

Appendix K

Recertification Waiver

Updated December 2004

Contents of Appendix K:

- 1) Annual Income Recertification Waiver Guidelines
- 2) Sample Letter - Owner Request To Proceed
- 3) IRS Revenue Procedure 94-64, Obtaining A Waiver of Annual Income Recertification

**Michigan State Housing Development Authority (MSHDA)
Low Income Housing Tax Credit Program**

ANNUAL INCOME RECERTIFICATION WAIVER GUIDELINES

December 2004

1. What Is An Annual Income Recertification?

Section 1.42-5 of the Internal Revenue Code requires that an owner receive an annual income verification for each low-income resident in the property. The recertification involves obtaining third party documentation of all income and asset sources for all low-income tenants.

2. What Is A Recertification Waiver?

Section 42(g)(8)(B) provides that an owner of an eligible property may request a waiver from the annual recertification requirement. The basic procedure for obtaining a waiver is described in IRS Revenue Procedure 94-64 (attached). This waiver is also sometimes referred to as a "reverification waiver" in other states.

3. What requirements are waived?

As stated on IRS Form 8877 (attached), while a waiver is in effect, the owner is exempt from the recertification requirements of Regulations sections 1.42-5(b)(1)(iv) and (vii) and 1.42-5(c)(1)(iii) for each building to which the waiver applies. Thus, the owner is not required to keep records that show an annual income recertification for all the low-income tenants in the building who have previously had their annual income verified, documented, and certified; maintain documentation to support that recertification; or certify to the compliance monitoring agency that it has received this information. In summary, the recertification waiver will eliminate the requirement to verify via third party the income and assets of existing tenants on an annual basis.

4. What tenant certification requirements remain?

As stated on IRS Form 8877 (attached), having a waiver in effect, however, does not relieve the owner of having to produce documentation in support of the requirements of section 42, including keeping records and documentation that show each tenant's annual income upon the tenant's initial occupancy of any unit in the building and, except for the exempted recertification requirements, satisfying the compliance monitoring procedure adopted by the compliance monitoring agency.

The owner/management agent must obtain a statement from each tenant once every twelve months stating what the household's income is, household composition, and student status.

The only difference is that verification by a third party of the income and asset information will not be required. The owner/management agent must continue to complete full certification procedures (including third party documentation) for all new move-ins.

5. Is my property eligible to request the waiver?

To be eligible for a recertification waiver, the project must meet all of the following requirements:

- The property must have an applicable fraction of 100%, i.e. all residential units in every building of the project are LIHTC units.
- The property must be 100% tax credit eligible, i.e. all tenants have been properly certified and documented as being LIHTC-eligible.
- The project must be placed in service, and the owner must have received an IRS form 8609 for each building in the project.
- The project must have completed its first year in service and submitted a First Year Credit Statement to MSHDA.
- The project must have completed one year of annual compliance monitoring reports (i.e. Tenant Income and Rent Report, Owner Certification of Continuing Program Compliance) and submitted the reports to MSHDA.
- The project and its owner(s) of the project and the management agent must be in good standing with MSHDA
- The project must have no outstanding items of noncompliance with LIHTC regulations.

6. Does the waiver eliminate the need to recertify tenants for other housing programs?

No. The recertification waiver applies to the LIHTC program only. Projects that participate in other programs, such as RHS, Section 8 or other project-based subsidies and/or that have MSHDA Direct Loan financing (i.e. 70/30, 80/20, 1%, Taxable Bond, Team), HOME, NPP or other such financing program must continue to complete recertifications as required for those programs.

7. Whom do I contact to request the waiver?

To request a waiver, the owner should submit "LETTER #1" (attached) to MSHDA at the following address:

Michigan State Housing Development Authority
Low Income Housing Tax Credit Program
Compliance Monitoring Section
735 E. Michigan Avenue
P.O. Box 30044
Lansing, Michigan 48909

For questions regarding the waiver, the owner should contact MSHDA at the above address, or at (517) 241-2560.

8. Does the state housing credit agency (MSHDA) grant the waiver?

No, the Internal Revenue Service must review the waiver request and will issue a letter either granting or denying the request.

9. What happens once I contact MSHDA?

After receiving LETTER #1, MSHDA will review its internal records to ensure that all information is up to date, that the property is eligible to request the waiver, and that there are no outstanding items of noncompliance. If satisfactory, MSHDA will provide to the owner a list of approved independent contractors that will contract directly with the owner to complete a tenant file inspection of 100% of the units in a property. The owner will select the contractor to conduct the 100% review.

Note: An approved contractor that has direct or indirect financial, consulting, or material business interest in the project or relationship with the owner, manager, developer, or investor of a project requesting a Recertification Waiver will not be allowed to perform the 100% file review for that property. Contractors and Owners must certify to MSHDA that there is no such interest or relationship.

10. When must the 100% review be completed?

The letter from MSHDA will indicate an effective date for the authorization to proceed. The entire 100% audit must be commenced after that effective date and be completed within six (6) months of that date.

