

Extended Use Period Monitoring (Beyond Year Fifteen)

In 1990 a change in federal law required an additional fifteen years of compliance for the Low Income Housing Tax Credit (LIHTC), this additional fifteen year period is known as the extended use period. As a result, properties that were awarded Housing Credits in or after 1990 must comply with program restrictions for a total of thirty years (or more as indicated in agreements), subject to certain exceptions. The applicable restrictions are indicated in the recorded Reservation and Extended Use Agreement (REUA) and the Declaration of Land Use and Restrictive Covenants (Declaration) for each property.

After the initial fifteen year Low-Income Housing Tax Credit (LIHTC) Compliance Period has expired for the LIHTC allocations, the Internal Revenue Service (IRS) will no longer receive notification of noncompliance by the State's issuance of 8823 forms. Instead, the responsibility for addressing noncompliance during the extended use period rests with the state tax credit housing finance allocating agency and the Department of Justice as applicable.

What is a credit period? The credit period is the period of time a building's investors plan on taking a tax credit on their federal income tax return. A building's credit period typically starts the year it is placed in service, but the owner has the option of beginning its credit period the year after they place it in service. For example, if a building was placed in service during 2015, the owner may begin its credit period during 2015 or 2016.

What is a compliance period? The compliance period is the period of time an owner must comply with all program requirements to benefit from their anticipated tax credit. The first year of a building's compliance period is the first year of its credit period. The compliance period lasts for fifteen years. It takes an owner fifteen years to earn the tax credit the IRS allows them to take over a ten year credit period. An owner must comply with all requirements established by the IRS and the housing finance agency for the fifteen year compliance period. During this time period noncompliance is reported to the IRS via form 8823 and tax credit recapture for noncompliance during the entire fifteen years is possible.

What is the extended use period? The extended use period (EUP) continues beyond the compliance period for at least fifteen additional years. Although the owner or investor is no longer eligible to receive a federal tax credit deduction, the owner of an LIHTC property is required to stay in compliance with the regulatory agreements in which they committed to keep the property affordable for low-income Oregonians, and in compliance with LIHTC regulations throughout the EUP. It is important that every property owner and manager know the requirements for the extended use period based on the regulatory agreement(s), and the compliance monitoring standards established by the State for properties past year fifteen.

Owner Responsibilities

- 1) Maintain the applicable fraction and set-aside requirements by leasing units to households whose income at placement is consistent with the restrictions outlined in the property documents, 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, market, 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;
- 10) Provide supportive resident services as stated in the initial application; and
- 11) Comply with all other property funding restrictions and documents as applicable.

Revised Tenant Eligibility Issues:

Tenant Income Certifications

- a) Move-in certification- - **The initial income certification is required.** 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.
- b) Annual certifications- **The completion of annual tenant income certifications will no longer be required.** If the property is found to be in non-compliance the agency may implement the requirement of annual certifications.
- c) Self-Certifications- **Will be required for all households after the initial move-in certification for HERA data reporting purposes which requires state agencies to submit current resident information to HUD on an annual basis.**
- d) 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

Federally a Full-Time student is not considered to be “low-income” or meet “low-income” requirements. Authority: Code Section 151(c)(4). Reference: Code Section 42(i)(3)(D) – Student defined

LIHTC student status rules will continue to apply during the extended use period, and will be monitored by the agency. Student status must be checked for each household member annually. The OHCS form ‘Annual Certification of Student Status’ is required.

Unit Transfers

Unit transfers anywhere within a property (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, and **the property must be part of a multiple building property as indicated on line 8b of the 8609 form.**

Next Available Unit Rule

Under the Code, special rules apply when an originally qualified household’s income increases above 140% of the applicable income limitation (i.e., 140% above either 50% AMGI or 60% AMGI). Provided the Available Unit Rule is followed, a unit continues to be treated as qualified even if the household’s income exceeds 140% of the applicable income limitation on recertification. Authority: Treasury Regulation 1.42-15. **Extended use properties will be subject to the Next Available Unit Rule.**

Properties with other funding

Housing Credit properties with RD, HOME, Risk Share, BOND, Grants, Section 8 funding, or other applicable funding will continue to be subject to compliance with the applicable rules as established by the corresponding program regulations, guidance and documents.

