National Council of State Housing Agencies

August 13, 2021

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)[1], 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 certain temporary relief provisions in IRS Notice 2021-12 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 greatly appreciates IRS' quick action to provide relief from certain program deadlines and requirements in response to the COVID-19 pandemic. This action was critical to allowing Housing Credit developments to continue construction and for existing properties to continue serving low-income residents during the extenuating circumstances the pandemic has caused.

Unfortunately, COVID-19 cases, many caused by the extremely virulent Delta variant of the virus, are surging 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 11 of the 15 relief provisions in IRS Notice

[1] NCSHA is a nonprofit, nonpartisan organization. None of NCSHA's activities related to federal legislation or regulation are funded by organizations that are prohibited by law from engaging in lobbying or related activities.

2021-12. We strongly urge IRS to publish this guidance prior to September 30, when many of the relief measures currently in place expire. Specifically:

- Extend the carryover allocation 10% Test deadline as required in IRC Section 42(h)(1)(E)(ii) by 12 months for projects with allocations on or before December 31, 2022. Delays in construction, permitting, and local approvals, coupled with construction material and labor shortages, continue to present significant challenges to meeting this deadline.

- Extend the rehabilitation expenditure deadline as required in IRC Section 42(e)(3) and 42(e)(4) by 12 months for projects with allocations on or before December 31, 2022. The aforementioned construction delays also present challenges to meeting this deadline.

- Extend the placed in service deadline as required in IRC Section 42(h)(1)(E)(i) by 12 months for all developments allocated Housing Credits in calendar years 2018-2022. 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 Housing Credit allocating agency and is only available to developments receiving a carryover allocation prior to January 20, 2020. Given the continuing disruption in construction activity, lack of a general rule extending the placed in service deadline is significantly impacting Housing Credit investor interest and equity pricing.

- Extend the rehabilitation period allowed under IRS Revenue Procedures 2014-49 and 2014-50 for casualty loss due to a Major Disaster by 12 months for projects suffering a casualty loss on or before December 31, 2022. Construction delays, labor shortages, and material supply issues continue to present challenges to meeting this deadline.

- Extend the year-end restoration period deadline for properties suffering a casualty loss not for Major Disaster reasons by 12 months for projects suffering a casualty loss on or before December 31, 2022. The year-end deadline can be a significant challenge under normal circumstances, particularly if a casualty loss occurs late in the calendar year. Construction delays, labor shortages, and material supply issues continue to present challenges to meeting this deadline.

- Extend the provision on satisfying occupancy obligations under Section 42(f) by allowing any increase in the number of low-income units by the close of the six-month period following the close of the first year of the credit period so that it applies to projects for which the close of the first year of the credit period is on or before December 31, 2022.

- Continue to allow a 12-month extension of noncompliance corrective action periods and change the current December 31, 2021 deadline to December 31, 2022 at the discretion of the state allocating agency. Construction delays and material supply issues continue to cause delays in correcting physical noncompliance, while eviction moratoria make correction of tenant noncompliance issues impossible in many cases. The ability to provide flexibility on the corrective action period is necessary to avoid penalizing otherwise compliant owners for circumstances beyond their control during the pandemic.

- Extend the waiver of tenant file reviews as required in IRS regulation 1.42-5 until December 31, 2021. Because IRS Form 8610 requires Housing Credit agencies to report their ability to meet compliance monitoring requirements on a calendar year basis, replacing the current September 30, 2021 deadline with December 31, 2021 conforms to this annualized structure. However, since the pandemic began, many Housing Credit agencies have transitioned successfully to virtual tenant file reviews and have been doing so even though IRS temporarily waived the requirement to conduct those reviews. For this reason, we believe that reinstating the requirements related to tenant file reviews is appropriate beginning January 1, 2022. However, we urge IRS to modify the reasonable notice period to provide more time for owners and property managers to travel to the property and complete the on-site work necessary to prepare for a tenant file review given safety concerns associated with the pandemic. Specifically, we recommend IRS allow 30 days rather than the current 15-day reasonable notice period.

- Extend the waiver of compliance monitoring physical inspections as required in IRS regulation 1.42-5 until December 31, 2022. On-site physical inspections during the current state of the pandemic would jeopardize the health and safety of residents, owners, property managers, and state agency compliance staff.

- Extend the provision clarifying that closure of property amenities and common space facilities in response to the COVID-19 pandemic do not result in reduction of eligible basis so that it applies to closures through December 31, 2022. The current surge in COVID-19 cases is requiring certain amenities and common space facilities to remain closed in many states, and owners should not face reductions in eligible basis for issues beyond their control.

- Make permanent the provision allowing Housing Credit allocating agencies to satisfy QAP public approval requirements under Section 42(m)(1)(A) using telephonic hearings and specify that virtual platforms may also be used to satisfy the public approval requirement. Housing Credit allocating agencies have successfully adapted to virtual QAP hearings during the pandemic and have experienced even greater public input as a result of online meeting capability.

At this time, we do not recommend extending the remaining provisions of IRS Notice 2021-12.

We appreciate IRS and Treasury's attention to these critical extensions. Please let us know if we can provide additional information to expedite this guidance.

Sincerely,

Garth Rieman
Director of Housing Advocacy and Strategic Initiatives