

North Carolina Housing Finance Agency

Asset Management – Compliance Manual

January 2022

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Introduction

The North Carolina Housing Finance Agency (NCHFA/the Agency) is a self-supporting public agency that finances affordable housing opportunities for North Carolinians whose needs are not met by the market. NCHFA was created by the General Assembly in 1973, and was appointed the administrative agent for the administration, allocation and monitoring of Federal Low-Income Housing Tax Credits (LIHTC). NCHFA is also the Agency responsible for the administration and monitoring compliance with the laws and regulations related to the federal HOME Program, the National Housing Trust Fund (NHTF), the North Carolina Housing Trust Fund (HTF), and the Workforce Housing Loan Program (WHLP), among others.

This manual is designed to provide technical assistance to owners and their agents to maintain compliance with regulatory requirements associated with LIHTC and other Agency-funded programs.

All parts of this manual can be accessed at NCHFA's website: <https://www.nchfa.com>

Disclaimer

NCHFA's responsibility to monitor for compliance will not cause NCHFA to be liable for an owner's noncompliance. An owner should not rely on NCHFA to determine if a project is in compliance. All owners of properties funded with LIHTC, HOME, or other funding sources should consult with an attorney, tax accountant, or other professional as to the specific requirements of the LIHTC program and other federal and state statutes and regulations. When a property is funded with multiple sources (LIHTC, HOME, NHTF, etc.) the owner must adhere to the most restrictive regulation/requirement of the programs.

Compliance with all applicable laws, rules, and regulations is the sole responsibility of the owner and owners are required to ensure their management agents are in compliance. This manual is to be used as technical guidance and NOT intended to be an all-inclusive and comprehensive guide to the LIHTC program or other Agency programs.

In January 2007 the IRS released its Guide for Completing Form 8823, Low-Income Housing Tax Credit Agencies Report of Noncompliance or Building Disposition (8823 Guide). It was updated in September 2009 and again in January 2011. The 8823 Guide is not intended to change any Section 42 rules or policies, but to provide definitions of what the IRS considers "in compliance" and for consistency in reporting "out of compliance" and "back in compliance" on IRS Form 8823. This Compliance Manual is reflective of instructions in the 8823 Guide, except where state policy or subsequent regulation changes take precedence.

This manual has not been reviewed or approved by either the Internal Revenue Service (IRS) or the US Department of Housing and Urban Development (HUD) and should not be relied upon for interpretation of federal income tax legislation or regulations.

This information is subject to change without notice. NCHFA will not be liable for any loss or damage caused by any inaccuracies in the information contained in this manual.

PART 1 – DEVELOPMENT

Chapter 1: Qualified Allocation Plan (QAP)—State Specific Requirements

The Qualified Allocation Plan (QAP) details the selection criteria and application requirements for Low-Income Housing Tax Credit (LIHTC) and tax-exempt bonds. It lists deadlines, application fees, restrictions, standards and requirements for rental developers to be eligible for an allocation of tax credits and/or other Agency funding. The Agency drafts a new QAP each year and holds a public hearing and accepts comments before adopting a final plan.

A QAP for each year can be found on the Agency’s website under [Rental Housing Partners > Rental Developers > Qualified Allocation Plan > Corresponding Year](#).

1.1: Timeline for Application Process

LIHTC Application Process

Deadlines for the LIHTC application process are spaced throughout the year. It is of paramount importance that applicants meet these deadlines. In addition to application deadlines, the projected dates for various notifications can be found below.

The following general schedule typically applies to the application process for 9% credits and the first round of tax-exempt bonds with 4% credits.

- **January**—Deadline for submission of preliminary applications (noon)
- **March**—Market analysts will submit studies to the Agency and applicants
- **March**—Notification of final site scores
- **April**—Deadline for market-related project revisions (5 p.m.)
- **April**—Deadline for the Agency and applicant to receive the revised market study, if applicable
- **May**—Deadline for full applications (noon)
- **August**—Notification of housing credit awards

Tax-Exempt Bonds Process

The Agency will accept applications for tax-exempt bonds with 4% credits any time around May 1 and October 1 (5 p.m.). When a preliminary application is submitted in this timeframe, a schedule of milestones will be provided to the applicant. The preliminary application submission date will determine when those milestones occur and will follow a timeframe similar to the schedule above.

The specific dates for the current cycle can be found on the Agency’s website under [Rental Housing Partners > Rental Developers > Timeline and Events](#).

1.2: Set-Asides, Award Limitations and County Designations

The Agency will determine whether applications are eligible for rehabilitation or new construction set-asides. This section only applies to 9% credit applications.

1.2a: Rehabilitation Set-Aside

Projects proposing rehabilitation of existing housing can be awarded up to 10% of credits available after forward commitments. The Agency may exceed this limitation to completely fund a project request. In the event eligible requests exceed the amount available, the Agency will determine awards based on evaluation criteria.

1.2b: New Construction Set-Aside

The Agency will award credits remaining after awards described above to new construction projects.

- **Geographic Region:** There are four (4) geographic set-asides where scoring will apply. Percentages each cycle are based on per capita. Refer to current QAP for actual percentages.
 - West
 - Central
 - Metro
 - East
- **Redevelopment Projects:** To qualify as a redevelopment project, the following are required:
 - Site currently contains, or contained, at least one structure used for commercial, residential, educational or governmental purposes
 - Application proposes adaptive re-use with historic rehabilitation credits and/or new construction
 - Demolition has been completed or is scheduled for completion (not including the project buildings)
 - A unit of local government initiated the project
 - As of the preliminary application deadline, a unit of local government formally adopted a plan to address the deterioration (if any)
- **Disaster Recovery:** If there is a federally declared disaster, additional credit/award requirements may apply. Refer to the current QAP for applicability.

1.2c: USDA Rural Development

Funds will be awarded annually to eligible rehabilitation and/or new construction project(s) identified by the US Department of Agriculture, Rural Development (RD) state office as a priority.

1.2d: Nonprofit and CHDO set-asides, National Housing Trust Funds (NHTF) and other Special Programs

Set-asides and NHTF: If necessary, the Agency will adjust the awards under the QAP to ensure that the overall allocation results in:

- 10% of the state's federal credit ceiling being awarded to projects involving tax-exempt organizations (nonprofits),
- 15% of the Agency's HOME funds being awarded to projects involving Community Housing Development Organizations (CHDOs) certified by the Agency and
- all funds available from the National Housing Trust Fund (NHTF) have been awarded
- **Special Programs:** At times additional funding sources are available from different regulatory agencies. Details on these programs (if available) can be found in the QAP for the corresponding allocation year.

1.2e: Principal and Project Award Limit

The maximum award, in credits, to any one principal or project will be stipulated in the QAP for the corresponding allocation year (including all set-asides).

1.2f: County Award Limits and Income Designations

Award limits are broken out into two categories: 1) Metro Region and 2) Rehabilitation and East, Central and West Regions.

The Agency will designate each county as high, moderate- or low-income using the data from HUD's current Median Family Income for the corresponding allocation year.

1.2g: Other Awards

The Agency may award credits remaining from the geographic set-asides based on specific criteria or carry forward any amount of credits to the next year.

The Agency may make a forward commitment of the next year's credits in an amount necessary to fully fund projects with a partial award or to any project application that was submitted in a prior year if such application meets all the minimum requirements of the QAP.

1.3: Fees and Applications

1.3a: Fees

All applicants are required to pay nonrefundable fees throughout the application and development process. Example of those fees are:

- Application fees (preliminary & full)
- Allocation fees
- Monitoring fees
- Penalty fees
- Loan closing fees

Details on all potential fees can be found in the QAP for the corresponding allocation year.

1.3b: Preliminary Application and Full Application

The Housing Credit application process consists of a preliminary application and a full application. Depending on the project, the preliminary application needs will differ. All projects will deal with market demand. For new construction, site suitability will be addressed, and for rehabilitation projects a physical needs assessment will be necessary. If the deadline for the preliminary application is missed, a full application cannot be submitted.

The full application deals with all other aspects of the development, including funding sources, development budget and plan design.

Applications are submitted through the Agency's online housing credit application. The online application provides interactive checks that help ensure that all submission requirements are provided. Email addresses and passwords from previous application cycles can be used to access the system and create new applications. Otherwise, a new user will need to be registered before creating applications.

The online application can be found on the Agency's website under [Rental Housing Partners > Rental Developers > How do I apply for Funding?](#)

Chapter 2: Submitting the Tax Credit Applications

Applications are submitted electronically according to the timelines provided in the annual QAP. The Preliminary Application is used for the owner/developer to provide the basics of a project. The Full Application has more details, including financial feasibility and developer information.

2.1: Application Details

Owner/developer will complete information providing project specific details such as:

- Project Description
 - Initial project details
 - Project address
 - Project information
 - Jurisdiction
- Site Description
 - Acreage
 - Demolition
 - Building occupancy
 - Public road access
 - Historical and environmental significance
- Site Control and Zoning
 - Fee ownership
 - Option/contract details
 - Zoning
- Applicant Information
 - Applicant information
 - Contact
 - Tax credit information
- Ownership Entity
 - Owner information
 - Members and partners
- Unit Mix
 - Project-based rental assistance (PBRA)
 - Low-income units
 - Average targeted income (full application only)
 - Employee units
 - Market rate units
 - Additional targeting
- Market Study Information
 - Construction
 - Unit amenities
 - Security
 - Project amenities
- Site Scoring Self Evaluation (new construction only)
 - Neighborhood characteristics
 - Amenities

- Site suitability
- Minimum Set-Asides

The following information is additional information that must be included with the Full Application:

- Funding sources
- Development costs
- On-site improvements
- Operating expenses
- Cash flow
- Development team
- Developer Experience summary
- Management team selection and pre-approval*

*Note: If the management company selected is not on the Agency's approved management company list, there will be additional information required to obtain Agency approval.

