Don’t Miss These 2023-2024 LIHTC Compliance Deadlines

Several upcoming deadlines and changes in low-income housing tax credit (LIHTC) property compliance have wide-ranging implications for developers, owners, investors, property managers and beyond. Michael Novogradac, CPA, and Stephanie Naquin, HCCP, COS, discuss four major issues on the horizon in 2023 in property compliance: the average income set-aside, the implementation of new income and asset rules, new physical inspection protocols and income limits. They cover what listeners need to know on each of these topics as well as providing insights for listeners for key dates and deadlines to keep in mind in the months ahead.

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Transcript

Introduction

[00:00:11] **Michael Novogradac, CPA:** Hello, I'm Michael Novogradac and this is Tax Credit Tuesday. This is the May 16th, 2023, podcast.

Today we're taking a look at what's on the horizon in 2023 regarding property compliance for low-income housing tax credit properties. These changes have wide-reaching implications for developers, owners, investors and property managers. Some of what's ahead goes even beyond the low-income housing tax credit and will affect affordable rental housing more broadly, so it's difficult for me to think of someone in this community who won't be affected.

In preparing for this podcast, we narrowed our discussion down to four major changes that listeners should be aware of: One, average income guidance; two, the implementation of new income and asset rules; three, new physical inspection protocols and; four, income limits. Now I want to note for our listeners that HUD did publish a final rule regarding physical inspection protocols in the Federal Register last week.

Today's episode covers some of what listeners need to know on each of these four topics. We'll discuss how you can prepare now, as well as other dates on the horizon you need to be keep–you need to keep in mind.

We're fortunate to have as our guest today Novogradac's director of multifamily compliance, Stephanie Naquin. She's based in our Austin, Texas, office. You may recognize Stephanie from our conferences and workshops. You may also know her from this podcast. She's been a frequent guest, including a previous episode on the final regulations on the average-income set-aside for low-income housing tax credit properties.

We have a lot we're going to cover today, so if you're ready, let's get started.

Stephanie, welcome back to Tax Credit Tuesday.

[00:01:57] **Stephanie Naquin, HCCP, COS:** Hi. Thank you. Thanks for having me back. It's going to be an interesting experience on a podcast recorded on YouTube, but I'm excited to be here and yeah, we'll have some fun with it.

[00:02:09] **Michael Novogradac, CPA:** I'll speak on behalf of my guests and they're excited to have you.

Average Income

So let's talk about each of these four areas in order of how soon changes will go into effect. Now one of them is already in effect, the average-income guidance. So, I figured we should start there. And I thought it'd be interesting if you shared with our listeners what kind of questions you're getting with respect to the average income test.

[00:02:33] **Stephanie Naquin, HCCP, COS:** Right. So let's just kind of recap what's going on. So, in October of last year, we finally, after several years, got some final guidance and it was some really fabulous final guidance. And we are what, like nine months into it? I can't believe it's already like May of 2023, but you know, we're a little bit further into it. I'm really seeing a lot of movement in the industry, both from the investors' standpoint and from owners' standpoint as far as their interests in average income really peaking, which is awesome to see because when the guidance was originally released, there was a little bit of reservation about some additional risks that could be interpreted through some of the temporary guidance.

But I think that we're at a space right now in the industry where states are coming out with really great policies that aren't counterintuitive to that final guidance, which makes it a lot more digestible for investors and owners to really absorb. And so I think we're in a really great place.

The questions that I tend to get are very much rooted in the logistics about how to operate an average-income deal. So, for example, I get a lot of questions about unit designations, and so while that was a big topic about how do we designate a unit and can unit designations change, you know, the final guidance gave us some really positive answers to that.

But in practice, we're getting a little bit caught up in like, how does an owner actually change designation? So if we think about what the final guidance says is that you set a designation for a unit and then if you want to change a designation, you do so by recording it in the owner's books and records and then communicating to the state agency.

So I'm getting a lot of questions about the logistics of what it means to record in your books and records, and then how do we communicate to the state agency? So there's are really kind of two separate issues, right? One is about how we're operating it from the owner's perspective, which is our role.

And then the other is about the state agency's role is about from receiving the information. So from a the owner's perspective and books and records, that tenant income certification, that a household signs when they move in is effectively where we're initially recording it in those books and records.

And so once someone moves in and that tenant income certification is executed, then it's about, well, how do I change it if it's an occupied unit and I need to do so for one of the available options under that, you know, dash 19 regulation? And so then it goes back to, well, what does the state say? And so we're starting to see state agencies coming out with policies on how they want it communicated to them.

And I've seen it all over the board. A lot of states either want it immediately communicated to them through whatever kind of software they're already using to collect occupancy information, whereas other states are just wanting it at a point in time, so when you do your annual reporting. And so logistically understanding those dynamics and how to make sure that we are maintaining compliance with that particular component is probably one of the large, like the most of the questions that I tend to get.

Some other questions that I get are about that qualified group of units and the best way to continually make sure that you're meeting those qualified groups of units for both the purposes of your minimum set-aside and then your applicable fractions. And so there's a real value in making sure on the onset as you're placing in service, you have some sort of like unit designation schedule that sets out the designations for all of the units and then allows you to fill those units at those designations.

