June 9, 2023

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2023-24)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

RE: Recommendations for 2023-2024 Priority Guidance Plan

On behalf of the A Call to Invest in Our Neighborhoods (ACTION) Campaign, we appreciate the opportunity to make recommendations to the Internal Revenue Service (IRS) and U.S. Department of the Treasury (Treasury) for their 2023-2024 Priority Guidance Plan. The ACTION Campaign is a national, grassroots coalition of approximately 2,400 national, state, and local organizations and businesses calling on the Administration and Congress to protect, expand, and strengthen the Low-income Housing Tax Credit (Housing Credit).

The ACTION Campaign supports the enactment of the bipartisan Affordable Housing Credit Improvement Act, S.1557/H.R.3238, which is comprehensive legislation that would make numerous modifications to the Housing Credit program. As outlined in this letter, there are several provisions of the Affordable Housing Credit Improvement Act that could be addressed via IRS/Treasury regulation rather than congressional action. We encourage you to include these in the 2023-2024 Priority Guidance Plan.

The ACTION Campaign's specific recommendations follow.

(1) Implement Violence Against Women Act Protections for Housing Credit Tenants
The 2013 reauthorization of the Violence Against Women Act (VAWA) provided protections for victims of domestic violence, dating violence, sexual assault, and stalking living in Housing Credit properties. However, there are outstanding questions about implementation of VAWA protections in Housing Credit developments; and because VAWA made no conforming changes to the Internal Revenue Code, IRS guidance is needed.

Section 205 of the Affordable Housing Credit Improvement Act would:

- Require all Housing Credit long-term use agreements to include VAWA protections;
- Clarify that an owner should treat a tenant who has their lease bifurcated due to violence covered under VAWA as an existing tenant and should not recertify the tenant's income as if they were a new tenant at initial occupancy; and
- Clarify that victims under VAWA qualify under the special needs exemption to the Housing Credit general public use requirement.

We have pursued these modifications through the legislative process only because IRS has not acted. The IRS has the authority to issue this guidance now without further action by Congress.

It has been a decade since the Housing Credit became a protected program under VAWA. IRS action is long overdue.

(2) Provide Greater Flexibility for Properties Suffering Casualty Loss
Current IRS guidance generally requires owners of properties that suffer a casualty loss to have the property restored by the end of the calendar year, regardless of when during the year the casualty occurred. The exception to this is if the casualty is associated with a presidentially declared disaster, in which case, the state Housing Credit agency sets an appropriate deadline for restoration, not to exceed 25 months.

In many instances, the calendar year-end deadline is inappropriate. For example, if a property suffers a fire in December that causes the units to be unavailable for occupancy as of the end of the calendar year, the owner will face a loss of Credits, even though the property was in service for the majority of the year. Conversely, if a property suffers a fire in January and the units are unavailable for most of the year, but back in service by December 31, the owner would not suffer a loss of Credits under current IRS policy.

Section 301 of the Affordable Housing Credit Improvement Act would provide greater flexibility for casualty loss restoration. Rather than a one-size-fits-all calendar year deadline, it would delegate authority to the state Housing Credit agency to determine the appropriate casualty loss deadline in all instances. For casualty loss not related to a presidentially declared disaster, the state could allow up to 25 months, and for casualty losses that are related to a presidentially declared disaster, the state could allow up to 37 months. This would provide a more predictable and reasonable window to repair and reoccupy properties after damage, as determined on a case-by-case basis.

Again, the IRS does not need to wait for Congress to act and should modify its regulations now to improve the casualty loss restoration process by delegating authority to the state agencies as proposed in the Affordable Housing Credit Improvement Act.

(3) Include Relocation Expenses in Rehabilitation Expenditures
When an occupied building is rehabilitated, it is often safer, more expedient, and more efficient if tenants are relocated while the work is being done. In 2015, the IRS finalized the Audit Technique Guide for the Housing Credit, which provided guidance that the cost of relocating tenants in properties not demolished is expensed as ordinary business income and thus deductible.[1]

However, under the section 280B of the Internal Revenue Code (IRC), the costs of relocating tenants out of an acquired building that will be demolished may be associated with the demolition and, if so, are capitalized to the land.[2] Such IRS guidance corresponds to Revenue Ruling 70-473, which states that relocation allowances required to be paid to the owner-occupants and tenants of the dwellings to be razed in connection with an urban renewal program were considered additional costs of the land that are to be capitalized and are not deductible as ordinary and necessary business expenses under IRC section 162(a). Thus, IRS guidance provides different tax treatment for relocation costs depending on whether or not a property is demolished.

[1] Audit Technique Guide, Section 42, Low-Income Housing Credit, Appendix C
[2] Audit Technique Guide, Section 42, Low-Income Housing Credit, Appendix C

Because the IRS does not allow relocation costs to be capitalized in cases when a building is not demolished, developers of Housing Credit projects may not have the resources needed to relocate tenants and may instead be forced to undertake the rehabilitation with the residents in place. This makes rehabilitation far more difficult and time-consuming, potentially adding unnecessary costs. In some instances, these obstacles make rehabilitation financially unfeasible.

Section 303 of the Affordable Housing Credit Improvement Act would allow tenant relocation costs incurred in connection with the rehabilitation of a building to be capitalized as part of the cost of the rehabilitation, consistent with the treatment of similar costs.

We request that the IRS re-evaluate the guidance in the Audit Technique Guide addressing the treatment of relocation costs incurred for the rehabilitation of a building assisted by the Housing Credit. The costs to relocate tenants from a building incurred solely by reason to rehabilitate the building should be capitalized as an indirect cost to the building under IRC section 263A, and thus be includible in eligible basis under IRC section 42. The IRS can do this without Congressional action.

(4) Better Restrict Planned Foreclosure

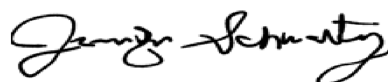
In the rare instances in which a Housing Credit property is acquired by foreclosure or instrument in lieu of foreclosure, the Internal Revenue Code provides that the affordability restrictions are terminated unless the Secretary of the Treasury determines that the acquisition is part of an arrangement with the taxpayer the purpose of which is to terminate the affordability restrictions. However, it is not practical for the Secretary to make this determination on a case-by-case basis; and in practice, we are aware of no instances in which Treasury has intervened in a foreclosure.

The Affordable Housing Credit Improvement Act (Section 310) would allow either Treasury or the state Housing Credit agency to make this determination. However, we believe Treasury has the authority to delegate this responsibility to state Housing Credit agencies now and should issue guidance facilitating this.

Specifically, Treasury should require the owner or successor acquiring the property to provide states with at least 60 days written notice of its intent to terminate the affordability period so that the state has time to assess the legitimacy of the foreclosure. This would strengthen state oversight of the program and reduce the potential for developments to lose affordability restrictions before the full affordability period has elapsed.

The ACTION Campaign appreciates the opportunity to provide input on the 2023-2024 priority guidance plan. Please do not hesitate to reach out to ACTION co-chairs, Scott Hoekman with Enterprise Community Partners (shoekman@enterprisecommunity.com) or Jennifer Schwartz with the National Council of State Housing Agencies (jschwartz@ncsha.org), with any questions.

Sincerely,



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