



Compliance Tips: Tenant Files, Inspections and COVID-19 – What You Need to Know

by Robin Thorne, VP of Training and Asset Management at RT Hawk Housing Alliance, and Scott Michael Dunn, CEO of Costello Compliance

A career in housing compliance is always full of challenges, and we always rise to these challenges. This year, the COVID-19 pandemic has presented everyone in the affordable housing industry with new and unique day-to-day operational challenges. This is especially true for those who are working with housing programs that contain multiple layers of financing with compliance requirements that are often seemingly in conflict with the accepted best practices that we are all used to during “normal” conditions. Ensuring that our tenant file documentation is correct and completed on time has become a more complicated process now that we must operate under what we now fondly refer to as “new normal” conditions. Virtual inspections have also become a regular feature of our day-to-day activities.

There are generally two types of tenant file documentation that everyone deals with in affordable housing programs: 1) initial move-in qualifying paperwork, and 2) recertifications (annual and Interims). Whether you are working with HUD, HOME, Low Income Housing Tax Credit (LIHTC), Rural Development, the National Housing Trust Fund (HTF) or other programs, the documentation needed for your tenant files is similar and the problems in obtaining correct paperwork have been exacerbated by the pandemic. This article will examine some of the more common tenant file issues that occur during the recertification process, and address possible solutions and available guidance. It will also cover physical inspection tips.

Resident File Issues

Initial qualifying move-in file documentation varies based on the type of financing programs utilized for your housing project. Limited guidance has been issued for exceptions or accommodations for file documentation as it is applied to initial move-in files. The best course of action when working on the initial qualifying paperwork needed to complete the initial move-in

file is to document each issue and request specific guidance from the appropriate regulatory authority.

Signatures on documents have become an issue due to COVID-19 safety guidelines. Many state housing agencies and federal program administrators have allowed copies of signed documents in place of original signatures in recognition of local and federal safety guidelines issued for the pandemic. When documents require a manager to witness resident signatures, but the parties are signing separately to follow COVID-19 guidelines, language should be added stating “Did not sign in the presence of applicant/resident due to COVID-19 risk.” A note should be placed with documents that contain electronic or photocopied signatures stating that the originals were not available due to COVID-19 restrictions.

Income verifications have become increasingly difficult to obtain from some federal, state and local resources. For example, many applicants have filed for unemployment, but have either not heard back from the unemployment provider or have been unable to log into their online accounts to print out their verification of benefits.

Suggestions:

- Obtain an individual’s payroll information, log on to the state unemployment benefits website and obtain a printout of the recipient’s estimated benefits;
- Obtain a statement from the individual providing the date on which he or she applied for benefits and noting that her or she has not received confirmation of benefits.

Small business employers who have temporarily shut down operations, and are out of contact or are unable to estimate when their employee might return to work and/or provide the employee’s expected earnings.

Suggestions:

- Utilize the employee’s most recent paycheck stubs prior to layoff,
- Estimate the amount of unemployment benefits the employee is eligible for (states often supply maximum benefit information on their unemployment websites), or
- Obtain a statement from the applicant that he or she is currently unemployed and is either eligible or not eligible for unemployment benefits. If eligible, the applicant should state the status of his or her unemployment benefits on the unemployed applicant’s affidavit that is required by many state housing agencies for LIHTC, HOME, and other programs.

Many tenants have limited access to computers and/or phones with internet capabilities, and are unfamiliar with many of the resources they can access online to satisfy certain document requirements. This includes bank statements, debit card balances, online payroll information, Social Security benefit letters, etc. Taking the time to walk them through some of these processes will not only help them with their housing needs, but it will also open up ways for them to apply for other assistance programs that require similar documentation. This is especially important when one considers the many local, state and federal programs that have come into existence as a direct result of COVID-19.

Late recertifications that were delayed as a result of COVID-19 should contain language that clearly identifies the cause of the delay, i.e. "Recertification was delayed due to COVID-19."

Physical Inspections

Virtual inspections are being used by many agencies and investors in the affordable housing project world. It is important to have practices in place that will ensure the best representation possible for your housing projects.

