

**Alaska Housing Finance Corporation's Internal Audit Department**

**Affordable Housing Compliance Reference Manual**

**For:**

**Internal Revenue Service (IRS)**

**Section 42 Low Income Housing Tax Credit Program (LIHTC)**

**U.S Department of Housing and Urban Development (HUD)**

**Home Investment Partnerships Program (HOME)**

**State of Alaska**

**Senior Citizens Housing Development Fund Program (SCHDF)**

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## Section I - Introduction

The purpose of the Alaska Housing Finance Corporation (AHFC) is to provide Alaskans access to safe, quality, and affordable housing. As a self-supporting public corporation, AHFC manages capital assets and grants. AHFC coordinates the State's housing strategy and homeless programs. AHFC also provides needed housing assistance to:

- ✚ Alaskans with low and moderate incomes.
- ✚ Alaska's rural residents.
- ✚ Alaskans with special needs.
- ✚ Alaska's senior citizens.

AHFC is active in lending and financing, allocating housing grants and subsidies, providing public housing, advocating for affordable housing, establishing state housing policies, and providing technical assistance to housing sponsors.

As a part of this activity, the Alaska Housing Finance Corporation's Internal Audit Department (IAD) is tasked with the responsibility of monitoring and determining development compliance for four affordable housing programs. Programs include the Low Income Housing Tax Credit Program (LIHTC), Home Investment Partnership Program (HOME), Senior Citizens Housing Development Fund Program (SCHDF), and the Tax Exempt Bond program when combined with at least one of the other three programs.

Compliance reviews can include single and/or multi-family affordable housing developments and may be defined as either a 'site review' or 'desk review'. Site review scheduling varies depending on the affordable housing program, and can occur on a one, two, or three year cycle. 'Site reviews' include physical on-site visits of a property. The purpose of the site review is to examine a select number of household files to assure income eligibility, and to verify that the owner of the development has met proper rental rate limits. Site reviews also examine development administrative documentation as required by the specific agreement between the development owner and AHFC, and the requirements of the specific affordable housing program. On-site reviews will also include a physical inspection of the development to determine compliance with health and safety requirements in accordance with the designated program inspection protocol. 'Desk reviews' are completed during all off-site annual reviews and examine only development operational administration documentation and a select number of household files as required by the AHFC agreement with the owner and the specific program regulations.

In January 2007, the IRS published its 1<sup>st</sup> edition of the ***'Guide for Completing Form 8823; Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition'***; which was revised in October of 2009, for the LIHTC program. Also in 2009, HUD published both the ***'Compliance in HOME Rental Projects: A Guide for Property Owners'*** and the ***'Compliance in HOME Rental Projects: A Guide for PJs'*** for the HOME program.

Supported by the ***'HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs'***, both IRS and HUD guides provide a significant program convention, clearly and concisely identifying what the IRS and HUD requires of the state monitoring agencies as well as development owners and managers. Given these program specific compliance manuals, and in an effort to seek and maintain 'common ground' and fairness, the IAD has determined that any

compliance manual that we as a state monitoring agency could produce internally would not substitute for a program specific publication for each affordable housing program.

AHFC's IAD reference to these publications will provide a sound basis for consistent compliance in all areas for all involved, alleviate much of the debate when various agencies are involved, and limit differing opinions as to how a particular issue should be treated. AHFC IAD encourages owners and managers to be proactive and involved in continuing education of development staff with the program to further the understanding of the programs and these guides.

It should be noted that this compliance reference manual only pertains to issues of the four programs **after** the development is ready for occupancy, referred to as the placed-in-service date and the start of the compliance period. The reference manual **does not** address development issues prior to the start of the compliance period and IAD's involvement. Questions or concerns regarding the pre-compliance period (allocation) are not addressed in this publication and should be directed to AHFC's **'Planning and Program Development Department' (PPDD)**.

