

CHAPTER 4 – COMPLIANCE MONITORING PROCEDURES

General

OHCS is responsible for establishing compliance monitoring procedures and will report incidences of noncompliance to the Internal Revenue Service (IRS). However, OHCS's inspections are not the same as IRS audits. Compliance with tax credit regulations is ultimately the responsibility of the Owner. The Owner will be liable for consequences of noncompliance regardless of Owner reporting or OHCS inspection procedures. Owners are urged to seek legal counsel and/or tax advice when establishing management and accounting practices for their tax credit projects.

Monitoring each project is an ongoing activity that extends throughout the Credit compliance period (a minimum of 30 years). OHCS is required to conduct this compliance monitoring and inform the IRS of noncompliance, or the failure of an Owner to certify to compliance, no later than 30 days after the period of time allowed for correction (including extensions). The IRS requires notification from OHCS whether or not the noncompliance has been corrected.

The Compliance Monitoring Process is based upon the following components:

- IRC Section 42 and promulgated regulations including the Oregon Administrative Rules for LIHTC Programs and the Qualified Allocation Plan for projects with Building Identification Numbers (BIN) beginning with OR90
- The Compliance Manual
- Compliance Training Workshops
- Owner's Certification of Continuing Program Compliance and Project Fees
- Utility Allowance Documentation
- Use of Correct Income and Rent Limits
- LIHTC Compliance Forms
- Lease and Tenant Selection Criteria Review and Approval
- Tenant File Review and Project Site Inspections
- Exemptions and Special Circumstances
- Record Keeping and Record Retention
- Noncompliance/Plans to Correct Noncompliance
- Form 8823
- Monitoring Fees
- Services Proposed in Application

**Compliance
Training
Workshops**

- Technical advice offered within the Guide for Completing Form 8823 (IRS publication, revised in October of 2009)
- IRS Technical Advice Memos, Private Letter rulings and other credit related information released by the IRS from time to time.

OHCS will conduct periodic Compliance Training Workshops, as scheduling permits. OHCS strongly recommends that all persons directly involved in the ownership and/or management of the project, including site staff, attend the workshops. The purpose of the workshops is to provide:

- A sampling of the basic Code compliance requirements;
- IRS Final Regulations for compliance monitoring or updates;
- OHCS policies and procedures for compliance monitoring;
- Specific information on the following low-income tenant eligibility requirements:
 - ✓Income and Rent Limits
 - ✓Definitions of Income and Assets
 - ✓Tenant Income and Asset Certification
 - ✓Leases and/or Addendums to the Lease
 - ✓Student Eligibility

Compliance training workshops are not intended to substitute for income and asset certification or other technical recordkeeping training. The Owner is responsible to ensure project management is capable of these tasks. If workshops are not currently being offered by OHCS, outside contractors are available to provide LIHTC training opportunities at least on an annual basis. Such contractors include (but not limited to):

- [National Center for Housing Management \(NCHM\)](#)
- [Quadel Consulting](#)
- [Spectrum Enterprises, Inc.](#)
- [TheoPRO Compliance & Consulting Inc.](#)

**Owner
Certification of
Continuing
Program
Compliance**

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

The Owner's Certificate of Continuing Program Compliance is due annually (see Required Forms [OHCS.1](#) and [OHCS.1a](#)). **The due date is on or prior to April 15th of each year.** The Owner will be required to certify that the project is currently and has been in compliance during the preceding calendar year with regard to:

- Low-income rent levels and tenant qualifications;
- Units being suitable for occupancy and in compliance with local

health, safety and building codes;

- Units being available for the general public on a non-transient basis;
- All tenant facilities that are included in the eligible basis are and have been available to all tenants, without fees, on a comparable basis;
- Units of comparable or smaller sizes are and have been rented only to income qualified persons when a unit formerly rented by a low-income tenant is vacated, or as a low-income tenant's income increases beyond the limit allowed in IRC Section 42(g)(2)(D)(ii);
- Resident services;
- No changes in the eligible basis and/or applicable fraction;
- All other applicable federal and state laws, OHCS regulations, policies, and procedures.

Section 42 regulations consider failure to supply a completed annual Certification of Continuing Program Compliance to be reportable noncompliance. The Certificate is to be signed by the Owner or a Managing Agent with signature authority. If it is not submitted, with all requested attachments, by the specified due date, OHCS will submit a Form 8823 to the IRS reflecting the project, **in its entirety**, as out of compliance. An amended Form 8823 will be submitted once the Certificate and all requested attachments are received and reviewed.

