



LIHTC Compliance and Monitoring Policy Post Year 15

Extended Use Period

Properties awarded a Low-Income Housing Tax Credit (LIHTC) allocation prior to 1990 were subject to a compliance period of 15 years. A subsequent change in federal law required a minimum of an additional 15 years of compliance, which is referred to as the extended use period. As a result, IRC Section 42(h)(6) establishes that properties that were awarded housing credits in 1990 or later must comply with program restrictions for a total of 30 years *or more*, subject to certain exceptions. These restrictions are embodied in the recorded real estate document called the Land Use Restriction Agreement (LURA).

After the 15-year Compliance Period has ended, there may be no tax impact to the Owner in the event of noncompliance; however, Owners must continue to follow all provisions of the LURA, unless modified in writing by New Hampshire Housing. Noncompliance with provisions of the LURA may result in legal action and could have a negative impact on future participation in New Hampshire Housing programs.

Current LIHTC policies, certifications and forms are located on [New Hampshire Housing's website](#).

Compliance and Monitoring After Year 15

This extended use monitoring policy is applicable to the LIHTC program only. Properties funded with other funding sources will continue to be monitored according to the monitoring requirements established for those programs.

The following information details the changes in monitoring and compliance after Year 15. Areas of monitoring and compliance not addressed in this policy have not changed.

The following guidelines will be in place for compliance activities during the extended use period, year 16 and beyond. These guidelines will apply to those properties that have completed the initial 15-year compliance period.

Applicable Fraction

No change. The applicable fraction is the lesser of either the unit fraction or floor space fraction and represents the low-income portion of each building. The applicable fraction must be maintained for the entire term of the LURA.

Available Unit Rule

No change. The rule states that if a tenant's income in a low-income unit increases above 140% of the current qualifying income limit, the next available unit of comparable or smaller size must be rented to a qualified low-income household at restricted rent.

Unit Transfers

No change. Unit transfers among low-income units within the same project (as defined on Line 8b of IRS Form 8609 Part II) will be allowed without initial qualification provided that the income of either household does not exceed 140% of the applicable income limit.

Move-in

An initial certification, including third party verification consistent with HUD Handbook 4350.3, Chapter 5 (as revised) will continue to be required for initial occupancy. Student status will be certified at move-in only.

Student Status

Household student eligibility is required at move-in only. Certification of student status is not required annually thereafter; however, Owners/Agents that anticipate a resyndication of credits on an existing LIHTC property are strongly encouraged to continue verifying student status on an annual basis.

Income Restrictions

No change. The income requirements for eligibility are based on household income limits adjusted for household size for the area in which the property is located.

Rent Restrictions

The unit must continue to be rent restricted so that the gross rent (tenant paid portion of rent plus the applicable utility allowance) does not exceed the applicable rent limit for the area in which the property is located.

Annual Household Certification

All LIHTC properties must continue to verify household composition on an annual basis.

Properties that are 100% LIHTC are not required to conduct annual certification of household income.

Mixed income properties are required to obtain annual certification of household income. After year 15, annual certifications may be in the form of a self-certification by the household. A completed TIC may serve as the self-certification.

Verification of student status is not required other than at move-in; however, as noted above, Owners/Agents that anticipate a resyndication of credits on an existing LIHTC property are strongly encouraged to continue verifying student status on an annual basis.

See the HDS Next Gen System section below for information regarding annual submissions.

Tenant Income Certification (TIC)

Owners/Agents must continue to complete a TIC for all households at move in and, if applicable, annual certification.

HDS Next Gen System (formerly Web Compliance)

The Housing and Economic Recovery Act of 2008 (HERA) contains a provision requiring state Housing Finance Agencies (HFAs) which administer the LIHTC program to collect data on residents of LIHTC properties. The law requires HFAs to collect and transmit to HUD annually information about LIHTC tenants, including their race, ethnicity, family composition, age, income, use of rental assistance, disability status, and monthly rental payments. The law also requires HFAs to establish procedures to minimize duplicative reporting requirements for properties assisted under multiple housing programs.

In an effort to comply with these requirements, New Hampshire Housing has purchased the [HDS Next Gen](#) (formerly Web Compliance) software for uploading and entering the necessary data. All LIHTC Owner/Agents must submit all required tenant data to our office through this website no later than March 1st of each year.

Owners/Agents are required to submit a certification for all LIHTC units that includes, at a minimum, the household composition, student status, rent and utility allowance for that unit, regardless of whether the property is 100% LIHTC and exempt from the annual recertification requirement. Mixed income properties must continue to submit annual recertification information. In addition, at least two weeks prior to the review, Owners/Agents must complete an upload of all current LIHTC unit data.

