

# CHAPTER 7 - COMPLIANCE MONITORING PROCESSES

## Section 7A – Tenant Data Collection and Reporting

### Part 700 : MSHDA's On-Line Tenant Data Reporting System

#### Name of Software Program: Certification On Line (COL)

Owners and managers of LIHTC projects must report the annual income, rent charged and additional resident information for each restricted unit in the development to MSHDA through the on-line tenant data reporting system - Certification On Line (COL). This data must be entered on an on-going basis as transactions occur (e.g. move-in, move-out, recertification, rent changes, etc.). The owner/management agent must then submit the data monthly or quarterly updates to MSHDA's On-line Tenant Data Reporting System via data entry or upload. The on-line system replaces the Tenant Income and Rent Report (TIRR), which was previously used to report tenant income and rent information. It also replaces the Annual Project Summary form that was used to track special targeting restrictions that a project might have, such as persons with disabilities, homeless, battered women, large households, special needs individuals, etc.

#### Tenant Data Reporting for Restricted Units

The owner/management agent must enter the following information into MSHDA's Online Tenant Data Reporting System for each restricted unit in the project:

- Number of qualified low-income units;
- Information on each low-income tenant (every household member)
  - tenant name
  - social security number
  - date of birth
  - move-in date
  - number of people in the household
  - annual income
  - rent charged for each unit
- Move-in date and move-out date for all tenants (including market rate tenants); and
- HUD's required demographic data (see **Part 702**); and
- Such other information as is set forth in the system and required by MSHDA

#### Tenant Data Reporting for Restricted Units

For market rate units (unrestricted), the move-in date and move-out dates for all tenants is required and the remainder of above information is requested but is not mandatory. This information is helpful because it is used by MSHDA for market analysis and statistical reporting.

**Failure to submit accurate and/or complete tenant data in a timely manner will result in a finding of noncompliance.** Detailed information about the MSHDA On-Line Tenant Data

Reporting System is provided on the MSHDA Website (www.michigan.gov/mshda. Select “Property Managers” and then “Online Systems”).

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**Part 702    :: HUD’s Required Tax Credit Data Collection**

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On July 30, 2008, the President signed into law the Housing and Economic Recovery Act of 2008 (“HERA”). Beginning September 30, 2010, HERA requires state housing finance agencies to annually collect and submit to HUD certain demographic data regarding the residents living in tax credit projects. This data includes, but is not limited to the following:

- Race
- Ethnicity
- Family composition
- Age
- Income
- Use of Rental Assistance
- Disability Status and
- Monthly rental payment

Specifically, the HUD LIHTC Tenant Data Collection Form requires the following information for each LIHTC household:

- a) Name: *List first name, middle initial and last name of all occupants of the unit.*
- b) Relationship to Head of Household: *Enter each household member’s relationship to the head of household by using one of the following coded definitions: H – Head of Household; S – Spouse; A – Adult co-tenant; O – Other family member; C – Child; F – Foster child(ren); L – Live-in caretaker; or N – None of the above.*
- c) Race: *Enter each household member’s race by using at least one of the following coded definitions: 1 – White; 2 – Black/African American; 3 – American Indian/Alaska Native; 4 – Asian; or 5 – Native Hawaiian/Other Pacific Islander.*
- d) Ethnicity: *Enter each household member’s ethnicity by using one of the following coded definitions: 1 – Hispanic or Latino; 2 – not Hispanic or Latino.*
- e) Disabled: Check yes if any member of the household is disabled according to Fair Housing Act definition for handicap (disability):
  - 1) A physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. For a definition of “physical or mental impairment” and other terms used in this definition, please see 24 CFR 100.201.
  - 2) “Handicap” does not include current, illegal use of or addiction to a controlled substance.
  - 3) An individual shall not be considered to have a handicap solely because that individual is a transvestite.

In administering the LIHTC program, the housing credit agency (MSHDA) must, to the best of its ability, provide this disability status information, pursuant to 42 U.S.C. 1437z-8. However, it is the tenant's voluntary choice whether to provide such information, and questions to the tenant requesting the information must so state. If the tenant declines to provide the information, the housing credit agency shall use its best efforts to provide the information, such as by noting the appearance of a physical disability that is readily apparent and obvious, or by relying on a past year's information. For purposes of gathering this information, no questions with respect to the nature or severity of the disability are appropriate.

- f) Date of Birth: *Enter each household member's date of birth.*
- g) Student Status: *Enter Yes if the household member is a full-time student or No if the household member is not a full-time student.*

In addition to the items listed above, the Social Security Numbers or Alien Registration Numbers are required for each household member, as discussed in **Part 638** (Social Security Cards and Numbers / Alien Registration Numbers).

MSHDA collects the required data for each resident in the project through the Online Tenant Data Reporting System and annually submits the data to HUD. A copy of the HUD LIHTC Tenant Data Collection Form, which looks very similar to the Tenant Income Certification (TIC) form (see **Part 618**), is available on the MSHDA website.

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## Section 7B – Annual Compliance Certifications

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The requirements and procedures discussed in this Section are subject to change. Please refer to the MSHDA website for up to date information about Annual Compliance Certifications.

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### Part 704 : Annual Owner Compliance Certifications and : Forms for Projects

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The forms/reports listed below are included in the Annual LIHTC Owner Certification package and must be submitted to MSHDA on an annual basis to certify a project's continuous compliance with program regulations. These certifications are made under penalty of perjury that the information provided is true, complete, and in compliance with Section 42 of the IRC.

- A. Owner Certification of Continuing Program Compliance Form (AOC) – The purpose of this form is for LIHTC project owners to certify continuing compliance with Section 42 on an annual basis. See [Part 706](#) for a detailed description of the Owner Certification form.
- B. Utility Allowance Documentation Form – This form details the monthly amount estimated for each utility, the source of the estimate, and whether or not the utility is tenant-paid. This form must be completed annually by the owner/manager. See [Part 470](#) for more information about utility allowance forms.
- C. Common Area Unit Designation Statement Form (if applicable) – This form is used to designate a particular unit as common area unit in the first compliance year of the project, if such a unit was included. This form is also used to request changes in common area units as required under LIHTC Compliance Policy #7. For more information, see [Parts 862](#) (Common Area Residential Unit).
- D. First Year Credit Statement Form (when applicable) ([Part 144](#)).
- E. Resident Fees Form ([Part 432](#)).

Obtaining Current Forms - Copies of these forms are located online, as discussed in [Part 202](#) (MSHDA website). Owners and management agents should use the following instructions to access the AOC information and forms (or any other compliance-related documents, information or forms) located on the MSHDA website at [www.michigan.gov/mshda](http://www.michigan.gov/mshda). From MSHDA's main page, select "Property Managers" on the column located on the left side of the screen, then select "Compliance for Rental Housing", then "Recent Updates" (or "Forms" then "Year End Reports"). Owners must check the website to verify that the form being used is the most current version.

E-mail notification - Each year, MSHDA Compliance Monitoring sends a memorandum via email to notify owners and management agents of the AOC requirements and to provide links to the updated forms located on the MSHDA Compliance website. The memorandum is also posted on the Compliance website. Owners and management agents may request to be included on

the emailing list to receive the electronic notification (email your request to [MSHDACompliance@michigan.gov](mailto:MSHDACompliance@michigan.gov)). However, Owners are responsible to meet the annual reporting deadline regardless of whether or not they receive the email notification. MSHDA Compliance no longer sends mass correspondence by U.S. mail.

**Submission Due Dates** - Annual LIHTC owner certifications must be submitted for existing tax credit projects no later than March 1st of each year during the compliance period, beginning with the year for which credit was first claimed. If the submission deadline falls on a weekend, Annual Owner Certification package and attachments must be received the Friday before the deadline.