Attachments to the Certification of Continuing Program Compliance (CCPC) include:

- An Annual Reporting Spreadsheet (see "Required" form [OHCS.10](#))
- The most recent utility allowance information
- Copies of IRS 8609 forms ("LIHC Allocation and Certification") issued for each building where **the owner has completed, signed and dated**, Part II "First-Year Certification" of each form. The owner should have submitted these forms on or prior to April 15th of the year after the first year of the credit period. Once OHCS has confirmed receipt of these forms, there should be no need to resubmit in subsequent years.

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

Utility Allowance Documentation

If utilities are paid directly by the tenant, use the required utility allowance when determining eligible unit rents. If utilities are included in gross rent, the utility allowance is zero. The IRS requires that utility allowances be set according to the Code ([Supplemental Information S.2](#) and [Supplemental Information S.2a](#)).

To remain in compliance, Owners must utilize the correct utility allowance in order to properly determine unit rents. In accordance with IRC Notice 89-6, **utility allowance documentation must be submitted**

*Utility Allowance
Update*

to OHCS each year with the Owner's Certificate of Continuing Program Compliance. If utility allowances change, Owners may need to adjust rents accordingly to remain in compliance with the Code's rent restriction requirement.

On July 29, 2008, the IRS issued a Utility Allowance Regulations Update ([IRS 26 CFR Part 1](#)), adding the following utility allowance calculation options (not retroactive):

- Estimate from the Agency that has jurisdiction over the building (if available),
- HUD Utility Schedule Model (see <http://www.huduser.org/resources/utimodel.html>), and
- Energy Consumption Model – must be calculated by a licensed engineer or a qualified professional approved by OHCS

Owners still have the option of continuing to choose from one of the original utility allowance calculations which are:

- Allowances provided by the applicable Public Housing Authority (PHA) or
- Data obtained from the local utility company, in accordance with HUD guidelines.

The Owner is responsible to obtain (and make available on-site) updated utility allowance data on an annual basis. Once obtained, the new utility allowances should be implemented within 90 days.

The 90-day implementation period begins for:

- PHA Estimate – when the PHA makes the revisions available
- Utility Company – with receipt date of the new information
- HUD's Utility Schedule Model – the date entered as the "Form Date" on HUD Form 52667
- Energy Consumption Model – begins 60 days after the end of the last month of the 12-month period for which data was used to compute the estimate
- State HFA Estimate – with receipt date of the new information (not applicable in Oregon)

⇒ *Sub-Metered
Utilities*

[IRS Notice 2009-44](#) clarifies that utilities paid by a resident that are based on actual consumption in a sub-metered unit are to be treated as being paid directly by the resident.

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Note: The Final Regulations state that cable television, telephone, and internet costs are to be **excluded** from the utility allowance calculations.

*Projects with RD,
Section 8 and
HOME*

Projects regulated by Rural Development (RD) and HUD (Section 8) must continue to use the RD and HUD-approved utility allowance procedures, respectively.

⇒ *Tenant-Based
Assistance*

Owners/agents must use the applicable Public Housing Authority (PHA) utility allowance for those residents receiving tenant-based HUD assistance and occupy rent-restricted units in LIHTC buildings that are not FmHA-assisted or HUD-regulated.

LIHTC Compliance Forms

OHCS has created several verification forms that must be used in the format presented within this manual and on the website. **Deviations from the exact format of these forms will not be permitted.** The OHCS-mandated forms are as follows:

Required Forms

- ✓ Owner's Certificate of Continuing Program Compliance (CCPC) ([OHCS.1](#)) (rev. 10/06/10)
- ✓ Owner's Certificate of Extended Use Compliance (CEUC) ([OHCS.1a](#)) (rev. 10/06/10)
- ✓ Tenant Income Certification (TIC) ([OHCS.2](#)) (rev. 10/25/10)
- ✓ Instructions to the TIC ([OHCS.2a](#)) (rev. 10/01/10)
- ✓ Applicant/Tenant Questionnaire ([OHCS.3](#)) (rev. 03/10/10)
- ✓ Under \$5,000 Asset Certification ([OHCS.4](#))
- ✓ Annual Certification of Student Status ([OHCS.5](#)) (rev. 03/10/10)
- ✓ Student Status / Financial Assistance Verification ([OHCS.6](#))
- ✓ Employment Verification ([OHCS.7](#)) (rev. 04/09/10)
- ✓ Unemployed / Zero-Income Certification ([OHCS.8](#)) (rev. 11/05/10)
- ✓ Unit Transfer Certification ([OHCS.9](#)) (rev. 03/30/10)
- ✓ Annual Reporting Spreadsheet ([OHCS.10](#)) (rev. 09/22/10)

Note: Owners/managing agents must implement the use of the OHCS-mandated forms when they are made available on the OHCS website, but **no later than 30 days** beyond their creation/revision dates (posted on the forms and the OHCS website).

