Expanding Knowledge of Compliance for Mixed-Income Tax Credit Properties

Property compliance is multilayered for owners and managers of low-income housing credit (LIHTC) properties, with complexity increasing for mixed-income properties, which are properties whose renters make up to varying levels of the area median income, often including market-rate apartments. In this episode of Tax Credit Tuesday, Michael Novogradac, CPA, and Stephanie Naquin, HCCP, COS, delve into compliance for mixed-income properties that use the LIHTC. They discuss the definitions of 100% affordable housing and mixed-income housing, recertifications, the next-available-unit rule and more.

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Transcript

Introduction

[00:00:12] **Michael Novogradac, CPA**: Hello, I'm Michael Novogradac and this is Tax Credit Tuesday. This is the May 14, 2024, podcast.

As our viewers on YouTube can see, I'm pleased to have as my guest this week, Stephanie Naquin, director of multifamily compliance in Novogradac's Austin, Texas, office. Stephanie is one of Novogradac's leading experts when it comes to affordable rental housing compliance, which makes her an ideal guest for today's topic. We're going to discuss property compliance for mixed-income properties that use the low-income housing tax credit.

Now, the inspiration for today's episode came from the March 26 episode of Tax Credit Tuesday, when Novogradac housing policy consultant Mark Shelburne was my guest and we discussed the many meanings of the term "mixed income." Now, during the course of that conversation, one of the topics we touched upon was compliance for mixed-income tax credit properties. And I think even during that podcast, I suggested maybe we needed to have Stephanie on to discuss that topic.

And here we go. Today's podcast is going to focus on the much larger property compliance complexities that are involved when you're operating a tax credit property that is mixed income. That is, you're not renting all the units to income-eligible and otherwise qualified tenants and charging no more than the maximum tax credit rents.

Now, I do have a word to the wise. I've found that many property developers, tax credit developers, who are new to the space and may initially be considering mixed-income properties, tax credit properties, when they learn of these complexities, they step back and choose to operate the properties as 100% affordable, even if they don't get tax credits on all the units.

With that said, many do not, and there's lots of reasons not to do it that way, and that's the purpose of today's podcast, to help you navigate the various complexities.

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

Compliance Services

Stephanie, welcome back. This is your ninth appearance on Tax Credit Tuesday.

[00:02:33] **Stephanie Naquin, HCCP, COS**: So exciting.

[00:02:34] **Michael Novogradac, CPA**: Yes, yes. It makes you, I'm not sure where you rank, but it definitely puts you in the top of the various guests that I've had on Tax Credit Tuesday over the years.

[00:02:44] **Stephanie Naquin, HCCP, COS**: Yeah, no pressure or anything. But it's definitely an honor to be here. And I really always appreciate the platform to get the word out about these compliance issues, so thank you.

[00:02:53] **Michael Novogradac, CPA**: Well, it's great to have you back on the podcast. Now, before we discuss today's topic, as I like to do on all my podcasts with my partners and other associates, if you could please describe for our listeners some of the services you provide to Novogradac clients.

[00:03:10] **Stephanie Naquin, HCCP, COS**: Yeah. Well, I think what I've probably said in all the podcasts is I'm not a CPA, I just play one on TV every once in a while. I'm not an attorney. Maybe I play one on TV, but I'm like all things compliance.

So in my capacity, both myself and my team, are very focused on what happens after placed in service and whether that be tenant file reviews for investors or directly with owners or kind of operating as a property owner's compliance shop or even consulting. It really runs the gamut of all the various services.

I'm very much focused on holistic compliance, so to whatever extent we can help support folks through that process is really what we're here to do. And that could be, again, tenant file reviews, consulting, utility allowances compliance manuals, rule, like all the things.

I sometimes feel like a used car salesman when people call me because they were like can you give me a fact or term sheet or something? And I'm like, nope, because what do you need? I can do it. So that's really the focus of what I, my team does here at Novogradac when it comes to compliance is pulling out and focusing on both the macro and the micro when it comes to, well, what could be a very complicated topic.

