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memorandum

to: Owners and Management Agents of Low Income Housing Tax Credit Developments

from: Liz Smith, Manager, Multifamily Program Compliance, Asset Management

effective date: Revised November 1, 2015

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 an understanding of how projects are monitored beginning year 16 of their Extended Use Period. At that point, the IRS no longer oversees compliance with Section 42, and CHFA has elected to revise several of its compliance monitoring practices.

The Extended Use Period begins at the start of the credit period and remains 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).

Throughout the Extended Use Period and for three years after the termination of the Extended Use Period, the following are not permitted:

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

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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.

As stated in the LURA, the owner must provide CHFA with a copy of the signed IRS form 8609 for each building for the **first** year of the credit period. The first-year 8609 is used to determine the start of the 15-year compliance period. Should the owner not provide an 8609 as required, CHFA will determine the start of the compliance period as the year **after** the date the last building was placed in service.

tenant eligibility and records

1. **Certification of Income and Assets** – Initial certifications and third-party verification of household income and assets continue to be required prior to move-in for all units of 100 percent LIHTC developments and for mixed income LIHTC developments. After move-in, however, residents may self-certify their income and assets (i.e., third-party verification is no longer required). Annual recertification records must include a signed Tenant Income Certification form, active Affordable Housing Lease Addendum, Self-Certification Questionnaire and Annual Demographics Form.
2. **Student Rule** – Since student status is not one of the defined requirements of the LURA, compliance with the student rule under IRC Section 42 is no longer monitored. **Note:** for developments financed with tax exempt bonds, the student rule continues to apply after Year 15 as long as the regulatory agreement remains in effect.
3. **Unit Transfers** – Unit transfers from building to building for 100 percent and mixed income properties are no longer monitored for LIHTC compliance. Income certifications are not required upon transfer of a household to another unit within the same building or in another building in the project.
4. **Next Available Unit Rule** – Compliance with the Next Available Unit Rule is no longer monitored. A unit occupied by a household that qualified at move-in may retain its designation until it is reoccupied **as long as the unit remains rent restricted**.
5. **Utility Allowances** – Utility allowances must continue to be updated annually. Revised utility allowances must be implemented in the timeframe specified in the CHFA LIHTC Program Compliance Manual.
6. **Record Retention** – Records for the first year of the credit period must be retained for a minimum of 21 years, which is equivalent to six years after the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.

Owners are required to retain all other records, including resident files, for each building for a minimum of six years after the due date (with extensions) for filing the federal income tax return each year. Resident file retention is based on the year the resident moved out of the unit. The IRS allows records to be kept electronically provided they remain retrievable throughout the required record retention period.

CHFA will continue to monitor compliance with all other LIHTC requirements throughout the remainder of the Extended Use Period.

Please note: After Year 15, the property may be required to continue to comply with more restrictive rules applicable to programs such as Section 8, CHFA and FHA loans (including tax exempt bond financing), and HOME.

For owners who anticipate seeking a LIHTC award to rehabilitate a Post Year 15 LIHTC project: It should be noted that, if an allocation is made, the project must meet all Section 42 requirements. These include compliance with the Student, Unit Transfer, and Next Available Unit rules for which CHFA no longer monitors compliance.

monitoring compliance

1. **Annual submissions** – Annual submissions are due on January 15 each year and include:
 - a. LIHTC Post Year 15 Owner Certification of Continuing Program Compliance (www.chfainfo.com/arh/asset/LIHTCForms/CHFA_Y15_Certification.pdf)
 - 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. However, they will be conducted every **five years** and 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 be given to the new owner or partner that the property will remain subject to the terms of the LURA and Regulatory Agreement including all compliance restrictions and annual compliance monitoring. A copy of the notification and other additional information from the new owner or partner will be required to obtain CHFA consent.

Compliance with 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, will continue to be monitored.

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 sixteenth year of a project's Extended Use Period. Fees charged as of the effective date of this notice will be **\$25 per tax credit including employee units (not to exceed \$2,500 maximum)**. 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 addressed 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 that 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 "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.