Recommended Forms

In addition to the required forms, the following recommended forms are available for your use to assist in obtaining information required in order to adequately verify income, assets, etc. Any format the Owner or Managing Agent chooses that provides, **at a minimum**, the information requested on the following forms is acceptable to OHCS:

- ✓ Affidavit of Pregnancy ([R.1](#)) (rev. 03/16/10)
- ✓ Annuity Verification ([R.10](#)) (created 11/15/10)
- ✓ Assessment of Household Demographics ([R.2](#)) (created.10/06/10)
- ✓ Asset Verification ([R.3](#))
- ✓ Certification of Child Support and/or Alimony ([R.4](#)) (rev. 03/25/10)
- ✓ Compliance Checklist ([R.5](#))
- ✓ Divestiture of Assets Verification ([R.6](#))
- ✓ Estrangement / Separation Certification ([R.7](#))
- ✓ Live-In Caregiver Affidavit ([R.8](#)) (rev. 03/16/10)
- ✓ Pension Verification ([R.15](#)) (created 11/15/10)
- ✓ Periodic Monetary Assistance Verification ([R.9](#))
- ✓ Public Assistance Verification ([R.11](#))
- ✓ Public Housing Authority Statement ([R.12](#))
- ✓ Retirement Account Verification ([R.19](#)) (created 11/15/10)
- ✓ Self-Employment Affidavit ([R.13](#)) (rev. 07/22/10)
- ✓ Self-Employment Affidavit (No Tax Return) ([R.14](#)) (rev. 07/22/10)
- ✓ Social Security Benefits Verification ([R.16](#))
- ✓ Special Features Unit / Live-in Caregiver Verification ([R.17](#)) (rev. 03/16/10)
- ✓ Termination of Employment Verification ([R.18](#))

*Tenant File
Required
Documents*

The following documents are required to be included in each tenant file:

- ✓ Application
- ✓ Applicant/Tenant Questionnaire ([Required Form OHCS.3](#))
- ✓ All Related Verification Forms
- ✓ Certification of Assets (if under \$5,000) ([Required Form OHCS.2](#))
- ✓ Annual Certification of Student Status (during initial compliance period) ([Required Form OHCS.5](#))
- ✓ Lease Agreement

***OHCS Tenant
File Reviews &
On-site
Inspections***

As provided in the IRS compliance monitoring regulations, OHCS has the right to review tenant files on-site and/or to perform physical inspections of LIHTC Projects as deemed necessary throughout the applicable compliance period for each project. (See [Exhibit E.8](#), “File Review Checklist”. This form is used by OHCS Compliance Officers for conducting file reviews.)

Monitoring frequency is a minimum of once every three years. OHCS selects random samples of at least 20% of the building/project’s units (occupied and vacant) and files (current and move-out) for each review and inspection conducted. When a project is scheduled for inspection, OHCS will:

- Notify the Owner and Managing Agent in writing of the date and approximate time of inspection;
- Perform the on-site file, property, and unit inspections;
- Inform the Owner and Managing Agent of any findings of noncompliance with regard to the review.

Note: If an owner of a multiple building project has elected to treat one or more of the buildings as separate projects (answered “No” to line 8b of IRS Form 8609), OHCS is required to randomly select at least 20% of each affected buildings units to inspect and files to review in order to satisfy the monitoring requirements under the Section 42 Program.

Inspection Standards

State Housing Finance Agencies are mandated to conduct physical inspections at least once every three years to ensure that LIHTC properties are providing buildings and units that are suitable for occupancy (Treas. Reg. §1.42-5). OHCS conducts inspections of selected units using the Uniform Physical Conditions Standards (see [Supplemental Information S.5](#)) established by HUD. The following is an excerpt from the General Instructions for completing Form 8823 that provides explanation of what the inspectable areas of a project are and how they should be reported to the IRS:

“Housing credit agencies must use either (a) local health, safety, and building codes (or other habitability standards) or the (b) Uniform Physical Conditions Standards (UPCS) (24 C.F.R. section 5.703) to inspect the project, but not in combination. The UPCS does not supersede or preempt local codes. Thus, if a housing credit agency using the UPCS becomes aware of any violation of local codes, the agency must report the violation. Attach a statement describing either (a) the deficiency and its severity under the UPCS, i.e., minor (level 1), major (level 2), and severe (level 3) or (b) the health, safety, or building violation under the local codes. The Department of Housing and Urban Development’s Real Estate Assessment Center has developed a comprehensive description of the types and severities of deficiencies entitled “Dictionary of Deficiency Definitions” found at <http://www.hud.gov/offices/reac/offices/reac/> under Library Section, Physical Inspections, Training Materials. **Under Regulations section 1.42-5(e)(3), report all deficiencies to the IRS whether or not the noncompliance or failure to certify is corrected at the time of inspection.** In using the UPCS inspection standards, report all deficiencies in the five major inspectable areas (defined below) of the project: (1) Site; (2) Building exterior; (3) Building systems; (4) Dwelling units; and (5) Common areas.”

