

## **Bond Policies- Chapter 7**

### **Project Transfer or Assignment Requirements**

Pursuant to the Commission's rules (WAC 262-01-130), *Policies*, and Regulatory Agreements, a transfer of an interest in a project requires Commission approval. A stated goal of the Commission's Tax Credit Program is to prefer projects that are affordable to the lowest income tenants for the longest period of time. Toward that end, the Commission will decide whether to approve a proposed transfer based on whether the proposed transfer will (1) promote satisfaction of all applicable regulatory and contractual obligations, and (2) further the Commission's priorities for LIHTC projects as set forth in WAC 262-01-130, including by increasing the likelihood the project will continue to serve the lowest income tenants for the longest period of time. This will be determined based on the totality of circumstances, including but not limited to the characteristics of the project, existing partners, and transferee.

Transferees are required to submit a short paragraph explaining how the proposed transfer satisfies the Commission's approval criteria and to complete a ***Financial Solvency and LIHTC History*** (FSLH) form as part of the transfer process. This form is designed to help the Commission determine whether or not the transferee is positioned and likely to support the Commission's stated goals. The Commission may pause, require additional certifications or information from a transferee, or disallow the transfer depending on what the FSLH or other documents reveal. Potential grounds for disallowing the transfer include but are not limited to:

- Transferee has been part of a LIHTC ownership/project that subsequently was found by a court or administrative body to be in violation of a LIHTC statutory or regulatory requirement or covenant;
- Transferee has been part of a LIHTC ownership/project that subsequently reduced the project's associated financial resources such that the project was not able to meet its planned capital needs;
- Judicial or administrative finding against the Transferee of causing actionable harm to a LIHTC project or partner; committing fraud; or violating a LIHTC requirement or covenant.

### **Project Transfer or Assignments Requiring Commission Consent**

A project transfer means any direct or indirect sale, contribution, assignment, lease, exchange, or other similar transfer of, or change in:

- an interest in the land, the Project, or any building;

- an ownership interest in the entity that is the Applicant or project owner (for example, a transfer of a partnership interest or, with respect to a limited liability company, a membership or managers' interest);
- the rights, title, or interest of the Applicant or project owner in any agreement in which the Commission and the Applicant or project owner are parties;
- the sale or transfer of, or change in, the interest of a limited partner (including the addition, removal, or withdrawal of a limited partner); or
- in the case of a limited liability company, the sale or transfer of, or change in, the interest of the investor member (unless the investor member actively participates in management of the company, such as in the case of a transfer of an investor member interest to a fund in which the investor member serves as the fund manager).

### **Project Transfer or Assignments Not Requiring Commission Consent**

**Only a few types of project transfers do not require the prior written consent of the Commission. They include:**

- the grant of a security interest or lien junior to the interest of the Commission;
- the issuance, redemption, or transfer of stock or shares of a corporation that is not a closely held corporation;
- a sale or transfer of the interests in a fund or funds constituting the investor limited partner or member, so long as such sale or transfer does not result in a change of control of the fund or funds constituting the investor limited partner or member;
- a sale or transfer of the interests of the investor limited partner or member to implement the ownership arrangement initially agreed upon by the parties at the time of closing, including as a result of the involvement of a syndicator, such as a contemplated transfer of the investor interest to a syndicated fund identified as the closing of the transaction.

### **Process and Requirements for Obtaining the Commission's Consent**

The first step in obtaining the Commission's written consent is to advise the Commission staff in writing of the Applicant's proposed project transfer or assignment. At a minimum, the Applicant should describe: (1) the name of the project; (2) the names of the project Applicant and/or the owner, the proposed transferor and transferee, and all other relevant parties; (3) a complete description of the proposed project transfer or assignment, including the proposed effective date; and (4) any special circumstances related to the proposed project transfer or assignment.

After receiving the Applicant's written request, the staff will advise the Applicant if Commission consent is necessary. If it is, the staff will require the short paragraph and ***Financial Solvency and LIHTC History*** form described above and also will advise the Applicant of the Commission's process and conditions that must be satisfied in order to obtain the Commission's consent, including the payment of a nonrefundable transfer fee to the Commission..

