



July 8, 2022

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, would like to express our appreciation for the Internal Revenue Service (IRS) and U.S. Department of the Treasury's (Treasury) willingness to provide Housing Credit regulatory relief to allocating agencies and their industry partners as they grapple with the challenges resulting from the COVID-19 pandemic. While some of the flexibilities IRS and Treasury provided over the last two years in various guidance documents, most recently Notice 2022-05, are no longer needed, the industry is still facing significant problems due to pandemic-related economic disruptions. To address these hardships, we urge you to extend and expand certain relief measures as outlined in this letter.

Last month, NCSHA surveyed all state Housing Credit allocating agencies to better understand their experience on the ground and determine the extent to which the various IRS/Treasury-provided relief measures are still needed. NCSHA has also reached out to key industry partners about their needs. Based on this outreach, it is clear that the unprecedented and volatile inflationary impact on development costs, pandemic-related supply chain disruptions, and construction workforce challenges continue to make it impossible for many developments to meet program deadlines.

Development cost increases are requiring owners and investors to postpone closings, as unanticipated financing gaps force developers to find supplementary financing sources and states and syndicators must re-underwrite projects, sometimes multiple times, before closing. Even once a deal is able to close, it then faces supply chain disruptions. These delays, both before and after closing, prevent projects from meeting their placed-in-service deadlines. Existing

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properties requiring repairs to fix noncompliance or for general maintenance and those that require more significant restoration after a casualty loss are facing the same supply chain disruption challenges and are unable to meet corrective periods or restoration deadlines.

Given the continuing turmoil in the construction industry, we urge the IRS and Treasury to issue targeted guidance extending and expanding existing relief for placed-in-service, casualty loss restoration, and correction period deadlines as follows.

- Notice 2022-05 provides projects that were initially allocated Credits in the first quarter of 2019 (and thus had an original 10 percent test deadline before April 1, 2020 and an original placed-in-service deadline at the close of the 2021 calendar year) a one-year extension until December 31, 2022 to place in service. However, projects that received their allocation on or after April 1, 2019 and on or before December 31, 2019 (and thus had an original 10 percent test deadline falling on or after April 1, 2020 and on or before December 31, 2020), received a two-year extension of their placed-in-service deadline to December 31, 2023. NCSHA urges IRS and Treasury to provide all projects that received an allocation in 2019 a two-year extension of the placed-in-service deadline until December 31, 2023.
- Notice 2022-05 provides projects that were initially allocated Credits in 2020 (and thus had an original 10 percent test deadline in calendar year 2021 and an original placed-in-service deadline by the close of calendar year 2022) a one-year extension until December 31, 2023 to place in service. NCSHA urges IRS and Treasury to further extend this placed-in-service deadline relief until December 31, 2024, giving these projects a two-year extension, rather than a one-year extension.
- NCSHA urges IRS and Treasury to provide a one-year extension to the placed-in-service deadline for projects that were initially allocated Credits in 2021. These projects have not yet received any placed-in-service deadline relief, and many states reported to NCSHA that developers already know that they will not be able to meet the original placed-in-service deadline at the close of calendar year 2023.

It is critical that IRS/Treasury act now to provide these projects with relief, even though their placed-in-service deadline is still over a year away. Many of these deals have had their closings pushed back as developers try to reassemble their project financing, thus they are already delayed. Moreover, we have heard that some syndicators are refusing to close on these deals unless IRS/Treasury extends the placed-in-service deadline or the allocating agency agrees in advance to a “Credit swap,” in which the developer will return the 2021 Credits for a new allocation from a future year’s authority. Credit swaps are time-intensive for both developers and allocating agencies and unnecessarily add cost to the deal because of the delays they cause. Thus, swift IRS action to provide an extension of the placed-in-service deadline is far preferable. We strongly urge IRS to act as soon as possible in 2022 to provide this relief.

- Notice 2022-05 postpones the reasonable time period allowed to restore a project that suffered a casualty—regardless of whether or not that casualty results from a Major Disaster—for up to 18 months (at the discretion of the allocating agency), but not beyond December 31, 2022, if the original restoration deadline would have occurred on or after April 1, 2020. NCSHA urges IRS/Treasury to update this flexibility by providing properties that had an original restoration deadline falling on or after January 1, 2021 up to an additional 24 months from their current restoration deadline, inclusive of the 18-month period provided under Notice 2022-05, but no later than December 31, 2023. Allocating agencies should have discretion to require a shorter extension or no extension at all.
- Notice 2022-05 provides that if an agency provides an owner time to correct noncompliance, and the correction period ends on or after April 1, 2020 and before December 31, 2021, then the correction period is extended by a year, but not beyond December 31, 2022. NCSHA urges IRS/Treasury to update this flexibility by extending the correction period to a year, but not beyond December 31, 2023.

NCSHA appreciates the flexibility IRS has provided agencies related to waivers of compliance monitoring requirements. Allocating agencies report to NCSHA that they have resumed tenant file reviews and physical inspections of properties. While we do not anticipate the need for a blanket waiver of agency compliance monitoring requirements in the future, we do encourage IRS/Treasury to extend the flexibility provided in Notice 2022-05 allowing allocating agencies, in consultation with public health experts, to extend the physical inspection waiver that ended on June 30, 2022 if the level of transmission makes such an extension appropriate. This flexibility currently is provided until December 31, 2022. We urge IRS/Treasury to extend it until December 31, 2023.

Based on our survey of allocating agencies and our outreach to the Housing Credit industry, we do not anticipate needing IRS/Treasury to further extend other relief measures included in Notice 2022-05, such as relief of the 10 percent test or rehabilitation expenditure deadlines, satisfaction of occupancy requirements, basis impact of closure of amenities, the use of Housing Credit properties as emergency housing for medical personnel and other essential workers, the 12-month transition period for tax-exempt bond financed projects to meet the set-aside for qualification as residential rental projects, or the 2-year rehabilitation period for tax-exempt bonds used to provide qualified residential projects under Section 147(d).

Lastly, we appreciate IRS/Treasury's issuance of Revenue Procedure 2022-20, which provided permanent authority to conduct telephonic hearings for tax-exempt private activity bonds and permits allocating agencies to conduct Qualified Allocation Plan (QAP) public hearings under the same rules allowed for private activity bond hearings. This flexibility had been provided on a temporary basis in Notice 2022-05. Allocating agencies report to NCSHA that since they have begun using virtual technology to hold QAP hearings, they have had greater

participation from a more diverse set of stakeholders than they did when these hearings had to be held in person.

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,

A handwritten signature in black ink, appearing to read "Garth Rieman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Garth Rieman
Director of Housing Advocacy and Strategic Initiatives