

# CTCAC Combined Compliance Workshops

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# Role of the State Monitoring Agency

- Monitor LIHTC Properties for compliance to IRC Section 42
- Report incidents of noncompliance to the IRS on Form 8823
- Provide guidance, information, and training to the users of the LIHTC program

# Role of the State Monitoring Agency

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- Keep up with changing regulations, program requirements, laws and industry discussions that affect LIHTC
- Work in partnership with the owners and management agents who own and operate LIHTC properties

- CTCAC Project Number
  - CA-XX-XXX or CA-12-105
  - This number will identify the particular project on our database
    - Used on Form 8609 –IRS
    - Used on Form 8823 –IRS
  - Used any time you contact CTCAC

# CTCAC Reporting Requirements

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- AOC Package, Part I & Part II
  - Part I (AOC & POP) Due Date: March 19, 2018
    - Contact for questions – Tina Johnson 916-651-0344
  - Part II (AOE & LR) Due Date: May 21, 2018
    - Forms posted on TCAC's website around the week of March 19, 2018
    - Contact for questions – Quang Le 916-651-3882

# CTCAC Reporting Requirements

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## AOC Package Part I – AOC Form

- AOC Form mailed to the attention of Tina Johnson
- Most Frequent Errors:
  - Statement I, federal set-aside not marked
  - Statements I – XX - Not initialing a statement and not providing an attachment with an explanation.
  - Statements XXI – XXIII, only to be initialed if they are applicable
  - Owner printing name instead of signing at the bottom of the AOC form



# CTCAC Reporting Requirements

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## AOE Package Part II – Annual Operating Expense (AOE) Form

- AOE form emailed to TCAC at this address:  
[tcac@treasurer.ca.gov](mailto:tcac@treasurer.ca.gov)
- Most Frequent Errors:
  - Typos in operating expenses that put a project in the red.
  - Including depreciation into expenses.
  - Not filling out the contact information at the bottom of the AOE.
  - If a project is in the red, not providing an explanation.
  - Emailing the form in PDF.

# CTCAC Reporting Requirements

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## Tenant Income Certification and Supplemental Information Data

- In the contracting process.
- Information will be sent out by CTCAC in the coming weeks in regards to the status of the contract, due dates, etc.



# Compliance Due Diligence

Tax credits can be claimed if unit meets three basic requirements:

- Income Eligible
- Rent Restricted
- UPCS Standards
  - Safe
  - Habitable
  - Good Condition



# Compliance Due Diligence

## Facts and Circumstances

CTCAC will determine if the owner/management performed sufficient due diligence with regards to the following:

- Documenting Income Eligibility
- Keeping Units Rent Restricted

# Compliance Due Diligence

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- CTCAC Compliance Website:
  - [www.treasurer.ca.gov/ctcac/compliance.asp](http://www.treasurer.ca.gov/ctcac/compliance.asp)
    - Online Compliance Manual
    - Policy Memos
    - Forms
    - 2018 Monitoring List
      - Note: CTCAC cannot give advance notice of inspection dates

# Eligibility Basics

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## The Tenant Application

- Detailed and Asks Appropriate Questions
  - Household Members
  - Income Sources
  - Assets
  - Employment
  - Housing History
  - Age (if Senior Complex)

# Eligibility Basics

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## Verification of Income and Assets:

- Third party verification
- Telephone clarifications for minor issues or items left blank
- Significant changes must be third party verified
- Don't have ALL the info...
  - DON'T MOVE THEM IN!!

# Eligibility Basics

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## Other Income Sources:

- Social Security and Supplemental Security
- Pensions and Annuities
- Gifts
- Zero Income Certification
- Payments from another Country
  - Owner needs to verify
  - Burden on the applicant/tenant to provide information



## SSA/EDD/Payroll Debit Cards

- Issued by the source
- CTCAC will treat as Income
- Verify the Source – Either 3<sup>rd</sup> Party or the Current Award Letter

## Required Income Documentation

### Regular Income from Wages

- VOE and 3 months of current pay-stubs
- Calculating income (3 methods)

### Self Employment

- Tax Return and Schedule C
- 4506-T if claiming no tax returns
  - Profit/Loss Statement
  - Statements from recurring clients

# Eligibility Basics

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## Cash Wages

- 4506-T if claiming no tax returns
- Third party statement from the employer on company letterhead indicating tenant is paid in cash and also include tenant's name, title and job duties.



# Eligibility Basics

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## Farm Labor and other Seasonal Labor

- Completed VOE showing lay-off period
- May use payroll printout instead of paystubs
- If receiving unemployment during lay-off period
  - Calculate only the months expected to receive. Do not annualize.



# Calculating Income Exercise

## Exercise # 1

**2018 Income Limit for a 1 person household:**

**\$30,200**

Kimmie Johnson is applying to your property. She fills out the application and her consent forms. Her employer completes the VOE, she gives you 3 months worth of current and consecutive paystubs, and completes all other required documentation. Use the following information to determine if she is income qualified at move-in.



# Calculating Income Exercise

## Verification of Employment

- \$14.50 an hour @ 40 hours a week. No overtime or shift differential.

