

# United States Senate

WASHINGTON, DC 20510

June 13, 2008

The Honorable Max Baucus,  
Chairman  
Committee on Finance  
United States Senate  
Washington D.C. 20510

The Honorable Charles Grassley,  
Ranking Member  
Committee on Finance  
United States Senate  
Washington D.C. 20510

Dear Chairman Baucus and Ranking Member Grassley:

We write to call to your attention a problem that has recently arisen with respect to the availability of the Section 42 Low Income Housing Tax Credit for housing of targeted populations, including homeless and disabled veterans, farm workers, first responders, teachers, artists, pregnant and parenting teens, and victims of domestic abuse. As the House and Senate continue working on housing stimulus legislation, we respectfully request your assistance in addressing this problem as part of that legislation.

In the past year, the IRS has begun retroactively and arbitrarily interfering with the operation of existing affordable housing and the development of new affordable housing for these special needs populations. In our view, the IRS' activities are in conflict with the congressional intent behind the low-income housing tax credit. The House Ways and Means Committee included report language accompanying modifications to the Housing Credit program in H.R. 3221. But unfortunately, as drafted the report language could complicate this issue further. We urge the Senate Finance Committee consider a statutory clarification of this issue, rather than the report language adopted by the House.

The legislative history to Section 42 requires that qualified housing be available for "general public use." Until last year, IRS guidance had allowed housing sponsors to give preferences to certain classes of tenants, provided that such preference is consistent with HUD anti-discrimination policies. In addition, the Section 42 rules have long provided that housing must not be provided solely for members of a social organization (e.g., the Elks or a college fraternity) or by an employer for its employees. Accordingly, the Low Income Housing Tax Credit has successfully supported housing for homeless and disabled veterans, as well as for other special needs or targeted tenant classes, including seniors, pregnant teens, farm workers, public safety officials, and artists. In some cases, a federal or state agency will provide complementary assistance (such as financial support or a lease of property) to a housing development, conditioned on the development's grant of preferential or restricted access to a such particular group. Indeed, Section 42 specifically requires that state housing finance agencies consider

“tenant populations with special housing needs” in selecting projects to receive tax credits.

In 2007, the IRS began retroactively challenging the qualification of existing Section 42 developments that offer a preference to artists. The IRS has claimed that because of their common interest, the artists effectively comprise a social organization, even though the artists do not belong to any actual social organization. Additionally, the IRS has prohibited preferences for members of an occupational group, such as farm workers, teachers or first responders, even if the housing is not sponsored by an employer.


These new policies have created considerable uncertainty – among housing sponsors, the state agencies that select projects to receive credits, and investors – surrounding whether housing for targeted groups will continue to be permissible. Besides chilling the establishment of new affordable housing developments, the IRS’s new position could trigger dire consequences for existing developments. For instance, at a recent workshop with IRS audit staff, Texas’ housing finance agency notified an owner of a property housing victims of domestic violence and pregnant or parenting teen mothers that the agency would need to issue a noncompliance report; such a report could ultimately lead the IRS to recapture all tax credits on the property.

In its report to H.R. 3221, the Ways and Means Committee attempted to clarify the permissibility of advertising to targeted tenant groups. However, the report did not directly address the question of tenant preferences or restrictions and endorsed IRS enforcement efforts in this area. Thus, the permissibility of housing for homeless and disabled veterans, farm workers, first responders, teachers, artists, pregnant and parenting teens, victims of domestic violence, and other groups remains in serious doubt.

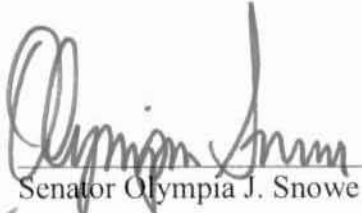
As the House and Senate continue to work on housing tax legislation that includes changes to the Low-Income Housing Credit program, we strongly urge you to address this issue by including a statutory clarification to Section 42 that would permit properties to limit eligibility to members of a specified group, provided that the properties satisfy the non-discriminatory tenant selection criteria and other requirements of the Low-Income Housing Credit program.

Thank for your attention to our concerns.


Sincerely yours,



Senator Jeff Bingaman



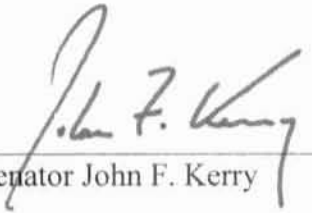
Senator Olympia J. Snowe




Senator Maria Cantwell



Senator Christopher J. Dodd



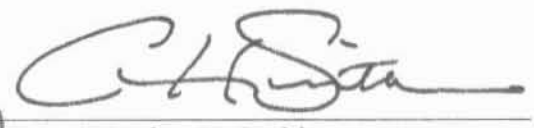
Senator John F. Kerry




Senator Richard J. Durbin



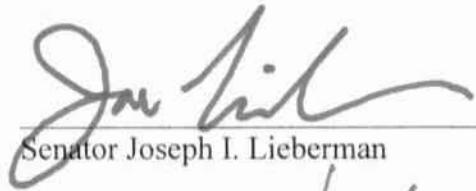
Senator Charles E. Schumer



Senator Gordon H. Smith



Senator Barbara Boxer



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Senator Susan M. Collins



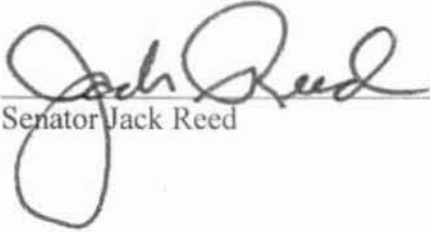
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