

**OREGON HOUSING AND COMMUNITY SERVICES  
RISK-SHARING ADDENDUM TO THE LIHTC MANUAL  
2009 EDITION  
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# INTRODUCTION

## **BACKGROUND**

The Risk-Sharing Program is authorized by Section 542(c) of the Housing and Community Services Act of 1992 (12 U.S.C. 1707). Section 235 of HUD's FY 2001 Appropriation Act, Public Law 106-377 amended Section 542 and changed the Risk-Sharing Pilot Program to a permanent multifamily insurance program. Program regulations are in 24 CFR Part 266.

OHCS provides financing for Risk-Sharing projects through the sale of tax-exempt revenue bonds, which are governed by federal statutes and regulations. To be eligible for financing with tax-exempt bond proceeds, the project must conform to the provisions of Section 142(d) of the Internal Revenue Code of 1986, as amended. Additional program restrictions are imposed by the provisions contained in state law and the conditions associated with the Risk-Sharing Agreement the Department has executed with the Department of Housing and Urban Development (HUD). The Risk-Sharing Program requires that the state Housing Finance Agency (HFA) perform monitoring for this HUD program. There are currently no nationwide, standardized monitoring procedures for this program. Each state HFA may have different requirements and procedures established for previous bond-financed programs that now have been tailored to accommodate the program regulations for Risk-Sharing.

Program loan servicing instructions are in Handbook 4590.01 "Housing Finance Agency Risk-Sharing Pilot Program". This Handbook also outlines a variety of HFA and HUD responsibilities in connection with select physical and financial monitoring activities. The content pages for this Handbook can be found in Exhibit A. A hard copy of the Handbook may be obtained from HUD by calling 1-800-767-7468, faxing a request to 1-202-708-2313, or through HUD's website: [www.huduser.com](http://www.huduser.com).

The majority of OHCS Risk-Sharing projects have received additional funding through the federal Low-Income Housing Tax Credit (LIHTC) Program by an allocation of credit outside the State's annual LIHTC cap.

***Risk-Sharing projects that have received federal tax credits must use this Addendum as guidance in determining which program requirements are the most restrictive (credits or bonds).***

## **THE RISK-SHARING ADDENDUM**

The Program Analysis and Enforcement Section will provide a hard copy of the LIHTC manual with this addendum to each new project prior to the loan closing. Additional copies can be downloaded from our website, [www.ohcs.oregon.gov](http://www.ohcs.oregon.gov). The manual describes OHCS compliance monitoring procedures, which the Borrower and management agent must follow. OHCS will periodically mail program updates and changes to borrowers, in addition to posting them on the agency website.

***Links within the manual and addendum will lead to all required and recommended forms, and excerpts as applicable from Section 142(d) of the Internal Revenue Code and CFR Part 266.***

## **PURPOSE OF THE RISK-SHARING ADDENDUM**

This addendum is a guide to understanding compliance monitoring, as practiced in Oregon, under the guidelines established by OHCS and HUD for the Risk-Sharing Program. It was developed pursuant to state and federal requirements for use by borrowers, management agents,

on-site management personnel and others involved with compliance activities associated with Risk-Sharing projects. This document should be used for projects with or without tax credits.

### **COMPLIANCE PERIOD**

Use restrictions will remain in effect until the end of the Qualified Project Period as defined in the Loan Documents. OHCS does not accept pre-payment of the loan. Note: For purposes of simplicity, henceforth in this manual the term “Loan Documents” shall mean one or all of the following, as applicable: the Loan Agreement, the Trust Deed, the Trust Deed Note or Note, the Regulatory Agreement, the Commitment Letter, the Borrower Tax Certificate, the Housing Council write-up and any other documents associated with the loan of Bond Proceeds to the Borrower for the project.

## **RESPONSIBILITIES**

For the purposes of clarification, the responsibilities of the various parties and monitoring processes are outlined below.

