Responsibilities of Housing Credit Agencies

A housing credit agency is a state or local agency administering the LIHTC program. This agency often oversees a multitude of other affordable housing programs such as rental assistance, downpayment assistance, and other capital funding.

While the structure may vary between states, each housing credit agency is required to perform certain tasks in its administration of the LIHTC program. Let's look at the specific responsibilities of these agencies under Section 42 of the Internal Revenue Code and the applicable Treasury regulations.

Note: A housing credit agency is often referred to as an allocating or housing finance agency. Because the code and Treasury regulations use the term housing credit agency, that is what we use here.

First Primary Function

The first primary function of a housing credit agency is to allocate the tax credits. Per Section 42(m)(1), the agency must create a qualified allocation plan (QAP) that "sets forth selection criteria to be used to determine housing priorities of the housing credit agency which are appropriate to local conditions." While the code and regulations do prescribe a few selection criteria (e.g. the 10% set-aside for qualified non-profits) and require certain documents be submitted for review (e.g. a third-party market study), the QAP is mostly written at the agency's discretion. This results in variation in QAP criteria across states, as each housing credit agency uses the QAP to promote its mission focus and to serve its local housing needs.

After awarding credits through the established QAP process, the agency must then work with its selected developers to ensure that their developments are built in a timely and compliant manner. This includes entering into a carryover agreement (in accordance with Treasury Regulation 1.42-6), monitoring for the 10% test, and tracking construction progress and completion to confirm the project meets the applicable placed-in-service deadline. Once the project is placed in service, the agency can then begin its final review and move towards the official credit allocation via issuance of Form 8609.

However, before the 8609s can be issued, the agency must conduct an analysis of project costs by reviewing a final cost certification. Per Section 42(m)(2), this review is undertaken to verify that "the housing credit dollar amount allocated to a project shall not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the project." In other words, the agency must determine and document that it is not over-subsidizing the project.

This analysis must be completed during the initial application review before reserving an award of credits and then again after construction completion based on final certified construction costs. Once the final costs have been reviewed and the amount of credit deemed reasonable, the agency can then allocate the credits by completing Part I of Form 8609, executing the document, and sending to the owner.

Second Primary Function

Second, a housing credit agency must monitor for program compliance. Monitoring procedures must meet the minimum requirements in Treasury Regulation 1.42-5. Per Section 42(m)(1)(B)(iii), the agency's QAP must provide written monitoring procedures. These procedures often are included within an agency compliance manual that is then considered to be an attachment to the QAP. Monitoring consists of three essential tasks:

- Review annual owner certifications. The agency must provide an owner certification form for use by all owners that contains all of the items mandated in Treasury Regulation 1.42-5(c).
- Conduct physical inspections of units in accordance with Treasury Regulation 1.42-5(c) and (d).
- Conduct reviews of tenant files and records in accordance with Treasury Regulation 1.42-5(c). The review must include monitoring of tenant income certifications, supporting income verification documents and rent records.

Initial unit inspections and tenant file reviews must be conducted for a project no later than "the end of the second calendar year following the year the last building in the project is placed-in-service." After the initial monitoring, the agency must then conduct an inspection and file review for each project at least once every three years. The agency may notify the owner of the date and time of the scheduled inspection/review, but is required to select a random sample and is not allowed to give advance notice of the selected units to the owner. The selected sample size must meet the requirements of Rev. Proc 2016-15. Finally, it should be noted that per Treasury Regulation 1.42-5(f), the agency has the explicit right to delegate all or parts of its compliance monitoring functions (with the exception of issuance of Form 8823) to a private contractor or agent.

When noncompliance with the code or regulations is discovered through review of the annual owner certification, physical inspection or file review, the agency must notify the IRS via Form 8823. Form 8823 must be issued no later than 45 days after the end of the correction period, regardless of whether the noncompliance was corrected. (The 8823 will indicate a corrected or non-corrected status for each issue reported.) The initial correction period may not exceed 90 days, though the agency may extend for up to a total of six months if deemed appropriate. As noted above, the agency is always responsible for issuance of Form 8823, and cannot delegate this responsibility to a contracted inspector or monitor.

In summary, the housing credit agency is responsible for writing a QAP, allocating credits in accordance with that QAP, ensuring project completion within established deadlines, and monitoring for compliance throughout the applicable compliance period. In addition to these federally mandated tasks, the agency also likely engages in a number of training and technical assistance activities so that its development and management partners are well-equipped to comply with program rules.

Matt Rayburn is the deputy executive director and chief real estate development officer for the Indiana Housing and Community Development Authority. Rayburn oversees IHCDA's real estate development department to ensure resources are used to accomplish agency priorities while complying with federal and state regulations.