

**OHFA**  
**Housing**  
**Tax Credit**  
**Compliance**  
**Manual**



**OHFA**

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## CHAPTER 1

# OAHTC COMPLIANCE MANUAL OVERVIEW

The procedures outlined in this manual are guidelines for helping owners ensure that LIHTC developments remain in compliance with the Internal Revenue Code (the “Code”), the Regulatory Agreement, the Chapter 36 Rules, and other applicable regulations for the duration of the compliance period.

This manual describes how to meet LIHTC requirements, but it is **not** an operation manual. It will provide instructions on determining eligibility of families for occupancy, the maximum rents that can be charged, record-keeping procedures, occupancy rules, provisions for auditing development files, certifications and other forms required for compliance reviews.

All developments participating in the Oklahoma Affordable Housing Tax Credit Program are subject to compliance monitoring with the rules and regulations of the Code and all other applicable regulations.

Questions regarding Tax Credit compliance issues may be directed to:

Oklahoma Housing Finance Agency  
Attn: Tax Credit Compliance Department  
100 NW 63<sup>rd</sup>, Suite 200  
Oklahoma City, OK 73116  
(405) 848-1144

OHFA is committed to helping owners of LIHTC developments understand and meet their responsibilities under the program. This manual is an example of that commitment. OHFA will offer periodic training explaining key components of the program. However, a development’s compliance with the LIHTC regulations and requirements, as well as state and local law, is solely the owner’s responsibility.

# THE LOW-INCOME HOUSING TAX CREDIT PROGRAM

In 1986, Congress created the Low-Income Housing Tax Credit (LIHTC) Program as part of the Tax Reform Act of 1986. The LIHTC Program provides an incentive for developers and investors -- credits reducing their tax liability -- in qualified low-income housing that has been acquired, constructed, or rehabilitated since 1986.

The credits are allocated by the Federal government to the individual states based upon population. In return, the states are required to review the applications from developers in accordance with state-set objectives and goals. The tax credits are allocated to developments which best meet these goals and objectives. In exchange for the tax credits, the developer must agree to rent the units to households whose income is at or below 50% or 60% of the median area income and follow certain leasing rules and guidelines. Failure to follow the regulations can result in the loss or recapture of credits.

The compliance period is established in the Regulatory Agreement, which is recorded on the property deed. \*The compliance period for tax credit developments placed in service prior to January 1, 1990, is 15 years. For tax credit developments placed in service on or after January 1, 1990, the compliance period is 15 years, with an additional extended use period of 15 years for a total of 30 years, unless otherwise specified in applicable governing documentation. Section 42(h)(6)(D) of the Code details the specific instances where such documentation may be broken.

\*IRC42(h)(6)(A); RevenueRuling.92-79

## CHAPTER 1

# KEY PROGRAM DOCUMENTS

The fundamental rules of the LIHTC program appear in Section 42 of the Federal Internal Revenue Code, Treasury Regulations regarding Final regulations, and the Oklahoma Housing Finance Agency's Chapter 36 Rules. It is necessary for the owners to familiarize themselves with these two documents in order to understand their responsibilities under the program.

The Compliance Monitoring Regulations can be found in Treasury Regulation 1.42-5. In February, 2019 the IRS published a final regulation on how State HFA's must monitor for compliance with the requirements of the LIHTC program, found here:

<https://www.federalregister.gov/documents/2019/02/26/2019-03388/amendments-to-the-low-income-housing-credit-compliance-monitoring-regulations>

On July 1, 2020, the IRS released a proposed regulation, Treasury Regulation 12327-19 found here: <https://www.irs.gov/pub/irs-drop/reg-123027-19.pdf>

changing one of the requirements of the guidance. The proposed regulation relaxes the minimum monitoring sample. All other provisions of this regulation are still in effect as of January 1, 2021.

***Disclaimer:** The policies, procedures and forms included in this manual have not been reviewed or approved by the Internal Revenue Service and should not be relied upon for interpretation of legislation or regulations. OHFA makes no representation that complying with these procedures will satisfy all Internal Revenue Service requirements. As always, the ultimate responsibility for compliance in the LIHTC Program is with the Owner.*

## CHAPTER 2

# OHFA'S RESPONSIBILITIES

In accordance with Section 42 of the IRS Code, OHFA Chapter 36 Program Rules, and the Regulatory Agreement, the following are OHFA's responsibilities:

At least once every three (3) years, OHFA will conduct on-site inspections of all buildings in each low-income housing project and, for each tenant. The sample size will be the lesser of 20 percent of the project's low-income units or the REAC number listed below in the chart. **OHFA will inspect according to the IRS guidelines and according to OHFA's Risk Assessment of sites.** OHFA will review the low-income certification, the documentation supporting such certification, and the rent record.

