APPENDIX F

Monitoring Compliance with Low-Income Housing Tax Credit Requirements

A. General

The Ownership Entity and any Principle thereof (collectively, the "Owner" or "Owner") of low-income housing tax credit properties must comply with the following rules and procedures.

B. Recordkeeping and record retention

1. **Recordkeeping**: Owners must keep records for each qualified low-income building in the project that show for each year in the compliance period:
   - (i) the total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);
   - (ii) the percentage of residential rental units in the building that are low-income units;
   - (iii) the rent charged on each residential rental unit in the building (including any utility allowances);
   - (iv) the number of occupants in each low-income unit, but only if rent is determined by the number of occupants in each unit under Section 42(g)(2);
   - (v) the low-income unit vacancies in the building and information that shows when, and to whom, the next available units were rented;
   - (vi) the annual income certification of each low-income tenant per unit (for an exception to this requirement, see Section 42(g)(8)(B));
   - (vii) documentation to support each low-income tenant's income certification (other than as covered by the special rule for a 100 percent low-income building) as determined under Section 8 or by a public housing authority;
   - (viii) the eligible basis and qualified basis of the building at the end of the first year of the credit period; and
   - (ix) the character and use of the nonresidential portion of the building included in the building's eligible basis under Section 42(d).
2. **Record retention**: Owners must retain the records described in B(1) for at least six (6) years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period, however, must be retained for at least six (6) years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.
3. **Inspection record retention**: Owners must retain the original local health, safety, or building code violation reports or notices that were issued by the State or local government unit (as described in C(1)(vi)) for the Agency's inspection in Section D. Retention of the original violation reports or notices is not required once the Agency reviews the violation reports or notices and completes its inspection, unless the violation remains uncorrected.

C. Certification and Review

1. **Certification**: Owners must certify at least annually to the Agency that, for the preceding twelve (12) month period:

   (i) the project met the requirements of the 20-50 test under Section 42(g)(1)(A), the 40-60 test under Section 42(g)(1)(B), whichever is applicable to the project (see Section F if Average Income is selected as the minimum set-aside on IRS Form 8609);

   (ii) there was no change in the applicable fraction (as defined in Section 42(c)(1)(B)) of any building in the project, or that there was a change, and a description of the change;

   (iii) the Owner has received an annual income certification from each low-income tenant, and documentation to support that certification consistent with B(1)(vii) (other than as covered by the special rule for a one hundred percent (100%) low-income building);

   (iv) each low-income unit in the project was rent-restricted under Section 42(g)(2);

   (v) all units in the project were for use by the general public, including the requirement that no finding of discrimination under the Fair Housing Act occurred for the project (meaning an adverse final decision by HUD, a substantially equivalent state or local fair housing agency or federal court);

   (vi) the buildings and low-income units in the project were suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the State or local government unit responsible for making local health, safety, or building code inspections did not issue a violation report for any building or low-income unit in the project (Owner must attach any violation report or notice to its annual certification and state whether the violation has been corrected);

   (vii) there was no change in the eligible basis (as defined in Section 42(d)) of any building in the project, or if there was a change, the nature of the change;

   (viii) all tenant facilities included in the eligible basis under Section 42(d) of any building in the project were provided on a comparable basis without charge to all tenants in the building;

   (ix) if a low-income unit in the building became vacant during the year, that reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income;

   (x) if the income of tenants of a low-income unit in the project increased above the limit allowed in Section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the project was or will be rented to tenants having a qualifying income; and

   (xi) an extended low-income housing commitment as described in Section 42(h)(6) was in effect, including the requirement under Section 42(h)(6)(B)(iv) that an Owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937;

   (xii) all low-income units in the project were used on a non-transient basis (except for transitional housing for the homeless provided under Section 42(i)(3)(B)(iii) or single-room-occupancy units rented on a month-by-month basis under Section 42(i)(3)(B)(iv));

   (xiii) no tenants in low-income units were evicted or had their tenancies terminated other than for good cause and no tenants had an increase in the gross rent with respect to a low-income unit not otherwise permitted under Section 42;

(xiv) the project complied with the Violence Against Women Reauthorization Act of 2013 and tenant protections were incorporated into the lease forms, tenant selection plans, and policies related to unit transfers;

(xv) the Owner meets the requirements of the nonprofit set-aside if the project was allocated as such; and

(xvi) no unauthorized changes in ownership or management agent(s) have occurred.

