

## SECTION II – RESPONSIBILITIES

Among the entities/persons involved in the compliance part of the tax credit program are the California Tax Credit Allocation Committee (CTCAC), the project owner, and the management company. Their various responsibilities are set forth below.

### **Part 200 California Tax Credit Allocation Committee**

The California Tax Credit Allocation Committee allocates and administers the tax credit program for the State of California. The responsibilities of CTCAC are as follows:

#### **A. Issue IRS Form 8609 (Low-Income Housing Certification)**

An IRS Form 8609 is prepared by CTCAC for each building in the project. Part I of the Form is completed by CTCAC and then sent to the owner when the project is Placed In Service and all required documentation is received by CTCAC.

Part II of the IRS Form 8609 must be completed by the owner in the first taxable year for which the credit is claimed. After completion of Part II, the owner is required to submit a copy of the form to the Compliance Section of CTCAC. The original is sent to the IRS with the owner's personal, partnership, or corporate tax returns in the first taxable year in which the credit is claimed and each year thereafter in the compliance period. After signing and dating Part II of the 8609 form, the owner should make sixteen (16) copies of it, one for each of the tax credit compliance years.

Owners should consult with their legal and/or tax advisors for advice on completing and filing the IRS tax forms. CTCAC cannot give legal or tax advice on the filing or completion of tax forms.

The issuance of the IRS Form 8609 begins the compliance monitoring period. A sample copy of the form is included in Appendix 5. CTCAC will conduct the 1<sup>st</sup> compliance monitoring visit within two years of the Placed in Service date.

#### **B. Prepare Regulatory Agreement/Restrictive Covenants**

CTCAC will prepare a Regulatory Agreement (Land Use Restrictive Agreement) prior to issuance of the IRS Form 8609. This document must be recorded before the end of the calendar year in which credit is first claimed. When the original recorded document, from the County Recorder's Office in which the property is located, is returned to CTCAC and all fees have been paid, the IRS Form 8609 will be sent to the owner.

#### **C. Review Annual Owner Certification**

For information on the Annual Owner Certification, see Section II, #210 D 1.

#### **D. Review Annual Operating Expense Report (AOE)**

For information on the Annual Operating Expense Report, see Section V, #540 C.

**E. Review Project Status Report**

For information on the Project Status Report, see Section V, #540 D.

**F. Conduct On-site Monitoring - Current Portfolio**

Currently, CTCAC will conduct in-depth on-site compliance monitoring for at least one-third of the total portfolio of tax credit projects each year. Owners of the selected projects will be required to provide detailed information on tenant income and rent for all low-income units in each building in the project, and CTCAC will choose a random 20% sampling to audit. Information to be reviewed will include, but is not limited to, the annual income certifications, the documentation received to support those certifications, and rent records. CTCAC retains the right to perform an on-site inspection of any low-income building at any time during the compliance period. For more information about on-site monitoring, see Section V, #550.

In 2001, CTCAC started conducting both 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 are conducted for all buildings and common areas in each project, and for at least 20% of the low-income units in each project. The tenant file reviews are also for at least 20% of the low-income units in each project, and will be conducted on site. On very rare occasions, CTCAC will conduct the file inspection at an off-site management location.

**G. Conduct On-site Monitoring – Extended Use Portfolio**

Starting in January of 2009, CTCAC will be monitoring those projects that are out of the 15 year federal compliance period and are in the extended-use period as noted in the Regulatory Agreement or LURA for each property. CTCAC will be monitoring approximately 20% of the total extended-use portfolio of tax credit projects each year, and will choose a random 10% sample to audit for file and units; 100% of the common areas will be inspected. CTCAC reserves the right to perform an onsite inspection of any property in the Extended Use period at any time.

**H. Notification of Noncompliance**

**For Properties within the 15-year Federal Compliance Period** - CTCAC will notify the IRS of instances of reportable noncompliance for any projects within the 15 year federal compliance period. For information on noncompliance, see Section VI.

**For Properties in the Extended Use Period** – CTCAC may issue Negative Points to the owner or Management Agent for future funding rounds, if the issues of noncompliance are not corrected timely.

**I. Record Retention**

CTCAC will retain all owner certifications and records for not less than three years from the end of the calendar year in which they are received. CTCAC will retain records of noncompliance or the failure to certify compliance for six years after its filing an IRS Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance.

