

CHAPTER 2– RESPONSIBILITIES

For the purposes of clarification, the responsibilities of the various parties and monitoring process are outlined below.

Once tax credits are allocated to a project, the Code requires the State to monitor program compliance on an ongoing basis. However, compliance is the responsibility of the project Owner, and OHCS will not assume liability for tax consequences as a result of noncompliance and/or Internal Revenue Service audits.

OHCS’s monitoring duties include:

- Providing an LIHTC Compliance Manual and related materials;
- Offering continuing education on compliance to the Owner, Managing Agent, and on-site personnel, primarily through periodic compliance training workshops, as scheduling permits, and updates to the Compliance Manual;
- Reviewing annual Owner Certifications of Continuing Project Compliance (CCPC) (see “Required” forms [OHCS.1](#) or [OHCS.1a](#));
- Reviewing each low-income housing project a minimum of once every three years. The review consists of an on-site audit of a minimum of 20% of the low-income tenant certifications, supporting documentation, low-income tenant records, and move-out files. The review also includes a physical inspection of a minimum of 20% of the units (occupied and vacant) and all of the property grounds and common areas. Files and units are randomly chosen;
- Notifying the Owner when the project is found to be out of compliance with the Code requirements, including reports, fees or certifications not received by OHCS when due;
- Establishing schedules with the project Owner for correcting any noncompliance (Typically, 30 days are given to correct noncompliance issues. However, extensions will be granted under certain circumstances. The Owner or Managing Agent must request the extension in writing and submit the request to OHCS prior to the deadline originally given.);
- Performing follow-up reviews of any building or entire project, if deemed necessary; a follow-up review may include a physical

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inspection of the building(s) and/or a review of project tenant records;

- Notifying the IRS of an Owner’s noncompliance or failure to certify to compliance within 30 days after the period of time allowed for the correction whether or not the noncompliance has been corrected. OHCS will notify the IRS by filing Form 8823 noting the circumstances of the noncompliance and indicating whether or not the Owner has corrected or has submitted an acceptable plan for correction to OHCS; and
- Retaining records of noncompliance or failure to certify for a minimum of six (6) years beyond OHCS’s filing of the IRS Form 8823. In all other cases, OHCS must retain the certifications and records submitted by the Owner for three (3) years from the end of the calendar year in which they were received by OHCS.

The following schedule outlines time frames for certain monitoring events:

Event	Timeline
A project is chosen for inspection	OHCS gives a <i>minimum</i> of 14 days notice
OHCS notifies an Owner/Agent that a project is or is not in compliance	OHCS notifies an Owner/Agent of any noncompliance within 30 days of the determination
OHCS gives the Owner/Agent time to correct any noncompliance	OHCS allows a <i>minimum</i> of 30 days to correct noncompliance
OHCS must report noncompliance, corrected or not, to the IRS via Form 8823	OHCS notifies the IRS within 30 days of the correction period (with extensions) allowed to the Owner and identifies whether or not the findings have been corrected

The Owner or Developer

Each Owner has chosen to participate in the Low-Income Housing Tax Credit Program to take advantage of the available tax benefits. In exchange for these benefits, certain requirements must be met by the Owner that will benefit qualified low-income tenants. The requirements listed in the Code include Owners meeting the elected minimum set-aside requirement, charging appropriate rental rates for each qualified unit and maintaining accessible documentation and verification of qualified low-income tenants.

The Owner must also meet all requirements agreed to in the Reservation and Extended Use Agreement (Reservation) in regard to additional restrictions on rent levels and income. The Owner must certify annually that all Program requirements have been met. **Any violation of the Program or Reservation requirements could result in the loss of Credits allocated, or possible denial of applications received by OHCS for future funding.**

Although an Owner may have a Managing Agent act on his or her behalf, the Owner is ultimately responsible for ensuring compliance with all applicable low income housing tax credit regulation and rules. In selecting a Managing Agent, **the Owner should ensure that the Agent and all on-site personnel are knowledgeable of the provisions and requirements of the tax credit program and are experienced with managing a tax credit project.**

*Proper
Administration and
Recordkeeping*

Owners are required to keep records for each qualified low-income building in the project showing the following information:

