

## SECTION VI – NONCOMPLIANCE

Noncompliance is defined as a period of time a development, specific building, or unit is ineligible for tax credit because of failure to satisfy LIHTC Program requirements.

### **Part 600**      **Types of Noncompliance**

Generally, during the Compliance Period a project is out of compliance and recapture may apply if:

- A. A building or an ownership interest in a building is disposed of (except as noted in Part 680)
- B. There has been a change in the applicable fraction or eligible basis that results in a decrease in the qualified basis of the building from one year to the next; or
- C. The building no longer meets the minimum set-aside requirements or Section 42(g)(1), the gross rent requirements of Section 42(g)(2), or the other requirements for the units which are set-aside; or
- D. Failure to submit the annual utility allowance documentation, owner certification, tenant income and rent report, or compliance monitoring fees, along with any applicable supporting documentation in a timely manner.

### **Part 610**      **Consequences**

If the project is out of compliance, a penalty could apply to all units in the project (IRS Form 9861-1). Penalties include:

- A. Recapture of the accelerated portion of the tax credit for prior years;
- B. Disallowance of the credit for the entire year in which the noncompliance occurs;
- C. Assessment of interest for the recapture year and previous years;
- D. Notification to IRS;
- E. Negative points on any subsequent LIHTC reservation applications (poor previous participation on the part of the sponsor or the management agent).
- F. Rejection of future applications. Proposals submitted from sponsors that currently have projects that are out of compliance will not be accepted until the noncompliance is corrected;
- G. Repayment of rent overages; and/or
- H. De Minimis Errors. On August 10, 1993, Congress passed the Omnibus Reconciliation Act of 1993 that includes a provision for de minimis errors. Certain de minimis errors may be exempt from noncompliance or recapture as determined by the Secretary of the Department of Treasury.

### **Part 620**      **Notification of Noncompliance to Owner**

CTCAC is required to provide written notice of noncompliance to the owner if:

- A. Any required submissions are not received by the due dates;

- B. Tenant income certifications, supporting documentation, and rent records are not submitted when requested by CTCAC; and/or
- C. The project is found to be out of compliance through inspection; review, and/or other means with the provisions of Section 42 of the IRC.

Should any of the submissions required herein, including the Annual Owner Certification, the Project Status Report, and/or income certifications, supporting documentation, and rent records, not be submitted in a timely fashion, or should there be omissions, CTCAC shall, within 45 working days, notify the owner in writing, requesting such information. The owner will have 20 working days in which to provide the information, after which CTCAC shall notify the Internal Revenue Service of the owner's failure to provide the required information.

### **Part 630 Notification by Owner to CTCAC**

If the management company becomes aware of any noncompliance with the LIHTC program requirements, the CTCAC staff must be notified immediately. This includes any situations where Casualty Loss (flood, fire, wind) causes one or more units to become uninhabitable.

### **Part 640 Correction Period**

Should CTCAC discover, as a result of an inspection or review, or in any other manner, that the project is not in compliance with Section 42, or that credit has been claimed or will be claimed for units which are ineligible, CTCAC shall notify the owner within 45 working days. The owner will have a time line in which to commence appropriate action to cure such noncompliance.

The owner shall be provided a time frame to cure the noncompliance, usually 30 days. In extraordinary circumstances, and only if CTCAC determines that there is good cause, an extension of up to six months to complete a cure for noncompliance may be granted.

### **Part 650 Reporting Noncompliance to Internal Revenue Service and Recapture**

- A. **Reporting** - Actual noncompliance will occur if the potential noncompliance is not corrected within a "reasonable" time period. The term "reasonable" is not defined, and will be applied by the IRS on a case-by-case basis. Potential noncompliance of which the owner or management agent becomes aware must be reported to the state agency, who will in turn report it to the IRS. The IRS ultimately determines whether or not there is noncompliance.

CTCAC is required to file IRS Form 8823, "Low-income Housing Credit Agencies Report of Non-Compliance," with the IRS no later than 45 days after the end of the correction period (as described above, including extensions) and no earlier than the end of the correction period, whether or not the noncompliance or failure to certify is corrected.

CTCAC must explain on IRS Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify.

If a building is entirely out of compliance and will not be in compliance at any time in the future, CTCAC will report it on a IRS Form 8823 one time and need not file IRS Form 8823 in subsequent years to report that building's noncompliance.

- B. **Recapture** - Recapture is defined as an increase in the owner's tax liability because of a loss in tax credits due to noncompliance with program requirements.

The IRS will make the determination as to whether or not the owner faces recapture of tax credits as a result of noncompliance. Please note: CTCAC is never notified of IRS actions against the owner.

IRS Form 8611 is used by taxpayers who must recapture tax credits previously claimed. A copy of IRS Form 8611 must be sent to the IRS and CTCAC upon completion by the owner.

#### **Part 660 Retention of Noncompliance Records by CTCAC**

CTCAC will retain records of noncompliance or failure to certify for six years beyond CTCAC's filing of the respective IRS Form 8823. In all other cases, CTCAC will retain the certifications and records described in paragraph (c) of Reg. 1.42-5 for three years from the end of the calendar year CTCAC receives the certifications and records.

#### **Part 670 Liability**

*Compliance with the requirements of Section 42 is the responsibility of the owner of the building for which the credit is allowable.* CTCAC's obligation to monitor for compliance with the requirements of Section 42 does not make the Agency liable for an owner's noncompliance (Reg. 1.42-5(g)).

#### **Part 680 Sale, Transfer, or Disposition of the Project after the Placed-in-Service Date**

Generally, any change in ownership of a building or a partnership interest is considered to be a potential recapture event. Recapture can possibly be avoided if the IRS determines that the project is expected to remain in compliance for the balance of the Compliance Period.

When a sale occurs, the owner must submit the following to CTCAC:

- A. Recorded Statutory Warranty Deed indicating ownership; or
- B. Copy of the title policy indicating ownership.
- C. Letter from new owner indicating name, address, and phone number of the on-site manager.
- D. Any other additional evidence that CTCAC may deem necessary.