## Year to Date

- YTD on the VOE shows \$9688.59 earned from 12/28/17 – 4/23/18

## Paystubs

- Average hours on her paystubs show that she has been getting occasional overtime, but that she also does not always work 40 hours a week.



# Calculating Income Exercise

Paystub #1 – 40hrs / no overtime

Paystub #2 – 40hrs / 1 hr overtime

Paystub #3 – 37.5hrs / 2.5 hrs overtime

Paystub #4 – 39hrs / no overtime

Paystub #5 – 40hrs / no overtime

Paystub #6 – 40 hrs / 1.25hrs overtime

Paystub #7 – 38hrs / .75 overtime

Paystub #8 – 38.5hrs / 1hr overtime

Paystub #9 – 40hrs / no overtime

Paystub #10 – 39hrs / 1 hr overtime

Paystub #11 – 40hrs / no overtime

Paystub #12 – 37.5 hrs / 1.5 hrs overtime

- **Verification of Employment**
  - 14.50 an hour x 40 hours x 52 weeks = **\$30,160**
- **YTD Calculation**
  - Pay period ending 4/23/18 = 117 days (4 days in 2017/113 in 2018)
  - 117 days / 7 = 16.71 weeks
  - \$9,688.59 / 16.71 = \$579.81
  - \$579.81 x 52 = **\$30,150.12**
- **Paystub Calculation**
  - **Regular** – 40+40+37.5+39+40+40+38+38.5+40+39+40+37.5 = 469.5
  - 469.5/12 stubs = 39.125 average hours per pay period
  - \$14.50 x 39.125 x 52 = \$29,500.25
  - **Overtime** – 1+2.5+1.25+.75+1+1+1.5 = 9
  - 9/12 stubs = .75 average hours per pay period
  - \$21.75 x .75 x 52 = \$848.25
  - Total Paystub - \$29,500.25 + \$848.25 = **\$30,348.50**

# Student Rules

## ■ Who is a Student?

- IRS defines a student as an individual, who during each of 5 calendar months during the calendar year is a full-time student at an educational organization defined by IRC 170 (b)(1)(A)(ii)
- Months need not be consecutive
- Full-time or part-time is determined by the educational institution the student is attending



# Student Rules

- **What is an Education Organization?**
  - Any organization that maintains a regular facility, faculty, and curriculum that normally has an enrolled body of students in attendance
  - Definition includes elementary, junior and senior high schools, colleges, universities, technical, trade, or mechanical schools.



# Student Rules

- Full-time Student Households must meet one of 5 IRS exceptions:
  1. Any member(s) of the household is married and is filing (or is entitled to file) a joint tax return
  2. Be receiving assistance under Title IV of the Social Security Act (AFDC, Cal WORKS, or TANF not SSA/SSI)



# Student Rules

3. Have recently exited the Foster Care System
  - CTCAC restricts to ages 18-24
4. Be enrolled in a job training program under the JTPA or WIA or under another similar Federal, State or local law
5. Be a single parent with a child (or children) and neither the parent or children are claimed as a dependent on a third parties tax return
  - Single Parent Full-time Student Status Form



Jan started her last semester at CSU Chico in January of 2017 and graduated in June. She was a full time student all through her college years but now she is no longer going to school and she is working full-time. She is applying at your property in September of 2017. Do you need to worry about her student status since she graduated?

Yes. The IRS classifies full-time student status as any time in a calendar year. Jan would need to meet one of the 5 IRS exceptions or wait until 2018 to move-in.

Kevin and David are both full-time medical students going to school at UC Davis. Both are married to spouses living in other states. Their spouses will not be living in the units but their income will be added to the total household income, since spouses are legally obligated for support. Even with the added income, they income qualify for a two-bedroom unit. Do they meet one of the 5 IRS exceptions?

Yes. The IRS exception is any member of the household is married and filing or is entitled to file a joint tax return. It does not state household members need to be married to each other.



Kathy is 22 and working towards her Bachelors Degree in Mechanical Engineering at University of Phoenix. She has been going to school full-time and she gets \$1000 a month from her mother, who is not living in the unit. Kathy has a daughter named Mary who is in the 1<sup>st</sup> grade. Does this household meet one of the 5 IRS exceptions?

**Not Necessarily.** The IRS exception is single parent with a dependent child and neither are dependent on a third party's tax return. In this instance Kathy *may* still of a dependent of her mother, even though the mother is not residing in the unit.

# Financial Aid

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- Only counted if the household is receiving Section 8 Assistance
- Aid in excess of tuition (scholarships, grants, etc. but **not** loans) must be added to the households income unless one of two exceptions are met:
  1. Living at home with his/her parents or guardian
  2. Over age 23 with a dependent child

## Student Income

For households where the Student is over 18 and has wages from a job - Only count \$480 of the student's income

1. Student cannot be the Head, Co-head, or Spouse
2. Must be living in the unit and claimed as a dependent on the HOH, Co-Head, or Spouse's tax return
  1. Tax Return must be in the file
  2. Applies to full-time students

## Student Income

- If not a dependent of HOH, Co-Head or Spouse, full income from wages must be counted.
- For part-time students – full income from wages must be counted.



