LOW INCOME HOUSING TAX CREDIT PROGRAM

COMPLIANCE MONITORING MANUAL

September 9, 2013

Includes all updates through September 9, 2013

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PREFACE

The Iowa Finance Authority (IFA) Compliance Monitoring Manual is a training and reference guide for the compliance monitoring of the Low-Income Housing Tax Credit Program (LIHTC or the Program). The Manual is designed to provide guidance for compliance with the Land Use Restriction Agreement (LURA) and Section 42 of the Internal Revenue Code of 1986, as amended, and the State of Iowa's (Qualified Allocation Plan – QAP) and, generally, to help answer questions regarding the procedures, rules, and regulations that govern LIHTC developments. The Manual should be a useful resource for owners and developers, management companies, and on-site management personnel.

It is important to note this manual is to be used as a supplement to existing laws and rules. It is by no means a comprehensive guide to the LIHTC program and all its requirements. This manual was produced for utilization by LIHTC participants in Iowa and should be used in conjunction with the Internal Revenue Code and the LURA, where applicable. Owners and managers should consider retaining the services of an attorney and/or accountant who specializes in the LIHTC program to counsel them on the complex issues that may arise. IFA's obligation to monitor for compliance with the requirements of the IRS Code does not make IFA liable for an owner's noncompliance (26 CFR Pt 1, 1.42-(5)(g) effective 6/30/93).

IFA shall be under no obligation to undertake an investigation of the accuracy of the information submitted for compliance monitoring. IFA's review shall not constitute a warranty of the accuracy of the information, nor of the quality or marketability of the housing to be purchased, constructed, or rehabilitated pursuant to the program. Developers, potential investors and interested parties should undertake their own independent evaluation of the feasibility, suitability, and risk of the development. If any information submitted by building owners to IFA is later found to be incorrect in any material respect, it is the responsibility of the building owners to inform IFA and to request a reexamination of the information. Interested parties should consult with a knowledgeable tax professional prior to entering into any commitment concerning the use and claim of housing tax credits.

This manual has not been reviewed or approved by the Internal Revenue Service (IRS) and should not be relied upon for interpretation of federal income tax legislation or regulations.

Compliance monitoring by IFA will be administered by the multi-family compliance staff under the direction of the IFA Chief Administration Officer. The IFA Director of Compliance may be reached at (515) 725-4900 or toll free at 1-800-432-7230.

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INTRODUCTION

Established in 1975 as a public instrumentality and agency of the State of Iowa, the Iowa Finance Authority is the state housing finance agency and is the housing credit agency for the purpose of IRS Section 42. While IFA's primary mission is to provide affordable housing for residents of Iowa, IFA also assists in the creation of jobs and economic opportunities in Iowa communities through the issuance of tax-exempt bonds to provide attractive rates of loan financing to manufacturing firms, nursing homes, hospitals and multifamily rental housing.

BACKGROUND

Congress enacted the Low-Income Housing Tax Credit Program which is authorized and governed by Section 252 of the Tax Reform Act of 1986. The Treasury Department is responsible for the administration of the Program nationwide. The Program is governed by Section 42 of the Internal Revenue Code, as amended, and the regulations, there under, (the Code). Under the provisions of the Code, each state is required to designate a "housing credit agency" to allocate the credits. The State of Iowa has designated IFA to allocate tax credits within the State of Iowa.

The Low-Income Housing Tax Credit (LIHTC) is a dollar-for-dollar reduction in tax liability to the investors of a qualified low-income housing development for the acquisition, rehabilitation, or construction of low-income rental housing units. The size of the credit allocation determines the number of units that may generate a tax credit for a building's owner. A unit actually generates a tax credit only if it meets the federal rent and income targeting requirements.

The Omnibus Budget Reconciliation Act of 1990 amended the Code to require that state tax credit allocating agencies provide a procedure for monitoring developments for non-compliance with the requirements of the Program under Section 42(m)(1)(B) of the Code, and for notifying the Internal Revenue Service of such non-compliance.

An allocating agency must have a procedure for monitoring compliance with the provisions of the Code and notifying the Internal Revenue Service (IRS) of any non-compliance of which IFA becomes aware, whether or not it is corrected. The monitoring requirements became effective on January 1, 1992, and apply to all tax credit developments, even if the developments received an allocation prior to 1992. IFA, as the allocating agency, is authorized by the Code to charge a reasonable fee to cover the costs of compliance monitoring. The IRS has issued final regulations, Income Tax Regulation, 26 CFR 1.42-5, relating to the requirements for compliance monitoring.

This manual includes a number of chapters designed to cover the specific compliance monitoring requirements under Section 42. Chapter 1 gives a summary of program requirements and regulations. Chapter 2 sets forth the monitoring agency and the owner responsibilities. Chapter 3 summarizes the owner's record keeping and retention requirements, the procedures to be followed at the time a tax credit development is sold or otherwise transferred, and consequences of noncompliance. Chapter 4 covers the procedures for determining household income and eligibility. Chapter 5 discusses income determinations. Chapter 6 provides guidelines for the correction of non-compliance. Chapter 7 discusses compliance procedures after the development's initial compliance period or the 'Post-15' years. Chapter 8 discusses other considerations affecting the administration of the LIHTC program in Iowa.

This manual is intended to generally outline the broad elements of the legal and regulatory framework of federal tax law. This manual does NOT offer formal legal opinions on the matters discussed. Specific questions about particular matters or developments must be addressed in the precise legal and factual contexts in which they arise, and should be addressed by each party's own tax professionals. IFA makes no warranty or representation, either expressed or implied, with respect to the accuracy, completeness, or utility of information contained in the manual; there is no assumption of liability of

any kind whatsoever resulting from the use of or reliance upon any information, procedure, conclusion or opinion contained in the manual.

In the end, the risks and cost of noncompliance fall squarely on project owners and investors, and therefore responsibility for compliance with the Code's requirements must rest with them and their professionals. Each owner must assure itself that its own practices respond to the latest legal requirements and interpretations, and that its staff is trained properly to implement the appropriate procedures.

Monitoring fees will be determined annually. Specific amounts will be stated annually in the Qualified Allocation Plan (QAP). Beginning effective with developments allocated under the 2009 First Amended Qualified Allocation Plan and continuing thereafter, monitoring fees are paid annually each year of the compliance period and the extended use period. Monitoring fees for these developments will be due with the first annual payment being submitted with the Form 8609 Application, subsequent annual payments being ****due not later than January 31 of each subsequent year, including the 'compliance period' and the 'extended use period'****.

Owners should be aware that regulation 1.42-5 explicitly provides that the credit agency monitoring procedures only address the requirements for housing credit agency monitoring and do not address forms and other records that may be required by the IRS on examination or audit.

Tax Exempt Bond Developments

Some tax credit developments receive their allocation of credits through the use of tax-exempt bonds. IFA will monitor all developments receiving allocation through the issuance of tax exempt bonds. Tax exempt bond developments monitored by IFA must comply with the specific requirements in Internal Revenue Code Sections 42 and 142 as applicable.

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Chapter 1 Low Income Housing Tax Credit Program Fundamentals

**Section 1.0 Principles for Addressing Overlapping Federal, State, and Local Requirements

A. General

In addition to complying with IRC §42 and this manual, owners must comply with other federal, state and local laws applicable to the occupancy of multifamily housing properties. If other federal, state or local laws conflict with IRC §42 requirements, owners should contact IFA for guidance. Also, when addressing complex overlapping requirements, it is always prudent for owners to seek proper counsel.

B. Statutory Program Eligibility Requirements

Federal statutory eligibility requirements cannot be overruled by state or local law.

C. Multiple Federal Laws

If more than one federal law applies to a situation, the laws should be read and applied together. Where one law imposes a more restrictive requirement or standard on the owner than another, the more restrictive requirement or standard is controlling as to federal law.

D. Overlap Between Federal and State/Local Nondiscrimination Laws

If state or local laws impose different nondiscrimination requirements than federal law, the more rigorous standard, the one that provides the higher level of protection for the resident, is controlling regardless of whether the more rigorous standard is that of the state, local, or federal law.**

Section 1.1 Regulations

Program requirements are contained in section 42 of the Code. Program changes and revisions are incorporated within the Code. Additionally, the IRS publishes periodic revenue notices, rulings, regulations, and procedures that clarify and/or expand on the law.

The following section highlights some of the statutory and regulatory provisions directly affecting development compliance. The following is not meant as an exhaustive listing of compliance regulations.

Section 1.2 Development Regulations

A. Minimum Set-Aside Election

Qualifying developments must meet rental and income targeting requirements for a minimum 15-year period and the extended use period as elected. The owner must make one of the following two minimum set-aside elections on a development basis during the application process for housing tax credits:

i. At least 20% of the rental units must be rented to households whose incomes are 50% or less of the area median income adjusted for family size; **or**
ii. At least 40% of the rental units must be rented to households whose incomes are 60% or less of the area median income adjusted for family size.
iii. In addition to electing one of the two minimum set aside options discussed above, an owner may also elect to deep rent skew. If an owner elects the deep rent skew option, 15% of the low income units in the property must be rented to households with income not exceeding 40% of the area median income for the family size.

B. Special Set-Asides

An owner or developer may receive additional points in scoring on IFA's tax credit application for setting aside units for lower income (less than 50% or 60% of area median income) households. This applies to low-income units only. The requirements necessary to obtain the additional points are **in addition** to the federal regulations. IFA will enforce compliance with these requirements through one or all of the following:

- cancellation of tax credits if IRS Form 8609 has not yet been issued;
- legal enforcement of the owner's obligations under contract documents and Land Use Restrictive Agreements (LURA);
- consideration of noncompliance in future applications for tax credits by the owner, developer, or related party.

Both minimum and special set-aside elections will be reflected in the allocation documents, which include the Application, the Carryover Agreement, LURA, and IRS form 8609. If such additional set-asides are elected, they must be maintained throughout the compliance period and extended use period, and will be monitored at the same time as, and in a manner similar to, the Section 42 requirements.

Rental agents or managers should confirm the set-aside that was designated by the owner at the time the set-aside option was made (the election is made on the form 8609 for the first year of the credit period), to ensure continued compliance.

C.**Project Defined

Each building is considered a separate project under IRC §42(g)(3)(D) unless, before the close of the first calendar year in the project period, each building that is, or will be, part of a multiple-building project is identified as such by checking the "yes" box on line 8b of Form 8609 and attaching the statement described in the instructions for line 8b. The minimum set-aside documented on Form 8609, line 10c, must be the same for all buildings in the project.

Two or more qualified low-income buildings may be included in a multiple-building project only if they:

- **Are located on the same tract of land (unless all of the dwelling units in all of the buildings being aggregated in the multiple-building project are low-income units (see IRC §42(g)(7));**
- **Are owned by the same person for Federal tax purposes;**
- **Are financed under a common plan of financing; and**
- **Have similarly constructed residential units.****

Section 1.3 Building Regulations

A. Eligible Basis

The eligible basis is assigned to a building at the time of final credit allocation (issuance of 8609). The eligible basis is composed of allowable cost elements subject to depreciation. (Many special rules apply in determining the eligible basis that are not detailed herein.) The eligible basis, as of the end of the first year of the credit period, is reported to the IRS on Part II of the form 8609 and does not change from year to year.

B. Applicable Fraction:

The applicable fraction is that portion of a building occupied by qualified low income residents. An owner's targeted applicable fraction is based on the size of the credit allocation received for each building.

The targeted applicable fraction is assigned to a building at the time of final credit allocation (issuance of IRS Form 8609) by the owner. However, a final determination of the maximum applicable fraction is made on the last day of a building's initial tax credit year. The maximum credit an owner may claim on a building is based on the lesser of the targeted applicable fraction or the actual applicable fraction on the last day of the initial tax credit year. (See IRS Form 8609-A for complete instructions on calculating the building's first year applicable fraction.)

The applicable fraction is calculated (I.R.C. §42 (c)(1)(B)) as the lesser of:

1. The number of housing tax credit units in a building divided by the total number of residential rental units (whether or not occupied); **or**

2. The total square footage of the housing tax credit units in the building divided by the total square footage of all residential rental units in the building (whether or not occupied), with the exception of the manager's unit, which may or may not be included, depending on the circumstances, as explained later in this section.

When determining which units to include as low-income units in the numerator (low-income units), and total units in the denominator of the fraction, please note:

- Units that have never been occupied may not be included in the numerator (low-income units), but must be included in the denominator (total units);
- Units that are vacant at the end of the initial tax year which previously were qualified as low-income units may be considered to be low-income for determining the amount of credits claimed. **(**I.R.C. §42(f)(2)(A)(i)(1994)) The building must be placed in service for a full month before credits can be claimed, but a household may move in on the last day of the month and the owner may still claim credits on the unit (Rev. Ruling 2004-82 Q&A #4);
- If a qualified low-income household becomes an ineligible household prior to the end of the initial tax credit year, that unit may not be counted in the first year toward the minimum set-aside or the determination of the qualified basis, unless the unit is vacated and re-qualified by the end of the initial tax credit year.

Management Units

A **full-time** employee's unit may be considered in one of two ways listed below:

a) For buildings placed in service after September 9, 1992, the manager's unit may be considered as **common area** or other special facility within a rental development that supports and/or is reserved for the benefit of all the rental units. The resident manager and/or maintenance personnel residing in that unit are not required to be income qualified. (If the owner charges rent for the unit, the IRS may subsequently determine that the unit is not reasonably required by the development because the owner is not requiring staff to occupy the unit as a condition of employment.) Under this interpretation, the unit is excluded from the low-income occupancy calculation. If this option is elected, the unit occupied by management staff is included in the building's eligible basis but excluded from the applicable fraction for the purposes of determining the building's qualified basis;

Examples:

If the development contains 24 units, and the applicable fraction is 100%, the unit will be excluded from the applicable fraction as such 23/23 and staff does not have to be certified low-income;

If the development contains 24 units and credit was allocated on 23 units the applicable fraction is less than 100% (23/24), this means that the manager's unit is considered a market rate unit, and the owner may charge rent for the use of this unit.

The owner must make a designation of the unit as common space, a low-income residential unit (income qualified household), or a market rate unit.

All developments must notify IFA of the status of the management unit and which method is being used. When notifying IFA, it is necessary to include the development name, the IFA-assigned LIHTC number, the building address, BIN number, the unit number, the number of bedrooms in the unit, the square footage and the current employee's name.

As long as the number of previously approved management units is not increased, the owner shall be permitted to move the management unit within the development as long as the change is reported on the annual compliance report. If the owner feels the development requires additional management units, beyond those previously approved, the owner will need to obtain IFA's prior written approval.

NOTE: It is the Owner's responsibility to ensure the building's applicable fraction, either unit or square footage percentage (which ever is the lesser), is maintained and will not affect Qualified Basis. For more information regarding the manager's unit, see IRS Rev. Rul. 92-61

C. Qualified Basis

The qualified basis is used to determine the amount of tax credit allowed per building in the development. The qualified basis of a building is determined by multiplying its eligible basis by its applicable fraction. The annual tax credit amount is computed by multiplying a building's qualified basis by the applicable tax credit percentage (approximately 4% or 9%) for that building.

The original qualified basis is determined as of the last day of the initial tax year for which the tax credit is claimed and is reported to the IRS on part II of tax form 8609.

Tax credits may be claimed annually by the owner of the development for a period of 10 years. At the option of the owner, the initial year in which the tax credits are claimed is either the year in which the building is placed in service, or the year following the year in which the building is placed in service.

Increasing the Qualified Basis in Subsequent Years

If an owner is unable to obtain the desired applicable fraction and qualified basis in the first year of the credit period, the qualified basis of a building may be increased in subsequent years. The owner may claim an additional credit equal to two-thirds of what it would first have been eligible to claim during the remainder of the compliance period, as long as the amount of credit taken does not exceed the amount allocated by IFA. This should not be confused with the owner's option to elect to begin the credit period either the year of the placed in service date or the following year.

Decreasing the Qualified Basis

If at the close of a year, the qualified basis of a building has decreased (due to a decreased applicable fraction) from the close of the previous year, the credit for the building may be subject to recapture. See IRS Form 8611.

D. Claiming Credits

The credits may be taken annually for 10 years and are based on a percentage of the qualified costs of the building. For 1987, the applicable rates were 9 percent for new construction and substantial rehabilitation and 4 percent for buildings with federal subsidies and for acquisition and rehabilitation of existing buildings. (In order for an existing building to qualify for the credit in connection with acquisition, there must be a period of at least 10 years between the date the building was last placed in service and the date of acquisition. Additionally, for a building to qualify for acquisition tax credits, it must also qualify for the credit for substantial rehabilitation.)

After 1987, the credit percentage is adjusted according to a calculation based on the Applicable Federal Rate (AFR) for the month the development is placed in service, or the month a carryover/commitment agreement is entered into by the owner and IFA.

This credit percentage adjustment for the 9 percent credits has been temporarily amended by the Housing and Economic Recovery Act (HERA) of 2008, Division C, Title I, Subtitle A, Part I, §3002 for all LIHTC developments placed in service between July 31, 2008 and December 31, 2013.

Owners of qualified residential rental developments must satisfy the minimum set-aside gross rent requirements for a minimum 15-year compliance period, and any extended use period.

E. The Annual Tax Credit Amount

The maximum amount of credit that may be allocated is calculated by multiplying the "eligible basis" by an "applicable fraction" to ascertain the "qualified basis" and then multiplying by the "applicable credit percentage."

QUALIFIED BASIS = Eligible Basis X Applicable Project Fraction

ANNUAL TAX CREDIT = Qualified Basis X Applicable Credit Percentage

The annual credit allocated may not exceed this amount; however, it may be less if IFA determines, during allocation, that this maximum amount is not necessary.

F. Housing Credits - Claiming Tax Credits in the Initial Year

The credit is claimed annually for ten years and the credit period may begin in the year the building is placed in service. During the first year of the credit period, the low-income occupancy percentage is calculated on a monthly basis. The calculation begins with the first full month in which the building was placed in service, even though the building may not be occupied during that month. If the owner elects to begin the credit period the year after placing a building in service, the calculation begins in January of the first year of the credit period. Occupancy for each month is determined on the last day of the month.

An IRS Form 8609 is completed for each building in the development receiving tax credits and is filed with the taxpayer's return for the first year of the credit period. Owners may elect to defer the date of the credit period by checking the appropriate box on the IRS Form 8609.

G. Initial Year Pro-ration

A development claiming credit in the initial year of occupancy is subject to a special provision which limits the credit to a proportionate amount based on average occupancy during the year **(**I.R.C. §42(f)(2)(A))****.

For Example*:*

If one-half of the low-income units were occupied in November and the remaining one-half were occupied in December, the building would be treated as being in service for 1.5/12 (12.5% - <u>all</u> for December and half for November) of the year for a calendar year partnership. In the 11th year, the disallowed credit of 10.5/12 (87.5%) could be claimed.

H. Calculating the First Year Applicable Fraction

There are specific rules for the first year credit period. To determine the applicable fraction for the first year, find the low-income portion as of the end of each full month that the building was in service during the year. Add these percentages together and divide by 12 (per instructions on IRS form 8609 and 8609-A). Note that the applicable fraction must be ****the lesser of**** the unit fraction and the floor space fraction.

The following is an **example**:

Assume that a low-income building was placed in service on January 15 and has the following lease-up schedule during the first year of the credit period. To determine the applicable fraction for the first year, an average of all monthly applicable fractions must be used.

Month	Low-Income Units	Total Units	Monthly Unit Fraction	Low-Income Sq. Ft.	Total Sq. Ft.	Monthly Sq. Ft. Fraction
January	1	10	0%	1000	12000	0.00%*
February	2	10	20%	2000	12000	16%
March	4	10	40%	3800	12000	31.66%
April	6	10	60%	5400	12000	45%
May	7	10	70%	6300	12000	52.5%
June	7	10	70%	6300	12000	52.5%
July	7	10	70%	6300	12000	52.5%
August	8	10	80%	7200	12000	60%
September	9	10	90%	8400	12000	70%
October	10	10	100%	12000	12000	100%
November	10	10	100%	12000	12000	100%
December	10	10	100%	12000	12000	100%
	Sum of Monthly Unit Fraction / 12		66.66%	Sum of monthly Sq Ft fraction / 12		56.68%

The owner may not count the unit occupied in January towards the first-year fraction as the building was not placed in service for the full month. For all other months, even if a resident moved in the last day of the month, that unit is considered occupied at the end of the month.

The first year applicable fraction for this building would be 56.68% based on this lease-up schedule.

I. The Two-Thirds Rule

If an owner decides to take the tax credit for a building before leasing all of its targeted low-income units, only those units actually rented to low-income residents will generate a tax credit for the first year of the credit period. Any unit initially rented to a qualified resident during year two of the credit period, or later, will generate only two-thirds the credit it would have produced if rented during year one.

J. Claiming Credit in the Remaining Years of the Compliance Period

Owners must file an IRS Form 8586 (Low Income Housing Credit) with the Internal Revenue Service for every year of the compliance period. This form indicates continuing compliance and the qualified basis of the development for each year of the compliance period.

The applicable fraction must be met on a building-by-building basis consistent with Treasury Regulation 1.42-5 (c)(vii). Any reduction in the applicable fraction of a building (and thus its qualified basis) is potential noncompliance and will be reported to the IRS. Different buildings within a development may sometimes have different applicable fractions.

Section 1.4 Unit Regulations

A. Maximum Income Limits

In order for persons to qualify as households for low-income units in a section 42 development, their income must first be certified to not exceed the applicable area income limit for the minimum set-aside the owner selected.

Qualifying residents in developments operating under the "20/50" election may not have total household incomes that exceed 50% of the appropriate area median income (AMI) adjusted for family size. Qualifying residents in developments operating under the "40/60" election may not have total household incomes that exceed 60% of the appropriate AMI adjusted for family size.

The U.S. Department of Housing and Urban Development (HUD) annually publishes median income figures for all Iowa counties. IFA uses these figures to calculate the maximum allowable rents and household incomes for rental units receiving the tax credit. IFA publishes income and rent limits, based on area median income, for developments receiving a LIHTC allocation and publishes the updated limits as they become available on our web site. However, it is the owner's responsibility to obtain the new limits each year. Owners should not anticipate increases in income limits and corresponding rents. Limits remain in effect until new annual limits are officially published each year by HUD. The IRS requires that owners begin applying new limits by the later of (i) the effective date provided by HUD for the new limits; or (ii) 45 days after the new limits are published by HUD (Rev. Rul. 94-57).

Refer to Chapter 4 for instructions on how to calculate household income.

Rent Restrictions and Lease Requirements

The LIHTC program sets only a maximum allowable qualifying income. The LIHTC program does not set minimum requirements. An owner/manager may elect to set a minimum income for prospective and current residents. However, such a requirement may not be applied to prospective or current residents who participate in the Section 8 Program(s).

B. Maximum Rent Limits

Similar to restrictions on household income, restrictions also exist on the amount of rent that may be charged for a low-income unit.

****Under IRC §42(g)(2)(A), a unit qualifies as an LIHTC unit when the gross rent does not exceed 30 percent of the imputed income limitation applicable to such unit under IRC §42(g)(2)(C). The income limit for a low-income housing unit is based upon the minimum set-aside election made by the owner under IRC §42(g)(1), but is never less than the income limit applicable for the earliest period the building (which contains the unit) was included in the determination of whether the project is a qualified low-income housing project. (See Gross Rent Floor)****

Developments Allocated Credit

Developments receiving tax credit allocations must be rent-restricted based on an imputed, not actual, family size. Family size is imputed by number of bedrooms in the following manner:

- An efficiency or a unit which does not have a separate bedroom – 1 individual.
- A unit which has 1 or more separate bedrooms – 1.5 individuals for each separate bedroom.

The maximum gross rent is calculated as 30% of the applicable median income for the imputed household size (notwithstanding that the actual household size may be different).

For Example:

Income Limits (by household size)
This table is provided as an example only – the owner must use income limits specific to the county in which development is located.

One Person	Two Person	Three Person	Four Person	Five Persons
$23,940	$27,360	$30,780	$34,200	$36,960

The rent for a two-bedroom is calculated based on the imputed household size of three persons (1.5 persons for each of the two bedrooms). Annual rent is 30% of the income limit for the imputed household size [($30,780 x 30%) divided by 12 months equals $****769.50, this value should be rounded down to the next lower whole dollar amount. Rounding up would cause one to exceed the maximum****]. The $769 amount would be the maximum allowable gross rent regardless of the number of persons actually occupying the two-bedroom unit.

****The rent for a three-bedroom is calculated based on the imputed household size of four and one half persons (1.5 persons for each of the three bedrooms). Annual rent is 30% of the income limit for the imputed household size . Since we are not provided with the income limit for 4.5 persons, it is necessary to average the 4 person and 5 person to arrive at a 4.5 person income limit (34,200+36,960)/2 = 35,580. [($35,580 x 30%) divided by 12 months equals $889.50, this value should be rounded down to the next lower whole dollar amount. Rounding up would cause one to exceed the maximum]. The $889 amount would be the maximum allowable gross rent regardless of the number of persons actually occupying the three-bedroom unit.****

Gross rent must include an allowance for any utilities paid by the resident. Utility allowances must be determined according to program requirements set forth in 26 C.F.R. §1.42-10.

Section 8 Rent

Gross rent does not include 3rd party payments made to the owner to subsidize the residents' rent, including Section 8 or any comparable government rental assistance paid to a unit or its occupants. See IRC §42(g)(2)(B)(i) and the General Explanation of the Tax Reform Act of 1986. Only the resident-paid portion of the rent payment (inclusive of resident-paid utilities) is considered when determining if the rent exceeds the maximum gross rent permissible.

**Example 1:

Income Limits (by household size)
This table is provided as an example only – the owner must use income limits specific to the county in which development is located.

One Person	Two Person	Three Person	Four Person	Five Persons
$23,940	$27,360	$30,780	$34,200	$36,960

The manager accepts a rental application from a couple seeking to rent a 2 bedroom apartment. The applicant indicates s/he is receiving Section 8 rental assistance and they have a housing choice voucher from the local public housing authority. The PHA verifies the households combined family income (line 8a of the HUD 50058) is $30,960. This applicant's annual income exceeds the LIHTC maximum allowable income. The applicant does not qualify to reside in the development and should not be housed.

If this had been a recertification application, and the household income was below the maximum income limit at move-in, the recertification would trigger the next available unit rule, unless the development is a 100% low-income property. The resident is not required to move out and the unit remains a qualified unit, so long as the rent remains restricted. If the resident stops receiving rental assistance for any reason, the owner must charge the resident no more than the maximum allowed by the LIHTC program to maintain the unit's qualified status.

Example 2:

The maximum allowable gross rent for a unit is $769.
A particular resident is paying $172, the unit has a utility allowance of $28 and the owner receives a $616 Section 8 subsidy for this unit. The owner receives a total of $788 for this unit which exceeds the $769 maximum. As long as the owner receives $1 in rental assistance through the Section 8 program, or a comparable program, the amount of rent collected for the unit, and the portion of the rent paid by the resident is determined by the organization administering the rental subsidy. If the resident stops receiving rental assistance for any reason, the owner must charge the resident no more than the maximum allowed by the LIHTC program.**

Example 3:

The maximum allowable gross rent for a unit is $769.
A particular resident is paying $774, the unit has a utility allowance of $28 and the owner receives a $14 Section 8 subsidy for this unit. The owner receives a total of $788 for this unit which exceeds the $769 maximum. It is possible and permissible for the resident's out of pocket rental payment to exceed the maximum

allowable LIHTC rents so long as the resident continues to receive a subsidy. If the resident stops receiving rental assistance for any reason, the owner must charge the resident no more than the maximum allowed by the LIHTC program.

For FMHA 515 Developments

The amount of rent paid by the resident in excess of the tax credit rent limit is known as the "rent overage." The rent overage is treated as follows:

- For FMHA 515 developments built before 1991, the rent overage may not be charged to the resident, and the owner is responsible for paying the difference.
- For developments built in 1991 and later, the rent amount exceeding the tax credit rent limit may be collected by the owner, but the owner must pay the overage to Rural Development. The owner should maintain documentation on file sufficient to demonstrate the overage has been remitted directly to Rural Development to avoid noncompliance.

C. Gross Rent Floor

IRS Revenue Procedure 94-57 allows the owner to establish the effective date of initial maximum rents which serve as a floor against subsequent reductions in rent that may result from a decrease in an area median income. The Procedure allows the owner/taxpayer to fix the date of the gross rent floor as either the placed-in-service date or the credit allocation (carryover) date.

For all developments receiving allocations of credit after October 6, 1994, a statement of election must be completed and returned to IFA before the placed-in-service date unless the allocation (carryover) date precedes the placed-in-service date. The gross rent floor determination allows the Taxpayer either election.

For tax-exempt developments, the Gross Rent Floor will be the date that the Agency initially issues a determination letter for the building unless the taxpayer requests to use the placed-in-service date.

Please refer to IRS Ruling 94-57 (Gross Rent Floor) for an explanation on how the rent floor is established for developments financed by tax-exempt bonds.

If a rent amount that is greater than the maximum allowable LIHTC rent is charged to a resident, the unit is out of compliance when the rent charged exceeds the limitation, ****and remains out of compliance for the remainder of the development owner's tax year****. A unit is back in compliance ****on the first day of the development owner's next tax year**** when the rent charged does not exceed the limit. However, an owner does not avoid a loss of credits by refunding the excess amount charged to the residents.

D. Utility Allowance

The maximum gross rent includes the amount of resident paid utilities. Utilities include electricity, water, sewer, oil, gas, and trash, where applicable. Utilities do not include telephone, Internet, or cable television.

When utilities are paid directly by the resident (as opposed to being paid by the development), a utility allowance must be used to determine maximum eligible unit rent. The utility allowance (for utility costs paid by the resident) must be subtracted from the maximum gross rent to determine the maximum amount of allowable resident-paid rent.

For Example:

If the maximum gross rent on a unit is $450, and the resident pays utilities with a utility allowance of $66 per month, the maximum rent chargeable to the resident is $384 ($450 minus $66).

If all utilities are included in the household's gross rent payment (development paid utilities), no utility allowance is required.

Treasury Regulation Section 1.42-10, IRS Notice 89-6 and Federal Register Vol. 73, No. 146 Section 42 Utility Allowance Regulations Update set forth the IRS required procedures for determining utility allowances. Following is a summary of the required procedures:

RHS-assisted buildings – If a building receives assistance from Rural Housing Service (RHS) (formerly the Farmers Home Administration (FmHA)), the applicable utility allowance for all rent restricted units in the building is the utility allowance determined under the method prescribed by RHS for the building (whether or not the building or its residents also receive other state or federal assistance).

Buildings with RHS – Rental Assistance – If *any* resident in a building receives RHS rental assistance, all tax credit units are governed by the RHS utility allowance. This includes any HUD assisted units in that building.

HUD-regulated buildings – If a building is regulated by HUD, the HUD-required utility allowances must be used for all rent-restricted units in the building.

Residents receiving HUD rental assistance – If a resident receives HUD rental assistance in a building that is neither RHS-assisted nor HUD-regulated ****(Section 8 voucher holders)****, the PHA utility allowance established for the Section 8 Existing Housing Program must be used for the household.

Buildings without RHS or HUD assistance – If a building is neither RHS-assisted nor a HUD-regulated building, and no resident in the building receives RHS resident assistance, building owners may use one of the following options:

1) **PHA Utility Allowance**

2) **Agency Estimate** – A building owner may obtain a utility estimate for each unit in the building from IFA provided that IFA agrees to provide the estimate (cost estimate is calculated using the HUD Utility Schedule Model). The cost incurred in obtaining the estimate shall be borne by the building owner. ****At this time IFA does NOT provide utility estimates.****

3) **Utility Company Estimate** – A local utility company estimate may be obtained, providing the estimated cost is for a unit of similar size and construction for the geographic area in which the building containing the unit is located. The utility company must offer utility services to the building in order for that utility company's rate to be used in calculating utility allowances.

4) **HUD Utility Schedule Model** – A building owner may calculate a utility estimate using the "HUD Utility Schedule Model" that can be found on the Low-Income Housing Tax Credit page found on the internet at http://www.HUDUser.org/datasets/lihtc.html. Utility rates used for the HUD Utility Schedule Model must be no older that the rates in place 60 days prior to the beginning of 90 days after the change (90 day period).

5) **Energy Consumption Model** – A building owner may calculate utility estimates using an energy and water and sewage consumption and analysis mode. The utility consumption estimates must be calculated by either a properly licensed engineer or a qualified professional approved by IFA, and the qualified professional and the building owner must not be related within the meaning of IRC Section 267(b) or Section 707(b).

Regardless of the utility allowance source used, the development owner must clearly identify, on the supporting documentation, which utility allowance is being utilized for the development (i.e., circling, underlining, etc.). Also, if multiple utility sources are being used, evidence of each source must be provided to IFA *****upon request**.***

To remain in compliance, owners must utilize a correct utility allowance in order to properly determine unit rents. An increase in the utility allowance will increase the gross rent and may cause the rent to be greater than the maximum allowable rent, in which case, the contract rent must be lowered. When a utility allowance changes, rents must be refigured within ninety (90) days of the effective date of the change to avoid violating the gross rent limitations of Section 42(g)(2). Utility allowances must be reviewed and updated as follows:

- When the rents for a development or building are changed, or there is a change in who pays the utilities;
- Within 90 days of an update by HUD, RD, PHA, or local utility supplier;
- Within 90 days of a change in the applicable allowance (e.g., a new resident is receiving HUD Section 8 rental assistance);
- Annually for developments or buildings with documentation from a utility sponsor.