Casualty Losses

Per the IRS 8823 Guide, “A casualty loss is defined as the damage, destruction, or loss of property resulting from an identifiable event that is sudden, unexpected, or unusual.” A casualty loss includes events such as fires, floods, damage caused by vandalism, car accidents, tornadoes, and hurricanes.

The Guide states further that, “Physical damage to LIHC properties caused by casualty events and which render LIHC residential rental units or buildings, or common areas associated with the property, unsuitable for occupancy is reported as noncompliance with the UPCS or local standards.”

Owners and/or managing agents are required to notify OHCS immediately upon discovering that a LIHTC project has experienced a casualty loss.

*Vacant Unit
Turnover*

As stated in Chapter 3 (page 3-6), owners are required to prepare vacant units for immediate occupancy within a reasonable amount of time. OHCS has defined “reasonable amount of time” to be 30 days or less. In addition, owners must make all reasonable attempts to market their vacant, rent-restricted units.

All vacant units that are not made suitable for occupancy, within a reasonable amount of time, will be considered as out of compliance dating back to the applicable dates each unit was vacated.

Note: There may be extenuating circumstances that prevent an owner from being able to timely prepare a unit (i.e. extraordinary repairs need due to severe damage caused by resident). These cases should be individually dealt with between the owner and OHCS.

*Tenant Income
Certification
Review
Exemptions*

The Code requires all project owners to submit annually a Certificate of Continuing Program Compliance (CCPC) (see [Required Form OHCS.1](#)). Owners are also required to inform OHCS in the event such reports and certifications are unable to be made. Projects will be considered out of compliance if these requirements are not met.

*Projects Financed
By Rural
Development (RD)*

IRS regulations allow OHCS to exempt RD 515 projects from the Tenant Income Certifications, supporting documentation, and rent records review process unless questions or discrepancies arise. **As of January 1, 2009, all 100% LIHTC projects with RD funding will be exempt from having to complete annual LIHTC tenant income certification.**

The owner is still subject to comply with the program restrictions

*Projects with Rental
Subsidy (Section 8)*

established by Rural Development with respect to the tenant recertification process. In addition, student status for each household will need to be addressed on an annual basis throughout the Initial compliance period. Households will need to complete an Annual Certification of Student Status **every twelve months** beginning with the move-in certification (see [Required Form OHCS.5](#)).

For 100% LIHTC projects receiving housing subsidies under Section 8 of the U.S. Housing Act of 1937, completion of the LIHTC Tenant Income Certification (TIC) is required **at move-in only**. Third-party documentation will need to be obtained to support the income and asset figures reported on the move-in TIC.

The owner is still required to maintain compliance with Section 8 program rules, as well as addressing Student Status **on an annual basis** for each household, with the completion of an Annual Certification of Student Status (see [Required Form OHCS.5](#)) during the Initial 15-year compliance period.

*Projects with
Federal HOME
Funds*

Prior to July 30, 2008, 100% LIHTC projects that had units with federal HOME funds attached were required to complete formal tenant income certifications (including obtaining third-party verifications) on an annual basis as required by Section 42 of the Internal Revenue Code of 1986.

Effective January 1, 2009, households occupying LIHTC/HOME units (for 100% tax credit properties) will no longer need to process formal tenant income certifications annually. Instead, owners are required to complete the LIHTC/HOME TIC ([Required Form OHCS.2](#)) and obtain third-party verifications of income and assets, **at the time of move-in, upon the first-year anniversary (OHCS-mandated), and for every sixth year of the HOME affordability period (per 24 CFR 92.203(a)(1)(i))**. The HOME Program requires households to, at a minimum, self-certify their income and assets for all other years, which may be accomplished by using the LIHTC/HOME TIC.

Example:

HOME Affordability Period – **Began in 2001**

- 2003 – Move-in (complete TIC, 3rd party verify)
- 2004 – 1st Year Annual (complete TIC, 3rd party verify)
- 2005 – Self-certification
- 2006 – 6th Year of HOME Affordability (TIC, 3rd party verify)
- 2007 – Self-certification
- 2008 – Self-certification

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Owners will need to continue to address student status for each household annually by use of the Annual Certification of Student Status (see [Required Form OHCS.5](#)).

