

Missouri Housing Development Commission
Compliance Monitoring During the Extended Use Period

Compliance Period:

Internal Revenue Code Section 42(j)(1) defines the term “compliance period” as, with respect to any building, **the period of 15 taxable years beginning with the 1st taxable year of the credit period with respect thereto.**

The first year of the compliance period is the first year in which the owner claimed credits. Owners should rely on the Form 8609, as filed with the IRS, to determine the first year of credits. The Missouri Housing Development Commission (MHDC) will not have record of this information unless it was provided by the owner at the time the credits were claimed.

All requirements of the Internal Revenue Code Section 42 apply to the “compliance period”.

Extended (“Additional”) Compliance Period:

This period is not defined by Section 42 of the Internal Revenue Code, although MHDC did offer this option to developers through the competitive application process. MHDC defines this period as beginning on the 1st day following the initial “compliance period” and ending on the date specified by the Land Use Restriction Agreement (LURA).

Extended Use Period :

The “extended use period” is described in IRC 42(h)(6)(D) as follows:

- (i) beginning on the 1st day in the compliance period on which such building is part of a qualified low-income housing project, and
- (ii) ending on the later of –
 - (I) the date specified by such agency in such agreement, or
 - (II) the date which is 15 years after the close of the compliance period

The agreement used by MHDC is referred to as the Land Use Restriction Agreement (LURA)

IRC 42(h)(6)(E) provides for exceptions if foreclosure or if no buyer is willing to maintain low-income status as further described in IRC 42(h)(6)(E)(I) and (II).

Compliance with the Land Use Restriction Agreement (LURA):

As per the originally recorded LURA, the owner agreed to comply with the following:

I. **Recorded Language:** (page 2 par 6) The Taxpayer has represented to the Commission in Taxpayer's application that it will limit occupancy to (family) (elderly), notwithstanding anything to the contrary contained in this Agreement, the provisions of the Fair Housing Act contained in Title VII of the 1968 Civil Rights Act, as amended, (42 U.S.C. 3601, et. Seq.)

No amendment available

II. **Recorded Language:** (Sect. 3(e))The Owner shall not demolish any part of the Project or substantially subtract from any real or personal property of the Project; or permit the use of any residential rental unit for any purpose other than rental housing during the term of this Agreement unless such action was the result of eminent domain.

Furthermore, Sect. 3(s) states the Owner shall not sell or exchange with any person or entity, any portion of the Project to which this Agreement applies unless the entire Project to which this Agreement applies is disposed of to such person or entity.

Amendment available upon request: MHDC may authorize a partial release of buildings in locations where evidence, as deemed acceptable by MHDC, suggests high vacancy rates related to market conditions.

III. **Recorded Language:** (Sect. 3(o))During the term of this Agreement, all units subject to Tax Credits shall be leased and rented or made available to members of the general public who qualify as low-income tenants.

Furthermore, Sect 6(a) states the Owner irrevocably elects that at least (%) of the residential rental units in the Project shall be both rent-restricted (as hereinafter defined) and occupied by individuals or families whose income is (%) or less of area median gross income.

Amendment available upon request: MHDC may authorize an income waiver to 80% of Area Median Income (as defined by HUD) in locations where evidence, as deemed acceptable by staff, suggests high vacancy rates related to more restrictive income levels.

IV. **Recorded Language:** (Sect. 6(d)) The determination of whether an individual or family is a Qualifying Tenant (that is, meets the income requirements of subsection (b) of this Section 6) shall be made at least annually on the basis of the income of such Qualifying Tenant(s). Any unit occupied by an individual or family who is a Qualifying Tenant at the commencement of occupancy shall continue to be treated as a Low-Income Unit under subsection (b) of this Section 6 provided that, if such Qualifying Tenant's income subsequently exceeds one hundred forty percent (140%) of the applicable income limit, such unit shall no longer be a Low-Income Unit if after the determination of such increase, but prior to the next determination, any residential unit of comparable or smaller size is rented to a tenant who is not a Qualifying Tenant.

Amendment A: MHDC has determined that 100% LIHTC properties are no longer required to recertify tenant income annually. Mixed-use properties must recertify annually, although a self-certification from the household attesting to the continued compliance with income restrictions and acknowledged by management as being true to the best of his/her knowledge is acceptable.

Amendment B: MHDC has determined the Available Unit Rule (AUR) will no longer pertain to “comparable or smaller size”. Any currently vacant unit will suffice.

V. Recorded Language: (Sect. 6 (j)) MHDC shall approve rental increases sufficient for the Owner to compensate for any net increases in taxes (other than income taxes) over which the Owner has no effective control.

Amendment: MHDC will defer to the tax credit rent limits and will no longer approve annual rent increases. Owner/managers must request a final Schedule II from MHDC which will reflect the current year tax credit limit. MHDC will rely on owner/managers to apply increases fairly and in a manner that will not jeopardize current occupancy rates. Random audits will be performed and MHDC may at any time during the extended use period begin regulating rents to ensure project viability.

VI. Recorded Language: (Sect. 8(b))The Owner shall annually provide to the Secretary of the United States Department of the Treasury (the “Secretary”), or to his or her designee, at such time and in such manner as the Secretary shall prescribe, a certification as to the continuing compliance of the Project with requirements of Section 42 of the Code. A copy of such annual certification shall be provided to MHDC.

