April 26, 2021

The Honorable Ron Wyden
Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Wyden:

On behalf of the undersigned organizations, we want to express our concerns with changes proposed to the Section 45L New Energy Efficient Home Tax Credit as part of the *Clean Energy for America Act*. We are grateful for your long record of support for the housing industry, particularly affordable housing, and we support making 45L a permanent feature of the tax code as well as the higher credit value to reflect rising development costs. Unfortunately, this credit would be rendered unusable if Congress includes prevailing wage or registered apprenticeship mandates.

Historically, residential construction has been a non-unionized industry. While some building firms are experienced with Davis-Bacon compliance, most are not – and many highly qualified businesses, particularly smaller ones, are unwilling or unable to make the financial investment of hiring additional staff to comply with these requirements. Prevailing wage requirements particularly disadvantage builders in suburban and rural locations where Davis-Bacon compliance is rare.

Underserved areas, such as Native American lands and rural communities, are disproportionately affected by a lack of developers willing to proceed with new projects. Davis-Bacon requirements are a barrier to entry for both for-profit and non-profit developers, not just increasing project costs, but altering the geographic landscape where housing is constructed by favoring urban areas where Davis-Bacon is somewhat more commonplace. While some multifamily projects may offer prevailing wages, this is unheard of in the single-family space.

The challenge for businesses goes well beyond the actual wages paid; the paperwork and administrative burden is massive, particularly in residential construction. Prevailing wages trigger additional requirements such as payroll certification that add to costs. This is especially burdensome for builders that operate in multiple jurisdictions. Compliance becomes even messier with larger projects. There are four different Davis-Bacon wage categories: residential (four stories or less), building, heavy, and highway. This used to be less common, but we see now a lot of split-wage determinations where the housing units are residential, but the parking lot or ancillary structures are building or highway. This not only drives up the cost of the project, but it significantly adds to the compliance complexity because now the developer is managing two different construction projects with different wages. Yet, it is just one housing project.

In our view, not only are the vast majority of residential developers ill-equipped to comply with the complex prevailing wage requirements, but the additional costs will exceed the value of the tax credit. According to a March 2020 study by the Terner Center for Housing Innovation at UC Berkley, prevailing wage requirements cost an average of $30 more per square foot.[1] By that metric, an 83 square foot project—smaller than most kitchens—would consume the entire value of the credit. An average new home of just over 2,300 square feet would see increased construction costs of nearly $70,000. Simply put, there's no value in retaining this credit if prevailing wage requirements are imposed.

While not applied to Section 45L, the legislation also proposes requiring the use of labor sourced from registered apprenticeships in order to qualify for certain tax credits. This also is infeasible if applied to tax incentives used for residential development. In addition to the labor shortages endemic in the industry, there is simply not a prevalence of apprenticeships in residential construction. The vast majority of registered apprenticeships in construction exist in the commercial sector and involve specialized training that differs from residential instruction. Registered programs are costly and burdensome to establish and operate for the typical home building company, which is comprised of 10 or fewer employees. The few residential programs the National Association of Home Builders has been able to identify (among its members and state and local home builders' associations), turn out very small numbers of graduates annually in proportion to the number of open jobs. These are not sufficient workers to meet the skilled labor needs of builders across the country in order to keep up with market demand for new homes.

Finally, we also want to express the reliance on Energy Star for New Residential Construction as the sole means to qualify for the 45L tax credit. Energy Star has been a small part of the marketplace—less than 10% of single-family and multi-family units were certified in 2020. The program has its merits, but it will never be adopted widely. Developers have indicated that the paperwork burden is onerous, and would create an unnecessary layer of bureaucracy on top of the QC protocols already in place. Energy star adds restrictions on design choices that go beyond energy efficiency metrics. 45L should remain an energy-focused credit. Designers and developers should also retain flexibility on the methods for achieving the expected energy performance levels. To that end, we also believe that marketplace competition is key to advancing energy efficiency, including competition amongst various rating programs. To this end, we would encourage adding additional rating systems beyond Energy Star, including specifically the two highest tiers for the ANSI-approved 2020 National Green Building Standard: Gold, which is currently 15% above the 2018 IECC, and Emerald, which is currently 20% above.

We believe strongly that the 45L credit should be achievable by any new home or apartment unit being constructed. If the credit is impractical, it will fail to serve the purpose of incentivizing broadly increased energy efficiency.

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[1] See pg 14 at https://ternercenter.berkeley.edu/wp-content/uploads/pdfs/Hard_Construction_Costs_March_2020.pdf)

Thank you for considering our concerns.

Sincerely,

American Seniors Housing Association
Council for Affordable and Rural Housing
National Apartment Association
National Association of Home Builders
National Leased Housing Association
National Multifamily Housing Council