

April 5, 2022

The Honorable Janet Yellen
Secretary
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Yellen,

Thank you for your efforts and the efforts of this Administration to partner with the thousands of state and local governments, non-profit organizations, and businesses we represent in community development finance. Collectively, we provide vital economic and societal benefits to low-income populations and underserved communities throughout the United States. We appreciate the commitment of this Administration and the longstanding bipartisan congressional support for the essential financing tools that provide affordable homes to people in need, critical investments in our nation's infrastructure, and jobs to support economically thriving communities.

As organizations advocating for community development finance tools, especially on behalf of the Low-Income Housing Tax Credit (LIHTC), the New Markets Tax Credit (NMTC), the Historic Tax Credit (HTC), tax-exempt bonds, and the proposed Neighborhood Homes Tax Credit, we are very concerned about the impact that the OECD Pillar II Model Rules implementing a global minimum tax could have on the vulnerable and distressed communities and populations these irreplaceable financing tools support. We respectfully ask that the U.S. Treasury work with the OECD to ensure these longstanding, bipartisan and successful current-law tax policies for spurring community development in the United States are protected for the long-term in this agreement and its implementation.

Amid reports that the use of American tax credits could penalize U.S. companies with additional taxes paid to foreign governments due to their inclusion in the OECD's new effective tax rate calculation, and in consultation with our investor communities, we found that this agreement could have a much more dramatic impact than likely expected on investments in community development. Our analysis of the adverse impact on community development financing tools includes:

Low Income Housing Tax Credits

The LIHTC is the primary tool for creating and preserving affordable rental housing, having created more than 3.5 million rental homes serving 8 million low-income households nationwide, while supporting more than 5.6 million jobs and generating \$223 billion in local, state and federal tax revenue. A survey of major investors in the LIHTC market found that minimally 48 percent of the equity financing, and likely much more, would be at risk if the new OECD rules were to move forward. Risking the loss of anywhere near this magnitude by disincentivizing these investments would devastate the

impact of the LIHTC, which is responsible for virtually all the affordable rental housing built or preserved in America since its inception more than 36 years ago. It is very likely that such a disincentive will extend to other development finance tools. For example, many LIHTC investors are also investors in NMTC and HTC, and many LIHTC deals rely on tax-exempt private activity bonds to raise the capital needed to complete projects. Such an outcome would undermine key elements of the Treasury Department's 2022-2026 strategic plan, which seeks to promote "Economically Resilient Communities" (Objective 1.3) and a "Resilient Housing Market" (Objective 1.4).

New Markets Tax Credits

Since it was established in 2000, the NMTC has leveraged \$8 private dollars for every \$1 of federal investment, delivered more than \$110 billion in total project financing to more than 9,500 businesses, community facilities, and other community development projects in distressed communities. NMTC financing has led to the creation of more than 1 million jobs in some of the poorest communities in America. As most NMTC investors are also LIHTC investors, we believe that several NMTC investors would elect not to invest in these credits should the OECD rules go into effect, having serious negative consequences on hundreds of pipeline projects and thousands of jobs located in the poorest rural and urban communities in America.

Historic Tax Credits

The HTC has leveraged \$181 billion in private investment over the life of the federal government's largest preservation program. It has rehabilitated more than 46,000 buildings across the country. The HTC is the federal government's most significant investment in preservation and has a proven track record of success. The credit has created more than 3,000,000 jobs and nearly three quarters of all projects were in predominantly low-income census tracts. Like other credits, HTC transactions stand to lose significant investors should these rules go forward.

Tax-Exempt Bonds

Tax-exempt bonds are a federally authorized development finance tool that helps stimulate public and private investment in job creation, business and industry expansion, economic and physical redevelopment, transportation and infrastructure, health care and higher education, and agricultural and renewable energy production. Over \$485 billion of tax-exempt bonds were issued in 2021, representing a \$4 trillion industry. Approximately 75% of investments in infrastructure are accomplished with tax-exempt bonds.