### **OREGON HOUSING AND COMMUNITY SERVICES**

All projects financed through the Risk-Sharing Program will be monitored by OHCS under guidelines established by HUD and OHCS on an ongoing basis throughout the period of affordability.

#### **OHCS monitoring duties include:**

- Providing a LIHTC Compliance Manual with Risk-Sharing Addendum and related materials;
- Offering continuing education on compliance to the borrower, management agent, and on-site personnel, primarily through periodic compliance training workshops, as scheduling permits, and updates to the LIHTC Compliance Manual and Risk-Sharing Addendum;
- Reviewing each low-income housing project annually. The review at all projects will consist of an inspection of at a minimum 20% of the units and grounds and an audit of 20% of the low-income tenant records (see Exhibit B for file review sheet);
- Notifying the borrower when the project is found to be out of compliance with state or federal requirements, including reports not received by OHCS when due;
- Establishing schedules with the project borrower for correcting any noncompliance. (Typically, 30 days are given to correct noncompliance issues. However, extensions may be granted under certain circumstances. The borrower or managing agent must request the extension in writing and submit the request to OHCS prior to the deadline originally given.);
- Performing follow-up reviews of any building or an entire project, if deemed necessary; a follow-up review may include a physical inspection of the building(s) and/or a review of project tenant records.

The following schedule outlines time frames for certain monitoring events:

#### **Event**

Project is due for inspection

OHCS notifies the borrower/agent that project is or is not in compliance

#### **Timeline**

OHCS will give a minimum of 14 days notice

OHCS will notify the borrower/agent of noncompliance. OHCS will allow 72-hours for correction upon discovery of serious health and safety inspection issues or a minimum of 30 days from the date of the report issued to the project for correction of any other issues of noncompliance

### **THE BORROWER/DEVELOPER**

Each borrower has chosen to participate in the Risk-Sharing Program to take advantage of lower interest rates, easier underwriting requirements, and the ability to access larger amounts of money for rehabilitation of existing housing. In exchange for these benefits, certain requirements must be met by the borrower that will benefit qualified low-income tenants. Some of the requirements include borrowers meeting the elected minimum set-aside requirement,

charging appropriate rental rates and maintaining accessible documentation and verification of each low-income tenant.

*Although a borrower may have a managing agent acting on his or her behalf, the borrower is ultimately responsible for ensuring compliance with all applicable programs and their regulations and rules. In selecting a managing agent, the borrower should ensure the agent and all on-site personnel are knowledgeable of the provisions and requirements of all funding sources for the project.*

### **Cooperation with OHCS during on-site reviews:**

Throughout the Qualified Project Period the PAES Compliance staff will conduct periodic on-site reviews of the Risk-Sharing Program properties and their records, in order to evaluate borrower compliance with the Loan Documents. During a review, borrowers and their property management staff must provide monitoring staff with access to all documents relevant to an evaluation of the borrower's continued compliance. OHCS staff will give borrowers reasonable advance notice of a pending inspection and review.

### **Proper Administration and Record Keeping**

There are several record-keeping and reporting requirements that borrowers must meet to assure compliance with the Loan Documents. These requirements fall into five (5) major groups:

#### **1. On-site record keeping:**

As set forth in the regulatory agreement, all records concerning the property must be kept separate from the borrower's other business unrelated to the property and in a reasonable condition to allow for proper audit. The records must be maintained as required by OHCS and in accordance with the procedures in this addendum. Representatives of OHCS may examine or photocopy documents pertaining to the property during regular business hours. Borrowers must keep a tenant file for each unit on site. Each tenant file must contain the following:

- The tenant's **original** rental application (with date and time received noted) and all subsequent updates to the application;
- Required forms listed in Chapter 4 of the LIHTC Manual for all set-aside units;
- For Risk Share only projects and Risk Share projects coupled with 100% tax credit funding, a formal "tenant income certification" (TIC) form must be completed for the initial and first year annual certifications only, as long as the project remains in compliance. These certifications must be accompanied by source documentation. Projects found to be out of compliance will be required to resume formal annual certifications on an ongoing basis until compliance has been re-established.
  - ❖ In subsequent years (beyond the first year annual), self-certifications of income and assets must be obtained from each household by use of the TIC. Third-party verifications of income and assets are not required for self-certifications.
  - ❖ For Risk Share projects coupled with project-based Section 8, a formal tenant income certification, accompanied by source documentation, must be completed at move-in only. Projects will continue to be subject to Section 8 program requirements.

