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Monitoring and Documenting Compliance

27% of the test 20-21 Items

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State Agency Monitoring

- The State Agencies are responsible for monitoring compliance
- They monitor from the placed in service date all the way through the extended use period
- The IRS gives the State Agencies the liberty to impose more stringent requirements

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Program Data Reporting

- HERA requires every State to provide tax credit household data to HUD annually on:
 - Race
 - Ethnicity
 - Age
 - Family composition
 - Income
 - Rental assistance status
 - Disability status, and
 - Monthly rental payments

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Monthly Reporting

- Most states have a web based system to enter household data
- Some states require copies of the resident files or TICs

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Owner's Certification of Program Compliance

- Owners are **required** by the IRS to submit a document affirming that they are in compliance with program regulations to the **State Agency**.
- The report is called the "Owner's Certificate of Continuing Program Compliance"

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Owner's Certification of Program Compliance

- Some of the items the Owner **must** certify compliance in:
 - All tenant facilities included in the eligible basis were provided on a comparable basis without charge to all tenants in the buildings
 - Reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size
 - NAU was followed
 - Applicant holds a voucher or certificate
 - If applicable its nonprofit entity materially participated in the operation of the project

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Owner's Certification of Program Compliance

- Some of the items the Owner **must** certify compliance in:
 - There has been no change in the ownership or management of the project
 - **For Properties Placed In Service prior to July 30, 2008:** For this compliance period, was the project a recipient of a federal grant or other form of federal subsidy (that would cause a reduction in eligible basis)?

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Owner's Certification of Program Compliance

- Some of the items the Owner **must** certify compliance in:
 - Tax Credit Owner's Utility Certification
 - All residents listed in the compliance report were eligible households
 - The project is fully compliant with all terms and provisions of the Restrictive Covenants Agreement
 - Low-income levels
 - Project meets the minimum requirements
 - **No change in the applicable fraction**

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Owner's Certification of Program Compliance

- Some of the items the Owner **must** certify compliance in:
 - Received Tenant Income Certification from each low-income resident
 - Each low income unit in the project has been rent-restricted
 - All low income units in the project are and have been for use by the general public and used on a non-transient basis

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Owner's Certification of Program Compliance

- Some of the items the Owner **must** certify compliance in:
 - No finding of discrimination under the Fair Housing Act
 - Each building in the project is and has been suitable for occupancy
 - There has been no change in the eligible basis

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Review Schedule

Once every 3 years UNLESS...

- Non-compliance
- Change in owner
- Change in management



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What Might You Be Asked To Provide On Or Before the Review?

- Current Rent Roll showing rents charged to LIHTC units (before);
- Regulatory Agreement/LURA
- Copies of original 8609's, signed and executed by the owner and schedules A and forms 8586 for all years under review;
- Utility allowance documentation for years under review;
- Listing of all LIHTC units, organized by BIN;
- Resident Files; and
- Management Forms Packet (If the monitor is unfamiliar with your company)

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State Agency On-site Reviews

- Items reviewed:
 - 140% NAU rule & Vacant Unit rule
 - Rent Rolls to determine rents, UA and other charges
 - Compliance with the LURA
 - Utility allowance documentation
 - Advertising
 - File retention policies

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LIHC Reviews

- What is Reviewed?
 - Policies and Procedures
 - Affirmative Fair Housing & Fair Housing Posters
 - Advertising
 - Rent Roll – Resident Charges
 - Reserve Accounts
 - Training Activities
 - Waiting List Policies

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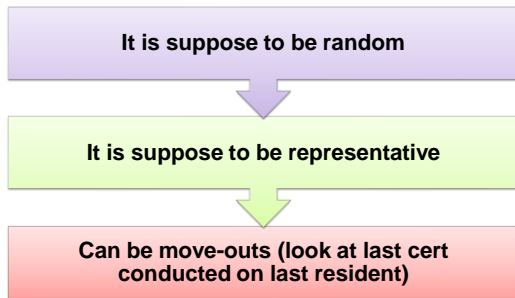
LIHC Reviews

- What is Reviewed?
 - Utility Allowance Documentation
 - Lead Based Paint Requirements
 - Compliance with the Next Available Unit Rule
 - Good Cause Eviction Compliance

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Audits

See 8823 Guide 3-2 and 3-3



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State Agency On-site Reviews

