

# COMPLIANCE MONITORING

## 7.1 Fulfilling Compliance Obligations

**Y**our compliance monitoring *begins when you place in service*. The IRS requires specific recordkeeping requirements that may be found in Recordkeeping Requirements of Section 42 in Section 4 of this manual. **In order to maintain compliance with Section 42 and Connecticut Requirements, you should immediately notify CHFA when you place in service.** CHFA will help you identify specific submission requirements for your property.

A file review of 20% of the files for 1/3 of the LIHTC properties annually is required by the IRS. Currently, SPECTRUM Enterprises performs compliance monitoring under contract as the Authorized Delegate for the State of Connecticut. On the SPECTRUM web site, [www.spectrumlihtc.com](http://www.spectrumlihtc.com), you will find information regarding yearly submission requirements. You will need to contact SPECTRUM to receive specific details for the yearly submission requirements and to notify SPECTRUM & CHFA of your placed in service dates. You will be placed on the SPECTRUM mailing list and e-mail blast as soon as it is determined you have placed in service, and you will be notified when any required yearly submissions are due. However, if you place in service earlier than targeted and do not contact SPECTRUM & CHFA, you may miss submission deadlines required by the IRS. Information and updates will be posted on the SPECTRUM web site. This information will include but not be limited to forms, industry Web links, and industry information. Additionally, we will be sending notices via email, in an attempt to reduce paper communications.

### *Yearly submission requirements*

**What are the yearly submission requirements?** In short, an owner is required to submit an annual report and certification [Section 6] and unit history for all tax credits units. Unit history information is collected electronically for the previous year. You may download software and instructions from the SPECTRUM Web site at [www.spectrumlihtc.com](http://www.spectrumlihtc.com).

This information is required by law, so it is very important that information submitted is timely and accurate. Failure to submit on time, incomplete submissions, or inaccurate

*Site visit within two years of PIS date*

submissions may be determined noncompliant.

An Owner must realize that the *Owner* is required to maintain and submit the records. Managers must realize that the Owner is financially responsible for late submissions or inaccurate submissions. Be advised that CHFA and Spectrum provide compliance monitoring requirement notices to Owners only and management agents upon written request of owners.

**When will SPECTRUM visit the site?** By 12/31 of the second year after the last building places in service and at least once every three years thereafter SPECTRUM will audit 20% of your files, inspect 20% of your units, and inspect all common area in all buildings. You will be notified at least 30 days in advance of the site visit. While we can accommodate emergency situations, audit dates are not negotiable. Our schedules are tight and geographically coordinated. Normal procedures are as follows:

1. A SPECTRUM Monitor will contact Management by phone to inform them of an upcoming on-site review. The monitor will answer any questions or concerns about the review.
2. A Confirmation Letter (see sample below) will be sent to the owner as well as the site verifying the date, time, and requirements for the review.
3. We visit the site, auditing 20% of the tenant files, inspecting 20% of the units and all common areas
4. An Owner's Report is then written and forwarded to the Owner after review with CHFA, with management copied with permission of the Owner. There is a thirty (30) day period in which to respond. Late submissions will be considered noncompliance. Submissions after an IRS Form 8823 is generated will only be reviewed subject to CHFA's additional review policy.
5. The Owners' responses to the Owner's Report will be reviewed and, after review with CHFA, a notification to the Owner will be sent out informing the Owner of his compliance status. Management is again copied with permission of the Owner. If non-compliance is being reported, an unsigned copy of the generated Form 8823 will be included as an attachment.

*Sample confirmation  
letter*

The following is a sample confirmation letter:

[date]

[name]

[address]

Re: LIHTC Compliance Monitoring For **[property name]**

Dear [name] :

This letter is to confirm our scheduled inspection and review of the referenced property on **[Date]** beginning at **[time]**. We will review (#) LIHTC files and inspect (#) LIHTC units and all common areas. The files and units will be chosen at random upon our arrival. To help prepare for our inspection and review, please comply with all of the following:

1. Ensure that all LIHTC residents are notified of the upcoming site inspection. **Additionally, it is required that an Owner's representative be present at all times during the site inspection, preferably a maintenance staff person familiar with the building systems and also an administrative person familiar to the residents.** Spectrum Monitors *will not* enter a unit or a room in any building unaccompanied. Our time at each property is limited and we ask that you help us maintain our schedule.

2. All common area emergency lighting will be tested during the inspection by throwing the circuit breakers and walking the hallways. Circuit breakers for emergency lighting must be identified, labeled, and accessible at the time of inspection. This system test is the most accurate portrayal of an emergency situation. Please notify any emergency system/security monitoring firm of the time and date of the inspection to avoid unnecessary emergency personnel response. This type of system test will be conducted unless loss of power to the building would automatically bring the fire department. If you have back up power systems and do not rely on battery power, a physical test of the system will not be conducted. Instead we will need a copy of the current inspection and test report showing the system is fully operational. Powered emergency lights and exit signs that don't remain illuminated when power is interrupted must be reported as a major violation of safety and building codes. We strongly encourage you test these systems regularly, and prior to our arrival.