❖ For Risk Share projects coupled with HOME funds, please refer to the Oregon Housing & Community Services HOME Compliance Manual for certification requirements.

- A proper dwelling lease (including Section 8 leases, if the tenant receives a Section 8 subsidy) that provides for termination of the lease and consent to immediate eviction if the tenant is discovered to have deliberately misrepresented income in order to qualify for a set-aside unit (units designated for occupancy by households whose income is 60% or less of area median gross income.)

## **2. Monthly vacancy reports:**

Per OHCS current policy every borrower must submit monthly project vacancy reports to the Program Analysis and Enforcement Section (PAES). This report is due by the 10th of the month and should be completed by personnel involved in leasing activities for the project. (See Exhibit C for the required form.)

## **3. Annual and semi-annual budget reports**

Borrowers must submit financial statements as requested by the Department. At a minimum, projects must submit an annual budget and semi-annual reports.

## **Record Retention**

All tenant files must be maintained for at least six (6) years after the date the tenant moves out.

## **Ongoing Administration and Notification**

The borrower is responsible for keeping OHCS informed of any event that might affect the project's compliance with the Risk-Sharing regulations, for certifying annually the project's continued compliance and responding to OHCS's inquiries. This includes written requests made at least 60 days in advance for approval of changes in ownership or management agent, and immediate notification of borrower, managing agent, on-site manager or any other designated contact address and telephone changes.

## **Reporting and Certification**

The certification of the remediation of exigent health and safety items discovered during a REAC inspection must be signed by the borrower unless a legal Power of Attorney record for another designated signatory entity has been provided to the Department.

## **Noncompliance**

The borrower is responsible to correct any incidents of noncompliance within the required time frame. Failure to correct within the time specified by OHCS may result in enforcement actions by OHCS to compel the borrower to bring the project into compliance.

If the management agent and/or the borrower determines that a procedure, a tenant, a change in rent, a building or entire project is not in compliance with the Risk-Sharing Program requirements, OHCS must be notified. The management agent and the borrower must formulate a plan to bring the project back into compliance, and advise OHCS in writing of such plan.

## **MANAGEMENT AGENT AND ON-SITE PERSONNEL**

The management agent and on-site personnel are responsible to the borrower for implementing the Risk-Sharing Program requirements and the provisions of the project Management Plan. Anyone who is authorized to lease apartment units to tenants should be thoroughly familiar with and follow all applicable federal and state laws, rules, and regulations governing certification and leasing procedures.

The management agent must provide information requested by OHCS and submit, on behalf of the borrower, all required reports and documentation in a timely manner. The certification of the remediation of exigent health and safety items discovered during a REAC inspection can be signed by the management agent provided the management agent has obtained from the borrower a Power of Attorney prior to the REAC inspection being conducted.

Management agents should ensure that tenant occupancy information remains confidential but is accessible to authorized representatives of OHCS.

## REGULATIONS AND REQUIREMENTS

In addition to the regulations referenced in previous sections of this addendum, the borrower is also bound to the provisions of the Loan Documents. The Loan Documents are created by OHCS and may not be altered without the knowledge and approval of the Department. These documents are:

**Regulatory Agreement** – The use restrictions for the Risk-Sharing Program are incorporated into a recorded regulatory agreement, which is in the real estate records of the county in which the project is located. It contains conditions that run with the “Qualified Project Period” that must be adhered to regardless of whether a loan is in place or not.

