



TAB K

Requirements & Procedures for Compliance Monitoring



**REQUIREMENTS AND PROCEDURES FOR
COMPLIANCE MONITORING
STATE OF MICHIGAN
Low Income Housing Tax Credit Program**

I. BACKGROUND

Section 42(m)(1)(B)(iii) of the Internal Revenue Code of 1986, as amended (the "Code"), requires that each state's Qualified Allocation Plan for the allocation of low income housing tax credit provide a procedure that the agency will follow in notifying the Internal Revenue Service of any noncompliance with the provisions of Section 42 of which it becomes aware. This provision became effective on January 1, 1992.

Final regulations, developed by the Internal Revenue Service and published on September 2, 1992 and amended on December 21, 2000, outline minimum requirements for owner record keeping and reporting, for state credit agency monitoring and inspecting, and for reporting to the Service instances of noncompliance.

This Compliance Monitoring Plan generally follows the final regulations. **Please note that the requirements of this Plan are applicable to ALL owners of ALL buildings which have ever claimed the low income housing tax credit, from the inception of the program in 1987.** In addition to the overview of compliance requirements listed below, additional policies and procedures are detailed in the MSHDA Rental Housing Compliance Manual.

II. RESPONSIBILITIES OF THE OWNER

A. Record keeping

The owner of a low income housing project or any buildings located therein must keep records, which include all of the information set forth below, on a building by building basis, for a minimum of six years after the due date (with extensions) for filing the federal income tax return for that year. However, the records for the first year of the credit period must be kept for six 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.

- i) 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);
- ii) The percentage of residential rental units in the buildings that are low income units;
- iii) The rent charged on each residential rental unit in the building (including any utility allowances);
- iv) The number of occupants in each low income unit
- v) The low income unit vacancies in the building and information that shows when and to whom the next available units were rented;

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- vi) The income certifications of each low income tenant per unit;
- vii) Documentation to support each low income tenant's income certification;
- viii) The eligible basis and qualified basis of the building at the end of the first year of the credit period; and
- ix) The character and use of the nonresidential portion of any building included in the project's eligible basis (for example, any community building, recreational facility, etc. available to all tenants and for which no separate fee is charged).

Owners must keep, for inspection by the Authority, the original local health, safety or building code violation reports or notices that are issued by the state or local government unit. These reports may be destroyed following an inspection by the authority and notification to the owner that the violations have been corrected. Code violation reports must be retained for uncorrected violations.

B. Annual Certification of Owner

The owner of any building(s)/project which has claimed or plans to claim low income housing tax credit must certify to the Authority, under penalty of perjury, at least annually, for each year of the compliance period, on MSHDA's Owner Certification form, that, for the preceding 12-month period:

- i) The project meets the requirements of: either the 20/50 test set forth at Section 42(g)(1)(A) of the Code, or the 40/60 test set forth at Section 42(g)(1)(B) of the Code, whichever is applicable, and, if applicable to the project, the 15/40 test set forth at Sections 42(g)(4) and 142(d)(4)(B) of the Code for "deep rent skewed" projects;
- ii) There was no change in the applicable fraction (as defined in Section 42(c)(1)(B) of the Code) of any building in the project, or that there was a change, and a description of the change;
- iii) The owner has received an annual income certification from each low income tenant and documentation to support that certification;
- iv) Each low income unit in the project was rent restricted in accordance with the applicable provisions of Section 42(g) of the Code;
- v) All units in the project were for use by the general public and were used on a nontransient basis (except for permissible transitional housing for the homeless);
- vi) No finding of discrimination under the Fair Housing Act, 42 U.S.C 3601-3619, has occurred for this project.
- vii) Each building in the project was suitable for occupancy according to all local health, safety, and building codes;

