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FOR IMMEDIATE RELEASE

LIHTC WORKING GROUP COMMENTS ON IRS'S HOLD HARMLESS POLICY UNDER HERA

Asks for guidance on interpreting the HERA income rules

San Francisco — In light of HUD's suspension of its hold harmless policy for Section 8 income limits as of May 14, 2010, the Novogradac LIHTC Working Group (Working Group) and the National Affordable Housing Management Association (NAHMA) have sent a letter to U.S. Department of the Treasury (Treasury) officials requesting clarification of the IRS hold harmless rule under the Housing and Economic Recovery Act (HERA) of 2008 for properties financed with low-income housing tax credits (LIHTCs) or tax-exempt bonds (TEBs).

The July 9, 2010 letter addresses the same issues as those sent to the IRS in the Working Group's and NAHMA's April 6, 2009 letter, but this letter expands on some of these issues now that HUD has discontinued its hold harmless policy for Section 8 income limits.

"These issues are more critical now that tax credit and tax-exempt bond projects cannot rely on HUD's hold harmless policy and must rely on the HERA hold harmless policy," said Jim Kroger, CPA, a partner in Novogradac & Company LLP's San Francisco office. "Our concern is that the HERA hold harmless policy is being applied on a project basis instead of a county basis for low-income housing tax credit and tax-exempt bond properties. This sometimes results in two to three different income limits for the same county."

Owners of LIHTC and TEB properties under Internal Revenue Code sections 42 and 142 have since 1986 and prior to 2009 generally determined their income limits from HUD Section 8 income limits on a county basis. However, HUD now publishes separate limits for sections 42 and 142, called Multifamily Tax Subsidy Projects (MTSP), to accommodate adjustments to the Section 8 income limits required by HERA.

HUD's 2009 and 2010 guidance for MTSP income limits indicates that only those projects that were placed in service before January 1, 2009 qualify for HERA Special income limits; and that the income floor for the HERA Hold Harmless provision begins when a project is placed in service.

"Adopting a hold harmless policy that is applied on a project basis creates anomalies in the income and rent limits among projects located within the same county; and creates uncertainty for industry stakeholders who are trying to determine the feasibility of future projects," says Kroger. He notes that a project-based approach to determining income limits could, among other things, make it more difficult for lenders and investors to underwrite affordable housing, resulting in smaller loans, lower syndication proceeds and a reduction in the production of affordable housing.

In adopting a project-based approach, there will be two income limits in 2010 for the more than 500 counties that had a decrease in Section 8 income limits. It also means that in 2010 there are three possible income limits for the more than 1,000 HERA Special counties.

"This approach results in different income and rent limits in the same county depending on when projects are placed in service," says Michael J. Novogradac, managing partner in the San Francisco office of Novogradac & Company LLP. "We believe a county based approach in which all projects in a county use the same income and rent limits would greatly reduce the administrative burden of complying with affordable housing programs, enhance the ability to finance new affordable housing and clarify the rent and income limits for tenants who are applying for affordable housing," he said. Novogradac serves as advisor on industry and governmental affairs for the Working Group.

The LIHTC Working Group in its letter requests guidance clarifying that the interpretation of the HERA income rules is a county based approach. For more details and a copy of the letter, please go to www.taxcredithousing.com and click on LIHTC Working Group

The LIHTC Working Group was established by Novogradac & Company LLP in 2008 to provide a platform for LIHTC industry participants to work together to resolve technical and administrative LIHTC program issues. Members meet monthly via conference call to provide input regarding pending action items as agreed to by the members of the group. Comments and suggestions are agreed to and submitted in writing directly to the IRS and/or various state agencies based on the group's discussions.

For more information, visit www.lihtcworkinggroup.com or email Jeff.Nishita@novoco.com.

Novogradac & Company LLP, founded in 1989, has since grown to more than 300 employees and partners in 12 offices nationwide. The firm has consulted on thousands of real estate projects and maintains client relationships with the leading affordable housing, community development and renewable energy tax credit sponsors. The firm is consistently ranked by *Accounting Today* and *Inside Public Accounting* as one of the top 100 accounting firms in the nation.

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