

Tax Credit Compliance Policy and Procedures



Tax Credit Compliance: Onboarding Process

- Projects will be issued 8609(s) after the cost certification is completed.
- Projects will complete the project history form which details the building(s), units, accessible features, and project demographics.
- PHFA cannot setup the units in the Multi-family Web Entry System until the 8609(s) and project history form are received.
- After PHFA completes the setup of all information on the project history form, the Owner/Agent can submit annual reports and compliance monitoring begins.

IRS Form 8609

- Copies of the fully executed 8609(s) with Part II completed must be received by PHFA for accurate compliance monitoring.
- Each building that receives an allocation of credits gets an 8609.
 - **Note** – if your project was awarded both Acquisition and Rehab credits, the buildings may have received 2 8609(s).
- 8609 Part II Elections (important for compliance monitoring):
 - Question 8b- Are you treating this building as part of a multiple building project for purposes of section 42?
 - Question 10a- Elect to begin credit period the first year after the building is placed in service?
 - Question 10d- Election of minimum set-aside requirement

Indenture of Restrictive Covenants (IRC)

- Owners execute an IRC after closing on the project. This document outlines compliance requirements and is recorded against the property.
- IRCs are in effect for a period of at least 30 yrs.
 - Note- many new projects have 35–40-year compliance periods
- Indenture includes, but not limited to:
 - Allowable occupancy
 - Rent restrictions
 - Income Restrictions
 - Owner responsibilities
 - Continuing qualified characteristics

Indenture of Restrictive Covenants (IRC)

ARTICLE I DEFINITIONS

For the purposes of this Indenture, all terms defined above are hereby incorporated. Unless the context otherwise requires, the terms defined in this Article I shall, for all purposes of this Indenture, have the following meanings:

1. "Compliance Period" means the period of time beginning with the first day of the tax year in which the Owner may claim Tax Credits for any building subject to this Indenture and ending on the last day of the tax year **forty years** after the tax year in which a building subject to this Indenture was last placed in service. "Compliance Period" shall be construed to include the fifteen-year compliance period established in the Code as well as the extended use period established by the Agency pursuant to this Indenture, an extended low-income housing commitment under the Code.
2. "Extremely Low Income" means income at or below 20% of area median income.
3. "Regulations" means rules promulgated by the United States Department of Treasury, the Internal Revenue Service or the United States Department of Housing and Urban Development to implement the provisions of the Code, and shall be construed to include all related compliance monitoring regulations as well as all related public rulings, notices, procedures, directives, announcements and bulletins.

Indenture of Restrictive Covenants (IRC)

EXHIBIT B (New IRC)

A. Applicable Fraction

B. Deeper Rent/income restrictions

C. Minimum Set-Aside

EXHIBIT B DEVELOPMENT SPECIFIC RESTRICTIONS

The Owner represents, warrants and covenants that it will satisfy the requirements below:

- A. The combined applicable fraction (as defined in Section 42(c)(1) of the Code) for the Development shall be at least one hundred percent (100%). The combined applicable fraction reflects the individual applicable fractions determined by the Agency on a building per building basis. Both the combined applicable fraction and any individual building applicable fractions shall continue to apply during the entire Compliance Period in accordance with Section 42(h)(6)(B)(i) of the Code. The applicable fraction of any individual building shall be available to any person with Third-Party Rights requesting the applicable fraction from the Owner.
- B. Owner hereby certifies that a minimum of seventeen (17) units will be available and affordable to tenants at or below 50 percent of median income.
- C. In accordance with Section 42(g)(1)(C) of the Code, Owner has elected the Minimum Set-Aside Requirement to be the average income test.
- D. NO GENERAL PARTNER MAY BE ADDED, REMOVED OR WITHDRAWN FROM THE OWNERSHIP ENTITY WITHOUT THE PRIOR WRITTEN APPROVAL OF THE AGENCY. ANY LIMITED PARTNER MAY SELL, CONVEY, ASSIGN OR TRANSFER ITS LIMITED PARTNERSHIP INTERESTS IN THE OWNERSHIP ENTITY WITHOUT AGENCY APPROVAL.