3. The following documents are required for the review. Please make copies of those documents identified as items C - H so we may take them with us. **An Owner's representative familiar with the**

**resident files must be present during the file review and is required to sit with the monitor during the review.**

- A. LIHTC resident files including certifications, verifications, applications and lease agreements;
- B. Rent Rolls showing rents charged to LIHTC residents for all years under review (one month for each year);
- C. Copies of original 8609's, signed and executed by the owner (first review only), and also Schedule(s) A and form(s) 8586 for the past 3 years.
- D. Copy of the project State Tax Credit Extended Low-Income Housing Use Agreement (EUA);
- E. Copies of Utility Allowance documentation for all years under review;
- F. Copy of a listing of all LIHTC units, organized by BIN (Building Identification Number);
- G. A list of all owners for the property including mailing addresses and EIN or Social Security number;
- H. A management forms package including: tenant application, income certification, interview/questionnaire, worksheet, employment verification, certification of child support, and other applicable third party verifications.

PLEASE NOTE: Failure to comply with any of these monitoring requirements will hinder the review and will be reported to the IRS as noncompliance. Should you have any questions or concerns, please contact our office directly. Noncompliance with the tax credit program may preclude Owners and Management Agents from participating in future tax credit projects in Connecticut.

Beginning in 2006, SPECTRUM will send one copy of any compliance monitoring reports to an additional person of the Owner's choice. In order to do this, please complete the attached form to designate to whom the additional copy will be sent. If the form is not returned, SPECTRUM will continue to send the compliance monitoring reports only to the Owner.

Thank you for your assistance.

LIHTC Monitoring Specialist

*What we expect regarding a file review*

*Remember:  
A BLANK DOES NOT MEAN "NO."  
Be sure to get answers to all questions on all forms and document the file appropriately.*

Please review the requirements listed in sections two and three of the sample letter. It is essential that these documents are available for the review. No excuses will be accepted. "Failure to comply with these requests will be considered noncompliance and would be reported to the Internal Revenue Service as such."

**What expectations does SPECTRUM have regarding file review?**

- \* Uniformly organized files
- \* Move-in certifications effective for the LIHTC move-in date and signed not more than 5 days prior to the effective date
- \* Back-up verification for all certifications
- \* Annual certification effective on or before the anniversary date
- \* Student Status identified and/or verified for every certification
- \* Worksheets showing calculations used on the certification
- \* A documented tenant interview at move-in
- \* An application sufficient to determine eligibility for a LIHTC property
- \* A re-certification update or questionnaire for the annual certifications
- \* Phone clarifications for any ambiguities or missing information on verifications (NO BLANKS)
- \* Child support and zero income affidavits addressing historical and anticipated income
- \* Zero employment affidavits
- \* Third-party verification of gross Pension benefits, including verification of changes
- \* Verification of termination of employment where applicable
- \* All HUD criteria for acceptable forms of verification and what to verify satisfied
- \* At minimum, a six-month lease in effect for the LIHTC move-in date without an early termination clause prior to six-months
- \* Utility allowance verification for each year of the credit

**Will SPECTRUM look at anything else?** SPECTRUM will review your submissions on an annual basis. During the year you are selected for an on-site visit, this will happen

*What expectations we have regarding the physical inspection*

*Note: All items noted during the physical inspection are expected to be addressed, even if they do not rise to the level of a building code violation. You could receive a report of noncompliance for failing to respond to minor inspection items.*

*Inoperable emergency lights and exit signs are the biggest source of 8823s in Connecticut!*

conjunctively. Otherwise, this review is separate from the on-site reviews. Additionally, SPECTRUM will monitor compliance with the ELIHC, the original qualified basis, deep income targeting, next available unit rules, 140% rules, Fair Housing, ADA, and utility allowance requirements.

## **7.2 Physical Inspection of Units**

SPECTRUM uses Uniform Physical Condition Standards (UPCS) and State Building Codes. A physical inspection of all buildings in a project and 20% of the units in a project is a requirement of the Tax Credit Program. Physical inspections will generally be performed at the same time as file reviews. State physical inspection guidelines are strictly adhered to. The IRS requires reporting of violations. As all properties have knowledge of our arrival there is no excuse for common area violations such as smoke detectors, emergency lights, and fire alarm panels system faults. All must be reported to the IRS as non-compliance unless repaired prior to our leaving the property.

Examples of health and safety findings include:

- Structural and roof problems
- Blockage of fire exits
- Elevators functioning improperly
- Smoke detectors or sprinklers not functioning
- Pest infestation
- Serious electrical, heating, or plumbing problems
- Common area safety lighting problems

Routine violations are those that require correction but do not impair essential services and tenant safeguards.