And then what we are doing here at Novogradac with our partners and our clients is on a quarterly basis, we're extracting that information and so that we have a running kind of total throughout the year, so it's not so cumbersome at the end of the year to figure out where was the movement? How did that affect my qualified group of units for effective and efficient reporting to the state agency when they get those systems in place?

I think the other thing I tend to hear a lot of questions about is, is that cliff test real? Like, do we still have a cliff test out there? Mike, I'm sure you get that question too, a lot. Right? And I've always said no. My initial reading and my continued reading of the temporary guidance as it relates to that reporting component doesn't seem to color the interpretation as far as it being a cliff test.

But I get it. I get that we could, some people can read it that way and some people have, and as a result, it's a question in the industry that has to be addressed. The public comment for those temporary regulations ended in December and Novogradac did submit comment on behalf of the LIHTC Working Group. And we did so actually in coordination with NCSHA, which was you know, really cool to kind of collaborate with them because they have, you know, the attention of the state agencies and the understanding of how these particular things flow into the state agency's responsibility.

And our proposal was let's just report one qualified group of units. And if it changes, let's make that change in automatic acceptance and lower the administrative burdensome that would have to go into effect on the state to approve every one of these changes. And so, fingers crossed. If that guidance gets tweaked a little bit, I think that we completely move away from the cliff test and everyone really gets to take a big sigh of relief and just move on with this excellent tool that we have.

[00:08:09] **Michael Novogradac, CPA:** Great, thank you for that discussion of the average-income guidance. And I'll just relay to our audience. You know, Stephanie talked about this before. The IRS on many occasions has said there is no cliff effect. And they're obviously understanding how people could

read a cliff effect into the rules, but the IRS has said there is no cliff effect. So hopefully we do end up getting additional guidance to deal with this cliff effect question.

National Standards for the Physical Inspection of Real Estate Inspection Protocols

So, our second topic of the podcast relates to physical inspection protocols. So here's some, here's another area, Stephanie, where I'd like you to tell our listeners about the upcoming change and when it goes into effect.

[00:08:51] **Stephanie Naquin, HCCP, COS:** Sure. So just to remind everyone, in order for a unit to be eligible to, you know, generate this magical low-income housing tax credit, it has to be occupied with a household that's income restricted or income eligible, rather–and we're actually going to touch on that change a little bit with the next discussion–rent restricted and then, of course, suitable for occupancy. And the standard for determining whether a unit is suitable for occupancy currently is under the uniform physical condition standard or the UPCS protocol. And so that protocol is a HUD-based protocol. And then so for the LIHTC world, we take that and adopt it for our use.

Well, that base protocol with HUD is changing. And so UPCS itself is being repealed and it's being replaced with NSPIRE, or the National Standards for Physical Inspection of Real Estate. So NSPIRE. And because UPCS itself and the Housing Quality Standard, or HQS, protocol, they're just completely going away. NSPIRE is replacing everything for both public housing and also for any housing choice voucher, you know, project-based Section 8 or any multifamily projects under HUDs funding.

There's a couple of different effective dates for public housing. This is going to go into effect July 1, so just around the corner. And for everything else, this goes into effect on Oct. 1. And so the reason why it's important to understand this in our LIHTC world is because under Treasury Reg. 1.42-5, it tells us that the inspection protocol is UPCS. But if UPCS goes away, what then becomes the inspection protocol for, you know, the LIHTC program? And so NSPIRE is going to replace that. So we need to understand what NSPIRE is and how that experience is going to be different from the UPCS experience.

So just from a high level, UPCS has five inspectable areas, and then you take those inspectable areas and any deficiencies are categorized into three different levels. And then of course you can have what's called exigent health and safety issues, or EH&S violations. And then the inspection is scored for HUD purposes and some state agencies that also score it for the LIHTC program. Not all, but some use that scoring. So scoring is not required for the LIHTC program, but it is part of the inspection protocol.

UPCS is pretty hardcore. But the intent of it is just to make sure that things are functioning as they're intended to function. It's everything from is the sink stopper there to the weather stripping to is the roof missing? So it's a hardcore inspection. And having been, in my prior life with the state agency and done UPCS inspections before I can tell you that it very much is an extensive type of inspection. And I'm not

suggesting that NSPIRE isn't, but NSPIRE is changing its focus to really focus on health, safety and functional defects over appearance.

And so UPCS had all these inspectable areas and you categorized deficiencies, but the reason for the change is that we weren't really kind of getting to what is the intent of habitability with UPCS. NSPIRE does that a little bit more efficiently. NSPIRE as opposed to UPCS has three inspectable areas. So we're looking at the unit, the inside and then the outside.

And then those inspectable areas are categorized into different particular areas. And so if we think about the three different categories, we have health and safety. We have function and operability. And then we also have condition and appearance. And so in other words, we could have an outside area that has a health and safety issue. Or we can have an outside area that has a function and operability issue or deficiency, rather. And each one of those deficiencies are going to have to be addressed.