Units on the Property	Minimum Unit Sample Size	Units on the Property	Minimum Unit Sample Size
1	1	26 - 29	14
2	2	30 - 34	15
3	3	35 - 40	16
4	4	41 - 47	17
5 - 6	5	48 - 56	18
7	6	57 - 67	19
8 - 9	7	68 - 81	20
10 - 11	8	82 - 101	21
12 - 13	9	102 - 130	22
14 - 16	10	131 - 175	23
17 - 18	11	176 - 257	24
19 - 21	12	258 - 449	25
22 - 25	13	450 - 1461	26
1462 - 9999	27		

OHFA will inspect new projects by the end of the second calendar year following the year the last building in the project is placed in service.

OHFA file reviews will continue to be conducted via desktop through OHFA's secure portal. The Compliance Specialist assigned to the site will

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request specific files to be submitted electronically. The review may include, but is not limited to:

- a. Tenant qualifications, certifications, income calculations and appropriate supporting documentation.
- b. Rental Application(s), Dwelling Lease(s), and Addendum(s).
- c. The gross rent payment and its components, including utility allowance, and the source.
- d. The vacancy history of both low-income and market-rate units.
- e. Promises documented in the Regulatory Agreement or other applicable documentation; development characteristics attested to in the initial application for which ranking points were awarded must be proven, i.e.:
  1. Contract agreement with service providers.
  2. Tenant Advisory Committee.
  3. Homeless Unit.
  4. Security Issues.
  5. Any other item listed in the Regulatory Agreement.

OHFA may inspect first year files, inactive files, active files, vacant units, occupied units and common spaces. The electronic review may be waived for fact specific circumstances only.

The physical inspection may include, but is not limited to:

### Exterior:

- Grounds, walkways, and steps
- Play areas and equipment
- Storm drainage
- Common areas (i.e., laundry room, pools)

The physical standards of the above must meet the following:

- a. Buildings must be free from severely cracking.
- b. Chipping paint, missing siding, or missing bricks.
- c. Buildings must be free from all potentially hazardous conditions (i.e., open electrical boxes, broken windows, or tripping hazards).
- d. There should be no deferred maintenance.
- e. There must be a wheelchair accessible route to ground floor units of buildings and common areas.

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- f. Americans with Disabilities Act and Fair Housing Accessibility Act compliant.

### Interior:

- a. All doors/windows leading to the outside must be airtight and free of obstructions.
- b. All doors leading to the outside must lock securely.
- c. Ceilings and walls must be in good condition.
- d. Units must be free from any electrical hazard which includes missing cover plates, light switch plates and receptacles, or protruding electrical boxes.
- e. All units must have working faucets with proper water pressure, hot and cold running water, and be free from leaks.
- f. All commodes must flush properly and be secured to the floor.
- g. The water heater must be enclosed unless it is in a garage, basement, or an enclosed utility room, and free from materials stored.
- h. The unit must be equipped with at least one working smoke detector on each level of the unit.
- i. There cannot be any tripping hazards (i.e., cords across thresholds/walkways; wrinkled, loose, or torn carpet; torn linoleum; buckled carpet or obstructions).
- j. All appliances must be in working order (stove, disposal, fridge, etc.).
- k. Stove burners must be working (checked by site staff).
- l. Refrigerator seals must be tight.
- m. All Ground Fault Interrupter must be in working order.
- n. Housekeeping: must be free of any severe health or sanitary concerns.
- o. There must be no evidence of vermin or bug infestation.

OHFA uses the Uniform Physical Condition Standards (UPCS) during inspections.

OHFA has the right to perform site visits and inspections, on any tax credit development during the full term of the compliance period. These reviews may be performed with at least seven (7) days prior written notification to

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the owner unless circumstances warrant immediate action. The final regulations state that owners shall be given no more than a fifteen (15) days' notice that a file and/or physical inspection will occur. This is a reasonable notice according to the regulations. All buildings must be inspected regardless how the owner elected to treat on Form 8609. Even though we encourage owners and representatives to be present, it is not mandatory. There must be at least one staff person available to accompany the inspector during the physical review and if needed for the file review.