**Loan Agreement** – The Loan Agreement contains covenants that run with the term of the loan. It also contains project use restrictions and outlines reporting requirements and other controls that OHCS has incorporated to protect the interest of the bondholders and ensure that project operations are within the control of the Department.

**Trust Deed** – The trust deed is the document that secures the obligation of the real property for the loan. It contains the provisions outlining the requirements of the obligation and what constitutes a default and OHCS remedies for the same.

**Trust Deed Note** – The “Note” as it is more commonly called, contains the Borrower’s promise to pay the loan back to OHCS along with the amount of the loan and the interest rate and term (number of years).

**Management Agreement** – This agreement between the owner and the management agent contains provisions outlining the requirements relative to management of the project, including occupancy requirements and restrictions, reporting requirements, use of project funds, maintenance of the physical structure, management fee and term of the agreement, etc. All other management agreements signed between the owner and the agent are subordinate to this document.

### **LOW-INCOME ELECTION AND RENTAL SET-ASIDE REQUIREMENTS**

The terms of affordability must be maintained for the Qualified Project Period. Developers must initially elect one of two minimum set-aside requirements in order to meet IRS and OHCS’s affordability requirements and qualify for the allocation of federal tax credits and/or tax-exempt bond financing. These requirements include both income and rent level restrictions, as described below:

#### **Income**

##### **The 40/60 Election:**

- A minimum of 40% of the units in each Risk-Sharing project must be “set-aside” (rented) to households whose gross annual income (adjusted for family size) does not exceed 60% of area median income.

### **The 20/50 Election:**

- A minimum of 20% of the units in each Risk-Sharing project must be “set-aside” (rented) to households whose gross annual income (adjusted for family size) does not exceed 50% of area median income.

These elections are the minimum required by the Code. **Once made initially they are irrevocable.** Actual compliance monitoring will be based upon the most restrictive representations made by the owner in the application or Loan Documents.

The Department may negotiate with the Borrower additional income requirements that will be outlined in the Loan Documents, which incorporate by reference, the loan commitment and are further specified in the State Housing Council Loan Approval. These requirements may be different from project to project, depending on the bond series that funded the project and state regulations (which typically do not retroactively affect existing project requirements.) The Borrower shall be responsible for ensuring that these requirements are met during the term of the Qualified Project Period.

### **Rents**

HUD has established in CFR 266.5 restricted rent levels for “set-aside” units as follows:

- “A residential unit is rent-restricted if the gross rent with respect to such unit does not exceed 30 percent of the imputed income limitation applicable to such unit.” OHCS calculates the maximum Risk-Sharing rent annually based on income limits published by HUD.

Rents shall not exceed the most restrictive funding source limitations.

#### **60% Rents**

- Rents must not exceed the maximum annual OHCS published 60% rents. These rents are calculated to be affordable to households making up to 60% of area median income. Tenant rent (the rent the tenant actually pays) must include a deduction for any utilities they pay.

#### **50% Rents**

- Rents must not exceed the maximum annual OHCS published 50% rents. These rents are calculated to be affordable to households making up to 50% of area median income. Tenant rent (the rent the tenant actually pays) must include a deduction for any utilities they pay

Changes to rental rates must be approved by this agency. Owners must submit requests for a rent adjustment at least 60 days prior to the proposed implementation date. The request must include the following:

1. Current rental rates
2. Proposed rental rates by unit, not as a percentage of the current rates.

Upon receipt of a complete package the PAES Compliance Officer will process the request.

As long as rents for apartment units in the Project do not exceed the annual published rents from HUD and are consistent with the terms of the Regulatory Agreement, OHCS will not unreasonably withhold approval to the rental rates set by the Borrower. For projects with housing tax credits, the proposed rental rates will be compared to the maximum allowable tax credit rents.