IFA requires that documentation be completed each year indicating how utility amounts were determined. A LIHTC form 004, Utility Allowance Documentation, must be completed at least once a year or whenever an update is necessary (whichever occurs first). A copy of the form must be submitted to IFA once per year with the annual compliance certifications. The completed LIHTC form 004 must also be kept in the Development File.

Contact the appropriate agency to request current utility allowance information. The Operations – Asset Management division at IFA does not maintain the various utility allowances.

E. Household Size

Knowing the actual number of persons in the household is necessary for determining the maximum allowable income of a household for all developments, regardless of the allocation year.

The following circumstances that affect household size should be noted:

- In the case of a pregnant woman, unborn children are included in the size of the household and for purposes of determining the maximum allowable income. A household in the process of adopting a child is treated the same as a pregnancy;
- A live-in care attendant is included in household size when determining the size of unit the household will need, but the individual and their income is not included in the total household when determining the maximum allowable income;
- Foster children should be included in the size of the household when determining the size of unit the household will need, but payments received on behalf of the foster children ****(unearned income)**** are not included in household income and the children are not included in household size for the purpose of determining the maximum allowable income
- Exclude children not living in the unit at least 50% of the time from the household size when determining both the household income limit and appropriate unit size;
- Include children subject to joint custody who will be living in the unit at least 50% of the time in the household size when determining both the household income limit and appropriate unit size;
- Include children temporarily placed in a foster home in the household size when determining household income limit and appropriate unit size;
- Include children who are away at school but who live with the family during school recesses when determining both the household income limit and appropriate unit size, unless the child has established residency at the other location as evidenced by a lease;
- Include temporarily absent members, including those in a hospital or rehabilitation facility, in the family size when determining both the household income limit and appropriate unit size;
- The household may elect to include a member permanently confined to a hospital or nursing home in their household size. Include the permanently confined member in the household size when selecting the income limit, but not when determining the appropriate unit size. The permanently confined person may not be listed on the tenant income certification as the head of household, co-head of the household or spouse to the head of household. Include the confined person's income in the household's annual income calculation.

Section 1.5 Units After Occupancy by Qualified Low-Income Residents

A. Annual Recertification of Income

Section 42 requires that the household income of residents in qualifying units be recertified annually. Therefore, at least once every 365 days from a household's last income certification date, management must complete an income recertification of the household. See Chapter 5 of this manual for complete information on recertification.

Owners of developments in which 100% of the rental units in the development are income and rent restricted, please refer to §5.8 for rules relating to Annual Recertification.

B. Next Available Unit (140%) Rule (NAUR)

When the income of a qualified household increases above 140% of the current maximum income amount (over-income unit); and a building is at or below its applicable fraction, the next available unit rule (NAUR) goes into effect.

When the NAUR is in effect, the next available unit of comparable or smaller size in that building must be rented to a qualified low-income household (I.R.C. §42(g)(2)(D)(ii)(1994)). All comparable or smaller sized units must be rented to qualified tax credit households until the percentage of low-income units in the building equals the applicable fraction on which credit is based.

If the NAUR is adhered to, all over-income units that were previously determined qualified units remain qualified units and are included in the calculation of the applicable fraction if the units remain rent restricted.

If the NAUR is violated, all over-income units lose their low-income status and are counted in the building's fraction as market-rate. All units causing a NAUR violation will be reported to the IRS for noncompliance.

With the issuance of 26 CFR §1.42-15, effective 9-26-97, the IRS made the following changes:

1. Over-income units (qualifying units whose income later exceeds 140% of AMI) are included in the calculation of the Minimum Set-Aside requirement so long as the rent for the unit continues to be restricted by the LIHTC maximum rent.

2. Comparable unit is measured by the same method as the taxpayer used to determine the qualified basis of the building (lesser of unit fraction or sq. footage fraction).

3. A current qualifying household is permitted to move to another unit within the same building, without having to re-qualify. The units exchange status.

4. A unit is not available for purposes of the NAUR when the unit is not available for rent due to a reservation that is binding under local law.

As stated previously, some developments received additional ranking points in the scoring of the tax credit application for targeting lower-income households. Special set-aside units refer to those units with lower income limits than those in the general set-aside (50% or 60% of AMI). It is necessary for on-site management agents or those responsible for income certifying households to be aware of any additional income requirements that exist for the properties they manage.

At a property where the owner has elected the deep rent skew option ****on IRS Form 8609 line 10.d****, when the income of a qualified household increases above 170% of the current income limit, the owner must rent the next available tax credit unit to a household with income not exceeding 40% of the area median income. ****The 170% threshold is applied to ALL the low-income units in the development****. As long as one unit is occupied by a resident with income above 170% of the current income limit, the owner must rent all available low income units to households with income not exceeding 40% of the area median income. However, when an owner elects to deep rent skew, the low income units are fixed and the owner is not required to rent an available market unit to a low-income resident.

It is in the owner's best interest that the lease agreement contains language allowing rent adjustments due to a change of household income.

C. Vacant Unit Rule (VUR)

Under the Vacant Unit Rule, 26 CFR Pt.1, Sec 1.42-5(c)(1)(ix) states, "if a low-income unit in the development became vacant during the year, that reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to applicants having a qualifying income before any units in the development were or will be rented to applicants not having a qualifying income."

When a qualified low-income unit becomes vacant and reasonable attempts are being made to rent that unit, that unit will continue to be included as a qualified low-income unit for meeting the minimum set-aside and in calculating the applicable fraction of the building if the requirements of the VUR are met. THE VACANT UNIT RULE IS A PROJECT RULE, NOT A BUILDING RULE.

The IRS has not given any guidelines as to what constitutes "reasonable attempts" in regard to the VUR requirements. Management agents and owners should document and retain records of all efforts to rent to a qualified low-income household.

When the VUR is violated, all units of comparable or smaller size that are rented to market-rate households prior to renting to a low-income household will be reported to the IRS as a violation.

Examples of Minimum Set-Aside, NAUR and VUR:

Hideaway Manor is a one-building tax credit development consisting of 10 apartments. All units are the same size, two-bedroom units. Units 1 through 5 are rented to qualified low-income residents. Units 6 through 10 are rented to market-rate residents. The owner chose the 40/60 minimum set-aside election. At the end of the first year for which credit was claimed, the owner established an applicable fraction of 50% (5 of 10 units).

Example 1:

Units #1 and #2 are recertified. The incomes of residents in both units have increased above 140% of the AMI limit. Additionally, the resident in unit #6 moves out, and further a new market-rate applicant moves in. Several violations have occurred.

The NAUR went into effect when units #1 and # 2 were recertified and remained in effect when the vacancy in unit #6 occurred. Since that unit was rented to a market-rate household first, the NAUR was violated.

As soon as the market-rate household moved into unit #6, units #1 and #2 automatically changed their low-income status to market-rate. Thus, 7 units are now market-rate units, causing the development minimum set-aside to be 30%. The minimum set-aside rule has been violated.

As noted above, units #1 and #2 are considered market-rate units. This caused the applicable fraction to drop to 30%. This will be reported as a Qualified Basis Violation.

Example 2:

Qualified low-income units #1, #4, and #5 vacate. Unit #4 is rented first, to a market-rate household. The rental of unit #4 to a market-rate household causes units #1, 4, and 5 to be in violation of the unit vacancy rule. All three of these units are now considered market-rate units, causing the applicable fraction of the building to decrease to 20%. Thus, the building is not in compliance with Section 42 because it has fallen below its project minimum set-aside of 40% and its established applicable fraction of 50% and violated the unit vacancy rule requirements.

D. Transfer of Existing Residents to Another Set-Aside Unit

If an existing qualified household moves from one LIHTC unit to another in a different building in the development, the newly occupied unit adopts the status of the vacated unit. As noted in Rev. Rul. 2004-82, Q&A #8, when a household whose income is no greater than 140% of the income limit (or 170% for deep rent skewed projects) moves to a low-income unit in a different building within the development during any year of the compliance period the vacated unit assumes the status the newly occupied unit had immediately before it was occupied by the current resident. On line 8b of a building's 8609 form, the owner indicates if the building is part of a multi-building project. If the building is part of a development including other buildings, the owner lists the other addresses included in the same project. A resident may transfer only to other buildings the owner included as part of the same project. A resident wanting to move to a building that is not part of the same project must qualify as a new low income resident.

If an existing household moves to a different LIHTC restricted unit in the same building, the newly occupied unit adopts the status of the vacated unit. Thus, if a current resident whose income exceeds the applicable income limitation moves from an over income unit to a vacant unit in the same building, the newly occupied unit is treated as an over-income unit. The vacated unit assumes the status the newly occupied unit had immediately before it was occupied by the current resident.

IFA does not require interim recertifications for residents of unit transfers. However, the date of the transfer must be clearly identified in the resident file. The household must continue to be recertified on the anniversary of the original date it moved into the development or within 365 days of the previous certification.

E. Rules Governing the Eligibility of Particular Residents and Uses

The following is a listing of rules governing the eligibility of certain households. For more information regarding resident eligibility, consult Section 42 of the Code or a LIHTC textbook or guide.

Employees

It is permissible for a manager, assistant manager, or other employee of the owner to reside in a unit within a development. An otherwise over-income employee may reside in a unit that is designated as a manager's unit and is considered common area or rental property. In order for a household to be eligible to reside in a unit that is designated as common area, the head of household (or co-head) must be a full-time employee at the particular development. IFA allows each owner to determine what constitutes a full-time work schedule at each development. Persons who are employed less than full-time at the development are not eligible to reside in a manager's unit designated as common area (such as regional managers). The manager or employee may also be included as an eligible LIHTC resident if he or she is income-qualified and required to pay rent.

All residents, including employees of the development, occupying LIHTC rental units that are not "common area", must be income-eligible, rent-restricted, and under a lease with an initial term of at least six months. If an employee residing in a low income unit receives a discount in the amount of rent paid to occupy the unit, the difference between the maximum LIHTC rent and the amount paid by the employee must be included in the household's annual income to determine their eligibility for the LIHTC program.

**Live-in Aide

A live-in aide is a person who resides with one or more elderly persons, near-elderly persons, or persons with disabilities, and who:

a) Is determined to be essential to the care and wellbeing of the person(s);
b) Is not obligated for the support of the person(s); and
c) Would not be living in the unit except to provide the necessary supportive services.

A relative of the household may be considered to be a live-in aide if they meet the above requirements, especially c).

To qualify as a live-in aide:

a) The Owner should verify the need for the live-in aide. Verification that the live-in aide is needed to provide the necessary supportive services essential to the care and well-being of the person must be obtained from the person's physician, psychiatrist or other medical practioner or health care provider. The Owner MUST approve a live-in aide if needed as a reasonable accommodation to make the housing accessible to and useable by the household member with a disability. The Owner may verify whether the live-in aide is necessary only to the extent necessary to document that applicants or residents who have requested a live-in aide have a disability-related need for the requested accommodation. This may include verification from the person's physician, psychiatrist or other medical practitioner or health care provider. The Owner may not require applicants or residents to provide access to confidential medical records or to submit to a physical examination.
b) Qualifies for occupancy only as long as the individual needing supportive services requires the aide's services and remains a resident. The live-in aide may not qualify for continued occupancy as a remaining family member. Owners are encouraged to use a lease addendum that denies occupancy of the unit to a live-in aide after the resident, for whatever reason, is no longer living in the unit. The lease addendum should also give the owner the right to evict a live-in aide who violates any of the house rules. (LIHTC developments layered with any HUD program MUST obtain HUD's written permission prior to implementation of any lease addendum.)
c) The income of a live-in aide is excluded from household annual income.
d) The live-in aide must meet all other usual and customary screening criteria applied to applicants such as criminal background checks or credit scoring.**

Students

Every resident 18 years of age or older who is a member of a household residing in a LIHTC unit must certify to student status either on the application, recertification questionnaire, or complete a Student Eligibility Certification for the initial certification and for every recertification of the household thereafter. Developments subject to §5.8 of this manual must continue to determine the student status of all LIHTC households annually. The certification of student status must be included in the resident file.

i. If a single applicant/resident or all the applicants/occupants of a unit are full-time students, that unit will not be considered a qualifying tax credit unit unless one of the following criteria is met:

- All household members are full-time students and such students are married and entitled to file a joint tax return; or,

- At least one full-time student was previously under the care and placement responsibility of the State agency responsible for administering a plan under part B or part E of title IV of the Social Security Act (a student who received foster care assistance)(Housing and Economic Recovery Act of 2008); or,
- At least one full-time student is enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar federal, state, or local laws; or,
- At least one full-time student receives assistance under Title IV of the Social Security Act (including AFDC, TANF); or,
- At least one full-time student is a single parent with minor children (living in the household), and such parents are not dependents of another individual and such children are not dependents of another individual other than a parent of such children (Public Law 110-142 Mortgage Forgiveness Debt Relief Act of 2007).

ii. If a previously qualified low-income household changes due to all household members becoming full-time students, the household must meet one of the above criteria in order to remain eligible under the program rules. If none of the criteria is met, the unit will be considered a non-qualifying household or a market-rate unit.

iii. An applicant claiming one of the exceptions must be able to provide documentation to prove status. An owner must require the applicant to indicate whether or not they are full-time students on the Tenant Income Certification (TIC) form.

iv. To document student status (for full-time students and for those persons claiming to be part-time students) obtain a letter from the educational institution indicating that it classifies the person as a "full-time" or "part-time" student. If the educational institution is unable to verify the student status at the time of certification or recertification the resident must then self certify under penalty of perjury as to their student status for the next 12 months. All documents must be in the file for review including the educational institutions response as to student status. IFA considers K-12 age children as full-time students and does not require further verification. When defining a full-time student note the following:

- Include those persons who are full-time students in a, junior college, community college, vocational school with a diploma or certificate program, or technical school;
- Include those persons who are completing an internship, thesis, or research as part of an academic program for educational credits if the school classifies the particular student as "full-time";
- Include those persons who are on break from school, including summer and spring breaks, but are planning to return to school for the next semester;
- Include those persons who have attended school or who intend to attend school full-time for 5 months out of the current calendar year as defined in IRC § 151(c)(4), IRC § 170(b)(1)(A)(ii). Treas. Reg. §1.151-3(b) further provides that the five calendar months need not be consecutive.

Also note the following in regard to full-time students and student households:

- Consider a single person household ineligible if he or she is a full-time student at the time of initial occupancy or will be for 5 months out of the current calendar year (unless the individual meets one of the student exceptions described above);
- Consider a household of students eligible if it includes at least one part-time student or meets one of the student exceptions described above;
- Consider a previously qualified low-income household changing status due to all household members becoming full-time students to remain an eligible unit up to the point where the last full-

time student attends up to 5 months in any calendar year, or the household must meet one of the above exception criteria in order to remain eligible under the program rules. If none of the criteria is met, the unit will be considered a non-qualifying household or a market-rate unit.

- Consider a household containing full-time students and at least one child (who is not a full-time student) an eligible household;
- Consider TANF an acceptable Title IV program exception;
- Consider the unborn child of an expectant mother to be a household member who is not a full time student;
- Consider a person attending two schools on a part time basis as a full time student.

Common Questions Concerning Student Eligibility:

In regard to "Married Persons who File a Joint Tax Return", note the following:

- Couples married in the current calendar year and who have not yet filed a joint tax return, but are entitled to file jointly are considered exempt under IRC §42(i)(3)(D)(ii)(II).
- For couples who were married prior to the end of the previous calendar year, but did not file a joint tax return for the previous calendar year, "entitled" to file jointly satisfies the student eligibility exception.

In regard to "Title IV of the Social Security Act" note the following:

- Title IV of the Social Security Act includes only welfare benefits (commonly known as public assistance, or Family Independence Program, formerly called AFDC);
- The Food Stamp Program was funded under the Food Stamp Act of 1977, not Title IV of the Social Security Act. Therefore, the receipt of food stamps alone does not qualify a household for this student exemption;
- Social Security benefits and Supplemental Social Security income are not part of Title IV of the Social Security Act;
- Work study and Pell Grants are not part of the Title IV of the Social Security Act.

In regard to participants in a program similar to those funded under the "Job Training Partnership Act" (JTPA), note the following:

- Pell Grants, GI Bill, ROTC, and work-study do not qualify as JTPA programs;
- Apprenticeship programs and vocational schools do not qualify as JTPA programs.
- Programs funded by the Workforce Investment Act are considered similar to those funded under the JTPA.

In regard to "single parents receiving AFDC payments with minor children who are also students," note the following:

- The single parent receiving welfare benefits need not also be claiming the child as a dependent on the tax return in order to be eligible under this exception.

In regard to "a single parent with minor children (living in the household), and such parents are not dependents of another individual and such children are not dependents of another individual other than a parent of such children", note the following:

- The minor children must be claimed on the tax return of one of the parents whether or not such parent is residing in the unit. Under Public Law 110-142 Mortgage Forgiveness Debt Relief Act of 2007, minor children claimed as dependent on the non resident parent's tax return will be considered as qualifying for the exception;
- This can include a full-time student over the age of 18 who is away at school, but is listed as the dependent on the tax return of a single parent residing in the unit.

Section 8 Voucher Holders

IRC Section 42(h)(6)(B)(iv) prohibits refusing to lease to a Section 8 voucher holder simply because that person is such a holder. A household may be denied residency if it fails to meet any other consistently applied screening criteria (i.e., criminal background, eviction history, and credit rating), with the exception of a minimum income requirement.

Chapter 2 Responsibilities

Section 2.1 Iowa Finance Authority

IFA allocates and administers the tax credit program for the State of Iowa. In addition, the responsibilities of IFA are as follows:

A. Prepare Regulatory Agreement/Restrictive Covenants

IFA will prepare a Land Use Restrictive Agreement (LURA) prior to the issuance of the IRS Form 8609. This document must be recorded before the end of the calendar year in which credit is first claimed. The LURA must be an encumbrance on the property so that the restrictive covenants are prime. In the event the property is foreclosed IFA will make every effort to retain affordability for the development.

B. Issue IRS Form 8609 (Low Income Housing Certification)

When the original recorded LURA is returned to IFA and all fees have been paid, the IRS Form 8609 will be sent to the owner. An IRS Form 8609 is prepared by IFA for each building in the development.

> **Note**: If rehabilitation and acquisition credits are claimed on the same building, the rehabilitation is treated by Section 42 as a separate building. Therefore, the acquisition and rehabilitation will receive separate 8609 forms.

The owner submits the original to the IRS with the owner's personal, partnership, or corporate tax returns for the first taxable year in which the credit is claimed. Refer to the 8609 instructions to determine when, how (manually or electronically), and how often a copy of the 8609 must be submitted with the tax return.

Owners should consult with their legal and/or tax advisors for advice on completing and filing the IRS tax forms. IFA cannot provide legal or tax advice on the filing or completion of tax forms.

Part 1 of IRS Form 8609 is prepared and filed by IFA only. If IFA becomes aware that a developer or agent filed a self-prepared 8609 with the IRS, IFA reserves the right to determine that all parties involved are ineligible for future participation in Iowa's LIHTC program for a period of up to five (5) years.

C. Review Annual Owner Certification of Continuing Compliance

- For information on the Annual Owner Certification, see Section 2.2.

D. Review Resident Income and Rent Report

- For information on the annual Resident Income and Rent Report, see Chapter 4.

E. Conduct On-site Monitoring

IFA is required by the IRS to conduct in-depth, on-site inspections of all buildings in the development. For further information regarding on-site monitoring, see Chapter 3.

F. Notify IRS of Noncompliance

IFA will provide written notification to the Taxpayer for items of non-compliance. The correction period will not exceed 90 days from the date of notice of non-compliance. IFA may extend the correction period for up to 6 months, but only if IFA determines there is good cause for granting the extension. During the 90 day time period, or the extension thereof, the taxpayer must supply all documentation that verifies the development is back in compliance.

G. Records Retention

IFA will retain all owner certifications and records for not less than three years from the end of the calendar year in which they are received. IFA will retain records of noncompliance or the failure to certify compliance for six years after its filing IRS Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance. Also see Chapter 3.

H. Conduct Training and Provide Continuing Education

IFA will conduct or arrange compliance training and will disseminate information regarding the dates and locations of such training. From time to time, IFA will offer continuing education to assist the owner, the management company, and on-site personnel in complying with federal regulations and state rules.

I. Possible Future Subcontracting of Functions

****Treasury Regulations found at 26 CFR Part 1, Subpart A, Section 1.42-5(f) allow IFA the right to delegate some or all of its compliance monitoring responsibilities.**** IFA may in the future, decide to retain an agent or private contractor to perform some of the responsibilities listed above, in IFA's sole discretion. In this event, IFA shall use reasonable diligence to ensure that the agent or private contractor(s) properly perform(s) the delegated monitoring functions. IFA shall, however, at all times retain responsibility for notifying the IRS of any noncompliance of which it becomes aware.

Section 2.2 Owner Responsibilities

The owner has chosen to utilize the LIHTC program to take advantage of the tax benefits provided. In exchange for the tax benefits, the owner must adhere to certain requirements and accept responsibilities. These responsibilities include, but are not limited to the following:

A. Allocation Requirements:

In the application, the owner provided comprehensive development information with evidence of overall economic feasibility. Prior to the issuance of a final allocation of credits, the owner certified to the total development costs and that all Program requirements had been met. Any violation of the Program requirements or information represented in the application or certifications could result in the loss of the credit allocated.

B. At a minimum, the development owner should be knowledgeable about the following:

1. The credit year of the development. (What is the date of allocation?)

2. The date of placed in service for each building. (The placed in service date is the

date of first possible occupancy, not necessarily actual occupancy – generally; this is the date of the certificate of occupancy.)

3. If an acquisition rehabilitation development,
    a. Whether residents were required to move out during rehab.
    b. Whether the building was occupied during the rehab.
    c. Whether current residents are qualified households.
    d. Developers must track the relocation of residents during the rehabilitation process sufficient to complete the cost certifications and income tax return.

4. The number of buildings in the development.

5. The Building Identification Number (BIN) for each building in the development.

6. The minimum set-aside elected:

    a. 20/50 or;
    b. 40/60 or;
    c. Deep rent skewing or;
    d. 40/50 election for HOME or;
    e. Additional elections made in the Application for additional points.

7. For each building, the percentage of the residential units and the percentage of residential floor space occupied by qualified residents.

8. The year that credit was first claimed.

9. The terms, under which the tax credit reservation was made, including statutory set asides, deeper targeting agreements, etc. For more information, see Chapter 1.

10. The terms and conditions stated in the LURA.

C. Proper Administration and Record Keeping

The owner is responsible for proper administration of the development, including the Code requirements that resident income and rent records be kept and retained for each building in the development for the compliance period.

Record Keeping - 26 CFR Part 1, Section 1.42-5(b)(1) states that the owner of a low-income housing development must be required to keep records for each building in the development to which an allocation on the Low Income Housing Tax Credits have been made.

Record Retention - Section 42 of the tax code requires owners to maintain the records necessary for IFA to conduct a compliance monitoring review and for the IRS to conduct an audit. Maintain records for the first year of the credit period for a minimum of 21 years, and records for all other years in the 15 year compliance period for a minimum of 6 years following each year's end.

The records **must** include the following:

1. The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);

2. The percentage of residential rental units in the buildings that are low income units;
3. The rent charged on each residential rental unit in the building, supporting documentation, and the applicable utility allowance;
4. The number of occupants in each low income unit;
5. The low income unit vacancies in the building and information that shows when and to whom the next available units were rented (This information must include the unit number, resident name, move-in dates and move-out dates for all residents, including market rate residents.);
6. The annual income certification of each eligible resident;
7. Documentation to support each eligible resident's income certification;
8. The eligible basis and qualified basis of the building at the end of the first year of the credit period;
9. The character and use of the nonresidential portion of any building included in the project's eligible basis under Section 42(d) of the code (e.g., resident facilities that are available on a comparable basis to all residents and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the development).

D. Maintain a Development File

Owners must maintain a development file that contains all pertinent documents for the development. IFA retains the right to inspect the development file at any time. The development file must contain:

1. All approved tax credit applications together with applicable attachments.
2. A recorded copy of the Regulatory Agreement/Restrictive Covenant/LURA.
3. IRS Forms 8609 and 8586 for each building for each year credit is claimed.
4. All applicable documents relating to any other form of housing or finance programs (i.e., HOME, HUD Section 8, RHS. etc.).
5. Documentation that the development complies with any statutory set-asides or Qualified Allocation Plan requirements.
6. Documentation for each utility allowance update or revision, which must occur at least once per year.

E. Maintain a Resident/Unit File for Each Unit in the Development

The resident/unit file requirements are outlined in Section 3.4 of this manual. Developments subject to multiple assistance programs must maintain only one file per resident/unit.

F. Reporting and Certification Requirements

1. **Certification** - 26 CFR Part 1, Section 1.42-5(1) states that the owner of a low-income housing development must be required to certify to the Agency, for the preceding 12 month period that the development met the requirements of Section 42 provisions. The requirement is satisfied by the owner submitting the Owner's Annual Certification of Continuing Program Compliance, and related documents, for each year of the compliance period. Initial Certifications are due April 1st and subsequent year's Certifications are due March 1st .

2. **Submit copy of IRS Form 8609** - A copy of the signed and dated IRS form 8609 (Part I & Part II) and Schedule 8609-A must be submitted to IFA with the Initial Owner Certification of Continuing Program Compliance for the first year Credit Period.

3. **Submit Copy of IRS Form 8586 -** This form must be completed to claim credits for the first taxable year in which credit is taken and every year thereafter in the compliance period. A copy of IRS Form 8586 must be sent to IFA for the first year of the credit period.

4. **Submit copy of IRS Form 8611 -** This form is used by taxpayers to report a recapture of previously claimed tax credits. A copy of IRS Form 8611 must be sent to IFA upon completion and submission to the IRS.

5. **Prepare and submit initial owner certifications -** The owner is responsible for reporting the development's status, condition, and compliance with program requirements to IFA in the form and manner IFA specifies. (This is for credits taken on a development for the first time in the previous year.) These certifications are made under penalty of perjury that the information provided is true, complete, and in compliance with Section 42 of the IRC.

6. **Prepare and submit annual owner certifications -** The owner is responsible for reporting the development's status, condition, and compliance with program requirements to IFA annually in the form and manner IFA specifies. These certifications are made under penalty of perjury that the information provided is true, complete, and in compliance with Section 42 of the IRC.

7. ****Prepare and submit quarterly vacancy reports – The owner is responsible for reporting vacancies on a quarterly basis. Vacant units are counted on the last day of each month and reported to IFA on a quarterly basis by the 10th of the month following the end of each quarter. Forms and instructions may be located on our web located at www.IowaFinanceAuthority.gov. ****

G. Train On Site Personnel

It is the owner's responsibility to ensure that the on-site management knows, understands, and complies with all applicable rules, regulations, and policies governing the development.

H. Ensure Proper Maintenance

The owner is responsible to maintain the development in a decent, safe, and sanitary condition. Failure to do so is a reportable act of noncompliance.

I. Administration and Notification

The owner must notify IFA immediately in writing of any changes in the ownership composition, general partner or managing member, or in the management agent, such as name, address, telephone number, and federal ID#.

If the composition of the ownership entity changes, the owner must provide details, and include a sales agreement if the property has been sold. For more information on development sales, see Chapter 3.

The owner is responsible for informing IFA of any event that might affect the development's credit throughout all phases of development, rent-up, and operation. This includes the initial phases of construction, the scheduled placed-in-service date and the completion of the development as outlined in the Code.

All communications with IFA must include the IFA assigned LIHTC development number, and, if appropriate, the affected BIN #'s.

J. Compliance Training

Owners of developments, and their management agents, are required to attend compliance training that is either approved or conducted by IFA prior to receiving an IRS Form 8609 from IFA. Training provided by an organization, one of whose primary purposes is to provide training in compliance with Section 42 of the IRC, will generally be approved. The training provider cannot hold a vested interest in the development seeking 8609 from IFA.

K. Declaration of Land Use Restrictive Agreement (LURA)

Prior to claiming tax credits, the building owner must record an approved IFA Declaration of Land Use Restrictive Agreement (LURA) which must be in effect as of the end of the taxable year credits are claimed 42(h)(6)(A).

Section 2.3 Management Company and On-Site Personnel Responsibilities

A. General

The management company and all on-site personnel are responsible to the owner for implementing the LIHTC program requirements properly. Anyone who is authorized to lease apartment units should be thoroughly familiar with federal and state laws, rules, and regulations governing certification and leasing procedures. It is also important that the management company provide information to IFA, as needed, and submit all required reports and documentation in a timely manner.

B. Noncompliance

If the management company determines that the development is not in compliance with the LIHTC program requirements, the management company should correct the noncompliance whenever possible. ****Correction of noncompliance matters prior to receiving notification from IFA of a pending scheduled file review and physical inspection is demonstration of proper due diligence and is not reportable to the IRS on form 8823.****

C. Compliance Training

Management staff must remain up-to-date on all IRS Code regulation and procedure changes that are published. This may be accomplished through the IRS web site, several nationally known LIHTC training providers, IFA's web site, and our annual training.

NOTE: THE ULTIMATE RESPONSIBILITY FOR COMPLIANCE AND PROPER ADMINISTRATION OF THE LIHTC PROGRAM LIES WITH THE OWNER.

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Chapter 3 Compliance Monitoring Procedures

Section 3.1 Compliance Period

A. All LIHTC Developments

Once allocated by the housing credit agency, low income housing tax credits may be claimed annually over a ten (10) year period beginning either with the year placed in service or the following year, depending on which option is selected by the owner ****on IRS Form 8609****, unless the qualified basis is increased after the first year of the credit period as specified in IRC 42 (f)(3). However, in order to claim the credit, all developments receiving a credit allocation since 1987 must comply with eligibility requirements for a period of 15 taxable years, beginning with the first taxable year of a building's credit period (the compliance period). Additionally, owners who agreed in their applications to have longer compliance periods will be bound for the length of time specified in the application, carry over agreement, 8609 application and the LURA.

B. Credit Allocations after December 31, 1989

Developments receiving a credit allocation after December 31, 1989, entered into a LURA for Housing Tax Credits with IFA at the time a final allocation of credit was issued. These developments must comply with eligibility requirements for ****a minimum**** additional 15 years, defined as "extended use periods" based on code requirements or developer election.

This restrictive covenant binds the owner and any successors to maintain specified low-income occupancy during the extended use period. Earlier termination of the extended use period is provided for under certain circumstances in the Code. However, if a development received ranking points for delaying enactment of such earlier termination, the owner will be bound by this election in the LURA.

C. General Information

The purpose of compliance monitoring is to determine the owner's compliance with federal and state regulations. However, compliance with Section 42 regulations and rules is the owner's responsibility and is required to retain and use the credit.

Monitoring each development is an ongoing activity that extends throughout the credit compliance period (15 years or longer). The Code requires IFA to conduct compliance monitoring and to inform the IRS through the issuance of form 8823 of noncompliance**.** Notification to the IRS is required whether the noncompliance has or has not been corrected (26 CFR Pt. 1 §1.42-5 - 1994).

See also Section 3.5 Noncompliance of this compliance manual and IRS Guide for Completing Form 8823 Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition for additional details.

Section 3.2 The Compliance Monitoring Manual

Owners and management companies may obtain a copy of the Compliance Monitoring Manual **(**the Manual**)** on our website.

The Manual describes the compliance monitoring standards, which the owner and management agents must follow. This standard does not prohibit owners/managers from establishing higher standards from those specified in the manual.

The Manual also refers to required and/or recommended resident eligibility forms (Tenant Income Certification (TIC), Verifications, Certifications, etc.). ****All forms may be located on our web page located at www.IowaFinanceAuthority.gov.****

Section 3.3 Reporting

The IRS and IFA require Owners to file specific forms for compliance and reporting purposes. Failure to submit required forms as outlined in this manual, to either the IRS or IFA, as appropriate, will constitute noncompliance and may make the Owner subject to recapture or ineligible for future or additional credits.

A. Low Income Housing Allocation Certification (IRS Form 8609)

A copy of the ****completed,**** signed and dated IRS Form 8609 (Part II) and 8609-A for each building must be submitted to IFA with the Initial Owner Certification of Continuing Program Compliance of the year following the first year credit period.

B. Delay of Placed In Service

If the owner elects to defer the credit until the year following the placed-in-service date of the building, IFA must be notified in writing by April 1 (or the next business day should April 1 fall on a weekend or legal holiday) of the year following the placed in service date. ****This election may be found on the Owner's Certification form****.

C. Low Income Housing Credit (IRS Form 8586)

A Low Income Housing Credit (IRS Form 8586) form must be completed ****and filed with the IRS**** to claim credits for the first Taxable Year in which credit is taken, and every year thereafter in the Compliance Period. A copy of Form 8586 must be sent to IFA for the first year of the credit period.

Filing Instructions: IRS Form 8586 must be attached to the Low Income Housing Credit Allocation Certification (IRS Form 8609 and Form 8609—A). See instructions provided with these forms for required submission with the Owner's federal tax returns.