OHFA will no longer report issues of noncompliance that have been identified and corrected by the owner prior to notification of an upcoming compliance review or inspection by OHFA. Prior to notification means prior to the date of the inspection letter, telephone notification, or email notification.

Upon arrival for an inspection, OHFA requires the following items:

1. Copy of the notice sent to residents informing them of inspection.
2. Copy of current Unit Data Sheet AND a rent roll.
3. Copy of the current Utility Allowance used. OHFA must be provided with documentation on evidencing the methodology used to arrive at a particular amount, not just the dollar amounts.
4. Copy of documentation proving the fulfillment of any extra commitments or development characteristics promised in the application.
5. Vacant unit history (what units are vacant and date last move-out occurred).
6. Documentation of the application fee, if any, charged to tenants, along with proof of actual cost.
7. The ownership documentation and material participation by the non-profit involved if the site was funded out of the non-profit set-aside

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(see chapter 22 of The Guide for Completing Form 8823).

8. Ensure ownership and management entity are the same as previously reported on the last Annual Owner Certification submitted to OHFA.
9. OHFA will require proof of Oklahoma Real Estate Commission license or being exempt from such upon inspection.

OHFA will report to the Internal Revenue Service (IRS) any instances of noncompliance (whether corrected or not) on Form 8823 “Report of Noncompliance”, after the correction period has elapsed. OHFA is required to file a ‘back in compliance’ Form 8823 if the compliance is remedied within three years.

### *Examples of the most common noncompliance issues are:*

- a. Unit Data Sheets not updated or not available.
- b. Residents do not have access to **storm shelters** 24/7.
- c. TICs not updated with current rent or UA (draw one line through, correct and initial. As a note, the resident will also need to initial and date anytime a change is made that will impact them i.e., rent or UA change.)
- d. over-income tenants
- e. rents too high when utility allowance rise
- f. blocked egress
- g. incomplete or late forms filed
- h. the under 5K asset certification incorrect
- i. smoke alarms not working
- j. improper income certification or verification
- k. student question not documented annually
- l. housekeeping (health and sanitary issues)
- m. utility allowance documentation not available on site
- n. handicap parking spaces without access aisle, ramps, or signage
- o. items being stored in oven (frying pans, pots etc.)

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### Helpful Hints for a Successful Inspection:

*To help OHFA Compliance Specialists conduct an efficient inspection and allow adequate time for other appointments, the following are suggestions:*

#### **File inspection:**

1. Have any documents requested in the inspection letter ready upon arrival. The following lists a few items needed:
  - a. Vacant report listing number of days each unit has been vacant and status of make ready
  - b. Have proof of Oklahoma Real Estate Commission license or reason being exempt from such
2. Ensure the Fair Housing Poster is clearly displayed in a public place for applicants / residents to see.

#### **Physical inspection:**

1. Please map out the best route for walking units to minimize crisscrossing the property.
2. Wear walking shoes when accompanying inspector and be prepared to walk up and down stairs, if applicable.
3. Have a maintenance person walk units with manager representative who is equipped with light bulbs, screwdriver, smoke alarm batteries, smoke alarms, HVAC air filters etc.
4. A management representative should open every door and confirm that the inspector may enter safely. The inspector may request certain tasks of the representative (i.e., open window, turn burners on etc.).

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# OWNER'S RESPONSIBILITIES

### 1. Reports      **OHFA is going paperless!**

**Reports will no longer need to be snail mailed. The LIHTC compliance department will send a link when reports or files are due or requested to be submitted via our secure portal.**

**Quarterly Owner Reports and Tax Forms may be submitted via email or secure portal. If ever in doubt and there is a chance of a late submittal, please email.**

**OHFA will consider a fee or report as being received on-time, if postmarked on or before the due date.** Please avoid piecemeal submittal by reviewing all documents for accuracy, completeness, and organization.

In accordance with Section 42 of the IRS Code and OHFA Chapter 36 Program Rules, the owner of the development receiving a tax credit allocation is required, by acceptance of the allocation, to provide the following reports listed in this section.