## **PROJECT ACCOUNTS**

**Operating Income and Expense Account** – Prior to or on the closing date as required by OHCS, the borrower shall establish and maintain a Project Operating Income and Expense Account with a depository approved by OHCS. All operating income shall be immediately deposited in the account, and the borrower shall promptly pay all operating expenses out of this account. No other use of the Operating Income and Expense Account deposits may be made by the borrower without prior written approval by the Department.

**Security Deposit Account** – The borrower shall segregate and hold all resident security deposits in an interest-bearing account as allowed by law. The balance of this account must at all times be equal to the total amount collected from the tenants plus any accrued interest. All prorated interest on this account shall be payable to the tenants if the security deposit is returned to them or as otherwise provided by law.

**Contingency Escrow** – As required by OHCS, the borrower may place on deposit, as specified at closing, an amount of money, to be determined by OHCS and to be used to handle specific problems that may arise after closing. Such funds may be applied by the Department in its sole discretion as outlined in the Loan Documents. The conditions for release of any unused funds (the time periods and percentages of release) are outlined in the Loan Documents.

**Surplus Cash** – Borrowers are entitled to distributions from the project operating account only at the end of each fiscal year of project operation and only after all operating expenses, including loan payments, have been paid, or funds have been set aside for payment, and all reserve requirements have been met. Before each distribution is made, OHCS shall have received the project's audited financial statements, and the borrower shall have obtained written approval from OHCS authorizing the distribution.

**Replacement Reserve** – The borrower shall deposit on a monthly basis an amount as specified at closing into a Replacement Reserve account. This account is primarily used to pay for capital replacements not typically budgeted from the operating income of the projects. Approved uses are detailed in Exhibit D.

## **COMPLIANCE MONITORING PROCEDURES**

### **GENERAL**

In compliance with the Regulatory Agreement, borrowers agree to follow a set of requirements designed to assure the project provides affordable housing to lower income persons or households. OHCS compliance staff will check the project's occupancy status periodically, but at least annually, to assess whether or not the borrower is complying with these requirements. If the borrower fails to follow the required procedures, OHCS may take enforcement actions to compel the borrower to bring the project into compliance.

### **COMPLIANCE TRAINING WORKSHOPS**

OHCS will provide periodic training as time allows. Announcements of training will either be mailed directly to owners/agents or posted on the agency website.

### **OHCS TENANT FILE REVIEWS AND ON-SITE INSPECTIONS**

On-site reviews are an integral part of OHCS' monitoring activities. On-site reviews should be considered an extension of OHCS' efforts to ensure the mortgage remains adequately secured and that programs are administered as intended, as well as to ensure fraud, waste and mismanagement do not exist. On-site reviews can also provide documentation to support enforcement actions, which may become necessary when borrowers or agents will not voluntarily implement corrective actions.

On-site reviews of Risk-Sharing projects are performed similarly to LIHTC inspections and audits. The key differences are discussed below.

#### **Management Reviews**

Management reviews focus primarily on policies and procedures. The review evaluates the adequacy of both the procedures for carrying out day-to-day activities, such as leasing and maintenance, and procedures for directing and overseeing project operations. Management reviews must consider, among other things, all of the management tasks listed in the Management Review Summary Sheet (Exhibit E) and information gathered from the tenant file reviews, physical inspection reports, unit inspections, and on-site visits.

#### **Annual Financial Statements**

Audited financial statements of the project's operations are submitted by the borrower annually and are reviewed by OHCS with a focus on the project's financial health and its compliance with the Loan Documents. If the Department determines the financial integrity of the project is in jeopardy, or that the project is out of compliance in some area, OHCS may withhold approval of distribution of surplus cash until the project is back into compliance.

#### **Annual and Semi-Annual Budget Reports**

Each year projects are required to submit an annual operating budget of projected income and expenses followed at 6 months by a semi-annual report of actual income and expenses. This semi-annual report allows OHCS to compare budget to actual expenses.