[00:04:30] **Michael Novogradac, CPA**: And what could be more complicated than mixed-income tax credit housing?

[00:04:34] **Stephanie Naquin, HCCP, COS**: I mean, not a lot. Not a lot. It definitely has its uniquenesses. Uniquenesses? That's a word? Sure.

[00:04:41] **Michael Novogradac, CPA**: It is now.

Definitions of 100% Affordable and Mixed-Income Housing

So most tax credit properties are 100% affordable, wherein 100% of the units are rented to tax credit eligible tenants, which among a variety of factors, they have to be below a certain qualifying income level, and then they're charged no more than the maximum allowable tax credit rents.

And while it's not simple, it's much simpler than if you have a mixed-income property. And with respect to a mixed-income property, as I'm referring to a property where some portion of the units are not rent

restricted and are not income restricted and they're rented to otherwise market-rate tenants, or it could be some other program that you're under, but it's not tax-credit eligible as such that the tenants and the unit itself wouldn't qualify for purposes of calculating the amount of tax credits a property is eligible for.

Or I'm thinking of mixed income. For this purpose, we're thinking about those properties that have these units that are not qualified units for purposes of the low-income housing tax credit. With that as a bit of an overview, maybe you can build that out a bit, elaborate on it, on the distinction.

[00:06:10] **Stephanie Naquin, HCCP, COS**: Yeah. That's a really kind of great groundwork. In a nutshell, that's what it is. We have buildings and they are covered under a low-income housing tax credit extended-use agreement. And built into that is this expectation of how many units am I going to offer up under that extended use agreement as housing tax credit units, and it could be 100%.

And how I operate 100% low-income project is different than how I'm going to operate a mixed-income, low-income project and understanding the delineation between the two is key in maintaining compliance throughout that extended-use period.

I do want to make sure everyone is on the same page that as – so, as kind of the years go on, this gets a little bit more complicated, but under both types of activities, anytime a housing tax credit tenant moves into one of these projects, we are tasked with identifying them and certifying them as low income. This conversation is really about once someone moves into one of these projects as low income, what am I required to do on an annual basis to make sure that I'm maintaining compliance and preserving that particular building's low income occupancy percentage, so that that building continues to generate the amount of credits that I told the investor way before I placed in service that I was going to generate on an annual basis?

So it's about, first, understanding the type of project that I have and then figuring out what I need to do. If I'm 100% low income, I do want to dispel this idea that we're not having to do anything annually. We're still having to do something on an annual basis for all those 100% low-income projects, and that's really about checking the student status. But I'm not required to do like this full, annual income recertification the same way that I am required to do it for a mixed-income project.

And so first, understanding the activity is important and then making sure you're delineating between those activities. So you're applying compliance on the right way helps preserve that on an ongoing basis. If I'm 100% low income, and hopefully this isn't a surprise for anyone out there, but if it is, surprise! We know we're not required to test someone's income annually. We're always required to make sure that we have not qualified student households, and if they're nonqualified student households, taking some sort of action, and that doesn't change between the two activities.

Really what this is about is checking someone's income on an annual basis, and what happens if their income increases under that applicable income limit for the household size. What do I do? How do I take that income and still be able to deliver the right amount of credits at the end of the day?

[00:09:01] **Michael Novogradac, CPA**: So when I think about a tax credit property, and this actually takes me way back to the '86 Tax Act, where even the statute itself uses some words interchangeably. And I think if we were to redraft Section 42, which I have no plan to do there's probably areas where I would change the words, but I think of a property as being the entire number of units that a owner owns.

So you have a project and you have units and then many, most tax credit properties don't have just one building. They have multiple buildings. So you end up with units, different number of units in each building. And some of the tests that we talk about are applied on a building-by-building basis.

