Introduction

• State Agencies are responsible for monitoring low-income housing credit (LIHTC) properties for compliance with requirements of Internal Revenue Code (IRC) Section 42

• A state agency performs desk audits, conducts site visits and provides the owner with a report of its findings
• NIFA conducts the site inspections on new projects and contracts with a third party to perform follow up site inspections

• At least 20% of a LIHTC project’s units and files are inspected onsite every 3 years

• Desk Audits are performed on 20% of the files annually on all projects

• If a project has moderate units 10% of those files and units will be inspected
Retention of Tax Credits

To retain the credits, a development must:

1. Rent to income qualified households
   • Prove the above through supporting documentation

2. Keep rents affordable

3. Maintain the property in good repair
   • Good site managers are vitally important
     – They must maintain and document on-going compliance
     – Failure to maintain compliance can result in loss of tax credits for the owner or a not in good standing designation for the owner and property manager
Compliance Monitoring

• NIFA annually reviews Tenant Income Certifications (TIC) with supporting documentation, and other information related to a development’s compliance under the LIHTC Program

• The review will either be performed as desk reviews at NIFA or as on-site inspections

• On or before the January due date, compliance reporting documents for the previous compliance year for each development must be submitted to NIFA, along with the applicable compliance monitoring fee
What documentation can you expect NIFA to ask for?

- The items requested by NIFA may include, but are not limited to the following:
  - Owner’s Certificate of Continuing Program Compliance
  - Annual Tax Credit Summary Report as of 12/31/XXXX (For new projects only)
  - Non-Profit documentation
  - Certificate of Continuing Program Compliance (BONDS)
  - Utility Allowance documentation
  - Supportive Service documentation
  - Affirmative Fair Housing Marketing Plan (AFHMP)
  - Violence Against Women’s Act (VAWA) documentation
  - Tenant Rental Application
  - Tenant Income Certifications (TIC) and supporting verifications
  - Lease Agreement documentation
  - Rental Assistance (if any) documentation
  - Student Status documentation
Documentation most frequently questioned

- Non-Profit Set Aside
- Supportive Services
- Affirmative Fair Housing Marketing Plan (AFHMP)
- Violence Against Women Act (VAWA)
Non-Profit Set Aside

- NIFA will reserve at least ten percent (10%) of its annual 9% LIHTC allocation to qualified non-profit sponsors as required by Code Section 42(h)(5)
What is expected if your project was allocated its credits under the Non-Profit Set Aside?

- “*Nonprofit organization must have an ownership interest in the low income project throughout the 15 year compliance period.”

- “*Nonprofit organization must materially participate in the development and operation of the project.”

- Annually NIFA will ask for the following documentation:
  - A description of the non-profit’s participation in the daily operations of the development.
  - A description of the non-profit’s ownership in the development entity (including the non-profit’s ownership percentage in the development).
  - A statement of whether the non-profit’s ownership rights with respect to the development remain the same throughout the compliance year.

* Audit Technique Guide
What does it mean to “Materially Participate”?

• “The nonprofit must participate on a regular, continuous, and substantial basis.
  
  – Legislative history suggests the following guidelines in defining material participation in a business activity:

  1. Material participation is most likely to be established in an activity that constitutes the principal business/activity of the taxpayer,
  2. Involvement in the actual operations of the activity should occur. That is, the services provided must be integral to the operations of the activity. Simply consenting to someone else’s decisions or periodic consultation with respect to general management decisions is not sufficient.
  3. Participation must be maintained throughout the year. Periodic consultation is not sufficient.
  4. Regular on-site presence at operations is indicative of material participation.
  5. Providing services as an independent contractor is not sufficient.

Accordingly, a nonprofit entity will be considered to materially participate where it is regularly, continuously, and substantially involved in providing services integral to the development and operations of a project.”

