



December 28, 2020

Internal Revenue Service
Attn: CC:PA:LPD:PR (Reg-119890-18)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

RE: Comments on Reg-119890-18 Regarding Low Income Housing Tax Credit Average Income Test Regulations

To Whom It May Concern:

As the Director of Rental Housing Management of the South Dakota Housing Development Authority (SDHDA), which administers the Low Income Housing Tax Credit (Housing Credit) in the state of South Dakota, I am writing to express my concerns about the Internal Revenue Service (IRS) notice of proposed rulemaking to establish regulatory guidance on the Housing Credit Average Income Test (AIT) minimum set-aside. I would like to associate myself with the comments of the National Council of State Housing Agencies (NCSHA), which represents SDHDA and all other state Housing Credit administering agencies, and further elaborate on the specific impact these regulations will have in South Dakota.

IRS's AIT proposed rule creates unnecessary and excessive risk of violating the minimum set-aside for Housing Credit investors and developers. It also prohibits state agencies from allowing owners to modify unit designations, which is essential for practical implementation of the AIT. Prohibiting changes in unit designations also creates potential conflicts with fair housing- and accessibility-related laws, which may necessitate such changes.

The AIT was established and available as an option to project sponsors immediately upon enactment of the Consolidated Appropriations Act of 2018. As such, and in the absence of IRS guidance or knowing when such guidance might be published, SDHDA developed policies for implementing the AIT in SD. We designed these policies under the assumption that eventual IRS guidance, if published, would similarly seek to facilitate the use of AIT in practice. Never did we expect that the IRS would take the positions it has in the proposed rule in respect to violation of the minimum set-aside and requiring perpetually fixed income designations for units.

Since the AIT became law, SDHDA has financed eight Housing Credit properties for which the sponsors have already chosen the AIT minimum set-aside on Form 8609 and several others have



indicated to SDHDA that it is their intent to do so. The proposed rule creates excessive risk to the investors and we are very concerned about the impact this rule would have on these properties if made final as written.

In addition to the risk to minimum set-aside requirements, the proposed rule poses additional concerns with respect to casualty loss, the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973, the Violence Against Women's Act, and projects layered with other federal and/or state subsidies in addition to Housing Credit equity. In order for these projects to be successful and comply with the many laws in place, there must be flexibility so that the integrity of all associated programs can be maintained.

NCSHA has recommended that IRS provide guidance allowing the AIT minimum set-aside to be met so long as 40 percent of the units in the property have an average of 60 percent or less of AMI and for states to establish policies allowing for modifications of unit designations. I strongly concur with NCSHA's recommendations and hope IRS will consider them in finalizing these regulations.

Sincerely,



Tasha N. Jones, Director
Rental Housing Management

TNJ