#### **A. Quarterly Owner Certification**

Owners must begin quarterly reporting the FIRST FULL calendar quarter after the last building is placed in service and continue to report for the subsequent 3 quarters. The following are the quarterly reporting dates:

Quarterly Report	January 1 - March 31	due no later than	April 10
Quarterly Report	April 1 - June 30	due no later than	July 10
Quarterly Report	July 1 - September 30	due no later than	October 10
Quarterly Report	October 1 - December 31	due no later than	January 28

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FOR EXAMPLE:

PIS, 10/15/2017

1 <sup>st</sup> Quarterly Report	10/15/17 thru 03/31/18	due no later than	April 10, 2018
2 <sup>nd</sup> Quarterly Report	04/01/18 thru 06/30/18	due no later than	July 10, 2018
3 <sup>rd</sup> Quarterly Report	07/01/18 thru 09/01/18	due no later than	October 10, 2018
4 <sup>th</sup> Quarterly Report	10/01/18 thru 12/31/18	due no later than	January 28, 2019

**FIRST ANNUAL REPORT = 01/01/19 thru 12/31/19 DUE 02/15/2020**

FOR EXAMPLE:

PIS, 01/25/2018

1 <sup>st</sup> Quarterly Report	01/25/18 thru 06/30/18	due no later than	July 10, 2018
2 <sup>nd</sup> Quarterly Report	07/01/18 thru 09/01/18	due no later than	October 10, 2018
3 <sup>rd</sup> Quarterly Report	10/01/18 thru 12/31/18	due no later than	January 28, 2019
4 <sup>th</sup> Quarterly Report	01/01/19 thru 03/31/19	due no later than	April 10, 2019

**FIRST ANNUAL REPORT = 01/01/19 thru 12/31/19 DUE 02/15/2020**

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The **Quarterly Owners Certification (QOC)** can be found in Appendix H and must be accompanied with **Income Certifications** for each Tenant certified in that period. In addition, the completed current **Unit Data Sheets (UDS)** are required. Rehabilitation Quarterly Reports are due following the first full quarter after substantial completion.

If a project is determined not to follow Program requirements or there is indication of possible noncompliance, OHFA, at its discretion, may require reports each quarter until compliance is demonstrated. Owners will be required to report quarterly for no less than four quarters, until the property has reached the owners 'set-aside and has initially leased all tax credit units.

### **B. Annual Owner Certification (AOC)**

Once quarterly compliance reporting is complete, **certification on-line (COL)** is required annually along with the **signed AOC**. COL is submitted electronically via internet and the signed AOC is submitted via secure portal. *Owners must manage the development in accordance with the Code, the Rules, other applicable regulations, and any agreements reached with OHFA during the allocation process for the duration of the compliance period and must certify to this fact.* This certification for the preceding calendar year shall be in a form prescribed by OHFA due no later than **February 15 of each year** and must be accompanied by the current **UDS (Unit Data Sheet)**. Also, an **addendum to the AOC must be completed by the non-profit entity** if the non-profit question on the AOC is answered "Yes". A copy of this Annual Owner Certification report can be found in Appendix I. The cover pages to the certification should provide the



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## 4. Non-profit (if applicable)

**Non-Profit Addendum to  
Annual Owner Certification**

<b>Certification Dates:</b>	From: January 1, 20	To: December 31, 20
<b>Project Name:</b>	Project No:	
<b>Project Address:</b>	City:	Zip:
<b>Tax ID # of Ownership Entity:</b>		

This form is to be completed if the site listed above received its credit allocation from the portion of the state ceiling set aside for a project involving "qualified non-profit organizations" under Section 42(h)(6) of the Code.

IRC 42(h)(6) requires that each state set aside at least 10% of its state housing credit ceiling for allocations to projects in which qualified nonprofit organizations own an interest and materially participate in the development and operation of the projects. "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 the state agency as not being affiliated with or controlled by a for-profit organization, and one of the exempt purposes of the organization includes the fostering of low-income housing.

For purposes of this allocation, a nonprofit organization must have an ownership interest in the low-income housing project throughout the compliance period and materially participate in the development and operation of the project.