- Treas. Reg. §1.42-5(c)(2)(ii)(A) requires state agencies to conduct on-site inspections of all buildings in the project, and for at **least 20 percent** of the low-income units, inspect the units and review the certifications, the documentation supporting the certifications, and the rent records for the tenants in those units, **by the end of the second calendar year following the year the last building is placed in service**

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State Agency On-site Reviews

- State Agencies can use a 3rd party to perform on-site reviews
 - However, third parties are **not allowed** to report non-compliance to the IRS (cannot file IRS Form 8823)

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State Agency On-site Reviews

- The compliance monitoring regulations under Treas. Reg. §1.42-5 establish the minimum monitoring requirements
- State Agencies can determine how documents are maintained and may mandate the use of standardized forms to document an owner’s compliance with the requirements under Treas. Reg. §1.42-5

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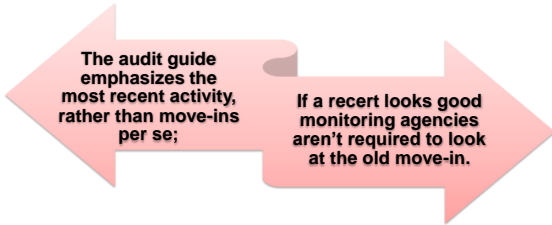


State Agency On-site Reviews

- All other reviews will be conducted at least once every three years.
- The minimum number of low-income units for which an Agency must conduct on-site inspections and low-income certification review is the lesser of (1) or (2) below—
- (1) 20% of the low-income units in the low-income housing project, rounded up to the nearest whole number of units, or
- (2) the Minimum Unit Sample Size set forth in the following Low Income Housing Credit Minimum Unit Sample Size Reference Chart

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Does The Audit Guide Focus on Move-ins or Recerts?



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Physical Inspections

- 20% of the LIHTC units on the property
 - No longer looking at the same units as files reviewed
- State Agency is required to use either:
 - Uniform Physical Condition Standards (UPCS) or
 - **Local health, safety and building codes**
 - But **not both** and must identify protocol in the QAP

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Physical Inspections

- Items reviewed
 - Common areas
 - Site/grounds
 - Emergency lighting
 - Building exteriors
 - Building systems
 - Individual units

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On-site Review Tips

- Have staff available to assist inspectors
- Ensure all smoke detectors are operable
- Regularly self-audit files
- Maintain neat easy to audit files

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Understand the Requirements

- What are the acceptable forms of verifications?
- What should appear on those verifications?
- Checklists?

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Interview Process

- Hold an interview with the applicant(s)
- Ask questions about household composition, whether or not they have any of the **income** sources or **assets** listed in the HUD Handbook as income or asset inclusions
- Clarify any contradicting or missing information
- Have the applicant(s) sign release forms

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Chapter 5

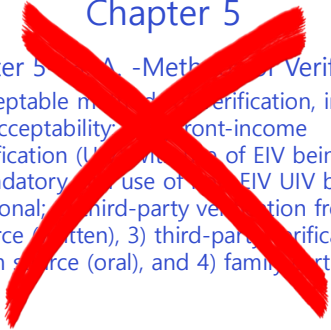
- Chapter 5-13 Methods of Verification
 - One of the biggest changes in the newest release (change 4)
 - The IRS States, "The state housing agencies can require taxpayers to obtain specific documentation of income based on local practices and circumstances. Taxpayers are advised to consult with the state housing agency regarding documentation requirements for income certifications."

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Chapter 5

- Chapter 5-13 A -Methods of Verification
 - Acceptable methods of verification, in order of acceptability: 1) front-income verification (UIV), 2) use of EIV being mandatory, 3) use of EIV UIV being optional; 4) third-party verification from source (written), 5) third-party verification from source (oral), and 6) family certification.



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Electronic Verification

- Verifications may be obtained from a third-party and will be considered a written verification as long as adequate effort is made to ensure that the sender is indeed a valid third party source.
- Electronic verification sources are:
 - Facsimile
 - Email
 - Internet

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Documenting Why Third-Party Verification Is Not Available

When third-party verification is not available, you must document in the file the efforts made to obtain the required 3rd party verification and the reason the verification was not obtained by:

- A written note to the file explaining why third-party verification is not possible
- A copy of the date-stamped original request that was sent to the third party
- Written notes or documentation indicating follow-up efforts to reach the third party to obtain verification
- Written notes to the file indicating how long the request has been outstanding without a response from the third party.



