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Hot Topics in Housing Credit Compliance: New Compliance Monitoring Regulations

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NCSHA

Compliance Monitoring Final Rule Summary

- Amends Low Income Housing Credit Compliance Monitoring Regulations, replacing temporary regulations in place since 2016
- Makes major changes to compliance monitoring requirements without undertaking a proposed rule process and formal comment solicitation
- Requires agencies to determine the number of units to inspect according to the Low Income Housing Credit Minimum Unit Sample Size Reference Chart (REAC numbers), rather than 20 percent of the units in a project
- Requires agencies to provide no more than 15 days' advance notice to owners before a physical inspection or tenant file review

Compliance Monitoring Final Rule Summary

- Prohibits agencies from notifying owners which units will be inspected until the day of the inspection
- Maintains the “all-buildings rule” and the requirement to monitor compliance based on the project as defined by the owner’s election on Form 8609
- Codifies the decoupling of physical inspections from tenant file reviews and use of REAC protocol
- Effective as of February 26, 2019; applicable upon amendment to QAPs but not later than December 31, 2020

Problems with the New Reg: Higher Costs, Less Housing

- Agencies will be forced to:
  - Hire and train more staff and contractors and increase funding for travel
  - Increase fees paid by owners to cover these costs, possibly impacting targeting and/or number of households served in future properties
  - Divert agency resources from other affordable housing activities to cover increased costs
  - Triage monitoring, leaving older properties more vulnerable
- The vast majority of Housing Credit properties are small, especially in rural areas, which are hit hardest under the new requirements.

Problems with the New Reg: An Unworkable Protocol

- REAC properties are treated as a single project, regardless of the number of buildings, while individual buildings in a Housing Credit property may be treated as separate projects.
- REAC is a physical inspection protocol only, while Housing Credit rules require an equal number of unit inspections and tenant file reviews.
- Housing Credit physical inspections require consistent follow-up by agencies to ensure all noncompliance is resolved, whereas REAC simply provides a score to the property.
- Unlike HUD properties, the structure of the Housing Credit provides a high degree of deterrence against noncompliance.

NCSHA's Message to IRS

- Reissue the reg as a proposed rule and get comments from all the key stakeholders
- Collect the data necessary to determine the true extent of burden on the states imposed by changes to the sample sizes so that IRS has the information it needs for data-driven policy-making
- Work with NCSHA and other interested parties on a more feasible compliance monitoring approach that protects Housing Credit residents and the federal interest while being mindful of the burden on state allocating agencies

Options for a More Workable, Effective Regulation

- Apply a lower confidence interval for some or all properties (80 percent), which would lower the sample size
- Aggregate buildings/properties into larger sampling groups (e.g., by treating properties as a single project, regardless of the owner’s 8b election)
- Split monitoring into two cycles for smaller properties
- Take a risk-based approach to monitoring