Furthermore, Sect. 8(c) states the Owner shall provide to MHDC, annually, a Certification of Continuing Program Compliance and an Occupancy Report, each in the form provided, from time to time, by MHDC, together with a copy, for each building, of the most recently filed Schedule A, Annual Statement, IRS Form 8609.

Furthermore, Section 10 (f) states the Owner shall submit a copy of the Annual Development Certification of Continuing Compliance shown as Exhibit “B” in the Compliance Manual together with the Occupancy Report shown as Exhibit “B2” in the Compliance Manual, at least annually, or as requested by MHDC in order to monitor compliance with the provisions specified in this Agreement and the Code, please refer to the “Missouri Housing Development Commission Low Income Housing Tax Credit Program Compliance Monitoring Manual” for the annual reporting deadlines.

Amendment: MHDC will continue to require a Certification of Continued Compliance with requirements of the Land Use Restriction Agreement and annual Occupancy Report ONLY.

VII. Recorded Language: (Sect. 10(d))The owner is required to keep records for each Qualified Low-Income Building in the Project showing the following: (vi) the annual

income certification of each Qualifying Tenant; (vii) documentation to support each Qualifying Tenant's income certification

Amendment: Refer to Amendment A and B of Section IV.

VIII. Recorded Language: (Sect. 10(g)) The owner is required to keep all records for each building for a minimum of six years after the due date (with extensions) for filing the Owner's federal income tax return for any year; provided, that the records for the first year of the credit period must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.

Amendment: Record retention during the Extended Use Period is limited to 6 years for "move out" and/or "denied" files.

Monitoring for Noncompliance During the Extended Use Period:

IRC Section 1.42-5 defines agency requirements for the monitoring of Section 42 compliance. The IRC does not address specific requirements once the compliance period has ended and the extended use period commences. Therefore, it is left to each state monitoring agency to establish policy for their respective state.

Based on the requirements of the LURA, specified in Section 42 regulations and the agreement itself, the agency has the authority to set policy for the following criteria during the Extended Use Period:

Annual recertifications
Eligible/ineligible student households
Unit transfers
Available unit rule
Income and rent restrictions
General Use Requirements
Section 8 acceptance

MHDC will further require the following:

1. An initial income certification is required on all new move-ins as described in the MHDC Low Income Housing Tax Credit compliance manual.
2. An annual recertification is required on mixed-use properties ONLY. MHDC will accept, in lieu of income/asset verification, a self-certification from the household attesting to the continued compliance with income restrictions and acknowledged by management to be true to the best of their knowledge.
3. An annual recertification is not required on 100% Low Income Housing Tax Credits properties.
4. Student rules, as defined by Section 42, will no longer apply.

5. Unit transfers from building to building are allowed. 100% LIHTC properties do not need to certify income. Mixed-use properties will be required to monitor the set-asides of low income units.
6. The available unit rule no longer pertains to “comparable or smaller size”. The amended rule provides that if a household’s income goes over 140% of the applicable AMI, a currently vacant unit or the next unit in the same building must be rented to a qualifying household.
7. An annual Owner Certification of Continuing Program Compliance (amended form to reflect state requirements) is required.
8. An annual Occupancy Report is required through the Certification On-Line process and state agency (rather than IRS) testing will be performed.
9. Rent increases will no longer be reviewed annually. Tax Credit Rent Limits will apply with a final Schedule II from MHDC.
10. Annual budgets will no longer be required by the tax credit program although loan requirements still apply.
11. Annual financial statements will no longer be required by the tax credit program although loan requirements still apply.
12. Tax credit income restrictions will apply although MHDC may, as deemed necessary, authorize income waivers upon request.
13. Physical inspections and file reviews will be performed every 5 years or as deemed necessary by staff.
 - Physical Inspection - a minimum of 3 units chosen at random or a maximum of 10% of the low income units not to exceed 15 units in any development. Evidence of deficiency trends may trigger additional unit inspections.
 - File Review – MHDC will no longer limit the review to files that relate to the inspected unit. New move-ins will require income and asset verifications. Recertification files on mixed-use properties will require a self-certification at minimum. Files may be chosen at random. Evidence of deficiency trends may trigger additional file reviews.
14. MHDC will rely on Section 8 or Rural Development inspection reports for those properties with layered financing or rental assistance provided by either agency.
15. Submission of a transfer agreement (MHDC form) is required prior to ownership transfers. Such transfer agreement puts new ownership on notice that the property is subject to compliance restrictions and monitoring.
16. During the “3 year decontrol period” the owner is required to submit an annual certification stating that no leases have been terminated or residents displaced for other than good cause.

Consequences of Noncompliance During the Extended Use Period:

IRS Form 8823 has been amended to reflect agency-defined language. Evidence of noncompliance reported through agency Form 8823 will affect future funding clearance by MHDC and may be reported to other agencies inquiring of the compliance status of the owner or manager.

MHDC's mission is to provide strength, dignity, and quality of life through the partnerships that we have created in the affordable housing industry. It is our intent to create more reasonable compliance criteria during the extended use period as a means of reducing the administrative burden on the owners and managers of Low Income Housing Tax Credit properties. These efforts ensure the longevity of the affordable housing program and therefore provide quality affordable housing to the citizens of Missouri.

Attachments:

- EUP-1 – Noncompliance Report
- EUP-2 – Annual Certification of Continuing Compliance
- EUP-3 - Annual Occupancy Report
- EUP-4 – Transfer Agreement
- EUP-5 – Sample Land Use Restriction Agreement