AFFORDABLE RENTAL HOUSING A.C.T.I.O.N.
A Call To Invest in Our Neighborhoods

The Affordable Housing Credit Improvement Act of 2019 (S. 1703/H.R. 3077)

Sponsored by Senators Maria Cantwell (D-WA), Todd Young (R-IN), Ron Wyden (D-OR), and Johnny Isakson (R-GA), in the Senate and Representatives Suzan DelBene (D-WA), Kenny Marchant (R-TX), Don Beyer (D-VA), and Jackie Walorski (R-IN) in the House, the Affordable Housing Credit Improvement Act of 2019 (S. 1703/H.R. 3077) would make significant strides towards addressing our nation's severe shortage of affordable housing by expanding and strengthening the Low-Income Housing Tax Credit (Housing Credit), our nation's most successful tool for encouraging private investment in the production and preservation of affordable rental housing. This legislation would increase the supply of affordable rental housing by over 550,000 units over 10 years.

For over 30 years, the Housing Credit has been a model public-private partnership program, bringing to bear private sector resources, market forces, and state-level administration. It has financed over 3.2 million apartments since 1986, providing approximately 7.4 million low-income families, seniors, veterans, and people with disabilities homes they can afford. Virtually no affordable rental housing development would occur without the Housing Credit.

S. 1703 and H.R. 3077 are identical companion bills. See below for a summary of the provisions in the Affordable Housing Credit Improvement Act of 2019.

Provision	Issue	Proposal
Expand the Housing Credit (Section 101)	More than 10.8 million renter households spend over half of their income on rent. The affordable housing crisis is being felt in communities across the country, from coastal cities, to rural America and in the small towns in between. The high cost of rental housing leaves little money left over for other critical necessities, like food, transportation, childcare, healthcare, and utilities. Despite the vast and growing need for affordable housing, Congress has not permanently increased Housing Credit authority in 19 years, and viable and sorely needed Housing Credit developments are turned down each year because Housing Credit resources fall far short of the demand.	Increase the annual Housing Credit allocation authority by 50 percent over the current level, phased in over five years, and raise the small state minimum by 50 percent, also phased in over five years. This additional allocation would increase affordable housing production over 10 years by over 384,000 more homes than we are able to produce today.

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Streamline income averaging for Bond-financed Housing Credit developments (Section 201)	In 2018, Congress enacted an important programmatic change to the Housing Credit program: allowing new developments to serve households earning up to 80 percent of area median income (AMI), so long as the average income in the low-income units in any given property would be no higher than 60 percent of AMI, commonly referred to as income averaging. Prior to this change, only households earning up to 60 percent of AMI were permitted to move into Housing Credit properties. The new income averaging provision allows developments to better serve very low- and extremely low-income households and makes more properties feasible in rural and other areas where incomes are depressed. While Congress modified the Housing Credit to allow income averaging, it did not make a similar change to the Housing Bond program, which triggers the so-called "4 percent" Housing Credit. Approximately half of all Housing Credit apartments financed today are financed with the 4 percent Credit and Housing Bonds. While it is technically possible to still use income averaging for bond-financed Housing Credit properties, it can be administratively burdensome to do so. In the interest of easing administration, the income restrictions in the Housing Bond program should mirror those of the Housing Credit.	Adds the "Average Income Test" as a third minimum set-aside option for multifamily Housing Bonds (currently, the only two minimum set-aside elections available under the bond program are the 40 at 60 or 20 at 50 tests). This change aligns the Housing Bond program rules with those of the Housing Credit program, which now also has these three options. This will better facilitate the use of income averaging in 4 percent Housing Credit properties.
Provide flexibility for existing tenants' income eligibility (Section 203)	When the Housing Credit is used to recapitalize properties for preservation, all existing tenants must have their incomes recertified for eligibility. However, problems have arisen in instances when tenants were eligible when they moved into the property, but their incomes have since increased above the Housing Credit limits – this may reduce the eligible basis, and thus reduce the credits allowable for the rehabilitation. IRS guidance currently allows apartments occupied by over-income tenants to be included in eligible basis if the project was originally financed with Housing Credits. However, that guidance is not codified by law and does not apply to affordable housing originally financed with HUD or other affordable housing programs. In those cases, the amount of Credit the property is eligible for is reduced, which can make it financially infeasible to rehabilitate the property.	Allow existing tenants to be considered low-income for purposes of determining eligible basis if the tenant met the Housing Credit income requirement upon initial occupancy, provided their income has not risen above 120 percent of AMI. This would apply to all means-tested affordable housing undergoing recapitalization with Housing Credits, not just properties that were originally financed with Housing Credits. This eliminates the tension between allowing existing tenants to stay in their homes and recapitalizing affordable housing properties, so long as tenant incomes do not exceed a reasonable limit.

