There's a "new normal" for low-income housing tax credit (LIHTC) compliance monitoring. Certain LIHTC compliance requirements in place today are different from requirements that were in place before the pandemic. Michael Novogradac, CPA, and Novogradac's director of compliance, Stephanie Naquin, discuss how the new compliance regime affects state allocating agencies, property owners and managers, as well as investors and syndicators. They cover tenant file reviews, physical inspections, implementation of a 15-day reasonable notice period and more.

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Episode Transcript

[00:00:12] **Michael Novogradac, CPA:** Hello. I'm Michael Novogradac and this is Tax Credit Tuesday. Today is Tuesday, Dec. 7, 2021. In this week's podcast, we're going to talk about what the "new normal" for low-income housing tax credit property compliance means for you.

This podcast is a must-listen for all low-income housing tax credit participants, whether you are a state allocating agency, property owner, investor or syndicator. And you'll notice I called it the "new normal" for compliance and not "back to normal" for compliance. That's because certain compliance requirements in place today are different from the requirements that were in place before the pandemic.

So to set the stage, let's go back a bit in time. In February 2019, Treasury issued regulation changes that govern how states monitor for compliance. Those changes were scheduled to go into effect January 2021. Now I emphasize *scheduled* to go into effect because the effective date of those changes was delayed due to the global pandemic.

Not only was the effective date of those changes delayed, but the IRS provided compliance relief to building owners due to the pandemic. The compliance relief provided essentially suspended or altered many of the prior compliance monitoring rules. Now fast forward to Sept. 30 of this year, and that compliance relief expired. It expired Sept. 30 of this year, which means that those February 2019 regulatory changes that were scheduled to go into effect in January of 2021 are now in effect as of Oct. 1, 2021.

In this week's podcast, we're going to analyze the key compliance changes and how they affect low-income housing tax credit participants.

And I'll focus on the different roles that are affected and how they're affected. Mainly three major categories: state agencies, property owners and investors and syndicators. We'll discuss real-life examples of how the new regulations are being implemented. We'll also talk about recommended practices and action items for keeping up with those rules changes.

Joining me on today's podcast is a returning guest to Tax Credit Tuesday, Novogradac's own director of compliance, Stephanie Naquin. Stephanie's clients range from state agencies, investors and syndicators to developers and onsite property manager staff. She was previously the director of multifamily compliance for the Texas Department of

Housing and Community Affairs where she oversaw all aspects of compliance monitoring, physical inspection, and compliance administration. In short, Stephanie adds valuable perspective to our discussion today with her varied experience in compliance.

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

So Stephanie, welcome back to Tax Credit Tuesday.

[00:03:02] **Stephanie Naquin:** I'm excited to be back. Thank you for having me back.

Expired Compliance Relief

[00:03:05] **Michael Novogradac, CPA:** You were most recently on the podcast in August and in that episode, we previewed the compliance relief that was set to expire on Sept. 30. And I encourage any of our listeners by the way, who missed that episode to go back and listen to it. You can find that podcast at www.novoco.com/podcast. And listeners may also want to review a column that I wrote for the August issue of the Novogradac Journal of Tax Credits on how to prepare for the compliance obligations that were about to take effect on Oct. 1 that have obviously now taken effect since we're past the date of publishing of my August Journal of Tax Credits article. Now with those resources already available, I don't want to spend too much time today's podcast talking about the expired compliance relief. But in order to level set and maybe a quick refresher, if you could provide a high-level overview of what compliance relief expired on Sept. 30.

[00:04:05] **Stephanie Naquin:** Sure. And so in IRS Notice 2021-12, there was lots of different provisions that provided some relief to our industry. And there was a handful of ones that specifically affected compliance. And so those are the ones I'm going to focus on. So for owners, there was some relief as it related to dealing with your tenants and the first was not having to do annual income recertification.

So for any project that is not 100% low income, you have market-rate units. You're required to annually assess each low-income tenant's income in order to maintain your applicable fraction. And that requirement was waived for any of those annual income recertifications that were due April 1, 2022, to Sept. 30, 2021.

So we are back to annual income recertifications. So if you have them due and you haven't executed them, you're already behind the curve, so get those notices out and get started on those annual recertifications. So another provision that was available in the relief notice was that owners did not have to have open common areas and amenities. And that was because of safety risks as it related during the pandemic. And now all your amenities are expected to be open and in good repair. So those playgrounds that were closed during the pandemic, if they're not in good repair, it's time to take a look at those and get them back up and running. Because violations of not having your amenities open or your common use areas affects your eligible basis.