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Effective Term of Verification

- Information that is not subject to change, such as age, need only be verified one time
- Verifications that are subject to change are valid for 120-days from the certification date
- Once the 120-days has expired, new verifications must be obtained

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Method of Verification

- **First-hand Verification:**
 - Notarized statements or signed affidavits by applicant
 - Self-employed income, **unemployed status**, **zero income**, recurring gifts, cash NOT held in a Bank Account.



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Affidavit of Non-Employed Status

UNEMPLOYED STATUS AFFIDAVIT

SECTION 1

SECTION 2

SECTION 3

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Methods of Verification

- Original tenant provided documents **must** be returned to tenant to paragraph 5-18,D.



4350.3 Change 4 Page 5-61

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IRS Form 8609

- One for each building in the development
 - Indicates the **final Tax Credit allocation** and **the minimum set aside election**
- Two-part form
 - Part 1 completed by the State Allocating Agency when credits are issued
 - Part 2 completed by the owner when credits are claimed

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8609 Low-Income Housing Credit Allocation and Certification

Part 1 Allocation of Credit

1a. Date of allocation: []

1b. Maximum applicable credit percentage allowable (see instructions): []

1c. Maximum housing credit dollar amount allowable: []

1d. Date building placed in service: []

1e. Date building placed in service: []

1f. Date building placed in service: []

1g. Date building placed in service: []

1h. Date building placed in service: []

1i. Date building placed in service: []

1j. Date building placed in service: []

1k. Date building placed in service: []

1l. Date building placed in service: []

1m. Date building placed in service: []

1n. Date building placed in service: []

1o. Date building placed in service: []

1p. Date building placed in service: []

1q. Date building placed in service: []

1r. Date building placed in service: []

1s. Date building placed in service: []

1t. Date building placed in service: []

1u. Date building placed in service: []

1v. Date building placed in service: []

1w. Date building placed in service: []

1x. Date building placed in service: []

1y. Date building placed in service: []

1z. Date building placed in service: []

2a. Original qualified basis of the building of those of that year of credit period: []

2b. Date you started the building as part of a multiple building project for purposes of section 45: []

2c. Do you have any other building units available to you in the building, or are you planning to build additional units, that are subject to the same credit period as the building units described in 2a? []

2d. Do you have any other building units available to you in the building, or are you planning to build additional units, that are subject to the same credit period as the building units described in 2a? []

2e. Do you have any other building units available to you in the building, or are you planning to build additional units, that are subject to the same credit period as the building units described in 2a? []

2f. Do you have any other building units available to you in the building, or are you planning to build additional units, that are subject to the same credit period as the building units described in 2a? []

2g. Do you have any other building units available to you in the building, or are you planning to build additional units, that are subject to the same credit period as the building units described in 2a? []

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2i. Do you have any other building units available to you in the building, or are you planning to build additional units, that are subject to the same credit period as the building units described in 2a? []

2j. Do you have any other building units available to you in the building, or are you planning to build additional units, that are subject to the same credit period as the building units described in 2a? []

2k. Do you have any other building units available to you in the building, or are you planning to build additional units, that are subject to the same credit period as the building units described in 2a? []

2l. Do you have any other building units available to you in the building, or are you planning to build additional units, that are subject to the same credit period as the building units described in 2a? []

2m. Do you have any other building units available to you in the building, or are you planning to build additional units, that are subject to the same credit period as the building units described in 2a? []

2n. Do you have any other building units available to you in the building, or are you planning to build additional units, that are subject to the same credit period as the building units described in 2a? []

2o. Do you have any other building units available to you in the building, or are you planning to build additional units, that are subject to the same credit period as the building units described in 2a? []

2p. Do you have any other building units available to you in the building, or are you planning to build additional units, that are subject to the same credit period as the building units described in 2a? []

2q. Do you have any other building units available to you in the building, or are you planning to build additional units, that are subject to the same credit period as the building units described in 2a? []

2r. Do you have any other building units available to you in the building, or are you planning to build additional units, that are subject to the same credit period as the building units described in 2a? []

2s. Do you have any other building units available to you in the building, or are you planning to build additional units, that are subject to the same credit period as the building units described in 2a? []

2t. Do you have any other building units available to you in the building, or are you planning to build additional units, that are subject to the same credit period as the building units described in 2a? []

2u. Do you have any other building units available to you in the building, or are you planning to build additional units, that are subject to the same credit period as the building units described in 2a? []