# UPCS

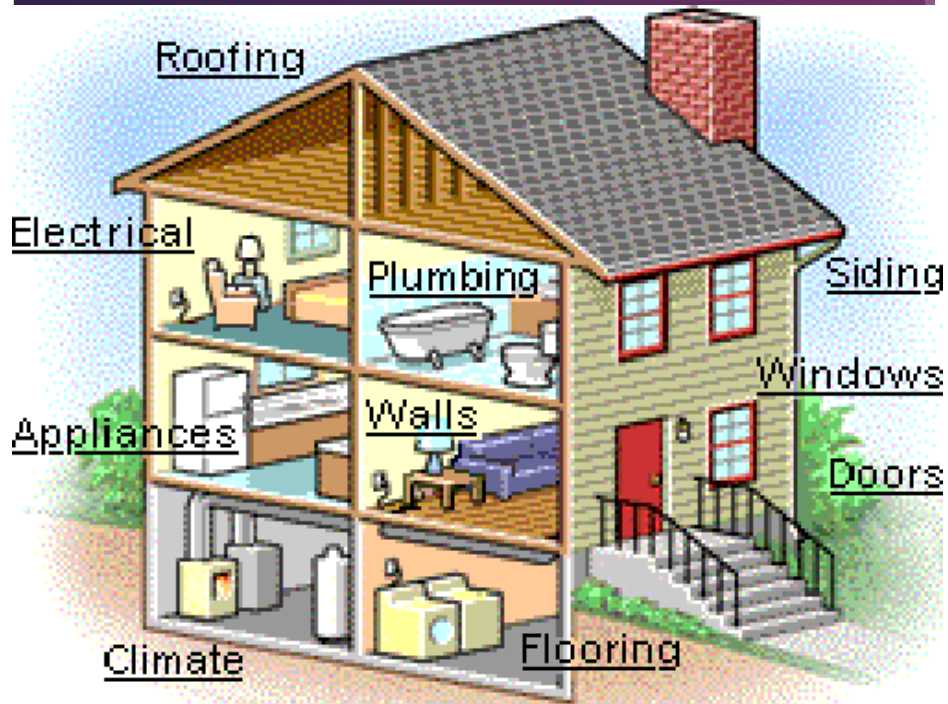
## Basic Physical Inspection Protocols

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- 24 hour notice
- Keys
- Water Heater Closets / Boiler Rooms
- Smoke Detectors
- Pool

## Compliance Manual

- Section 7 – Part 7.3 Physical Inspection Checklist



## Physical Inspection

- HUD's UPCS Standards
  - Exterior
    - ADA Accessibility to Common Areas
    - Visual Inspection of Building/Roof
    - Landscaping/Standing Water
    - Trip Hazards
    - Parking Structures

## ■ Physical Inspection

- HUD's UPCS Standard

- Interior

- Smoke Detectors
- Functioning Appliances
- Water Heater/HVAC Closets
- Blocked Ingress/Egress

- Holes/Leaks
- Trip Hazards
- Carbon Monoxide Detector

## Interior Corridor Emergency Lighting

- CTCAC will check all emergency lighting to verify back-up battery systems are operating correctly
  - If 20% of the units tested are inoperable it is an automatic 8823

## Fire Alarm Systems

- Maintenance/service logs are required for all properties with a centralized Fire Alarm system



## Results of Physical Inspections

- Attention to:
  - No operational smoke detector
  - Exposed electrical wiring
  - Deficiencies that could cause immediate injury
- Requirements before leaving the property:
  - Copy of signed and dated work orders for those items that require immediate attention



# Findings Letter

## Two Types of Letters

- Good - No file or physical issues
  - Noncompliance - One or more file or physical issues
- 30 day turnaround timeframe
  - Detailed list of noncompliance issues for file, physical, and amenities



### CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

915 Capitol Mall, Suite 405  
Sacramento, CA 95814  
p (916) 854-2348  
f (916) 854-8033  
ctcac@treasurer.ca.gov  
www.treasurer.ca.gov/ctcac

MEMBERS  
JOHN CHANG, CHAIRMAN  
State Treasurer  
BETTY YEE  
State Controller  
MICHAEL CHEN  
Director of Finance  
EXECUTIVE DIRECTOR  
Mark Stevens

March 1, 2015

John Smith  
ABC Apartments, LP  
111 Main Street, Suite 202  
Sacramento, CA 95814

RE: ABC Apartments (CA-2015-213)

#### NOTICE OF NONCOMPLIANCE WITH INTERNAL REVENUE CODE SECTION 42

The California Tax Credit Allocation Committee (CTCAC) staff conducted a file and on-site physical inspection of your project to determine compliance with the Low-Income Housing Tax Credit program requirements on February 17<sup>th</sup> 2015. The law and regulations require that tax credit units be rent restricted and occupied by income eligible households whose income is verified by third-party documentation. All units must be habitable and the property must be safe for all tenants.

