

October 28, 2022

Internal Revenue Service  
CC:PA:LPD:PR (Notice 2022-50)  
Room 5203  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

To Whom It May Concern:

The undersigned national associations represent for-profit and non-profit owners, operators, developers, lenders, property managers, and other real estate professionals involved in commercial real estate, as well as housing cooperatives involved in the provision of rental housing, both affordable and conventional. We are writing in response to the request for information in Notice 2022-50 regarding implementation of the elective direct-payment provisions under new Section 6417 and the elective credit transfer provisions under new Section 6418 of the Internal Revenue Code (IRC) as established in the *Inflation Reduction Act (IRA) of 2022*.

We respectfully request that forthcoming regulations and/or other guidance implementing these provisions enable partnerships comprised of both taxable and tax-exempt entity partners to elect to benefit from the direct payment or transfer of eligible tax credits. If this issue is not specifically addressed, we are concerned that partnerships with both taxable and tax-exempt partners could be precluded from benefitting from these important opportunities to access the incentives Congress provided in the *IRA* to encourage investments in clean energy across the nation.

The *IRA* enables qualifying tax-exempt entities to elect to receive the direct payment of certain tax credits and for-profit entities to transfer those credits to other taxpayers. For the commercial real estate sector, the most relevant eligible tax credits include the energy credit (IRC Section 48) and the clean electricity investment credit (IRC Section 48E) once it becomes effective in 2025. In the case of partnerships owning property qualifying for these eligible credits, both the direct-payment and transferability provision enacted in the *IRA* require that the partnership make the election for direct payment or to transfer the credit. No election may be made by a partner. The statutory language is unclear how a partnership with both for-profit and tax-exempt partners affects these elections. Given that many commercial developments and multifamily projects, including some utilizing the Low-Income Housing Tax Credit, are composed of both for-profit and tax-exempt partners (in some instances including pension funds), this could prevent such partnerships from fully benefiting from the *IRA* and undermine the policy goal of encouraging investments in clean energy.

IRC Section 6417(a) allows only “applicable entities,” including tax-exempt organizations as well as state, local, and tribal governments (but generally not for-profit entities), to elect the direct payment of eligible tax credits. This raises the issue of whether a partnership with both taxable and tax-exempt partners can be considered an applicable entity. If not, tax-exempt partners will be unable to qualify for the direct payment of credits. At the same time, IRC Section 6418(f)(2), prohibits applicable entities from transferring qualifying tax credits. This again raises the question of whether a partnership with both taxable and tax-exempt partners can be eligible to transfer any part of its qualifying credits. On a combined basis, there is the concern that a

partnership with both taxable and tax-exempt partners could be precluded entirely from accessing the benefits of these credits through direct payment and/or transferability as Congress intended to encourage investments in clean energy.

We believe that the underlying policy of the *IRA* is to allow tax-exempt entities to receive the direct payment of eligible tax credits and to allow for those not receiving direct payments to transfer eligible tax credits as a means of promoting the full utilization of these incentives. Accordingly, we respectfully recommend the following to enable partnerships with both taxable and tax-exempt entities to utilize direct payment and/or transfer of tax credits, as applicable to their partners, while respecting the underlying policy the *IRA* seeks to achieve.

For purposes of the election described in IRC sections 6417(c)(1), a partnership should be permitted to elect direct payment with respect to the share of qualified tax credits allocable to its tax-exempt partners under the partnership agreement. A partnership should be able to make an election under IRC section 6418(c)(1) to the extent it does not elect direct payment with respect to the share of the qualified tax credits allocable to its eligible recipients of direct payments. In either case, the proceeds – the direct payment or cash received for transferred credits – should be restricted to the partners associated with the relevant election.

By providing partnerships with this kind of flexibility to monetize the qualified credits, the regulations would help the multifamily housing sector to participate in the expansion of clean-energy and energy-efficient-home investments as Congress intended, but without the inefficiency of having to substantially reform existing property ownership arrangements. This approach is also in keeping with the statute since the imposition of a pass-through entity like a partnership or limited liability company should not change the results that the tax-exempt or for-profit parties would be able to achieve through direct ownership of the clean-energy property.

While the forgoing is our preferred approach, we strongly recommend that the regulations clarify that a partnership with both for-profit and tax-exempt entities is not disqualified from both the direct-payment election and the transferability election. As noted above, a more restrictive election approach will likely have financing implications and could limit the viability for adding clean-energy and energy-efficient-home investments, especially in cases where existing financing arrangements are difficult to change like multifamily housing.

Thank you for considering our views. We look forward to working with you on implementing these provisions and promoting investment in clean energy.

Sincerely,

National Multifamily Housing Council  
Council for Affordable and Rural Housing  
ICSC  
Nareit  
National Affordable Housing Management Association  
National Apartment Association  
National Association of Home Builders  
National Leased Housing Association  
The Real Estate Roundtable