

## Extended Use Period (“EUP”) – Notice to Tenants of Expiration Process

### Owner Obligations and Requirements

Effective \_\_\_\_\_, 2024

**Purpose:** To notify owners of their obligation to provide advanced written notification to all Low-Income Housing Tax Credit (“LIHTC”) tenants of the expiration of the extended use agreement.

### **Key Terms**

**Compliance period:** The Compliance Period is fifteen (15) years, including the ten (10) year tax credit period. It commences in the first year of the credit period (year one [1]) and continues for fourteen (14) additional years, for a total of fifteen (15) years (to year fifteen [15]).

**Extended Use Period:** The Extended Use Period commences the first year following the completion of the Compliance Period. It then continues for an additional fifteen (15) years. The total thirty – or more – years thus committed comprise the extended use period. As with the other periods, the extended use period begins with the first year that credits are claimed. It then continues for at least twenty-nine additional years. The Compliance Period and Extended Use Period, combined, can continue for at least twenty-nine (29) additional years.

**Internal Revenue Code (“IRC”) Section 42:** The low-income housing credit was created under Section 42 of the IRC. Section 42(a) provides that the amount of the low-income housing credit for any taxable year in the credit period is an amount equal to the applicable percentage of the qualified basis of each qualified low-income building.

**Low-Income Housing Tax Credit (“LIHTC”):** LIHTC provides a tax incentive to construct or rehabilitate affordable rental housing for low-income households.

**Land Use Restriction Covenant (“LURC”):** The LURC is a declaration of restrictive covenants applied to real property for LIHTC, a recorded agreement between a government entity and the Owner.

**Land Use Restriction Agreement (“LURA”):** The LURA is a recorded agreement between an owner and a government entity that documents restrictions placed upon a property in order to receive future tax credits.

**Non-Compliance:** Non-Compliance occurs through failure to abide by such policies and guidelines as outlined in IRC Section 42 and DCA’s LIHTC & Home Investment Partnerships Program (“HOME”) Compliance Manual

**Owner:** a person/or entity has the legal or rightful title to a property.

**Tenants:** A tenant is a legal resident of a rental property.

**The Georgia Department of Community Affairs (DCA):** DCA administers housing programs on behalf of the Georgia Housing and Finance Authority and is the agency responsible for the administration and monitoring of LIHTC and the HOME funds for the state of Georgia.

**The Georgia Housing and Finance Authority (GHFA):** GHFA is a public corporation and instrumentality of the state of Georgia. It is the state applicant and recipient of federal housing grants and programs.

### **Extended Use Period (“EUP”)**

Properties awarded a Low-Income Housing Tax Credit (“LIHTC”) allocation prior to the year 1990 are subject to a fifteen (15) year Compliance Period. A subsequent change in federal law (sec42(h)(6)(D)) required a minimum of an additional fifteen (15) years of compliance, 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 thirty (30) years or more, subject to certain exceptions. These restrictions are located in the recorded real estate document called the Land Use Restrictive Covenants (“LURC”) or the Land Use Restrictive Agreement (“LURA”). The total of thirty (30) or more years committed are comprised of the Compliance and Extended Use Periods. In addition to the Federal Requirements (IRC Section 42) for thirty (30) years, DCA/GHFA may have additional and/or extended requirements based on the applicable funding source.

### **Determining the end of the Extended Use Period (“EUP”)**

Refer to the Internal Revenue Service (“IRS”) Form 8609, *Low-Income Housing Credit Allocation and Certification*, to determine when the building’s credit, compliance, and extended use periods began. Refer to lines 5a, the date the building was placed in service, and 10a, the first year the owner elected to start the credit period.

Please note the following as it relates to Form 8609, 10a:

- If 10a is marked NO, the end of the EUP is calculated using the placed-in-service year,
- If 10a is marked YES, the end of the EUP is calculated using the year after the placed-in-service year.

### **Owners Requirements During the Extended Use Period**

Owners will require all tenants who move into a LIHTC property within three (3) years of the building’s extended use period expiration (years twenty-eight [28], twenty-nine [29], and thirty [30]) to sign an acknowledgment of written notification of expiration as part of the initial lease documents.

