Back to Basics: Compliance Monitoring

Rhode Island Housing
Rental Housing: Multifamily Management

HFA Staff Contact
Mary Kate Harrington
communications@rihousing.com
Two words: “Compliance Monitoring.”
Most people outside of the housing industry don’t know the magnitude of this work. But for those of us working in the affordable housing field, we know all too well its importance.

No property manager or owner wants to be determined non-compliant. And Housing Finance Agencies, entrusted with the oversight of scarce federal resources, want to ensure the success of a property (and their portfolio) through compliance. Compliance plays an important role in a property’s long-term viability and property managers/owners and HFA staff require thoughtful guidance and support to navigate the complex world of tax credit compliance monitoring.

Changing Needs
In response to this need, RIHousing kicked off the new year with the release of our new LIHTC Compliance Manual. Ensuring property managers and owners of LIHTC-financed properties have the tools and resources they need to ensure the long-term success of these developments is at the heart of our Asset Management and Compliance departments.

The housing landscape had changed dramatically since the last time RIHousing updated our Compliance Manual. Gone are the days when LIHTC equity is enough to fund a project. More and more funding sources are needed, resulting in a complex layering of sources, all with different rules, regulations and requirements. With more funding sources came the need for comprehensive compliance monitoring guidance and staff who understand the requirements and implications of non-compliance. As an agency entrusted to safeguard public funds, ensuring that the federal dollars put toward affordable housing is of the utmost importance.

For years, RIHousing Compliance staff had struggled to keep LIHTC managers and owners informed about important changes in compliance monitoring. The complexities of administering these programs to meet requirements and conditions specified under the law and specific regulations for each funding source made updating our existing manual an almost impossible task. RIHousing’s existing LIHTC Compliance manual had initially been created in 1997, with minimal updates made over the last two decades. The content, format and layout of the manual had become obsolete and a burden for both users and our staff.

RIHousing staff previously had to rely heavily on the release of a series of Program Bulletins to communicate updates to managers/owners, which caused confusion among partners as well as internally. For many years, partners and monitoring staff were left wanting more.

It Was Time......
The existing manual was very text heavy, with no visuals or graphics. It was a 105-page document without hyperlinks, bookmarks or indexing, requiring users to spend considerable time searching for the regulations and requirements needed. RIHousing had long recognized the need for a completely updated manual but did not have the in-house capacity to undertake the complete overhaul we felt was required.

In late 2017, we released a Request for Proposals (RFP) for consulting services to help prepare the new manual. Initially, we expected the effort to take several months and expected it to be composed of three main steps:
Back to Basics: Compliance Monitoring
Rental Housing: Multifamily Management

- **Assessment of Current Policies and Procedures**: Work with our Rental Compliance/Training Coordinator and staff to review the existing compliance manual and management documents, review existing protocol, forms and checklists.
- **Review of Best Practices and HUD Requirements and Guidance**: Compile and compare industry best practices to RIHousing policies and procedures against IRS and HUD regulations; make recommendations and provide sample documents.
- **Development of New Compliance Manual**: Produce comprehensive policies and procedures in the LIHTC Compliance Manual to be used both as guidance for owners/managing agents and by RIHousing staff as a reference. All materials produced must meet all applicable IRS and HUD regulations.

Our intent was for a comprehensive, user-friendly document that incorporates all requirements, methods and procedures related to LIHTC compliance monitoring, whether standalone, or when layered with other federal and state affordable housing programs. We selected Costello Compliance, a nationally recognized industry leader and expert in LIHTC compliance, and began the process.

**Pulling off Bureaucratic Layers (or Back to Basics)**
During the course of the initial phase of review, it became apparent that in order to create the document we wanted, we would have to completely re-assess our policies, forms and procedures or the update would be superficial at best. We initially intended to include several key Compliance and Asset Management staff on the project but ended up engaging our entire team.

The project took almost one year from beginning to rollout of the new manual. The additional time was a result of a deep dive into our policies and procedures, which yielded in a complete revamp of how we manage LIHTC compliance.

