

ARKANSAS DEVELOPMENT FINANCE AUTHORITY

**SUBJECT:** Compliance Monitoring Policies and Procedures Manual for the Low Income Housing Tax Credit Program

**DESCRIPTION:** This manual provides guidelines for monitoring of Low Income Housing Tax Credits in accordance with Section 42 of the Internal Revenue Service Code. The manual does not substitute for IRS regulations, but it is meant to be a supplement to them. Noncompliance with applicable regulations could result in the recapture of LIHTC (low income housing tax credits).

**PUBLIC COMMENT:** A public hearing was held on August 28, 2013. The public comment period expired August 28, 2013. The Authority received the following comments:

**Jeff Van Patten**

**COMMENT:** Negative points for Non- Compliance 8823's are punitive. Change to only assess negative points if problems not fixed in a timely manner. Don't penalize developers with less than 40% of units in non-compliance status. **RESPONSE:** Developments are expected to be compliant 100% of the time; however no negative points will be assessed for developments with an average of less than 15% non-compliance.

**COMMENT:** Regarding Proposed Compliance Guidelines Change in 2014 QAP, requests ADFA limit the negative non-compliance points to life safety issues. **RESPONSE:** Developments are expected to be compliant 100% of the time. All non-compliance will be considered.

**COMMENT:** Regarding Proposed Changes in ADFA's 2014 QAP: Negative points prevent property managers from taking on a troubled project, as it may hurt their scores and negatively impact ability to add new projects. **RESPONSE:** Negative non-compliance points are averaged over a 3 year period, giving managers adequate time to stabilize developments. New ownership and/or new management from previously non-compliant owners or management will be considered.

**Jim Petty**

**COMMENT:** Recommends written memo from ADFA to tenants supportive of monthly inspections and that tenant is responsible for condition of unit. Some tenants have complained of privacy invasion resulting in Notices to Vacate. **RESPONSE:** ADFA will require developments to have written executed Tenant Agreements. The owner is responsible for obtaining Tenant Agreements.

**COMMENT:** Negative points prevent property managers from taking on a troubled project, as it may hurt their scores and negatively impact ability to add new projects. **RESPONSE:** Negative non-compliance points are averaged over a 3 year period, giving managers adequate time to stabilize developments.

**COMMENT:** for properties designated as “troubled”, requests a “Written Workout Plan” between ADFA and the new owner and/or management company whereby negative points/grades are not assessed initially or for a period of time. **RESPONSE:** Negative non-compliance points are averaged over a 3 year period, giving managers adequate time to stabilize developments. New ownership and/or new management from previously non-compliant owners or management will be considered.

**COMMENT:** Requests **clarification** memo from ADFA regarding subject of **cleanliness**. **RESPONSE:** ADFA will require developments to have written executed Tenant Agreements. The owner is responsible for obtaining Tenant Agreements. Units will be inspected according to Uniform Property Standard Conditions. (UPSC)

**COMMENT:** **Applauds** ADFA staff for allowing a recertification waiver for 100% tax credit properties. **RESPONSE:** ADFA agrees.

**Carr Hagan**

**COMMENT:** Negative points for Non- Compliance 8823’s are punitive. Change to only assess negative points if problems not fixed in a timely manner. Don’t penalize developers with less than 40% of units in non-compliance status. **RESPONSE:** Developments are expected to be compliant 100% of the time; however no negative points will be assessed for developments with an average of less than 15% non-compliance.

**Mitch Minnick**

**COMMENT:** Requests that new information pertaining to WCMS be distributed and compliance trainings be scheduled. **RESPONSE:** ADFA plans to conduct compliance trainings in Fall of 2013.

**Oke Johnson**

**COMMENT:** Request prioritization of 8823 to weight the levels of non-compliance. There are different levels of non-compliance. Some are life threatening and others are just normal maintenance. **RESPONSE:** ADFA disagrees.

**COMMENT:** Recertification process should be expanded to 100%. Due to layering, 6 out of 50 units may be affected, so why recertify the other 44 units? After the first year, not much information is gleaned from recerts. **RESPONSE:** ADFA disagrees.

**COMMENT:** Revise non-compliance scores to be based on the speed and quality of a response instead of whether or not the violation existed. **RESPONSE:** ADFA disagrees.

**Brent Lacefield**

**COMMENT:** Requests no deduction of points for an “A” but instead, reward points. **RESPONSE:** ADFA agrees that no deduction should be made for an “A”; however, no reward points will be given for substantially compliant developments.

**Arby Smith**

**COMMENT:** Commends ADFA for holding Owner's accountable to compliance standards. **RESPONSE:** ADFA agrees.

**Elizabeth Small**

**COMMENT:** Agrees with and appreciates the proposed waiver for the 100% LIHTC properties. Submitted a sample form for self-certification for consideration by ADFA's use. **RESPONSE:** The form will be considered as well as other possible forms.

**COMMENT:** Agrees with point deduction for life threatening issues. However, does not agree with 2014 QAP's proposed deduction of points from applications for the receipt of ANY issued Form 8823. **RESPONSE:** Consideration of all LIHTC non-compliance insures requirements are being met and maintained.