During the term of the Extended Use period, the LURC/ LURA (if applicable) sets forth the terms of the agreement between the owner and the state. Failure to comply with the owner requirements outlined in the LURC and/ or LURA during the years of the property exiting the program will trigger state Non-Compliance and possible point deductions for future DCA/GHFA funding applications.

**Owners are required to meet specific requirements during the years of the property exiting the program. Owners must:**

1. Continue to abide by the terms set forth in the LURC and/or LURA;
2. Provide DCA with an updated Rent Roll at DCA request;
3. Provide annual Utility Allowance updates available to DCA upon request;
4. Implement annual rent limits so as not to exceed the maximum (per HUD guidelines);
5. Complete the Annual Owner Certification (AOC) by March 1<sup>st</sup> of each year;
6. Continue to update the state database (EMPHASYS) to ensure the database is current with all tenants, including vacant units;
7. Notify all new move-in and current low-income tenants starting in year twenty-eight (28) of the Extended Use Period, using DCA's notification form, that the property is currently reaching the end of its allocated time frame within the LIHTC Program;
8. List all DCA/GHFA properties and maintain current and up-to-date rental unit availability on the Georgia Housing Search website at [www.georgiahousingsearch.org](http://www.georgiahousingsearch.org). Listing properties and maintaining current unit availability is a program requirement.

The project must maintain any affordability and regulatory restrictions based on financing and rental subsidies received on the project other than Section 42 LIHTC financing (i.e., HOME, Housing Trust Fund), as applicable. Additionally, loan agreements may reference other requirements. Owners are advised to know all required program restrictions where/if applicable.

**Extended Use Tenant Notification Process**

DCA/GHFA requires written notification to be provided to existing tenants and new move-in households, notifying them that the property will be exiting the tax credit program. A written document must be delivered to each tenant, posted in visible locations throughout the property, and given to each existing applicant.

By January 15 of each year, owners/agents will send notices to existing tenants of the upcoming expiration of their property starting in year twenty-eight (28) of the Extended Use Period. Any new household that moves in during years twenty-eight (28) through thirty (Year 30) of the Extended Use Period must be notified that the restriction on rents will terminate at the end of this

period. In the final year, year thirty (30), owners/agents must provide a six (6) month advance written notice to each LIHTC tenant.

### **Tenant Notification Template**

As the owner, you are required to use the *Tenant Notification* templates, which can be found on the DCA/GHFA website. Owners are required to send four notices to tenants as follows:

#### **First notice:**

Year 28 – DCA’s template letter is to be sent by the owner by USPS Certified Mail with a return receipt or personal delivery (to obtain tenant signature) to each LIHTC-qualified household.

#### **Second notice:**

Year 29 – DCA’s template letter is to be sent by the owner by USPS Certified Mail with a return receipt or personal delivery (to obtain tenant signature) to each LIHTC-qualified household.

#### **Third notice:**

Year 30 – DCA’s template letter is to be sent by the owner by USPS Certified Mail with a return receipt or personal delivery (to obtain tenant signature) to each LIHTC-qualified household.

#### **Fourth notice:**

Six (6) months before the end of year 30 – DCA’s template letter, to be sent by the owner by USPS Certified Mail with return receipt or personal delivery (to obtain tenant signature) to each LIHTC-qualified household.

### **Tenant Acknowledgement**

Tenant acknowledgment signatures must be obtained by January 31 for each of the last three (3) years of the extended use period. For any units for which the owner is unable to obtain a signature, notification letters must be sent by USPS-certified mail with a return receipt within thirty (30) days (no later than February 28). Failure to provide tenant acknowledgment notices by January 31 may trigger State non-compliance fees. Additional penalties may include but are not limited to possible point deductions for future DCA/GHFA funding applications.

### **New Move-ins**

For new move-ins where a LIHTC-qualified household is moving in during years twenty-eight (28), twenty-nine (29), and thirty (30) of the Extended Use Period, a tenant-signed acknowledgment must be obtained and maintained in the tenant’s file. This notification must be a part of the new LIHTC household move-in file.

Please refer to the DCA LIHTC & HOME Compliance Manual for further information on Extended Use Period (EUP) requirements.