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Simplify the Housing Credit student rule (Section 204)	When Congress created the Housing Credit, it sought to ensure that Credits were not used to develop dormitory housing for full-time students. However, the rule is overly complex, and has become even more so as Congress has enacted a growing list of exceptions to the Housing Credit student rule. Moreover, the Housing Credit student rule differs from the student rule applied to HUD-financed housing, which means that properties that have both Housing Credit and HUD funding sources must comply with two different student rules.	Simplify the current Housing Credit student rule and better achieve the intended targeting by replacing it with a new rule that makes households composed entirely of adult students under the age of 24 who are enrolled full-time at an institution of higher education ineligible to live in a Housing Credit apartment, with certain exceptions. The bill better aligns the Housing Credit student rule with the HUD student rule, and provides important exceptions to the student rule for single parents, formerly homeless youth and those aging out of foster care, victims of domestic violence, veterans, and others.
Limit tenant-based voucher payments in certain Housing Credit developments (Section 205)	Under current law, owners may collect the full value of a Housing Choice Voucher from a tenant who is a voucher holder, even if the value of the voucher exceeds the Housing Credit rent limit for the tenant's unit. Any additional rental income is typically used to offset operating expenses, provide services for residents, or make capital improvements to the property. While this may support the financial health of the property and its residents, those funds could otherwise be used to provide rental assistance to households on the wait list for vouchers.	Limit the rent charged to the maximum Housing Credit rent instead of the HUD-calculated fair market rent for apartments leased by tenant-based voucher holders and benefiting from either income averaging or the basis boost for extremely low-income tenants provided in Section 309 of this bill, since both of these options already reduce rents for the lowest-income tenants. By limiting the rental income to the Housing Credit maximum rents, the excess rental assistance that the tenant-based voucher would have provided can be used by the public housing authority that issued the voucher to serve other families. *The bill does not limit the voucher payment associated with project-based vouchers or other project-based rental assistance, as this is taken into consideration in underwriting, whereas tenant-based vouchers are not.*
Clarify protections for victims of domestic violence in Housing Credit developments (Section 206)	The 2013 reauthorization of the Violence Against Women Act (VAWA) provided protections for victims of domestic violence, dating violence, sexual assault, and stalking living in Housing Credit properties. However, VAWA made no conforming changes to the Internal Revenue Code to conform Section 42, which governs the Housing Credit. Because VAWA and Section 42 are not aligned, there are certain circumstances in which their requirements are contradictory.	Better align the Housing Credit with VAWA by: • Requiring all Housing Credit long-term use agreements to include VAWA protections • Clarifying that an owner should treat a tenant who has their lease bifurcated due to violence covered under VAWA as an existing tenant and should not recertify the tenant's income as if they were a new tenant at initial occupancy • Clarify that victims under VAWA qualify under the special needs exemption to the Housing Credit general public use requirement.