2. **Review**:

(i) The Agency will review the certifications submitted under C(1) for compliance with the requirements of Section 42. The Agency may review the low-income certifications electronically using the Rental Compliance Reporting System (RCRS) or wherever the Owner maintains/stores the records, at the Agency's discretion.

(ii) With respect to each tax credit project, the Agency will conduct on-site inspections and review low-income certifications (including documentation to support the low-income certifications and the rent records for the tenants).

(iii) On-site inspections conducted by the Agency must satisfy both the requirements of Section 1.42-5(d) and the requirements of C(2)(iii)(A) through (D) below. Low-Income certification review conducted by the Agency must satisfy the requirements of C(2)(iii)(A) through (D) below.

(A) Timing. The Agency must conduct on-site inspections of all buildings in the low-income housing project and must review low-income certifications of the low-income housing project:

(1) By the end of the second calendar year following the year the last building in the low-income housing project is placed in service; and

(2) At least once every 3 years thereafter.

(B) Number of low-income units. The Agency must conduct on-site inspections and low-income certification review of not fewer than the lesser of:

(1) 20 percent of the low-income units in the low-income housing project rounded up to the nearest whole number of units: or

(2) the minimum number of low-income units in the low-income housing project set forth in the following table:

Number of low-income units in the low-income housing project	Number of low-income units selected for inspection or for low-income certification review (minimum unit sample size)
1	1
2	2
3	3
4	4
5-6	5
7	6
8-9	7
10-11	8
12-13	9
14-16	10
17-18	11
19-21	12
22-25	13
26-29	14

Number of low-income units in the low-income housing project	Number of low-income units selected for inspection or for low-income certification review (minimum unit sample size)
30-34	15
35-40	16
41-47	17
48-56	18
57-67	19
68-81	20
82-101	21
102-130	22
131-175	23
176-257	24
258-449	25
450-1,461	26
1,462-9,999	27

(C) Selection of low-income units for inspection and low-income certifications for review:

(1) Random Selection. The Agency will randomly select low-income units and tenant records to be inspected and reviewed. The Agency generally will not select the same low-income units of a low-income housing project for on-site inspection and low-income certification review, because doing so would give prohibited advanced notice. The Agency must select the units for inspections and for low-income certification separately and in a random manner.

(2) Advanced notification limited to reasonable notice. The Agency must select the low-income units to inspect and low-income certifications to review in a manner that does not give advance notice that a particular low-income unit (or low-income certifications for a particular low-income unit) will or will not be inspected (or reviewed) for a particular year. The Agency may notify the Owner of the low-income units for on-site inspection only on the day of

inspection. However, the Agency may give an Owner reasonable notice that an inspection of the project and of not-yet-identified low-income units or review of low-income certifications will occur. The notice serves to enable the Owner to assemble needed documentation for low-income certifications for review and to notify tenants of the possibility of physical inspection of their units.

(3) Meaning of reasonable notice. For purposes of C(2)(iii)(C)(2), reasonable notice is generally no more than 15 days. The notice period begins on the date the Agency informs the Owner that an on-site inspection of a project and low-income units or low-income certification review will occur. Notice of more than 15 days, however, may be reasonable in extraordinary circumstances that are beyond an Agency's control and that prevent an Agency from carrying out within 15 days an on-site inspection or low-income certification review. Extraordinary circumstances include, but are not limited to, natural disasters and severe weather conditions. In the event of extraordinary circumstances that result in a reasonable-notice period longer than 15 days, an Agency must select the relevant units and conduct the same-day on-site inspection or low-income certification review as soon as practicable.

(4) Alternative means of conducting on-site inspections - Use of the REAC protocol. An Agency may satisfy the requirements of C(2)(ii) and (iii) if the inspection is performed under the Department of Housing and Urban Development (HUD) Real Estate Assessment Center (REAC) protocol and the inspection satisfies the following requirements:
   (i) Both vacant and occupied low-income units in a low-income housing project are included in the population of units from which units are selected for inspection;
   (ii) The inspection complies with the procedural and substantive requirements of the REAC protocol, including the requirements of the most recent REAC Uniform Physical Condition Standards (UPCS) inspection software, or software accepted by HUD;
   (iii) The inspection is performed by HUD or HUD-Certified REAC inspectors;
   (iv) The inspection results are sent to HUD, the results are reviewed and scored within HUD's secure system without any involvement of the inspector who conducted the inspection, and HUD makes its inspection report available.

