

Chapter 25

Miscellaneous Noncompliance Topics

The chapter includes noncompliance topics not discussed elsewhere.

Tenant Misrepresentation or Fraud

LIHC property owners should demonstrate due diligence to prevent tenant fraud. Fraud includes *deliberate* misrepresentation of fact in order to induce someone else to part with something of value or surrender a legal right. In this case, the outcome of deliberate misrepresentation by a tenant can result in the property owner renting a residential unit to an ineligible tenant at a below market rate.

If misrepresentation is suspected, additional steps should be taken to verify the accuracy of information provided by the tenant. See chapter 4. Regulation 1.42-5 gives examples of how an income certification may be documented, including the submission of federal tax returns. If necessary, tenants can be asked to complete Form 8821, Tax Information Authorization, which will allow the owner to confirm the accuracy of the tenant's tax returns with the IRS.

If an owner discovers that a tenant has *deliberately* misrepresented their income level, student status, household size, or any other item used to determine eligibility, the owner should consult state or local landlord-tenant laws to determine whether the tenant can be asked to vacate the LIHC unit or the rent raised to the market rate. The owner is not expected to complete the annual recertification if a tenant is asked to leave or an eviction proceeding is in process.

Report any suspected or known deliberate misrepresentation of income to the Internal Revenue Service's *Whistleblower Office. Complete Form 211, Application for Award for Original Information, and submit the form to the address identified on the form.* The following information should be provided:

1. tenant's name,
2. tenant's social security number if possible,
3. explain association with LIHC program,
4. what the tenant did that misrepresented their income or documentation (the owner may be asked to provide evidence of the tenant's fraudulent acts),
5. amount of tenant income as reported by the tenant and the amount actually verified, and
6. the difference between the market rate and restricted rent for the unit, and how long the tenant was in the unit. This is the amount of economic benefit the tenant may be deemed to have received as taxable income.

Reporting Tenant Misrepresentation or Fraud to the IRS

So that possible loss of low-income housing credit might be avoided if it is determined upon later review by the state agency that a tenant is not qualified for low-income housing, the state agency should encourage owners to immediately report any suspected deliberate misrepresentation of fraud by a tenant to the state agency.¹

The Low-Income Housing Program will not consider there to have been reportable noncompliance if tenant fraud is discovered and addressed by the owner prior to a state agency review or an IRS audit, and the owner satisfies the state agency that: (1) the tenant provided false information; (2) the owner did everything a prudent person would do to avoid fraudulent tenants (due diligence) and has implemented any needed changes to avoid future problems; (3) the tenant has vacated the unit (if possible); and (4) there is no pattern of accepting fraudulent tenants. In such cases, the owner need not reduce the applicable fraction for determining the credit amount and the state agency need not report the noncompliance arising because of the tenant's fraud on Form 8823.

This administrative *position* applies only when the owner notifies the state agency before notice is given by the state agency that a review of the tenant records or a site inspection is to be conducted. As a general rule, the Internal Revenue Service does not want to disturb the credit when the owner has demonstrated due diligence to avoid fraudulent tenants, timely removes fraudulent tenants when identified, and timely notifies the state agency of their actions.

Identification of Tenant Misrepresentation or Fraud During State Agency Reviews or IRS Audits

An owner's opportunity to identify and self-correct misrepresentations or fraud by a tenant for purposes of the low-income housing credit terminates upon notification of a state agency's intended review/inspection of the LIHC project. Any noncompliance arising from such a misrepresentation or fraud discovered during a state agency's review/inspection should be reported to the IRS on Form 8823 under the appropriate category of noncompliance, regardless of the cause. As noted in Treas. Reg. §1.42-5(a), state agencies are required to report any noncompliance of which the agency becomes aware. Agencies should report all noncompliance, without regard to whether the identified outstanding noncompliance is subsequently corrected. See chapter 3 for full discussion.

Owner/Taxpayer Fraud

If a state agency becomes aware of an apparent fraudulent act by the owner, management company, or other party associated with the low-income housing property, or a party responsible for providing income/asset verification for tenants, the state agency *may submit Form 3949-A, Information Report Referral, with supporting documents to the IRS' program analyst for IRC §42.^{2*}

¹ The IRS wants to provide an incentive for owners to identify, and remove (if possible) fraudulent tenants. By working with the state agency up front, we can provide an opportunity to resolve the problem without harming the owner and not waiting for a state agency review, yet retaining involvement in the determination of a "fraudulent" tenant.

² *Additional information is available on the IRS website www.irs.gov. The specific webpage is <http://www.irs.gov/individuals/article/0,id=106778,00.html> or enter "reporting fraud" in the search feature to locate the webpage, "How Do You Report Suspected tax Fraud Activity?"*