

COMPLIANCE MONITORING

7.1 Fulfilling Compliance Obligations

Your 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 Massachusetts Requirements, you should immediately notify DHCD when you place in service.** DHCD 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 Commonwealth of Massachusetts. On the SPECTRUM website, 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 & DHCD of your placed in service dates. You will be placed on the SPECTRUM mailing list 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 & DHCD, you may miss submission deadlines required by the IRS. Information and updates will be posted on the SPECTRUM website. 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.

This information is required by law, so it is very important that

Site visit within two years of PIS date

information submitted is timely and accurate. Failure to submit on time, incomplete submissions, or inaccurate 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.

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 of 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 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, with management copied. 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 not be reviewed without DHCD authorization.
5. The Owners' responses to the Owner's Report will be reviewed and a notification to the Owner will be sent out informing the Owner of his compliance status. Management is again copied. 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:

SPECTRUM SEMINARS, INC.
 Web Page: www.spectrumseminars.com
 Email: info@spectrumseminars.com
 Fax: (207) 767-8000

SPECTRUM ENTERPRISES, INC.
 Web Page: www.spectrumenterprises.com
 Email: info@spectrumenterprises.com
 Fax: (207) 767-8000

100 West Kent
 Cape Elizabeth, ME 04107
 (207) 767-8000

Date: _____

Re: **SPECTRUM CONFIRMATION LETTER – Property**

Dear NAME:

This letter will confirm our scheduled inspection of the referenced property.

PROPERTY:	DAY:	MONTH:	TIME:	Number of LIHTC files to be reviewed.

To ensure a timely and accurate review please comply with all of the following:

A.	Please email the name of the contact person, phone number, and location where we should meet to begin the audit. (jack@spcsmm.com , tkusker@spectruminc.com , charter@spectrumllc.com)
B.	Please inform all LIHTC residents of the upcoming site inspection. Also, Spectrum will not enter a unit or room in any building unaccompanied so an Owner/Management Representative must be available.
C.	Locate breakers for testing the emergency lights. We will trip breakers to best simulate a power outage. This test will not be performed if the building has emergency power. Instead we will need a copy of the current inspection and test report showing the system is fully operational.
D.	The following documents are required for the review. Please make copies of these documents as we may take them with us. <ol style="list-style-type: none"> 1. A current rent roll showing rents charged to LIHTC residents. 2. Copies of Utility Allowance documentation for all years under review. 3. Schedules A and forms 8586 for all years under review (2006, 2007, 2008).
E.	The following documents are required if they have not already been provided during previous Spectrum audits. Please make copies of these documents identified so we may take them with us. <ol style="list-style-type: none"> 1. Copies of original BOY's, signed and executed by the owner. 2. Copy of a listing of all LIHTC units, supported by BW (Building Identification Number). 3. A management firms package including: (unless SPECTRUM forms are in use).

Someone familiar with the tenant files should also be available for consult. Please feel free to call with us if you wish. Time permitting, we will be glad to answer questions once we have completed our inspection/visit.

Thank you for your assistance. Your time is valuable and it is our intention to complete our work efficiently so that our review is the least disruptive as possible.

Sincerely,

 Harold Tucker, Compliance Analyst
 Spectrum Enterprises

cc: Andrew Bowden, SPECTRUM ENTERPRISES, Catherine Bacon, DHCD

Please review the requirements listed in sections D and E 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 the 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 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 audit your submissions on an annual basis. This review is separate from the on-site reviews. Additionally, SPECTRUM will monitor compliance with the Tax Credit Regulatory Agreement, the original qualified basis, deep income targeting, next available unit rules, 140% rules, Fair Housing, ADA, and utility allowance requirements.

What we expect regarding a file review

7.2 Physical Inspection of Units

In Massachusetts, SPECTRUM uses 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 panel system faults. All violations 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/Carbon Monoxide detectors 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

What we expect 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 Massachusetts!

building would automatically bring the fire department or unless the building has a generator back up.

* Since smoke detectors, carbon monoxide detectors, 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.

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.

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 DHCD. 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.

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 program; to provide affordable housing to people with low 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.

After 15 years:

*Full cert at move in
*Full recert year 2
*Full recert every
year thereafter.

Owners are expected
to maintain good liv-
ing conditions at all
times. Even after fif-
teen years.

What changes after
15 years?

- 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 Next Available Unit Rule.
- 4) Maintain physical conditions consistent with the requirements for the first fifteen years.

Compliance monitoring after fifteen years:

The monitoring agent will continue using the same three year schedule as before. 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 DHCD for consideration. DHCD 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. There may be an additional cost associated with this review.