



Low Income Housing Tax Credit (LIHTC) Extended Use (Post Year 15) - Compliance and Monitoring Policy

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1. Purpose & Background

The Internal Revenue Code ("**Code**") requires the Community Development Administration ("**CDA**"), a unit in the Division of Development Finance of the Department of Housing and Community Development ("**DHCD**") to include in the Qualified Allocation Plan for the Allocation of Federal Low Income Housing Tax Credits (the "**Allocation Plan**") a procedure that CDA will follow in monitoring Low Income Housing Tax Credit ("**LIHTC**") projects for compliance with the provisions of §42 of the Code and in notifying

the Internal Revenue Service (“**IRS**”) of any noncompliance of which CDA becomes aware. Treasury Regulation §1.42-5 sets forth minimum standards that the monitoring procedures must meet in order for the Allocation Plan to meet Code requirements.

After the initial 15 year compliance period required by the Code (the “**Initial Compliance Period**”) has ended, and continuing through the additional period of at least fifteen (15) years beyond the Initial Compliance Period (the “**Extended Use Period**”) required by the Extended Low-Income Housing Covenant (“**LIHTC Covenant**”), there may be no tax impact to the project owner in the event of noncompliance and CDA has greater flexibility in establishing criteria and monitoring requirements than during the Initial Compliance Period; however, owners must continue to operate the project in accordance with the requirements of the LIHTC Covenant and the Allocation Plan.

At the end of the Initial Compliance Period, CDA will require less frequent inspection criteria that will provide more flexibility and make it administratively easier for owners to operate and maintain compliance at tax credit properties during the Extended Use Period, while also providing sufficient safeguards to ensure owners and management companies are continuing to comply with the requirements, and the spirit, of the Code, the Allocation Plan and the LIHTC Covenant.

The following inspection criteria, compliance review and monitoring procedures, will apply to tax credit properties during the Extended Use Period.

CAUTION: DHCD and CDA will continue to apply the most restrictive requirements in connection with projects that have received other sources of funding or subsidy from DHCD, CDA and other approved sources. In the event that the requirements of this Extended Use Policy differ from the requirements imposed by other sources (e.g., Tax-exempt bonds, HOME, National Housing Trust Fund, Section 8), owners should continue to comply with all requirements imposed by other sources and expect to submit to inspections and monitoring as required by other programs in addition to those set forth in this Extended Use Policy.

Owners and management agents must keep careful track of when a development, and in some cases certain buildings within a development, transition from the Compliance Period into the Extended Use Period. Premature implementation of the Extended Use Period compliance and monitoring guidelines may result in non-compliance with IRC Section 42 for which CDA would be required to file IRS form 8823.

Compliance with the requirements of § 42 is the responsibility of the LIHTC project owner. CDA and DCA's respective obligation to monitor for compliance with the requirements of § 42 does not make CDA or DCA liable for a project owner's noncompliance.

The relaxation or deviation from requirements imposed during Compliance Period requirements may impact household eligibility if a resyndication (e.g. new allocation of housing tax credits) is sought in the future. If owners are contemplating resyndication to preserve compliance with previously qualified households, owners should consider self-monitoring for compliance.

2. Compliance and Monitoring After Year 15

During the Extended Use Period, all compliance and monitoring will be conducted by and through the Multifamily Unit of DHCD's Division of Credit Assurance (DCA).

LIHTC projects not already monitored by DCA in connection with other funding sources will be assigned a project manager and portfolio administrator at the end of the Compliance Period. At the discretion of DCA, the owner and/or manager may be required to attend a transition meeting with DCA and submit additional documentation necessary to set up or update their account with DCA.

All communications and questions relating to the project's LIHTC Covenant and compliance during the Extended Use Period should be submitted through the Project's Procorem workcenter.

3. Owner's Certification of Continuing Compliance

Owners will continue to be required to submit annual certifications of compliance. However, a modified version of the Owners Certificate of Continuing Compliance applicable to projects during the Extended Use Period will be used. The form to be used during the Extended Use Period is available on the Department's website and through the Project's Procorem workcenter each year.

4. Household Certification/Recertification

The exemption for buildings with 100% LIHTC units from the annual tenant recertification requirements set forth in §42(g)(8)(B), 1.42-5(b)(1)(vi) and (vii), and 1.42-5(c)(1)(iii) of the Internal Revenue Code (a “**Full Recertification**”), and set forth in the Allocation Plan, will automatically extend into the Extended Use Period for buildings exempted during the Compliance Period.