*Audit Technique Guide. 1 Treas. Reg. §1.469-5T provides rules for determining the material participation for individuals. IRC §469(h)(4) and Treas. Reg. §1.469-5T(g)(3) provide rules for determining the material participation of certain corporations. Because neither of these provisions applies to nonprofit organizations, they should be reviewed for illustrative purposes only. The general facts and circumstances test of IRC §469(h)(1) is the test applicable to nonprofit organizations.
Supportive Services

- As part of the current LIHTC application, a maximum of 3 points can be awarded for Supportive Services.

- If a project received points for Supportive Services, NIFA will ask for the current agreements in place along with supporting documentation that demonstrates the services are being performed and utilized by the tenants on an annual basis.
SUPPORTIVE SERVICES:
A maximum of 3 points are available in this category.
Please check the following supportive services that apply to the proposed development.

*Attach a Supportive Service plan and commitment letters from the appropriate supportive service providers as Exhibit 213, dated within one year of the applicable final deadline.*

Please choose up to three supportive services:

- [ ] Transportation to services at no cost to the tenant (12 round trips).  
  (1 point)
- [ ] Monthly onsite medical, dental or vision testing at no cost to the tenant.  
  (1 point)
- [ ] Owner paid renter’s insurance for tenant (yearly).  
  (1 point)
- [ ] Onsite congregate meals served to the tenant at no cost (monthly).  
  (1 point)
- [ ] Annual cleaning of the unit at no cost to the tenant.  
  (1 point)
- [ ] Child Care subsidy (minimum of $50 off the enrollment fee) for each child (yearly).  
  (1 point)
- [ ] Onsite Rent Wise Education at no cost to tenant (yearly).  
  (1 point)
  *Attach a copy of the certificate of the person authorized to provide the Rent Wise Education as Exhibit 213 that is dated within 3 years.*
- [ ] Onsite monthly beautician services at no cost to the tenant.  
  (1 point)
- [ ] Monthly onsite, organized tenant activities offered at no cost to the tenant, such as exercise classes, movie nights, potlucks or financial assistance classes.  
  (1 point)
- [ ] Other services offered annually at no cost to tenant, subject to NIFA’s approval.  
  Please list _____  
  (1 point)

Note: The “other” category for supportive service cannot be listed under any other exhibit and receive dual points in two categories. The supportive services must be available to all tenants residing in the development and not targeted to a certain group. Scattered site developments may provide services at a central location if transportation is provided at no cost to the tenant. Developments that have entered into the CRANE process must include at least three supportive services in their application.
Affirmative Fair Housing Marketing Plan (AFHMP)

- NIFA requires the AFHMP to be submitted on an annual basis

- AFHMP is effective for 5 years; however, needs to be updated sooner if there are changes to any of the information
Violence Against Women Act (VAWA)

• Owner must submit certification annually that the project is in compliance with VAWA

• Effective January 1, 2017, each household is required to complete the VAWA Lease Addendum
Desk Audit

• NIFA sends a letter to owner requesting 20% of files
• Owner has 30 days to submit files
• NIFA reviews files
• Exhibit A is mailed to the owner with the findings, if applicable
• Owner has 60 days to respond to the findings
• 8823 will be issued to the IRS or a not in good standing letter will be issued on uncorrected items
File Order

• When submitting files the preferred file order is as follows:
  – Tenant Income Certification (TIC)
  – Rental Application
  – Income and Asset Verifications
  – Student Status Verification
  – Lease
  – Rental Assistance Documentation
Common File findings

- Employment Verification does not have all the questions answered
- Hourly wages and year to date wages are not both calculated and compared
THIS SECTION TO BE COMPLETED BY EMPLOYER

*PLEASE COMPLETE EVERY LINE – IF IT DOES NOT APPLY PLEASE WRITE N/A OR NONE*

Employee Name: ___________________________ Job Title: ___________________________

Presently Employed: Yes _____ Date First Employed _______________ No _____ Last Day of Employment ______________________

Current Wages/Salary: $_____________ per (circle only one) hourly weekly bi-weekly semi-monthly monthly yearly other__________

