

SECTION V – COMPLIANCE MONITORING PROCEDURES

This section of the manual outlines CTCAC's procedures for monitoring all projects receiving credit. Monitoring is designed to determine if the owner is in compliance with federal and state laws, regulations, and policies. Compliance is solely the responsibility of the owner and is necessary to retain and use the credit, and to avoid recapture of credit already claimed. Also, refer to Committee Regulations Section 10337, which details the compliance requirements.

Monitoring each project is an ongoing activity that extends throughout the initial 15 year Federal Credit Compliance Period, as well as, the Extended Use period. CTCAC is required by law to conduct compliance monitoring and inform the IRS of noncompliance, or the failure of an owner to certify to compliance. CTCAC will report to the IRS no later than 45 days after the period of time allowed for correction. Notification to the IRS by CTCAC is required whether or not the noncompliance has been corrected.

Part 500 The Compliance Manual

In May of 2007, CTCAC converted the Compliance Manual to an openly accessible online format. The manual describes the compliance monitoring procedures that the owner and management agent must follow. Updates will be provided by CTCAC as changes to the law and/or procedures occur and will be available on our website www.treasurer.ca.gov/ctcac/compliance/manual.asp

The manual also contains samples of the required reporting and certification forms that must be completed and submitted to CTCAC, sample tenant eligibility forms, Section 42 of the Code, the HUD Handbook 4350 Chapter 5, the IRS Guide to Completing Form 8823, and completed compliance monitoring regulations as published in the Federal Register and other pertinent IRS notices and rulings.

Part 510 Compliance Training Workshops

CTCAC will conduct periodic compliance training workshops, open only to professionals who own, consult, or manage tax credit properties, usually in the beginning of the year. Although attendance is not mandatory, it is recommended that personnel directly involved in the ownership or management of the project attend a workshop as soon as is practical either prior to or immediately following the date the project is Placed In Service. The purpose of workshops is to provide instruction on:

A sampling of the basic Code compliance requirements; IRS final regulations for compliance monitoring; CTCAC policy and procedures for compliance reporting; CTCAC policy and procedures for tenant file reviews; equal housing opportunity and fair housing regulations and policies.

The basic training workshop is designed for onsite management personnel and lower-level compliance staff. It will provide specific information on the following low-income tenant eligibility requirements:

Income and rent limits; definitions of income and assets; certification of tenant income and assets; verification of tenant income and assets; leases; student eligibility; reporting violations of the tax credit program; other owner responsibilities, including notifying CTCAC of any change in management or ownership of the project.

As need arises, CTCAC will provide advanced training workshops for higher-level compliance staff including Asset Managers, Regional Directors, Occupancy Specialists and Owners. These workshops will provide specific information about legislative changes, IRS rulings, and any other information that directly impacts the LIHTC program.

Announcements as to the specific date, time, and location of workshops will always be posted on our webpage at www.treasurer.ca.gov/ctcac/compliance.asp. All workshops will be limited to 2 persons from a specific company per location unless prior arrangements have been made with CTCAC, or the workshop brochure states differently.

Part 520 Compliance Files and Records

The following compliance files and records must be maintained by the owner and made available to CTCAC upon request:

- A. Owner Record-keeping and Record Retention Requirements. See Section II, #210 H.
- B. Tenant/Unit File. See Section IV, #460.
- C. Service Provider Contracts. If a project's Regulatory Agreement stipulates a Service Provider contract, the owner must provide and maintain a contract for the required Site and Service Amenities as noted in the Regulatory Agreement Exhibit A for the property.

Part 530 CTCAC Forms

The following list contains examples of a few of the required forms that project owners/managers submit for annual certifications, and are used to determine tenant eligibility. **A sample of required forms is located in Appendix 3.**

A. Annual Owner Certification

This form is used to certify continuing compliance with Section 42 and is completed by the owner on an annual basis. The Project Ownership Profile (POP) and the Annual Operating Expense Report (AOE) are included with the Annual Owner Certification (AOC) form.

B. Project Status Report

This form is used to detail the move-in income amounts, utility allowances, and gross rent charges for all low-income units in the development and is completed by the owner and/or management agent upon request by CTCAC, for compliance monitoring purposes. The form is submitted electronically and is available on the CTCAC website at www.treasurer.ca.gov/ctcac/compliance.asp

Please note: Only the current PSR that is on the CTCAC website will download into our database. Any changes, modifications, or use of a similar form from an outside vendor (such as Yardi) will not download and will not be accepted. CTCAC will require the information to be completed only on the current PSR form located on our website. Repeated failures to provide the information in the format specified may result in the issuance of Form 8823 for failure to comply with monitoring inspection requirements.

