

December 29, 2020

Internal Revenue Service

Re: Low-Income Housing Credit Average Income Test Regulations

To Whom It May Concern:

The Indiana Housing and Community Development Authority (IHCDA) is the state housing finance agency (HFA) and Low-Income Housing Tax Credit (LIHTC) allocating agency for the State of Indiana. In this role, IHCDA is tasked with allocating LIHTC pursuant to its Qualified Allocation Plan (QAP) and monitoring LIHTC projects for compliance.

Upon careful review of the proposed Average Income Test Regulations, IHCDA believes that the proposed rule creates a high risk of noncompliance with the minimum set-aside (which results in a complete loss of credits) and an unnecessarily inflexible method of designating units. IHCDA agrees with the concerns raised and solutions proposed by the National Council of State Housing Agencies (NCSHA) in its written response to this proposed regulation. Rather than duplicating that response, IHCDA respectfully requests that the IRS consider those concerns and solutions.

In addition, we offer the following comments:

- Disallowing unit designations to float throughout the project is unnecessarily inflexible. Presumably, the reason for this proposed regulation is for ease of implementation. However, for decades, HFAs have imposed lower income and rent restrictions on LIHTC units- i.e. restrictions below the federal minimum set-aside low-income definitions of 50% AMI or 60% AMI. For example, IHCDA rewards points in through its QAP competitive scoring process for developers who commit to reserving units at 30% and 40% restrictions in 20/50 or 40/60 minimum set-aside projects. These lower restrictions are codified in the extended use agreement recorded against the property and are tracked by both IHCDA and the Owner Agent (OA). While there are a set number of units at each AMI level, the unit designations can float between units as long as the overall unit mix is maintained. HFAs and OAs have years of experience tracking floating units in the LIHTC program to comply with state requirements and have implemented appropriate



software systems that allow for this tracking and reporting. Floating units are also frequently used in other federal affordable housing programs such as the HOME Investment Partnerships Program and Section 8. Simply put, floating units are an established practice in the affordable housing industry. Both HFAs and OAs are well prepared to compliantly handle this complexity.

- IHCDA believes the explicit Congressional intent behind the Average Income minimum set-aside was to expand the income eligibility of the tax credit program to better serve lower income households (20%, 30%, and 40% AMI) and to newly serve higher income households (70% and 80% AMI) in need of affordable housing. IHCDA supports this intent and believes that ensuring access to LIHTC units for households at these additional income levels is critical to our mission of providing affordable housing. Based on preliminary conversations in reaction to this proposed rule, we fear that if the rule is finalized as currently written, few developers and investors will elect the Average Income Test due to the increased risks of credit loss and the inflexibility of disallowing floating units. If the result of this rule is indeed a significant reduction in the amount of LIHTC projects electing the Average Income minimum set-aside election, then the program will not succeed in serving households at those additional income levels.

Thank you for the opportunity to provide written comments on the proposed Low-Income Housing Credit Average Income Test Regulations and for the Internal Revenue Service's continued partnership with HFAs to administer this critical program. Please feel free to contact me at mrayburn@ihcda.in.gov or 317-233-9564 if you have any questions about these comments or if IHCDA can be of any additional assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Rayburn', written in a cursive style.

Matt Rayburn
Deputy Executive Director & Chief Real Estate Development Officer