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Extended Use Expiration

by Christine Bennett-Martin, president of Bennett Martin Consulting LLC

It’s 2021, we are starting to see many Low-Income Housing Tax Credit (LIHTC) properties enter the next phase of their life, and their fate could be up in the air. To put context on this conversation, we need to look to the past to talk about today and the future.

As many of you know, the LIHTC program was first created in the Tax Reform Act of 1986. The idea was that affordable housing would be created for low- to moderate-income households typically at or below 60% of the area median gross Income based on the property location. Such properties would have affordability periods of 15 years.

In 1990, there was a sea change in the length of affordability. A change in federal law required a minimum of an additional 15 years of compliance, which is referred to as the extended use period. As a result, IRC Section 42(h)(6) established that properties awarded housing credits in 1990 or later must comply with program restrictions for a total of 30 years or more. This extended use period can vary by allocating agency, with some as high as 99 years; many opted to implement a 15-year extended use period. This period will be identified in the Land Use Restrictive Agreement (LURA) or Extended Use Agreement, depending on the name given by the allocating agency. Such agreements are a matter of public record and kept at the County (or Parish) Recorder’s office.

Projects awarded credits in 1990 most likely did not start taking credits until 1991 or 1992, and now find themselves at their 30-year milestone. So what happens next for those properties?

Many properties are sold at the end of the original compliance period or shortly thereafter. The new owners often use the properties for cash flow and do not desire to apply for tax credits to complete a resyndicated rehab once the extended use period ends. Also, many of the current owners are older and may no longer desire to keep the properties affordable; they may sell them to the highest bidder. We may see this especially in areas that have been regentrified during the life of the property.

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For properties that have reached the end of the extended use period, as vacancies occur, the owner could begin to move in households that do not have any eligibility requirements, and rents could be as high as the market will bear. There are protections, however, for existing residents to maintain restricted rents, and they cannot be evicted for anything other than just cause. Protections for existing residents are to remain in place for three years beyond the end of the extended use period.

This ultimately hurts the industry by a loss of affordable units. For a point of reference, HUD saw a loss of more than 35,000 units because of the Mark to Market Program (M2M) which was authorized by the Multifamily Assisted Housing Reform and Affordability Act (MAHRA) enacted Oct. 27, 1997, according to a General Accounting Office (GAO) study published in April 2007. This was due to owners just opting out of the HUD programs.

Owners could also recapitalize and resyndicate the properties with a new round of tax credits. Many allocating agencies are including this specific area of housing into their annual Qualified Allocation Plan (QAP). The National Council of State Housing Agencies (NCSHA) conducts an annual study each year regarding the status of affordable housing in the country. Approximately 15,000 units were part of a resyndication nationally in 2018. In 2019, this number increased to approximately 18,000 units. In 2020 — according to Jim Tassos, NCSHA’s Deputy Director of Tax Policy and Strategic Initiatives — although the figures haven’t been published yet, it increased to approximately 23,000 units. This is good news for the industry, but it will be an uphill battle in many senses.

Conversations need to continue regarding the preservation of affordable units by encouraging the resyndication of older properties that have reached the end of their extended use period. Many older LIHTC properties can benefit from a new infusion of credits to address capital needs and allow them to continue to house low- to moderate-income households until the middle of this century and beyond. Let’s keep talking.

Christine Bennett-Martin has been in the affordable housing industry nearly 19 years; she spent the first seven years in the private sector and close to 12 years with the Ohio Housing Finance Agency as its training and technical assistance manager before leaving in August 2018 to start her own company, Bennett Martin Consulting, LLC. Christine holds the following industry certifications: Assisted Housing Manager (AHM), Fair Housing Coordinator (FHC), Housing Credit Certified Professional (HCCP), Specialist in Housing Credit Management (SHCM), Spectrum Training Award Recipient (STAR), Tax Credit Compliance Systems (TaCCS) and the Tax Credit Specialist (TCS). Christine has been a member of the National Association of Home Builder’s HCCP Board of Governors since 2018 and is the vice chair of the HCCP Exam Re-write Committee.