Public Comment to Audit Rule

To: Bernadet Martinez (via email to rulechange@osa.nm.gov)
Office of the State Auditor
2540 Camino Edward Ortiz, Suite A
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From: Robert Blumenfeld

Re: Public Comment to the NM Audit Rule

Date: April 28, 2025

We are writing on behalf of three of New Mexico's leading housing authorities - the Albuquerque Housing Authority, Mesilla Valley Public Housing Authority, and Santa Fe Civic Housing Authority (collectively, the "*Housing Authorities*") - to provide public comment regarding the proposed amendments to the Audit Rule.

As background, the Housing Authorities have interests in separate entities that own and manage multifamily rental housing ("*Apartments*") that are financed utilizing low income housing tax credits ("*LIHTC*") and which provide affordable housing to low-income renters pursuant to the federal Housing Tax Credit ("*HTC*") program. For purposes of our comment, we refer to these separate entities that own Apartments as a "*TC Owner Entity*."

The current challenges and burdens are that the Office of State Audit ("*OSA*") is interpreting the Audit Rule to require each TC Owner Entity affiliated with a housing authority to provide a separate audit under the Audit Rule. Because each TC Owner Entity is already subjected to strict private sector annual audit requirements, the OSA's interpretation of the Audit Rule requires TC Owner Entities to undertake and complete annual audits that comply with both private sector standards and applicable public-sector standards required of public entities by the Audit Rule, such as GASBS. This unduly imposes costly and unnecessary red tape in the form of double audits, double costs, extra lost staff time, and lost opportunities to serve the residents of affordable housing apartments.

This comment is not merely to point out the challenges related to money, time, and effort that is required as a result of performing an effective double-layered public-private audit, but to add from our perspective that the requirement as currently interpreted by OSA does not yield materially better-quality information or substantially heightened audit detail for the

OSA or anyone else. Essentially, OSA is imposing a significantly burdensome cost of double audits on the TC Owner Entities with no public benefit in return.

In view of this, the Housing Authorities respectfully request clarification be included in the new Audit Rule that a housing authority providing a housing authority audit subject to the Audit Rule be permitted to rely on a professional third-party independent audit of a TC Owner Entity that complies with investor and lender requirements alone, without requiring the housing authority's TC Owner Entity to undertake an audit that also complies with the Audit Rule.

As further background for this request, the Audit Rule exists to examine the financial affairs of state agencies and public program funds. However, a TC Owner Entity is not a state agency and does not operate a federal housing program. Furthermore, a TC Owner Entity is subject to private obligations which require them to conduct professional third-party independent audits, on a different time schedule, and under private sector standards. Because a TC Owner Entity is not a governmental entity, does not operate any federal housing programs, and is audited annually by separate agreement, there is no reasonable purpose or valid justification to require a TC Owner Entity to comply with the Audit Rule for its own audit. The purpose of the Audit Rule is fulfilled, and the public is protected when the TC Owner Entity's affiliated housing authority performs its annual audit in compliance with the Audit Rule.

To be clear, a TC Owner Entity is a private, for-profit entity that owns an Apartment. A TC Owner Entity is organized and operates as a limited liability company or partnership with two owners. One of the owners is a tax credit investor, a private person or company that invests in the apartment. The tax credit investor typically owns 99.99% of the TC Owner Entity. The other owner, in the case of the Housing Authorities, is a private entity controlled by the Housing Authority, which typically owns 0.01% of the TC Owner Entity. It is clear therefore that a TC Owner Entity is not a governmental entity itself.

There is a misconception by the OAS that the TC Owner Entities affiliated with the Housing Authorities hold "federal assets" or themselves operate federal housing programs. This is incorrect. The TC Owners and Apartments they own and operate are not federal assets and the TC Owners are not directly operating any federal housing programs. The program administration is being handled by the Housing Authorities, who are subject to and meet the requirements of the Audit Rule. In simple terms, to the extent there are federal housing vouchers utilized at the Apartments, the dollars involved in the federal voucher program are subject to audit under the Audit Rule when the Housing Authorities are audited.

