

## **South Carolina State Housing Finance & Development Authority's Low Income Housing Tax Credit Year 15 Policy**

### **I. Background**

Created by Congress in 1986, the federal Low-Income Housing Tax Credit (the "LIHTC") Program was created to promote the development of affordable housing for low-income individuals and families. The LIHTC Program is governed by Section 42 of the Internal Revenue Code of 1986, as amended (the "Code") and by Treasury Regulations for the LIHTC Program that can be found at 26 CFR §1.42 et. seq.

The South Carolina State Housing Finance and Development Authority (the "Authority") is responsible for administering the LIHTC Program for the state of South Carolina and allocating tax credits to developments throughout the state.

### **II. Extended Use Period**

Properties awarded tax credits in 1987, 1988, and 1989 had a 15-year compliance period. However, the federal law was changed to add an Extended Use Period requiring an additional 15 years of compliance for developments awarded tax credits starting in 1990. As such, all developments awarded tax credits in 1990 and afterwards must comply with the LIHTC program restrictions for a total of 30 years, subject to certain exceptions. The LIHTC program restrictions are outlined in a document called the Agreement as to Restrictive Covenants (the "Covenants") which is recorded on each tax credit development.

Pursuant to Section 42(h)(6)(E)(i) of the Code, the Extended Use Period for any building shall terminate on the date a building is acquired through foreclosure or instrument in lieu of foreclosure or on the last day of the compliance period if the owner exercises the qualified contract option discussed below and the Authority does not present the owner with a qualified contract as discussed below. However, Section 42(h)(6)(E)(ii) of the Code prohibits the owner from increasing rents above the maximum tax credit rents and from evicting or displacing tenants for reasons other than good cause for the three (3) years following the termination of the extended use period.

### **III. Qualified Contract Option**

The qualified contract option is a means by which owners of tax credit developments may exit the LIHTC program after the first 15 years of compliance and during the Extended Use Period. An owner exercises the qualified contract option by requesting that the allocating agency present a qualified contract for the purchase of the development by a person or entity willing to continue to operate the development as a qualified low-income property.

To exercise the qualified contract option, the owner must submit to the Authority both a Qualified Contract Request and a complete Qualified Contract Package with all necessary attachments. The Qualified Contract Request and Qualified Contract Package can be downloaded from the tax credit webpage of the Authority's website at [www.schousing.com](http://www.schousing.com). Once completed in their entirety, all forms should be mailed to the Authority as follows: SC State Housing Finance and Development Authority, Attn: Laura Nicholson, Program Manager, 300-C Outlet Pointe Blvd., Columbia, SC 29210.

An eligible owner may exercise the qualified contract option only after the last day of the 14<sup>th</sup> year of the compliance period for the last building placed in service or the last year of a multiple allocation. For example, if four buildings in a development began their credit periods in 1990 and one started its credit period in 1991, the 15<sup>th</sup> year for the purposes of a request would be 2005. If a development received its first allocation of credits in 1990 and a subsequent allocation was awarded in 1992, the 15<sup>th</sup> year for the purposes of submitting a request would be 2006.

The Authority has one year from the receipt of both the Qualified Contract Request and a complete Qualified Contract Package with all necessary attachments to present the owner with a qualified contract. The owner must cooperate with the Authority and its agents with respect to the Authority's efforts to obtain a Qualified Contract or else the one year time period may be extended.

If the Authority presents the owner with a qualified contract, regardless of whether or not the owner executes the contract and closes the transaction, the owner voluntarily and irrevocably waives any future right to exercise the qualified contract option.

If the agency is unable to present a Qualified Contract, the Extended Use Period for the development will be terminated and the development will no longer be restricted to the low-income requirements. However, Section 42(h)(6)(E)(ii) of the Code prohibits the owner from increasing rents above the maximum tax credit rents and from evicting or displacing tenants for reasons other than good cause for the three (3) years following the termination of the extended use period.

An owner is not eligible to exercise the qualified contract option for a development in the following circumstances: the development is already obligated under an Agreement as to Restrictive Covenants under another program administered by the Authority (HOME or Housing Trust Fund), the owner has waived its right to request the Authority to find a buyer to acquire the tax credit portion of the building or the development is currently out of compliance with the LIHTC program.

#### **IV. Compliance Monitoring During the Extended Use Period**

Income and rent restrictions, fair housing requirement of general use, acceptance of Section 8 tenants, minimum set-aside, applicable fraction, initial and annual recertification requirements and compliance monitoring fees will remain as program requirements during the Extended Use Period. Compliance will be monitored property wide, including the number of eligible affordable units. Unit transfers are not restricted provided they occur within the property.

As allowed by the Code, the Authority will modify compliance monitoring criteria and procedures during the Extended Use Period. The Authority will modify as follows:

1. A self-certification from the tenant will be required at annual recertification to ensure the annual reporting information can be completed by the owner.
2. Households may be comprised entirely of full time students. Student eligibility shall be determined in accordance with HUD Section-8 criteria.
3. The next available unit rule and vacant unit rule will no longer be enforced.
4. At a minimum of every five years, a property review will be completed. A minimum of 20% of tenant files may be examined, but more files may be

reviewed at the discretion of the authority. Physical review of the property will include all vacant units and/or a minimum of 20% of all program units. If the Authority has completed a physical review of the property under a different housing program within the last two years, that physical review would be utilized.

Owners must follow all provisions of the Covenants during the Extended Use Period, unless modified in writing by the Authority. Set-asides and targeting will be as stipulated in the Covenants, not the tax credit application. Upon expiration of the Extended Use Period, a satisfaction of the Covenants will be issued and filed upon request.

In addition to other remedies allowed by law, the Authority may designate the owner and any party responsible for a development remaining in noncompliance (after any opportunity to cure) as not being in good standing with the Authority.

**Should you have any questions about this policy, please call Laura Nicholson at (803) 896-9190. Questions may also be sent via e-mail: [laura.nicholson@schousing.com](mailto:laura.nicholson@schousing.com) or fax (803) 551-4925.**