

COMPLIANCE PROCEDURES

COMPLIANCE PERIOD PROCEDURES

4.1 ELECTION OF MINIMUM SET-ASIDE

An irrevocable election of the minimum set-aside of low income units is made by the owner no later than the date the building is placed in service, as outlined in the *Pennsylvania Multifamily Housing Application Program Guidelines and Submission Requirements*.

One of the following elections must be made:

1. At least 20 percent of the rental units must be rented to residents with qualifying income at or below 50 percent of area median income, or
2. At least 40 percent of the rental units must be rented to residents with qualifying income at or below 60 percent of area median income.

Properties that received tax credits prior to January 1, 1990, had to meet their minimum set-aside of low income units no later than 12 months after the building was placed in service. Properties receiving post-1989 tax credits must meet their minimum set aside by the close of the first year of the tax-credit period for the building.

The set-aside is the minimum amount of units that must be reserved for low income residents for a building to be considered a qualified low income building and retain any of its tax credits. However, the amount of units that must be reserved for qualified low income residents is determined at the placed-in-service date and is referred to as the Applicable Fraction of low income units. For a further explanation of the determination of the Applicable Fraction, please refer to the *Pennsylvania Multifamily Housing Application Program Guidelines and Submission Requirements*. The Applicable Fraction must be met on a building by building basis (statute requirement). The Applicable Fraction of units may not be decreased during the compliance or extended compliance period. A decrease in the Fraction may result in a partial recapture of tax credits, an event of noncompliance, and applicable penalties.

4.2 COMPLIANCE PERIOD

A property receiving an allocation of tax credits must remain a qualified low income housing property as defined in Section 42(g) of the Code for its entire compliance period. Properties receiving an allocation of 1987-1989 tax credits were required to remain a qualified property for a period of 15 taxable years beginning with the first taxable year of the credit period. Properties receiving an allocation of tax credits after 1989 must enter into a Restrictive Covenant Agreement with the Agency. This agreement addresses not only the maintenance of the applicable fraction of tax credit units, but also the rights of the residents and provisions for an extended low-income compliance period beyond the initial 15-year compliance period. An owner may claim no tax credit for a taxable year unless the Restrictive Covenant Agreement is in effect for such taxable year.

4.3 ELIGIBILITY REPORTING REQUIREMENTS FOR DEVELOPMENTS FINANCED BY PHFA

If a development has PHFA mortgage financing, monitoring requirements for the property must meet additional PHFA compliance procedures and requirements as set forth in the mortgage loan documents and the additional requirements as set forth below:

1. **Owner's Certificate of Continuing Program Compliance** – The owner/agent shall submit to the Agency an Owner's Certificate of Continuing Program Compliance, along with its attachment, the Rental Schedule. The Annual Report covers the prior calendar year, and the Rental Schedule should include all residents that occupied a unit at any given time during that 12-month period. Both of these forms are required submissions for each year throughout the compliance period. Both forms must be submitted through the Agency's Automated Web Entry System and are due by January 31 each year.

Should there be any items that require further clarification, either the Tax Credit Analyst or the Housing Management Representative will write to the owner/agent advising of any outstanding items to be addressed. The owner/agent must respond within 90 days of the date of the letter addressing the method and/or action completed to rectify each item indicated in the letter. (If an owner must make corrections/revisions to previously completed reports/forms, in order to correct an issue of noncompliance, all parties involved in signing the reports/forms must sign off/initial the changes.) When appropriate, the Agency will file IRS Form 8823, Low Income Housing Credit Agencies Report of Noncompliance, regardless of whether the noncompliance items have been corrected. The report will identify all outstanding items that have not been rectified, as well as deficiencies that have been corrected.

2. **Annual Tenant Income Certification / Alternate Certifications:** The TIC shall be submitted to the Agency for each household. If the owner qualifies for an exemption from Annual Recertification, the Alternate Certification must be provided in lieu of the Annual Tenant Income Certification. One of these forms, per resident household, is a required submission for each year throughout the compliance period. Each form must be submitted via the Agency's Automated Web Entry System. The certifications are to be submitted as they are processed throughout the year. Submissions on a weekly or monthly basis are preferred.

A TIC shall be submitted to the Agency for each resident move-in and/or transfer, as well as the addition of a new household member. Properties that are not 100% LIHTC do not qualify for exemption from Annual Recertification and therefore cannot use the Alternate Certification Form.

3. **Compliance Review** - At the discretion of PHFA and in accordance with IRS direction, a compliance review will be performed on LIHTC units.

The developments participating in a Compliance Review will be subject to the following:

- a. Notification in writing of a proposed visitation review date.
- b. Required to have all LIHTC resident files with applicable Tenant Income Certifications and supporting income and asset verification on site for a review or required to send hard copies of said forms to PHFA.
- c. Required to have all utility analysis data on file for review or required to send copies of utility documentation to PHFA.
- d. Required to have a copy of the signed Owner's Certificate of Continuing

Program Compliance on site for a review or requested to send copy of said form to PHFA.

