

Technical Advisory



Oregon Housing and Community Services

March 01, 2019

Re: IRS Updated LIHTC Compliance Monitoring Regulations First-15 Year Properties

Dear OHCS LIHTC Partners,

On February 26, the Internal Revenue Service (IRS) issued final regulations for Housing Credit compliance monitoring, which replace the temporary compliance monitoring regulations under which OHCS has been operating since 2016. The new regulations make several significant changes to compliance monitoring requirements, including in some cases increasing the number of units in a property that OHCS will need to monitor and reducing the inspection notice requirement (for both physical and file inspections) from 30 to 15 days.

Specifically, the regulations:

- Require Credit agencies to inspect at least as many units as specified by project size in the Low Income Housing Credit Minimum Unit Sample Size Reference Chart (§1.42-5(c)(2)(iii)). In most cases this will result in OHCS inspecting more units at each inspection. The temporary regulations that predated the final regulations had allowed Credit agencies to inspect the lesser of 20 percent of the total number of units or the number of units in the Minimum Unit Sample Size Reference Chart. Note that OHCS may inspect more units than the minimum requirement at their discretion.
- Maintain the “all buildings” rule, which requires Credit agencies to conduct on-site inspections in units in all buildings in a project, rather than simply applying the minimum unit sample size on a project-wide basis if a project encompasses multiple buildings.
- Shorten the reasonable notice requirement to 15 days in advance of when a project will experience a physical inspection or review of low-income certification, which is reduced from a 30-day notice requirement under the temporary regulations.

In addition, it is important to point out that random unit selection guidance as indicated in the IRS update emphasizes the fact that:

- OHCS must select in a random manner the low-income units to be inspected and the units whose low-income certifications are to be reviewed. OHCS generally may not select the same low-income units of a low-income housing project for on-site inspections and



low-income certification review, because doing so would usually give prohibited advance notice. OHCS may choose a different number of units for on-site inspections and for low-income certification review, provided that OHCS chooses at least the minimum number of low-income units in each case. OHCS must select the units for inspections or low-income certification review separately and in a random manner. OHCS may notify the owner of the low-income units for on-site inspection only on the day of inspection.

- Both vacant and occupied low-income units in a low-income housing project are included in the population of units from which units are selected for inspection.

The final regulations are effective immediately. Please see the following link for more information. The updated unit selection requirements are specified in the tables on page 4. <https://www.govinfo.gov/content/pkg/FR-2019-02-26/pdf/2019-03388.pdf>

Due to this immediate change in regulation we understand that our partners will have less time to prepare for inspections and return pre-inspection paperwork. All effort made to accommodate our new scheduling requirements will be appreciated as we will have reduced flexibility with scheduling.

If you have any questions, please do not hesitate to contact me at the email/phone below.

Sincerely,

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