Documentation and Compliance

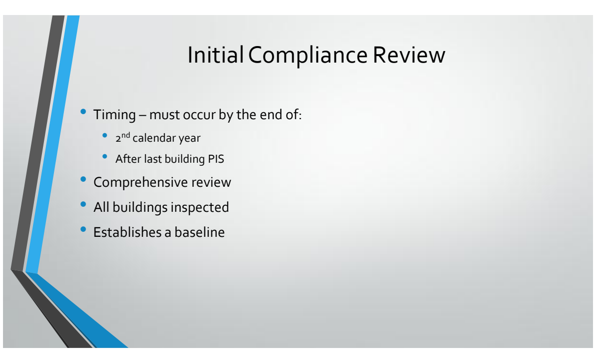
State Agency Monitoring

Authority and Responsibility

- Statutory Mandate
  - Monitor for noncompliance
  - Conduct on-site inspections
    - Review resident files
    - Inspect physical conditions
    - Report noncompliance to the IRS
- Extended Oversight
  - Credit Period (yrs 1-10)
  - Compliance Period (yrs 1-15)
  - Extended Use Period (yrs 1-30+)


State Specific Requirements
Stricter standards
More set asides
More frequent reviews
Enhanced documentation
Additional reporting
Special populations


Monitoring Procedures


Initial Compliance Review
Timing – must occur by the end of:
2nd calendar year
After last building PIS
Comprehensive review
All buildings inspected
Establishes a baseline

Scope of Initial Review

- Exam 20% of resident files
- Review policies and procedures
- Look at all buildings and common areas
- Document physical conditions

On-going Monitoring

- At minimum every 3 years
- File reviews
  - Compliance verification
  - Follow-up required
- Physical inspection
- More frequent monitoring may be required if:
  - Prior noncompliance
  - Management changes
  - Ownership transfers
  - Risk factors present
  - Agency receives complaints

The Review Process

Notification Procedures

- Advance Notice
  - Typically 15-30 days
  - Must be written (email acceptable)
  - Review scope
  - Inspection areas
  - Request documents

Pre-Review Requests

- Rent roll – must clearly identify affordable units
- Utility allowance documentation
- Policies/Procedures
- Compliance reports
- Waiting lists
- Any other reports they feel necessary – such as a vacancy or unit turnover report

File Selection

- Random Sampling – States must use:
  - Statistically valid method
  - Random selection
  - Sufficient sample size
  - Representative distribution
  - Documented process
- Minimum Requirements:
  - 20% of affordable units
  - Minimum number per buiilding

File Review Components

Certification Review

Key Elements

- Household composition accuracy
- Student Status
- Income calculations
- Asset documentation
- Signature completeness

Verification Review

- Proper verification methods
- Current documentation
- Third party sources
- Calculation support
- Complete information

Lease Examination

Required Elements

- LIHTC or Affordable Housing Addendum
- Proper term
- Rent amount
- Good cause language
- Required clauses

Consistency Checks

- Lease matches certification
- All adults included
- Rent within limits
- Proper effective dates
- Terms are compliant

Physical Inspections

Inspections

Standards

- UPCS, Local Standards NSPIRE
  - Know what your state uses
- Consistent application
- Clear Requirements
- Some states have a separate inspection department

Areas Inspected

- Site conditions
- Common areas
- Building exteriors
- Building systems
- Common areas
- Unit interiors

Unit Inspections

Selection Process

- Randon Selection
- Different buildings
- Representative sample
- Various unit types
- Occupied units

Inside Units

- Health and safety
- Habitability standards
- Maintenance conditions
- Required features
- Code compliance

Compliance Reporting

Owner Certifications

- Annual Requirements – owners must certify:
  - Prior year compliance
  - Building-by-building
  - Continued eligibility
  - No changes in units or applicable fraction
  - All requirements met

Supporting Documentation

- Rent rolls
  - Some State Agencies have online reporting systems, such as WCMS or NextGen
- Utility allowances
- Waiting lists
- Marketing materials
- All requirements met