And some could be applied on a project basis. And when I think about a tax credit property and those on are watching on YouTube are seeing me putting my hands up in the air and on my left I'm showing property and my far right, I have units and then closer to the property, I have buildings, which units make up the buildings and then in between property and buildings. I could have a multiple projects.

[00:10:28] **Stephanie Naquin, HCCP, COS**: That's right.

[00:10:29] **Michael Novogradac, CPA**: I could have projects. So a property could have two projects and within those projects one could be 100% affordable and that project would make up certain buildings and units as well as, and that could be 100% affordable. And then another project could be mixed income.

[00:10:52] **Stephanie Naquin, HCCP, COS**: Yeah.

[00:10:53] **Michael Novogradac, CPA**: I've said a lot there.

[00:10:54] **Stephanie Naquin, HCCP, COS**: Yeah, that was a lot of words, but I do think that you synthesized it really well. In a sense, if you go to the code and the various regulations, they do use these terms interchangeably. So it's really important for us in order to operate compliantly through the extended-use agreement to really understand what these terms mean.

So we are very much looking back and pulling through this idea of what is a project as it relates to the election on Line 8B of the 8609. So let's look at an example. I could have 10 buildings on a property that I as an owner own. And five of those buildings could be 100% low income, which means everyone that I'm moving in is qualified under the housing tax credit program.

And the other five are mixed income, which means not everyone that's moving in is qualified under the housing tax credit program. I have some unrestricted or some market-rate units. So I have 10 buildings, five are 100% low income, five have some market-rate units.

What do I do? How do I maintain compliance? Well, this depends on what your Line 8B election is, so we're folding in this idea of a project. I have a couple of different options as an owner that I would want to make. So option number one is I could say that I'm going to treat the first five buildings that are 100% low income as one project.

That means I'm going to have an 8609 for each one of those five buildings. Yes, it's going to be checked, and I'm going to have an attachment that supports. These five buildings are part of one multiple-building project. Same with the five buildings that are mixed income. Also going to have an 8609. They're going to say yes, and I got to have that statement that says these five buildings are project number two.

So now I know I have two separate projects on the same physical property. Project number one is 100% low income. I'm not having to test income annually. Project number two that has mixed income or market-rate units, I am testing income annually. If we switch that up a little bit and say all 10 buildings are part of one multiple-building project, then all of a sudden I am doing annual income recertifications.

I'm testing that income annually on all the low-income units in all 10 buildings, regardless of each building's low-income occupancy percentage. And so that's why an owner might say, I have two projects on this property to be able to insulate those 100% low-income buildings in a way that doesn't require us to test that income annually and just focus on the operational kind of issues with the testing of income for those mixed income ones.

This is a great path and a great option. And Mike, I'm going to be honest with you. I've been doing this for, well, since I was like 7. No, I'm just kidding. Twenty years since I was 7. Just kidding. Way older than that. But you know, I was with the Texas HFA when HERA came out. And I know you remember HERA back in 2008, which seems like super new legislation, but it's also not so much anymore.

And that's the first time we were introduced to this idea that if you're 100% low income, Congress was like you're always moving in low-income folks, so there's no reason to test income annually. And I'm going to be honest with you, shh, don't tell anyone, but also I'm fine telling everyone. That might mean the election didn't play into how we were operationally doing things because everyone was required to do annual income recertifications before that.

So, while it does seem like a newer concept, this idea of the election playing into how to operate compliantly, it's not so much. It's been around since 2008. And so, again, I hope this wasn't news to everyone, but if it was, surprise, and you're welcome. That's very exciting for those 100%.

Now, we still have those other ones that we need to contend with, and that's where things get a little bit trickier. I just wanted to make sure, A, we were level-setting this idea that it's not about necessarily the buildings' low-income occupancy risk percentage. It's how those buildings play into the larger project election that drives how we maintain compliance. And then even then, if I'm insulating those 100% low-income buildings into a separate project, it doesn't mean I'm not doing anything. It just means I'm not testing income annually.

