National Council of State Housing Agencies

December 6, 2023

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury

The Honorable Marcia L. Fudge
Secretary
U.S. Department of Housing and Urban Development

The Honorable Merrick Garland
Attorney General
U.S. Department of Justice

The Honorable Danny Werfel
Commissioner
Internal Revenue Service

Dear Secretary Yellen, Secretary Fudge, Attorney General Garland, and Commissioner Werfel:

The National Council of State Housing Agencies (NCSHA), on behalf of the state Low Income Housing Tax Credit (Housing Credit) allocating agencies, urges the U.S. Department of the Treasury (Treasury), the U.S. Department of Housing and Urban Development (HUD), and the U.S. Department of Justice (DOJ) to enter into a Memorandum of Understanding (MOU) to facilitate Treasury and Internal Revenue Service (IRS) action to implement the Violence Against Women Act's (VAWA) application to the Housing Credit program. Such an MOU could be modeled after the existing MOU to which these agencies are party regarding the Fair Housing Act and the Housing Credit program.

The Housing Credit has been a VAWA "covered program" since 2013, yet Treasury and IRS have never provided guidance to Housing Credit agencies, owners, managers, or other stakeholders on its implementation. In the absence of guidance, state agencies have used their Qualified Allocation Plans and other tools to compel housing providers to comply. NCSHA has also adopted in its Recommended Practices in Housing Credit Administration procedures related to VAWA implementation.[1]

Despite these efforts, the lack of federal direction leaves certain aspects of VAWA implementation ambiguous, including the proper procedure for reporting and enforcement should a state HFA find an owner is not in compliance with VAWA, particularly if the property does not receive HUD program financing support. Furthermore, it is unclear whether a tenant should be treated as an existing tenant or a new tenant if their lease is bifurcated because another household member is evicted after committing an offense covered by VAWA. This is an important distinction as a new tenant would need to undergo a full recertification of their eligibility to live in the property, whereas an existing tenant would generally remain eligible despite changes in income or household size as long as they were eligible when they moved in.

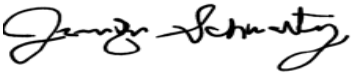
[1] Recommended Practices in Housing Credit Administration, Practice Number 31

Treasury staff have suggested verbally that Treasury and IRS are unable to issue such guidance because VAWA does not amend Section 42 of the Internal Revenue Code (IRC) and because VAWA legislative text makes clear that noncompliance with VAWA's requirements does not disqualify owners/investors from receiving tax benefits associated with the Housing Credit.

The MOU among Treasury, HUD, and DOJ on the Fair Housing Act's application to the Housing Credit provides precedence for how to proceed absent an amendment to the tax code. Like VAWA, the Fair Housing Act does not amend IRC Section 42. Instead, it establishes a mechanism for the Act's application as it pertains to the Housing Credit. A similar MOU clarifying VAWA implementation and enforcement for Housing Credit properties would be valuable. Consistent with the statute, such an MOU should specify that noncompliance with VAWA does not disqualify program participants from receiving Housing Credit tax benefits.

A decade has passed since Congress reauthorized VAWA specifying its application to the Housing Credit program. Congressional intent is clear. The Biden–Harris Administration should not allow the lack of a cross reference in IRC Section 42 to result in continued federal inaction to protect tenants residing or applying to live in Housing Credit properties who have been victims of domestic violence, dating violence, sexual assault, or stalking.

Sincerely,



Jennifer Schwartz
Director of Tax and Housing Advocacy

cc: Wally Adeyemo, U.S. Department of the Treasury
Thomas West, U.S. Department of the Treasury
Zack Rosenblum, U.S. Department of the Treasury
Julienne Joseph, U.S. Department of Housing and Urban Development
Demetria McCain, U.S. Department of Housing and Urban Development
Karlo Ng, U.S. Department of Housing and Urban Development
Rosie Hidalgo, U.S. Department of Justice
Jennifer Klein, White House Gender Policy Council
Vincent Reina, White House Domestic Policy Council
Chad Maisel, White House Domestic Policy Council
Nicole Cimino, Internal Revenue Service
Katie Jennings, U.S. Interagency Council on Homelessness
Erika Jones-Haskins, U.S. Interagency Council on Homelessness
Yvonne Hsu, U.S. Department of Agriculture, Rural Development
Barbara Chism, U.S. Department of Agriculture, Rural Development
Maureen Elias, U.S. Department of Veterans Affairs
Shawn Liu, U.S. Department of Veterans Affairs