**Extension Requests** - If the owner is unable to submit the Annual Owner Certification package by the deadline due to extenuating circumstances, the owner may request an extension. Extension requests must be in writing and must include the reason for the extension and the extension date requested. Extension requests will only be approved for extenuating circumstances.

**Compliance Monitoring Fees** - If applicable, compliance monitoring fees (not including the physical inspection fees) must be submitted no later than 30 days after invoices are issued. For additional information regarding compliance monitoring fees, see **Part 650**.

Failure to submit legible, responsive and thoroughly completed Annual Compliance Certifications when they are due will be deemed noncompliance. For additional reporting requirements, see **Part 700** (MSHDA's On-line Tenant Data Reporting System). For a list of additional owner responsibilities, see **Part 206** (Owners of LIHTC Projects).

Note: HOME projects are required to submit an additional annual certification.

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<b>Part 706</b>	<b>Annual LIHTC Owner's Certification of Continuing Program Compliance</b>
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The owner of a project (or building) which has claimed or plans to claim low income housing tax credits must certify annually to MSHDA, under penalty of perjury, for each year of the compliance period, that the project is in compliance with the requirements of Treasury Reg. 1.42-5 paragraph (c)(1). The owner is required to certify on MSHDA's Owner Certification of Continuing Program Compliance form (AOC) or other forms designated, as to the following for the preceding 12 month period:

- 1) The project meets the minimum requirements of: either the 20/50 test set forth under Section 42(g)(1)(A) of the Code, or the 40/60 test set forth under Section 42(g)(1)(B) of the Code, whichever is applicable.
- 2) There has been no change in the applicable fraction (as defined in Section 42(c)(1)(B) of the Code) for any building in the project.

- 3) The owner has received an annual Tenant Income Certification from each low-income resident and documentation to support that certification, or the owner has a recertification waiver letter from the IRS in good standing, that waives the requirement to obtain 3rd party verifications at recertification, and has received a Tenant Income Certification from each low-income resident, and documentation to support the certification at their initial occupancy. Note: This language will likely be revised on upcoming versions of the Owner's Certification form to include requirements for projects that have been approved by MSHDA to eliminate recertifications.
- 4) Each low-income unit in the project has been rent-restricted under Section 42(g)(2) of the Code.
- 5) All low-income units in the project are and have been available for use by the general public and used on a non-transient basis (except for transitional housing for the homeless provided under Section 42(i)(3)(B)(iii) of the Code or single-room-occupancy units rented on a month-by-month basis under Section 42(i)(3)(B)(iv) of the Code).
- 6) No finding of discrimination under the Fair Housing Act, 42 U.S.C 3601-3619, has occurred for this project. A finding of discrimination includes an adverse final decision by the Secretary of the Department of Housing and Urban Development (HUD), 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. 3616a(a)(1), or an adverse judgment from a federal court.
- 7) Each building in the project is and has been 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 building code inspections did not issue a violation report for any building or low income unit in the project. Additionally, all low income units were continuously occupied, vacant but rent ready or vacant for redecorating/minor repairs for a period of 30 days or less, throughout the reporting period.
- 8) There has been no change in the eligible basis (as defined in Section 42(d) of the Code) of any building in the project since the last certification submission.
- 9) All tenant facilities included in the eligible basis under Section 42(d) of the Code of any building in the project, such as swimming pools, other recreational facilities, parking areas, washer/dryer hookups, and appliances were provided on a comparable basis without charge to all tenants in the buildings.
- 10) If a low-income unit in the project has been vacant during the year, reasonable attempts were 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 rented to tenants not having a qualifying income.
- 11) If the income of tenants of a low-income unit in any building increased above the limit allowed in Section 42(g)(2)(D)(ii) of the Code, the next available unit of comparable or smaller size in that building was rented to residents having a qualifying income.

- 12) 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, 42 U.S.C. 1437s. Owner has not refused to lease a unit to an applicant based solely on their status as a holder of a Section 8 voucher and the project otherwise meets the provisions, including any special provision, as outlined in the extended low-income housing commitment.
- 13) The owner received its credit allocation on the basis that a bona fide 501(c)(3) or 501(c)(4) nonprofit organization under Section 42(h)(5) of the Code, has an ownership interest in the development and continues to materially participate in the development's operation under Section 469(h) of the Code.
- 14) 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(h)(6)(E)(ii)(II).
- 15) There has been no change in the ownership entity of the project (change in limited and/or general partners): if there has been a change, a description of the change has been provided to the Compliance Monitoring Section of MSHDA in writing.
- 16) All resident data for the project has been entered as required into MSHDA's on-line tenant data collection system for all project activity through December 31 of the reporting year.
- 17) All required special needs units as designated in the LIHTC Regulatory Agreement were rented to tenants with special needs and substantial services were available as a result of a contract (or equivalent relationship) with a local service provider.

Owner Signature - The Owner's Certification of Continuing Program Compliance form must be signed by the owner or an authorized representative of the owner. If signed by an individual other than a person affiliated with the ownership entity (i.e. member, partner, principal, etc.), a copy of a document authorizing the individual to sign on behalf of the ownership entity must be included with each Owner Certification submitted to MSHDA.

Use Current Form - Owners/management agents should be aware that the Owner's Certification of Continuing Program Compliance form and required attachments may change from year to year. Owners should go to the MSHDA Website (see **Part 202**) to access the most current version of the form each year.

Execute forms after January 1st - The AOC form may be executed (signed) no earlier than Jan 1<sup>st</sup> following the certification year.

In addition to the Owner's Certification of Continuing Program Compliance form, other documents required to be submitted annually are discussed in **Part 704** (Annual Compliance Certifications for Projects). These documents include but are not limited to the Utility Allowance Documentation Form, Common Area Unit Designation form (if applicable) and First Year Credit Statement Form (if applicable)

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## Section 7C - Tenant File Audits

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The requirements and procedures discussed in this Section are subject to change. Please refer to the MSHDA website for up to date information about Tenant File Audits.

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### Part 708 : Overview of Tenant File Audits

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As provided in IRS compliance monitoring regulations, MSHDA (or a contractual agent authorized by MSHDA) has the right to review a project's Tenant/Unit Files, Development File, and record-keeping and record retention files. The reviews may be conducted in-house (at MSHDA offices) or on-site at a tax credit project as deemed necessary throughout the compliance period (initial 15 year and extended use). MSHDA has the right to conduct the file audits at any time, without notice. However, notice typically will be provided to the owner/management agent and the general procedures discussed in this Chapter will usually be followed.

Tenant file audits ("file audits" or "audits") are required to determine if owners of housing developments funded under certain government programs (i.e. LIHTC, HUD Section 236, HOME, Bonds, etc.) are complying with federal and state regulations. Compliance with these regulations includes certifying the incomes of tenants, ensuring that rents charged are within program guidelines and ensuring that residents meet program and project eligibility.

Presently, MSHDA contracts with one or more companies to conduct tenant file audits. Owners, management agents, and on-site leasing staff must cooperate with the contractors. MSHDA continues to oversee the audit process and makes final determinations regarding noncompliance.

It is important that MSHDA's contact information for the owner and management agent, as well as the on-site telephone number be up to date. When changes in management or owner contacts occur, the owner must report the change to MSHDA Compliance. A Notice of Transfer or Change in Ownership or a Notice of Change in Management form is required (both available on the MSHDA website). A project for which current contacts are unknown, making scheduling the file audit difficult or impossible, will be deemed in noncompliance. See [Part 216](#) (Update Contact Information) for more information.

