



## CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

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DATE: February 5, 2021

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

FROM: California Tax Credit Allocation Committee – Compliance Section

RE: Monitoring Guidance for 2021

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 2021-12](#)
2. Common Areas and Amenities
3. Desk Audits

On January 15, 2021 the Internal Revenue Service (IRS) released [IRS Notice 2021-12](#) which extended the temporary relief provisions outlined in [IRS Notice 2020-53](#). The extended 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 originally through December 31, 2020, the IRS will extend the action period from December 31, 2020 to September 30, 2021. These include:

1. 10% Test
2. 24 month minimum rehabilitation expenditure period
3. Placed in Service Deadline
4. Casualty Loss (both disaster and non-disaster)
5. Emergency Housing for Essential Workers

## **Income Recertifications**

IRS Notice 2021-12 extends 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 applies to both 100% and Mixed Income LIHTC properties and includes the 1<sup>st</sup> 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 and IRS Notice 2021-12. This clarification record will act as a placeholder in lieu of a normal recertification. TCAC will require that recertifications resume on or after October 1, 2021 at the normal anniversary date of the household.

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 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-19 for the period of April 1, 2020 through September 30, 2021, a full income and asset certification should be completed on the household's anniversary date on or after October 1, 2021 and the transition to a short form recertification can be completed on or after October 1, 2022.

## **Compliance Monitoring**

IRS Notice 2021-12 extends the relief granted by IRS Notice 2020-53 for the Allocating Agency to discontinue compliance monitoring for the period of April 1, 2020 through September 30, 2021. The IRS has further clarified that properties normally scheduled for inspection during that time frame do not need to be completed at a later time.

However, in California, TCAC will continue to perform desk audits on the LIHTC properties scheduled to be monitored in 2021. LIHTC properties that were inspected from January through September 2018 will be subject to a desk audit to maintain their audit cycle and ensure the properties continue to meet their monitoring requirements. These Desk Audits will be completed from mid-February through September 2021. LIHTC properties that were last inspected in October through December of 2018, will have a normally scheduled physical audit that includes both file and unit inspections. These will be completed in October through December 2021.

New LIHTC properties that placed in service in 2019 and are scheduled for their 1<sup>st</sup> Compliance Monitoring Review in 2021 will have a full file and unit inspection completed for the property. This may be completed either as a separate desk audit and physical unit inspection completed at different times during the year or as a single on-site audit visit. Desk audits may be completed from February through September and physical audits will be completed in October through December 2021.

## **Common Areas and Amenities**

IRS Notice 2020-53 provides guidance that if a common area or amenity is 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 2020-21 extends that moratorium through September 30, 2021.

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. 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, 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 LIHTC properties that provide service amenities such as health and well-being classes or after school programs, TCAC suggests 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, TCAC 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 of

at least 6 feet between persons, 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 2021 may result in either negative points or fines to the owner and/or management company.

### **TCAC Desk Audit Procedure 2021**

For the period of February through September 30, 2021, TCAC will be conducting desk audits in lieu of in-person physical audits for all (1) LIHTC properties that were last monitored in January through September of 2018, (2) Extended Use properties that were last seen in 2015 and 2016, and (3) LIHTC properties that initially Placed in Service in 2019. In order to organize and streamline the desk audit process initiated in June of 2020, TCAC has made some changes to the desk audits process and has determined a specific organizational format for which files should be transmitted to TCAC during a desk audit.

The following timetable will be put into place following the IRS regulation of 2018 to give a 15-day Notice of Intent to Conduct an Audit. This timetable will be the basis for all future inspections, whether desk audit or in-person audit, though some parts are specific to the type of audit and may not necessarily be used in both types of audit.