2.2: Required Documents

The owner/developer will provide the following documents with the Preliminary Application. These documents may need to be updated/revised prior to submitting the Full Application.

- Site map
- Driving instructions
- Documentation of redevelopment
- Evidence of site control
- Site and floor plans
- Market studies
- Scope of work (rehabilitation projects only)

In addition to the documents above, when submitting the Full Application, the following will be required (if applicable):

- Current financial statements
- Party agreements
- Flood zone designation
- Zoning confirmation letter
- Water/sewer impact fees
- Utility letters
- Utility allowance
- Uniform residential appraisal report
- Site plans
- Hazard plans
- Certificate of occupancy/historic tax credit documentation
- Proposed relocation plan
- Commitment letter (public and/or private)
- PBRA letter

- Deferred developer fee statement
- Inducement letter
- Rural development budget

2.3: Site Visits

Preliminary Application Phase

Agency orders a market study for all projects that submit a preliminary application.

- Rehab Projects
 - Site visit with a review of the scope of work
 - Rehabs are not scored
- New Construction Projects
 - Site visit to verify property specifics outlined in application, examples are:
 - Neighborhood characteristics
 - Site suitability
 - Review self-scoring and post final scoring on the Agency website per the schedule listed in the current QAP

Full Application Phase

- Rehab Projects
 - Agency reviews the scope of work, including any comments made during preliminary
- New Construction
 - Agency reviews and scores the full set of site plans
- No physical site visits performed

Chapter 3: Post Award Processes and Requirements

The Agency awards projects annually encompassing new construction and rehabilitation throughout North Carolina. All awarded projects are announced in mid-August.

3.1: Carryover Agreement/42m Letter

All 9% projects must execute and submit the Carryover Agreement, including the allocation fee, as directed by the Agency. The Carryover Agreement details all benchmarks and requirements pursuant to Section 42, QAP, and any additional agreements made through the application process. Examples of information detailed in the agreement are:

- Date of allocation
- Expected placed in service date per building
- Demonstration that at least 10% of the reasonably expected basis has been achieved and completion of the 10% Cost Certification by an auditor

Once agreement is executed, this confirms the award and allows developer/owner two (2) years to complete the project.

Tax-Exempt Bonds

All Tax-Exempt Bonds projects will submit a signed 42m Letter to the Agency confirming that NC Federal Tax Reform Allocation Committee (NCTRAC) has reviewed and approved the bond volume request.

3.2: Project Updates

Prior to issuance of IRS Form 8609, any changes made to the awarded application must have Agency approval. A few of the required approval examples are listed below:

- Increasing rents
- Altering the designs (amenities, site layout, floor plans, etc.)
- Financial changes

Once a project has been awarded credits, the construction development team will review and approve the full set of design plans including any adjustments/revisions as needed. Construction can begin only after Agency approval has been given.

Failure to comply with the approval requirement may result in a fine of up to \$25,000 and potential disqualification/revocation of current/future allocation. A complete list can be found in the QAP for the corresponding allocation year.

3.3: Commitment Letters

There are two types of commitment letters given to a project with Agency funding: Conditional and/or Final.

RPP Loans

A Conditional Commitment Letter is issued within 30 days of finalizing the Carryover Agreement. It includes a list of items that must be submitted and approved to the Agency prior to issuing the Final Commitment Letter. The list includes:

- Environmental Review (the level/type of review will depend on funding source)
- Architects Certification of Compliance and Accessibility Codes
- Agreement to enter into a contract with PHA (if applicable)
- Section 3 Compliance Certificate (for CDBG-DR, NHTF, and HOME funded projects)
- Firm/Final Commitments for all other non-Agency sources of funding

The Conditional Commitment Letter is set to expire within 6 months of issuance.

The issuance of the Final Commitment Letter is dependent on the developer submitting items requested to the Agency.

WHLP Loans

These Agency loans do not receive Conditional Commitment Letters. The Final Commitment Letter is issued within 30 days of finalizing the Carryover Agreement.

Note: The Final Commitment Letter can be amended for specific items (including extensions) and a single project can have multiple Final Commitment Letters.

Chapter 4: Allocation

4.1: Construction Requirements

Once a property has received its allocation, the following inspections will occur:

- Framing Inspections (New Construction): occurs once the first building has been framed, if no issues are found construction is cleared to continue. If there are issues, additional framing inspections may be required
- Final Inspection (All projects): If a project only has one building, the building and property final inspection is the same
 - Building: occurs once the first building has been completed, if no issues are found construction is cleared to continue
 - Property: occurs once the entire project has finished construction

Specific federal funding sources may require more frequent inspections to be completed by the Agency.

Note: Issues found during the construction inspection phase, if not corrected may result in a delay in financing, issuance of IRS Form 8609 and/or the entire project being placed in noncompliance.

4.2 Regulatory Documents

Prior to construction completion, a regulatory document is generated and recorded with the county Register of Deeds. All Agency monitored projects will have at least one of the following documents reviewed and signed by the Owner.

4.2a: Land Use Restriction Agreement (LURA)

The LURA is a non-negotiable instrument that details the requirements a project must follow in accordance with the Full Application, QAP, Carryover Agreement and Section 42. After execution of the Carryover Agreement or 42m letter, LURAs are sent upon the earlier of (i) request of the developer or (ii) within 12 months of the award.

The Agency requires the LURA to be recorded with the Register of Deeds in the county the project is located. It must be recorded ahead of all permanent financing. The LURA must be recorded in the year prior to the first-year tax credits are claimed. 8609's will not be issued until the LURA is on record and the Agency has confirmed that the LURA is ahead of all permanent financing.

The compliance period, income and rent restrictions and applicable fraction, and resident protections should be carefully reviewed by owners/management agents. Details of the Extended Use Period are also found in the LURA. The Agency monitors the project for section 42 compliance in accordance with the recorded LURA.

Note: Projects with LIHTC funding will have a recorded LURA.

4.2b: Declaration of Deed Restrictions

If an owner receives a loan from the Agency they will be required to sign various loan documents include a Declaration of Deed Restrictions. The Deed Restrictions are a legal document that details the requirements a project with an Agency loan must follow in connection with receiving funding from the Agency. Similar to the LURA, Deed Restrictions include:

- Initially approved rents and increase requirements
- Fair housing and AFHMP requirements
- Affordability period
- Income and rent restrictions
- Program and monitoring requirements
- Resident protections

The Agency monitors the project for compliance in accordance with the recorded Deed Restrictions and other loan documents.

4.3 Loan Documentation

4.3a: Loan Closing

The Agency Legal Team is responsible for completing the loan closing process in conjunction with the Owners' Legal Representative.

The process will include the collection/creation of documents and payment of required fees. Documents that are typically generated during the loan closing process are:

- Promissory Note
- Loan Agreement
- Deed of Trust, Assignment of rents and leases, Security Agreement
- Borrowers Affidavit
- Uniform Commercial Code (UCC)
- W-9

RPP loans are not considered permanent financing until they have been converted, see [Section 4.3c](#) for details.

4.3b: Final Cost Certification

Once the project has been completed, the owner submits the final cost certification to development. The development team reviews and creates the 8609. Prior to loan conversion (after final certification), any changes made to the project must be reviewed/approved by the Development Team.

For additional details on Form 8609, [see Section 4.4](#).

4.3c: RPP Loan Conversion

Once a project has placed-in-service (PIS), the owner will provide the Agency with the Final Cost Certification. Once the Final Cost Certification is received by the Agency, the conversion of the loan may begin. In order to convert the loan to permanent financing, the following documents are prepared by the Agency:

- Estoppel & Modification Agreement
- Borrowers Certification

There are a series of events that need to take place for an RPP loan to convert from construction to permanent. This includes, but it not limited to:

- As-built survey

- Final inspection and pre-occupancy meeting completed
- 90% occupancy for 90 consecutive days
- Final Cost Certification submitted and approved
- Issuance of 8609's
- Current insurance
 - Hazard Insurance
 - Liability Insurance
 - Fidelity Insurance
 - Proof of Workers Comp coverage
 - Flood Insurance (if there are improvements located in a flood zone)

Note: WHLP loans will not go through a conversion period as they are considered permanent financing from the start of the loan.

4.4: Form 8609

Form 8609 is the official notification to the IRS of the allocation of credits and certifies certain information for the project. A separate form must be issued for each building in a multiple-building project. 8609's will not be issued until the LURA is on record and the Agency has confirmed that the LURA is ahead of all permanent financing.

Part I – Allocation of Credit

Once the Final Cost Certification has been submitted/reviewed the Agency Development team will complete Part I of the 8609 and send to the owner. The issuance of the 8609 may be held for reporting or construction issues. Pertinent information included in Part I is:

- Amount of credits awarded per building
- Qualified basis
- PIS date
- Building Identification Numbers (BIN)

Part II – First-Year Certification

Once the form is received by the owner from the Agency, they are responsible for completing Part II, which includes:

- Eligible basis
- Multiple building election
- First-year credit period election
- Minimum set-aside election

The above-mentioned elections are irrevocable once signed and filed with the IRS. After the first-year tax return has been filed with the IRS, a copy of the 8609 must be uploaded into RCRS under management documents. Schedule A of the Form 8609 is filed annually with the owner's tax return.

Prior to issuance of the project's IRS Form 8609, a per unit monitoring fee must be paid. Any project utilizing income averaging is subject to an additional per unit monitoring fee.

For specifics on monitoring fees, the QAP can be found on the Agency's website under [Rental Housing Partners > Rental Developers > Qualified Allocation Plan > Corresponding Year.](#)

4.4a: Compliance Training

To receive the Form 8609, with Part I completed, the QAP training requirements must be met. An individual from the owner/developer team must have attended Compliance 101 or Advanced Compliance training in the past 12 months. Once training has been verified, the 8609 can be released.

