasury regulations to better support operating businesses, and adopting other suggestions contained in this testimony, would greatly benefit rural communities.

## Extend the Deadline for OZ Investment

Both the Small Business Jobs Act and OZTEIA extend the capital gains investment deadline and deferral period for qualifying investments. This change would recoup time lost during regulatory implementation and pandemic disruption, as well as create a stronger incentive for investment going forward in low-income communities.

## Longer Term Programmatic Changes

While OZTEIA is a key legislative update, our experience with the OZ incentive has convinced us that it could also benefit from longer term programmatic changes.

### Additional Incentives for Impact Investments

Since its enactment, the OZ incentive has proven that private capital will flood into low-income communities when investors are sufficiently incentivized. The OZ incentive is a relatively shallow incentive that on its own, may not be sufficient to persuade private capital to invest in many impact investments such as affordable housing, community centers, job-creating operating businesses and infrastructure projects. A larger exclusion from taxation of up to 100% of

[44] Sciarretti, John "New Opportunity Zones Legislation Seeks to Enhance and Extend the Incentive" April 19, 2022
https://www.novoco.com/notes-from-novogradac/new-opportunity-zones-legislation-seeks-enhance-and-extend-incentive

the originally invested deferred gain, based on the project's value to the local community, would help to level the playing field and result in more investment in more impactful projects.

#### Interim Gain Reinvestments

Under the OZ incentive, investors are required to hold their investments in a qualified opportunity fund for a minimum of 10 years to qualify for exclusion of the capital gains created by their investments. While this rule encourages patient capital, it does not allow for the rollover of any capital gains by funds recognized prior to 10 years. As an example, if an OZ fund sells property prior to 10 years, any capital gain from that sale is fully taxable. This discourages many investors with a shorter-period investment strategy from participating in the OZ incentive. A far better result would be to treat gains from the sale of OZ property similarly to Section 1031 gains whereby an OZ fund that reinvests 100% of the proceeds from a sale into OZ property would not recognize the gain. This modification would allow OZ funds to capitalize on successful investments and inject additional investments into even more low-income communities.

#### Allow Nonqualified Property to Qualify with Substantial Improvements

Tangible property purchased from a related party or that is contributed by an investor is treated as nonqualified. Any improvements made to these nonqualified assets were themselves deemed by Treasury regulation to be nonqualified. This seemingly innocuous rule has prevented numerous investors and businesses from accessing the OZ incentive. In a separate rule, certain used tangible property can become qualified if the OZ business substantially improves the property, defined as spending more on improvements than was spent to acquire the property. A similar rule should apply to property acquired from either a related party or by contribution. This minor modification would enable an existing property owner to participate in the OZ incentive by allowing them to contribute the property into a joint venture, which would then improve the property with OZ investments.

### Private Activity Bonds

When financing economic and community development, one of the key tools is qualified private activity bonds (PABs). 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. If such bonds are considered "qualified," then 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 2024, the private activity bond volume cap for each state is the greater of $125 per capita or $378,230,000.[45] The formula is recalculated annually for changes in the consumer price index and population. After receiving its annual PAB cap, states may carry forward their unused PAB authority for up to three years, giving them a total of four years to use this resource. PABs are a significant source of financing for affordable rental housing, but the volume cap means there is competition among the eligible activities, including the economic development activities, for this limited resource.

See below for data on 2000-2020 PAB issuance as capped under IRC Section 146 from the Council of Development Finance Agencies (CDFA):

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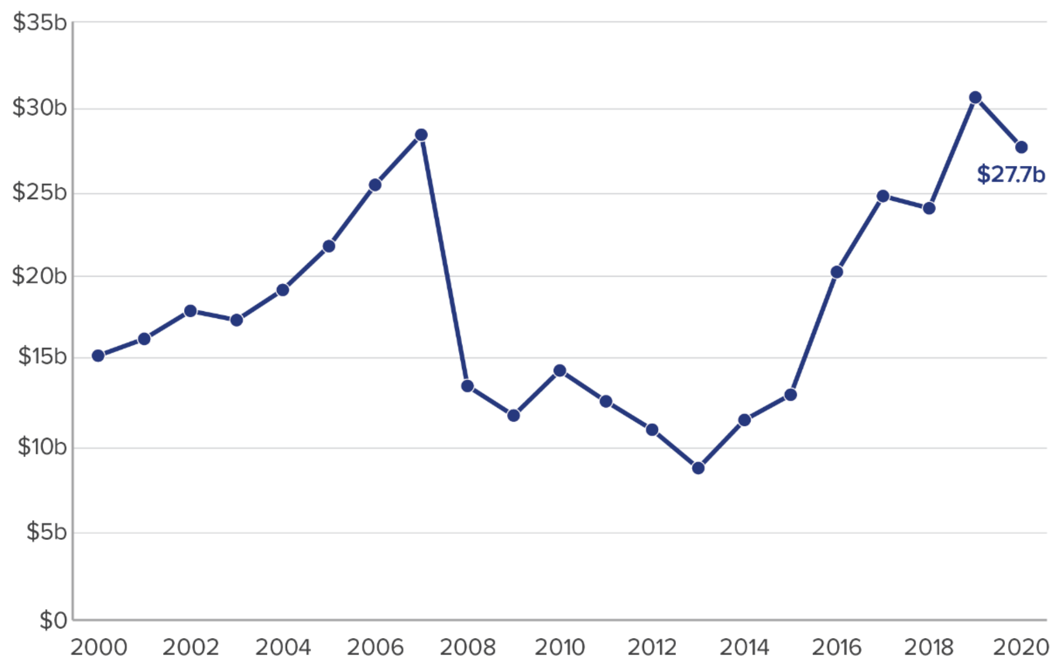
[45] IRS Revenue Procedure 2023-34 https://www.irs.gov/pub/irs-drop/rp-23-34.pdf

