CHAPTER 6 – EXTENDED USE PERIOD MONITORING

Properties that were awarded Housing Credits on or after January 1, 1990 must comply with restrictions as embodied in the recorded Reservation and Extended Use Agreement (EUA) and the Declaration of Land Use and Restrictive Covenants (Declaration).

After the initial 15-year Low-Income Housing Tax Credit (LIHTC) Compliance Period has expired for these allocations, the Internal Revenue Service (IRS) will no longer receive notification of noncompliance by the States' issuance of 8823 forms. Instead, the onus for dealing with noncompliance during the remainder of the affordability period rests with the state allocating agency.

OHCS has made the determination that during the Extended Use Period the administrative burden to owners can be reduced by relaxing some of the inspection, audit, reporting, and eligibility criteria, providing a more palatable way to operate tax credit properties and maintain compliance when the tax benefits have been exhausted. Monitoring for compliance during the Extended Use Period will ensure the spirit of the program is preserved, that the housing will continue to serve the people for whom it was intended, and the OHCS mission continues to be met.

Definitions

Compliance Period - with respect to any building, the period of 15 taxable years, beginning with the first taxable year of the credit period. The first year of the Compliance Period is the first year in which the owner claimed credits. The first year must be either the year the building is placed in service or, at the owner's election, the year following the placed in service year. All requirements of the Internal Revenue Code, Section 42, including the 1.42-5 monitoring regulations, are in effect during the initial 15-year Compliance Period.

Extended Use ("Post-15 Year") Period - the period beginning on the last day in the Compliance Period in which such building is part of a qualified low-income housing project and ending on the date specified by OHCS in the Extended Use Agreement.

Owner Responsibilities

The Extended Use Period compliance rules will be greatly simplified. The owner will agree to:

1. Maintain the applicable fraction by leasing units to households whose income at placement is 50% or 60% or less of the area median gross income, as adjusted for family size;

2. Maintain the rent and income limit restrictions in accordance with the current Reservation and Extended Use Agreement;
3. Lease, rent, or make available to the general public (who qualify under the applicable election) all units subject to the credit;
4. Comply fully with the requirements of the Fair Housing Act;
5. Not refuse to lease a unit to a Section 8 voucher holder solely because of the prospective tenant's status as a voucher holder;
6. Maintain all units as suitable for occupancy;
7. Certify tenants initially at move-in (for units subject to income qualification requirements stated within the Reservation and Extended Use Agreement);
8. Continue to update utility allowances annually. Revised utility allowances must be implemented within 90 days of their published effective date;
9. Comply with other restrictions as required under the specific year's Qualified Allocation Plan (QAP) or representations made during the application process; and
10. Make their best effort to provide tenant services as stated in the initial application.

Extended Use Period Eligibility

Tenant Income Certification

Form OHCS.2 was revised on 10/25/10

Revised tenant eligibility issues:

1. Tenant Income Certifications
   a) Move-in certification
      - The initial income certification is still required (see **Required Form OHCS.2**). Income will be verified by third-party sources and calculated in a manner consistent with the determination of income as defined under Section 8 requirements. Owners/Agents will check the box labeled "Extended Use Period - Initial" at the top of the first page of the certification.

   b) Annual certifications
      - **The completion of annual tenant income certifications will no longer be required**.

   c) Changes in household composition
      - Any additions to household composition (not including births or adoptions) **will not be permitted during the first six months of occupancy**.

Student Status

2. Student Status
   Student status rules will no longer apply, and therefore will not be monitored during the Extended Use period.

Transfers

3. Unit Transfers
   Unit transfers anywhere within a project (even building to building) are allowed regardless of the household's income at the point of transfer, provided the household initially qualified at move-in.

Next Available Unit Rule

4. Next Available Unit Rule
   Projects will no longer be subject to the Next Available Unit Rule but will be required to maintain the unit set-aside agreed upon in the Extended Use Agreement.

Projects with RD, HOME or Section 8

5. Projects with RD, HOME or Section 8
   Housing Credit projects with RD, HOME or Section 8 funding will continue to be subject to comply with the applicable rules as established by the corresponding Program.

Extended Use Period Monitoring

The following explains the monitoring procedure OHCS will adopt once projects have entered into their Extended Use affordability periods:

Inspections

Projects will be inspected and audited a minimum of every five years. It is at the discretion of the assigned Compliance Officer (CO) to determine if a project will need more frequent reviews. Depending on the size of the project and other factors, the number of units and files inspected will range from 5 – 10% of the unit total for each building/project, or a minimum of 5 units and files. More units and files (over the 10%) may be reviewed should the CO deem it necessary.

Annual Reporting

Form OHCS.1a was revised on 10/06/10

Once projects have entered the extended use affordability period, owners will be required to complete a Certificate of Extended Use Compliance (CEUC) (see **Required Form OHCS.1a**) on an annual basis, throughout the term of the Extended Use period. This form was created to reflect the end of the initial compliance period and the shift in focus to compliance under the provisions within the Reservation and Extended Use Agreement.

Form OHCS.10 was revised on 09/22/10

The owner will also be required to complete the Annual Summary Spreadsheet (see **Required Form OHCS.10**) and submit it with the Owner's CEUC.

Monitoring Charges

Monitoring charges will be reduced from $35 per unit per year to $25 per unit per year. Invoices will continue to be sent to the Owner (or agent) of record annually in November, with a due date in January of the following year.

Note: OHCS reserves the right to adjust the monitoring charges due to changing circumstances.

Project-Based Subsidy Programs

Tax credit physical inspections and monitoring charges will be waived for projects with project-based subsidy programs in effect. The owner must notify OHCS of the type and duration of the subsidy program(s) attached to the project to obtain a written waiver of these requirements. Inspections and charges will resume if the subsidy program expires prior to the expiration of the terms of the Extended Use Agreement.

Transfers of Ownership or Ownership Interest

A transfer agreement is required in the event of a transfer of ownership or ownership interest. Such agreement will put the new owner or partner on notice that it is subject to the terms of the Reservation and Extended Use Agreement, including all compliance restrictions and annual compliance monitoring.

Record Retention

Once the project has entered into the extended use affordability period, the owner is subject to any and all record retention rules (if such rules exist) as stated within all documents prepared to enforce compliance throughout the Post-15 Year compliance period.
If no such reference is made within the extended affordability documents, **the owner must maintain the original move-in documentation for each household on-site for at least three (3) years**. At the point a household's occupancy exceeds three years, the owner may choose to keep the file off-site or stored electronically on disc.

If a household moves out prior to the three year timeframe, the owner must maintain the file on-site until the full three (3) year timeframe has been exhausted.

Extended Use Period Expiration

Once the Extended Use Period has expired (or has been terminated), the owner may not evict or displace any households (other than for "good cause"), and must maintain restricted rents for the following three years, as stated within IRC Section 42(h)(6)(E)(ii).

Consequences of Noncompliance

Owners will be given the same timeline for correction of noncompliance during the extended affordability as was allowed during the initial compliance period (30 days from the date of the inspection and audit report). Extensions are available by request but, in no case, can exceed a total of six months (including the initial 30 day correction period). Uncorrected noncompliance may result in the following progressive actions:

1. The status of owners, managing agents, and/or general partners will be designated as “Not-in-Good Standing” with the agency.

   Note: OHCS reserves the right to publish a list of “Not-in-Good Standing” entities on our website for future reference if deemed necessary.

2. OHCS may choose to enforce compliance with the Reservation and Extended Use Agreement through the courts.

3. Future applications for housing credits may be subject to automatic denial.