Household File Review (*Effective 1/1/2022*)

In general, the compliance review of household files for each property will be performed at least every three (3) years unless a complete and current upload of tenant data has been submitted timely to the HDS NextGen system for each of the previous three (3) years and New Hampshire Housing is not aware of any potential noncompliance or other issues (i.e., change in Owner/Agent, turnover of Agent staff, late submission of required reports/certifications) at the property. In addition, one of the following must apply:

- For properties participating in other New Hampshire Housing financing/funding programs, a management and occupancy review (MOR) has been completed within the past three (3) years with a rating of Satisfactory or above.
- For properties not participating in other New Hampshire Housing financing/funding programs, the Owner/Agent provides a copy of a satisfactory monitoring review completed by another governing agency (i.e., Rural Development) within the past three (3) years that demonstrates compliance with household eligibility requirements, including income eligibility.

If a compliance review of household files is conducted, monitoring will include a review of at least 10% of the LIHTC tenant files. The sample size will be based on the total number of LIHTC units in the property, regardless of the Owner's election on Line 8b of IRS Form 8609. New Hampshire Housing reserves the right to review more files if needed.

The LIHTC files to be reviewed will be selected in a manner that will not give Owners/Agents of LIHTC properties advance notice of what files will be reviewed. New Hampshire Housing will provide Owners/Agents with reasonable notice of an upcoming file review.

Physical Inspections (*Effective 1/1/2022*)

In general, a physical inspection of each property will be performed at least once every three (3) years unless one of the following three statements applies:

- A REAC inspection with a score of 70 or higher has been conducted within the past three (3) years and the Owner/Agent confirms that all Exigent Health & Safety (EH&S) and Level 3 items have been corrected.
- For properties participating in other New Hampshire Housing financing/funding programs, a physical inspection (including a sampling of units) has been completed within the past three (3) years and the Owner/Agent has confirmed that all physical items noted have been corrected.
- For properties not participating in other New Hampshire Housing financing/funding programs, the Owner/Agent provides a copy of a satisfactory physical inspection (including a sampling of units) completed by another governing agency (i.e., Rural Development) within the past three (3) years that demonstrates compliance with physical inspection requirements and the Owner/Agent confirms that all items noted have been corrected.

In addition to the above, New Hampshire Housing must not be aware of any potential noncompliance or other issues (i.e., change in Owner/Agent, turnover of Agent staff, reports of physical condition concerns) at the property.

If a physical inspection is conducted, it will include inspection of at least 10% of the LIHTC units in the property, as well as inspection of the site, building exterior(s), building systems, common areas, and health and safety areas of the property to ensure compliance with HUD's Uniform Physical Condition Standards (UPCS). The inspection report will require confirmation of correction of all EH&S and Level 3 items; all other items (including Level 1 and 2 items) will be noted as observations only.

The sample size will be based on the total number of LIHTC units in the property, regardless of the Owner's election on Line 8b of IRS Form 8609. New Hampshire Housing reserves the right to inspect more units if needed.

The LIHTC units to be inspected will be selected in a manner that will not give Owners/Agents of LIHTC properties advance notice of what units will be inspected. New Hampshire Housing will provide Owners/Agents with reasonable notice of an upcoming inspection.

Annual Certifications

The Owner Certification of Continuing Program Compliance will be required annually no later than March 1st. The appropriate certification can be found on New Hampshire Housing's website.

Special Conditions Restrictions

Special Conditions within the LURA must be maintained throughout the extended use period. The Owner will certify annually, no later than March 1st, regarding compliance. The certification is part of the Owner Certification of Continuing Program Compliance and can be found on New Hampshire Housing's website.

Training

Annual LIHTC training is not required after year 15 of the compliance period; however, New Hampshire Housing strongly recommends that staff continue ongoing LIHTC and Fair Housing training.

Monitoring Fees

Compliance monitoring fees will continue to be assessed in accordance with the Qualified Allocation Plan (QAP) under which the property received its allocation of credits. Information regarding monitoring fees can be found on New Hampshire Housing's website.

Noncompliance

In addition to other remedies allowed by law, any noncompliance may have a negative impact on future scoring for the LIHTC program and other future funding from New Hampshire Housing.

Miscellaneous

Owners/Agents must keep careful track of when a property, and in some cases certain buildings within a property, transition from the compliance period to the extended use period. Premature implementation of the extended use period compliance and monitoring guidelines may result in noncompliance with IRC Section 42 for which New Hampshire Housing would be required to file IRS Form 8823.

This policy will be reviewed periodically and may be modified to facilitate better administration of the LIHTC program. Furthermore, New Hampshire Housing may waive or adjust any items contained within, on a case-by-case basis, for good cause shown to address unforeseen circumstances.

Any waiver granted by New Hampshire Housing under this policy may be subject to the rights of any third-party beneficiary of the applicable LIHTC LURA to seek enforcement of any of the applicable provisions thereof.