HERA Data Collection

- Annual demographic reporting of:
  - Race and ethnicity
  - Income levels
  - Disability status
  - Rent amounts
  - Family composition
  - Assistance Typed
- Submission Methods:
  - State online systems
  - Standardized forms
  - Accurate data
  - Timely submission
  - Privacy detection

Non-Compliance Procedures

Discovery and Notice

- States must:
  - Document violations
  - Notify owner promptly
  - Specify issues
  - Set correction deadline
  - Provide guidance

Owner Response

- Generally given 90 days from notice date to correct
- Possible extension
  - One-time only
  - Six months maximum

Form 8823 Filing

States must file:

- 45 days after end correction period
- For all violations whether corrected or not
- Specific violation categories
- Building specific
- Clear documentation

Information Included:

- Property identification
- Violation types
- Discover date
- Correction status
- Supporting details

Common Findings

- Documentation Issues:
  - Incomplete files
  - Missing verifications
  - Calculation errors
  - Outdated forms
  - Poor organization

SELF-AUDIT YOUR FILES – ESPECIALLY IN THE YEAR OF YOUR NEXT MANAGEMENT REVIEW

- Physical deficiencies:
  - Deferred maintenance
  - Units not ready for occupancy
  - Safety hazards
  - Code violations
  - Accessibility issues
  - Housekeeping standards

Reporting Requirements

Monthly Reporting

Electronic Reporting – Required Data Elements:

- For each unit:
  - Current occupancy status
  - Household size
  - Income level
  - Current Rent
  - Utility Allowance
- Property data:
  - Total units
  - Vacant units
  - Compliance percentage
  - Physical occupancy

Annual Reporting

Annual Owner Certification (AOC)

- Owners must certify:
  - No change in applicable fraction
  - Property suitable for occupancy
  - Affordable units are comparable to other units
  - Rent restrictions observed
  - Tenant Eligibility maintained

AOC

- Additional certifications:
  - Fair Housing compliance
  - No findings of discrimination
  - Student rule compliance
  - Non-transient use
  - Utility allowance compliance

AOC

Timing and Submission

- Vary by State
- Calendar year-end
- Fiscal year-end
- Property specific dates
- With other reports
- Know your State requirements

AOC

Supporting Documentation (may need)

- Rent rolls
- Utility allowance documentation
- Audit reports
- Inspection results
- Corrective actions

HERA Demographic Reporting and Data Collection

Household Demographics

- Race and ethnicity
- Age of HH members
- Student status
- Disability status
- Family composition

HERA

Unit Information

- Bedroom size
- Monthly rent
- Utility allowance
- Set aside
- Assistance received

IRS Form 8609

Annual Filing – during 10-year credit period

- File one 8609 per building
- Attach form 8586 (used to claim credits)
- Calculate credits
- Report compliance
- Maintain records

Information Reported

- Building identification (BIN)
- Credit amount claimed
- First-year election
- Compliance Status
- Ownership information

State Specific Reports
Know your State Requirements

Utility Allowance Documentation

- Current allowances
- Implementation dates
- Calculation method
- Source documentation
- Update confirmation

Fair Housing Reports

- Not required by all States, but may include:
  - Marketing efforts
  - Outreach results
  - Application sources
  - Demographics
  - Effectiveness measures

Financial Reports

- Typical requirements:
  - Monthly/quarterly statements
  - Variance explanations
  - Cash flow analysis
  - Reserve balances
- Audit requirements:
  - Annual audited financials
  - Cost certifications
  - Tax returns
  - Insurance documentation
  - Reserve confirmations

Incident Reporting

- Report immediately:
  - Fair housing complaints
  - Major casualties
  - Off-line units
  - Significant violations
  - Legal actions
  - Material changes

Special Reporting Situations

Ownership Changes

- New ownership entity
- Transfer date
- Assumption agreements
- Contact changes
- Management updates

Casualty Loss

- Report damage immediately:
  - Damage assessment
  - Restoration plans
  - Timeline updates
  - Completion certification