## Private Activity Bond Issuance Capped Under IRC Section 146



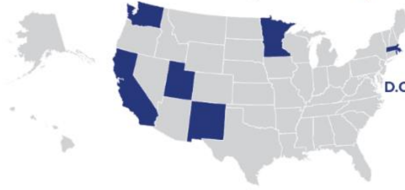

*Source: Council of Development Finance Agencies; Novogradac*

## States Using More Than 50% of the Private Activity Bond Cap

States using **50% to 74%** of their 2020 PAB cap

States using **75% to 100%** of their 2020 PAB cap

States using **more than 100%** of their 2020 PAB cap




*Source: Council of Development Finance Agencies; Novogradac*

## PABs: 2020 Issuance by Category (in $ millions)

| | Exempt Facilities | Multifamily Housing* | Mortgage Revenue Bonds | Industrial Development Bonds | Student Loans | Other | Total PAB Issuance |
|---|---|---|---|---|---|---|---|
| Alabama | 106.3 | 18.0 | 0 | 0 | 0 | 0 | 106.3 |
| Alaska | 17.3 | 17.3 | 80.2 | 0 | 0 | 0 | 158.4 |
| Arizona | 131.6 | 131.6 | 101.0 | 0 | 0 | 0 | 237.0 |
| Arkansas | 26.0 | 26.0 | 0 | 0 | 0 | 0 | 310.3 |
| California | 4040.9 | 3,735.8 | 100.0 | 0 | 0 | 0 | 4983.4 |
| Colorado | 533.7 | 533.7 | 169.5 | 10.0 | 0 | 1.7 | 570.4 |
| Connecticut | 87.6 | 87.6 | 236.2 | 0 | 22.2 | 0 | 346.0 |
| Delaware | 12.2 | 12.2 | 0 | 0 | 0 | 0 | 12.2 |
| District of Columbia | 394.1 | 394.1 | 104.0 | 0 | 0 | 0 | 498.3 |
| Florida | 1263.1 | 1,123.1 | 519.7 | 9.9 | 0 | 0 | 1792.7 |
| Georgia | 1089.0 | 1,089.3 | 0 | 0 | 0 | 0 | 1089.0 |
| Hawaii | 121.5 | 121.5 | 0 | 0 | 0 | 0 | 121.5 |
| Idaho | 36.9 | 36.9 | 177.0 | 0 | 0 | 0 | 213.9 |
| Illinois | 254.8 | 254.8 | 190.3 | 0 | 0 | 1.5 | 446.6 |
| Indiana | 220.2 | 186.9 | 115.0 | 0 | 0 | 0 | 335.2 |
| Iowa | N/A | N/A | 144.5 | 0 | 0 | 12.7 | 157.2 |
| Kansas | 58.6 | 58.6 | 273.9 | 0 | 0 | 10.0 | 321.7 |
| Kentucky | 177.7 | 177.7 | 0 | 20.0 | 0 | 0 | 197.7 |
| Louisiana | 107.8 | 107.8 | 15.7 | 0 | 0 | 0 | 123.5 |
| Maine | 121.2 | 121.2 | 192.8 | 0 | 0 | 0 | 314.0 |
| Maryland | 379.7 | 379.7 | 240.0 | 0 | 0 | 0 | 619.7 |
| Massachusetts | 568.0 | 568.0 | 15.0 | 25.7 | 115.0 | 0 | 737.0 |
| Michigan | 173.5 | 173.5 | 288.4 | 0 | 0 | 0 | 462.0 |
| Minnesota | 470.8 | 450.8 | 121.2 | 29.0 | 0 | 0 | 621.2 |
| Mississippi | 54.3 | 54.3 | 0 | 0 | 0 | 0 | 79.3 |
| Missouri | 67.4 | 67.4 | 213.9 | N/A | N/A | 1.1 | 282.4 |
| Montana | 112.0 | 112.0 | 97.7 | 0 | 0 | 0 | 209.7 |
| Nebraska | 0.0 | 0 | 175.0 | 0 | 0 | 2.8 | 177.7 |
| Nevada | 171.7 | 151.7 | 89.7 | 0 | 0 | 0 | 261.4 |
| New Hampshire | 7.1 | 0 | 0 | 0 | 0 | 0 | 7.1 |
| New Jersey | 166.8 | 166.8 | 147.5 | 0 | 259.1 | 0 | 575.8 |
| New Mexico | 188.1 | 188.1 | 142.7 | 0 | 0 | 0 | 330.8 |
| New York | 1882.3 | 1,807.3 | 116.5 | 0 | 0 | 0 | 1998.8 |
| North Carolina | NR | 222.3 | 427.0 | 0 | 0 | 0 | 649.3 |
| North Dakota | 8.6 | 8.6 | 231.8 | 0 | 0 | 0 | 240.4 |
| Ohio | 804.2 | 564.6 | 264.5 | 0 | 0 | 0 | 1068.6 |
| Oklahoma | 56.0 | 56.0 | 82.9 | 0 | 0 | 0 | 138.5 |
| Oregon | 279.6 | 239.6 | 5.6 | 0 | 0 | 0 | 285.2 |
| Pennsylvania | 232.6 | 133.3 | 375.0 | 17.9 | 50.0 | 5.9 | 681.4 |
| Rhode Island | 115.0 | 115.0 | 156.8 | 23.1 | 61.8 | 0 | 356.8 |
| South Carolina | 203.5 | 203.5 | 249.1 | 0 | 0 | 0 | 452.7 |
| South Dakota | 0.0 | 0 | 75.1 | 0 | 0 | 2.0 | 77.1 |
| Tennessee | 241.9 | 241.9 | 217.5 | 0 | 0 | 0 | 459.4 |
| Texas | 1767.5 | 1,596.6 | 185.0 | 0 | 93.3 | 0 | 2145.5 |
| Utah | 264.6 | 264.6 | 141.4 | 0 | 0 | 0 | 406.0 |
| Vermont | 7.8 | 7.8 | 33.1 | 0 | 45.8 | 0 | 86.8 |
| Virginia | 346.9 | 346.9 | 0 | 0 | 0 | 0 | 346.9 |
| Washington | 879.2 | 817.2 | NR | 0 | 0 | 0 | 900.8 |
| West Virginia | 72.8 | 19.7 | 55.2 | 0 | 0 | 0 | 128.0 |
| Wisconsin | 88.8 | 53.8 | 350.0 | 19.2 | 0 | 0 | 458.1 |
| Wyoming | N/A | 0 | 161.8 | 0 | 0 | 0 | 161.8 |
| **Total** | **18,411.3** | **17,245.2*** | **7,079.1** | **155.0** | **647.2** | **37.9** | **27,741.4** |

