Tax-Exempt Bond-Financed Properties with Tax Credits

Summary

A residential rental property financed with tax-exempt bonds may also receive tax credits. The property must then maintain compliance with both the tax-exempt bond rules and the tax credit program. While certain rules overlap, such as the property meeting either the 40/60 or 20/50 test, the rules do not exactly match, and the Owner is responsible for being aware of and complying with both sets of requirements. Where the Commission is the issuer of the bonds, the Compliance Officer will perform a single compliance review, which will verify compliance with both programs. Where the Commission is not the issuer of the bonds, the Commission will perform the tax credit compliance review only. Usually, there will be two separate Regulatory Agreements filed against the property, one for the bond requirements and one for the tax credit requirements.

This section describes the compliance requirements for affordable units receiving tax credits which are located in properties financed with tax-exempt bonds, and identifies some conflicts between the two programs. This section does not identify bond compliance requirements; a separate compliance manual for tax-exempt bond properties is viewable and downloadable from our website, at: ***www.wshfc.org/managers/ComplianceManuals.htm***.

Properties financed with tax-exempt bonds may obtain an allocation of tax credits without going through the competitive tax credit allocation process. Owners must still submit an application to the Commission's Tax Credit Division; must meet certain threshold requirements, and must execute a Regulatory Agreement incorporating commitments made regarding tax credit units.

Income Restrictions

Tax-exempt bond financed residential properties must meet the same 40/60 or 20/50 income requirement as is required for tax credit properties. However, the bond financing does not require rent restrictions — it only requires that the affordable Households be income-certified. However, rents must be restricted for all units on which tax credits are claimed. The rules for determining income are the same for both programs. The primary difference is that compliance with tax-exempt bond requirements is determined property-wide, while federal tax credit requirements are determined building-by-building. However, recent legislation allows Owners to abide by the less restrictive building rule for units also financed with tax credits. Owners must comply with both sets of requirements, which may result in maintaining more affordable units than originally planned in order to maintain compliance with both programs.

Many bond-financed properties are mixed-income, and all the discussion in the Mixed-Income Properties section in **Chapter 2** of this Manual applies to mixed-income bond properties.

A few important tax credit program rules are now implemented correspondingly for jointly-financed properties. The Next Available Unit Rule is applied on a building-by-building basis for bond compliance, just as it is for tax credit compliance. In other words, if the income of a Household in a bond- and tax credit-financed property increases above the allowable income limit, the Household will continue to be considered “qualified” as long as the next available unit in the same **building** is rented to an income-qualified Household.

Additionally, the Student Rule is now applied in the same way for both the tax credit and bond programs. The bond program (and bond compliance at a bond- and tax credit-financed property) now follows the Student Rule as it is outlined for the tax credit program. This means that properties with bond units may utilize the more lenient tax credit Student rules and exceptions. Based on the way this rule was changed in Section 142 of the Code, the Commission believes this rule also applies to tax-exempt bond properties that have no tax credit financing.

The interplay of bond compliance rules and tax credit compliance rules, means that compliance for these properties can be complex. It is strongly recommended that a management plan, including detailed strategies for lease-up, filling vacancies, and addressing over-income units on recertification, be developed with advice from qualified tax credit advisors.

For additional information, review the **Differences Between Tax Credits and Bonds** chart, included as **Appendix L** in this Manual.