NATIONAL AFFORDABLE HOUSING MANAGEMENT ASSOCIATION

400 North Columbus Street
Suite 203
Alexandria, VA 22314
(703) 683-8630
(703) 683-8634 FAX
www.nahma.org

May 27, 2021

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2021-28) Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Re: Notice 2021-28 Recommendations for 2021-2022 Guidance Priority Plan

Thank you for this opportunity to submit recommendations for the 2021-2022 Guidance Priority Plan on behalf of the National Affordable Housing Management Association (NAHMA). NAHMA is the leading voice for affordable housing management, advocating on behalf of multifamily property managers and owners whose mission is to provide quality affordable housing. NAHMA supports legislative and regulatory policy that promotes the development and preservation of decent and safe affordable housing, is a vital resource for technical education and information and fosters strategic relations between government and industry. NAHMA's membership represents 75 percent of the affordable housing management industry and includes its most distinguished multifamily owners and management companies. NAHMA’s comments will focus on important matters related to the management of Section 42 Low Income Housing Tax Credit (LIHTC) properties.

Section 42, Low-Income Housing Credit Compliance Monitoring Regulations

NAHMA members are requesting relief from the February 26, 2019, Final Regulations that amended the compliance monitoring regulations concerning the low-income housing credit under section 42 of the Internal Revenue Code (RIN 1545–BL39). Since the beginning of the pandemic’s outbreak, our members have been on the frontlines working to provide a safe home for residents to “shelter at home,” as well as to provide safe working conditions for property employees, including maintenance staff. Many NAHMA members have faced significant numbers of COVID cases at their properties or on their staff, and all have had to suspend normal property management operations due to state and local public health emergency declarations and stay-at-home orders. Except for Exigent Health and Safety (EH&S) work orders, most maintenance work has not been addressed over the past few months due to the significant health risks for staff and residents of entering units. Even in cases of required emergency maintenance work, NAHMA members have reported that residents have expressed concern in allowing staff into their units. As the nation reopens at different rates in different geographic areas, depending on how hard the area was hit by the pandemic, NAHMA members will need time to return to normal staff operational levels, assess their properties, and provide the necessary maintenance to bring all units up to appropriate standards.

To provide adequate time for NAHMA members to reopen, recover, assess and address maintenance needs across the entire portfolio across the country, we request that you provide State Housing Finance Agencies (HFAs) the authority to consider other approaches that might mitigate the potential significant health risks and portfolio-wide negative assessment impacts resulting from operational disruptions caused by the pandemic. Such approaches could include, for the remainder of 2021, or even into early 2022:

- Scheduling physical inspections only for high-risk properties that scored low/failing or demonstrate a high risk, based on their most recent inspection;
- Applying a REAC's NSPIRE-demo-type approach to all housing credit physical inspections, in that properties would be inspected but not receive a specific score, but findings would be documented and work would need to be accomplished to address the findings (except for exigent health and safety findings);
- Waiving the drastically shortened physical inspection 15-day notification timeframe for low-income housing credit properties, as announced on February 26, 2019 through the Final Rule: Amendments to the Low-Income Housing Credit. To ensure the maximum safety of residents, management staff and inspectors, we strongly urge a temporary return to scheduling a physical property inspection in the 30-day timeframe. HFAs should consider the health and safety risks of all parties involved and provide some flexibility given the logistical impacts of the pandemic;
- Discouraging HFAs from a requirement to issue Form 8823 for every physical deficiency or allow providers to request an extension of time to come into compliance with such requirement. Implementing this requirement immediately upon resumption of physical inspections will likely result in thousands of Form 8823(s) for minor issues and resident-caused or unreported damages. It is our understanding that some HFA physical inspections are based on the HUD UPCS Protocol used for REAC inspections. "Level 1" deficiencies in REAC inspections are minor, non-health and safety issues. For every "Level 1" deficiency to be issued a corresponding Form 8823 seems unreasonable and would cause undue administrative burden not only to housing credit properties, but it will be equally burdensome to HFA staff;
- Encouraging postponing HFA implementation of fines and other new penalties until the current state of emergency and COVID-19 pandemic have passed or grant exceptions to those who can demonstrate that non-compliance was related to the COVID-19 pandemic;
- For HFAs performing desk audits, implementing longer timeframes for housing providers to submit documents and scanning files, and provide accommodations for extenuating circumstances and hardships. Many NAHMA members are reporting unreasonable turnaround times, such as less than 48 hours.

Section 42, Student Occupancy Rule

The student occupancy rules for the LIHTC program are intended to ensure that qualified families are not displaced by college students who need affordable off-campus housing. While NAHMA supports the goal of these restrictions, we strongly believe the LIHTC student occupancy policies require comprehensive modernization. Under the current laws, owners and managers of LIHTC properties have had to deny tenancy to applicants who are full time students—even if the applicant is 50 years old and is employed. Similarly, LIHTC residents risk the loss of their housing if they become a full-time student household while living on the property. Once again, this policy adversely affects independent adults who are the sole member of the household. Ideally, NAHMA would like Treasury-IRS to pursue reasonable statutory changes that preserve the intent of the student occupancy restrictions, but allow otherwise qualified independent adults to pursue greater economic opportunities through education.

As LIHTCs are used to preserve and recapitalize older HUD-assisted properties, housing providers are concerned that residents who are full-time students may be displaced under the LIHTC rules.

NAHMA recommends that Treasury-IRS change the definition of a full-time student to a person under the age of 24 who is classified as a full-time student by the school attended; or add another exception to the 5 current exceptions: the student is age 24 or older.

Improve Coordination with Other Federal Agencies

NAHMA recommends that Treasury-IRS, HUD, and the U.S. Department of Agriculture-Rural Housing Service (RHS) re-establish and utilize the Rental Policy Working Group with stakeholders to propose uniform rental policy solutions for all federal multifamily housing programs. This Working Group can be formed to standardized best practices and address the impact of the pandemic on residents, properties, and staffs, across the rental housing industry.

Conclusion

Thank you again for the opportunity to offer these recommendations for the Guidance Priority List.

Sincerely,

Kris Cook, CAE
Executive Director