4.4b: Final Construction Inspection

The construction team has the ability to delay/hold the issuance of the 8609. If substantial findings are noted during the final construction inspection, the 8609 may not be released until the construction team signs off on the correction of those findings. Examples of substantial findings are:

- Accessibility features
- Health and safety items
- Inferior workmanship and punch list items not completed

If substantial findings from the final construction inspection are not corrected, the Agency may also prevent the loan from converting to permanent financing. Additionally, the entire project can be reported to the IRS as being noncompliant on Form 8823.

4.5: Annual Reporting

The Owners Certification of Continuing Program Compliance (AOC) is required to be submitted annually and confirms compliance with the Deed Restrictions and LURA. The AOC is due by February 10th each year, beginning once a project is officially allocated. (Example: if allocation is 2021, the AOC is due February 2022). Even if credit allocation was received, but credit period has not begun, the AOC is still required to be completed and submitted.

PART 2 – RESPONSIBILITIES

Chapter 5: Transition from Development to Asset Management

5.1: Initial Transition

- Every December, after awards are made, projects are transitioned for management to have access in the Rental Compliance Reporting System (RCRS). When this transition happens, ONLY individuals with admin status (within RCRS) have access to the project in RCRS until they assign it to management staff.
- The income limits will show in RCRS, but not the rent limits. In order to get the rent limits to populate, at least 1 unit per bedroom size must be set up in RCRS. Please refer to Section 8.2 for further information regarding RCRS and steps that need to be taken.
- If the project has received Tax-Exempt Bond financing, the timeline will vary as the awards take place on a different timeline.
- Both Development and Asset Management have roles in the project during this phase. Primary role is Development.

Note: For more detailed information on RCRS, please refer to Section 8.2 of this manual.
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5.2: Between Initial and Final Transition

- Projects with Agency loans: The Legal Department needs the following information reviewed and approved in order to prepare the loan for permanent financing:
 - Insurance Information
 - Tenant Selection Plan
 - Management Plan
 - Affirmative Fair Housing Marketing Plan
 - Lease with Required Lease Addenda
 - Grievance Procedures (CHDO only)
 - Tenant Participation Plan (CHDO only)
- Projects without Agency loans:
 - Tenant Selection Plan
 - Affirmative Fair Housing Marketing Plan
 - Lease with Required Lease Addenda
- Prior to final transition, rent increases and utility allowance changes must be approved by Development
- Owner Agreement to Participate, DHHS Targeting Unit Agreement, KEY Direct Deposit Authorization, W-9 and Proof of EIN must be signed and submitted prior to PIS date
- Development is still lead on the project, but Asset management will begin playing a more significant role 120 days prior to PIS date

5.3: Final Transition

- Once owner submits Final Cost Certification, Development will be able to prepare and send the 8609, with Part I completed, to the owner
- If the project has a loan from the Agency, Development will send the information to Legal for the loan to be converted to permanent financing
- After 8609 and loan conversion has been completed, Development no longer plays a role in the process
- Asset Management has sole responsibility for the project

Chapter 6: Responsibilities

The entities/persons involved in the compliance part of the Tax Credit Program are the North Carolina Housing Finance Agency (NCHFA/the Agency), the owner/developer of the project, investors and the management company. Their various responsibilities are set forth below:

6.1: NCHFA Development Team

The Development Team creates the Qualified Allocation Plan (QAP) annually, reviews and approves Housing Credit applications, awards and allocates credits in accordance with the Low-Income Housing Tax Credit Program. A synopsis of their responsibilities is listed below:

- Awards and allocations of credits
- Issue IRS Form 8609
- Prepare Regulatory Agreement/Restrictive Covenants

6.2: NCHFA Asset Management Team

The Asset Management Team monitors for compliance with the Low-Income Housing Tax Credit Program. A synopsis of their responsibilities is listed below:

- Complete resident file reviews
- Complete site physical inspections
- Review annual owner's certification
- Review management documents
- Conduct trainings and provide continuing education
- Report to IRS
- Financial oversight

6.3: Owners/Developers

Once an allocation is awarded, the owner must adhere to the requirements and stipulations outlined in the QAP for the corresponding allocation year. The owner's responsibilities are as following:

- Retain an Agency approved management company
- Reporting and communicating with the Agency
- Maintain compliance with program requirements (Federal and State)

The selected management company acts as the owner's agent and performs the responsibilities of a liaison between the owner and the Agency. Careful consideration should be made in selecting a

reputable and experienced management company from the Agency-approved list. Owners are bound to the management company listed on their preliminary/full application for a period of two years following the PIS date. Changes can only be made with prior approval from the Agency, regardless of when the change occurs.

It is important that the owner maintains a strong working relationship with the investor, the Agency and the management company to ensure the health and longevity of the project. The ultimate responsibility of remaining in compliance and any consequences of noncompliance is that of the owner.

6.4: Investors

Investors purchase the credits allocated to owners; therefore, they have a strong interest in the compliance and financial operation of the project. Investors can purchase all credits for a development, or a portion of credits in an equity fund, through a syndicator. Due to the investors interest in the project, they will:

- Conduct site and file reviews
- Review project financial viability including risk assessments
- Project oversight to ensure credits are protected

Investors have limited (if any) direct contact with the Agency, unless the project becomes a troubled asset.

6.5: Management/Site Staff

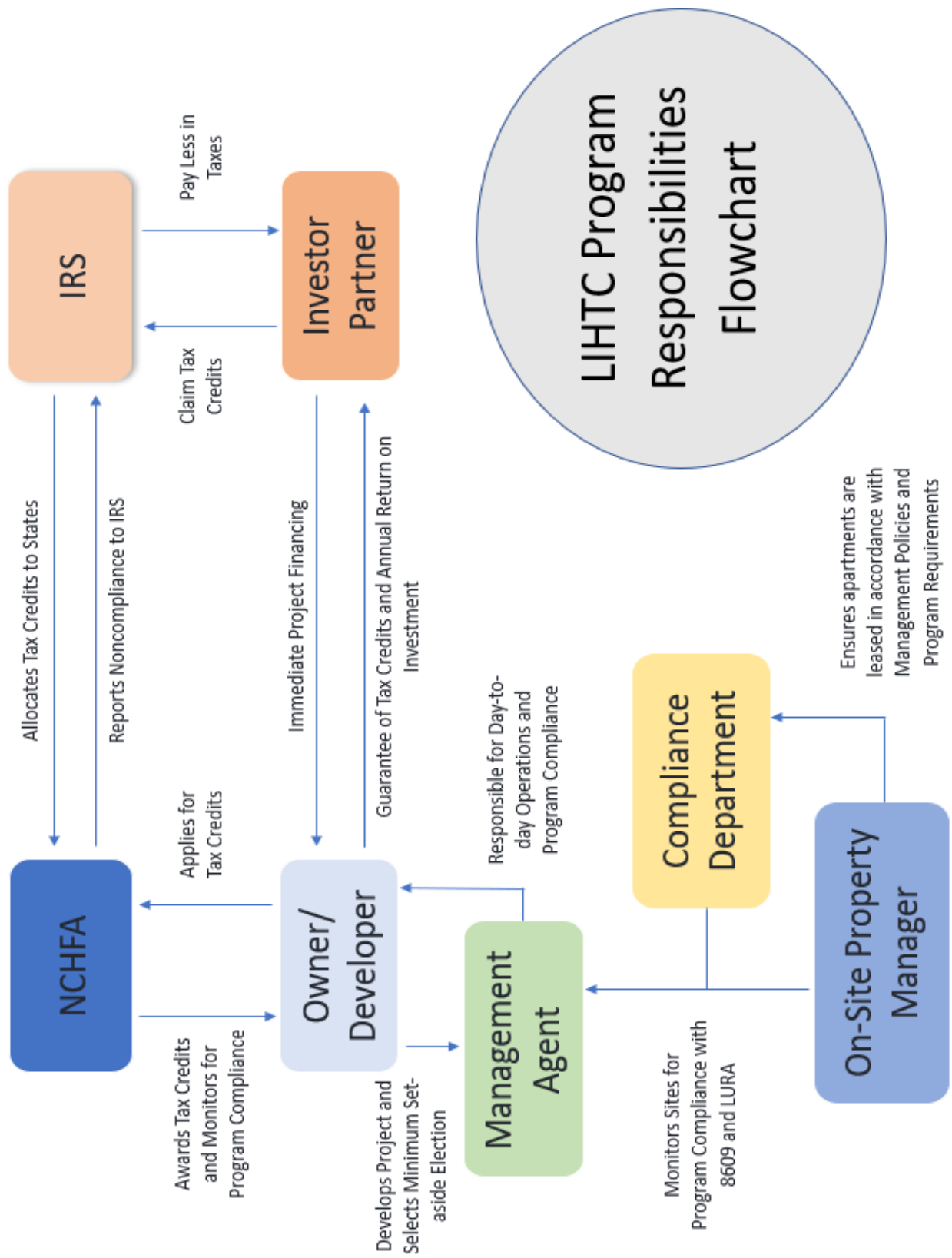
The management company and site staff are responsible to the owner for implementing the program requirements and ensuring compliance. The management company acts as the owner's agent by:

- Performing the day-to-day operations of the project
- Reporting and communicating with the Agency
- Maintaining approved management company status
- Attending Agency trainings and continue professional development
- Keeping up to date with program requirements (Federal and State)

These responsibilities should be outlined in the Management Plan. In some cases, the owner and management company are the same, operating under different divisions, or an owner may obtain a third-party management company to manage their properties.

Note: For a visual representation of responsibilities, please see flowchart in Section 6.6.

6.6: LIHTC Flowchart



PART 3 – ASSET MANAGEMENT

Chapter 7: Program Requirements

7.1: Program Types

The Agency finances construction of affordable rental housing throughout the state. The Agency awards federal housing tax credits, low-interest loans and tax-exempt bond allocations annually through a competitive application process. Below is more information about each type of financing and eligibility requirements.