Indenture of Restrictive Covenants (IRC)

ARTICLE III (Old IRC)

- Applicable Fraction
- Rent/income restrictions

ARTICLE III RENTAL RESTRICTIONS

Owner represents, warrants and covenants throughout the term of this Indenture that the applicable fraction (as defined in Section 42(c)(1) of the Code) shall be at least 100%. Owner hereby certifies that a minimum of 50 percent of the units will be available to tenants at 50 percent of median income pursuant to its application for low-income housing tax credits with the Agency. Additionally, Owner has elected to set aside 40 percent of the units at 60 percent of median income in accordance with Section 42(g)(1) of the Code. In the event the project is a recipient of Federal HOME funds and has received an allocation of tax credits based upon a 70% present value calculation, Owner warrants that at least 40% of the units will be rented to tenants at 50% of median income.

Owner Responsibilities

- Complete the Owner's Certificate of Continuing Program Compliance and submit by January 31st each year.
 - The form will be available on the [Web Entry System](#) by January 1st of each year.
 - The Owner's Certification **cannot** be completed or submitted prior to January 1 of the tax credit year.
 - **Note:** When submitting, be sure to include any addendums and/or additional paperwork needed to clear any questions of concern on the Owner's Cert.
- Ensure the property is managed in accordance with:
 - Section 42 of the Internal Revenue Code
 - Indenture of Restrictive Covenants (IRC)
- Ensure units remain suitable for occupancy
- Respond timely to Agency communication

Owner Responsibilities Continued

The Owner must notify PHFA of:

- Change in Management Agent
- Change in Ownership ***prior to sale or transfer of project***
- Change of mailing address
- The results of an IRS audit if issues of noncompliance exist
- Severe damage to buildings (fire, flood structural damage, etc.)

Agent Responsibilities

- Submit Tenant Income Certifications (TICs) for each unit and the rental schedule by **January 31st** of each year
- Ensure day to day operations are running smoothly
- Enforcement of the lease (including the PHFA lease addendum)
- Oversee upkeep of building and unit maintenance
- Respond timely to monitoring requests and non-compliance issues
- Maintain Record keeping pursuant to the Tax Credit Compliance Manual, [Section 4.5: Recordkeeping and Record Retention](#)
- Keep up with current LIHTC requirements, policies and procedures

PHFA Responsibilities

- Review the following documents submitted by the Owner/Agent:
 - Owner's Certificate of Continuing Program Compliance, as submitted by the Owner/Agent
 - Tenant Income Certificate(s), as submitted by the Owner/Agent
 - Rental Schedule
- Notify the Owner/Agent of any noncompliance with the LIHTC Program
- Notify the Internal Revenue Service (IRS) of any noncompliance issues, as required
- Perform management reviews of income verification and assets
- Respond to tenant concerns by contacting Owner/Agents - these issues are **time sensitive!**

Special Funding Desk Reviews

- The Tax Credit Compliance Department is also responsible for monitoring a small subset of projects that received an additional funding source (Not HOME or HTF).
- The following slides detail the Desk Review process in addition to standard Tax Credit Compliance monitoring requirements.
- These projects are monitored by our Compliance Specialist – Kristen Kasi kkasi@phfa.org

Special Funding Desk Reviews – CCRP/DCRP

- Construction Cost Relief Program (CCRP) & Developer Cost Relief Program (DCRP)
 - Projects with these funding sources will be required to participate in an annual desk review.
 - Property managers will be contacted by email or phone to set up a time for the review.
 - At the agreed upon time, the property managers will be asked a set of questions.
 - Questions will be about the property's marketing activity, supportive services, staff, and a few other topics.
 - Failure to participate in the review will result in a letter of noncompliance.

Special Funding Desk Reviews - RTT

- Realty Transfer Tax (RTT)
- Projects with this funding source will be required to participate in an annual desk review.
 - The Property Managers will be sent a questionnaire by email.
 - The questionnaire will need to be completed and sent back before a deadline that will be given in the original email.
- Failure to do so will result in a letter of noncompliance.

Ownership Sale/Transfer: Tax Credit Only

- Ownership transfers must be reviewed and approved **PRIOR** to any transfers or sales.
- Requests must be submitted in writing to the Manager of Tax Credit Compliance and must come from current owner.
- Outstanding issues of non-compliance must be resolved prior to transfer.
- Documentation will be provided to the current owner for completion.
- Documents will be reviewed by the Manager of Tax Credit Compliance and PHFA's legal team.