Extended Use Period Monitoring

The monitoring procedure OHCS will adopt once properties have entered into the extended use affordability period may change based on risk analysis of the property. The property and the Owner’s/Agent’s current portfolio of properties monitored by OHCS must be in compliance with program requirements and other applicable department regulations.

Each property is evaluated using a standardized internal process reviewing asset management and compliance categories with portfolio thresholds. Compliance categories evaluated will include but are not limited to the following:

- Most recent rating received for management reviews;
- Physical inspections;
- Tenant file reviews;
- REAC scores;
- Submission of required reporting including financial audits and certifications of program compliance;
- Owner and Agent cooperation with reporting and communication; and
- Change of Ownership or Agent.

Properties with no asset management or compliance concerns will be inspected and audited a minimum of once every five years. Most properties will be audited once every three years, and properties that have compliance concerns may be audited more frequently depending on the specific concern and need for additional follow-up or oversight. The unit and file sample will be at least 20% for each building or property as applicable. More files and units may be reviewed as deemed necessary.

Annual Reporting

Once properties have entered the extended use affordability period, owners will be required to complete the Certificate of Extended Use Compliance 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. The owner will also be required to complete the OHCS.10 Annual Reporting Spreadsheet or accurately submit the required fully completed tenant data information through WCMS as applicable.

Monitoring Fees:

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. Late payments of monitoring charges are subject to an additional \$5.00 per unit fee.

Note: OHCS reserves the right to adjust the monitoring charges as determined by the agency. Properties that have additional funding sources may have additional monitoring fees that apply.

Extended Use 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 three years following the expiration/termination, as stated within IRC Section 42(h)(6)(E)(ii). This is commonly known as a safe-harbor period.

Three Year Good Cause Eviction and Rent Increase Protection for Tenants

The term of the property agreement is at least 30 years, beginning on the first day of the compliance period and ends on the later of the date specified by the state agency or 15 years after the close of the 15-year compliance period under IRC §42(i)(1).

IRC §42(h)(6)(E)(i) describes two circumstances by which the extended use agreement can be terminated:

- The building is acquired through foreclosure, or
- The state agency fails to present a qualified contract if applicable for the acquisition of the LIHTC building (or part thereof) by a party who will continue to operate the building (or part thereof) as low-income housing.

In the event that the extended use agreement is allowed to be terminated, IRC §42(h)(6)(E)(ii) provides existing low-income tenants protection against two events for three years following the termination. These events are: The eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit, or any increase in the gross rent with respect to such unit not otherwise permitted under IRC §42.

Transfer of Ownership

An Owner which has received a grant, tax credit, or loan from OHCS shall not transfer ownership, lease, or otherwise encumber any property which serves or will serve as security for a program without prior written approval from OHCS. Approval will not be unreasonably withheld. Review the Property’s program documents for more specific transfer information.

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 Declaration of Restrictive Covenants and the Reservation and Extended Use Agreement (tax credit documents), including all compliance restrictions, annual compliance monitoring and monitoring fees. OHCS must be notified in writing prior to a transfer or change of ownership and the owner will be subject to charges as applicable for the type of transfer involved.

If a transfer is completed without prior OHCS approval, OHCS may, at its sole discretion, enforce remedies as provided under the program documents or OARs which may include additional charges assessed and up to reversal of transfer of ownership. For more information, view the Transfer of Ownership request for Approval Sale, Partial Sale, Lease, or merger and Ownership Entity Changes document at: <http://www.oregon.gov/ohcs/Pages/asset-management-transfer-of-ownership.aspx>.