



CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

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DATE: September 1, 2020

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

FROM: CA Tax Credit Allocation Committee – Compliance Section

RE: IRS Guidance for 2020 – Recertifications and Monitoring (UPDATED)

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

1. IRS Notice [2020-53](#)
2. Student Certifications
3. IRS [Proposed Regulation](#) – Project Sample Size
4. TCAC Guidance for Resyndication

On July 1, 2020 the Internal Revenue Service (IRS) released two documents. The first was IRS Notice 2020-53 which provided temporary relief from certain requirements of IRC Section 42 the LIHTC Program. These temporary relief measures are:

Time Sensitive Actions – postponed

For the following actions that were due to be performed between the period of April 1, 2020 and December 31, 2020, the IRS will postpone all deadlines through December 31, 2020. These include:

1. 10% Test
2. 24 month minimum rehabilitation expenditure period
3. Casualty Loss (both disaster and non-disaster)

Income Recertifications

Notice 2020-53 grants relief from all annual income recertifications for the period of April 1, 2020 through December 31, 2020. This applies to both 100% and Mixed Income Tax Credit properties and includes the 1st year recertification requirement (California). It does not eliminate the requirement for initial income certification to determine eligibility.

In California, TCAC will require that the owner put a clarification record in the file to indicate that the annual recertification was not completed due to guidance from IRS Notice 2020-53. This clarification record will act as a placeholder in lieu of a normal recertification. TCAC will require that recertifications resume in 2021 on the normal anniversary date of the household, or for 100% properties using a mass recertification schedule, at the next scheduled recertification.

For 100% Tax Credit properties that intend to go to the short form recertification after move-in using the THIF, two full income and asset certifications must be in the file prior to TCAC allowing the use of the short form recertification. If the first anniversary recertification for a household (as required by TCAC) is not completed due to COVID in 2020, a full income and asset certification should be completed on the household's anniversary date in 2021 and the transition to a short form recertification can be completed in 2022.

Compliance Monitoring

Notice 2020-53 grants relief for the Allocating Agency to discontinue compliance monitoring for the period of April 1, 2020 through December 31, 2020. The IRS has further clarified that properties normally scheduled for inspection in 2020 do not need to be completed in 2021.

In California, TCAC will continue to perform desk audits on the current portfolio properties scheduled to be monitored in 2020. To ensure that properties on the list for this year will not miss or change their recertification cycle, and are continuing to meet the eligibility requirements of the program, TCAC will continue the desk audit process. Desk audit procedures can be found in the [MEMO](#) dated June 16, 2020. All physical site inspections will be cancelled for the remainder of 2020. Extended Use properties that were initially scheduled for 2020 will be postponed until 2021.

Common Areas and Amenities

Notice 2020-53 provides guidance that if a common area or amenity is temporarily unavailable due to Coronavirus (COVID-19) and not due to other reasons, the temporary closure does not result in a reduction of the eligible basis of the building.

In California, TCAC 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. Sanitize 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, TCAC 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.

For projects that provide service amenities such as health and well-being classes or after school programs, TCAC suggests finding alternative virtual methods to hold the classes/programs that still allow for the service to be provided. For case management services that require in-person contact, TCAC suggests requiring temperature checks, masks, safe social distancing of at least 6 feet between persons, and sanitizing surfaces before and after each session.

Emergency Housing for Medical Personnel and other Essential Workers

Notice 2020-53 allows owners of tax credit properties to provide emergency housing to medical personnel or other essential workers (as defined by State or local governments) during the COVID-19 pandemic for the period of April 1, 2020 through December 31, 2020. Owner may treat these individuals as “displaced” and provide emergency housing under the provisions of Rev Proc 2014-49 and Rev Proc 2014-50.

In California, TCAC will require a printed document from the State or local government defining the term “essential worker”. Income eligibility will not be required to temporarily house medical personnel or other essential workers for the period of April 1, 2020 through December 31, 2020. **Any tenants that remain in the units that were used as emergency housing under these provisions, must be certified as income eligible effective January 1, 2021, unless further guidance from the IRS extends this provision.**

The provisions of Emergency Housing do not allow for disregarding any waitlist(s) on the property. If a property has a waitlist of qualified households, an owner may not “skip” the applicants on the waitlist to provide emergency housing to essential workers.