Next-Available Unit Rule

[00:15:15] **Michael Novogradac, CPA**: And when we talk about the annual income certifications, we talk about the requirement, the federal requirement, to have it or not have it. That's really driven by what's referred to as the next-available-unit rule. So maybe you could explain to the listeners what the next-available-unit rule is and the role that the annual income certification plays in applying that rule.

[00:15:43] **Stephanie Naquin, HCCP, COS**: So when we have low-income tenants that are moving into these units in theory, the idea here is that households or to whatever extent their incomes are increasing annually, and whether that be through natural cost of living or different job opportunities, or we're looking at a population who, in general, have increasing incomes. And at some point, the household's income may exceed the applicable income limit for the household size, and even it could go way up, and that's OK, right? It is okay. We don't want to discourage the betterment of low-income households from creating different opportunities and obtaining different opportunities.

And so as such, we have this next-available-unit rule in play that allows us to preserve the low-income occupancy or even the occupancy of that tenant as long as we follow a couple of steps through the process.

So the first thing is I want to make sure everyone is on the same page about is that your tenants have to be income eligible when they move in. That's a really important level set here, because this only speaks to what happens if they're initially income eligible, and at some subsequent certification, their income increases over a certain extent.

What do I do? I kick them out? I evict them? I'm like, get out on the street? You're doing better for yourself, therefore, this housing is not for you? Absolutely not. And in fact, there's a component of the code that says that we don't terminate someone's tenancy for anything other than good cause. And good cause isn't, this doesn't really fit into good cause because we have this available-unit rule in our back pocket that allows us to naturally operate through the process and still preserve the occupancy that's needed to deliver those buildings credits. And so step number one is, again, they were income eligible to move in. Key step.

Step number two is that I'm doing annual income recertification. So what is an annual income recertification? It's a rinse and repeat of the initial income recertification. It's due annually on the

household's original move in date into the project, and that is super important in this conversation because if someone transfers to a different unit within the same building or within a different building in the same project, the date that they moved into that project doesn't change, and that's the date by which this annual income recertification is due.

So, making sure you have an understanding of that. I present that household and application. I screen them all over. I ask them for another blood sample and a promise of their second born because I've already gotten their first born and initial certification and a lock of their hair. I don't know something crazy like that.

It's an intense process, but we're checking their income annually. And then if someone's income, after I do all the things that I need to do on-site increases over the applicable income limit for the household. So if I'm 40-at-60, that would be 60%. There's not anything I need to do right now. I keep the rent restricted, and in fact, I keep the rent restricted until such time that the household exceeds 140% of the applicable income limit, and now they're over-income.

And to your earlier point, Mike, words mean things in this program. Over-income means they were initially income eligible and now at some sort of subsequent time, they have exceeded 140% of the applicable income limit. Now I know there's things that I need to take, some additional action I need to take to preserve that building's low-income occupancy percentage so that I can deliver the amount of credits with that over-income household that my investor is expecting us to do.

I'd like to really like hone in on that when we do property compliance workshop. Wayne has this little soapbox that pulls out and don't you know I get right up on my soapbox when we talk about this. Because if you call me and say, Stephanie, I have an over-income tenant, my answer on how to address that or fix that from a compliance perspective, technically, it's going to be very different if you mean you accidentally move someone in who is not income eligible.

So I want to make sure I'm being super clear. They got to be income eligible first. Then they can be over-income. So once a tenant is considered over-income, what we're doing is making sure that all next-available units a smaller comparable size in that building are at least two tenants that are tax credit qualified until such time that I can meet that building's low-income occupancy percentage without my over-income tenant.

[00:20:35] **Michael Novogradac, CPA**: All right, thank you for that. And there is a narrow alternative rule to the 140%, which is higher in a limited circumstance.

[00:20:45] **Stephanie Naquin, HCCP, COS**: Oh, don't even start me on deep rent skew! If you were going to go there, no!