D. Recapture of Low Income Housing Credit Form 8611

The IRS Form 8611 is used by taxpayers that must recapture tax credits previously claimed. A copy of Form 8611 must be sent to the IRS and IFA upon completion by the owner.

E. Annual Owner Certification of Continuing Program Compliance

An owner's Certification of Continuing Program Compliance must be submitted annually to IFA no later than March 1 (or the next business day should March 1 fall on a weekend or legal holiday) of each year. The owner is required to certify that the development is and has been in compliance for the preceding year with regard to:

- The development meets the requirements of either the 20/50 test set forth at Section 42(g)(1)(A) of the Code or the 40/60 test set forth at Section 42(g)(1)(B) of the Code, or deep rent skewing, whichever is applicable;

- There was no change in the applicable fraction (as defined in Section 42(c)(1)(B) of the Code) of any building in the development, or that there was a change and a description of the change;
- The owner has received an annual income certification from each low income resident and documentation to support that certification ****at initial occupancy and subsequent years during the compliance period. The owner may satisfy the documentation requirement for residents using Section 8 vouchers by submitting a statement provided by the issuing public housing authority (see Treas. Reg. §1.42-5(b)(1)(vii)). For an exception to this requirement, see IRC §42(g)(8)(B) (which provides a special rule for a 100 percent low-income building)****;
- Each low income unit in the development was rent restricted in accordance with the applicable provisions of Section 42 (g) of the Code and LURA;
- All units in the development were available for use by the general public and were used on a non-transient basis (except for permissible transitional housing for the homeless);
- Each building in the development was suitable for occupancy according to all local health, safety, and building codes;
- There has been no change in the eligible basis of any building in the development or, if there has been a change, the nature of that change;
- All resident facilities in each building in the development that have been included in the eligible basis are provided on a comparable basis to all residents without additional charge;
- If a low income unit became vacant during the year, reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to applicants who have qualifying incomes before any units in the development were or will be rented to applicants <u>not</u> having qualifying incomes;
- If the income of any resident of a low income unit increased above the limit allowed in Section 42(g)(2)(D)(ii) of the Code, the next available unit of comparable or smaller size was or will be rented to residents having a qualifying income;
- An extended low-income housing commitment as described in Section 42(h)(6) of the Code was in effect, including the requirement under Section 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the development 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.
- There has been no change in the ownership of the development or any of its buildings, or, if there has been a change, a description of the change has been provided to IFA in writing.
- There has been no finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, at this development. A finding of discrimination includes an adverse final decision by the Secretary 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.
- There has been no casualty loss during this reporting period.

The owner's annual certification must be submitted each year with the owner's signature affixed and date of signature. Signatures of a person other than an authorized signatory of the ownership entity will not be accepted unless the owner submits a letter to IFA stating that the named individual is an authorized signatory for the ownership entity. ****IFA will accept certification via postal, overnight delivery, email or facsimile.****

Beginning effective with developments allocated under the 2009 First Amended Qualified Allocation Plan and continuing thereafter, monitoring fees ****may be**** paid annually each year of the compliance period and the extended use period. Monitoring fees for these developments will be due with the first annual payment being submitted with the Form 8609 Application, subsequent annual payments being

****due not later than January 31 of each subsequent year during the compliance period and the extended use period.****

Failure of the owner to supply legible and complete annual certification is considered noncompliance ****and is a reportable event on IRS Form 8823 to**** the IRS.

F. Initial Owner Certification of Continuing Program Compliance

If the property is not yet in the first year of the credit period, but has received an award letter from IFA, the owner must submit "Owner's Certificate of Continuing Program Compliance" with appropriate designation of "No buildings have been placed in service", or "at least one building placed in service but elect to begin credit period in the year following placed in service." Signed, dated, and submitted by April 1 (or the next business day if April 1 falls on a weekend or legal holiday) of each year following the year of the award until the development is placed in service and ready to start taking credits.

An Owner's Initial Certification of Continuing Program Compliance must be submitted to IFA no later than April 1 (or the next business day if April 1 falls on a weekend or a legal holiday) of the following year of the election (placed in service year or following year). The owner is required to certify that the development is and has been in compliance with regard to the items detailed in 3.E above.

G. Initial and Annual Resident Income and Report Forms

Compliance is monitored on a building-by-building basis. A separate reporting form must be submitted for each building.

The Annual Compliance Report must be submitted annually. The Initial Compliance Report is prepared only for the first year the building (s) begin taking credits. Both Reports detail the following:

- The number of qualifying low income units.
- Information on each low income resident, including name, social security number, number of people in household, and annual income.
- The number of bedrooms in each unit.
- The rent charged for each unit.
- The unit number, resident name, move-in date, and move-out date for all residents, including market rate residents.
- Such other information as is set forth on the form and required by IFA.

Section 3.4 Setting Up and Organizing the Resident File

A separate file must be maintained for every unit/resident in the development.

A. Lease - IFA does not provide a lease for Owners to use**.** It is the responsibility of each owner to create an acceptable lease. The initial lease term for all Section 42 residents must be a minimum of six months in length, unless the unit is a qualified Single Room Occupancy Unit or the project was developed for transitional housing only. For acquisition/rehab properties, the owner is not required to sign a new lease with an existing resident who has lived in the unit under a lease that lasted at least six months. ****Developments that have subsidy layering with any HUD program are required by HUD regulations to use the HUD approved model leases for the appropriate program. In addition, those developments must have HUD written approval of any lease addendum in use.****

B. Verifications – There must be verification documents for all income and asset sources listed on the application/TIC. See Chapter 4.

C. Tenant Income Certification (TIC) - This form is completed by the owner or management agent after the appropriate verifications have been received. The owner or manager uses the information from the verification forms to complete the certification. Each adult household member 18 years of age or older must sign this certification as well as the owner or manager. The required TIC is located on IFA's web site. Upon certification, do not verify the employment or other earned income of an applicant who is 17 years old and not the head, spouse or co-head of the household, even though they will turn 18 during the certification period. Unearned income must always be included regardless of age, except for unearned income sources HUD excludes from a resident's annual income calculation. All documents that support the information listed on the TIC should be located just behind the corresponding TIC.

The TIC is required for initial move in, for annual recertifications and for documentation as to the change in the number of occupants, and income and asset certification if an additional adult moves into the unit. All qualified households must have a TIC regardless of any other subsidy the resident or development receives.

The IFA approved Tenant Income Certification (TIC) will be the only accepted form of TIC.

D. Other Documents

This may include any contract for optional items that the resident pays for, if not contained in the lease. Other items including, but not limited to pet charges, garage or underground parking charges, and other items if not in base rent.

E. Applicable Housing and Financing Requirements Specific to this Unit.

If other housing or financing programs govern the development, the applicable documentation reflecting compliance with the other program's requirements should also be in the resident's file. These programs may include: HOME Investment Partnership, Tax Exempt Bond Financing, HUD, or RHS.

Section 3.5 Noncompliance

Noncompliance is defined as a period of time a development, specific building, or unit is ineligible for tax credit because of failure to satisfy LIHTC Program requirements. LIHTC program requirements will be applicable throughout the development's extended use period as defined in the development's application, carryover agreement, and LURA.

Types of Noncompliance

Generally, during the Compliance Period, a development is out of compliance and recapture may apply under the following circumstances:

A. Development Violations:

- A building or an ownership interest in a building is disposed of; **or**
- The development no longer meets the minimum set-aside requirements of Section 42(g)(1), the gross rent required of Section 42(g)(2); **or**
- **Owner does not comply with unit vacancy rule;** or

B. Building Violations:

- There has been a change in the applicable fraction or eligible basis that results in a decrease in the qualified basis of the building from one year to the next; **or**
- Owner does not comply with next available unit rule; **or**

C. Health and Safety:

- The apartment units, common areas, or grounds have major violations of health, safety, and building codes. **or**
- The Owner fails to make repairs in a timely manner. **or**

D. Reporting Violations:

- The Owner fails to submit the initial information forms (copy of filed IRS Form 8609); **or**
- The owner fails to submit the annual Owner's Certificate of Continuing Program Compliance, utility allowance documentation, owner certification, resident income and rent report, along with any applicable supporting documentation in a timely manner. **or**

E. **Owner is Using Inappropriate Utility Allowances:**

- IFA shall issue an 8823 for failure to properly calculate utility allowance. **or**

F. Examples of Non Compliance Requiring an 8823 to be issued:

- Household income above income limit upon initial occupancy;
- Owner failed to maintain or provide tenant income certification & documentation;
- Violation(s) of UPCS or local inspection standards;
- Owner failed to submit annual certification or submitted incomplete or inaccurate certification;
- Changes in eligible basis or the applicable fraction;
- Project failed to meet minimum set-aside requirement (20/50 or 40/60 test);
- Gross rent(s) exceeded tax credit limits;
- Development not available to the general public;
- Violation of the Available Unit Rule under section 42(g)(2)(D)(ii);
- Violation(s) of the Vacant Unit Rule under Reg. 1.42-5(c)(1)(ix);
- Owner failed to execute and record extended-use agreement within time prescribed by Section 42(h)(6);
- Low-income units occupied by nonqualified full-time students;
- Owner did not properly calculate utility allowance;
- Owner has failed to respond to agency requests for monitoring reviews;
- Low income units used on a transient basis;
- Development is no longer in compliance and is no longer participating in the low-income housing tax credit program;

- Owner has evicted or terminated the tenancy of an existing resident of any low-income unit other than for good cause Sec. 42(h)(6)(E)(ii)(I);
- Other non-compliance issues (explanation will be attached).

Section 3.6 Consequences

If the development is out of compliance, a penalty may be imposed by the IRS and apply to all low income housing tax credit units in the development. Penalties include:

- Recapture of the accelerated portion of the Tax Credits for prior years;
- Disallowance of the credit for the entire year in which the noncompliance occurs;
- Assessment of interest for the recapture year and previous years.

NOTE: These actions may be imposed by the Internal Revenue Service. IFA does not calculate recapture amounts.

****In addition to Section 42 requirements, many development owners have made additional commitments as expressed in applications and the development's LURA. Failure to comply with these additional commitments may subject the owner to:**

- **Suit in a court of competent jurisdiction seeking specific performance;**
- **Revocation of tax credit reservations; or**
- **Bar significant parties of the development team from applying for or receiving Tax Credits for a period of up to five years.****

Section 3.7 Notification of Noncompliance to Owner

IFA is required to provide prompt written notice of noncompliance to the owner if:

- Any required submissions are not received by the due date;
- Tenant income certifications, supporting documentation, and rent records are not submitted when requested by IFA; and/or
- The development is found to be out of compliance through inspection, review, and /or other means within the provisions of Section 42 of the IRC.

Section 3.8 Notification by Owner to IFA

If the owner or owner's agent(s) become aware of noncompliance with the LIHTC program requirements, the owner must submit written notification to IFA within 30 working days. Examples of occurrences when IFA must be notified:

- When a development or building is entirely out of compliance and will not be brought back into compliance any time in the near future;
- When the development fails to meet its minimum set-aside requirement in the first year credit is claimed;
- When the development falls below its minimum set-aside in subsequent years;
- When the owner makes the decision to withdraw the development or a building in the development from the Program and discontinues claiming credits on the development or building;

- When the owner changes the applicable fraction or qualified basis of a building;
- When the owner becomes aware of units that are not available to the general public for occupancy due to damage caused by accident or natural disaster.

Section 3.9 Owner Response

When the owner receives a notification of noncompliance from IFA, the owner has the opportunity to respond in writing to the letter within the prescribed correction period. Because of the complexity of tax credit regulations and the necessity to consider their applicability to specific circumstances, owners are urged to seek competent professional legal and accounting advice regarding compliance issues.

Section 3.10 Correction Period

Should IFA discover that the development is not in compliance with Section 42, or that credit has been claimed or will be claimed for units which are ineligible, IFA shall notify the owner promptly.

The owner will have a correction period of up to 90 days but not more than 6 months from the date of notice to the owner to cure the noncompliance before IFA is required to notify the IRS.

Section 3.11 Reporting Noncompliance to Internal Revenue Service

IFA is required to file IRS Form 8823, "Low-Income Housing Credit Agencies Report of Noncompliance," with the IRS no later than 45 days after the end of the correction period (as described above) and no earlier than the end of the correction period, whether or not the noncompliance or failure to certify is corrected.

IFA must check the appropriate box on IRS Form 8823, explain the nature of the noncompliance, and indicate whether the owner has corrected the noncompliance or failure to certify. By law, IFA must notify the IRS whether or not the noncompliance or failure to certify is corrected. If a building is entirely out of compliance and will not be in compliance at any time in the future, IFA will report it on IRS Form 8823 one time, and need not file IRS Form 8823 in subsequent years to report that building's noncompliance.

Section 3.12 Recapture

Recapture is defined as an increase in the owner's tax liability because of a loss in tax credits due to noncompliance with program requirements.

The IRS will make the determination as to whether or not the owner faces recapture of tax credits as a result of noncompliance. IFA bears no responsibility for the determination of recapture events nor the calculation of amounts of recapture.

IRS Form 8611 is used by taxpayers who must recapture tax credits previously claimed. A copy of IRS Form 8611 must be sent to the IRS and IFA upon completion by the owner.

Section 3.13 Retention of Noncompliance Records by IFA

IFA will retain records of noncompliance or failure to certify for six years beyond IFA's filing of the respective IRS Form 8823. In all other cases, IFA will retain the certification and records described in

paragraph (c) of Reg. 1.42-5 for three years from the end of the calendar year IFA receives the certifications and records.

Section 3.14 Corrections to Documents

Sometimes it is necessary to make corrections or changes to documents. A document with correction fluid, ("white out"), write overs that are not legible, or the blacking out of information will not be accepted. IFA recommends that when a change is needed on a document, the person making the change should draw a line through the incorrect portion and write in the correct information. The person making the change and the person(s) certifying to the accuracy of the information must initial the correction.

Section 3.15 Sale, Transfer, or Disposition of the Development after the Placed In Service Date

Generally, any change in ownership of a building or a partnership interest is considered a potential recapture event. The owner faces recapture of the accelerated portion of any tax credits claimed on the development. The amount of the repayment is equivalent to approximately 1/3 of the credits claimed on the development. Recapture may possibly be avoided if the IRS determines that the development is expected to remain in compliance for the balance of the compliance period. The new owner of a development may then be eligible to continue claiming tax credits.

When a sale occurs, the new owner **MUST** submit the following to IFA:

- An executed copy of the purchase agreement;
- A copy of a title policy, title guaranty certificate or commitment, or a title opinion by an attorney licensed in Iowa indicating that marketable title is held by the new owner (subject to any encumbrances permitted by IFA);
- A copy of the IRS 8611, Recapture of Low-Income Housing Credit, if applicable;
- A letter from the seller indicating the name, address, and phone number of the new owner;
- A letter from new owner indicating name, address, phone number, and federal ID number of the management agent;
- Any other reasonable evidence that IFA may deem necessary.

IFA will recognize a new owner or ownership entity only after all required documentation has been submitted. Until such time, all compliance requirements will be the responsibility of the seller, and any compliance violations will be reported to the IRS under the name of the owner, as indicated by IFA's records. The IRS has also suggested in Reg. 1.42-5 that, if a building is sold or otherwise transferred by the owner, the transferee should obtain from the transferor all information related to the first year of the credit period so the transferee can substantiate credits claimed.

When there is a change in the partnership interests of the owner, the owner must submit the following to IFA:

- A copy of the amended or restated partnership agreement identifying the changes to the partnership interests and the identity and interests of all partners;
- If the General Partner has changed, a letter from the general partner indicating the name, address, phone number and federal ID of the general partner;
- Any other reasonable evidence that IFA may deem necessary.

This section of the compliance manual is intended only to provide a brief, generalized description of the requirements for selling or withdrawing LIHTC developments. Both buyer and seller should consult an attorney or other professional knowledgeable about the LIHTC program for advice and guidance concerning sales.

Section 3.16 Amendments to Compliance Monitoring Procedures

The compliance monitoring procedures and requirements are set forth herein as issued by IFA, pursuant to Treasury Regulations. These provisions may be amended by IFA for purposes of conforming with the Treasury Regulations and/or as may otherwise be appropriate, as determined by IFA or the IRS. In the event of any inconsistency or conflict between the terms of these monitoring procedures and the monitoring procedures set forth in such Regulations, the provisions set forth in the Regulations shall control.

Section 3.17 Agency Liability

Pursuant to the provisions of 26 CFR Parts 1 and 602, Section 1.42-5(g) of the Regulations, compliance with the provisions of Section 42 is the responsibility of the owner of the buildings to which an allocation of low income housing tax credits has been made. The obligation of IFA to monitor the owner's compliance with the provisions of Section 42 does not make IFA liable for any noncompliance on the part of the owner.

Section 3.18 Conduct On-site monitoring

By the end of the second calendar year following the year the last building in the development is placed in service, and for at least 20 percent of the development's low-income units, a compliance review will be conducted. IFA must inspect the units and review the low-income certification, the documentation supporting the certification, and the rent records for the residents in those units.

At least once every three years, IFA must conduct on-site compliance reviews of all buildings in the development and, for at least 20 percent of the development's low-income units, inspect the units and review the low income certifications, the documentation supporting the certification, and the rent records for the residents in those units.

IFA will randomly select which low-income units and resident records are to be inspected and reviewed. IFA will make every effort to provide an owner 30 day advance written notice that an inspection of the building and low-income units or resident record review will occur so that the owner may notify residents of the inspection or assemble resident records for review.

****Such notification is a bright line event for purposes of reporting noncompliance to the IRS. Owner discovered and corrected instances of noncompliance with Section 42 requirements prior to this notification are considered proper due diligence on the part of the owner. Owner discovered and corrected instances of noncompliance with Section 42 requirements after the date of such notice are considered reportable on Form 8823 events.****

Under the inspection provision found at 26 CFR Ch.1, § 1.42-5(d)(1), IFA must have the right to perform an on-site inspection of any low-income housing development at least through the end of the compliance period of the buildings in the development. Under the provisions of the LURA, IFA shall also have the right to enter and inspect the Development and its records at reasonable time throughout the period of the LURA. For the on-site inspection of buildings and low-income units required, IFA must review any local health, safety, or building code violations reports or notices retained by the

owner and must determine whether the buildings and units are suitable for occupancy, taking into account local health, safety, and building codes.

Also taken into account is whether the buildings and units satisfy the uniform physical condition standards for public housing established by HUD and codified at 24 C.F.R. Section 5.703. The HUD physical condition standards do not supersede or preempt local health, safety, and building codes. A low-income housing development under Section 42 must continue to satisfy these codes and if IFA becomes aware of any violation of these codes, IFA must report the violation to the IRS. However, provided IFA determines by inspection that the HUD standards are met, IFA is not required to determine by inspection whether the development meets local health, safety, and building codes.

The Iowa Finance Authority will send results of the inspection to the owner. Please note that IFA may place a development on a more frequent inspection cycle if, ****in IFA's sole discretion,**** observed violations are numerous or severe in nature.

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Chapter 4 Procedures for Determining Resident Income and Eligibility

Section 4.1 Overview of the Initial and Annual Certification

Potential residents for rent-restricted units should be advised early in the application process that there are maximum income limits that apply to these units. Management should explain to potential residents that the anticipated gross income of all persons 18 years of age or older, and unearned income of minor children expecting to occupy the unit must be included and verified on a Tenant Income Certification prior to occupancy and annually thereafter for continued eligibility.

It is the owner's responsibility to select and rent to qualified residents. IFA will not qualify or approve eligible residents. Initially, resident eligibility is determined at the time of move-in. Before a resident takes occupancy, owners or managers must determine that the household will cause the unit to be a qualifying housing tax credit unit. This is called the Initial Certification. Each year, thereafter, a recertification must be performed to ensure continued compliance. This is called the Annual Recertification.

The certification consists of a written resident application or questionnaire, third party verification of all sources of income and assets, and a calculation of annual income by the owner or management agent. The certification must also include all forms and documents necessary to qualify the family under the full time student rule if applicable. The Tenant Income Certification is to be completed by the owner or manager then signed and dated by all adult household members and by the owner or management agent.

Section 4.2 Resident Application

Since the LIHTC Program uses special definitions for income and households, a fully completed application is critical to an accurate determination of resident eligibility. The information furnished on the application should be used as a tool to determine all sources of income, including total assets and income from assets. Sample applications for Tax Credit and for RHS/Tax Credit Properties can be found on our web site.

A good application is also used as a basis for determining which written third party verification may be necessary. The application, along with all supporting documentation and the Tenant Income Certification will be reviewed by IFA staff during an on-site review or resident file review.

IFA recommends that roommates complete separate applications.

The IFA application includes:

- The name, birth date, sex, age, marital status, student status, and social security number of each person that will occupy the unit (legal name should be given just as it will appear on the lease and Tenant Income Certification);
- The current year or anticipated student status of each applicant expected during the twelve-month certification period;
- All sources and amounts of current and anticipated annual income expected to be derived during the twelve-month certification period. This includes assets now owned and the income from those assets, as well as any assets disposed of for less than fair market value during the previous two years;
- The name of any person not listed on the application who expects to move into the unit during the next 12 months or any anticipated changes to household composition;

- The signature of the applicant and the date the application was completed. It may be necessary to explain to the applicant that all information provided is considered sensitive and will be handled accordingly.

Section 4.3 Determining Annual Income

According to the Compliance Monitoring Regulations contained in 26 CFR Part 1, Section 1.42-5 for the LIHTC Program, "Resident income is calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937 ("Section 8"), not in accordance with the determination of gross income for federal income tax liability." Please refer to the HUD Handbook 4350.3, REV. 1, Change 3 Chapter 5 for a complete listing and discussion of earned/unearned income and asset income.

****Annual income is the amount of income that is used to determine a family's eligibility for assistance. Annual income is defined as follows:**

1. **All amounts, monetary or not, that go to or are received on behalf of the family head, spouse or co-head (even if the family member is temporarily absent), or any other family member; or**
2. **All amounts anticipated to be received from a source outside the family during the 12-month period following admission or annual recertification effective date.**

Annual income includes all amounts that are not specifically excluded by regulation. HUD Handbook 4350.3, REV-1, Change 3, Exhibit 5-1, Income Inclusions and Exclusions, provides the complete list of income inclusions and exclusions published in the regulations and *Federal Register* notices.

Annual income includes amounts derived (during the 12-month period) from assets to which any member of the family has access.**

A. Annual Income

Annual income is the amount of gross income anticipated to be received by all adult members of the household (18 years of age and older, including full-time students), and unearned income of minor children during the 12-month period following the date of certification or recertification.

The following are examples of types of income that are included in Annual Income. Also listed are specific types of income that are excluded from income. Generally, if a particular type of income is not specifically excluded, then it is included in the calculation of annual income:

Annual Income includes, but is not limited to:

1. Interest, dividends and other income from net family assets (including income distributed from a non-revocable trust);

2. (a) The gross amount (before any payroll deductions) of wages and salaries, overtime pay, commissions, fees, tips, bonuses, and other compensation for personal services of all adults in the household; including persons under the age of 18 who are the head, spouse or co-head. This includes salaries of adults received from a family-owned business;

(b) Net income, salaries, and other amounts distributed from a business;

3. (a) The gross amount (before any deductions for Medicare, etc.) of periodic social security payments. Include payments received by adults on behalf of individuals under the age of 18 or by individuals under the age of 18 for their own support);

Note: If the Social Security Administration is reducing a family's benefits to adjust for a prior overpayment, count the amount that is actually provided after the adjustment.

Example: Mr. Jones' Social Security Payment of $475 per month is being reduced by $50 per month for a period of 6 months to make up for a prior overpayment. Count his Social Security income as $425 per month for the next 6 months and for the remaining 6 months as $475 per month.

4. The full amount of annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts (e.g., Black Lung Sick Benefits, Veterans Disability, Dependent Indemnity Compensation (spouse of a service member killed in action). Count the total amount of such amounts received. Do not reduce the amount by any amounts the individual previously paid into the account in order to receive the pension, annuity, or insurance policy; ****See also Exclusions from Annual Income #22****

5. Delayed periodic payments received because of delays in processing unemployment, welfare or other benefits. These are payments that would have been paid periodically, but were paid in a lump sum because of circumstances such as processing delays;

Note: Delayed periodic payments of supplemental security benefits , social security benefits, ****and Veteran's Administration Disability benefits**** that are received in a lump sum are excluded from Annual Income.

6. Payments in lieu of earnings, such as unemployment and disability compensation, workers' compensation and severance pay. Any payments that will begin during the next 12 months must be included;

7. Welfare assistance;

8. Alimony and child support received by the household. Alimony or child support **paid** by a member of the household is not deducted from income, even if it is garnished from wages.

Example:

Mr. Smith pays $200 per month in child support. It is garnished from his monthly wages of $1,000. After the child support is deducted from his salary, he receives $800. The owner must count $1,000 as Mr. Smith's monthly income.

In many cases, alimony and/or child support has been ordered but is not being paid. If this is the case, request that the resident provide a notarized statement attesting to the fact that support payments are not being received, the likelihood of support payments being received in the future, and that a reasonable effort has been made to collect the amount due;

9. Recurring monetary contributions or gifts regularly received from persons not living in the unit. Exclude from Annual Income recurring monetary contributions that are paid directly to a child care provider by persons not living in the unit. Also exclude gifts of groceries;

10. Relocation payments made pursuant to Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

11. Actual income distributed from trust funds that are not revocable by or under the control of any member of the resident family. Note: Even if family assets exceed $5,000, use actual income distributed from the irrevocable trust;

Exclusions from Annual Income

1. Meals On Wheels or other programs that provide food for the needy; groceries provided by persons not living in the household; and amounts received under the School Lunch Act and the Child Nutrition Act 1966, including reduced lunches and food under Special Supplemental Food Program for Women, Infants and Children (WIC);

2. Amounts paid by a State agency to a family with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home;

3. Grants or other amounts received specifically for medical expenses, including Medicare premiums paid by an outside source, set aside for use under a Plan to Attain Self Sufficiency (PASS) and excluded for purposes of Supplemental Security Income eligibility, out of pocket expenses for participation in publicly assisted programs (such amounts must be made solely to allow participation in these programs. These expenses include special equipment, clothing, transportation, childcare, etc.);

4. ****The full amount of any student financial assistance either paid directly to the student or to the educational institution. This includes scholarships, grants, fellowships and any other kind of student financial assistance, unless the student is receiving Section 8 assistance.**** Also, the full amount of student loans either paid directly to the student or to the educational institution. It is expected that students will make repayment of any loan achieved for purposes of higher education;

5. Unearned income not deemed as "student financial assistance," such as welfare and social security benefits received by full-time students must be counted as part of household income for all household members, including those under the age of 18. Earnings from participation in Job Training Partnership Act (JTPA) programs are excluded from the total household income calculation for LIHTC purposes. Assets held by persons who are full-time students must be counted as part of household income;

6. Any household member over the age of 18 and any emancipated minor who is not the dependent of another person in the household (i.e., included on the federal tax return of that person) must be deemed a head of household, co-head or spouse for LIHTC purposes. All income, including that which is earned and unearned, of such persons must be counted as part of household income;

Example:

Bill and Bob, both 19 years old, are friends who share an apartment in an LIHTC development.

Bill is not a student and is employed full-time.
Bob attends school full-time and works part-time
at a local restaurant. Bill and Bob must be deemed
as co-heads of household for LIHTC purposes and
the entire amount of each of their income must be counted.
Even though Bob is a full-time student.

7. Earnings in excess of $480 for each dependent full-time student 18 years or older.

8. Adoption assistance payments in access of $480 per adopted child;

9. Any deferred Department of Veteran's Affairs disability benefits that are received in a lump sum or in prospective monthly amounts;

10. Loans such as personal or student loans (see HUD Handbook 4350.3, REV. 1, Change 3, paragraph 5-6.G. on business loans which are not excluded);

11. Temporary, nonrecurring or sporadic income (e.g., gifts, census taker income from the Federal Bureau of the Census);

12. Amounts received by the household in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit;

13. Special pay to a household member serving in the Armed Forces who is exposed to hostile fire;

14. Amounts received under training programs funded by HUD;

15. Compensation from state or local employment training programs and training of a household as resident management staff. Amounts excluded under this provision must be received from employment training programs with clearly defined goals and objectives, and are excluded only for a limited period as determined in advance under the program by the state or local government;

16. A resident service stipend. A resident service stipend is a modest amount (not to exceed $200 per month) received by a resident for performing a service for the owner, are on a part-time basis, that enhances the quality of life in the development. Such services may include, but not limited to, fire patrol, hall monitoring, lawn maintenance, and resident initiative coordination. No resident may receive more than one such stipend at a time;

17. Reparation payments made by a foreign government pursuant to claims under the laws of that government by persons who were persecuted during the Nazi era. Examples include payments by the German and Japanese governments for atrocities committed during World War II;

18. Deferred periodic payments of Supplemental Security Income and social security benefits that are received in a lump sum payment;

19. Payments received for the care of foster children or foster adults. (Foster adults are usually adults with disabilities who are unrelated to the resident family and who are unable to live alone.);

20. Amounts received on behalf of someone not living in the unit as long as the amounts are (i) not inter-mingled with the family funds, and (ii) used solely to benefit the person not residing with the family. For such amounts to be excluded the individual must provide the owner with an affidavit

stating that the amounts are received on behalf of someone who does not reside with the family and the amounts meet the conditions above;

21. Recurring child care payments paid directly to a provider by persons not living in the unit. This exclusion is based on a handbook interpretation of reimbursed child care expenses under the definition of adjusted income and its bearing on Annual Income. The regulations define child care expenses to include "amounts to be paid by the family for child care to the extent they are not reimbursed." This handbook interprets the regulations to mean that child care expenses that are reimbursed are not included as annual income.

22. ****Pension funds paid directly to an applicant's/resident's former spouse pursuant to the terms of a court decree of divorce, annulment, or legal separation are <u>not counted</u> as annual income. The state court has, in the settlement of the parties' marital assets, determined the extent to which each party shares in the ownership of the pension. That portion of the pension that is ordered by the court to be paid to the applicant's/resident's former spouse is no longer an asset of the applicant/resident and therefore is <u>not counted</u> as income. However, any pension funds received from a former spouse is counted as income for an applicant/resident receiving such funds. This applies to ALL pension finds including Federal Government, Uniformed Services, Other State/Local Government, social security or private pensions paid to a former spouse.****

Income Excluded by Federal Statute:

Amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the *Federal Register* and distributed to housing owners identifying the benefits that qualify for this exclusion.

The following is a list of income sources that qualify for that exclusion:

(a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 [b]);

(b) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058) (employment through AmeriCorps, Volunteers in Service to America [VISTA], Retired Senior Volunteer Program, Foster Grandparents Program, youthful ffender incarceration alternatives, senior companions);

(c) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626[c])

(d) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);

(e) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624[f]);

(f) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552[b]; (effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 [29 U.S.C. 2931], e.g., employment and training programs for Native Americans and migrant and seasonal farm workers, Job Corps, veterans employment programs, state job training programs, career intern programs, Americorps);

(g) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L- 94-540, 90 Stat. 2503-04);

(h) The first $2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court and the interests of individual Indians in trust or restricted lands, including the first $2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408);

(i) Amounts of scholarships funded under title IV of the Higher Education Act of 1965, including awards under federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);

(j) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056[f]), e.g., Green Thumb, Senior Aides, Older American Community Service Employment Program;

(k) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in *In Re Agent*-product liability litigation, M.D.L. No. 381 (E.D.N.Y.);

(l) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721);

(m) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q);

(n) Earned income tax credit (EITC) refund payments received on or after January 1, 1991, including advanced earned income credit payments (26 U.S.C. 32[j]);

(o) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433);

(p) Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637[d]);

(q) Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran (38 U.S.C. 1805);

(r) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602); and

(s) Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931).

B. Income from Assets

Assets are items of value, other than necessary personal items, and are considered along with the verified income to determine the eligibility of a household.

Third-party verification of assets is required when the value of all assets combined is greater than $5,000. The asset information (total value and income to be derived) should be obtained at the time of application or recertification. The applicant/resident will affirm that this information is correct by executing the Tenant Income Certification (TIC).

An owner may satisfy the third party documentation requirement for a resident's income from assets if the resident submits to the owner a signed statement that the value of the combined assets is less than $5,000. The use of IFA form entitled Under $5,000 Asset Certification, is required for this procedure. If a development is required to obtain third-party verifications because of participation in another housing program (i.e., Section 8, RHS, etc.) then do not use the Under $5,000 Asset Certification.

> **Note:** The resident's income from net household assets that are less than $5,000 must still be included in the calculation of the annual income amount when initially qualifying a household and upon recertification.

IRS Revenue Procedure 94-65 does not permit an owner to rely on a low-income resident's signed, sworn statement of annual income from assets if a reasonable person in the owner's position would conclude that the resident's income is higher than the resident's represented annual income. In this case, the owner must obtain other documentation of the low-income resident's annual income from assets to satisfy the documentation requirement of third-party asset verification.

Net Household Assets Include:

1. **Cash held in savings and checking accounts, safe deposit boxes, homes, etc**. For savings accounts use the current balance. For checking accounts, use the average balance for the last six months. Assets held in foreign countries are considered assets.

2. **Revocable trusts.** Include the cash value of any revocable trust available to the household.