This reference manual is not a program specific 'compliance manual'. As AHFC IAD works with owners and managers not only within Alaska but also outside of the state, it was found that compliance standards, particularly for the LIHTC program, tended to be viewed differently between the various owners and management companies; as well as between state housing agencies, often times leading to conflict and extensive debate with the previous AHFC IAD website compliance manual. It was at this point that the IAD elected to remove all previous compliance manuals from the AHFC website, replacing it with this reference manual which refers Owners and managers to the specific program compliance manual as published by the particular program sponsor. The IAD will, in most cases, rely upon the specific program guidance as published by the specific sponsor when determining development compliance. Due to the significant number of changes in the past five years with all programs, the IAD advises Owners and managers to disregard any copies of the 2005 AHFC Compliance Manual.

Also included in this compliance reference manual is a listing of compliance forms, some of which are specific to the program while others can be used universally for all. **(Reference Section II; Forms)**. In addition to the program publications listed above, this reference manual includes a list of LIHTC, HOME and SCHDF pertinent websites which may be useful when used in conjunction with the above program specific guidance. **(Reference Section III; Program Websites)**. As there will be instances specific to Alaska where there will be conflicts with Federal standards, such as year two annual household recertifications, this reference manual also includes a section for program deviations. **(Reference Section IV)**. Through experience, the IAD has found that conflicting instances are limited with solutions found through the interpretation of the published regulations and guides noted above.

This reference manual also includes a collection of program questions and answers **(Reference Section V - Frequently Asked Questions)**, description of Inspection Protocols used during on-site reviews **(Section VI)**, and various appendices that include program Power Points, spreadsheet data and additional reference material.

**Note:** This reference manual has not been reviewed or approved by the Internal Revenue Service (IRS) or the United States Department of Housing and Urban Development and should not be relied upon for interpretation of federal income tax legislation or regulations.

Owners and Managers of LITHC, HOME, and SCHDF developments should be cognizant of the fact that this reference manual is not be considered a complete guide to compliance but to be used only as a supplement to specific program regulations, as well as all other applicable laws, rules and regulations for

each program. The responsibility for compliance lies solely with the Owner of the building(s) or tenant unit(s) for which tax credits, allocations or grants have been received. **Because of the complexity of the various regulations for each of these programs, Owners are urged to seek competent professional legal and accounting advice regarding compliance issues.** AHFC's obligation to monitor compliance with the regulations for the three programs does not make AHFC liable for an Owner's noncompliance.

## 1.1 – Low Income Housing Tax Credit (LIHTC) Program

The LIHTC program was created in 1986 under IRS Section 42 of the Internal Revenue Code to foster the development of affordable multifamily rental housing. The credit is generally referred to as Section 42, Credit, Low-Income Housing Tax Credits, or simply LIHTC. Although the root premise of the LIHTC program is to provide affordable housing, the benefit to Owners/Developers is that the program provides equity from the sale of tax credits. Equity funds are used to pay for part of the property development costs. The equity comes to the property from investors as a contribution to the legal entity that owns the property. This entity is typically a limited partnership, or a limited liability company, and defined as a legal entity that is allowed the benefit of tax credits which can flow through to investors. In turn, investors use the credit to offset their own income tax liability.

While the equity funds are usually contributed or received during construction or soon after the completion of the property, credits are received by the Owner annually and over a 10-year period. The price paid for the credit is determined by the timing of the payments to the Ownership entity as agreed upon between the Owner, general partner, and investors. The balance of the property costs may be paid through conventional mortgage financing and other sources of funds. The trade-off for receiving tax credits is that the Owner must agree that the housing units receiving credit will be restricted to income qualified Households for 15 years; the IRS 'Compliance Period', and an additional 15 years during the 'Extended Use Period' between the Owner and AHFC. During this 30 year period, rents for affordable units are capped. Because a large portion of the property costs have been paid from equity, a property should be designed so that the restricted rents are sufficient to pay the operational costs and mortgage debt on the property.

