

**Correction  
Period;  
Notice of  
Noncompliance  
to IRS**

## *Noncompliance*

If the Commission does not receive the certifications described in previous sections, or does not receive or is not permitted to inspect Resident income certifications, supporting documentation, and rent records, or discovers by inspection, review, or in some other manner, that the property is not in compliance with the provisions of Section 42, it will notify the Owner and provide a correction period during which time the noncompliance must be corrected. Any change in either the applicable fraction or eligible basis that results in a decrease in the qualified basis of the property is noncompliance that must be reported to the IRS.

Depending on the severity of the noncompliance, the Commission will generally provide 30 days to correct documentation or reporting errors. However, the correction period is not to exceed 90 days from the date of the notice to the Owner, although the Commission may extend the correction period for up to 6 months, but only if it determines there is good cause for granting the extension.

**The Commission files Form 8823, "Low-Income Housing Credit Agencies Report of Noncompliance," with the IRS no later than 45 days after the end of the correction period and no earlier than the end of the correction period, whether or not the noncompliance or failure to certify is corrected.**

The Commission explains on Form 8823 the nature of the noncompliance or failure to certify and indicates whether the Owner has corrected the noncompliance or failure to certify.

The Commission retains records of noncompliance or of failure to certify for six years beyond the Commission's filing of the respective Form 8823. In all other cases, the Commission retains the certifications and records above for three years from the end of the calendar year the Commission receives the certifications and records.

**Reporting  
Noncompliance  
with  
Commission  
Requirements**

In addition to reporting to the IRS events of noncompliance which could result in recapture of credit, the Commission also reports to the IRS any noncompliance with additional commitments made to the Commission in the recorded Regulatory Agreement . These areas of noncompliance with Commission agreements include failure to maintain any Additional Low-Income Housing Units Set-Aside and to restrict the rents for those units

### **Common Reasons for Noncompliance**

based upon the income level of the set-aside. Other items of noncompliance with State requirements include failure to pay annual compliance fees, to maintain Special-Needs Commitments, to restrict upfront rental charges, or failure to advertise and provide notice of affordable housing vacancies as outlined in the Regulatory Agreement, to the extent such commitments were made.

1. Failure to recertify Residents within a 12-month period.
2. Failure to obtain and retain proper income verification.
3. Failure to implement changes in utility allowances.
4. Failure to satisfy Special-Needs Commitments or additional affordable housing set-asides.
5. Failure to charge correct rent for additional affordable housing set-asides.
6. Failure to pay monitoring fees.
7. Health, safety or building code violations.

### **Recertifications at 100% Low Income Properties**

If the Commission or another public funder partner discovers that Households at a 100% low-income property were not properly initially qualified, the Commission may require that the Owner re-instate third-party recertifications for all Households, every year, until the Owner can prove that all Households are income-qualified. The Commission also has the right to require re-instatement of third-party recertifications for any property that fails to:

- ◆ Prevent adult members from being added to Households within the first six months of the initial lease, without re-qualifying the entire household
- ◆ Complete the first year third-party recertification for all Households
- ◆ Report Resident fraud to the Commission
- ◆ Follow the Next Available Unit Rule
- ◆ Abide by other Commission requirements

### **Properties with Recertification Waivers**

Properties with the recertification waiver in place must be certain that new household is properly income certified. If an improper initial certification is discovered, the income of **all** units in the building must be re-certified and

revocation of the waiver may be required. IRS guidance has stated that it is up to the state agency to determine whether or not the waiver should be revoked.

Properties approved by the IRS for Recertification Waivers are not required to complete a first year third-party recertification for their Residents. Per Recertification Waiver guidelines described in **Chapter 12** of this Manual, such properties are only required to properly income-certify Residents at *initial move-in*.

## Resident Fraud

Owners should demonstrate due diligence to prevent Resident fraud when determining eligibility. Deliberate misrepresentation on the part of a Resident can result in the Owner renting a unit to an ineligible tenant. If an Owner discovers that a Resident has deliberately misrepresented one or more eligibility factors, the Owner should consult landlord-tenant law to determine if the household can be compelled to move, or if the rent can be raised to market rate.

The IRS has stated that if an Owner corrects an issue of fraud and notifies their housing finance agency, the property will not be reported as out of compliance. If the housing finance agency discovers the fraud, then an 8823 must be filed. This encourages Owners to be proactive in discovering and resolving noncompliance prior to an agency audit.

To prevent any recapture issues, Owners are also encouraged to immediately report Resident fraud directly to the IRS by calling the IRS Fraud Hotline at 1-800-829-0433.

### **Authority:**

Federal compliance monitoring requirements - **IRS Regulation 1.42-5**.  
State compliance requirements are set out in the property's recorded Regulatory Agreement (Extended Use Agreement) as well as the Commission's Tax Credit and Compliance policies.