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Clarify the General Public Use Rule for multifamily bond-financed Housing Credit properties and its application to Veterans (Section 207)	In general, Housing Credit properties must be made available for rental to income-eligible members of the general public. Section 42 defines that requirement to permit occupancy restrictions or preferences that favor tenants with special needs, or who are members of a specified group under a federal or state program that supports housing for such groups, or who are involved in artistic or literary activities. The IRS recently issued guidance that the Section 42 general public use rule is applicable to multifamily bond financed properties under Section 142.	Codify the recent IRS guidance applying the Section 42 general public use rule to Section 142 multifamily bond properties. Add specific language in Section 42 providing that veterans of the armed forces are members of a specified group under a Federal program that supports housing for such groups
Establish a permanent minimum 4 percent Housing Credit rate (Section 301)	When the Housing Credit was created, Congress set the credit rates (which determine how much Housing Credit equity can go into a particular project) at 9 percent for new construction and substantial rehabilitation and 4 percent for the acquisition of affordable housing and for multifamily Housing Bond-financed housing, which is how the "9 percent" and "4 percent" credit labels were derived. However, since then, Housing Credit rates have fluctuated according to a formula related to federal borrowing rates, which have sunk to historic lows, yielding much lower credit rates. As a result, there is 15 to 20 percent less Housing Credit equity available for any given affordable housing development today than the original rates provided. Recognizing the impact of declining rates on the program, Congress permanently enacted a minimum 9 percent credit rate in 2015, but there is still no corresponding minimum 4 percent rate.	Establish a minimum 4 percent rate for Credits used to finance acquisitions and Housing Bond-financed developments. This would provide more predictability and flexibility in Housing Credit financing, allowing developers to target more apartments to very- and extremely-low income households at rents they could afford and make more types of properties financially feasible, especially for affordable housing preservation. A minimum 4 percent rate would increase affordable housing production by at least 66,000 affordable homes over the next 10 years, compared to current law. It would also provide parity with the corresponding minimum 9 percent Housing Credit rate, which has now been made permanent.

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Clarify the ability to claim Housing Credits after casualty losses (Section 302)	If a Housing Credit property experiences a casualty loss, like a flood or fire, that causes residents to temporarily vacate the property, the owner is required to have the property back in service by December 31 of the calendar year – regardless of when during the year the loss occurred – in order to avoid recapture of Housing Credits. This is especially problematic when the casualty loss occurs near the end of the calendar year, because the owner risks losing Housing Credits for the entire year, even though the property was in service for most of that time. The only exceptions to this rule are for casualty losses resulting from federally declared disasters.	Clarify that there is no recapture and no loss of the ability to claim Housing Credits during a restoration period that results from any casualty loss (regardless of whether it results from a federally declared disaster), provided that the building is restored within a reasonable period as determined by the state Housing Credit agency, but not to exceed 25 months from the date of the casualty. This provides a more predictable and reasonable window to repair and reoccupy properties after damage.
Modify rights related to building purchase (Section 303)	As Housing Credit properties reach the end of their initial 15-year compliance period, the Tax Code permits a nonprofit general partner to obtain full ownership of its property through a "right of first refusal" (ROFR) However, in some cases, the transfer of properties to nonprofits through ROFR has caused conflicts between investors and nonprofit sponsors in instances involving the disposition of cash assets, such as operating or replacement reserves that are critical to the long-term viability of the property. This problem becomes of greater concern as more and more properties reach year 15.	For newly financed Credit properties, replace the existing right of first refusal, which was intended to allow nonprofit sponsors of Housing Credit properties to gain full control of the property at the end of the property's initial 15-year compliance period but has been problematic in practice, with a purchase option at the minimum purchase price allowed by current law. This change is intended to help nonprofit sponsors keep Housing Credit properties affordable for the long term. For existing partnership agreements utilizing ROFR and future partnership agreements utilizing a purchase option, clarify that the property may be acquired directly or by purchase of a partnership interest, and that the property includes all assets held for development, operation, or maintenance of the building. Clarify that ROFR or purchase option may be exercised without approval of the investor and in response to any offer to purchase the property, including by a related party.

