Early Termination, LURA Expiration, or Refinance, Oh My!

by Patricia Hensley

The Housing Tax Credit (HTC) program, established by the Tax Reform Act of 1986, has become the most significant source of affordable housing financing in the United States. This program is layered with several different periods that include separate compliance requirements. The Initial Compliance Period is the first 15 years of the HTC program. During this period, properties must comply with federal and state requirements to maintain their tax credits. The Extended Use Period is typically the 15-year period after the Initial Compliance period. This 30-year total compliance period is designed to ensure long-term affordability; however, the last 15 years can have reduced compliance requirements. In some situations, an owner may be faced with situations that can warrant an early termination of the Regulatory Agreement, while others are able to maintain the requirements until the expiration of the Land Use Restriction Agreement (LURA).

Early termination of regulatory agreements involves changes to the obligations originally set for properties benefiting from housing tax credits, while the expiration of a LURA occurs naturally at the end of the agreed-upon period.

Housing regulatory agreements are put in place to ensure that properties receiving tax credits comply with specific requirements of the HTC program. These include providing affordable housing to low-income tenants for a designated period, typically 15 to 30 years. Early termination of these agreements can occur if the development goes through a foreclosure, has significant non-compliance, or a buyout of the remaining obligation period occurs. This termination typically requires approval from the applicable State Housing Finance Agency and may involve repayment of tax credits or penalties. When an early termination is granted, the property may no longer be subject to the affordability and tenant protections originally required by the tax credit program; however, most tenant protections are enforced for a 3-year period after the early termination is approved. During this 3-year period, tenant protections can vary based on specific regulations and agreements. In most cases, residents are not allowed to be evicted without legal cause, lease agreements must be honored, and the rents must continue to be restricted to the designation the households are currently qualified. In some situations, notices to residents regarding changes in rent are required to occur at specific times before the expiration of the LURA, while other HFAs require the owner to provide relocation assistance in some capacity. Additional tenant protection may be required by local or state housing laws and it is always important to check these regulations as they might offer further protections or requirements beyond the federal tax credit program.

When a LURA expires the restrictions automatically lift without needing approval or additional conditions to be met. When a LURA expires, the property is no longer subject to its restrictions. This means the owner can potentially convert the property to market-rate housing or use it for different purposes, which

can also reduce the supply of affordable housing over time. Owners also have the opportunity to refinance the development with additional tax credits. Tenant protections are still present when a LURA expires but are mainly regulated by state and local laws. Households generally have the right to stay in their units under the terms of their existing leases until the lease expires, even if the LURA has ended. The owner is allowed to raise the rent to market rent; however, residents must be given proper notice of any rent increase as required by local or state laws. Although the HTC LURA might expire, properties might still be subject to other affordability requirements or regulations depending on other program agreements.

Refinancing with additional tax credits when a LURA expires can provide several strategic benefits.

Adding new tax credits during refinancing can offer additional funds or lower borrowing costs, enhancing the property's financial flexibility and potentially improving cash flow. By securing new tax credits, the property can continue to offer affordable housing options beyond the original LURA period, which can be beneficial for community impact and may align with the owners ongoing affordability goals. Since LURAs don't expire before 30 years, new tax credits can help fund substantial property upgrades or renovations, maintaining or improving the property's condition and appeal. Overall, refinancing with additional tax credits after a LURA expires can enhance financial stability, improve property conditions, and support continued affordability, benefiting both the property owner and the community.

In conclusion, early termination of housing tax credit regulatory agreements happens before the intended end date due to specific conditions, while expiration of a LURA occurs at the end of its agreed-upon term. Both result in the end of affordable housing requirements, but they differ in timing, process, and predictability. While early termination and the expiration of LURAs is a common part of the HTC program, continuing to provide affordable housing through new tax credits can reinforce the property's role in community development and support local housing needs.

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