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### Part 710 : General Scope of Tenant File Audits

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To determine if the unit is in compliance with applicable program/project rules and regulations, the file auditor will review the following information:

- Income at move-in or initial eligibility of each household and the documentation used to determine that income;
- Current income of each household and the documentation used to determine that income;



- Zero Income Statements, where required;
- For Section 236 projects, deductions and allowances (i.e. medical, elderly, and dependent) for each household and the documentation used to determine those deductions and allowances, if required;
- Supplemental documentation (i.e. social security cards, birth certificates, etc.);
- Project and program eligibility of each household (i.e. student status, elderly status, etc);
- Recertifications for each household, if required;
- Rent amount charged to each household;
- Utility allowance for each unit;
- Lease agreement;
- Consistency of the information provided in the tenant file, on reports submitted to MSHDA, on the rent roll, vacancy report, and on the lease agreement;
- Current number of vacant units and vacancy percentage; and
- Other items and information as specified by MSHDA.

For more information about the topics listed above, see the Index at the end of the Compliance Manual for Part Number references.

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## **Part 712     File Audit Frequency**

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Depending on the source of funding, projects are audited on a one-year, eighteen-month, two-year, or three-year cycle for the duration of the compliance period. Listed below is the minimum file audit frequency for each program type. MSHDA reserves the right to conduct audits more frequently if MSHDA deems this necessary and appropriate based on the results of a previous tenant file audit or for any other reason(s).

- **Low Income Housing Tax Credit (LIHTC or tax credit), Tax Credit Assistance Program (TCAP) and Section 1602 developments** – File audits are conducted every 3 years. Initial file audits for new buildings are conducted no later than the end of the second taxable year after the last building is placed in service.
- **Section 236 and Authority-financed developments (with or without LIHTC)** – File audits are conducted every 18 months, or at the request of the Authority. Authority-financed developments include tax-exempt bond projects and taxable bond projects.
- **HOME developments (with or without LIHTC)** – File audits are conducted every 1, 2, or 3 years, depending on the **total** number of units in the project (not on the number of HOME assisted units):
  - 1-4 units in project – every 3 years
  - 5-25 units in project – every 2 years
  - 26 or more units in a project – every year
- **Developments with multiple sources of funding** – File audit frequency defaults to the most restrictive program requirement.

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**Part 714 : Number of Files Audited**

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Listed below are the minimum percentages of files for each program type that will be audited. MSHDA reserves the right to review a higher percentage of files, if MSHDA deems this necessary and appropriate based on the results of a previous tenant file audit or for any other reason(s).

- **Low Income Housing Tax Credit, Tax Credit Assistance Program (TCAP) and Section 1602 Developments** - 20% of the restricted units in the development.
- **MSHDA Financed Developments** - 20% of the restricted units in the development.
- **Section 236 Developments** – the number of files to be audited is based on HUD’s formula below:

Number of Units	Minimum File Sample
100 or Fewer	5 files plus 1 for each 10 units over 50
101-600	10 files plus 1 for each 50 units or part of 50 over 100

- **HOME Developments** - 20% of the restricted units in the development.
- **Developments with Multiple Funding Sources** – the number of files to audit defaults to the most restrictive program requirement.

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**Part 716 : Scheduling and Preparing for the File Audit**

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As a general rule, the file audit contractor will contact the management agent by telephone or email at least 30 calendar days prior to the audit to arrange the file audit date, location, and time. The file audit contractor will then send a scheduling letter to the management agent/owner confirming the scheduled audit date, time, and location.

The scheduling letter also notifies the management agent/owner that a current rent roll (or similar report) and a vacancy report must be submitted to the file audit contractor at least ten (10) days prior to the scheduled audit, preferably by email. Providing this information before the audit gives the contractor the ability to plan the file or unit sample, which saves valuable time on the day of the file audit.

The Rent Roll (or similar report) and Vacancy Report must include the information listed below.

Rent Roll for **all units** must include:

- Unit #
- Head of Household Name (first and last)
- Move-in Date
- Designation (Market Rate or Program/Funding Source)

The rent roll (or similar report) must contain the following additional information for **all restricted units**:

- Current Income
- Current Rent
- Programs/Funding Sources and AMI % (i.e. LIHTC 50%, HOME 30%, etc.) Any and all applicable unit designations for each unit must be included, such as elderly, disabled, homeless, battered women, etc.

Vacancy Report must include:

- Unit #
- Move-Out Date of Last Resident
- Number of Days Vacant (preferred but not mandatory)

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**Part 718**    **Conducting the Audit**

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The owner must provide the following items to the auditor at the time of the audit:

- a. Updates to the development's rent roll, if applicable.
- b. Tenant files for the units selected for review. For information on the recommended format and required contents of the tenant file, see **Part 646** and **Part 648**.
- c. Updates to the development's vacancy report, if applicable.
- d. Any other program-related documents, reports, etc. deemed necessary by the MSHDA auditor, if requested.

During and at the conclusion of the file audit, if the particular circumstances are conducive and time permits, the auditor will verbally review and explain the file audit findings and results with the development's management agent representative or personnel, if such personnel are on-site and available at the file audit. The auditor will prepare a File Audit Report (discussed in **Part 720**) and send it to the owner/management agent.

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**Part 720**    **File Audit Report**

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A File Audit Report will be prepared after the tenant file audit. It will be sent to the management agent within 30 calendar days after the date the file audit was performed, unless there are unusual or unforeseen circumstances that result in a delay in preparing or sending the report. A copy of the report will also be sent to the owner of the project.

For all units cited as having potential compliance issues, the report will include a description of the issue(s), the required and/or suggested corrective actions, the date each unit identified was "out of compliance", and the appropriate correction deadline.

**Name of Software Program: Compliance Audit Response System (CARS)**

The owner/management agent must submit a complete, accurate, responsive and timely written response to the development's File Audit Report (Audit Response or AR) detailing the corrective actions taken and providing pertinent documentation of those actions. The AR must be submitted to the file audit contractor and to MSHDA Compliance Monitoring. The AR to the file audit report must also be generated using MSHDA's **Compliance Audit Response System (CARS)** found at the MSHDA Compliance Portal website. Detailed information about CARS is provided on the MSHDA Website ([www.michigan.gov/mshda](http://www.michigan.gov/mshda). Select "Property Managers" and then "Online Systems".) After entering the appropriate information, the CARS system will produce two forms for submittal:

- (1) Owner's Certification of File Audit Corrections and
- (2) An Owner's Report of File Audit Corrections.

- **Owner's Certification of File Audit Corrections** - This form must be signed by the owner of the development or an authorized representative of the owner. If signed by an individual other than a person affiliated with (i.e. member, partner, principal, etc.) the ownership entity, a copy of a document authorizing the individual to sign on behalf of the ownership entity must be included with each AR submitted to MSHDA.

<Owner's Letterhead>

**FILE AUDIT CORRECTIONS**  
**OWNER'S CERTIFICATION OF FILE AUDIT CORRECTIONS**

[Name of Development Owner:] \_\_\_\_\_ (the "Development Owner"), the owner/Management of [Development Name:] \_\_\_\_\_, located in [City:] \_\_\_\_\_, Michigan. MSHDA Number: \_\_\_\_\_ by and through its duly authorized representative identified below, hereby certifies the following:

1. All file audit findings identified in the file audit performed on \_\_\_\_\_ and listed in the file audit report have been corrected and the files are now in compliance with the MSHDA file audit requirements.
2. The attached file audit report accurately identifies the actions taken to correct the file audit findings and the date(s) the corrections were made.

