



## **LIHTC – New IRS Compliance Monitoring Rules**

Presented by Robin Thorne

# LIHTC Program:

Low Income Housing Tax Credit (LIHTC) program was created by Congress in 1986 as part of the Tax Reform Act

- LIHTC regulations are codified in Section 42 of the Internal Revenue Code
- IRS delegates oversight of LIHTC projects to State Housing Agencies
- State Housing Agencies report LIHTC non-compliance to the IRS

# LIHTC Program:

The IRS amended the Compliance Monitoring Regulations on February 26, 2019

- The final regulation can be found at 1.42-5 (iii)(C)(3)
- Section 1.42-5 describes provisions that each State HA must include in their Qualified Allocation Plans (QAP)
- State HA's must perform physical inspections of all LIHTC projects

# LIHTC Program:

The IRC requires that a State HA must conduct on-site inspections of all buildings and tenant files in an LIHTC project

- By the end of the second calendar year following the year the last building is placed-in-service
- At least once every three (3) years thereafter

# LIHTC Program:

New rules:

- Reduces from 30 days to 15 days, the advance notice an HFA may provide an owner that a project will be physically inspected or be reviewed to ensure compliance with the maximum resident income and rent requirements.
- Reduced notice provision is intended to prevent owners from preparing units for inspection.
- New rule also requires that the State HA may identify to an owner the specific units that have been randomly selected **only on the day of inspection.**

# LIHTC Program:

Notice of more than 15 days can be made under extraordinary circumstances that are out of the State HA's control. These types of circumstances may include, but are not limited to:

- Natural disasters
- Severe weather conditions

## LIHTC Program:

- State HA's administering their state's LIHTC program must now randomly inspect **no fewer** LIHTC units than the number specified for projects of the various sizes in the LIHTC Minimum Unit Sample Size Reference Chart.
- Prior to the final rule, Rev. Proc. 2016-15 required a minimum sample size of the lesser of 20% of the total number of LIHTC-assisted units or the minimum sample size in the Chart.
- IRS made the change after determining that the previous 20% option may have been unnecessarily burdensome for large projects and also may have failed to adequately assess the habitability of smaller projects.

# LIHTC Program:

**Minimum Unit Sample Size Reference Chart**

Units on the Property	Minimum Unit Sample Size	Units on the Property	Minimum Unit Sample Size
1	1	26 - 29	14
2	2	30 - 34	15
3	3	35 - 40	16
4	4	41 - 47	17
5 - 6	5	48 - 56	18
7	6	57 - 67	19
8 - 9	7	68 - 81	20
10 - 11	8	82 - 101	21
12 - 13	9	102 - 130	22
14 - 16	10	131 - 175	23
17 - 18	11	176 - 257	24
19 - 21	12	258 - 449	25
22 - 25	13	450 - 1461	26
1462 - 9999	27		

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# LIHTC Program:

Applicability of reasonable notice when same units are chosen for inspection and file review.

If the State HA chooses to select the same units for physical inspection and tenant file review the review both inspections must be completed before the end of the day on which the units are selected.

# LIHTC Program:

Implementation Date:

All State HA's must amended their QAP's to reflect these changes to the final regulations no later than December 31, 2020.

Questions?

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**THANK YOU**