And that's a pretty scary thing to think about. So making sure all your common areas and your amenities are up and running is— it's time. From a state agency perspective, and of course it affects the owners as well, any kind of file review and physical inspection that was due again from April 1 to Sept. 30, 2021, were waived. So we weren't experiencing those normal tenant file reviews and physical inspections on that frequency that's defined in Treasury Regulation 1.42-5. So we know that the first time that the state is required to come out and conduct a tenant file review or a physical inspection is no later than the end of the second calendar year after the last building in your project is placed in service, and then every three years thereafter. And so all of those that were due during that time period were waived. And so we're back into the normal process and we can expect to see that the state agencies out there conducting these reviews again.

Responsibilities of State Agencies

[00:06:39] **Michael Novogradac, CPA:** Great. Thank you for that, Stephanie. That was an excellent overview. And I guess I should provide a caveat to our listeners that the IRS hasn't provided any additional guidance with respect to the extension of those various relief provisions. And it is possible that the IRS could come out with guidance, extending some of those relief provisions. So that this podcast is as accurate as it is on the day that we're recording it and there could be additional guidance coming in the future. That's a caveat that's applicable to all of our podcasts.

So with that overview, let's turn to a state of allocating agencies. I know your clients make up state allocating agencies, property owners, as well as investors and syndicators. And the advice that you give them with respect to compliance requirements that depends on their role because depending on their role, there's different responsibilities that they have. And I do want to break down the podcast into each of these three broad groups.

And let's start with the state agencies. I did want to, before we actually did that, I should give a reminder to our listeners. And this is once again, this is a general caveat, a gentle reminder for all low-income housing tax credit matters: the low-income housing tax credit is a federal incentive, or at least the federal low-income housing tax credit is a federal incentive. There are state low-income housing tax credits as well, but it is the federal low-income housing tax credits that federal incentive that's administered at the state level. And that means that there are federal requirements that apply to all states and possessions and the like, however, each state does have some degree of flexibility and each agency has flexibility in how they administer that federal credit.

And that flexibility applies to both how the tax credit is allocated as well as how states monitor tax credit properties for compliance. Now we're going to address both the federal changes and how states are interpreting the change required. Even though we're not obviously going to cover all 50 states and all the rest, we're going to talk about some various state interpretations of the requirements.

And so with that in mind, I would just encourage our listeners that the federal rules should be universal. However, there can be additional state interpretations and you need to satisfy both. So with that caveat or framework in mind that our listeners have Stephanie, if you could describe what has changed for state monitoring agencies from a federal regulatory perspective? You know, what's changed across the board for state agencies?

[00:09:27] **Stephanie Naquin:** So the things that federally will impact every state monitoring plan are going to be first reasonable notice. The new regulation has some specifications about what is considered reasonable notice.

And there's really kind of two dates that were changed and really highlighted. And they were both really for the effect of, I think, enforcing the idea of due diligence. And so 15 days, you're no longer going to receive anything more than a 15-day notice when the state's going to come out and do a tenant file review or physical inspection.

Previously it was just reasonable notice. And now that's been defined in the regulation as 15 days. And that's 15 calendar days. That's not 15 working days or business days. That is 15 days. It was reasonable notice. We often saw that was really more driven to the state monitoring plan, what reasonable was. We saw anywhere from 30 to 60 days and so a significantly longer time, and now we're restricted by 15 days. And so that really puts the pressure on everyone involved with that really short turnaround time.

And the second one is that the state agencies cannot identify what units are going to be inspected or whether it be the tenant file reviews or physical inspection until the day of that review. So there's no advanced notification of what units are going to be inspected or what tenant file certifications they're going to be reviewed. And so that does two things for us. It it's shortened the timeline for the notification and then it limits the notification on what units will actually be touched, which is a much different feeling, especially from my days at the state. And we gave 30, 45 days' notice and sometimes we'd send out advanced notice for tenant files so owners could pull their keys and get things ready for us, but that's no more, which is going to impact the owners, how the owners field these changes.

And I know we'll be talking about that. The other thing that changed was this idea that if your tenant file review and your physical inspection are conducted at different times, the unit sampling has to be done in a random and separate manner. So, in other words, your tenant files, the ones that they're going to be reviewing certifications for, if it's done at a separate time, then your physical inspection will not be the same unit. And so if Unit 101 had a tenant file review, that doesn't mean Unit 101 is going to have a physical inspection and back in the day, that's what that meant. They were aligned together.

So that one unit was receiving a review of its tenant file certification and a physical inspection and those have been bifurcated now. The other thing that changed was this idea of an all-buildings rule. So before, the physical inspection protocols were done in the uniform physical condition standard, the UPCS protocol, and there's five different inspectable areas under that particular protocol.