Management Agent Change Process

Management changes should be indicated on the Annual Owner's Certification



The new Management company or Owner shall provide the fully executed Management Agreement to PHFA



After PHFA receives the Management Agreement, records will be updated, and individuals can request access to the PHFA Multi-Family System

Unit Transfers

- Refer to the 8609s with Part II completed; Question 8b indicates if Owner elects to treat buildings as part of a multiple building project.
- Confirm in PHFA's multi-family system that unit is vacant prior to completing a transfer tenant event.
- Reminder – if project is comprised of both LIHTC and Market Rate units, the Next Available Unit Rule must be followed.



Vacant Units

Reasonable attempts must be made to rent vacant LIHTC units. If the unit is vacant for an extended period of time, PHFA may ask for documentation to prove reasonable attempts to rent the unit were made.

All vacant units must be listed on PAHousingSearch.com



Non-Compliance

NonCompliance Letters

- Tax Credit Officers monitor that projects are compliant with all Internal Revenue Code section 42 and PHFA requirements.
- Depending upon noncompliance violation and responses, IRS Forms 8823 may be issued to the IRS.
 - NOTE - Copies are provided to owner/agent.
- Unresolved noncompliance may result in credit recapture from the IRS, and negative ranking points may be assessed for future applications for any additional tax credits with PHFA.

Physical Inspection

- PHFA is required to conduct on-site inspections of all buildings in the project, and for at least 20 percent of the low-income units.
- Inspections are conducted every 3 years for Pre-15 properties, and 5 years for Post-15 properties.
 - *Inspection timing is subject to change based on state and federal requirements.*
- PHFA reports all inspection violations to the IRS if the project is still within the initial 15-year compliance period, even if a correction was made in the given timeframe.

IRS Form 8823

- Housing credit agencies use IRS Form 8823 as part of their compliance monitoring responsibilities to notify the IRS of any building disposition or noncompliance with the LIHTC provisions.
- Projects within the initial 15-year compliance period are subject to potential 8823s.
 - After the 15-year compliance period, findings are not reported to the IRS.
- Examples of 8823s you may receive:
 - **Open issues** - No corrections/partial corrections were made to previously generated noncompliance letters.
 - **Corrected 8823** - All issues have been corrected on the previous 8823 signifying noncompliance.
 - **Amended** - An error was made on the original 8823 and an update was completed for correction.

