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July 17, 2019

**RE: The Affordable Housing Credit Improvement Act of 2019 (S.1703 & H.R. 3077)**

Dear Massachusetts Congressional Delegation:

On behalf of Citizens' Housing and Planning Association (CHAPA), we urge you to co-sponsor and support S.1703 and H.R. 3077, The Affordable Housing Credit Improvement Act of 2019. This bipartisan legislation makes key improvements to the Low Income Housing Tax Credit (LIHTC) to increase production and preservation of affordable homes across the country. Since its inception in 1986, LIHTC has financed over 3.2 million apartments, providing approximately 7.4 million low-income families, seniors, veterans and persons experiencing a disability a home they can afford.

The Commonwealth has had great success with LIHTC. In total, from 1986-2017, the credit helped develop or preserve 55,988 homes statewide. Yet the need for long-term affordable housing remains a pressing issue for residents. Nearly 250,000 renter households in Massachusetts pay more than half of their monthly income on rent, cutting into household budgets for health care, transportation, nutritious foods, and other essential expenses. Each year, tax credit funding rounds are oversubscribed and many well deserving projects must wait a year or more for funding. H.R. 3077 is a critical federal response to the need for additional affordable units and the preservation of the valuable affordable housing stock that already exists. We hope you will consider co-sponsoring and publically supporting this critical legislation.

Here are a few key provisions in the bill that are particularly relevant to Massachusetts:

- **50% Increase in Allocation to States (Section 101):** The amount of credit each state can allocate per year is the result of a calculation based on state population. The bill provides a phased-in 50% increase to the Housing Credit Authority over current levels. This increase would boost affordable housing production by an additional 384,000 homes over the next ten years across the country, including 5,384 new homes in Massachusetts.

- **Provide Flexibility for Existing Tenants' Income Eligibility (Section 202):** Not all affordable housing restrictions are permanent. Sometimes the expiration of a rent restriction can result in the conversion of units to market rate housing, putting residents at risk of displacement. This is particularly challenging in Greater Boston where the average monthly rent for a market rate apartment is \$3,087. We are fortunate in Massachusetts to have the resources and commitment from state agencies, local officials, owners, and advocates to preserve as many of these units as possible by investing new resources and creating new affordability restrictions. Last year, the Massachusetts affordable housing community was able to preserve the affordability of more than 3,750 homes, with over 1,900 of these homes receiving support from LIHTC.

This bill addresses a key challenge in LIHTC preservation deals where an existing tenant who qualified for income restricted housing many years ago now has an income higher than LIHTC allows. Section 202 addresses this issue by qualifying these now over-income tenants as “low-income” if their household income was 60% of AMI or below when they first moved in and their income has not increased beyond 120% of AMI. Moreover, this provision would apply to not only tenants living in LIHTC units, but to tenants living in units restricted by *any* federal, state, or local program.

- **Clarify Protections for Victims of Domestic Violence (Section 205):** The reauthorization of the Violence against Women Act (VAWA) in 2013 provided protections for victims living in LIHTC properties but VAWA did not amend IRC Section 42, the statute that governs LIHTC. This bill would make technical changes to Section 42 to align with VAWA, including a requirement that all LIHTC long-term use agreements include VAWA protections.
- **Establish a Permanent Minimum 4% Housing Credit Rate (Section 301):** When Congress created LIHTC it set tax credit rates (9% and 4%) to determine how much equity can go into a particular project. The credit rates, however, were not permanent and have fluctuated according to a formula related to federal borrowing rates. Consequently, there is currently 15-20% less housing equity available than the original rates provided. To address this issue, Congress set a minimum 9% credit rate in 2015. This bill would make a corresponding change to establish a minimum 4% rate. In Massachusetts, this change could result in an additional 2,764 affordable homes over the next ten years.
- **Boost for Developments Serving Extremely Low-Income Tenants (Section 309):** Most LIHTC units generally have rents affordable to residents earning 60% of AMI. To help meet the tremendous need for housing that is affordable to Extremely Low-Income (ELI) households, Massachusetts requires all LIHTC developments to set-aside 10% of the units for households earning less than 30% AMI. Because rents are much lower for ELI restricted units, it is challenging to provide more ELI units than required. This bill would incentivize the creation of

additional ELI units by allowing states to provide up to a 50% basis boost to the calculation of credit for developments serving at least 20% ELI households.

- **Boost for Developments in Rural Areas (Section 501):** LIHTC rents are based on AMI. Generally, median incomes are lower in rural areas than in metropolitan areas. As a result, rents collected by LIHTC property owners are lower in rural areas. Lower monthly rents means there is less cash flow for the owner to leverage to access other forms of financing (e.g. debt). This bill would allow states to give rural developments a boost to the calculation of their credit award by designating them “Difficult to Develop Areas.” The effect of this change would result in more up-front equity investment, thereby increasing financial feasibility. This is important in rural areas of Massachusetts and throughout New England.
- **Modification and Clarification of Rights Relating to Building Purchase (Section 303):** As housing credit properties reach the end of their compliance period, the tax code provides a critical preservation tool by allowing a nonprofit general partner to obtain full ownership of the property through a “right of first refusal” (ROFR). This right came under dispute last year in Massachusetts when a Cambridge nonprofit developer sought to exercise this right to acquire an apartment building along the Charles River.<sup>1</sup>

The investors in the partnership claimed the ROFR was not triggered because 1) the investors did not agree to the sale and 2) the third party offer was not a bona fide offer. Ultimately, the Supreme Judicial Court ruled in favor of the nonprofit in a narrow decision that examined the rights expressed in the partnership agreement, noting that the ROFR is a matter of contract law and “we must enforce the language they chose.” This bill would clarify in statute that the ROFR or purchase option may be exercised without approval of the investor and in response to *any* offer to purchase the property.

- **Expand Multifamily Housing Bond Recycling (Section 601):** Multifamily Housing Bonds (Housing Bonds) are a type of tax-exempt private activity bond (PAB) used by state and local housing finance agencies for the development of affordable housing. Developments are only eligible to receive the 4% credit if they also receive financing from Housing Bonds. However, the federal government limits the amount of PAB that can be issued by each state. Massachusetts typically reaches this cap without funding every deserving project. The bill would expand a practice known as “bond recycling” to allow states to reinvest bond proceeds back into multifamily development and homeownership, effectively increasing the Massachusetts annual bond cap and increasing the number of affordable homes.

We hope you will consider co-sponsoring and publicly supporting this important legislation. To co-sponsor, please contact Victoria Honard in the Office of

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<sup>1</sup> For additional background on this decision: <https://www.chapa.org/housing-news/mass-supreme-judicial-court-rules-for-nonprofit-developer-in-lihtc-dispute>

Congresswoman Delbane ([Victoria.Honard@mail.house.gov](mailto:Victoria.Honard@mail.house.gov)) or Lara Muldoon in Senator Maria Cantwell's office ([Lara\\_Muldoon@Cantwell.Senate.Gov](mailto:Lara_Muldoon@Cantwell.Senate.Gov)). Please contact Rachel Heller at CHAPA with any questions.

Sincerely,



Rachel Heller  
Chief Executive Officer  
Citizens' Housing and Planning Association