



# 2024 Compliance Refresher

&

# Common Issues

for Owners & Managers of  
HDC-Financed LIHTC Developments

FYE 2024

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## INTRODUCTION

The New York City Housing Development Corporation (HDC) monitors properties that have been financed with 4% Low Income Housing Tax Credits allocated by the New York City Department of Housing Preservation and Development (HPD) and tax-exempt bonds issued by HDC.

In the course of monitoring these properties, we have identified a number of recurring issues which may delay our review process and/or result in the property owner being cited for noncompliance with the federal LIHTC requirements and/or the HDC Regulatory Agreement. This document is intended to remind owners and managers of these recurring issues, so that they may be avoided and internal processes corrected. *(This document is not all-encompassing and does not substitute for the more thorough direction furnished elsewhere by HDC, the Internal Revenue Service (IRS) and the U.S. Department of Housing and Urban Development (HUD).)*

## I. SIGNATURES & NOTARY CLARIFICATIONS

### Electronic Signatures

On March 20, 2020, HDC issued guidance on electronic signatures (E-Signatures). In this guidance, HDC communicated that e-signatures are permissible for initial certifications as well as for ongoing recertifications so long as these signatures adhere to the standards outlined in the **10.10.1 IRS Electronic Signature (e-signature) Program memorandum**. These standards include, but are not limited, to the requirements below:

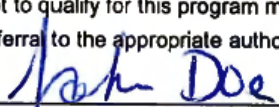
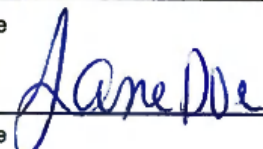
- The signer(s) using an acceptable form of electronic signature(s)
- The signer(s) consenting to the electronic signature(s) protocol
- The electronic signature(s) being attached to or associated with the electronic record being signed
- There is a means to identify and authenticate the person(s) as the signer(s)
- **There is a means of preserving the integrity of the signed electronic record**

Owners and managers are responsible for developing policies and procedures to ensure electronic signatures obtained meet the aforementioned requirements as all signatures must be authenticated and have a date and time stamped by the software being used to collect the e-signature. **The software must also produce a tamper-proof completion certificate or equivalent record of signature.** Most e-sign software contains built-in processes that implement these requirements, however, Owners seeking to utilize electronic signatures should confirm their software's compatibility with all requirements.

**Signatures that are typed, stamped, or cannot be authenticated are not valid.**

### Invalid Signatures

Forms that are digitally completed will be considered invalid if they were signed with ink and dated electronically or vice versa. If the forms do not have the timestamp record produced by the e-signature software or proof of authentication, the forms will not meet the e-signature requirements outlined in the 10.10.1 IRS Electronic Signature (e-signature) Program memorandum and will not be accepted. See below samples of a TIC that was signed in ink and dated electronically, this is not acceptable.

attempt to qualify for this program may include the disqualification of and referral to the appropriate authorities for potential criminal prosecution	
 _____ Signature	<u>4/15/2024</u> Date
 _____ Signature	<u>4/15/2024</u> Date

## Electronic Notary

Electronic Notaries must be registered with the Department of State Division of Licensing Services records. Electronic notaries are Notaries Public who are registered to perform electronic notarial acts. Electronic notarial acts are notarial acts performed remotely whereby the notary and the customer are physically separated but able to communicate with each other simultaneously by sight and sound using means authorized by the Secretary of State. **Additionally, the signature, seal, and certificate must be attached to or logically associated with the document or signature being notarized.**

Also, all notaries are required to maintain a journal of notarial acts performed, which must include the type of identification provided by the principal, for a period of ten years. Electronic notaries will additionally be required to maintain an audio & video record of all electronic notarial acts performed.

## Retro-Active Notary

Forms are not allowed to be retroactively notarized. Any documents that have been noted as insufficient may not be retroactively certified or altered. It is illegal and unethical for a notary to backdate a document. The notarial certificate must reflect the actual date of notarization. A newly executed notarized document will need to be submitted.

