

Maine State Housing Authority  
Low Income Housing Tax Credit (LIHTC) Compliance and Monitoring Policy

Post Year 15

## **Section I - Background**

### **Extended Use Period**

Projects awarded LIHTC prior to 1990 had a compliance period of 15 years. A change in federal law required an additional 15 years of compliance known as the extended use period. As a result, IRC Section 42(h)(6) requires projects awarded LIHTC in or after 1990 must comply with program restrictions for at least 30 years, subject to certain exceptions. The program requirements and the extended use period are embodied in a recorded restrictive covenant called the Extended Low Income Housing Commitment Agreements (EUA).

### **Compliance and Monitoring After Year 15**

Projects funded from other sources will continue to be monitored according to the monitoring requirements established for those programs and contained in their respective governing documents. The extended use monitoring plan is only applicable to LIHTC projects that have completed their initial 15 year compliance period.

The following details the transition in monitoring and compliance of LIHTC projects beyond their initial 15 year compliance period. Areas of monitoring and compliance not addressed herein have not changed.

## **Section II - Program Guidelines**

**The following LIHTC rules are addressed as follows:**

### **1. Applicable Fraction**

MaineHousing will continue to monitor for the Applicable Fraction set forth in the EUA after year 15.

### **2. Project vs. Building Rule**

All building rules (i.e. building-by-building) will become project rules except the Next Available Unit Rule. The Next Available Unit Rule will be a building rule.

### **3. Next Available Unit Rule**

If a tenant's income in a LIHTC unit increased above 140% of the current applicable income limit, the next available unit of comparable or smaller size must be rented to a qualified low-income resident at the applicable LIHTC rent. This rule only applies in projects with market rent units or multiple income targeting.

### **4. Unit Transfers**

Affordable unit transfers from building to building will be allowed without recertification. Transfers must be consistent with the owners Tenant Selection Requirements. The buildings must be part of a multiple building project (see 8609, Part II, question 8b) and each unit must qualify. The file must demonstrate that the household has not exceeded 140% of

the applicable income limit. Owners will be expected to establish and maintain a non-discriminatory unit transfer policy.

**5. Move-in**

An initial income certification and third party verification consistent with HUD Occupancy Handbook 4350.3 Rev. 1 guidelines will continue to be required for initial occupancy and changes in household.

**6. Student Rule**

The project must remain a qualified residential rental project to be used on other than a transient basis and available to the general public. Hotels, motels, dormitories, fraternity and sorority houses, rooming houses, hospitals, nursing homes, retirement homes, sanitariums, rest homes and trailer parks are not qualified residential rental projects. The unit must be the household's primary residence and the head /co-head of the household cannot be claimed as a dependent on another person's income tax filings. Income qualified households meeting these requirements may reside in the unit even though the household is comprised entirely of fulltime students. Annual certification of full-time student status will be required.

**7. Income Eligibility Restrictions**

The income eligibility of households is based upon household income limits adjusted for family size for the area in which the project is located. These limits are published annually by MaineHousing.

**8. Maximum Rent Restrictions**

The unit must continue to be rent restricted so that the tenant paid portion of rent plus the utility allowance does not exceed the applicable rent limit. This applies to LIHTC units only. LIHTC units funded with FedHOME funds must include tenant-based rental assistance/subsidy in the calculation of maximum gross rent. Rents will be calculated by bedroom size.

**9. Utility Allowance**

The utility allowance methodology selected by the owner at the onset of the compliance period shall continue to be used through the EUA term. Any changes must be submitted to and approved by MaineHousing.

**10. Recertification of Tenant Income (TIC)**

Annual income certifications with third party verification are required for each household occupying a LIHTC unit in the project, except:

(a) no annual income certifications are required for a project in which 100% of the units in the project are subject to the same income limit elected pursuant to Section 42(g)(1) of the Code for the project (e.g. 100% of the units at 60% AMI or 100% of the units at 50% AMI); and

(b) for a project in which 100% of the units are LIHTC units but the project is subject to multiple income targeting requirements, annual income certifications are only required for households in units subject to the lower income targeting requirements (example, in a 100% LIHTC project with 60% AMI, 50% AMI, and/or 40% AMI units, annual income certifications are required for the 50% AMI and 40%

AMI units). MaineHousing will allow self-certification from each household for which an annual income certification is required under this subsection, except third party verification of the household's income shall be required at initial occupancy and every sixth (6<sup>th</sup>) year during the affordability period, commencing on the date on which the building is placed in service, and otherwise upon request by MaineHousing. The self-certification must be made using *Tenant Income Self-Certification* form posted on MaineHousing's website.

For projects financed or assisted under State or Federal programs that require annual income certifications, the owner must provide annual income certifications for each household occupying a LIHTC unit in the project pursuant to the requirements of the State or Federal program. (See MaineHousing Notice dated January 12, 2009 for details).

#### **11. Annual Tenant Status Report**

The status report is required to provide MaineHousing a snapshot of the current households occupying the LIHTC project. The Tenant Status Report must be submitted electronically through Web Tenant Compliance (WTC) by May 1<sup>st</sup> each year covering the prior calendar year activity.

#### **12. Annual Owner Certification/Status Report**

Annual certification of the owners continuing compliance with the program will be required. The annual certification must be made using the *Owner's Certificate of Continuing Program Compliance, Post Year 15* form posted on MaineHousing's website.

#### **13. Resident File and Management Inspection**

The compliance review of files will be performed every three (3) years unless FedHome or other circumstances dictates more frequent inspections. MaineHousing will inspect the tenant income certification(s) and the rent records for each LIHTC unit.

#### **14. Physical Inspections**

MaineHousing will inspect each project at least once every three (3) years, conducting a physical inspection of a sampling of the LIHTC units as well as the common areas, mechanical rooms, and exteriors of the project to insure compliance with HUD's Uniform Physical Condition Standards (UPCS) that have been adopted by MaineHousing. MaineHousing reserves the right to inspect more units if needed.

### **Section III - Compliance**

#### **Training**

MaineHousing strongly encourages continued training in the occupancy requirements of affordable housing.

#### **Noncompliance**

After the initial 15 year compliance period has ended MaineHousing will no longer issue the Form 8823 Notice of Non Compliance to the Internal Revenue Service. Owners must follow all provisions of the EUA, unless modified in writing by MaineHousing.

Owners and management agents must keep careful track of when a project and, in some cases, certain buildings within a project transition from the initial 15 year compliance period into the extended use period. Premature implementation of the extended use period compliance and monitoring guidelines may result in noncompliance with IRC Section 42 for which MaineHousing would be required to file IRS Form 8823.

The intended public benefit created by the EUA will be enforced by MaineHousing through the extended use period. If the owner fails to comply with the EUA during the extended use period, MaineHousing may bring a lawsuit to compel the owner to comply and may exercise other remedies set forth in any MaineHousing loan documents, including but not limited to foreclosure. Noncompliance may also jeopardize MaineHousing funding awards and future applications submitted by the developer.

These procedures will be reviewed periodically by MaineHousing. MaineHousing reserves the right to modify processes that will improve its administration of the EUA.