IRS Issues Compliance Regulations for LIHTC Projects and COVID-19 Relief

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On July 1, 2020, the IRS issued proposed regulations (REG-123027-19; RIN 1545-BP59) (Regulations) governing compliance-monitoring for low-income housing tax credit (LIHTC) projects and issued **Notice 2020-53** (Notice) in response to the COVID-19 pandemic.

The Regulations ease recently adopted compliance monitoring requirements imposed on State or local housing credit agencies (Agency(ies)) after persistent opposition from Agency trade groups. On February 26, 2019, the Treasury Department and IRS published final rules that, among other things, required Agencies to inspect no fewer low-income units than those specified on a chart issued by the Department of Housing and Urban Development?s Real Estate Assessment Center (REAC). The REAC chart established minimum inspection sample sizes depending on the number of low-income units in a project (REAC Number). By requiring agencies to use the REAC Number, the 2019 rules eliminated the option for Agencies to use an inspection sample size of 20 percent of the low-income units in a project.

This change in calculation method had the effect of increasing the sample size of low-income units that compliance-monitoring agencies had to inspect for smaller LIHTC projects. Agency trade groups opposed the change because of the increased costs and staffing burdens associated with inspecting more projects, which would ultimately result in increased compliance monitoring fees charged to building owners and a diversion of resources from other affordable housing priorities to fund compliance-monitoring activities. The Regulations acknowledge the Agencies? concerns and reinstate the 20 percent sample size calculation method as a viable option. Therefore, under the Regulations, ?the minimum number of low-income units that must be included in the random samples on which an Agency conducts physical inspections or low-income certification review is the lesser of the applicable REAC number or 20 percent of the low-income units in the project, rounded up to the next whole number,? **found here**.

The Notice provides COVID-19 related tax relief to issuers, operators, owners, and tenants of residential rental projects financed with low-income housing tax credits or exempt facility bonds, and to the state agencies that have jurisdiction over these programs. The relief extends from April 1, 2020, until

December 31, 2020 (Relief Period), and comes in three forms: extending key deadlines, waiving compliance requirements, and expanding program scope.

The Notice extends certain deadlines until December 31, 2020, that must be met to qualify for tax credit under Section 42 of the Internal Revenue Code. In particular, if any of the following deadlines occur within the Relief Period, then parties have until the end of 2020 to satisfy those timing requirements:

- 10% test for carryover allocations;
- The 24-month minimum rehabilitation expenditure period;
- The reasonable period for restoration or replacement in the event of casualty loss;
- The reasonable restoration period in the event of prior major disaster;
- The 12-month transition period for qualified residential rental projects; and
- The 2-year rehabilitation expenditure period for bonds used to finance qualified residential rental project.

These extensions are particularly helpful to LIHTC projects that were in development but experienced work stoppage due to the coronavirus and now have extra time to satisfy tax credit requirements. Notably, the Notice does not extend the deadline by which projects must be placed in service to receive credit, as requested by **LIHTC market participants**.

During the Relief Period, the Notice also suspends certain compliance requirements for LIHTC projects and agencies. LIHTC property owners are not required to perform income recertifications of low-income tenants during the Relief Period but must resume income recertifications after December 31, 2020. In addition, during the Relief Period, a temporary closure or unavailability of common areas or amenities in a LIHTC project or building will not result in a reduction of the eligible basis of a building. The Notice also relieves state agencies from conducting compliance-monitoring inspections and reviews through the end of 2020.

Lastly, the Notice expands the scope of the LIHTC program by allowing medical personnel and other essential workers (as defined by State or local governments) providing services during the COVID-19 pandemic to be treated as ?displaced individuals? eligible for emergency housing in LIHTC properties. The expansion allows owners and operators of LIHTC properties to offer temporary housing to those individuals during the Relief Period regardless of income level and disregards the usual transience rules and minimum length of occupancy requirement. LIHTC owners and operators are not required to offer temporary emergency housing, but if they do, they must comply with the rules provided in **Revenue Procedure 2014-49** and **Revenue Procedure 2014-50**.

Should you have any questions, please do not hesitate to reach out to any member of the firm?s Tax Credits practice.

Please note: This alert contains general, condensed summaries of actual legal matters, statutes and opinions for information purposes. It is not meant to be and should not be construed as legal advice. Readers with particular needs on specific issues should retain the services of competent counsel.

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