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Simplify the "Ten Year Rule" and "Related Party Rule" (Section 304)	Housing Credits are not available for the acquisition of properties placed in service during the last ten years. This rule dates to 1986, when Congress was concerned about "churning" real estate to take advantage of property appreciation due to the accelerated depreciation rules enacted in 1981. Decades later, with longer depreciation rules in effect, the Ten Year Rule is no longer relevant. Instead, the rule unnecessarily prevents the acquisition of properties that would otherwise be eligible for preservation. Congress partially addressed this in 2008, by providing an exception to the Ten Year Rule for certain federally or state-assisted buildings. However, the IRS has not issued regulations implementing this change, thus few transactions have tried to utilize this exception. A related issue is the Related Party Rule, which precludes acquisition credit if a building was owned at any time in the past by a related party (as identified in the Code). While the purpose of the Related Party Rule is to prevent a prior owner from generating acquisition credits upon a transfer of the property to itself or a related party, there is no time limit on this provision. Investors have run into difficulty in determining the owners of interests from many years ago. Given the limited pool of investors, this rule has impeded rehabilitation of properties.	Modify the prohibition on claiming acquisition Housing Credits for properties placed in service in the previous ten years by creating an option to instead limit the acquisition basis of the building to the lowest price paid for the building during the last ten years (with an adjustment for the cost of living), plus any capital improvements. Allow properties to qualify for acquisition credit so long as (1) the property is not acquired directly from a related party and (2) a related party has not owned the building at any time during the five years prior to the acquisition date. These changes are intended to simplify and support preservation of properties in need of rehabilitation regardless of when they were placed in service or whether an investor was involved with the project more than five years prior to its acquisition.
Include relocation expenses in rehabilitation expenditures (Section 305)	When an occupied building is rehabilitated, it may be safer, more expedient, and more efficient if tenants are relocated while the work is being done. The IRS has taken the position that the cost of relocating tenants is deductible, and therefore cannot be capitalized. In the case of the Housing Credit, the result of this position is that relocation costs cannot be considered direct costs of the rehabilitation, and thus cannot be covered by Housing Credit equity. This makes rehabilitation far more difficult and time consuming, potentially adding unnecessary costs, while sacrificing resident safety. In some instances, these obstacles make the rehabilitation untenable.	Allow for tenant relocation costs incurred in connection with a rehabilitation of a building to be capitalized as part of the cost of the rehabilitation, consistent with the treatment of similar costs. As the Housing Credit is the most important source of capital for affordable housing rehabilitation and preservation, this provision would greatly assist preservation efforts.

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Repeal the Qualified Census Tract (QCT) population cap (Section 306)	Currently, properties are eligible for up to a 30 percent basis boost if they are located in a Qualified Census Tract (QCT), meaning 50 percent or more of the households have median incomes at or below 60 percent of the area median income, or tracts with at least 25 percent poverty rates. However, no more than 20 percent of the population of any given metropolitan area may be located in census tracts that are eligible to receive the QCT designation, even if additional census tracts within that metropolitan area would otherwise qualify based on the QCT income standard.	Remove the QCT population cap, enabling properties in more areas to receive additional Housing Credit equity if necessary to make the project financially feasible.
Clarify that states have the authority to determine the definition of a community revitalization plan with broad parameters (Section 307)	Under current law, state Housing Credit agencies must give preference to properties that are located in QCTs and the development of which contributes to a "concerted community revitalization plan." However, the statute does not specify which entity should define what constitutes a community revitalization plan.	Clarify that each state Housing Credit agency has the authority to determine what constitutes a concerted community revitalization plan for its state, taking into account any factors the agency deems appropriate, including the extent to which the plan 1) is geographically specific, 2) outlines a clear plan for implementation, 3) includes a strategy for securing commitments of investment in non-housing infrastructure, amenities or services, and 4) demonstrates the need for community revitalization.
Prohibit local approval and contribution requirements (Section 308)	Current law requires state agencies to notify the chief executive officer (or equivalent) of a local jurisdiction in which a proposed building would be located. Some states have taken this a step further by requiring developers to demonstrate local support for Housing Credit developments or provide points as part of a competitive scoring process for developments that demonstrate such support. While well intentioned, these types of provisions can result in the unintended consequence of giving local government officials "veto power" over projects, as withholding support is could result in the project not getting funded.	Remove the provision that requires state agencies to notify the chief executive officer (or equivalent) of the local jurisdiction in which a proposed building would be located. Specify that the selection criteria in the QAP cannot include consideration of any support for or opposition to a project from local or elected officials or local government contributions to a project. States would be able to develop a competitive scoring process that encourages developers to obtain additional funding sources for their projects, including local financial contributions, so long as states do not prioritize local contributions over any other source of outside funding. This provision would enable more highly-needed and competitive developments to receive Housing Credit allocations.

