



## MULTIFAMILY HOUSING UPDATES

### Multifamily Housing Notice 20-19

December 3, 2020

**To:** Developers, Sponsors and Local Housing Contacts

**From:** Patrick Gill, Director, Tax Credit Compliance

**Re:** *COVID Impacted Site Visit Plan for 2021*  
*Changes in 8823 Filings for Physical Inspection Findings*

Thank you all for your partnership and commitment to continue advancing affordable housing. Below are two important announcements regarding Low Income Housing Tax Credit compliance monitoring.

#### **COVID Impacted Site Visit Plan for 2021**

On July 7, 2020, in response to concerns arising out of the COVID pandemic, the Internal Revenue Service released Notice 2020-53. After consulting with IRS counsel, CDA posted Notice 20-08, which broadly accepted the relief provided in the IRS Notice and extended that relief to all of our LIHTC projects.

On November 10, 2020, in response to fresh concerns arising out of a significant spike in COVID infections, Governor Hogan announced changes in various emergency orders and procedures. More importantly for the purposes of this Notice, Governor Hogan cautioned all Marylanders that his health care advisors believe that heightened COVID concerns will be with us through the end of February 2021, at a minimum.

CDA anticipates that COVID concerns may ultimately result in a Notice from the Internal Revenue Service granting relief or providing guidance with respect to best practices for tax credit compliance for the first quarter of 2021, or beyond, particularly where Site Visits are concerned.

CDA's challenge is to put a plan in place, with an effective date of January 1, 2021, describing how CDA will meet its Site Visit obligations in 2021 in the absence, for the moment, of IRS guidance.

Here is that plan:

1. CDA is refining our list of projects that will be subject to a Site Visit in 2021. Later this month we will post on our website a list of projects that will be subject to a Site Visit in 2021 accompanied by our request that our property management community reach out to us if they believe there are any errors with respect to the list or other data incorporated in the list.
2. This month we will also begin following the protocol that we adopted in mid-March of 2020 in response to the pandemic and followed until the issuance of IRS Notice 2020-53. That protocol involves working directly with the projects to secure electronic files for File Review purposes. We are aware that the Final Regulation does not accept desk audits. In the event that no relief is forthcoming from the IRS regarding the desk audit rule, then we will confirm our desk audits in the field later in the year when it is safe to do so.
3. No earlier than March, 2021, and subject to additional guidance from Governor Hogan, we intend to change our approach to Site Visits. Rather, than conducting desk audits (in lieu of full File Reviews at the location where the files are stored) as planned for January and February of 2021, we will embark on our traditional Site Visit path where we will visit projects and conduct File Reviews and Physical Inspections on the same day.
4. For those projects subjected to File Reviews by desk audit in January and February, we will issue a partial Site Visit Report. Later in the year when it is safe to conduct Physical Inspections at those projects, we will compare and contrast the electronic files provided to us for the desk audit to the actual files on site to satisfy ourselves that the materials provided and already reviewed by us match the materials in the on-site files. Of course, if the IRS provides some relief from the desk audit provision in the Final Regulation we may accept that relief.
5. Each project that would have been subject to its first Site Visit in 2020, will be subject to its 1<sup>st</sup> Site Visit in 2021, as well as all those projects that are due for their first Site Visit in 2021.

### **Important Change in 8823 Filings effective January 1, 2021**

During 2020 CDA and many other SHA's cooperated with the IRS to identify differences in approaches to determining when 8823's are required to be filed. The end result of our discussions with the IRS is a change in CDA's approach to filing 8823's resulting from UPCS Physical Inspections.

Over the past 15 years CDA has only filed an 8823 for a Level 3 UPCS violation in two circumstances: 1) where the violation by its nature placed many people in a building at risk, e.g. when emergency egress lighting was not functional; and 2) when the Level 3 violation has not been corrected within 72 hours after the violation is identified and reported to property management.

**Effective January 1, 2021, each Level 3 violation identified during a UPCS Physical Inspection will automatically result in an 8823 filing. Additionally, the Level 3 violation will need to be corrected within 48 hours.**

If you have any questions, please contact Patrick Gill, Director, Tax Credit Compliance via email at [Patrick.Gill@Maryland.gov](mailto:Patrick.Gill@Maryland.gov).

#### *IMPORTANT NOTICE REGARDING EMAILING OF MULTIFAMILY NOTICES*

*Multifamily Housing issues periodic notices (such as the one above) to announce new initiatives, provide important news, announce funding round deadlines, significant application changes, bond program amendments, and other key dates and facts on our website and by email only. You can subscribe to receive Multifamily Housing Notices at the following link:*

<http://dhcd.maryland.gov/HousingDevelopment/Pages/About.aspx>

*Notices are posted to the DHCD website at the following location:*

<http://dhcd.maryland.gov/HousingDevelopment/Pages/MFLibrary.aspx>