- **Low-Income Housing Tax Credit (IRC § 42):** The LIHTC program is a federal program which allows publicly or privately owned or managed affordable rental housing properties to take a tax credit, equal to 9% or 4% of the “Qualified Cost” of building or rehabilitating the property (excluding land). Tax Credits are awarded through a competitive funding cycle.
- **Tax-Exempt Bonds:** Tax-exempt bond financing provides long-term, below-market financing for the construction and rehabilitation of affordable rental housing. In order to utilize tax-exempt bond financing, you need to partner with a local entity, such as local government or a public housing authority, to issue the bonds.
- **Workforce Housing Loan Program:** The Workforce Housing Loan Program (WHLP) provides loans to fund construction or substantial rehabilitation of affordable rental developments. WHLP is administered in combination with LIHTC. (Replaced the State Tax Credit).
- **Rental Production Program Loans:** The Rental Production Program (RPP) provides loans for the production of rental housing, primarily targeting households at or below 50% of area median income. These loans are for 9% Housing Credit projects such as: new construction, substantial rehabilitation or acquisition/rehabilitation. RPP loans are typically used as gap financing for projects funded with LIHTC. RPP has clear application criteria and developments that are not funded are notified through the announcement of Housing Credit awards each year, as no development can receive an RPP award that does not have a Housing Credit award.
 - Sources of RPP Loans:
 - **HOME (24 CFR Part 92):** provides a federal block grant, based on population and housing needs, to state and local Participating Jurisdictions (PJ’s). The funds can be used to finance the acquisition, construction and rehabilitation of affordable housing.
 - **Housing Trust Fund (HTF):** HTF is North Carolina's only state-funded and state-designed resource for financing affordable housing. It was created by the General Assembly and is managed by the Agency.
 - **National Housing Trust Fund (NHTF) (24 CFR Part 93):** The NHTF is the first new federal housing resource in a generation, and it is exclusively targeted to help build, preserve, rehabilitate and operate housing affordable to people with the lowest incomes.

7.2: Compliance Periods

LIHTC: IRS and Extended Use Periods

The compliance period begins on the same day (i.e. the first day of the tax year) in which the building is placed in service, or if the tax payer elects, the beginning of the following tax year. The election is noted on the IRS Form 8609. The compliance period is for 30 years. During the first 15 years, noncompliance is reported to the IRS by generating Form 8823. It is imperative that the owner correct all noncompliance within the given timeframe to avoid recapture of credits and to remain in good standing with the Agency. Years 16-30 are the Extended Use Period. Noncompliance during this period is not reported to the IRS, but corrections should be made so that the owner remains in good standing with the Agency. The first year of the credit period is based on the owner's election made on line 10a of the Form 8609. The owner is allowed to claim credits on a 10-year accelerated period or the 15-year compliance period. If the owner decides to claim credits at the accelerated 10-year period, the owner is still subject to IRS recapture for noncompliance during the first 15 years.

Possible consequences of Noncompliance are:

- Reporting of noncompliance to the IRS (IRS Form 8823), during the Compliance Period
- Possible recapture of Credits, during the Compliance Period
- If uncorrected during the Compliance Period or Extended Use Period, possible loss of good standing with the Agency, which could result in loss of future funding from the Agency
- If uncorrected during the Compliance Period or Extended Use Period, potential for the management company being removed from Agency Approved Management Company List

HOME: Affordability Period

The affordability period for HOME funded projects typically begins the date the loan converts to permanent financing and remains in effect for 20 years.

Other Important Information:

- Even if HOME loan is paid in full, property must follow affordability guidelines for remainder of affordability period
- Program noncompliance results in being reported to HUD annually until resolved
- Uncorrected noncompliance can result in loss of future funding and removal from Agency Approved Management Company List

NHTF: Affordability Period

The affordability period for NHTF-funded projects begins the date the loan converts to permanent financing and remains in effect for 30 years.

Other Important Information:

- Even if NHTF loan is paid in full, property must follow affordability guidelines for remainder of affordability period
- Program noncompliance results in being reported to HUD annually until resolved
- Uncorrected noncompliance can result in loss of future funding and removal from Agency Approved Management Company List

7.3: Monitoring Type and Frequency (File/Physical)

The monitoring frequency is determined by the funding source:

- Tax Credits (not including Average Income): file reviews and physical inspections – 20% of units every three years. (Properties with 100+ units will have 7% audited annually)
- Average Income/RPP/WHLP: file reviews and physical inspections – 10% of units annually

Note: Monitoring frequency may be increased at the Agency's discretion.

7.4: Required Management Documents

7.4a: Tenant Selection Plan (TSP)

The Agency requires landlords who participate in Agency-administered rental programs to have a written property specific Tenant Selection Plan (TSP). The criteria contained in a TSP must not be so restrictive that it creates a disparate impact on groups protected by the Federal Fair Housing Act. The criteria must align with HUD's requirement for housing entities to affirmatively further fair housing and conform to any applicable HUD guidance published on the subject.

For Agency-administered properties that include financing or regulation from RD/HUD:

- Properties that have financing from the US Department of Agriculture Rural Development (RD 515) must prepare and maintain TSP's in accordance with Rural Development guidelines.
- Properties that are regulated by the federal Department of Housing and Urban Development (HUD) Multifamily or HUD Public and Indian Housing must prepare and maintain TSP's in accordance with HUD guidelines.
- To the extent such a TSP does not address all the elements in the Agency policy, the property owner must either modify the RD/HUD plan or prepare an addendum that addresses all of the Agency-required elements. In the event RD/HUD requires subsequent changes to the TSP, the owner must submit any modifications to the Agency for review and approval.

For all Agency-monitored properties, regardless of HUD/RD participation, a property's TSP must:

- Specify how applicants are selected for tenancy. All criteria used in the decision-making process must be included in the plan. The plan must have enough specificity that the applicant can read it and reasonably determine their likelihood of acceptance.
- Contain screening criteria that is no more restrictive than described in the policy.
- Be clearly posted in the property rental office as well as anywhere else applications are distributed, including websites. Copies of the TSP must be available to applicants upon request.

The document must be submitted to the Agency via RCRS prior to loan closing (or anytime changes are made) for review. Once approved it must be posted in a common area and available to the public upon request.

Failure to comply with either of these requirements, or failure to satisfactorily address concerns or deficiencies identified by the Agency, may result in the property owner and/or agent being considered not in good standing and result in a suspension from doing future business with the Agency until the issue is corrected.

All current TSP guidelines, a sample TSP and checklists can be found on the Agency's website under [Rental Housing Partners > Rental Owners & Managers > Policies, Resources & Forms > Ownership/Management](#).

7.4b: Affirmative Fair Housing Marketing Plan (AFHMP)

A completed HUD Form 935.2A (most recent version) must be submitted for all projects who participate in Agency-administered rental programs. The HUD form must be completed in its entirety and uploaded to the documents section in RCRS. Required attachments to all eight pages of the submitted form are:

- Worksheets 1–4 completed (including worksheet 2, even if not applicable)
- Any advertisements used by the property
- Any brochures used by the property
- Project sign photo or mockup MUST display Equal Housing Opportunity logo or slogan
- Additional Census tract documentation not required for Agency approval unless it is an attachment to a worksheet

The AFHMP must be updated every five years. If submitting a plan with no significant changes, include a memo that states no significant changes and is dated and signed. Owner and management changes are considered significant. Once the Agency has reviewed, if there are corrections needed management should resubmit the corrected form including all pages, worksheets and supporting documentation.

If the AFHMP is approved by HUD/RD, upload the complete approved AFHMP, including the worksheets and supporting documents. There may be additional documentation needed that is not required by HUD/RD, in order to gain Agency approval.

The document must be submitted to the Agency via RCRS prior to loan closing (or anytime changes are made) for review. Once approved through RCRS, the document must be posted in a common area and available to the public upon request.

Failure to have an Agency-approved AFHMP uploaded in RCRS and displayed in the leasing office subjects the property to noncompliance.

Note: The Agency does not sign the AFHMP to indicate approval.

The AFHMP checklist can be found on the Agency's website under [Rental Housing Partners > Rental Owners & Managers > Policies, Resources & Forms > Ownership/Management](#).

7.4c: Management Plan

If a project has an Agency loan, a management plan and agreement will be required. The management plan consists of:

- Property details (location, bedroom sizes, target population, etc.)
- Program requirements
- Marketing strategies
- Compliance training information
- Staffing and maintenance scheduling

If a property selects a management company that is not on the Agency approved list, they will need to submit proof of: licensing in the state of NC, compliance with LIHTC program and management experience.

The Management Plan checklist can be found on the Agency's website under [Rental Housing Partners > Rental Owners & Managers > Policies, Resources & Forms > Ownership/Management](#).

7.4d: Lease Addenda

The Agency has created lease addenda to comply with specific program requirements. Approval of the rental lease agreement utilized by the project is not required as long as it is compliant with NC Real Estate Law. If a property has an Agency loan, the rental agreement including addenda must be uploaded and approved in RCRS.

All current required addenda can be found on the Agency's website under [Rental Housing Partners > Rental Owners & Managers > Policies, Resources & Forms > Resident Files](#).

7.4e: CHDO Requirements

State and local governments that receive federal HOME funds are required to set aside at least 15% of their HOME allocations for development activities owned, developed and/or sponsored by qualified Community Housing Development Organizations (CHDO).

A CHDO is a private, nonprofit, community-based organization that has staff with the capacity to develop affordable housing for the community it serves. The Agency meets the 15% requirement through RPP funds. In order to be CHDO-certified, the Agency CHDO application must be completed including the checklist and supporting documentation. Once a CHDO has been approved and awarded funds, there are additional management documents required for Agency approval.