3. **Equity in rental property or other capital investment.** Include the current fair market value less (a) any unpaid balance on any loans secured by the property; and (b) reasonable costs that would be incurred in selling the asset (i.e., penalties, broker fees, etc.). Note: If the person's main business is real estate, then count any income as business income. Do not count it as an asset and as business income.

4. **Stocks, bonds, treasury bills, certificates of deposit, money market accounts.**

5. **Individual retirement and Keogh accounts.** These are included because participation in such retirement savings accounts is voluntary and the holder has access to the funds, even though a penalty may be assessed. If the individual is withdrawing from the account, determine the amount of the asset by using the average balance for the previous 6 months. (Do not count withdrawals as income).

6. **Retirement and pension funds.** While the person is employed include only amounts the family can withdraw without retiring or terminating employment. Count the whole amount less any penalties or transaction costs. At retirement, termination of employment or withdrawal, periodic receipts from pension and retirement funds are counted as income. Lump sum receipts from pension and retirement funds are counted as assets. Count the amount as an asset or as income as provided below:

   - If benefits will be received in a lump sum, include the lump sum receipt as an asset;
   - If benefits will be received through periodic payments, include the benefits in annual income. Do not count any remaining amounts in the account as an asset;
   - If the individual initially receives a lump sum benefit followed by periodic payments, count the lump sum benefit as an asset and treat the periodic payment as income.

- In subsequent years, count only the periodic payment as income. Do not count the remaining amount as an asset.

7. **Cash value of life insurance policies** available to the individual before death (i.e., the surrender value of a whole life policy or a universal life policy). It would not include a value for term insurance, which has no cash value to the individual before death.

8. **Personal property held as an investment.** Include gems, jewelry, coin collections, and antique cars held as an investment. An applicant's wedding ring and other personal jewelry are not considered assets.

9. **Lump sum receipts or one-time receipts.** These include inheritances, capital gains, one-time lottery winnings, victim's restitution; settlements on insurance claims (including health and accident insurance, worker's compensation and personal or property losses); and any other amounts that are not intended as periodic payments.

10. **A mortgage or deed of trust held by an applicant/resident.** (Land Contract)

- Payments on this type of asset are often received as one combined payment of principle and interest portions of the payment. (This can be done by referring to an amortization schedule that relates to the specific term and interest rate of the mortgage);
- To count the actual income for this asset, use the interest portion paid on the amortization schedule for the 12 month period following the certification;
- To count the imputed income for this asset, determine the asset's cash value as the principle balance remaining due on the mortgage or deed of trust on the effective date of the certification. Since this amount will continually be reduced by the principle portion paid during the previous year, the LIHTC development owner will have to determine this amount at each annual recertification.

Example:

Ms. Green sold her home and holds the mortgage for the buyer. The cash value of the mortgage is $60,000. The combined payment of principle and interest expected to be received for the upcoming year is $5,000. The amortization schedule breaks that payment into $2,000 in principle and $3,000 in interest. In completing the asset income calculations, the cash value of the asset is $60,000, and projected annual income from that asset is $3,000. In this example, the mortgage would be reduced to $58,000 after the first year. The owner would multiply this amount by the current passbook savings rate provided by HUD.

Documentation required: copies of closing documents showing the selling price, the distribution of the sales proceeds and the net amount to the individual; a letter from an accountant, attorney, real estate broker, the buyer, or a financial institution stating interest due for the next 12 months; amortization schedule showing interest for the 12 months following the certification date. (A copy of the check(s) paid by the buyer to the applicant/resident mortgage holder is NOT sufficient since an appropriate breakdown of interest and principal is not included.)

Types of Assets Not Included:

Important: The owner does not compute income from any assets in this section.

1. Necessary personal property including clothing, furniture, cars, etc;

2. Interests in Indian trust land;

3. Term life insurance policies (where there is not a cash value);

4. Assets that are part of an active business (not including rental or properties that are held as investment and not a main occupation);

Example:

Mr. Higgins owns a copier service. None of the equipment he uses in the business is counted as an asset (e.g., the copier, FAX machines, etc.)

Example:

Ms. Mustard rents out a home that she lived in. The home is not an active business asset. Therefore, it is considered an asset, and the owner must determine the annual income Ms. Mustard receives from it.

5. Assets that are not effectively owned by the applicant. That is, when assets are held in an individual's name, **but** the assets and any income they earn accrue to the benefit of someone else who is not a member of the household, **and** that other person is responsible for income taxes incurred on income generated by the assets;

   Note: Non-revocable trusts (irrevocable trusts) are not covered by this paragraph.

Example:

Mr. Tiffany and his son Robert have a bank account with both names on the account. Robert's name is on the account for the convenience of his father in case an emergency arises that would result in Robert's handling payments for his father.

Robert has not contributed to this asset, does not receive interest income from it, nor does he pay taxes on the interest earned. Therefore, Robert does not own the account. If Robert applies for an apartment, the owner should not count this account as his asset. The asset belongs to Mr. Tiffany and would be counted entirely as the father's asset, should he apply.

6. Assets that are not accessible to the applicant and provide no income to the applicant. Non-revocable trusts are not covered under this paragraph.

Example:

A battered spouse jointly owns a house with a partner in marriage. Because of the domestic situation, the applicant/resident receives no income from the asset and cannot convert the asset to cash.

Assets Owned Jointly

Assets owned by more than one person should be prorated according to the percentage of ownership. If no percentage is specified or provided by state or local law, prorate the assets evenly among the owners.

Example:

Ms. Kennedy is a tax credit resident. She and her daughter, Ms. Duncan, who lives 1200 miles away, have a joint savings account. Ms. Kennedy states that the account is fully accessible by either party. Assume that in this example State law does not specify ownership. Even though either Mrs. Kennedy or Ms. Duncan could each withdraw the entire asset for her own use, count Ms. Kennedy's ownership as 50% of the account.

Determining the Value of Assets

In determining the value of an asset, owners must use the cash value of the asset; that is, the amount the family or household would receive if the asset were converted to cash. Cash value is the market value of the asset minus reasonable costs that were or would be incurred in selling or converting the asset to cash. The household or family must not be required to actually convert the asset to cash. Expenses, which may be deducted, include:

- Penalties for withdrawing funds before maturity;
- Broker/legal fees assessed to sell or convert the asset to cash;
- Settlement costs for real estate transactions;
- Loans on the asset (exception: income from a business).

For non-liquid assets, enough information should be collected to determine the current cash value, defined as the net amount the family would receive if the asset were converted to cash.

Assets Converted to Trusts

A trust is a legal arrangement regulated by state law in which one party holds property for the benefit of another. A trust can contain cash or other liquid assets or real or personal property that could be turned into cash. Trust assets are sometimes transferred to the beneficiary upon the death of the grantor. This Manual recognizes two types of trusts: revocable and non-revocable (irrevocable):

1. Revocable Trusts:

The grantor of a revocable trust can change this type of trust as often as s/he wishes. Therefore, the grantor has access to this asset at any time. The cash value of any revocable trust available to the household is considered an asset.

Example:

Mr. Porter establishes a trust of $30,000 in his daughter's name. The daughter is not a member of the household. Because it is revocable, Mr. Porter may modify the trust at any time and have access to it. For purposes of this example, the income is either reinvested into the trust or paid to his daughter. Treat this trust as a current asset. Even though Mr. Porter does not receive the income from this asset, he is required to report the cash value of the asset and the income the trust generates. Because it is still considered an asset owned by Mr. Porter, it is not considered an asset disposed of for less than fair market value.

2. Non-revocable Trusts (Irrevocable Trusts)

This is a trust agreement that allows an individual to permanently transfer assets during his/her lifetime to someone else. Trusts which are not revocable by or under the control of any member of the family are not considered assets. Instead, the regulation requires that the actual income distributed to the resident family from such a trust be counted when determining Annual Income. (As with all income, this is the gross amount received before taxes or other deductions.) As long as the trust exists, any income distributed from the trust to the resident family must be counted as income.

If there is no income distributed from the trust, then do not count any income from the trust (e.g. income from the trust is reinvested into the trust).

If an asset is disposed of for less than fair market value by being converted to a non-revocable trust, assuming that no consideration is received or the consideration which is received is less than fair market value, then the owner must count such asset for a period of two years.

- In addition, any actual income distributed from the non-revocable trust must also be counted as income under the paragraph above. Therefore, for a two year period, the owner will consider this asset for the purpose of income computation and, in addition, count actual income distributed from the non revocable trust to the resident family;
- Following the two year period, the owner will count only the actual income distributed from the trust to the family.

Assets Disposed of for less than Fair Market Value within Two Years of the Effective Date of the Certification/Recertification, including assets put into non-revocable trusts:

- Applicants and residents must declare whether an asset has been disposed of for less than fair market value within two years preceding each certification and recertification;
- Assets are considered to be disposed of for less than fair market value if the cash value of the disposed asset exceeds the gross amount the family received by more than $1,000;

- In such cases, owners must include the **whole** difference between the cash value of the asset and the amounts received. If the difference is less than $1,000, ignore it.
- If the family disposes of assets for less than market value, and if the difference between the cash value of the assets and what the family received for the assets exceeds $1,000, all assets disposed for less than market value must be included in the resident income certification for two years following the date of disposal.

  Note: Use cash value if there are costs incurred in disposing of the asset.

Do consider:

- Assets disposed of for less than fair market value when they are placed into a non-revocable trust (assuming that no consideration is received or the consideration which is received is less than cash value).

  Note: Amounts received through settlements or judgments that are placed into non-revocable trusts on behalf of a member of the family are not considered as assets disposed of for less than fair market value.

  Example:

  Mr. and Mrs. Long's son, John, was injured in a car accident. He received a settlement of $300,000 to compensate him for injuries and future loss of income. The attorney handling the case set up a non-revocable trust of $300,000 for the benefit of John. This trust is not under the control of any member of the resident family. Count only the actual income distributed from the trust to John.

- Business assets that are no longer part of an active business that are disposed of for less than fair market value. (Business assets are excluded from net family assets only while they are part of an active business).

Do not consider assets disposed of for less than fair market value as a result of:

- Foreclosure;
- Bankruptcy, or;
- Divorce or separation agreement if the applicant or resident receives important consideration not measurable in dollars.

401(k) as an Asset:

If the applicant has a 401(k), list it as an asset but first determine what the cash value of the asset would be if converted to cash. It can be quite complicated depending upon the costs recognized in "converting the asset to cash."

Example:

A resident's 401(k) account balance is $35,000. They are able to terminate participation in the retirement plan without quitting employment, but doing so

they would lose a part of the employer's contribution and would be required to pay a penalty fee. The total cash the resident could withdraw, $18.000 for this example, is the amount that is counted as an asset.

Section 4.4 Verification Procedures

All regular sources of income, including asset income, must be verified. Verifications must be received prior to the signing of the Tenant Income Certification and actual move-in. Verifications must contain complete and detailed information and include, at a minimum, direct written verification from all sources of regular income and income from assets. Please refer to the HUD Handbook 4350.3, REV. 1, Change 3 for types of includable income and asset sources. Additional verification guidance may be found in Appendix 3 of the handbook. An eligible applicant/resident cannot bear the expense for third parties to complete written verifications. If an eligible applicant/resident would be charged a fee for completion of written verifications, the owner/agent may move to an alternate form of verification. The resident file must be documented accordingly.

****Owners must verify all income, assets, family characteristics, and circumstances that may affect family eligibility.**

Applicants and adult family members must sign consent forms to authorize the owner to collect information to verify eligibility, income and assets. Applicants who do not sign required consent forms should not be allowed housing. Residents who do not sign required consent forms should be moved to a market rent status, if applicable. (Owners of 100% LIHTC developments are not required to perform annual certifications but must obtain a Student Status from each adult member of the household annually).

The owner must handle any information obtained to verify eligibility or income in accordance with applicable Privacy Act(s).**

Upon receipt of all verification, owners or managers then determine if the resident is still qualified for participation in the LIHTC Program.

A. Effective Term of the Verification

All verifications are valid for 120 days from the date of receipt by the owner. After this time, a new written verification must be obtained. Owners and agents should be prepared to clearly document the receipt date of all verifications received. All oral verifications, including owner clarification of written verifications, must be documented in the applicant's file. Documentation must include facts, time and date of contact, name and title of third party being contacted. Supporting documents should be included in the file as well (examples are check stubs, bank statements, divorce decree, etc).

B. Methods of Verification

Third-Party Written Verification:

Written verification directly from the source (third-party verification) is the standard preferred and most reliable method of verifying income. Third party verification efforts must be undertaken prior to acceptance of any less reliable method such as second party or first party verification. Written verifications must contain complete and detailed information and include, at a minimum, direct written verification from all sources of regular income and income from assets. The owner may obtain accurate

third-party written verification by facsimile, e-mail, or internet, if adequate effort is made to ensure that the sender is a valid third-party source. ****Verifications obtained through these methods must contain a date received in order to be considered valid and timely.**** Information verified by internet is considered third-party verification if the owner is able to view web-based information from a reputable source on the computer screen. A printout of the web page must also be included in the resident file if web-based information is relied upon.

Third-party verification requests must be sent directly to and returned from the source. They are never to be given to the resident to obtain information and signatures. It is suggested that a self-addressed stamped envelope be included with the request for verification. If the verifications do not contain complete information (typical examples include failure to indicate interest rates, dates of anticipated raises, amounts of anticipated raises, etc.), owners/managers must follow up with the source to obtain complete information. Oral third-party verifications should be followed up with written verification as soon as possible. Oral third-party verifications must be documented in the file and must also include the facts, time and date of the contact, name, phone number, and title of the contact.

Applicants should be asked to sign two copies of each verification request form. The second copy may be used if the first request has not been returned in a timely manner. Resident file must show that third-party verification was attempted before moving to second-party verification. Owners and agents must allow at least a two week period from the request for third party verification prior to moving to a second or first party verification. When third-party verifications are not needed, owners can accept resident-provided documents (birth certificates, divorce decree, etc.).

Second-Party Document Verification:

Second-party verification provided by the resident consists of documents the resident has received from the source. Examples of second-party verifications are recent pay stubs (to verify employment, six to eight most recent consecutive pay stubs should be used, do not use a check without a pay stub attached), recent quarterly or monthly asset statements, W-2's, etc. If the original document being witnessed is a document that cannot be copied, the owner should make a file note, recording the type of document, any control or serial numbers, and the issuer of the document. (Examples of documents not to be copied include: United States Bonds, Certificates of Deposit, US Savings Bonds, Postal Money Orders, Military identification cards, certificates of citizenship or naturalization, passports, etc. This list is not all inclusive. In case of doubt, consult your attorney.)

First-Party Certification:

Occasionally there are situations where third and second-party verifications are not available. A resident may then self-certify under penalty of perjury as to the amount they anticipate that they will receive. Note: Self-certification is not acceptable for documents that are legally required and of which copies can therefore be obtained by the resident (i.e.; divorce decrees or other court documents).

C. Acceptable Forms of Income Verification

Specific information must be obtained on income verifications. The sample verification forms located on IFA's web site may be used. If information that you need is not provided on these forms, you may add to the verification. The sample forms are the minimum required documentation to be used, are not certified to be complete, and are provided only as a tool. If a specific verification form is needed which is not provided on IFA's web site, the owner/managing agent may create an appropriate form.

The following chart provides a listing of acceptable forms of verification of applicant/resident information. If a particular type of verification is not appropriate to the applicant/resident, you are not required to verify that item.

Acceptable Forms of Verification

Factor to be Verified	ACCEPTABLE SOURCES				Verification Tips
	Third Party		Documents Provided by Applicant	Self-Declaration	
	Written	Oral			
Age.	None required.	None required.	Birth Certificate Baptismal Certificate Military Discharge papers Valid passport Census document showing age Naturalization certificate Social Security Administration Benefits printout		
Alimony or child support.	Copy of separation or divorce agreement provided by ex-spouse or court indicating type of support, amount, and payment schedule. Written statement provided by ex-spouse or income source indicating all of above. If applicable, written statement from court/attorney that payments are not being received and anticipated date of resumption of payments.	Telephone or in-person contact with ex-spouse or income source documented in file by the owner.	Copy of most recent check, recording date, amount, and check number. Recent original letters from the court.	Notarized statement or affidavit signed by applicant indicating amount received. If applicable, notarized statement or affidavit from applicant indicating that payments are not being received and describing efforts to collect amounts due.	Amounts awarded but not received can be excluded from annual income only when applicants have made reasonable efforts to collect amounts due, including filing with courts or agencies responsible for enforcing payments.

Factor to be Verified	ACCEPTABLE SOURCES				Verification Tips
	Third Party		Documents Provided by Applicant	Self-Declaration	
	Written	Oral			
Assets disposed of for less than fair market value.	None required.	None required.	None required.	Certification signed by applicant that no member of family has disposed of assets for less than fair market value during preceding two years. If applicable, certification signed by the owner of the asset disposed of that shows: - Type of assets disposed of; - Date disposed of; - Amount received; and - Market value of asset at the time of disposition.	Only count assets disposed of within a two-year period prior to examination or re-examination.
Current net family assets.	Verification forms, letters or documents received from financial institutions, stock brokers, real estate agents, employers indicating the current value of the assets and penalties or reasonable costs to be incurred in order to convert nonliquid assets into cash.	Telephone or in-person contact with appropriate source, documented in file by the owner.	Passbooks, checking, or savings account statements, certificates of deposit, property appraisals, stock or bond documents, or other financial statements completed by financial institution. Copies of real estate tax statements, if tax authority uses approximate market value. Quotes from attorneys, stockbrokers, bankers, and real estate agents that verify penalties and reasonable costs incurred to convert asset to cash. Copies of real estate closing documents that indicate distribution of sales proceeds and settlement costs.	Notarized statement or signed affidavit stating cash value of assets or verifying cash held at applicant's home or in safe deposit box.	Use current balance in savings accounts and average monthly balance in checking accounts for last 6 months. Use cash value of all assets (the net amount the applicant would receive if the asset were converted to cash). **NOTE:** This information can usually be obtained simultaneously when verifying income from assets and employment (e.g., value of pension).

Factor to be Verified	ACCEPTABLE SOURCES				Verification Tips
	Third Party		Documents Provided by Applicant	Self-Declaration	
	Written	Oral			
Disability status.	Verification from medical professional stating that individual qualifies under the definition of disability.	Telephone or in-person contact with medical professional verifying qualification under the federal disability definition and documentation in the file of the conversation.		Not appropriate.	If a person receives Social Security Disability solely due to a drug or alcohol problem, the person is not considered disabled under housing law. A person that does not receive Social Security Disability may still qualify under the definition of a person with disabilities. Owners must not seek to verify information about a person's specific disability other than obtaining a professional's opinion of qualification under the definition of a person with disabilities.
Dividend income and savings account interest income.	Verification form completed by bank.	Telephone or in-person contact with appropriate party, documented in file by the owner.	Copies of current statements, bank passbooks, certificates of deposit, if they show required information (i.e., current rate of interest). Copies of Form 1099 from the financial institution, and verification of projected income for the next 12 months. Broker's quarterly statements showing value of stocks/bonds and earnings credited to the applicant.	Not appropriate.	The owner must obtain enough information to accurately project income over next 12 months. Verify interest rate as well as asset value.

Factor to be Verified	ACCEPTABLE SOURCES				Verification Tips
	Third Party		Documents Provided by Applicant	Self-Declaration	
	Written	Oral			
Employment Income including tips, gratuities, overtime.	Verification form completed by employer.	Telephone or in-person contact with employer, specifying amount to be paid per pay period and length of pay period. Document in file by the owner.	W-2 Forms, if applicant has had same employer for at least two years and increases can be accurately projected. Paycheck stubs or earning statements.	Notarized statements or affidavits signed by applicant that describe amount and source of income.	Always verify: frequency of gross pay (i.e., hourly, biweekly, monthly, bimonthly); anticipated increases in pay and effective dates; overtime. ****Require most recent 6-8 consecutive pay stubs; do not use check without stub.** **For a fee, additional information can be obtained from The Work Number 800-996-7556; First American Registry 800-999-0350; and Verifax 800-969-5100. Fees are valid project expenses.****

Factor to be Verified	ACCEPTABLE SOURCES				Verification Tips
	Third Party		Documents Provided by Applicant	Self-Declaration	
	Written	Oral			
Family composition.	None required.	None required.	Birth certificates Divorce actions Drivers' licenses Employer records Income tax returns Marriage certificates School records Social Security Administration records Social service agency records Support payment records Utility bills Veterans Administration (VA) records		An owner may seek verification only if the owner has clear written policy.
Family type. (Information verified only to determine eligibility for development.)	Disability Status: statement from physician or other reliable source, if benefits documenting status are not received. See paragraph 3.25 B.1 for restrictions on this form of verification. Displacement Status: Written statement or certificate of displacement by the appropriate governmental authority.	Telephone or in-person contact with source documented in file by the owner.	Elderly Status (when there is reasonable doubt that applicant is at least 62): birth certificate, baptismal certificate, social security records, driver's license, census record, official record of birth or other authoritative document or receipt of SSI old age benefits or SS benefits. Disabled, blind: evidence of receipt of SSI or Disability benefits.	Elderly Status: Applicant's signature on application is generally sufficient.	Unless the applicant receives income or benefits for which elderly or disabled status is a requirement, such status must be verified. Owner may not ask the nature or extent of disability.
Full-time student status (of family member 18 or older, excluding head, spouse, or foster children).	Verification from the Admissions or Registrar's Office or dean, counselor, advisor, etc., or from VA Office.	Telephone or in-person contact with these sources documented in file by the owner.	School records, such as paid fee statements that show a sufficient number of credits to be considered a full-time student by the educational institution attended.		

Factor to be Verified	ACCEPTABLE SOURCES				Verification Tips
	Third Party		Documents Provided by Applicant	Self-Declaration	
	Written	Oral			
Income maintenance payments, benefits, income other than wages (i.e., welfare, Social Security [SS], Supplemental Security Income [SSI], Disability Income, Pensions).	Award or benefit notification letters prepared and signed by authorizing agency.	Telephone or in-person contact with income source, documented in file by the owner. **NOTE:** For all oral verification, file documentation must include facts, time and date of contact, and name and title of third party.	Current or recent check stubs with date, amount, and check number recorded by the owner. Award letters or computer printout from court or public agency. Copies of validated bank deposit slips, with identification by bank. Most recent quarterly pension account statement.		Checks or automatic bank deposit slips may not provide gross amounts of benefits if applicant has deductions made for Medicare Insurance. Pay stubs for the most recent four to six pay cycles should be obtained. Copying of U.S. Treasury checks is not permitted. Award letters / printouts from court or public agency may be out of date; telephone verification of letter / printout is recommended.
Interest from sale of real property (e.g., contract for deed, installment sales contract, etc.)	Verification form completed by an accountant, attorney, real estate broker, the buyer, or a financial institution which has copies of the amortization schedule from which interest income for the next 12 months can be obtained.	Telephone or in-person contact with appropriate party, documented in file by the owner.	Copy of the contract. Copy of the amortization schedule, with sufficient information for the owner to determine the amount of interest to be earned during the next 12 months. **NOTE:** Copy of a check paid by the buyer to the applicant is not acceptable.		Only the interest income is counted; the balance of the payment applied to the principal is merely a liquidation of the asset. The owner must get enough information to compute the actual interest income for the next 12 months.
Need for an assistive animal.	Letter from medical provider.				If the owner's policy is to verify this need, owner must implement policy consistently.

Factor to be Verified	ACCEPTABLE SOURCES				Verification Tips
	Third Party		Documents Provided by Applicant	Self-Declaration	
	Written	Oral			
Net Income for a business.	Not applicable.	Not applicable.	Form 1040 with Schedule C, E, or F. Financial Statement(s) of the business (audited or unaudited) including an accountant's calculation of straight-line depreciation expense if accelerated depreciation was used on the tax return or financial statement. Any loan application listing income derived from business during the preceding 12 months. For rental property, copies of recent rent checks, lease and receipts for expenses, or IRS Schedule E.		
Recurring contributions and gifts.	Notarized statement or affidavit signed by the person providing the assistance giving the purpose, dates, and value of gifts.	Telephone or in-person contact with source documented in file by the owner.	Not applicable.	Notarized statement or affidavit signed by applicant stating purpose, dates, and value of gifts.	Sporadic contributions and gifts are not counted as income.

Factor to be Verified	ACCEPTABLE SOURCES				Verification Tips
	Third Party		Documents Provided by Applicant	Self-Declaration	
	Written	Oral			
Self-employment, tips, gratuities, etc.	None available.	None available.	Form 1040/1040A showing amount earned and employment period.	Notarized statement or affidavit signed by applicant showing amount earned and pay period.	****Note: A tax return must be filed for all self-employed individuals who operate sole-proprietorship businesses or otherwise report income on Schedule C, regardless of whether the taxpayer is reporting a profit or a loss. If the person is not eligible to get an SSN, which is needed to file a tax return, an individual taxpayer identification number (ITIN) can be obtained using IRS Form W-7.****
Unborn children.	None required.	None required.	None required.	Applicant/resident self-certifies to pregnancy.	Owner may not verify further than self-certification.
Unemployment compensation.	Verification form completed by source.	Telephone or in-person contact with agency documented in a file by an owner.	Copies of checks or records from agency provided by applicant stating payment amounts and dates. Benefit notification letter signed by authorizing agency.		Frequency of payments and expected length of benefit term must be verified. Income not expected to last full 12 months must be calculated based on 12 months.
Zero Income.	Not applicable.	Not applicable.	Not applicable.	Applicant/Resident self-certifies to zero income.	

D. Differences in Reported Income

Management should provide the applicant the opportunity to explain any differences between the amounts reported on the application and amounts reported on the third-party verification in order to determine actual income. The file should be documented to explain the difference.

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Chapter 5 Determining Resident Eligibility

Section 5.1 Determining Eligibility

****Compliance Monitoring Regulations contained in 26 CFR Part 1, Section 1.42-5(b)(vii) for the LIHTC Program, "Resident income is calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937 ("Section 8"), not in accordance with the determination of gross income for federal income tax liability."****

For guidance in the determination of resident income, the HUD Handbook 4350.3, REV. 1, Change 3 - Occupancy Requirements of Subsidized Multifamily Housing Programs, is used and is recommended as a reference guide. HUD Handbooks, Notices and other documents are available to print or view at **http://www.HUD.gov/offices/adm/hudclips/** (HUDCLIPS). Printed handbooks can be ordered online through the Direct Distribution System , by telephone at (800) 767-7468, ****or by fax(202) 708-2313****.

To determine if a family meets the income test, look at the sources of income as stated in 24 CFR 813.106, which is the test for HUD Section 8 program. If the amounts from these sources when combined are equal to or less than the applicable Area Median Gross Income for the county for the household size, then the household is an income qualified household.

Please keep in mind that rental agents sometimes attempt to establish only that the applicant has sufficient income to support monthly rent payments. However, tax credit developments are both rent restricted and income restricted. Therefore, if a rental agent intends to include the applicant as an eligible resident, income from all required sources must be verified in the income calculation even though not all of the income is necessary to support the rent payment.

> **Note:** RHS developments must use the Section 8 method of calculating income based on "annual income" not the Rural Development method of "adjusted annual income" for tax credit qualified residents.

Income determination is based on the anticipated annualized gross income for a household or individual for the 12 months following signing of the TIC/rental agreement. Verification of all sources of current and anticipated income for all household members age 18 or older and unearned income of minor children must be obtained in order to establish that the income limits are not exceeded.

A. Owners Must Convert all Verified Incomes to Annual Amounts.

1. To annualize full-time employment, multiply:

    - Hourly wages X 2,080 hours (does not include any overtime);
    - Semi-monthly wages X 24 (does not include any overtime);
    - Weekly wages X 52 (does not include any overtime);
    - Monthly wages X 12 (does not include any overtime);
    - Bi-weekly wages X 26 (does not include any overtime).

2. To annualize income from the other than full-time employment, multiply:
    - Hourly wages X the number of hours the individual is expected to work per week X 52;
    - Average weekly amounts X the number of weeks the individual is expected to work;

- Other periodic amounts (monthly, bi-weekly, etc.) X the number of periods the individual expects to work.

Example 1:

$7.25 per hour X 25 hours per week X 52 weeks = $9,425.

Example 2:

$130 per week X 45 weeks = $5,850.

In addition to the above calculations, annualize the year to date amounts listed on the verification or check stub by dividing the amount listed by number of weeks worked and then multiply it by 52 or the number of expected weeks listed. You must use the higher amount of the two calculations or provide documentation that describes why the lesser amount is a more accurate statement of income.

Use an annual wage without additional calculations.

Example: If a teacher is paid $25,000 a year, use $25,000, whether the payments are made in 12 monthly installments, 9 installments or some other payment schedule.

B. Sporadic or Irregular Income

If an eligible applicant/resident indicates that income might not be received for the full 12 months (e.g., unemployment insurance), the Owner should still determine an annual income as described below.

If an eligible applicant/resident is in a seasonal line of work, for example, a job dependent on weather conditions such as roofing, and normally collects unemployment during the "off" months, both incomes are used for the appropriate number of months. For example, if an individual makes $1,200 a month, typically works 9 months per year and collects unemployment in the amount of $600 a month for the remaining 3 months, income is calculated as follows:

$1,200 x 9	=	$10,800	
$600 x 3	=	$1,800	
		$12,600	= Total Annualized Income

C. Unemployed Applicants

The income of unemployed applicants with regular income from any source, such as social security, pension, recurring gifts, etc. must be verified as covered previously.

If an applicant is currently unemployed and claiming zero (0) income, he/she must provide evidence of anticipated income for the certification year by executing a Certification of Zero Income (found on IFA web page under 'Required Forms').

If an applicant is unemployed and intends to live off of assets only, a Certification of Zero Income Affidavit must be submitted along with a clarification sheet.

Please note that annual income is not the same as adjusted income. Annual income generally corresponds to gross income, with no adjustments (deductions) for childcare, medical expenses, dependents, etc. Adjusted income is used in some federal housing programs, such as Rural Housing Section 515 and the HUD Section 8 program, to determine the level of benefit provided to a household. However, adjusted income is not used in the LIHTC Program. Use only gross annual income.

Use current circumstances to project income, unless verification forms indicate that an imminent change will occur.

Example of Anticipated Increase in Hourly Rate:

April 1 Certification Effective Date
$8.00 Current Hourly Rate
$8.50 New rate effective May 15

(40 hours per week X 52 weeks = 2080 hours per year)

April 1 through May 15 = 6 weeks
6 weeks X 40 hours = 240 hours
2,080 hours minus 240 hours = 1,840 hours

Annual Income is calculated as follows:

240 hours X 8.00 = $ 1,920
1840 hours X $8.50 = $15,640
Annual Income $17,560

When an employer gives a range of hours for number of hours worked, always use the highest number in the range for income calculations. If using the lesser number of hours to calculate income, documentation must be in the file that states why the lesser number would be more appropriate to use for total income.

Example:

John works 25 –30 hours per week and
makes $8.25 per hour. To annualize his hours:

30 hours X 52 weeks = 1,560 hours per year
1,560 hours X $8.25 = $12,870 annual income.

D. Imputed Income From Assets

If the net family assets exceed $5,000, Annual Income must include the **greater** of:

The actual income from the assets, or

Imputed income from assets. Owners must impute income by multiplying total net family assets by the passbook rate specified by HUD. The passbook rate is currently set at 2%.

Example:

Type of Asset	Cash Value of Asset	Actual Income Per Year	Imputed Income per year
Checking Account	$ 550	0	$ 11
Savings Account	3,000	300	60
Certificate of Deposit	12,000	480	240
Property	32,000	0	640
Totals	$47,550	$ 780	$ 951

Since the total assets in this example exceed $5,000, the owner must calculate the imputed income. In this example, the owner would multiply the Net Family Assets of $47,550 X .02, totaling $951. The owner would then compare the $780 (actual income from assets) to the $951 (imputed income from assets) and include the greater of the two as part of the family's gross annual income. In this example, the imputed income of $951 is greater than the actual income of $780.

E. Computing the Total Household Income (Annual Income)

After all income and asset information has been obtained and computed for a household, all qualified sources of income are added together to determine the total annual income. Annual Income has two components: Earned/Unearned income and Asset income.

Total Income from all Sources = Annual Income

Earned/Unearned Income	+	Income From assets	=	Annual Income

In order for the household to initially qualify for a tax credit unit, the total household income must be less than or equal to the maximum allowable qualifying income in effect at the time of tenant certification. If the total household income is greater than the maximum allowable qualifying income, the household cannot be certified for a tax credit unit.

Section 5.2 Forms

Forms to Verify Income

Sample forms are provided on our web site located at www.IowaFinanceAuthority.gov to assist the owner in the verification process. The resident must sign forms requiring resident signatures. Information must be completed prior to sending the form to an employer or other income source. Completed and returned verifications should be notated with the date of receipt and attached to the Tenant Income Certification. The forms are provided as a tool for owners. Should there be any missing information questions on these documents; owners may modify the sample form.

Section 5.3 Full-Time Student Verification

IFA requires that management agents use the Student Certification Form to assist in the verification and qualification of each full-time student applying for residency for a low-income tax credit unit.

Specific information must be obtained regarding full-time student verifications. Each full-time student listed as a qualified tax credit applicant must have a third-party verification located in the resident file to prove qualification status.