We are most proud of the fact that the **effort drove policy changes and resulted in new ways for thinking about compliance**. We pulled back the “bureaucratic layers” that were no longer necessary and focused on what was really needed and how best to communicate our intentions to our target audience. While the endeavor took longer than anticipated, partners and staff feel it was worth it. While we didn’t envision what it would become, we are very excited to highlight key aspects of the new manual:

- Reflects significant changes in policy at RIHousing
- Scaled back non-regulatory RIHousing requirements
- Consistent with HUD methods, IRS guidance and industry best practices
- Discusses LIHTC compliance intricacies
- Includes the new “Average Income Set-Aside”
- Over 90 case studies and recommendations in the form of Examples
- User friendly: provides clearer, more practical guidance for partners and staff
- More efficient: easily searchable with bookmarks and hyperlinks to forms and documents
- Format makes the manual easier to update as needed and keep current
- Multiple Programs Guide: a 26-page addendum that presents requirements for each program
- Graphics throughout vs previous, which was almost entirely text
  - Graphs, flow charts, examples and tables for ease of use and understanding
**Roll Out & Results**

We rolled out the new Compliance Manual with a series of interactive webinars for our partners. We also shared the manual via email and posting to our website. As we completely revamped our forms and applications we were able to highlight the changes and features of the report via the webinars. To date, over 140 program managers, owners and development partners have participated in the webinars.

Our staff and partners have been thrilled! We have received plenty of great feedback since the rollout. Our consultant has shared they think the manual is the “Best ever done” and they plan to use our Compliance Manual for training purposes going forward.

We understand several HFAs have rolled out updated compliance manuals in recent years. We think ours is unique in that we may be the first compliance manual in the country that addresses “gig” income as new forms of earning potential relate to income qualifications. Studies show that gig economy jobs are taking on a greater role in household income, and managers and owners require guidance on how to calculate income derived from these jobs.

**Unintended Positive Results**

- Ended up reflecting on and changing policies
- Re-trained staff
- Collaborative: all Compliance staff involved; engagement created ‘buy-in’ from staff
- Team-building process; engaged entire team

**Can’t Stop, Won’t Stop**

The effort has completely engaged staff and our management/owner partners. We have big plans for next steps to ensure the manual remains current but also reflects new and emerging rules and regulations, remains user-friendly and utilizes any new and emerging technology improvements.

We are about to launch our “On the Road,” series, which allows our Training Coordinator to hit the road and head out to management offices for small, in-person engagement and introduction of the new manual and our policies and procedures. This also allows for feedback from partners that can help spur further improvements.

**Exceeding Expectations**

RIHousing has been promising transparency and improvements in our processes and with this manual, we are living up to this promise. By reflecting on and updating our internal processes, we were able to make several key streamlined process improvements which means we are more efficient with our time and effective in our oversight. RIHousing Compliance specialists have an electronic version of the manual on their iPads to use during inspections and managers/owners know exactly what is expected to remain in compliance with LIHTC, avoiding serious financial penalties and loss of tax credits, which could cost the property (and owner) greatly. Owners/agents may refer to the new manual to clear up any “gray” areas in LIHTC compliance.

Our goal was to provide clear and consistent policies and procedures while lessening the burden on compliance staff, owners/agents and tenants by offering the resources to support our partners in remaining in compliance and operating successful, safe and affordable homes for Rhode Island residents. We feel strongly that with this comprehensive effort, we have met our goal and more!

*Click here to see the new manual.*
I just wanted to comment, that was one of the best webinars I have ever been on. Plus, the job your team and Costello did on the new LIHTC Guide is AMAZING! Great Job! Thank you so much for the clear guidance.

Melissa Koseski, Vice President, Wingate Companies

REALLY enjoying this manual! It’s the best resource to effectively manage a Tax Credit site.