IRS Form 8823

Form 8823 (Rev. June 2023) Department of the Treasury Internal Revenue Service		Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition		OMB No. 1545-1204
1 Building name (if any). Check if line 1 differs from Form 8609 <input type="checkbox"/>			IRS Use Only	
Street address				
City or town		State	ZIP code	
2 Building identification number (BIN)				
3 Owner's name. Check if line 3 differs from Form 8609 <input type="checkbox"/>				
Street address				
City or town		State	ZIP code	
4 Owner's taxpayer identification number <input type="checkbox"/> EIN <input type="checkbox"/> SSN				
5 Total credit allocated to this BIN \$				
6 If this building is part of a multiple building project, enter the number of buildings in the project				
7a Total number of residential units in this building				
b Total number of low-income units in this building				
c Total number of residential units in this building determined to have noncompliance issues (see instructions)				
d Total number of units reviewed by agency (see instructions)				
8 Date building ceased to comply with the low-income housing credit provisions (see instructions) (MMDDYYYY)				
9 Date noncompliance corrected (if applicable) (see instructions) (MMDDYYYY)				
10 Check this box if you are filing only to show correction of a previously reported noncompliance problem <input type="checkbox"/>				
11 Check the box(es) that applies:				
a Household income above income limit upon initial occupancy <input type="checkbox"/> Out of compliance <input type="checkbox"/> Noncompliance corrected <input type="checkbox"/>				
b Owner failed to correctly complete or document tenant's annual income recertification <input type="checkbox"/> Out of compliance <input type="checkbox"/> Noncompliance corrected <input type="checkbox"/>				
c Violation(s) of the UPCS or local inspection standards including casualty losses (see instructions) (attach explanation) <input type="checkbox"/> Out of compliance <input type="checkbox"/> Noncompliance corrected <input type="checkbox"/>				
d Owner failed to provide annual certifications or provided incomplete or inaccurate certifications <input type="checkbox"/> Out of compliance <input type="checkbox"/> Noncompliance corrected <input type="checkbox"/>				
e Changes in Eligible Basis or the Applicable Percentage (see instructions) <input type="checkbox"/> Out of compliance <input type="checkbox"/> Noncompliance corrected <input type="checkbox"/>				
f Project failed to meet minimum set-aside requirement (20/50, 40/60, average income test) (see instructions) <input type="checkbox"/> Out of compliance <input type="checkbox"/> Noncompliance corrected <input type="checkbox"/>				
g Gross rent(s) exceeds limits <input type="checkbox"/> Out of compliance <input type="checkbox"/> Noncompliance corrected <input type="checkbox"/>				
h Project not available to the general public (see instructions) (attach explanation) <input type="checkbox"/> Out of compliance <input type="checkbox"/> Noncompliance corrected <input type="checkbox"/>				
i Violation(s) of the Available Unit Rule under section 42(g)(2)(D)(i) <input type="checkbox"/> Out of compliance <input type="checkbox"/> Noncompliance corrected <input type="checkbox"/>				
j Violation(s) of the Vacant Unit Rule under Reg. 1.42-5(c)(1)(x) <input type="checkbox"/> Out of compliance <input type="checkbox"/> Noncompliance corrected <input type="checkbox"/>				
k Owner failed to execute and record extended-use agreement within time prescribed by section 42(h)(6)(J) <input type="checkbox"/> Out of compliance <input type="checkbox"/> Noncompliance corrected <input type="checkbox"/>				
l Low-income units occupied by nonqualified full-time students <input type="checkbox"/> Out of compliance <input type="checkbox"/> Noncompliance corrected <input type="checkbox"/>				
m Owner did not properly calculate utility allowance <input type="checkbox"/> Out of compliance <input type="checkbox"/> Noncompliance corrected <input type="checkbox"/>				
n Owner has failed to respond to agency requests for monitoring reviews <input type="checkbox"/> Out of compliance <input type="checkbox"/> Noncompliance corrected <input type="checkbox"/>				
o Low-income units used on a transient basis (attach explanation) <input type="checkbox"/> Out of compliance <input type="checkbox"/> Noncompliance corrected <input type="checkbox"/>				
p Building is no longer in compliance nor participating in the section 42 program. (Attach explanation.) <input type="checkbox"/> Out of compliance <input type="checkbox"/> Noncompliance corrected <input type="checkbox"/>				
q Other noncompliance issues (attach explanation) <input type="checkbox"/> Out of compliance <input type="checkbox"/> Noncompliance corrected <input type="checkbox"/>				
12 Additional information for any line above. Attach explanation and check box <input type="checkbox"/>				
13a Building disposition by <input type="checkbox"/> Sale <input type="checkbox"/> Foreclosure <input type="checkbox"/> Destruction <input type="checkbox"/> Other (attach explanation)				
b Date of disposition (MMDDYYYY)				
c New owner's name		d New owner's taxpayer identification number <input type="checkbox"/> EIN <input type="checkbox"/> SSN		
Street address				
City or town		State	ZIP code	
14 Name of contact person		15 Telephone number of contact person Ext.		
Under penalties of perjury, I declare that I have examined this report, including accompanying statements and schedules, and, to the best of my knowledge and belief, it is true, correct, and complete.				
Signature of authorizing official		Print name and title	Date (MMDDYYYY)	

Tenant Complaint Process

PHFA receives written notice of a complaint from a tenant detailing an issue



PHFA emails the Owner to notify them of the complaint



Complaints **MUST** be responded to within 10 days

Investigate the matter of the tenant complaint

Explain how the allegations were reviewed

Note if the allegations were substantiated or unsubstantiated

Provide the projected completion date(s) for the corrective action(s)

Provide any documentation to support findings

Post Year 15 - Extended Use Period

- All projects are subject to the initial 15-year IRS compliance period as well as an Extended Use Period.
- During the Extended Use Period, the owner must still adhere to the following:
 - Submission of Annual Reporting Requirements (AOC, TICs, Rental Schedule)
 - NOTE - Failure to submit annual reports during this period will result in a letter of non-compliance and saved in the project file. It may also cause negative ranking points for future tax credit applications.
 - Income limits
 - Rent restrictions
 - Tenants cannot be evicted for anything other than good cause
 - No disposition of any part of the building that was used in the qualifying basis
 - Cannot refuse occupancy based on a section 8 voucher

Post Year 15 - Extended Use Period Continued

- Households comprised of full-time students are allowable during extended use period.
 - **Note** - An owner who plans to seek a new allocation should continue to implement the Full-Time Student Rule, so the existing tenants will qualify under the new allocation.
- The extended use period expires on December 31st of the last year of the compliance period.
- Affordability clause- Owners must keep rents affordable to existing, qualified households for 3 years after the expiration of the IRC.
 - **Note** – PHFA will notify owner/agents via letter 6 months prior to IRC expiration. Owner/agents must notify tenants of their rights and provide a copy of that notice to PHFA.