Suggested Best Practices:

- Install cameras that take clear digital pictures with automatic lighting adjustments
- Install cameras that will place time and date stamps on photos
- Label pictures with building/unit numbers
- Label interior pictures with unit number/room identifier (i.e., bedroom #1, bathroom #1, laundry area, etc.).
- If there are items that need to be repaired, provide a narrative that discusses how and when the repair will be addressed. If it is routine maintenance, note that the repair will be completed as soon as the unit can be entered in compliance with local and federal COVID-19 guidelines.
- Provide notes as to how emergency and health and safety issues are being handled in compliance with COVID-19 restrictions.

Special LIHTC Provisions

Please note that if your affordable housing project is financed with LIHTC funds only, the IRS issued Notice 2020-53 on July 1, 2020, which provides the following guidance related to annual recertifications:

VI. GRANT OF RELIEF PURSUANT TO § 1.42-13(a)

A. INCOME RECERTIFICATIONS An Owner of a low-income building is not required to perform income recertifications under § 1.42-5(c)(1)(iii) in the period beginning on April 1, 2020, and ending on December 31, 2020. The Owner must resume the income recertifications as due under § 1.42-5(c)(1)(iii) after December 31, 2020.

B. COMPLIANCE-MONITORING For purposes of § 1.42-5, an Agency is not required to conduct compliance monitoring inspections or reviews in the period beginning on April 1, 2020, and ending on December 31, 2020. The Agency must resume compliance-monitoring inspections or reviews as due under § 1.42-5 after December 31, 2020.

It is important to remember that the above waivers for “income” recertifications do not specifically provide a waiver for the LIHTC annual student certification requirement. State LIHTC agencies may also have more extensive requirements that may require some level of recertification or inspection. While owner/agents will do their best to comply with state obligations, noncompliance with these state requirements should not result in federal noncompliance or risk tax credits. Also, for projects that are 100% LIHTC, income recertification is never federally required, so your state will have to inform you if and how they have amended their policies regarding income recertification at 100% projects. Again, noncompliance with state income recertification requirements does not risk tax credits. Other programs have implemented modifications to accommodate the restrictions created by the pandemic. Property managers and compliance team members must know the COVID-19 procedures that have been instituted for each project financing source. Remember, in most cases, the strictest program rule will cover the compliance requirements for all of the applicable project finance programs. Find answers in the list of resources at the end of the article.

Most important, document all items that are modified as a result of COVID-19 and keep copies of the guidance documents that were utilized to support your COVID-19 compliance policies and procedures.

These are challenging times. But for those of us who work in the affordable housing industry, challenge is the hallmark of our profession. The importance of affordable housing and the protection it provides for the people we serve has never been more present than at this time.

“The ache for home lives in all of us, the safe place where we can go as we are and not be questioned.” - Maya Angelou

Bonus: Additional COVID-19 Resources

Department of Housing and Urban Development

Public and Indian Housing:

https://www.hud.gov/program_offices/public_indian_housing/covid_19_resources

Multifamily:

https://www.hud.gov/program_offices/housing/mfh/Multifamily_Housing_COVID-19_Guidance

State Housing Agency Websites

Search for each individually.

Affordable Housing Organizations

National Council of State Housing Agencies (NCSHA):

<https://www.NCSHA.org>

National Low Income Housing Coalition (NLIHC):

<https://www.nlihc.org>

National Affordable Housing Management Association (NAHMA):

<https://www.nahma.org>

Robin Thorne is the Vice President for Training & Asset Management at RTHawk Housing Alliance LLC where she works with Tribal clients to develop and manage affordable housing projects. Robin works with clients to ensure compliance with LIHTC, NAHASDA, AHP, HOME and other program requirements. Robin obtained her HCCP designation in 2011, She can be reached by email at robin@rthawkhousing.com.

Scott Michael Dunn is the CEO of Costello Compliance and Director of Policy for the Costello Companies. The Costello Companies are developers, builders and managers of affordable housing with clients throughout the country. They are headquartered in Sioux Falls, S.D. Scott Michael has served as part of the Technical Advisor Group on the HCCP Board of Governors for over a decade. He can be reached by email at smdunn@costelloco.com.