Julie Leddy, Executive Director, Coventry HFA

I wanted to compliment you and the others on the Compliance Manual webinar today. Excellent work! Excellent Manual! Thank you,

Rodgney Hoel, Director of Property Management, Housing Opportunities Corporation

The old manual had a glossary, but no way of determining the source of the information; the new manual has a clickable index, allowing the user to read not only a definition within the document itself, but the context surrounding it.
Easily Access and Reference Information

In general, households made up of full-time students of any age do not qualify. There are five exceptions to this general rule. They are for students who are:

1) Married and entitled to file a joint tax return*
2) Single parents with dependent child(ren)
3) Title IV welfare recipients (TANF or similar program)
4) Former foster care recipients
5) Participants in a Job Training Partnership Act (JTPA) or similar program**

* Same-sex couples qualify for "married and entitled to file" if legally married under any state law.
** The "Workforce Investment Act" has replaced JTPA.

HUD Section 8 Rule:
Any individual who attends an institute of higher learning (full or part-time) must be one of the following:
1) A dependent of the student
2) Over age 23
3) A veteran
4) Married
5) A parent with a dependent child in the unit
6) A disabled individual who was receiving assistance prior to 11/30/2005 or
7) Be independent from parents or have parents who are income eligible.

Certain vulnerable youths also count as independent under HUD and DOE rules.

Non-Section 8 programs:
Each student at an institute of higher learning must meet ALL of the following requirements:
1) Be of legal contract age under state law
2) Have established a separate household from parents for at least a year OR meet the U.S. Dept. of Education definition of an independent student
3) Not be claimed on a parent's tax return
4) Must disclose if they get financial assistance from parents.

Same as HUD Section 8 Rule
Same as tax credit. In general, households made up of full-time students of any age do not qualify. Prior to HERA, the only exception that qualified a full-time student household was 'married, entitled to file a joint tax return'. Per HERA, the same five student exceptions that apply for LIHTC apply to bond qualification.

§42 (i)(3)(D) §142 (d)(2)(C)

Charts define asset types and corresponding market & cash values and income.

The below chart demonstrates how to establish values and income for various types of assets.
The focus of the manual isn’t only on maintaining compliance through documentation, but also on the physical portion of compliance, providing insight into the UPCS standards used to inspect LIHTC properties. Examples are strategically placed throughout the manual to provide insight to owner/agents in an effort to reduce noncompliance at the site level. Examples provide answers with clear explanations.
Image Description:

**Flow Charts**

1. **Flow Chart: Calculating Student Assistance Income**
   - Does the household receive Section 8 Assistance? **NO**
   - Are any adults enrolled in an institute of higher learning? **NO**
   - Are the individual adult students over 23 years old with a dependent child or themselves dependents of the household? **YES**
   - How is the schooling paid for each adult student? Document this for the file and include all Education Act of 1965, scholarship, grant and private assistance (such as money from parents). Do NOT count student loans.
   - Subtract tuition from the documented financial assistance for each adult student. **This is the Student Assistance Income**

2. **Flow Chart: Tax Credit Student Eligibility**
   - Does the household entirely consist of full-time students? **NO**
   - Is at least one household member married and entitled to file a joint tax return? **YES**
   - Same-sex couples qualify if legally married under any state law [Rev. Rul. 2013-17]
   - This can be verified by a tax return or a marriage certificate.
   - Is one household member a single parent with a dependent child? **NOTE**: One parent/minor child set in a household is enough to meet this requirement, even if other non-parent/child members live in the unit.
   - All the single-parent cannot be a tax dependent of any third-party
   - The children can only be a tax dependents of a parent (this does not have to be the parent living in the unit) if claimed by anyone.
   - This is verified by a tax return or a signed affidavit stating the 2 items above.
   - Does a household member receive Rhode Island Works (TANF) benefits? **YES**
   - Verified by a RI Works award letter or 3rd-party verification.
   - Was a household member formerly in foster care? **YES**
   - Verified by the welfare agency responsible for the foster's placement.
   - Does a household member receive assistance from a Workforce Investment Act or similar program? **YES**
   - The program must receive federal, state or local government funding; and
   - Have a mission statement like the one for JTPA.
   - Eligible Household! **YES**
   - NOT an Eligible Household! **NO**

**Check Lists**

- **✓ Normal Wear & Tear**
  - Normal costs of turning an apartment after a household vacates may not be charged to either the former or the next household. Costs an owner incurs for the basic cleaning and repairing of items necessary to make a unit ready for occupancy are part of the costs of doing business.