This new regulation says that if through your random sampling, a unit and a particular building isn't picked, you still have to touch some of those inspectable areas for that building. And so the all-buildings rule is going to add an additional requirement for state. And that just means more it's going to be looked at too, from an owner perspective when we think about the building, That's really kind of the big changes. There was, and I'll just go ahead and acknowledge it: There was something about the actual sampling itself and there was a temporary regulation that was provided originally when it was proposed in 2016. It says, we're going to do the lesser of 20% of the units in your project or what's in this chart. This chart is found and the (1.25)-5 regulation. There was a time when Treasury came back and said, just kidding. It is just what's in this chart. Which caused quite a bit of concern. And after that NCSHA and a lot of those national organizations worked closely with Treasury to pull that back.

So we're back to what it was proposed and that it's simply going to be the lesser of 20% of the units in your project or that chart. But because those changes are happening during times in which inspections were occurring, a lot of folks aren't aware that it changed and then changed back.

[00:13:40] **Michael Novogradac, CPA:** Thank you for pointing that out and thanks for a good overview as to how the responsibility is that agencies have changed. So how do you think state agencies are handling these rules changes over the last couple of months?

[00:13:55] **Stephanie Naquin:** Well, you know, I've talked to the state agencies and of course I have clients that have undergone already many reviews and it's just all about coordination at this point. So I think that we were all like, oh, 15 days, no big deal.

Everyone's audit ready. Right. We should all be ready any time we should all be compliant. Compliance isn't, you know, subsequent to all the other business activities of a property. But then it actually started happening. We started realizing how tight that 15 days is. And so if you think about, like a larger state, like Texas, for example, that has a giant portfolio and is very spread out.

States are looking at what is due, when it's due and trying to coordinate in a manner that tackles everything. But within that 60-day notice? So what does that mean? I am going out, I worked for TDHCA the Texas Department of Housing and Community Affairs. I'm going out to the Houston area and I'm going to be doing a review for one day, a property one day per week.

So five different reviews, five days. That's my 15-day notice. If my notice is limited as 15 days, that one-day property I'm giving 15 days and a second property is 14 days. The next property is 12 days. And so it's really not 15 days. When you look at it logistically, it's really more something like 10 to 15 days, depending on when in the week your property is on their schedule.

If states were to very much do it by each 15 days and that was an additional administrative burden of having to send out notices every day of the week and coordinating that and then also coordinating those response periods. And that can be challenging. So just overall coordination of getting folks out there and making sure that you're, you're following this notification requirements and how that works.

I think it feels a lot different than we all thought it would from a state perspective. I, I feel for this, for the pickup, they're having to coordinate it, especially in these larger ones, because 30 days is not a lot of time. And I will say that from my experience, that notification period we'll see states requests information prior to them coming out there, whether it be a sense that we're asking for local inspections or work order is a preparation for a physical review or asking for your utility allowance or any other relevant documents in preparation for a tenant file review. You know, that deadline has to be somewhere in between that 15 days so that they can review it, prepare for it through unit sample and then get out there. And so that turnaround time just administratively it's tight from the state perspective.

What I see is a lot of things still being very concerned about COVID risk and looking at the staff and their personnel and wondering, where is your level of comfortability, you know. Before, when we were traveling around or the stage of traveling around to inspections, it was they're touching lots of different properties in lots of different hotels and gas stations and restaurants and that exposure can be a little scary to folks who have been cooped up in their room at home, working from home for the last 18 months. Getting over that and getting into, like you said, Mike, the new normal and what that looks like. And the other thing I see states doing is kind of going back to that original concern with the sampling.

What's crazy is that the larger your project is, the less they're going to be looking at. And so if I have a project that is hundreds of units, maybe the sample's like 25 units, whereas before, if it was just straight up 20% that provided the state a level of comfortability that what they were sampling was reflective of what was going on. So I see some things still trying to find that balance between what's federally required and what they're actually comfortable with and making sure that their portfolio is in good repair and up to where it needs to be

[00:18:15] **Michael Novogradac, CPA:** Those are great observations and definitely you just made 15 days sound a lot shorter.

[00:18:23] **Stephanie Naquin:** I know it's like, no problem:15 days we're ready. And then all of a sudden it's like, wait a minute, you get the notice on a Friday night or Friday afternoon. You don't get it till Monday morning. And that's for that fifth property of the week. And all of a sudden we're down to like seven days' notice.