And the relevance of a deficiency as it relates to (IRC) Section 42 is that any time the state agency observes a deficiency under one of these pro protocols, they're required to report that on IRS form 8823, you know, to the IRS. And so these deficiencies are directly tied to what the IRS is seeing as far as the physical condition of the property. So understanding that there is a change in protocol and properly acclimating to that change will help us from an overall perspective, not only preserve this well-needed housing, but also really conform to current IRS guidance. Some of the kind of–oh, we'll talk about the effect in a second.

That, in a nutshell, the inspection protocol is changing, so no more UPCS and we're moving to NSPIRE. I will say there is a little bit of conversation out there in the industry about when NSPIRE is going to be applicable to Section 42, because remember, it's under the dash-five regulation that prescribes the inspection protocol that the state is supposed to use. Well, the dash – while UPCS itself is being repealed and doesn't exist anymore, that dash-five Treasury regulation is still in effect. So there is some conversation a little bit that the IRS is trying to work out with, well are we beholden to this dash-five regulation definition of physical inspection? Or it does NSPIRE just naturally replace that language because it's been repealed? So, heads up, there is some conversation about that going on in the industry, and I know NCSHA is working with the IRS to kind of get that cleaned up. And then in conjunction with the HFAs. And so just putting it out there that you may not see an immediate change in your state with the LIHTC program because of this kind of discussion that's going on.

But for all other affordable housing programs, so we're talking, you know, the HOME program, National Housing Trust Fund, any other HUD program, NSPIRE is it. And that's in effect as of 10/1.

[00:15:16] **Michael Novogradac, CPA:** So thank you for that. I think in in your answer, you did a good job of discussing what types of properties this is applicable too. As you noted, public housing, housing choice vouchers, project-based certificates, Section 8 certificates and multifamily, HUD-supported developments more broadly.

You also just clarified that there's some lack of clarity as that will affect low-income tax credit properties. But assuming that at some point the NSPIRE standards do apply for low-income housing tax credit properties, maybe you could expand on what that means, what might be different from NSPIRE versus UPCS.

[00:16:01] **Stephanie Naquin, HCCP, COS:** I can pretty confidently say that NSPIRE will be part of the LIHTC inspection protocol. It's the timing is just kind of a little bit–

[00:16:12] **Michael Novogradac, CPA:** Right.

[00:16:12] **Stephanie Naquin, HCCP, COS:** In question, right? So independent of that kind of conversation of applicability, this goes into effect as of Oct. 1. And so there's a couple of things that I'm seeing from an HFA perspective that is kind of causing some barriers for implementation. So, in order to kind of solve that, what I'm hearing from a lot of these state agencies is that those inspections that are otherwise due in quarter three, so you know, October, November, and December of 2023, they're, they're bumping up. They're going to do them earlier, so before Oct. 1, so that they can perform them under the UPCS protocol and not have to worry about in this last quarter of the year, do I need to change protocols, you know, in a current year that I'm doing activity, which is hard for a state agency to adjust to.

And so I'm hearing that, I'm hearing that. So in other words, it's not a surprise when an inspection occurs. It's every three years. It's a schedule. And so if you had an inspection a physical inspection in November of 2020, and it's due in November of 2023, you might see it done earlier. And so, whereas we would normally prepare for a physical inspection, perhaps by that due date and doing some of our own due diligence, I would really recommend that folks do that diligence now, if you know that you have an inspection occurring in that last quarter. Because while the intent of the inspection is not different necessarily, what they look at and how they look at things, it is going to feel different.

So to say it otherwise, if they did an inspection on Sept. 30, it's going to be under UPCS protocol, whereas if they do an inspection on Oct. 2, it'll be under the NSPIRE protocol, which would be very challenging for our folks to acclimate to so quickly. And so, I'm seeing that kind of adjustment in the schedule.

And then the other need for that adjustment in the schedule is that the NSPIRE final rule really just came out and so we're all quickly trying to acclimate. And that also means things like training. And that's not just for property owners, but that's for the state agencies and the inspectors as well.

Software has to be developed. There's no real software out there. And so, whereas UPCS has been a long-term inspection protocol and there's been training and people are certified in it and there's software and we're all moving along, we don't have the same level of comfort for NSPIRE at this time.

And so everyone is moving quickly trying to acclimate and respond to these final NSPIRE regulations. But that is going to take a little bit of time. And so that those barriers are part of some of the trouble I'm seeing with like, the implementation of NSPIRE, just from a practical perspective.

[00:19:02] **Michael Novogradac, CPA:** So thank you for that. I was going to move on to our third topic of the day, but I just wanted to see if there's any last comments you wanted to make on physical inspection.

[00:19:10] **Stephanie Naquin, HCCP, COS:** No, I mean, from my read of NSPIRE and having done UPCS inspections before, it does seem like a much more reasonable standard. I'm not suggesting it's going to be any less intense, but its focus does seem to be more about kind of what our goals are in this program. And so I'm excited about it and I think it's a really cool change.

Housing Opportunity Through Modernization Act of 2016

[00:19:33] **Michael Novogradac, CPA:** Great. Thank you. So moving on to our third topic of the day, the Housing Opportunity Through Modernization Act of 2016, which is quite a mouthful. So it's often abbreviated as HOTMA, or I should say the acronym HOTMA, H-O-T-M-A. The HOTMA contained several changes that affect the public housing and Section 8 rental assistance programs. And HUD issued the final rule in February of this year to implement the broader income and asset changes in Section 102 and 104 of HOTMA. This final rule goes into effect Jan. 1, 2024, so the first of next year. What do you think listeners need to know about the implementation of the HOTMA income and asset rules?