**Multifamily Housing PABs are a subcategory of Exempt Facilities PABs*

*Source: Council of Development Finance Agencies; Novogradac*

## PABs: Start and End of Year Allocations (in $ millions)

| | Start of Year Allocation | | | End of Year Allocation | | |
|---|---|---|---|---|---|---|
| | 2020 Cap | Carryforward from Prior Years | Total Capacity Available | Mortage Credit Certificates | Carryforward Abandoned | Total Carryforward to 2021 |
| Alabama | 514.8 | 305.2 | 820.0 | 431.6 | 0 | 713.7 |
| Alaska | 321.8 | 912.0 | 1233.8 | 0 | 187.1 | 949.2 |
| Arizona | 764.3 | 749.0 | 1513.3 | 101.0 | 118.0 | 1,158.3 |
| Arkansas | 321.7 | 46.4 | 368.2 | 0 | 0 | 77.2 |
| California | 4148.8 | 834.6 | 4983.4 | 0 | 0 | 0.8 |
| Colorado | 604.7 | 858.6 | 1463.3 | 0 | 0 | 775.6 |
| Connecticut | 374.4 | 87.3 | 461.7 | 0 | 0 | 0 |
| Delaware | 321.8 | 938.8 | 1260.6 | 273.0 | 0 | 937.0 |
| District of Columbia | 321.8 | 127.4 | 449.2 | 0 | 0 | 349.2 |
| Florida | 2255.2 | 4356.0 | 6611.2 | 45.0 | 341.0 | 5,020.1 |
| Georgia | 1114.8 | 894.8 | 2009.6 | 328.3 | 0 | 356.5 |
| Hawaii | 321.8 | 220.8 | 542.6 | 101.0 | 0 | 184.8 |
| Idaho | 321.8 | 849.7 | 1171.4 | 0 | 271.0 | 676.6 |
| Illinois | 1330.5 | 1809.3 | 3139.8 | 0 | 292.6 | 1,434.6 |
| Indiana | 706.8 | 1272.7 | 1979.5 | 149.9 | 0 | 1,490.9 |
| Iowa | 335.0 | 533.9 | 533.9 | 0 | 0 | 0 |
| Kansas | 321.7 | N/A | 321.7 | 0 | 0 | N/A |
| Kentucky | 469.1 | 1182.7 | 1651.8 | 128.5 | 253.5 | 1,103.8 |
| Louisiana | 488.1 | 1286.5 | 1774.6 | 30 | 90.4 | 1,465.0 |
| Maine | 321.8 | 844.0 | 1165.7 | 0 | 260.3 | 901.0 |
| Maryland | 634.8 | 1271.4 | 1906.2 | 0 | 0 | 1,286.5 |
| Massachusetts | 723.7 | 13.3 | 737.0 | 0 | 0 | 87.2 |
| Michigan | 1048.6 | 2882.9 | 3931.5 | 0 | 661.9 | 993.4 |
| Minnesota | 592.2 | 433.6 | 1025.7 | 0 | 0 | 404.5 |
| Mississippi | 321.8 | 267.5 | 589.3 | 0 | 0 | 267.5 |
| Missouri | 644.4 | 1822.5 | 2466.9 | 1.2 | 286.2 | 1,757.2 |
| Montana | 321.8 | 888.7 | 1210.5 | 60.0 | 143.2 | 725.6 |
| Nebraska | 321.8 | 611.2 | 933.0 | 0 | 0 | 755.2 |
| Nevada | 323.4 | 310.2 | 633.6 | 11.0 | 0 | 520.9 |
| New Hampshire | 321.8 | 278.3 | 600.1 | 0 | 122.6 | 309.4 |
| New Jersey | 932.6 | 1320.2 | 2252.8 | 0 | 0 | 1,622.5 |
| New Mexico | 321.7 | 358.2 | 680.0 | 0 | 4.8 | 619.0 |
| New York | 2042.6 | 147.3 | 2189.9 | 0 | 0 | 0 |
| North Carolina | 1101.2 | 871.1 | 1670.0 | 400.0 | 25.0 | 1.7 |
| North Dakota | 321.8 | 767.1 | 1088.9 | 0 | 0 | 848.5 |
| Ohio | 1168.9 | 2660.8 | 3829.7 | 365.1 | 0 | 2,399.0 |
| Oklahoma | 415.5 | 1084.8 | 1500.3 | 14 | 253.8 | 1,038.4 |
| Oregon | 442.9 | 479.3 | 922.2 | 4.6 | 0 | 632.4 |
| Pennsylvania | 1344.2 | 2651.2 | 3995.4 | 0 | 332.2 | 2,988.6 |
| Rhode Island | 321.8 | 2293.7 | 2615.5 | 0 | 118.1 | 606.8 |
| South Carolina | 540.6 | 1401.1 | 1941.7 | 0 | 3.2 | 1,434.4 |
| South Dakota | 321.8 | 773.7 | 1095.5 | 125.1 | 0 | 893.3 |
| Tennessee | 717.1 | 1007.1 | 1724.2 | 0 | 0 | 938.8 |
| Texas | 3044.6 | 3376.0 | 6420.6 | 1,215.0 | 82.0 | 2,978.1 |
| Utah | 336.6 | 301.0 | 637.6 | 0 | 0 | 231.6 |
| Vermont | 321.8 | 801.4 | 1123.1 | 60 | 134.3 | 816.1 |
| Virginia | 896.2 | 1535.6 | 2431.9 | 443 | 0 | 1,641.7 |
| Washington | 799.6 | 179.5 | 979.1 | 0 | 0 | 121.6 |
| West Virginia | 321.8 | 443.4 | 765.1 | 0 | 117.5 | 519.7 |
| Wisconsin | 611.4 | 1318.7 | 1930.1 | 0 | 0 | 1,472.0 |
| Wyoming | 321.8 | 0 | 321.8 | 143.5 | 0 | 0 |
| **Total** | **37,581.2** | **50,660.2** | **87,604.2** | **4,430.8** | **4,098.7** | **46,506.0** |

*Source: Council of Development Finance Agencies; Novogradac*

### 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 first-time 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 2018 annual report on private activity bond use by 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.[46] Similar percentages have been devoted to housing in more recent years. It has not always been the case that such a high percentage of PAB usage was directed toward multifamily housing. In 2010, we saw an increase in the percentage of PABs 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, $14.7 billion in 2018, $16.4 billion in 2019, and $17.2 billion in 2020[47]. The period 2016 to 2020 saw $77.7 billion in bond issuance for multifamily rental housing.[48] While 2021-2023 PAB data are not publicly available, initial estimates suggest that more than $20 billion was issued in 2021 and slightly less than 2021 issuance was issued in 2022 and 2023.

