

## **DSHA POST-15 YEAR COMPLIANCE MONITORING PROCEDURES**

### **Background**

Tax Credit properties allocated credits in 1990 and after, were required to record a commitment (Declaration of Land Use Restrictive Covenants) for an affordable housing period of a minimum of thirty years. The first fifteen years is called the compliance period. During the compliance period, DSHA is responsible for monitoring tax credit properties and reporting noncompliance to the IRS. The remaining 15 years (after the compliance period has expired) are referred to by the IRS as the extended use period. During the extended use period DSHA must continue to monitor tax credit properties for the low-income housing commitment, but is no longer required to report noncompliance matters to the IRS. IRS officials and other tax credit experts have indicated verbally that state agencies may not report noncompliance to the IRS after the compliance period is over. The tax benefit to the owner is exhausted and the IRS can no longer recapture or disallow credits. Therefore, DSHA has established a policy on how tax credit properties will be monitored during the extended use period.

The purpose of these procedures is to ensure compliance with the Declaration of Land Use Restricted Covenants while allowing for the waiving of certain requirements during the extended use period. DSHA believes these changes will prove to be beneficial to owners and managers of tax credit properties by streamlining reporting requirements and other tax credit eligibility criteria during the extended use period.

To qualify, owners must be in good standing (continue to comply with the monitoring requirements and/or terms of the Declaration of Land Use Restrictive Covenants) within three years of the end of the compliance period. DSHA's goal is to preserve all tax credit properties for the benefit of the residents while maintaining a reasonable level of monitoring requirements.

**Compliance Period** – means with respect to any building the period of 15 taxable years, beginning with the first taxable year of the credit period. The first year of the Compliance Period is the first year in which the owner claimed credits. The first year must either be the year the buildings(s) are placed in service, or at the owner's election the year following placed in service.

**Extended Use Period** – means the beginning of the last day in the compliance period on which such building is part of a qualified low-income housing project and ending on the later date specified by DSHA in the Declaration of Restrictive Covenants or the date which is 15 years after the close of the compliance period.

## **Continued Resident Eligibility and Criteria**

1. Tenant Income Certification (TIC) – the initial Tenant Income Certification (TIC), Asset Certification and third party verifications will still be required (consistent with all requirements of DSHA’s Tax Credit Compliance Monitoring Manual). The properties must continue to meet the income set-asides and all additional income restrictions as defined in the Declaration of Land Use Restrictive Covenants. Any change in set-aside restrictions must be approved by DSHA. (Properties with Rural Development (RD) or HUD Section 8 subsidy must continue to meet the requirements of those programs.)
2. The unit must continue to be rent restricted so that the tenant paid portion of rent plus the utility allowance does not exceed the tax credit applicable rent.
3. All DSHA financed developments, must continue to seek DSHA’s approval on all rent increases. All of the rent limits elected in the Declaration of Land Use Restrictive Covenants will continue to apply.
4. Annual Recertifications and Student Certifications will no longer be required. A Self-Certification of income will be necessary for reporting purposes only. RD, HUD Section 8 or tax-exempt bond properties must continue to follow all of the applicable requirements of each program.
5. Households who add adult members during occupancy must continue to add the household member to the initial certification using the current income limit. (Consistent with all requirements of DSHA’s Tax Credit Compliance Monitoring Manual).
6. Households may now be comprised entirely of income eligible full-time students with no exception necessary. However, if Section 8 property, the HUD student rules will now apply.
7. All management/owner screening and application process will continue. In addition, a waiting list must also be continued to be maintained.
8. Each low income unit will remain suitable for occupancy under the Uniform Physical Condition Standards (UPCS).
9. Owners must continue to comply fully with the requirements of the Fair Housing Act as it may from time to time be amended.
10. Unit transfers from building to building are allowed without having to re-determine whether the household’s income is over the 140% of median income at the time of transfer.
11. Next Available Unit Rule no longer applies.

12. Vacant Unit Rule no longer applies.
13. Utility allowances will be updated annually. Revised utility allowances must continue to be implemented within 90 days of their published effective date. It is no longer necessary to obtain DSHA's approval on revised utility allowances.
14. All minimum occupancy requirements will be waived.
15. Social Services will continue to be required if an Extended Use Declaration of Restrictive Covenants for Social Service commitments were made. All Social Service contracts will continue to be updated and provided to the residents at no cost.
16. Properties with the HOME project rule of at least 40% of the units must be occupied by households at or below 50% of the median income limit per building are no longer subject to this provision. (with DSHA approval)
17. All other requirements of the Declaration of Restrictive Covenants will continue to apply.
18. Transfer of Ownership – a transfer agreement is required in the event of a transfer of ownership or ownership interest. Such transfer agreement will put the new owner or partner on notice that it is subject to the terms of the Declaration of Land Use Restrictive Covenants including all compliance restrictions and annual compliance monitoring. Documentation of signatory authorization for the new owner may be requested. Owners contemplating transfers of ownership or ownership interest should notify DSHA.
19. Expiration of Termination of Extended Use Period – During the three year period after the extended use period expires or is terminated pursuant to IRSC Section 42(h)(6)(E)(ii), owners are required to annually submit to DSHA that no low-income residents have been evicted or displaced for other than good cause. This certification will be due January 15 each year for three years after the extended use period has expired.

## **Reporting and Monitoring**

1. Owners Annual Certification for Continuing Compliance – Owners will continue to submit a certification of compliance due January 15 each year. This includes all RD, HUD Section 8 and tax-exempt properties.
2. Annual Reporting – Owners/management agents must continue to submit monthly or annual financial reports (if required) as well as submitting monthly tenant data to the MITAS database. This includes all RD, HUD Section 8 and tax-exempt properties.
3. DSHA will perform a physical inspection and monitoring review for LIHTC purposes every 5 years from the last inspection date. A minimum of 5 units or 10% will be chosen for the physical inspection. DSHA will reduce the file review to 10%. DSHA reserves the right to review additional files or inspect additional units to ensure compliance. Inspection frequency may be increased if necessary, or if DSHA has financing in the property.
4. Annual monitoring fees – DSHA will charge \$15 per unit during the extended use period. DSHA reserves the right to adjust the fee due to changing circumstances, rules or regulations. Fees are due January 15 with the Owners Annual Certification. This includes RD or HUD Section 8 properties.
5. Record Retention – owners will need to maintain the original documents of initial move-in certifications, verifications, applications and leases for three years from the date of move-in.
6. Properties monitored and found to have noncompliance matters must follow the same correction period requirements and procedures as outlined in DSHA Tax Credit Compliance Monitoring manual.

## **Noncompliance**

DSHA will use remedies allowed by local and federal law and the Declaration of Land Use Restrictive Covenants to enforce compliance. Owners and/or management agents that have material noncompliance with the Declaration of Land Use Restrictive Covenants may no longer be eligible to participate in the Post-Year 15 Monitoring Procedures and will be deemed no longer in good standing with DSHA. Owners and/or management agents that are deemed not in good standing will not be allowed to participate in future tax credit applications.

## **Reservations**

DSHA reserves the right to modify the Post 15 Year Procedures as needed.

08/13/10