[00:20:21] **Stephanie Naquin, HCCP, COS:** So if nothing else is taken away from this conversation, know that how we are determining if a household is income eligible is changing, which is a big deal, right? So if we think again about what, how does a unit generate a credit? Remember, a household has to be income-eligible and they have to be income eligible under a certain standard. So we're taking a household's income and we're comparing it against the applicable income limit for that household size.

What is included in that household income is changing, and this is the first time there's been a substantial change since Section 8 was enacted back in 1937. And so we've seen some tweaks here and there over the years and some minor kind of changes to this definition, but nothing as sweeping as HOTMA is.

And so like why do we care in the Section 42 world? Well, if we go back to that Treasury Reg. 1.42-5, which is the same place we find the inspection protocol information, we can see that when Congress created this program back in 1986, they took a look around and they were like, okay, well what's existing? Let's not reinvent the wheel here.

And they identified, oh, the Section 8 program, they're already calculating or verifying income and assets. Let's adopt that standard. So it's important to delineate the adoption of that standard is specific

to what are the sources of income and what are the sources of assets. They don't–they we're not codified or beholden to the verification requirements under the Section 8 program, which is a really important component when we're talking about the HOTMA discussion, because HOTMA also changed those verification requirements for the HUD programs.

What's interesting about these changes, as we'll kind of talk about later, is how the state agencies are going to respond because it's the state agencies who have to set the verification requirements for their own compliance monitoring plan. And so we're seeing a change in the definition of what are sources of income, what are assets and household composition. And then by extension we're going to be seeing a change in expectations for verifications from the state agencies.

So it's kind of a two-part change that's happening here. But this is often called the part five definition. So the part five definition is used for all affordable housing programs that I can think of, so we're talking Section 8, we're talking the bond program, we're talking HOME, National Housing Trust Fund all HUD programs, Section 8 project-based public housing. All the programs use this part five definition. So at its core, how we approach income eligibility itself is changing, which is a big deal. So if nothing else, I want you to know something's changing and we need to acclimate to it.

[00:23:15] **Michael Novogradac, CPA:** So thank you for that. And since it's so broad, I was going to ask you what properties are subject to the change. But I think your answer's going to be, you know, all properties that have income and asset testing now will be subject to these rules.

[00:23:33] **Stephanie Naquin, HCCP, COS:** Right. And there's some pretty cool changes. Like HOTMA, I think has been, a lot of the changes have been just being discussed for several years. You know, we're thinking about household composition, you know, that's changing. So who's in the household and who's income am I counting? That's going to change.

What are considered sources of income? There's going to be some tweaks to the income inclusions and exclusions. It really hones in and highlights the kind of old adage that, like, you count everything unless it's specifically excluded. Well, the exclusions have been firmed up a little bit more to give us some more context.

And then what are considered assets is also changing. And so not only what are considered assets, but one of the more favorable things under HOTMA, I think, is this idea of assets in the threshold of $5,000. So for folks that do this every day, you'll know what I'm talking about. There's this like magical thing that happens when the total household assets hit $5,000. That threshold is changing to $50,000, which makes it way more from an administrative perspective, a program easy to administer, not only from a Section 8 side, but from a LIHTC perspective.

So why is it important from a LIHTC perspective? Well, that $5,000 means something to us also because if total household assets are less than $5,000 to satisfy the verification requirement, a

household gets to self-certify to it. So in other words, I don't have to go third-party verify. I don't have to get bank statements, I don't have to get a third party, I don't have to fax something off to the bank. And yes, people still fax them. I'm not sure where they're getting these fax machines, but I guess they're using their fax and their pager, but that's still happening.

[00:25:18] **Michael Novogradac, CPA:** Their Blackberry.

[00:25:20] **Stephanie Naquin, HCCP, COS:** Right? Your BlackBerry. They send that off and then they fax it back. So in absence of that guidance, like if someone said they had a checking account of $5, we would have to verify that, which is hugely administratively burdensome and it just takes longer. Now uh, uh when they're less than $5,000 for LIHTC, they self-certified to them. That threshold is moving from $5,000 to $50,000. So it gives us a lot more span of where we're having to verify assets.

However, there is some kind of discussion out there in the industry, whether or not we can move that self-certification to the $50,000 mark. And so I want to kind of introduce this to kind of the group and let everyone know that this is on the horizon. It's something that we're talking about. We all feel pretty confident that Treasury will come out and say, yeah, that's what we meant. That $5,000 had a context in that part five definition and that has changed. And therefore, by extension, this part is going to change for the LIHTC program.

So very similar to the discussion about whether NSPIRE replaces UPCS, there's some kind of just old existing guidance out there that has specific language in it that, you know, automatically should be replaced. But, you know, in absence of an actual updated revenue procedure or Treasury regulation doesn't really–so just some kind of heartburn out there about the actual implementation of that level.