## **Frequency of On-Site Inspections**

On-site inspections will be conducted annually. The number of units may vary from year to year at the discretion of the Compliance Officer assigned to the project. OHCS uses the Uniform Physical Inspection Standards (UPCS) for all asset management inspections. The review at all projects will consist of an inspection of a minimum of 20% of the units and grounds and an audit of a minimum of 20% of the low-income tenant records.

**An additional inspection will be conducted as required by HUD.** This inspection is completed using the Real Estate Assessment Center (REAC) computer protocol and the UPCS inspection standards. REAC must inspect Risk-Sharing projects at least every 3 years and more often if projects achieve low scores.

## QUALIFYING TENANTS

Projects that have some units that are not allocated credits should refer to their Loan Documents to ascertain the income and rent guidelines to follow. **The following rules apply to all Risk-Sharing units:**

### GENERAL

#### **Selection of Tenants**

- The project owner will not utilize any criteria or methods which discriminate by race, national origin, familial status, religion, color, disability, or by age of occupant (except in elderly facilities) or by reason of the sex of the household head, or by reason of the availability of subsidies to such households. Tenant will be selected on a first-come first-serve basis.

#### **Income Eligibility**

- Federal Regulations for tax-exempt bond financed projects state that determination of annual income of individuals must be made in a manner consistent with HUD Section 8 income definitions and guidelines. OHCS uses HUD Handbook 4350.3 “Occupancy Requirements of Subsidized Multifamily Housing Program” as the guide for determining income and assets for the Risk-Sharing Program. A hard copy of the Handbook may be obtained from HUD by calling 1-800-767-7468, faxing a request to 1-202-708-2313, or through HUD’s website: [www.huduser.com](http://www.huduser.com).

#### **Annual Income Certification**

- If the household income of a set-aside unit’s tenant(s) increases above 140% of the applicable income limit and the tenant(s) initially met the qualifying income requirements, the unit may continue to be counted as a qualifying unit as long as the unit continues to be rent restricted as set forth in **Maximum Rent Limits** below and the next available unit of comparable or smaller size is rented to a qualified low-income tenant(s).

#### **Student Status**

- Federal regulations for tax-exempt bond financed projects prohibit the renting of set-aside units to households composed entirely of full-time students. Please refer to the 2009 OHCS LIHTC manual for the student definition.

#### **Transfer Policy**

- Residents who transfer from one unit to another must be re-qualified. All application, certification, and verification procedures must be completed for the transferring tenant(s), including the execution of new income and asset verifications to determine continued eligibility for a Risk Share unit.

#### **Procedures and Methods for Qualifying Tenants**

- Please refer to Chapter 5 of the OHCS 2009 LIHTC manual, pages 5-2 through 5-17, for instructions on qualifying tenants. In addition, a list of all required and recommended compliance forms can be found in Chapter 4, pages 4-4 through 4-5

## **OTHER RISK-SHARING REQUIREMENTS**

### **AFFIRMATIVE FAIR HOUSING MARKETING PLAN**

The Affirmative Fair Housing Marketing Plan (Exhibit H) must be submitted to OHCS prior to closing and approved by OHCS prior to lease-up of the project. The purpose of the plan is to reach the potential applicants who might be least likely to apply for the housing absent any outreach efforts.

#### **Plan Requirements**

The plan requirements include:

- A copy of the plan must be posted conspicuously at the site leasing office or other conspicuous public place if there is no site office.
- Qualifications for acceptance into the Risk-Sharing Program must be made known through continuous communication (verbal and written) with appropriate local agencies identified by the borrower in the plan.
- Fliers that are informative, descriptive and contain the Equal Housing Opportunity logo should be created and posted at various sites within the project neighborhood, such as:
  - Neighborhood bulletin boards
  - Churches
  - Social services offices
  - Employment department
  - Laundromats
- The Affirmative Fair Housing Marketing Plan file will be properly maintained and must include the following:
  - Copies of all newspaper advertisements related to availability of units
  - Copies of all written correspondence to the agencies identified by the borrower in the plan.
  - Notations of verbal contact indicating the date, time of day, name of person contacted, and nature of the conversation.
  - Documentation of all efforts to rent units to those most likely to readily apply for occupancy (minorities for that geographical area, elderly, handicapped, disabled, disadvantaged, etc.)
  - Copies of all advertisements in minority newspapers and other minority media.
- The Affirmative Fair Housing Marketing Plan should be updated every five years and submitted to the Compliance Officer assigned to the project for approval. OHCS will retain a copy to be included in the Department's project file.