## II. Annual Owner Certification

### Rent Roll

- Must be uploaded as an Excel file
- Must be as of 12/31/2024
- If the project has more than one (1) building, the address of each building must be clearly identified.

### Summary and Tenant Data Workbook

The Workbook available on HDC's website (<https://www.nychdc.com/manage>) must be used. This workbook is password protected to ensure that the format is not altered or adjusted as any changes may impact HDC's ability to process and review the information. If the HDC template is not used or has been altered, you **will be required** to upload this information using the current template.

Below are some common issues that HDC has noticed with previous Summary and Tenant Data Workbook submissions. *This guidance is not meant to be a substitute for reading the instruction forms available on HDC's website.*

#### Summary

- This tab must be completed for every project.

#### Tenant Data

- Column E: Initial LIHTC Qualification Date – this column must be completed for all LIHTC units. The initial LIHTC Qualification date for the household occupying the unit as of 12/31/2024 must be entered.
- Column O: Bedroom Size – only enter one of the following number values: 0, 1, 2, 3, 4, 5, 6. **Do not** enter any text into this column (i.e. studio, 1 BR).
- Column S: For Average Income Projects only:
  - Average Income Project: Final regulations on the Average Income test introduced the concept of “Qualified Group of Units” under Treasury Regulation 1.42-19(b)(3) and 1.42-19T(c)(1). When the Average Income test is elected, the owner **must identify the qualified group of low-income units that meets the minimum set aside (25%)** and communicate the identification of these units to the applicable housing credit agency by entering a “1” in this column.
  - Non-Average Income Project - This column must be left blank.
- Columns AD, AN, AW, BH, BR, CB, CL, CV, DF, DP, DZ, EJ: Last 4 Digits of SSN:
  - Only enter the last 4 digits. Do not enter the full SSN.
  - If the first number is a 0, do not substitute a symbol (\*,-) for the 0.

- Columns EN – EO: Household Meet Income Restriction At:
  - Average Income Project:
    - Column EN – must have the Code corresponding to the Income Limit of the unit entered in this column.
    - Column EO – must be left blank
  - Non-Average Income Project:
    - Column EN - must have the Code corresponding to the Income Limit of the federal minimum set-aside of the Project entered in this column.
      - 25% at 60% or 40% at 60% → enter Code of “5”
      - 20% at 50% → enter code of “4”
    - Column EO
      - If the Income Limit of the unit is less than the Income Limit of the federal minimum set-aside of the Project, enter the percentage of the Income Restriction (i.e. 30%, 40%).
      - If the Income Limit of the unit is equal to the Income Limit of the federal minimum set-aside of the Project, leave this column blank.
- Columns FH – FI: Household Meet Income Restriction At
  - Average Income Project:
    - Column FH – must have the Code corresponding to the Rent Limit of the unit entered in this column.
    - Column FI – must be left blank
  - Non-Average Income Project:
    - Column FH - must have the Code corresponding to the Rent Limit of the federal minimum set-aside of the Project entered in this column.
      - 25% at 60% or 40% at 60% → enter Code of “5”
      - 20% at 50% → enter code of “4”
    - Column FI
      - If the Rent Limit of the unit is less than the Rent Limit of the federal minimum set-aside of the Project, enter the percentage of the Rent Restriction (i.e. 30%, 40%).
      - If the Rent Limit of the unit is equal to the Rent Limit of the federal minimum set-aside of the Project, leave this column blank.