**J. Conduct Training and Provide Continuing Education**

CTCAC will conduct or arrange compliance training conferences and will disseminate information regarding the date and location of these training opportunities on our website <http://www.treasurer.ca.gov/ctcac.asp> . CTCAC will offer continuing education to assist the owner, the management company, and on-site personnel in complying with federal regulations and state rules. CTCAC staff can be contacted at:

Low-Income Housing Tax Credit Program  
California Tax Credit Allocation Committee  
915 Capitol Mall, Room 485  
P.O. Box 942809  
Sacramento, CA 94209-0001  
(916) 654-6340

**K. Rural Housing Service (RHS) Agreement**

CTCAC currently has an agreement with the RHS (formerly known as the Farmers Home Administration) with respect to the provision of monitoring certain tenant and rent information. RHS projects are subject to the compliance requirements outlined in this manual.

**L. Subcontracting of Functions**

In 2001, CTCAC began awarding a contractor certain compliance monitoring functions in the following counties only: Los Angeles, Orange, Riverside, San Bernardino, San Diego and Kern.

From January 1, 2006 to July 2007, CTCAC no longer used an outside contractor. A temporary contract was awarded to Spectrum Enterprises for the period of July 2007 – June of 2009. After June 2009, CTCAC will reassess the need to contract with an outside agency.

As of July 1<sup>st</sup> 2010, CTCAC will no longer be using a contractor to monitor for compliance.

Starting in 2011, CTCAC anticipates to subcontract with a sister agency or a third party vendor to provide Asset Management services for some of the 142 properties that were awarded Tax Credit Assistance Program (TCAP) or Section 1602 credit exchange funds under the American Recovery and Reinvestment Act of 2009. *(See Section 8 Part 820)*

**M. Freedom of Information Act**

The California Public Records Act (PRA) Government Code 6250-6270, is similar to the federal Freedom of Information Act -- the purpose of these acts is to give private citizens greater access to government information. With some exceptions, the PRA considers records maintained by most state agencies to be public records, but also recognizes the right to individual privacy.

To make a FOIA or PRA request, please submit it in writing to:

Tiffani Armstrong  
c/o CTCAC FOIA Request  
915 Capitol Mall, Room 485  
Sacramento, CA 95814

CTCAC will charge for the cost of copying the documents only. No other fees or charges apply. The turnaround time for all requests is normally 10 business days. If a request will take longer, a notification letter will be sent within 10 business days.

## **Part 210      Owner of Project**

In exchange for the low-income housing tax credit benefits, the owner must adhere to certain requirements and accept responsibilities, outlined as follows:

### **A.      The project owner should be knowledgeable about the following:**

1. The credit year of the project. (The date of allocation.)
2. The date(s) the building(s) was Placed In Service. (The Placed In Service date is the date of first possible occupancy, not necessarily actual occupancy. Generally, this is the certificate of occupancy date or temporary certification of occupancy, if applicable.)
3. If a rehabilitation project,
  - a. whether or not tenants were required to move out during rehab.
  - b. whether or not the building was occupied during the rehab.
4. The number of buildings in the project.
5. The Building Identification Number (BIN) for each building in the project.
6. The percentage of the residential units in the project that are tax credit eligible, or the percentage of floor space that is tax credit eligible.
7. The year when credit was first claimed with the IRS.
8. The terms under which the tax credit reservation was made, including statutory set-aside, deeper targeting agreements, etc. For more information, see Section III, #370 and #380.
9. The minimum set-aside elected:
  - a. 20/50
  - b. 40/60

### **B.      Good Cause Eviction**

On July 29, 2004, The Internal Revenue Service (IRS) issued Revenue Ruling 2004-82 which set forth that all Housing Credit Properties are prohibited against evicting or terminating tenancy of tenants in low-income housing units for other than good cause throughout the entire Extended Use Period.

In accordance with Revenue Ruling 2004-82, effective July 30, 2004, a low-income resident of any Housing Tax Credit project may not be evicted or otherwise have their lease terminated other than for good cause. This prohibition includes the non-renewal of leases or rental agreements other than for good cause. Housing Tax Credit unit occupants have the right to specifically enforce this prohibition in State court. Generally, “good cause” is

defined as “the serious or repeated violations of a material term of the lease”, as that definition is applied with respect to federal public housing.