The undersigned acknowledges that any material omission or misrepresentation of fact herein constitutes an act of fraud, which is punishable by a fine of not more than \$15,000 or imprisonment for not more than ten years. False, misleading or incomplete information shall also be grounds for rejection of this Certification and will result in an event of noncompliance.

**Owner's Report of File Audit Corrections** - The Audit Response must address all findings cited in the File Audit Report. For each unit cited as being in noncompliance, the following information is required for each individual finding:

- Description of corrective actions taken and,
- Correction date

Documentation (TIC forms, 50059 forms, verifications, etc) of the corrective action taken also needs to be attached to the two generated forms printed from CARS. (The documentation should be submitted to the file audit contractor only. MSHDA will request documentation, if needed.)

<b>Owner's Report of File Audit Corrections</b>									
Development: _____					Audit Date: _____				
MSHDA #: _____			LIHTC#: _____			Submission#: _____			
Address: _____									
Item	Bin/Unit	HOH Name	Move-in Date	Category	Finding	Corrective Action	Completion Date	High Home	Low Home
								<input type="checkbox"/>	<input type="checkbox"/>
								<input type="checkbox"/>	<input type="checkbox"/>

Submission and Correction Deadline - In general, the audit response must be received no later than 30 days after the report is issued (file audit report cover letter date). The File Audit Report will indicate the correction deadline. For a related discussion, see **Part 904** (The Three-Year Post -8823 Correction Period).

Failure to Submit a Timely Response - If the owner/management agent does not respond within the required time period (no later than the correction deadline), the auditor will issue a nonresponse letter to the owner/management agent (with a copy sent to MSHDA Compliance Monitoring). When the owner/management agent's response is received, the auditor will review the response, if received within the specified timeframe, or forward to MSHDA for appropriate action, if not received within the specified timeframe.

Extension requests - The correction deadline is typically 30 days from the date the File Audit Report is issued. If extenuating circumstances exist, the owner/management agent may submit an extension request in writing to MSHDA for approval.

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**Part 724    :: File Audit Closeout**

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When the owner/management agent responds to noncompliance findings and forwards correction documents to the auditor (currently an agent contracted by MSHDA), the auditor will notify the owner/management agent in writing that the response is either acceptable or that outstanding issues still exist that must be resolved. If outstanding issues still exist, the auditor will notify the owner/management agent of noncompliance issues that remain outstanding and the corrective actions required or recommended. The auditor will forward a copy of the response to MSHDA Compliance Monitoring. If all items have been corrected, no additional

follow-up is required by the owner/management agent. If outstanding items still exist at the time the file audit contractor closes the audit process, the owner/management must work with MSHDA staff (Compliance and Asset Management, if project is MSHDA-financed) to resolve the issues. MSHDA may also conduct other follow-up actions, as discussed in [Part 728](#).

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**Part 726**    **MSHDA File Audit Follow-Up Actions**

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Noncompliance Reporting to the IRS - If noncompliance was identified at the audit, MSHDA may issue an IRS 8823, Report of Noncompliance. For a more detailed discussion of noncompliance, see [Chapter 10](#).

Survey – MSHDA conducts customer satisfaction surveys on an on-going basis to continuously evaluate contractor performance and to obtain valuable feedback on the file audit process. Survey forms are available on the MSHDA Compliance website or may be hand delivered at the completion of the file audit. MSHDA may also mail or fax a survey form to the on-site office and/or to the management agent's office.

Quality Assurance Review - If the audit was conducted by a contractor, MSHDA may conduct a quality assurance review (on-site or desk review) of the contractor's work.

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**Part 728**    **Vacancy Reporting**

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The owner must report the number of unit vacancies within the project. If unit vacancies exceed 10 percent of the total units in the project, including market rate units if any, the owner/management agent must provide an explanation and improvement plan for addressing the vacancy issue to the auditor and MSHDA. This information must be provided to the auditor (in writing) at the time of the tenant file audit or may be included with the audit response. Information about vacancies, and must also be submitted to MSHDA, upon request.

For related discussions, see [Part 204](#) (Michigan Housing Locator) and [Part 834](#) (Vacant Unit Rule).

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**Part 730**    **File Audit Noncompliance Correction and Other  
File Audit Fees**

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MSHDA will assess a fee of \$50 per unit for significant and repeated noncompliance issues.

MSHDA will assess a fee of \$100 if an owner fails to have a representative present for a tenant file audit on the scheduled date and time and as a result the auditor is unable to conduct the audit.

See [Part 650](#) for a list of all compliance and related fees.

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## Section 7D - Physical Inspections and Condition Standards

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The requirements and procedures discussed in this Section are subject to change. Please refer to the MSHDA website for up to date information about Physical Inspections.

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### Part 732 : Overview of Physical Inspections

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The Internal Revenue Service requires that MSHDA (or a contractual agent authorized by MSHDA) inspect LIHTC properties to ensure that LIHTC buildings, units, and common areas are suitable for occupancy. Under Treasury Reg. §1.42-5(C)(2)(ii)(B), on-site inspections must be conducted at least once every three years. MSHDA reserves the right to conduct inspections on a more frequent basis, if MSHDA deems this necessary and appropriate based on the results of a previous inspection or for any other reason(s). During these physical inspections, MSHDA assesses whether LIHTC properties are in safe, decent, sanitary condition and in good repair, according to the Uniform Physical Conditions Standards (UPCS) established by HUD. The IRS requires that all findings of noncompliance be reported to the Internal Revenue Service on IRS Form 8823, whether or not the noncompliance issue is corrected and regardless of the severity of the deficiency.

Presently, MSHDA contracts with one or more companies to conduct physical inspections. Owners, management agents, and on-site leasing staff must cooperate with the contractors. MSHDA continues to oversee the inspection process and makes the final determination about noncompliance.

It is important that MSHDA's contact information for the owner and management agent, as well as the on-site telephone number be up to date. When changes in management or owner contacts occur, the owner must report the change to MSHDA Compliance. A Notice of Transfer or Change in Ownership or a Notice of Change in Management form is required (both available on the MSHDA website). A project for which current contacts are unknown, making scheduling the inspection difficult or impossible, will be deemed in noncompliance. See [Part 216](#) (Update Contact Information) for more information.

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### Part 734 : Physical Condition Standards

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Treasury Regulation 1.42-5 outlines the Uniform Physical Condition Standards (UPCS) as the inspection protocol for the LIHTC program. The UPCS is defined in Federal Register 24 CFR, Parts 5 and 200 and is the standard used by HUD REAC PASS inspectors. The UPCS:

- Identifies the five inspectable areas and exigent health and safety hazards. The five inspectable areas are Site, Building Exterior, Building Systems, Common Areas, and Units.
- Standardizes definitions for inspectable items.

- Provides uniform, objective protocol for training inspectors to perform inspections of all property types and sizes, at any location.

MSHDA Compliance Monitoring oversees physical inspections for several MSHDA-administered housing programs, some of which have physical condition standards over and above UPCS. When conducting physical inspections, the following physical inspection standards will be applied:

- **Low Income Housing Tax Credit, Tax Credit Assistance Program (TCAP) and Section 1602 Developments** (with no additional sources of MSHDA funding or assistance) – “UPCS” Standards.
- **Section 8, Section 236, HOME, and MSHDA-financed developments** – “UPCS Plus” (UPCS Standards Plus MSHDA Inspection Standards). The basis for this standard is the UPCS and additional MSHDA requirements which are “M” items on the Physical Inspection Report. Units occupied by **Housing Choice Voucher (HCV)** participants are also subject to UPCS Plus standards (in addition to the HCV Program’s HQS standards).
- **LIHTC with MSHDA or Government Financing (i.e. Section 8 with LIHTC, Section 236 with LIHTC, HOME with LIHTC, Bond with LIHTC, etc.)** – “UPCS Plus” (UPCS Standards Plus MSHDA Inspection Standards).
- **FHA-Insured Developments** – HUD REAC Inspection Standards, timeline and system is required.
- **RHS-financed developments** – see **Part 768**.