Grievance Procedure

A written established policy that affords a prospective or existing resident the opportunity for a hearing in the case of a grievance. The grievance can be an action or failure to act involving the resident's lease or regulations which adversely affect the individual resident's rights. The written grievance procedure must include:

- Property information
- Information and formal review process guidelines
- Response timeline
- Communication/delivery of request/outcomes
- Lease terminations procedures
- Owner and management representative approval

The document must be provided to the Agency's Rental Asset Management Team prior to loan closing for review. Once approved it must be posted in a common area and available to the public upon request. The Agency will provide, upon request, a Grievance Procedure Checklist for use in developing the procedures. Submission with the document is not required, but is recommended.

Tenant Participation Plan (TPP)

A written document that establishes residents' rights to organize and roles of a resident council. The Tenant Participation Plan (TPP) details the rights of residents to 1) improve the quality of life, 2) participate in self-help initiatives, 3) improve resident satisfaction and 4) to create a positive living environment. The written TPP must include:

- Property information
- Roles and responsibilities of the resident council
- The right to organize
- Make the community room or space available for use
- Allow residents to conduct meetings independent from management representative
- Outline resident's grievance policy and process to file a complaint
- Owner and Management Representative Approval

The document must be provided to the Agency's Rental Asset Management Team prior to loan closing for review. Once approved it must be posted in a common area and available to the public upon request. The Agency will provide, upon request, a TPP checklist for use in developing the procedures. Submission with the document is not required, but is recommended.

7.5: Required Reporting

7.5a: Annual Owner Certifications (AOC)

The Owners Certificate of Continuing Program Compliance (AOC) is completed annually through RCRS. This document certifies owners' program compliance as of 12/31 and must be submitted by 2/10. The questions on the form vary depending on funding source. All questions must be answered and explanations provided as requested on the form. Tips for successful completion are:

- Ensure authorized signee is listed as a contact in RCRS (including address, email, phone number)
- Check Property Activity Report in RCRS to ensure all unit events have been entered and are correct (including employee and market rate units)
- Once AOC is accepted by the Agency no changes can be made to unit events in RCRS
- AOC must be printed, signed and scanned back into RCRS for submission (print screens are not allowed)

Owner is certifying for the preceding 12-month period information including, but not limited to, the following topics:

- Project information (ownership changes, minimum set-asides, applicable fractions, etc.)
- Violence Against Women's Act (VAWA)
- Physical conditions (suitable for occupancy, casualty loss, etc.)
- Notification of violations of Fair Housing, federal or state law or regulation
- Household qualifications (RCRS reporting, income certifications, etc.)

If the AOC has been returned for corrections, corrections must be made and resubmitted through RCRS for review. Once the AOC has been accepted it will no longer be visible under the AOC tab on the RCRS home screen.

Failure to submit the AOC on-time, completely and legibly is noncompliance and can ultimately result in the issuance of an uncorrected IRS Form 8823 and/or being placed not in good standing with the Agency.

Training videos to assist with the submission of the AOC can be found on the Agency's website under [Rental Housing Partners > Rental Owners & Managers > Train With Us.](#)

7.5b: Insurance Requirements

Borrower shall keep or cause to be kept, in full force and effect, the following types of insurance coverage, at its sole cost and expense:

- Commercial Property (Hazard) Insurance
- Commercial General Liability Insurance
- Worker's Compensation Insurance
- Flood Insurance (if applicable)
- Fidelity Coverage

Such other and further insurance may be required from time to time by Lender in order to comply with regular requirements and practices of Lender in similar transactions.

Each policy of insurance shall be issued by one or more insurance companies, each of which must have an A.M. Best Company financial and performance rating of "A-" or better. All policies shall list the Lender's name and address exactly as:

**North Carolina Housing Finance Agency, ISOA, ATIMA
P.O. Box 28066
Raleigh NC 27611-8066**

Borrower shall promptly pay, or cause to be paid, all premiums when due on all insurance policies and not less than 15 days prior to the expiration dates of such policies. Borrower will deliver to Lender evidence satisfactory to Lender reflecting that all required insurance is current and in force.

During the term of the loan, the Agency may require modifications to existing insurance or require additional insurance at its reasonable discretion.

Insurance Requirements can be found on the Agency's website under [Rental Housing Partners > Rental Owners & Managers > Policies, Resources & Forms > Ownership/Management](#).

7.6: Financial Requirements

The information found in this section is a general overview of the requirements based on funding types. Specific property requirements are found in the loan documents and/or deed restrictions.

7.6a: Rent Increase

All properties with an active Agency loan are required to gain prior approval for all proposed rent increases. If the Agency loan has been paid off early, the Agency still requires approval of rent increases until the affordability period has ended.

Initial rent structures must be entered into RCRS before any rent increases can be submitted for review. Management enters the final rents from the development stage into RCRS as the initial rent structure once the permanent financing has been completed.

All rent increase submissions must:

- Be entered into RCRS
- Be submitted a minimum of 30-days prior to the effective date
- Include Utility Allowances that are not over nine months old
- Have most recent audited financials entered into RCRS for review

Implementing rent increases without Agency approval will result in management/ownership not in good standing with the Agency and noncompliance for the project.

Training videos on rent increases can be found on the Agency's YouTube channel; the link can be found in [Part 4 – References](#), of this manual.

Instructions for submitting rent increases can be found on the Agency's website under [Rental Housing Partners > Rental Owners & Managers > Policies, Resources & Forms > Ownership/Management](#).

7.6b: Reserves

There are two types of reserve accounts required: Replacement Reserves and Operating Reserves. All properties with an active Agency loan are required to gain prior approval before withdrawing funds from reserve accounts. The required deposits for both account types will be found in the loan documents for the property. All requests to withdraw funds are submitted into RCRS.

Rent-Up Reserves

- Used for initial operating costs during lease up
- Withdrawals do not need Agency approval
- When loan converts, excess funds must be transferred to replacement reserves

Replacement Reserves

- Used for capital improvements and replacement items (not repairs)
- Monthly deposits are made
- If requesting for reimbursement of expenses, management must provide actual invoices
- If requesting for prior approval, management must provide two to three comparable bids
- Including in the request:
 - Most recent bank statement, trial balance, invoices (or bids)

Operating Reserves

- Used for operating deficits during times of economic hardship
 - Additional documentation may be required as proof of future financial viability
- Lump sum amount allotted during development
- Reimbursement required if balance is below minimum
- Included in the request:
 - Current accounts payable, accounts receivable, cash flow, vacancy, bank statement

Withdrawing monies from either reserve account without Agency approval may result in management/ownership not in good standing with the Agency and noncompliance for the project.

Training videos on reserve requests can be found on the Agency's YouTube channel; the link can be found in [Part 4 – References](#), of this manual.

Instructions for submitting reserve requests can be found on the Agency's website under [Rental Housing Partners > Rental Owners & Managers > Policies, Resources & Forms > Ownership/Management](#).

7.6c: Audited Financials

Audited financials are required to be submitted through RCRS annually for projects with Agency funding. For FYE 12/31, audited financials are due 5/1. For any other FYE, they are due 120 days after that date.

All properties are required to:

- Upload PDF version of the audited financial into RCRS
 - Should have comparative year schedules (including reserve accounts activity)
 - If consolidated, must contain property specific schedules
- Enter data from audited financial into RCRS
 - All available information must be entered
 - Include accrued not yet paid transactions
- Findings noted by auditor must be addressed with a letter/memo noting all actions taken to correct

Instructions for Data Entry of Audits can be found on the Agency's website under [Rental Housing Partners > Rental Owners & Managers > Policies, Resources & Forms > Ownership/Management](#).

7.7: Utility Allowances (UA)

All projects that participate in Agency-administered rental programs must update their utility allowance at least once annually through RCRS. Implementation can only occur after the Agency's review and approval. Costs are incurred solely by the owner. The Utility Allowances (UA) includes all utilities paid directly by the resident.

There are seven options for calculating a utility allowance:

- RD/RHS
 - Must be used if building or residents received assistance from RHS
- HUD
 - Must be used if building is HUD-regulated
- PHA Methodology
 - Cannot be used for HOME or NHTF
- Utility Company Estimate
- Agency Estimate (consumption average)
- HUD Utility Schedule Model
- Energy Consumption Model

Owners/management are allowed to utilize multiple methodologies when calculating UA (except for RD/HUD), and rotate year-to-year. The required processing fee (if applicable) should be paid prior to submitting UA for review and approval.

On the Agency's website under [Rental Housing Partners > Rental Owners & Managers > Policies, Resources & Forms > Ownership/Management](#), the following can be found:

- Utility Allowance Policy
- Sample Utility Allowance Effective Dates
- Approved Vendors for Utility Allowance Calculations
- Instruction Sheet for Utility Allowance Compliance

Failure to maintain an acceptable up-to-date UA may result in management/ownership not in good standing with the Agency and noncompliance for the project.

7.8: Rent/Income Limits

Once the property's credits have been allocated, the owner elects the minimum set-aside on IRS Form 8609. This irrevocable election determines the income requirements for the property, as well as the rent restrictions. An example is the 40%/60% set-aside, which means that at least 40% of the residential units are rented to households whose incomes do not exceed 60% of the Area Median Income (AMI), adjusted for household size as published by HUD. HUD publishes income and rent limits annually for affordable housing programs:

- HUD Section 8 limits
- MTSP (LIHTC elections)
- HERA Special (only applicable to properties PIS prior to Jan 1, 2009)
- HOME (limits are published separately after certification by CPD)

The income and rent limits are listed by county or metropolitan area. Property specific income and rent limits are published in RCRS by the Agency once they are released.

Properties not electing Average Income on IRS Form 8609, will use the state mandated deeper targeting income and rent limits. The Agency will utilize the highest of the income and rent limits (National Non-metro, MTSP and HERA Special) published by HUD to determine deeper set-asides. Therefore, there will only be one income and rent limit applicable to each set-aside in a given county. Due to this simplification, the Agency will provide the income and rent limits for the deeper targeted set-asides through RCRS.

Tax Credit properties that are layered with other affordable housing programs (Section 8, RD, HOME) must use the most restrictive income and rent limits to maintain compliance with all programs.