[00:20:49] **Michael Novogradac, CPA**: I'm not going to go there, but I just wanted to say, full disclosure, that 140% is the rule and 95% or more of this situation, there's just one deep rent skew rule.

[00:21:01] **Stephanie Naquin, HCCP, COS**: Yeah, if you guys thought mixed income was challenging, throw in some deep rent skew stuff and things to get real fun.

[00:21:09] **Michael Novogradac, CPA**: I just wanted to point out that from a federal perspective, if you're 100% affordable, you're always renting the next available unit to a qualifying tenant.

[00:21:22] **Stephanie Naquin, HCCP, COS**: Right.

[00:21:22] **Michael Novogradac, CPA**: So that's one of the reasons why the notion of having to do annual income certification for 100% affordable property didn't make sense from a federal perspective because it didn't change how you operated the property. And one of the reasons that do, one of the reasons you would do the, you would do the income certification annually is so you would know if the next-available-unit rule is going to be kicking in.

[00:21:48] **Stephanie Naquin, HCCP, COS**: Right.

[00:21:48] **Michael Novogradac, CPA**: That all being said – go ahead.

[00:21:49] **Stephanie Naquin, HCCP, COS**: Yeah, I do want to just highlight, I don't want anyone out there to think that by extension, that means you can never fail the next-available-unit rule with 100% low income. You can, but you have to really take some deliberate action to not do anything, just start handing keys out to folks on the street.

[00:22:08] **Michael Novogradac, CPA**: Well, no, no, you definitely – you can if you don't rent to qualifying tenants.

[00:22:13] **Stephanie Naquin, HCCP, COS**: Right. But you would think people just forget about that little rule. So, yeah, in that case, you're getting everything and the kitchen sink thrown at you anyway.

[00:22:22] **Michael Novogradac, CPA**: Yeah, you have bigger issues if you're 100% affordable and not renting–

[00:22:27] **Stephanie Naquin, HCCP, COS**: Yes, you do.

[00:22:28] **Michael Novogradac, CPA**: The units to qualifying tenants.

Recertifications

That being said, some properties will continue to have an annual recertification and one of the reasons could be the state agency requires it. Are there other reasons why you would see a property that's 100% affordable continue to do income certifications other than the state agency mandate?

[00:22:54] **Stephanie Naquin, HCCP, COS**: Yes, they have some other type of program that is on their property. And as a result of that program, that income test annually is required. So, they could have some HOME funds and there is a annual income recertification test depending on what year of the affordability period you're in in HOME.

And so, that's really important if you're doing it for that program, that you're doing it in compliance with that program and not conflating the requirements of the housing tax credit program to those other ones. So not one-size-fits all. And if you're doing it for other programs, it doesn't all of a sudden taint your application of the housing tax credit compliance.

And again, like you said, Mike, if I'm 100% low income, in theory, I'm moving everyone into a building. All next-available units are being occupied by low-income households. So even if I have this other program where I'm testing income and it becomes obvious that this tenant's income has risen above a certain level, A, it doesn't take the initial income certification for tax credit or change what I have to do, but, B, I'm already, by extension, following the available unit rules, so deep breaths, no worries about that kind of violation. So. Great question.

[00:24:13] **Michael Novogradac, CPA**: And in the context of the next-available unit rule, if you do have to rent the next available unit or when you have to rent the next available unit to a qualifying tenant with restricted rents, that ends up having an adverse effect on property income because you have an existing tenant with restricted rents that once you rent the next available unit, they're not a qualifying tenant anymore and now they're there, but they have restricted rents.

And that's a consideration for underwriting. So, as a general matter, you really, in a mixed-income property, you can't be assuming 100% of your market-rate units are going to be generating market-rate rents. Any other observations about that question?

[00:25:00] **Stephanie Naquin, HCCP, COS**: Yeah, I mean, that's true. I mean, sometimes through just the natural progression of the available unit role, because I need enough units to meet that low-income occupancy percentage without my over-income, before I can do something with that over-income tenant, you may have more low-income occupancy and a particular ability that would have otherwise been underwritten.