#### RESULTS OF THE TENANT FILE INSPECTION:

Thirteen tenant files were reviewed. The review of the files and the Project Status Report (PSR) for your project indicate that income eligible households occupy the units, rents are within the maximum rent limits, and all required documentation is contained in the files with the exception of the following:

Building 2 - Unit #203 (Smith) - This one-person household moved in on 04/21/2009. At initial



# Findings Letter

States the Correction Period and the Owner's Response due date.

- Extensions
- Analyst's Contact information
- Sent to Owner and Management Contact on File



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# Owner / Management Response Letter

## Preferred Response Layout:

- Cover letter with non-compliance issues and brief summary of response
- Documentation requested to correct file non-compliance
- Work orders requested to correct physical non-compliance
  - Signed and dated by both tenant and maintenance.
- Documentation requested to correct other issues

# Owner / Management Response Letter

**Documentation must  
be mailed to the Analyst in  
charge of the inspection not  
e-mailed.**

# IRS Section 42 Rules – Vacant Units

The IRS permits credits on a vacant unit as long as:

- Previously occupied by an income qualified household
- Turn-key ready for immediate occupancy
  - CTCAC allows a 60 day grace period from date of vacancy before noting this as a noncompliance issue, please note the IRS considers a **2 week period sufficient**

# IRS Section 42 Rules – Vacant Units

- CTCAC Requires 3 methods of Advertising:
  - Newspaper
  - Internet
  - Signage
- Reported to the IRS if vacant more than 60 days:
  - Unit not being advertised
  - Not Turn Key Ready
  - Waiting for a referral from an Agency



# IRS Section 42 Rules – Changing Household Size

- Circumstances may arise where a tenant wants to add additional members to the household
- CTCAC strongly suggests not permitting any change in household the first year of the credit period.
  - Check with the owner and Investor prior to making changes to household size during the first year of the credit period
  - Most investors will want assurance that if there is an increase in household size the units will be tax credit eligible



# IRS Section 42 Rules – Changing Household Size

- Have clear criteria that states:
  - If adding members to household will put the household over the limit for household size - the change will not be permitted
  
- Mixed-use tax credit project –
  - Recalculate income to verify:
    - additional household member will not put the household over either income limit or over 140% of AMI

## IRS Section 42 Rules – Totem Pole Rule

- As long as at least one original household member remains in the unit, that unit continues to maintain its eligibility
  - Additional household members may be added
  - Household members that were minors at initial move-in still qualify as an original household member even though they didn't sign paperwork

# IRS Section 42 Rules – Totem Pole Rule

- For mixed-income properties that means the household must remain under 140%
- If at any time no original members are in the unit, the unit must now income qualify at the current limits with the existing household members

# IRS Section 42 Rules – Transfers

- Know the 8609 Part II Line 8b election
- If yes, tenants can transfer throughout the property
- If no, tenants can transfer within the same building, but cannot transfer directly to another building on the property.
  - Treated like a move-out / new move-in
  - Tenants would have to re-income qualify at the current limits

## IRS Section 42 Rules – Exempt Units

- Following recent discussions with the Internal Revenue Service (“IRS”), TCAC received clarification on the correct use of the manager’s unit at LIHTC properties.
- Per IRS Revenue Ruling 92-61, Manager/Exempt units are considered facilities reasonably required for the operation of the residential rental housing.

## IRS Section 42 Rules – Exempt Units

- If a managers unit is included in eligible basis the person that occupies that unit must be employed at the same property where they reside.
  
- This includes:
  - On-site Manager
  - Assistant Manager
  - Maintenance Personnel



## IRS Section 42 Rules – Exempt Units

Staff not eligible to occupy the managers unit:

- Key holders
- Service Coordinators
- Regional Managers
- Any staff that float from one project to another

## IRS Section 42 Rules – Exempt Units

TCAC will verify which staff is currently occupying the Exempt unit:

- Letter of Intent to Conduct a Compliance Inspection has changed.
  - Requests for the name and title of the person(s) whom occupy the exempt unit.

## IRS Section 42 Rules – Exempt Units

- During the inspection, TCAC staff will verify who occupies the unit.
- If the Exempt unit is occupied by an ineligible person or unqualified household, it will be reported to the IRS on Form 8823

# Annual Reporting – Tenant Demographic Data

## Tenant Income Certification and Supplemental Information Data

- Spectrum approved as contractor for the next year
- Information will be sent out by CTCAC in the coming weeks in regards to due dates

# IRS Section 42 Rules – Common Areas

- Common Areas include
  - Community Room
  - Pool / Gym
  - Computer Room
  
- Common Areas should be available for use by the tenants and the tenants should have access to the areas
  - Management cannot charge for the use of common areas
  - Hours of use may be set by management
    - Be reasonable!



# IRS Section 42 Rules – General

- Section 42 is silent on the requirement for SSN# and Citizenship
- CTCAC is not authorized to use the HUD Enterprise Information Verification (EIV) System
- Households that are comprised of entirely of full-time students are subject to additional rules

# Washington Update

- H.R. 1 - **Tax Cuts and Jobs Act** reform legislation signed into law
  - Preserves both the Low Income Housing Tax Credit and private activity Housing Bonds
  - Reduces the Corporate Income Tax Rate from current 35% to 21%
  - Ends the practice of taxing American businesses profits earned in other countries
  - Cuts taxes by an estimated \$1.5 trillion.

