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# The Credential



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## ■ Compliance Monitoring Versus Asset Management – What Is the Difference?

by *Melanie Shapiro, HCCP*

This has been a most unusual year in the tax credit industry. Given the state of the economy and the difficulty in securing traditional investors in the low income housing tax credit (LIHTC) program, Congress enacted the Tax Credit Assistance (TCAP) and Credit Exchange programs through the American Recovery and Reinvestment Act of 2009 to provide necessary gap financing resources to stalled LIHTC projects. This gap financing will allow many LIHTC projects to go forward even if no traditional investor or syndicator can be found. By utilizing the TCAP and Exchange funds, the state housing finance agency (HFA) will essentially become the investor. If there is no other investor in the deal, the HFA is required to take on the asset management function that the investor would normally handle, or contract for performance of these asset management services. But HFAs already conduct compliance monitoring. So, just what is the difference between these two roles?

Although there are many similarities between compliance monitoring and asset management, and many of the activities are the same, the two roles have very different purposes, a different scope of responsibility and a different duty of reporting. The role of compliance monitoring is to insure that the government's goals for the housing are met. These goals include providing decent, safe housing to eligible applicants at an affordable rent in a non-discriminatory manner.

The primary purpose of an asset manager is to insure that the investor's goals – both short-term and long-term – are met. These goals include ensuring that the property (investment) performs as anticipated. So, while the investor's goals include the idea of providing decent, safe housing to eligible applicants at an affordable rent, the investor's goals also include ensuring the long-term viability of the property. Because of this focus on the long-term viability of the property, asset management is concerned not only with providing decent housing for eligible applicants, but also with the efficiency and effectiveness of the operations of the property so that it operates as intended and retains its value over time.

For example, both compliance monitors and asset managers will review the rents being charged to ensure that the rent is not above the maximum allowable rent under the LIHTC program. However, the asset manager will also be concerned with whether the rent is adequate to cover expenses at the property. The asset manager will be reviewing the rents not only from a regulatory compliance position, but also as to what is necessary for the operation of the property and what is achievable in the market.

Both compliance monitors and asset managers will conduct physical inspections and review tenant income certifications. But asset managers also will be very involved in reviewing the financial health of the property – again, to ensure the long-term viability of the project. Asset managers are likely to review financial reports at least quarterly, review the annual budget and the audit for the property, and to monitor occupancy very closely. In reviewing these reports, asset managers determine whether income and expenses are on track to allow the property to at least break even and to maintain the property in good physical condition.

Typically, compliance monitors and asset managers have a different duty of reporting as well.

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Compliance monitors are required to report any noncompliance to both the owner of the property and to the IRS, while the asset manager is only required to report findings to the owner. Once compliance monitors have reported any findings, they are generally not involved with the planning and implementation of any corrections to the noncompliance. Asset managers frequently take a more active role in working with the owner and property manager to ensure that the property fixes the specific instance of noncompliance and implements policies and procedures to prevent future noncompliance.

Asset management conducted on behalf of state finance agencies may be a little different than asset management performed on behalf of a traditional investor. Normally, investors are interested in specific dollar amounts of tax credits to be delivered, especially during the first year. But, since there aren't really any credits being earned with an Exchange deal, HFAs won't have lease up goals that are tied to earning credits. HFAs may have goals to ensure the benefit of affordable housing gets delivered to the public as soon as possible, but these goals won't be driven by credit delivery. Traditional investors are also interested in passive losses that are generated by the property. HFAs won't be interested in those losses, and they probably will be more focused on simply ensuring that the property has adequate cash flow to maintain the property. The traditional investor may also have specific goals for money to be earned when the property is disposed of at year 15. State housing finance agencies are more likely to have long-term goals of being able to provide good quality affordable housing throughout the compliance period.

As the industry begins to encounter asset managers engaged on behalf of HFAs, it will be interesting to see the different perspective these new "investors" bring to the deal.

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