Student Recertifications

IRS Notice 2020-53 does not waive the exceptions for full-time student households. For any full-time student household, where every member of the household meets the

definition of a full-time student, the owner will need to continue to verify the household's eligibility under one of the 5 IRS student exceptions:

1. Married and filing (or are entitled to file) a joint tax return
2. Single Parent with a dependant child (neither are dependant of a 3rd party)
3. Receiveing AFDC or TANF under title IX of the Social Security Act
4. Attending school through the JPTA or WIA
5. Recently exited the Foster Care system (ages 18-24)

This verification should be completed on the normal recertification date for the household.

Project Sample Size

On July 1, 2020, the IRS submitted the [Proposed Regulation](#) which relaxed provisions from a previously approved 2018 regulation [TD 9848] regarding the sample size that allocating agencies must monitor for compliance with the Section 42 program. The previous regulation required the mimimum sample size as determined by REAC to be implemented by December 31, 2020. The current proposed regulation returns to the 2016 proposed regulation of the lesser of a sample size of 20% or the REAC table. The REAC table is indicated in **Attachment A**.

In California, TCAC will continue to monitor a 20% sample size rather than the number indicated on the REAC tables. For properties that are over 150 units, TCAC does not feel that the number indicated on the REAC tables is a sufficiently representative sample and will use the following methodology:

- For Properties that are 151-300 units – TCAC will monitor a 15% Sample
- For Properties that are over 301 units – TCAC will monitor a 10% Sample

TCAC Guidance on Resyndication Certifications during the COVID-19 Pandemic

In California, TCAC requires that for properties that have resyndicated, obtained new credits, and start a new 15 year Federal Compliance Period, complete a full income and assets certification on all existing tenants to determine if they are income eligible under the limits and provisions of the new allocation. This certification can either be completed as a “line in the sand” date or on the tenant’s next annual recertification date. The date that certification is complete becomes the anniversary date for that household for the new allocation and all subsequent recertifications.

If the household is income eligible under the new limits, no other action needs to be taken. The certification starts a new file for the household under the new allocation and the tenant file under the previous allocation can be removed and archived.

If the household is not income eligible under the new limits, the owner must go back through the household’s prior certifications and remove a certification that clearly demonstrates income eligibililty under the previous allocation (usually the move-in or 1st recertification). The certification for the new allocation, the TCAC Resyndication Clarification form, and the

certification from the previous allocation showing eligibility, should be put into a new file to demonstrate eligibility for the new allocation.

For resyndicated properties that have been awarded a new allocation of credits, TCAC will continue to require the initial certification (completed either at a “line in the sand” date or at the tenant’s annual recertification date) for all households to demonstrate eligibility under the new allocation.

The TCAC Compliance Section thanks you for your patience and understanding as we continually monitor the COVID-19 situation and work towards meeting our LIHTC obligations, while maintaining respect for the safety and health of TCAC staff, the staff of the owner and management companies we serve, and the tenants who reside in tax credit properties. As circumstances change, TCAC 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 Senior Program Managers Elizabeth Gutierrez-Ramos at elizabeth.gutierrez@treasurer.ca.gov or Shannon Nardinelli at shannon.nardinelli@treasurer.ca.gov.

ATTACHMENT A

Number of low-income units in the low-income housing project	Number of low-income units selected for inspection or for low-income certification review (minimum unit sample size)
1	1
2	2
3	3
4	4
5-6	5
7	6
8-9	7
10-11	8
12-13	9
14-16	10
17-18	11
19-21	12
22-25	13
26-29	14

Number of low-income units in the low-income housing project	Number of low-income units selected for inspection or for low-income certification review (minimum unit sample size)
30-34	15
35-40	16
41-47	17
48-56	18
57-67	19
68-81	20
82-101	21
102-130	22
131-175	23
176-257	24
258-449	25
450-1461	26
1462-9999	27