But, remember, less low-income occupancy than I'm otherwise required means I wouldn't be able to deliver all those credits that the investor is anticipating, so while for a short period of time, or for a period of time, I might have to have more units rent restricted, the idea here is that if you follow the available unit rule the right way, it'll all kind of shake out in the end. So that should be a short period of time, but it is a better position to be in than the opposite where I'm–

Unit and Floor Space Fractions

[00:25:56] **Michael Novogradac, CPA**: No, no, it's definitely, I mean – you can't deal with tax credit recapture and foregoing future tax credits and the rest. It's more just from an underwriting perspective, to emphasize the fact that mixed-income property in this manner, you would end up with that issue. Which is one of the reasons why a single property might have multiple projects 100% affordable, one not to help sort of manage some of that risk.

[00:26:22] **Stephanie Naquin, HCCP, COS**: But it's also, you might think, and the way we've described it so far, it might seem like if I'm an owner or manager that if the next-available unit rule kicks in, because the one tenant is 40% higher or 40% has an income level that's 40% higher than the allowable income limit, and then the next-available unit rule kicks in, so I rent my next-available unit to a low-income tenant and now I have the same number of units that are my minimum tax credit number of units, but that may not satisfy my promise of delivery of tax credits to the investor.

[00:27:08] **Michael Novogradac, CPA**: You may have to do another calculation and maybe, or not, maybe, please do explain to the listeners what additional calculation you have to do in order to ensure you're delivering the tax credits to the investor that they're expecting.

[00:27:23] **Stephanie Naquin, HCCP, COS**: So you would think that just on face value, this idea of moving in all next-available units of smaller comparable size is pretty straightforward, but not so much.

So let's say that the next-available unit was a previously qualified tax credit, housing tax credit unit. Well, I would obviously want to lease that unit with a low-income household, but that still is not replacing, and I still don't have enough units to cover my building's low-income occupancy percentage without the over-income tenant. So it's not just an immediate one for one. It is a progression until such time that I'm able to kind of replace that low-income occupancy unit or percentage in that particular building to preserve that building's qualified basis.

If, let's take a pretty straightforward example where I have 10 units and they're all two bedrooms. Let's make it super easy, right? So, smaller or comparable, you would think would all be two bedrooms. If they're all the same size two bedrooms, because remember, when I talk about my long term occupancy percentage or think about it as your applicable fraction, it's not just my unit count. I'm not just counting the number of units that are low income and making sure I have enough number of units to cover the spread. I'm always looking at the lesser of the two, my unit fraction or my floor space fraction, and that's what's gets folded into my qualified basis calculation every year.

So, if I have a, all two bedrooms, let's say that they're all the same size two bedrooms, like a nice clean example, and the next available unit that becomes vacant is a previously unrestricted or market-rate household.

First, I want to dispel this idea that for this purposes, unit designations are what they are in perpetuity for this conversation. So, a lot of times I get this idea of what was occupied by a market tenant, therefore, it should be occupied for a market tenant now. And I'm like, no, no, no, no, that's a violation of the available-unit rule. You're required to lease that unit to a low-income household.

If they're all the same size, and I have an even number of units, then that is a one for one. At the time I replace that over-income tenant with a new low-income household in a different unit, I then have an opportunity to take a look at my over-income tenant and convert them to an unrestricted or market-rate unit. And at that time, I wouldn't be required to keep the rent restricted.

So that is a great kind of clean cut example of, yes, for a period of time, I might have more low income occupancy in this building, but once I have and are accomplished the available unit rule, I get to convert that over income tenant to a market rate unit, therefore re-establishing that original low income occupancy percentage.