[46] "CDFA Annual Volume Cap Report; An Analysis of 2019-2020 Private Activity Bond & Volume Cap Trends" by Council of Development Finance Agencies, https://www.cdfa.net/cdfa/cdfaweb.nsf/ordredirect.html?open&id=VolumeCapReport-2019-2020.html.

[47] Ibid.

[48] Ibid.

## Multifamily Private Activity Bond Issuance

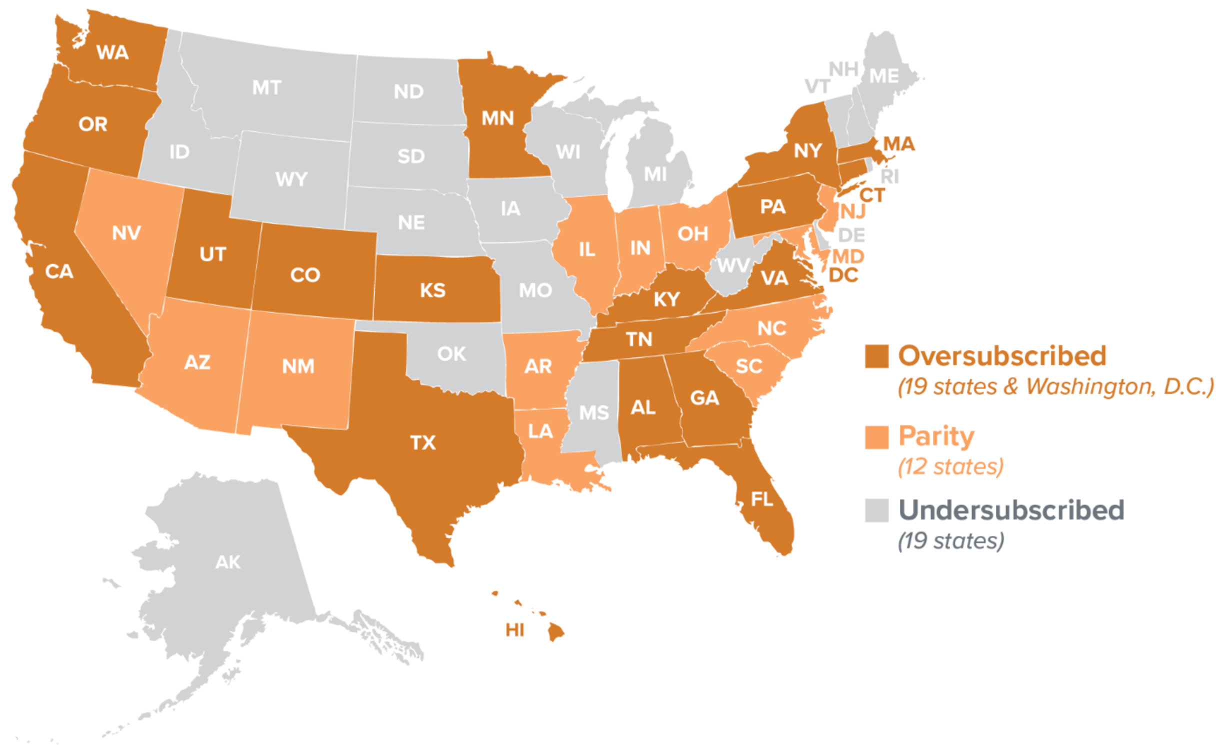
Source: Council of Development Finance Agencies; Novogradac

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

Recent legislation has included approaches to boost the utility of PABs to finance affordable rental housing, such as the proposal to lower the 50% PAB financing threshold test to qualify for 4% Housing Credits, as included in the Tax Relief for American Workers and Families Act (H.R. 7024) and the Affordable Housing Credit Improvement Act (AHCIA, S. 1557), led by Sens. Cantwell and Young. Lowering the PAB financing threshold would enable states to either finance more affordable rental housing or use it for other PAB-eligible uses, including economic development. I strongly support this provision and urge you to consider including it in upcoming tax legislation. Another provision in AHCIA would promote multifamily PAB recycling, which could also free up PAB authority for owner-occupied housing and non-housing uses, including economic development.

Furthermore, Sens. Cortez Masto and Cassidy introduced the Affordable Housing Bond Enhancement Act (S. 1805), which would make improvements to private activity bonds used for both owner-occupied and rental housing, including increasing the Mortgage Revenue Bond home improvement limit, facilitate low-income, first-time homebuyer access to Mortgage Credit Certificates allow states to redesignate PAB carryforward for other eligible uses, and require IRS to report more detail annually on PAB utilization, among other provisions.

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 PAB cap available for residential rental housing.[49] Because of the vital role PABs in concert with Housing Credits play in the financing of affordable rental housing, increasing the PAB cap limit and including proposals to make it easier to use would support the development of additional affordable rental homes as well as promote other economic and community development needs. See below for our latest snapshot of the PAB volume cap scarcity, which we estimate regularly in collaboration with the bond counsel law firm Tiber Hudson.



## How Community Development Tax Incentives Work Together

Not only do the community development tax incentives I have discussed work on their own to achieve the goals that Congress set out for them, but they are often combined to provide the most impactful overall investment in communities across the country. I have already noted in my testimony several ways that Congress could act to make it even easier to combine the community development tax incentives, but I will now discuss how each community development tax incentive sometimes interacts with others to achieve important outcomes.

*Combining HTCs with Other Incentives*

**Housing Credit.** While HTCs have been used with the Housing Credit for many years, resulting in nearly 200,000 affordable rental homes, many developers are increasingly using HTC to preserve and rehabilitate public housing, many of

[49] "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.

which are in desperate need of recapitalization. Recent estimates suggest that public housing has accrued a backlog of $70 billion in capital needs.[50] While the Rental Assistance Demonstration (RAD) has been a powerful financing tool for recapitalizing public housing and other properties with assistance from U.S. Department of Housing and Urban Development (HUD) funding, it increasingly depends on the Housing Credit and when appropriate HTCs to make more of these recapitalizations financially feasible. As I mentioned earlier, however, it would be far easier to combine the HTC and the Housing Credit to preserve historic properties to adapt them for affordable rental housing if the HTC basis reduction were repealed as proposed by HTC-GO.