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Increase the amount of Housing Credits that developments serving extremely low-income tenants can receive (Section 309)	In order to serve the lowest-income tenants – those with incomes at or below the greater of 30 percent of area median income or the federal poverty line – developers must often eliminate or substantially reduce the need for debt on a property so that they are less reliant on rental income from tenants. Though state allocating agencies can award up to a 30 percent basis boost to provide additional Housing Credit equity to developments when needed for financial feasibility, this often still is not sufficient to bring down rents to levels that extremely low-income families can afford.	Provide up to a 50 percent basis boost (if needed for financial feasibility) for developments serving extremely low-income and homeless families and individuals in at least 20 percent of the apartments. This provision would only apply to the portion of the development reserved for these families and individuals, thereby allowing the Housing Credit to target more extremely low-income tenants at rents that are more affordable. This provision would also facilitate the development of more affordable housing for populations with special needs, such as formerly homeless veterans.
Allow states to award a "basis boost" to Housing-Bond financed developments (Section 310)	Current law provides state agencies the discretion to award up to a 30 percent basis boost to developments financed with Housing Credits from the state's credit ceiling, regardless of whether those developments are located in a QCT or a Difficult Development Area (DDA), if the state determines the additional equity is necessary for financial feasibility. However, the same rule does not currently apply to developments financed with Housing Bonds.	Allow states to provide up to a 30 percent basis boost for Housing Bond-financed properties if necessary for financial feasibility, providing parity between Housing Bond-financed developments and those that use allocated Housing Credits.
Make the Housing Credit compatible with energy tax incentives (Section 311)	Three key energy tax incentives – the Section 45L New Energy Efficient Home Tax Credit, the Section 179D Energy Efficient Commercial Buildings Deduction, and the Section 48 Investment Credit used to finance solar panels – require basis reductions when used with the Housing Credit. This means that when affordable housing developers claim the energy tax incentives, less Housing Credit equity can go into the property. The trade-off makes these incentives very difficult to use with the Housing Credit and creates a conflict between affordable housing and energy efficiency or renewable energy measures.	Eliminate the basis reduction for Housing Credit projects that also claim the Section 45L New Energy Efficient Home Credits, the Section 179D Energy Efficient Commercial Building Deduction and/or the Section 48 Investment Credit, allowing developers to build housing that is affordable and also benefits from the energy efficiency and renewable energy measures made possible by these tax incentives.

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Restriction of planned foreclosures (Section 312)	By law, Housing Credit properties must remain affordable for at least 30 years. The first 15-year period is regulated through the Tax Code under the threat of recapture of tax credits; the second 15-year period is regulated through an extended use agreement administered by the state Housing Credit agency. Under current law, if a property is acquired by foreclosure during the second 15-year period, the affordability restrictions terminate unless the Secretary of the Treasury determines that the acquisition was part of an arrangement to terminate those restrictions and not a legitimate foreclosure. In practice, it is very difficult for the Treasury Secretary to make such a determination about individual properties.	Ensure that affordability restrictions endure in the case of illegitimate foreclosure by providing state agencies, rather than the Treasury Secretary, the authority to determine whether the foreclosure was an arrangement. This provision would further require the owner or successor acquiring the property to provide states with at least 60 days written notice of its intent to terminate the affordability period so that the state has time to assess the legitimacy of the foreclosure. This provision is intended to strengthen oversight of the program and reduce the potential for developments to lose affordability restrictions before the full affordability period has elapsed.
Increase of population cap for Difficult Development Areas (DDA) (Section 313)	Currently, properties are eligible for up to a 30 percent basis boost if they are located in a DDA, meaning areas with high construction, land, and utility costs relative to area median gross income. No more than 20 percent of the aggregate population of the entire country may be located in census tracts that are eligible to receive the DDA designation.	Increase the DDA population cap from 20 to 30 percent, enabling properties in more areas to receive additional Housing Credit equity if necessary to make the project financially feasible. This provision would make production and preservation of Housing Credit properties in higher cost areas more financially feasible.
Strengthen state oversight capacity related to development costs be establishing a selection criteria for cost reasonableness (Section 314)	Housing Credit properties—like all developments—are subject to market forces impacting cost, including costs associated with labor, materials, and land prices, as well as costs stemming from local regulations. These costs have risen substantially in recent years, and state agencies have taken steps to contain those costs to the best of their abilities, recognizing that some cost drivers are beyond their control. However, because the Housing Credit program is market-based and competitive, state agencies can and do use competition as a means of containing cost, while still providing the flexibility needed to construct quality, durable properties that will serve the lowest income households possible.	In practice, state agencies employ numerous strategies to contain costs. This provision would codify these efforts by requiring states to consider cost reasonableness as part of their selection criteria in determining which developments will receive Housing Credit allocations each year.