2v. Do you have any other building units available to you in the building, or are you planning to build additional units, that are subject to the same credit period as the building units described in 2a? []

2w. Do you have any other building units available to you in the building, or are you planning to build additional units, that are subject to the same credit period as the building units described in 2a? []

2x. Do you have any other building units available to you in the building, or are you planning to build additional units, that are subject to the same credit period as the building units described in 2a? []

2y. Do you have any other building units available to you in the building, or are you planning to build additional units, that are subject to the same credit period as the building units described in 2a? []

2z. Do you have any other building units available to you in the building, or are you planning to build additional units, that are subject to the same credit period as the building units described in 2a? []

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Review Reports

- The State Agency will send a report to the Owner generally within 30-days
- The Owner should submit the results of the file audit to the Syndicator to provide evidence of appropriate compliance activities

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File Review Tips

❖Pointers

- Do not use white-out on any file paperwork
- When making corrections both management and the resident must initial and date the change
- Paperwork should be filed in a consistent manor in each file. A file checklist will help with this
- Your files should tell the whole story

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File Review Tips

- If you have a mixed use property, use different colored file folders for LIHC files
- Have multi-part files
- Separate each year with a colored piece of paper
- Always keep the initial certification and the initial lease in the file
- **OH Yeah, AND DO NOT USE WHITE-OUT!**

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LIHC File Set-Up

- Four Part File
 - Application and household eligibility
 - Lease, Addendums, Security Deposit Documents
 - Move-in Certification
 - Recertifications



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LIHC File Set-Up

- Six Part File
 - Application and Household Eligibility
 - Lease, Addendums, Security Deposit
 - Move-in Certification
 - Recertifications
 - Resident Notices
 - Inspections



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- SECTION 4. Recertifications (TOP TO BOTTOM)**
 Most current Year on Top and Separate Each Year with a Colored Piece of Paper
- ____ Signed Tenant Income Certification (TIC) Form
 - ____ Exhibit L - Annual Demographics Form
 - ____ Certification Questionnaire (First Recertification)
 - ____ Self-Certification Questionnaire (All Subsequent Recertifications)
 - ____ Student Status
 - ____ Certification of Student Status
 - ____ Public Housing Authority Statement Of Income and Assistance
 - ____ Unemployed Resident Affidavit
 - ____ Tax Returns
 - ____ Zero/Extremely Low-Income Household Questionnaire
 - ____ 3rd Party Income Verifications
 - ____ Calculation Sheets and Clarification Records
 - ____ Verification of Employment
 - ____ Verification of Social Security/VA Benefits
 - ____ TANF
 - ____ Verification of Household Assistance
 - ____ CAP or Pension IRA Rollover Acct. (Periodic payments)
 - ____ Verification of Unemployment Benefits
 - ____ Verification of Workman's Compensation Benefits
 - ____ Other Income
 - ____ Certification of Self-Employment
 - ____ Tax Return Schedule C
 - ____ Profit and Loss Statement
 - ____ Child Support
 - ____ Verification of Child Support
 - ____ Child Support Affidavit
 - ____ Asset Verifications Under \$5,000
 - ____ Resident Statement of Assets Under \$5,000
 - ____ Asset Verifications Over \$5,000 3rd Party Verifications
 - ____ Bank Account Verifications
 - ____ Retirement Pension
 - ____ Life Insurance
 - ____ Stocks/Bonds/Investments
 - ____ Real Estate of Rental Property
 - ____ Trusts
 - ____ Assets Disposed of for Less Than Fair Market Value
 - ____ Other Assets
 - ____ Recertification Notice
- YEAR: _____



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Non-compliance

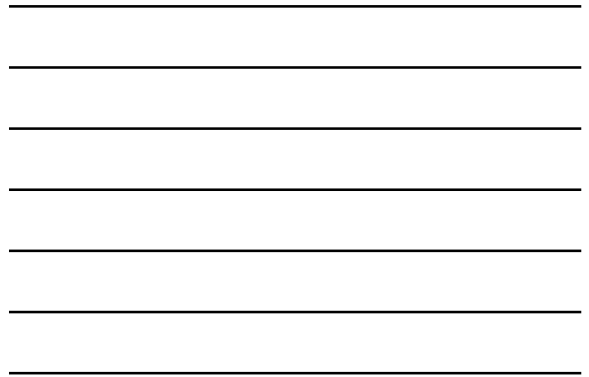
- If non-compliance is discovered the following timelines must be followed
 - The owner has a **maximum of 90-days** to provide clarification or correction of the non-compliance to the state agency
 - The State Agency may offer a one-time extension to the owner of 6-months
 - Each state has their own timelines; therefore, check with your state on compliance timelines

