

So Many More Units to Inspect!

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Quick Notes on the New Compliance Monitoring Regulations

An analysis of the new rule makes it clear that a large number of tax credit properties will have many MORE units inspected by state agencies now.

On Feb. 26, 2019, the IRS published the final regulation in the Federal Register, adjusting the compliance monitoring rules for tax credit properties (§1.42-5). Both physical inspections and the review of documentation will be adjusted. The regulations primarily adopt the temporary regulations that were published on Feb. 25, 2016, but with significant changes.

The regulation can be read [HERE](#).

Highlights of Changes

Sample Size. The final regulations provide that the minimum number of units that must undergo physical and file inspection is the number of low-income units listed in the reference chart provided in the regulation (based on HUD REAC standards). The “lesser of the chart or a 20% sampling” no longer applies as a minimum. For projects under 102 units, this means that many more units will be inspected than was true under the 20% standard. However, for larger projects, the sampling will be less than 20%. It is around 108 units that the sample starts to dip below 20%.

Example: A 35-unit all-tax credit project will have 16 units inspected, which is 45% of the total units, or more than double the former seven required at the 20% minimum standard.

Same-Unit Rule. As long as the minimum sampling is met, a state agency can choose different units for the physical inspection and for the file review. Agencies 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 the IRS feels that doing so would usually give prohibited advance notice. If the Agency chooses to select the same units for on-site inspections and low-income certification review, the Agency must complete both the inspections and review before the end of the day on which the units are selected. Physical and file reviews can be done at different

times, and different units must be selected for each type of review unless the inspections are conducted on the same day.

All-Building Rule. Buildings subject to HUD REAC inspections may not have all buildings inspected, per REAC procedures. However, the rule is more restrictive for buildings without REAC oversight. The new requirement for non-REAC properties is: If the randomly selected minimum number of units to be inspected fails to include at least one unit in one or more buildings in a project, then an agency must inspect some aspect of each omitted building. These aspects might include the building exterior, common area, HVAC system, etc. In the absence of HUD oversight, requiring that all buildings be inspected serves as a quality control mechanism.

Notice of Inspection. The final regulations shorten the reasonable notice requirement from a 30-day to a 15-day notice that a project will experience an upcoming physical inspection or file review. The specific units to be inspected cannot be disclosed to the owner/agent prior to the day of the inspection.