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DATE: February 3, 2022

TO: Project Owners and Management Agents of Low-Income Housing Tax Credit (LIHTC) Properties

FROM: California Tax Credit Allocation Committee – Compliance Section

RE: Monitoring Guidance for 2022

This memorandum serves as guidance from the California Tax Credit Allocation Committee (CTCAC) to owners and property management agents of LIHTC projects in California on the following topics:

1. Income Recertifications
2. Compliance Monitoring
3. 30-Day Notice
4. Common Areas and Amenities
5. Service Amenities
6. Desk Audits
7. Electronic File Storage
8. CTCAC Required Forms
9. Continuing CTCAC COVID Guidelines

On January 11, 2021 the Internal Revenue Service (IRS) released IRS Notice 2022-05 which extended the temporary relief provisions outlined in IRS Notices 2020-53 and 2021-12. Please see [CTCAC Memo IRS Notice 2022-05](#) for detailed guidance on the extensions. This Memo will detail CTCAC's implementation of the guidance and updated COVID parameters for 2022.

Income Recertifications

IRS Notice 2021-12 extended the relief provided in IRS Notice 2020-53 from all annual income recertifications for the period of April 1, 2020 through September 30, 2021. This applied to both 100% and Mixed Income LIHTC properties and included the 1st year recertification requirement (California). It did not eliminate the requirement for initial income certification to determine eligibility.

As of October 1, 2021, the moratorium on recertifications ended. Normal recertification parameters are in effect. For 100% Tax Credit Properties, CTCAC will require a full income and asset certification at initial move-in and the 1st recertification completed on anniversary date. Subsequent recertifications may be either full income and asset or short form recertifications. For 100% LIHTC properties that intend to go to the short form recertification after move-in using the Tenant Household Information Form (THIF), two full income and asset certifications must be in the file prior to CTCAC allowing the use of the short form recertification. If the first anniversary recertification for a household (as required by CTCAC) was scheduled to be completed during the period of April 1, 2020 through September 30, 2021, but was not completed due to the IRS moratorium, a full income and asset certification should be completed on the household's next anniversary date after October 1, 2021 and the transition to a short form recertification can be completed at the subsequent recertification.

For Mixed Income properties with LIHTC and conventional market rate units, CTCAC will continue to require full income and asset recertifications annually on the anniversary date.

Compliance Monitoring

IRS Notice 2022-05 did not extend the relief granted by IRS Notices 2020-53 and 2021-12, for the Allocating Agency to discontinue all compliance monitoring after September 30, 2021. CTCAC resumed file and physical inspections on October 1, 2021.

IRS Notice 2022-05 provides a moratorium on the physical inspection of a property through June 30, 2022. It does not provide a moratorium on the requirement to complete file audits during that time frame. As such, CTCAC will continue to perform desk audits on the LIHTC properties scheduled to be monitored in 2022. Properties that receive a desk audit for the period of January – June 2022, will not have a physical inspection completed on the property. Please certify to the habitability of the units on the 2022 AOC package.

The Notice also allows for the State Allocating Agency, in conjunction with health experts, to extend the moratorium on physical inspections as needed, though no longer than December 31, 2022. In late-May, CTCAC will assess and determine if the physical inspection moratorium due to COVID needs to be extended. Updated guidance will be released in mid-June 2022.

30-Day Notice

In 2018, the IRS published final regulations that changed the notification period to no more than 15 calendar with an effective date of January 1, 2021. With IRS Notification 2021-12 extending the moratorium on inspections through September 30, 2021, CTCAC implemented the 15-day rule in full on October 1, 2021.

IRS Notice 2022-05 provides an extension from the 15-day notification period to 30 days through December 31, 2022. The 15-day notification period will resume on January 1, 2023.

For 2022, CTCAC will follow the IRS extension and provide up to a 30-day notice to all properties of an intent to conduct an inspection. This will apply to properties in both the current portfolio and the extended use portfolio.

Common Areas and Amenities

IRS Notices 2020-53 and 2021-12 provided guidance that if a common area or amenity were temporarily unavailable due to COVID-19 and not due to other reasons, the temporary closure does not result in a reduction of the eligible basis of the building. IRS Notice 2022-05 extends that moratorium through December 31, 2022.

