

Dear NAHMA Member,

NAHMA is providing a [copy of a memorandum \(dated March 26, 2015\)](#) issued by the Internal Revenue Service (IRS), Office of Chief Counsel. The March 2015 memo recommends the withdrawal of a past memo issued by the IRS in August 2007, titled [“Noncompliance Resulting From Conflicting Program Requirements”](#). The August 2007 memo stated that if taxpayer policies are implemented that are in conflict with the requirements of the Low-Income Housing Tax Credit (LIHTC), such as not renewing a tenant’s lease in a low-income unit when the tenant’s income rises to a certain income threshold that violates a local, state or other federal program, then the property is considered not in compliance at all during the 15-year LIHTC period and no credit is allowable.

Contrary to the August 2007 memo, the March 2015 memo states that not renewing a tenant’s lease when a tenant’s income rises to a certain income threshold that violates a local, state or other federal program does not mean that the building is not a qualified low-income building under the LIHTC requirements. Based on the 2015 memo, the IRS has said that not renewing a tenant’s lease because a tenant is over the income limit does not automatically trigger noncompliance for the owner.

This 2015 memo may give property owners and managers some relief from the 2007 memo, in that they might not immediately be subject to tax credit recapture when not renewing a lease in response to a tenant income increase. Still the 2015 memo was not officially distributed to the public and was instead circulated internally from the IRS’s Office of Chief Counsel, and it explicitly states that the advice presented in the memo should not be used or cited as precedent. Rather, the memo simply reflects the current thinking of IRS’s Office of Chief Counsel.

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