Office of the President
Gerald M. Howard
President & Chief Executive Officer
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December 1, 2020

Ms. Nicole Cimino
Branch Chief
Office of Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Mr. Michael Novey
Associate Tax Legislative Counsel
Office of Tax Policy
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Ms. Cimino and Mr. Novey:

On behalf of the 140,000 members of the National Association of Home Builders (NAHB), I would like to express our gratitude for the flexibility your agencies have provided under IRS Notice 2020-53 with regard to the Low-Income Housing Tax Credit (LIHTC) program. As many of our members continue to struggle with unparalleled challenges due to COVID-19, I am requesting that the Department of Treasury and Internal Revenue Service extend and expand the relief provided in IRS Notice 2020-53.

Although the challenges we face with COVID-19 today are somewhat different from those facing the industry in the spring, the pandemic continues to disrupt construction activities throughout the country. The recent spike in cases and potential for government-imposed lockdowns add to a challenging environment in which construction continues at a much slower pace in order to accommodate CDC recommendations on workplace safety. These recommendations have required reducing the number of workers on a jobsite or taking other precautions that will slow the pace of construction.

Over the course of the summer, we also experienced other unforeseen challenges growing out of the COVID-19 pandemic, including an unprecedented surge in building material prices. The Bureau of Labor Statistics' September Producer Price Index reported building material prices increased 4.4% year-to-date, led by a 28.6% increase in softwood lumber. Lumber prices hit record highs as lumber mills decreased production due to COVID-19 and led to lumber shortages across the country.

At the peak, NAHB estimated the higher lumber prices added nearly $6,000 to the cost of <u>every</u> multifamily unit under construction. A typical LIHTC project might have seen their lumber costs increase by tens and even hundreds of thousands of dollars, depending on the size of the project. Some developers had no choice but to pause construction or cancel projects until prices fell. No developer could have anticipated shortages and price spikes of this scale.

While lumber prices have begun to normalize, other product shortages have emerged. Due to COVID-19 shutdowns of factories in Mexico and disrupted supply chains elsewhere, some appliances are in critically short supply. Anecdotally, we have had members report up to six-month delays on refrigerators and shortages of code-required devices such as circuit interrupters. Additionally, particularly early in the pandemic, our members reported cases of investors withdrawing from projects due to COVID-19 financial uncertainty. While the investors were ultimately replaced, this caused further project delays.

For these reasons, NAHB is requesting additional deadline extensions as well as a one-year extension on placed-in-service deadlines. This will ensure much-needed affordable rental housing is completed and delivered in spite of the challenges the pandemic presents:

- Extend the December 31, 2020 deadlines and associated requirements provided by IRS Notice 2020-53, including the carryover allocation 10% test deadline; the minimum rehabilitation expenditure deadline; the rehabilitation period deadline for properties that suffered a casualty loss due to a presidentially declared major disaster; the transition period requirement to meet set-asides for residential rental projects in accordance with IRS Revenue Procedure 2004-39; and the rehabilitation period requirement for bonds used for residential rental projects. We request these deadlines be extended to at least September 30, 2021.
- Extend the waiver of the physical inspection and tenant file review requirements of IRS regulation 1.42-5 and tenant income recertification requirements provided by IRS Notice 2020-53 to at least September 30, 2021.
- Extend guidance provided by IRS Notice 2020-53 clarifying that the temporary closure of property amenities and common space facilities will not negatively impact a property's eligible basis and result in loss of Credits until at least September 30, 2021.

In addition to extending relief provided by IRS Notice 2020-53, we urge IRS and Treasury to make the following additional accommodations critical to the program operating effectively during the pandemic:

- Provide a 12-month extension of the placed in service deadline as required in IRC Section 42(h)(1)(E)(i) for all developments allocated Housing Credits in calendar years 2018-2021. While limited relief to placed-in-service rules is available to certain projects in accordance with IRS Revenue Procedures 2014-49 and 2014-50, this relief requires specific action by the state housing credit allocating agency and is only available to developments receiving a carryover allocation prior to January 20, 2020. Given the continuing interruption in construction activity, lack of a general rule extending the placed in service deadline is significantly impacting housing credit investor interest and equity pricing amounts.
- Provide a 12-month extension (until December 31, 2021) of the year-end deadline for property restoration for any property that suffers a casualty loss not associated with a major disaster during 2020. The year-end deadline can be a significant challenge under normal circumstances, particularly if a casualty loss occurs late in the calendar year. Construction disruptions and social distancing requirements due to the pandemic further exacerbate this challenge and can make it impossible to meet the deadline.

- Provide a 12-month extension for all open noncompliance corrective action periods, with state housing credit agencies having the ability to reinstate deadlines depending on their assessment of the situation. The ability to conduct routine maintenance and complete work orders is affected by social distancing requirements and construction material shortages, while correction of other noncompliance may be hampered by other delays and closures. The ability to provide additional flexibility on the corrective action period is necessary to avoid penalizing otherwise compliant owners for circumstances beyond their control during the pandemic.
- Provide guidance clarifying that housing credit allocating agencies may conduct telephonic hearings to satisfy qualified allocation plan (QAP) public approval requirements in IRC Section 42(m)(1)(A)(ii) until September 30, 2021, consistent with guidance provided in IRS Revenue Procedure 2020-49 for private activity bonds. The pandemic has restricted the ability of states to convene public hearings for the approval of QAPs, and these restrictions are continuing into 2021. Many states have successfully solicited public input using telephonic hearings as permitted for tax-exempt bonds. IRS should treat the Housing Credit QAP public approval requirement in a consistent manner to the private activity bond requirement in Section 147, as the Section 42 requirement directly references the private activity bond rules.

Thank you for considering our request.

Sincerely,

Gerald M. Howard
Chief Executive Officer
National Association of Home Builders