[00:18:37] **Michael Novogradac, CPA:** And what if the person who received the email is on vacation and or the received notice isn't around? So it definitely seems like there's a lot of challenges there for states that are following up to make sure that the appropriate players received a notice. So did that or just more generally for state agencies, what are some of the areas where they've been seeking your advice on how to handle or areas where you have given specific advice on addressing some of these challenge or other ones you haven't mentioned?

[00:19:11] **Stephanie Naquin:** I think what you've just said a while ago was an excellent point. Making sure you have the right contact information with your state. I mean, the states really need to know who would have contact to make sure that the right person is getting these notices. So that this 15-day period can go as smoothly as possible.

And also to the monitoring and review, you can go as smoothly as possible. If the person that you have on record to notify is just like a figurehead who doesn't actually have contact with the property, then your 15 days is getting a lot quicker because you know, it has to go through a different person to get to a different person.

Then sometimes it doesn't even get to the right person. So making sure that the state has some sort of mechanism to easily record the correct contact for these reviews. I know that that was a huge struggle when I was with the state, just knowing who to contact, making sure this correspondence got to the right person.

And this becomes even more important now that we have such a small turnaround time. And then just being mindful again, different people have different views about COVID risk and being sensitive to that. And so is trying to figure out this with the staff that I have. This is what I need to get accomplished: How do I do that in a way that that is sensitive to my staff, but also meets my monitoring responsibilities and that one's a little bit harder to attack. But I do think that there's a lot of ways that we can continue to meet this requirement. So for example, during the relief period, there were some states that continued to do tenant file reviews, which puts them kind of ahead of the game.

But what I was seeing is that those were all electronic. We're seeing a movement now that they're allowed to be back in person that they're coming in onsite. But we were really successful with that, that space where we were doing electronic reviews. So looking to bifurcate those physical inspection and tenant file reviews and taking opportunities where we can to do things remotely or continue to do things remotely.

And so, you know, if you have a tenant file review and a physical inspection that's due in January of 2022 bifurcate that. Let's do the tenant file review electronically. So that mitigates the risk and the folks are out there. And then do the physical inspection in person. And so it just nice in between. So just thinking of creative ways and not just assuming that, because I can go back on property, I have to, right? So just settling into the new normal.

[00:21:44] **Michael Novogradac, CPA:** I definitely liked that point just because you can, you may not have to and you may not want to from an efficiency perspective, beyond the COVID risks.

[00:21:55] **Stephanie Naquin:** I was thinking sometimes that the upside to all this COVID is that it forced us to think of things in a different way. And I don't want to backslide and just kind of go back into our old ways just because we don't have this relief on hand anymore. And so I really championed kind of that, like, let's, let's continue on with this innovative thinking and stick with it.

[00:22:17] **Michael Novogradac, CPA:** So one of the items that we discussed in our prior podcast was to the extent that site visits and unit inspections were kicking back and on Oct. 1. There could be properties that had to have their inspections by the calendar end of this year. That could put a real substantial burden on state agencies, particularly if you're in areas where it could be snowing, you get bad weather and the rest, or you know new COVID variants and the rest. I mean, what have you seen so far with the threat of that concern?

[00:23:10] **Stephanie Naquin:** Well, I've kind of seen three different takes. So the first one is some states are just like, we're just not comfortable with it right now. We understand what the risk is. We understand that. What our monitoring responsibilities are, but we're going to continue until it's a time that we felt safe to do so.

So that's kind of one bucket. The other I've seen are kind of the opposite of that, speeding it up. So all of those that they may not have done during the relief period, they're trying to put back on to their schedule. And so, for example, I am working with a client and they have a large portfolio and on one day they received a notification like it's for 21 physical inspections.

And that wasn't necessarily 21 that were due during the month of December 2021, because they were done in December of 2018. It was because they were in the area. And so they pulled ones that had been due and they pulled the ones that will be to, to be efficient. And so that's kind of a different approach that we're seeing is kind of speeding up the timeline to kind of catch everything.

And then of course we have that last bucket where it's just doing what is required. And that's usually driven by staffing needs or by, just this is what's required of me, so this is what I'm going to do. So, but it's the ones that are speeding things up that I think we're feeling the most. I'm, not over it. I'm not exaggerating: 21 properties on the entire portfolio.

Responsibilities of LIHTC Owners

[00:24:37] **Michael Novogradac, CPA:** So I'd like to turn now to the property owners' perspective and we've already noted that one of the things that property owners need to know about the new compliance requirements is getting the right contact information at the state and potentially multiple contact information that the state will allow it just so when you are notified, your distribution notice within the company will be wide enough that you can be responding timely.

