

Ralph M. Perrey, Executive Director



MEMORANDUM

TO: Persons Interested in the Low-Income Housing Tax Credit Program

FROM: Multifamily Development Division

DATE: August 26, 2015

SUBJECT: **Draft** 2016 Low-Income Housing Tax Credit Qualified Allocation Plan
Part XIII: Program Compliance

The following document is the initial draft of Part XIII of the 2016 Qualified Allocation Plan for Low-Income Housing Tax Credits (the "Draft 2016 Part XIII"). The Draft 2016 Part XIII includes language regarding changes proposed by members of THDA's Board of Directors, changes proposed by the public, and changes proposed by THDA staff.

A public hearing regarding the Draft 2016 QAP will be held on Wednesday, September 2, 2015. Additional information about the meeting may be found at http://www.tn.gov/assets/entities/main/thda/attachments/2016_LIHTC_Public_Hearing_Notice.pdf.

Changes proposed in this Draft 2016 Part XIII may be accepted, rejected, or modified in any respect. Changes or modifications not currently reflected in this Draft 2016 Part XIII may also be made. By posting this Draft 2016 Part XIII, no representations are being made about any item that may be included, excluded, or modified in the preparation and approval of the final 2016 Qualified Allocation Plan for Low-Income Housing Tax Credits.

DRAFT Part XIII: Compliance Monitoring

Compliance monitoring procedures and requirements that apply to all buildings placed in service in Tennessee ~~which that~~ have received Tax Credits allocated under Section 42. ~~The current compliance monitoring procedures and requirements include, but~~ are ~~as follows~~ not limited to, the following:

- A. Owners must certify ~~annually (each year of the compliance period and the extended use period~~ (“Owner’s Annual Certification of Compliance”), under penalty of perjury that, for all times during the prior calendar year:
1. The development meets the minimum requirements of the appropriately selected test (i.e.- 40/60 or 20/50) perconsistent with the irrevocable election made at the time of the initial application under the relevant QAP and Section 42(g)(1);
 2. There was no change in the applicable fraction (as defined in Section 42(c)(1)(B)) of any building in the development or that there was a change and a description, satisfactory to THDA, of that change;
 3. The owner has received an annual income certification from each low-income ~~residenttenant~~ and has documentation to support the certification, including certify that tenant income has not increased above 140% of the income limitation required under Section 42(g)(2)(D)(ii);
 4. Each low-income unit is rent restricted under Section 42(g)(2);
 5. All units in the project were for use by the general public, including the requirement that no finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, occurred for the project.;
 - ~~66.~~ There were no findings of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619 for the development;
 7. Each building in the development is suitable for occupancy, taking into account UPCS standard and local health, safety, and building codes (or other habitability standards) and the state or local government unit responsible for making local, health, safety, or building code inspections did not issue a violation report for any building or low-income unit in the projectdevelopment;
 - ~~78.~~ There has been no change in the eligible basis (as defined in Section 42(d)) of any building in the development or, if there was a change, the nature of the change;
 - ~~89.~~ All ~~residenttenant~~ facilities included in the eligible basis under Section 42(d) of any building in the development, such as a swimming pool, other recreational facilities, and parking areas, arewere provided on a comparable basis without charge to all residentstenants of the development;
 - ~~9-10.~~ —If a low-income unit has-beenbecame vacant during the year, reasonable efforts have-beenattempts were made to rent that unit or the next available unit of comparable or smaller size to residentstenants having a qualifying income before any units in the development were rented to tenants not having a qualifying income and while the unit has-beenwas vacant, no units of comparable or smaller size have-beenwere rented to residentstenants not having a qualifying income;
 - ~~11-10.~~ —If the income of residentstenants of a low-income unit in the development increased above the limit allowed in Section 42(g)(2)(D)(ii), the next available unit of a comparable or smaller size was rented to residents having a qualifying income;
 - ~~112.~~ An extended low-income housing commitment, as described in Section 42(h)(6), was in effect, including the requirement under Section 42(h)(6)(B)(iv) that an owner

cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f;

~~1213.~~ All low-income units in the project development were used on a non-transient basis (except for transitional housing for the homeless provided under Section 42 (i)(3)(B)(iii) or single-room occupant units rented on a month-by-month basis under Section 42(i)(3)(B)(iv));