11. Which tenant files must be reviewed as part of the 100% audit?

The tenant files for all households residing in the unit at the end of the most recent credit period must be reviewed. For units that were vacant at the end of the most recent credit period, the tenant file for the last tenant to occupy the unit as of the end of the most recent credit period must be reviewed. In addition, the tenant files for all new move-ins during current credit year (up to the effective date of the authorization to proceed) must also be reviewed. For example:

Michigan Villas has 100 LIHTC units. The Owner receives an authorization to proceed with an effective date of March 15, 2002. As of December 31, 2001, 95 of the units were occupied and five were vacant. In conducting the 100% review, a contractor must review the move-in eligibility documentation for tenants residing in the 95 occupied units and the last households that moved out of the five vacated units (as of 12/31/01). Between January 1, 2002 and March 15, 2002, eight new households moved into Michigan Villas. In addition to the 100 files already discussed, the tenant files for the eight new move-ins must also be audited as part of the 100% review.

12. What are the costs associated with requesting the waiver?

The owner will contract directly with the company/individual that is approved by MSHDA to perform the inspections of all properties. Fees are usually negotiated on a per-unit basis, and will vary from contractor to contractor.

13. What happens after the record inspection is completed?

If the contractor finds no evidence of noncompliance, it will issue a certification to the owner that each residential rental unit in the building was a qualified low-income unit under Section 42 at the end of the most recent credit period for the building. The contractor will forward a copy of the report to MSHDA as well for MSHDA's final approval. Subsequent to MSHDA's final approval of the contractor's certification, MSHDA will send a letter to the owner indicating that it is approved to proceed with the waiver request.

The owner must complete and sign Part I, Certification, of IRS form 8877. The owner must then forward a copy of the form to MSHDA, which will sign that part. MSHDA will forward the signed form back to the owner, who must then complete and sign Part II, Consent of Disclosure to Monitoring Agency, and send the completed Form 8877 to the Internal Revenue Service (IRS). The IRS will not consider an owner's request unless both Parts I and II of Form 8877 are properly completed.

14. What happens if the contractor finds noncompliance?

Because the independent company is contracting exclusively with the owner and not the housing credit agency, no report is filed with MSHDA or the Internal Revenue Service regarding the noncompliance. If the noncompliance is correctable, the owner should attempt to correct it. The owner and contractor then must decide whether or not a) the contractor is able to certify that all units are in compliance and b) the owner wishes to go forward with the waiver request.

15. Once the IRS grants the waiver, when is it effective?

As stated on IRS Form 8877, the waiver takes effect on the date the IRS approves the waiver. It remains in effect until the end of the 15-year compliance period (defined in section 42(i)(1)), unless the waiver is revoked, in which case it ceases to be in effect on the date of revocation.

16. Can the waiver be revoked?

Yes. The IRS may revoke the waiver if the building ceases to be a 100% low-income building or if the IRS determines that the owner has violated section 42 in a manner that is sufficiently serious to warrant revocation. The IRS will also revoke the waiver if the compliance monitoring agency requests its revocation. A change in the ownership of the building for federal tax purposes (including a change resulting from the termination of a partnership under section 708) will cause the waiver to be revoked automatically as of the change in ownership. The new owner may apply for a waiver.

17. Will I still complete annual monitoring reports and pay fees to MSHDA?

Yes, the only change to the current monitoring process is that annual reverifications of income are not required. The owner must continue to submit an annual compliance certifications, i.e. a Tenant Income and Rent Report (TIRR) and Owner's Certification of Continuing Compliance. Annual monitoring fees are still payable to MSHDA. MSHDA will reassess the fee amount in the future to determine if there is enough of a time savings to warrant a reduction.

18. Will MSHDA still conduct compliance monitoring record inspections?

Yes. MSHDA will inspect a minimum of 20% and a maximum of 100% of the tenant files for new move-ins to the development once every three years.

19. Will the property still have to meet the required physical condition standards?

Yes, in accordance with IRS requirements, MSHDA (or its authorized contractual agent or RHS) will continue to conduct physical inspections of the buildings and units in the project once every three years.

[DATE]

Michigan State Housing Development Authority
Low Income Housing Tax Credit Program
Compliance Monitoring
735 E. Michigan Avenue
P.O. Box 30044
Lansing, MI 48909

SAMPLE

RE: Project Name, Project City and County
LIHTC Project No.
Name of Ownership Entity
Owner's TIN#

Pursuant to Section 42(g)(8)(B), the owner of the above-referenced property, _____ (the "Owner") hereby requests authorization from the Michigan State Housing Development Authority (MSHDA) to apply for an annual income recertification waiver for the captioned property.

Owner understands that MSHDA may continue to require an annual compliance certifications (Tenant Income and Rent Report, Owner Certification) under its monitoring procedure and the waiver does not exempt the Owner from the recordkeeping and certification requirements of Section 1.42-5 for the verification of annual income of a tenant upon the tenant's initial occupancy of any unit in the building.

Owner recognizes that there is no guarantee the Internal Revenue Service will issue a waiver in response to our request. The Owner is still obligated to continue the annual recertification of tenant income/assets until a waiver acceptance notice is received from the Internal Revenue Service.

Sincerely,

[general partner or authorized official of the ownership entity]
Ownership Entity Name

Letter #1