AHFC has been designated by the Alaska State Legislature as the allocating agency of the LIHTC program for the State of Alaska. With this responsibility, AHFC is required to monitor properties for compliance within program requirements, report all compliance violations to the Internal Revenue Service (IRS) and monitor and report to the IRS on corrective actions in cases of non-compliance in accordance with IRS Section 42 Code requirements [Section 42 (m) (i) (B) (iii)]. AHFC will also monitor the Owner's compliance with additional requirements resulting from obligations undertaken as a result of and in the course of the allocation process and separate Agreement with AHFC. Compliance monitoring is performed by the Internal Audit Department (IAD) of AHFC.

Owners and managers of LIHTC developments should possess, at a minimum, a working understanding of Internal Revenue Code 42 and the publications, ***'Guide for Completing Form 8823; Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition'***, and ***'HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs'***. Owners and managers should consult with a knowledgeable tax professional prior to entering into any commitment concerning the use and claim of housing tax credits.

Unless the LIHTC development is combined with another housing program, such as HOME which has a more restrictive inspection frequency standard, the 1<sup>st</sup> and every 3<sup>rd</sup> year annual review will be conducted as an 'on-site' review and include a physical inspection of the property following the Uniform Physical Conditions Standards (UPCS) inspection protocol. Owners, and particularly on-site management, should be well versed with the UPCS inspection protocol. On-site reviews will also include consideration of the Fair Housing Act and the Americans with Disabilities Act (ADA).

In addition, on-site reviews will include the examination of development administrative documentation and a select number of tenant files. For 1<sup>st</sup> year reviews, Owners will be required to provide copies of all tenant files (100%) for examination by AHFC IAD. All annual reviews (every year for up to 30

years) will require the Owner to address in written form a response to the following administrative compliance components:

1. LIHTC Owner's Certification of Compliance
2. Unit History & Status Report
3. Rent Roll for the month ending for the certification period
4. Statement regarding rents in excess of 'Gross Rent'
5. Statement and support of utility allowances used for development if applicable
6. Confirmation and status of affirmative marketing (HUD Form 935.2A or 935.2B)
7. Vacancy Summary
8. Report of building Violations
9. Report of Optional and Non Optional Charges
10. Submittal of IRS Forms (signed 8609 for 1<sup>st</sup> year, 8609A and 8586 for subsequent years
11. Description of all common areas
12. Report of any Student Households in development during the certification period.
13. Report and accounting of Repair and Replacement Funds
14. Confirmation of participation in the HERA Tenant Data Collection for the prior year
15. Submission of Owner/Management Training Certifications
16. Submission of Monitoring Fee.

**Note:** The administrative responses listed above are subject to change without notice. LIHTC developments when combined with HOME, SCHDF or Tax Exempt Bond funding will require additional response issues. Owners will want to review each annual AHFC IAD 'Notice Letter' carefully for changes and additions.)

## 1.2 – Home Investment Partnership (HOME) Program

Under the HOME program, funding is available to develop new affordable rental housing through new construction, rehabilitation, or acquisition and rehabilitation. HOME funds are typically grant funds but may also be loaned to project sponsors. As the Participating Jurisdiction (PJ), and in providing funding for Alaska based affordable housing under the HOME program, AHFC holds the Owner of a development responsible and accountable for compliance throughout the period of affordability. Although an Owner may elect to delegate day-to-day property management to another person or entity, this will not relieve the Owner of its obligations to see that all HOME-assisted units comply with HOME requirements. Failure on the part of an Owner to comply with HOME requirements may result in numerous corrective actions, including the repayment by the PJ of HOME funds to HUD, and suspension of future HOME awards to the Owner. Given this, it is essential that Owners of HOME-assisted properties understand the HOME requirements to and maintain compliance.

As part of AHFC's responsibility, AHFC's Internal Audit Department (IAD) is tasked with monitor properties for compliance with HOME rules and regulations under HUD 24 CFR Part 92.

Owners and managers of HOME program developments should possess, at a minimum, a detailed understanding of the guide, *'Compliance in HOME Rental Projects: A Guide for Property Owners'*, in addition to the *'HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs'*. Owners and managers should also consult with knowledgeable program professionals prior to entering into any commitment concerning the use of HOME program funding.