C. Tenant Income Certification

This form summarizes the household composition and income and asset amounts for a particular unit. It is used to certify the eligibility of a tenant to reside in a LIHTC unit and is completed and signed by the owner / management agent and signed and dated by all adults residing in the unit.

D. Tenant Income Certification Questionnaire

This form serves as a worksheet to list all of the sources of income and types of assets held by the applicant and must be completed by the applicant(s).

NOTE: *The Owner/Management Agent may add additional information to Forms C and D as necessary, but may not remove CTCAC required information*

E. Utility Allowance

The Internal Revenue Service published Final Regulations on July 29, 2008 which impact the Section 42 Utility Allowance Regulations. These regulations provide that taxpayers may rely on the rules for determining utility allowances before the first day of the owner's taxable year beginning on or after July 29, 2008 provided that any utility allowance so calculated are effective no earlier than the first day of the owner's taxable year beginning on or after July 29, 2008. For most taxpayers, Treasury Regulation 1.42-10 is effective January 1, 2009.

The Regulations modify the methods for computing the applicable Utility Allowance Amounts for Tax Credit Projects located in California. The existing Utility Allowance Regulations had 4 Methods for Tax Credit Owners to compute utility allowances. The Updated Section 42 Utility Allowance Regulation outlines 3 additional methods for computing utility allowances for Tax Credit Projects.

CTCAC has proposed regulation changes in our Qualified Allocation Plan that will include the changes as modified by the IRS under Treasury Regulation 1.42-10 Section 42 (g) (2) (B) (ii).

The new regulation details 7 methodologies owners can use to calculate a utility allowance:

1. Rural Housing Services (RHS)- *Already in Use*
2. Housing and Urban Development (HUD)/ Project-based Section 8- *Already in Use*
3. Public Housing Authority (PHA)- *Already in Use*
4. Written local utility company estimate- *Already in Use*

5. Energy Consumption Model: California Utility Allowance Calculator (CUAC)-
NEW
6. HUD Utility Allowance Model- **NEW**
7. Agency Estimate- **NEW** (*not available in California*)

Option 1: RHS methodology

RHS Financed Project- Use RHS approved utility allowance schedules.

Option 2: HUD Project-Based Subsidy Regulated Buildings- Use HUD approved utility allowances.

Option 3: A) For any non-Project Based Section 8 properties, including those with Section 8 Voucher Holders, the owner may elect to obtain an estimate of utilities from the local Public Housing Authority (PHA) administering the assistance for those tenants only.

B) Energy Efficiency Based Utility Allowance (EEBUA)- This is an estimate provided by the PHA using a calculation that takes into account general energy efficiency measures. To ensure the proper use of the EEBUA, housing authorities rely on a home energy rater (HERS) to verify the project meets the policy’s energy efficiency requirements. This schedule is provided to Tax Credit Projects that meet or exceed the California Energy Commission Title 24 standards by 15% for new construction development and rehab projects with a 20% improvement over existing conditions.

***CTCAC reserves the right to request that project owners obtain a letter from the local Public Housing Authority on PHA letterhead certifying the project was reviewed by a HERS (Home Energy Ratings System) specialist and that the project meets or exceeds Title 24 standards for Energy Efficiency.

Option 4: Written Local Company Utility Estimate- This methodology is not available for RHS and/or HUD regulated developments. An interested party may request the utility company’s estimated utility cost for each unit of similar size and construction in the buildings geographic area. Such estimate must be in writing for the current year, signed by a local utility company official, prepared on the utility company’s letterhead and maintained in the Development File for the project. Use of actual utility rates, whether higher or lower, is required once they have been requested. The new regulation requires that the written local estimate should include all “component deregulated charges” for providing the utility service.

The new regulation makes clear that if there are multiple utility companies that service the development, a written estimate is needed from only one of the providers. However, the estimate must come from a provider that offers services to the building. The Compliance Monitoring Rules will be updated to reflect this requirement.

Option 5: Energy Consumption Model- The new regulation allows a utility allowance based on an “energy consumption model”. *“The utility consumption estimate must be calculated by either a properly licensed engineer or a qualified professional approved by the Agency that has jurisdiction over the building (together qualified individuals) and the qualified professional and the building owner must not be related within the meaning of section 267 (b) or 707 (b).”*

In these regulations the IRS established the authority for CTCAC to authorize the use of an energy consumption software model to determine project-specific utility allowances.