You must use the CTCAC form to evidence compliance with this provision. See Section IV, #450 and Section VII, #710 (required forms)

**C. Comply with Terms of Application**

For more information regarding the compliance monitoring requirements for representations made by project owners in their applications, see Section III, #370 and #380.

**D. Meet Initial Eligibility Requirements**

1. Submit compliance monitoring fees as described in Section V, #560.
2. Submit to CTCAC a copy of the signed and dated IRS Form 8609 for each building.
3. If the composition of the ownership entity changes, the owner must provide details and include a sales agreement identifying the complete information for the new owner entity (ie. complete address, partnership tax-id number, copy of the Secretary of State filing) if the property has been sold or if the General Partnership interest change is greater than 50%. For more information on project sales, see Section VI, #680.

**E. Prepare and Submit the Annual Certification Package**

Prior to 2009, the Annual Owner Certification Package consisted of three reports: the Annual Owner Certification (AOC), the Project Ownership Profile (POP), and Annual Operating Expense Report (AOE), and was due as of March 1<sup>st</sup>.

Starting in 2009, the Annual Owner Certification Package (AOC package) will consist of **four** reports: the Annual Owner Certification (AOC), the Project Ownership Profile (POP), Annual Operating Expense Report (AOE), and the Lender Report. In 2009, the AOC package will be split into two parts. Part 1 will include the Annual Owner Certification (AOC) documentation and the Project Ownership Profile (POP). Part 2 will include the financial data of the Annual Operating Expense Report (AOE) and the Lender Report.

**Part 1 of the Annual Owner Certification Package is due on or before March 29<sup>th</sup>, 2010.**

**Part 2 of the Annual Owner Certification Package is due on or before May 24<sup>th</sup>, 2010.**

It is solely the owner’s responsibility to submit the complete Annual Owner Certification Package before the deadlines noted.

The Annual Owner Certification Package forms and files are available on our website:

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

Failure to submit all four reports (AOC, POP, AOE, and Lender Report) completely and legibly by the due date is noncompliance and can ultimately result in the issuance of an uncorrected IRS Form 8823 and/or a recommendation for negative points (Regulation Section 10325(c)(3)).

## 1. Annual Owner Certification (AOC) *part 1:*

The owner of any building(s)/project which has claimed or plans to claim low-income housing tax credit or **owner's whose projects are in the extended-use period**, must certify to CTCAC, under penalty of perjury, **annually**, for each year of the compliance period, on CTCAC's Owner Certification form, that, for the preceding 12 month period:

- (i) The project meets the requirements:
  - (A) The 20-50 test under §42(g)(1)(A), or
  - (B) The 40-60 test under §42(g)(1)(B)
- (ii) There was no change in the applicable fraction (as defined in §42 (c)(1)(B) of the Code) of any building in the project;
- (iii) The owner has received an annual income certification from each low-income tenant and documentation to support that certification; or, in the case of a tenant receiving Section 8 housing assistance payments, the statement from a public housing authority described in paragraph (b)(1)(vii) of §1.42-5 (Compliance Monitoring Requirements);
- (iv) Each low-income unit in the project was rent restricted under §42(g)(2);
- (v) All units in the project were for use by the general public (as defined in §1.42-9), including the requirement that no finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, occurred for the project. A finding of discrimination includes an adverse final decision by the Secretary of the Department of Housing and Urban Development (HUD), 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. 3616a(a)(1), or an adverse judgment from a federal court;
- (vi) The buildings and low-income units in the project were suitable for occupancy, taking into account local health, safety, and building codes, and the State or local governmental unit responsible for making local health, safety, or building code inspections did not issue a violation report for any building or low-income unit in the project. If a violation report or notice was issued by the governmental unit, the owner must attach a statement summarizing the violation report or notice, or a copy of the violation report or notice to this certification. In addition, the owner must state whether the violation has been corrected;
- (vii) There has been no change in the eligible basis (as defined in §42(d)) of any building in the project, (e.g., a common area has become commercial space, or a fee is now charged for a tenant facility formerly provided without charge);
- (viii) All tenant facilities included in the eligible basis under §42(d) of any building in the project, such as swimming pools, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the building;
- (ix) If a low-income unit in the project becomes vacant during the year, that reasonable attempts were, or are being made to rent that unit, or the next available unit of comparable or smaller size, to tenants having a qualifying income before any units in the project were, or will, be rented to tenants not having a qualifying income;
- (x) If the income of tenants of a low-income unit increased above the limit allowed in §42(g)(2)(D)(ii), the next available unit of comparable or