**Nonprofit Organization Name:** \_\_\_\_\_

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

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Contact Person:** \_\_\_\_\_ **Phone #:** \_\_\_\_\_

**Email Address:** \_\_\_\_\_

1. Do you have an ownership interest in the project?  
 YES  NO
2. Did you participate in the development of the project?  
 YES  NO
3. Do you continue to participate in the day-to-day operations of the project?  
 YES  NO
4. Do you aid in the management decision-making of the project?  
 YES  NO
5. Do you provide services to the project?  
 YES  NO
6. How often do you have an on-site presence at this site? \_\_\_\_\_

\_\_\_\_\_  
Signature of Non-Profit Rep                      Non-Profit Rep Name Printed

\_\_\_\_\_  
Title of person signing                              Date

Due February 15 every year:

1. Submit all BINs in COL with every occupied unit showing a current year cert/recert date.
2. Submit the signed AOC with Unit Data Sheets and contact pages (Appendix I) submitted via secure portal. **This is different than submitting COL.**
3. You may submit the Unit Data Sheets and the AOC generated from COL, but these docs **MUST** be submitted via secure portal. These **MUST** be printed **FIRST** before submitting COL to OHFA.
4. The AOC is not required to be notarized.

### C. HUD Demographic Data Collection

OHFA is required to report to HUD annually the:

Race	Ethnicity	Family composition	Disability status
Age	Income	Use of rental assistance	Amount of rental payments of tenants
			Student Status

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<i>HUD is also requesting the last four digits of each adult household member's social security number. If a social security number is not applicable, enter the two-digit birth month and the last two digits of the birth year.</i>	

OHFA is collecting this data through Certification On-Line (COL).

**\*\* The unsigned COL Annual Owner Report and all Tenant Certifications must be submitted electronically via COL to OHFA no later than February 15<sup>th</sup> each year.**

*\*\*Note: In addition to the COL requirement, if you choose to scan and electronically submit (formerly mail), the AOC and Unit Data Sheets to OHFA generated from COL, you **MUST PRINT THE DOCUMENTS BEFORE YOU CLICK SUBMIT!** The AOC printed from COL does not need to be notarized.*

### **D. Unit Data Sheet (UDS)**

A separate Unit Data Sheet must be provided for each building in the development (to be updated at least monthly) and will be provided with the Quarterly and Annual Certifications and upon any request from OHFA. *The Unit Data Sheet is historical; therefore, an apartment may require several lines to record the ENTIRE history of a given apartment for that reporting year.* Note: each sheet only needs to contain the current reporting period's activity (recertification's, move-outs, and move-ins for that year). NEVER INCLUDE FUTURE DATES ON THE UNIT DATA SHEET.

The Unit Data Sheet should include the following information for each unit:

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- a. Unit Number
- b. Square Feet
- c. Bedroom
- d. Size
- e. Head of Household
- f. Household Size at Move-in
- g. Move-in Date
- h. Gross Income at Move-in
- i. Last Certification Date
- j. Current Recertification Date
- k. Current Recertification Income
- l. Household Size at Recertification
- m. Tenants Rent Portion
- n. Current Utility Allowance
- o. Move-out Date
- p. Set-Asides (20%, 30%, 40%, 50%, 60%, 70%, 80%, Market rate)
- q. Type of unit (homeless, elderly, exempt etc.)
- r. Comments (eviction, notice, late recertification, be sure to attach back-up of due diligence i.e., 120, 90, 60, 30-day notice)

*A copy of the Unit Data Sheet with instructions can be found in Appendix J.*

### **E. Management and Ownership Changes**

Management changes must be submitted to OHFA at least 60 days prior to the change. There is a fee associated with a management change. See Chapter 36 Rules, section 330: 36-4-3(a)(8). The management

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change checklist can be found in Appendix O. If a management company fails to show capacity to manage, (i.e., have outstanding fees, outstanding reports, negative points, etc.), approval to transfer management could be denied.

The management company must have at least 3 years of prior LIHTC compliance experience. If the management company does not have experience, a consultant, whose primary function is to aid with compliance or co-management company can be put in place to make up for the time needed. OHFA will need to see the executed contract between the management company and the consultant or co-mgmt. prior to approval.

OHFA will conduct an on-site inspection within 12 months after the effective date of a management change to ensure compliance. See Appendix O.

*Ownership changes require approval of the Board of Trustees. These changes must also be submitted at least 60 days PRIOR to the change. There is also a fee to transfer a site. See Chapter 36 Rules, section 330:36-4-3(a)(7).*

*If a management change is anticipated, please contact OHFA so we can be aware prior to receiving the change request. If an ownership change is anticipated, contact OHFA for the proper forms to complete and information needed.*

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### F. Casualty Losses

**Owners must report all instances of casualty loss to OHFA LIHTC Compliance staff as soon as discovered and send all applicable documentation at occurrence and at correction.** Casualty loss is defined as the damage, destruction, or loss of property resulting from an identifiable event that is sudden, unexpected, or unusual (i.e., car accidents, fires, hurricanes, tornadoes, storms, vandalism etc.). The common areas, units, or buildings are unsuitable for occupancy. Property damage such as siding off a building, termite damage or roof leaks are examples of what is not a casualty loss.

