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 use 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; or that are able to opt-out but choose to remain in the program.

1) 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.

With the passage of HERA in 2008, annual recertifications are no longer required for projects that were allocated as 100% low-income projects. All other program rules remain in effect, including student status and household composition.

Extended Use Compliance Period:

An initial certification, including third party verification, will continue to be required for initial occupancy. Annual recertification requirements will be relaxed. For mixed-rate developments, (any property with less than 100% applicable fraction), the annual recertification will consist of a self-certification (AHTC Extended Use Period Form 300) from the tenant. For 100% low-income properties, annual recertification will not be required.

Student status must be verified on AHTC Form 800.

2) Available Unit Rule (aka 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 and the building is at or below its applicable fraction, that unit can continue to be counted as a qualifying unit as long as the unit remains rent restricted and the next available unit(s) of comparable or smaller size are rented to a qualified low-income household.

Annual Income Recertifications after July 30, 2008 are no longer required for 100% projects. Failure to rent the next available unit as a rent-restricted unit reduces the low-income building's qualified basis to zero unless the owner can document which units are not over-income units.

Extended Use Compliance Period:

The Available Unit Rule will be applied in the same manner as during the initial 15-year compliance period.

3) Unit Vacancy Rule

Initial 15 Year Compliance Period:

IRS regulations state that when a low-income unit becomes vacant during the year and the building is at or below its applicable fraction, reasonable attempts must be made to rent that unit or the next available unit of comparable or smaller size to tenants having qualifying income before any units of comparable or smaller size in the project are rented to non-qualifying tenants.

Extended Use Compliance Period:

The Unit Vacancy Rule will be applied on a building basis during the extended use period.

4) Applicable Fraction

Initial 15 Year Compliance Period:

The Applicable Fraction is the percentage of low-income units or low-income square footage in a tax credit building. It is calculated as the lesser of:

> Low-income units divided by total units in a building; or
>
> Total square footage of low-income units divided by total square footage of all units in a building, with the exception of the manager's unit, which may or may not be included, depending on the circumstances.

Extended Use Compliance Period:

The Applicable Fraction will be calculated in the same manner as during the Initial 15 Year Compliance Period.

5) Owner's Certification of Continuing Program Compliance

Initial 15 Year Compliance Period:

An annual certification of compliance with program requirements is required annually, according to IRS regulations.

Extended Use Compliance Period:

A modified version of the Owner's Certification (AHTC Extended Use Period Form 100) will be required annually.

6) Physical Inspection and File Audit

Initial 15 Year Compliance Period:

IRS regulations require that WHEDA perform an inspection of the physical property and tenant records at least once every three years. The inspection is done on 20% of the units and corresponding tenant records (files). In addition, all common areas must be inspected.

Extended Use Compliance Period:

The physical property and tenant records will be inspected every five years. Ten percent (10%) of the low-income units and files will be inspected, with a minimum of three units and maximum of fifteen. Properties participating in another federally regulated affordable housing program, (i.e. HUD, Rural Development), that requires physical and file inspections, will be exempt from this inspection requirement.

7) Utility Allowance

Extended Use Compliance Period:

Annually, AHTC Form 205 Parts A and B, "Utilities Information" is required along with documentation for the utility allowance(s) 90 days prior to effective date for the properties that utilized the following calculation methods:

- Local Utility Company estimate
- HUD Schedule Model
- Energy Consumption Model

If a property is utilizing the local PHA utility allowance, only an AHTC Form 205 A will need to be submitted to WHEDA 90 days prior to effective date.

8) Compliance Reporting and Monitoring

Owners will be required to complete and submit annual reports (AHTC Extended Use Period Form 200) of unit activity similar to those required for the initial 15-year compliance period. WHEDA will continue to do annual desk audits of information submitted. Compliance monitoring fees will continue to be charged during the extended use period.

At the conclusion of the extended use period, owners will be required to submit annual unit activity 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.

If an owner fails to comply with the monitoring requirements during the extended compliance period, a notice of noncompliance will be issued. When the owner receives a notification of noncompliance (violation letter) from WHEDA, the owner has an opportunity to respond in writing to the letter within the prescribed correction period identified in the letter. Generally, the owner will have 30-90 days from the date of written notification by WHEDA in which to respond.

In the case of non-submission of required reports, information, or fees, the owner will have not more than 30 days in which to submit the missing item. A late charge will be assessed for documentation or fees that are not received by the due date. Annual monitoring and late fees can be found in The AHTC Compliance Manual.

If the noncompliance is not corrected within this time, or a plan for correction has not been agreed upon, the owner will be considered to be "out of compliance" with the Authority. Once the noncompliance is corrected, this designation will be removed. While the owner is "out of compliance", they are ineligible to be part of the development team for any new tax credit awards. WHEDA 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 Affordable Housing Tax Credit program. Furthermore, WHEDA may waive or adjust any items contained within, on a case-by-case basis, for good cause shown to address unforeseen circumstances. As stated within the Land Use Restriction Agreement, individuals who meet the income limitations applicable to qualifying households, whether prospective, present or former occupants of the project, shall have the right to enforce such Agreement.

WHEDA will follow the "Tax Credit Final Monitoring Policy – Extended Use Period".