LIHTC WORKING GROUP
hosted by Novogradac & Company LLP

June 7, 2019

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2019-30)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

RE: Notice 2019-30, 2019-2020 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 2019-2020:

1. We are requesting guidance under IRC Section 163(j), as amended by Section 133301(a) of the Act, regarding the treatment of interest expense in multi-tiered partnership structures engaged in a real property trade or business. In multi-tiered partnership structures, a partnership entity is the investor limited partner (the "Upper-Tier") of a lower-tier partnership entity (the "Lower-Tier") that is a real property trade or business. Some Upper-Tier investor partnerships incur bridge loan interest, which is oftentimes capitalized into their investments in Lower-Tier real property trade or business partnerships. For interest that would otherwise be eligible for deduction, it is unclear whether interest expense at the Upper-Tier investor partnership level is business or nonbusiness interest expense. Furthermore, if it is business interest expense, it is unclear if such interest is "properly allocable" to the Lower-Tier real estate activity or if the Upper-Tier investor partnership is eligible to similarly make a real property trade or business election, as is the case with a Lower-Tier real property trade or business partnership.

2. We are requesting guidance under IRC Section 42 regarding the provision in the fiscal year 2018 omnibus appropriations law that created an income-averaging option in addition to the existing low-income requirements. The new provision allows a taxpayer to elect for certain apartments in a LIHTC property to be available to residents with incomes up to 80% of the area median income ("AMI"), as long as the development-wide average income is 60% or less than AMI. On May 31, 2018, a revised Form 8609, Low-Income Housing Credit Allocation and Certification, was issued, which provides taxpayers the option to choose "average income" as a minimum set-aside election. However, both the instructions to Form 8609 and Form 8823, Low-Income Housing Credit Agencies Report of

Noncompliance or Building Disposition, have not been updated to reflect this revision. Furthermore, we are requesting guidance on the rules for determining the next available unit designation in situations in which more than one tenant in units of differing income level designations become over income simultaneously.

3. We are requesting guidance regarding LIHTC properties that suffer a casualty loss in an area that is not a federally declared disaster area. Chief Counsel Advice 200912012 provides that if a building is damaged by a casualty loss and fully restored and rented to low-income tents within the same taxable year, then there is no recapture and no loss of tax credits. However, if the building is not restored by the end of the taxable year, no credit would be allowed for the entire taxable year, even if the reasonable restoration period of 24 months (as defined in Revenue Procedure 2007-54) extends into the next taxable year. We recommend that casualty loss relief for a LIHTC property not located in a federally declared disaster area be applied in a manner similar to the relief offered by Revenue Procedure 2007-54, which allows for a LIHTC property in a federally declared disaster area to continue claiming tax credits, even if its units are not suitable for occupancy as long as the units are restored within a "reasonable period of time," which is defined as a period of time that cannot exceed 24 months. We request formal guidance on this matter. 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." A copy of this comment letter, as referenced above, can be reviewed at www.lihtcworkinggroup.com.

Additionally, on behalf of the members of the LIHTC Working Group, we recommend that the Internal Revenue Service include in the Priority Guidance Plan for 2019-2020 the following issue that was removed from the Priority Guidance Plan for 2015-2016 that was not addressed during the plan year:

1. Guidance concerning the exception under IRC Section 42(d)(6) for any federally or State assisted building.

We appreciate the opportunity to comment on the 2019-2020 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 at dirk.wallace@novoco.com or (330) 365-5364 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

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