



LIHTC Compliance Manual 2019

FAQs for Property Managers and Owners

CERTIFICATIONS

Q. If we initially certify 75% of the tenants within 120 days before the acquisition date, and the remaining 25% of tenants within 120 days after the acquisition date, are we in compliance with the '120 rule'?

A. Yes.

Q. If we receive a new round of LIHTCs, do we need to keep the original initial certification paperwork with the new initial certification paperwork?

A. Yes, all certification paperwork for separate LIHTC funding rounds should be retained.

ANNUAL RECERTIFICATIONS

Q. Does an owner with an old/existing Annual Recertification (AR) waiver, either approved by RI Housing or issued by the Internal Revenue Service (IRS), need to complete the request for an Abbreviated Annual Certification (AAC)?

A. Yes.

Q. Our owner/investor does not want us to participate in the Abbreviated Annual Certification even though we are an 100% LIHTC property. Are we required to participate?

A. The Abbreviated Annual Certification is not required; therefore, participation is at the owner's discretion.

Q. My property is 100% tax credit with Neighborhood Opportunity Program and HOME funds, are we eligible for the Abbreviated Annual Certification?

A. Approval for the Abbreviated Annual Certification may be granted, but if so, the exemption applies to LIHTC compliance only.

Q. All of our tenants earn less than 60% of Area Medium Income (AMI), but the owner's request for an Abbreviated Annual Certification was denied, why?

A. Eligibility is based upon review of the Land Use Restrictive Agreement (LURA) Covenant, Regulatory Agreement and the Cost Certification. If a property is not recorded as 100% Low Income Housing Tax Credit (LIHTC) in these documents, then it is not eligible.

FORMS

Q. The LIHTC Compliance Manual lists several RIHousing specific forms. Can we continue to use our own forms, and if so, do our forms have to be approved by RIHousing?

A. You must submit your forms to your RIHousing LIHTC Compliance Specialist for approval. If not approved, you will be required to use RIHousing's forms.

Q. Are the RIHousing specific forms available on your website? If not, when will they be?

A. As of April 1, 2019, most forms can be found on the RIHousing website. New and/or edited forms will be added as they become available.

Q. Is there a standard rental application form or questionnaire that owners/agents need to use for tenant applications?

A. No, currently RIHousing does not have standard application and/or questionnaire forms. Any previous RIHousing rental application or questionnaire forms are obsolete.

Q. A layered development with 100% Low Income Housing Tax Credit (LIHTC) and 66% HUD* Section 8 uses two different lease forms based on the programs. Should the RIHousing LIHTC lease addendum be used with both leases?

A. No, the RIHousing LIHTC lease addendum cannot be used with a HUD lease unless HUD has granted approval.

QUALIFYING TENANTS

Q. Prior joint tenant bank accounts were split based on ownership, regardless of who contributed to an account. If a joint account is for "just in case" purposes, should it no longer be split based on percentage of ownership?

A. Based on HUD guidance, one cannot assume percentage of ownership. Check with the financial institution for further information on this issue.

Q. When reviewing an applicant's employment verification, for example, two different annual income amounts were determined based on Year-to-Date (YTD) (= \$32,000) and rate of pay (= \$24,000). Is it acceptable to use the rate of pay calculation to qualify the applicant? Using the YTD puts the applicant over the income limit.

A. The discrepancy in the amounts should be a red flag to further determine an accurate number, but not an automatic denial. Investigate further to find out why YTD is so much higher. Also, consult with the owner for their input.

Q. An elderly resident with an IRA is required to take the Required Minimum Distribution (RMD). Should the RMD be counted as income? It is a regularly recurring periodic payment, but it's annually.

A. Yes, for the purposes of income qualifications, it is considered a 'periodic payment.'

Q. If a tenant has access to a 401k for 'hardship' only, how should this be treated for income qualification? Is it considered 'having access'?

A. No, it is not considered having access. It is comparable to having to quit or retire to have access to the account.

AFFIRMATIVE FAIR HOUSING & MARKETING

Q. I have an LIHTC property with Neighborhood Opportunity Program funding and voucher holders. Do I need to have an Affirmative Fair Housing and Marketing Plan (AFHMP)?

A. RIHousing requires all multifamily housing projects to have an AFHMP. The purpose of the AFHMP is to help owners/agents effectively market the availability of housing opportunities to individuals who are least likely to apply for occupancy.

VIOLENCE AGAINST WOMEN ACT (VAWA)

Q. Do we need to comply with the Violence Against Women Act (VAWA)? And if so, how?

A. Yes, all federally assisted housing must comply with VAWA. If owners/agents do not comply, it becomes a serious civil and Fair Housing issue. Note: RIHousing does not monitor for compliance with VAWA. Please consult with HUD for compliance questions and guidance.

ONGOING COMPLIANCE

Q. My property was placed in service in 2004, when will the LIHTC 15-year compliance period end?

A. Assuming the owner elected to take credits beginning in 2004, or if deferred, 2005; the compliance period will end on December 31, 2018 or December 31, 2019 (if deferred). Check the 8609(s) Form for the date credits began.

Q. For a layered development with LIHTC and HOME funding, what income and rent limits should be listed on the Tenant Income Certification (TIC)? Does RIHousing want to see the LIHTC limits or the more restrictive HOME program limits?

A. The TIC should show the LIHTC limits on Parts V and VI. HOME should be reflected on Part VIII.

LEASE

Q. We are a section 8 property with tax credits and we use the HUD model lease. We were told not to use the LIHTC Lease Addendum, now we are told that we must use it, what should we do?

A. RIHousing received permission from HUD to use the LIHTC lease addendum along with the HUD model lease, this will be effective 1/1/20 for annual certifications and effective immediately for move-ins and unit transfers. Please see [Program Bulletin 2019-08](#) for more specific information.

*HUD: Office of Housing and Urban Development