Here's where things get very interesting, and let's still stick with the all two-bedrooms. I could have two-bedroom units of different floor space, right? I could have a two-bedroom unit that's 900 square foot and a two-bedroom unit that is 750 square feet. Well, if the two-bedroom unit in which I have an over-income tenant is 900 square feet and the next one that comes available is 750 square feet, I'm going to want to move a low-income tenant into that 750-square-foot, two-bedroom unit and have enough number of units to cover my low-income occupancy percentage but not enough square footage.

So, I would need to continue to rent units until such time I could cover both the floor space and the unit fraction. That preserves my building's qualified basis. And that's just if we have some units that are all two bedrooms. Fold in other size bedrooms, one bedrooms, two bedrooms, three bedrooms, all of different kind of square footages or floor space, and that's where things get very interesting.

[00:31:27] **Michael Novogradac, CPA**: And I'd just like to remind listeners that Congress created the rule that you get the lesser, your low-income occupancy percentage is the lesser of relative square footage or relative units, and you can guess why Congress did it.

They didn't want to create an incentive to have the market-rate units be larger and the low-income units smaller, and you would get, in essence, tax credits and costs attributable to the larger units if you did a pure unit count.

So it was an effort by Congress to be, to encourage equity among your tenant pop – among your mixed-income tenant population, or at least–

[00:32:03] **Stephanie Naquin, HCCP, COS**: And how this unfolds, definitely. How this unfolds definitely reinforces that idea.

[00:32:08] **Michael Novogradac, CPA**: At least they didn't want to create a subsidy that subsidized equity.

[00:32:14] **Stephanie Naquin, HCCP, COS**: Right? There you go.

[00:32:16] **Michael Novogradac, CPA**: So, I'm going to, we, in preparing for the podcast, we were going to talk about the average-income test and how the average-income test complicates the mixed income, is further complicated if it's a mixed-income average-income property.

And I'll just mention for the audience average income is where you can rent up to 80% of your median income, but the average income of the property has to be 60%. And there's a host number, a number of complexities that you need to be mindful of when you're operating a property qualifying for the average-income set aside, and that is further complicated if it's a mixed-income property, but I'm going to keep that for a 202 podcast and not go into that. As much as you want to talk about, I'm going to hold you back.

[00:33:10] **Stephanie Naquin, HCCP, COS**: No, good, good, good. I wanted to say one sentence, but I have a whole bunch of sentences to say, so I'm glad we can go to Part 2 on that. Because it is, it's a little bit different. Conceptually, it's the same, but there's a couple other considerations we've got to take into consideration.

[00:33:24] **Michael Novogradac, CPA**: Yes, so we can leave that to, if a listener has a mixed-income property that's looking to work with the average-income set-aside test, please email Stephanie and she can help you work through some of those additional considerations.

Transfers

With that said, are there other areas with respect to mixed-income compliance that you want to at least mention briefly?

[00:33:50] **Stephanie Naquin, HCCP, COS**: Yeah. So, I mean, there's this idea of transfers. We have a little bit of kind of additional things to think about when it comes from folks transferring from one building in the same multiple-building project to another building. Keeping an eye on your low-income occupancy percentage is really important with those transfers.

So while we can do it in the unit swap status, keeping an eye on that low-income occupancy percentage so it doesn't impact our ability to deliver the credits, number one. And number two, if you have a tenant that is actually over-income with their last income or their last annual recertification, they actually can't transfer to another building in the same multiple-building project.

So there are a couple other complexities when it comes to transfers. So when I was thinking through what else would I want to like ping people about, it's those two considerations.

Wrap Up

[00:34:43] **Michael Novogradac, CPA**: Great, thank you for that. And I would just say we can bring the discussion to a close. And I'll just say that, as you can tell from the complexity that Stephanie has shared that if the additional rent you're getting to be mixed income isn't enough, you might find that from a cost perspective, there may be other reasons why you would still operate as mixed income, but from an administrative perspective, you might look at it and say the juice isn't worth the squeeze of the additional income from a financing perspective.

