

TAX CREDIT WORKSHOP JULY 2, 2013
UNDERWRITING, CLOSING, AUDIT AND PERFORMANCE ISSUES

Common Issues with LIHTC Electronic Application:

- I. Rent limits exceeded
- II. No evidence of the Rent Subsidy amounts included in application
- III. Profit Limits exceeded
 - a. Developer Fee
 - b. Builder Profit
 - c. Builder Overhead
 - d. General Requirements
- IV. Total Development Cost per unit exceeded
- V. Development Budget not supported
 - a. No commitments for Sources
 - b. Excessive and/or Inappropriate Costs
 - i. Excessive Reserves
 - ii. Operating Expenses
 - iii. Misclassified Costs (e.g. “Financing Costs” that are actually consulting fees)
 - iv. Unsupported Costs
 - v. Consulting Fees
 - vi. Miscellaneous and Other
 - c. Sources and Uses don’t balance
- VI. Market Study
 - a. Market rents (including rent grids) not included
 - b. LHC’s Certification of Demand form not included
 - c. Projected Operating Budget for the development not included
- VII. Pro Forma Cash Flows
 - a. Different Rental Income from what is shown in Rental Income page
 - b. Operating expenses too low compared to market study
 - c. (Replacement) Reserves Needs schedule not completed
 - d. DSCR too low
- VIII. Challenges
 - a. Evidence not submitted to support claim(s)
 - b. Complete revised Application not submitted with challenge letter to support change(s)

AMEC (Asset Management Electronic Compliance) Model Requirements:

All projects must complete an AMEC Model which is used to monitor (i) changes in underwriting to the final financial closing and (ii) performance of the project post-closing compared to underwriting in the AMEC Model. An Index of Closing Documents lists at closing all loan documents, organizational documents, contracts etc. All contract amounts, developer fees etc. in closing documents must correspond to the value inputs in the AMEC model.

Common Issues at closing using AMEC model:

- IX. No documentation for AMEC model values
- X. Contingency outside of construction contract only if approved by underwriter

Common Issues at Placed in Service Audit Review:

- XI. Audit opinion does not include wording which evidences that the Certificate of Actual Cost “presents fairly, in all material respects, the Project’s total costs in conformity with accounting principles generally accepted in the United States of America.”
- XII. Identity of interest not disclosed or form not properly completed
- XIII. LHC’s Certificate of Actual Cost format not used
- XIV. Profit Limits Exceeded
 - a. Developer Fee
 - b. Builder Profit
 - c. Builder Overhead
 - d. General Requirements
- XV. Financing Certification and Syndication Certification not signed/notarized.
- XVI. PIS documents not in agreement
- XVII. Excessive and/or Inappropriate Costs
 - a. Excessive Reserves
 - b. Operating Expenses
 - c. Misclassified Costs (e.g. “Financing Costs” that are actually consulting fees)
 - d. Unsupported Costs
 - e. Consulting Fees
 - f. Miscellaneous and Other
- XVIII. GAP Analysis
 - a. Adjustments are made for XVII(a) thru (f)
 - b. TDC is reduced by adjustments and subsidy funds (HOME, CDBG, Tax Credits) are reduced accordingly
- XIX. AMEC, Requisition, and PIS documents are inconsistent
 - a. Reconciliation is done in Subsidy Layering Review

Common Issues Post-Placed in Service:

- XX. Quarterly Financials
- XXI. Annual Audit of operations due April 1st or 90 days after fiscal year end
 - a. Audit opinion does not include wording which evidences that the financial statements “present fairly, in all material respects, the financial position, and the results of its operations, the changes in members equity and cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.”
 - b. Related Party Transactions must be disclosed and must be reasonable
 - c. Balance sheet must be consistent (differences must be explained) with AMEC, Cost Certification, and Subsidy Layering Review
 - d. Income Statement must be consistent with AMEC Pro Forma (explain variances)
 - e. Replacement Reserves contributions and balance must be in line with AMEC
 - f. Calculation of Surplus Cash and payment due to LHC
 - g. Disclosure of litigation involving the Project and/or Related Parties.
- XXII. Annual Asset Management Report by Asset Manager (Foley & Judell) including assessments of:
 - a. Physical Condition of the development
 - b. Management’s performance as of the end of the fiscal year covered by the audit
 - c. Financial Condition of the development