And this really applies to property owners, but really property owners and property managers. So it's really both from that perspective. So maybe you could share beyond that, what else you think is important for property owners and managers to know about the new compliance requirement?

[00:25:19] **Stephanie Naquin:** Before I dive into that, I do want to extend and recommend that everyone have a distribution email set up. And so that if the state is communicating via email, more than one person is receiving that. And so that, that helps with that communication. So just, just a little compliance trip.

[00:25:36] **Michael Novogradac, CPA:** Distribution email, maybe you could expand on what that means.

[00:25:39] **Stephanie Naquin:** So maybe it's compliant@abccompany.com and then that you have. The property manager, you have that, the regional manager, you have someone who's from the compliance division. You may have me on there because I'm working with a group of folks that are being notified. And so that it's not just one person receiving.

It's multiple people so that you can really move quickly when you get that notification. And that's really true of any type of communication from the state agency, whether it be notification of an onsite review or notification of an event of non-compliance. And so that you're being made aware of it timely. So you can take action and inappropriate time period.

[00:26:21] **Michael Novogradac, CPA:** That's actually great advice. And so many fronts, not the least of which is as you have staffing changes. There's no issue where their emails getting forwarded to and all the rest. And you can add emails to that distribution list. So a great tip at the end of this podcast, I go into my Off-Mike section where I asked for productivity tips. You can't use that one.

[00:27:12] **Stephanie Naquin:** Yeah. So, you know, from an owner's perspective, the state's dealing with this 15 days. So as the owner, and it's a little bit more, I think, administratively, logistically challenging for onsite staff. So a lot of times, your property manager, your maintenance man, they requested vacation a month and a half ago, you approved and all of a sudden, you're notified that in 15 days, the state's coming out and you're scrambling to get someone out onsite. And that can be a big deal, especially in those smaller areas or the smaller properties that just have one person operating them at, or conversely, the larger properties that like to have everyone from corporate out on the property every time there's some sort of review.

And, you know, getting those folks out there, mobilizing the team just to be available can be challenging. So not only being responsive to any requests in that 15-day notice for pre-onsite documentation, prep, documentation, but actually on the day of making sure that there's staff available in there to provide them files or to walk those units.

That can be challenging when you're scheduling staff so far out in advance, not to mention just general staffing issues. I think we're just is a widespread issue. And so you're dealing with not only well-run properties where you're approving people's time off so far in advance, maybe not having people there that the date the state picks. But you're also dealing with an industry that's really hurting from staffing needs. And so just being able to have folks out there to greet the state, to provide them the tenant files to walk to the units is challenging. And then let's see what else, there's what do I say this: What I've heard from folks who have experienced the tenant file, whereas you that's where as the state seemed to be very much removed a little bit from the process. So before it was a collaborative effort, if you will, at the states would come out, they review temp files, they would give you an exit interview. But now it's very much we need a separate space. We don't want to risk anything, we don't want to interact. And so they're not getting that same level of support or feedback that we saw beforehand. So that kind of feels different from a new normal perspective and then physical inspection.

You're notifying tenants. Our unit's going to be inspected and refusal to inspect a unit means you got to find another unit. And so that can be a little bit challenging, too. Just the day of some of the challenges that always exist. They would have existed otherwise, but when you couple this with the realities of the pandemic and speeding up all these timelines, you get a very unique challenge.

[00:29:52] **Michael Novogradac, CPA:** So, how do you think that owners are doing in terms of responding to these new requirements? And even beyond owners, also state agencies, because when they're doing the onsite visits, both the state agency folks haven't been doing it for a while and the other ones haven't had on-sites for a while. Both are the new requirements, how they're responding to those, but also how you're seeing it going. Just the fact that it's restarted after the ongoing pandemic.

[00:30:23] **Stephanie Naquin:** Right. And it's weird because you're also, even if you had been at that property for years and years and years and you had been at the state for years and years and years, it feels different. So we're also dealing with folks who have never even experienced a tenant file review, a physical inspection or our state agency monitors that are new to the state.

And they've actually never conducted monitoring. And so what I'm seeing is all kind of finding our footing right now, these last couple of months. It's been a lot of where is the balance and how do we strike it? And so I think we're going to need a little bit more time to get that.

[00:31:01] **Michael Novogradac, CPA:** And what do you think some of the particular challenges of the new requirements are for owners beyond the fact that there's such a short timeframe between when you get notice and when you'll have folks from the monitoring part of your state compliance group on your properties?