Consequences for No or Late Submissions

- Noncompliance citations
- Penalties possible
- Reputation impact
- Increased scrutiny
- Correction burden

Form 8823 and Non-Compliance

Regulatory Requirement

- Purpose:
  - Notify IRS of non-compliance
  - Document corrections
  - Track compliance patterns
  - Trigger potential action
  - Create permanent record

Categories of Non-Compliance

11A - Household Income Above Limit

Out of Compliance

- HH exceeds limit at move-in
- No available exception
- Documentation insufficient
- Calculation errors
- Improper qualification

Back in Compliance

- Unit occupied by qualified HH
- Proper documentation
- Can be retroactive if documented
- New household not required
- Depends on documentation

11B - Rent Exceeds Limit

Common Causes

- Calculation errors
- Wrong income limits
- Utility allowance mistakes (most common)
- Improper fees
- System failures

Correction Requirements

- Cannot regain compliance by simply refunding overcharges
- Adjust for proper limit
- Update procedures
- Only IRS can determine if non-compliance was corrected

11C – Project Failed Minimum Set Aside

Critical Violation

- Below elected percentage
- Cannot be corrected in year 1
- May trigger recapture
- Affects entire project
- Severe consequences

Restoration

- Increase qualified units
- Meet minimum percentage
- Document achievement
- Maintain going forward
- Prevent recurrence

11D – Gross Rent Exceed Limit

- Similar to 11B
- Technical violation
- Unit out for entire year
  - Even if only for 1 month
- Cannot cure retroactively
- Back in compliance following year
- Document carefully

11E – Failure to Complete Recertifications

Documentation Issue

- Missing annual recerts
- Late completions
- Incomplete forms
- Missing signatures
- Verification gaps

Correction Method

- Complete missing items
- May backdate if supported
- Document HH status
- Update procedures
- Staff training

11F – Household Composition Changed & Unreported

- Additional occupants
- Departing members
- Student status changes
- Income source changes
- May affect eligibility

11G – Tenant Files Unavailable

Documentation Failure

- Cannot locate files
- Incomplete documentation
- Missing certifications
- No proof of eligibility
- Destroyed records

Recovery Options

- Reconstruct if possible
- Obtain new verifications
- Document current status
- May remain out of compliance
  - Depends on proof

11G – Failure to Report

- Missing annual certifications
- Late submissions
- Incomplete reports
- No response to requests
- Pattern of delays

11I – Units Used on Transient Basis

- Less than 6-month lease
- Hotel-type operations
- Corporate housing
- Vacation rentals
- Not permanent housing

11J – Available Unit Rule Violation

- Rented to over-income HH
- When HH goes over 140%
- Comparable or smaller
- Same building
- Documentation lacking

11K – Units Not Suitable for Occupancy

- Health/safety issues
- Code violations
- Inhabitability
- Major deficiencies
- Casualty damage

11L: Eligible Basis Reduced

- Structural changes:
  - Removed amenities
  - Charged for common area space
  - Reduced required service
  - Converted residential space to commercial space
  - Reduced access to common are spaces

11M – Failure to Comply with General Public Use

- Fair Housing Related:
  - Discriminatory practices
  - Illegal preferences
  - Steering
  - Disparate treatment
  - Selection violations

11N – Violation of Site Suitability Standards

- Contamination discovered
- Flood plain problems
- Airport clear zones
- Other hazards
- May not be correctable

Owner Response Strategies

Immediate Actions Upon Notice

- Review notice carefully
- Access accuracy – even States get things wrong
- Gather documentation
- Plan corrective action
- Communicate promptly with the State

Correction Planning

- Prioritize by severity
- Assign responsibilities to staff or consultants
- Set internal deadlines
- Track progress
- Document every step

Effective Responses

- Communication is key
- Acknowledge receipt of notice
- Request clarification, if needed
- Provide updates
- Submit documentation
- Meet deadlines

Documenting Corrections

- Submit:
  - New certifications
  - Updated procedures
  - Training records
  - Work orders or repair receipts
  - Policy revisions
- Method of Submissions:
  - Follow State preferences
  - Provide clear evidence
  - Include explanations
  - Reference the violation(s)
  - Confirm State received submission

