

VIRGINIA HOUSING

Post Year 15 Compliance Monitoring Policy

Purpose This document is written to provide guidance to owners of tax credit properties during the extended use period.

At the end of a property’s 15-year Compliance Period (required by the IRS), Virginia Housing will require less frequent audit/inspection criteria that will provide more flexibility and make it administratively easier for owners to operate and maintain compliance at tax credit properties during the Extended Use Period. **Caution:** Owners of tax credit properties financed by Virginia Housing with Tax Exempt Bonds will have bond restrictions imposed by the IRS and the owner **must** continue to adhere to those restrictions.

Eligibility Criteria Each household must meet the income and occupancy requirements of the property’s Extended Use Agreement. However, occupancy requirements may be maintained project wide rather than by building. (**Note:** Owners of properties governed by other federal housing programs must also continue to follow the requirements of that program.)

Income Verification Verification of income and documentation of such must be in accordance with Chapter 5 of the HUD Occupancy Handbook 4350.3. Verification of income and assets (assets over \$5000) are required for all Move-in or initial certifications and must be dated within 120 days of the move-in or initial certification effective date.

Tenant Income Certification At or prior to move-in, a Tenant Income Certification listing all occupants of the household and all sources and amounts of income must be completed in HDS NextGen or uploaded to WTCMS using the XML feature. The TIC must be signed and dated by **all** adult household members **and** the management agent representative.

Rents The unit must continue to be rent restricted. The tenant’s paid portion of the rent plus the utility allowance must not exceed the maximum allowable Tax Credit rent. Rent restrictions elected by the owner at the time of allocation continue to be in force during the Extended Use Period.

Utility Allowance Owners must continue to update Utility Allowances annually as required by the IRS Utility Allowance Regulations and in accordance with Virginia Housing Utility Allowance procedures.

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Virginia Housing Post Year 15 Compliance Monitoring Policy, Continued

Full Time Students

Tax Credit Properties that do not have Tax Exempt financing may now house full time students but must follow the guidelines below when determining the eligibility of Students who are head of a household:

- A. The individual must be of legal contract age under state law.
- B. The individual must have established a household separate from parents or legal guardians or the individual meets the U. S. Department of Education's definition of an independent student.
- C. The individual must not be claimed as a dependent by parents or legal guardians pursuant to IRS regulations.

Caution: Owners be aware.....relaxing the student rule requirements may impact household eligibility if a second allocation of credits is sought.

Full Time Students in Tax Credit Properties layered with Tax Exempt Bond Financing

On June 30, 2008, the Housing Economic Recovery Act revised the student rule for Tax Exempt Bonds to mirror that of the Low Income Housing Tax Credit Program. Under the Internal Revenue Code Section 42 Regulations, households wherein all members are full-time students are not eligible and units occupied by these households may not be considered as low income households.

There are five exceptions to the limitation on households where all members are full-time students. Full-time student households that are income eligible and satisfy one or more of the following conditions are considered eligible:

- Students are married and entitled to file a joint tax return;
 - The Household consists of a single-parent with child(ren) and the parent is not a dependent of someone else, and the child(ren) is/are not dependent(s) of someone other than a parent;
 - At least one member of the household receives assistance under Title IV of the Social Security Act now known as Temporary Assistance for Needy Families (TANF)
 - At least one member of the household participates in a program receiving assistance under the Job Training Partnership Act (JTPA) or other similar federal, state, or local laws.
 - At least one member of the household was previously in foster care.
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**Full Time
Students in
Tax Credit
Properties
layered with
Tax Exempt
Bond
Financing**
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The IRS Code Section 151 © (4) defines a “student” as an individual, who during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins, is a full-time student at an educational organization described in IRC Sec 170(b)(1)(A)(ii). Treasury Regulation Section 1.51-3(b) further provides that the five calendar months need not be consecutive.

The determination of student status as full or part-time should be based on the criteria used by the educational institution the student is attending;

An educational organization, as defined by Internal Revenue Code Sec. 170(b)(1)(A)(ii) is one that normally maintains a regular faculty and curriculum, and normally has an enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. The term “educational organization” includes elementary schools, junior and senior high schools, colleges, universities, and technical, trade and mechanical schools. It does not include on-the-job-training courses. ***“Previously” means within five (5) years of the effective date of the initial income certification. “Foster Care” means substitute care for children placed away from parents or guardians and for whom the state agency has placement and care responsibility. This includes, but is not limited to, placement in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the state or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is a federal matching of any payments that are made.

**Annual
Student
Certification**

The annual student certification is no longer required for Tax Credit only properties.

Please Note: Tax Credit properties in its EUA period with Tax Exempt Bonds must continue to execute the annual student certification for households meeting the 20/50, 20/80 or 40/60 minimum set-aside chosen for the property.

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Annual Recert for TC only Properties Annual recertification of households for 100% Tax Credit only properties in the Extended Use Period is eliminated. However, in order for Virginia Housing to ensure owners are obtaining Utility Allowance Estimates annually and maintaining affordable rents, rents and utility allowances must be updated in HDS NextGen annually for each unit.

Annual Recert for TC properties with TE/AMT Bonds **NOTE:** Properties that are not 100% Tax Credit with Tax Exempt Financing must continue to recertify the required minimum set-aside (20/50, 20/80 or 40/60) low income households annually including acceptable verification of income as outline in HUD Occupancy Handbook 4350.3, chapter 5.