A close-up photograph of a person's hands writing on a white notepad with a white pen. The person is wearing a light-colored, ribbed sweater. The background is a plain, light-colored wall. A vertical blue bar is on the right side of the image.

Best Practices

- Communication is key!
 - Respond promptly to notifications from PHFA.
 - Keep applicable PHFA staff abreast of corrections.
 - Submit tenant events (TICs) on a monthly or quarterly basis.
 - Check both student and disability statuses on TICs uploaded/entered into PHFA web entry system.

PHFA Website & Resources

The screenshot displays the PHFA website interface. At the top left is the PHFA logo, and at the top right is the text "PA Housing Finance Agency". A blue navigation bar contains links for Home, News, Podcasts, Customers, Partners, Portal, Search, and Sitemap. The Partners link is highlighted with a red box, and a red arrow points to a dropdown menu. This menu lists several options: Homeownership Professionals (HOP), Pipeline Plus Login, Multifamily Housing Professionals (MHP), Multifamily Login, Counselor's Corner, Investor Information, and Procurement Opportunities. The MHP option is also highlighted with a red box. Below the navigation bar, there is a promotional banner for PHFA with the text "PHFA is your key to opening the door to homeownership possibilities." and an "Enter Here!" button. At the bottom, there is a dark navigation bar with links for Homebuyers, Homeowners, Renters, Loan Programs, and Counseling, and a footer area with "Go Back", "Login", and "Help" links.

PHFA PA Housing Finance Agency

Home News Podcasts Customers Partners Portal Search Sitemap

PHFA is your key to opening the door to homeownership possibilities.

[Enter Here!](#)

Homeownership Professionals (HOP)

Pipeline Plus Login

Multifamily Housing Professionals (MHP)

Multifamily Login

Counselor's Corner

Investor Information

Procurement Opportunities

Homebuyers Homeowners Renters Loan Programs Counseling

Alerts & Notices (Alertas)

Go Back Login Help

PHFA Website & Resources

The screenshot shows the PHFA website's navigation menu. The top navigation bar is blue and contains links for Home, News, Podcasts, Customers, Partners, Portal, Search, and Sitemap. Below this is a green navigation bar with links for News & Awards, Developers, Tech Services, Housing Services, and Asset Mgmt. The 'Asset Mgmt' link is highlighted with a red box, and a red arrow points down to a dropdown menu. The dropdown menu contains the following items: Contract Admin, Property Mgmt (highlighted with a red box), Rent & Income Limits, and Section 811 PRA. To the left of the dropdown menu, there is a yellow banner for 'Alerts & Notices (Alertas)' with a red arrow pointing to a notice about system unavailability during Labor Day Weekend. Below the banner is a link for 'Multifamily Housing Professionals' and another link for 'News & Awards 2019-Present'.

Home News Podcasts Customers Partners Portal Search Sitemap

News & Awards Developers Tech Services Housing Services **Asset Mgmt** Go Back Login

Alerts & Notices (Alertas)

▶ All PHFA systems will be unavailable Labor Day Weekend starting on September 1st, 2025 at 12:00 pm until September 1st, 2025 at 5:00 pm for system maintenance. We apologize for the inconvenience.

Multifamily Housing Professionals

News & Awards 2019-Present

Contract Admin

Property Mgmt

Rent & Income Limits

Section 811 PRA

PHFA Website & Resources

Houses HUD
notices, HOTMA
Policies Matrix,
Required Forms
and Training
Resources



Property Management

PHFA believes that an affordable apartment turns hardship into happiness. Companies that manage affordable units financed with an Agency loan and/or Low Income Housing Tax Credits (LIHTC) will find guidance and information on reporting requirements and regulatory compliance.

If you have any questions regarding the content on this page, please contact Housing Management at 717.780.3819.

- Best Practices
- Accessible Unit Resource Center
- Violence Against Women Act (VAWA) Resource Center
- Multifamily Affordable Housing Conference
- Property Management Training Events
- Financial Operations Information and Forms
- Agency Financed Properties
- HOTMA Resources**
- HOME Resources
- Multifamily Post Closing Fees
- Low Income Housing Tax Credits-Manual**
- Non Performance Based Section 8-Manual

Questions?

