

OWNER'S CERTIFICATION THAT PROJECT WILL NOT PARTICIPATE
IN THE LOW INCOME HOUSING TAX CREDIT (LIHTC) PROGRAM
OR OTHER SUBSIDY PROGRAMS

TO: HUD Field Office/PHA/Coinsuring Lender

RE: Project No.: _____

Project Name: _____

1. I certify that neither I nor any other representative of the project identified above currently intends to participate in the LIHTC program or other subsidy programs not already disclosed to you with regard to the subject project.

2. If plans change and I or another representative of the project decide to participate in the LIHTC program or other subsidy programs not already disclosed to you with regard to the subject project, I will notify you in writing immediately following our decision to participate.

WARNING: It is a crime to knowingly make false statements to a federal agency. Penalties upon conviction can include a fine and imprisonment. For details, see Title 18 U.S. code, Sections 1001 and 1010.

_____/_____/_____
Signature

Name

Position Title

Special Attention of:

Notice H 90-17 (HUD)

ALL REGIONAL DIRECTORS OF HOUSING
ALL REGIONAL DIRECTORS OF PUBLIC HOUSING
ALL COINSURING LENDERS

Issued: 3/8/90
Expires: 3/31/91

ALL PUBLIC HOUSING AUTHORITIES (PHAs)
ALL STATE HOUSING FINANCE AGENCIES (HFAs)

Cross References:

Subject: Combining Low Income Housing Tax Credits (LIHTC)
with HUD Programs

I am asking your assistance in assuring that developers and owners do not receive excessive profits or subsidies or create undue mortgage insurance risks by combining tax credits with HUD's subsidy or mortgage insurance programs. Credits, subsidies and mortgage insurance are all limited commodities and I want to use these scarce resources to maximize production and preservation of affordable housing -- not to generate excessive profits for developers or owners.

In a few instances, developers/owners have realized large profits because either: a) they did not disclose they would receive tax credits; or b) mortgage insurance or subsidy processing did not recognize the tax credits' rent restrictions or the funds raised by selling ownership interests in tax credit projects. To address these deficiencies, I am asking that HUD staff, coinsuring lenders and PHAs modify processing to incorporate the procedures set forth in this notice. Important: Each HUD Office should mail its PHAs and HFAs a copy of this notice, with a cover letter directing them to apply these procedures to transactions they process. Headquarters is mailing this notice to all coinsuring lenders.

Effective immediately, before taking any of the actions listed in Attachment 1, HUD staff/ PHAs/ HFAs/ coinsuring lenders must: 1) ask if the current or any prospective owner plans to utilize in the LIHTC; and 2) obtain HUD Headquarters' review of all cases that will use LIHTCs'.

o If an owner's response is POSITIVE, require the owner to submit the information listed in Attachment 2.

(Note: Attachment 2 supersedes and replaces the submission requirement now included on page 4 of our February 2, 1988 memo and in Coinsuring Lender Letter 88-2 regarding processing tax credit transactions. This notice applies to all tax credit projects - not just those exceeding the 1988 40 percent threshold.)

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o If an owner's response is NEGATIVE, require the owner to sign the certification in Attachment 3 to this memo. Note that the certification requires the owner to immediately notify you if his/her plans change and the project receives or applies for tax credits.

Submit cases for Headquarters' review to the appropriate program staff before approving any of the actions listed in Attachment #1, but after you have completed all analysis required by outstanding instructions. HFAs, PHAs should submit cases through HUD Field Offices. Coinsuring lenders should submit cases directly to HUD Headquarters. When submitting cases to Headquarters:

- o Send the package to the program office having responsibility for the transaction currently being processed, but identify all HUD programs in use/expected to be used at the project.

Example: If a project is now seeking mortgage insurance but will later seek a HUD subsidy (such as Section 8 LMSA), submit the case to the Office of Insured Housing Development but note in your transmittal that the applicant also plans to seek Section 8. My Development staff will coordinate with the appropriate Headquarters Section 8 staff.

- o Send all information the owner submitted pursuant to Attachment 2 and all documents related to the financial aspects of the transaction being processed.

Note: Once Headquarters has reviewed any tax credit information and directed that processing proceed, a project must be resubmitted to Headquarters during any subsequent processing only if the tax credit information changes or Headquarters' review letter specifically required resubmission.

