



June 14, 2024

United States Department of the Treasury
1500 Pennsylvania Avenue NW
Washington D.C. 20200

RE: IRS Revenue Procedure 2024-21

To Whom It May Concern:

The National Council of State Housing Agencies (NCSHA),¹ on behalf of the nation's state housing finance agencies (HFAs), thanks you for the opportunity to comment on Revenue Procedure 2024-21, which the Internal Revenue Service (IRS) published April 16.

NCSHA is deeply concerned about the proposal in Revenue Procedure 2024-21 to adjust how the home purchase price limit safe harbors for the tax-exempt Mortgage Revenue Bond (MRB) and Mortgage Credit Certificate (MCC) programs are calculated. The proposed new methodology will limit affordable homeownership opportunities for working families at a time when so many are already priced out of the market and hinder HFAs' efforts to expand homeownership for underserved populations, particularly households of color and rural families.

NCSHA strongly urges Treasury to rescind the proposed new methodology and to continue its long-standing practice of setting the MRB/MCC purchase price safe harbors based on Federal Housing Administration (FHA) loan limits.

Further, if IRS adopts the proposed new methodology, we ask it to hold the safe harbors at 2024 levels until the safe harbors under the new calculation method catch up and exceed those levels so HFAs do not have to reduce purchase price limits and decrease lower income home buyers' access to the HFAs' MRB and MCC programs.

The rest of this letter will include some background information on MRBs and MCCs, our rationale for opposing the proposed new methodology, and recommendations for how Treasury and IRS should approach the MRB and MCC purchase price safe harbors.

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.

HFAs and Housing Bonds: Filling a Critical Need

NCSHA represents the state housing finance agencies for all 50 states, the District of Columbia, Puerto Rico, New York City, and the U.S. Virgin Islands. HFAs are state-chartered, public mission-driven organizations dedicated to providing affordable housing help to those who need it.

Tax-exempt MRBs, which fall under the private activity bond (PAB) cap, have historically been HFAs' primary means of financing their affordable homeownership programs. Investors are willing to accept a lower rate of return for Housing Bonds than they would get on other investments because the interest on the bonds is exempt from federal income tax. The lower rate is then passed on to lower the interest rate paid by lower income home buyers.

This interest rate advantage is especially beneficial for home buyers in a housing market like the one we are in today, with interest rates at the highest they have been in over a decade. An internal survey conducted by NCSHA in early April found that the typical HFA was offering an interest rate on their MRB program loans that was .5 to 1 percent less than the prevailing market rate. The rate advantage was even higher in several states.

The MRB program has been a resounding success in opening homeownership opportunities for working families. MRBs have made first-time homeownership possible for more than 3.5 million lower-income families, historically funding 100,000 mortgages every year.

The program is well-targeted toward helping those underserved by the market. MRB mortgages are restricted to first-time home buyers who earn no more than the area median income (AMI). Larger families can earn up to 115 percent of AMI (140 percent in targeted areas). The median income of an MRB borrower in 2022, the last year for which we have full data, was \$59,465, 80 percent of the national median. Seventy-five percent of all MRB borrowers that year earned at or below 100 percent of AMI. Forty-three percent of MRB loans went to households of color and 39 percent to women-headed households.

HFAs also use their MRB authority to issue Mortgage Credit Certificates (MCCs), which provide a nonrefundable federal income tax credit for part of the mortgage interest qualified home buyers pay each year. MCCs are subject to the same requirements and limits as MRBs.

The MCC program is a flexible subsidy source, which can be adjusted depending on the incomes of different home buyers and provides a relatively constant level of benefit to first-time home buyers regardless of the spread between market and MRB rates. State HFAs have used MCCs to provide critical tax relief to almost 400,000 families. Seventy-one percent of all MCC borrowers in 2022 earned at or below AMI.

Background on MRB/MCC Purchase Price Limit

In addition to the income limits described above, federal tax law also restricts the price of the home a purchaser can buy with these programs. Specifically, Section 143(e) of the federal tax code limits the home purchase price for a house purchased with an MRB-funded mortgage to 90 percent of the median home price where the property is located (110 percent in targeted areas). The same limits apply to MCC recipients, based on a separate section of the tax code.

The MRB purchase price limits have been in effect since the program was first authorized in 1954 (and were subsequently applied to MCCs when they were first authorized in 1984). The income restrictions were established—as part of the tax reform act of 1986—to ensure the program better targets the home buyers Congress wants it to serve. Congress did not remove the program home purchase price limits when it established the income limits. As a result, home loans financed by MRBs, as well as MCCs, are subject to both borrower income and home price restrictions.

State and local issuers are tasked with establishing the MRB/MCC purchase price limits for their programs using the best available data. However, collecting and analyzing the information needed to establish the limits has proven difficult and costly for state and local agencies. Therefore, since 2004, the IRS has published “safe harbors” for the MRB and MCC purchase price limits for each county. If the purchase price does not exceed the safe harbor amount for the area in which the home is located, the loan or MCC is considered in compliance with the purchase price limit. Because of the challenges in determining their own purchase price limits, the safe harbors serve as the purchase price limits for most MRB and MCC programs, though some HFAs do make downward adjustments based on their knowledge of local markets.