LIHTC projects must comply with all state and local building, health and fire codes as well as UPCS. The owner/management agent must notify the MSHDA inspector of any local code violations, regardless of whether or not the violations have been corrected (see **Part 762**).

UPCS Manual - The Department of Housing and Urban Development’s (HUD) Real Estate Assessment Center has developed a comprehensive description of the types and severities of deficiencies entitled “Dictionary of Deficiency Definitions”. The dictionary can be found at <http://www.hud.gov/offices/reac/offices/reac> (select “Library Section”, then “Physical Inspections”, and then “Training Materials”). A link to the HUD website is also provided on the MSHDA Compliance website at [http://www.michigan.gov/mshda/0,1607,7-141-8002\\_26576\\_26578-113476--,00.html](http://www.michigan.gov/mshda/0,1607,7-141-8002_26576_26578-113476--,00.html).

UPCS Plus Manual - The “UPCS Plus” manual is posted on the MSHDA Compliance Monitoring website at [www.michigan.gov/mshda](http://www.michigan.gov/mshda) (select “Property Managers,” then “Compliance for Rental Housing”, then “Manuals”, then “UPCS Plus Physical Inspection Manual”).

MSHDA’s physical inspectors use MSHDA-approved forms (i.e. Hazard Notice Form, etc.) and MSHDA’s Physical Inspection software when conducting physical inspections and reporting physical inspection results.



For a related discussion, see **Part 800** (Units Must Be Suitable and Available for Occupancy).

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**Part 736**     **Physical Inspection Frequency**

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Depending on the source of funding, projects are inspected on a one, two, or three-year cycle throughout the compliance period. Listed below is the minimum inspection frequency for each program type. MSHDA reserves the right to conduct inspections more frequently if MSHDA deems this necessary and appropriate based on the results of a previous inspection or for any other reason(s).

- **Low Income Housing Tax Credit, Tax Credit Assistance Program (TCAP) and Section 1602 Developments** (with no additional sources of MSHDA funding or assistance) – every 3 years. Inspections for new projects are conducted no later than the end of the second taxable year after the last building is placed in service.
- **Section 8, Section 236 and MSHDA-financed developments** - every 12 months.
- **HOME developments** (with or without LIHTC) – Physical inspections are conducted every 1, 2, or 3 years, depending on the **total** number of units in the project (not on the number of HOME assisted units):
  - 1-4 units in project – every 3 years
  - 5-25 units in project – every 2 years
  - 26 or more units in a project – every year
- **RHS-financed developments** – see **Chapter 11**.
- **Developments with multiple sources of funding** – Physical inspection frequency defaults to the most restrictive program requirement.

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**Part 738**     **Number of Units Inspected**

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Listed below is the minimum percentage of units for each program type that will be inspected. MSHDA reserves the right to inspect a higher percentage of units if MSHDA deems this necessary based on the results of a previous inspection or for any other reason(s).

- **Low Income Housing Tax Credit, Tax Credit Assistance Program (TCAP) and Section 1602 Developments** - 20% of the restricted units in the development. At least one unit in every building will be inspected (except scattered site single family homes).
- **MSHDA Financed Developments** - 20% of the total units in the development (including restricted and market-rate units).

- **Section 8 and Section 236 Program Units** - 20% of the restricted units in the development, not to exceed 25 units.
- **HOME Developments** - 20% of the restricted units in the development.
- **RHS-financed developments** – see **Chapter 11**.
- **Developments with Multiple Funding Sources** – The number of units to inspect defaults to the most restrictive program requirement.

Units occupied by Housing Choice Voucher (HCV) participants are also subject to LIHTC physical inspections and may be included as part of the inspection sampling.

In general, the units to be inspected will be randomly selected by the inspector on the date of the inspection. However, MSHDA may designate specific units to inspect.

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**Part 740     Scheduling and Preparing for the Physical Inspection**

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As a general rule, MSHDA or the physical inspection contractor will contact the management agent by telephone or email at least 30 calendar days prior to the physical inspection to arrange the physical inspection date and time. The inspection date and time will be confirmed in a written notice (“Scheduling Letter”) sent to the development’s management agent. A copy of the scheduling letter will be sent to the owner of the project and to MSHDA Compliance Monitoring.

The scheduling letter also notifies the management agent/owner that a current Rent Roll Report (or similar report) and a Vacancy Report must be submitted to the physical inspection contractor at least ten (10) days prior to the scheduled inspection, preferably by email. Providing this information before the inspection gives the contractor the ability to plan the file or unit sample, which saves valuable time on the day of the physical inspection.

The Rent Roll (or similar report) and Vacancy Report must include the information listed below.

Rent Roll for all units must include:

- Unit #
- Head of Household Name (first and last)
- Move-in Date
- Designation (Market Rate or Program/Funding Source)

Vacancy Report for all unoccupied units must include:

- Unit #
- Move-Out Date of Last Resident
- Number of Days Vacant (preferred but not mandatory)

### Preparing for the Inspection

The management agent must notify all residents at least 24 hours prior to the date of the inspection that their unit may be inspected.

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## **Part 742**     **Conducting the Inspection**

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When the inspector arrives at the site for the scheduled inspection, the owner/management agent must provide the inspector with the following items on the date of the inspection:

- Site Map
- Current list of all units in the development with the unit numbers, number of bedrooms, and type of assistance (i.e. Section 8, HOME, LIHTC, etc.) clearly identified for each unit.
- Updates to the development's rent roll, if applicable.
- Updates to the development's vacancy report, if applicable.
- Copy of Local Code Violations, if any such violations have been issued and
- Any other program-related documents, reports, etc. deemed necessary by MSHDA or the physical inspector, if requested.

It is expected that an authorized representative of the owner/management agent will be available to accompany the inspector during the inspection.

The inspection will include the outdoor grounds, parking lots, exteriors of buildings, building systems, common areas, and residential units. In addition, the inspector will review local health, safety or building code violations, if any (discussed in [Part 760](#)), and review the CNA at MSHDA-financed developments, if applicable (discussed in [Part 764](#)). The inspector will issue any necessary Hazard Notices (as discussed in [Part 744](#)).

During and at the conclusion of the physical inspection, if time permits, the inspector will verbally review and explain the physical inspection findings and results with the development's management agent representative or personnel. The inspector will prepare a written inspection report (discussed in [Part 746](#)) and send it to the owner/management agent.

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## **Part 744**     **EH&S Hazard Notices**

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If life-threatening (Exigent Health and Safety or EH&S) deficiencies are discovered during the inspection, the inspector will issue a Hazard Notice to the owner/management agent at conclusion of the inspection. The inspector and the representative of the owner/management agent must both sign the Hazard Notice form. The inspector will send a copy of the Hazard Notice to MSHDA Compliance Monitoring.

The deficiency must be corrected as soon as possible, but no later than 24 hours after the conclusion of the inspection. The owner must also submit an Owner Certification and an Attachment A (discussed in [Part 748](#)) to the inspector and to MSHDA Compliance no later than

three (3) business days after the date of the inspection. The Attachment A must include the corrective actions taken to resolve the deficiency and the date the corrective actions were taken. A sample copy of the Hazard Notice form is available on the MSHDA website.

**MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY  
NOTIFICATION OF EXIGENT HEALTH AND SAFETY HAZARDS**

Development Name:		Inspection Company:
MSHDA #:	LIHTC #:	Inspector Name:
Address:		Inspection Date:

During this inspection, the following items were observed and noted as EH&S hazards. The Authority requires all EH&S hazards be mitigated immediately (no later than 24 hours) and an Owner's Certification of Completion of Repairs and an Attachment A be completed and sent to the inspector, MSHDA Compliance (Fax 517-241-8471 or e-mail [mshdacompli@michigan.gov](mailto:mshdacompli@michigan.gov) – subject line PI EHS), and Asset Manager (if applicable) within 3 business days of the date of the inspection:

Item	Location of Deficiency (Unit #/Common Area/Building Address/ Grounds/System)	Description Of Health and Safety Hazards
1		
2		
3		

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**Part 746     : The Physical Inspection Report (PI)**

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The inspector will prepare a cover letter (indicating the correction deadlines and other response instructions) and a Physical Inspection Report (PI) that provides the results of the physical inspection. The cover letter and PI will be sent to the development's owner/management agent within 30 calendar days after the date the physical inspection was performed, unless circumstances arise that increase this time frame. Copies of the cover letter and PI will be sent to MSHDA Compliance Monitoring.

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**Part 748     : Owner's Physical Inspection Response (PIR)**

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**Name of Software Program: Owner's Physical Inspection Certification System (OPIC)**

**Response Deadlines**

The owner/management agent must correct inspection deficiencies timely (discussed in **Part 750**) and submit a complete, accurate, and timely written response to the development's physical inspection report to the inspector and MSHDA. The Owner's physical inspection response (PIR) to the physical inspection report must be completed using MSHDA's **Owner's Physical Inspection Certification System (OPIC)** found at the MSHDA Compliance Portal

website. Detailed information about OPIC is provided on the MSHDA Website (www.michigan.gov/mshda, select "Property Managers" and then "Online Systems".) After entering the appropriate information, the OPIC system will produce two forms for submittal:

- (1) Owner's Certification of Completion of Repairs (Owner's Certification or OC) and
- (2) Attachment A - Owner's Report of Completion of Repairs and EH&S Items.

- **Owner's Certification of Completion of Repairs** - This form must be signed by the owner of the development or an authorized representative of the owner. If signed by an individual other than a person affiliated with (i.e. member, partner, principal, etc.) the ownership entity or the owner's authorized management representative, a copy of a document authorizing the individual to sign on behalf of the ownership entity must be included with each PIR submitted to MSHDA.

<Owner's Letterhead>

**OWNER'S CERTIFICATION OF COMPLETION OF REPAIRS  
AND EXIGENT HEALTH AND SAFETY ITEMS**

[Name of Development Owner:] \_\_\_\_\_ (the "Development Owner"), the owner of [Development Name:] \_\_\_\_\_, located in [City:] \_\_\_\_\_, Michigan. MSHDA Number: \_\_\_\_\_ by and through its duly authorized representative identified below, hereby certifies the following:

1. All physical deficiencies identified in the inspection performed on \_\_\_\_\_ and listed in the physical inspection report have been corrected and all areas are now in compliance with the Uniform Physical Conditions Standards and MSHDA inspection requirements, or if any deficiencies have not yet been corrected, the planned corrective actions and planned correction dates are included in the attached report (Attachment A), which is incorporated herein as a part of this Certification.
2. The attached report (Attachment A) accurately identifies the repairs that have been made to correct the physical deficiencies, the location of those repairs, and the date(s) the repairs were made and/or the dangerous condition was eliminated.
3. To the best of undersigned's knowledge, the development is in compliance with all local building and safety codes.

- **Attachment A (Owner's Report of Completion of Repairs and EH&S Items)** - All deficiencies cited in the Physical Inspection Report must be addressed. The following information is required for **each** deficiency identified:

- (1) location (unit number and building address) of the deficiency;
- (2) description and level of the cited deficiency as reported in the PI;
- (3) date the deficiency was corrected (or anticipated date); and
- (4) description of the corrective actions taken (or actions to be taken).

- An original and the appropriate number of copies of the OC and Attachment A must be prepared.
  1. Original OC/Attachment A must be submitted to the MSHDA Compliance Monitoring
  2. One copy of the OC/Attachment A must be submitted to the physical inspection contractor

- It is not necessary to include backup documentation (i.e. work orders, receipts, purchase orders, photographs) with the PIR. However, such documentation must be submitted to MSHDA or the physical inspector upon request.
- Detailed instructions for completing the OC and Attachment A forms, as well as the latest versions of the forms are located on the MSHDA website (select “Property Managers”, the “Compliance for Rental Housing”, the “Forms”, and then “Physical Inspection Forms”).
- Each Owner’s Certification/Attachment A should include a submission number in the appropriate place at the top of the Attachment A form. The first submission should be labeled submission “#1”, the second submission, if needed due to an incomplete first submission would be labeled “#2” and so on. When all deficiencies have been corrected the last submission should be labeled with the word “Final”. Each Attachment A form submitted must include correction dates and information for **all** inspection deficiencies cited in the Physical Inspection Report. Attachment A forms with only the most recently corrected violations are not acceptable. An Attachment A form submitted without the Owner’s Certification form is also not acceptable.

**ATTACHMENT A**

**Owner’s Report of Completion of Repairs and Exigent Health & Safety Items**  
**Owner’s Plan for Completion of Repairs**  
 (Itemized List of Corrective Actions Taken & Plan for Corrective Actions to be Taken)

Development Name: \_\_\_\_\_ Inspection Date: \_\_\_\_\_

MSHDA #: \_\_\_\_\_ Submission #: \_\_\_\_\_

Address: \_\_\_\_\_

Item	Location of Deficiency (Unit/Common Area/ Building Address/ Grounds/System)	Level (EHS, H/S, L3, L2, L1, or “M” for MSHDA)	Description of Deficiency	Corrective Actions Taken/or To Be Taken	Expected Completion Date	Completion Date	Meets UPICS/ MSHDA Standard (Yes or No)	✓ CHECK IF HOME UNIT
1								<input type="checkbox"/>
2								<input type="checkbox"/>

- **Uncorrected Deficiencies** - It is possible that when the PIR is submitted, some of the items may still be uncorrected because the correction deadline for some violations is 6 months (i.e. MSHDA “M” items). If the PIR contains some uncorrected deficiencies, the following information is required for each item:
  - A description of corrective actions **to be** taken; and
  - The date corrective actions **will be** completed.

If some violations are “uncorrected” when the Physical Inspection response is submitted, upon correction of those violations, an additional Owner’s Certification/Attachment A must be submitted. The **Final** Owner’s Certification/Attachment A submitted must include the

correction dates and the corrective actions taken for **every deficiency** cited on the physical inspection report. The Final OC/Attachment A must include the word “**Final**” in the submission number field of the Attachment A.

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**Part 750**    **Corrective Action and Owner Response**  
                   **Deadlines**

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The Physical Inspection Report lists the deficiencies and the severity level. The deadlines for correcting the deficiencies depend on the severity of the defect and are listed and described below. Owners/management agents should review the physical inspection report and attached cover letter to determine the correction and response deadlines for their specific project.