Please see submittal instructions in [Chapter 9](#) of the Tax Credit Compliance Procedures Manual.

If the Applicant made a Commitment to participate under the Credit Set-Aside category for Qualified Nonprofit Organizations, any project transfer or assignment must be such that the Project continues to qualify for applicable Credit Set-Aside category.

#### **Final Conditions to Consent by Commission**

The Commission will indicate its consent to the proposed project transfer or assignment by executing and returning to the Applicant/Owner a certain "Transfer Agreement." Certain types of transfers or assignments may not require the execution of a "Transfer Agreement" but may require only a formal letter of approval from the Commission. The Applicant/Owner may not complete the proposed project transfer or assignment until the Commission has executed and returned this agreement to the Applicant/Owner and until the Applicant/Owner has performed or satisfied any and all other requirements and conditions established by the Commission. If a Regulatory Agreement has been recorded for the Project, the Applicant/Owner must ensure the "Transfer Agreement" is recorded in the office of the county auditor or recorder of each county where any Building in the Project is.

Any project transfer or assignment made without the Commission's prior written consent (unless otherwise expressly permitted in this chapter) or otherwise in violation of the requirements or provisions of this chapter, the RAC, the Regulatory Agreement, or the Tax Credit Program will be:

- ineffective to relieve or release the transferor, the land, the Project, and/or any building from the obligations and provisions of the Policies, the RAC, the Regulatory Agreement, and/or the Tax Credit Program;
- considered an event of default under the Application, the RAC, the Regulatory Agreement, and the Tax Credit Program, allowing the Commission to exercise any or all available remedies; and
- considered an event of Noncompliance that may result in the cancellation or invalidation of the reservation and/or allocation of Credit for the Project and/or any Building.

The indemnity and hold-harmless provisions of the RAC, the Regulatory Agreement or any other Tax Credit Program agreement by the Applicant/Owner and/or a successor-in-interest will survive the ending of such parties' interest in the Project and will continue to be a personal obligation of such party.

## 9% Policies -Chapter 9

### Project Transfer or Assignment Requirement

Pursuant to the Commission's rules (WAC 262-01-130), *Policies*, and Regulatory Agreements, a transfer of an interest in a project requires Commission approval. A stated goal of the Commission's Tax Credit Program is to prefer projects that are affordable to the lowest income tenants for the longest period of time. Toward that end, the Commission will decide whether to approve a proposed transfer based on whether the proposed transfer will (1) promote satisfaction of all applicable regulatory and contractual obligations, and (2) further the Commission's priorities for LIHTC projects as set forth in WAC 262-01-130, including by increasing the likelihood the project will continue to serve the lowest income tenants for the longest period of time. This will be determined based on the totality of circumstances, including but not limited to the characteristics of the project, existing partners, and transferee.

Transferees are required to submit a short paragraph explaining how the proposed transfer satisfies the Commission's approval criteria and to complete a *Financial Solvency and LIHTC History* (FSLH) form as part of the transfer process. This form is designed to help the Commission determine whether or not the transferee is positioned and likely to support the Commission's stated goals. The Commission may pause, require additional certifications or information from a transferee, or disallow the transfer depending on what the FSLH or other documents reveal. Potential grounds for disallowing the transfer include but are not limited to:

- Transferee has been part of a LIHTC ownership/project that subsequently was found by a court or administrative body to be in violation of a LIHTC statutory or regulatory requirement or covenant;
- Transferee has been part of a LIHTC ownership/project that subsequently reduced the project's associated financial resources such that the project was not able to meet its planned capital needs;
- Judicial or administrative finding against the Transferee of causing actionable harm to a LIHTC project or partner; committing fraud; or violating a LIHTC requirement or covenant.

