TAX CREDIT
HOUSING MANAGEMENT INSIDER

Free Sample Issue

How to Manage Mixed-Program Tax Credit Sites Effectively

You may find yourself—now or in the future—managing a tax credit site that gets assistance from another federal or state housing program. Like the tax credit program, the other program will have its own set of compliance requirements. If you don't comply with these requirements, you risk losing the funding that the program provides. But what do you do if the other housing program's requirements conflict with the tax credit program's requirements?

To stay in compliance with other housing programs at your tax credit site and keep the owner's credits safe, you must be alert to the differences and conflicts among program requirements and know how to handle them, says A.J. Johnson, president of A.J. Johnson Consulting Services, Inc. We'll tell you about the most common issues you're likely to encounter so you can be prepared. We'll also give you a five-step approach to take when managing a mixed-program site.

Beware of Common Conflicts with Other Programs

Because the tax credit program and other housing programs are complex, there are many ways these programs can conflict. Here are some common conflicts you should be aware of when managing a mixed-program site.

Minimum set-asides. To qualify for the tax credit program, a site must meet a "minimum set-aside." This means that you must rent at least a certain percentage (for example, 20 percent) of the units in your tax credit building or site to low-income households that earn no more than a certain percentage (for example, 50 percent) of area median gross income (AMGI). If a building or site doesn't meet the set-aside (the "20-50" set-aside, in this example) by the end of the year after the building was placed in service, the building or site won't qualify for the tax credit program. This means the owner can't claim any of the credits it was allocated for the building or site.

Some other programs also require minimum set-asides. But their set-asides may differ from the one you must meet under the tax credit program. Also, in the tax credit program, the owner chooses a minimum set-aside with its state housing agency when it applies for credits. But not all programs give the owner a choice, explains Johnson. For example, if your site is financed by tax-exempt bonds, the bond issuer—not the owner—chooses the minimum set-aside for the site, he points out.

The tax credit program's minimum set-aside applies to the entire building or site. But some programs' set-asides apply only to certain units. For example, the set-aside in HUD's HOME program applies only to units funded by HOME. So, if HOME requires you to rent 20 percent of units to households with incomes at or below 50 percent of AMGI to meet its minimum set-aside, that's 20 percent of HOME units only—not 20 percent of the total number of units.

Rent restrictions. The rent you're allowed to charge your low-income households may be different under other housing programs than under the tax credit program. As a general rule, you should calculate the allowable rents under all programs and charge the lowest rent to satisfy all requirements. But some programs have special rules.

For example, under the Rural Development 515 (RD 515) program (formerly known as the FmHA program), low-income households pay a specified base rent. If the household's income rises after move-in, RD 515 rules say that you should charge a higher rent. If you don't charge the full amount, the owner will have to pay the overage—the difference between the base rent and the higher rent—to the Rural Housing Service (commonly known as the RD) out of its own pocket, explains Steven L. Rosenblatt, a leading tax credit consultant. If your building got its allocation of tax credits after 1990, tax credit rules allow you to raise the rent above the maximum allowable rent—as much as necessary to cover the overage—without risking noncompliance, he explains. But, if your building got its allocation before 1991, tax credit rules won't let you charge more than the maximum allowable rent under the tax credit law. So the owner may have to turn more rent over to the RD than it can collect from covered households, he adds.

The tax credit program also requires you to use a utility allowance when determining a household's rent. But not all housing programs use a utility allowance, notes Johnson. So make sure, when you compare rents between the tax credit program and another program, that you add or subtract the utility allowance as necessary to make an accurate comparison.

Household income. Under the tax credit program, an over-income household remains eligible as long as it stays in the same building. But under the RD 515 program, for example, if a household's income exceeds the moderate-income limit, it must vacate the unit at the end of its lease, Rosenblatt explains. If you manage a site that's regulated under both programs, the RD 515 rule still applies, even though it may force tax-credit eligible households to vacate, he notes.

Compliance periods. Compliance periods vary. The compliance period for the tax credit program is 15 years. Although the owner normally claims all its credits in the first 10 years (the "credit period"), these credits remain vulnerable to recapture until the compliance period is over. (Sites allocated credits after 1989 have an extended use period, which requires at least some degree of compliance beyond the 15 years. But the IRS can't recapture any credits for noncompliance during the extended use period.)

On the other hand, for example, California's state tax credit program has a 30-year compliance period, while its credit period is only four years, says Jeanne Peterson, executive director of the California Tax Credit Allocation Committee. And the owner's credits are at risk only during the credit period, although an owner can be sued for noncompliance during the remaining years of the compliance period, she explains.

Take Steps to Avoid Noncompliance

Here are five steps you should take each time you begin managing a tax credit site. Taking these steps will help ensure that your site not only complies with the tax credit program but also complies with any other housing programs that apply to it.

