



LIHTC Compliance and Monitoring Policy Post Year 15

Extended Use Period

Properties awarded Low Income Housing Tax Credits (LIHTC) prior to 1990 had a compliance period of 15 years. A 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) established that properties 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 year 15 of the Compliance Period has ended, there may be no tax impact in the event of noncompliance; however, Owners must follow all provision of the LURA, unless modified in writing by the Authority. Noncompliance with provisions of the LURA may result in legal action and could have a negative impact on future participation in New Hampshire Housing Finance Authority programs.

Current LIHTC policies, certifications and forms are located on New Hampshire Housing's website: <https://www.nhhfa.org/asset-management/staying-in-compliance/low-income-housing-tax-credit/>

Compliance and Monitoring After Year 15

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

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 resident at restricted rent.

Unit Transfers

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

Student eligibility is required at move-in only. Certification of student status is not required annually thereafter; however, Owners 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 family size for the area in which the project 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 project is located.

Annual Certification

Projects that are 100% LIHTC must continue to verify household composition on an annual basis. Annual certification of household income is not required.

For mixed income projects, requirements for annual certifications will be in the form of a self-certification by the household. A completed TIC will serve as the self-certification.

Student status is not required other than at move-in; however, as noted above, Owners 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)

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

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, household 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 February 1st of each year.

Beginning with the February 1, 2018 tenant data submission, owners/agents must annually submit a certification for each LIHTC unit that includes, at a minimum, the household composition, student status (move-in only), rent and utility allowance for that unit, regardless of whether or not the project is 100% LIHTC and exempt from the annual recertification requirement. Mixed income properties must continue to submit annual recertification information. In addition, effective with the January 2018 LIHTC compliance monitoring reviews, at least two weeks prior to the review, owners/agents must complete an upload of all LIHTC unit data.

Household File Review

A compliance review of files for each property will be performed at least once every four (4) years. Monitoring will include a review of at least 10% of the LIHTC tenant files. 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 of LIHTC projects advance notice of what files will be reviewed. New Hampshire Housing will provide an owner with reasonable notice of an upcoming file review.

Physical Inspections

A physical inspection of each property will be performed at least once every four (4) years. This 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). 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 of LIHTC projects advance notice of what units will be inspected. New Hampshire Housing will provide an owner with reasonable notice of impending inspection.

If New Hampshire Housing has completed a physical inspection of the property within the last two (2) years in order to fulfill other funding requirements, that inspection report may be used. New Hampshire Housing may also rely on a REAC inspection completed within the previous three (3) years.

Special Conditions Restrictions

Special Conditions within the LURA must be maintained throughout the extended use period and the owner must certify annually, no later than March 1st, regarding compliance. The appropriate certification can be found on New Hampshire Housing's website.

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.

Training

Annual LIHTC training is not required; 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 and management agents must keep careful track of when a development, and in some cases certain buildings within a development, transition from the Compliance Period into 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 Low Income Housing Tax Credit 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 Land Use Restriction Agreement for Low Income Housing Credits to seek enforcement of any of the applicable provisions thereof.