Understanding “Back in Compliance”

Temporary vs Permanent

Temporary – can be corrected

- Documentation issues
- Procedural failures
- Most income/rent
- Physical repairs
- Policy violations

Permanent – cannot cure

- FY set aside failure
- Some basis reductions
- Past rent violations
- Historical issues
- Structural changes

IRS Processing

Review Process

- Log violation into compliance system
- Review for repeat patterns
- Assess severity
- Determine action
- Possible property audit – based on 8823s filed

Potential Outcomes

- No action
- Audit initiation
- Recapture assessment
- Requests for additional information
- Future heightened monitoring
- Recapture

Special Circumstances

Multiple Violations

- Address systematically
- Prioritize safety
- Show progress
- Communicate regularly
- Document thoroughly

Casualty Events & Natural Disasters

- Extended timelines
- Restoration periods
- Temporary relocations
- Insurance delays
- Presidential Declarations

Long-Term Impact

Future Implications

- May affect:
  - Future allocations
  - Investor confidence
  - Insurance costs
  - Management reputation
  - Monitoring Frequency

Record Retention & Best Practices

The Foundation of Compliance Defense

Retention Requirements

- First-Year Records – 21 year Requirement, but recommend to keep permanently:
  - Initial tenant certifications
  - First-year leases
  - Original applications
  - All verifications
  - Move-in documentation
- Rationale:
  - Establish qualified basis
  - Prove initial compliance
  - Cannot be reconstructed
  - Critical for audits

On-Going Records

- Six Year Standard:
  - Past due date
  - Past tax return date – including extensions
  - Past move-out date
  - Building-by-building
  - Rolling retention

Categories of Records

Tenant Files

- Certifications:
  - Tenant Income Certification
  - All verifications
  - Calculation worksheets
  - Student status forms
  - Asset documentation
- Leases:
  - Original leases
  - All amendments
  - Addendums
  - Notices
  - Correspondence

Property Records

- Regulatory Documents – Keep permanently:
  - Land Use Restriction Agreement
  - Form 8609s
  - Regulatory Agreements for other programs
  - QAP from allocation year
  - Extended Use Agreement
- Other Historical Records:
  - Income and Rent limits
  - Utility allowance documentation
  - Denied applications

Fair Housing and General Public Use

Federal Fair Housing Framework

The Fair Housing Act of 1968

- Initially protected against discrimination based on:
  - Race
  - Color
  - Religion
  - National origin
- Protections apply to:
  - Marketing
  - Tenant screening and selection
  - Lese terms and conditions
  - Use of property facilities
  - Services provided to residents

The 1988 Fair Housing Amendments Act

- Expanded coverage by adding two protected classes:
  - Disability (formerly handicalled)
  - Familial status
- Also introduced design and construction standards for multifamily housing build ager 03/13/1991, requiring:
  - Accessible building entrances
  - Accessible common areas
  - Usable doors and hallways
  - Accessible environmental controls
  - Reinforced bathroom walls
  - Usable kitchens and bathrooms
  - Accessible routes throughout

Protected Classes

Race and Color

You cannot:
- Use racial quotas
- Steer to certain buildings
- Code applications by race
- Delay processing based on race

Marketing:
- Advertise broadly
- Reach all communities
- Use diverse imagery

National Origin

Language Considerations:
- Cannot require English Only
- Must provide translation for vital document
- Should accommodate interpreters
- Consider community needs

Immigration Status:
- Not required for LIHTC
- May be required for other programs, so verification is ok
- Cannot discriminate based on accent, clothing, etc
- Must accept valid foreign documents
- Apply standards consistently

Religion

Accommodation Requirements:

Allow religious expressions
Accommodate Religious practices
No religious preferences
Equal treatment for all

Exceptions are limited to:

Properties operated by religious organizations
- If preference given to same religion

Still cannot discriminate on other bases

Sex

Includes Gender Identity:

- Transgender individuals
- Gender expression
- Non-binary individuals
- Equal treatment required

