

## **Compliance Requirements after Year 15**

After the close of the 15 year compliance period, KHC will no longer file a Form 8823 with the IRS when issues of noncompliance with IRC Sec. 42 are noted. However, as the responsible entity mandated to develop policies in regard to compliance of Housing Credit projects within the extended use period, KHC has developed such policies to ensure that the projects remain affordable to those residents for whom the program was created.

In an effort to not compromise the spirit of the program, KHC has developed policies so that compliance can be achieved for property owners after year 15. In addition, based upon the requirements of the Extended Use Period as specified in IRC Section 42 regulations and as stated in the project Land Use Restriction Agreement (LURA), the agency has the authority to establish somewhat different criteria for projects within the extended use period.

KHC's policy and procedures for HC projects in or entering into the Extended Use Period is as follows:

### **Extended Use Period**

#### **A. Eviction of Tenancy**

Under IRC Section 42(h)(6)(E)(ii) the termination of an Extended Use Period due to foreclosure or deed in lieu, or for failure to present a qualified contract shall not be construed to permit before the close of the three-year decontrol period following such termination:

- a) the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit, or
- b) any increase in the gross rent with respect to such unit not otherwise permitted by the applicable rent limits.

#### **B. LURA Requirements**

For each Section 42 property, a LURA is executed detailing the restrictions for the property. The term of the LURA is thirty (30) years with an additional three-year decontrol period. As noted above, this decontrol period protects the tenants from eviction (other than for good cause) and increased rents.

Under the LURA, the owner agrees to comply with the following for the term of the agreement:

- a) it will maintain the applicable fraction by leasing units to individuals or households whose income is 50% or 60%, as irrevocably elected by the owner

- on Form 8609, or less of the area median gross income as determined in accordance with IRC Section 42;
- b) it will maintain the Section 42 rent and income restrictions and any such further restrictions as initially pledged and noted in the LURA;
- c) all Housing Credit units shall be leased and rented or made available to the general public who qualify as low-income tenants;
- d) the requirements of the Fair Housing Act and any such amendments to the Act;
- e) the owner will not refuse to lease a unit to a household that holds a Section 8 voucher because of such voucher;
- f) each Housing Credit unit will remain suitable for occupancy in accordance with Uniform Physical Condition Standards;
- g) the determination of whether a tenant meets the definition of low-income shall be made at least annually on the basis of the current income of such low-income tenant; and
- h) any other restrictions as required under the specific year's Qualified Action Plan (QAP) and related points the owner received in order to obtain an allocation of housing credits.

C. During the Extended Use Period, the following will be required in regard to tenant eligibility and certification of income:

- a) Tenant Income Certification – The initial income certification must be calculated in accordance with HUD Handbook 4350.3. However, owners will no longer be required to third-party verify income and assets at annual recertification. An annual self-certification signed by the tenant household will suffice. An owner may select to continue to third-party verify all tenants at recertification. If the owner chooses to do so, such method must be used consistently for all tenants. Owners must use the Tenant Income Certification (TIC) form to document initial certification, as well as the annual self-certification.
- b) Student Status – The student rules under IRC Section 42 are no longer applicable.
- c) Unit Transfers – Tenants may transfer to units located within separate buildings and not trigger the requirement to verify income-eligibility at the time of such move.
- d) Available unit rule- No longer applicable.
- e) Vacant unit rule- Owner must continue to actively market vacant units and make reasonable attempts to make vacant units rent-ready within a reasonable amount of time.
- f) Rent limits- Rent limits as elected by the owner at the time of Form 8609 continue to be in force during the Extended Use Period. If a tenant's income exceeds 140 percent of the area median income at the time of recertification, the owner may begin charging rent comparable to market units within the area.

- g) Utility allowances – Allowances must continue to be updated annually. Revised utility allowances must be implemented within 90 days of their published effective date.
- h) 40/50 Rule for Projects with HOME funds – No longer applicable.

KHC will continue to update the Housing Credit income and rent limits annually and make them available to the owners.

#### D. Monitoring Compliance During the Extended Use Period

- a) Annual Certification – By March 15 of each year, owners of projects within the extended use period must submit a certification of compliance, as well as various annual reports, to KHC. Housing credit projects combined with RHS financing will not be required to submit such reports; however, KHC reserves the right to request such reports if it is made aware by RHS of issues of noncompliance.
- b) Inspections – Every five years, KHC will conduct on-site reviews of tenant files of Housing Credit projects not combined with RHS financing, as well as physical inspections of at least 20 percent of the units in a project. KHC reserves the right to monitor the project more often than once every five years, as well as inspect more than 20 percent of the units, if deemed necessary. Also, KHC may accept documentation of a passing HQS inspection by the local PHA for units occupied by households receiving Section 8 assistance in lieu of conducting an additional physical inspection of the units. Such HQS inspection must have been conducted within three months of the KHC inspection.
- c) Annual Monitoring Fees- No such fee required on RHS projects; housing credit projects not combined with RHS financing will be assessed a reduced annual fee of \$10 per housing credit unit. Owners may also be assessed a late fee if the annual fees/reports are not submitted by the March 15 due date. KHC reserves the right to adjust the fee structure as deemed necessary.
- d) Nonprofit participation (if applicable)- KHC encourages the continued participation of nonprofits in projects allocated housing credits through the nonprofit set-aside; KHC will no longer monitor to ensure the material participation of the nonprofit.
- e) Correction Period- The owner will be allowed 30 days to correct any issues of noncompliance noted during monitoring reviews of projects within the extended use period.
- f) Pledged Services- Any pledges made by the owner upon which the Housing Credit allocation was based are encouraged to continue. Such pledges include services for the tenants, as well as special populations to serve. Owner must notify KHC in writing, including an explanation as to the necessity, if such pledges are to be revised during the extended use period.

E. Consequences of Noncompliance During the Extended Use Period

- a) If an owner repeatedly delays requests for monitoring reviews, fails to submit annual certifications, reports and fees, does not correct noted noncompliance issues timely, or otherwise chooses to ignore the monitoring requirements, the following may be consequences:
1. The owner and management company will be considered to be Not in Good Standing. No additional applications for Housing Credits or any type of KHC financing involving either the owner or management company will be considered until all noted issues of noncompliance have been addressed.
  2. KHC reserves the right to take legal action to enforce the LURA.

IRC Section 42(h)(6)(E) provides exceptions to the Extended Use Period in the case of a legitimate foreclosure or deed in lieu or, for projects that have not waived this right, if the agency is unable to present a qualified contract pursuant to IRC Section 42(h)(6)(F). This Compliance Guide does not contain guidance for the provisions for the Code regarding the qualified contract referenced in IRC Section 42(h)(6)(E)(i)(II).