**NMTC**. As I mentioned previously, more than 50% of all HTC properties are in low- and moderate-income census tracts, and 75% are in economic distressed communities, making the combination of HTC and NMTC particularly useful to promote the preservation of historic properties in low-income communities more financially feasible. Making the NMTC an indefinite part of the tax code would provide historic developers more certainty to apply for that resource with HTCs to preserve historic properties in low-income communities.

**OZ**. Similarly, some HTC properties are in OZs, and given that OZ financing is very frequently used to finance real estate, as indicated in our QOF survey, an increasing number of developers are combining OZ financing with HTC to preserve historic properties in OZs. Extending the OZ capital gains investment deadline would facilitate preserving more HTC properties in OZs.

*Combining NMTCs with Other Incentives*

**Housing Credit**. While the NMTC is expressly prohibited from financing more than 20% rental housing, it is often used separately but in conjunction with Housing Credit properties to revitalize neighborhoods by providing needed community amenities with the Housing Credit-financed housing, such as child care facilities, charter schools, health care facilities (sometimes directly on-site with the case of permanent supportive housing), retail, and more. The NMTC was designed to address the needs of low-income communities outside of affordable rental housing, and this feature makes it a complementary tool for the Housing Credit for concerted community revitalization efforts. Again, making the NMTC an indefinite part of the tax code would enable more of these community revitalization efforts possible in low-income communities nationwide.

**OZ**. While both incentives are not often combined in the same transaction given their different nature I previously mentioned, given their very similar geographic targeting (the OZ statute borrows from the NMTC statute to define what an eligible OZ is) means that "sidecar" investments where two community and economic development transactions are planned in the same community are not entirely uncommon. Making the NMTC an indefinite part of the tax code and extending the OZ capital gains investment deadline would prompt more of these "sidecar" investments in low-income communities.

*Combining the OZ Incentive with Other Incentives*

**Housing Credit**. Some Housing Credit developers use OZ financing, especially for new construction properties financed by PABs, which typically need several additional sources of financing to be financially feasible. However, it can be difficult to combine OZ financing when using the Housing Credit to acquire and rehabilitate existing rental housing in OZs, given the differing definitions for what constitutes substantial improvement. Aligning the definition when using OZ financing with the Housing Credit would enable more preservation of existing affordable rental housing.

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[50] "The 2023 Public Housing Investment Update" by Rod Solomon, Hawkins Delafield & Wood LLP, July 28, 2023 https://www.nahro.org/journal_article/the-2023-public-housing-investment-update/

The appendix at the end of my written testimony provides more background information to compare the various features of the community development tax incentives and tax legislation concerning community development tax incentives.

## Deep and Durable Investor Market for Tax Incentives

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

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 economic and community development tax incentives, it should also consider ways to increase the value of tax incentives, further expand and deepen the pool of investors, and enhance the ability of taxpayers to use tax incentives to provide the greatest amount of subsidy per tax incentive dollar.

Some of the economic and community development tax incentives require investors to reduce their basis in the investment or property that the incentive is inducing. Eliminating any basis adjustment for economic and community development tax incentives would increase the value of such tax incentives and generate more subsidy per tax incentive 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 economic and community development tax incentives, 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, 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 incentive dollar.

Several code provisions limit the ability and/or incentive of many taxpayers to invest in tax credits, such as the alternative minimum tax (AMT) under 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 economic and community development tax incentives to reduce the AMT would help expand the pool of investors interested in those incentives 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 incentives 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 economic and community development tax incentives to be taken against BEAT liability, or if the policy is more fundamentally changed, any successor to BEAT should allow such tax incentives to be taken against such liability.

Furthermore, if Congress chooses to revise tax code provisions addressing a global minimum tax or maintain a minimum tax on corporate book income, it should ensure that 100% of economic and community development tax incentives 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 economic and community development tax incentives, 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 law 75% limit under IRC Section

38(c)(1). 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 during periods of economic turmoil when those community development tax incentives are particularly needed.

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 all general business credits for three years, and the Inflation Reduction Act allowed certain energy tax credits to be carried back three years, but for community development tax credits are allowed to be carried back only one year under current law. Increasing the carryback period for community development tax credits to three years would provide policy parity with those energy tax credits and strengthen investment demand, particularly during periods of lower growth or recession, leading to more subsidy per tax credit dollar.

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 Finance 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 finalized a rulemaking process to update the CRA regulations last October, but implementation has been halted due to litigation. Depending on how that litigation is resolved, the CRA could crucially continue to sustain and perhaps even increase demand for economic and community development tax incentives.

Similarly, while bank capital standards are also not in the jurisdiction of the Finance Committee, they are also heavily influential on the effectiveness and efficiency of the community development tax incentives. The federal banking regulatory agencies recently released proposed regulations to change bank capital requirements for large banks to implement the Basel III Endgame proposal. While Basel III doesn't change bank capital requirements for NMTC and the Housing Credit, it could potentially quadruple the bank capital requirements for some HTC and OZ investments, severely damaging bank investment in those tax incentives. Just as I would argue for policy parity on tax credit carryback period, I believe all community development tax incentives should have the same bank capital requirements. Furthermore, even the bank capital requirements for NMTC and the Housing Credit overestimate the risk these tax credit investments pose to bank investors. According to IRS Publication 5108, the LIHTC recapture rate averaged only 0.09% for tax years 2008-2019 (the latest available), peaking at 0.17% in 2009.[51] Furthermore, I am not aware of and Publication 5108 did not document a single instance of recapture of NMTC since its inception in 2000. And my testimony above reported a 0.73% recapture rate for HTC. Given this exceedingly low recapture rate, the LIHTC Working Group, the NMTC Group, the HTC Coalition, and many other like-minded organizations submitted public comments urging the federal bank regulatory agencies to low the risk weighting of community development investments from 100% to 50%.

