



400 North Columbus Street
Suite 203
Alexandria, VA 22314
(703) 683-8630
www.nahma.org

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

Holly Porter
Associate Chief Counsel
Office of Tax Policy Passthroughs and Special
Industries, Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Subject: Amendments to the Low-Income Housing Tax Credit Compliance-Monitoring Regulations

Dear Mr. Novey and Ms. Porter:

On behalf of the National Affordable Housing Management Association (NAHMA), our members request your consideration in examining the impacts of recent amendments to Low-Income Housing Credit (LIHTC) compliance-monitoring regulations, published February 26, 2019 (RIN 1545-BL39). **Based on our members' experiences with the new regulations, we strongly urge the Agency to rescind the adjustments put forth last year with regard to reasonable notice and minimum sample size: as an alternative, request that the Agency utilize our suggestions for incentivizing portfolio compliance and for achieving portfolio oversight for LIHTC communities.**

NAHMA members take great pride in providing quality housing that offers a safe, healthy environment for residents across the country. As property owners and managers, NAHMA members value the Agency's efforts to incentivize portfolio compliance and implement robust portfolio oversight, but we strongly disagree with the newly imposed method for achieving those goals. In fact, NAHMA also believes that, as more states implement the new compliance-monitoring amendments, the regulations will continue to create hardship for residents and will further erode the confidence and integrity of the Agency's physical inspections and file reviews as a tool for assessing the state of the portfolio.

As anticipated in our communication to you on May 3, 2019, NAHMA has learned that as these final housing credit compliance-monitoring regulations have been incorporated into state Qualified Allocation Plans (QAPs), they result in significant logistical and feasibility challenges for housing managers and residents through the following three regulatory changes:

- The compliance monitoring amendments drastically shorten the reasonable notice for physical inspections and income certifications to 15 days, creating undue hardship for property owners and agents, residents, and inspectors without achieving measured gains in portfolio oversight and regulatory compliance;
- The amendments also adjust the minimum sample size of units for inspection in housing credit properties, resulting in a significantly higher sample size for some LIHTC communities, particularly small and rural communities that are already heavily burdened; and

- Finally, the “all buildings” rule only exacerbates the additional burden created by the new regulations, without adding to the quality of the resident experience in LIHTC communities.

These hardships on owners, managers, inspectors, and residents will only increase as more states implement the new regulations into their QAPs. Based on the examples outlined below from our nationwide membership, we request the following actions for the Agency to improve its compliance monitoring commitments:

- **We urge the Agency to withdraw the amendments put forth last year with regard to reasonable notice and minimum sample size, and to reopen the regulations for public comment;**
- Further, the Agency should reinstate the previous, temporary regulation that allowed the lesser of 20-percent of the total number of low-income units or the minimum unit sample size set forth in the LIHTC Minimum Unit Sample Size Reference Chart;
- The Agency should emphasize consistent regulatory implementation across the portfolio by issuing clarifying guidance to Housing Finance Agencies. In particular, the clarifying language should emphasize regulatory intent and consistent application while minimizing variable interpretations of the reasonable notice requirements;
- Rather than imposing a blanket policy change that severely impacts the entire portfolio, the Agency should target any shortened inspection notice targeted at troubled properties with a history of noncompliance, while providing extended notice periods for high-performing properties as an incentive for consistently positive behavior; and
- The Agency should reverse its “all buildings” rule for inspections, allowing inspectors to instead apply the minimum sample size on a project-wide basis (across a community with common ownership and financing, regardless of the number of separate buildings).

NAHMA’s membership represents 75 percent of the affordable housing management industry, and includes its most distinguished multifamily owners and management companies across the country. Our membership shares the agency’s goal of providing quality affordable housing to low-and moderate-income households, in particular by consistently maintaining subsidized properties in good physical condition throughout the year. Further, NAHMA provides a certification program that recognizes the outstanding achievements of property managers and owners who provide high-quality, affordable multifamily rental housing; through this “Communities of Quality” (COQ) program, NAHMA member properties from across the country continue to be nationally recognized not just on the physical and financial condition of the properties, but also on the quality of life they offer to residents.

We thank you for your urgent consideration of this matter, and we look forward to working together to advance our shared goal of providing quality housing and improving economic opportunity for all Americans. Please do not hesitate to reach out with questions to Kris Cook, NAHMA’s Executive Director, at 703-683-8630 x113.

Sincerely,



Kris Cook, CAE
Executive Director

Enclosures

NAHMA Member Experiences with the Updated LIHTC Compliance-Monitoring Regulations

NAHMA members have experienced the following logistical, financial, and feasibility challenges under the new regulations; as more states implement the changes into their QAPs, the challenges are only expected to grow, presenting significant burden on especially smaller properties and management companies:

1. Shortened Reasonable Notice Period Creates Logistical Hardship Across LIHTC Portfolio

The new regulations drastically shorten the reasonable notice for physical inspections and income certifications to 15 days, cutting the time available for scheduling, advance file preparation, and travel arrangements for inspectors and managers, and reducing the appropriate notice that owners are able to give to residents ahead of an in-unit inspection.