### III. Responses to Audit & Annual Owner Certification Findings

- Responses uploaded to the SharePoint Online folder must be clearly named to identify which unit the response is for.
- Responses should only be combined on the unit level:
  - If the recertification was incomplete and the rent ledger was not provided for unit 1A, these items can be combined into one pdf file when uploaded.
  - If 10 rent ledgers were not provided, the rent ledgers must be uploaded in separate pdf files for each unit.
- For projects subject to a LIHTC Audit Review for the certification year, HDC will notify the Project of all findings from the LIHTC Audit and AOC Review at the same time. The Project must respond to all noted findings on the LIHTC Audit Report **and** the AOC Findings Report.
  - HDC has seen several instances where a Project will only address the findings from the LIHTC Audit Report and not the AOC Findings Report or vice versa.
  - Responses must also be uploaded to the appropriate folders in SharePoint Online as indicated in HDC's Notification of Findings email.



## IV. INCOME CERTIFICATIONS:

### Income Verification & Audit File Documentations

#### 1. Income Verification:

- If a household member receives Supplemental Security Income (SSI), separate verification of the State Supplemental Payment (SSP) is also required.
- If a third-party verification of employment is provided, all fields must be completed in its entirety. If all fields are not completed, it will be considered incomplete.
- If pay stubs are provided, they must:
  - Be consecutive.
  - Be thoroughly reviewed by management for relevant items of importance such as additional assets and bonuses.
    - ❖ Additional assets may include 401K & other retirement accounts, checking/Savings Accounts, Life Insurance, etc..
    - ❖ Third-party verification of bonuses is required to determine the potential gross amount and frequency.
  - Any year-to-date (YTD) discrepancies should be further investigated, and appropriate verification obtained.

#### 2. Audit File Documents:

- File documents should be separated by unit and the File Submission Requirements should be followed as closely as possible.
- The following documents are not needed:
  - Stale documents
    - ❖ Ex: Move-in date of 8/1/2024
    - ❖ Pay stubs were initially collected from 1/1/2024 - 2/1/2024. The process was delayed and new pay stubs were required to be collected from within 120 days prior to the move-in date to properly document the tenant's income.
    - ❖ Pay stubs were later collected from 6/1/2024 - 7/1/2024. These are the pay stubs that must be provided with the audit file.
  - Extra pages of the lease (Only pages needed are the first page, term page and signature page)
  - Non-HDC lease riders (VAWA riders, Lead Paint Riders, Pet Policy Riders, etc.)
  - Credit and Background Checks
  - EIV Reports - These should NEVER be included in a file.
  - Birth Certificates, SS Cards, Licenses, and other Photo ID\*
    - ❖ Unless warranted for name change or to confirm ages etc.

## Combination Income

Combination Income – Invalid Certification: Income from different points in time used to determine eligibility for Initial LIHTC Certifications and Annual Income Recertifications.

The most important thing to remember when it comes to Combination Income is that **there must be a 120-day window where all supporting documentation is effective**. Ideally this would mean the following in order for files to be valid, however this list is not exhaustive:

- a. **Initial Certification**: All documents and signatures are dated within the 120 days prior to move-in. **The TIC is the last item to be signed/dated in the package** (i.e., no documentation that is required to determine eligibility is dated after the TIC).
  - i. Scenario:
    - Initial LIHTC Qualification date of 4/12/2024
    - The TIC was signed on 4/12/2024.
    - Social Security award letter, effective 3/1/2024.
    - Pension, effective 11/20/2023.
    - Public Assistance, effective 4/11/2024.
    - Checking account, effective 4/9/2024.
  - ii. This initial certification is considered incomplete because the pension is stale.
  - iii. Items needed to bring this file back in compliance:
    - A pension statement dated within 120 from initial effective date of 4/12/2024
    - OR**
    - A notarized self-declaration of income from the tenant confirming the Pension amount received. *Must have valid effective date or "True and correct" date.*
      - *If an effective date or "True and correct" statement are not explicitly included in the self-declaration, the verification is considered effective as of its execution.*
    - Please note that a corrective self-declaration document without a valid effective date (within 120 days prior to move-in) will result in an invalid file. The file is considered invalid because the self-declaration was signed outside of the 120-day window when all

other documents in the file are effective. In other words, there is a “combination” of income and assets from various points in time.

