

Chapter 20
Category 11o
Low-Income Units
Used on a Transient Basis

Definition

This category is used to report noncompliance when units have been used on a transient basis. Generally, the length of the initial lease agreement determines whether use is transient. A unit is nontransient if the initial lease term is six months or more.¹

There are two exceptions to the general rule that the initial lease term must be 6 months or longer.

**Buildings
Used for
Transitional
Housing for
the Homeless
Under IRC
§42(i)(3)(B)(iii)**

Certain transitional housing for the homeless may be considered used other than on a transient basis provided the residential rental unit contains sleeping accommodations and kitchen and bathroom facilities and is located in a building-

1. which is used exclusively to facilitate the transition of homeless individuals² to independent living within 24 months, and
2. in which a government entity or qualified nonprofit organization³ provided such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing.

**Single-Room
Occupancy
(SRO) Units
Under IRC
§42(i)(3)(B)(iv)**

SRO units which permit the sharing of kitchen, bathroom, and dining facilities, shall not be treated as used on a transient basis merely because it is rented on a month-by-month basis.

In Compliance

A unit is in compliance with this requirement if the *initial lease term for each tenant* is at least six months. The presence of a six month initial lease is the customary evidence used to document the owner and tenant's intent to enter into a nontransient rental agreement.

¹ H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II-89 (1986), 1986-3 (Vol. 4) C.B. 89.) Residential units must be for use by the general public and all of the units in a project must be used on a nontransient basis. ...Generally, a unit is considered to be used on a nontransient basis if the initial lease term is six months or greater. Additionally, no hospital, nursing home, sanitarium, life care facility, retirement home providing significant services other than housing, dormitory, or trailer park may be a qualified low-income project....certain single room occupancy housing used on a nontransient basis may qualify for the credit, even though such housing may provide eating, cooking, and sanitation facilities on a shared basis.

² Within the meaning of section 103 of the Stewart M. McKinney Homeless Act (42 U.S.C. 11302) , as in effect on the date of the enactment of this clause.

³ As defined in IRC §42(h)(5).

Example 1: Tenant Vacates Before End of the Lease

A couple vacates their unit before fulfilling their initial six-month lease because the husband accepted a job in another state. Because the couple was subject to a valid six-month lease and vacated the unit for a valid reason, the low-income unit was not used on a transient basis.

Out of Compliance

Other than the two exceptions for certain transitional housing and single room occupancy units, a unit is out of compliance if the unit is rented on a transient basis. The out of compliance date is the effective date of the initial tenant income certification. A unit is out of compliance if:

1. no lease is on file for the tenant, or
2. the tenant's initial lease term is not at least six months.

Example 1: Month-to-Month Initial Leases

A state agency discovers that an owner of a 100 unit LIHC property (not a SRO or transitional housing) established a policy of signing month-to-month leases at the time of initial occupancy.

At the time of the review, 84 units are occupied by households with initial month-to-month leases. All 84 units are out of compliance based on the effective date of the initial tenant income certification.

Back in Compliance

Noncompliance is corrected when a lease with a term of at least six months is executed. The correction date is the effective date of the new lease.