7.9: Student Eligibility

Student status is verified annually to determine continued eligibility. Eligibility requirements are specific to each affordable housing program type (LIHTC, HUD, RD). Below are the eligibility requirements for the LIHTC and the HOME programs.

LIHTC: Student is defined as an individual who has attended an educational organization full-time during each of five months within a calendar year. Month's need not be consecutive. Examples of educational organizations are:

- Public or private elementary, middle and high schools
- Colleges and universities
- Technical and trade schools
- Online or mechanical schools

Full-time status is defined by the institution the student attends. Educational organizations do not include on-the-job training courses.

Households fully comprised of full-time students are considered not low-income eligible unless they meet one of five exceptions noted below:

- Students are married and entitled to file a joint tax return
- At least one student is a single parent who is not a dependent, with children who are not dependents of someone other than a parent
- Student receiving assistance under Title IV of the Social Security Act (Temporary Assistance to Needy Families)
- At least one student enrolled in a job training program receiving assistance under the Workforce Innovation and Opportunity Act or under other similar federal, state or local law
- Student previously under the care and placement responsibility of state agency responsible for administering foster care

The Agency's Annual Student Certification is a required form to be completed for each household to certify student eligibility, including any supporting documentation needed.

HOME: Student is defined as an individual attending full-time or part-time an institution of higher education. To be eligible, at least one of the following statements must be true:

- Over the age of 23
- Veteran of the United States military
- Married
- Parent with a dependent child
- Person with disabilities receiving assistance prior to November 30, 2005
- Independent and individually eligible, or has parents who are income eligible
- Dependent living with a parent

For properties layered with both LIHTC and HOME funds, both student requirements must be met in order for the household to qualify as low-income eligible.

7.10: Annual Recertifications

Owners are required to annually certify the households continued housing credit eligibility. The recertification must be effective no less than 12 months from the prior effective date. Owners must obtain third-party documentation to support the household's income eligibility and verification of the household's student status during an annual recertification. Once the information has been obtained, the Tenant Income Certification (TIC) must be completed and signed by all adult household members.

The Agency specific requirements for annual recertifications are listed below:

Programs/Funding = FTC (excluding Average Income), STC, WHLP

- Property is 100% Tax Credit (year 1–15):
 - Full recertification at first anniversary of move-in
 - After first year, update annually: household composition, student status and current rent charged
- Property is 100% Tax Credit (year 16–30):
 - Full recertification at first anniversary of move-in
 - After first year, update annually: household composition and current rent charged
- Property is mixed use (LIHTC and Market) (year 1–15):
 - Full recertification annually, per Section 42
- Property is mixed use (LIHTC and Market) (year 16–30):

- Full recertification at first anniversary of move-in
- After first year, update annually: household composition and current rent charged

Programs/Funding = FTC (Average Income Only); RPP or any Agency loan

- Full recertification annually regardless of affordability levels or age

Units with Key Assistance = Regardless of Funding Type

- Full recertification annually regardless of affordability levels or age

Failure to complete and provide required documentation for recertification may result in noncompliance and risk remaining in good standing with the Agency.

7.11: Training

The Agency offers the following training opportunities in-person and virtually throughout the year. One supervisor from the management company must attend BOTH Compliance 101 and Advanced Compliance annually to maintain their "approved" status. Active developers are required to attend Agency training, specifically Compliance 101 and/or Advanced Compliance, at least once annually. Properties with targeted units must have staff affiliated with the property, including but not limited to the site manager, supervisor and compliance, attend DHHS Targeting and Key Assistance training annually. It is especially important to attend Agency training because of evolving state requirements.

More information and registration can be found on the Agency's website under [Rental Housing Partners > Rental Owners & Managers > Train With Us.](#)

7.11a: 101 Compliance Training

The Agency offers a Compliance 101 training which focuses on how to qualify and certify residents for Agency properties. The HUD 4350.3 manual is used as the basis for determining income eligibility. Typical areas covered during training are:

- Program specific procedures and requirements
- Industry and state updates
- Compliance monitoring requirements
- Income/asset inclusion and exclusions, including sample calculations
- Tips for successful file reviews and physical inspections
- Brief fair housing overview

Note: Compliance 101 is designed primarily for site staff and corporate staff.

7.11b: Advanced Compliance Training

Advanced Compliance training is a more in-depth look at tax credits as well as other Agency programs. Typical areas covered during training are:

- Advanced review of program requirements
- Agency reporting requirements
- RPP loan requirements
- Rents, fees and utility allowances

- Required management documents
- Consequences for noncompliance
- Brief overview of fair housing

Basic eligibility requirements, resident files and physical inspections will not be covered in this training, but are included in Compliance 101.

Note: Advanced Compliance is designed primarily for compliance staff, regional managers and owners.

7.11c: DHHS Targeting & Key Assistance Training

This training focuses on ensuring compliance with the DHHS Targeting Program. Typical areas covered during training are:

- Resident and program eligibility
- Reporting requirements
- Special claims/hold fees
- Vacancy and Referral System
- DHHS and Agency partnership

Note: DHHS Targeting and Key Assistance is designed for anyone directly involved with these programs, from site staff to owners/developers.

7.11d: Fair Housing

The Agency partners with Legal Aid of NC to offer fair housing trainings. The Agency recommends all partners attend professional fair housing trainings and seek legal advice regarding fair housing policies with an attorney. The basic and advanced fair housing trainings provided are for informational purposes and will not satisfy the QAP annual training requirements.

Trainings will provide an overview of federal and state fair housing laws, with a particular focus on the rights of people with disabilities and the legal responsibilities of property owners and managers in this area. Typical topics covered during training are:

- Definition of disability
- Types of disability discrimination
- Requests for reasonable accommodations/modification
- Procedure and timeline for filing a fair housing complaint
- Overview and timeline of eviction process

Note: Fair housing training is designed for anyone who wants a refresher, or new employees who need an introduction into fair housing.

7.11e: RCRS Training

The Agency offers an overview of the RCRS system. This training provides partners a basic presentation of the day-to-day operations in the system. Including, but not limited to: system access, building and unit entry and reporting.

Note: This training is designed for new employees, new management companies or a refresher for veteran staff.

7.11f: YouTube Channel Videos

The Agency continues to create instructional videos covering a wide range of topics. These videos are available for free, to all partners, on the Agency YouTube channel. The link can be found in [Part 4 – References](#), of this manual.

Chapter 8: Compliance Monitoring

8.1: Remaining on the Approved Management List

The Agency maintains a list of approved management companies to manage properties with funding allocations from the Agency. Careful consideration should be made when selecting a management company from the Approved Management List. Changes in management companies must be approved by the Agency. The following requirements must be met to remain on the Approved Management List or for new management companies to be added:

- Have at least one similar tax credit property in their portfolio
- Request Key Program assistance timely and accurately (if applicable)
- Report using the Agency's Rental Compliance Reporting System (RCRS) timely and accurately
- Have at least one staff person in a supervisory capacity with regard to the project attend Compliance 101 or Advanced Compliance
- Properties with targeted units must have staff affiliated with the property—including, but not limited to, the site manager, supervisor and compliance attend DHHS Targeting and Key Assistance training annually
- Have at least one staff person in a supervisory capacity with regard to the project, who has been certified as a tax credit professional. Such certification must be from an organization approved by the Agency
- Have a valid North Carolina real estate brokers license and be registered with the North Carolina Secretary of State (a copy of the firm license must be provided)
- Adhere to rent increase approval requirements (if applicable). Any management company found to have implemented a rent increase on an existing property without the required Agency approval may be disallowed from serving as management company on an application for a minimum of one year
- Additional stipulations may be required for new management companies seeking initial approval or being added to the Approved Management List after being removed

None of the persons or entities serving as management may have in their portfolio a project with uncorrected or material noncompliance beyond the cure period, unless there is a plan of action to address the issue(s).

The Approved Management List will be reviewed annually. If management is removed from the list, they must wait a minimum of one year from the date removed, or until all noncompliance is correct, whichever is greater. Management will be added back to the approved list once the waiting period has been satisfied.

8.2: Rental Compliance Reporting System (RCRS)

The Agency has developed the Rental Compliance Reporting System (RCRS) as a secure line of communication with management and owners.

RCRS has many uses and capabilities, the most common for management are the following:

- Reporting unit events (move-ins, move-outs, recertifications, transfers)
- Uploading management documents
- Responding to file reviews and physical inspections
- Submitting financial information (audited financials, rent increases, reserve requests)
- Requesting KEY payments
- Accessing the Vacancy & Referral System
- Receiving announcements/notifications from the Agency

The Agency utilizes the data collected to monitor for compliance and to test the accuracy of the Annual Owner Certifications (AOC) and resident data. All documents loaded into RCRS must be PDF's and less than 10 megabytes in size.

Administrators in RCRS

Every management company will have at least one “admin” user, who will have full control of all properties in that management company’s portfolio. Admin(s) have the following capabilities:

- Creating and maintaining user accounts for all staff at the management company; as well as their access level and properties
- Unlocking accounts and resetting passwords
- Receiving all notifications sent by the Agency as well as any users tagged for certain responsibilities

Reporting Unit Events

Management is required to complete the data entry for all unit events (move-in, move-out, transfer, update, annual recertifications) within 30-days of the unit event. Management is required to upload all supporting documentation for MOVE-INS within 30-days of the unit event. For new construction and acquisition rehab projects, management has up to 60-days from the PIS or acquisition date to enter the data and upload documents.

Uploading Management Documents

Management is required to upload certain documents into RCRS, some one-time and others routinely. Documents are uploaded on the property level and include the following:

- Affirmative Fair Housing Marketing Plan (AFHMP)
- Blank lease w/ required addenda
- Tenant Selection Plan (TSP)
- Management Plan
- Utility allowance
- External inspection (RD/REAC inspections)
- Completed & signed Form 8609

Gaining Access to RCRS

There are two instances where management will gain access to a property in RCRS: new allocation or taking over management.

