



May 5, 2020

Ms. Nicole Cimino
Branch Chief
Office of Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Mr. Michael Novey
Associate Tax Legislative Counsel
Office of Tax Policy
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Request for Relief from Various Low-Income Housing Tax Credit (LIHTC) Requirements due to the COVID-19 Pandemic

Dear Ms. Cimino and Mr. Novey:

We are writing this letter on behalf of the LIHTC Working Group. The members of the working group are participants in the low-income housing tax credit (LIHTC) industry who work together to help resolve technical LIHTC program issues and provide recommendations to make the program even more efficient in delivering benefits to help build affordable housing. Our group includes nonprofit and for-profit developers, syndicators, investors, accountants and lawyers.

The challenges for real estate development and operations resulting from the COVID-19 pandemic are well documented. These circumstances are particularly problematic for LIHTC developments. Therefore, the working group urges the Internal Revenue Service (IRS) and the U. S. Department of the Treasury (Treasury) to issue guidance providing the relief enumerated below as soon as possible.

1. Provide a 12-month extension of the 10% Test deadline for carryover allocations as required by Internal Revenue Code (IRC) Section 42(h)(1)(E)(ii) and IRS regulation 1.42-6.
2. Provide a nationwide 12-month extension to the normal 24-month period to meet the minimum rehabilitation expenditure deadline required by IRC Section 42(e)(3) and IRC Section 42(e)(4) for rehabilitation expenditures placed in service in taxable years ending in 2020-2022.
3. Provide a 12-month extension of the placed in service deadline as required in IRC Section 42(h)(1)(E)(i).



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4. Provide at minimum, a 12-month extension of the 25-month rehabilitation period currently allowed under IRS Revenue Procedures 2014-49 and 2014-50 to properties that suffered a casualty loss due to a presidentially declared major disaster in the 25-month period prior to the onset of COVID-19.
5. Provide a 12-month extension of the year-end deadline for property restoration for any property that suffers a casualty loss, regardless of the cause.
6. Provide a 12-month moratorium on both physical inspections and tenant file reviews as required by IRS regulation 1.42-5. LIHTC allocating agencies (Agencies) should continue to monitor emergency work orders during this time, and should be allowed to continue or resume inspections depending on their assessment of the situation in their state and their ability to do so, but there should be no penalty for states or owners if inspections are not completed during this time.
7. Provide a 12-month moratorium on tenant income recertification requirements. Agencies should be allowed to continue or resume requiring property managers to conduct recertifications, depending on their assessment of the situation in their state and their ability to do so.
8. Provide a 12-month extension for all open noncompliance corrective action periods.
9. Suspend the implementation of IRS regulation 1.42-5, which will increase the number of required compliance monitoring physical inspections even further than required under current regulations and exacerbate the inspection backlog.
10. Provide guidance clarifying that the temporary closure of property amenities and common space facilities during the duration of the crisis (with the exception of laundry facilities) will not negatively impact a property's eligible basis and result in loss of LIHTCs.
11. Amend the instructions to Form 8609-A to allow taxpayers to claim LIHTCs without a Form 8096-A executed by an Agency if due to reasonable cause and not due to willful neglect. The problem addressed by this action predated the declaration, but the COVID-19 emergency has made it substantially worse.

Conclusion

We acknowledge that some of what we are requesting may be available to certain properties under Revenue Procedures 2014-49 and 2014-50. However, we also believe that these procedures are inadequate to fully address the situation at hand. Additionally, the relief requires action by Agencies. Although these entities have been impressively responsive, they are overtaxed.

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Thank you in advance for your time and careful consideration of these issues. Please do not hesitate to contact us 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

A handwritten signature in blue ink, appearing to read "Dirk A. Wallace". The signature is fluid and cursive, with a long horizontal stroke at the end.

by Dirk A. Wallace, Partner