[00:26:49] **Michael Novogradac, CPA:** Oh, go ahead. Finish.

[00:26:50] **Stephanie Naquin, HCCP, COS:** I was going to say like it's really important that we know all these different things, because after all, if you don't calculate a household's income correctly, then that's going to be non-compliance and non-compliance results in things like a reduction in your qualified basis, it results in 8823, so understanding these change is going to be key.

[00:27:09] **Michael Novogradac, CPA:** So if I'm a listener, I'm an owner or project manager of a low-income tax credit property, what should I be doing now to prepare for this Jan. 1, 2024, effective date?

[00:27:21] **Stephanie Naquin, HCCP, COS:** It's a weird time because what the rule is is that it's for determinations of income on or after Jan. 1, 2024, right? And so, if I have someone who is scheduled to move in January–you know, let's say Dec. 15, 2023, I'm going to be documenting their income under the current standard. And if something happens and let's say their move-in date changes to Jan. 3, then all of a sudden, I'm going to have to look at what I did and perfect it and change it under the new

standard. And so that's why it's a little bit challenging of a time to figure out how to practically implement this on your particular property because you have to operate under one standard through 12/31, and then immediately on New Year's Eve, we have a brand-new standard that we have to figure out how to implement.

So training is key. Understanding it is key, but also not confusing the two, while we're in this kind of weird space is super important because you want to make sure you're applying the correct standard at the correct point in time. And so I often caution people yes, train, understand, know what's going on. But maybe not talk to that on-site staff member or that leasing agent, whoever's actually doing the paperwork until closer to that time period so they're not confusing what they're doing on a day-to-day basis.

[00:28:49] **Michael Novogradac, CPA:** Thank you for that. And I think, when I think about the impact of the changes, there are three major categories and you can amplify based on the three major categories: One is how you determine household composition in terms of how many are in the household. Secondly, what are considered sources of income? And then the third are what are considered assets, with assets being relevant because there's imputed income based upon the assets.

[00:29:21] **Stephanie Naquin, HCCP, COS:** Yes, that's correct.

[00:29:23] **Michael Novogradac, CPA:** Really part of the income test, but I think of it separately as sources of income assets. Then you impute some income from the assets, which then get your overall projected income level, which you then use to determine income eligibility.

[00:29:37] **Stephanie Naquin, HCCP, COS:** That's correct. And now you're using that imputed income. Yeah, it's like, it's slightly tweaking as well. The application of that imputed income is going to be a little bit different at two. And there are some things that are otherwise considered assets that are no longer going to be considered assets. And they're really like things like retirement accounts and IRAs–certain ones not, not all of them that we generally have so much trouble trying to verify and it's almost like, why are we including this? It's not really a true asset. Well, those have been recognized and they've been removed. So what I like I think most about HOTMA is those things that are like, "hmm, why are we doing this? This doesn't make a lot of sense," it seems like have been course corrected and adjusted a little bit.

[00:30:20] **Michael Novogradac, CPA:** I would just say, I know we'll talk with this in a bit and there's the resources we have, but we do have trainings under development before that'll–

[00:30:28] **Stephanie Naquin, HCCP, COS:** That's right.

[00:30:28] **Michael Novogradac, CPA:** Webinars and the like that we'll share with listeners before the, obviously, well before the end of the year. You can become so you can identify the key areas of

change because, you know, rather than learning a whole new set of rules, that's really taking the existing rules we have and then knowing where there are changes.

[00:30:51] **Stephanie Naquin, HCCP, COS:** That's right. Yes.

Income Limits

[00:30:52] **Michael Novogradac, CPA:** So let's go on to our fourth and final topic, and we're recording this podcast before May 15th. This is the May 16th Tax Credit Tuesday, but we're recording it before May 15th, and you might be saying, well, why am I pointing that out to the listeners? Well, May 15th is the day that HUD is scheduled, or at least announced that they were scheduled, to release the 2023 income limits. We don't know if on the day of this recording they've been released or not, but we do expect them to be released if they haven't been released yet to be released soon.

So with that in mind, I thought it'd be useful, Stephanie, if you could share with listeners who are LIHTC owners or property managers or investors what actions they can take or should be taking once the new income limits are released.

[00:31:47] **Stephanie Naquin, HCCP, COS:** I've got to tell you, I always get very nervous this time of the year with projects that are placing in service during this time period.

So for the folks that have any projects placing in service or you're acquiring any new deals for the purposes of an acq-rehab this is where I get the most nervous because once income limits are released, we have this 45-day implementation period. We know for the most part we're going to be seeing increases across the country, but there are some places that we will see some decreases, so we want to be aware of that.

But once the income limits are released, we have a 45-day implementation period, and during that 45 days you get to rely on either set. And so if the 2022 are higher than the 2023, because if you're–then you're placing a service during that 45-day period, you get to use the 2022 for the purposes of your hold-harmless limit, and that's really important because once your project places in service, whatever limits are in effect, at that time, you're held harmless in case HUD publishes something that is lower than what you're using. So it's at your high-water mark once you've placed in service.