Frequency of Pay: (circle only one) daily weekly bi-weekly semi-monthly monthly yearly other__________

Ave # of regular hours per wk: ______ Year-to-date gross earnings: $_____________ From ______/_____/____ through ______/_____/____

Number of pay periods included in the YTD earnings above: ____________________

Overtime Rate: $_____________ per hour Average # of overtime hours per week: ____________

Shift Differential Rate: $_____________ per hour Average # of shift differential hours per week: ____________

Commissions, bonuses, tips, other: $_________(circle only one) hourly weekly bi-weekly semi-monthly monthly yearly other_______

List any anticipated change in the employee’s rate of pay within the next 12 months: ____________________; Effective date: ______________

If the employee’s work is seasonal or sporadic, please indicate the layoff period(s): ____________________

Does the employee participate in a 401K/Retirement account? □ Yes □ No Employee can access the account? □ Yes □ No

Additional remarks: ________________________________________________________________

_________________________ ___________________________ ___________________________
Employer’s Signature Employer’s Printed Name Date

_________________________ ___________________________ ___________________________
Employer [Company] Name and Address

_________________________ ___________________________ ___________________________
Phone # Fax # E-mail

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Common File findings

• Employment Verification does not have all the questions answered
• Hourly wages and year to date wages are not both calculated and compared
• Under $5,000 Asset Certification has wrong boxes checked or no boxes checked at all
## UNDER $5,000 ASSET CERTIFICATION

For households whose combined net assets do not exceed $5,000.
Complete only one form per household, include assets of children.

Household Name: ____________________________  User #: ____________________________

Development Name: __________________________  City: __________________________

Complete all that apply for 1 through 6: *Please complete every line. If it does not apply please write N/A.*

1. **My own assets include:**

<table>
<thead>
<tr>
<th>(A) Cash Value</th>
<th>(B) Int. Rate</th>
<th>(C) Annual Income</th>
<th>Source</th>
<th>(A) Cash Value</th>
<th>(B) Int. Rate</th>
<th>(C) Annual Income</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>$ ____________</td>
<td>$ ____________</td>
<td>$ ____________</td>
<td>Savings Account</td>
<td>$ ____________</td>
<td>$ ____________</td>
<td>$ ____________</td>
<td>Checking Account</td>
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<td>$ ____________</td>
<td>$ ____________</td>
<td>$ ____________</td>
<td>Cash on Hand</td>
<td>$ ____________</td>
<td>$ ____________</td>
<td>$ ____________</td>
<td>Safety Deposit Box</td>
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<td>$ ____________</td>
<td>$ ____________</td>
<td>$ ____________</td>
<td>Certificates of Deposit</td>
<td>$ ____________</td>
<td>$ ____________</td>
<td>$ ____________</td>
<td>Money market funds</td>
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<tr>
<td>$ ____________</td>
<td>$ ____________</td>
<td>$ ____________</td>
<td>Stocks</td>
<td>$ ____________</td>
<td>$ ____________</td>
<td>$ ____________</td>
<td>Bonds</td>
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<td>$ ____________</td>
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<td>IRA Accounts</td>
<td>$ ____________</td>
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<td>$ ____________</td>
<td>401K Accounts</td>
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<td>$ ____________</td>
<td>$ ____________</td>
<td>$ ____________</td>
<td>Keough Accounts</td>
<td>$ ____________</td>
<td>$ ____________</td>
<td>$ ____________</td>
<td>Trust Funds</td>
</tr>
<tr>
<td>$ ____________</td>
<td>$ ____________</td>
<td>$ ____________</td>
<td>Equity in real estate</td>
<td>$ ____________</td>
<td>$ ____________</td>
<td>$ ____________</td>
<td>Land Contracts</td>
</tr>
<tr>
<td>$ ____________</td>
<td>$ ____________</td>
<td>$ ____________</td>
<td>Lump Sum Receipts</td>
<td>$ ____________</td>
<td>$ ____________</td>
<td>$ ____________</td>
<td>Capital investments</td>
</tr>
<tr>
<td>$ ____________</td>
<td>$ ____________</td>
<td>$ ____________</td>
<td>Life Insurance Policies (excluding Term): ____________</td>
<td></td>
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<td></td>
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</tr>
<tr>
<td>$ ____________</td>
<td>$ ____________</td>
<td>$ ____________</td>
<td>Other Retirement/Pension Funds not named above: ____________</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>$ ____________</td>
<td>$ ____________</td>
<td>$ ____________</td>
<td>Personal property held as an investment**: ____________</td>
<td></td>
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<td></td>
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</tr>
<tr>
<td>$ ____________</td>
<td>$ ____________</td>
<td>$ ____________</td>
<td>Prepaid Debit Cards (ReliaCard, Direct Express, etc.): ____________</td>
<td></td>
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<tr>
<td>$ ____________</td>
<td>$ ____________</td>
<td>$ ____________</td>
<td>Other (See below): ____________</td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