### 9.1 PROJECT TRANSFER OR ASSIGNMENTS REQUIRING COMMISSION CONSENT

A project transfer means any direct or indirect sale, contribution, assignment, lease, exchange, or other similar transfer of, or change in:

- an interest in the land, the Project, or any building;

- an ownership interest in the entity that is the Applicant or project owner (for example, a transfer of a partnership interest or, with respect to a limited liability company, a membership or managers' interest);
- the rights, title, or interest of the Applicant or project owner in any agreement in which the Commission and the Applicant or project owner are parties;
- the sale or transfer of, or change in, the interest of a limited partner (including the addition, removal, or withdrawal of a limited partner); or
- in the case of a limited liability company, the sale or transfer of, or change in, the interest of the investor member (unless the investor member actively participates in management of the company, such as in the case of a transfer of an investor member interest to a fund in which the investor member serves as the fund manager).

Only a few types of project transfers do not require the prior written consent of the Commission. They include:

- the grant of a security interest or lien junior to the interest of the Commission;
- the issuance, redemption, or transfer of stock or shares of a corporation that is not a closely held corporation;
- a sale or transfer of the interests in a fund or funds constituting the investor limited partner or member, so long as such sale or transfer does not result in a change of control of the fund or funds constituting the investor limited partner or member;
- a sale or transfer of the interests of the investor limited partner or member to implement the ownership arrangement initially agreed upon by the parties at the time of closing, including as a result of the involvement of a syndicator, such as a contemplated transfer of the investor interest to a syndicated fund identified as the closing of the transaction.

## 9.2 PROCESS AND REQUIREMENTS FOR OBTAINING THE COMMISSION'S CONSENT

The first step in obtaining the Commission's written consent is to advise the Commission staff in writing of the Applicant's proposed project transfer or assignment. At a minimum, the Applicant should describe: (1) the name of the project; (2) the names of the project Applicant and/or the owner, the proposed transferor and transferee, and all other relevant parties; (3) a complete description of the proposed project transfer or assignment, including the proposed effective date; and (4) any special circumstances related to the proposed project transfer or assignment.

After receiving the Applicant's written request, the staff will advise the Applicant if Commission consent is necessary. If it is, the staff will require the short paragraph and *Financial Solvency and LIHTC History*

form described above and also will advise the Applicant of the Commission's process and conditions that must be satisfied in order to obtain the Commission's consent, including the payment of a nonrefundable transfer fee to the Commission.

Please see submittal instructions in [Chapter 9](#) of the Tax Credit Compliance Procedures Manual.

If the Applicant made a Commitment to participate under the Credit Set-Aside category for Qualified Nonprofit Organizations, any project transfer or assignment must be such that the project continues to qualify for applicable Credit Set-Aside category.

### 9.3 FINAL CONDITIONS TO CONSENT BY COMMISSION

The Commission will indicate its consent to the proposed project transfer or assignment by executing and returning to the Applicant a certain "Agreement Regarding Transfer of Project Consent." The Applicant may not complete the proposed project transfer or assignment until the Commission has executed and returned this agreement to the Applicant and until the Applicant has performed or satisfied all other requirements and conditions established by the Commission. If a Regulatory Agreement has been recorded for the project, the "Agreement Regarding Transfer of Project

Interest" must be recorded in the office of the county auditor or recorder of each county where any building in the project is located.

Any project transfer or assignment made without the Commission's prior written consent (unless otherwise expressly permitted in this chapter) or otherwise in violation of the requirements or provisions of this chapter, the RAC, the Regulatory Agreement, or the Tax Credit Program will be:

- ineffective to relieve or release the transferor, the land, the project, and/or any building from the obligations and provisions of the Policies, the RAC, the Regulatory Agreement, and/or the Tax Credit Program;
- considered an event of default under the Application, the RAC, the Regulatory Agreement, and the Tax Credit Program, allowing the Commission to exercise any or all available remedies; and
- considered an event of Noncompliance that may result in the cancellation or invalidation of the reservation and/or allocation of Credit for the project and/or any building.

The indemnity and hold-harmless provisions of the RAC, the Regulatory Agreement or any other Tax Credit Program agreement by the Applicant and/or a successor-in-interest will survive the ending of such parties' interest in the project and will continue to be a personal obligation of such party.