1. 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;
2. The percentage of residential units in the building that are low-income units meeting the election of 20/50 or 40/60 minimum set-aside test;
3. The rent charged on each residential unit in the building, including the basis for determining the utility allowance;
4. The low-income unit vacancies in the building by date and the rentals of the next available unit(s) by date;
5. The low-income initial certification and annual certification of each low-income tenant/household and documentation to support those certifications, including Section 8 and Rural Development (RD) projects, and must be available during any reviews;
6. The eligible basis and qualified basis of the building at the end of the first year of the credit period;
7. The character and use of the nonresidential portion of the building included in the building's eligible basis under the Code (e.g. tenant facilities that are available on a comparable basis to all tenants and for which no use fee is charged, except for laundry facilities which may be coin operated as demonstrated in the operating projections made at the time of application); and
8. Evidence that tenant services are being provided as per the LIHTC application materials, or have been amended with Department approval.

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*On-site Records
(Administrative
Notebook)*

An Administrative Notebook is required to be kept on-site, and accessible to staff responsible for placing and tracking eligible households. The notebook should contain the following documents:

1. Any restrictive documents associated with the project (such as the Declaration of Land Use and Restrictive Covenants);
2. Documentation reflecting the current utility allowance and its source;
3. Current income limits;
4. Current rent limits;
5. Resident Services Plan;
6. Copy of the 8609 forms (the lower portion, Part II, should have been completed by the owner)

Record Retention

The Internal Revenue Code requires Owners/Agents to retain the records described above for at least six (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, however, must be retained for the entire compliance period plus six (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.

*Electronic File
Storage*

Owners have the option to maintain copies of the records described above on electronic storage systems provided they comply with the requirements listed in IRS Revenue Procedure 97-22. Further clarification to these requirements was provided in IRS Revenue Procedure 2004-82 Q&A. In addition, **OHCS has established more restrictive retention rules specific to tenant files and are as follows:**

- All **initial** qualifying tenant files must be maintained in hard-copy form for the duration of the initial compliance period, plus six (6) years beyond, for a total of no less than twenty-one (21) years.
- The owner must maintain resident files (**current and move-out**), **in original hard-copy form**, for the most current three (3) years.
- Resident files older than three (3) years can be electronically archived, with exception to the files for households currently residing at the project. For current households that have occupied units for more than three (3) years, all original move-in and first-year annual certifications, as well as the corresponding backup documentation, must be available upon request during an audit.

Note: The average “shelf life” for a disc is approximately 10 years. Re-saving information to a “fresh” disc for proper continued archival may be needed.

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Ongoing Administration and Notification

The Owner is responsible for keeping OHCS informed of any event that might affect the project's compliance with Internal Revenue Code 42 (IRC 42 or Code), for certifying annually the project's continued compliance and responding to OHCS's inquiries. This includes written notification of changes in ownership, management, Managing Agent, address, email address and telephone changes.

⇒ Process for Change of Managing Agent

Should the Owner desire to change Managing Agents, the Owner must notify OHCS and submit a Management Agent Plan and Qualifications (see "[Management Agent Packet](#)") for the proposed Managing Agent **at least 60 days prior to the effective date of change**. OHCS will evaluate the proposed change and approve, conditionally approve, or deny the change and notify the owner of the decision within 30 days. The Owner can then give the Managing Agent in place a 30-day notice to terminate services.

Reporting and Certification

The Owner is required to submit to OHCS a copy of IRS Form 8609 (see [Exhibit E.5](#)), where Part II has been completed and signed by an authorized representative of the ownership entity, upon filing with the IRS for the first year of the credit period. IRS Form 8609 should be accompanied with IRS Form 8609-A (see [Exhibit E.6](#)). Copies of subsequent filings may be requested by the agency.

*Forms OHCS.1 and
OHCS.1a were revised
on 10-06-10*

*Form OHCS.10 was
revised on 09/22/10*

The Owner is responsible for reporting to OHCS by submitting the Owner's Certification of Continuing Project Compliance Form (see "Required" forms [OHCS.1](#) or [OHCS.1a](#)), as well as certain household data collected within the Annual Reporting Spreadsheet ("Required" form [OHCS.10](#)). This information will eventually be submitted online via the OHCS website. In the mean time, the Annual Reporting Spreadsheet will need to be **submitted electronically, in its original, Excel formatting** to ensure that the information can be uniformly collected and uploaded to HUD each year. The Owner is also responsible for submitting tenant file documentation for specified units upon OHCS request.