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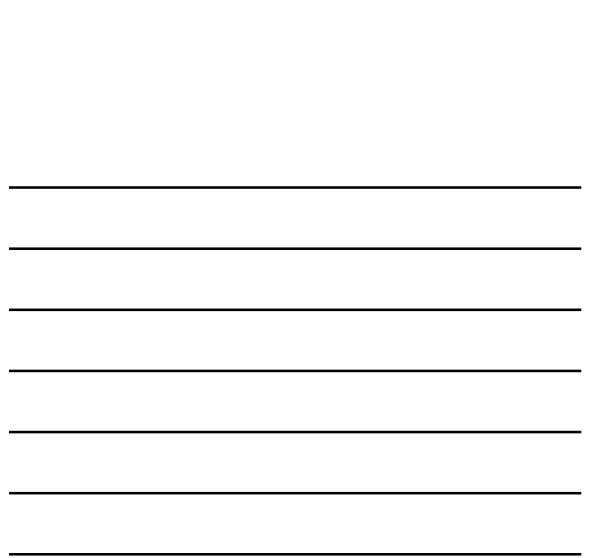


Non-compliance

- If the owner does not respond or remains out of compliance the State Agency has **45-days** from the end of the **correction period** to file an 8823 (report of non-compliance) with the IRS



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8823 Guide

- Was developed by the IRS with input from NCSHA and 10 State Agencies
- Developed to help with the inconsistencies in monitoring
- Is to be used as a "guide" and not cited as a "legal authority"
- State Agencies are not required to adopt the definitions of non-compliance in the Guide



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8823 Guide

- In January 2007 the IRS released its *Guide for Completing Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition* (8823 Guide), updated in January 2011.
- The 8823 Guide was not intended to change any Section 42 rules or policies, but to provide definitions of what IRS considers "in compliance", "out of compliance" and "back in compliance"

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8823 Guide

Household Income Above Income Limit upon Initial Occupancy

"This category is used to report units that have been rented to households with incomes that do not meet income eligibility restrictions."

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Back in Compliance

"Units are back in compliance when it is determined that an income-qualified household occupies the unit.

Evidence of corrected noncompliance includes copies of certification paperwork such as the tenant's application, income and asset questionnaire, third party verifications, and tenant income certification."

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8823 Guide

Owner Failed to Correctly Complete or Document Tenant's Annual Income Recertification

"Under Treas. Reg. §1.42-5(b)(1)(vi), owners are required to complete an annual income certification for each low-income household. The recertification process is identical to the initial certification in terms of documenting household composition, income, and income from assets. State agencies are required to review the tenant income recertifications and the supporting documentation for the tenants in the units. Therefore, the state agency should be reviewing the most recent income recertification."

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Back in Compliance

"Owners may use the following methods to self-correct noncompliance. Evidence of corrected noncompliance may include a copy of the full recertification, including application, verifications, and/or tenant income recertification. Owners must submit copies of the documents required by the monitoring agency.

1. A recertification can be performed using current income and asset sources and current income limits.
2. A retroactive recertification can be performed"

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8823 Guide

Violation(s) of the UPCS or Local Inspection Standards

"This category is used to report noncompliance when rental units, building exteriors and systems, common areas, or the property site in a project are not suitable for occupancy. State agencies should assess whether low-income housing tax credit projects are in safe, decent, sanitary condition and in good repair, according to either the **Uniform Physical Conditions Standards¹ (UPCS)** established by HUD², or **local inspection standards**. The standards to be used should be identified in the **Qualified Allocation Plan (QAP)**

- 1. State agencies are not required to use the Real Estate Assessment Center (REAC) protocol in using the UPCS.
- 2. State agencies cannot combine selected portions of the UPCS with portions of local standards; only one inspection standard can be selected and used."

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Back in Compliance

"Property is back in compliance when noted violations are corrected. The correction date is the date of the repair, the date of the inspection at which the repair was observed, or the date of the certification that the repair had occurred; whichever evidenced the correction to the agency's satisfaction.

