

## *Commission Recertification Waiver Procedure*

### **Introduction**

Prior to the Housing & Recovery Act of 2008 (HERA), the IRS allowed owners to apply for an annual recertification waiver procedure granted under §42(g)(8)(B), of the Code. HERA eliminated the need to annually recertify. However, the Commission still requires one third-party recertification of every new household until Year 15, after which annual self-recertifications may be done. Properties that were previously approved by the IRS for the Recertification Waiver, continue to qualify and do not need to complete annual third-party recertifications. Property owners who are still interested in a waiver of the third year third-party recertification, may still apply for this waiver – after year 3 and prior to year 11. The Commission will follow the same IRS established procedures outlined in this chapter. However, all approvals will be completed by Commission staff instead of the IRS.

### **Qualifying for the Waiver**

- A. The Owner and/or any Related Party shall remain current with respect to the payment of all fees due and payable under any agreement with the Commission. The Owner shall provide reasonable evidence, satisfactory to the Commission, that the Owner and/or any Related Party has paid all fees due and payable under any agreement with the Commission.
- B. For each building applying for the Waiver, the building must (1) have been Placed-In-Service, (2) contain 100% Qualified Low-Income Housing Units as of the immediately preceding year end, and (3) have been in service for a minimum of three years prior to the application. Due to the cost of this certification, we recommend no applications for projects after year 11.
- C. Buildings receiving funding from agencies that require annual certifications including, but not limited to, Rural Development and Project Based Section 8 (HUD) may not be eligible for the waiver. Buildings that received tax-exempt bonds from the Commission may be eligible for the waiver but, if approved, such buildings must still annually recertify all bond-required set-aside units.
- D. No building with uncorrected non-compliance issues is eligible for the Waiver. Buildings with a pattern of noncompliance issues or material corrections may not be eligible for the Waiver.

## Request Process

- E. The Annual Compliance Monitoring Fee, as may be amended from time to time, continues to apply to each Low-Income Housing Unit in the Project.
- F. The Owner must identify a proposed third-party auditor as described below.

If a Building Owner meets the “Qualifying for the Waiver” conditions stated above, the Owner should submit to the Commission (1) the *Owner Request to Proceed for Recertification Waiver* letter and (2) detailed information regarding the qualifications and experience of the Owner’s chosen Auditor.

To be approved by the Commission, the Auditor must demonstrate the following minimum qualifications:

- At least 5 years doing tax credit compliance monitoring work
- Has worked with at least 75 properties
- Has nationally recognized LIHTC accreditation
- Can perform work in accordance with scope of work
- Can certify that there is no conflict of interest with Owner or Owner representatives, project developer, management company or syndicator

A sample *Owner Request to Proceed for Recertification Waiver* letter is attached.

- A. After receiving the *Owner Request to Proceed for Recertification Waiver* letter and the auditor proposal, the Commission will review the building to ensure that all qualifying conditions are met.
- B. If the Waiver is approved by the Commission, the Commission will provide the Owner with the *Authorization to Proceed for Recertification Waiver* letter. A sample *Authorization to Proceed* letter is attached.
- C. Audits. Auditors must review the initial certification and supporting documentation for each Low-Income Resident residing in the property at the end of the most recent credit year. If the property has vacant units at the end of the most recent credit year, the Auditor will review the initial certifications and supporting documentation for the households who last occupied the unit prior to vacancy.
  - Auditors must inspect 100% of each building’s files and meet each of the following requirements:

1. The audit must establish that (1) all of the Housing Units in each building of a single Property were Qualified Low-Income Housing Units as of the close of the end of the most recent credit year.
2. Auditors must submit an *Auditor Statement of 100% Compliance* to the Commission upon completion of the audit. A sample *Auditor Statement* is attached.

D. Upon completion of the audit, the Owner must submit the *Auditor Statement* to the Commission.

E. Upon approval of the *Auditor Statement*, the Commission will send written notification of Waiver approval to the Owner. The Waiver is not effective until the Owner receives written approval from the Commission.

### Annual Self-Recertification Form

The Commission works closely with several other public funding agencies that require annual recertifications. Most of these agencies do not require third-party verification of income for a recertification. To satisfy the IRS and other funder requirements, the Commission has adopted a *Self-Certification of Annual Income Form*. After initial qualification, households must self-certify their income and student status annually on this form.

Owners with bond regulatory agreements that require recertification of bond units must continue to **fully** recertify those units and demonstrate compliance with federal bond regulatory requirements.

### Annual Reports

Owners must continue to complete all Owner certification information on the CCPC. Since the owner will be collecting income information through self-certifications from the residents (see above), income information should still be included on the Table 1 report.

### Household Transfers

For 100% tax credit affordable properties, households may change units, even into a different building, without the requirement of a new household income qualification. Owners should indicate all household transfers on the Table 1 report in WBARS.

Owners with tax credit and bond regulatory agreements must continue to recertify households that transfer from one unit to another unit in a different building, if that unit is part of the federal bond set-aside units and must continue to demonstrate compliance with the Available Unit rule.

## Assumptions and Reservations

The Commission reserves the right to modify its policy with respect to the Waiver as circumstance and/or experience warrant, subject to proper notice and public comment.

Furthermore, the Commission reserves the right to deny, modify, suspend, or revoke the Waiver with respect to particular Project(s) upon:

- A. any project transfer subject to Section 17 of the Regulatory Agreement (Extended Use Agreement), provided that
  1. the Commission shall not unreasonably modify, suspend or withdraw its consent where the Transferee satisfies the requirements outlined in Section 17 of the Regulatory Agreement (Extended Use Agreement).
- B. any change in the property management agent for the property. In the event of a change in property management,
  1. the property management company must satisfy the requirements under the applicable Program Guidelines or Policies of the Tax Credit Program, and
  2. with respect to new property management agents, the Owner shall include a review of other Projects in Washington managed by such agent. Additionally,
    - i. the Commission, at its discretion, may require a two-year period of demonstrated compliance with the Commission's policies and procedures if the new management agent does not have a history of property management activity in Washington State; and
    - ii. the management company or Owner shall be responsible for costs associated with extraordinary review of a managing agent's compliance activities.
- C. any institution of proceedings for temporary suspension or Debarment of the Owner and/or any Related Party by the Commission.

Until approval of said Waiver is granted, Owners must continue to comply with Commission recertification requirements.

**Noncompliance**

The current non-compliance procedure will continue to be utilized as outlined in **Chapter 7** of this Manual. Repeated, material or uncorrected non-compliance issues may result in Waiver revocation. If revocation occurs, annual certifications will be reinstated for all households in a building.

**Definitions**

**Note:** Capitalized terms are also defined in the Commission’s Tax Credit Policies, Owner Regulatory Agreements and in **Appendix A, Glossary** of this Manual.

**Attachments:** *(See Website)*

<http://www.wshfc.org/managers/ManualTaxCreditIndex.htm>

- A. Owner Request to Proceed for Recertification Waiver (DOC)
- B. Authorization to Proceed for Waiver of Annual Income Recertification (DOC)
- C. Auditor Statement of 100% Compliance (DOC)
- D. Self – Certification of Annual Income (PDF)
- E. Self – Certification of Annual Income Instructions (PDF)