

November 6, 2013

Internal Revenue Service
Attn: Yvette Lawrence
Room 6129
1111 Constitution Avenue NW
Washington, DC 20224

RE: OMB Number: 1545-1102; Regulation Projection Number: TD 8520 (Final), TD 9420 (Final)

Dear Ms. Lawrence:

The LIHTC Working Group was established to provide a platform for low-income housing tax credit (“LIHTC”) industry participants to work together to resolve technical and administrative LIHTC program issues. On behalf of the members of the LIHTC Working Group, we are responding to Federal Register Notice Volume 78, Number 166 dated August 27, 2013 (the “Notice”) that solicited comments concerning carryover allocations and other rules relating to the LIHTC, and the Internal Revenue Code Section 42 (“Section 42”) utility allowance regulations concerning the LIHTC. We request that you consider including our response regarding ways to minimize the burden of the collection of information on respondents in the request for the White House Office of Management and Budget approval.

LIHTC building owners who use the public housing authority (“PHA”) established utility allowances to comply with the Section 42 utility allowance regulations are tasked with the burden of continually monitoring changes in PHA utility allowances, which carries the potential risk of inadvertent noncompliance with Section 42. According to Treasury Regulation 1.42-10(c)(1), a taxpayer that owns a LIHTC building is required to implement its respective PHA utility allowance within 90 days of the PHA updating its utility allowance schedule. A PHA is not required to update utility allowances on a regular, fixed schedule, which permits a PHA to update a utility allowance multiple times throughout any given year. As a result, the added cost of compliance with Section 42 due to the continuous monitoring of PHA utility allowances is disproportionately greater than the typically nominal changes to a utility allowance during the course of a year. Included in the added cost of compliance with Section 42 is the risk of failing to timely identify and implement utility allowance changes, which could potentially lead to LIHTC recapture if the building owner is unintentionally not in compliance with the utility allowance requirements in Treasury Regulation 1.42-10(c)(1).

It is recommended that the IRS requires an owner to check with its PHA only once a year (the “Utility Allowance Date”), similar to the requirements for the annual review of the basis for which the utility allowance has been established in accordance with Treasury Regulation 1.42-10(c)(2). Further, it is recommended that the Utility Allowance Date coincides with the issuance

of new area median gross income information by the U.S. Department of Housing and Urban Development. The owner would continue to be required to implement its respective PHA utility allowance within 90 days of the Utility Allowance Date. The proposed alternative above would both reduce the burden of continuous utility allowance monitoring from the LIHTC building owner and decrease the risk of unintentional Section 42 noncompliance.

We appreciate the opportunity to comment on this issue. The furtherance of this issue will help the LIHTC program better provide affordable housing through increased procedure efficiencies by providing clarification and lessening burdens of LIHTC program administration and compliance. Thank you in advance for your time and careful consideration of this issue. Please do not hesitate to contact us if you have any questions regarding our comments or if we can be of further assistance.

THE LIHTC WORKING GROUP

Very truly yours,

NOVOGRADAC & COMPANY LLP



by

Michael J. Novogradac

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by

Stacey Stewart

cc: Mr. Paul F. Handleman
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