#### **Desk Audit Procedure:**

1. A Notice of Inspection will be sent 15 days from the TCAC scheduled inspection date to the Owner and Management Contact on record. If the 15<sup>th</sup> day falls on a weekend, the Notice will be sent on the preceding Friday
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 7<sup>th</sup> calendar day fall on a weekend, the materials will be due on the following Monday. Due to the tight turnaround period, TCAC can no longer grant extensions to returning documents beyond the 7-day period
3. TCAC staff will have 2 days to complete their pre-inspection audit and submit to the Owner/Management Agent a list of 30% of the total files for the property. A 20% random audit sample will be selected out of that 30% to complete the inspection. *(Desk Audit Only)*
4. Owner/Management will have 4 calendar days to scan the listed files and send to TCAC via a Secure File Transfer System link or provide a link to an internal portal where those files can be accessed. **Starting in 2021, in order to maintain consistency across all management companies and expedite the desk audit process, TCAC will require that all files submitted follow a specific Desk Audit Format *(noted below)*.** Due to the tight turnaround period now required by the IRS, TCAC will only grant extensions on a case by case basis, and only through September 30, 2021. *(Desk Audit Only)*

5. TCAC 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. (*Desk Audit Only*)
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 within the 7 calendar day return period will result in an immediate Noncompliance Findings Letter and a Correction Period will be given with a rescheduled audit date determined by TCAC.

After October 1, 2021, failure to provide the pre-inspection materials by the required timeline of the rescheduled audit date will result in TCAC filing an Uncorrected Form 8823 for "Failure to Respond to Agency Request for Monitoring Review". The noncompliance will remain uncorrected until TCAC is able to reschedule the inspection, the materials are received for the rescheduled inspection, and the rescheduled audit has been completed. TCAC 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 within the 7 calendar day return period will result in an immediate Noncompliance Findings Letter and a Correction Period will be given with a rescheduled audit date determined by TCAC.

After October 1, 2021, failure to provide the pre-inspection materials by the required timeline of the rescheduled audit date will result in TCAC levying an immediate \$500 fine against the property. An additional \$100 fine per month will be assessed until TCAC is able to reschedule the inspection, the materials are received for the rescheduled inspection, and the rescheduled audit has been completed. TCAC 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 of files by TCAC staff, starting in 2021, TCAC will require that all files be submitted in the below "folder-style" format. For 100% LIHTC properties, TCAC will only need the following documents submitted: Application, Initial Lease, TCAC required Lease Riders (Good Cause Eviction, VAWA, Section 42), Complete Move-in Certification, Complete 1<sup>st</sup> 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 1<sup>st</sup> Recertification, TCAC will need all additional Complete Recertifications for the household. Other File documentation such as House Rules, Work Orders, additional

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Leases, Notifications, etc. are not required to be submitted to TCAC. 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 TCAC Number

■ Building Number

■ Unit Number

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

■ Complete Move-in Certification

■ Complete 1<sup>st</sup> Recertification

■ Last Completed Recertification

■ Unit Number

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

■ Complete Move-in Certification

■ Complete 1<sup>st</sup> Recertification

■ Last Completed Recertification

For Mixed Income LIHTC Properties:

Property Name and TCAC Number

■ Building Number

■ Unit Number

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

■ Complete Move-in Certification

■ Complete 1<sup>st</sup> Recertification

■ Complete 2<sup>nd</sup> Recertification

■ Complete 3<sup>rd</sup> Recertification (etc.)

■ Unit Number

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

■ Complete Move-in Certification

■ Complete 1<sup>st</sup> Recertification

■ Complete 2<sup>nd</sup> Recertification

■ Complete 3<sup>rd</sup> Recertification (etc.)

Please check the TCAC Compliance Section webpage at

<https://www.treasurer.ca.gov/ctcac/compliance.asp> for a list of properties that are scheduled to be seen in 2021. LIHTC properties that were last inspected in January – September 2018 will receive a desk audit between February and September of 2021. Mixed Income LIHTC properties on the list will be seen in September of 2021, in order to provide the Owners and Management Agents more time to prepare the multiple recertifications required.

***TCAC strongly recommends that Owners and Management Companies whose properties are on the list of Desk Audits for 2021 start processing, scanning documents, and preparing for their Desk Audit early, to minimize the impact of the shortened window for document submission.***

Monitoring Guidance for 2021

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The TCAC 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 TCAC staff, the staff of the owner and management companies, and the tenants who reside in LIHTC properties. As circumstances continue to 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 Compliance Senior Program Managers Elizabeth Gutierrez-Ramos at [elizabeth.gutierrez@treasurer.ca.gov](mailto:elizabeth.gutierrez@treasurer.ca.gov) or Shannon Nardinelli at [shannon.nardinelli@treasurer.ca.gov](mailto:shannon.nardinelli@treasurer.ca.gov).