[00:31:20] **Stephanie Naquin:** I think that this unit sampling is an interesting component and it has its good and its bad. And so the good is that for larger projects, they won't be looking at as much because of the sampling requirement and the chart, but the bad is that they won't be looking at as much that as much. That kind of takes away a level of comfortability for your investors to know that your properties are kind of on the up and up and in compliance. And so I think that's going to be an interesting dynamic when we start chatting about investors and syndicators about how the sampling size is going to affect things. And I would also say that it's just the reality of getting folks back into the swing of things. I mean, we're just in such a weird time.

[00:32:13] **Michael Novogradac, CPA:** So maybe you could describe some of the work that you do and you provide to owners and property management companies, around these inspection requirements.

[00:31:51] **Stephanie Naquin:** OK, Well, tackle the known, right? There are some things that we know are and we know when we're going to be monitored, we know what the state may ask for and respond to the monitoring. And so we can be as prepared as possible. And so, for example, if I had a tenant file review and January of 2019, I can expect it to be happening in January 2022.

So six months ago was the time for me to stop and look at my tenant records, making sure I had good solid tenant files. Everything was in good repairs. Did I need to take any drawdowns from my reserves, fix things that maybe got a little wonky, just thinking the pandemic, you know, anticipating what the knowns are and mitigating as much as possible so that when you are notified, you're just dealing with those, those kinds of live things.

Right? So updating your occupancy reports, submitting work orders or local code inspections as their request. In other words, I know when a tenant file review is going to happen, I know when a physical inspection should be happening. Take time away from that back out a couple of months. And that's your opportunity to do some due diligence.

What I love about this program, unlike a lot of affordable housing programs, is that it really highlights this idea of due diligence. And we can make mistakes, but so long as we have policies and procedures in place to address and correct them prior to the notification of review that they're not subject to an 8823.

And so when we have those tools in our tool belt, we should take advantage of them. And so I do. I always recommend, whether it be a full tenant file review, I would definitely recommend if you are coming out of a pandemic or some sort of percentage thereof, getting an idea of what's going on your actual property level, I think is the biggest kind of key to productivity.

[00:34:23] **Michael Novogradac, CPA:** So you said avoiding an 8823, maybe you could explain for our less informed listeners briefly, what the 8823 is and what you meant by avoiding an 8823.

[00:34:35] **Stephanie Naquin:** Sure. So the state mechanism for notifying, the IRS of an event of noncompliance is through IRS Form 8823. So when they come out and observe an event of non-compliance, they open up a corrective action period. And at the end of that, they're required to notify the IRS on that Form 8823 that the event.

So, if you are identifying and correcting that stuff before you're notified an event of noncompliance is subject to an 8823. So for example, I have someone in unit 101 and I missed that raise and that third-party employment verification, I have really great policies and procedures in place.

I caught that error. I was able to perfect the certification and I did so before the state came out. That event wouldn't be subject to an 8823. However, if the state comes out there and they identify the issue, all the sudden that event would be subject to an 8823. So that, that due diligence is really a key component in being successful.

[00:35:49] **Michael Novogradac, CPA:** And I know the answer to the question. I'll ask this in this way for our listeners, just so our listeners don't think I don't know the answer to the question. So is the 8823 some sort of recapture?

[00:36:00] **Stephanie Naquin:** That's a great question. No, an 8823 doesn't always mean recapture. And also you don't need an 8823 for recapture to occur. I'm telling you before, even though I was at the state, I thought everything was recaptured. And it was really when I joined Novogradac that it became very clear that those two events are independent of each other, and 8823 was what that was the scary thing to have at when you were onsite with an 8823.

And I have thousands of those 8823s a day. And I thought I missed something, but come to find out it's not really all about the 8823. And so we should still take it seriously. We should still follow our due diligence because lots of 8823 is not a great look either. But just because an 8823 is reported, doesn't always lead to a reduction in our qualified basis or recapture.

[00:37:00] **Michael Novogradac, CPA:** No, but it does mean that the IRS has been notified of an event of noncompliance. It's basically the IRS being told, "Yeah, this is an area that might have a reduction in qualified basis." Obviously for anyone who gets an 8823, they should be giving you a call so that they're correcting it.

[00:37:19] **Stephanie Naquin:** Call me before the 8823. We don't want the 8823. Whatever the corrective action, even if they come out monitor, they, they cite an event of non-compliance, you're provided a correction period. And that's your opportunity to really engage with the state. Because this is the end of that corrective period that they're going to issue that 8823.

[00:37:39] **Michael Novogradac, CPA:** That's important. I appreciate your point about not calling you after 8823, call before. Because I'll also note we don't have to get into this—maybe we'll do a separate podcast on the ins and outs of the 8823s—is there are some parts of the 8823 that you can't correct. So ultimately you can't take the approach of, "I'll correct them when I get them." You've got to avoid getting them.