In California, CTCAC will continue to require that certain amenities that are included in basis remain open, such as the laundry room and the computer room. The laundry room is necessary for tenants to wash their clothing and bedding for hygiene purposes and the computer room may serve as the only access some tenants have for ordering food, deliveries, and prescriptions. Owners and management agents may put in place restrictions on the use of the computer room, such as (but not limited to):

1. Limiting the number of people in the space
2. Requiring masks be worn in all common spaces or hallways
3. Sanitizing the room and equipment following use
4. Limiting the hours that the computer room is accessible
5. Requiring a sign-up sheet to use the computer room
6. Limiting access to the computer room for essential use only (ordering food, deliveries, or prescriptions)

If the computer room is located inside the community room, CTCAC suggests that the main portion of the community room be blocked off and designated spacing be put in place to allow tenant access to the computers.

Service Amenities

For LIHTC properties that provide service amenities such as health and well-being classes or after school programs that cannot be completed in person due to COVID, CTCAC will require finding alternative or virtual methods to hold the classes/programs

in order to ensure the service(s) are being provided. Examples of alternatives may be (but are not limited to):

1. Zoom or Video Conferencing Fitness Classes
2. Zoom or Video Conferencing Food Preparation, Art, or Skills Classes where any required materials are pre-packaged and given to the tenants prior to the class
3. Outdoor Fitness Classes that can safely maintain a minimum of a 6 feet distance from each participant
4. Outdoor After School Programs where participants are kept in the same small groups, can be spaced out to safely maintain distances, and masks are worn at all times

Providing pamphlets, flyers, or other reading materials about a subject/class is not an acceptable substitution for providing the actual classes and does not count towards meeting the required annual service hours requirement.

For case management services that require one-on-one contact, CTCAC suggests remote or virtual contact when possible, via a video conferencing platform. For all situations where person-to-person contact is required, masks, safe social distancing and sanitizing surfaces before and after each session shall be required.

Failure to meet the Service Amenity requirements of the Regulatory Agreement for the LIHTC property in 2022 will result in either negative points or fines to the owner and/or management company.

Desk and Physical Audit Procedure 2022

IRS Notice 2022-05 provides a moratorium to the State Agencies with regards to conducting physical inspections through June 30, 2022. It also provides the State with the authority, after consultation with public health officials, to extend that moratorium through December 31, 2022. CTCAC will assess, determine and release updated guidance in mid-June.

IRS Notice 2022-05 does not extend the moratorium on file audits. For the period of February through June 30, 2022, CTCAC will be conducting desk audits in lieu of in-person audits for LIHTC properties that were last monitored in January through June of 2019. Projects that receive a desk audit only due to the moratorium (either IRS or State) will not have a physical audit component as part of the audit. Please certify to the habitability of the units on the 2022 AOC package.

In 2021, in order to organize and streamline the desk audit process initially created in June of 2020, CTCAC made changes to the desk audits process and determined a specific organizational format for which files should be transmitted to CTCAC during a desk audit.

Desk Audit Procedure:

1. A Notice of Inspection will be sent up to 30 days from the CTCAC scheduled inspection date to the Owner and Management Contact on record.
2. Owner/Management will have 7 calendar days to complete and return the required pre-inspection materials, including Project Status Report (PSR), Utility Allowance (U/A), Rent Roll, and Service Logs for Emergency Systems. The date of the Notification Letter is considered Day 1. If the 7th calendar day fall on a weekend, the materials will be due on the following Monday.
3. IRS Section 42 requires that the allocating agency not disclose the units that will be audited until the day of the audit. No guidance has been issued that provides relief from this restriction. In order to maintain compliance within this restriction, and to provide the ability to expand the audit sample as needed, CTCAC is requesting a larger sample size than the required number of units to be audited. CTCAC staff will complete their pre-inspection audit and submit to the Owner/Management Agent a list files to be submitted for the audit. The number of files will be the sample size based on size of the property, plus an additional determined number of files. The sample size is as follows:
 - a. Projects with 1 - 150 LIHTC Units - 20% audit sample. CTCAC will request an additional 5 files above sample size.
 - b. Projects with 151 - 300 LIHTC units – 15% audit sample. CTCAC will request an additional 10 units above sample size.
 - c. Projects with 301+ LIHTC units – 10% audit sample. CTCAC will request an additional 10 units above sample size.

Example 1:

Project has 125 LIHTC units. CTCAC will request that 30 files be submitted for review. CTCAC will review at minimum 25 files for the audit.

Example 2:

Project has 400 LIHTC units. CTCAC will request 50 files be submitted. CTCAC will review at minimum 40 files for the audit.