Like I said, it might be other reasons why you want to operate mixed income in any event, but we work with lots of properties that are mixed income and the rental advantage that you can get on those units are well worth some of these complexities and make the project financially feasible. And a host of other reasons to want to operate properties as mixed income that many studies have shown and many governments are, state and local governments are encouraging.

So, it could also be something we might even see more of in the years ahead. But with that said, Stephanie, maybe you could share some other resources that are available if our audience wants to learn more about property compliance generally and property compliance, tax credit property compliance and mixed-income properties more particularly.

[00:36:07] **Stephanie Naquin, HCCP, COS**: Yeah, we do our property compliance workshop four times a year and we really go down kind of the rabbit hole when it comes to this discussion where we look at both building a unit and floor space fractions and the impact and kind of Interplay of it, which I think is super valuable. I believe that we have an excerpt of that on YouTube.

And then I've written a couple of Journal articles specific to the available-unit rule. And then of course, we work directly with clients who do have these more complicated projects and helping them navigate through it. So if you're interested in any kind of like, 101, how do I navigate through this? What is this available-unit rule stuff? That's really kind of the space in which we try to connect with our audience and our clients.

[00:36:54] **Michael Novogradac, CPA**: Excellent. Thank you, Stephanie. I do encourage anyone in our audience who's interested in learning more about tax credit compliance to reach out to Stephanie. I will include her contact information in the show notes for today's episode.

And before we get to the Off-Mike Section, I want to remind the audience to subscribe to our podcast on whatever platform you prefer. And please do share the podcast with your colleagues who may be interested.

Off-Mike Section

Now, let's turn to the Off Mike Section. And I don't know if you've been on, Stephanie, since we started doing this over the past few months, we've been using the Off-Mike Section as an opportunity to give a shout out to someone working in community development and affordable housing or renewable energy. So Stephanie is there someone to whom you would like to give a shout out?

[00:37:48] **Stephanie Naquin, HCCP, COS**: There is. And I really thought a lot about this. So no, I haven't been on the podcast since we were doing the shout outs and I really like it.

I want to shout out George Lydford, who is the senior program analyst under all things related to Section 42 compliance. I feel like again, when I started this industry, when I was 7, and Grace Robertson was all over the place and she was wonderful, but she's been retired for a hot minute, and I feel like George has been living in her shadow a little bit, and I just want to give him kudos. He is so very open to collaborating and communicating, and he understands very uniquely kind of what he does and doesn't know about the program and I really value that.

Sometimes I feel like compliance is a lot about what you don't understand and then how to dig into the resources to, to better understand. So shout out, George. Thank you for all that you do. And while you've lived in Grace's shadow, know that I see the sunshine. I bring it down to you.

[00:38:57] **Michael Novogradac, CPA**: Great. Thank you, Stephanie. And my thanks to George as well. We appreciate all the work that you're doing on behalf of Section 42 compliance.

I will say, Stephanie, that when you made the comment about how it's kind of what you've done and all the rest, I mean, one of the beauties of doing our workshops and our training sessions and all the rest is we learn as much as we teach, because as much as we've been doing this for a long time, there's always that new, unique fact pattern, that new "what about this situation?"

[00:39:31] **Stephanie Naquin, HCCP, COS**: Yes.

[00:39:31] **Michael Novogradac, CPA**: We keep hearing about–

[00:39:32] **Stephanie Naquin, HCCP, COS**: That new person that started like a week ago and they're taking the property compliance workshop on like day five. And I'm like, that's a great question I had never thought about. Yes. That is so wise.

[00:39:43] **Michael Novogradac, CPA**: Yes. So thank you Stephanie. Thank you, George. And to our listeners, I'm Mike Novogradac. Thanks for listening.

Additional Resources

Email

Stephanie Naquin

Property Compliance Workshop

Novogradac Online LIHTC Property Compliance Workshop (June 2024)

Novogradac Journal of Tax Credits

Understanding the Final Adoption of the Available Unit Rule with the LIHTC Average Income Test