

CHFA / Spectrum LIHTC Compliance Monitoring Process During COVID-19 and Safe Practices

Frequently Asked Questions (FAQs) UPDATED and REVISED February 7, 2022

In support of Governor Lamont's request for social distancing during the COVID-19 outbreak, CHFA suspended onsite physical inspections of LIHTC properties and units in March of 2020. On March 27, 2020, recognizing that property management practices related to LIHTC compliance may need to be modified, CHFA posted frequently asked questions (FAQs) to assist owners with completing tenant income certifications during the pandemic crisis. Subsequently the Internal Revenue Service published Notice 2020-53 on July 1, 2020 that included specific provisions that adjust LIHTC compliance requirements for the period beginning April 1, 2020, and ending December 31, 2020, and Notice 2021-12 on January 15, 2021 which extended all COVID-19 relief measures originally provided under Notice 2020-53 through September 30, 2021 and expanded the relief provided to include additional measures.

On January 11, 2022 the IRS issued Notice 2022-05, extends previous relief for the 10% test for carryover allocations, the 24-month minimum rehabilitation period, the placed-in-service deadline, the reasonable period for restoration or replacement in the event of casualty loss, and agency correction periods. The notice also provides an extension to satisfy occupancy obligations.

Concerning compliance, Notice 2022-05 provides the following:

- An extension of the requirement for a 30-day notice for state agency reviews of tenant files through the end of 2022.
- Allows state agencies to defer physical inspections through June 30, 2022, with the option to extend that through the end of 2022 in consultation with local public health experts. At this time CHFA is deferring physical inspections through June 30, 2022.
- Tenant file reviews are required. CHFA will continue with remote compliance monitoring file reviews for the foreseeable future.
- The closure of amenities or common areas in LIHTC properties due to COVID-19 will not result in a reduction of eligible basis
- Essential workers may be provided emergency housing in LIHTC properties.

The following FAQs have been updated, revised and modified based on the IRS Notice 2022-05 and replace the previously posted FAQs published on February 9, 2021.

Additional questions can be addressed to Catherine Webb at catherine.webb@chfa.org. To review all CHFA-related COVID-19 guidance and updates, refer to CHFA's website at <https://www.chfa.org/covid19-updates/>

Q1: Will CHFA/Spectrum compliance monitoring be suspended?

A1: CHFA will not perform onsite physical inspections until June 30, 2022 or until a time that a determination has been made that it is safe for staff, residents and owners to resume physical inspections. However, Spectrum has been and will continue to perform file reviews remotely for the foreseeable future. If your project is scheduled to be audited in 2022 Spectrum will contact the owner/agent and provide guidance on how to submit files electronically. Owners will not be penalized for not performing tenant income recertifications for the period beginning April 1, 2020, and ending September 30, 2021.

Q2: Will annual recertifications be required during COVID-19?

A2: IRS Notice 2021-12 states that owners are not required to perform annual recertifications for the period beginning April 1, 2020, and ending September 30, 2021. Additional CHFA approval is not required. However, IRS Notice 2021-12 does not waive the student status verification requirement. Student status forms are still required to be obtained.

Q3: If owners are not required to perform annual recertifications through September 30, 2021, how should this be documented in the Spectrum reporting software for purposes of annual owner's certifications and database reporting? How should the physical file be documented?

A3: It is recommended that the owner does not enter any data for the period the IRS waived the requirements for the owner to perform annual recertifications. In accordance with IRS Notice 2021-21 annual recertifications are waived beginning April 1, 2020 and ending September 30, 2021. No data entry is required by Spectrum if an annual recertification was not performed.

Q4: If the owner does complete the annual recertification, will it be subject to an audit with potential findings?

A4: Yes, the annual recertification performed would be subject to an audit and potential findings.

Q5: What safety considerations and mitigants are recommended for owners/agents performing move-in certifications or electing to perform annual recertifications through September 30, 2021?