Title VII of the Omnibus Budget Reconciliation Act of 1989, P.L. 101-239 (12/19/89), made several changes to the LIHTC program. Attachment 4 is a copy of the legislation. Among other things, the new law: 1) requires tax credit applicants to disclose to the tax credit agency all state, local, or federal subsidies; and 2) directs the states to develop allocation and selection criteria, consider all sources and uses of funds and limit credit allocations to the amount needed to make projects feasible. Headquarters staff will be working with Treasury and the National Council of State Housing Agencies to develop procedures for coordinating the states' underwriting with HUD's reviews. Meanwhile, I would like each HUD Regional Office to meet with all state agencies responsible for allocating tax credits in the Regions' jurisdiction. At the meeting, the Region should:

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- o Ask the credit agencies to describe any application and allocation procedures they now use and their plans for implementing the Budget Reconciliation Act's underwriting and allocation requirements.
- o Explore how the use of HUD mortgage insurance or HUD subsidies will affect each credit agency's evaluation of a tax credit application.
- o Obtain copies of any forms the agencies will use to issue preliminary approvals or to reserve all allocated credits.
- o Ask the credit agencies to notify the HUD Field office/the Coinsuring Lender/the PHA (for Mod Rehab or PBA certs) /the HFA whenever they learn that a tax credit applicant is participating in a HUD mortgage insurance or subsidy program.

o Determine if the agencies are aware that the Budget Reconciliation Act placed new restrictions on allocating 1990 credits to Section 8 Mod Rehab projects. If the agencies raise any questions on the new restrictions, suggest that they consult their tax counsel or the IRS.

BACKGROUND: See Attachment 4 for a copy of the legislation and a summary of the House-Senate conference. While Section 7108(h)(5) of the legislation only precludes Mod Rehab projects from receiving the 30% credit, the Congressional record states that the House-Senate conferees intended to deny both the 30% and the 70% present value credit. Congressional tax staff have stated they will seek a technical correction that will prohibit both credits.

Understanding the credit agencies' procedures should help you identify which projects are likely to receive credits and the potential for excess profits. It may also give you ideas on how HUD and the credit agencies' processing can be better coordinated.

Please complete these meetings by April 2nd and send a brief summary of the meeting to Sue Donahue in Room 6168 or on Fax number 755-2583. Please submit the summary by April 9th. Your report should cover the first two points listed above, include copies of any draft/official underwriting and allocation forms or procedures the credit agencies will use, and set forth any suggestions you have on coordinating the credit agencies' and HUD's processing. This reporting requirement has been approved under RMS No. MM130000458s.

Thank you for your cooperation on this important matter.

C. Austin Fitts, Assistant Secretary
for Housing-Federal Housing Commissioner

Attachment 1

ACTIONS REQUIRING CERTIFICATIONS AS TO PARTICIPATION IN LIHTC PROGRAM

HUD field staff/coinsuring lenders/ PHAs/HFAs must obtain an owner's certification as to whether the project will participate in the LIHTC program before taking any of the actions listed in this attachment. Mod Rehab and the PBA certificate programs are covered only in paragraphs 1 and 2 and those paragraphs apply only to those two programs. Other paragraphs may apply to more than one program - e.g., coinsurance and full insurance. These requirements apply to all HUD - related projects except nursing homes and hospitals.

1. Project-Based Certificates: establishing initial contract rents (including exception rents); signing AHAPs; approving transfers of property ownership or subsidy contracts; or requesting Headquarters' approval of Section 8 special rent adjustments for purposes the Field is not authorized to approve (e.g., security).

2. Mod Rehab (Regular and SRO): before taking any of the actions listed in paragraph 1; before adjusting rents to reflect any refinancing the owner reports to the PHA.

Note: While the 1989 Omnibus Budget Reconciliation Act put new restrictions on allocating 1990 tax credit authority to Mod Rehab projects, Mod Rehab projects that received allocations of 1989 or earlier tax credit authority may still use credits. Since some projects with these earlier credit allocations may be in the mod Rehab pipeline for at least another 18 months, you must apply these procedures to owners seeking Mod Rehab. (See Page 3, Paragraph 5 of this notice for more on the ineligibility of Mod Rehab projects.)

3. Mortgage Insurance: Issuing a SAMA/feasibility letter or a conditional/firm commitment under Section 207, 220, 221(d)(3), 221(d)(4), 223(d), 223(f), 231, 232 Board & Care, or 241.
4. Ownership Changes: issuing preliminary or final approval of TPAs; assigning subsidy contracts to new owners.
5. Mortgage Relief: approving or recommending approval of workouts/ mortgage modifications/ partial payment of claims.
6. Refinancing Before approving or recommending approval of any refinancing that would result in a modification of a HUD interest reduction or tenant assistance payment contract.
7. Prepayment Plans of Action: recommending Headquarters approval of plans of action required under 1987 or subsequent prepayment legislation.