- **New Allocation:** Once a project has been transitioned from development to asset management, the management company will gain access to the project in RCRS. Management will need to set up the buildings and units in order to begin entering unit events. Once at least one unit of each bedroom size is created, the income limits will be generated. Management needs to verify those income limits are correct by comparing to Novogradic's Rent and Income Calculator.
 - If the project selected Average Income for the minimum set-aside, all set-aside limits should match the calculator results.
 - If the project selected 40/60 or 20/50, then the 60% (or 50% respectively) should match the calculator results, but any deeper state mandated set-asides may vary.

It is acceptable in such cases to use the limits in RCRS. If the federal set-asides do not match the calculator results, management should contact the Agency to ensure RCRS is correct.

Note: The most common reason for a discrepancy is that the projects are not marked as Rural when they have been transitioned. Projects awarded Tax-Exempt Bonds are not eligible to be considered Rural, even if located in a rural area.

- **New Management:** Once the Agency has been notified of a management change, and all required documentation is submitted, the Agency will grant access to the property for the new management company. Access will be deactivated for previous management once new management is activated. New management will need to set up any necessary users and assign the property accordingly.

Training videos on RCRS can be found on the Agency's YouTube channel; the link can be found in [Part 4 – References](#), of this manual.

8.3: Targeting Program

The Agency and NC Department of Health and Human Services (DHHS) partner with local communities receiving LIHTC funding to house people with disabilities. If a project is allocated credits, they must set-aside 10% of their units for DHHS referrals. Effective 2016, this includes Bond properties as well. Individuals must be referred by a service provider who has made a commitment to participate. Owners must complete the Targeting Unit Agreement (TUA) and the Owner Agreement to Participate (OAP).

The Targeting Program requires a disability source of income, DHHS referral for all initial move-ins and annual recertifications for continued eligibility and compliance.

Security deposits and risk mitigation assistance is available through DHHS for households participating in the Targeting Program.

8.3a: Vacancy and Referral System (V&R)

DHHS, in conjunction with the Agency, has developed the Vacancy and Referral System (V&R) as a secure line of communication for the Targeting Program. V&R is accessible through RCRS, but does not work simultaneously with data in RCRS. As part of the owner's commitment to the Targeting Program, V&R uses are as follows:

- All vacancies must be entered, even if required number of targeted units has been met
 - Can be added once notice is received/given
 - Detailed unit information and accessibility must be provided
- Communication regarding referrals are uploaded in V&R
 - Referral letter from DHHS
 - Denial letter from the property and supporting documentation (if applicable)
 - Comments box to inform DHHS of critical household information
- Units are released in V&R if no referrals are available from DHHS per program guidelines

8.3b: Key Rental Assistance

State-funded project-based rental assistance to subsidize rent for residents referred by DHHS through the Targeting Program. Any Key Assistance being received by a project is noted in the TUA. Key payment standard is set by the Agency and DHHS, with periodic increases. All payment requisitions must be made electronically through RCRS.

More information regarding the DHHS Targeting Program can be found on the Agency's website under [Rental Housing Partners > Rental Owners & Managers > Policies, Resources & Forms > Ownership/Management](#).

8.3c: Integrated Supportive Housing Program (ISHP)

The Integrated Supportive Housing Program (ISHP) is a collaboration between the Agency and DHHS. Interest-free loans of up to \$1,500,000 are available for rental developments in which no more than 20% of the apartments are integrated and reserved for people with disabilities.

Developments can include, but are not limited to, the following:

- New construction
- Acquisition and rehabilitation
- Rehabilitation only
- Refinancing

The portion of the apartments financed by the Agency must house individuals and families who earn below 50% of area median income. Rent and utilities cannot exceed 30% of the targeted income.

8.4: Average Income

Only new construction projects and rehabilitation projects not subject to an existing Declaration of Land Use Restrictive Covenants for LIHTC are eligible to utilize Average Income. Applicants electing to use Average Income must comply with the following:

- The average income for the property cannot exceed 60% of area median income
- The average income for any bedroom type cannot exceed 60% of area median income
- Market rate units are prohibited
- The election of Average Income at full application submission is irrevocable
- For projects with more than one building, owners must select that each building is part of a multiple building set-aside on line 8b in Part II of IRS Form 8609
- Annual recertifications are required for all households

- No project can have more than four income bands consisting of 20%, 30%, 40%, 50%, 60%, 70% or 80% area median income
- Designations must float

8.5: File Review and Physical Inspections

File reviews and physical inspections are conducted to confirm that the properties are meeting the program and state specific requirements through RCRS. The assigned compliance monitor will enter the rough dates of the scheduled reviews/inspections into RCRS. These dates can be viewed on the home page of RCRS and are subject to change throughout the year. All email correspondence in regards to reviews and inspections will be directed to the equivalent tagged user(s) in RCRS.

8.5a: File Review

The Agency releases the Notification Letter, Results Letter and Final Report in RCRS. Management will upload all responses into RCRS within the allotted response timeframe.

- Release of Notification Letter:
 - Provides owner and management 14 days to review and confirm that the requested files and supporting documentation are ready for the Agency to review
 - It is important that management reviews the letter to ensure that they are adhering to all instructions
- Release of Compliance Results Letter:
 - After compliance monitor reviews documentation, results letter is released (typically within 30 days after review)
 - Notifies owner and management of findings observed, and corrective action required if applicable
 - Management will upload all responses (in PDF format) into RCRS within the allotted response timeframe (only noncompliance items require responses)
- Release of Final Report:
 - After compliance monitor reviews response, Final report is released (typically within 30 days after review)
 - Notifies owner and management of corrective dates for noncompliance cited
 - If items are left uncorrected, a compliance resolution packet will need to be submitted through RCRS to clear/correct items ([see Section 8.6c](#))

8.5b: Physical Inspections

Physical inspections are conducted to ensure that the property and units are in compliance with the Uniform Physical Conditions Standards (UPCS), or standards adopted by the IRS and state-specific requirements. The Agency releases the Notification Letter, Results Letter and Final Report in RCRS. Management will upload all responses into RCRS within the allotted response timeframe.

- Release of Notification Letter:
 - Provides owner and management with 14-day notification of scheduled inspection date and time. (Note: Agency staff has confirmed date via email prior to notification letter)
 - Ensure all required documentation is ready for review at the start of inspection
 - Review “Tips for a Successful Property Inspection” and share with all site staff
 - Review and share state-specific requirements on the “NCHFA Compliance Guidance: Handling of Grey Areas in UPCS”

- Inspection Day:
 - Compliance monitor conducts in-office interview and review of required documents
 - Onsite inspection consisting of dwelling units, building systems, common areas, building exterior and site with owner/management representative
 - Compliance monitor conducts close out summary reviewing findings
- Release of Compliance Results Letter:
 - Notifies owner and management of findings observed, and corrective action required if applicable (typically within 30 days after inspection)
 - Management will upload all responses (in PDF format) into RCRS within the allotted response timeframe (only noncompliance items require responses)
- Release of Final Report:
 - After compliance monitor reviews response from management, Final Report is released (typically within 30 days after review)
 - Notifies owner and management of corrective dates for noncompliance cited
 - If items are left uncorrected, a compliance resolution packet will need to be submitted through RCRS to clear/correct items ([see Section 8.6c](#))

8.6: Noncompliance

The three types of noncompliance issued by the Agency are: Program, IRS and State noncompliance. Regardless of the type of noncompliance, corrective active documentation must be uploaded in RCRS as outlined below.

8.6a: Program/IRS/State

Program Noncompliance

Violations of various specific program requirements separate from the LIHTC program. Examples are:

- Violations of rent requirements
- Failure to obtain reserve withdrawal approvals
- Failure to recertify annually for properties with RPP funding
- Failure to obtain program required income/asset verifications
- Violations of the Targeting Program and Key Assistance

IRS Noncompliance

The 8823 Guide, published by the IRS, addresses noncompliance for the LIHTC program. The noncompliance is reported using IRS Form 8823. Examples of reportable noncompliance are:

- Household over income at move-in
- Violation of the Next-Available Unit Rule
- Violation of the Student Rule
- Lack of proper utility allowance documentation
- Physical inspection violation

It is important that IRS noncompliance be corrected within the allowable time frames so that the noncompliance is reported as corrected on Line 9 of the IRS Form 8823 to avoid recapture.

State Noncompliance

State noncompliance are violations of Agency-specific requirements not found in the 8823 Guide, program regulations or UPCS. Examples are:

- Failure to maintain the required number of units at the required lower set-asides
- Failure to use Agency-required forms
- Failure to recertify annually for properties with Agency funding
- Failure to adhere to financial requirements for properties with Agency funding
- Physical inspection noncompliance not found in the UPCS
- Noncompliance identified for properties in the extended use period

Note: It is important that regardless of the type of noncompliance cited by the Agency, that it is corrected within the time frame so the owner and management company remain in good standing with the Agency.

8.6b: Observations and Concerns/Comments

Observations

Observations are suggestions of improvement that should be considered, sharing of best practices and/or an overall impression of the property. Examples of observations are:

- Status of the curb appeal observed during a physical inspection
- Observations of management staff's assistance/cooperation/professionalism during the process
- Best practice sharing after a review of documents and/or policies
- Observations from file reviews, such as the quality and preparation of the file review

Concerns/Comments

File review and physical inspection findings that do not rise to the level of noncompliance, but still need to be addressed, are listed as concerns/comments. The Agency does not provide an opportunity to upload corrective action documentation in RCRS for concerns/comments. Examples of concerns/comments are:

- Minor asset/income calculations that do not affect the household's eligibility
- Concerns cited during a physical inspection

Items cited as concerns/comments should be addressed in a timely manner to avoid the issue rising to noncompliance. Also, continued pattern of not addressing concerns/comments may lead to future noncompliance.