(5) HUD Inspections that comply with the requirements of the REAC Protocol. If, consistent with the requirements of C(2)(iv)(D), an Agency conducts on-site inspections under the REAC protocol, then –
   (i) C(2)(iii)(A) of this section is applied as if it did not contain the word "all";
   (ii) The number of low-income units required to be inspected under the REAC protocol satisfies the requirements of C(2)(iii)(B) concerning the number of low-income units an Agency must inspect; and
   (iii) the manner in which the low-income units are selected for inspection under the REAC protocol satisfies the requirements of C(2)(iii)(C).

(6) Income Certification Requirements for HUD Inspections that comply with the requirements of the REAC Protocol. The agency is not excused from reviewing

low-income certifications in accordance with C(2)(ii) and (iii) if it conducts on-site inspections under the REAC protocol.

(7) Applicability of reasonable notice limitation when the same units are chosen for inspection and file review. If the Agency chooses to select the same units for on-site inspections and low-income certification review, the Agency must complete both the inspections and review before the end of the day on which the units are selected.

3. **Frequency and form of certification**: The certifications and reviews of C(1) and C(2) will be made annually covering each year of the fifteen (15) year compliance period under Section 42(i)(1). The Owner certifications will be made under penalty of perjury.

D. Inspections

1. **In general**: The Agency has the right to perform an on-site inspection of any tax credit project at least through the end of the extended use period.

2. **Inspection standard**: For the on-site inspections of buildings and low-income units required by C(2)(ii), the Agency will review any local health, safety, or building code violations reports or notices retained by the Owner under B(3) in order to determine whether:

(i) the buildings and units are suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards); or

(ii) the buildings and units satisfy, as determined by the Agency, the uniform physical condition standards for public housing established by HUD (24 CFR 5.703).

The HUD physical condition standards do not supersede or preempt local health, safety, and building codes. A tax credit project under Section 42 must continue to satisfy these codes. The Agency will report any violation of these codes to the Service.

E. Notification-of-noncompliance

1. **In general**: The Agency will give the notice described in E(2) to the Owner of a tax credit project and the notice described in E(3) to the Service.

2. **Notice to Owner**: The Agency will provide prompt written notice to the Owner of a tax credit project if the Agency does not receive the certification described in C(1), or does not receive or is not permitted to inspect the tenant income certifications, supporting documentation, and rent records described in C(2)(ii), or discovers by inspection, review, or in some other manner, that the project is not in compliance with the provisions of Section 42.

3. **Notice to Internal Revenue Service**:

(i) In general: The Agency will file IRS Form 8823, "Low-Income Housing Credit Agencies Report of Noncompliance," with the Service no later than 45 days after the end of the correction period (as described in E(4), including extensions permitted under that paragraph) and no earlier than the end of the correction period, whether or not the noncompliance or failure to certify is corrected. The Agency will explain on IRS Form 8823 the nature of the noncompliance or failure to certify and indicate whether the Owner has corrected the noncompliance or failure to certify. Any change in either the applicable fraction or eligible basis under C(1)(ii) and C(1)(vii), respectively, that results in a decrease in the qualified basis of the project under Section 42(c)(1)(A) is noncompliance

that will be reported to the Service under E(3). If the noncompliance or failure to certify is corrected within three (3) years after the end of the correction period, the Agency will file IRS Form 8823 with the Service reporting the correction of the noncompliance or failure to certify.

(ii) Agency retention of records: The Agency will retain records of noncompliance or failure to certify for six (6) years beyond the Agency's filing of the respective IRS Form 8823. In all other cases, the Agency will retain the certifications and records described in Section C for three (3) years from the end of the calendar year the Agency receives the certifications and records.

4. **Correction period**: The correction period shall be that period specified in the monitoring procedure during which an Owner must supply any missing certifications and bring the project into compliance with the provisions of Section 42. The correction period is not to exceed ninety (90) days from the date of the notice to the Owner described in E(2). The Agency may extend the correction period for up to six (6) months for good cause.

F. Average Income Special Procedures (Section F is revised effective 2/15/2023 to reflect Agency policy changes in response to IRS Notice 2022-52)

1. Income and rent designations are required to float to maintain compliance with set-asides specified in the application.

2. All households must be certified annually in accordance with B(1)(vi) to confirm the appropriate unit set-aside. No exception is allowed for one hundred percent (100%) low-income projects using Average Income as the minimum set-aside. If household income has increased to the next set-aside, the next available unit of comparable or smaller size must be rented to a household at the lower set-aside until the appropriate unit mix is restored. If household income decreases, it is acceptable to move the unit to the lower set-aside if a slot is available, but this is not mandatory.

