



LIHTC Compliance Monitoring Requirements

Revised 12/31/2020

Section 42 of the Internal Revenue Code requires LIHTC allocating agencies to monitor for noncompliance with the provisions of that section and notify the Internal Revenue Service of such noncompliance of which such agency becomes aware and monitor for noncompliance with habitability standards through regular site visits.

A. Recordkeeping and Record Retention

Under the recordkeeping provision of Treasury Regulation § 1.42-5(b), the owner must keep records for each building of the project for each year of the compliance period. Such records include the following:

- (i) The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit)
- (ii) The percentage of residential rental units in the building that are low-income units
- (iii) The rent charged on each residential rental unit in the building (including any utility allowances)
- (iv) The number of occupants in each low-income unit
- (v) The low-income unit vacancies in the building and information that shows when, and to whom, the next available units were rented
- (vi) The annual income certification of each low-income tenant per unit. For an exception to this requirement see section 42(g)(8)(B) (which provides a special rule for a 100 percent low-income building)
- (vii) Documentation to support each low-income tenant's income certification
- (viii) The eligible basis and qualified basis of the building at the end of the first year of the credit period
- (ix) The character and use of the nonresidential portion of the building included in the building's eligible basis under section 42(d) (e.g., tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project)

Under the record retention provision, §1.42-5(b)(2), owners are required to keep all records for each building for a minimum of 6 years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period must be retained for at least 6 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, bringing the total retention for the first-year records to 21 years.

Under the inspection record retention provision, §1.42-5(b)(3), the owner of a low-income housing project must be required to retain the original health, safety, or building code violation reports or notices that were issued by the State or local government unit for the Authority's inspection.

B. Certification and Review Provisions

Certification

The owner of the LIHTC project must certify at least annually to the Authority that for the preceding 12-month period the project met the requirements outlined in Treasury Regulation §1.42-5(c)(1). In addition, the Authority requires owners to submit annually the Management Agent Certification of Training and the Annual Certification of Service Coordination and complete an upload of all tenant data to the Authority's LIHTC system. The required reports, certifications, and forms can be found on the Authority's website, nhhfa.org. Annual certifications are due March 1 of each year and must be submitted throughout the Extended Use Period of the project. The tenant data upload must be completed by February 1 of each year throughout the Extended Use Period of the project.

Review

In accordance with Treasury Regulation §1.42-5(c)(2), the Authority must conduct on-site inspections and review low-income certifications of all buildings in the project by the end of the second calendar year following the year the last building in the project is placed in service and at least once every three (3) years thereafter.

The minimum number of low-income units that must be included in the random samples on which the Authority conducts physical inspections or low-income certification reviews is the lesser of 20% of the low-income units in the project, rounded up to the next whole number, or the number specified in the following table.

Number of low-income units in the low-income housing project	Number of low-income units selected for inspection or for low-income certification review (minimum unit sample size)
1	1
2	2
3	3
4	4
5-6	5
7	6
8-9	7
10-11	8
12-13	9
14-16	10
17-18	11
19-21	12
22-25	13
26-29	14
30-34	15
35-40	16
41-47	17
48-56	18
57-67	19
68-81	20
82-101	21

102-130	22
131-175	23
176-257	24
258-449	25
450-1,461	26
1,462-9,999	27

The Authority will randomly select which low-income units and certifications are to be inspected and reviewed. The review of tenant records may be undertaken wherever the owner maintains or stores the records (either on-site or offsite). The units and tenant records to be inspected and reviewed must be chosen in a manner that will not give owners of low-income housing projects advance notice that a unit and tenant certifications for a particular year will or will not be inspected and reviewed. However, the Authority will give an owner advance notice that an inspection of the building and low-income units or tenant record review will occur so that the owner may notify tenants of the inspection and assemble tenant certifications for review. Such notice will be provided no more than 15 days in advance.

Alternative Means of Conducting On-Site Inspections

The Authority may satisfy the on-site inspection requirements if the inspection is performed under the Department of Housing and Urban Development (HUD) Real Estate Assessment Center (REAC) protocol and the inspection satisfies the requirements of §1.42-5(c)(2)(iii)(C)(4).

Exception for Certain Buildings

The Authority may choose to enter into an agreement with the Rural Housing Service or the state's tax-exempt bond issuer, under which those agencies agree to provide information concerning the income and rent of the tenants in buildings that they finance.