8.6c: Responses

Timely responses to monitoring reviews are critical to ensure that noncompliance is corrected and the owner/management company remains in good standing with the Agency. Equally as important is ensuring that the correct documentation is uploaded in RCRS. Below is the response process:

Compliance Results Letter Response

- The owner/management company should carefully review the letter and submit what is requested in Exhibit A under corrective action within 30 days

- The owner/management company should upload the requested information in RCRS (all at one time in one PDF). Ensure to upload the correct documentation to resolve the finding(s). Do not upload a copy of the letter or Exhibit A. Upload the appropriate:
 - Photos – clearly showing work completed
 - Work orders – closed, signed and dated
 - Invoices for contract work completed
- Ensure corresponding common area, building location or apartment numbers and date completed are listed on documentation
- Compliance monitor will review provided documentation and mark findings as (to generate Final Report):
 - Corrected – listing the date of correction based on response provided
 - No Finding – clearing the original finding, indicating unit was always in compliance
 - Uncorrected Action Plan Accepted – response received pending additional action or documentation
- Call the compliance monitor that completed the review with any questions

Final Report Response Letter

- If the property is still in the IRS compliance period, an additional 14-day period will be provided for the owner/management company to respond to any open noncompliance listed in the Final Report
- If owner/management company is satisfied with the Final Report, no further action is required
- Compliance monitor will review response and make any adjustments in RCRS, however an updated letter will not be provided

If applicable, at the end of the corrective action period, all findings of IRS noncompliance are reported to the IRS on Form 8823. Copies of the 8823 are sent to the owner and made available in RCRS to the management company with the final status of the violation on Line 9. It is the responsibility of the owner to maintain compliance and cure outstanding noncompliance

Compliance Resolution

Uncorrected noncompliance (IRS/State/Program) remaining from the closed monitoring review must be corrected in order for the owner/management company to remain in good standing with the Agency. It is important to note that the Agency does not send out reminder notifications of uncorrected noncompliance. They will not appear as outstanding action items (red notification circle) in RCRS. The process to resolve is below:

- The owner/management company creates and uploads the compliance resolution packet in RCRS
 - If resolution packet does not resolve all open items for an inspection/review, management must select the specific items being addressed
 - Additional packets cannot be submitted for the same year and/or same review until all are closed
- Compliance monitor will review provided documentation and mark findings as:
 - Corrected – listing the date of correction based on response provided
 - No Finding – clearing the original finding, indicating unit was always in compliance

- Uncorrected Action Plan Accepted – response received pending additional action or documentation
- Uncorrected Action Plan/Documentation Required – No response received or response provided was not sufficient to address the finding
- The Owner Response Follow-up letter will be uploaded in RCRS for review by the owner/management company
- If applicable, all findings of IRS noncompliance corrected are reported on an updated IRS Form 8823. Copies of the 8823 are sent to the owner and made available in RCRS to the management company with the final status of the violation on Line 9.

8.6d: IRS Form 8823

The Agency uses Form 8823 to communicate various topics with the IRS during the first 15 years of the compliance period.

What prompts an 8823 being generated?

Form 8823 has 18 different reportable items, where the Agency reports out of compliance date as well as the corrected date (lines 8 and 9). The most common examples are:

- **File review & physical inspection noncompliance:** Line item 11a–11o (with the exception of 11k) all pertain to violations found during file reviews and/or physical inspections. When completing the form, the Agency will note whether the noncompliance violation is corrected or uncorrected. It is recommended for all violations to be noted as corrected upon initial submission of the form.
- **Property and/or building no longer participating in program:** Line item 11p communicates to the IRS when a property and/or building is no longer participating in the LIHTC program. Ending participation early can result in recapture.
- **Administrative changes:** Line items 13–15 address ownership changes, address changes and building disposition.

Form 8823 must be filed no later than 45 days after (a) the building was disposed of, or (b) the end of the time allowed the building owner to correct the condition(s) that caused noncompliance.

How 8823 is sent to the IRS?

A separate Form 8823 per BIN is generated and sent to the IRS. The Agency communicates with owner/management in the following manner:

- Copy of the notification letter is included as an attachment
- Copy is uploaded to the management company
- Paper copy is mailed to the owner

Once Form 8823 has been submitted, the IRS communicates directly with ownership regarding resolution and/or recapture (if applicable).

Chapter 9: Casualty Loss

Timely notification (i.e. incident report) is required when damages occur to, or in, an Agency-funded project. All damages must be reported whether insurance claim is eligible or not. Damages include, but are not limited to: weather related, accidental or intentional damage, system failure, etc.

9.1: Out of Service/Documentation

It is imperative the Agency collects certain information to document the event, verify how residents were affected, verify contractor performance and process any insurance checks for the ownership entity or management company. The following documentation is required to be included with the incident report:

- Description of event, including the time and date
- Building(s) and unit number(s) effected
- Individuals involved, including name and contact information
- Any third-party reports (i.e. police, fire, insurance)

9.2: Inspections

The Agency may schedule an inspection of the affected areas of the project to determine if the mitigation/renovation efforts are complete and satisfactory. If the Agency is unable to inspect the damages, pictures of the building or unit after remediation may be requested.

Prior to, or during, the inspection process, the following will be reviewed:

- Insurance scope of work (if applicable) that details work performed
- All invoices and contracts from vendors who performed work
 - Including emergency mitigation, water extraction or services needed to protect the unit, building or other residents from further harm or damage
- Notification when renovation has begun and when completed
- Notification when the resident(s) have returned to the unit(s), if permanently relocated, or have found other housing opportunities

9.3: Releasing of Insurance Funds

Insurance checks must be sent to the Agency for endorsement, addressed to:

**North Carolina Housing Finance Agency, Servicing
3508 Bush Street
Raleigh NC 27609**

The Agency will not endorse the check(s) unless all of the above information has been received. For large claims, the Agency deposits the funds into a loss draft (escrow) account and allows draws to be made periodically, upon inspection.

Chapter 10: Extended Use Period

The Extended Use Period is the 15-year time frame which begins after the initial 15-year federal compliance period, in which all the regulatory provisions must continue to be met. The end date of the Extended Use Period will be specified by the Agency in the Regulatory Agreement/Restrictive Covenant.

- All properties entering into the extended use period must continue to comply with the Uniform Physical Conditions Standards (UPCS), or standards adopted by the IRS and state-specific requirements.
- Changes in ownership occurring in the extended use period are closely monitored to ensure the project remains in compliance for the full term of the regulatory agreement
- Noncompliance found during the extended use period is not reported to the IRS, however it may negatively affect owner(s)/management(s) relationship with the Agency

Rent Restriction

If the LURA (extended use agreement) is terminated prior to the expiration, the rents must remain affordable to in-place residents for three additional years.

Evictions

Provides protection against eviction or the termination of tenancy (other than for good cause) from any low-income unit.

Student Status

Once a project has completed their initial 15-year federal compliance period, full-time students are eligible. However, the Agency strongly suggests continued monitoring in the case of resyndication.

Recertifications

Property is 100% Tax Credit (years 16–30):

- Full recertification at first anniversary of move-in
- After first year, update annually: household composition and current rent charged

Next Available Unit Rule

No longer applies when a property is in the Extended Use Period.

Unit Transfers

Will no longer be restricted based on the Form 8609 election.

Chapter 11: Resyndication/Foreclosure/Sale

11.1: Resyndication

When an existing LIHTC property receives a new allocation of credits, this is resyndication. The new allocation is layered over the existing allocation. The property is subject to both sets of requirements until the compliance period for the original allocation expires. If the property is located in an area where income limits have decreased in the past, the property will be required to reduce the income and rent limits on the new allocation, causing a reduction in rents and a change to screening criteria.

The new allocation will be created by Development in conjunction with Asset Management due to the existing allocation.

11.2: Foreclosure

In the event of a foreclosure (or transaction in lieu of foreclosure), the extended use period is terminated and the building is no longer a qualified low-income building. If a property is purchased prior to the completion of the foreclosure process, the new owner must abide by the Land Use Restrictive Agreement (LURA). **Once the foreclosure has been finalized, the rent must be restricted for three years for in-place tenants.**

11.3: Sale of Property

Any intent to sell a current LIHTC project will require, and must obtain, prior written approval from the Agency. The Agency will require documentation from the new owner and management company, which could include:

- Legal documents for new ownership
- Purchase agreement
- Recorded contract for deed
- Management company approval

Payment of required fees and requested documentation must be submitted prior to obtaining Agency approval.

PART 4 – RESOURCES

NCHFA Website

Fair Housing for Tenants with Disabilities

https://www.nchfa.com/sites/default/files/page_attachments/RAGuide.pdf

Qualified Allocation Plan

<https://www.nchfa.com/rental-housing-partners/rental-developers/qualified-allocation-plan>

Training

<https://www.nchfa.com/rental-housing-partners/rental-owners-managers/train-us>

Forms & Resources (new pages)

YouTube Training Playlist

<https://www.youtube.com/playlist?list=PLk5MC3cDIqXUWC7HVEZiZ3ItKlofI2R6O>

HUD Website

HOME Laws and Regulations

<https://www.hudexchange.info/programs/home/home-laws-and-regulations/>

HUD 4350.3: Chapter 5, Exhibit 5-1, 5-2, Appendix 3

https://www.hud.gov/program_offices/administration/hudclips/handbooks/hsgh/4350.3

IRS Website

Guide to completing Form 8823

<https://www.irs.gov/pub/irs-utl/LIHTC-form8823guide.pdf>

Form 8609

<https://www.irs.gov/forms-pubs/about-form-8609>

Form 8823

<https://www.irs.gov/forms-pubs/about-form-8823>

Section 42

[https://uscode.house.gov/view.xhtml?req=\(title:26%20section:42%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:26%20section:42%20edition:prelim))

Novogradic Rent and Income Calculator

<https://www.novoco.com/resource-centers/affordable-housing-tax-credits/rent-income-limit-calculator>