In addition to updating the MRB/MCC safe harbors for 2024, Revenue Procedure 24-21 proposes that, beginning in 2025, IRS use median house price data from the U.S. Department of Housing and Urban Development (HUD) to calculate the safe harbors instead of FHA’s single-family loan limits. IRS argues that this change will ensure the safe harbors will more accurately reflect actual area home purchase prices but acknowledges it would reduce MRB/MCC safe harbors in many parts of the country.

A Misguided Approach

NCSHA strongly opposes the proposed new methodology, which would significantly lower the MRB/MCC home purchase price limits in many parts of the country and make it more difficult for HFAs to help working families purchase a home, cutting against the Administration’s efforts to boost support for affordable homeownership. It would also increase uncertainty and add new regulatory requirements, disincentivizing lender participation in MRB and MCC programs. Lastly, NCSHA recommends that, given the redundancy of the MRB and MCC purchase price limits in light of the programs’ income limits, IRS strive to set the purchase price limits in such a way to ensure they don’t needlessly restrict homeownership options for eligible home buyers.

Hindering Affordable Homeownership

The proposed new methodology will restrict homeownership options for such home buyers by reducing the number of homes eligible for purchase with an MRB-funded mortgage.

An analysis NCSHA conducted shortly after IRS released its proposal demonstrates how widespread the impact would be. Our examination compared the current 2024 safe harbors for counties in six states (Colorado, Minnesota, Pennsylvania, South Dakota, Tennessee, and Washington) with what the safe harbors would be if they were based on HUD's median purchase prices. NCSHA conservatively assumed for the purposes of the analysis that IRS would apply the same .878 factor to the HUD median purchase prices as it did to the FHA loan limits.

Of the six states' 443 counties, the safe harbors would decline in all but one under the proposed new calculation. In more than half the counties (228, or 51.5 percent), the safe harbor would decrease by 50 percent or more.

The new standards would especially impact home buyers in rural communities, where the methodology would set the safe harbors so low as to severely restrict the number of properties available to those with MRB mortgages. Several states with large rural areas have told NCSHA the new safe harbors in rural areas would simply be unworkable and effectively prevent them from being able to utilize MRBs and MCCs to help home buyers in those communities purchase an adequate home. The data from NCSHA's analysis bears this out. For example, in Colorado, the safe harbor would decline by nearly 68 percent in Las Animas County (population 15,000), almost 25 percent in Archuleta County (12,000), and nearly 78 percent in Kiowa County (1,400). In Tennessee, the counties of Perry, Van Buren, and Wayne, each of whose entire land area is classified as rural, would each see their safe harbors decline by more than 86 percent.

Individual analyses conducted by HFAs further illustrate the impact the new safe harbor methodology would have on the availability of MRB-funded mortgages and MCCs in rural areas. For example, the Wisconsin Housing and Economic Development Authority (WHEDA) has found that the average purchase price for homes purchased with MRB-funded mortgages in 2023 exceeded what the safe harbors would be under the new methodology in 35 of its 48 counties. All 35 of those counties are classified as rural by the U.S. Department of Agriculture. In total, WHEDA estimates that the new safe harbors would have reduced its MRB lending since the beginning of 2023 by 24 percent, or 749 total loans.

The new safe harbors could also be especially hard on households of color and other underserved borrowers looking to purchase a home in growing metropolitan areas, where many modest homes may still exceed the limits set by the modified safe harbors. In Colorado, the safe harbors for Denver and Boulder counties would decrease 13 percent and 14 percent respectively. In Minnesota, the safe harbors for Ramsey County (St. Paul) and Hennepin (Minneapolis) would both decrease by 14 percent. Davidson County (Nashville), King County (Seattle), and Philadelphia County would all see similar decreases.

Again, HFAs have provided us with compelling examples of the specific impact the new safe harbor methodology would have. For example, nearly two-thirds of loans originated under Minnesota Housing's

MRB loan program (known as Start Up) over the past two years were made in the Twin Cities (Minneapolis-St. Paul-Bloomington) metropolitan statistical area (MSA). However, households of color made nearly three quarters of the purchases that would have exceeded the IRS' proposed limits in the Twin Cities, demonstrating that borrowers of color would be affected disproportionately.

In addition, the South Carolina State Housing Finance and Development Authority (SC Housing) estimates that just over a quarter of the loans it funded through MRBs in 2023 would not have been eligible if the proposed new methodology for calculating safe harbors had been in place. Historically, a high share of SC Housing MRB loans have gone to home buyers of color (54 percent in 2022), making it likely that such households would bear the brunt of these changes.

Examples like the ones provided above demonstrate that the proposed new methodology for calculating the MRB and MCC safe harbors would reduce homeownership opportunities, particularly for home buyers in rural areas, households of color, and other underserved consumers. At a time when home prices continue to climb and mortgage rates remain elevated, the interest rate advantage offered by MRBs is more important than ever for low- and moderate-income families looking to realize the dream of homeownership.