### **What expectation does SPECTRUM have regarding the physical inspections?**

- \* All LIHTC residents should be notified of the upcoming site inspection
- \* An Owner's representative *must* be present at all times during the site inspection, preferably a maintenance staff person familiar with the building systems and an administrative person familiar to the residents. SPECTRUM Monitors *will not* enter a unit or a room

in any building unaccompanied

- \* Circuit breakers for emergency lighting *must* be identified, labeled, and accessible at the time of inspection
- \* All common area emergency lighting will be tested during the inspection by throwing the circuit breakers and walking the hallways. This system test is the most accurate portrayal of an emergency situation. This type of system test will be conducted unless loss of power to the building would automatically bring the fire department or unless the building has a generator back up.
- \* Since smoke detector, emergency lighting, fire alarm panel system faults, and blocked egress issues in common areas are automatic non-compliance, be sure to inspect all of these systems before our arrival

It is important to note that a site representative capable of keeping up with our inspectors must be present during all times of the inspection. CHFA and SPECTRUM policy forbids any inspector going into any unit or part thereof unaccompanied. Failure to provide assistance will result in a failed unit, possible loss of credit and/or a re-inspection billed to the owner. The IRS requires that unit inspections be performed on the same units that are selected for file review. Units where admittance is not possible for any reason may be failed and/or subject to re-inspection at the owner's expense.

### **7.3 Owner Responsibilities After the 15th Year**

After fifteen years, properties enter their "extended use period" as required under IRS regulations. Issues with compliance during this time are *not* reported to the IRS. However, they *are* reported to CHFA. The principle requirements during the extended use are the same as during the first fifteen years:

- \*Rent units to income eligible households
- \*Rents charged to tenants must continue to be restricted.
- \*Maintain a quality living environment, and safe/sanitary housing.

- 1) While there is some easing of the procedural requirements (outlined below) it is imperative owners and managers don't lose sight of the underlying objective of the tax credit

After 15 years:

- \*Full cert at move in
- \*Full recert year 2
- \*Self certifications year 3 and beyond.

Owners are expected to maintain good living conditions at all times. Even after fifteen years.

What changes after 15 years?

- \*Easier certification requirements
- \* No Vacant Unit Rule
- \* Fewer student restrictions
- \* Possibly fewer units inspected.

income. With this in mind, the following is a summary of the process for monitoring compliance during the post year fifteen compliance period:

#### OWNERS MUST:

- 1) Complete a move in certification for new low income households using the same standards that are expected during the first fifteen years, with one exception. Households can now be comprised entirely of full time students, as long as at least the head of household, or co-head, are not claimed as dependants on another's tax return.
- 2) Complete an annual certification for existing low income households the year following initial move in. They must use the same standards that are expected during the first fifteen years, with an exception for independent, full time students, and students in kindergarten, elementary and high school. An independent student is one who is not claimed as a dependant on another's tax return.
- 3) After the second year of occupancy, Owners are required to obtain *self certifications* from every household. The purpose of these certifications is primarily to maintain compliance with deep skews, student status requirements and the NAUR and changes in household composition.
- 4) Maintain physical conditions consistent with the requirements for the first fifteen years.

#### Compliance monitoring after fifteen years:

The monitoring agent will continue to monitor once every five years. Instead of a 20% file and physical review, a review of no less than 10% of the restricted units will be conducted. The review can be expanded to up to 20% at the discretion of the monitor. Standards for the physical inspection will be consistent with those applied to properties still within the first 15 years.

Prior to the inspection/review, Owners/management will be notified of the upcoming review.

After the review, a report will be prepared and submitted to the Owner and CHFA for consideration. CHFA or the Owner may request a re-review. If a re-review is requested, the scope of the review will be limited to those areas that were previously found to be deficient. A second report will be prepared and submitted.

#### 7.4 Additional Review Policy

The Authority's Board of Directors reserves the right to impose additional fees at anytime for compliance monitoring or other purposes in implementing the requirements of Section 42 of the Code.

CHFA has adopted the following Additional Review Policy when Owner's request further review following the filing of Form 8823.

1. Section 1.42-5(e)(3) of the LIHTC Compliance Regulations states that if noncompliance or failure to certify is corrected within three (3) years after the end of the correction period, the HCA is required to file Form 8823 with the Service reporting the correction of the noncompliance or failure to certify.
2. Requests to correct noncompliance after the end of the Correction Period described in Section C, will be processed under the Authority's Additional Review Policy.
3. An Additional Review is defined as that process required when an owner submits information to Spectrum or CHFA past the deadline imposed in Section 1.42-5(e)(4) of the Compliance Regulations and in the Spectrum "Forwarding of noncompliance Letter" and after submission of IRS Form 8823 (Low-Income Housing Credit Agencies Report of Noncompliance) by CHFA to the Internal Revenue Service (The Service).
4. Spectrum will charge the owner a fee, as determined by the Authority's Board of Directors, in order to process as Additional Review request. The current fee of \$225.00, is based on a minimum of three (3) hours work. Any amount of time beyond the initial three (3) hours will be billed at \$75.00 per hour. This fee is subject to adjustment annually by the Authority's Board of Directors.
5. Upon receipt of information that corrects previously reported continuing noncompliance and, upon payment in full for the review, an amended Form 8823 will be submitted to CHFA for execution and forwarding to the IRS. The owner will receive a copy of the Form 8823 submitted to the Service.