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## memorandum

**to:** Owners and Management Agents of Tax Credit Developments

**from:** Mark Feilmeier, Manager, Program Compliance, Asset Management

**effective date:** November 17, 2009

**subject:** Low Income Housing Tax Credit Post Year 15 Compliance and Monitoring Plan

1981 Blake Street  
Denver, Colorado 80202

### **purpose**

The purpose of this Post Year 15 Compliance and Monitoring Plan is to provide owners of Low Income Housing Tax Credit (LIHTC) projects with a waiver of some of the compliance and monitoring restrictions beginning year 16 of a project's Extended Use Period.

The Extended Use Period will remain in effect for the term of the Land Use Restriction Agreement (LURA) unless the property is acquired by foreclosure or deed in lieu of foreclosure (unless it is determined that such an acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate the Extended Use Period).

Pursuant to IRC Section 42(h)(6)(E)(ii) - Throughout the Extended Use Period and for three years after the termination of the Extended Use Period, the following is not permitted:

- The eviction or termination of tenancy of an existing tenant for other than good cause.
- Any increase in the gross rent of an existing tenant above the applicable maximum rent.

The following Post Year 15 guidelines will be in effect starting the later of:

- The effective date of this notice, or
- The first day after the end of the project's 15-year compliance period.

The owner must provide the Authority with a copy of the signed first-year IRS 8609 for each building in order to determine the end of the 15-year compliance period. Should the owner not provide an 8609 as required, the Authority will determine the end of the compliance period as 15 years after the date the last building was placed in service.



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## tenant eligibility and records

**Certifications** – Initial certifications and verification of household income are required prior to move-in for all units of 100 percent LIHTC developments and for mixed income LIHTC developments.

1. **Student Rule** –The student rule under IRC Section 42 is no longer applicable.
2. **Unit Transfers** – Unit transfers from building to building applicable for all developments are allowed without triggering noncompliance. In addition, certifications are not required upon transfer of a household to another unit within the same building or in another building in the project.
3. **Next Available Unit Rule** – LIHTC Next Available Unit Rule no longer applies. A LIHTC unit occupied by a household that qualified at move-in shall retain its designation until it is reoccupied as long as the unit remains rent restricted.
4. **Utility Allowances** – Utility allowances must continue to be updated annually. Revised utility allowances must be implemented within 90 days of their published effective date.
5. **Record Retention** –Records generated after the 15-year compliance period must be kept for six years.

All other requirements will remain in effect.

**Please Note: The property may be required to continue to comply with more restrictive rules applicable to programs such as Section 8, CHFA loans, and tax exempt financing.**



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## monitoring compliance

1. **Annual submissions** – Annual submissions are due on January 15 of each year and include:
  - a. Post Year 15 Owner Certification of Continuing Program Compliance (exhibit F-1, attached)
  - b. Occupancy and Demographic Report submitted monthly online via WCMS
  - c. Annual Monitoring Fees
  
2. **Physical Inspections** - Management reviews and physical inspections will continue to be performed every three years; however, 10 percent or 10 of the files and units (whichever is greater) will be inspected during the review. The units are not required to be the same for the file review and the physical inspection. Additional units and files may be inspected if determined to be necessary by CHFA monitoring staff.
  
3. **Transfers of Ownership** – Owners contemplating transfers of ownership or ownership interests must notify CHFA in writing. In addition, written notification must refer to CHFA's "Transfer of Ownership Guide" which outlines the process for completing the transaction.

All other requirements under the LURA and Section 42 of the Internal Revenue Code of 1986 as amended and the Treasury Regulations thereunder (the "Code") as applicable remain in effect.

CHFA reserves the right to conduct a review of any building after serving appropriate notice and to examine all records pertaining to the rental of tax credit units.

## monitoring fee

Annual monitoring fees will be due for all LIHTC projects beginning the 16<sup>th</sup> year of a project's Extended Use Period. Fees charged as of the effective date of this notice will be **\$15 per tax credit including employee units (not to exceed \$1,500 maximum fee)**. All fees are due on January 15 of each year. The fee is subject to change upon an annual written notice from CHFA.



## noncompliance

Noncompliance includes but is not limited to:

- Any violation of the provisions of the LURA or the Code not revised by this notice
- Owner or the Owner's Agent repeatedly delaying or refusing CHFA requests to schedule management reviews.
- Failure to submit annual submissions or compliance monitoring fees.

If a noncompliance event occurs, written notice of noncompliance will be issued to the owner along with a correction period not to exceed 90 days. An extension of up to 90 additional days or longer may be granted under the following conditions:

1. CHFA determines the noncompliance cannot be reasonably corrected within 90 days.
2. The owner submits a Correction Plan detailing the timeline for the corrections, which is approved by CHFA.

If the noncompliance is not corrected within the correction period (including any extensions granted), CHFA shall reserve the right to apply the following remedies:

The property, owner, and owner's agent, if applicable, shall be considered to be "Not in Good Standing" with CHFA until the noncompliance is corrected to the satisfaction of CHFA. Applications for tax credit allocations or CHFA loans will not be accepted while an owner, partner, or management agent associated with the application is "Not in Good Standing" with CHFA. In addition, CHFA may declare a default under the LURA and may apply to any court, state or federal, for specific performance of the LURA or an injunction against any violation of the LURA; secure the appointment of a receiver to operate the project in compliance with the LURA; or exercise any other remedies at law or in equity or any such other action as shall be necessary or desirable to correct noncompliance with the LURA.