NELSON MULLINS BROAD AND CASSEL

Federal and State Tax Law Changes Affecting Affordable Housing Panel

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August 28, 3:45 p.m.-5:00 p.m.

Changes from Tax Reform That Affect Affordable Housing

- Tax Rates
- Income Averaging Rules
- Historic Tax Credit Delivery Schedule
- New Depreciable Lives/ Bonus Depreciation
- 50% Ad Valorem Property Tax Exemption
- Qualified Business Income Deduction (Mike)
- Opportunity Zones (Mike)

Tax Rates

- Affected Credit Pricing
- Affected Credit Pricing
- Affected Credit Pricing
- Anything else?

New Income Averaging Rules

- Allows a developer to select a new unit mix and include persons earning up to 80% of area median income (AMI)
- Must still qualify for Housing Credit units so long as the overall income of qualified tenants does not exceed 60% of AMI
- This can be a great program to help alleviate work force housing issues
- Can be used for tax-exempt bond transasctions, but still need to meet the minimum bond set-aside elections (i.e., 20 at 50 or 40 at 60).

Income Averaging - The Finer Details

- IRS has published a new 8609 form to reflect income averaging option.
- Designated income/rent levels may only be set at 10 percent increments beginning at 20% of AMI (20, 30, 40, etc.)
- Income averaging applies to rent limits as well as income limits
- Housing Credit developments that have already made a minimum set-aside election may not revoke them. Owners cannot switch from one set-aside system to income averaging.

Income Averaging - Open Questions

- Unit designation mechanics
- Next available unit rule mechanics
- Treat multi-building developments as a single property
- Address compliance issues

Income Averaging - Policy Questions

- How to address economic feasibility issues- Importance of market studies showing sufficient demand at each income targeting level – How many 60% units do we need?
- How will HFAs incorporate this into their programs
- Will State Agencies enact policies that curb the usefulness of this program – for example, can a Developer use this program to offset deeper skewing set-asides that were used to obtain other financing in order to support work-force housing?

Year 15 Property Tax Exemption 196.1978, part 2

- 50% Property Tax Exemption for certain affordable housing properties
- Must be subject to a FHFC restrictive agreement for at least 15 years
- Need to have at least 70 units occupied by tenants earning up to 80% of AMI
- Need to apply annually for the exemption
- Questions, and how:
  - Over income tenants and the next available unit rule
  - When does the 15 years start - EUA recorded much later than placed in service