- viii) There has been no change in the eligible basis of any building in the project, or, if there has been a change, the nature of that change;
- ix) All tenant facilities in each building in the project that have been included in eligible basis are provided on a comparable basis to all tenants without additional charge;
- x) If a low income unit became vacant during the year, reasonable attempts were or are being made to rent that unit, or the next available unit of comparable or smaller size to people having qualifying incomes before any units in the project were or will be rented to tenants not having qualifying incomes;
- xi) If the income of any tenant of a low income unit increased above the limit allowed in Section 42(g)(2)(D)(ii) of the Code, the next available unit of comparable or smaller size was or will be rented to tenants having a qualifying income; and
- xii) If applicable, an extended low income housing commitment as described in Section 42(h)(6) of the Code was in effect.
- xiii) If the owner received its credit allocation from the portion of the state ceiling set-aside for a project involving "qualified non-profit organizations" under Section 42(h)(5) of the code, the non-profit entity materially participated in the operation of the development within the meaning of Section 469(h) of the code.
- xiv) There has been no change in the ownership or management of the project other than those changes, if any, previously reported to the LIHTC Section of MSHDA.

C. Tenant Data Reporting

All owners must submit on an on-going basis in MSHDA's On-line Tenant Data Reporting System the following information:

- i) The number of qualifying low income units;
- ii) Information on each low income tenant, including name, social security number, number of people in household, and annual income;
- iii) The number of bedrooms in each unit;
- iv) The rent charged for each unit; and
- v) Such other information as is set forth on the On-line System and required by the Authority.

D. Additional Information

Should a building/project be selected under III A below, the owner must submit such additional information as may be required by the Authority in order to comply with this Plan and the applicable federal regulations.

III. **MSHDA RESPONSIBILITIES**

It is currently the intent of the Authority to perform the responsibilities listed below and outlined in the regulations governing this program. However, at some future time, should the Authority, in its sole discretion, decide to retain an agent or private contractor to perform some of the responsibilities listed below, it may do so. In this event, the Authority shall use reasonable diligence to ensure that the agent or private contractor properly performs the delegated monitoring functions. The Authority shall, however, at all times, retain responsibility for notifying the Internal Revenue Service of any noncompliance of which it becomes aware, and shall also file Form 8823 with the Service.

The Authority may also, as provided by regulation, enter into an agreement with the Farmers Home Administration, with respect to the provision of certain tenant income and rent information, and physical inspections.

A. Review of Certifications

Each year the Authority will review the Owner Certifications and Tenant Income/Rent Reports for compliance with program requirements.

B. Selection of Projects for In-Depth Monitoring

The Authority, or its authorized agent, will physically inspect at least 20% of the low-income units in a project and will inspect the low-income certification, the documentation the owner has received to support that certification, and the rent record for at least 20% of the low-income units no later than the end of the second calendar year following the year the last building in the project is placed in service.

The Authority, or its authorized agent, will conduct a physical inspection of all buildings and a minimum of 20% of the low-income units in a project, and will inspect the low-income certification, and the rent record for at least 20% of the low-income units at least once every 3 years.

The Authority retains the right to perform an on-site inspection of any low income building at any time during the compliance period for low income housing tax credit.

C. Authority Record Retention

The Authority shall retain records of noncompliance or failure to certify for six years after its filing a Form 8823.

The Authority shall retain all certifications and records for not less than three years from the end of the calendar year in which they are received.

IV. NOTIFICATION OF NONCOMPLIANCE

- i) Should any of the submissions required herein, including the Owner Certification, the Tenant Income/Rent Report, and/or income certifications, supporting documentation, and rent records, not be submitted in a timely fashion, or should there be omissions, the Authority shall, within 45 working days, notify the owner in writing, requesting such information. The owner will have 20 working days in which to provide the information, after which the Authority shall notify the Internal Revenue Service of the owner's failure to provide the required information.

- ii) Should the Authority discover, as a result of an inspection or review, or in any other manner, that the project is not in compliance with Section 42, or that credit has been claimed or will be claimed for units which are ineligible, the Authority shall notify the owner within 45 working days. The owner will have 20 working days in which to commence appropriate action to cure such noncompliance. The owner shall have a maximum of 90 days from the date of notice to the owner to cure the noncompliance. The Authority shall notify the Internal Revenue Service, utilizing Form 8823, no later than 45 days after the end of the correction period, of the nature of the noncompliance and will indicate to the Service whether or not the owner has made appropriate corrections. In extraordinary circumstances, and only if the Authority determines that there is good cause, an extension of up to six months to complete a cure for noncompliance may be granted.