The Regulatory Agreement for all Virginia Housing financed properties requires a three-year recertification of the household's annual income (150% households). Verification of income for this three-year recertification is not required. The households simply self certify their income, sign and date the Tenant Income Certification. All adult household members as well as the management agent representative must sign and date the Tenant Income Certification. All recertifications must be completed in HDS NextGen or management may use the XML feature to upload tenant information into HDS NextGen within 30 days after the recertification effective date. The three-year recertification effective date is based on the anniversary of the move-in or initial certification date.

Recertification for Change in HH Composition or Transfer If new members are added to an existing household that originally qualified as a low-income household for Tax Exempt Bond purposes, a re-determination of that household's eligibility is required and that household must be certified as a new applicant to determine if the household still qualifies as a low income household.

If the household's income does not exceed the current income limit for that household size, the household would still be considered a low-income household for Tax Exempt bond purposes.

Transfers For Tax Credit only properties, owners may transfer households property wide.

Please Note: If the property is financed with Tax Exempt bonds and a low-income household transfers, that household must be treated as a new household and a new eligibility determination is required for bond purposes. If the annual gross income of the household is within the current income limit for that household size, that household will continue to be a low-income household for Tax Exempt bond purposes.

Virginia Housing Post Year 15 Compliance Monitoring Policy, Continued

Available Unit Rule	During the Extended Use Period, only properties with Tax Exempt financing will be monitored for compliance with the next available unit rule if a low-income household's income goes over 140% of the applicable limit.
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Owner's Annual Certification	After year 15, owners will no longer be required to submit an Annual Certification of Compliance. Virginia Housing will utilize the tenant data entered by the owner in WTCMS to generate reports to determine an owner's compliance. Therefore, in order for Virginia Housing to determine and report on an owner's ongoing compliance with the EUA and regulatory agreement, it is imperative that owners maintain current tenant information in HDS NextGen. All new move-ins, move-outs, annual and three-year recertifications must be current in HDS NextGen at all time.
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Occupancy and physical inspections

File Inspections for Tax Credit Properties *with* or *without* Virginia Housing Financing in the EUA Period.

- On-site file inspections will be performed every **three** years for Tax Credit properties with Virginia Housing Tax Exempt Bond Financing that are in the Extended Use Period. Twenty percent (20%) of the minimum set-aside files will be reviewed.
- For all other Virginia Housing financed properties with Tax Credits during the EUA period, file inspections will be in the form of a desk audit or an onsite reduced file review. The final file inspection will cover the remaining years of the IRS compliance period. Virginia Housing will rely on tenant data submitted via HDS NextGen to determine an owner's overall compliance with income, rent and occupancy restrictions.

Physical Inspections for Tax Credit Properties with Virginia Housing financing in the EUA Period

- Physical inspections for Virginia Housing financed properties with Tax Credits in the Extended Use Period will be conducted and scheduled according to normal business practices specified by Virginia Housing.

Physical Inspections for Tax Credit properties governed by federal programs without Virginia Housing financing in the EUA Period

- Physical inspections are eliminated for Tax Credit properties with no Virginia Housing financing that are governed by other federal programs such as Section 8 project-based, Section 236/RAP, and Rural Development since these properties are already subject to inspections and consequences under those programs in place.

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**Annual
Monitoring
Fee**

During the Extended Use Period, the annual compliance monitoring fee for all tax credit properties except Rural Development will be \$20 per unit. The annual compliance monitoring fee for RD properties during the Extended Use Period will be \$10 per unit. The Authority reserves the right to adjust the fee due to changing circumstances. Fees are due each year by January 31st.

**Reporting
Requirements**

All Tax Credit properties during its Extended Use Period will be required to utilize the HDS NextGen application for updating tenant information as changes occur and for updating rent and utility allowances. Compliance and occupancy reports will be generated by Virginia Housing to assess an owner's adherence to EUA and/or bond requirements.

All Tax Credit properties in the extended use period must continue to complete and submit the Project Information Report (PIR) annually with monitoring fees by January 31st.

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Impact of Non-compliance during EUA Period

Please be advised that in accordance with the Authority's QAP, negative points will be imposed on future applications if there are reports of uncorrected noncompliance noted during the EUA period as follows for:

(1) Any Applicant that includes a principal who was a principal in a development at the time Virginia Housing inspected said development and discovered a life-threatening hazard under HUD's Uniform Physical Condition Standards, and such hazard was not corrected in the time frame established by the Authority. Negative 50 points will apply beginning at the end of the original correction period and continuing for three years from the date the violation is completely corrected.

(2) Any applicant that includes a principal that was a principal in a development that remained out-of-compliance with the terms of its extended use commitment after notice and expiration of any cure period set by the Authority. (Result: Negative 15 points will apply for a period of three calendar years beginning January 1st of the year after the year Virginia Housing filed the 8823, unless the executive director determines that such principal's attempts to correct such noncompliance was prohibited by a court, local government or governmental agency, in which case, no negative points will be assessed to the applicant, or 0 points, if the appropriate individual or individuals connected to the principal attend compliance training as recommended by the Authority.) **Please Note:** Training will not negate the 50 points penalty.

Management Agent Certification

Failure to maintain, update and submit current tenant data in HDS NextGen could impact the status your Virginia Housing Management Agent Certification.