

Chapter 19
Category 11n
Owner has Failed to Respond to Agency
Requests for Monitoring Reviews

Definition

This category is used to report owners of low-income projects that failed to respond to agency requests for monitoring reviews. Under the inspection provision Treas. Reg. §1.42-5, the state agencies must have the right to perform an on-site inspection of any low-income housing project at least through the end of the 15-year compliance period for the buildings in the project. State agencies (or their representatives) must conduct on-site inspections, inspect units, and review income (re)certifications, supporting documentation, and rent records for the tenants in those units, and otherwise meet the provisions listed in Treas. Reg. §1.42-5(a)(2)(i)(A), (B), (C), and (D).

The review of tenant records may be undertaken wherever the owner maintains or stores the records. A state agency may give an owner reasonable notice that an inspection of the building and low-income units or tenant record review will occur so that the owner may notify tenants of the inspection or assemble tenant records for review (for example, 30 days notice of inspection or review). However, the units and tenant records to be inspected and reviewed must be chosen in a manner that will not give owners of low-income housing projects advance notice that a unit and tenant records for a particular year will or will not be inspected and reviewed.

In Compliance

An owner is in compliance when requests for site visitations and access to tenants' records are honored without unreasonable postponements.

Example 1: Reasonable Request for Postponement

A state agency notified an owner that a property was to be inspected and requested that the inspection be conducted in 30 days. The owner requested that the inspection be postponed for two weeks because the permanent on-site manager had scheduled training during that time period.

This is a reasonable request. Although the owner arranged for a temporary manager, the permanent manager is more knowledgeable regarding the day-to-day operations, procedures, and tenant files.

Out of Compliance

An owner is out of compliance when requests for site visitations or tenant file inspections are denied or unreasonably postponed. A state agency should accommodate the owner's valid needs to reschedule a site visit or tenant file review, but should not allow owners to

delay or circumvent compliance monitoring reviews.¹ The date of noncompliance is the earlier of the date (1) the owner refused to allow a site visitation or access to tenants' records or (2) first postponed the site visit or access to tenant's records.

Example 1: Repetitive Delays

A state agency notified an owner on April 21, 2004, that a project was to be inspected and requested that the inspection be conducted on May 20, 2004. On May 2, 2004, the owner requested that the inspection be postponed until June 16, 2004, to give them time to get the records together. Then, the day before the inspection, the owner called to say that the property manager would not be available. The inspection was rescheduled for June 28, 2004, but the owner called again on June 27 to say that not all the records were available at the site and it would be more convenient to work at his office during the week of July 12, 2004.

The owner's repeated requests for postponements are not reasonable. The property is out of compliance on May 2, 2004.

State agencies may remove a LIHC property from the program if the owner fails to respond to repeated notices for monitoring reviews. See Chapter 21 for complete discussion.

Back in Compliance

The owner is back in compliance when the agency performs the site visit and/or reviews the tenants' files.

Example 1: Site Visit Performed Late

A state agency filed form 8823 noting noncompliance because the owner refused to allow the state agency's representatives on the property to perform the physical inspection. The date of noncompliance was August 15, 2004. The taxpayer received the IRS' notice identifying the noncompliance, after which the site inspection was completed on December 15, 2004, when state agency resources were available.

The property is back in compliance on December 15, 2004 and a Form 8823 should be filed noting the correction date.

References

1. IRC §42(i)
2. TD 8430, 1992-2 C.B. 14

¹ The IRS recommends that if the site visit/file review can be rescheduled within 45 days of the initial date, the appointment should be reschedule; longer postponements should be discouraged except under unusual circumstances. There is no legal authority for allowing this time period: it is similar to IRS policy for rescheduling audit appointments during an audit. See Internal Revenue Manual 4.10.2.8.3(4).