# Washington Update

- Both 9% tax credit and 4% bond financed tax credit projects will see lower equity pricing due to reduction in corporate tax rate.
  - Initial estimates project a 14% reduction in value of tax credits based on lower corporate tax rate due to potential alternative investments
- Fannie Mae and Freddie Mac regain access to tax credit equity markets
- The individual income tax reductions will expire on December 31, 2025

# Washington Update

- \$81 billion Disaster Bill to help states that have been impacted by hurricanes and wildfires this year.
- Omnibus Appropriations Bill
  - 12% boost to Allocation funding for 3 years
  - Affects projects coming in for credits after 3/26/18
  - Raises max AMI to 80% if average affordability is at or below 60%

# Washington Update

## 2018 Omnibus Appropriations Bill (cont).

- Allows Mixed Income projects with a pending application to revise targeting to include units above 60% if overall average affordability is 50%
- For New 4% Bond Projects
  - Raises max AMI to 80% if average affordability is at or below 59%
- For New 9% Competitive Projects
  - Raises max AMI to 80% if average affordability is at or below 50%



# California Update - VAWA

- VAWA protects victims of domestic violence, sexual assault, dating violence, and stalking (“VAWA Crimes”) from discrimination in accessing and maintaining federally assisted housing because of the violence committed against them
- In 2013, Congress expanded the VAWA’s housing protections by including additional federal housing programs such as the LIHTC program

# California Update - VAWA

- No official guidance given from the IRS to the State Agencies regarding how to implement VAWA
- CTCAC will follow the provisions of the VAWA legislation in accordance with IRS Regulations
- Starting January 1, 2018 CTCAC will require that owners start following the guidance noted in the VAWA/Manager's Unit Memo that was posted to our Website on December 22, 2017
  - Full implementation should be completed by July 2018

# California Update - VAWA

- CTCAC will be looking for the HUD VAWA Lease Rider (HUD – 91067) to be in all TCAC Files
- All the existing provisions and protocols that are in place at combined HUD/Tax Credit Projects remain unchanged
- Additional obligations may apply to other programs known collectively as “VAWA covered HUD Programs”
  - Check with HUD for a full list

# California Update - VAWA

## Tenant's Status as a Victim of a VAWA Crime

Owners and management agents may not deny admission or evict a tenant on the basis of, or as a direct result of, the fact that the tenant is or has been the victim or threatened victim of a VAWA Crime.

# California Update - VAWA

## Criminal Activity Related to VAWA Crimes

- Owners and management may not consider criminal activity directly relating to VAWA Crimes, engaged in by a member of a tenant's household or any guest or other person under the tenant's control, as cause for termination of assistance, tenancy, or occupancy rights if the tenant or an affiliated individual of the tenant is the victim or threatened victim of the violence.



# California Update - VAWA

## Criminal Activity Related to VAWA Crimes

- Owners and management agents may evict or terminate the assistance of a victim if they can demonstrate an actual and imminent threat to other tenants or employees at the property
- Owners and management agents cannot subject victims of VAWA Crimes to a more demanding standard than other tenants when determining whether to evict

# California Update - VAWA

## Notification

- Owners and management agents are required to notify all tenants of their VAWA rights by providing each tenant a Notice of Occupancy Rights Form HUD-5380 and VAWA Self-Certification Form HUD-5382 when the tenant has been admitted to the property and with any notification of eviction or notification of termination of assistance.
- These forms are available in multiple languages on HUD's website:  
[https://www.hud.gov/program\\_offices/administration/hudclips/forms/hud5a](https://www.hud.gov/program_offices/administration/hudclips/forms/hud5a)
- Housing providers must customize Form HUD-5380 by providing information about the program and contact information

# California Update - VAWA

## Documentation

- Owners and management agents may request, in writing, that the tenant seeking VAWA protections certify that the individual is a victim of a VAWA Crime.
- To receive protections under VAWA, the tenant has the choice to submit either a VAWA Self-Certification Form HUD-5382, or other documentation as noted on the certification form, completed and submitted within 14 business days, or an agreed upon extension date.

# California Update - VAWA

## Documentation

- Failure to provide the certification or other supporting documentation within the specified timeframe may result in eviction or admission denial.
- If the Owner or management agent receives conflicting certifications, they can require an applicant or tenant to submit third-party documentation permitted under VAWA.

# California Update - VAWA

## Confidentiality

- Owner and management agents are required to keep confidential all information submitted by the tenant related to their VAWA request - including the fact that an individual is a victim of a VAWA crime.
  
- This confidential information may not be put into any shared database or disclosed to any other entity or individual, except to the extent that the disclosure is:
  - requested or consented to by the individual seeking VAWA protections in writing,
  - required for use in an eviction proceeding,
  - otherwise required by applicable law, or for compliance with the Section 42 Tax Credit Program.