4. Owner/Management will have 4 business days to scan the listed files and send to CTCAC via a Secure File Transfer System link or provide a link to an internal portal where those files can be accessed. In order to maintain consistency across all management companies and expedite the desk audit process, CTCAC requires that all files submitted follow a specific Desk Audit Format (*noted below*).
5. CTCAC staff will complete the desk audit on the date noted in the Notification Letter. A Findings Letter will be sent to the Owner and Management contact on record within 45 days of the scheduled audit.
6. The Owner/Management Agent will have 60 days to correct any noncompliance.

For Properties in the Federal Compliance Period:

Failure to respond to the Notification of Intent to Inspect or failure to provide the required pre-inspection materials will result in an immediate Noncompliance Findings Letter and a Correction Period will be given with a rescheduled audit date determined by CTCAC.

Failure to provide the pre-inspection materials by the required timeline of the rescheduled audit date will result in CTCAC filing an Uncorrected Form 8823 for “Failure to Respond to Agency Request for Monitoring Review”. The noncompliance will remain uncorrected until CTCAC is able to reschedule the inspection, the materials are received for the rescheduled inspection, and the rescheduled audit has been completed. CTCAC will attempt to reschedule promptly, however due to the impacted nature of staff’s schedules, rescheduling may take several months.

For Properties in the Extended Use Period:

Failure to respond to the Notification of Intent to Inspect or failure to provide the required pre-inspection materials will result in an immediate Noncompliance Findings Letter and a Correction Period will be given with a rescheduled audit date determined by CTCAC.

Failure to provide the pre-inspection materials by the required timeline of the rescheduled audit date will result in CTCAC levying an immediate \$500 fine against the property. An additional \$100 fine per month will be assessed until CTCAC is able to reschedule the inspection, the materials are received for the rescheduled inspection, and the rescheduled audit has been completed. CTCAC will attempt to reschedule promptly, however, due to the impacted nature of staff’s schedules, rescheduling could take up to 5 months.

Desk Audit Format:

To reduce the burden on the Owner/Management, establish consistency in file submissions, and expedite the desk audit review, CTCAC will require that all files be submitted in the below “folder-style” format. For 100% LIHTC properties, CTCAC will only need the following documents submitted: Application, Initial Lease, CTCAC required Lease Riders (Good Cause Eviction, VAWA, Section 42), Complete Move-in Certification, Complete 1st Recertification, and Complete most recent Recertification. For Mixed Income LIHTC properties (Tax Credit + Conventional units), in addition to the Complete Move-in Certification and Complete 1st Recertification, CTCAC will need all additional Complete Recertifications for the household. Other File documentation such as House Rules, Work Orders, additional Leases, Notifications, etc. are not required to be submitted to CTCAC. Please ensure that all documents are submitted right-side up, and that any double sided documents include separate pages for each.

For 100% LIHTC Properties:

Property Name and CTCAC Number

📁 Building Number

📁 Unit Number

📁 Application, Initial Lease, Lease Riders (Good Cause, VAWA, Section 42)

📁 Complete Move-in Certification

📁 Complete 1st Recertification

📁 Last Completed Recertification

📁 Unit Number

📁 Application, Initial Lease, Lease Riders (Good Cause, VAWA, Section 42)

📁 Complete Move-in Certification

📁 Complete 1st Recertification

📁 Last Completed Recertification

For Mixed Income LIHTC Properties:

Property Name and CTCAC Number

📁 Building Number

📁 Unit Number

📁 Application, Initial Lease, Lease Riders (Good Cause, VAWA, Section 42)

📁 Complete Move-in Certification

📁 Complete 1st Recertification

📁 Complete 2nd Recertification

📁 Complete 3rd Recertification (etc.)

📁 Unit Number

📁 Application, Initial Lease, Lease Riders (Good Cause, VAWA, Section 42)

📁 Complete Move-in Certification

📁 Complete 1st Recertification

📁 Complete 2nd Recertification

📁 Complete 3rd Recertification (etc.)

Please check the CTCAC Compliance Section webpage at

<https://www.treasurer.ca.gov/CTCAC/compliance.asp> for a list of properties that are scheduled to be seen in 2022. LIHTC properties that were last inspected in January – June 2019 will receive a desk audit between January and June of 2022.

Electronic File Storage

In order to maintain efficiency, reduce waste, and keep up with changing technological innovation, CTCAC will require that all projects in the CTCAC portfolio create and maintain an electronic copy of the file for all households at a property.

This mandate goes into effect on February 1, 2022 and must be completed by December 31, 2023.

