April 25, 2019

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:

The National Council of State Housing Agencies (NCSHA), on behalf of our state Low Income Housing Tax Credit (Housing Credit) allocating agency members, greatly appreciates the work the Department of the Treasury (Treasury) and Internal Revenue Service (IRS) are currently engaged in to ensure the successful implementation of the new Average Income Test minimum set-aside election, as set forth in the IRS 2018-2019 Priority Guidance Plan.

In June 2018, NCSHA sent a letter to Treasury and IRS outlining areas where IRS guidance on the Average Income Test would be helpful. We would like to draw your attention to one of the issues NCSHA raised in that letter, on which we urge prompt IRS action: the calculation of area-specific income limits at the various designations allowable under the Average Income Test. While guidance on the Average Income Test generally is important, it is imperative that IRS expedite action in this area, as Housing Credit developments are already moving forward with the Average Income Test minimum set-aside.

IRS Revenue Ruling 89-24 sets the 50 percent of area median income (AMI) income limit for Housing Credit properties as equal to HUD's Section 8 "very low-income" (VLI) limit and provides direction to HUD to calculate the Housing Credit 60 percent of AMI income limit at 120 percent of the HUD very low-income limit. NCSHA urges IRS to issue similar guidance so that HUD may calculate income limits at the 20, 30, 40, 70 and 80 percent of AMI levels.

Specifically, we believe Housing Credit income limits should be calculated as follows:

Income Limit Level	**Income Limit Calculation**
20 Percent	40% of HUD's Section 8 Very Low-Income Limit
30 Percent	60% of HUD's Section 8 Very Low-Income Limit

40 Percent	80% of HUD's Section 8 Very Low-Income Limit
50 Percent	HUD's Section 8 Very Low-Income Limit
60 Percent	120% of HUD's Section 8 Very Low-Income Limit
70 Percent	140% of HUD's Section 8 Very Low-Income Limit
80 Percent	160% of HUD's Section 8 Very Low-Income Limit

When Congress passed the 2018 omnibus appropriations legislation authorizing the Average Income Test, it made this new option available immediately upon enactment of the legislation. Since then, sponsors of numerous Housing Credit developments have elected the Average Income Test as their minimum set-aside, or have indicated to state Allocating Agencies their intention to do so. Some of these properties are already well into the construction phase, and will soon be placed in service. Moreover, the financial feasibility analysis that the Housing Credit allocating agencies must perform for these developments requires analysis of applicable income limits and rent levels.

Until HUD is able to publish Housing Credit income limits that reflect the full range of designations allowed under income averaging, we expect that state Allocating Agencies, development owners, property managers, and other entities will determine income limits using the 50 percent income limit for the applicable area as a base and applying the multipliers specified in the table above to determine the other income limit designations. However, without formal HUD-published income limits at the 20, 30, 40, 70 and 80 percent of AMI levels, we run the risk of entities making mathematical mistakes when they set income limits, which could have serious repercussions for owners, investors, and low-income residents alike. Moreover, even absent mathematical errors, entities may apply different rounding rules to determine the different income limit designations.

We strongly urge IRS not to direct HUD to use its "low-income" (LI) limits as a proxy for the Housing Credit 80 percent limit and its "extremely low-income" (ELI) limits as a proxy for the Housing Credit 30 percent limit. HUD makes numerous adjustments to arrive at its LI and ELI limits that are not relevant to the Housing Credit program. In particular, HUD caps the LI limit at no higher than the national median income and sets the ELI limit at the greater of 30 percent of AMI or the poverty line with a cap at HUD's VLI limit.

In more than half of areas across the nation, HUD's ELI limit is greater than the mathematical 40 percent limit one would assume based on the formula in the chart above, and in 13.5 percent of areas ELI is actually equal to HUD's VLI limit. There are also 18 areas across the country where the LI limit is less than the mathematical 70 percent limit. Thus, if IRS were to base the Housing Credit 80 percent limit on LI and the 30 percent level on ELI, it could undermine the utility of income averaging in many areas. It would also create significant problems for those properties that have already moved forward under the assumption that IRS would base all income levels off of HUD's VLI level, in accordance with Revenue Ruling 89-24. Having worked closely with the bill sponsors when the Average Income Test was considered in Congress, NCSHA does not believe this was their intent.

NCSHA values our longstanding relationship with Treasury and IRS, and we look forward to working with you as you consider further action to help facilitate income averaging. NCSHA would be happy to meet with you to discuss this particular issue and other necessary income averaging guidance.

Sincerely,

Garth Rieman
Director of Housing Advocacy and Strategic Initiatives