Annual compliance reviews will include the examination of administrative documentation and select tenant file reviews. For 1<sup>st</sup> year HOME development reviews, Owners will be required to provide copies of all tenant files (100%) for examination by AHFC IAD. All annual reviews (every year for up to 30 years or as required by the Agreement between the Owner and AHFC) will require the owner to provide a response to the following administrative issues:

1. Owner's Certification of compliance
2. Unit History & Status Report
3. Rent Roll for the month ending for the certification period
4. Statement and support of utility allowances used for development if applicable
5. Confirmation and status of affirmative marketing (HUD Form 935.2A or 935.2B)
6. Vacancy Summary
7. Report of Household Characteristics (Form HUD-40097)
8. Report of any Student Households in development during the certification period.
9. Report of building Violations
10. Lead Based Paint Declaration (for developments constructed before 1978)
11. Report of Optional and Non Optional Charges
12. Report and accounting of Repair and Replacement Funds
13. Submission of Owner/Management Training Certifications

**Note:** The administrative responses listed above are subject to change without notice. In addition, HOME program developments when combined with LIHTC, SCHDF or Tax Exempt Bond funding will require additional responses. Owners will want to review each annual AHFC IAD 'Notice Letter' carefully for changes and additions.

Frequency of a HOME program development's on-site reviews are conducted by the IAD based on the total number of units in the development regardless if there are true HOME-assisted unit or not. Inspection frequency is summarized in the following table.

Number of HOME Units	Frequency of Inspections
<b>1-4</b> <b>5-25</b> <b>26 or more</b>	<b>Every 3 years</b> <b>Every 2 years</b> <b>Annually</b>

The 1<sup>st</sup> year annual review will be conducted as an 'on-site' review to include a physical inspection of the property following the Uniform Physical Conditions Standards (UPCS) inspection protocol. Years not requiring an on-site physical inspection will be addressed as a 'desk' review. Subsequent reviews will be based on the table above. Owners, and particularly on-site management, should be well versed with the UPCS and hold training certifications. The on-site physical inspection will also include a review of the Fair Housing Amendment Act, the Americans with Disabilities Act (ADA), and Section 504.

Note that some of older HOME program developments may require the use of HUD Housing Quality Standard (HQS) physical inspection protocol. Inspection Protocol will be identified in the Development's DCCR.

### 1.3 – Senior Citizens Housing Development Fund (SCHDF) Program

Allocated and managed by AHFC, Grants from the SCHDF program provide funding for senior citizen housing. Eligible recipients for SCHDF monies are limited to municipalities or public or private nonprofit corporations designated as tax exempt under 26 U.S.C. 501(c) (3) and (4) of the internal Revenue Code of 1954. AHFC's 'Greater Opportunity for Affordable Living program' (GOAL) awards SCHDF monies to bridge funding gaps between the total cost of the project and the total funding from other sources. Funds may be used for acquisition, rehabilitation and/or new construction of senior housing. This program targets the housing needs of both low-income and middle-income seniors. Grant recipients must choose a definition of "senior citizens" as either age 55 and older or age 62 and older according to the federal definition of "housing for older persons" under Section 807 of 42 U.S.C. 3607 implemented at 24 CFR 100.300-308. Both choices carry with them requirements detailed in the application process.

Compliance monitoring is performed by AHFC's Internal Audit Department (IAD). Although program compliance requirements may be somewhat limited compared to the other affordable housing programs, the IAD is nevertheless responsible for compliance monitoring of the SCHDF program and reporting compliance violations to AHFC's 'Planning and Program Development Department' (PPDD) SCHDF Program Manager and Director. Non-compliance with a SCHDF development may impact an Owner's future SCHDF funding requests. AHFC will also monitor for other programs (LIHTC, HOME) when combined with the SCHDF program.