~~1314.~~ If the owner received its credit allocation Tax Credits from the portion of Non-Profit Set-Aside, the state ceiling set aside for a project involving “qualified non-profit organizations” under Section 42(h)(5), that its non-profit entity organization materially participated (regular, continuous and substantial on-site involvement) in the on-going operation of the development within the meaning of Section 469(h);

~~1415.~~ If the building is financed by USDA/RD (formerly FmHA) under the Section 515 program, the owner certifies that the building complies with the requirements for USDA/RD assistance;

16. All requirements associated with items for which points were taken at the time of initial application were met;

17. An extended low-income housing commitment was in effect for the development;

18. If Owner cannot truthfully certify to one or more of the above items, a detailed explanation of the situation must be provided to THDA with the Owner’s Annual Certification of Compliance.

B. THDA will review all Owner’s Annual Certifications of Compliance for compliance with Section 42, relevant regulations and the relevant QAP. THDA will also conduct yearly on-site inspections of no less than 33% of developments receiving Tax Credits. ~~We~~

1. For the selected developments, THDA will review at least 20% of the prior year’s tenant files for adherence to Section 42 compliance with applicable occupancy and rent restrictions. We

2. For the selected developments, THDA will conduct physical inspections of at least 20% of the units at every development to evaluate the suitability of the development for occupancy, taking into account UPCS and local, health, safety, and building codes (or other habitability standards).

~~€3.~~ As a part of the on-site inspection, a review will be conducted of the owner’s marketing efforts to attract special needs populations and Section 8 applicants as outlined in the extended low-income housing commitment.

~~D4.~~ Developments which financed by the USDA/RD Section 515 loan program may be, but are not required to be, exempt from annual on-site file reviews and physical inspections are those developments financed by the USDA/RD Section 515 loan program.

~~E. THDA will charge fees~~ C. THDA shall provide prompt written notice to an owner if any of the following occur:

1. THDA does not receive the Owner’s Annual Certification of Compliance;

2. THDA does not receive or is not permitted to inspect tenant income certifications, supporting documentation or rent records;

3. THDA discovers by inspection, review or in some other manner that the development is not in compliance with Section 42, the relevant regulations, or the relevant QAP.

D. Owners shall pay fees, as determined by THDA, to cover the administrative expenses of monitoring compliance and other expenses incurred in carrying out its duties as the Housing Credit Agency including but not limited to reasonable fees for legal and professional services.

~~FE.~~ Owners ~~will be allowed~~ shall have a ~~90-~~sixty (60) day ~~correction~~ period to provide missing documentation or to correct noncompliance. ~~This correction period (the "Correction Period").~~ The Correction Period begins the earlier of on the date notification THDA sends written notice to the owner specifying the missing documentation or the noncompliance is via regular mail or via e-mailed, or the date of to the inspection at which address specified for the missing documentation. ~~Owner or Owner's contact in the noncompliance is noted. An extension of files held by the Compliance Division of THDA. The Correction Period may be extended up to 90an additional 120 days may be requested in writing and may be granted by THDA if it is for a total Correction Period not to exceed six (6) months upon a showing of good cause by the owner, all as determined that there are extreme circumstances beyond the control of the owner by THDA in its sole discretion. Notwithstanding the foregoing, THDA will not grant extensions for items that are immediate health and safety issues.~~

~~G.~~ THDA will notify ~~F.~~ THDA shall file an IRS Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance, with the Internal Revenue Service ~~to show~~ an owner's noncompliance or failure to certify compliance no later than 45 days after the end of the ~~time allowed for correction~~ Correction Period and no earlier than the end of the Correction Period, whether or not the noncompliance or failure to certify compliance is corrected. ~~THDA will notify the Internal Revenue Service by filing form 8823 Low Income Housing Credit Agencies Report of Noncompliance.~~

~~HG.~~ THDA has the right to inspect any low-income development at any time during the compliance period and the extended use period, including, but not limited to, on-site inspections and review of all records relating to compliance with Section 42 requirements. ~~THDA may require~~ Owner shall promptly deliver copies of ~~the~~ tenant certifications and supporting documentation ~~to as may be forwarded to~~ required by THDA.