[00:38:05] **Stephanie Naquin:** That's exactly right.

How Investors and Syndicators Are Affected

[00:38:08] **Michael Novogradac, CPA:** So let's turn to investors and syndicators. They're not directly affected, but they're most significantly indirectly affected, if there is any significant non-compliance that leads to recapture.

So we've talked about the new normal for property compliance for state agencies and owners. And when we look at tax credit investors and syndicators, maybe you could share, if I'm sitting here, one of our listeners are driving in their car, listening to this or walking to work and they work with an investor or a syndicator, what should they be thinking about with respect to this new compliance monitoring regime and in the sense of what should they potentially be doing different? Or making sure that they're doing, if they have been doing it before?

[00:38:56] **Stephanie Naquin:** Well, the first thing I'll say is it's Dec. 7. Dec. 31st means something. And so the investors are really caring about that, that Dec. 31 date. And I bring that up because if I underwent a monitoring review, whether it be tenant file or physical inspection back in November and maybe your correction period doesn't end until January, don't wait until the end of your correction period to get that stuff corrected.

Because if the event is uncorrected on Dec. 31, 2021, that's when we're going to maybe see a reduction in our qualified basis. And that's when the investors are going to be really care about what's going on with these credits. Whereas if you correct it now before the end of the year, then you're really putting yourself in a better position, not to experience a reduction in your qualified basis. And so not waiting until the end of the correction period. So investors should be thinking, "oh, wait a minute. What's going on with my portfolio? And do I have any deals that were recently monitored? You know, like we said before that 8823, doesn't always mean a recapture, but every recapture isn't just because an 8823 occurred either.

And so making sure you're understanding how those things play together is important. I think investors are really more sensitive to that than perhaps onsite staff. The onsite staff just cares about the corrective action period isn't over until this date. That's what I'm going to worry about it. But if you know, one day passed and all of a sudden we're in 2022.

You know that one day could really have an impact on that credit delivery and then I also think that we're going to see maybe a shift in the way that investors conduct their own reviews and that they usually look at 20%. Well, depending on the year, it's either 25% or 20% is what I see generally investors looking at.

And I think there's going to be upping their sampling size. Maybe once they get into these monitoring regs. Because the state's looking at last. And so to provide an extra kind of consideration or not really consideration, but level of certainty that things are in compliance and credit-worthy. I think the investors are really going to be upping their inspections and what they're going to be looking at.

And so that's something to consider. And then the last thing I would say, taking a look at your partnership agreements and understanding when you can draw down reserves so that you're getting ahead of any kind of disrepair happening on the project before the state comes out there and conduct these reviews because once they notify you of a physical inspection number, they're going to be out there in 15 days. That's really hard to get something back in the good repair that's in disrepair. If they're in a pandemic and not to mention, if you wait until that 15-day notice to take that action. Now you're going to be subject to an 8823.

And so if we take this action, now, it not only puts the property back in the good repair iIf you're dealing with physical inspections. And that's the face of the program, the way these properties look. And so really making sure, not only for the purpose of mitigating credit recapture 8823, but just so we have a good portfolio, we have a good face of our industry, making sure these properties are in good repair.

You know, making sure that the property owners and everyone are empowered to make sure their staffs are in place and really partnering more with owners and their partners to make sure that things are where they need to be. So be a little bit more plugged in perhaps than they were before.

[00:42:38] **Michael Novogradac, CPA:** Great. Thank you, Stephanie. That was a great advice. I've particularly appreciated emphasizing Dec. 31. And I would just emphasize that also for property owners, as I know you would as well. It obviously it's during years of lease-up, sort of every month matters and we won't go into all those details. Every month matters. And then thereafter, there's a particular significance to Dec. 31. So great advice. I'm sure many of our listeners are thinking, well, I think I need to reach out and engage Novogradac and Stephanie in particular, on some compliance matters. So if you could share your email address.

[00:43:18] **Stephanie Naquin:** It's Stephanie.Naquin@novoco.com.

[00:43:33] **Michael Novogradac, CPA:** Great, thank you for that. And I'll also include your contact info in today's show notes, which will be posted at www.novoco.com/podcast. So thank you very much, Stephanie and do stick around for the Off-Mike portion of the podcast, where I get to ask you some off-topic words of wisdom or get some off topic words of wisdom from you that aren't directly tax credits related, they might be indirectly tax credit related, to our listeners.

I'm pleased to share that the next two episodes of Tax Credit Tuesday are going to be a special two-part discussion of the $1.7 trillion bill Build Back Better Act. We'll air part one next week, Dec. 14. I'm going to focus on what the legislation could mean for affordable housing resources. That's part one, affordable housing, Build Back Better.

