

Satisfying the Required Qualified Allocation Plan Preference in Section 42(m)(1)(B)(ii)(III) (Concerning Concerted Community Revitalization Plans)

Notice 2016-77

PURPOSE

This notice reminds taxpayers that a project is not described in § 42(m)(1)(B)(ii)(III) of the Internal Revenue Code unless its development contributes to a concerted community revitalization plan.

BACKGROUND

Section 42 sets forth rules for determining a building's amount of the low-income housing credit (LIHTC), which § 38 allows as a credit against income tax.

Section 42(h)(1)(A) provides that the amount of the credit determined under § 42 for any taxable year for any building may not exceed the housing credit dollar amount allocated to the building.

Section 42(m) requires every allocation of housing credit dollar amount to be made pursuant to a qualified allocation plan (QAP). The Code specifies certain preferences and selection criteria that each QAP must contain.

Section 42(m)(1)(B)(ii) requires every QAP to contain three preferences. Under the third of these, the QAP must give "preference in allocating housing credit dollar amounts among selected projects to ... projects which are located in qualified census tracts ... *and the development of which contributes to a concerted community revitalization plan....*" Section 42(m)(1)(B)(ii)(III) (emphasis added). Qualified census tracts are designated by the U.S. Department of Housing and Urban Development and

are characterized by either the percentage of households below a certain income threshold or by a poverty rate above a certain threshold.

In some cases, state or local agencies allocating housing credit dollar amounts have given preference to projects that are located in qualified census tracts without regard to whether the projects contribute to a concerted community revitalization plan. In some other cases, because development of new multifamily housing benefits a neighborhood, the development of a LIHTC project, without more, has been treated as if it were such a plan.

DISCUSSION

Placing LIHTC projects in qualified census tracts risks exacerbating concentrations of poverty. Therefore, § 42(m)(1)(B)(ii)(III) grants a preference to that placement only when there is an added benefit to the neighborhood in the form of the project's contribution to a concerted community revitalization plan.

Although the Department of the Treasury and the Internal Revenue Service (the Service) have not issued guidance defining the term "concerted community revitalization plan," the preference fails to apply unless, not later than the allocation, a plan exists that contains more components than the LIHTC project itself.

REQUEST FOR COMMENTS

The Department of the Treasury and the Service are considering providing guidance to clarify the preference in § 42(m)(1)(B)(ii)(III), and they request comments from the public regarding the contents of that guidance. Comments should be submitted by February 10, 2017. Comments may be mailed to:

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2016-77)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

or hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to:

Courier's Desk
Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2016-77)
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Alternatively, persons may submit comments electronically via e-mail to the following address:

Notice.Comments@irsounsel.treas.gov.

Persons should include "Notice 2016-77" in the subject line. All comments submitted by the public will be available for public inspection and copying in their entirety.

DRAFTING INFORMATION

The principal author of this notice is James W. Rider, Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, please contact Mr. Rider at (202) 317-4137 (not a toll-free call).