# California Update - VAWA

## Court Orders

- Owners and management agents must honor all court orders addressing rights of access or control of property, including protective orders issued to victims, and any orders addressing the distribution or possession of property.

# California Update - VAWA

## Remedies for VAWA Victims

- Owner and management agents have an obligation to qualified tenants who are victims of VAWA crimes to assist them with an emergency transfer in accordance with a documented emergency transfer plan
- This may include the option of lease bifurcation or other discretionary procedures such as a transfer to another unit
- More information on these remedies can be found in the Notice of Occupancy Rights Form HUD-5380

# California Update - VAWA

## IRS Section 42 LIHTC and CTCAC Guidance

- Transfers related to VAWA regulation remedies must continue to follow the existing transfer protocols in place
- Projects that are **not** designated as a multi-building project (*noted as a "No" Election on Line 8b on the IRS 8609 Form*), may be subject to a loss of credits if a non-qualifying household is transferred into a unit in a different building.
- Projects that are not 100% tax credit and have market/conventional units as well as tax credit units, must continue to follow the 140% Next Available Unit Rule in addition to the protocol for transferring in a multi-building project.

# California Update - VAWA

## Failure to Meet Obligations

- Under the MOU between the IRS, HUD, and the Dept of Justice and to promote enhanced compliance with the Fair Housing Act:
  - If a “probable cause” discrimination charge or other violation of either VAWA or the Fair Housing Act is determined by HUD, DOJ, the Dept of Fair Employment and Housing, or any other substantially equivalent fair housing state or local agency, CTCAC will file Form 8823 to the IRS as a result of this MOU.
- Failure to follow the IRS Section 42 transfer protocols may result in the filing of Form 8823 to the IRS.

# Transfer Events

In September of 2017, CTCAC released an updated Memo and Questionnaire to correspond with the State Regulation Changes for 2017:

- Questionnaire can be found at:

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

These changes remain in effect in 2018



# Transfer Events

Easy to follow questions will determine what needs to be submitted for each type

- Ownership Transfer
- Sale
- Re-finance,
- Other change in partnership
  - either limited partner or general partner

# Transfer Events

- In order to start the review process, CTCAC must receive the documents noted as necessary on the questionnaire
- The review can take from 2 ½ to 4 weeks depending on whether the correct documentation was submitted and how many reviews are being conducted.

# Transfer Events

- Currently we receive on average 3-4 Transfer Events a week to process
- Please factor review processing time into your submission for review.
- We cannot push projects to the top of the queue because of late submission

# Transfer Events - Refinance

- For project refinance:
  - TCAC requires a letter from owner of proposed refinance including project name and number
  - If the owner is taking out equity proceeds, then TCAC requires owner submit current Capital Needs Assessment (within 180 days)
  - TCAC requires Sources/ Uses statement showing amount of equity distribution

# Transfer Events - Refinance

For project refinance:

- TCAC will review Capital Needs Assessment for short term (immediate plus years 1-3) and long term needs (years 1-15)
- TCAC will require owner to enter into Capital Needs Agreement to fund short term and long term amounts.
- Short term work must be completed within 3 years.



# Transfer Events

- Please submit completed Word versions of the following forms:
  - Assignment and Assumption Agreement
  - Stand Still Agreement
  - Capital Needs Agreement
- This allows us to edit if necessary and will speed up the review process

# Transfer Events

- Transfer Events as part of a Resyndication where a new allocation of credits has already been awarded go to Development staff
- All other transfer events go to Ammer Singh or Shannon Nardinelli

# Transfer Events

## Common errors found during TCAC review:

- Incomplete Stand Still Agreement or Capital Needs Agreement
- TCAC requires a 15-year long term replacement reserve schedule and use inflated amount for long term replacement reserve deposits.
  - Capital Needs Assessment submitted for refinance- long term chart is only for loan term (varies from 10 years to 12-years).

# Transfer Events

## Common errors found during TCAC review:

- Missing Sources/ Uses worksheet which shows net equity distribution to seller
- Missing confirmation letter from current owner confirming seller will transfer tenant records and demographic data to new owner upon close of escrow

# Transfer Events

## Mandatory CTCAC Training

- For new owners who are intending to purchase Tax Credit Properties in California and do not meet the same qualifications as the outgoing ownership entity and/or management company, CTCAC will require that the new owners, their management company, and their maintenance staff attend a one day training class held by CTCAC at our offices in Sacramento.



# Transfer Events

- TCAC may also require ownership entities who have never owned Tax Credit properties to partner with a bone-fide management company familiar with the LIHTC in the state of California for a minimum of 2 years before the owner can self-manage.
- Self - Management
  - TCAC has established a checklist of items required to be submitted for our review before approval can be granted

# Management Company Changes

## Management Agent Transfers:

- 9% tax credit projects require TCAC consent and equivalent management agent experience as existing entity:
  - Substitution of Property Management Agent
- 4% tax credit projects require TCAC management experience similar to the exiting management company

# Management Company Changes

## Management Agent Transfers:

New for 2018: For 4% tax credit projects:

- If a management company is ineligible for at least 2 experience points, then TCAC will require their staff to obtain training in project operations, on-site certification, fair housing law, and manager certification in IRS Section 42 program requirements from TCAC or TCAC approved nationally recognized entity.