<b>Corrective Action and Owner/Management Response Deadlines</b>		
<b>PI Deficiency</b>	<b>Correction Deadlines</b>	<b>Response Deadlines (Owner Cert/Attach A)</b>
EH&S <i>(Life-Threatening)</i>	Immediate/no later than 24 hours (after the inspection date)	No later than 3 business days (after the <u>inspection</u> date)
H&S <i>(Non-Life Threatening), L3, L2, L1</i>	No later than 60 days after inspection report issued date (cover letter date)	No later than 60 Days after inspection report issued date (cover letter date)
<b>M</b>	No later than 6 months after inspection report issued date (cover letter date)	<b>First response</b> – No later than 60 Days after report issued (cover letter date) – For each deficiency, include the date you plan to complete the correction and a description of the planned corrective action;  <b>Second response</b> – No later than 6 months after report issued (cover letter date) – for each deficiency, include the actual dates corrections were completed and a description of the corrective action taken.

**EH&S items (Exigent Health & Safety/Life Threatening):** Must be corrected as soon as possible, but no later than 24 hours after the inspection. Using OPIC, An Owner’s Certification and Attachment A must be printed and submitted to the inspection contractor and to MSHDA no later than 3 business days after the Hazard Notice is issued. If a property is not available in the OPIC system within 24 hours, then the forms can manually be filled out until it is available in OPIC. Once the property is available in OPIC, it should then also be entered and included with future responses. See **Part 744** (Hazard Notices) for additional information.

**“Level 1”, “Level 2”, Level 3” and Health & Safety items (Non Life-Threatening):** Must be corrected no later than 60 days after the date the inspection report was issued (cover letter date). An Owner’s Certification and Attachment A must be submitted to the inspection contractor and to MSHDA no later than 60 days after the cover letter date.

**“M” (MSHDA) Items:** Must be corrected no later than 6 months after the cover letter date. An Owner’s Certification and Attachment A must be submitted to the inspection contractor in a first response and a second response (if not all items were corrected in the first response), as discussed below:

- First response – No later than 60 days after the report is issued (inspection cover letter date). For each deficiency, include the date the development corrected the deficiency and a description of the corrective action taken or the anticipated correction date and a description of the planned corrective actions;
- Second response – No later than 6 months after the report is issued (cover letter date). For each deficiency, include the actual dates corrections were completed and a description of the corrective action taken.

**Extension Requests – 6 Months or Less** - All physical inspection deficiencies must be corrected by the deadlines specified in the inspection cover letter. If, due to extenuating circumstances, any corrections cannot be completed on time, the owner/management agent may submit a request for an extension and receive approval from the inspection contractor (if the request is received 6 months or less from the cover letter date). Extension requests must be submitted on the MSHDA Extension Request form (on Owner/Management Agent letterhead) with all the required information. The form can be found on the MSHDA website (select “Property Managers”, then “Compliance for Rental Housing”, then “Forms”, and then “Physical inspection Forms”). All extension requests must contain the following:

- A description of the deficiency area for which an extension is being requested;
- The reason for the request;
- The required completion date (original date); and
- The requested completion date.

The owner/management agent will be notified in writing that the extension is either approved or not approved.

**Extension Requests - Exceeding 6 Months** – The IRS maximum allowable correction period is six months, therefore, extension requests that exceed 6 months are not available for LIHTC-only developments (without MSHDA financing). Additionally, inspection contractors may not approve any extension requests that exceed 6 months. However, in certain extenuating circumstances, the MSHDA Asset Manager may approve an extension request for a MSHDA-financed project. Such requests must be submitted directly to the Asset Manager for approval, with a copy to the inspector and to MSHDA Compliance Monitoring. If an Asset Manager approves an extension request that exceeds 6 months for UPCS deficiencies for a MSHDA-financed development with tax credits, MSHDA Compliance is required to issue an “uncorrected” 8823. When all of the UPCS deficiencies have been corrected, the owner must submit a final Owner’s Certification/Attachment A and MSHDA Compliance will issue a “corrected” 8823. See **Part 1002** for information regarding the 3-year post-8823 correction period for LIHTC developments.

Note: When the corrections are subsequently completed, a **Final** Owner’s Certification and Attachment A must be submitted including the “Date” all deficiencies were corrected and a description of all “Corrective Actions Taken”. A copy of the approved Extension Request (Request and contractor or MSHDA approval) must be attached.



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**Part 752**    **Re-inspections**

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Re-inspections may be performed at developments if deemed necessary by MSHDA. The re-inspection will include a review of all deficiencies noted during the last physical inspection to ensure the satisfactory completion of the work. MSHDA reserves the right to add additional inspection items or units under special conditions, if MSHDA deems this necessary and appropriate based on the results of the previous inspection or for any other reason(s).

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**Part 754**    **Owner/Management Agent Failure to Respond**

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If the owner/management agent does not respond within the required time period, the inspector will issue a nonresponse letter to the owner/management agent. Inspections not corrected within the specified time frames will be deemed as noncompliance.

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**Part 756**    **Inspection Closeout**

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Upon receipt of the owner/management agent's response to the Physical Inspection Report, the inspector (MSHDA or an agent contracted by MSHDA) will review the documents and notify the owner/management agent in writing if the response and corrective actions are acceptable. If outstanding issues still exist, the inspector will notify the owner/management agent that corrective action is required and provide directions as to whom any documentation of subsequent corrective actions should be submitted. If the inspector certifies that all items have corrected, no additional follow-up is required by the owner/management agent. As discussed in **Part 758**, MSHDA may conduct additional follow-up actions in regard to the inspection.

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**Part 758**    **MSHDA Physical Inspection Follow-Up Actions**

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**Noncompliance Reporting - Reporting Deficiencies to the IRS** - For tax credit developments, IRS regulation Section 1.42-5(e)(3) requires MSHDA to report all physical inspection deficiencies identified during the physical inspection to the IRS, regardless of whether or not the deficiencies are subsequently corrected and regardless of the severity of the issues. MSHDA must issue a Report of Noncompliance (IRS Form 8823) for all EH&S, Health and Safety, Level 1, 2, and 3 deficiencies.

- MSHDA will note correction dates on the IRS form 8823 for those violations for which corrective actions have been completed. The Owner's Certification and Attachment A will be submitted to the IRS as documentation of the corrective actions taken, along with the inspection report.

- **Uncorrected noncompliance and/or the failure to correct noncompliance on a timely basis may affect approval of premium management fees and LD payments for MSHDA-financed developments and also may result in the issuance of negative points in future LIHTC funding rounds for applicants, their partners or members, management agents, or related entities.**

For additional information about noncompliance, see **Chapter 11** (Additional requirements for MSHDA Direct Loan Projects).

**Survey** - MSHDA conducts customer satisfaction surveys on an on-going basis to continuously evaluate contractor performance and to obtain valuable feedback on the physical inspection process. Survey forms are available on the MSHDA Compliance website or may be hand delivered at the completion of the inspection. MSHDA may also mail or fax a survey form to the on-site address and/or to the management agent's office.

**Quality Assurance Review** - MSHDA may conduct a quality assurance review of the contractor's inspection. This will consist of an on-site visit to the development by a MSHDA staff member. The MSHDA staff member will review the units inspected by the contractual agent to ascertain the completeness and accuracy of the inspection results reported to MSHDA by the agent. Only a portion of the projects inspected by the contractual agent will be reviewed by MSHDA.

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**Part 760**    **Fees for Physical Inspections**

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*This Part applies to the LIHTC projects only.*

The IRS requires that at least twenty percent (20%) of the low-income units in an LIHTC project be physically inspected at least once every three years. Currently, the fee for the physical inspection is \$30 per unit inspected and is assessed on a triennial basis in the year the inspection is conducted. Note the following:

- For pre-January 1, 2001 projects paying compliance fees on an annual basis, this \$30 fee per unit inspected is in addition to the annual compliance fees discussed in **Part 650**. For projects financed by RHS, the fee is \$20 per low-income unit.