For buildings without 100% LIHTC units, owners may apply for exemption from the annual Full Recertification requirement during the Extended Use Period. In order to be eligible for exemption, the following requirements must be met:

1. the owner must submit a request to DCA during the Extended Use Period;
2. an initial Extended Use Period on-site physical inspection and compliance audit (management and file review) shall have been completed satisfactorily; and
3. the project must have no outstanding or uncorrected issues of non-compliance.

For all units in non-exempted buildings, the owner will be required to conduct a Full Recertification at least every 5 years from the date of the last Full Recertification of the unit.

During any year in which an owner is not required to conduct a Full Recertification of a unit, the owner shall be required to obtain from each household an annual self-declaration of income, which will not be required to be verified but which must be maintained in the project tenant files.

All projects, regardless of exemption, will continue to be required to obtain, verify and document tenant annual income at the time of the initial certification and the first annual recertification via a Full Recertification.

Owners qualifying for the exemption will receive a written waiver letter for each property/building that qualifies for the exemption. DCA reserves the right to withdraw or limit the exemption, or to require owners to resume more frequent or annual Full Recertifications, at any time in its discretion by providing written notice to the owner and effective in the calendar year following the date of notice. Such notice will be provided at least ninety (90) days in advance of the calendar year during which the modification or revocation of the exemption will apply.

For projects with other funding sources, the project owner should continue to contact the funding source for its current requirements and contact DCA in order to apply for the exemption during the Extended Use Period.

5. Physical Inspections & Compliance Audits (Management/File Reviews)

During the Extended Use Period, the inspection and reviews conducted by DCA will be as follows:

- At least once every 5 years throughout the Extended Use Period, DCA will
 1. conduct on-site physical inspections of all buildings in all tax credit projects, and
 2. for the lesser of (a) 10% of the project's low-income units or (b) the number of low-income units identified as the applicable IRS Minimum Unit Sample Size set forth in the Low-Income Housing Credit Minimum Unit Sample Size Reference Chart, inspect the units and review the low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units.
- The first inspection and review in the Extended Use Period will take place within 5 years from the last inspection conducted during the Compliance Period.
- DCA may elect or approve, at its discretion, the submission of electronic documentation for its review of low-income certifications, the documentation supporting the certifications, and the rent records for the tenants in those units. Procedures for the submission of electronic or desktop file reviews will be made available on DHCD's website.
- DCA, at its discretion, may choose more files and units above the minimum requirements. Different units may be chosen for the file review as those receiving a physical inspection.
- Otherwise, there is no change from the requirements of the Allocation Plan.

DCA may accept substitute physical inspection and compliance audit (management/file review) documentation in lieu of conducting its own physical inspections and/or management/file reviews for projects in their Extended Use Period that are also actively monitored by the Department or other federal or local housing agency that conducts inspections.

6. Student Status

Household student eligibility verification is required at move-in only. Certification of student status is not required annually thereafter; however, properties intending to apply for funding in the future should strongly consider continuing to verify student status on an annual basis.

7. Unit Transfers

Affordable unit transfers from building to building will be allowed without Full Recertification. The buildings must be part of a multiple building project and each unit must qualify. The tenant's file must demonstrate that the household has not exceeded the 140% income limit. Transfers must be consistent with the owners tenant selection policy and owners are expected to establish and maintain a non-discriminatory unit transfer policy.

8. Next Available Unit Rule

No change from the requirements of the Allocation Plan.

9. Applicable Fraction

Only the percentage of units, not the percentage of floor space of units, will be examined to determine a building's applicable fraction and the project's applicable fraction.

10. Income Restrictions

No change from the requirements of the Allocation Plan.

11. Rent Limits

No change from the requirements of the Allocation Plan.

12. Utility Allowances

No change from the requirements of the Allocation Plan.

13. Monitoring Fees

No change from the requirements of the Allocation Plan. At this time, DCA does not charge fees for non-compliance/failure to correct compliance. However, it reserves the right to modify its current policy and fee schedule.

14. Noncompliance

Correction of Findings: Where DCA finds noncompliance, DCA will send a written communication notifying the owner and management companies of the noncompliance along with a cure period for corrections. Owners and management companies must make the corrections and send evidence acceptable to DCA within the correction period.

Penalties for Noncompliance: Owners and management companies that fail to report or to make themselves available for reviews and inspections may be placed on DCA's list of non-performing or underperforming entities.

Failure to address noncompliance may impact owners and/or management companies ability to obtain funding or participate in future projects with DHCD or CDA funding. In appropriate circumstances, DCA may pursue debarment proceedings in accordance with Maryland law.