So, conversely, if the income limits are increasing in 2023, then 2022, you still get that same benefit. So you want to make sure that you're super aware of your placed-in-service date as it kind of ties into this 45-day period with the release of the limits. So keeping an eye on are the limits increasing or decreasing, and how does that affect my high-water mark, my hold harmless? And so again, we're seeing mostly increases.

So this isn't necessarily a huge worry, but we are seeing, there are some places that do decrease and in a couple of years we might start to see some decreased income limits.

So it's important that we always keep in our, in the forefront of our thought process, what are the effective dates and how do I implement these things with these different moving parts?

And so yeah, with they're decreasing, it becomes a little bit more, a little bit riskier. So I know like with my clients that are placing a service, like I have a list and I'm contacting them–you have your CO yet? Do you have your settlement statement? Do you have a TCO? Do you have something? Because likely we are assessing eligibility for an anticipated commencement of leasing activities, and if things change because of these income limits and we're not triggering that placed-in-service date at the correct time, then all that work we've done beforehand could be stale and it may be not useful. So just thinking about that implementation period is important.

The other thing that I like to remind folks as we, in the context of income limits, is the idea of your gross rent floor. And so your gross rent floor is something that is discussed in revenue procedure, it's like 9457, but in other words, whatever the rent limits were based on the income limits in effect at the time that your credits were allocated, you don't have to drop below that mark. So, to say it differently, rent limits are a calculation of income limits, so anytime there's income limits, I use those to calculate my rent limits. In the space where income limits are decreasing, I could be calculating those rent limits on a lesser income limit, which is certainly not favorable, especially if I could have otherwise use a higher income limit because it was higher when my credits were allocated.

So it's two point in times. It's when the credits were allocated, your gross rent floor automatically takes effect unless the owner takes some sort of action to elect to do it at placed in service. And if you hear nothing else from this conversation, then this, don't elect it at place in service. There is no value add to doing that.

We have to remember that this revenue procedure is kind of, is back from 1994 when there were different circumstances, and the idea of the hold-harmless policy wasn't in existence. That came into play in 2008. And so we already get the benefit of whatever the rent limits are based on the income limits at placed in service through that hold-harmless policy. And so you would never want to do it at placed in service. You would always want to take it at allocation to give you the maximum possible rental rates, which of course turns into revenue, right?

And so I was talking to someone from the compliance department at a really large state agency, and they were like, Stephanie, an owner, they want, they are insisting that they do this at place in service and it's causing a problem and they just won't listen. What do I do? And I was like, that, yeah, that's a problem. But I guess it's their choice, you know? If they're wanting to go ahead and collect lower rent, then I guess that's on them.

But it is a real thing. So if there is any state agencies out there, just stop asking the question, it automatically goes into effect. There's no requirement of you to ask the question. It just let the revenue procedure function as it functions. It only asking the question confuses the issue.

And then the last thing I want to say about the gross rent floor is just to really iterate that it's two point times it's allocation or placed in service. And that's important in an area of volatile income limits because my income limit at allocation could be, you know, let's say $10,000, and then in between years, let's say it jumps up to $15,000 and then when I place in service it's $8,000, it's not like I get to pick any year since the time of allocation and then choose that as my high-water mark. It's limited to allocation or placed in service, because I tend to get a lot of questions about those intervening years, I'm like, no, that's not a thing.

[00:37:53] **Michael Novogradac, CPA:** I think what you're highlighting is the fact that state agencies will ask, or many state agencies will ask, do you want to make the election to have your influence determined at place in service is really a trap for the unwary because I like just think of it, you know, somewhat simplistically, as you were kind of pointing out that your floor through Section 42 is going to be either the allocation date or the placed-in-service date. But, if between the time of the allocation date, if that's your floor, if the incomes actually rise and at the point of your place-in-service date they've risen from the income allocation date, that rise becomes your new floor. Whereas if from the income allocation date, it falls, then you get to use the income allocation date unless you make the gross rent floor election to use the place-in-service date. So, you know, it really is a trap for the unwary and it's kind of unfortunate. It'd be nice if state agencies just stopped asking that question. It's unfortunately, it's the lesser informed developer that'll be making that election or the less-informed person working with the developer make that election not realizing that, you know, there's no upside, but there is downside.

But let's speaking of jobs for the unwary and ways in which clients can get educated to avoid these trials, what are some of the resources Novogradac offers that help our listeners navigate broader property compliance and more specifically, these upcoming changes and the deadlines.

[00:39:37] **Stephanie Naquin, HCCP, COS:** So for average income, I'm seeing a lot of investors putting into the partnership agreements a requirement to have someone involved more actively, not only in that first year, but ongoing. So I want to say normal, but old-school minimum set-aside, your 20 at 50 or 40 at 60, of course, we see investors wanting a, you know, first-year tenant file review to make sure those first-year tenants are good. I'm seeing an expectation beyond that first year for someone to participate in that process, to really make sure that everything is on track. And so I'm seeing anywhere from like one year to three years being required as part of, you know You know, agreements that are made with your third party consultants, that they're part of these deals for a longer period of time.

And so for Novogradac certainly does that. We have a whole host of ones we do for investors on the first-year tenant file reviews. And then we have ones in which we participate in an ongoing basis, not only for the tenant file reviews, but also for that qualified group of units. So going back to that discussion on how do we best track that? You know, built into some of our services is assistance with tracking that qualified group of units.