CTCAC Required Forms

Prior to 2021, CTCAC had a general policy that stated if the owner wanted to add additional questions to CTCAC required forms, it would be allowed only if the formatting of the forms was not altered and CTCAC approved the changes prior to implementation. This previous policy resulted in a significant number of owners and management companies using different and company specific variations of CTCAC forms. The wide variation in the forms being used has become burdensome for CTCAC staff and has resulted in several instances of staff writing up noncompliance for the use of non-standard forms, due to lack of pre-approval documentation in the file for the use of a non-standard form.

In Spring of 2022, CTCAC will be releasing updated versions of all CTCAC required forms to meet ADA accessibility standards. Once these forms are released, Owners and Management companies will have until the end of 2022 to implement the use of these forms. A finding of noncompliance will be noted during an audit if the owner is not using the correct CTCAC forms. With the modification, all prior approval to changes of the forms are no longer valid, and CTCAC will not approve additional changes to be made.

Allowed Exceptions:

- a) CTCAC will allow the following HUD Forms to be used in place of the CTCAC form, to allow consistency in projects with HUD subsidy and prevent duplication
 - i. Verification of Employment Form
 - ii. Live-in Aide Verification Form
 - iii. HUD VAWA Lease Rider
- b) The Work Number
- c) The addition of a management company logo or fine print Fair Housing language to the existing CTCAC required form is not considered a modification of a CTCAC form and does not require CTCAC approval

Correction Period:

- a) CTCAC will note use of non-standard CTCAC forms in the Noncompliance Letter for all inspections in 2022, but will not be considered a finding of noncompliance until January 1, 2023.
 - i. Non-standard form filings after that date will be noted as a violation and subject to a standard correction period
 - ii. Fines may be assessed if owner chooses to continue using non-standard forms after the correction period has been established

Continuing CTCAC Covid Guidance Policies

CTCAC has released several Memos regarding policies that have been adapted or extended during the ongoing COVID pandemic. The following policies remain in effect:

1. **Electronic Signatures** - In 2015, CTCAC started allowing the use of electronic signatures on the application only. In 2020, due to the COVID-19 Pandemic, CTCAC allowed the use of electronic signatures through the vendor DocuSign for all documents to mitigate in-person contact. In 2021, CTCAC started to allow electronic signatures on all CTCAC required documents (Application, Lease, CTCAC Forms) through a legitimate 3rd party vendor, provided the signature was obtained either by a secure login process directly from the 3rd party vendor which has an identity verification system in place, or the electronic signature was created by the resident “writing” their name using their finger on a touchpad, mouse, or electronic pen. Electronic signatures using 3rd party software that does not have a secure ID verification system to track and document identity will not be accepted.
2. **Electric Vehicle Charging Stations** - For properties that include electrical vehicle charging stations on the property grounds, the owner may not charge the resident for the use of the parking spot unless the parking structure(s) or area(s) were excluded from eligible basis. The owner may charge the direct cost of the electricity used at the charging station to the resident and limit use to residents of the property. Signage on or near the charging station must clearly state the requirements for use.
3. **Unemployment or Employment Development Department (EDD) Verifications** - In lieu of a separate 3rd party verification of unemployment from EDD, CTCAC will accept the current award letter stating the amount of unemployment benefits the resident is receiving. If the owner is unable to obtain the award letter, the resident may provide a copy of the following from the EDD Portal to verify their benefit amount:
 - a. Profile Page (provides full name of the resident)
 - b. Claim Summary
 - c. Payment History
 - d. Transaction Detail
4. **Social Security Verification** – CTCAC is aware that due to COVID restrictions, obtaining a copy of the most current Social Security Award letter can be challenging for those individuals who are homeless, special needs, or are in senior communities. CTCAC will accept an SSA award letter that was issued in or after 2019, with documented cost of living adjustments to be used if the current Social Security Award letter cannot be obtained. Please note – this applies to Social Security benefits only and does not apply to Supplemental Security Insurance (SSI). SSI Awards must be verified within the last 120 days.

The CTCAC Compliance Section thanks you for your patience and understanding as we adapt to the ongoing changes surrounding the COVID-19 pandemic, and work towards meeting our LIHTC obligations, while maintaining respect for the safety and health of CTCAC staff, the staff of the owner and management companies, and the tenants who reside in LIHTC properties. As circumstances continue to change, CTCAC may provide additional guidance or change existing guidance to better reflect information provided by the IRS, the Governor of California, the Center for Disease Control (CDC), or State and Local Public Health Agencies. For any questions, please contact Compliance Senior Program Managers Elizabeth Gutierrez-Ramos at elizabeth.gutierrez@treasurer.ca.gov or Shannon Nardinelli at shannon.nardinelli@treasurer.ca.gov.