CTCAC has adopted the California Utility Allowance Calculator (CUAC) as the energy consumption model software for California. This calculator can be used for New Construction Properties that will be awarded an Allocation of Tax Credits beginning with the 1st funding round of 2009 going forward. CTCAC will require the a Certified Energy Plan Examiner (CEPE) and either a Plans Examiner (PE) or (HERS) rater to review and certify that the Utility Allowance Amounts generated by the CUAC model meets the requirements as specified under Treasury Regulation 1.42-10 (E).

Please see the website noted below for a Memo with submission guidelines for proper use of the CUAC:

http://www.treasurer.ca.gov/ctcac/2009/submission_reqs.asp

Option 6: The HUD Utility Schedule Model- This methodology is not available for RHS and/or HUD regulated developments. Tax Credit Owners may calculated a Utility Allowance by using the HUD Utility Schedule Model available on their website: www.huduser.org/datasets/lihtc.html

Option 7: Agency Estimate – P lease note: This option is not available in California.

F. Utility Allowance (Sub-metering)

In June 2009, the IRS released for General comment Proposed Regulation 2009-44, which allows for individual sub-metering of units in a building. Proposed IRS Regulation 2009-44 allows for a sub-metering system within the Utility Allowance calculation methods that was not originally addressed in the initial Treasury Decision and is retroactive to the Final Regulations of July 29, 2008.

The breakdown of the proposed regulation is as follows:

Sub-metering is defined as a measurement of the tenant’s actual utility consumption and the tenants pay for the utilities they use. A sub-metering system usually has 2 parts.

1. A master meter, which is owned or controlled by the Utility Company and from which the Utility Company bills the overall utility consumption to the owner.
2. Individual unit-based meters which show the breakdown of utility costs per unit measured and whose combined total is part of the overall consumption costs

In a sub-metering system the owner receives and should retain the bill of the property consumption with a breakdown of the resident utility consumption (master bill). The owner then prepares a bill for each residential unit based off of their actual consumption, and the tenant receives the documentation of the utility costs as specified in the lease. A sub-metered rent restricted unit is treated as a utility paid directly by the tenant, and not by the owner. For HUD or RHS units all restrictions currently remain in place.

For Tax Credit only units (not RD or Project-based Section 8):

- The utility rates charged to each tenant in each sub-metered unit must be limited to the utility company rates incurred by the building owners

- The owners may charge a “reasonable fee” not to exceed \$5 per month to cover administrative costs of sub-metering. This fee is **NOT** considered in the Gross Rent calculation
- If the cost of sewer is included in / combined on the same bill as the water costs, then the sewerage costs are treated as paid directly by the tenants for purposes of Utility Allowance calculations.
- Resident Utility Billing System (RUBS) are not allowed under the sub-metering system. RUBS are pro-rated amounts based on number of people in the unit and/or unit size. Any billing by the owner **MUST** be based on actual consumption. Any water use in Common Areas

CTCAC monitoring requirements for sub-metered units:

- CTCAC will look for specific language in the Lease stating the units are sub-metered for water and the billing will be based on actual consumption.
- CTCAC will look for language if Owner is charging a \$5 Administrative fee
- CTCAC will require a copy of the Master Bill (with the breakdown by units) be available either prior to the inspection or on the day of the inspection.

G. Child Support and/or Spousal Support Release form (updated July 2007)

The Child Support Verification form was required as of June 2004. It is used to document any form of child support including personal and court ordered. It was updated in July of 2007 to include spousal support.

H. CTCAC Lease Rider (Good Cause Eviction)

The CTCAC Lease Rider is a required form and can be found on CTCAC’s website. The Lease rider informs tax credit households that they may not be evicted or refuse to have their leases renewed unless the owner or management agent has good cause. The Lease Rider outlines the protections household members can enforce if an eviction without cause occurs.

The Lease Rider must be signed at initial leasing only. If additional members are added to a household or a child in the household reaches 18, the original lease rider document should be signed with the current recertification date. The Lease Rider must be included with the lease.

I. Pay Stubs:

Starting in June of 2004, CTCAC requires three months worth of pay stubs for all new move-ins. This requirement is in addition to the Verification of Employment and should not be considered a substitute for the VOE or any other verifiable third party documentation.

Signatures are required from all adult household members, age 18 or over, on all CTCAC required forms.