The monitoring provisions of the Code require the Owner of a low-income housing project to certify at least annually that the project meets the following:

1. The requirements of the **20/50 test or the 40/60 test**, as applicable:

A. At least 20% of the available rental units must be rented to households with incomes not exceeding 50% of area median income adjusted for family size; or

- B. At least 40% of the available rental units must be rented to households with incomes not exceeding 60% of area median income adjusted for family size.
2. There was or was not a change to the applicable fraction of any building in the project. If a change occurred, it must be described. (The applicable fraction is the percentage of qualified low-income units within a project or the percentage of floor space of qualified low-income units, whichever is less. The original application specifies the set-aside amount for the project.);
 3. The Owner has received an annual low-income certification from each low-income tenant and documentation to support that certification following the guidelines of the HUD 4350.3, REV-1 Handbook, “Tenant Qualifications, Income and Assets”;
 4. That each low-income unit is rent-restricted as defined in the Code.

Note: Some Owners may have agreed through the Reservation and Extended Use Agreement and Declaration to reduce rents lower than the Code requirements. If so, the lower rents must be **applied**;

5. That all units in the project are for use by the general public and are used on a non-transient basis;
6. That each building in the project is suitable for occupancy taking into account local health, safety, and building codes;
7. That all tenant facilities included in the eligible basis of any building in the project are provided on a comparable basis without a separate fee to all tenants in the project (except for laundry facilities);
8. That if a low-income unit in the project becomes vacant during the year, every attempt is made to rent that unit to tenants having a qualifying income and while the unit is vacant, no units of comparable or smaller size are rented to tenants not having qualifying income, unless the Owner elects to withdraw a unit from the program which does not violate the minimum set-aside requirement as stated above and *reduces* the amount of credit eligible for the tax period including recapture of credit for prior years claimed;

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9. That if the income of tenants of low-income units increases above the limit allowed in the Code, the next available unit of comparable or smaller size will be rented to tenants having qualifying income;
10. The extended use agreement as described in the Code is in effect for projects receiving allocations on or after January 1, 1990;
11. That other restrictive programs included in the financing evaluation of the credit are in compliance. If other programs are funded through OHCS, such as Oregon Affordable Housing Tax Credit (OAHTC), HOME, HELP, Tax-Exempt bond financing or Trust Fund, a review of all requirements may be conducted along with an LIHTC review; and
12. That all tenant services proposed at the time of application are the services that are currently being provided, unless changes in services were in writing and forwarded to and approved by OHCS.

Noncompliance

The Owner is responsible to correct any incidents of noncompliance within the required time frame. OHCS must report to the IRS any violation of the requirements of the low-income housing tax credit program. Failure to correct within the time specified by OHCS may result in the loss of tax credits.

If the Managing Agent and/or the Owner determines that a procedure, a tenant, a change in rent, a building or entire project is not in compliance with the LIHTC Program requirements, OHCS must be notified immediately. The Managing Agent and the Owner must formulate a plan to bring the project back into compliance, and advise OHCS in writing of such plan. (See LIHTC Common File Findings, [Supplemental Information S.6](#), for more detail.)

***Managing Agent
and On-Site
Personnel***

The Managing Agent and on-site personnel are responsible to the Owner for implementing the LIHTC Program requirements and the provisions of the project Management Plan. Anyone who is authorized to lease apartment units to tenants must have a thorough understanding of, and follow, all federal and state laws, rules, and regulations governing certification and leasing procedures.

The Managing Agent must provide information requested by OHCS and submit, on behalf of the Owner, all required reports and documentation in a timely manner. Annual certification documents may be signed on behalf of the Owner by the Managing Agent with signature authority.

Managing Agent/staff should ensure that tenant occupancy information remains confidential, but is **accessible to authorized representatives of OHCS and/or the IRS.**