Section 5.4 Initial Tenant Income Certification Guidelines

The effective date of a certification cannot be arbitrarily assigned. The effective date of an initial tenant certification is the date the household moves into the unit

When an owner acquires a building, the effective date of the initial tenant income certification for existing residents is the date of acquisition if the owner completes the certification within 120 days using the income and rent limits in effect at acquisition. If the owner completes the initial certification more than 120 days after acquisition, the effective date is the date the last adult household member signs the tenant income certification.

Once all the income and asset information has been obtained and computed, management personnel must prepare a Tenant Income Certification for each household. The form is a legal document which when fully executed, qualifies the applicants to live in the set-aside units in the development. It is not a rental application.

The following requirements apply:

- Management should instruct the prospective resident(s) to sign the Tenant Income Certification exactly as the name appears on the form. The resident's legal name should be given and used just as it will appear on the lease;
- The tenant income certification must be signed by the resident and by the owner or owner's agent at initial move-in and upon annual recertification. Recertification is at least once every 365 days from a household's last effective income certification date. The effective date of the initial certification is the move-in date. Annual recertifications should be effective on the anniversary of the effective date of the previous certification. It is IFA's recommendation that the Tenant Income Certification be signed no earlier than 30 days prior to the effective date and no later than the effective date;
- IFA recognizes that for simplification of this management process, owners may wish to implement recertifications effective the first day of the month. This practice will continue to be acceptable so long as the effective date of the current certification is no greater than 365 days after the previous certification, the initial certification effective date remains the move-in date;
- A Tenant Income Certification that is completed late, either after the date the household occupied the unit, or after the anniversary date of the previous certification, will cause the unit to be considered out of compliance until a proper certification or recertification is performed. IFA **strongly** advises owners and managers to certify and recertify on a timely basis.

Note: Supporting documentation (income verification, employment verification, child support affidavit, etc.) must be reviewed and added to the file each year.

No one may live in a low-income set-aside unit in the development unless he/she is certified and under lease.

Section 5.5 Annual and Interim Income Recertification Requirements

The IRS states that the owner must perform, on an annual basis, an income certification for each low-income household and receive documentation to support that certification (26 C.F.R. Pt. 1, §1.42-5). Upon receipt of all verifications, owners or managers should determine if the unit still qualifies for participation in the Tax Credit Program. All verifications should be reviewed and calculations made as necessary.

A. Recertification of income must be made annually.

IFA monitors recertification of income 365 days from the later of the move-in date or the one-year anniversary of the previous certification.

B. ****Changes in the size of an existing household after the initial tenant income certification must also be addressed.**

Family Size Increases

The addition of new member(s) to an existing low-income household requires the income certification for the new member of the household, including third party verification. The treatment will depend on whether the building is a mixed-use or 100% LIHC building.

Mixed-Use Developments

For mixed-use developments, the new resident's income is added to the income disclosed on the existing household's most recent tenant income certification. The household continues to be income-qualified, and the income of the new member is taken into consideration with the income of the existing household for purposes of the Available Unit Rule under IRC §42(g)(2)(D).

> **Example: Additional Person Joins Household During the Year**
>
> **Jim and his two children initially income qualified and moved into an LIHC unit on March 1, 2005. The project is a mixed-use project consisting of one building with 50 low-income units and 25 market rate units. The household continued to qualify at the annual income recertification for 2006, 2007, and 2008. Jim then met Jane, and they decided to marry in October 2008. The new couple would like to live in the LIHC unit Jim occupies. Jane completes a tenant income certification.**
>
> **The certification effective date continues to be March 1, 2005 and the next annual income recertification is due within 120 days before March 1, 2009.**
>
> **If the household's income, when Jane's income is added to the existing household's income as determined for the March 1, 2009 annual recertification, exceeds 140 percent of the income limit (170 percent in deep rent skewed projects), then the unit is an over income unit and the Available Unit Rule is applicable.**

100% LIHC Projects

If the project is a 100% low income development, then the new tenant's income is added to the income disclosed on the existing household's original income certification.

> **Example: Owner is not Subject to Annual Income Recertification Requirement**
>
> **Mary and her two daughters initially income qualified and moved into a low-income unit on March 1, 2005. The project is a 100% low income development for which the owner had a waiver of the income recertification under Rev. Proc. 94-64 for periods ending before August July 30, 2008. Mary never completed an annual income recertification for**

2006 through 2008, and under IRC §142(d)(3), will not be required to complete an income recertification in the future.

Mary met Bill and they decided to marry in October 2008. The new couple would like to live in the LIHTC unit Mary occupies. Bill completes a tenant income certification and moves into the unit on October 25, 2008.

The certification effective date continues to be March 1, 2005, but no annual income recertification is required. Since the owner will always rent the next available unit to an income-qualified household as a low-income unit, the Available Unit Rule will not be violated if the household's income, when Bill's income is added to Mary's income at the time she moved in with her daughters, exceeds 140 percent of the income limit (170 percent in deep rent skewed projects).

Original Household No Longer Occupies Unit

A household may continue to add members as long as at least one member of the original low-income household continues to live in the unit. Once all the original residents have moved out of the unit, the remaining residents must be certified as a new income-qualified household unless:

1. **For mixed-used projects, the newly created household was income qualified, or the remaining tenants were independently income qualified at the time they moved into the unit.**

2. **For 100% LIHC buildings, the remaining tenants were independently income qualified at the time they moved into the unit.**

   Example: Remaining Tenants Must be Income Qualified

   Michael, an income-qualified individual, moved into a two bedroom LIHTC unit in a mixed-used project on May 20, 2006. Jason joined the household in October of 2007. At that time, Michael and Jason's combined income was below the limit for a two person household. In January of 2008, Michael moved out. It is not necessary for Jason to be certified as a new tenant.

   However, if Michael and Jason's combined income exceeded the income limit for a two-person household in October of 2007, then Jason must be certified as an income-qualified tenant when Michael moves out.

If a state agency determines that the tenants manipulated the income limitation requirements, then the unit should not be treated as a low-income unit as of the date the household initially occupied the unit.

Example: New Tenants Manipulated Income Limitations

An income-qualified household consisting of one person moved into a two bedroom unit on March 15, 2005. A second tenant completed an initial income certification and joined the household soon thereafter. The combined income of the two tenants is above in income limit for a household with two members. The unit is out of compliance as of March 15, 2005.

Family Size Decreases

Decreases in family size do not trigger the immediate income certification of a new household. Subsequent annual income recertifications will be based on the income of the remaining members of the household. If the remaining household's income is more than 140 percent (170 percent in deep rent skewed projects) of the income limit at the time of the annual income recertification, then the Available Unit Rule is applicable.

Example: Member of the Household Leaves

A married couple, with their two children, was initially income qualified and occupied a three bedroom unit. After four years, the oldest child, now 18 years old, moves out of the unit. It is not necessary to certify the remaining household as a new household. If the household's income exceeds 140 percent of the income limit (170 percent in deep-skewed projects) for a family with three members at the next income recertification, the Available Unit Rule is applicable.

Example: Unborn Children

A household was originally income qualified based on the inclusion of an unborn child. Four months later, the pregnancy ended in miscarriage. It is not necessary to certify the remaining household as a new tenant at the time of the miscarriage. If the income of the remaining household members exceeds 140 percent of the income limit (170 percent in deep rent-skewed projects) at the next income recertification, the Available Unit Rule is applicable.**

Also note the following in regard to recertification requirements:

C. If all residents in a previously qualified household become full-time students at any time, the household can only be considered as a qualified tax credit household if at least one of the student exceptions, as defined at 26 USC Section 42 (i)(3)(D), is met, see also Students on page 28 of this compliance manual. This eligibility determination must be made immediately upon the resident becoming a full-time student and cannot be delayed until a recertification of the household is due.

D. In the event that a resident moves into a building prior to the placed-in-service date of the building (as shown on the development's IRS Form(s) 8609), and the verification of the resident's income was performed more than 120 days prior to the placed-in-service date, the resident must be recertified on the placed-in-service date.

Section 5.6 Adjustments to Rent, Utility Allowance, Subsidy

Any changes to rent, utility allowances, and rent subsidies occurring between recertification dates must be reported to IFA at the same time initial and annual reports are due each year.

Section 5.7 Procedures for Recertification

- Notify resident that recertification is due;
- Interview resident to obtain information regarding the household's income, assets and family composition;

- Verify each resident's income and assets. Supporting documentation (third-party income verification, employment verification, child support affidavit, etc.) must be reviewed and added to the Resident/Unit File each year;
- Management agent must complete a Tenant Income Certification. The management agent and the resident must sign the TIC;
- Management agent should review the resident's checklist, income and asset verifications, and the TIC to determine the resident's eligibility for an LIHTC unit;
- The renewal lease may be executed at the time the TIC is signed and approved;
- Notify residents of any rent change resulting from the change in income, by providing a 30 day written notice in accordance with Iowa Code Section 562A.13 Disclosure)

Section 5.8 Annual Recertification Waiver

On July 30, 2008 the Housing and Economic Recovery Act (HERA) of 2008 was signed into law. Division C, Title I, Part III, Section 3010 of HERA, amended Section 142(d)(3) of the Internal Revenue Code (IRC), by waiving annual current income determination requirements for any development where for any year if during such year no residential unit in the development is occupied by a new resident whose income exceeds the applicable income limit.

Annual income recertifications are no longer required for 100% low-income properties, effective July 30, 2008. A property is 100% low-income when the allocation was based upon all units in the development and all units in the development are in compliance. Common space units are not considered in this determination. In addition the development's 8609(s) and LURA must indicate that all residential rental units in the development are subject to income and rent restrictions.

HERA allows for the exception to the annual recertification requirements for both Section 42 and Section 142. It does not, however, allow exception to the full-time student restrictions. Therefore, owners and management agents will still be required to obtain a Student Status Self Affidavit (located on our web at www.IowaFinanceAuthority.gov) annually from each household member over age 18, not later than 365 days from the household's move in date.

Section 5.9 Miscellaneous Rules Governing Low-Income Eligibility of Units

A. Live-in Care Attendants: A live-in care attendant for a tax credit resident should not be included as a household member for determining the eligible income and rent limits. The need for a live-in care attendant must be verified. The live-in care attendant must abide by the lease agreement, but has no survivorship rights to the apartment. If the qualified resident vacates the unit, the attendant must vacate as well. However, if an attendant would like to be certified as a qualified resident and remain in the unit, normal certification procedures must be performed, and the individual must meet the applicable eligibility requirements of the program.

B. Unborn/Adoptive Children: A pregnant woman or a household in the process of adopting a child should include the additional person(s) for the purposes of determining the maximum allowable income. In these cases, management must obtain documentation giving evidence. Either self-certification by the expectant mother or adoption papers will suffice.

C. Section 8 Applicants: Omnibus Budget Reconciliation Act of 1993 prohibits owners from refusing to lease to a prospective resident solely on the fact that the applicant holds a Section 8 voucher.

D. Next Available Unit Rule

An eligible resident's income following initial certification can increase to 140% (170% for Deep Rent Skewed elections) of the maximum income level and remain eligible. A resident whose income exceeds 140% of the maximum income level is technically no longer an eligible resident. However, the development will remain in compliance as long as the next available unit or any available unit of comparable or smaller size in the same building is made available to an eligible resident at the qualifying rent ****and the over income unit remains rent restricted****. If any comparable unit that is available or that subsequently becomes available is rented to a nonqualified resident, all over-income units for which the available unit was a comparable unit within the same building lose their status as housing tax credit units; thus, comparably sized or larger over-income units would lose their status as housing tax credit units.

****After July 30, 2008 if a building is part of a 100% qualified low-income development, where the owner is not completing annual resident income certifications under IRC § 142(d)(3)(A), the IRS accepts, for purposes of the Available Unit Rule only, that households documented as initially income-qualified households are income-qualified. Failure to rent the next available unit as a rent-restricted unit reduces the low-income building's qualified basis to zero unless the owner can document which units are not over-income units.****

Section 5.10 Lease and Rent Limits

All residents occupying set-aside units must be certified and under lease. Leasing guidelines are listed below:

The Lease

All residents occupying tax credit units must be certified and under lease no later than the time a resident moves into the unit. IFA does not have a mandatory lease specifically for the LIHTC program. Owners are expected to develop a suitable lease for use in the development. Leasing guidelines are listed below.

A. At a minimum, the lease should include (but is not limited to):

1. The legal name of all parties to the agreement and all other occupants.
2. A description of the unit to be rented.
3. The date the lease becomes effective.
4. The term of the lease.
5. The rental amount plus any other amounts paid by the resident for parking, pets, a/c, etc.
6. The use of the premises.
7. The rights and obligations of the parties, including the obligation of the resident to certify annually (or more frequently as required) to income as defined herein.
8. Language that addresses income decrease, utility allowance increase/decrease, income limit increase, basic rent changes (in RHS or 236 developments), family composition change or any other change and its impact on the resident's rent.

B. Rents on the tax credit units may not exceed the amounts allowed by Section 42 of the Code.

C. There must be an initial lease term of at least 6 months on all tax credit units (except for housing for the homeless and single room occupancy). Succeeding leases are not subject to a minimum lease period. For acquisition/rehab properties, if a resident is in occupancy on the date of acquisition, and has lived in the unit under a lease lasting at least six months, the resident is not required to sign a new lease.

D. It is important for the lease to reflect the correct date of move-in, or the date the resident takes possession of the unit.

E. Single room occupancy (SRO) housing must have a minimum lease term of one month. SRO housing is allowed to have residents share bathrooms, cooking facilities, and dining areas.

   Federal rules allow for month-by-month leases for the following types of SRO housing for homeless individuals:

   - SRO units in developments receiving McKinney Act and Section 8 Moderate Rehabilitation assistance;
   - SRO units intended as permanent housing and not receiving McKinney Act assistance;
   - SRO units intended as transitional housing that are operated by a governmental or nonprofit entity and providing certain supportive services.

F. **Developments subject to additional subsidy layering may be subject to additional lease restrictions depending upon the source of additional subsidies. Owners are expected to remain in compliance with all additional regulatory agreements or contracts.**

Section 5.11 Unit Transfer

A household may move to another unit within a low-income development.

In the Same Building

When a household moves to a different unit within the building, the newly occupied unit adopts the status of the vacated unit. Thus, if a current household whose income exceeds the applicable income limitation moves from an over-income unit to a vacant unit in the same building, the newly occupied unit is treated as an over-income unit. The vacated unit assumes the status the newly occupied unit had immediately before it was occupied by the current resident.

In a Different Building

As noted in Rev. Rul. 2004-82, Q&A #8, a similar rule applies when a household whose income is no greater than 140% of the income limit (or 170% for deep rent skewed projects) moves to a low-income unit in a different building within the development during any year of the 15-year credit period. The vacated unit assumes the status the newly occupied unit had immediately before it was occupied by the current resident. **Note:** Transfers between buildings can only occur **IF** the applicable 8609 indicates multiple building project, otherwise the action is treated as a move out/move in subjecting the resident to initial qualification process.

Section 5.12 Qualifying Section 8 Residents for LIHTC Units

An owner/management agent may substitute a completed, executed copy of the HUD 50058 form and supplemental worksheet (detailing asset calculations) for the income verification procedures outlined in Sections 3 & 4 of this manual when certifying the eligibility of Section 8 voucher holders. The HUD 50058 form should be obtained directly from the Public Housing Authority by the owner/management agent. The HUD 50058 may be used as verification of income for the LIHTC resident income certification. If it is not possible to obtain the 50058 from the PHA, a signed statement from the PHA indicating all household members and the household's gross annual income may also be used as verification of a resident's income.

The following modification must be made to the HUD forms:

> The street address and BIN of the building in which the unit is located must be written or typed at the top of each form.

The HUD 50058 with supplemental asset calculation worksheet replaces only the items outlined in the paragraph above. No other substitution of forms or certification procedures will be permitted. All other initial certification and recertification procedures outlined throughout this manual must be followed. All of the annual certification requirements, outlined, must be completed and submitted to IFA as described. All other tax credit policies and guidelines outlined in this manual and in federal and state regulations apply to Section 8 projects, except as noted therein.

The Resident/Unit File must contain a HUD 50058 or HUD 50059 for every interim and annual recertification. (See interim requirements for documentation needed – Section 5.5). Supporting documentation (which includes copies of third-party verifications) must be included if deemed necessary by IFA. The Resident/Unit file must contain all of the other documentation outlined including, an application and lease agreement.

To obtain the HUD 50058 and worksheet from the Public Housing Authority, the owner/management agent and the resident/prospective resident should complete an Authorization to Release Information for Section 8 Participants for each initial, interim, and annual certification.

If a HUD 50058 or updates cannot be obtained by the owner/management agent or the resident discontinues participation in the Section 8 program, all of the initial certification and/or interim and annual recertification procedures outlined in this manual must be followed.

Section 5.13 Using the HUD forms to Qualify Residents for Low Income Units

Use line 8a of the HUD 50058 (06/2004 version) or line 86 from the HUD 50059 (09/2008 version) to compare to the appropriate area median gross income limit as adjusted for household size. Tax credit income limits are based on the gross annual income of a household, not adjusted annual income.

Section 5.14 Qualifying Residents in RHS Developments for LIHTC Units

An owner/management agent of a development financed by the Rural Housing Services (RHS) and Community Development (formerly Farmers Home Administration and sometimes referred to as Rural Development or Rural Economic and Community Development) may substitute the Tenant Certification (RD ****3560****-8) form for the TIC form to certify and/or recertify the eligibility of LIHTC residents. Substitution of the RD ****3560****-8 will be valid only with the following attachments/modifications:

1) A worksheet calculating net family assets for each type of asset detailing the following information:

- The type of asset (cash, real estate property, stocks, etc.);
- The cash value of the asset;
- The actual yearly income from the asset;
- The combined total cash value of all assets;
- The combined total actual yearly income from all assets.

For households with assets with total cash value exceeding $5,000, the imputed income from assets based on the HUD approved passbook rate.

2) The following written or typed at the top of the RD ****3560****-8:

- The number of bedrooms in the unit;
- The street address and BIN of the building in which the unit is located; and the date the resident moved-in to the particular unit.

The RD ****3560****-8 replaces only the Tenant Income Certification. No other substitute of forms or certification procedures will be permitted. All other initial certification and recertification procedures outlined throughout this manual must be followed. All of the annual certification requirements must be completed and submitted to IFA as described. All other tax credit policies and guidelines outlined in this manual and in federal and state regulations apply to RHS developments.

The Resident/Unit File must contain a RD ****3560****-8 for the initial certification and an updated RD ****3560****-8 for every interim and annual recertification. The Resident/Unit File must contain all of the other documentation outlined in Sections 3 & 4, including, but not limited to, third-party verifications and lease agreement.

If a RD form ****3560****-8 is not completed, all of the initial certification and/or interim and annual recertification requirements and procedures outlined must be followed.

Section 5.15 Using the RHS Forms to Determine Rent and Income

Use Part IV, line 18f, from the RD ****3560****-8 (****04-2006**** version) to compare to the appropriate area median gross income limit as adjusted for household size. Tax credit income limits are based on a household's gross annual income, not adjusted annual income.

Use line 31 or line 33 (whichever is applicable to the resident), Final Net Tenant Contribution, from the RD ****3560****-8 (****04-2006**** version) to compare to the maximum allowable tax credit rent. Tax credit rents are based on the resident-paid portion of the rent and resident-paid utilities, and do not include any subsidy payments.

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Chapter 6 Guidelines for Correction of Noncompliance

The following is a list of noncompliance events as they appear on IRS Form 8823, the State Agencies Report of Noncompliance. Some examples of events of noncompliance, the related correction possibilities, and supporting evidence that an owner should obtain to document the correction has been identified. IFA will refer to these guidelines to recommend and determine correction. Please note that the guidelines (1) are derived from Internal Revenue Service "Guide for Completing Form 8823 Low-Income Housing Credit Agencies Report of Non-Compliance or Building Disposition", as revised by the Service effective ****October 2009****; (2) are not all inclusive since the facts and circumstances surrounding each event may be such that the examples and/or guidelines do not fully cover each event; and (3) are subject to change at any time.

The guidelines are for IFA'S use in determining and reporting correction. IFA does not imply a guaranty that the IRS will agree with its decisions.

According to the Internal Revenue Service, the consequences of having units out of compliance in the first year of the credit period, even if corrected, will be more severe.

Section 6.1 Household Income Above Income Limit Upon Initial Occupancy

This category is used to report units that have been rented to households with incomes that do not meet income eligibility restrictions. According to IRC §42(g)(1), an owner of a tax credit property must elect to serve resident populations with gross incomes that are either 50% or less of Area Median Gross Income (AMGI) ****or the National Nonmetropolitan Median Gross Income (NNMGI) when applicable**** or 60% or less of AMGI, ****or NNMGI when applicable**** as adjusted for family size. ****The National Nonmetropolitan Median Gross Income (NNMGI) is applicable if IRC §42(i)(8) is applicable. The LIHTC development is located in a rural area (as defined in section 520 of the Housing Act of 1949) and the NNMGI is greater than the AMGI. IRC §42(i)(8) is not applicable if the development is financed with tax-exempt bonds.****

Under the terms of an extended use agreement, an owner may agree to service resident populations at AMGI levels lower than identified in IRC §42(g); nonperformance of such agreements is not a noncompliance event reportable to the IRS using form 8823; however, property owners are expected to fully comply with terms and conditions expressed in existing LURA. Failure to comply with the LURA will cause IFA to seek remedy up to and including debarment from future tax credit allocations for a period of up to five years.

Example: Specific Source of Income Omitted

Annual Income was not properly calculated. The manager/owner did not include a source of income, such as a raise, overtime, or bonus. When reviewed**,** a correct calculation indicates that the household was not income eligible at move-in.

Example: Household Incorrectly Determined to be Eligible

The owner calculated annual household income correctly, but the household is over the appropriate income limit at move-in. For example, the owner may have used the income limit for the 40/60 minimum set-aside when the income limit for the 20/50 minimum set-aside was required, or the wrong county

AMGI was selected, or the income limits used by the owner were not in effect as of the date of the tenant income certification.

Example: Unrelated Parties Sharing an Apartment

Sally and Jane are unrelated individuals who want to rent a two-bedroom apartment in an LIHTC building. Sally and Jane individually have incomes that do not exceed 60% of AMGI for one individual. However, Sally and Jane's combined income exceeds 60% of the AMGI for a two-individual family.

In this case, Sally and Jane do not qualify for LIHTC housing. For purposes of computing the Gross Annual Household Income, the combined income of all the occupants of an apartment, whether or not legally related, is compared to the median family income for a household with the same number of members.

Example: No Initial Tenant Income Certification on File

A household moves into a unit that the owner wishes to include as an LIHTC unit. However, the owner does not provide documentation of initial eligibility at the time the state agency reviews the resident's file. The owner cannot substantiate that the unit qualifies for the LIHTC.

Example: No Initial Tenant Income Certification on File for New Member of Household

An income qualified household moved into an LIHTC unit. Six months later, an adult friend moved into the unit with the household, but no initial tenant income certification was completed for the additional member of the household.

Example: Initial Tenant Income Certification Performed After Move-In (Late Certification)

A household moved into a unit that the owner wanted to include as a low income unit. However, the certification of income eligibility, including the third party verification, was not performed until after the household moved in.

Example: Insufficient Documentation of Initial Eligibility

A household moves into a unit that the owner wishes to include as a low income unit. Income eligibility was not properly documented. IFA could not reasonably determine that the household was income qualified. The following are possible documentation noncompliance issues:

a. Application/questionnaire is not sufficiently detailed to disclose all sources of income and/or assets;
b. Not all sources of income are verified;
c. Not all sources of assets are verified;
d. Verifications are insufficient;
e. Not all adult household members' income and/or assets are disclosed and included;
f. Tenant income certification form is not prepared, signed and/or dated; and

g. Other state-required forms designed to document compliance with IRC §42 are not in the file.

Correction Possibilities

Units are back in compliance when it is determined that an income-qualified household occupies the unit. Evidence of corrected noncompliance includes copies of certification paperwork such as the resident's application, income and asset questionnaire, appropriate verifications (including evidence of attempts to obtain 3rd party if other than 3rd party were used), and tenant income certification.

Insufficient Documentation

In the event income eligibility was not properly documented and IFA cannot reasonably determine that the household is eligible, the noncompliance can be corrected in either of two ways:

1. A new certification can be performed using current income and asset sources and current income limits. Assuming the household is eligible, the unit would be out of compliance on the date of move in and back in compliance on the date the new certification signed (Form 8823 must be filed); or

2. A retroactive certification can be performed which completely and clearly documents the sources of income and assets that were in place at the time the certification should have been effective, and applies income limits that were in effect on that date. Assuming the owner can document that the household was income eligible at the time of move in, the unit should not be considered out of compliance. The owner has clarified the noncompliance; Form 8823 will not be filed.

Evidence of corrected noncompliance may include a copy of the full certification, including application, appropriate verifications (including evidence of attempts to obtain 3rd party if other than 3rd party were used), and/or the tenant income certification.

Income Ineligible Households

The household may be income certified as if it were a new move-in. If the household is eligible under the applicable move-in income limit in place on the date of the new certification, then the unit would be considered back in compliance.

Example: Ineligible Household Occupies LIHTC Unit

The household was over the appropriate income limit at move-in on June 1, 2006. The error was discovered during IFA's review on April 3, 2007.

The owner may treat the household as a new resident and complete a new income certification using the income limits in effect on April 3, 2007. If the household is qualified, the unit is out of compliance from June 1, 2006 and corrected April 3, 2007. If, upon certification, the household is not income-eligible, the unit is considered back in compliance when a new income-qualified household moves into the unit. In either scenario, a Form 8823 noting the noncompliance would be filed.

Initial Tenant Income Certification is Late

If the initial certification is late, the unit is considered out of compliance as of the date the resident moved into the LIHTC unit and back in compliance on the date the completed income certification, indicating the household is income qualified, is signed by all the residents.

Example: Initial Tenant Income Certification Performed After Move-In (Late Certification)

A household moved into an LIHTC unit on August 4, 2003. However, certification of eligibility, including the third-party verification, was not completed until September 15, 2004. If the tenant income certification meets all the requirements, the unit is considered in compliance beginning on September 15, 2004.

Note: Noncompliance with the initial income certification requirements that is identified and corrected by the owner retroactive to move-in and *prior to notification* of the compliance review by IFA will not be reported; i.e., the owner has demonstrated due diligence by addressing noncompliance issues independently.

Section 6.2 Owner Failed to Correctly Complete or Document Resident's Annual Income Certification

Owners are required to recertify each low-income household at least annually. The recertification process is identical to the initial certification in terms of documenting household composition, income, and income from assets. IFA is required to review the resident income recertifications and the supporting documentation for the residents in the units.

****Under IRC §142(d)(3)(A), if all of the low-income buildings in the project are 100% low-income buildings, owners are not required to complete annual tenant income recertifications. "Projects" are identified based on the owner's election as documented on Form 8609, line 8b. Therefore, effective 30 July 2008 with the passage of HERA 2008, this section does not apply to 100% low-income developments. IFA requires and will review only the initial tenant income certification. Owners or syndicators of developments may establish more restrictive policies than proscribed by IFA and may require additional certifications beyond the initial income certification. Such certifications will not be reviewed by IFA.****

Noncompliance Corrected by Owner Prior to Notification of IFA's Compliance Review

Noncompliance with the annual income recertification requirements that is identified and corrected by the owner *prior to notification* of the compliance review by IFA will not be reported; i.e., the owner has demonstrated due diligence by addressing noncompliance issues independently.

Noncompliance Not Corrected by Owner Prior to Notification of IFA's Compliance Review

A unit will be considered out of compliance if the annual recertification was not performed, or the annual recertification was performed late *and after notification* of an IFA compliance review which would include the annual submission of the Owner's Certification of Continuing Program Compliance.

Example: Annual Recertification Was Not Performed

Household was initially qualified and properly certified at move-in. However, it has been more than 12 months from the previous recertification and there is no recertification on file. This unit is out of compliance as of the date the recertification was due.

Example: Insufficient Documentation of Eligibility at Recertification

Household was initially qualified and properly certified at move-in; however, recertification was not properly documented and IFA cannot reasonably determine the household's continuing eligibility. The following are possible documentation noncompliance issues:

a. Application/questionnaire is not sufficiently detailed to disclose all sources of income and/or assets;
b. Not all sources of income are verified;
c. Not all sources of assets are verified;
d. Verifications are insufficient;
e. Not all adult household members' incomes and/or assets are disclosed and/or included;
f. Tenant income certification form is not prepared, signed and/or dated; and
g. Other state-required forms designed to document compliance with IRC §42 are not in file.

Correction Possibilities

Owners may use the following methods to self-correct noncompliance. Evidence of corrected noncompliance may include a copy of the full recertification, including application, verifications, and/or tenant income recertification. Owners must submit copies of the documents required by IFA.

1. A recertification can be performed using current income and asset sources and current income limits. If there is no resulting noncompliance (e.g., violation of the Available Unit Rule), the unit would be out of compliance on the date the recertification was due and back in compliance on the date the resident signs the recertification.

2. A retroactive recertification may be performed which completely and clearly documents the sources of income and assets *that were in place at the time the recertification should have been completed*, and applies income limits that were in effect on that date. If there is no resulting noncompliance (e.g., violation of the Available Unit Rule), the unit would be out of compliance on the date the recertification was due, and back in compliance on the date the resident signs the recertification.

   While the recertification has been performed retroactively, the recertification documents should be dated with the current date. All the adult members of the household should sign the recertification using the current date. In other words, the recertification documents should not be backdated.

   The advantage of the retroactive recertification is that the owner may avoid violating the Available Unit Rule.

In either case, the effective date for recertification continues to be the anniversary of the actual date of move in or the last certification effective date.

Section 6.3 Violations of the UPCS or Local Inspection Standards

This category is used to report noncompliance when rental units, building exteriors and systems, common areas, or the property site in a development are not suitable for occupancy. IFA will assess whether low-income housing tax credit properties are in safe, decent, sanitary condition and in good repair, according to the Uniform Physical Conditions Standards (UPCS) established by HUD at 24 CFR 5.703.

Identifying Noncompliance

Certification Reviews

Noncompliance may be identified when IFA reviews an owner's annual certification that the buildings and units in an LIHTC development were suitable for occupancy. (See 26 CFR Pt 1, §1.42-5(c)(1)(vi).) The owner must also certify that state or local authorities responsible for making inspections did not issue a violation report for any building or low-income unit in the development. If a violation notice or report was issued, the owner must attach a statement summarizing the violation report/notice (or a copy) to the annual certification submitted to IFA. The owner must also state whether the violation was corrected.

Physical Inspections

IFA must inspect LIHTC properties to ensure that LIHTC buildings and units are suitable for occupancy. Under 26 CFR Pt 1, §1.42-5(C)(2)(ii)(B), on-site inspections must be made at least once every three years. IFA has opted to use the inspection standard as defined at 26 CFR Pt. 1, §1.42-5(d)(2)(ii), which states that IFA must determine whether the buildings and units satisfy, as determined by IFA, the uniform physical condition standards for public housing established by HUD (24 CFR 5.703). The HUD physical condition standards do not supersede or preempt local health, safety, and building codes. A low-income housing development under section 42 must continue to satisfy these codes and, if IFA becomes aware of any violation of these codes, IFA must report the violation to the IRS. However, provided IFA determines by inspection that the HUD standards are met, IFA is not required to determine by inspection whether the development meets local health, safety and building codes.

HUD's Uniform Physical Condition Standards (UPCS)

The UPCS requires housing to be decent, safe, sanitary and in good repair. The major areas of consideration include:

1. Site: The site components such as fencing and retaining walls, grounds, lighting, mailboxes/development signs, parking lots and driveways, play areas and equipment, refuse disposal equipment, roads, storm drainage, and walkways must be free of health and safety hazards and in good repair. The site must not be subject to material adverse conditions, such as abandoned vehicles, dangerous walks or steps, poor drainage, septic tank back-ups, sewer hazards, excess accumulations of trash, vermin or rodent infestation, or fire hazards.

2. Building Exterior: Each building on the site must be structurally sound, secure, habitable, and in good repair. Each building's door, fire escapes, foundations, lighting, roofs, walls, and windows must be free of health and safety hazards, operable, and in good repair.

3. Building Systems: Each building's domestic water, electrical systems, elevators, emergency power, fire protection, HVAC, and sanitary system must be free from health and safety hazards, functionally adequate, operable and in good repair.

4. Dwelling Units: Each dwelling unit within a building must be structurally sound, habitable, and in good repair. The dwelling unit must be free from health and safety hazards, functionally adequate, operable and in good repair. This includes all areas and aspects of the dwelling unit; i.e., bathroom, call-for-aid (if applicable), ceiling, doors, electrical systems, floors, hot water heater, HVAC, kitchen, lighting, outlets/switches, patio/porch/balcony, smoke detectors, stairs, walls and windows.

   Where applicable, the unit must have hot and cold running water, including an adequate source of drinkable water. (Note: single room occupancy units need not contain water facilities.) If the unit includes its own sanitary facility, it must be in operating condition, usable in privacy and adequate for personal hygiene and the disposal of human waste. The unit must include at least one battery-operated or hard-wired smoke detector in proper working condition on each level of the unit.

5. Common Areas: The common areas must be structurally sound, secure, and functionally adequate for the purposes intended. The basement/garage/carport, restrooms, closets, utility, mechanical, community rooms, day care, halls and corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony and trash collection areas, if applicable, must be free from health and safety hazards, operable, and in good repair. All common area ceilings, doors, floors, HVAC, lighting, outlets/switches, smoke detectors, stairs, walls, and windows must be free of health and safety hazards, operable, and in good repair.