For projects that pay/paid an up-front fee after January 1, 2001, the lump sum monitoring fee included the fee for the physical inspection and no additional payment is required.

- MSHDA will assess a fee of \$100 if an owner fails to have a representative present for a physical inspection on the scheduled date and time and as a result the inspector is unable to conduct the inspection.
- MSHDA may assess a physical inspection noncompliance fee or a re-inspection fee of \$50 per unit for significant and repeated noncompliance issues.

MSHDA will send owners of LIHTC projects an invoice for the physical inspection fee. Payment of the fees must be received by MSHDA no later than 30 days from the date of the invoice. Failure to pay the physical inspection fee by this date could result in the issuance of an IRS Form 8823, Report of Noncompliance. See [Part 650](#) for more information regarding fees.

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## Section 7E – Other Physical Condition-Related Topics

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### Part 762 :: Local Health, Safety, or Building Code Violations

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*Treas. Reg. 1.42-5((b)(3)*

The UPCS, discussed in [Part 734](#) (Physical Condition Standards), does not supersede or preempt local codes. At the time of physical inspections of buildings and units, the owner/management agent representative must provide to the inspector any local health, safety, or building code violations reports or notices that have been issued since MSHDA (or a physical inspection contractor of MSHDA) conducted the last physical inspection. If violations have occurred, the inspector will review the reports or notices of violations and the corrective actions taken and then will inspect the areas to determine whether the deficiencies are corrected and the buildings and/or units are suitable for occupancy. This information will be documented in the physical inspection report.

Local health, safety, or building code violations must also be reported to MSHDA on the Owner's Certification of Continuing Program Compliance (see [Part 706](#)). For a related topic, see [Part 570](#) (Local Laws and Building Codes).

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### Part 764 :: Capital Needs Assessment (CNA)

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*This Part applies only to the MSHDA-financed bond projects, including those that also have LIHTC.*

Capital Needs Assessments (CNA) have been conducted on certain MSHDA-financed developments and are updated periodically. A CNA is a description of the current and future physical and related financial needs of a multifamily development projected over the next 20 years. The current condition and future physical needs are established through a detailed physical inspection of the development. Projected financial needs to maintain the physical condition of the development are established through a detailed analysis of the financial history, current status including escrow balance and funding levels, and future needs based on results of the physical inspection.

A CNA Review will be performed once a year for each MSHDA-financed development during the physical inspection to confirm the status of work or items recommended or cited in the CNA as requiring repair or replacement. The inspector will report the status of the work or items recommended in the CNA in the Physical Inspection Report.

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### Part 766 :: Casualty Losses

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A unit must be suitable for occupancy in accordance with state or local codes in order for credits to be claimed. If the unit is not habitable (or if common space is unusable), no credits can be claimed on that square footage. The IRS has stated that if a unit is destroyed due to a casualty

loss (i.e. fire, flood, or other disaster), credits cannot be claimed while the unit is being repaired or replaced. Internal Revenue Code Section 42(j)(4)(E) states that buildings which are allocated tax credits are protected from recapture of tax credits due to a casualty loss to the extent that such loss is restored by reconstruction or replacement within a reasonable period.

A reasonable amount of time (up to 30 days) is permitted for a development to prepare (i.e. clean, paint, replace carpet, etc.) a newly vacated unit for re-occupancy. The reasonableness of the time period to repair damaged property depends on the extent of the damage. MSHDA will consider other factors such as the location of the property and the time of the year (weather). Generally, however, a period of up to two years has been deemed sufficient by the IRS for the replacement of property completely destroyed by a casualty loss. In the event the owner is not able to replace the property within two years, MSHDA may extend the time period if the owner demonstrates that there is a reasonable cause for delay.

If a residential unit, building, or common space (such as a community room or leasing office) is anticipated to be uninhabitable (i.e. unavailable for occupancy) or unavailable for use for by low-income tenants for more than 30 consecutive days for any reason, whether due to damage by a tenant, inability to obtain necessary replacement items (such as furnace or plumbing fixtures) in a timely manner, casualty (such as fire, flood, or other disaster), or any other reason, the owner must notify MSHDA in writing by completing a Notice of Building Casualty Loss or Damage form. The Casualty Loss form identifies the project name, building address, building identification number, unit numbers for all residential units impacted, and a list of the common spaces impacted. The completed form must provide a description of the loss, identify any causes of the loss, and indicate the estimated time for repair or replacement. It must also indicate the number of low-income households displaced by the event.

The Notice of Building Casualty Loss or Damage form is available on the MSHDA website and must be submitted to MSHDA within five (5) days of the loss. This notification requirement applies specifically to areas that are anticipated to be unavailable for occupancy or use by low-income tenants for more than 30 days. A unit that is anticipated to be unavailable for residential occupancy for less than 30 days does not need to be reported to MSHDA. (In the event the time period does extend to 30 days or beyond, MSHDA must be notified in writing.)

For related discussions, see **Part 800** (Units Must Be Suitable and Available for Occupancy) and **Part 854** (Temporary Relocation of Tenants). For a similar topic, see **Part 1020** (Destruction), which discusses the permanent loss of a unit (as opposed to a casualty loss, which is temporary and for which replacement is anticipated).

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**Part 768     :: Physical Inspections of Rural Development  
                  :: Projects**

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RHS projects, including those with LIHTC, must comply with RHS physical inspection standards and guidelines. The RHS inspection report is used by MSHDA to satisfy LIHTC physical inspection requirements. MSHDA reserves the right to inspect RHS developments with LIHTC due to changes in RHS policy or for any reason. For additional information about RHS projects, see **Chapter 11** (More Information about RHS Projects).

A waiver of the MSHDA annual physical inspection may be granted for certain Section 8 or Section 236 developments with LIHTC. HUD allows MSHDA to waive the required annual physical inspection if a HUD REAC inspection is conducted within the same calendar year. Management Agents may submit a written waiver request to MSHDA Compliance at [MSHDACompliance@michigan.gov](mailto:MSHDACompliance@michigan.gov).

**Inspection Waiver Requests:**

- **For REAC Inspections Conducted** - Inspection waiver requests must include a copy of the REAC Inspection Report and the Owner's Certification and Attachment A form. The Attachment A must document the dates and corrective actions taken to resolve all REAC inspection deficiencies. Upon receipt of the Final Owner Certification/Attachment A, documenting that all deficiencies have been corrected, the MSHDA inspection will be canceled.
- **For REAC Inspections Scheduled** - If the REAC inspection is scheduled but has not yet been conducted, the waiver request must include the electronic HUD Scheduling letter. Upon receipt of the REAC scheduling letter, the MSHDA inspection will be postponed.

When a MSHDA inspection is postponed and the Final Owner's Certification/Attachment A is not received within the required timeframe, the MSHDA inspection will be rescheduled.

[www.michigan.gov/bedbugs](http://www.michigan.gov/bedbugs); HUD Inspector Notice No. 2010-01

Owners and managers are responsible for initiating and following procedures that remove bed bugs from the property and inhibit further infestation.

The MSHDA website provides information about protocol requirements to be utilized by physical inspectors who conduct inspections of MSHDA financed and/or assisted developments. The inspection requirements are applicable to all developments in the MSHDA Compliance Monitoring portfolio, which includes LIHTC, Section 1602, TCAP, Section 8, Section 236, HOME, and bonds. For comprehensive educational information regarding the identification, treatment and prevention of bed bugs, please review the Michigan Manual for the Prevention and Control of Bed Bugs and other information provided on the State of Michigan website at [www.michigan.gov/bedbugs](http://www.michigan.gov/bedbugs).