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March 28, 2014

Internal Revenue Service
Attn: Grace Robertson, C2-422
5000 Ellin Road
Lanham, MD 20706

Dear Grace:

Thank you for the opportunity to submit comments on the draft *Audit Technique Guide IRC §42, Low-Income Housing Credit*. NAHMA would like to offer the following constructive comments regarding the draft document.

Chapter 12, Page 12-26, Summary, Paragraph Number 5:

The example provided in paragraph 5 of the summary could be read as a requirement to determine comparable or smaller size based on a yet-to-be determined value. It reads:

“For purposes of determining whether a residential unit is comparably sized, a comparable unit must be measured by the same method used to determine qualified basis for the credit year in which the comparable unit became available.
For example, an owner may consider a residential unit with the same number of bedrooms (or fewer) and comparable amenities to be a comparable unit.”
(Emphasis added.)

A subtle difference in the discussion about comparable units in the *Guide for Completing Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition (the 8823 Guide)* provides better clarification of how to determine a comparable unit. In the discussion of Comparable or Smaller Unit on page 14-2, the *8823 Guide* states:

“A comparable or smaller unit is defined in §1.42-15 as ‘a residential unit in a low income building that is comparably sized or smaller than an over-income unit or, for deep rent skewed projects described in IRC §142(d)(4)(B), any low-income unit. For purposes of determining whether a residential unit is comparably sized, a comparable unit must be measured by the same method used to determine qualified basis for the credit year in which the comparable unit became available.’
Since a comparable unit may need to be identified before the end of the year when the qualified basis is determined, an owner may consider a residential unit with the same number of bedrooms (or fewer) and comparable amenities to be a comparable unit.” (Emphasis added).

NAHMA recommends striking the last sentence in the Summary Paragraph 5 of the draft *Audit Technique Guide*, and replacing it with the last sentence of the excerpt from the *8823 Guide*.

Chapter 12, Page 12-44, Deep Rent Skewing, Paragraph Number 2:

The draft *Audit Technique Guide* incorrectly states that one of the conditions for the project to satisfy conditions for deep rent skewing is, “The gross rent with respect to each low-income unit in the project does not exceed 30% of the tenant’s **actual income.**” **(Emphasis added.)**

NAHMA recommends replacing the paragraph with language found in the *8823 Guide* on Page 11-7 under Deep Rent Skewing, Paragraph Number 2. It states that one of the conditions for the project to satisfy conditions for deep rent skewing is, “The gross rent with respect to each low-income unit in the project does not exceed 30 percent of the **applicable income limit which applies to the individuals occupying the unit.**” **(Emphasis added.)**

Conclusion

Thank you for your consideration of NAHMA’s comments. NAHMA agrees that the availability of finalized guidance such as the *Audit Technique Guide* will help owners and managers better understand how the Internal Revenue Service approaches audits of Section 42 properties. I hope NAHMA’s feedback is helpful as you prepare the final document.

Sincerely,

A handwritten signature in black ink, appearing to read "Kris Cook".

Kris Cook, CAE
Executive Director