~~I.~~ ~~Awareness of Section 42 provisions and~~ ~~H.~~ Owners are responsible for complying or ensuring compliance of the development they own with requirements of Section 42 are the responsibility of, relevant regulations and the owner of relevant QAP throughout the building for which compliance period and the Tax Credits are allocated. ~~extended use period. THDA's monitoring of obligation to monitor compliance with Section 42, relevant regulations and the relevant QAP does not make THDA or the State of Tennessee liable for an owner's noncompliance.~~

~~J.~~ THDA shall be entitled to amend the compliance monitoring provisions of this QAP and its Tax Credit Program as required by applicable federal statutes or regulations ~~as amended, or~~ from time ~~to~~ time. Such amendment is expressly permitted by this QAP, and the making of such amendment will not require further public hearings. THDA, in accordance with Section 42, may impose additional requirements in order to fulfill the objectives of its housing initiatives.

~~J.~~ Any development receiving an allocation of Tax Credits must be managed, during the compliance period and the extended use period, by a management company/agent that has a current, valid, certification from the THDA Certified Property Manager/Agent Program as described in Exhibit 10.

~~K.~~ ~~Owners~~ ~~K.~~ ~~Owners and managers~~ shall attend ~~Owner's~~ THDA provided training as follows:

1. Owners shall attend owner's compliance training sessions provided by THDA within the 12 months prior to the submission/issuance of the Final Application for a development (8609) final allocating document. Only attendees who are listed on Attachment 16 or the attachment to the initial applications with the same information or who are employees of the development owner may meet this requirement. Development owners shall provide notice to THDA at least three (3) business days prior to the date of the Owner's compliance training session identifying the proposed attendee. Failure to provide such notice shall cause any attendee to not meet this requirement. THDA reserves the right to disallow any proposed attendee. THDA may, under

~~extraordinary circumstances, extend the deadline, but will not issue the final allocating document (IRS form 8609) until such training has been completed.~~

~~L. Owners or their management 2. Property managers and staff shall attend Manager's compliance training sessions provided by THDA after the final allocation and during the compliance period if it is determined that noncompliance exists which could be corrected by a better understanding of the in accordance with the requirements for the THDA Certified Property Manager/Agent Program.~~

~~M. Owners shall maintain tenant records within Tennessee.~~

~~NL. Owners shall maintain records for each qualified low income building in the development for each year of the compliance period and the extended use period sufficient to meet the requirements of 26 C.F.R. Section 1.42-5(b). All first year files shall be maintained as paper records and shall be maintained within Tennessee until THDA conducts the first inspection of the development. Thereafter, files may be maintained in electronic format. Any tenant records or other records maintained in an electronic format shall be accessible to THDA at THDA's request.~~

~~M. Owners shall submit annual compliance monitoring reports Owner's Annual Certification of Compliance and required tenant data via THDA's internet reporting application Housing Credit Monitoring System.~~

~~ON. Owners shall submit, not less than annually during the compliance period and the extended use period, information concerning the race, ethnicity, family composition, age, income, use of rental assistance under Section 8(o) of the United States Housing Act of 1937 or other similar assistance, disability status, and monthly rental payments of households residing in the development in a form and with substance as THDA may require.~~

~~P. Any development receiving an allocation of Tax Credits must be managed by a management company/agent that has a current, valid, certification from the THDA Certified Property Manager/Agent Program as described in Exhibit 10. Verification will be required with the Final Application.~~

~~QO. Any development receiving an allocation of Tax Credits must conspicuously post the THDA Customer Response Center Poster (the "CRC Poster") in the leasing office. The CRC Poster is available from THDA.~~

~~P. In the event of a sale, transfer, or exchange of a development or of the general partner/managing member of the ownership entity, the owner shall notify THDA in writing at least 30 days prior to the closing of such a transaction and shall provide information about the proposed new owner or proposed new general partner/managing member of the ownership entity as THDA may request. No closing shall occur unless and until the proposed new owner or proposed new general partner/managing member of the ownership entity has met with THDA Compliance staff.~~

~~Q. The requirements of Part VIII-P do not apply when a development is sold following the completion of the qualified contract process when THDA has not identified a purchaser.~~

~~R. THDA shall carry out its monitoring responsibilities in accordance with Section 42, relevant regulations, the relevant QAP and applications submitted thereunder. THDA will also rely on its compliance manual as well as guidance from the IRS via the "Guide for Completing Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition", Revenue Procedures, Revenue Rulings and other similar guidance, all as modified from time to time.~~

~~S. All monitoring and compliance activities referenced herein are required for the compliance period and the extended use period, whether specifically stated or not. All monitoring and~~

compliance activities referenced herein are required for all developments subject to compliance monitoring.

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