



## CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

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**DATE:** May 12, 2021

**TO:** Property Owners and Management Companies of Low-Income Housing Tax Credit Properties

**FROM:** California Tax Credit Allocation Committee – Compliance Section

**RE:** Monitoring Guidance for 2021

This memorandum serves as guidance from the California Tax Credit Allocation Committee (CTCAC) to owners and property management companies of Low-Income Housing Tax Credit (LIHTC) properties in California on the following topics:

1. Section 42 Lease Addendum and Good Cause Eviction Lease Rider
2. Verification of Employment Documentation Requirement
3. Non-CTCAC or edited CTCAC Forms
4. Electronic Signatures
5. Uniform Physical Condition Standards (UPCS) Violations
6. EV Charging Stations
7. Forms 4506-T and 4506-C
8. Unemployment (Employment Development Department) Verifications

### **CTCAC Section 42 Lease Addendum and Good Cause Eviction Lease Rider**

In March of 2021, CTCAC released a CTCAC Section 42 Lease Rider in lieu of including separate language in the lease or an Addendum created by the owner/management company. This CTCAC Required Section 42 Lease Rider will be used to maintain consistency across all properties and management companies and to clearly state the provisions of the LIHTC Program. It replaces the prior requirement for owners/management companies to include language in the lease or a separate owner-created lease addendum outlining the provisions of the Section 42 LIHTC Program.

The CTCAC Section 42 Lease Addendum outlines all of the LIHTC requirements per Internal Revenue Service (IRS) Section 42 such as; the rights and obligations of the parties, including

income requirements and the obligation of the resident to certify income annually, as well as, language which addresses income, utility allowance increase/decrease, income limit increase, rent changes, student restrictions and exceptions, household composition change or any other change that may impact the resident's rent or eligibility for the program.

This Addendum will be required to be in used at all properties by January 1, 2022.

To distinguish the new Section 42 LIHTC Lease Addendum from the current LIHTC Lease Rider that prevents eviction for other than good cause, CTCAC has changed the name of the "Low Income Housing Tax Credit Lease Rider" to "CTCAC Good Cause Eviction Lease Rider" to better differentiate between the two required forms. No other changes have been made to the CTCAC Good Cause Eviction Lease Rider. Use of the updated "Good Cause Eviction Lease Rider" should be implemented for new households after May of 2021.

### **Verification of Employment Documentation Requirement**

CTCAC policy requires third party Verification of Employment (VOE) and three months of current and consecutive pay stubs to determine income eligibility at move-in and the VOE at subsequent recertifications. CTCAC has also stated in workshops and other guidance provided that three reasonable attempts must be made to receive the VOE before CTCAC will accept secondary income documentation (such as pay stubs) alone. CTCAC clarifies the definition of reasonable attempts as:

For New Move-ins and recertifications where the household is currently employed:

- a) Management shall make three reasonable attempts spaced a minimum of 5 calendar days apart to obtain a third party VOE from the employer.
- b) Attempts need to be documented (fax receipt, dated email confirmation, returned envelopes, etc.)
- c) Provide 3 months of current and consecutive paystubs or for households that have recently started a job, the 75% paystub threshold test must be used.

### **Non-CTCAC or edited CTCAC Forms**

Prior to 2021, CTCAC had a general policy that stated if the owner wanted to add additional questions to CTCAC required forms, it would be allowed only if the formatting of the forms was not altered and CTCAC approved the changes prior to implementation. This previous policy resulted in a significant number of owners and management companies using different and company specific variations of CTCAC forms. The wide variation in the forms being used has become burdensome for CTCAC staff and has resulted in several instances of staff writing up noncompliance for the use of non-standard forms, due to lack of pre-approval documentation in the file for the use of a non-standard form.

Starting in 2021:

- a) Any owner/management company who is using a modified version of any CTCAC required forms, must resubmit those forms for approval

- i. Request for approval should state clearly why the standard CTCAC form is not adequate for management needs, and
- ii. Request should state why a Management Requirement Addendum or Rider could not be used in conjunction with the CTCAC form – either as a standalone document or as an adjunct to the CTCAC form
- b) Review time on resubmitted forms may take up to 3 months for approval
  - i. Management will be required to use CTCAC required forms until approval is granted

#### Allowed Exceptions:

- a) CTCAC will allow the following HUD Forms to be used in place of the CTCAC form, to allow consistency in projects with HUD subsidy and prevent duplication
  - i. Verification of Employment Form
  - ii. Live-in Aide Verification Form
  - iii. HUD VAWA Lease Rider
- b) The Work Number
- c) The addition of a management company logo or fine print Fair Housing language to the existing CTCAC required form is not considered a modification of a CTCAC form and does not require CTCAC approval