6. Health and Safety Concerns: All areas and components of the housing must be free of health and safety hazards. These areas include, but are not limited to, air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation and lead based paint.

   For example, buildings must have fire exits that are not blocked and have hand rails that are not damaged, loose, missing portions, or otherwise unusable. The housing must have no evidence of infestation by rats, mice, ****other vermin, or garbage and debris****. The housing must have no evidence of electrical hazards, natural hazards, or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold as well as odor (e.g., propane, natural, sewer or methane gas) or other observable deficiencies. The housing must comply with all requirements related to the evaluation and reduction of lead-based paint hazards and have available proper certifications of such.

Differences between Local Codes and the Uniform Physical Condition Standards (UPCS)

There may be situations when using the UPCS for IFA's inspection standard may result in a conflict with the local standards. For example, the local code may require bars on windows to prevent children from falling out whereas the bars may be viewed under the uniform physical condition standards as blocking access/exists in case of emergencies. The conflict should be brought to the attention of IFA by a governmental entity or individual such as a fire marshal's office or municipal building inspector who must provide a written submission explaining the nature of the conflict. When conflicts are presented in this manner, the local code will be evaluated by IFA in determining whether the development or unit is in compliance.

Out of Compliance

An LIHTC unit, building and/or entire development is out of compliance if:

1. The owner discloses violations of local standards or incorrectly certifies that the buildings and units in an LIHTC development were suitable for occupancy, taking into account local standards (or other habitability standards). See 26 CFR Pt 1, §1.42-5(c)(1)(vi).

2. During a physical inspection by IFA, the property had elements that failed to meet the UPCS requirements.

3. Otherwise fails to comply with the requirements of the UPCS or local codes at any time.

To ensure consistent evaluation of the property's physical condition, the definitions of physical deficiencies used for the Real Estate Assessment Center System (REAC) by the Department of Housing and Urban Development (HUD) will be used to determine whether noncompliance has occurred. The dictionary is divided into six sections:

1. Site Inspection
2. Building Exterior Inspectable Items
3. Building Systems Inspectable Items
4. Common Areas Inspectable Items
5. Unit Inspectable Items
6. Health and Safety Inspectable Items

Each section identifies specific components, which are then defined in ascending levels of severity (level 1, level 2 or level 3), and a fourth category is health and safety hazards and fire safety hazards. *All levels of deficiencies must be reported.* The Dictionary of Deficiency Definitions is available at HUD's website: www.hud.gov/offices/reac/products/pass/pass_def.cfm.

Level 1 Violation of UPCS

Examples of Level 1 violations include:

1. At least one screen door or storm door is damaged or is missing screens or glass. The noncompliance would be evidenced by an empty frame or frames.

2. The roofs of a development where up to one square (100 square feet) of surface material or shingles is missing from roof areas.

3. In one room in a dwelling unit, a permanent lighting fixture is missing or not functioning, and no other switched light source is functioning in the room.

Level 2 Violations of UPCS

Examples of Level 2 violations include:

1. Evidence of water stain, mold, or mildew, such as darkened areas, over a small area of floor (1-4 square feet). Water may or may not be visible. The affected area is estimated to be less than 10% of the floors.

2. In two rooms in a dwelling unit, a permanent lighting fixture is missing or not functioning, and no other switched light source is functioning in the rooms.

Level 3 Violations of UPCS

Example of Level 3 violations include:

1. A common area where a large portion of one or more floors –more than 4 square feet- has been substantially saturated or damaged by water, mold, or mildew. Cracks mold, and flaking are visible and the floor surface may have failed.

2. A sink or other related hardware in a kitchen may be missing, which creates unsanitary living conditions.

3. A permanent light fixture in more than two rooms is missing or not functioning, and no other switched light sources are functioning in the rooms.

Health and Safety Violations and Fire Hazard Violations of UPCS

Health and safety violations can be divided into non-life threatening and exigent, life threatening conditions.

Non-life threatening events include items such as pavement and walkway problems that create the potential for tripping and falling; missing or non-functioning sinks and bathroom components in individual units that impair human sanitation; missing exterior doors; and floor covering damage.

Exigent health and safety and fire hazards require immediate attention because of their life-threatening potential. Exigent health and safety violations include exposed electrical wires or water leaks on or near electrical equipment; propane /natural gas/methane gas detected; emergency/fire exits that are blocked; unusable fire escapes; gas or oil fired hot water heaters with missing or misaligned chimneys that pose carbon monoxide hazards. Fire safety hazards include missing or inoperative smoke detectors; fire extinguishers expired or window security bars preventing egress from a building.

Casualty Losses

A casualty loss is defined as the damage, destruction, or loss of property resulting from an identifiable event that is sudden, unexpected, or unusual. A sudden event is one that is swift, not gradual or progressive. An unexpected event is one that is ordinarily unanticipated and unintended. An unusual event is one that is not a day-to-day occurrence and that is not typical for low income housing credit properties.

Casualty losses may result from a number of different sources: e.g., car accidents, fires, government-ordered demolitions, hurricanes, mine cave-ins, sonic booms, storms, tornadoes, vandalism, etc. Property damage is not considered a casualty loss if the damage occurred during normal use, the owner willfully caused the damage or was willfully negligent, or was progressive deterioration such as damage caused by termites.

Physical damage to LIHTC properties caused by casualty events and which render LIHTC residential rental units or buildings, or common areas associated with the property, unsuitable for occupancy must be reported as noncompliance with the UPCS or local standards.

****Owners are required to notify IFA in the event of any casualty loss which results in uninhabitable units for any reason. Notification must be made using the IFA Report of Casualty Loss Form located on our web page at www.IowaFinanceAuthority.gov.****

****Vacant Units**

Vacant low-income units must also be suitable for occupancy; i.e., prepared for immediate occupancy. Depending on the facts, IFA will allow a reasonable period to clean a vacated unit or repair damages caused by a prior tenant.

Example: Vacant Units not Suitable for Occupancy

IFA determined that some vacant LIHTC residential units were not suitable for occupancy for new residents when they conducted a physical inspection of the property. The owner explained that because of the high vacancy rate, there were a sufficient number of empty units suitable for occupancy. All vacant LIHTC units that are not suitable for occupancy are out of compliance. The out of compliance date is determined for each unit based on the date that particular unit was vacated..**

Date of Noncompliance

The reportable "out of compliance" date is the date the property failed to meet the inspection standard, if known; otherwise, at the earliest documented date that the standard was not met.

Example: Factual Determination

****A frozen water pipe burst and flooded two vacant units in a low-income building. The owner timely repaired the damaged pipe but did not adequately clean the damaged floors, rugs, and walls in the affected vacant units. Upon inspection, IFA discovered mold damage resulting from the flooding in both units. The date of noncompliance is the date the frozen water pipe burst.****

Example: Noncompliance Date Identified by Inspection

IFA inspected the property site and determined that a dilapidated wooden fence on the exterior of the property represented a UPCS violation because it was about to fall down and nails were protruding out of the boards. The date of noncompliance is the date of the inspection.

Example: Noncompliance Date Identified by Documentation

A local building inspector performed an inspection and determined that there were significant safety hazards on an LIHTC property site. The owner was notified, but when the local building inspector revisited the property six months later, the hazards had not been corrected. The date of noncompliance is the date of local building inspector's initial inspection.

Notice to Owner

IFA is required to provide prompt *written* notice to the *owner* of a low income housing development if IFA discovers that the development is not in compliance with the UPCS inspection standard, or the annual certification is inaccurate. Notification letters establish and document the beginning of the correction period for any "out of compliance" issues.

When IFA determines that the violations involve life-threatening problems, a critical notification letter requiring immediate corrective action will be sent to the owner. *To ensure prompt correction of exigent, life threatening health and safety deficiencies*, the development representative will be provided a list of every observed life threatening violation and fire safety hazard that needs immediate attention or remedy, before the inspector leaves the development site. To document receipt, the development representative should sign IFA's copy of the list of deficiencies.

Back in Compliance

Property is back in compliance when noted violations are corrected. The correction date is the date of the repair, the date of the inspection at which the repair was observed, or the date of the certification that the repair had occurred, whichever evidenced the correction to IFA's satisfaction.

Acceptable evidence of the corrected violations includes items such as a certification from an appropriate licensed professional that the item now complies with the inspection standard, or other documentation demonstrating that the violation has been corrected. Alternatively, IFA may determine that the owner is back in compliance by visual inspection.

Reporting Noncompliance

Under 26 CFR Pt 1, §1.42-5(a), IFA is required to report any noncompliance of which the agency becomes aware. IFA must file Form 8823 no later than 45 days after the end of the correction period (including permissible extensions), whether or not the identified noncompliance is corrected.

Example: Extenuating Circumstances

IFA conducted a physical inspection of an LIHTC building on October 3, 2007. When inspecting the laundry room located in the basement, IFA staff noted that water pipes to three of the six washing machines had frozen and burst during a recent snow storm. The correction period started on October 6, 2007, the date on which the notice of noncompliance was sent to the owner. The correction period ends 90 days later on January 5, 2008.

The damage was extensive and could not be repaired immediately because the ground was frozen, so the owner requested an extension of time. IFA granted the maximum extension of an additional 90 days (180 days total), so that the correction period ended April 5, 2008. At that time, the ground was still frozen and the repair had not been completed.

IFA must file form 8823 within 45 days of the end of the correction period, or May 17, 2008, noting the noncompliance. A second Form 8823 will be filed when the noncompliance is corrected.

Section 6.4 Owner Failed to Provide Annual Certifications or Provided Incomplete or Inaccurate Certification

This category is used to report owners of low-income housing properties who fail to submit annual certifications, or any other required reports and documentation, to IFA as described in 26 CFR Pt 1, §1.42-5(c). Monitoring procedures require certifications (and IFA review of the certifications) at least annually for each year of the 15-year compliance period. Monitoring procedures may require certifications (and IFA review) more frequently than annually, provided that all months within each 12-month period are subject to certification.

Owners are responsible for reporting to IFA annually that their developments were in compliance with IRC §42 for the preceding 12-month period. They must report in the form and manner IFA specifies and must certify, under the penalty of perjury, that the information provided is true, accurate, and in compliance with the requirements of IRC §42. The owner must certify that:

1. The project met the requirements of the minimum set-aside test applicable to the project; i.e., the 20-50 test, the 40-60 test.

2. If applicable, the 15-40 test under IRC §§42(g)(4) and 142(d)(4)(B) for deep rent skewed projects was met.

3. There has been no change in the applicable fraction (as defined in IRC §42(c)(1)(B)) of any building in the project, or that there was a change and a description of the change is included with the certification.

4. The owner has an annual income certification from each low-income tenant (Tenant Income Certification) and documentation to support that certification at initial occupancy and subsequent years during the compliance period, unless the owner has received a waiver from the annual recertification requirements.

5. Each low-income unit in the project was rent restricted.

6. All units in the project were for use by the general public, including the requirement that no finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, has occurred for the project.

7. The buildings and low-income units in the project were suitable for occupancy, taking into account local health, safety and building codes (or other habitation standards), and the state or local government unit responsible for making local health, safety, or building code inspections did not issue a violation report for any building or low-income unit in the project. If a violation report or notice was issued by the governmental unit, the owner must attach a statement *summarizing* the violation report or notice or attach a *copy* of the violation notice or notice to the annual certification submitted to IFA. In addition, the owner must state whether the violation has been corrected.

8. There has been no change in the eligible basis (as defined in IRC §42(d)) of any building in the project (determined at the end of the first credit year), or if there was a change, the nature of the change (e.g., a common area has become commercial space, or a fee is now charged for a tenant facility formerly provided without charge).

9. All tenant facilities included in the eligible basis of any building in the project (such as swimming pools, other recreational facilities, or parking areas, etc.) were provided on a comparable basis without charge to all tenants in the buildings.

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

11. If the income of tenants of a low-income building in the project increased above 140% of the applicable income limit (or 170% for deep rent skewed projects), the next available unit of comparable or smaller size in the building was or will be rented to tenants having a qualifying income.

12. An extended low-income housing commitment is in effect including the requirement 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.

13. All low-income units in the project were used on a non-transient basis, except for transitional housing for the homeless or single-room occupancy units rented on a month-by-month basis.

Out of Compliance

If the owner fails to certify as required under 26 CFR Pt 1, §1.42-5(c)(1), submits inaccurate or incomplete certifications, or the certifications and documentation discloses noncompliance with the requirements under IRC §42, IFA must report the owner using Form 8823. Similarly, an owner must be reported if IFA does not receive or is not permitted to inspect the tenant income certifications, supporting documentation, and rent records described in 26 CFR Pt 1, §1.42-5(c)(2)(ii), or if IFA learns that the development is not in compliance with the provisions of IRC §42.

To the extent that inadequate documentation from the owner prevents IFA from determining whether a development is in compliance with IRC §42, IFA will treat the development as out of compliance.

Out of Compliance Date

If an owner fails to complete or submit any of the certification items listed above, the date each building ceased to comply would be the first day of the reporting year for which such information was due. For example, if an owner does not submit the annual certification package for the 2007 calendar year, the first day of the reporting year date of noncompliance is January 1, 2007.

Correction Possibilities

The owner is considered back in compliance when an approved annual owner certification of continuing program compliance (and any other required documentation) is received by IFA. Corrections may include submission of the required documentation or answering all the questions.

Section 6.5 Changes in Eligible Basis

This category is used to report violations associated with the Eligible Basis of a building, or any occurrence that resulted in a decrease in the Applicable Percentage of a building

In Compliance

The Eligible Basis of a building is determined at the end of the first year of the credit period. As long as there is no reduction in the Eligible Basis amount upon which the credit is based, the property is in compliance.

Out of Compliance

The Eligible Basis of a building is reduced when space that originally qualified as residential rental property changes character or space that was originally designated for use by qualified residents is no longer available to them. Typical noncompliance may involve converting common areas to commercial property, or charging fees for facilities (such as a swimming pool), the cost of which were included in the Eligible Basis.

The date of noncompliance is the specific date the residential space is converted to commercial space or when a fee is charged.

Correction Possibilities

Common areas and tax credit rental units may be converted to commercial space. Whether the cost of these converted spaces can be restored to Eligible Basis by changing the properties back into common areas or tax credit rental units has not been determined. In these instances, IFA will communicate directly with the IRS, and will not report the building back in compliance unless otherwise instructed by the IRS.

Section 6.6 Development Failed to Meet Minimum Set-Aside Requirement

This category is used to report developments that have violated the minimum set-aside rules; i.e., the number of qualifying units falls below the minimum requirements.

In Compliance

A property is in compliance if the elected minimum set aside requirement (20/50 or 40/60) and the elected deep-rent skewing requirement (15/40) is met by the end of the first year of the owner's credit (and compliance) period and continues to be met each year throughout the compliance period. The LIHTC residential units must also be rent restricted.

Out of Compliance

The initial analysis of compliance with the minimum set-aside requirement is generally based on a sample of resident files. In the event that the sample does not meet the minimum set-aside, the owner will be given the opportunity to demonstrate that the minimum set-aside is met in the development. Noncompliance will be reported only if the owner cannot demonstrate compliance for the minimum number of units. The burden is on the owner to show that the minimum set-aside was met.

Noncompliance with the minimum set-aside will also be reported if systemic errors affecting all the LIHTC units are identified; e.g., using incorrect income or rent limits for all the units.

Example: Single Building Development

> 20 units in a 100 unit building with a 40/60 minimum set-aside were reviewed. To satisfy the minimum set-aside test, 8 of the selected units must be in compliance.

If there are multiple buildings, and the owner elects to group the buildings together as one property, the sample for each building shall be combined to determine whether the minimum set aside has been met. Refer to line 8b of each building's 8609 form to determine if the owner elected to treat the building as part of a multi-building property.

Example: Multi-Building Considered as a Single Development

> A project consists of three buildings with 75 units in each building. The owner elected a 40/60 minimum set-aside. In total, there are 225 units, and at least 90 must be qualified LIHTC units to meet the minimum set-aside. Units may be distributed throughout the project in any manner so long as the owner maintains 90 qualified units. IFA must review 45 files. To satisfy the minimum set-aside test, 18 of the selected units must be in compliance.

If there are multiple buildings, and the owner did not elect to treat them collectively as one development (refer to form 8609 elections), then each building will be reviewed to determine whether the minimum set-aside has been met.

Example: Multi-Building Considered as Separate Projects

> A development consists of three buildings with 75 units in each building. The owner elected a 40/60 minimum set-aside. In total, there are 225 units and at least 90 must be qualified LIHTC units to meet the minimum set-aside, the owner must maintain 30 qualified units in each building. IFA must review 15 files from each building. To satisfy the minimum set-aside test, 6 of the selected units in each building must be in compliance.

Date of Noncompliance

In the event that noncompliance results in the failure to meet the minimum set-aside for the first year of the credit period, the taxpayer is prohibited from ever claiming the LIHTC; the date of noncompliance is the last day of the taxable year of the first year of the credit period.

Example: First Year Lease Up

> The owner did not lease the minimum number of units to income eligible residents by the end of the first year of the credit period.
>
> The date of noncompliance is the last day of the first year of the credit period. IFA will issue Form 8823 indicating Category 11f, Project failed to meet minimum set-aside requirements, and Category 11p, Project is no longer in compliance nor participating in the program, if Form 8609 has been filed with the IRS.

If the development meets the minimum set-aside by the end of the first year, but fails to meet the minimum set-aside at the close of the taxable year for a subsequent year in the compliance period, the entire credit is lost for that year. The date of noncompliance is the last day of the taxable year for which the minimum set-aside was not met.

Correction Possibilities

First Year of the Credit Period

If a development failed the first year minimum set-aside requirement, the noncompliance cannot be corrected, and the owner is prohibited from ever claiming the LIHTC. The date of noncompliance is the last day of the taxable year of the first year of the credit period for that development. IFA will issue Form 8823 indicating Category 11f, Project failed to meet minimum set-aside requirements and Category 11p, Project is no longer in compliance and is no longer participating in the program.

Years Subsequent to the First Year of the Credit Period

If the minimum set-aside violation occurs *after* the first year of the compliance period, the development is back in compliance for the taxable year in the compliance period in which the minimum set-aside is met, determined as of the close of that taxable year.

Example: Fees for Assisted Living Services

> The first year of the credit period ended December 31, 1998, for a 100 percent LIHTC building. The units were all rented to income qualified households. Subsequently, in 2003, the owner charged all households a fee for mandatory assisted-living services. This fee, when added to the rent, exceeded the gross rent limitation for all the units and resulted in a violation of the minimum set-aside requirement for year 2003. IFA conducted a review in February 2004 and noted the violation of the rent rules. The owner stopped charging the fee on March 1, 2004.
>
> The owner did not meet the minimum set-aside and should not claim any credit for 2003. The date of noncompliance with the minimum set-aside requirement is December 31, 2003. The owner will be back in compliance at the end of the taxable year in the compliance period in which the minimum set-aside is again met.

The submission of a Form 8823 identifying noncompliance with the minimum set aside will not be delayed even if the taxpayer demonstrates that the minimum set aside will be restored by the end of the taxable year in the compliance period. IFA will file Form 8823 within 45 days after the end of the correction period. A second Form 8823 noting correction of the noncompliance will be filed after the end of the first taxable tax year in which the minimum set-aside is restored.

Documentation of Corrected Noncompliance

Documentation of corrected noncompliance with the minimum set-aside requirement will be specific to the noncompliance issue resulting in failure to satisfy the set-aside.

Example: Rental to Ineligible Residents Violates Minimum Set-Aside Requirement

> Upon inspection, it is determined that the number of units qualifying as LIHTC units did not satisfy the minimum set-aside requirement during a year following the first year of the credit period because the owner rented to ineligible residents. To correct the minimum set-aside violation, the owner must rent units to IRC §42 eligible income qualified households until the minimum set-aside is restored.

At a minimum, documentation should include the resident's application/eligibility questionnaires, income verifications, tenant income certifications, and student verifications, if necessary.

Section 6.7 Gross Rents Exceed Tax Credit Limits

This category is used to report noncompliance with the rent restrictions outlined in IRC §42(g)(2). A unit qualifies as an LIHTC unit when the gross rent does not exceed 30 percent of the imputed income limitation applicable to such unit under IRC §42(g)(2)(C). The income limit for a low-income housing unit is based on the minimum set-aside election made by the owner under IRC §42(g)(1).

Items to consider when determining whether the rent is correctly restricted include services provided, revisions to HUD income limits, rent calculation methods, changes in the resident's income, Section 8 residents, Rural Housing Service (formerly FmHA) rents, supportive services, and deep rent skewing.

****Fees for Provision of Services**

Units may be residential rental property notwithstanding the fact that services *other than housing are provided*. However, any charges to low-income residents for services that are not optional generally must be included in the gross rent. A service is optional when the service is not a condition of occupancy and there is a reasonable alternative. Charges for non-optional services such as a washer and/or dryer hookup fee and built-in/on storage sheds (paid month-to-month or a single payment) will always be included in gross rent. No separate fees should be charged for resident facilities (i.e., pools, parking, recreational facilities) if the costs of the facilities are included in eligible basis. *Assuming they are optional*, charges such as pet fees, laundry room fees, garage, and storage fees may be charges in addition to the rent; i.e., they are not included in the rent computation.

Fees as a Condition of Occupancy

Under Treas. Reg. §1.42-11(a)(3), the cost of services that are required as a condition of occupancy must be included in gross rent even if federal or state law required that the services be offered to residents by building owners.

1. **Refundable fees associated with renting an LIHTC unit are not included in the rent computation. For example, security deposits and fees paid if a lease is prematurely terminated are one-time payments that are not considered in the rent calculation.**

2. **Required costs or fees, which are not refund able, are included in the rent computation. Examples include fee(s) for month-to-month tenancy and renter's insurance.**

Fees for preparing a unit for occupancy must not be charges; owners are responsible for physically maintaining LIHTC units in a manner suitable for occupancy.

Fees for Application Processing

Application fees may be charges to cover the actual cost of checking a prospective resident's income, credit history, and landlord references. The fee is limited to recove3ry of the actual out-of-pocket costs. No amount may be charged in excess of the average expected costs of checking applicant qualifications as the development.**

In Compliance

A unit is in compliance when the rent charged does not exceed the limitations.

Example: Provision of Optional Services

An LIHTC development provides hot meals twice a day for the convenience of its residents in a common dining facility. They charge a nominal fee to cover their costs, but do not include the cost in the rent charged for the apartments. Each unit in the property includes a fully functional kitchen.

In this case, a practical alternative exists for residents to obtain meals other than from the dining facility, and payment for the meals in the common dining facility is not required as a condition of occupancy. Thus, the cost of the meals is not included in gross rent for purposes of IRC §42(g)(2)(A) and 26 CFR Pt 1, §1.42-11(b).

Example: Fee for Late Payment of Rent

A resident pays the maximum rent of $525 for a one bedroom unit. The resident did not pay the rent timely and was charged a late fee of $35, as stated in the lease.

The $35 late fee is a penalty for failure to perform according to the lease agreement and, therefore, the fee is not included in the rent.

Out of Compliance

A unit is out of compliance ****if the rent charged exceeds the limit on a tax year basis or on a monthly basis. A unit is also considered out of compliance if an owner charges impermissible fees.****.

Example: Resident Income Rises Above Limit

A household was initially income qualified and moved into a unit on January 1, 2000. The maximum LIHTC gross rent is $500. At recertification, the owner increased the rent to the market rate of $1,000.

The unit is out of compliance, beginning on the date the rent was increased above the maximum of $500.

Correction Possibilities

A unit is back in compliance when the rent charged does not exceed the limit ****on a monthly basis****. An owner cannot avoid the disallowance of the LIHTC, or the issuance of an 8823, by rebating excess rent to the affected tenants.

Example: Overcharged Rent

The owner leased the minimum number or units to IRC §42 eligible residents during the third year of the credit period. However, the owner inadvertently overcharged rent to residents occupying 3 bedroom apartments. The error impacted 15 out of 75 units.

The unit is back in compliance ****on the first day of the owner's next tax year if the rent charged on a monthly basis does not exceed the limit**.**

Example: Overcharged Rent Impacted Minimum Set-Aside

The owner leased the rental units in a 100% LIHTC development to IRC §42 eligible residents by the end of the first year of the credit period. However, the owner overcharged rent for all the units and, as a result, failed to meet the minimum set-aside for the first year of the credit period.

The building does not qualify for LIHTC.

****Back In Compliance**

Once a unit is determined to be out of compliance with the rent limits, the unit ceases to ba a low-income unit for the remainder of the owner's tax year. A unit is back in compliance on the first day of the owner's next tax year if the rent charged on a monthly basis does not exceed the limit. An owner cannot avoid the disallowance of credits by rebating excess rents or fees to the affected tenants.**

Section 6.8 Development not Available to the General Public

This category is used to report properties that are not available to the general public. A residential rental unit is for use by the general public if the property conforms to the requirements of 26 CFR Pt 1, § 1.42-9.

Under 26 CFR Pt 1, 1.42-9(b), if a residential unit is provided only for a member of a social organization or provided by an employer for its employees, the unit is not for use by the general public and is not eligible for credit under IRC §42. A development does not fail to meet the general public use requirement solely due to occupancy restrictions or preferences that favor residents with special needs, who are members of a specified group under a federal or state program, or a policy that supports housing for a specified group, or who are involved in artistic or literary activities.

Any residential rental unit that is part of a hospital, nursing home, sanitarium, life care facility, retirement home providing significant services other than housing, dormitory, trailer park, or intermediate care facility for the mentally and physically disabled is not for use by the general public.

Fair Housing Act

LIHTC properties are also subject to Title VIII of the Civil Rights Act of 1968, which makes it unlawful to discriminate in any aspect relating to the sale, rental, or financing of dwellings because of race, color, religion, sex, or national origin. The Fair Housing Act of 1988 expanded coverage of Title VIII to include familial status and disabilities. Notifications of administrative and legal actions in regards to the Fair Housing Act are also reported to the IRS using Form 8823.

Iowa Civil Rights Act of 1965

LIHTC properties located in Iowa are also subject to Iowa Code Section 216, which makes it unlawful to discriminate in any aspect relating to the sale, rental, or financing of dwellings because of the race, color, creed, sex, sexual orientation, gender identity, religion, national origin, disability, or familial

status. Notifications of administrative and legal actions in regards to the Iowa Civil Rights Act are not reported to the IRS using Form 8823, but will be properly reported to the Iowa Civil Rights Commission, and may lead to enforcement actions up to and including debarment from future tax credit allocations for a period of up to five years.

In Compliance

Owners must rent their units in a manner consistent with the general public use requirements to be in compliance with IRC §42. Residential rental units must be for use by the general public, and all of the units in a development must be used on a non-transient basis.

Out of Compliance

The failure of LIHTC buildings to comply with the general public use requirements will result in the denial of low-income housing credits on a per-unit basis. A unit is out of compliance starting on the date of the event triggering the noncompliance. IFA will also consider whether the problem is systemic and whether owner has met the minimum set-aside under IRC §42(g)(1).

Example: LIHTC Units Restricted to Members of a Social Organization

The owner of an LIHTC building started renting only to members of a local fraternal organization in the third year of the compliance period. By the fifth year, all the residents in the building were members of the organization.

This building is in violation of the general public use requirements under 26 CFR Pt 1, § 1.42-9(b), which provides that a residential unit rented only to a member of a social organization is not for use by the general public and is not eligible for the credit under IRC §42. The noncompliance started on the date the first nonqualified resident moved into a unit in the third year of the credit period.

Example: Vacant Units not made ready in a timely fashion

IFA determined that some vacant LIHTC residential units were not suitable for occupancy for new residents when they conducted a physical inspection of the property. The owner explained that because of the high vacancy rate, there were a sufficient number of empty units suitable for occupancy. All vacant LIHTC units that are not suitable for occupancy are out of compliance, since they are not available for rental by the general public. The out of compliance date is a factual determination reflecting the earliest date that any of the noncompliant units was vacated.

Correction Possibilities

The owner is back in compliance with the general public use requirements when two conditions are met:

1. The owner demonstrates that marketing and rental practices are no longer in violation of the general public use rules.

2. All the units are made available to the general public.

Section 6.9 Violations of the Available Unit Rule Under Section 42(g)(2)(D)(ii)

****Effective July 31, 2008, owners of 100% low-income developments are no longer required to complete the annual tenant income recertifications referenced in Treas. Reg. 1.42 5(b)(1)(vi). Until further guidance is provided through administrative rulings or regulation, IFA will evaluate an owner's compliance with the Available Unit Rule as explained by IRS in the Guide for Completing Form 8823.**

Under IRC §142(d)(3)(A), as amended by the Housing Assistance Tax Act of 2008, owners are not required to complete annual income certifications if the building is part of a 100% low-income project. For purposes of applying the Available Unit Rule *only*, all households documented as initially income qualified households are treated as initially income-qualified as long as the owner-*demonstrates due diligence* when completing the initial certification.**

This category is used to report violations of the Next Available Unit Rule (NAUR); i.e., situations where an *initially* qualified household's income subsequently rises above 140 percent (170 percent in deep rent skewed developments) of the current income limit and a household that is not income qualified moves into the next available unit of comparable or smaller size.

The Next Available Unit Rule under IRC §42(g)(2)(D) states that if the income of the occupants of a low-income unit increases above 140 percent of the income limit (or 170 percent in deep rent skewed developments), the unit will continue to be treated as a low income unit if the occupants initially met the income limitation *and the unit continues to be rent restricted*. If the income of the occupants of the unit increases above 140 percent of the applicable income limitation, the unit will cease to qualify as a low-income unit if any residential rental unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a *new* resident whose income exceeds the income limitation. At a property where the owner has elected the deep rent skew option, noncompliance occurs when an available tax credit unit is rented to a household with income that is greater than 40% of the area median income after the owner discovers a current resident's income has increased above 170% of the applicable income limit.

The "next available unit" is any vacant unit, or any unit that is subsequently vacated in the same building, of a comparable or smaller size. 26 CFR Pt 1, §1.42-15(c) states that a unit is not available when the unit is no longer available for rent due to contractual arrangements that are binding under local law.

A comparable or smaller unit is defined in 26 CFR Pt 1, § 1.42-15(a) as "a residential unit in a low-income building that is comparably sized or smaller than an over-income unit or, for deep rent skewed projects described in IRC 42(d)(4)(B), any low-income unit. For purposes of determining whether a residential unit is comparably sized, a comparable unit must be measured by the same method used to determine qualified basis for the credit year in which the comparable unit became available." Since a comparable unit may need to be identified before the end of the year when the qualified basis is determined, an owner may consider a residential unit with similar square footage and amenities to be a comparable unit.

Key concepts of the Next Available Unit Rule include:

1. The Next Available Unit Rule is used to replace over-income households with new income-qualified households as available units are rented. Alternatively, over-income units may be returned to low-income status if the household's income decreases or the AMGI increases.

2. In a development containing more than one low-income building, the Next Available Unit Rule applies separately to each building.

3. Low-income units containing households whose income rises above 140% (or 170% for deep rent skewed projects) of the *current* income limit are still considered low income units as long as the rent remains restricted and available units of comparable or smaller size are rented to qualified low-income households.

4. For purposes of determining whether a residential unit is comparably sized, a comparable unit must be measured by the same method used to determine qualified basis for the credit year in which the comparable unit became available. An owner may consider a residential unit with similar square footage and amenities to be a comparable unit.

5. The owner of a low-income building must rent all comparable units that are available or that subsequently become available in the same building to qualified residents in order to continue treating the over-income unit as a low-income unit. Once the percentage of low-income units in a building (excluding the over-income units) equals the percentage of low-income units on which the credit is based, failure to maintain the over-income units as low-income units has no immediate significance.

6. If any comparable or smaller unit that is available or that subsequently becomes available is rented to a nonqualified resident, all over-income units within the same building for which the available unit is comparable or *larger* lose their status as low income units. See 26 CFR Pt 1, 1.42-15(f).

7. The Next Available Unit Rule should not be confused with the Vacant Unit Rule, which applies without regard to the income of existing residents.

Out of Compliance

Under 26 CFR Pt 1, §1.42-15(c), noncompliance occurs when a comparable or smaller unit than the over-income unit is rented to a nonqualified household and the current applicable fraction (excluding all over-income units from the numerator, but not the denominator) is less than the applicable fraction for which the credit is based. The date of a noncompliance event is the date the over-income household moves into the building, or the reservation of the unit, if earlier.

Example: Moving In Nonqualified Household When Over-Income Households Have Not Been Replaced

A development consists of one building with ten units of equal size. Units 1 through 8 are low-income units. Unit 9 is a market rate unit. Unit 10 is a vacant market rate unit. The applicable fraction for the credit is 80 percent. The current applicable fraction is 80 percent and the building is presently in compliance.

Units 6 and 7 were determined to be over-income. The rents for these two units remain rent restricted. The current applicable fraction remains at 80%. To determine whether a non-compliance event could potentially occur, the owner calculated the applicable fraction without the over-income households as part of the numerator. The applicable fraction is now 60 percent (6/10). To remain in compliance, Unit 10 must be rented to a qualified household to replace one of the over-income households.