  - Walls & Ceilings
    - Slight chips in plaster
    - Nail holes, pinholes, or cracks in walls
    - Fading, peeling, or cracked paint
    - Slightly torn or faded wallpaper

  - Doors & Windows
    - Door sticking from humidity
    - Cracked windows from faulty foundation/building settling
  - Floors
    - Floors needing a coat of varnish
    - Carpet faded or worn thin from walking
    - Loose grouting and bathroom tiles
  - Fixtures
    - Worn or scratched enamel in old bathtubs, sinks, or toilets
    - Partially clogged sinks caused by aging pipes
    - Rusty shower rods
    - Dirty or faded lamp or window shades

- **Vs. ** **✓ Tenant Damage**
  - Tenant damages usually require more extensive repair, and at a greater cost than "normal wear and tear" and are often the result of a tenant's abuse or negligence and not the result of normal living activities.

  - Gapping holes in walls or plaster
  - Holes in the ceiling from removed fixtures
  - Drawing, crayon marking, or wallpaper that the owner did not approve
  - Seriously damaged or ruined wallpaper

  - Doors ripped off hinges
  - Broken windows

  - Chipped or gouged wood floors
  - Holes, stains, or burns in the carpet
  - Missing or cracked bathroom tiles
  - Chipped and broken enamel in bathtubs and sinks
  - Clogged or damaged toilet from improper use
  - Missing or bent shower rods
  - Missing fixtures

**Helpful Reminders**

- RIHousing publishes the allocating agency estimate.
- The Owner determines the unit types in each building.
- The Owner decides which UA calculation method to use consistently throughout the building each year.
- The Owner may change methods from one year to the next.
- RIHousing approval is not required unless the chosen.
- The owner must give tenants a 90-day notice of all UAs other than the PHA estimate.

"Real-world" descriptions are incorporated into the language within the manual as well as helpful checklists and reminders.
The section on determining end of LIHTC periods features examples, helpful hints and visuals to help users more easily determine Credit, Compliance and Extended Use periods.

Important sections and frequent mistakes on a form are noted and defined for users.

Visual examples such as those for “placed-in-service” dates help managers/owners more easy identify important details.
The table of contents, like the manual itself, is interactive; one click takes the user to the appropriate page(s) for reference. A 26-page “Multiple Programs Guide” is a supplement to the manual.

Citations from HUD Handbook 4350.3, providing easy access for users to reference appropriate HUD guidance for more information.

**NEW**

Interactive, 26-Page Multiple Programs Guide

MULTIPLE PROGRAMS GUIDE
A SIDE-BY-SIDE SUMMARY OF SPECIFIC HOUSING PROVISIONS – 2019

Tax Credits | HUD | Rural Development | HOME | Tax Exempt Bonds
NOW INCLUDES HOUSING TRUST FUND PROVISIONS

The table of contents, like the manual itself, is interactive; one click takes the user to the appropriate page(s) for reference.

Citations

Stocks, Bonds, T-Bills, CDs, etc.

HUD’s Description | Exhibit 5-2 (A)(4)

“Stocks, bonds, Treasury bills, certificates of deposit, mutual funds, and money market accounts. Interest or dividends earned are counted as income from assets even when the earnings are reinvested. The value of stocks and other assets vary from one day to another. The value of the asset may go up or down the day before or after [income] is calculated and multiple times during the year thereafter. The owner may assess the value of these assets at any time after the authorization for the release of information has been received.”

Some of the above accounts accumulate income based on an interest rate.