



## Consequences of Non-Compliance

### **Notice to Owner**

NH Housing is required to provide prompt written notice to the owner of a housing tax credit project if NHH does not receive the required certifications and other forms, or does not receive or is not permitted to inspect the tenant income certifications, supporting documentation, and rent records, or discovers by inspection, review, or in some other manner, that the project is not in compliance with the provisions of Section 42 or its Declaration of Land Use Restriction Agreement.

### **Correction Period**

The correction period will be established by NHH and set forth in the notice of non-compliance and will be a period of up to 30 days from the date of the notice to the owner described in paragraph (e)(2) of Reg. 1.42-5. NHH is permitted to extend the correction period for up to six months, but only if NHH determines there is good cause for granting the extension. Requests for an extension must be in writing.

NHH will review the owner's response and supporting documentation, if any, to determine whether the noncompliance has been corrected.

### **Notice to Internal Revenue Service**

NHH is required to file Form 8823, "Low Income Housing Credit Agencies Report of Non-Compliance," with the IRS no later than 45 days after the end of the correction period (including permitted extensions) and no earlier than the end of the correction period.

NHH must check the appropriate box on Form 8823 indicating the nature of the non-compliance or failure to certify and indicate whether the owner has corrected the non-compliance or failure to certify. If the non-compliance or failure to certify is corrected, NHH will provide a date on which the noncompliance was corrected. If NHH cannot determine that an owner's actions have corrected the noncompliance, no correction date will be provided. Any change in either the applicable fraction or eligible basis under paragraph (c) (1) (ii) and (vii) of Reg. 1.42-5, respectively, that results in a decrease in the qualified basis of the project under Section 42 (c) (1) (A) is non-compliance that must be reported to the IRS.

## Recapture of Credit

Generally, during the Compliance Period a project is out of compliance and recapture applies if:

- ✦ there is a decrease in the qualified basis of the building from one year to the next; or
- ✦ the building no longer meets the minimum set-aside requirements of Section 42(g) (1), or
- ✦ the gross rent requirements of Section 42(g) (2), or
- ✦ the other requirements for the units which are set-aside are not met.

If the project is out of compliance, a penalty will apply to **all** units in the project.

- ✦ Recapture of the Accelerated Portion of the tax credits for prior years
- ✦ Disallowance of the credit for the entire year in which the non-compliance occurs; and
- ✦ Assessment of interest for the recapture year and previous years.

If the non-compliance is due to a reduction in qualified basis and the minimum eligibility requirements of twenty percent (20%) or forty percent (40%) are still met, recapture and disallowance of credit will apply only to units not in compliance.

If there is a minimal reduction in the floor space fraction or number of qualified units, no recapture will occur, provided the building remains a qualifying Housing Tax Credit building.

In the event of a casualty loss, recapture will not occur if the property is restored or replaced within a reasonable period of time.

The above information has been provided for informational purposes in order to give a general understanding of recapture procedures. The Internal Revenue Service bears the responsibility for determining whether a building owner has claimed the correct amount of credit each year and whether a building owner is subject to recapture. NHH is not responsible for determining whether or not a specific event of noncompliance is a recapture event.