Acceptable evidence of the corrected violations includes items such as a certification from an appropriate licensed professional that the item now complies with the inspection standard, or other documentation demonstrating that the violation has been corrected. Alternatively, the state agency may determine that the owner is back in compliance by visual inspection."

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Changes in Eligible Basis

"This category is used to report violations associated with the Eligible Basis of a building or any occurrence that result in a decrease in the Applicable Percentage of a building, which is discussed in Chapter 9. This chapter addresses non-compliance affecting the Eligible Basis."

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Back in Compliance

"...Whether the cost of these converted spaces can be restored to Eligible Basis by changing the properties back into common areas or tax credit rental units has not been determined. In these instances, **the state agency should not report the building back in compliance.** Instead, the state agency should contact the IRS National Office LIHC Program Analyst for instructions."

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8823 Guide

Owner Failed to Provide Annual Certification or Provided Incomplete or Inaccurate Certifications

"This category is used to report owners of low-income housing projects who fail to submit annual certifications, or any other required reports and documentation, to the state agency as described in Treas. Reg. §1.42-5(c). Monitoring procedures require certifications (and state agency reviews of the certifications) at least annually for each year of the 15-year compliance period. Monitoring procedures may require certifications (and state agency reviews) more frequently than annually, provided that all months within each 12-month period are subject to certification."

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Back in Compliance

"The owner is considered back in compliance when a perfected annual certification (and any other required documentation) is received by the state agency. Corrections may include submission of the required documentation or answering all the questions. "



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8823 Guide

Changes in the Applicable Percentage

"This category is used to report violations associated with the Eligible Basis of a building (discussed in Chapter 8) or any occurrence that result in a decrease in the Applicable Percentage of a building. This chapter addresses noncompliance affecting the Applicable Percentage of a building."

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Back in Compliance

"In general, a violation of the federal subsidy rules is a noncompliance event that cannot be corrected."



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Project Failed to Meet Minimum Set-Aside Requirement

"This category is used to report projects that have violated the minimum set-aside rule; i.e., the number of qualifying units falls below the minimum requirement. Under IRC §42(g)(1), a "qualified low-income housing project" means any *project* for residential rental property if the project meets one of the two requirements below, whichever is elected by the owner on Form 8609, line 10c.

1. At least 20% of the available rental units in the development are rented to households with incomes not exceeding 50% of Area Median Gross Income(AMGI) adjusted for family size.
2. At least 40% one of the available rental units in the development are rented to households with incomes not exceeding 60% of AMGI adjusted for family size.

The choice of minimum set-aside also establishes the income limit and rent limit applicable to low-income units in the project."

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Back in Compliance

"If a project failed the first year minimum set-aside requirement at the close of the first taxable year of the credit period, the noncompliance **cannot** be corrected and the owner is prohibited from ever claiming the LIHC. The date of noncompliance is the last day of the first taxable year of the credit period for that project. The state agency should issue Form 8823 indicating Category 11f Project failed to meet minimum set aside requirements and Category 11p, Project is no longer in compliance and is no longer participating in the program.

If the minimum set-aside violation occurs *after* the first taxable year of the compliance period, the project is back in compliance for the taxable year in the compliance period in which the minimum set-aside is met, determined as of the close of that taxable year."

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Gross Rent(s) Exceed Tax Credit Limits

"This category is used to report noncompliance with the rent restrictions outlined in IRC §42(g)(2). Items to consider when determining whether the rent is correctly restricted include services provided, revisions to HUD income limits, rent calculation methods, changes in the tenant's income, Section 8 tenants, Rural Housing Service (formerly FmHA) rents, supportive services, and deep rent skewing."

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Back in Compliance

"Once a unit is determined to be out of compliance with the rent limits, the unit ceases to be a low-income unit for the remainder of the owner's tax year. A unit is back in compliance on the first day of the owner's next tax year if the rent charged on a monthly basis does not exceed the limit."

An owner cannot avoid the disallowance of the LIHC by rebating excess rent or fees to the affected tenants."

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Project not Available to the General Public

"As part of the Housing Assistance Act of 2008, IRC §42(g) was amended to add a clarification of the General Public Use requirement. Until further guidance is provided through administrative ruling or regulation, IRS will evaluate an owner's compliance with the General Public Use Rule as explained here."

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Back in Compliance

“Generally, an owner is back in compliance with the general public use requirements when two conditions are met:

1. The owner demonstrates that marketing and rental practices are no longer in violation of the general public use rules.
2. All the units are made available to the general public.”