And then of course, we are always here to help review agency policies, which we've done and do and be a resource for agencies is they think about how to best incorporate all these different reporting components and kind of what it means for them, their portfolio. I'm really excited right now because NCSHA is coming out with the recommended practices, which means that the June NCSHA conference, this is going to be a buzz, right? Like everyone's going to be–like in January, everyone was just excited to see each other, maybe start talking about it, but wasn't really ready to robustly discuss what they were doing. I feel like now in June, we're going to get a lot of kind of insight to what's going on from a total industry perspective.

So that's average income. And then, you know, we're in the process right now of developing some HOTMA trainings. So we're really trying to figure out, you know, where does our focus need to lie when it comes to gearing people up for HOTMA? And so we are we are collaborating currently with the Novogradac training department to kind of figure out what is the best way to do this? Is it one webinar that's focused on income and assets? Is it a series? So stay tuned for that. We want to kind of map out what is the most effective way to communicate this information.

And then of course we'll be incorporating this into our property compliance workshop. And that will also extend to the Novogradac Property Compliance Certification Exam. And so we are in the process of looking at all of our current materials and updating accordingly. The June property compliance workshop is not going to have HOTMA information. We likely will not include this into our property compliance workshop until the one toward the end of the year. And that's intentional cause we don't want to confuse people and be misleading them about when things are effective.

And then of course we also offer personalized trainings. I do a lot of lunch and learns. I love me a lunch and learn. All of this is so much information, like there's so much that we could talk about or focus on, and it can be very overwhelming for that on-site staff member who's actually doing the work day in, day out. And so these kind of targeted personalized trainings are super helpful because what it does is it takes the information and puts it in the context of what does that person need to know? So not everything and the kitchen sink, but just the kitchen and just kind of test that out for them.

So and then of course we always have our future webinars and workshops and compliance services. And I sometimes feel like a used car salesman, Mike, because I'm like, what do you need? We can do, but it really is true because compliance is so broad that understanding the specific needs is really important to being successful in this industry.

[00:43:49] **Michael Novogradac, CPA:** So thank you for that. And I'll just, of all the various items that you mentioned I'll just emphasize the HOTMA changes that are effective Jan. 1, 2024. That's kind of what scares me the most in terms of an industry participant is there's the getting all those changes out, you know, from having that change be Dec. 31 to Jan. 1 and getting all that information communicated so it doesn't get adopted too early and the income and the income calculation tests end

up being inaccurate or they don't get implemented on Jan. 1 such that the income calculations are inaccurate. Definitely makes me a tad nervous knowing how many units, how many millions of units are out there, and how many tenant verifications going on. And how many people are involved in all of that. A somewhat massive undertaking to get everyone educated on the distinctions.

So if you're listening to the podcast, I definitely would encourage you, if you're an investor, I'd encourage you to talk to your syndicators about how they're addressing the question on their existing portfolio. And if you're a developer, I'd be reaching out to your property compliance department asking them how they're addressing it. And if you're in the property compliance department, I'd be reaching out to your property managers and asking their focus on it. I think if everyone is asking questions about it, there'll be fewer properties where the calculations slip through the cracks. But I'll get down from my soapbox.

[00:45:30] **Stephanie Naquin, HCCP, COS:** Well, I mean, if I could just crawl up on that soapbox with you, I guess the cool thing is that like we're all learning it, right? We're all learning together and you know, you know, we're all figuring out how to acclimate and implement it.

So, while it seems scary, we can do this. Just like average income seems scary, but we can all do it now. HOTMA is just new. It's a change. Changes can be scary, but I fully think it's going to be a lot easier in the long run to administer the application of these determinations.

[00:46:05] **Michael Novogradac, CPA:** Yeah, I'm definitely happy with the changes, just adopting changes. And then obviously for reasons we don't need to go through in detail here, the real key issue's going to be with new tenants on properties and calculations being done correctly for new tenants. So we could keep talking about this for a while, but we don't have the time here today.

Exit

So thank you, Stephanie, for joining me on the podcast. I will include your contact information in today's show notes, so listeners can reach out to you with specific questions. And please do stick around for our Off-Mike Section where I get to ask you for some fun off-topic recommendations and words of wisdom.

And to our listeners, be sure to tune into next week's podcast, which I hope will continue the discussion about income limits. As Stephanie and I noted earlier, the U.S. Department of Housing Urban Development is scheduled or has notified the industry that they plan to release fiscal year 2023 income limits on May 15. And as most listeners know, the HUD income limits are used by owners of tax credit properties to determine the maximum income families can earn and still qualify to live in tax credit properties.

And they're also used to determine the restricted rental rates, the maximum restricted rents that can be charged. Now if HUD stays on schedule with that income limit release, then my guest next week will be

my partner, Thomas Stagg. Many of us, including myself, think of Thomas as the expert on rent and income limits. I guess at least the expert outside of HUD because ultimately as the experts since they do the calculations. But Thomas is super familiar with how those calculations are done. Hence, we do have, as many listeners know, have an online income and rent limit calculator.