### G. Due Dates

**OHFA will consider a fee or report as being received on-time, if postmarked on or before the due date.** Avoid piecemeal correspondence by reviewing all documents for accuracy and completeness.

## **2. Compliance Fees and Tax Forms**

### A. Compliance Monitoring Fees

Owners must pay an annual fee for the applicable year that is invoiced, which shall be payable on or before *January 28* for each year during the Compliance Period and Extended Use Period. The applicable fees can be found in the Chapter 36 Rules in section 330:36-4-3(a)(5).

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### B. Tax Forms

Once a tax credit property is placed-in-service (PIS) and OHFA issues the IRS Form 8609 to the owner, the owner is responsible for submitting the appropriate IRS forms to claim the credit. **IRS Low-Income Housing Credit Tax Forms 8609 with completed Part II**, as filed on behalf of the ownership entity with the IRS for the **FIRST CREDIT YEAR** must be submitted to OHFA on or before **May 10th** of the year due to The Service. This is a one-time submittal to OHFA.

Copies of the filed forms may be requested by OHFA for any year if deemed necessary. NOTE: Make sure the 8609's submitted to OHFA with tax forms are signed and dated at the bottom of the forms.

Please review your document prior to mailing to IRS and ensure Part II question 8(b) is answered correctly. Your response will impact whether unit transfers are allowed as this is a non-revocable designation. Changes to this designation are not allowed unless directly communicated by the IRS with all proper documentation provided to OHFA LIHTC Compliance for any deviation to this designation.

**Failure to comply with the above requirements will result in the issuance of an IRS Report of Noncompliance (Form 8823).**

## CHAPTER 3

### 3. Record Keeping

#### A. Tenant Files

Should include but are not limited to:

- Rental Application
- Current Dwelling Lease and addendums
- Tenant Income Certification
- Income and asset Verifications
- Release & Consent Form

**Owners/Managers should develop a standard method for organizing tenant files. A suggested order would be:**

#### **Top to Bottom**

#### **Left Side**

Rental Application

Release & Consent Form

#### **Right Side**

Tenant Income Certification

Student Verification (if applicable)

Asset Verification

All Applicable Income Verification's  
(i.e., Child Support Verification, Zero  
Income Verification, Monetary  
Contribution Verification, etc....)

Dwelling Lease and required Lease  
Language

*Use colored paper to separate the paperwork for each year.*

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### **B. Authorization to Assist**

Managers and owners should allow applicants and residents to complete, sign and date their paperwork **unless there is a need** for assistance. If the need is present, it is the responsibility of the owners/managers to ensure an Authorization to Assist form is in the file when someone other than the applicant and/or resident is not completing their paperwork. This form should not be utilized for convenience or time-saving purposes.

### **C. Development Files**

Owners must maintain all tenant files for the development. Documenting the eligible basis and qualified basis of each building for the **first year of the credit period** is very important. These documents must be available for auditing purposes and kept for at least six years after the tax filing date for the last year of the compliance period, for a total of **21 years**.

The character and use of non-residential portions of buildings that are included in the development's eligible basis must also be documented. Owners must establish tenant facilities included in the eligible basis are available to all tenants and that no fee is charged for the use of these facilities.

## **4. Occupancy Rules**

### **A. Project Occupancy Restrictions**

Tax credit developments must contain enough qualified tax credit unit selections to satisfy the chosen minimum set-aside by the end of the tax year following the year that the development was placed in service (1991 and later years' developments). The set-aside options available are:

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### A. 20/50; B. 40/60; or C. Average Income

- A. No less than 20% of the housing units must be set-aside for tenants whose incomes are 50% or less of the area median income (AMI); or
- B. No less than 40% of the housing units be set-aside for tenants whose income are 60% or less of the AMI; or
- C. No less than 40% of the housing units are set-aside for tenants whose incomes average a total of 60% or less of the AMI. The possible income designations are 20%, 30%, 40%, 50%, 60%, 70% and 80% AMI.

