National Council of
State Housing Agencies

November 16, 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:

The National Council of State Housing Agencies (NCSHA), on behalf of the Low Income Housing Tax Credit (Housing Credit) allocating agencies, urges The Internal Revenue Service (IRS) and U.S. Department of the Treasury (Treasury) to extend the temporary relief provided by IRS Notice 2020-53 and to make other necessary accommodations for the Housing Credit program in light of the continuing disruption the COVID-19 pandemic is having on development and construction activities and the ongoing operations of Housing Credit properties.

NCSHA applauds IRS' quick action in Notice 2020-53 to provide relief from program deadlines and requirements in response to the COVID-19 pandemic. This action was instrumental in allowing Housing Credit developments in the construction phase to continue development this year and for existing properties to continue serving low-income residents during the extenuating circumstances the pandemic has caused.

Unfortunately, COVID-19 cases are still increasing nationally. The pandemic continues to impact the supply of construction materials, timing of permitting and local approvals, and the availability of construction workers. It also continues to limit the ability of property managers to interact with residents for regular property operations and to restrict the ability of state Housing Credit agencies to complete development approvals and regular compliance monitoring functions.

Given the continuing importance of safeguarding the health of Housing Credit residents, property management staff, and state and local inspectors, we urge the IRS and Treasury to issue immediate guidance extending the relief provided by IRS Notice 2020-53. Specifically:

- 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—to September 30, 2021, at minimum.

- 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 September 30, 2021, at minimum.

- 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 through September 30, 2021, at minimum.

In addition to extending relief provided by IRS Notice 2020-53, we urge IRS and Treasury to make the following critical additional accommodations to keep 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.

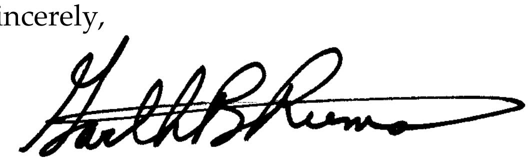
- Provide a 12-month extension for all open noncompliance corrective action periods, with state Housing Credit agencies having the ability to reinstate deadlines depending on their assessment of the situation. The ability to conduct routine maintenance and complete work orders is affected by social distancing 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.

Depending on the duration of the pandemic, IRS may need to further extend these actions beyond the time periods requested in this letter.

We appreciate IRS and Treasury's attention to these critical issues at this busy time and stand ready to assist in any way that we can.

Sincerely,



Garth Rieman
Director of Housing Advocacy and Strategic Initiatives