May 31, 2012

Internal Revenue Service
Attn: CC: PA: LPD: PR (Notice 2012-18)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044
VIA EMAIL to notice.comments@irscounsel.treas.gov

RE: FR Notice 2012-18, Comment Request for Section 42 Compliance Regulations

To Whom It May Concern:

Thank you for the opportunity to contribute to IRS' efforts to update the Section 1.42-5 regulations concerning state Housing Finance Agency (HFA) monitoring procedures for the Low Income Housing Tax Credit (Housing Credit) program.

As the Washington representative of the agencies that administer the Housing Credit in all 50 states, the District of Columbia, New York City, Puerto Rico, and the U.S. Virgin Islands, the National Council of State Housing Agencies (NCSHA) appreciates the IRS' expert oversight of the Housing Credit, your continued cooperative attitude toward NCSHA and the state HFAs, and your timely provision of program guidance.

HFAs now have nearly 25 years of experience successfully monitoring properties under the Housing Credit program and we encourage IRS to harness that expertise by maximizing state administrative flexibility, reducing the HFA compliance burden, and streamlining compliance requirements with other affordable housing resources, where possible.

To ensure that the Section 1.42-5 regulations continue to provide an efficient framework for compliance with Section 42 and provide the information necessary for IRS oversight, while allowing the greatest possible efficiency and effectiveness for the agencies charged with compliance monitoring, NCSHA suggests the following changes to the current regulations:

Reduce and Refine the Minimum 20 Percent Physical Inspection Requirement

Sections 1.42-5(c)(2)(ii)(A) and (B) currently require HFAs to conduct on-site inspections and tenant certification reviews for at least 20 percent of a project's low-income units. Given the significant HFA experience in compliance monitoring and the strong compliance record of the program, we suggest reducing this 20 percent requirement as it is overly burdensome,

particularly for larger properties. Reducing the minimum requirement would not preclude HFAs from conducting follow-up inspections should initial inspection results warrant, and would allow HFAs to focus compliance efforts on properties that need additional oversight instead.

An inspection protocol recently proposed by HUD under its Project Based Contract Administration program would require program administrators to inspect 10 percent of units and tenant files in a project on a sliding scale depending on project size, from a minimum of 5 units/tenant files for projects of 50 units or less to a maximum of 35 units/tenant files for projects with over 2,000 units. A similar requirement with a sliding scale based on project size would greatly enhance the effectiveness of Section 42 compliance efforts.

In addition, we suggest calculating the inspection sample size on the total units in a project, rather than in each building. A building requirement can make the inspection process overly burdensome, particularly in rural areas where projects are often comprised of small buildings such as single unit buildings, duplexes, or triplexes. We also suggest spreading the sample among as many buildings as possible to obtain a representative range.

Finally, an owner's election of multiple building status can have a large impact on an HFA's monitoring burden with regard to that property. We suggest the regulations permit monitoring agencies to consider multiple buildings with a common owner and plan of financing as a single project for monitoring purposes, regardless of whether or not the owner officially elected such treatment on Form 8609.

Decouple Physical Inspections and Tenant File Reviews

Section 1.42-5(c)(2)(ii) currently requires that HFAs conduct physical inspections and tenant file reviews on the exact same sample of units in a given project. We recommend that the regulations decouple physical inspections from tenant file reviews so that HFAs may conduct the two monitoring requirements independently.

Since there is generally no direct compliance relationship between the tenant files reviewed and the units inspected, decoupling these requirements will reduce the burden on HFAs to coordinate the two procedures and will strengthen the requirement of Section 1.42-5(c)(2)(iii) that the units and tenant records chosen for inspection and review be done so in a manner that will not give project owners advance notice that a unit and tenant records for a particular year will or will not be inspected and reviewed. Decoupling these requirements will enhance the overall monitoring of a particular project by allowing HFAs to inspect, through tenant file reviews or physical inspections, more units than if the regulations continue to link these requirements.

NCSHA also recommends that IRS expressly permit monitoring agencies to utilize desk audits as a method for conducting tenant file reviews. Desk audits are an efficient and cost effective monitoring tool. Allowing their use at a location designated by the agency using a method to ship or transmit the records determined by the agency will further reduce the monitoring burden to the state.

Expand Inspection and File Review Exceptions to Other Local, State or Federal Agencies

Sections 1.42-5(c)(4) and 1.42-5(d)(3) currently provide an exception from tenant file review and inspection requirements for buildings financed by the Rural Housing Service (RHS) under the Section 515 program. For the exception to apply, an HFA must enter into a formal agreement, such as a memorandum of understanding, with RHS.

The precedent set by this exception, and more recently the physical inspection pilot program under the federal rental alignment initiative, illustrates the high level of efficiency and coordination that can be achieved in this area.

NCSHA encourages IRS to amend the regulations to provide a similar exception for inspections and tenant file reviews conducted by HUD and other local, state or federal agencies that perform similar monitoring activities. This flexibility will encourage consolidation and alignment of monitoring processes, reduce redundancy, enhance tenant quality of life, and reduce costs to property owners and monitoring agencies.

In cases where parties are not able to enter into formal agreements, HFAs should still be permitted to rely on inspection reports from monitoring activities carried out by local, state, or federal agencies, or their designees, with the understanding that supplemental monitoring may be necessary in the event the report does not adequately address material compliance issues or other Section 42 requirements.

Thank you for this opportunity to suggest enhancements to Section 1.42-5. The state HFAs take their compliance monitoring responsibilities seriously and look forward to a continued partnership with IRS to ensure compliance and oversight of the Housing Credit portfolio. If you have any questions, please do not hesitate to contact me.

Sincerely,

Garth Rieman
Director, Housing Advocacy and Strategic Initiatives