

DELAWARE STATE HOUSING AUTHORITY Recertification Waiver Information



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Information About the Recertification Waiver

Q: What is the Recertification Waiver?

A: IRS Revenue Procedure 2004-38 provides that, on application by the taxpayer, the Secretary may waive any annual recertification of tenant income for purposes of section 42(g), if the entire project is occupied by low-income tenants (100 percent low-income buildings).

Q: How is my property eligible to request the waiver?

A: The property must be comprised of **100%** qualified low-income buildings and have completed their second credit year. The property must meet all other requirements outlined in these “Recertification Waiver” guidelines and procedures. Have had at least one DSHA compliance monitoring review and an overall favorable compliance status. The property can not be in another affordable housing program (HUD Section 8, Rural Development or the State of Delaware’s HOME program).

Q: Who can request the waiver?

A: DSHA will only accept an application from the owner. The application must be signed by a general partner of the ownership entity. DSHA will not accept an application for a waiver from the management company.

Q: When can an owner apply for the Recertification Waiver?

A: The recertification waiver request to the IRS can be applied for at any time. However, because of the steps involved, the request for a Statement of Compliance from DSHA Compliance Monitoring Section may take several months to process.

Q: How does an owner apply for a Recertification Waiver?

A: DSHA’s “Application for Recertification Waiver” can begin by completing an application form from DSHA or can be accessed on-line at www2.dsha.state.de.us/dsha. REMEMBER, the IRS will be the entity that issues the **final** Recertification Waiver.

Q. Does a property need a current year site review to obtain a waiver?

A. Yes, the property must have had a favorable compliance monitoring visit prior to an application that will be reviewed.

- Q.** What are the costs associated with the waiver?
- A.** The owner will deal directly with a DSHA-approved contractor to perform the 100% file review of the development. Fees are usually negotiated on a per unit basis and range from \$18 to \$35, plus travel.
- Q.** What are the steps involved in obtaining the Recertification Waiver?
- A.**
1. The owner must submit to DSHA a request with the Recertification Waiver Application.
 2. Upon approval to proceed from DSHA, the owner will contract with an approved DSHA contractor to perform a 100% file review on the development's records. The owner must receive a favorable Compliance Certification from the approved DSHA contractor.
 3. Submit a copy of the Compliance Certification from the approved DSHA contractor for review along with IRS Form 8877 Request for Waiver of Annual Income.
 4. Receive IRS Form 8877 from DSHA with Agency Attestation and Exemption Statement completed.
 5. Submit IRS Form 8877 and letter request to IRS for consideration of Recertification Waiver. Forward a copy of request and letter to DSHA.
 6. Receive OFFICIAL notification from IRS noting approval of Recertification Waiver. Forward copy to DSHA.
 7. Receive acknowledgement from DSHA of IRS waiver. Note: Before DSHA can acknowledge an approved IRS Waiver, DSHA must have a copy of the IRS approval notification.
- Q.** Once the IRS grants the waiver, when is it "effective"?
- A.** The Waiver takes effect on the date the Internal Revenue Service approves the waiver. Once the waiver takes effect, it remains in effect until the end of the 15-year compliance period unless the waiver is revoked.

Q. Can the waiver be revoked?

A. Yes. The Internal Revenue Service may revoke the waiver if the building ceases to be a 100% low income building or if the Internal Revenue Service determines that an owner has violated Section 42 in a manner that is sufficiently serious to warrant revocation, or upon recommendation to the IRS by the State Agency.

Examples of reasons a waiver may be revoked:

- Pattern of households comprised entirely of full-time students.
- Owner no longer submits annual owner certification to the Agency.
- Building ceases to be decent, safe and sanitary for tenants.

Q. Will we still complete annual monitoring reports and submit to DSHA?

A. Yes, the only change to the current monitoring process is that annual recertifications of income are not required. Obtaining the waiver will not prevent an owner from having to produce documentation to verify the owner's compliance with the rules and regulations of Section 42 upon an examination of the owner's federal income tax return.

Q. Will the property still be subject to a compliance monitoring inspection by DSHA?

A. Yes. The IRS requires DSHA to perform compliance monitoring inspections every three years (at a minimum).

NOTE:

- If the Recertification Waiver is denied for the property, an appeal may be submitted to DSHA within 14 business days from the date of the denial. All appeals should be addressed to the Housing Asset Manager, for an appeal review. Projects rejected for a waiver may submit an application the next year.
- DSHA reserves the right to deny any application at its sole discretion.

- DSHA reserves the right to deny an application even if noncompliance issues are resolved. If DSHA finds a pattern of management/owner practices not consistent with IRS and DSHA standards, the waiver may be denied. Violations may include:
 - Backdated forms (Tenant Income Certifications, Sworn Affidavit Income and Asset Statements, etc.)
 - Correction fluid or some other tampering used on forms
 - Signing required forms prior to or after dates allowable by DSHA (Tenant Income Certifications signed more than 60 days before the effective date or anytime after the effective date)
 - Lack of response on the part of management/owner to issues identified during DSHA's review of the property

- DSHA reserves the right to make changes in the procedures as necessary.