And then we also provide a service to clients that estimates income and rent limits out, you know, one or two years. And many developers, investors, lenders, and the like find that super useful so they can assess a property under development, what it's likely to generate in terms of income levels when it's placed in service. And we also find those that are seeking to acquire existing portfolios of LIHTC properties, that they find it useful to get that information so they have a sense over the next couple of years what maximum rents might be on a given portfolio of properties.

And there's also other users of those rent, of the rent and income limit estimator. So would encourage you to reach out to Thomas if you have any interest in that. I can assure you that your competitors are showing interest, at least some of them.

And if Thomas is on, if the income limits do come out as scheduled, we'll talk about the main takeaways from the income limits and what property owners and property managers should consider will go much more in depth than Stephanie was able to touch upon here today. We'll also talk about what we learned and didn't learn about how HUD will handle income limits going forward.

The income limits are not static. The ways in which they get calculated and applied have variability. Some years the variability is more than others, and some years HUD announces that in a couple of years are going to make a change. And it's important to know what the future holds, at least, what HUD's sharing about how the future income limits might, calculations might change.

And oftentimes they can have a material impact on a given area. And if you're developing in a given area, you'll want to know if there's some change that planning in the near term. And then if HUD is delayed in releasing in the 2023 income limits, then naturally we'll delay Thomas Stagg's return to Tax Credit Tuesday until after the income limits are released.

And if you do have any questions with respect to the 2023 income limits, questions you think we should, I should be asking Thomas Stagg, please send me an email and suggestion to Michael Novogradac at cpas@novoco.com.

Off-Mike Section

Now I'm pleased to reach our Off-Mike Section, where I get to ask Stephanie for some off-topic recommendations and words of wisdom.

And Stephanie, let me start with a question about your job and if is there a lesson or two that your job has taught you that you think everyone should learn at some point in their life?

[00:50:49] **Stephanie Naquin, HCCP, COS:** Yeah. So that's a great question, Mike. So, you know, I've had various positions in this industry. So, like I started as a leasing agent and I worked my way up through that side. I've been with the state agency. And then now in this capacity, I kind of see, you know, this side of the fence.

And collectively, what I think that experience has taught me is that you have to be able to adapt to change in this industry. While that's obviously a good life lesson to learn, I think I learned it best working in this industry. So, while there's not always, you know, sweeping change like there is with HOTMA or NSPIRE, there's always some sort of change.

And it could be nuanced, but effective and meaningful in context that you need to understand it. And so just not operating in that, well, that's how I always did it, like just because and that's because. Things change and as a result, you need to course correct and adapt to those changes to be successful in the compliance space.

If you always just do it just because you did it that way before, it's always been done that way, then you really lose sight and opportunities for efficiency and effectiveness and ultimately we lose sight on the goal of what we're doing here and that's to create housing that's decent, safe and sanitary for, you know, low-income housing or low-income tenants. And so being able to do that has just been super helpful whether it be from a–you know, because it's not just like Section 42 we have to abide by, right? It's state agency rules as well, and those change all the time. And so we don't know A, what the changes are and B, we're cool with it and we know that we can get past it then you're just not going to be successful in doing like in the compliance space.

[00:52:43] **Michael Novogradac, CPA:** Good comments. I like how you focused on learning that you have to be able to adapt to change, but you also have to be encouraging change to better optimize. So I really like the way you looked at both sides, if you will, of the change coin. Change affects you and how your change is going to affect others.

So why don't we stay with, for my second question, why don't we stay with the theme of change? So what's your best tip for how to adjust to change?

[00:53:15] **Stephanie Naquin, HCCP, COS:** Oh my goodness. Ah listen. Listen to the people who are around you and on your team and help identify what the struggles are.

Oftentimes we may be doing something, and I tend to observe, like what, like something is being done consistently incorrectly, or there's consistent, like struggles and getting something accomplished. And so listening to the people doing the work and understanding what those barriers are, help better accommodate the correct types of change. And so you, in other words, you can't do it in a vacuum, right? You can't just, I, Stephanie can't just sit here and figure out like, okay, this needs to change. We

will do it. I need the input of the people around me. I need to understand what's going on so that we can craft the correct plan.

Because what you don't want to do is just to change for the sake of changing, right? Like, you don't want to just be reactive because there's one particular thing. You want to make sure that there's a need for the change and understand what's the best way to do it so you're not constantly to course correct.

[00:54:20] **Michael Novogradac, CPA:** Right, right. No, I like that. And you know, I take that approach at Novogradac that collectively a group knows a lot more than any one individually. And when you are adapting or adjusting to change, or you're considering making changes, it's important to share that with the group and seek the advice of the group because the group itself has a lot more experience, if not more knowledge, than you individually.

And it's obviously obvious because if you're part of the group, the group can't have less knowledge than you and the group must have more knowledge. But it's one thing for something to be obvious and it's another thing to put something that's obvious into common practice.

So thank you, Stephanie. I appreciate those extra words of wisdom that aren't related to housing but have a linkage there. And to our listeners, I'm Mike Novogradac. Thanks for listening.

Additional Resources

Email

Stephanie Naquin

Webinar

Novogradac Online LIHTC Property Compliance Workshop