A market rate household moved into Unit 10 on August 1, 2000. At the time of the move in, the current applicable fraction (excluding all of the over-income units) was 60 percent. The event triggered an Next Available Unit Rule violation. All the over-income units cease to be treated as low-income units. The date of noncompliance is August 1, 2000.

Example: Comparable Units

A mixed income building, with an applicable fraction of 85 percent, contains 85 tax credit units and 15 market rate units. Eleven of the low-income units are occupied by households with incomes that have increased above 140 percent of the income limit. The eleven over-income units consist of 4 three-bedroom, 5 two-bedroom, and 2 one-bedroom units. The next unit to be vacated is #99, a two-bedroom unit (not one of the eleven over-income units). The vacated unit is leased to a market rate resident.

The building is out of compliance. To comply with the Next Available Unit Rule, the unit should have been leased to an income eligible household. Because the unit was leased to an ineligible resident, all over-income units, for which #99 was a comparable or *larger*-sized unit, lose their status as low-income units. Thus, all 4 of the three-bedroom and all 5 of the two-bedroom units of the over-income units are out of compliance. The 2 one-bedroom units (which are smaller than the rented unit) are not out of compliance (See 26 CFR pt 1, §1.42-15(f)).

Other Non- Compliance Issues

Violations of the Next Available Unit Rule can also result in noncompliance with other IRC §42 requirements. Specifically, consideration should be given to the following:

1. Minimum Set-Aside Requirement – as violation of the NAUR may result in multiple over-income units losing the low-income status, the minimum set-aside requirement may not be met; i.e., the number of qualifying units falls below the minimum requirement.

2. 100 Percent LIHTC Properties – The owner of a 100 percent LIHTC property is not required to complete annual recertifications or to track when a resident's income has increased above 140 percent of the income limit. Should the owner mistakenly rent an available unit to an ineligible household ****such action reduces the low-income building's qualified basis to zero unless the owner can document which units are not over-income units.****

3. Annual Certification – the owner may have incorrectly reported compliance with the AUR as part of the annual certification as described in 26 CFR Pt 1, §1.42-5(c).

Correction Possibilities

Once the Available Unit Rule has been triggered, a building can return to its pre-violation credit amount by renting any combination of market rate units, over-income units, and out of compliance low-income units to qualified households until the applicable fraction upon which the pre-violation credit amount is based is restored. The applicable fraction can also be restored if:

1. The resident's income decreases to an amount below 140 percent of the income limit in place, or;

2. The AMGI increases to an amount, such that 140 percent of the income limit is more than the resident's income.

The date of correction is the date on which the last household that restores the applicable fraction moves into the building or on which the income of an existing household falls below the current income limit (including possible increases to the AMGI). Bringing a building back into compliance does not remove the adverse effects that may have occurred.

Section 6.10 Violation(s) of the Vacant Unit Rule Under Reg. 1.42-5(c)(1)(ix)

This category is used to report violations of the Vacant Unit Rule (VUR); i.e., situations where an owner failed to make reasonable attempts to rent that unit, or the next available unit of comparable or smaller size, before renting units to residents not having a qualifying income.

As part of the requirements for the annual certification, 26 CFR pt 1, §1.42-5(c)(1)(ix) requires the owner to certify, "If a low-income unit in the development became vacant during the year, that reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to residents having a qualifying income before any units in the development were or will be rented to residents not having a qualifying income."

Reasonable Attempts

As long as reasonable attempts are being made to rent to qualified low income households, vacant LIHTC units will continue to be included as qualified low-income units for purposes of determining the minimum set-aside (IRC §42(g)(1)) and calculating the applicable fraction (IRC §42(c)(1)(B)). What constitutes reasonable attempts to rent a vacant unit is based on facts and circumstances, and may differ from project to project depending on factors such as the size and location of the development, resident turnover rates, and market conditions. Also, the different advertising methods that are accessible to owners and prospective residents would affect what would be considered reasonable.

Available Low-Income Unit Defined

The definition of an available low-income unit for purposes of the Vacant Unit Rule is the same as used for the Next Available Unit Rule. 26 CFR Pt 1, §1.42-15(c) states that a unit is not available when the unit is no longer available for rent, due to contractual arrangements that are binding under local law.

Comparable Units

The definition of a comparable or smaller unit for purposes of the Vacant Unit Rule is the same as used for the Available Unit Rule; i.e., a residential unit that is comparably sized or smaller than the vacated unit. For deep rent skewed projects described in section 142(d)(4)(B), any low-income unit is considered a comparable unit. For purposes of determining whether a residential unit is comparably sized, a comparable unit must be measured by the same method used to determine qualified basis for the credit year in which the comparable unit became available. (See 26 CFR Pt 1, §1.42-15(a).) Since a comparable unit may need to be identified before the end of the year when the qualified basis is determined, an owner may consider a residential unit with similar square footage and amenities to be a comparable unit.

Out of Compliance

Noncompliance occurs when the owner does not make reasonable attempts to rent vacant low-income units and rents units to non-qualifying residents. If the Vacant Unit Rule is violated, all vacant units

previously occupied by qualified households lose their low-income status and are not considered qualified units. The date of noncompliance is the date the first low-income resident moved out of the now vacant units.

Example: Owner Stopped Making Reasonable Efforts to Rent Low-Income Housing Units

The owner of a mixed-use LIHTC project with 100 units stopped advertising efforts to attract low-income residents on January 15, 2004. 15 of the 25 market rate units are vacant and 25 of the 75 low-income units are vacant at the time IFA conducts a resident file review. The LIHTC units were vacated between September 25, 2003 and March 31, 2004.

The development is out of compliance effective September 25, 2003, when the first currently vacant low-income unit was vacated.

If it is determined that an owner is not making reasonable attempts to rent vacant low income units, the owner will need to provide IFA a list of all vacant low income units in the development. Under 26 CFR Pt 1, §1.42-5(b)(1)(v), owners are required to maintain records identifying vacant low-income units and information that shows, when, and to whom, the next available unit was rented. Failure to provide the needed information will result in a finding of noncompliance using form 8823 item 11f , Project failed to meet minimum set-aside requirement, because the owner has failed to establish that the minimum set-aside has been met.

Correction Possibilities

A development may return to its pre-violation status if a sufficient number of vacant units are rented to qualified low-income households.

Example: Owner Restored Applicable Fraction

The owner of a mixed-use LIHTC project with 100 units stopped advertising efforts to attract low-income residents on January 15, 2007. 15 of the 25 market rate units are vacant and 25 of the 75 low-income units are vacant. The LIHTC units were vacated between September 25, 2006, and March 31, 2007.

The development violated the Vacant Unit Rule on September 25, 2006, when the first currently vacant low-income unit was vacated. The owner resumed advertising efforts on June 18, 2007, and rented 13 former market rate units and 12 out of compliance low-income units between June 30, 2007, and November 18, 2007, to income-qualified residents. The building is restored to its pre-violation status when the last household, which restores the applicable fraction, moves into the building; i.e., November 18, 2007, when 75% of the units were restored to the status of low-income units.

Section 6.11 Owner Failed to Execute and Record Extended Use Agreement Within Time Prescribed

This category is used to report buildings for which an extended low-income housing commitment (extended use agreement) is not in effect; i.e., the extended use agreement is not executed, is not recorded, or fails to meet the requirements of IRC §42(h)(6). No credit is allowable for a building in a year unless an extended use agreement is in effect at the end of the year. See IRC §42(h)(6)(A). If it is

determined that an extended use agreement was not in effect at the beginning of the year, IRC §42(h)(6)(J) permits the owner to correct the problem within one year from the date of the determination.

When an owner submits a request for IFA to issue form 8609, a properly executed and recorded LURA is a required document submission.

Out of Compliance

The owner is out of compliance in the absence of a properly executed and recorded extended use agreement, and no credit is allowable if the extended use agreement is not in effect as of the end of a taxable year in the credit period. However, if the owner executes and records an extended use agreement within one year after the determination that an extended use agreement is not in effect, the noncompliance is corrected and the taxpayer can claim the low-income housing credit for past taxable years. If the noncompliance is not remedied within one year after the notification, the taxpayer loses the credit for past taxable years until the taxable year in which the extended use agreement is properly in effect.

Example: Owner did not Execute and Record Extended Use Agreement

The owner of a LIHTC project placed the buildings in service in February 1998 and submitted the documentation for final approval in June 1998. IFA issued the Form 8609 in September 1998, prior to receiving the executed extended use agreement from the owner. The owner claimed the credit for the 1998 tax year. IFA later determined that an extended use agreement was not in effect for the 1998 tax year (the first year of the credit period), issued a notice of noncompliance to the owner in February 1999, and submitted Form 8823 to the IRS in May 1999, reporting the absence of the extended use agreement. In December 2000, the owner and IFA executed the extended use agreement, and recorded it.

The date of noncompliance is December 31, 1998, when IFA determined that an extended use agreement was not in effect as of the end of the tax year. Since the owner failed to execute the extended use agreement within one year from the date of the notification, the owner will lose credits for 1998 and 1999, but can resume claiming the credits for 2000.

Correction Possibilities

The owner is back in compliance when the extended use agreement is executed and recorded within one year of the determination of noncompliance. If the extended use agreement is not in effect within one year of the determination that an extended use agreement was not in effect, the taxpayer loses low-income housing credits for past taxable years and cannot claim credit with respect to any building for which an extended use agreement is not in effect by the end of the applicable taxable year.

Section 6.12 Low Income Units Occupied by Non-Qualified Full Time Students

This category is used to report LIHTC units occupied by non-qualified full-time student households. A unit is *not* considered to be occupied by low-income individuals if all the occupants of such unit are students, no one of whom is entitled to file a joint return.

Defining "Student"

IRC §151(c)(4) defines, in part, a "student" as an individual, who during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins, is a full-time student at an educational organization described in IRC §170(b)(1)(A)(ii). 26 CFR Pt 1, §1.151-3(b) further provides that the five calendar months need not be consecutive.

The determination of student status as full or part-time should be based on the criteria used by the educational institution the student is attending.

An educational organization, as defined by IRC §170(b)(1)(A)(ii), is one that normally maintains a regular faculty and curriculum, and normally has an enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. The term "educational organization" includes elementary schools, junior and senior high schools, colleges, universities, and technical, trade and mechanical schools. It does not include on-the-job training courses.

Units Comprised Entirely of Full-Time Students

Units comprised of full-time students (no one of whom is entitled to file a joint return) do not qualify as low-income units. However, there are exceptions as outlined in IRC §42(i)(3)(D). This section provides that a unit shall not fail to be treated as a low income unit merely because it is occupied:

1. by an individual who is:

   i. a student receiving assistance under Title IV of the Social Security Act, or

   ii. a student enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State or local laws, or

   iii. a student who was ****previously under the care and placement responsibility of the State agency responsible for administering a plan under part B or part E of title IV of the Social Security Act (Foster Care and Adoption Assistance)****; or

2. entirely by full-time students if such students are:

   i. single parents with children all of whom are students and such parents and children are not dependents (as defined in IRC §152) of another individual other than a parent of such children (revised under Mortgage Forgiveness Debt Relief Act of 2007), or

   ii. married and file a joint return.

Out of Compliance

A unit is out of compliance when (1) it is occupied entirely by full-time students at qualifying educational organizations for five or more months during a calendar year in which the taxable year of the taxpayer begins, or (2) it is occupied entirely by full-time students no one of which meets one of the exceptions identified in IRC §42 (i)(3)(D). The out of compliance date is the first day of the fifth month during the calendar year that the full-time student attended a qualifying educational organization.

Example: Continuing Student Status

An otherwise qualifying low-income individual occupies a unit in June. She attended a qualifying educational organization for two months during the calendar year prior to the date she occupied the unit. From September through December of the calendar year she again attends a qualifying educational organization.

The unit is out of compliance on November 1, the first day of the fifth month she attended a qualifying educational organization during the calendar year.

****A unit is also considered out of compliance if the owner fails to verify the household's student status at the time of move-in, or an annual student status verification was performed late *and after notification of an IFA compliance review.*****

Correction Possibilities

The unit is back in compliance when it is no longer occupied entirely by full-time students or the resident qualifies under one of the exceptions under IRC §42(i)(3)(D).

Section 6.13 Owner Did Not Properly Calculate Utility Allowance

This category is used to report noncompliance with the utility allowance requirements outlined in 26 CFR Pt 1, §1.42-10. An allowance for the cost of any utilities, other than telephone, cable ****television, or Internet****, paid directly by the resident(s) is included in the computation of gross rent under IRC §42(g)(2)(B). A separate estimate is computed for each utility and different methods can be used to compute the individual utility allowances. The utility allowance is computed on a building-by-building basis. The maximum rent that may be paid by the resident must be reduced by utility allowance(s)**** obtained in the following manner:**

1. **If a building receives assistance from the Rural Housing Service (RHS-assisted building) then the utility allowance is determined using the method prescribed b the Rural Housing Service (RHS) for the building, regardless of whether the building or its tenants also receive other state or federal assistance.**

2. **If any tenant in a building receives RHS rental assistance payments (RHS tenant assistance), the applicable utility allowance for all rent-restricted units is the applicable RHS utility allowance, including any units occupied by residents receiving rental assistance payments from the Department of Housing and Urban Development (HUD)**

3. **If neither the building nor any resident in the building receives RHS housing assistance, and the building's rents and utility allowances are reviewed by HUD (or HUD's authorized representative) on an annual basis (HUD-regulated building), then the applicable HUD utility allowance is the utility allowance for all rent-restricted units in the building.**

4. **If a building is neither an RHS-assisted nor HUD-regulated, and no tenant receives RHS assistance, the applicable utility allowance for any rent-restrited unt occupied by tenants receiving HUD rental assistance payments (HUD tenant assistance) is the applicable Public Housing Authority (PHA) utility allowance established for the Section 8 Existing Housing Program.**

5. **If neither the building nor tenants ae subject to the rules described above, then the public housing authority (PHA) allowance is used. However, is an estimate is obtained for any unit in the building, that estimate is used as the utility allowance for all similar units in the building. Estimates may be obtained from a local utility company or a state or local housing credit agency, or calculated using HUD's Utility Schedule Model**.**

Refer to Treasury Regulation §1.42-10 for additional details.

Out of Compliance

Low-income housing developments are considered out of compliance when:

1. ****the appropriate utility allowance is not used,**
2. **the utility allowance is not properly calculated,**
3. **rents are not reduced for a utility allowance when utilities are paid directly by the resident to the utility provider,**
4. **the owner did not review the basis on which the utility allowance is established at least once during the calendar year,**
5. **the owner failed to update rents for a revised utility allowance after the 90 day period, or**
6. **the owner failed to maintain adequate documentation regarding the computation of utility allowances, without proof of the allowance and how it was estimated, there is no way to correctly compute the rent.****

Correction Possibilities

A unit is considered back in compliance when the rent charged is reduced to correctly reflect the utility allowance. The date of correction is date that the rents correctly reflect the utility allowance.

Example:

The maximum gross rent is $500. Beginning on March 1, 2003, the owner charged $450 rent and a $75 utility allowance; the total rent is $525. The rent is $25 over the ceiling. The error was discovered during IFA's review on April 13, 2004.

The owner immediately reduces the rent charged to $425 for rents due beginning on May 1, 2004. The units are back in compliance ****effective the first day of the owner's subsequent tax year****.

Section 6.14 Owner has Failed to Respond to Agency Requests for Monitoring Reviews

This category is used to report owners of low-income properties that failed to respond to agency requests for monitoring reviews. Under the inspection provision, 26 CFR Pt 1, §1.42-5, IFA must have the right to perform an on-site inspection of any low-income housing development at least through the end of the 15-year compliance period for the buildings in the development. IFA (or its representatives) must conduct on-site inspections, inspect units, and review income (re)certifications, supporting documentation, and rent records for the residents in those units, and otherwise meet the provisions listed in 26 CFR Pt 1, §1.42-5(a)(2)(i)(A), (B), (C), and (D).

Out of Compliance

An owner is out of compliance when requests for site visits or resident file inspections are denied or unreasonably postponed. IFA will accommodate the owner's valid needs to reschedule a site visit or resident file review, but cannot allow owners to delay or circumvent compliance monitoring reviews. The date of noncompliance is the earlier of the date (1) the owner refused to allow a site visit or access to residents' records or (2) first postponed the site visit or access to resident's records.

Example: Repetitive Delays

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

The owner's repeated requests for postponements are not reasonable. The property is out of compliance on May 2, 2004. IFA may remove a LIHTC property from the program if the owner fails to respond to repeated notices for monitoring reviews.

Correction Possibilities

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

Example: Site Visit Performed Late

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

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

Section 6.15 Low-Income Units Used on a Transient Basis

This category is used to report noncompliance when units have been used on a transient basis. Generally, the length of the initial lease agreement determines whether use is transient. A unit is non-transient if the initial lease term is six months or more.

There are two exceptions to the general rule that the initial lease term must be 6 months or longer:

1) Buildings Used for Transitional Housing for the Homeless Under IRC §42(i)(3)(B)(iii)

Certain transitional housing for the homeless may be considered used other than on a transient basis provided the residential rental unit contains sleeping accommodations and kitchen and bathroom facilities and is located in a building which:

a. is used exclusively to facilitate the transition of homeless individuals to independent living within 24 months; and

b. a government entity or qualified nonprofit organization provided such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing.

2) Single-Room Occupancy (SRO) Units Under IRC §42(i)(3)(B)(iv)

SRO units which permit the sharing of kitchen, bathroom, and dining facilities, shall not be treated as used on a transient basis merely because it is rented on a month-by-month basis.

A unit is in compliance with this requirement if the *initial* lease term *for each resident* is at least six months. The presence of a six month (or longer) initial lease is the customary evidence used to document the owner and resident's intent to enter into a non-transient rental agreement.

Example: Resident Vacates Before End of the Lease

A couple vacates their unit before fulfilling their initial six-month lease because the husband accepted a job in another state. Because the couple was subject to a valid six-month lease and vacated the unit for a valid reason, the low-income unit was not used on a transient basis.

Out of Compliance

Other than the two exceptions for certain transitional housing and single room occupancy units, a unit is out of compliance if the unit is rented on a transient basis. The out of compliance date is the effective date of the initial resident income certification. A unit is out of compliance if:

1. No lease is on file for the resident; or

2. The resident's initial lease term is not at least six months.

Example: Month-to-Month Initial Leases

IFA discovers that an owner of a 100 unit LIHTC property (not a SRO or transitional housing) established a policy of signing month-to-month leases at the time of initial occupancy. At the time of the review, 84 units are occupied by households with initial month-to-month leases. All 84 units are out of compliance based on the effective date of the initial resident income certification.

Correction Possibilities

Noncompliance is corrected when a lease with a term of at least six months is executed. The correction date is the effective date of the new lease.

Section 6.16 Project is No Longer in Compliance Nor Participating in the Program

This category is used to notify the Internal Revenue Service that a building is entirely out of compliance and is no longer participating in the program.

1. The determination that an LIHTC building is entirely out of compliance and will not be in compliance at any time in the future is a recapture event under IRC §42(j).

2. The filing of a Form 8823 for this category also puts the IRS on notice that IFA is no longer performing monitoring activities with respect to the property.

3. The building is no longer considered a qualified low-income building under IRC §42(c)(2)(A). No credit is allowable in the remaining years of the credit period, even if the building subsequently complies with all the requirements of IRC §42.

Out of Compliance

IFA may find that a building is no longer in compliance with the LIHTC program requirements, and thus is no longer participating in the program. The following discussion provides a broad overview of issues that may justify terminating an owner's participation in the program. It is not an exhaustive list; IFA will consider each case individually based on the specific facts and circumstances.

Egregious Noncompliance with Program Requirements

Egregious noncompliance is conspicuous, flagrant, and systemic in nature and includes the failure to make reasonable attempts to comply with the requirements of the program, or careless, reckless, or intentional disregard of program requirements.

The Owner has Voluntarily and Permanently Withdrawn From the Program and is No Longer Claiming Credits

An owner, during the 15-year compliance period, may voluntarily withdraw a property from the low-income housing credit program, but retain ownership. The building still exists physically, but is not being operated as an LIHTC property. For example, the owner may have converted the entire building to a use other than as an LIHTC housing project or 100% of the units may be vacant (and the owner has no intention of renting any of the units in the future).

Failure to Respond to Repeated Requests for Reports, Certifications, Reviews, or Other Essential Communication

IFA may remove a LIHTC property from the program if the owner fails to respond to *repeated* notices for monitoring reviews, or annual reports and owner certifications are not submitted, *and* Forms 8823 identifying the noncompliance were previously submitted to the IRS.

1. Under the inspection provisions of 26 CFR Pt 1, §1.42-5(d)(1), IFA must have the right to perform an on-site inspection of any low-income housing project at least through the end of the compliance period of the buildings in the development.

2. Under the certification provisions of 26 CFR Pt 1, §1.42-5(c), IFA may remove a property from the program if annual reports and owner certifications are not submitted.

The date of noncompliance is the first day of *the first year* that the owner failed to provide annual reports or certifications or did not respond to a request for the physical inspection of the property.

Building No Longer Participating in the Low-Income Housing Program

When a building is no longer in compliance with nor participating in the Low-Income Housing Credit Program, IFA will address two issues, as discussed below.

1) Extended Low-Income Housing Commitment

IRC §42(h)(6)(D) requires a property owner to commit to the low-income housing program for a minimum of 30 years. The commitment is documented as a restrictive covenant against the property and is recorded against the property as a deed restriction governed by state law. Commonly know as Land Use Restriction Agreement or LURA, these covenants are agreements *between the owner and IFA.* Consideration will be given to enforcing the agreement through a civil court proceeding.

However, when a building or development is removed from the program, IFA will have discretionary authority to release the extended use agreement and remove the deed restriction.

2) Protection of Residents' Rights

Under IRC §42(h)(6)(E)(ii), there are two requirements that must be met when an extended use agreement is terminated:

1. No eviction or termination of tenancy (other than for good cause) of an existing resident of any low-income unit before the close of the 3-year period following the termination of the extended use agreement; and

2. No increase in the gross rent of any unit occupied by an existing resident before the close of the 3-year period following the termination of the extended use agreement, not otherwise permitted under IRC §42. In other words, units occupied by income-qualified residents continue to be rent restricted for three years, or until the residents vacate the units.

Section 6.17 Other Noncompliance Qualified Nonprofit Organization Failed to Materially Participate

IRC §42(h)(5) requires that each state set aside at least 10% of its state housing credit ceiling for allocations to developments in which qualified nonprofit organizations own an interest, and in whose development and operation the qualified nonprofit organizations materially participate. "Qualified nonprofit organization" is defined as an IRC §501(c)(3) or 501(c)(4) organization exempt from tax under IRC §501(a) that is determined by IFA as not being affiliated with or controlled by a for-profit organization, and one whose exempt purposes includes the fostering of low-income housing.

For purposes of this allocation, a nonprofit organization must (i) have an ownership interest in the low-income housing development throughout the 15-year compliance period; and (ii) materially participate in the *development* and *operation* of the development. Whether a nonprofit sponsor materially participates will depend on the application of IRC §469(h) to the facts and circumstances of a given development.

Under IRC §469(h)(1), the nonprofit must participate on a *regular, continuous,* and *substantial* basis in the development and operation of the development. Although this standard is vague, the legislative history suggests the following guidelines in defining material participation in a business activity:

1. Material participation is most likely to be established in an activity that constitutes the principal business/activity of the taxpayer,

2. Involvement in the actual operations of the activity should occur. That is, the services provided must be integral to the operations of the activity. Simply consenting to someone else's decisions or periodic consultation with respect to general management decisions is not sufficient.

3. Participation must be maintained throughout the year. Periodic consultation is not sufficient.

4. Regular on-site presence at operations is indicative of material participation.

5. Providing services as an independent contractor is not sufficient.

Accordingly, a nonprofit entity will be considered to materially participate where it is regularly, continuously, and substantially involved in providing services integral to the development and operations of a development.

Pursuant to IRC §42(h)(5)(D), the ownership and material participation test can be met by the organization if it owns stock in a qualified corporation that satisfies the ownership and material participation test. A qualified corporation must be a corporation that is 100 percent owned at all times during its existence by one or more qualified nonprofit organizations.

In Compliance

For purposes of reviewing properties for compliance with the requirements of IRC §42(h)(5) during the 15-year compliance period, IFA's responsibility is limited to consideration of whether the qualified nonprofit entity is *materially participating* in the *operation* of the development; i.e., both management decision making and the day-to-day operations. In order to materially participate, the qualified nonprofit must be engaged in the activities on a basis that is regular, continuous, and substantial.

Out of Compliance

A taxpayer is out of compliance if:

1. The qualified nonprofit organization does not materially participate (as determined under IRC §469(h)(1)), or

2. The qualified nonprofit organization does not materially participate in both the *development and operation* of the project; i.e., both management decisions and day-to-day activities.

A property is out of compliance for any taxable year where the entity does not participate on a basis that is regular, continuous and substantial within the meaning of IRC §469(h)(1) for that year.

Noncompliance can be identified by interviewing the qualified nonprofit organization's management representatives and observation while at the property site.

Should IFA become aware of noncompliance with other requirements imposed under IRC §42(h)(5), Form 8823 will be filed noting the issue.

Areas of noncompliance may include:

1. The qualified nonprofit organization loses its exempt status. As part of the preparation for a review of an LIHTC property owned by a qualified nonprofit organization under IRC §42(h)(5), IFA will confirm that the nonprofit is a qualified tax-exempt organization. IFA may request documentation of tax-exempt status.

2. The qualified nonprofit organization does not have an ownership interest in the low-income housing development.

Back in Compliance

LIHTC developments are considered back in compliance in a taxable year when a qualified nonprofit organization owns an interest in the development and satisfies the material participation test set forth in IRC §469(h)(1) for that taxable year.

Section 6.18 Other Noncompliance Issues

This category will be used to report noncompliance only when the noncompliance cannot be associated with any other category. The discussion presented here is not intended to be all inclusive.

Nonreportable Compliance Issues

Nonperformance of Extended Use Agreement

Under IRC §42(h)(6), taxpayers receiving credits must execute an extended use agreement (LURA), which is recorded as a restrictive covenant against the property, as provided by state law. The extended use period ends on the later of the date specified in the agreement or 15 years after the close of the compliance period. At a minimum, the property must be maintained as low-income housing property for 30 years beginning with the first day of the compliance period.

In addition, IFA may add additional terms or restrictions to reflect the terms of the credit allocation. Under IRC §42(m), IFA is required to develop qualified allocation plans with criteria for determining housing needs in Iowa and selecting appropriate developments. These terms and conditions will be reflected in the LURA; e.g., the targeting of special needs groups, income restrictions, rent skewing, housing types, etc. IFA will attempt to enforce the agreement. Nonperformance of the terms of the extended use agreement will *not* be reported to the IRS on form 8823, but may be cause for civil action for specific performance, and/or a determination that all parties involved are ineligible for future participation in Iowa's LIHTC program for a period of up to five (5) years..

Example: Special Set-Asides Not Reported

The owner elected the 40/60 minimum set-aside on Form 8609. IFA required 20/50 targeting, as evidenced in the LURA. The maximum 50% gross rent is $400, but the maximum 60% gross rent is $500. The owner charges $450 rent and a $50 utility

allowance, for a total of $500. The rent charged is above the limit agreed upon in the LURA, but equals the rent limit for the 60 percent minimum set aside election.

The owner has violated the state's requirements. However, according to the imputed income limitation applicable to the unit, the rent is in compliance within federal regulations. IFA will *not* file a Form 8823, but may seek to enforce the LURA by other means.

Example: Elected Minimum Set-Aside Inconsistent with Extended Use Agreement

An owner, at the time of application and subsequent submission of final cost certifications when the LIHTC development was completed, represented to the state agency that the 20/50 minimum set-aside would be elected. The 20/50 minimum set-aside is also identified in the extended use agreement. When making the election on Form 8609 for IRS purposes, the taxpayer selected the 40/60 set-aside.

The taxpayer is in compliance with the requirements of IRC §42. Noncompliance with the terms of the extended use agreement is *not* reportable to the IRS on Form 8823, however, IFA may seek to enforce the LURA by other means.

Chapter 7 Post Year-15 Monitoring Procedures

Section 7.1 Introduction

The following Post Year-15 Monitoring Procedures will apply to Low Income Housing Tax Credit (LIHTC) developments that have completed the initial 15-year Compliance Period and have an Extended Low-Income Housing Commitment defined in the development's Land Use Restriction Agreement (LURA).

These procedures will also apply to LIHTC developments that were financed with tax-exempt bonds, provided the bonds are no longer outstanding and the bond Qualified Project Period has expired.

These procedures address many changes in the compliance monitoring procedures previously discussed for the initial 15-year compliance period. Any procedures not addressed below will remain the same as previously discussed.

Owners and management agents should carefully track when a development, and in some cases certain buildings within a development, transition from the Compliance Period to the Extended Use Period. Premature implementation of the Post Year-15 compliance and monitoring guidelines may result in noncompliance with IRC Section 42 for which IFA will be required to notify the IRS using form 8823.

These procedures may be reviewed and modified periodically to facilitate better administration of the low-income housing commitment of the LIHTC program. IFA may waive or adjust any procedures, on a case-by-case basis, upon owner's written request and demonstration of good cause shown to address unforeseen circumstances.

After the initial 15-year Compliance Period has expired, there may be no tax impact in the event of noncompliance. Therefore, filing IRS form 8823 to report noncompliance is no longer an effective consequence. IFA has modified the IRS form 8823 to serve as a reporting tool reflecting issues of noncompliance with the development's LURA. This notice, ***Tax Credit Program State Notice of Noncompliance With The Land Use Restrictive Agreement (LURA)-Extended Use Period,*** will be issued only after the 90 day correction period and the development has not taken effective measures to cure all observed LURA noncompliance items.

Section 7.2 Initial Income Certification and Recertification Process.

- The initial Tenant Income Certification with appropriate verifications (as previously discussed) will be completed <u>only</u> at the time of initial occupancy.
- The household must be under a lease agreement for an initial term of not less than 6 months.
- Annual recertification, with appropriate verifications, will not be required for existing households after year 15 of the compliance period for LIHTC developments and bond developments where bonds are no longer outstanding and the development has satisfied the Qualified Project Period.

- Developments financed with other funding sources, such as HOME or RD, may continue be subject to the rules of their respective funding source beyond the LIHTC 15 year Compliance Period. Check with an IFA Compliance Officer is you are unsure of the current status of your development in regards to other funding sources.

Section 7.3 Annual Reports.

Owners will continue to submit their annual compliance reports through the IFA Compliance-On-Line system. Owners will report all data for new households and complete all Owner Certifications. For previously qualified households, owners will not need to include recertification dates or income data.

Developments financed with both LIHTC and tax-exempt bonds may have additional reporting requirements. Owners with bond regulatory agreements that require recertification of bond units must continue to recertify those units and demonstrate compliance with all federal bond set-aside requirements, including, but not limited to, compliance with the Next Available Unit Rule and the restrictions of Full-Time Student households, until the bonds are no longer outstanding and the development has completed the Qualified Project Period.

Developments financed with other funding sources, such as HOME or RD, may continue be subject to the rules of their respective funding source beyond the LIHTC 15 year Compliance Period. Check with an IFA Compliance Officer is you are unsure of the current status of your development in regards to other funding sources.

Section 7.4 Household Transfers & Next Available Unit

- Households may change units, including moving to a unit in a different building within the development, without the submission of a new household income qualification. Owners should indicate all household transfers on the Annual Report.
- Developments with bond regulatory agreements must continue to recertify households that transfer from one unit to another if that unit is part of the bond set-aside. Developments must continue to demonstrate compliance with the Next Available Unit Rule until the bonds are no longer outstanding and the development has completed the Qualified Project Period.
- Interpretation of the Next Available Unit Rule will no longer pertain to “comparable or smaller size”, and will apply on a unit basis only, allowing one for one unit replacement to maintain the development’s applicable fraction.

Section 7.5 Student Status.

Student status, as defined by IRC Section 42, will not apply. Developments financed with other funding sources, such as HOME or RD, may continue be subject to the rules of their respective funding source beyond the LIHTC 15 year Compliance Period. Check with an IFA Compliance Officer is you are unsure of the current status of your development in regards to other funding sources.

Section 7.6 Special Needs Set-Asides.

No changes are proposed. Owners may submit a written request to the IFA Director of Compliance for changes to Special Needs Set-Asides in cases where they can demonstrate demographic changes have caused significant vacancy and/or turnover issues and are creating a financial hardship affecting the continued viability of the property.

Section 7.7 Low-Income Unit Set-Asides.

- No changes are proposed to Low-Income Units Set-Asides. The original income restrictions set forth in the development's LURA will remain in effect through the term of the LURA.
- The building's applicable fraction will be determined by the unit fraction only.
- For properties with extreme hardship cases, Owner may request a waiver or changes that will improve financial feasibility issues of the property. Waiver requests should be submitted to the IFA Director of Compliance and will be reviewed by a team at IFA on a case-by-case basis.
- Waivers may not be applicable for developments that have other funding sources such as HOME, Rural Development, and/or HUD. IFA recommends the owner contact representatives of other funding sources for a determination prior to submission of a waiver request to IFA.

Section 7.8 Record Retention.

Beginning in year sixteen, Owners must maintain a resident file for the entire term of residency plus one year after the household vacates the unit. Check with an IFA Compliance Officer if you have other funding sources and program rules that may still in effect.