Isaac Linam, an attorney with the Bureau of Legislative Research, asked the following question:

**QUESTION:** Under what authority does ADFA charge the various fees in this rule, consistent with Ark. Code Ann. § 25-15-105? **RESPONSE:** Ark. Code Ann. § 15-5-207.

The proposed effective date for the rule is Once Reviewed by Legislative Council.

**CONTROVERSY:** This is not expected to be controversial.

**FINANCIAL IMPACT:**

**Economic Impact Statement**

**1. Explain the need for the proposed changes. Did any complaints motivate you to pursue regulatory action? If so, please explain the nature of such complaints.**

Compliant owners/entities expressed that noncompliant owners/entities were not sufficiently penalized for any instances of noncompliance. 2012 policies considered only life-threatening noncompliance. 2013 policies will consider all noncompliance reported to the IRS via from 8823 Report of Noncompliance. Management companies performance as well as owner compliance will also be measured.

**2. What are the top three benefits of the proposed rule?** Tracking and considering unit noncompliance scoring determines project soundness or lack thereof; may warrant increased monitoring; and noncompliance fees deter future noncompliance.

**3. What would be the consequence of taking no action, thereby maintaining the status quo?** Owners resist bringing units into compliance until they are considered for additional funding. Owners/entities that may not reapply for LIHTC funding do not have sufficient incentive to remain compliant during the period of affordability. ADFA

assisted affordable housing may become noncompliant for unacceptable periods of time. Tenants would not be provided housing that is decent, safe, and affordable.

**4. Describe market-based alternatives or voluntary standards that were considered in place of the proposed rule and state the reason for not selecting those alternatives.** No market-based alternatives have been identified to supply affordable housing. Voluntary standards to ensure compliance would not be effective.

**5. Estimate the cost to state government of collecting information, completing paperwork, filing, recordkeeping, auditing, and inspecting associated with this new rule.** No financial impact due to Compliance Department standard of monitoring units for all noncompliance including life-threatening.

**6. What types of small businesses will be required to comply with the proposed rule?** Owners/entities that have or will utilize the LIHTC to develop multi-family housing projects. There are approximately 650+ LIHTC projects placed in service in the ADFA Compliance portfolio.

**7. Does the proposed rule create barriers to entry? If so, please describe those barriers and why those barriers are necessary.** Noncompliance with required program requirements will be considered prior to future funding and may determine application approval.

**8. Explain the additional requirements with which small business owners will have to comply and estimate costs associated with compliance.** No impact.

**9. State whether the proposed rule contains different requirements for different sized entities, and explain why this is or is not necessary.** The minimum monitoring requirements are the same.

**10. Describe your understanding of the ability of small business owners to implement changes required by the proposed rule.** Positive impact. Implementation of a required Tenant Agreement provides technical assistance and support to the owner.

**11. How does this rule compare to similar rules in other states or the federal government?** Other states, such as Mississippi and Texas have substantial noncompliance fee structures. The IRS mandates states to maintain, enforce, and report project compliance. The IRS also has provided verbal assurance and supports methods implemented by states, such as fees, to enforce compliance.

**12. Summarize the input your agency has received from small business or small business advocates about the proposed rule.**

-Owners suggested a required Tenant Agreement/Memo between the owner and tenant to support compliance, addressed in policy.

-Owners and management companies would like increased compliance training.

- Suggested noncompliance not be considered upon discovery and assign different weights, addressed in policy.
- Suggested recertification should be waived for all units within a tax credit property, addressed in policy.
- Suggested to revise noncompliance scores, addressed in policy.
- Reward points for “A” grade by management company, addressed in policy.

**LEGAL AUTHORIZATION:** Ark. Code Ann. § 15-5-207(b)(5) grants the Arkansas Development Finance Authority power “[t]o make and issue such rules and regulations as may be necessary or convenient in order to carry out the purposes” of §§ 15-5-101 — 15-5-316. In addition, § 15-5-207(b)(26) gives the Authority power “[t]o do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted” in §§ 15-5-101 — 15-5-316. In enacting the “Arkansas Development Finance Authority Act”, the General Assembly in § 15-5-102(b)(5) found that there was “an immediate and urgent need to provide the means and methods for providing financing” so as “[t]o eliminate the shortage of decent, safe, sanitary, and affordable residential housing for elderly persons and families of low and moderate income in the state”.

Ark. Code Ann. § 26-51-1702(a) states that “[a] taxpayer owning an interest in a qualified project shall be allowed a state tax credit, to be termed the Arkansas low income housing tax credit”. Ark. Code Ann. § 26-51-1701 defines “qualified project” as “a qualified low income building as that term is defined in Section 42 of the Internal Revenue Code of 1986, as amended, which is located in Arkansas”. Ark. Code Ann. § 26-51-1705 states that the Arkansas Development Finance Authority “shall promulgate rules and regulations necessary to administer the provisions of this subchapter”.