Brian P. Kemp
Governor

Georgia® Department of Community Affairs

Christopher Nunn
Commissioner

December 29, 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:

Thank you for providing the opportunity to comment on the above-referenced Notice of proposed rulemaking. As the Housing Finance Division Director of the Georgia Department of Community Affairs ("DCA"), which administers the Low-Income Housing Tax Credit (Housing Credit) in the state of Georgia, I am writing to comment on the Internal Revenue Service (IRS) Notice of proposed rulemaking to establish regulatory guidance on the Housing Credit Average Income Test (AIT) minimum set-aside. Additionally, I would like to associate myself with the comments of the National Council of State Housing Agencies (NCSHA), which represents DCA and all other state Housing Credit administering agencies, and further elaborate on and distinguish the specific impact these regulations will have in Georgia. DCA has read the proposed amendments to the regulations and comments on two specific provisions as follows:

Proposed §1.42-19, Average Income Test

B. Designation of Imputed Income Limitations

The proposed regulations would require that taxpayers designate the imputed income limitation for each unit in accordance with Agency protocol and policy and complete the initial designation of all of the units as of the close of the first taxable year of the credit period (§1.42-19(b)).

DCA recommends that the unit designations be documented by a broader classification, such as bedroom number, not specific unit references. For instance, taxpayers should be able to designate "three 2-bedroom units at 40% AMI" as opposed to designating "Unit 101 at 40% AMI," as follows:

14	one-bedroom units at	40% AMI
20	two-bedroom units at	40% AMI
10	three-bedroom units at	40% AMI
0	four-bedroom units at	40% AMI

The more specific and exact proposed designation does not allow for any flexibility for unit conversions to be cured nor does it allow for mitigation of noncompliance. It is unclear whether this broader application of designating units would be appropriate under the proposed regulations. DCA recommends the broader classification be accepted.

In addition, the proposed regulations provide that a taxpayer may not make any subsequent changes to the designated imputed income limitations (§1.42-19(b)(3)(i)). DCA has determined that it is in the best interest of the low-income housing project that the taxpayer has some flexibility in unit designations. Broader classification of unit designation increases the flexibility of the taxpayer to address and respond to changes in low-income housing households or market conditions, which may have unforeseen yet significant impacts. It is important to note that restricting the ability to make changes is not required under Section 42.

Proposed §1.42-19, Average Income Test

E. Results Following an Opportunity to Take Mitigating Actions

The proposed regulations provide for certain mitigating actions to avoid project disqualification or significant recapture provided that the taxpayer takes a mitigating action within 60 days of the close of a year for which the average income test might be violated (§1.42-19(d)). As proposed, it appears that meeting this expectation would be in addition to the Section 42(g)(1)(C) income averaging minimum set-aside test requirement that 40 percent of the units comply with their designations.

In determining the validity of a tax credit project, the set-aside test provided under Section 42 is in itself a sufficient means to make a determination. DCA maintains that a single non-compliant unit should not cause the project to fail the minimum set aside test, so long as at least 40 percent of all low-income units' designations average 60 percent AMI or below. Rather, the non-compliant unit should only impact the project's applicable fraction, resulting in the inability to claim credits on non-compliant units. DCA further maintains that the treatment of Average Income non-compliance, discovered at any time during a calendar year, should be treated consistent with non-compliance found with the other two types of set-asides.

Again, DCA appreciates the opportunity to provide comments on the proposed regulations. If you need any further clarification, please do not hesitate to contact us.

Regards,

Jill Cromartie
Division Director, Housing Finance and Development