# Management Company Changes

- All letters and notices of intent to conduct a monitoring inspection go to the Owner and Management Contact CTCAC has on file
- As of April 2017, CTCAC has the authority to issue fines to owners who change management companies without notifying and receiving approval from CTCAC first.

# 8823 – Why and How

## Why

- When noncompliance is identified, the owner is expected to respond and document that issues of noncompliance have been addressed.
  
- CTCAC determines one of 3 things:
  - whether the owner was always in compliance,
  - has corrected the noncompliance, or
  - remains out of compliance.



## 8823 – Why and How

Regardless of whether the owner remedied the noncompliance or remains out of compliance - a Form 8823 must be filed with the IRS

# 8823 – Why and How

## How

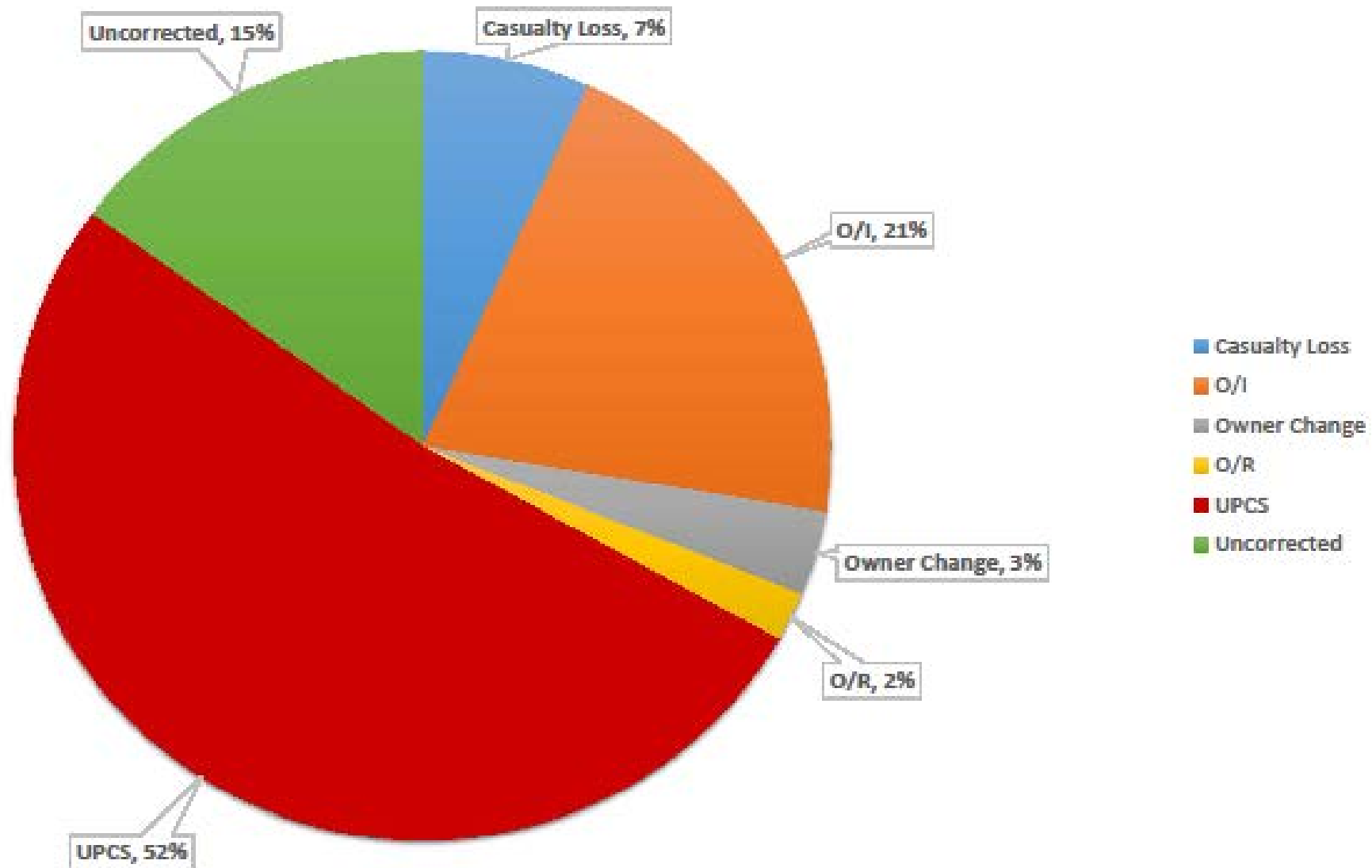
- CTCAC may file Form 8823 that simultaneously reports findings that are both out of compliance and back in compliance.
- Once the noncompliance is resolved within the correction period, CTCAC will file a “back in compliance” Form 8823.
- If the remaining noncompliance is corrected after the correction period but within 3 years, CTCAC is required to file another Form 8823 reporting the corrected noncompliance.