Part two will air in two weeks. That's on Dec. 21. There, we're going to focus on what the legislation could mean for renewable energy. And we're going to discuss not only specific proposals in the bill, but more importantly, how listeners can best prepare for those potential changes.

Now to join me for the podcast will be Peter Lawrence. Peter, as you know, is the Novogradac director of public policy and government relations. Peter will be on both episodes to provide us that legislative outlook. We'll talk a little bit about the status of the bills, expecting the Senate to take up the bill, within the next couple of weeks.

It's unclear if the bill could actually be enacted before the end of the year, even though Senator Majority Leader Schumer is focused on and trying to get it done by the end of the year. The Dec. 14 housing episode is also going to include my partner, Dirk Wallace. Dirk heads up the Novogradac Low-Income Housing Tax Credit Working Group. So he'll be joining us.

And then the Dec. 21 episode on renewable energy will also include my partner Tony Grappone. And yes, Tony is the head of the Renewable Energy Tax Credit Working Group. And we're obviously focusing on these two areas because they're the areas with the greatest additional resources provided in the Build Back Better Act.

You can make sure that you're notified of that episode and each week's episode by following and subscribing to the Tax Credit Tuesday podcast, go to www.novoco.com/podcast to subscribe to and to stream the show on our website. You can also follow us, subscribe to Tax Credit Tuesday on iTunes, Spotify, Google Podcast, Stitcher and Radio Public. If there's another podcasting site that we don't include this on that we should, let us know.

So now I'm pleased to reach our Off-Mike section where listeners can get some off-topic advice and words of wisdom from our podcast guests. So I'll start. Stephanie as Novogradac's director of compliance, I know that you have a lot of tips to stay organized. You already gave one of your tips for clients. So give me your, I won't say your favorite organization tip or tool, I'll say one of your favorites, a tip or tool for staying organized.

[00:46:54] **Stephanie Naquin:** Currently my favorite tool for staying organized is Smartsheet. Love me a Smartsheet and we have found so many creative ways to integrate that into what we do daily. It's exciting. I get that excited to get organized. I'm lucky to be surrounded by a bunch of folks on my team that have that same level of enthusiasm for organization. So also another tip is building a team who has kind of the same organizational goals as you do.

[00:47:21] **Michael Novogradac, CPA:** That's great. My second question has to do with work-life balance. If there are your favorite way or ways to try to maintain, achieve, optimize your work-life balance.

[00:46:54] **Stephanie Naquin:** Well, I have an 11-year old son. He really creates that balance for me. I might sit here in my home office 24/7 if I didn't need to pick him up from school and do all the mom things. But I think just surrounding myself, my family is really how I have found a work-life balance. I'm not very good at the balance part of it. So I try to champion it with folks on my team and making sure that they create a work-life balance. So I would say definitely say my family is who helps me create that or almost forces me to get that balance.

[00:48:28] **Michael Novogradac, CPA:** I definitely appreciate as a parent with children in college and not high school or middle school, elementary school, all that. There's definitely something about a child, you know, being in school and living at home. And it does create some degree of balance.

[00:48:48] **Stephanie Naquin:** Now that he's back at school, I mean, I don't know. It's like we were both working from home.

[00:48:54] **Michael Novogradac, CPA:** Yeah. That's very true. So what's the most important, or one of the most important leadership lessons that you've learned over the years?

[00:49:04] **Stephanie Naquin:** To surround yourself with people smarter than you are. I'm always looking to train who's going to be my next boss, right? Like always surrounding myself with people who are smarter than I am so that we're learning from each other and we're feeding off of each other and it just creates a good kind of vibe, I think, in a team atmosphere.

[00:49:27] **Michael Novogradac, CPA:** That's great. I appreciate that suggestion as well. I think it's come up before with the other guests, the importance of people that you hire.

[00:49:37] **Stephanie Naquin:** One day I want to retire. And if I do that, you know, I'm not going to be able to step away unless I felt something that I you know is of importance.

[00:49:50] **Michael Novogradac, CPA:** You're still within your compliance period, so it won't be happening anytime soon.

[00:49:56] **Stephanie Naquin:** I feel like also that there may be some years tacked onto that extended-use agreement as well.

[00:50:18] **Michael Novogradac, CPA:** So, well, thank you very much for being a guest. Thanks for joining me for the Off-Mike section. And to our listeners, thank you for joining us for another edition of Tax Credit Tuesday.

Additional Resources

Email

Stephanie Naquin