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Project not Available to the General Public (Notifications of Fair Housing Act)

“State agencies must report the receipt of notices of Fair Housing Act (FHA) administrative and legal action issued by HUD or the Department of Justice to the Internal Revenue Service. Administrative and Legal Actions”

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Back in Compliance

“The IRS is responsible for determining whether the owner is out of compliance for purposes of IRC §42, and the associated out of compliance and back in compliance dates, based on the findings of the court proceeding. The determination will be based on the facts of the individual case.”

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Violations of the Available Unit Rule Under Section 42(g)(2)(D)(ii)

"This category is used to report violations of the Available Unit Rule (AUR)1; i.e., situations where an *initially* qualified household's income subsequently rises above 140 percent (170 percent in deep rent skewed developments) of the current income limit and a household that is not income qualified moves into a unit of comparable or smaller size in the low-income building."

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Back in Compliance

"Once the Available Unit Rule has been triggered, the noncompliance can be corrected by renting any combination of market rate units, over-income units, and out of compliance low-income units as rent restricted units to income-qualified households until the applicable fraction upon which the credit amount is based is restored. The applicable fraction can also be restored if:

1. The tenant's income decreases to an amount below 140 percent of the income limit in place, or
2. The AMGI increases to an amount, such that 140 percent of the income limit is more than the tenant's income.

The date of correction is the date the last household, which restores the applicable fraction, moves into the building or the income of an existing household falls below the current income limit."

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Violation(s) of the Vacant Unit Rule under Reg. 1.42-5(c)(1)(ix)

"This category is used to report violations of the Vacant Unit Rule (VUR); i.e., situations where an owner failed to make reasonable attempts to rent that unit, or the next available unit of comparable or smaller size, before renting units to tenants not having a qualifying income."

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Back in Compliance

"The noncompliance is corrected when if a sufficient number of vacant units in the project are rented to qualified low-income households."



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Low-Income Units Occupied by Nonqualified Full-Time Students

"This category is used to report LIHC units occupied by nonqualified full-time student households. A unit is *not* considered to be occupied by low-income individuals if all the occupants of such unit are full-time students, no one of whom is entitled to file a joint return."

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Back in Compliance

"The unit is back in compliance when is no longer occupied entirely by full-time students or the tenant qualifies under one of the exceptions under IRC §42(i)(3)(D)."

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Owner Did Not Properly Calculate Utility Allowance

"This category is used to report noncompliance with the utility allowance requirements outlined in Treas. Reg. §1.42-10. An allowance for the cost of any utilities, other than telephone, cable television, or Internet, paid directly by the tenant(s) and not by or through the owner of the building is included in the computation of gross rent under IRC §42(g)(2)(B). A separate estimate is computed for each utility and different methods can be used to compute the individual utility allowances. The utility allowance is computed on a building-by building basis. The maximum rent that may be paid by the tenant must be reduced by utility allowance(s) obtained in the following manner."

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Back in Compliance

"A unit is considered back in compliance when the rent charged is reduced and correctly reflects the utility allowance. The date of correction is date that the rents correctly reflect the utility allowance."

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Owner has Failed to Respond to Agency Requests for Monitoring Reviews

"This category is used to report owners of low-income projects that failed to respond to agency requests for monitoring reviews. Under the inspection provision Treas. Reg. §1.42-5, the state agencies must have the right to perform an on-site inspection of any low-income housing project at least through the end of the 15-year compliance period for the buildings in the project. State agencies or their representatives must conduct on-site inspections, inspect units, and review income (re)certifications, supporting documentation, and rent records for the tenants in those units, and otherwise meet the provisions listed in Treas. Reg. §1.42-5(a)(2)(i)(A), (B), (C), and (D)."

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Back in Compliance

"The owner is back in compliance when the agency performs the site visit and/or reviews the tenants' files."



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Low Income Units Used on a Transient Basis

"This category is used to report non-compliance when units have been used on a transient basis. Generally, the length of the initial lease agreement determines whether use is transient. A unit is non-transient if the initial lease term is **6 months or more.**"

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Back in Compliance

"Noncompliance is corrected when a lease with a term of at least six months is executed. The correction date is the effective date of the new lease."



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Project is No Longer in Compliance Nor Participating in the LIHC Program

"This category should be used to notify the Internal Revenue Service that a building is entirely out of compliance and is no longer participating in the program."