At a deeper level, there are two general types of LIHTC projects at issue here: (1) "Tax Credit Only" Projects and (2) "Repositioning" Projects.

Tax Credit Only Projects. The Housing Authorities are affiliated with affordable apartments that are, in many cases, financed with LIHTC but have no other federal or state subsidy attached to them. Informally, these properties are referred to as "Tax Credit Only" Projects. By way of illustration, Mesilla Valley Public Housing Authority ("MVPHA") has affiliates with interests in several Tax Credit Only apartments.

These projects are financed and operated on the same basis as unaffiliated[1] privately-owned tax credit projects in New Mexico. These types of properties were never operated as federal public housing, and they have no federal programs attached to in the past through the present day. There is simply no way to characterize these so-called "Tax Credit Only" projects as a federal asset or federal program.

Repositioning Projects. The Housing Authorities have other apartments that formerly served public housing residents pursuant to Section 9 of the Federal Housing Act ("Section 9"). Again, these Repositioning Programs are not federal assets and do not directly operate any federal housing programs.

The background of the federal repositioning is too complex to explain in detail in this letter. To summarize, due to challenges and weaknesses of Section 9 "public housing", HUD has a long-term policy encouraging housing authorities to find ways to "reposition" federal public housing units to a new ownership and subsidy model. HUD has created several tools, or mechanisms, to allow housing authorities to exit a property from the public housing program and convert the property into another type of affordable housing. The most common mechanism for repositioning is known as "RAD", which stands for the federal "Rental Assistance Demonstration" program.

In a "repositioning" transaction, HUD releases its deed of trust held on a housing authority's property (which has always been owned by the housing authority) to allow the housing authority to leverage private debt and tax credit equity to rehabilitate the apartments or re-build the apartments as new construction. After the repositioning conversion, the property is now owned by a TC Owner Entity, a private-entity landlord that provides rental housing to low-income tenants who receive subsidies through the federal Section 8 program. The subsidies paid through the Section 8 program provide a stream of **income** to the landlord.

[1] The term "unaffiliated" here refers to a privately owned apartment that has no direct or indirect connection with a housing authority.

This income is no different that any other private landlord who receives Section 8 income by agreeing to house a voucher holder at its property.

During this time, the Section 8 program is administered by the housing authority. This means that any federal funds flowing into the project first comes from the federal government to the local housing authority. The local housing authority staff then, in turn, ensure that the renters and landlords are meeting the requirements of the program. If so, the renters are allowed to remain as tenants, and the landlords collect a rental subsidy paid through the housing authority itself. At all times, the housing authority – and not the TC Owner Entity – is handling the direct funds from the federal government and the housing authority – and not the TC Owner Entity – is accounting for those dollars to ensure compliance with both federal and state law.

In connection with the Repositioning Model, the TC Owner Entity is a private landlord that agrees to rent its apartment's units to low-income residents who are participants in the Section 8 voucher program. The TC Owner does not operate the Section 8 program. Rather, the Housing Authority administers and operates the Section 8 Program (and the Housing Authority is audited subject to the Audit Rule) and pays the TC Owner Entity for those residents who have a subsidy on their unit.

In this scenario, the TC Owner Entity is no different than an unaffiliated private landlord that happens to accept Section 8 voucher holders as tenants. In both cases, the TC Owner Entity and the unaffiliated private landlord derive gross revenues through the housing authority that derive from the Section 8 program, but this is merely income to them. In this scenario, it is our understanding the Audit Rule does not apply to the unaffiliated private landlord. If the Audit Rule does not apply to such unaffiliated private landlords who receives Section 8 income from a voucher holder, there is no reason the same rule applies to the TC Owner Entities affiliated with the Housing Authorities.

We hope this letter explains the Housing Authorities position that the Audit Rule be clarified to exempt TC Owner Entities that are subject to annual private audits from the Audit Rule.

We are glad to provide more information and additional suggestions for this language at the upcoming hearings to consider the final form of the Audit Rule.

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