J. Other Forms:

Additional CTCAC forms such as the Student Affidavit, Zero Income Certification, Under \$5000 Asset form, Marital Separation Status Form, Single Parent Full-time Student Status, Financial Aide verification, and Foster Care Affidavit are required only when they are applicable to the tenants intending to occupy or are currently occupying the unit.

K. The Work Number

Beginning in June 2010, the outside employment verification company “The Work Number” will no longer offer free verifications of employment for users of their program.

At *initial move-in* into a tax credit unit, CTCAC policy requires all tenant files must contain 3rd party verification for all wage earners in the form of a Verification of Employment (VOE) along with *3 months of consecutive pay-stubs*. Beginning in June 2010 forward, CTCAC will require that for all initial applicants whose wage earnings can only be verified via The Work Number, the owner of the project may *pass* on the cost of the verification to the applicant. This will ensure there is a VOE and pay-stubs for all wage earners at initial move-in, in the tenant files as requested by CTCAC. The requirement to pass the cost for the VOE is only at initial move-in year. At first year anniversary move-in date during the CTCAC mandatory 1st recertification, the owner or their management agent no longer have to supply a VOE from The Work Number, as long as 3 months of consecutive pay-stubs are included in the file.

For projects layered with HUD financing and tax credits, and where the owner is prohibited from passing on the cost of a verification to the applicant, for the cost of The Work Number, the owner *must* pay for the cost to obtain The Work Number verification for the file and include the required 3 months of pay-stubs as well. This will be a one-time expense at initial move-in only, as you may revert to using only the 3 months of pay-stubs at the required 1st anniversary move-in date during the CTCAC mandatory 1st recertification.

Please note this policy is only for those files where obtaining The Work Number verification is an issue, for all other wage earners at initial move-in the file must contain a VOE form directly from the employer plus the required 3 months of consecutive pay-stubs.

Part 540 Annual Certification with Section 42

Annual compliance information must be reported by the owner for existing tax credit projects when requested by CTCAC, beginning with the year for which credit was first claimed.

The annual compliance requirements are as follows:

A. Annual Owner Certification (AOC)

Failure to supply legible and thoroughly complete Owner Certifications when due will

be considered noncompliance and is reportable on IRS Form 8823. The 2010 AOC's are due by March 29th, 2010. The forms will be posted on the CTCAC web site page in January of each year.

B. The Project Ownership Profile (POP) is considered part of the AOC.

For more information regarding the AOC, see Section II, #210 E.

C. Annual Operating Expense Report (AOE)

Failure to supply legible and thoroughly complete Annual Operating Expense Reports (AOE) when due will be considered noncompliance. The 2010 AOE 's are due by May 24th, 2010. The forms will be posted on the CTCAC web site page in April of each year.

For more information regarding the AOE, see Section II, #210 E.

D. Lender Report

For more information regarding the Lender Report, see Section II, #210 E.

E. Project Status Report

Currently **not** required on an annual basis (requested by CTCAC prior to the time of property inspection). Compliance is monitored on a building by building basis. This form is used to detail the move-in income amounts, utility allowance, and gross rent charges for all low-income units in the development and is completed by the owner and/or management agent upon request by CTCAC. Failure to complete and return the PSR with accurate and current tenant information per building on date requested will be noted as failure to cooperate with a State Agency monitoring Inspection and is reportable as an issue of noncompliance.

F. Utility Allowance Documentation

Under the new Utility Allowance regulations, Owners are to submit annually the current utility allowance as well as have it available to tenants on site. CTCAC is currently reviewing this process and has not made a determination as to whether annual U/A's will be required for submission. Please continue to follow the existing policy of annually updating with the Utility Provider, but do not submit the annual documentation to CTCAC. CTCAC will review the current Utility Allowance schedule at the time of inspection. If this information changes, a Memo will be posted on the CTCAC website. For more information regarding utility allowances, see Section III, #330 and Section V, #530 E.

Part 550 CTCAC Tenant/Unit File Review and On-site Project Inspections

As provided in IRS compliance monitoring regulations, CTCAC is required to review a project's Tenant/Unit Files, Development File, and recordkeeping and record retention files.

Beginning in 2001 and pursuant to new IRS Regulations, the Committee or its agent will conduct file and on-site physical inspections for all projects no later than the end of the second calendar

year following the year the last building in the project is Placed In Service, and once every three years thereafter. The physical inspections will be of at least 20% of the low-income units in each project. The tenant file reviews will also be for at least 20% of the low-income units in each project, but may be conducted on-site or off-site. Each year the Committee shall select projects for which site inspections will be conducted. The projects shall be selected using guidelines established by the Executive Director for such purpose, while the units and tenant records to be inspected shall be randomly selected. Advance notice shall not be given of the Committee's selection process, or of which tenant records and units will be inspected at selected projects; however, an owner shall be given reasonable notice prior to a project inspection date.

