

December 22, 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 Executive Director of the California Housing Finance Agency (CalHFA), 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 CalHFA and all other state Housing Finance Agencies, and further elaborate on the specific impact these regulations will have in California.

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, CalHFA developed policies for implementing the AIT in California. 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, California has financed over 120 Housing Credit properties, representing over 13,000 units, for which the sponsors have either already chosen the AIT minimum set-aside on Form 8609 or have indicated to that it is their intent to do so, based on the latest available data. Of these units, over 6,500 units are below 50% Area Median Income (AMI). We are very concerned about the impact this rule would have on these properties if made final as written.

In addition, on December 21st, 2020 California adopted a new fair housing scoring criteria for its private activity bonds and 4% LIHTCs that requires many projects to include a minimum 40% range of AMIs in their projects. This requirement is crucial in combating systemic racial segregation in affordable housing. It will also ensure that residents in 4% LIHTC properties have access to the ladder of opportunity. We are concerned that it will be impossible to implement this important fair housing requirement if the IRS' new AIT minimum set-aside rule becomes final.

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,

A handwritten signature in black ink that reads "Tia Boatman Patterson". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Tia Boatman Patterson
Executive Director
California Housing Finance Agency