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Create a selection criteria for housing that serves the needs of Native Americans (Section 401)	Native Americans face a particularly acute affordable housing crisis, yet it has been difficult in some areas of the country for tribes to access Housing Credits.	Require states to consider the affordable housing needs of Native Americans in their states by establishing a QAP selection criteria.
Qualify Indian areas as Difficult Development Areas (Section 402)	While some projects in Indian areas may qualify as DDAs and are thus eligible for up to a 30 percent basis boost, most tribal areas do not qualify under current DDA standards.	Modifying the definition of DDAs to automatically include projects located in an Indian area, making these projects eligible for increased Housing Credit equity if needed to make them financially feasible.
Provide a basis boost in rural areas (Section 501)	Building affordable housing in rural areas presents certain challenges that developers in more urban areas are less likely to face. In particular, rural areas often have very low area median incomes. Because Housing Credit rents are based on area median income levels, rural properties often cannot generate enough cashflow to support much debt. Therefore, these properties need more equity invested in them on the front end.	Give states the ability to provide up to a 30 percent basis boost to properties in rural areas if needed for financial feasibility by qualifying rural areas as Difficult Development Areas. Rural areas are defined as nonmetropolitan counties and rural areas designated in state QAPs and defined by Section 520 of the Housing Act of 1949. This would allow these developments to receive more Housing Credit equity than would otherwise be available to them.
Standardize income eligibility for rural properties (Section 502)	Under current law, there is a discrepancy in tenant income limits for Housing Credit properties located in rural areas based on whether or not the property is financed with Housing Bonds. The income limits in rural Housing Credit properties financed with the 9 percent Credit are the greater of area median income or the national nonmetropolitan median income; whereas the income limits in rural Housing Credit properties financed with the 4 percent Credit are based solely on area median income.	Base income limits in rural projects on the greater of area median income or the national nonmetropolitan median income. This would standardize tenant income limit rules for Housing Credit projects in rural areas regardless of whether or not they are financed with Housing Bonds, making bond-financed developments more feasible in rural areas while aligning program rules.

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Expand multifamily Housing Bond recycling (Section 601)	States have a finite amount of private activity bond authority that can be used for a number of different eligible activities, including both multifamily Housing Bonds and Mortgage Revenue Bonds (MRBs), which states use to help lower-income households become first time homebuyers, as well as other eligible non-housing activities. In recent years, states have devoted the vast majority of their bond cap to affordable housing, either single family or multifamily. However, because many states do not have enough bond cap to meet their affordable housing needs overall, affordable homeownership and affordable multifamily production are in competition for those finite resources. In 2008, Congress authorized the use of "recycling" of tax-exempt multifamily Housing Bonds so that states could use the proceeds from the repayments of those bonds to finance more affordable multifamily bond-financed housing. However, the properties that receive the recycled bond authority are not eligible for 4 percent Housing Credits. Moreover, there are limits that impede the utility of multifamily bond recycling and technical challenges that have made recycling needlessly difficult to do in practice.	Allow states to use recycled multifamily bond proceeds to finance not only new multifamily developments, but also affordable homeownership through MRBs; thereby allowing states to devote more of the "new" bond cap to multifamily production that would be eligible for 4 percent Housing Credit authority. Provide more flexibility by allowing states 12 months, rather than 6 months provided under current law, to issue the new loan backed by recycled proceeds and make other technical fixes to streamline multifamily bond recycling.
Change the official name of the program (Section 701)	The official name of the Low Income Housing Tax Credit sometimes exacerbates NIMBY (Not In My Backyard) opposition to proposed developments financed by the Housing Credit.	Change the official name to the Affordable Housing Tax Credit.