- smaller size in the project was, or will be, rented to tenants having a qualifying income;
- (xi) A regulatory agreement as described in §42(h)(6) was in effect, including the requirement that an owner may not refuse to lease a unit in the project to a prospective tenant who holds a voucher for assistance pursuant to Section 8 of the United States Housing Act of 1937, as amended, because of the status of such prospective tenant as the holder of such voucher or certificate.
  - (xii) All low-income units in the project were used on a non-transient basis (except for transitional housing for the homeless provided under §42(i)(3)(B)(iii) or single-room-occupancy units rented on a month-by-month basis under §42(i)(3)(B)(iv));
  - (xiii) The project met all terms and conditions recorded in its Regulatory Agreement, if applicable. (As detailed in the Regulatory Agreement and Exhibit A to the Regulatory Agreement.);
  - (xiv) The applicable fraction (as defined in IRC Section 42(c)(1)(B)) met all requirements of the credit allocation as specified on IRS Form(s) 8609 (Low-Income Housing Credit Allocation Certification.);
  - (xv) **No change in ownership of the project has occurred during the reporting period;**
  - (xvi) The Project has **not** been notified by the Internal Revenue Service that it is no longer a “qualified low-income housing project” within the meaning of Section 42 of the IRC.
  - (xvii) No additional tax-exempt bond funds or other Federal grants or loans with interest rates below the applicable federal rate have been used in the project since it was placed in service;
  - (xviii) The project contains: \_\_\_\_\_ low income units. On December 31, 20##, the number of low income units that were **occupied** by tax credit eligible households was \_\_\_\_\_.
  - (xix) The project did not suffer any casualty loss in 20##; fire, flood, earthquake, or structural damage;
  - (xx) No tenants in low-income units were evicted or had their tenancies terminated other than for good cause, and no tenants had an increase in gross rent with respect to a low-income unit not otherwise permitted under Section 42;
  - (xxi) The project has provided all site / service amenities as identified in the project Regulatory Agreement during the reporting period;
  - (xxii) FOR PROJECTS RECEIVING STATE CREDITS ONLY: No more than the 8% cash distribution from Project operations, after funding required reserves, as provided for under Revenue and Taxation Code Sections 17058(d) and 23610.5(d), was distributed during the reporting year.

An Annual Owner Certification must be submitted to CTCAC for each year in which a project was in service or occupied for one day or more. The form should not be completed prior to January 1<sup>st</sup>, 2010 and must be received by CTCAC on March 29<sup>th</sup>, 2010. Failure to submit legible and thoroughly completed required forms when they are due will be considered an act of noncompliance and is reportable to the IRS on Form 8823. A copy of this form is included in Appendix 3.

All AOC documents (AOC, AOE, POP, Lender Report) will be available on the CTCAC website at:

**[www.treasurer.ca.gov/ctcac/compliance.asp](http://www.treasurer.ca.gov/ctcac/compliance.asp)**

## **2. Annual Project Ownership Profile (POP) part 1:**

CTCAC requires a Current Project Ownership Profile at the AOC filing. This information should reflect the current and correct Ownership address and contact information, as well as the current Management company information. The form will be available on our website and will be due electronically in the same packet as the AOC. Please Note – If the POP information indicates a change from the Ownership partnership or Tax-Id Number noted on the 8609's, CTCAC will contact the owner for clarification prior to reporting the discrepancy on IRS Form 8823.

## **3. Annual Operating Expense Report (AOE) part 2:**

CTCAC requires an Annual Operating Expense Report (AOE) as part of the Annual Owner Certification package. The form will be available on our website and report will be due electronically.

## **4. Lender Report part 2:**

Starting in 2009, CTCAC will require a complete copy of the Lender Report. The form will be available on our website and the report will be due electronically.