C. Inspection Provision

As the allocating agency, the Authority has the right to perform on-site inspections throughout the term of the Land Use Restriction Agreement. For the on-site inspections of buildings and low-income units required by Treasury Regulation §1.42-5(c)(2)(ii), the Authority must review any local health, safety, or building code violation reports or notices retained by the owner under paragraph (b)(3) of Treasury Regulation §1.42-5 and must determine—

- (i) Whether the buildings and units are suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards); or
- (ii) Whether the buildings and units satisfy, as determined by the Authority, the uniform physical condition standards for public housing established by HUD (24 CFR 5.703). The HUD physical condition standards do not supersede or preempt local health, safety, and building codes. A low-income housing project under Section 42 must continue to satisfy these codes and, if the Authority becomes aware of any violation of these codes, the Authority must report the violation to the IRS. However, provided the Authority determines by inspection that the HUD standards are met, the Authority is not required to determine by inspection whether the project meets local health, safety, and building codes.

D. Notification of Noncompliance

The Authority will provide prompt written notice to the owner when the Authority does not receive the required certifications and other forms, does not receive or is not permitted to inspect the tenant income certifications, supporting documentation, and rent records or discovers by inspection, review or in some other manner that the project is not in compliance with the provisions of Section 42. The correction period established by the Authority is 30 days from the date of the notice. The Authority may extend the correction period, but only if it determines there is good cause for granting the extension. Under no circumstances may the Authority allow a total correction period of greater than six (6) months. All requests for an extension must be made by the owner in writing.

The Authority is required to file Form 8823, "Low-Income Housing Credit Agencies Report of Noncompliance," with the Internal Revenue Service no later than 45 days after the end of the correction period (as noted above, including extensions) and no earlier than the end of the correction period, whether or not the noncompliance or failure to certify is corrected. The Authority must explain on Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify. Any change in either the applicable fraction or eligible basis that results in a decrease in the qualified basis of the project under section 42(c)(1)(A) is noncompliance that must be reported to the Internal Revenue Service. If the Authority reports on Form 8823 that a building is entirely out of compliance and will not be in compliance at any time in the future, the Authority need not file Form 8823 in subsequent years to report that building's noncompliance. If the noncompliance or failure to certify is corrected within 3 years after the end of the correction period, the Authority is required to file Form 8823 with the Service reporting the correction of the noncompliance or failure to certify.

The Authority must retain records of noncompliance or failure to certify for 6 years beyond the Authority's filing of the respective Form 8823. In all other cases, the Authority must retain the certifications and records described above for 3 years from the end of the calendar year the Agency receives the certifications and records.

E. Delegation of Authority

Treasury Regulation §1.42-5(f) permits the Authority to retain an agent or other private contractor ("Authorized Delegate") to perform compliance monitoring. The Authorized Delegate must be unrelated to the owner of any building that the Authorized Delegate monitors. The Authorized Delegate may be delegated all of the functions of the Authority, except for the responsibility of notifying the IRS under Section D above. For example, the Authorized Delegate may be delegated the responsibility of reviewing tenant certifications and documentation, the right to inspect buildings and records, and the responsibility of notifying building owners of lack of certification or noncompliance. The Authorized Delegate must notify the Authority of any noncompliance or failure to certify.

Should the Authority delegate compliance monitoring to an Authorized Delegate, the Authority must use reasonable diligence to ensure that the Authorized Delegate properly performs the delegated monitoring functions. Delegation by the Authority of compliance monitoring functions to an Authorized Delegate does not relieve the Authority of its obligation to notify the Internal Revenue Service of any noncompliance of which the Authority becomes aware.

The Authority may delegate all or some of its compliance monitoring responsibilities for a building to another Agency within the State. This delegation may include the responsibility of notifying the IRS under Section D above.

F. Liability

Compliance with the requirements of Section 42 of the Internal Revenue Code is the responsibility of the owner of the qualified low-income building for which the credit is allowable. The Authority's obligation to monitor for compliance with the requirements of Section 42 does not make the Authority liable for an owner's noncompliance.

G. Other

The Authority reserves the right to revise compliance monitoring policies and procedures as required by Section 42, including other guidance published by the IRS.

Please refer to the Authority's website for further information and required documents.