Section 7.9 Physical Inspections & File Reviews.

Physical inspections and file reviews will be performed by IFA or its authorized representative at least once every 5 years. Please note that IFA may place a development on a more frequent inspection cycle if observed violations are numerous or severe in nature at the sole discretion of IFA.

- Physical Inspection – a minimum of 3 units chosen at random or a maximum of 20% of the low income units, not to exceed 15 units in any development. Observation of systemic or chronic noncompliance may trigger additional unit inspections.
- File Review - a minimum of 3 units or a maximum of 20% of the low income units, not to exceed 15 units in any development. Files need no longer be tied to inspected units and may be chosen from low-income qualified units at random. Observation of systemic or chronic noncompliance may trigger additional file reviews.

IFA will randomly select which low-income units and resident records are to be inspected and reviewed by IFA. IFA will provide an owner 30 day advance written notice that an inspection of the building and low-income units or resident record review will occur so that the owner may notify residents of the inspection or assemble resident records for review.

Developments financed with other funding sources, such as HOME or RD, may continue be subject to the rules of their respective funding source beyond the LIHTC 15 year Compliance Period. Check with an IFA Compliance Officer is you are unsure of the current status of your development in regards to other funding sources.

Section 7.10 Noncompliance.

The current correction period process (90 days from date of owner notification from IFA) will be used; however IFA will issue the ***Tax Credit Program State Notice of Noncompliance With The Land Use Restrictive Agreement (LURA)-Extended Use Period*** to Owners for uncorrected issues. For systemic or chronic noncompliance, temporary suspension and/or debarment procedures may be implemented.

Section 7.11 Qualified Contract Process.

The Omnibus Budget Reconciliation Act of 1989 required that all properties receiving an allocation of Housing Credits after January 1, 1990 be subject to an "extended use period" that lengthened the period of time that LIHTC developments are required to maintain affordability from 15 to 30 years. In an effort to ease concerns of program participants about the economic viability of maintaining affordability without additional subsidy, the 1989 Act also provided an option for owners to exit the program at the end of the initial 15 year compliance period by requesting the state allocation agencies assist in finding a purchaser, willing to continue the affordability restrictions, at a "Qualified Contract Price" (QCP).

Even though the 1989 Act provided owners with an opt-out provision in year 15, many developers in Iowa, as well as across the country, waived their right to an early opt-out in exchange for additional points in the scoring and allocation process. The policy below will apply to those properties that are eligible for opt-out at some point prior to the 29th year of use.

Owners are encouraged to review their copies of applications submitted to IFA when applying for an allocation of credits, as well as the deed restrictions (LURA), to determine if and when they are eligible to pursue the opt-out provision. If eligible for early opt-out, owners may request, in writing, that IFA find a buyer for the low-income portion of the property. If IFA is unable to find a buyer pursuant to a Qualified Contract, the property may be converted to market rate, provided the owner has encumbered no other use restrictions, (i.e.; subordinate loans, HUD Use Agreements, etc.).

Owners must notify IFA of their desire to sell the property using the process outlined below. Once complete and proper notice has been received, IFA will have one year to find a buyer for the development at a pre-determined price, not to exceed the QCP. The qualified purchaser may be a nonprofit or for-profit entity that agrees to maintain the affordable housing units and fulfill all requirements of the LURA. The period for finding a buyer is the one year period beginning on the due date of the QCP package that the taxpayer submits along with their written request to the housing credit agency (but no sooner than the beginning of the last year of the initial compliance period.) For developments which consist of more than one building (as evidenced in the development's 8609(s)) **all buildings** must be in last year of their initial compliance period or after in order to request the Qualified Contract.

The development and owner should be in compliance with all program requirements to be eligible to apply for the opt-out provision. The Qualified Contract may be suspended or terminated due to any mortgage defaults or encumbrances on the property or IRS audit or investigation that may adversely affect the sale of the property.

Owners who elect to exercise this option must complete the following information and provide all required due diligence documentation listed therein.

1. Qualified Contract Notification Letter (Required Document Provided by IFA)

Wherein the owner acknowledges that information submitted may be shared with prospective purchasers, real estate brokers, and staff and agents of IFA, and that data provided may be reasonably posted on IFA's website for purposes of marketing the development.

The owner must agree to work with and cooperate with IFA in efforts to market the property. This may include providing copies of rent rolls, income certifications, repair and maintenance records, operating expenses, and other due diligence documents, as well as allowing access to the property for inspection by IFA, its agents, and prospective buyers, upon proper notice and request. Prior to sharing any information with a prospective purchaser, the owner may require that the prospective purchaser enter into a commercially reasonable form of nondisclosure agreement.

The owner acknowledges and certifies in the notification letter that it has conducted due diligence review of the calculation of the Qualified Contract Price and is solely responsible for documents and information provided to IFA.

The owner agrees to indemnify, defend and hold IFA harmless with respect to IFA's use of the development information in pursuit of a Qualified Contract.

The owner understands that if IFA presents a prospective purchaser willing to make an offer to purchase the property for an amount equal to or greater than the Qualified Contract Price, the owner must agree to enter into a commercially reasonable form of earnest money agreement or other contract for sale of the property that will allow the prospective purchaser a sufficient period of time to undertake additional, usual and customary due diligence prior to closing.

2. Calculation of Qualified Contract Price Form (Required Excel Workbook)

The workbook contains the *Calculation of Qualified Contract Price* worksheet as well as worksheets A through E and instructions for the use of each. This workbook must be accompanied by a signed letter, or an examination report, from a certified public accountant, stating the name of the development and that they are an independent CPA. The letter must further state that they have completed, or examined, the calculation of QCP in accordance with 26 CRF Part 1, Section 1.42-18 and the AICPA Statements on Standards for Attestation Engagements. The letter must also state the determined QCP.

> <u>The completed workbook document and CPA letter or examination report must be submitted to IFA electronically when you submit your other documentation to IFA.</u> Please rename the document with the Project number and Project name for ease of identification.

3. Attachment for Qualified Contract Notification Letter and Excel Workbook

a. *Property narrative* - A thorough narrative description of the development including all amenities within the units as well as common areas, and proximity to schools, business districts, shopping, mass transportation, highways sufficient for familiarizing prospective purchasers with the property.

b. *A description of all income, rental or other restrictions* applicable to the operation of the property.

c. *Property photographs* – A detailed set of digital and hard copy photographs for use on the IFA website, including the interior and exterior of representative apartment units, buildings and property grounds. Photographs must be taken within 6 months.

d. *Copies of the most recent 12 months operating statements* for the property which will fairly to apprise a potential purchaser of the property's operating expenses, debt service, gross receipts, and net cash flow and debt service coverage ratio.

e. *Copy of lease(s)* if any portions of the land or improvements are leased (not the normal LIHTC tenant leases but other types of leases such as the land being leased or commercial property being leased, etc.).

f. *Current rent roll* documenting unit number, name of head of household, move in date, security deposit held in trust, current rental charge, amount delinquent, and move out date for current vacant units

g. *Copy of the partnership agreement or other legal documentation* granting any form of preference for purchasing the development (for example, a right of first refusal granted to a nonprofit partner, or tenants), and provide a waiver of that right if it is to be waived. If it is not waived, please provide further information.

h. *First Years 8609's showing Part II completed.*

i. *Payment of the non-refundable processing fee* to be submitted at the time the Qualified Contract Notification Letter.

4. Non-Refundable Processing Fee. This fee is for processing a Qualified Contract request. The fee must be submitted at the time the Qualified Contract Notification Letter is presented to IFA, and is non-refundable.

The processing fee is determined based upon the number of units in the development to include both market rate units and rent restricted units.

24 units or less	$ 500
25 to 74 units	$ 1,000
75 to 149 units	$ 1,500
150 to 199 units	$ 2,000
200 or more units	$ 2,500

Qualified Contract packets will be accepted and processed by IFA in March and October of each calendar year. Packets received by IFA prior to March 31st or October 31st deadlines will be reviewed by IFA within 30 days of the deadline.

All documents and fees set forth above must be addressed or delivered to:

Iowa Finance Authority
ATTN: Director of Compliance
2015 Grand Avenue
Des Moines, IA 50312

5. IFA Procedure

Upon receipt of the owner's request to exercise their option year (Qualified Contract Notification Letter, Calculation of Qualified Contract Price form with worksheets, Fee and all required documentation), IFA staff may do any or all of the following:

a. Review the owner's packet of due diligence materials and agree on an appropriate QCP. This will require IFA staff and the owner to work closely together to ensure all required information has been submitted and a QCP has been set. The one-year period begins once this step is complete. IFA will review the owner's request package within 30 business days of deadline set for submission of QCP packages. Upon completion of this review, should the request package be determined to be complete, it will be considered to have been complete on the date of the submission deadline and that date will start the one year period. Upon completion of the review, should the package be determined to be incomplete or lacking in required submissions, IFA will provide a written notice of deficiency to the owner. The one year period will begin on the day the owner cures the noted deficiencies.

b. Post the property information on IFA's website.

c. Send the property information to the Federal Home Loan Bank (FHLB) and ask them to immediately post the information on their website.

d. Prepare an informational flyer and send to a pre-established mailing list. This list will include current owners of Tax Credit Developments; contacts at large; management companies; other public funding agencies in the state; local, state and nation-wide nonprofit and for-profit Owners interested in preserving affordable housing; and tax credit investor contacts.

e. Present information on the development(s) to preservation groups at stakeholder meetings IFA attends.

f. Act as a conduit for all requests of prospective purchasers by responding to requests for additional information from the Owner and forwarding that information upon receipt.

For more information on this process, contact the Director of Compliance. The required Qualified Contract forms are located on the IFA website at www.iowafinanceauthority.gov.

6. General Information

a. IFA shall be under no obligation to undertake an investigation of the accuracy of the information submitted for Qualified Contract. IFA's review shall not constitute a warranty of the accuracy of the information, nor of the quality or marketability of the housing to be purchased, constructed, or rehabilitated pursuant to IRC §42. Developers, potential investors and interested parties should undertake their own independent evaluation of the feasibility, suitability and risk of the development. If any information submitted by building owners to IFA is later found to be incorrect in any material respect, it is the responsibility of the building owner to inform IFA and to request a reexamination of the information. IFA is not, and is not acting in the capacity of, a real estate agent or real estate broker. IFA's role is limited to implementation of IRC §42 requirements and facilitating the presentation of a Qualified Contract, as defined in the code. Interested parties should obtain advice from independent sources, including consultation with knowledgeable tax professionals and legal counsel.

b. IFA will market the property in good faith and will continue such efforts until the property is sold or the one year period has expired. Lack of cooperation by the owner in the marketing of the property will cause the process to cease, and the owner will be required to comply with the full term of the LURA. Lack of cooperation shall include, but shall not be limited to: the owner's failure to respond to any request for additional documentation, delay or refusal by the owner to allow inspections of the property by IFA or potential purchasers, or the owner's intentional misstatement of material facts. The owner is not required to accept any purchase offers presented through IFA; however, if the owner rejects an offer at or above the QCP, the development will remain subject to the terms specified in the LURA through the remaining term. IFA may reject purchasers who have failed to demonstrate proficiency in the LIHTC program or any other housing program administered by IFA.

c. If IFA is unable to locate a buyer pursuant to the Qualified Contract before the expiration of the one year period, the development may be released from the LURA restrictions; however, the property will continue to be subject to the requirements of IRC §42(h)(6)(E)(II) for the three-year period commencing with the date of release from the LURA. IRC §42(h)(6)(E)(II) states the owner may not evict or terminate tenancy (other than for good cause) of an existing resident of any low income unit OR increase the gross rent with respect to such unit except as permitted under IRC §42.

   In this event, IFA will issue a partial release of lien with respect to the LURA within 30 days of the end of the one year period. Such partial release will be filed with the appropriate recordation authority and a filed copy forwarded to the owner. The owner will be required to provide written notice to each existing resident of the development advising of the protections afforded by IRC §42(h)(6)(E)(II). The owner will be required to submit a certification to IFA at the end of each year of the three-year period, stating that the requirements of IRC §42(h)(6)(E)(II) have been met.

Chapter 8 Other Considerations

A. Physical Requirements of Buildings

Qualified units rented to, or reserved for, eligible residents:

- Must have substantially the same equipment and amenities (excluding luxury amenities such as a fireplace) as other units in the development; and
- Cannot be geographically segregated from other units in the development.

Units intended for eligible residents must be comparable in size, location, and quality to those rented to other residents. In the event a resident unit in a development which is not rented to an eligible resident is above the average quality standards of the units rented to eligible residents, then the basis in the development which is used to determine the amount of tax credits must be reduced by the portion which is attributed to the excess costs of the above standard units.

B. Discrimination Prohibited in Development

Neither the owner nor the owner's agent(s) shall discriminate in the provision of housing on the basis of race, color, creed, sex, sexual orientation, gender identity, religion, national origin, disability, or familial status, ****in accordance with the Iowa Civil Rights Act****. Additionally, owners cannot refuse to accept a prospective resident based solely on the fact that the applicant holds a Section 8 rental voucher or certificate. All owners, managers, and staff members should be familiar with both state and federal civil rights and fair housing laws.

C. General Requirements

Under program requirements, tax credit units must be available for use by the general public. Owners are allowed to establish preference for certain population groups (e.g. homeless individuals, persons with disabilities, etc.). These preferences, however, must not violate state and federal civil rights and fair housing laws.

D. General Occupancy Guidelines/Household Size

There are no current tax credit requirements governing minimum or maximum household size for a particular unit; however owners must comply with all applicable local laws, regulations, and/or financing requirements (e.g. FMHA regulations).

IFA advises all owners or agents to be consistent when accepting or rejecting applications. Occupancy guidelines or requirements should be incorporated into the development's management plan. Management should be aware of occupancy standards set by federal, state, HUD, PHA, civil rights laws, and municipal codes that may establish a maximum or minimum number of persons per unit.

E. Allowable Fees and Charges

Customary fees that are normally charged, such as damage deposits, cleaning deposits, pet deposits, and/or credit deposits are permissible. The LIHTC program allows an owner to charge an application fee so long as the fee is used to cover the costs involved in processing an application. However, an eligible resident cannot be charged a fee for work involved in completing the additional forms or documentation required by the LIHTC Program, such as the Certification of Tenant Eligibility. An eligible resident cannot bear the expense for third parties to complete written verifications. If an eligible

resident would be charged a fee for completion of written verifications, the owner/agent may move to an alternate form of verification. The resident's file must be documented accordingly. If after occupying a unit, an eligible resident cannot pay the rent, the owner has the same legal rights in dealing with the LIHTC resident as with any other resident.

F. Conflicts with other Government-Funded Housing Programs

Management must be aware of the difference between RHS (formerly called FMHA) rent rules and those of the LIHTC Program that could result in proper RHS rents but incorrect LIHTC rents. If the LIHTC maximum allowable rent is less than the overage, the overage cannot be charged.

> **NOTE:** For credit allocations beginning in 1991, the overage can be charged for amounts that will be returned to RHS. This provision is not retroactive to developments receiving credit allocations from 1987 through 1990.

If a rent amount that is greater than the maximum allowable LIHTC rent is charged to a resident, the unit is out of compliance ****for the remainder of the owner's tax year**** when the rent charged exceeds the limitation. A unit is back in compliance ****the first day of the owner's next tax year**** when the rent charged does not exceed the limit.

GLOSSARY

- **4% Annual Credit**

The approximate applicable percentage used to calculate the annual amount of tax credit given for the cost of a new building or substantial rehabilitation built with a federal subsidy or the cost of buying an existing building for which substantial rehabilitation expenditures also are incurred with a federal subsidy. The actual applicable percentage is set each month by the Department of Treasury based on current interest rates. This percentage is then multiplied by the qualified basis to determine the actual annual tax credits.

- **9 % Annual Credit**

The applicable percentage used to calculate the annual amount of tax credits given for the cost of a new building or substantial rehabilitation built without federal subsidy. This percentage is multiplied by the qualified basis to determine the actual annual tax credits.

- **20/50 Test**

Minimum set-aside requirements in which at least 20% of a development's units must be set aside for households whose incomes are less than or equal to 50% of applicable area median income.

- **40/60 Test**

Minimum set-aside requirements in which at least 40% of a development's units must be set aside for households whose incomes are less than or equal to 60% of applicable area median income.

- **Allocation**

The process whereby a state housing agency issues an owner of rental housing the authority to deduct a specific amount of tax credits each year from his/her personal tax liability.

- **Annual Income**

The **gross** amount (before deductions) of contributions **ALL** family members anticipate they will receive from **ALL** sources, including earned income, unearned income (including minor children), and income from assets, in the 12-month period following the effective date of certification (or recertification) of income.

- **Annualized Income**

Specific methods used to convert employment and other income amounts to a projected annual income.

Example:

An applicant who makes $7.25 an hour and works full-time (with no over-time) will have annual income as follows:

$7.25/hour x 40 hours x 52 weeks = $15,080

- **Applicable Fraction**

A fraction that is used in calculating the amount of tax credit an owner can claim for a building, determined by the number of units or square footage occupied by qualifying low-income residents. The applicable fraction is the lesser of:

- The number of low-income residential units divided by the number of all residential rental units in the building (the unit fraction); OR
- The total square footage of the low-income residential units divided by the total square footage of all the residential rental units in the building (the floor space fraction).

- **Applicable Percentage**

The type of annual credits (4% or 9%) allocated.

- **Application/Resident**

The first stage for the Section 42 resident certification process where accurate and complete income asset information, and other necessary personal data is collected from **ALL** family members and **reviewed with applicants** by a property manager or owner.

- **BIN (Building Identification Number)**

A unique number that is assigned to each Section 42 building in a development at the time of issuance of 8609.

Example: IA-06-50001

IA indicates the development is in Iowa; credits were applied for in 2006; it was the 50th application in 2006 (50); it is the first building in the 50th application for 2006 (001). (Specific amounts of tax credits are issued for each building).

- **Certification/Resident**

The process **ALL** Section 42 prospective applicants and current residents must complete to prove that they are eligible to reside in the unit. This process includes the resident(s) reporting all income and asset information on an application, appropriate verification and documentation of reported information by management, and finally a **Resident Income Certification** (**TIC**) is signed (within 30 days prior to move-in or recertification effective date) by all adult family members (18 years and over) and by development owner/management to certify to the resident's eligibility.

- **Compliance Period**

The period of time in which the property must be rent restricted and occupied by qualified low-income residents.

> **Note:** For properties with BIN numbers 1987 through 1989 the compliance period is 15 years. Properties with 1990 or later have compliance periods of at least 15, but most for 30 or even 50 years. The restrictive covenants for the property define the term of agreement (compliance period).

After the first 10 years, the owner does not receive tax credits; however, the Program requirements must be followed. (Please also see Extended Use Period.)

- **Credit Period**

The ten-year period during which the owner of rental housing may deduct the tax credits from his/her/its tax liability if the requirements of the program are met. [IRC Section 42(f)]

** The consecutive 10 taxable years in which the credits are received, beginning with the placed in service date or, at the election of the tax payer, the following year.

- **Deep Rent Skewed Project (IRC 142(d)(4)(B)**

If an owner elects to have a development treated as a deep rent skewed project, the following requirements must be met:

15% of the low-income units in the development must be rent restricted and occupied by households whose income does not exceed 40% of the area median gross income. The gross rent of each low-income unit in the development must not exceed ½ of the average gross rent of the comparable unrestricted units, if any. The Next Available Unit rule defines an over-income unit in a Deep Rent Skewed project as a low-income unit in which the aggregate income of the occupants of the unit increases to, but not above, 170% of the applicable income limitation.

- **Development**

A developed tract of land, for example, one with housing on it. Synonymous with complex or project.

- **Educational Organization/ Institution**

Educational organization is one which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. An educational organization includes a vocational school with a diploma or certificate program, as well as an institution offering a college degree.

- **Elderly Housing**

The Fair Housing Law has stated that there are three types of Elderly Housing:

> 1. Federal or State programs that the Secretary of HUD has recognized as being Elderly Housing so long as the definition of the program is followed. FmHA (RD) (RHS), HUD and PHA Elderly Housing programs fall under this category. In these programs the term "Elderly" is defined to mean the resident or co-resident is 62 or older, or handicapped/disabled, so long as they are of legal age. In these programs, children **are** allowed, so long as they are members of the Elderly household. In these properties many disabled or handicapped applicants (who may be less than 62 years of age) with or without children have been housed under this definition. If a Federal Agency or a State government program wishes to create another Elderly program that does not follow one of the two remaining choices in the law, then that definition must receive a waiver from the Secretary of HUD.

2. 62 and older housing – This is the most restrictive type of Elderly Housing since every single resident must be 62 or older. In other words if an applicant who was 63 applied with a spouse or household member who was 61, they would be ineligible for this type of housing. Children are not allowed nor are handicapped/disabled or other applicants who are under 62.

3. 55 and older housing – In this type of property Elderly means that one household member is 55 or older in at least 80% of the units at all times. This could occur where a household consists of a 57 year old and a 52 year old. If the 57 year old later leaves or dies, the remaining member, despite being under 55, is allowed to remain. This could occur so long as no more than 20% of the units were currently rented to households other than 55 plus. An owner may limit the age of other household members to, for example, 50 or require that everyone be 55 or that all 100% of the units have at least one 55 year old resident. In, fact, if an owner wished to turn 55 plus housing into 60, 62, 65 (or another age in excess of 55) housing it would still meet the requirements of the law since these ages are over 55.

- **Eligible Basis**

Eligible costs associated with the development of a LIHTC building. These eligible costs are multiplied by the applicable fraction (percent of low-income units) for each building to determine the amount of tax credits allocated.

** Eligible basis of a new development is its adjusted basis, generally the eligible development costs minus the cost of land. Eligible basis for acquisition credit is the eligible costs of acquiring a building. Eligible basis for rehab expenditures are aggregated over 24 months, which are chargeable to the development's capital account.

- **Extended Use Period**

Owners of developments that received an allocation of credits after 1989 are subject to a Land Use Restriction Covenant (LURA) between the owner and IFA that requires the development to comply with the Program requirements for an extended period of a specified number of years beyond the initial 15 year Compliance Period. Under IRC Section 42, the minimum time for this extended period is fifteen (15) years beyond the close of the compliance period.

- **Floor Space Fraction**

The total square footage of the residential low-income units divided by the total square footage of all the residential rental units in the building.

- **Full-time Enrollment**

The number of credit hours deemed full-time by the educational institution being attended.

- **Full-time Student**

IRC §151(c)(4) defines, in part, a "student" as an individual, who during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins, is a full-time student at an educational organization described in IRC §170(b)(1)(A)(ii). Treas. Reg. §1.151-3(b) further provides that the five calendar months need not be consecutive.

The determination of student status as full or part-time should be based on the criteria used by the educational institution the student is/was attending.

- **Gross rent**

The amount of contract rent paid by the resident plus the amount of utility allowance for the unit, which when combined cannot be greater than 30 percent of the income allowable for the unit (50% or 60% of area gross median income, depending on the minimum set-aside election adjusted for family size).

For developments allocated prior to 1990, allowable rent is based on the actual number of family members. For developments allocated after 1989, allowable rent is based on the actual number of bedrooms in the unit.

- **Gross rent floor**

Allows the owner to establish floor rent amounts that will be affected by fluctuations in the income limits and maximum rent ceilings. In other words, developments will never have to charge gross rents (rents plus utilities) below their gross rent floor amounts. This irrevocable election must be made by the owner and submitted in writing to IFA no later than the development's placed-in-service date. See also IRC §42(g)(2)(A).

- **Household/Family**

Any and all persons residing or intending to reside in the Section 42 unit **except** for foster children, foster adults and live-in attendants.

Note: The need for a live-in attendant must be properly verified by an appropriate outside source.

- **Physical Inspection Standards**

Guidelines for determining that apartment units are safe and suitable for occupancy by the Section 8 program, and by state agencies for the LIHTC program. IFA will apply the Uniform Physical Conditions Standards (UPCS) established by HUD at 24 CFR 5.703.

- **HUD Handbook 4350.3, REV. 1, Change 3**

Income eligibility for Section 42 residents must be determined in a manner consistent with the requirements for the HUD Section 8 program by applying the information as outlined in Chapter 5 of the HUD Handbook 4350.3; REV. 1, Change 3, Determining Income and Calculating Rent.

> **Note:** HUD Handbooks, Notices, and other documents are available to view or print at http://www.HUD.gov/offices/adm/hudclips/. Printed handbooks can be ordered online through the Direct Distribution System (www.hud.gov/offices/adm/dds/index.cfm) or by telephone at 1.800.767.7468.

- **Imputed Asset Income**

When the family's net assets exceed $5,000, income from assets is calculated by multiplying the total cash value of the family assets by the current passbook specified by HUD (See HUD 4350.3, REV. 1,

Change 3). Once the imputed income is compared with the actual income from assets, the greater of the two amounts must then be included in the annual gross income for the family.

LIHTC Program

Refers to the Low-Income Housing Tax Credit program (also called the Section 42 program).

- **Live-In Aide**

A person who resides in a unit **only** to provide essential support services that insure the care and well-being of an elderly, disabled, or handicapped resident and who is not obligated for the financial support of the resident. The need for such a person must be properly verified by an appropriate outside source. ****(See also, this handbook Section 1.5.E and HUD Handbook 4350.3 ¶3-6.E.3.a, page 3-8.)****

- **Manager's Unit**

A non-revenue-producing unit occupied by an employee of the owner, which is considered as a common use area and not included in the applicable fraction calculation. The manager's unit must be identified at the time of application and/or the first year of the credit period.

> **Note:** As long as the number of previously approved management units is not increased, the owner shall be permitted to move the manager's unit within the development provided the change is reported on the annual compliance report and the square footage remains the same. If the owner feels the development needs two manager units, but was only approved for one, then the owner will need to ****obtain IFA's prior written approval.****

- **Minimum Set-Aside**

When application is made for tax credits on a development, the owner establishes that a minimum percent of units in the development will be rent restricted **AND** occupied by (or set-aside for) residents who meet a certain low-income requirement. Once elected, the minimum is locked in and applies throughout the life of the development.

A 40-60 set-aside election requires a minimum of 40 percent of the units in the development to be rented to residents with gross family incomes less than or equal to 60 percent of the area median gross income, adjusted for family size. Some owners may elect a 20-50 set-aside using the above formula.

> **Example:** An owner of a 200 unit development selected a 40-60 set-aside test. To satisfy the required set-aside, the owner must have rented at least 80 units in the development to residents whose incomes meet the 60 percent income requirement in order for the owner to claim ANY tax credits for the development that year.

Note: If the minimum set-aside is not met by the end of the first year in which credits are claimed, the owner must forfeit all allocated credits for the life of the development. Also, if the percentage of qualified units ever falls below this minimum, no credits may be claimed until the property again meets the minimum requirement.

- **Mixed Income Development**

A development that in accordance with its occupancy requirements has set-aside low-income households. As a result, mixed income developments have low-income units and unrestricted or market units.

- **Next Available Unit (NAU) Rule**

If at any time after initial certification of low income, it is determined that a qualified household's total gross annual income has increased **over 140**% of the applicable area median income limit, the next available apartment of comparable or smaller size in the **same building** must be rented to another qualified Section 42 resident to avoid reduction in the percent of qualified units. Documentation must be included in the file of the resident whose income exceeds the 140% limit identifying the next unit leased.

NEXT AVAILABLE UNIT MUST BE RENTED TO LOW-INCOME RESIDENT IF INCOME RISES ABOVE 140 PERCENT OF INCOME LIMIT. – If the income of the occupants of the unit increases above 140 percent of the applicable income limit, that unit shall no longer be considered a qualified unit if any residential rental unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation. In the case of a project described in IRC Section 142(d)(4)(B), the preceding sentence shall be applied by substituting "170 percent" for "140 percent" and by substituting "any low-income unit in the building is occupied by a new resident whose income exceeds 40 percent of the area median gross income" for "any residential unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation."

- **Non-employed**

Applicants who are permanently out of the workforce.

- **Non-revocable Trust**

A trust in which the assets held in trust are **permanently** transferred to someone else and which cannot be modified or controlled by any member of the family and therefore are not counted as assets. Only the actual income distribution to the resident's family from the trust is counted in annual income.

Exception: When an asset is converted to a non-revocable trust and thereby is disposed of for less than fair market value, the resident must report it as a current asset (as in revocable trust) for a period of two years and, in addition, count the actual income distribution for the asset.

- **Owner's Annual Certification**

****Certification**** provided by the owner to IFA that the property is in compliance with the requirements of the program. This certification is due March 1 of each year of the compliance period ****and extended use period.****.

- **Placed-in-Service**

The date on which the property enters the tax credit program. Specific requirements define the placed in service date based on when the property was purchased or construction was completed and/or units were available for occupancy. (See IRS Notice 88-116).

** The date a building is considered for tax purposes to be ready for occupancy, usually when a building receives its certificate of occupancy.

- **Qualified Basis**

An amount related to the development's costs that are used in calculating the amount of tax credits a development is allocated. A development's qualified basis is determined by multiplying the building's eligible basis by its applicable fraction. The qualified basis is determined each year as fluctuations may occur with the applicable fraction.

- **Rent Restricted**

Rent which is 30 percent or less of the area median gross income limit designated by the minimum set-aside election established for the development.

Note: Gross rent includes the cost of any utilities (utility allowance) for a unit that are not paid by the owner.

- **Restrictive Covenant**

A land use covenant restricting the use of the property and defining the length of time the property must be in compliance with the requirements of Section 42. The restrictive covenant binds the current owner and any future owners to these agreements. [Reference IRC Section 42(h)(6).]

- **Revocable Trust**

Assets held in trust by a trustee where the trust may be modified by, and assets accessed by, the resident or a member of the resident's family. The cash value of the trust is counted as an asset, <u>and</u> the income generated from the asset (trust) must be included in annual gross income.

- **Section 42**

Internal Revenue Code Section 42 of the Tax Reform Act of 1986 created an income tax credit for private investors as an incentive for them to develop rental housing for people with low income. The Code is supplemented by IRS regulations for administering the tax credit program. (Reference also 26 CFR 1.42 Final Rule of Monitoring Compliance).

** The section of the Internal Revenue Code that applies to the LIHTC Program.

- **Transfer Rule**

A previously qualified low income resident who transfers to another unit (whether in another building, or in the same building) the status of the unit the household will occupy is transferred to the unit the household vacated. The units will swap status. If the unit moved into was previously qualified, the unit moved out of will now be previously qualified. If the unit moved into was never qualified or was determined to be not qualified, the unit moved out of will now become never qualified or now determined to be not qualified.

****This transfer rule may be impacted by the way in which the original 8609 forms were completed and filed with the Service. If the development consists of multiple buildings, but the**

owner elected to treat the building as NOT being a multi-building project, NO unit transfers can be allowed. The action must be treated as a move out – move in with the resident household undergoing all of the initial income certification requirements. If the household combined annual income exceeds the current applicable gross income limit, the household should not be moved.**

- **Unearned Income**

Gross amount (before deductions) of payments, receipts, distributions and other assistance, including gifts, regularly received by family members through a source other than employment.

Example: AFDC, child support, trust funds, social security, unemployment, disability or workers' compensation, expenses paid or other support by parents or relatives, relocation assistance, pensions, annuities, and insurance benefits and other similar types of periodic receipts.

Note: Child support paid by a family member, even if by garnishment, is counted as income for the family paying the funds (i.e. the amount of child support garnished is added back into the gross income).

- **Unemployed Applicant**

Applicants who are temporarily out of the workforce who expect to return to work within the next 12 months.

- **Unit Fraction**

The number of residential low-income units divided by the total number of all residential rental units in the building.

- **Unit Vacancy Rule**

If the occupants of a low-income unit move out, the owner may continue to count the vacated low-income unit as a qualified unit as long as reasonable efforts are made to re-rent that unit to a qualified resident and no available unit of comparable or smaller size in the development is rented to an ineligible resident. As with the procedure for low-income units with over-income residents, this provision allows the owner/manager to replace the resident of a vacant low-income unit without reducing the development's qualified basis.

- **Utility Allowance**

The calculated cost of utilities for a Section 42 apartment (excluding phone and cable) is based on the number of bedrooms in the unit. This calculated amount added to the contract rent the resident is charged cannot exceed the maximum Section 42 gross rent limit. Depending on the type of unit (i.e. RHS/FmHA, Section 8), the utility allowance must be based on figures supplied by a state or federal agency or the local utility company. There can be a combination of applicable sources within one building.

> **Note**: Utility allowance calculated by paid consultants are not valid unless approved by the applicable utility company.

Utility allowances are maintained on file at the property and **must be reviewed at least annually** and updated as necessary. Since an increase in a utility allowance could increase total Section 42 rent

above the maximum limit, once an increase is determined; the amount of rent charged must be adjusted within 90 days of such a change.

> **Note:** Unless the owner is paying 100 percent of the cost of utilities, a calculated allowance as mentioned above will apply to all Section 42 residents and should not be confused with the utility allowance subsidy assigned to those residents holding a Section 8 voucher.

- **Verification/Resident**

Documentation of **ALL** income, assets and household size and characteristics reported by prospective residents upon application that affect eligibility in the Section 42 program. This must be completed before the resident moves into the unit and every 12 months after move in. Written verification directly from the source must be obtained whenever possible.