

May 1, 2015

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2015-27)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

RE: Notice 2015-27, 2015-2016 Priority Guidance Plan

Dear Ladies and Gentlemen:

The LIHTC Working Group was established to provide a platform for low-income housing tax credit (“LIHTC”) industry participants to work together to resolve technical and administrative LIHTC program issues. On behalf of the members of the LIHTC Working Group, we would like to recommend the following issues in priority order for addition to the Priority Guidance Plan for 2015-2016.

1. We are requesting guidance regarding on the inclusion of tenant relocation costs in eligible basis for the purposes of IRC Section 42. Under IRC 263A, a taxpayer must capitalize all direct and certain indirect costs properly allocable to real property and tangible property produced by the taxpayer. Indirect costs are properly allocable to property produced when the costs directly benefit or are incurred by reason of the performance of production. The costs incurred to relocate tenants during the rehabilitation of a LIHTC building are incurred solely by reason to rehabilitate the LIHTC building, and therefore it appears that these relocation costs should be capitalized as indirect costs to the building under 263A and included in the building’s eligible basis for the purposes of IRC Section 42. We request formal guidance on this matter. For further discussion, we reference our letter submitted to the Internal Revenue Service on February 6, 2015 with respect to guidance related to the inclusion of tenant relocation costs in eligible basis for the purposes of IRC Section 42.
2. We are requesting guidance regarding the inclusion of the amortization deductions of the costs of issuing tax-exempt bonds in Internal Revenue Code (“IRC”) Section 42 eligible basis. The amortization deductions of construction loan fees during the production period of IRC Section 168 property that are allocable under IRC Section 263A to the adjusted basis of that property can be included in a LIHTC project’s eligible basis under IRC Section 42(d)(1). We request that similar treatment be afforded to the amortization deductions of tax-exempt bond issuance costs. For further discussion, we reference our

comments submitted the Internal Revenue Service on March 28, 2014 with respect to the draft “Audit Technique Guide Section 42, Low-Income Housing Credit.”

3. We are requesting guidance under IRC Section 42(j), which provides for recapture of LIHTCs, in relation to tax credit recapture for projects that have received Section 1602 subawards under the American Recovery and Reinvestment Act of 2009 (“Section 1602”). Treasury has expressed its intentions to issue separate recapture procedures for Section 1602 fund subawards; however, no procedures have yet been issued. For further discussion, we reference our letter originally submitted to the Department of the Treasury on July 30, 2009 and reissued August 2, 2010 with respect to recapture rules surrounding Section 1602 of the American Recovery and Reinvestment Act of 2009.
4. We are requesting guidance regarding the application of IRC Section 42 requirements as they conflict with the requirements of other affordable housing governmental assistance programs. In certain circumstances, the construction of affordable housing projects requires additional financing from other governmental assistance programs. The funds provided by these assistance programs may include restrictions that conflict with program guidance under IRC Section 42. Guidance is needed on whether IRC Section 42 projects can be held harmless by virtue of complying with other affordable housing governmental assistance program requirements. For further discussion, we reference our letter submitted to the Internal Revenue Service on February 27, 2013 with respect to conflicting affordable housing program requirements.
5. We are requesting guidance under IRC Section 142 on whether a low-income housing project that has lost its rural designation is held harmless at the highest national non-metro median income that the project achieved if its income limit was originally determined using the national non-metro median income afforded to rural projects under IRC Section 42(i)(8). For further discussion, we reference our letter submitted to the Internal Revenue Service on January 30, 2013 with respect to rural designation uncertainty.
6. We are requesting guidance on the documented legislative intent included in the technical explanation prepared by the Joint Committee on Taxation explaining revenue provisions of the Health Care and Education Affordability Reconciliation Act of 2010, footnote 344 (“Footnote 344”). Footnote 344 clarified that the codification of the economic substance doctrine is not intended to disallow tax credits in a transaction that achieves the basic purpose or plan for which the tax credits were intended by Congress. In addition, we request that Treasury provide guidance as to the applicability of Footnote 344 to Section 1602. For further discussion, we reference our letter submitted to the Internal Revenue Service on October 27, 2010 with respect to guidance related to codification of economic substance and low-income housing tax credits.

Furthermore, on behalf of the members of the LIHTC Working Group, we would like to commend the Internal Revenue Service on including issues in the 2014-2015 Priority Guidance Plan to further improve and clarify guidance surrounding IRC Section 42, and we recommend that the Internal Revenue Service continue to include in the Priority Guidance Plan for 2015-

2016 the following issues currently on the Priority Guidance Plan for 2014-2015 that were not addressed during the plan year.

1. Temporary regulations concerning renewable energy and maximum gross rent under IRC Section 42.
2. Guidance under IRC Section 42 relating to the application of the design and construction accessibility requirements under the Fair Housing Act.
3. Regulations under IRC Section 42 relating to compliance monitoring, including issues identified in Notice 2012-18.
4. Guidance concerning the exception under IRC Section 42(d)(6) for any federally or State assisted building.
5. Final regulations concerning utility allowances under IRC Section 42(g)(2)(B)(ii) for sub-metered buildings. Proposed regulations were published on August 7, 2012.

The LIHTC Working Group has submitted previous comment letters to the Internal Revenue Service and the Department of the Treasury requesting guidance on the above-mentioned issues. A copy of these comment letters, as referenced above, can be reviewed at www.lihtcworkinggroup.com. Please contact us if you would like us to resubmit our comment letters for your review.

We appreciate the opportunity to comment on the 2015-2016 Priority Guidance Plan. The furtherance of these issues will help the LIHTC program better provide affordable housing in our communities by providing clarification and lessening the risks in the LIHTC program compliance. Thank you in advance for your time and careful consideration of these issues. Please do not hesitate to contact us if you have any questions regarding our comments or if we can be of further assistance.

THE LIHTC WORKING GROUP

Very truly yours,

NOVOGRADAC & COMPANY LLP



by

Stacey Stewart