#### Correction Period:

- a) CTCAC will note use of non-standard CTCAC forms in the Noncompliance Letter for all inspections in 2021, but will not be considered a finding of noncompliance until January 1, 2022.
  - i. Non-standard form filings after that date will be noted as a violation and subject to a standard correction period
  - ii. Fines may be assessed if owner chooses to continue using non-standard forms after the correction period has been established

### Electronic Signatures

In 2015, CTCAC started allowing the use of electronic signatures on the application only. In 2020, due to the COVID-19 Pandemic, CTCAC allowed the use of electronic signatures through the vendor Docusign for all documents to mitigate in-person contact. Starting in 2021, CTCAC will allow electronic signatures on all CTCAC required documents (*Application, Lease, CTCAC Forms*) through a legitimate 3<sup>rd</sup> party vendor, provided the signature was obtained either by a secure log-in process directly from the 3<sup>rd</sup> party vendor which has a identity verification system in place, or the electronic signature was created by the resident “writing” their name using a their finger on a touchpad, mouse, or electronic pen.

Numeric “PIN only” signatures or signatures using Adobe or other 3<sup>rd</sup> party software that does not have a secure ID verification system to track and document identity will not be accepted.

### Uniform Physical Condition Standards (UPCS) Violations

Starting in 2021, for all required audits that have a physical onsite inspection as part of the audit

process, CTCAC will issue IRS Form 8823 and report to the IRS all levels of Uniform Physical Condition Standards (UPCS) violations (Levels 1-3 and Health and Safety Violations) for all properties in the initial 15-year Federal Compliance Period. IRS Form 8823 issuance will note both corrected and uncorrected noncompliance consistent with IRS requirements noted in the IRS 8823 Guide Chapters 3 (pg. 3-1) and 6 (pg. 6-4). For projects in the Extended Use period (post-Year 15), CTCAC will issue fines for any uncorrected physical violations.

Per IRS Notice 2021-12, physical inspections will resume on certain CTCAC properties starting on October 1, 2021. A list of properties that will have a mandated physical inspections between the October and December 2021 can be found on the CTCAC website at:

[https://www.treasurer.ca.gov/ctcac/compliance/inspection\\_list.pdf](https://www.treasurer.ca.gov/ctcac/compliance/inspection_list.pdf)

### **Electric Vehicle Charging Stations**

For properties that include electrical vehicle charging stations on the property grounds, the owner may not charge the resident for the use of the parking spot unless the parking structure(s) or area(s) were excluded from eligible basis. The owner may charge the direct cost of the electricity used at the charging station to the resident and limit use to residents of the property. Signage on or near the charging station must clearly state the requirements for use.

### **Forms 4506-T and 4506-C**

CTCAC requires that for all residents that indicate cash wages or self employment and who do not file taxes to the IRS, that a completed copy of Form 4506-T be in the file showing verification from the IRS for non-filing status. In 2020, a new form was released by the IRS – Form 4506-C – which could be used in lieu of the 4506-T form.

CTCAC will accept both the completed 4506-T form and 4506-C form as verification from the IRS for non-filing status of the resident.

### **Unemployment and Employment Development Department (EDD) Verifications**

In lieu of a separate 3<sup>rd</sup> party verification of unemployment from EDD, CTCAC will accept the current award letter stating the amount of unemployment benefits the resident is receiving. If the owner is unable to obtain the award letter, the resident may provide a copy of the following from the EDD Portal to verify their benefit amount:

- a) Profile Page (provides full name of the resident)
- b) Claim Summary
- c) Payment History
- d) Transaction Detail

CTCAC thanks you for your patience and understanding as we work towards meeting the required LIHTC obligations, while maintaining respect for the safety of CTCAC staff, the staff of the owner and management companies, and the residents in the LIHTC properties.

CTCAC may provide additional guidance or change existing guidance to better reflect information provided by the IRS, the Governor of California, or other industry changes. For any questions, please contact Compliance Senior Program Managers Elizabeth Gutierrez-Ramos at [elizabeth.gutierrez@treasurer.ca.gov](mailto:elizabeth.gutierrez@treasurer.ca.gov) or Shannon Nardinelli at [shannon.nardinelli@treasurer.ca.gov](mailto:shannon.nardinelli@treasurer.ca.gov).