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REG-114084-04

Eliot Spitzer
Governor

Deborah VanAmerongen
Commissioner

New York State Division of Housing and Community Renewal
25 Beaver Street
New York, NY 10004

September 17, 2007

SEP 1 8 2007

LEGAL PROCESSING DIVISION
PUBLICATION & REGULATIONS
BRANCH

Internal Revenue Service
CC:PA:LPD:PR (REG-114084-04)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Section 42 Qualified Contract Provisions, RIN 1545-BC20

Dear Sir or Madam:

Thank you for the opportunity to comment on the proposed Section 1.42-18 (the proposed regulations). Since 1987 the Division of Housing and Community Renewal has successfully administered the Low-Income Housing Credit Program (Credit Program) in its role as the lead Housing Credit Agency for New York.

The Credit Program is an important housing resource in New York and has provided assistance through our Housing Credit Agencies to over 1,000 projects with more than 40,000 units.

Our comments deal specifically with Section 1.42-18(b)(3) of the proposed regulations which in pertinent part state:

> "The fair market value of the non low-income portion of the building is determined at the time of the Agency's offer of sale of the project to the general public. This valuation must take into account the existing and continuing requirements contained in the commitment for the building. The non low-income portion also includes the fair market value of the land underlying the entire <u>building</u>, both the non low-income portion and the low-income portion regardless of whether the project is entirely low-income..." Emphasis added.

The Division believes this component of the proposed regulations will have an adverse effect upon our efforts to preserve affordable housing in New York by artificially inflating the value of the land underlying the project. As is acknowledged in the Background to the Draft Regulations, the value of the underlying land is directly related to the value of the building. Attempting to impute a "fair market value" to the underlying land will artificially inflate the value of that land, increase the qualified contract price and decrease the likelihood of finding a qualified purchaser willing to pay the qualified contract price and continue to operate the project as a low income project. As a result of this misguided draft regulation, the low income units, the federal subsidies and any state and/local subsidies will be permanently lost.

New York State recommends that the valuation of the land underlying the low-income portion of a credit building should include only that value contributed by the investor.

If you have any questions regarding my comments on the proposed regulation please contact Joseph Fryer at (518) 486-6263.

Sincerely,

David B. Cabrera
Deputy Commissioner