## **5. HUD Tenant Demographic Data (2010)**

The Housing Recovery Act of 2008 requires that all LIHTC and HUD programs gather tenant demographic data for all participants in its programs on an annual basis. Beginning in 2011, CTCAC will require all owners provide this information. CTCAC will post specific instructions on the website to owners on submission of this data, as well as revised required forms that will be used to capture the data. Data will be due electronically.

## **F. Train On-site Personnel**

The owner must make certain that the on-site management knows, understands, and complies with all applicable rules, regulations, and policies governing the project. Additionally, CTCAC strongly recommends that all onsite personnel be Tax Credit certified.

## **G. Ensure Proper Maintenance**

The owner is responsible to ensure that the LIHTC project is maintained in a decent, safe, sanitary condition, and in good repair. *Failure to do so is a reportable act of Uniform Physical Condition Standards (UPCS) noncompliance.*

**Lock-outs or units where management does not have a key at the time of a compliance inspection, will be noted as a Level 3 UPCS violation (blocked ingress/egress) and will be reported to the IRS on Form 8823.**

All properties entering into the Extended Use period must continue to comply with the UPCS requirements.

## **H. Recordkeeping and Record Retention**

The owner of any building for which credit has been or is intended to be claimed must keep records that 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. **Please note: The records for the first year of the credit period must be kept for six years beyond the end of the federal compliance period for each building in a project, for a total period of 22 years.**

The records must include the following:

1. The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rent unit);
2. The percentage of residential rental units in the building that are low-income units;
3. The rent charged on each residential rental unit in the building and the applicable utility allowance;
4. The number of occupants in each low-income unit;
5. The low-income unit vacancies in the building and information that shows when and to whom the next available units were rented (This information must include the unit number, tenant name, move-in date and move-out date for all tenants, including market rent tenants.);
6. The income certifications of each eligible tenant;
7. Documentation to support each eligible tenant's income certification;
8. The eligible basis and qualified basis of the building at the end of the first year of the credit period; and
9. The character and use of nonresidential portion of any building included in the project's eligible basis (for example, any community building, recreational facility, manager's unit(s), etc.) available to all tenants and for which no separate fee is charged.

## **I. Maintain a Development File**

CTCAC suggests that Owners maintain a Development File that contains all pertinent documents for the project. The Development File should contain:

- (1) All approved tax credit applications together with applicable attachments;
- (2) Recorded copy of the Regulatory Agreement/Restrictive Covenant (except for pre-1990 credit projects);
- (3) For 1987-89 projects, election to calculate rent on a bedroom basis, if applicable;
- (4) IRS Forms 8609 and 8586 for each building for each year credit is claimed;
- (5) All applicable documents relating to any other form of housing or finance programs (i.e., HOME, HUD Section 8, RHS, etc.);
- (6) Documentation that the project complies with any statutory set-asides or Qualified Allocation Plan requirements. For more information, see Section III, #370 and #380;
- (7) Utility Allowance documentation, for each utility allowance update or revision

which must occur at least once per year. For more information regarding utility allowances, see Section III #330.

**J. Maintain a Tenant/Unit File for Each Unit in the Project**

The Tenant/Unit File requirements are outlined in Section IV, #460.

**K. Prepare and Submit Low-Income Housing Credit (IRS Form 8586)**

One IRS Form 8586 must be completed to claim credits for the first taxable year in which credit is taken and every year thereafter in the compliance period. IRS Form 8586 must be attached to IRS Form 8609 and Schedule A (IRS Form 8609) and submitted annually with the owner's federal tax return. A sample copy of the form is included in Appendix 5.

**L. Administration and Notification**

The owner is required to notify CTCAC immediately in writing and obtain CTCAC approval for any changes in the ownership composition or in the management agent, such as name, address, and telephone number.

**Part 220 Management Company and On-site Personnel**

The management company and all on-site personnel are responsible to the owner for implementing the LIHTC program requirements properly. Anyone who is authorized to lease apartment units to tenants should be thoroughly familiar with all federal and state laws, rules, and regulations governing certification and leasing procedures. It is also important that the management company provide information, as requested, to CTCAC and submit all required reports and documentation in a timely manner. *The Owner has the ultimate responsibility for compliance and proper administration of the LIHTC program.*