Sexual Harassment – Prohibited Conduct Includes:

- By staff or resident
- Quid pro quo harassment
- Hostile environment
- Prompt response required

Disability

Reasonable Accommodations – changes in rules, policies, or services:

- Assigned parking spaces
- Assistance animals
- Live-in aides
- Lease modifications
- Payment arrangements

Reasonable Modifications – structural changes to unit or building:

- Tenant pays in most cases
- Owner pays if Federal funding
- Must allow modifications
- Can require restoration

Verification Limits – can only verify:

- Disability exists – not what the disability is or the severity
- Accommodation/modification needed due to disability
- Recommend use HUD forms

Familial Status

Protects families with:

- Children under 18
- Pregnant women
- Adults seeling custody of child(ren)
- Legal guardians

No Child Restrictions – cannot:

- Limit children per unit (but you can have occupancy standards)
- Designate family buildings
- Restrict areas to adults
- Have adult-only hours

Exemptions for Older Persons

55 and Older Housing Requirements

- Must prove:
  - 80% of units have one person 55+
  - Publish and follow age policies
  - Verify age regularly
- Some flexibility – certain allowances permitted:
  - Allow younger spouses
  - Permit temporary younger residents
  - Have support staff under 55
  - Include grandchildren in some cases

62 and Older Housing Requirements

- Stricter requirements:
  - 100% of residents must be 62+
  - No exceptions, generally
  - Clear policies required
  - State/Federal program rules

LIHTC Accessibility – General Public Use

All LIHTC Properties MUST

- Be open to all eligible persons
- Follow consistent standards
- Operate without discrimination
- Operate transparently

Allowable Preferences

- Special Needs Targeting
  - Elderly persons
  - Disabled persons
  - Homeless persons
  - Veterans
  - Other special needs
- Requirements
  - Must be included in the QAP
  - Apply consistently to all applicants
  - Document properly
  - Avoid disparate impact

Tenant Selection

- Establish clear standards
  - Written policies
  - Measurable criteria
  - Consistent application
  - Regular reviews
  - Documentation requirements
- Minimum requirements may include:
  - Income verification
  - Credit history
  - Rental history
  - Criminal background

Reasonable Accommodations in Screening

- Examples:
  - Extended application time
  - Alternative documents
  - Co-signer acceptance
  - Payment history consideration
  - Disability-related exceptions

Three Agency Coordination

- To strengthen enforcement of FH laws, three Federal agencies coordinate through a Memorandum of Understanding (MOU):
  - HUD (Fair Housing Enforcement)
  - Treasury (LIHTC Oversight)
  - DOJ (Pattern/Practice cases)
- Coordination benefits:
  - Information sharing
  - Joint training
  - Consistent enforcement
  - Comprehensive compliance

Enforcement Consequences

Fair Housing Violations

- Compensatory damages
- Punitive damages
- Civil penalties
- Injunctive relief
- Attorney fees
- LIHTC Impact:
  - Form 8823 filing
  - Potential recapture
  - Future allocation impact
  - Reputation damage

Best Practices

Policy Development

- Address:
  - Marketing procedures
  - Application processing
  - Tenant selection
  - Reasonable accommodations and modifications
  - Grievance processes

Staff Training

- Regular topics:
  - Fair Housing basics
  - Unconscious bias
  - Cultural competency
  - Disability awareness
  - Documentation requirements

Record Keeping

- DOCUMENT EVERYTHING
  - Marketing efforts
  - Application decisions
  - Accommodation and modification requests
  - Demographic data
  - Policy compliance

How long must you keep first year files?

A. 6 years
B. 21 years
C. 10 years
D. Forever

True or False – the State Agency must submit an 8823 to the IRS for every finding

A. True
B. False

Which of the following is an example of incurable non-compliance in year 1?

A. Violation of the minimum set aside
B. HH over-income at move-in
C. Failure to submit required reports
D. Units not suitable for occupancy

What is your best defense against a Fair Housing complaint?

A. Documentation
B. Clear policies
C. Staff Training
D. All of the above