3. Low-income certification review frequency under C(2)(ii) will be increased to annual review to monitor compliance with this set-aside.

4. Lower set-asides must follow the Multifamily Tax Subsidy Program (MTSP) income and rent limits as published by HUD annually. Any units where income or rent exceeds the limit for the set-aside specified on the low-income certification will be reported to the IRS.

5. As part of the annual review of the certification required under C(1), the Agency will test compliance with the Average Income requirements. If the average income designation of at least 40% of compliant units is at or below sixty percent (60%) Area Median Income (AMI), there will be no impact to the minimum set-aside. The grouping of compliant units is expected to shift to help achieve compliance. If the minimum number of compliant units falls below forty percent (40%), or if the average income designation of the most advantageous grouping of 40% of compliant units is above sixty percent (60%) Area Median Income (AMI), the entire project will fail to meet the required minimum set-aside and will be reported to the IRS. The unit designation is determined by the owner as reported on the most recent unit event in RCRS. Units out of compliance at year end, regardless of whether attributable to a low-income certification issue or a physical inspection issue, will not be included in the grouping to determine whether the Average Income is acceptable and meets program requirements. Further, individual units that are out of compliance will be

reported to the IRS, even if the minimum set-aside is not affected. Any unit out of compliance will cause the applicable fraction to be less than the required 100%.

6. There are 5 allowable reasons to change the designation of a unit: 1) Federally permitted changes: As contained in IRS forms, instructions or guidance published in the Internal Revenue Bulletin. 2) Agency-permitted (or Agency-required) changes: As described in written public guidance. 3) Certain laws: As required or appropriate to enhance protections under The Americans with Disabilities Act, The Fair Housing Act, The Violence Against Women Act, The Rehabilitation Act of 1973 or any other state, federal or local law or program that protects tenants. 4)Tenant movement: When a current income-qualified tenant transfers to a different unit in the same project, the units "swap" status. 5) Restoring compliance with the average income requirements: As needed for purposes of identifying a qualified group of units, either for purposes of satisfying the AIT set-aside or for purposes of identifying the units to be used in computing applicable fraction(s).

G. "Not in Good Standing" Provisions

The Declaration of Land Use Restrictive Covenants for Low Income Housing Tax Credits ("LURA") requires the tax credit property to maintain compliance with program regulations for a period not less than 30 years. It does not allow for an Owner to voluntary withdrawal from the program. The Owner directly benefited from the tax credits or other Agency financing, and any subsequent Owners voluntarily purchase the property subject to these conditions.

The Agency may place the original Owner or subsequent Owner "Not in Good Standing" with the Agency for reasons including, but not limited to:

1. Owner's failure to comply with the terms and conditions in the LURA.
2. Owner's refusal to allow Agency Monitoring of the property and files.
3. Owner's failure to complete the annual certification required under C(1) for two consecutive years.
4. Owner's default on an Agency loan or other loans on the property.
5. A foreclosure on the property that results in early termination of the LURA.

The Agency will provide the current Owner with a letter detailing the issue(s) and outlining the repercussions for being placed "Not in Good Standing". When an Owner is declared "Not in Good Standing":

- The LURA for the property will remain in place until it naturally expires. Under the LURA, certain third party beneficiaries are entitled to sue for specific performance, not just the Agency.
- The Owner will not be allowed to participate in any Agency programs or receive any additional funding from the Agency while not in good standing.
- The property will be reported as no longer participating in the Low-Income Housing Tax Credit Program to the NC Department of Revenue. This may result in a substantial increase in real estate taxes, as the real estate tax is calculated differently for actively participating tax credit properties.

Curing the issue(s) will result in being removed from the "Not in Good Standing with the Agency" list. However, this doesn't automatically make the Owner eligible to participate in Agency programs or to receive funding from the Agency. In order to receive new funding, the Owner must first present a viable application and demonstrate capacity to ensure the previous issue(s) would not recur.

If the property received a loan from the Agency, the loan may be called in default and the full balance on the loan will be due and payable, as outlined in the loan documents. If the loan balance is not paid, the Agency will make appropriate attempts to enforce all remedies available to the Agency for such purposes. Even if the balance of the loan is paid in full, the loan's Deed Restrictions will remain in full force and effect.