In 2009, CTCAC implemented a policy of posting on the website a list of all the properties that were scheduled for inspection in that year. The list can be found at

<http://www.treasurer.ca.gov/ctcac/compliance.asp>

A. When performing an on-site review, CTCAC will:

1. Notify the owner and management agent in advance of the intended site visit.
NOTE: Physical inspection will be of the project grounds, common amenities, and occupied units. Staff may ask to see vacant units and inquire as to the reason for and duration of the vacancy.
2. Inform the management agent on the day of the review which units and unit files will be inspected.
3. Inform the owner of any findings of noncompliance with regard to such review.
4. Inform the owner of a time line to respond to CTCAC with correction of any noncompliance. CTCAC may extend the correction period up to six months, but only if the Authority/Committee determines there is good cause for granting the extension.
5. Report all instances of noncompliance to the IRS whether or not the noncompliance has been corrected.
6. Require **ORIGINAL** documentation.
7. Require that the review of the files and units will occur at the project site. If tenant files are kept at a central management office, they must be brought to the property on the date of the monitoring inspection. Exceptions may be made on a case-by-case basis at the discretion of the Analyst conducting the inspection.

B. CTCAC reserves the right to perform an in-house (at CTCAC) review. CTCAC will:

1. Notify the owner in writing which unit files have been selected for review.
2. Request that the owner mail the selected files and documentation to CTCAC.
3. Give a time frame (up to 30 days) in which the tenant file documentation must be submitted.
4. Inform the owner of any findings of noncompliance with regard to such review.
5. Allow the owner a time line to notify and respond to CTCAC of any correction of noncompliance.
6. Report all instances of noncompliance to the IRS whether or not the noncompliance has been corrected.

C. Extended Use Monitoring

When performing an extended use review, CTCAC will:

8. Notify the owner and management agent in advance of the intended site visit.
NOTE: Physical inspection will be of the project grounds, common amenities, and occupied units. Staff may ask to see vacant units and inquire as to the reason for and duration of the vacancy.
9. Inform the management agent on the day of the review which units and unit files will be inspected. A 10% random sample list will be provided, however CTCAC reserves the right to expand the audit sample if necessary.
10. Inform the owner in writing of any findings of noncompliance with regard to such review.
11. Inform the owner of a timeline to respond to CTCAC with correction of any noncompliance. CTCAC may extend the correction period up to six months, but only if the Authority/Committee determines there is good cause for granting the extension.
12. Require **ORIGINAL** documentation
13. Require that the review of the files and units will occur at the project site. If tenant files are kept at a central management office, they must be brought to the property on the date of the monitoring inspection. Exceptions may be made on a case-by-case basis at the discretion of the Analyst conducting the inspection.

Part 560 Compliance Monitoring Fees (\$410 per unit)

The Committee currently charges a one time per unit fee to cover the costs associated with compliance monitoring throughout the Extended-Use Period. Payment of the fee shall be made prior to the issuance of federal and/or state tax forms. Any alternative timing for payment of the fee, may be approved in the sole discretion of the Executive Director and shall only be considered where convincing proof of financial hardship to the owner is provided.

Failure to submit the fee will be considered an act of noncompliance.

The per unit lump sum fee must be paid for the manager/employee-occupied unit(s) if this unit(s) is being counted as a “rental unit” for purposes of determining the low-income occupancy percentage for the building. If the manager/employee-occupied unit(s) is being considered as “common space,” no monitoring fee is required for this unit(s). For more information on the manager’s unit, see Section III, #340 E.

Part 570 Compliance Period

The compliance period begins on the date on which the project is Placed In Service. For more information regarding the compliance period, see Section I, #120. For more information regarding due dates, see Section V, #540 F.

Part 580 Amendments to Compliance Monitoring Procedures

The compliance monitoring procedures and requirements set forth herein are issued by CTCAC pursuant to Federal Regulations. These provisions may be amended by CTCAC, for purposes of

conforming to the Federal Regulations and/or as may otherwise be appropriate, as determined by CTCAC or the IRS. In the event of any inconsistency or conflict between the terms of these monitoring procedures and the monitoring procedures set forth in such Regulations, the provisions set forth in the Regulations shall control.