A5: Safety for all persons remains a high priority and owners, agents and residents should continue to practice social distancing and other safe practices. Typical practices and procedures may need to be modified. Modifications should be adequately documented in each file. Some modifications to regular practices may include measures such as:

1. Documents may be sent/received via electronic mail, mail service, or hand delivered (i.e., door to door drop-off and scheduled pick-up). Owners and management agents are asked to continue to take appropriate care when processing and/or transmitting personally identifiable information.
2. Interviews for certifications/recertifications may be performed via telephone, teleconferencing, email or utilizing video conferencing software. The physical file must be notated to include the date, time, the name of the individual interviewed as the answers. This would need to be done for all adult household members.

3. When a 3rd party (independent party) verification response is not available due to closures or limited operations, a review of documents (such as by a related, 2nd party) for verification of income or assets will be conducted to determine eligibility.
4. Documents may be sent/received via electronic mail, mail service, or hand delivered (i.e., door to door drop-off and scheduled pick-up). Owners and management agents are asked to continue to take appropriate care when processing and/or transmitting personally identifiable information.
5. Interviews for certifications/recertifications may be performed via telephone, teleconferencing, email or utilizing video conferencing software. The physical file must be notated to include the date, time, the name of the individual interviewed as the answers. This would need to be done for all adult household members.
6. When a 3rd party (independent party) verification response is not available due to closures or limited operations, a review of documents (such as by a related, 2nd party) for verification of income or assets will be conducted to determine eligibility.

Q6: Are documents such as questionnaires, verifications, affidavits, and other necessary documents that are obtained electronically acceptable to determine a household's income eligibility?

A6: Yes, this would be acceptable. Any tool available to help complete the certification process is allowable (e.g. electronic signatures, emails, drop off/pick up of documents, phone verifications). Owners and management agents are asked to continue to take appropriate care when processing and/or transmitting personally identifiable information.

Q7: Can the Tenant Income Certification (TIC) signatures be obtained electronically? If yes, is there any requirement to obtain an original signature at a future date, or is the electronic signature sufficient for the documents in the permanent file?

A7: As a consequence of social distancing due to the COVID-19 health crisis, electronic signatures are valid and acceptable for TICs. At a future date, original signatures should be obtained. The acceptance of electronic signatures for TICs is not a permanent change.

Q8: At a future point when original signatures are required again, what penalty would be imposed if an original signature is not obtained prior to an on-site file review? Would an 8823 be issued citing noncompliance?

A8: We would not cite this as noncompliance if the file is notated as to why original signatures were not obtained due to social distancing and/or COVID-19. The determination regarding the relation to COVID-19 would be based on the dates on the material (given the timing of the COVID-19 crisis) and/or file documentation attributing the electronic signatures to COVID-19. It is our intent to be flexible during this time to ensure the health and safety for residents, owners, property managers and staff. However, the expectation is that once business returns to normal original signatures will be obtained.

Q9: Are there any special considerations for modifying the 3rd party verification requirements during COVID-19 crisis?

A9: While 3rd party verifications remain the preferred method of verification, they may not be available due to organizational closures or limited operations. The file should include notations as to the attempts to obtain 3rd party verifications and why alternative procedures are being conducted; all procedural changes that are attributable to COVID-19 should be clearly documented in each file. For new move-ins, multiple alternative forms of verification to ensure eligibility should be obtained (i.e., pay stubs, self-certification, tax returns).

Q10: How do the proposed regulations that would relax the minimum compliance monitoring sampling requirement for purposes of physical inspections and tenant income certification reviews that had previously been set forth in the final regulations published on February 26, 2019 impact CHFA?

A10: The current regulation that requires a higher sampling requirement was to be implemented by state agencies by the end of 2020. However on July 1, 2020, the IRS issued proposed changes that would revert the sampling size requirement to prior standard before the February, 2019 regulatory change (i.e. the lesser of 20% of low-income units or the minimum from the sampling reference chart). While there is no current timetable for its issuance, it is expected that the effective date of the proposed changes would be retroactive to February 2019.