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Back in Compliance

"LIHC projects are considered back in compliance in a taxable year when a qualified non-profit organization owns an interest in the project and satisfies the material participation test set forth in IRC §469(h)(1) for that taxable year."

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Other Noncompliance Issue

"This category should be used to report noncompliance only when the noncompliance cannot be associated with any other category."

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Good Cause Evictions

"The owner of an IRC §42 property must be able to demonstrate if challenged in state court that good cause existed to support the eviction or termination of a tenant from a low-income unit. For purposes of IRC §42(h)(6)(E)(ii)(I), good cause is determined by the state and local law applicable to the location in which the IRC §42 property is located."

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Good Cause Eviction

"State or local law examples of good cause evictions may include nonpayment of rent, violations of the lease or rental agreement, destruction or damage to the property, interference with other tenants or creating a nuisance, or using the property for an unlawful purpose."

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Back in Compliance

"Owners are back in compliance with the prohibitions against evictions or terminations of tenancy for other than good cause and increases in the gross rent not permitted under IRC §42 if:

The extended use agreement is in effect and the owner is back in compliance when the extended use agreement is amended to clearly provide for the prohibition against the eviction or termination of tenancy other than for good cause and any increase in the gross rent not otherwise permitted under IRC §42."

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- Miscellaneous Noncompliance Topics
 - Tenant Misrepresentation or Fraud
 - Owner/Taxpayer Fraud

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Fraud

“LHC property owners should demonstrate due diligence to prevent tenant fraud. Fraud includes *deliberate* misrepresentation of fact in order to induce someone else to part with something of value or surrender a legal right. In this case, the outcome of deliberate misrepresentation by a tenant can result in the property owner renting a residential unit to an ineligible tenant at a below market rate.”

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Fraud

- Report any suspected or known deliberate misrepresentation of income to the Internal Revenue Service’s Whistleblower Office.
- Complete Form 211, Application for Award for Original Information, and submit the form to the address identified on the form. The following information should be provided:
 1. tenant’s name,
 2. tenant’s social security number if possible
 3. explain association with LHC program

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Fraud

- 4. what the tenant did that misrepresented their income or documentation (the owner may be asked to provide evidence of the tenant's fraudulent acts)
- 5. amount of tenant income as reported by the tenant and the amount actually verified
- 6. the difference between the market rate and restricted rent for the unit, and how long the tenant was in the unit. This is the amount of economic benefit the tenant may be deemed to have received as taxable income

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Owner Fraud

"If a state agency becomes aware of an apparent fraudulent act by the owner, management company, or other party associated with the low-income housing property, or a party responsible for providing income/asset verification for tenants, the state agency may submit Form 3949-A, Information Report Referral, with supporting documents to the IRS' program analyst for IRC §42."

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RECORD RETENTION

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Record Retention

Treas. Reg. §1.42-5(b)

The resident file records for the **first year** of the credit period, however, must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building **or 21 years**

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All Other Tax Credit Files

- Owners are required to keep all of the records for each unit, building and property for a minimum of **6 years** (after the due date for filing extensions).



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Record Retention

- Revenue Ruling 2004-82, clarifies that owners may comply with the record retention provisions under IRC Section 1.42-5(b) by using an electronic storage system instead of maintaining hardcopy (paper) books and records, provided that the electronic storage system satisfies the requirements of Revenue Procedure 97-22. However, complying with the recordkeeping and record retention requirements of the IRS does not exempt an owner from having to satisfy any additional recordkeeping and record retention requirements of the monitoring procedure adopted by the **housing credit agency**.
- For example, the housing credit agency may require the taxpayer to maintain hardcopy books and records.

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Electronic Files

- Owners may use electronic storage systems instead of a hard copy of the records if permission is granted by the HFA.



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Electronic Files

- If permission is granted by HFA to use electronic storage systems instead of a hard copy of the records, ensure that files can be obtained 21-years from now.



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Record Retention

- Owners must maintain applicant and tenant information in a way to ensure confidentiality. Any applicant or tenant affected by negligent disclosure or improper use of information may bring civil action for damages and seek other relief, as appropriate. Owners must dispose of records in a manner that will prevent any unauthorized access to personal information, i.e., burn, pulverize, shred, etc.

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Disposal of Files

- Owners must dispose of tenant files and records in a manner that will prevent any unauthorized access to personal information

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Destroying Resident Files

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