## Conclusion

Chairman Wyden, Ranking Member Crapo, 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 investment in local economic and community development. The enhancement and expansion of community development tax incentives will further improve communities across the country, including particularly distressed areas, provide community businesses with low-cost private capital, preserve

[51] IRS, *SOI Tax Stats - Corporation Income Tax Returns Line Item Estimates (Publication 5108)*, https://www.irs.gov/statistics/soi-tax-stats-corporation-income-tax-returns-line-item-estimates-publication-5108 The recapture rate equals the LIHTC amount recaptured divided by the LIHTC amount claimed. IRS did not publish LIHTC recapture data for 2020 to protect taxpayer identities.

historic properties, and affordable housing, as well as 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. Proposals on HTC, NMTC, private activity bonds, and opportunity zones were included in bipartisan and bicameral legislation that could be considered in tax legislation you will consider next year.

As you consider legislation to invest in economic and community development, 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 economic and community development tax incentives to advance investment in a wide variety of urban, suburban and rural communities.

Before I conclude my testimony, I would like to offer my personal and heartfelt thanks to Sen. Cardin for his many years of leadership on HTC, NMTC and the Neighborhood Homes Investment Act as he concludes his Senate service. His relentless advocacy for modernizing the HTC with the HTC-GO Act, making the NMTC permanent, and to establish the Neighborhood Homes Tax Credit to finance starter homes in distressed communities where it costs more to construct or acquire and rehabilitate those homes than the price for which such homes can be sold. We hope that before the end of this Congress, the Senator's signature community development tax legislation can be enacted.

Thank you for the opportunity to appear before you today.

# Senate Finance Committee Hearing on "Tax Tools for Local Economic Development" – Testimony Appendix

This appendix provides additional background information on the community development tax incentives, particularly how they compare to each other and how they work together. The following will be covered:

- Historic Tax Credit (HTC)
- Low-Income Housing Tax Credit (LIHTC)
  - Private Activity Bonds (PAB)
  - *Proposed Workforce Housing Tax Credit (WHTC)*
- New Markets Tax Credit (NMTC)
- Opportunity Zone (OZ) Incentive
- *Proposed Neighborhood Homes Tax Credit (NHTC)*

As noted above, PAB and WHTC are considered in conjunction with the LIHTC. Furthermore, in the tables that follow, data on non-rental housing PAB uses are not included.

## Use Tax Code to Incent Private Sector to …

| Tax Credit | Year Enacted | Purpose |
|---|---|---|
| HTC | 1978 | Preserve historic properties & aid in revitalizing Main Streets |
| LIHTC/PAB | 1986 | Build and renovate affordable rental housing (households at or below 60% AMI) |
| *WHTC* | *TBD* | *Build and renovate affordable rental housing (households* at or below *100% AMI)* |
| NMTC | 2000 | Provide below-market debt & equity to attract & grow operating businesses, community facilities, and other properties in distressed areas |
| OZs | 2017 | Provide tax incentives to help unlock investor capital to fund businesses in low-income communities |
| *NHTC* | *TBD* | *Build and renovate single family homes & aid in revitalizing distressed areas* |

## Economic Activity Generated

Since their inception, the various community development tax incentives have financed millions of homes, created millions of jobs and benefited low-income communities through the generation of millions of dollars in wages, business income and tax revenue. It should be noted that as the youngest incentive enacted, the research conducted thus far has not been able to report specifics on economic activity generated though positive benefits have been noted in OZs studied.

| Tax Credit | Years | Homes/Properties | Jobs | Wages and Business Income | Generated Tax Revenue |
|---|---|---|---|---|---|
| HTC | 1977 – 2023 | 49,263 properties<br>356,267 new homes<br>199,138 low- & moderate-income rental homes<br>314,201 rehabbed homes | More than 3.2 million | HTC leverages more than $235 billion in private investment in historic rehabilitation | $50.3 billion in federal tax revenue |

| Tax Credit | Years | Homes/Properties | Jobs | Wages and Business Income | Generated Tax Revenue |
|---|---|---|---|---|---|
| LIHTC/PAB | 1986 - 2022 | 3.85 million rental homes<br>8.97 million low-income households served | 6.33 million | $716 billion | $257 billion |
| *WHTC* | *2025 – 2034* | *projected 344,000 homes* | *projected 560,400* | *projected $63.5 billion* | *projected $22 billion* |
| NMTC | 2000 – 2022 | Over 8,500 properties/businesses financed | More than 1.2 million | $135 billion in total financing | $9.9 billion* |
| OZs | 2017 - 2024 | Qualified opportunity funds (QOFs) tracked helped finance more than 180,000 homes across more than 200 American cities** | Data is not yet available | Data is not yet available | N/A |
| *NHTC* | *2025 – 2034* | *projected 500,000 homes* | *projected 786,000* | *projected $56 billion* | *projected $38 billion* |

*Estimate of federal tax revenue paid after 7-year compliance period; does not include taxes generated from induced economic activity.

**Data from QOFs participating in Novogradac's quarterly fund survey. It is estimated these survey participants represent one-fourth to one-third of all QOFs.

## Annual and Long-term Cost – per JCT/Treasury

The benefits realized by the tax incentives in terms of investments in homes and businesses far outweigh the cost, measured in terms of lost tax revenue. It should be noted, a 10-year cost estimate was provided for the OZ incentive though stakeholders are requesting a 2-year extension of the investment period.

| Tax Credit | 2025 | Homes, Properties, Businesses Financed (est.) | Longer Term | Homes, Properties, Businesses Financed (est.) |
|---|---|---|---|---|
| HTC | $1.7 billion | 850-1,000 properties | 2023-27: $8.4 billion | 2023-27: 4,000-4,500 properties |
| LIHTC/PAB | $14.4 billion | 130,000-150,000 rental homes | 2023-27: $72.0 billion | 2023-27: 650,000-750,000 rental homes |
| *WHTC* | *N/A (nominal)* | *~36,000 rental homes* | *2025-34: ~$15 billion* | *2025-34: ~344,000 rental homes* |
| NMTC | $1.4 billion | 300-350 businesses | 2023-27: $6.8 billion | 2023-27: 1,500-1,750 businesses |
| OZs | $153 million | Data is not available yet | 2025-34: $70.4 billion* | Data is not available yet |
| *NHTC* | *N/A (nominal)* | *50,000 owner-occupied homes* | *2025-34: ~$21 billion* | *2025-34: 500,000 owner-occupied homes* |

*Represents 10-year estimate of cost of extending the OZ deferral through 2037, though proponents have asked for a 2-year extension.