### **MANAGEMENT AGENT REVIEW**

#### **Purpose and Scope**

The purpose of the management agent review function is to determine the acceptability of the proposed management agent and the proposed procedures for managing the project's operations. It will be conducted by or under the direction of the staff of the Program Analysis and Enforcement Section (PAES) of OHCS, who will review the exhibits and forms submitted by the borrower and/or developer.

## **Acceptability of Proposed Management Agent**

OHCS will determine whether the proposed management agent is qualified to manage the project under consideration. The nature of the development and the agent's abilities and past performance in managing comparable developments shall be considered during this analysis. This same process will be used for the initial proposed management agent and for any subsequent proposed changes in management agents. All management agents must have OHCS approval before the Borrower will be allowed to proceed. Evaluation of the qualifications of the management agent will include:

- **Review of Previous Participation:** The management agent must submit the HUD Form 2530 (Exhibit F - Previous Participation Certification) with the application. HUD and OHCS must review and approve this document.
- **Review of Management Agent:** The management agent must submit their qualifications and plan (Exhibit G) at the time of application. OHCS will review the HUD Form 2530, their qualifications, and OHCS records to determine if the management agent has attained, or can be expected to attain, an acceptable record of effectively managing comparable developments. The management agent must demonstrate a capacity to provide effective management procedures and support services. If the proposed management agent has a history of managing OHCS monitored property this will be taken into consideration.
- **Notification Procedures:** Upon OHCS's acceptance of the management agent and management fee, written approval will be documented in OHCS's files and the borrower or developer notified. OHCS will prepare the Management Agreement for original signatures. If the decision is negative, the borrower or developer must select another management agent.

## **ANNUAL AUDITED STATEMENTS REVIEW**

As part of the review process for the distribution of allowable surplus cash, audited financial statements are to be submitted annually within 90 days of year-end. The required format is described in detail in the *Audit Guide for Bond Financed Projects including Risk Sharing Loan Program and Elderly/Disabled Housing* (the Guide) published by OHCS. This guide can be obtained from our website at [www.ohcs.oregon.gov](http://www.ohcs.oregon.gov).

### **Audited Financial Statements Package**

In addition to the required financial statements and notes, the audited financial statements package as described in the Guide must include a surplus cash computation, reports on internal controls and compliance, and a Certification of Borrower to be signed by an owner, or the Management Agent, if authorized to do so.

### **Authorized Distributions of Surplus Cash**

Upon receipt of written authorization from OHCS, surplus cash may be distributed to the owners annually. Any distribution of project income or assets without prior OHCS written approval will be considered an unauthorized distribution and will be deemed held in constructive trust for the benefit of OHCS. This would include fees paid to owners and Partners (with the exception of the OHCS approved Management Agent's fee), and reserves placed into Partnership deposit accounts (with the exception of OHCS required Replacement Reserves). Unless approved by OHCS as an operating expense, Management Services Fees, Incentive Management Fees, Investor Services Fees, Social Services Fees, Asset Management Fees, Management Advisory Fees, Partnership Management Fees and similar fees paid to Partners and owners may be accrued

and paid from available surplus cash only, and only after written authorization based on the annual review has been received.

### **Controlling Documents**

If any provision of the Owner's Articles of Organization, Operating Agreement, Partnership Agreement, or other organizational documents, or any later amendment to those documents, conflicts with the terms of the project Loan Documents, the provisions of the project Loan Documents will prevail.