Attachment 1
cont'd

- **8. Replacement Reserves & Residual Receipts: before releasing more than \$1000 per unit during any 12-month period from these or similar accounts (e.g., painting reserves or project improvement accounts other than those set up under Flexible Subsidy contracts).
- **9. Rent Increases: Before requesting Headquarters' approval of Section 8 special rent adjustments for purposes the HUD Field staff/PHA/HFA/ coinsuring lender is not authorized to approve (e.g., security); before including project improvements in a budgeted rent increase.
- ** EXCEPTION: When processing actions in Item 8 or 9, no owner certification is required if: 1) a negative certification in the format of Attachment 3 is already on file; 2) that certification is dated less than 1 year before the date of the owner's current request; and 3) there is no reason to believe the owner has or intends to seek tax credits.
10. LM or PD Section 8 (24 CFR 886, subparts A and C). Before executing contracts for new or additional units, or reserving

funds for those units. (This notice does not apply to renewals or cost amendments.)

11. Flexible Subsidy: Before recommending or approving reservations, contract increases or extensions, or new contracts. Before depositing Flexible Subsidy Funds in a working capital fund/replacement reserve account when closing-out a Flexible Subsidy contract.
12. Foreclosure Sales: executing a use agreement, AHAP or HAP contract when HUD is outbid at a foreclosure sale.
13. PD Negotiated Sales: before recommending Headquarters approval of any non-competitive sale. (Request the tax credit certification during your preliminary discussions.)
14. PD Competitive Sales (when bids are opened in the Field Office): before executing a sales contract, AHAP or HAP contract. (Headquarters will request tax credit certification and information when bids are opened in Headquarters.)
15. HODAG: Amending Grant Agreements; approving an ownership change; processing a request to waive a regulation, handbook, or notice requirement.

OMB No. 2502-0377

Expires 3/31/91

Attachments 2

MATERIALS LIHTC PARTICIPANTS MUST SUBMIT

1. Brief summary of the terms on which the owner will participate in the LIHTC program. Include:
 - a. the annual credit amount, the type(s) of credit (acquisition and or rehab); the date the 10-year credit period will begin; the credit percentage awarded for each type of credit; and the maximum qualified basis for each type of credit.
 - b. which income eligibility limit will apply (50/60 percent of median income) and how many units, if any, will be set-aside for families with incomes below 40 percent of the median income (deep-rent skewing).
 - c. list of units for which credits will be claimed. Give the number of units in each bedroom size and the initial tax credit rent limit for each unit size. Also indicate which units, if any, will be held for families with incomes below 40% of the median income.

Note: The 1989 Omnibus Reconciliation Act sets the rent limit based on the median income of "hypothetical" households having 1.5 persons per bedroom. Under previous law, rent cap was based upon the actual size of the household occupying the unit. See Page H 9396 of Attachment 4 for the new statutory language.

2. Copy of a) IRS Form 8609, Low Income Housing Credit Allocation Certification; or b) a report on the status of any tax credit allocation still in process and a copy of any credit agency reservation form or other document indicating agency's intent to award credits to the project.
3. Whether credit will be claimed by current owners or new owners.
4. List of all federal/ state/ local government insurance, loan, grant or subsidy programs in which the applicant plans to participate and any grants or below-market loans expected to be received from non-government sources. For each loan, give interest rate, monthly debt service, loan amount and loan term.
5. Sources and Uses of Funds Statement, itemizing: a) all funds available; b) all purposes for which funds will be disbursed; and c) dates any investor contributions are due. For item (a), use gross amounts available before deducting syndication, legal or other intermediary costs.
6. A Statement in which the applicant agrees to promptly notify the HUD Field Office of any change in the information provided pursuant to this attachment.

Attachment 2
cont'd

NOTE: The following language must be included in the submission. The applicant's signature must appear immediately below this warning.

WARNING: It is a crime to knowingly make false statements to a federal agency. Penalties upon conviction can include a fine and imprisonment. For details, see Title 18 U.S. code, Sections 1001 and 1010.

PUBLIC REPORTING BURDEN. This collection of information is estimated to average 1/2 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

- o Reports Management Officer
Office of Information Policies and Systems
U.S. Department of Housing and Urban development
Washington, D.C. 20410-3600
- o Office of Management and Budget
Paperwork Reduction Project (2502-0377)
Washington, D.C. 20503

Appendix 4
4355.1

Applicant/Recipient
Disclosure/Update Report

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ref. Sec 102, HRA 1989;PL. 101-235

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