It is also important to note that IRS' new proposed methodology is already limiting homeownership opportunities, as several HFAs have decided not to adopt the 2024 safe harbors to reduce the impact a potentially steep reduction in the safe harbors (and, consequently, the purchase price limits) could have in 2025.

Additional Regulatory Complexity

In addition, the proposed methodology would add confusion and uncertainty to the MRB and MCC programs, disincentivizing lender participation. As IRS notes in the Revenue Procedure, 87 percent of counties are currently subject to the same safe harbor (the FHA mortgage limit floor). Under the proposed new methodology, each county would have its own safe harbors. Both HFAs and their lender partners would be forced to navigate potentially hundreds of different home purchase price limits. This could prove infeasible for many lenders, particularly those that operate nationwide or state-wide.

HFAs' lender partners are vital to meeting their affordable homeownership missions. The vast majority of HFA loans are not originated directly by the HFA, but rather through private lenders participating in the HFAs' programs. The lender typically originates the loan meeting HFA program specifications, then sells it to the HFA after closing. HFA lenders often have to dedicate more time and resources to originating HFA program loans than non-HFA loans due to the borrowers being served, additional paperwork associated with special program requirements, and the increased standards HFAs put in place to ensure the loan is responsibly underwritten. Drastically increasing the number of purchase price limits lenders have to monitor and adhere to will needlessly add to the burden and make HFA program loans less attractive to lenders.

A "Hold Harmless" Approach to the MRB/MCC Purchase Price Limits

NCSHA appreciates that, in proposing the new safe harbor methodology, IRS is trying to carry out its duty to faithfully enforce the purchase price limit requirement. However, we contend that, since MRBs and MCCs have been subject to well-targeted income limits since 1986, the home purchase price limits are obsolete. The income limit is a more effective means of ensuring MRB assistance goes to those that need it most and makes the purchase price limit redundant. Borrower income limits are enough to ensure that MRBs are not used to finance the purchase of unreasonably costly homes because HFAs, and their lending partners, already limit the size of the loan to which a borrower is eligible based on income. In addition, the purchase price limitation requires Treasury to calculate and publish area median home prices each year, a process that is needlessly burdensome and consumes substantial staff time and other resources.

MRB and MCC programs are helping the low-and moderate-income home buyers they are intended to serve. As mentioned above, the median income of an MRB borrower in 2022 was 80 percent of the national median income. Notably, this was higher than in previous years. In 2021 the median income for an MRB borrower was 64 percent of the national median. In 2020, it was 66 percent.

Further, MRBs in the aggregate fund the purchase of modest homes, fitting the profile of the typical MRB borrower. The national average price of an MRB-financed home was \$203,585 in 2022, 44 percent of the national median sale price for all homes that year. In 2021 the MRB average sale price was 49 percent of the national average.

This data demonstrates that MRBs are working as intended, with the vast majority of MRB loans going to low- and moderate-income home buyers purchasing modest homes. It certainly does not suggest a need to adjust program requirements in a way that substantially reduces eligibility.

Consequently, while the decision to eliminate the MRB/MCC purchase price limit ultimately resides in Congress, we urge IRS not to implement the limits in any way that needlessly limits home buyers' options and creates unnecessary regulatory requirements. We also suggest that Treasury consider asking Congress to eliminate the MRB and MCC purchase price limits. Rescinding the limits has long been a priority for NCSHA, for all the reasons stated above. We encourage Treasury to support this change.

For all these reasons, we strongly recommend IRS not adopt the proposed changes included in Revenue Procedure 2024-21.

Hold Safe Harbors at Current Levels until HUD Prices Catch Up

The Revenue Procedure also seeks comment on how IRS should implement the change in how it calculates the MRB/MCC safe harbors if it chooses to do so.

IRS outlines two specific approaches. The first is to phase in the new safe harbor amounts over five years, using the current 2024 values as a baseline and shifting towards the HUD values over time. The second approach would be for IRS to hold the MRB/MCC safe harbors at their 2024 level until an area's

average purchase price based on HUD data surpasses the frozen value, after which the safe harbor would follow the HUD data.

NCSHA's strong preference is for IRS to not go forward with its proposed change to the MRB/MCC safe harbor calculation. However, if IRS does go forward with this proposal, we ask you to take the second approach toward implementation. Such an approach will ensure that the new method does not result in a sudden and significant drop in the purchase price safe harbors. This approach will also give HFAs and their lender partners time to prepare for the change.

It is important to note that holding the safe harbors at the 2024 level until the HUD median home prices catch up will still limit homeownership opportunities for MRB borrowers in the years ahead, as the safe harbors will not be adjusted to account for increasing home prices. Perhaps IRS could add to this approach an inflation factor that would recognize some price increases while the HUD data and current purchase price limits align. Either way, NCSHA strongly encourages the IRS to continue its practice of adjusting for lags in home purchase price data, as it has done since it first started republishing the safe harbors 20 years ago.

Thank you for your consideration. We would be happy to discuss these issues with you at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Garth Rieman", with a long horizontal flourish extending to the right.

Garth Rieman
Director of Housing Advocacy and Strategic Initiatives