## Major Current Legislation – Senate

Except for the OZ incentive, major legislation has been introduced in the Senate for each of the community development tax incentives in the 118th Congress.

| Tax Credit | Bill | | Republican | Democrat | Total Cosponsors | SFC Cosponsors |
|---|---|---|---|---|---|---|
| HTC | S. 639 | Historic Tax Credit Growth and Opportunity Act | Cassidy | Cardin, Cantwell | 6R, 10D, 1I | 1R, 5D |
| LIHTC/PAB | S. 1557 | Affordable Housing Credit Improvement Act | Young, Blackburn | Cantwell, Wyden | 17R, 16D, 1I | 4R, 13D |
| *WHTC* | *S. 3436* | *Workforce Housing Tax Credit Act* | *Sullivan* | *Wyden* | *1R, 1D* | *1D* |
| NMTC | S. 234 | New Markets Tax Credit Extension Act | Scott, Cassidy | Cardin, Cantwell | 11R, 11D, 1I | 4R, 6D |
| | S. 1455 | Rural Jobs Act | Wicker | Warner | 4R, 1D | 1D |
| OZs | S. 4065* | Opportunity Zones Transparency, Extension, and Improvement Act | Scott, Young | Booker, Warner | 3R, 4D | 2R, 2D |
| *NHTC* | *S. 657* | *Neighborhood Homes Investment Act* | *Young* | *Cardin* | *7R, 8D* | *1R, 3D* |

*Introduced in the 117th Congress

## Bipartisan, Bicameral Legislation

| | Republican | | Democratic | |
|---|---|---|---|---|
| Tax Credit | House | Senate | House | Senate |
| HTC | LaHood | Cassidy | Blumenauer | Cardin |
| LIHTC/PAB | LaHood, Wenstrup & Tenney | Young, Blackburn | DelBene, Beyer & Panetta | Cantwell, Wyden |
| *WHTC* | *Carey* | *Sullivan* | *Panetta* | *Wyden* |
| NMTC | Tenney, Kelly | Daines | Sewell, Davis | Cardin |
| OZs | Kelly, Tenney, LaHood | Scott | Sewell, Kildee | Booker |
| *NHTC* | *Kelly* | *Young* | *Larson* | *Cardin* |

## Overview of Major Bills

| Tax Credit | Key Provisions | |
|---|---|---|
| HTC | Eliminate basis adjustment<br>Permanent 30% HTC for small props. in rural areas | Relax tax-exempt leasing rules<br>Lower substantial rehab threshold |
| LIHTC/PAB | Restore 12.5% increase<br>Further increase 9% credits<br>Lower 50% PAB test | Rural basis boost<br>Native American basis boost<br>Discretionary basis boost for PAB-financed properties |
| *WHTC* | *Allocation: $1 per capita/$1.5 million small state minimum*<br>*5% increased allocation for housing in rural areas*<br>*Targeted to households earning at or below 100% AMI* | *States have flexibility to use authority for WHTC or LIHTC*<br>*Can be combined with LIHTC for mixed income housing* |
| NMTC | Extend NMTC<br>Adjust for inflation<br>Allow to offset AMT | |
| OZs | Establish reporting requirements<br>Extend the investment deadline<br>Adjust geographic targeting | Allow "fund of funds" financial model<br>State and Community Dynamism Fund |
| *NHTC* | *Authorize tax credits for construction and renovation of single-family homes in distressed areas*<br>*Allocation: $7 per capita, $9 million minimum for small states* | *20% metro census tracts eligible, 25% of nonmetro census tracts eligible* |

## Agencies Involved in Oversight

The IRS is the federal agency chiefly responsible for providing oversight for the community development tax incentives.

| Tax Credit | Federal Agencies | | State Agencies | Allocated or As of Right | Awarding Agency |
|---|---|---|---|---|---|
| HTC | IRS | National Park Service (NPS) | State Historic Preservation Officers | As of Right | NPS |
| LIHTC/PAB | IRS | HUD | State Housing Finance Agencies (HFAs) | Competitively allocated | State HFAs |
| *WHTC* | *IRS* | *HUD* | *State Housing Finance Agencies (HFAs)* | *Competitively allocated* | *State HFAs* |
| NMTC | IRS | CDFI Fund | N/A | Competitively allocated | CDFI Fund |
| OZs | IRS | N/A | N/A | As of Right | N/A |
| *NHTC* | *IRS* | *HUD* | *State Housing Finance Agencies (HFAs)* | *Competitively allocated* | *State HFAs* |

## Applicants, Recipients, Investors, Beneficiaries

Low-income households and communities are the primary beneficiaries of the private investment encouraged by the tax code incentives.

| Tax Credit | Applicant for Award | Recipient of Subsidized Capital | Investors | Targeted Beneficiaries |
|---|---|---|---|---|
| HTC | Developer | Developer | Banks, C Corps | Historic properties and town centers |
| LIHTC/PAB | Developer | Developer | Banks, Insurance Cos., Large C Corps | Low-income families |
| *WHTC* | *Developer* | *Developer* | *Banks, Insurance Cos., Large C Corps* | *Families earning just above LIHTC income limits* |
| NMTC | Community Development Entity (CDE) | Operating business in distressed communities | Banks | Low-income communities |
| OZs | N/A | Businesses in low-income communities | Taxpayers with Capital Gains | Low-income communities |
| *NHTC* | *Developer* | *Developer* | *Banks, Insurance Cos., Large C Corps* | *Distressed communities* |

## Tax Credit Details

| Tax Credit | Tax Credit Percentage | Tax Credit Claiming Period | Tax Credit Recapture Period | Basis Adjustment | Notes |
|---|---|---|---|---|---|
| HTC | 4% / yr. | 5 years | 5 years | Yes, 100% | |
| LIHTC/PAB | 9% or 4% / yr. | 10 years | 15 years | No | Minimum total 30-year affordability period |
| *WHTC* | *5% or 2% / yr.* | *15 years* | *15 years* | *No* | *Minimum total 30-year affordability period* |
| NMTC | 6% / 5% / yr. | 7 years | 7 years | Yes, 100% | |
| *NHTC* | *Max 35% of costs, Limited to gap* | *PIS* | *5 years* | *No* | |

## Status and Supporters

Incentivizing private investment in low-income communities is supported by numerous housing and community development stakeholders. These incentives also enjoy bicameral, bipartisan support.