# 8823 – Why and How

## How

- Address noncompliance quickly to indicate that the noncompliance was corrected.
  - From the IRS' point of view, the owner's responsiveness is indicative of due diligence.
- Form 8823 must be filed with the IRS within 45 days following the end of the correction period.
- CTCAC files Forms 8823 at the end of each month.

Percentage of 8823s by Category 2017



## 8823 – A Case Study

- CTCAC performed a file and unit on-site inspection at Happy Place Apartments
- Within 30 days following the end of the inspection, CTCAC sent the owner a Non-Compliance Letter (NCL)
- The NCL identified the noncompliance, offered guidance for correction, and gave the owner a correction period of 30 days from the date of the NCL.



## 8823 – A Case Study

The following noncompliance was identified in the NCL:

1. One unit in Building 5 was over the income limit for family household size at initial move-in
2. One unit each in Buildings 1, 2, 4, 5, 7, and 8 had gross rents exceeding the maximum tax credit limit
3. One unit each in Buildings 1, 3, and 8 was not turn-key ready due to various UPCS violations at the time of inspection and were vacant for over 60 days

# 8823 – A Case Study

Guidance for correction:

1. Additional verifiable 3<sup>rd</sup> party income documentation to show household was income qualified at move-in, or W-2 and 1040 tax forms
2. Identify the dates and for how long when the units were overcharged rents
  - Calculate the overcharged amounts
  - Issue rebate checks to the affected households.
  - Ensure rents are now within maximum tax credit limits.

# 8823 – A Case Study

Guidance for correction:

3. An explanation why units were not suitable for occupancy;
  - Copy of completed work orders and color photos evidencing units are back in habitable condition;
  - Copy of management's completed, signed, and dated inspection report for the vacant units;
  - Three sources of marketing/advertising methods for the vacant units.
    - Sources may include but not limited to: internet advertising, flyers, newspaper advertisement, signs in front of property, etc.

# 8823 – A Case Study

Owner's Response and CTCAC determination:

Issue #1:

- The owner concluded that the household was over-income at initial move-in
- The owner served the household a 30-day notice to terminate tenancy

CTCAC Determination:

- The noncompliance remains uncorrected until a qualified household occupies the unit

# 8823 – A Case Study

## Owner's Response and CTCAC determination:

### Issue #2:

- Owner calculated the correct amount of overcharged rents and issued rebate checks to the tenants, and provided copies of the cancelled checks

### CTCAC Determination:

- CTCAC determined this noncompliance was corrected
  - Note – The IRS may still determine that the noncompliance should result in the recapture of credits. CTCAC does not have any input or influence in the IRS's decision.



# 8823 – A Case Study

## Issue #3:

- Owner provided work orders, pest control invoices, management signed inspection forms, and photos of 2 market ready units
- For marketing efforts, owner provided screenshots of .com advertising, flyers to the local PHA, and published ads in a local newspaper

## 8823 – A Case Study

### Issue #3:

- The 3<sup>rd</sup> unit became occupied by eligible tenants, and the owner provided the move-in certification package for that household

### CTCAC Determination:

- CTCAC determined this noncompliance was corrected

## 8823 Case Study – Reporting to the IRS

As required by IRS, CTCAC must file Form 8823 for any noncompliance, whether corrected or not.

- CTCAC filed an uncorrected 8823 for Building 5 for noncompliance of “Household income above income limit upon initial occupancy”
  - The out of compliance date is the date of the household’s initial move-in date

## 8823 Case Study – Reporting to the IRS

- CTCAC filed a corrected 8823 for Buildings 1, 2, 4, 5, 7, and 8 for noncompliance of “Gross rents exceed tax credit limits”
  - The out of compliance date is the date the units began to be overcharged rents
  - The back in compliance date is the date the rent returns to, or goes below, the maximum current limit.

# 8823 Case Study – Reporting to the IRS

CTCAC filed a corrected 8823 for Buildings 1, 3, and 8 for “Violations of the Vacant Unit Rule”

- The out of compliance date is the date the unit became vacant
- The back in compliance date will be determined by the type of vacant violation
  - UPCS – date of correction noted on work order/invoices to contractors
  - Qualified Household – Date the new Household occupied the unit



## 8823 Case Study – Reporting to the IRS

- Copies of Forms 8823 and Attachment are sent to the owner together with a letter from our Chief of Compliance
- A separate closeout letter sent to both the owner and management agent
- This last step concludes the inspection for CTCAC

## 8823 Case Study – Follow-Up

3 months after the inspection was closed, the Owner submitted additional documentation to correct the remaining noncompliance:

### For Building 5 – Over-income household

- The owner was able to terminate the tenancy of the over-income household
- A newly eligible household occupies the unit
- The owner submitted copies of the complete move-in certification package for the new household

## 8823 Case Study – Follow-Up

CTCAC corresponding action:

- Because the owner corrected the noncompliance within 3 years, CTCAC filed another Form 8823 reporting the corrected noncompliance and documenting the date the owner was back in compliance.
- The back in compliance date is the move-in date of the newly eligible household.

# Questions?