- b. **Recertification:** All documents and signatures are dated within the 120 days prior to the anniversary of the Initial LIHTC Qualification Date. **The TIC is the last item to be signed/dated in the package** (i.e., no documentation that is required to determine compliance is dated after the TIC).
- i. Scenario:
    - The household’s Effective Date is 4/12/2024.
    - The Recertification TIC was signed on 4/12/2024.
    - Pension, effective 11/20/2024.
    - Public Assistance, effective 11/1/2023.
    - EBT Card balance, effective 4/9/2024.
  - ii. This recertification will be considered incomplete because of combination income. Management must correct with a retroactive certification or a current certification.
  - iii. Example of a newly completed **retroactive certification** with income and asset documents that bring this unit back in compliance:
    - The new Recertification TIC was signed on 6/12/2025.
    - Pension, effective 4/10/2024.
    - Public Assistance, effective 3/1/2024.
    - EBT Card balance, effective 4/9/2024
  - iv. Example of a newly completed **current certification** with current income and asset documents that brings this unit back in compliance:
    - The Recertification TIC was signed on 6/12/2025.
    - Pension, effective 5/20/2025.
    - Public Assistance, effective 6/1/2025.
    - EBT Card balance, effective 5/17/2025

Please note that while the 8823 Audit Guide allows retroactive certifications to be performed, the retroactive certification must completely and clearly document the sources of income and assets *that were in place at the time the certification should have been completed*. In the event the retroactive certification cannot be completed,

the 8823 Audit Guide allows the owner to correct the noncompliance by performing a certification using current income and asset sources under the current income limits in effect as of the date the household completes the certification. Management must provide a complete certification in accordance with one of the aforementioned requirements.

## V. Rent Ledgers

Rent ledgers must be submitted for all files selected for audit and for all units included on the Rent Discrepancies tab of the Annual Owner Certification (AOC) Findings Report. The guidance below can help address concerns HDC has had with the ledgers provided:

- All transactions on rent ledgers should be clearly labeled.
  - Subsidy charges and payments must be labeled.
    - Management must differentiate between tenant payments (credits) and subsidy payments (credits).
  - Plain language should be used, or a key must be provided.
  - All transactions and adjustments should contain the date range(s) they pertain to.
  - Rent concessions (to reach a preferential rent) should be clearly labeled.
  - Label all optional and non-optional fees.
  - Please note that utility charges, even if labeled separately, are considered part of a unit's gross rent.

## VI. DUE DILIGENCE

### Units occupied by non-qualified households

A household may continue to add members as long as at least one (1) member of the original low-income household continues to live in the unit. The addition of new household member(s) to an existing low-income household requires an income certification for the new member(s) of the household, including third-party verifications. Once all the original tenants have moved out of the unit, the remaining tenants must be certified as a new income-qualified household unless:

- The newly created household was income-qualified between the date the new member(s) joined the household and the date the last original member moved out, OR
- The new member(s) were *independently* income-qualified between the date the new member(s) joined the household and the date the last original member moved out

If the remaining tenant(s) fails to provide the owner with a qualifying certification and documentation of initial eligibility by the time the last original member moved out, evidence of timely due diligence must be documented. This would include all the certification notices sent to the household. Thereafter, management must continue to diligently pursue action to bring the unit back into compliance, and, when necessary, commence a holdover case to correct the noncompliance. In such cases, a copy of the executed Holdover Petition (with an index/docket number) filed with the court *no later than 120 days post the date the last original member moved out* must be provided, along with a current status of the case. If there was a delay with the commencement of the holdover case or the Holdover Petition was not filed, management must advise as to the circumstances that prevented the holdover case from being brought to court and provide supporting documentation (i.e. restrictions resulting from protections under the Emergency Rental Assistance Program (ERAP)). **Please note that documentation of initial eligibility is required for the program even if the remaining tenants have succession rights.**