The delivery of low-cost capital remains the primary strength of tax-exempt bonds, but today, job creation is one of the most critical elements in the use of this important tool for economic development purposes. State and local governments have established thousands of issuing authorities to directly work with manufacturers, nonprofit hospitals, schools, renewable energy facilities, and many others on projects that expand production, development, revenue opportunities, markets, and employment. Without investors buying tax-exempt bonds because of OECD rules, state and local governments would have to rely on taxable bonds, which ultimately drives up the costs of government for everyone. Forced to make tough decisions on high interest borrowing, governments will be required

to raise taxes, fees, and other costs to citizens, thus significantly slowing economic growth – particularly detrimental in light of the current economic struggles in our country.

Congress has repeatedly, over many years, reinforced its support for these financing tools and excluded them from the calculation of a minimum tax – whether the economic substance doctrine, the corporate alternative minimum tax, or the proposed Base Erosion and Anti-Abuse (BEAT) tax clarifications and 15% domestic minimum tax on book earnings in Build Back Better. Similarly, Congress provided protection under the Volcker Rule for banks’ “public welfare investments”, such as LIHTC and NMTC, as well as HTC investments. Further, in the Basel III International Regulatory Framework Risk-Based Capital Rule, special recognition was given to “community development equity exposures” which resulted in protecting public welfare investments.

Reversing that history now would have disastrous effects on these catalytic financing mechanisms beginning immediately, as major investors in these projects could be forced to significantly alter their investments past, present, and future regardless of the Pillar II implementation timeline. At a time when costs are rising and low-income families and communities are being hit the hardest, we cannot afford to lose these critical tools.

With the understanding that this is a complex multinational process, we appreciate the Administration acknowledging this major issue in the FY2023 budget request and demonstrating the desire to work to protect these financing tools. That said, recognizing the enormity of the problem, we respectfully ask that you work with the OECD now to prevent an unintended and unprecedented consequence that would alter the landscape of U.S. tax incentives. We stand ready to work with you in any way to ensure the continued success of these vital programs.

Sincerely,

1. A Call To Invest In Our Neighborhoods (ACTION) Campaign
2. Affordable Housing Developers Council
3. Affordable Housing Investors Council
4. Affordable Housing Tax Credit Coalition
5. African American Alliance of CDFI CEOs
6. Bond Dealers of America
7. CDFI Coalition
8. Council for Affordable and Rural Housing
9. Council of Development Finance Agencies
10. Council of Large Public Housing Authorities
11. Historic Tax Credit Coalition
12. Housing Advisory Group
13. Housing Partnership Network
14. National Apartment Association
15. National Association of Affordable Housing Lenders
16. National Association of Home Builders
17. National Association of Housing and Redevelopment Officials

18. National Association of Local Housing Finance Agencies
19. National Association of State and Local Equity Funds
20. National Council of State Housing Agencies
21. National Housing Conference
22. National Housing & Rehabilitation Association
23. National Multifamily Housing Council
24. Neighborhood Homes Coalition
25. New Markets Tax Credit Coalition
26. Opportunity Finance Network
27. Partnership for Job Creation
28. Public Housing Authorities Directors Association
29. Stewards of Affordable Housing for the Future
30. Up For Growth Action

cc:

The Honorable Nancy Pelosi
The Honorable Chuck Schumer
The Honorable Kevin McCarthy
The Honorable Mitch McConnell
The Honorable Richard Neal
The Honorable Ron Wyden
The Honorable Kevin Brady
The Honorable Mike Crapo

Jonathan Davidson, Deputy Under Secretary of the Treasury
Lily Batchelder, Assistant Secretary for Tax Policy
Itai Grinberg, Deputy Assistant Secretary
Jose Murillo, Deputy Assistant Secretary
Rebecca Kysar, Counselor to the Assistant Secretary for Tax Policy
Kevin Nichols, International Tax Counsel