| Tax Credit | Current Status | Key Supporters | |
|---|---|---|---|
| HTC | Indefinite | Historic Tax Credit Coalition<br>National Trust for Historic Preservation<br>Preservation Action<br>Main Street America | National Conference of State Historic Preservation Officers<br>National Housing & Rehabilitation Association<br>National Preservation Partners Network<br>American Institute of Architects |
| LIHTC/PAB | Indefinite | ACTION, National Council of State Housing Agencies, Affordable Housing Tax Credit Coalition, Housing Advisory Group, National Association of Home Builders, National Multifamily Housing Council, National Apartment Association, National Multifamily Housing Council, National Affordable Housing Management Association, Housing Partnership Network, Stewards of Affordable Housing for the Future, Stewards of Affordable Housing for the Future, National Association of Housing and Rehabilitation Officials, Council of Large Public Housing Agencies, Public Housing Agencies' Directors Association, National Housing & Rehabilitation Association, Partnership for Job Creation, National Community Stabilization Trust, Local Initiatives Support Corporation, Housing Assistance Council, Mortgage Bankers Association, National Association of Hispanic Real Estate Professionals, National Association of State and Local Equity Funds, National Fair Housing Association, National Housing Conference | |
| *WHTC* | *Not enacted* | *Housing Advisory Group*<br>*National Association of Home Builders*<br>*National Multifamily Housing Council* | |
| NMTC | Expires Dec. 31, 2025 | Partnership for Job Creation<br>NMTC Coalition<br>CDFI Coalition<br>Opportunity Finance Network | American Bankers Association<br>Grow America |
| OZs | Investment period ends Dec. 31, 2026 | OZ Coalition, hosted by Economic Innovation Group (EIG)<br>OZ Funds Association | OZ Working Group Hosted by Novogradac<br>Opportunity Zone Association of America<br>OpportunityDb<br>Opportunity Zone Association of America |
| *NHTC* | *Not enacted* | *American Bankers Association, National Community Stabilization Trust, National Association of Affordable Housing Lenders, Capital for Healthy Families and Communities, Local Initiatives Support Corporation, Habitat for Humanity, Housing Assistance Council, Home by Hand, Housing Partnership Network, Mortgage Bankers Association, Enterprise, Community Opportunity Alliance, National Association of Hispanic Real Estate Professionals, National Association of State and Local Equity Funds, National Association of Realtors, National Association of Remodeling Industry, Center for Community Progress, National Council of State Housing Agencies, National Fair Housing Association, National Housing Conference, National Neighborworks Association* | |

## Eligible Activities and Areas

| Tax Credit | Eligible Activities | Eligible Areas |
|---|---|---|
| HTC | Historic properties that are or will become income producing. | No restrictions, but 51% of HTC properties are in Low- to Moderate-Income (LMI) census tracts and 76% of HTC properties are in economically distressed communities, according to NPS. |
| LIHTC/PAB | Construction and renovation of rental housing. | No restrictions, but 30% bonus applies to LIHTC properties in difficult development areas (DDA) or qualified census tracts (QCT). |
| *WHTC* | *Construction and renovation of rental housing.* | *No restrictions, but 30% bonus applies to WHTC properties in difficult development areas (DDA).* |
| NMTC | Operating businesses in low-income communities. | Census tracts with incomes 80% of AMI or 20% poverty, but CDFI Fund prioritizes census tracts with severe distress (e.g., 60% AMI, 30% poverty or 1.5x national unemployment rate). |
| OZs | Operating businesses and business property in low-income communities. | Census tracts in low-income communities experiencing economic distress, under the definition of "low-income community" used in the NMTC program. |
| *NHTC* | *Construction and renovation of owner-occupied housing.* | *Limitations on eligible neighborhoods, tax credit amounts, sale prices, homeowner incomes, and short- term resales, as well as project selection criteria, support revitalization without gentrification.* |

## How the Subsidies Work

Raising equity by incentivizing the private sector has been a proven way to benefit low-income communities and households.

| Tax Credit | |
|---|---|
| HTC | Raises equity to offset higher historic renovations costs |
| LIHTC/PAB | Raises equity so less hard debt, to offset lower rental income |
| *WHTC* | *Raises equity so less hard debt, to offset lower rental income* |
| NMTC | Raises equity so loans and equity to small businesses in low-income communities can be below market |
| OZs | Raises equity to fund businesses in low-income communities. |
| *NHTC* | *Raises equity to cover appraisal gap, the difference between what it costs to build or acquire & rehabilitate properties and the sales price* |

## Limitations

While encouraging private sector investment through the tax code is a proven strategy, there are limitations that should be considered.

| Tax Credit | |
|---|---|
| HTC | Tax-exempt users |
| LIHTC/PAB | Difficult to finance housing at affordable rents for the lowest income families<br>Land costs<br>Need for gap financing |
| *WHTC* | *Land costs*<br>*May need gap financing in some communities or some properties* |
| NMTC | Difficult to win award for first-time applicants |
| OZs | Hard to use in operating businesses<br>Need an appreciating asset to make use of incentive |
| *NHTC* | *Cannot finance starter homes in non-distressed areas* |

## Rural and Tribal Considerations

Built in provisions would ensure rural and Tribal areas and communities can better access community development tax incentives.

| Tax Credit | Rural Considerations | Tribal Considerations |
|---|---|---|
| HTC | Need for higher subsidy for small projects<br>HTC-GO provision for permanent 30% HTC for small projects | Need for higher subsidy for small projects<br>HTC-GO provision for permanent 30% HTC for small projects |
| LIHTC/PAB | Need for more equity in low AMI rural communities<br>Rural basis boost | Need for more equity in low AMI tribal communities<br>Native American basis boost<br>Obtaining conventional debt financing on tribal land |
| *WHTC* | *5% bump up for states that allocate workforce housing to rural areas* | *Obtaining conventional debt financing on tribal land* |
| NMTC | Minimum 20% of investments in non-metro areas, Rural Jobs Act | Possible separate tribal allocation pool |
| OZs | Rural OZ and Investment Act would extend OZ designation to any rural persistent poverty census tract nationwide (nearly 2,000 tracts) | Some rural persistent poverty census tracts are in tribal areas |
| *NHTC* | *Flexibility for states in rural areas* | *Flexibility for states in tribal areas* |