Owners and managers of SCHDF developments which may require rent and income restrictions (Refer to the Agreement with AHFC) should possess, at a minimum, a clear understanding of chapter 5 of the '**HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs**'.

Compliance Monitoring of a SCHDF development may extend for up to 30 years. Owners and managers will want to review their development's Declaration of Covenants, Conditions, and Restrictions (DCCR) for the scope of what will be required for annual reporting to the IAD. Annually, the IAD will require the owner to provide a response to the following administrative issues:

1. Unit History & Status Report (if required by Grant)
2. Rent Roll for the month ending for the certification period (if required by Grant)
3. Statement and support of utility allowances used for development if applicable & required by Grant
4. Confirmation and status of affirmative marketing (HUD Form 935.2A or 935.2B)
5. Vacancy Summary
6. Report of building Violations
7. Report of Optional and Non Optional Charges (if required by Grant)
8. Age declaration of resident households
9. Report and accounting of Repair and Replacement Funds
10. Submission of Owner/Management Training Certifications

Note: The administrative responses listed above are subject to change without notice. In addition, SCHDF developments when combined with LIHTC or HOME program funding will require additional responses. Owners will want to review each annual AHFC IAD 'notice' letter carefully for changes and additions.)

Frequency of a SCHDF program development's on-site reviews are conducted by the IAD. The 1<sup>st</sup> year annual review will be conducted as an 'on-site' review to include a physical inspection of the property following the Uniform Physical Conditions Standards (UPCS) inspection protocol. Owners and on-site management should have an understanding of the UPCS inspection protocol. On-site reviews will also

include the Fair Housing Amendment Act, and the Americans with Disabilities Act (ADA). Subsequent year on-site inspections will be as specified by the Agreement with AHFC. Years not requiring an on-site physical inspection will be address as a 'desk' review.

Note that some of SCHDF program developments may require the use of HUD Housing Quality Standard (HQS) physical inspection protocol. Inspection Protocol will be identified in the Development's DCCR.

## **1.4 – Tax Credits when Combined with Tax-Exempt Bonds**

Program regulations and compliance standards for Tax-Exempt Bond properties mirror that of the LIHTC program. As such, development owners of Tax-Exempt Bond properties should follow the guidance provided under parts 1.1, 2.1, 3.1, 4.1, 5.1 and 6.1 of this compliance reference manual.

It should be noted that AHFC IAD will only conduct compliance reviews of a tax-exempt bond development when it is combined with a LIHTC development. Questions and concerns regarding compliance and program regulations for tax-exempt bond only developments should be directed to AHFC's Mortgage Servicing Department.

## **1.5 – LIHTC Compliance & Monitoring After Year 15**

**Section is Currently Under Construction**

## 1.6 - AHFC Affordable Housing Program and Audit Contacts

➤ **AHFC Internal Audit Department (IAD)** - *(For Questions regarding program Compliance)*

Jerusha Gatfield	907-330-8414	<a href="mailto:jgatfield@ahfc.us">jgatfield@ahfc.us</a>
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Megan Schmidt	907-330-8408	<a href="mailto:mschmidt@ahfc.us">mschmidt@ahfc.us</a>
Dave White	907-330-8413	<a href="mailto:dawhite@ahfc.us">dawhite@ahfc.us</a>
Department Fax #	907-338-1707	

➤ **Planning & Program Development** - *(For Questions regarding program Development & Allocation)*

Elaine Mello	907-330-8236	<a href="mailto:emello@ahfc.us">emello@ahfc.us</a>	P&PD Officer & SCHDF Program Manager
Daniel Delfino	907-330-8273	<a href="mailto:ddelfino@ahfc.us">ddelfino@ahfc.us</a>	LIHTC Program Manager
Colette Slover	907-330-8275	<a href="mailto:cslover@ahfc.us">cslover@ahfc.us</a>	HOME Program Manager
Department Fax #	907-338-2585		

➤ **Additional AHFC Contact Information**

AHFC Toll Free Within Alaska:

1-800-478-2432

Mailing Address:

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Anchorage, Alaska 99510-1020