- a. This rule change disproportionately impacts smaller properties with fewer staff, or rural portfolios with spread-out and hard-to-reach communities: In order to have appropriate staff members present to accompany inspectors to units, management companies have had to book flights and other travel expenses with less than two weeks' notice, increasing travel and administrative expenses significantly. In addition, with fewer staff available (in some cases one or two part-time property staff), and taking into account holidays and employee absences, as well as factoring in the extra time required by the increased sample size (one-day inspections have often turned into multi-day inspections under the new regulations), the shortened notice puts undue administrative burden on management companies.
- b. The shortened notice also puts more strain on manager relations with residents, who experience unit inspections as an intrusion and see lengthier notice periods from management agents as a sign of respect and goodwill. Because many LIHTC communities utilize subsidy layering, they also are subjected to multiple repetitive in-unit inspections through each year, further straining quality of life for residents.
- c. In addition to arranging for staff to be present, management company have to compile and submit to inspectors significant amounts of paper work prior to the inspections, sometimes with *as little as seven hours' notice*; the administrative burden created by the shortened notice period has in some cases lead to a breakdown of the crucial elements of trust and collaboration between state housing agencies and the owners and operators of affordable housing.
- d. Lastly, the shortened notice period provides a reverse incentive for owners who commit to ongoing maintenance as a proactive measure. Two weeks is not sufficient time to wrap up maintenance projects ahead of a physical inspection, in effect resulting in lower scores for high-performing properties and dis-incentivizing proactive building maintenance.

2. Adjusted Unit Sample Size Disproportionately Negative Impacts on Small, Rural Properties and Management Companies

The new regulations disallow the previous guidance to inspect the lesser of 20-percent of the total number of low-income units or the minimum unit sample size set forth in the Low-Income Housing Credit Minimum Unit Sample Size Reference Chart. Instead, under these final regulations, Agencies must inspect no fewer units than the number specified for projects of the relevant size as set forth in the Low-Income Housing Credit Minimum Unit Sample Size Reference Chart.

- a. Again, this rule change negatively impacts smaller properties at a disproportionate rate: the LIHTC Minimum Unit Sample Size Reference Chart requires inspection of much higher than 20%

of units for smaller properties; these smaller projects also tend to have fewer administrative and financial resources at their disposal. Often, the properties are staffed by only one or two part-time employees; having sufficient staff on-site for longer periods of time to accompany inspectors to more units (and in more buildings, per the separate projects rule) results in unmanageable staffing challenges for smaller management entities. With the increased sample size requirements, HFAs have reported to NAHMA that they are bringing out teams of four or five inspectors to accomplish the review; this means that the management agent must also supply four or five staff members to accompany the HFA staff on their inspections. As management companies respond to the new regulations by shifting more staff from other properties or regions to attend inspections with less notice, the burden increases, the quality of life for residents, decreases, and the level of compliance across the portfolio begins to suffer.

- b. The impacted smaller projects are also often located in rural and other areas with limited affordable housing options, in some cases representing the only affordable housing in the area. While the unit count might be small, the viability of these small projects is critical to the health of these vulnerable communities. Ensuring regulatory compliance should not come at the expense of providing safe, decent, affordable housing.
- c. The adjusted sample sizes also negatively skew portfolio compliance data eroding the integrity of the agency's compliance oversight mechanism. For example, under the previous regulations, some Housing Finance Agencies (HFAs) attempt to complete the physical and file inspections on the same day as a courtesy to owners and managers. This allows the same units to be used for the physical inspection as well as the tenant certification file, reducing the risk of credit loss to owners (when noncompliance with both UPCS and the tenant file is found, reviewing the same unit both aspects of compliance results in just one unit being out of compliance). However, if the HFA reviews different tenant files and physical units, this increases the potential number of units that might have non-compliance.

Because multi-day inspections have been more likely to occur with the increased sample size and reduced notice, this regulatory change has resulted in severe unintended consequences for the maintenance and inspector communities, as well as for the integrity of the Agency's oversight data.

3. Shared LIHTC Property Oversight with HUD

Given the shared oversight of LIHTC properties with HUD, we have also included for your review our letter to HUD from March 14, 2019 regarding changes to HUD's physical inspection notification protocols; in the letter NAHMA proposes several "Alternate Methods for Achieving Shared Goals." NAHMA requests your review and consideration in making the proposed goals applicable to the LIHTC properties:

- a. HUD should utilize recently enhanced inspection enforcement tools enacted by Congress to address the 5% of the portfolio that is "troubled," instead of circumventing Congress and penalizing the entire portfolio with a drastic policy change.
- b. HUD should go through appropriate regulatory channels and in partnership with Congress to establish an improved, data-driven policy for physical inspection notification timeframes.
- c. HUD should foster strong partnerships between the agency, owners and operators of affordable housing properties, and residents by allowing for proper notification and logistical feasibility when scheduling physical property inspections.

- d.** HUD should promote private owner participation in its assisted programs by implementing a forbearance policy in a limited number of documentable situations in which the property is held harmless for inspection scheduling non-compliance, such as natural disasters or major rehab.