



North Dakota
Housing Finance Agency

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**North Dakota Housing Finance Agency
Compliance Policy for Extended Use Period**

Credits are claimed each year for the first ten years of the credit period. Some of those credits are considered accelerated and are not deemed to be fully earned until the end of year 15. Credits are subject to recapture if noncompliance is detected at any time until the end of year 15. At the end of the 15 year initial compliance period, there is no longer a threat of recapture and the IRS is no longer involved in enforcing compliance. It is left up to the states to set a policy for monitoring and to enforce compliance through state courts or other internal measures such as debarment from participating with the agency in any new programs, etc.

The following guidelines will be in place for compliance activities during the extended 15 year compliance period. This will apply to those properties that have completed the initial 15 year compliance period and are unable to opt-out of the program, because of deed restrictions; or that are able to opt-out but choose to remain in the program.

1) Student Rule

Initial 15 Year Compliance Period:

IRS Code states that households consisting entirely of full-time students are not eligible to occupy Housing Credit (HC) units unless certain exceptions are met.

Extended 15 Year Compliance Period:

HC units may now be occupied by households consisting entirely of income-eligible, full-time students, without exception.

2) Annual Recertification of Households

Initial 15 Year Compliance Period:

IRS Code requires that a certification of household income, including third-party verification, be completed prior to initial occupancy and an annual recertification at least once every 12 months thereafter.



Extended 15 Year Compliance Period:

An initial certification, including third party verification consistent with HUD Section 8 guidelines will continue to be required for initial occupancy but annual recertification requirements will be relaxed and consist of a self-certification from the tenant on a form to be developed by the Agency.

3) Unit Transfers

Initial 15 Year Compliance Period:

IRS Code allows for unit transfers within a building without re-determination of eligibility but requires a re-determination of eligibility for any transfers between buildings in a property.

Extended 15 Year Compliance Period:

Unit transfers between buildings in a property will be allowed without having to re-determine a household's eligibility.

4) Next Available Unit Rule

Initial 15 Year Compliance Period:

IRS regulations state that, upon annual recertification, if it is determined that a household's income has exceeded 140% of the allowable income limit, that unit can continue to be counted as a qualifying unit as long as the unit remains rent restricted and all units of comparable or smaller size are held vacant until the over-income unit is replaced by a qualified household.

Extended 15 Year Compliance Period:

The next available unit rule will be relaxed so that if a household's income goes over 140% of the allowable income limit, only one currently vacant unit must be held for occupancy by a qualifying household or, if there are no current vacancies, the next available unit must be held for a qualifying household.

5) Applicable Fraction

Initial 15 Year Compliance Period:

IRS regulations state that the applicable fraction for determining qualified basis is the lesser of the number of low-income units as a percentage of all residential units; or the total floor space of low-income units as a percentage of the total floor space of all residential units.

Extended 15 Year Compliance Period:

The building's applicable fraction would only be determined by the unit fraction.

6) Deeper Income Targeting

Initial 15 Year Compliance Period:

Properties are bound by the commitments made by the applicant as a condition of funding and set forth in the deed restrictions.

Extended 15 Year Compliance Period:

Properties experiencing sustained vacancy rates greater than 10% average over a 12 month period ending with the most recent reporting period may request relief from the deed restrictions requiring occupancy by households at some area median income (AMI) level at or below 50% of AMI. The waiver request must coincide with the submission of annual compliance reports. Once granted, the waiver will apply for the remainder of the extended use period.

Owners may not be eligible to apply for this waiver if it would be in conflict with program requirements of other funding sources in the property such as RD, HOME and HUD Section 8.

7) Leasing to Non Qualified Tenants

Initial 15 Year Compliance Period:

Properties are bound by the commitments made by the applicant as a condition of funding.

Extended 15 Year Compliance Period:

Properties experiencing sustained vacancy rates greater than 10% average over a 12 month period ending with the most recent reporting period may request relief from the low-income usage requirements as established at initial funding. On a case by case basis, the Agency will grant a waiver to rent vacant units to non-qualified households, providing the owner is in good standing with the agency. The waiver would require that one unit be kept available for qualified households at all times during the term of the waiver. When that unit is rented to a qualified household, the next vacant unit would then once again need to be held for a qualified household. The waiver would allow for no more than 50 percent of the units to be leased to non-qualified households. Preference must always be given to qualified households. Steering of qualified households to less desirable units will not be allowed and will be cause for revocation of the waiver.

The waiver request must be submitted with the annual compliance reports and, if granted, shall continue for the property's remaining extended use period unless rescinded by the Agency for good cause.

Owners may not be eligible to apply for this waiver if it would be in conflict with program requirements of other funding sources in the property such as RD, HOME and HUD Section 8.

Compliance Reporting and Monitoring

Owners will be required to complete and submit annual reports of leasing activities similar to those required for the initial 15 year compliance period. The Agency will continue to do annual desk reviews of information submitted and on-site reviews will continue to be conducted at least once every three years. The number of tenant files inspected may be reduced, as well as the number of units subject to physical inspections, at the discretion of the Agency. At the conclusion of the 15 year extended use period, owners will be required to submit modified annual reports for three years to show that no residents have been displaced or evicted for other than good cause and the rents have not been raised above the housing credit ceiling rents. Compliance monitoring fees will continue to be charged during the extended use period.

If an owner fails to comply with the monitoring requirements during the extended compliance period, a notice of noncompliance will be issued. If the noncompliance is not corrected within a reasonable period of time, the owner and management company will be considered to be “not in good standing” with the Agency. Once the noncompliance is corrected, this designation will be removed. As long as an owner or management company remains “not in good standing” they are ineligible to be part of the development team for any new tax credit awards. The Agency also has the right to enforce specific performance in a state court of competent jurisdiction.

This policy will be reviewed periodically and may be modified to facilitate better administration of the Housing Credit Program. Furthermore, the Agency may waive or make adjustments to any items contained within, on a case by case basis, for good cause shown to address unforeseen circumstances.

Any waiver granted by the Agency under this policy may be subject to the rights of any third party beneficiary of the applicable Declaration of Land Use Restrictive Covenants for Low Income Housing Credits to seek enforcement of any of the applicable provisions thereof.