**PLEASE NOTE:** Certain funds (e.g. Retirement, Pension, Trusts) may or may not be (fully) accessible to you. Include only those accounts which are.

*Cash value is defined as market value minus the cost of converting the asset to cash, such as broker’s fees, settlement costs, outstanding loans, Brady withdrawal penalties, etc.

**Personal property held as an investment may include, but is not limited to, pens or coins, collections, art, antique cars, etc. Do not include necessary personal property such as, but not necessarily limited to, household furniture, daily-use assets, clothing assets of an active business, or special equipment for use by the household.

**MUST CHECK BOX 2 OR 3.**

2. **Within the past two (2) years, have sold or given away assets (including cash, real estate, etc.) for more than $1,000 below their fair market value (FMV).** (Include the difference between FMV and the amount received, for each asset on which this occurred). 

3. **Have sold or given away assets (including cash, real estate, etc.) for less than fair market value during the past two (2) years.**

4. **Do not have any assets at this time.**

The net family assets (as defined in 24 CFR §83.102) above do not exceed $5,000 and the annual income from the net family assets is ____________ . This amount is included in total gross annual income. Complete even if the amount is 0.

Under penalty of perjury, I hereby certify that the information presented in this certification is true and accurate to the best of my / our knowledge. I understand and further understand that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of a lease agreement.

Applicant/Tenant __________________________  Date __________________________

Applicant/Tenant __________________________  Date __________________________

(Updated 12/16)
Common File Findings continued…

• Court ordered child support is not included on the TIC
• Rental assistance documentation needs to be dated within 120 days of move-in or anniversary of move-in
• Periodic payments not verified by third party
• NIFA’s verification forms not used
Correcting Non-Compliance Items

• If information is missing all applicable parties need to sign with a current date and include the entire statement, “This information was true and correct as of move-in date”

• Please refer to Chapter 7 of NIFA’s manual for further Issues and Corrections
Site Inspections

- Conducted by NIFA or a third party
- Physical Inspection of all building exteriors and 20% of unit interiors including health & safety issues
- Units inspected will also have an audit of the files
- NIFA uses Uniform Physical Conditions Standards (UPCS)
Preparing for a Site Inspection

Prior to the inspection:

• Notify all residents of the inspection and ask them to contact management with any maintenance issues that they are aware of

• Walk the property

• Check all common areas

• Make sure files are ready and available on site or in a designated spot for review
**Inspection Day**

- Have keys available to enter any unit in the project
- Notify the inspector of any concerns
- 20% of the units will be chosen to inspect the files and the interior of the units
- The entire exterior and grounds will be inspected
- Common areas will be inspected
Uniform Physical Conditions Standards - UPCS

- *5 “Inspectable areas”*
  1. Site
  2. Building Exterior
  3. Building Systems
  4. Dwelling Units
  5. Common Areas