- e. Required to have on file all copies of IRS Form(s) 8609 with Part II completed.
- f. Required to have on file a copy of the letter sent to tenant(s) notifying them of a pending physical inspection of the unit.
- g. A review will be performed by a PHFA representative to determine compliance with this Manual and the Low Income Housing Tax Credit Program. The number of files reviewed will not be less than 20 percent of the Low Income Housing Tax Credit Resident Files, and may be up to 100 percent of the files.
- h. PHFA representative will respond to the owner/agent as to any finding during this review. The owner/agent will be required to respond to the representative within 90 days of the date of the letter, addressing the method and/or action completed to rectify each item. (If an owner must make corrections/revisions to previously completed reports/forms, in order to correct an issue of noncompliance, all parties involved in signing the reports/forms must sign off/initial the changes.) PHFA will notify the Internal Revenue Service within 21 days from the above-referenced correction period of all outstanding items that have not been rectified, as well as deficiencies that have been corrected. This may include State imposed noncompliance issues, as well as Section 42 regulated issues. IRS Form 8823 is used to do this reporting.

4.4 ELIGIBILITY REPORTING REQUIREMENTS FOR ALL LIHTC DEVELOPMENTS NOT FINANCED BY PHFA

As the monitoring agency for the LIHTC Program, PHFA will request the owner/agent utilizing the Program to complete the following steps:

1. **Owner's Certificate of Continuing Program Compliance** – The owner/agent shall submit to the Agency an Owner's Certificate of Continuing Program Compliance, along with its attachments, including the Rental Schedule. The Annual Report covers the prior calendar year, and the Rental Schedule should include all residents that occupied a unit at any given time during that 12-month period. A Tenant Income Certification or Alternate Certification (whichever applies) shall also be submitted to the Agency for each resident household. Both these forms must be submitted through the Agency's Automated Web Entry System and are due by January 31 each year.
Should there be any items that require further clarification, a Tax Credit Analyst will write to the owner/agent advising of any outstanding items to be addressed. The owner/agent must respond within 90 days of the date of the letter addressing the method and/or action completed to rectify each item indicated in the letter. (If an owner must make correction/revisions to previously completed reports/forms, in order to correct an issue of noncompliance, all parties involved in signing the reports/forms must sign off/initial the changes.) When appropriate, the Agency will file IRS Form 8823, Low Income Housing Credit Agencies Report of Noncompliance, regardless of whether the noncompliance items have been corrected. The report will identify all outstanding items that have not been rectified, as well as deficiencies that have been corrected.
2. **Annual Tenant Income Certification / Alternate Certifications:** The TIC shall be submitted to the Agency for each household. If the owner qualifies for an exemption from Annual Recertification, the Alternate Certification must be provided in lieu of the Annual

Tenant Income Certification. One of these forms, per resident household, is a required submission for each year throughout the compliance period. Each form must be submitted via the Agency's Automated Web Entry System. The certifications are to be submitted as they are processed throughout the year. Submissions on a weekly or monthly basis are preferred.

A TIC shall be submitted to the Agency for each resident move-in and/or transfer, as well as the addition of a new household member. Properties that are not 100% LIHTC do not qualify for exemption from Annual Recertification and therefore cannot use the Alternate Certification Form.

3. **Compliance Review** - At the discretion of PHFA and in accordance with IRS direction, a compliance review will be performed on LIHTC units.

The developments participating in a Compliance Review will be subject to the following:

- a. Notification in writing of a proposed visitation review date.
- b. Required to have all LIHTC resident files with applicable Tenant Income Certifications and supporting income and asset verification on site for a review or required to send hard copies of said forms to PHFA.
- c. Required to have all utility analysis data on file for review or required to send copies of utility documentation to PHFA.
- d. Required to have a copy of the signed Owner's Certification of Continuing Program Compliance on site for a review or required to send hard copy of said form to PHFA.
- e. Required to have on file all copies of IRS Form(s) 8609 with Part II completed.
- f. Required to have on file a copy of the letter sent to tenant(s) notifying them of a pending physical inspection of the unit.
- g. A review will be performed by a PHFA representative to determine compliance with this Manual and the Low Income Housing Tax Credit Program. The number of files reviewed will not be less than 20 percent of the Low Income Housing Tax Credit Resident Files, and may be up to 100 percent of the files.
- h. PHFA representative will respond to the owner/agent as to any finding during this review. The owner/agent will be required to respond to the representative within 90 days of the date of the letter, addressing the method and/or action completed to rectify each item. (If an owner must make corrections/revisions to previously completed reports/forms, in order to correct an issue of noncompliance, all parties involved in signing the reports/forms must sign off/initial the changes.) PHFA will notify the Internal Revenue Service within 21 days from the above-referenced correction period of all outstanding items that have not been rectified, as well as deficiencies that have been corrected. This may include State imposed noncompliance issues, as well as Section 42 regulated issues. IRS Form 8823 is used to do this reporting.

4.5 RECORDKEEPING AND RECORD RETENTION

As required by the Internal Revenue Service, *FEDERAL REGISTER*, Part 1 and 602, the owner is required to maintain accurate records for each building in the low income housing property. These data MUST include:

- The total number of residential units in the building and the square footage of all residential units in the building.
- The total number of all low-income units in the building.
- The percentage of residential rental units in the building that are low-income units.
- The number of occupants in each low-income unit.
- The rent charged on each residential unit in the building, including an account of the utilities that are paid by the resident and/or the owner. These records should reflect all applicable utility allowances as well.
- The number of bedrooms in each unit.
- The low-income unit vacancies in the building.
- The rentals of all available units in each building, including when and to whom rented.
- Documentation regarding the eligible and qualified basis of each building as of the end of the first year of the tax-credit period.
- The character and use of the nonresidential portion of the building that was included in the building's Eligible Basis.
- The certification data discussed in Section 4.3 and 4.4 of this Chapter.

These records must be kept for a minimum of six years after the due date (with extensions) for filing the federal income tax return for that year. However, the records for the first year of the credit period 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. All records must be available to the Agency at any time for its review.