IRS Annual Recertification Waiver

Note: Please refer to Chapter 1 (page 1-5), regarding the passage of new legislation and the requirement of owners of LIHTC projects to submit tenant data on an annual basis (later submitted to HUD by OHCS).

An amendment of the Omnibus Budget Reconciliation Act of 1993 allows for an Owner of a 100% LIHTC project to request the IRS to waive the annual tenant income recertification requirement.

However, one of the provisions within the Housing and Economic Recovery Act of 2008 (H.R. 3221) grants an automatic tenant income recertification waiver to owners of **100% LIHTC** projects (can be coupled with tax-exempt bond financing). The provision **does not** waive recertification requirements for other programs that require additional monitoring, such as with the Section 8, HOME or Rural Development programs.

OHCS-Mandated First-Year Certification

As of October 16, 2008, **OHCS has opted to exercise their right** as the state's Housing Finance Agency responsible for monitoring Oregon's LIHTC properties, **to establish a policy requiring all owners of 100% LIHTC projects to continue to complete a formal certification at move-in, as well as a first-year annual certification (see [OHCS Letter 10/16/08](#)) for each household.** Third-party verifications must be obtained to support the information reported for both the move-in and first-year annual certification ("**formal**" certifications). This policy went into effect on January 1, 2009.

OHCS Waiver of First-Year Certification

OHCS will consider, on a case-by-case basis, requests from owners to waive the State-mandated process of completing first-year annual certifications for **100% LIHTC** properties. A written request for the waiver should be submitted to the OHCS Compliance Officer assigned to the project. In order to determine whether the waiver of the first-year certifications should be granted, **OHCS may deem it necessary for a third-party review of 100% of the current LIHTC tenant files take place (at the owner's expense).**

Noncompliance Notification to Owner

The IRS requires OHCS to provide written notice of noncompliance to the Owner if:

- An annual Owner's Certification of Continuing Program

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	<p>Compliance (CCPC) (Required Form OHCS.1) is not received by the due date;</p> <ul style="list-style-type: none">• Tenant Income Certifications, supporting documentation, and rent records are not submitted when requested by OHCS;• The project is found to be out of compliance through inspection, review, or other means with the provisions of IRC Section 42 or representations made in the project application and noted in the Reservation Agreement; and/or• The Owner fails to give notice to the agency of the sale or transfer of the property.
<p><i>Correction Periods</i></p>	<p>Owners will have advance notice of the intent to file Form(s) 8823 for noncompliance resulting from failure to submit required documentation including the annual status report and the annual Owner’s Certification of Continuing Program Compliance.</p>
	<p>Owners will have a minimum of 30 days from the date of notification by OHCS to correct findings of noncompliance with any other Code provisions. In some circumstances, extensions will be granted upon receipt of a written request for extension from the Owner or Agent.</p>
<p><i>Notification to IRS</i></p>	<p>OHCS is required to file IRS Form 8823 “Low-Income Housing Credit Agencies Report of Noncompliance” (see Exhibit E.4 Link) with the Internal Revenue Service no later than 30 days after the end of the correction period, including any extensions.</p>
<p><i>Monitoring Fees</i></p>	<p>The IRS must be notified whether or not the noncompliance or failure to certify is corrected. OHCS must explain the nature of the noncompliance or failure to certify and state whether the noncompliance has been corrected. Any change in either the eligible basis or applicable fraction that results in a decrease in the qualified basis of the project must be reported to the IRS. If a building is entirely out of compliance and will not be in compliance at any time in the future, OHCS must be informed in writing. In this case, OHCS will notify the IRS <i>one time only</i>.</p> <p>OHCS assesses an annual charge to all projects during the entire term of affordability. The monitoring fee is currently \$35 per unit per year throughout the initial compliance period and is then reduced to \$25 per unit per year during the extended affordability period.</p> <p>OHCS mails the invoices for all properties each year in November, to which the payments are due the first business day after January 1st.</p>

Example:

Initial Compliance Period -

The annual monitoring fee for a 60-unit project = \$2,100 (60 units x \$35)

Extended Use Period -

The annual monitoring fee for a 60-unit project = \$1,500 (60 x \$25)

Note: OHCS reserves the right to adjust annual monitoring fees with proper notification to owners as circumstances change. Furthermore, OHCS may initiate additional fees associated with various monitoring functions and/or noncompliance issues, should it be deemed necessary.