- “Health and Safety” applies to all areas

* UPCS Dictionary of Deficiency Definitions
1. *Site Inspectable Items

- Fencing and Gates
- Grounds
- Mailboxes/Project Signs
- Market Appeal
- Parking Lots/Driveways/Roads
- Play Areas and Equipment
- Refuse Disposal
- Retaining Walls
- Roads
- Storm Drainage
- Walkways/Steps

* UPCS Dictionary of Deficiency Definitions
Parking Lots - Cracks
Walkways - Spalling
Grounds - Erosion
2. *Building Exterior Inspectable Items

- Doors
- FHEO/Uniform Federal Accessibility Standards (UFAS)
- Fire Escapes
- Foundations
- Lighting
- Roofs
- Walls
- Windows

* UPCS Dictionary of Deficiency Definitions
Walls – Missing Pieces
Walkways/Steps – Cracks/Settlement/Heaving
Roofs – Missing/Damaged Shingles
Windows – Damaged/Missing Screens
3. *Building Systems Inspectable Items

- Domestic Water
- Electrical System
- Elevators
- Emergency Power
- Fire Protections
- HVAC
- Roof Exhaust System
- Sanitary System

* UPCS Dictionary of Deficiency Definitions
4. **Dwelling Units Inspectable Items**

- Bathroom
- Call-for-aid (if applicable)
- Ceiling
- Doors
- Electrical Systems
- Floors
- Hot Water Heater
- HVAC System
- Kitchen
- Laundry Area
- Lighting
- Outlets/Switches
- Patio/Porch/Balcony
- Smoke Detectors
- Stairs
- Walls
- Windows

* UPCS Dictionary of Deficiency Definitions
Graffiti
Range/Stove – Burners not functioning
Lighting – missing/inoperable
Floors
Walls - Holes
Kitchen – Refrigerator Seal
5. *Common Areas Inspectable Items

- Basement/Garage/Carport
- Closet/Utility/Mechanical
- Community Rooms
- Day Care
- Halls/Corridors/Stairs
- Kitchen
- Laundry Rooms
- Lobby
- Office
- Patio/Porch/Balcony
- Pools and Related Structures
- Restrooms/Pool Structures
- Storage
- Trash Collection Areas

* UPCS Dictionary of Deficiency Definitions
Health and Safety Inspectable Items

- Air Quality
- Electrical Hazards
- Elevators
- Emergency/Fire Exits
- Flammable Materials
- Garbage and Debris
- Hazards
- Infestation

* UPCS Dictionary of Deficiency Definitions
Items stored in Furnace Room
Housekeeping (Health and Safety)
Common Findings

- GFI “no test”
- Smoke detector not functioning or missing
- Blocked egress
- Cracked sidewalks, driveways or parking lots
What warrants a “72 hour notice”

- Any “life threatening” finding will warrant a 72 hour notice, such as:
  - Propane/natural/methane gas smelled
  - Exposed wires/open panels; water leaks on or near electrical equipment
  - Exits that are restricted/blocked
  - Smoke detector is missing or does not operate
  - Outlet switch or cover plate is missing
Blocked Egress
Smoke Detector
Maintenance Findings

- Maintenance Findings do not require a response; however, should be addressed to avoid the potential for a future UPCS finding.
  - Missing doorstops
  - Chipping paint
  - Frayed carpet
What happens after the inspection

When NIFA discovers potential non-compliance:

• NIFA will send a report of the findings to the owner
• NIFA allows up to 60 days to correct the findings
• Up to 6 month extension allowable on physical findings if the reason is valid (as determined by NIFA) and the request is submitted prior to the due date
• Non-Compliance items can be corrected as follows:
  • Work orders detailing the work completed
  • Invoices detailing the work completed
• NIFA will report any non-compliance issues to the IRS on form 8823
  • All UPCS violations must be reported to the IRS, even if corrected at the time of the inspection or within the 60 days
Questions

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