Step #1: Ask owner about other housing programs. Check with the owner to see whether your site gets assistance through any other housing programs. An owner that hires you to keep its site in compliance with the tax credit program may not think to tell you this information. That's because sometimes owners don't realize these other programs have compliance requirements that you must know about.

We've put together a list of the most common housing programs (see box p. 3). When you talk to the owner, you can read the list to confirm whether your site gets assistance through any of these programs.

Step #2: Get program documents from owner. It's important to become very familiar with the requirements of any housing programs your site may participate in. This way you'll be able to maintain compliance with the tax credit program while making sure that the site doesn't lose any funding it gets through another program.

Ask the owner for any documents it has regarding the programs, such as regulatory agreements and financing agreements, so you can learn the program's requirements. You may also need to contact the agency that administers the program to find out all the requirements. For example, if your site also gets state tax credits, check with the state housing agency that administers the program to see whether it has a compliance manual that explains its rules. Our list of housing programs tells you which agency administers each.

Step #3: Ask owner to consider making site mixed-income, if possible. When a site must comply with the requirements of both the tax credit program and another program, there's a great likelihood that a conflict will arise between the two, says Rosenblatt. So it's a good idea to have some leeway to resolve conflicts if you can, he explains.

You can get leeway if you have least one or two units at your site that don't need to stay in compliance with the tax credit program. If you're hired to manage a mixed-program site when it's still in the development period, recommend to the owner that the site be mixed-income, suggests Rosenblatt. If the site becomes a 100 percent site, this means you won't have any market-rate units. But, if the owner decides to make its site mixed-income, you'll have market-rate units to use, if necessary, to satisfy the requirements of other housing programs without jeopardizing the owner's tax credits. For example, if you determine that a resident is ineligible for the tax credit program but eligible for another program, you can house the resident in one of your market-rate units.

Step #4: Never jeopardize tax credits when resolving conflicts. Sometimes, when conflicts arise between the tax credit program and another program, it's impractical—or impossible—to comply with both. Because the consequences of tax credit loss are so great, never resolve a conflict in a way that could jeopardize the owner's tax credits, Rosenblatt cautions. The sanctions an owner would get for violating another program's requirements probably won't be as costly as losing tax credits, he adds. So, as you sort through conflicts between programs, give priority to the tax credit program, he recommends.

When you can't find a way to resolve a conflict without risking noncompliance with a program, get the owner's approval before you act, recommends Johnson. Talk to the owner about the conflict and discuss the options, he says. Also, consider contacting your state housing agency or the agency that administers the other housing program for guidance, suggests Johnson. Make your request in writing and keep a copy of your letter along with the agency's response in the files for your building. This way, if you rely on the agency's guidance and later get cited for noncompliance, you can use your written correspondence to back you up, he explains.

Step #5: Follow most restrictive requirement when program requirements differ. Sometimes one program's requirement is clearly more restrictive than another program's related requirement, notes Johnson. When this happens, decide which is the more restrictive requirement and follow it, he recommends.

For example, if the owner elected a 40-60 minimum set-aside under the tax credit program, you'll need to rent at least 40 percent of your units to low-income residents. But another program may require you to rent only 30 percent of units to households earning 60 percent or less of the AMGI. In this case, you must follow the tax credit program's set-aside—since it's more restrictive—and rent at least 40 percent of your units to low-income residents to satisfy the requirements of each program.

Insider Sources

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▶ *Housing Programs You're Likely to Find at Mixed-Program Sites*

Here's a list of the housing programs you're most likely to encounter at a tax credit site. Next to each is the name of the agency that administers it. If a tax credit site that you manage gets assistance through one of these programs, be sure to learn the program's requirements, so you can keep your site in compliance with both programs. Ask the owner for the documents relating to the program and contact the appropriate administrative agency to get all the information you need to comply.

NAME	ADMINISTRATIVE AGENCY
▶ HOME Investment Partnerships	HUD
▶ HOPE VI	HUD
▶ Historic tax credits	IRS
▶ State tax credits	State housing agencies
▶ Section 8 project-based assistance	HUD
▶ CDBG grants or loans	HUD
▶ Affordable Housing Program	Federal Home Loan Bank
▶ Affordable Housing Disposition Program	Resolution Trust Corporation (RTC)
▶ RD 515 Program	Rural Housing Service (RHS) [formerly, the Farmers Home Administration (FmHA)]
▶ Section 236 program	HUD
▶ Rental Housing Mortgage Insurance Program [Section 221(d)(4)]	HUD
▶ Section 202 Housing for the Elderly	HUD
▶ Housing Opportunities for Persons with AIDS (HOPWA)	HUD
▶ Tax-exempt bonds	State housing agencies