If a greater set-aside election than the minimum is selected by the owner during the application process, then this percentage is the Owner's set-aside election. The Owner's set-aside election is specified in the LIHTC Application for Tax Credits. NOTE: The owner must ensure that the minimum set-aside election specified in the application is maintained throughout the compliance period.

If occupancy in a LIHTC development falls below the IRS minimum set-aside percentage, the development will be deemed out of compliance and reported to the Internal Revenue Service on an IRS Report of Noncompliance (Form 8823). The owner may be subject to credit recapture by the IRS, even if the violation is corrected before the end of the calendar year.

If OHFA cannot determine compliance on a property, the staff will request the first-year files. If this does not satisfy OHFA's compliance regulations, OHFA will then turn the matter over to the IRS for their determination.

### **B. Compliance with Fair Housing and Equal Opportunity Laws**

Americans with Disabilities Act prohibits discrimination in all areas of

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public accommodation, no matter when the property was built. All properties must comply with applicable federal, state, and local fair housing and anti-discrimination laws in the marketing and provision of housing. OHFA may request written documentation to evidence the owner's compliance with these laws. Federal laws that may be applicable to a development include, but are not limited to, the Fair Housing Act as amended by the Fair Housing Amendments Act of 1988, Section 504, the Americans with Disabilities Act, and any further amendments of said acts. These laws include provisions for construction and design of multifamily developments as well as property management.

*Disclaimer: Owners and managers should not rely solely upon this manual when assessing their compliance with the Fair Housing Act & Accessibility. OHFA does not in any way warrant that this manual will ensure compliance with any laws or regulations regarding accessibility for disabled individuals. Owners and managers should consult with legal and architectural professionals for further guidance.*

The Fair Housing Act requires that all new multifamily dwellings consisting of four or more dwelling units meet certain design criteria so that the dwellings can later be adapted for use as supportive housing without significant structural renovations. In buildings with four or more dwelling units, if the building does not have an elevator, the design requirements apply to all ground floor units. If the building does have an elevator, the requirements apply to all units. The design standards apply if the building is built for first occupancy on or after March 13, 1991. Such buildings must

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meet specific design requirements so public and common use spaces and facilities are accessible to people with disabilities.

See Appendix M for OHFA Fair Housing Accessibility Guide or [ohfa.org](http://ohfa.org).

1. Site Accessibility
  - a. Are the handicap parking spaces oversized or do they include a painted access aisle?
  - b. Are the tenant mailboxes on an accessible route?
  - c. Do the mailboxes have a clear turnaround space in front of them?
  - d. If community has indoor/outdoor common amenities, (picnic areas, tennis courts, basketball courts, a swimming pool or gazebo), are they on an accessible route?
  - e. Are trash receptacle's accessible on an accessible route?
  
2. Common Buildings Accessibility
  - a. Is the Office and/or Community Building served with at least one handicap parking space with a painted or oversized access aisle?
  - b. Is the Office and/or Community Building and Laundry Room on an accessible route, free from inclines and steps?
  - c. Is the threshold height of the primary door to the Office and/or Community Building and Laundry Room one-half inch or less?
  - d. Are the primary door openings of the Office and/or Community Buildings and Laundry wider than 32"?
  - e. Does the primary door to the Office and/or Community Room and Laundry require little effort to open?
  - f. Are the hallways in the Office and/or Community Building 36" or wider?
  - g. Are the door openings to the habitable rooms in the Office and/or Community Building greater than 32"?
  - h. Are the bathrooms in the Office and/or Community Building fully accessible, including grab bars around the toilets, wall hung sink, and a turnaround space in front of the toilet and sink?
  
3. Dwelling Unit Accessibility
  - a. Is there an accessible route to the dwelling unit, free from

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- inclines and steps?
- b. Is the threshold height at the primary entrance door one-half inch or less?
- c. Is the primary entrance door opening 32" or wider?
- d. Are the hallways 36" or wider throughout the dwelling unit?
- e. Are the door openings to all habitable rooms 32" or wider?

### C. Changes in Family Size

The addition of a new member or new members to an existing low-income household requires the income certification of each new member of the household, including third party verification (this does not apply to anyone under the age of 18). Obtain the new household member's information on an application (i.e. student status) along with any applicable verification. The income of the new tenant or tenants must then be added to the income disclosed on the existing household's tenant income certification. If the new member's income added to the existing household exceeds the income limit, you may still allow the additional members to move-in. If the total income combined exceeds 140% of the income limit, the Available Unit Rule must be applied in that building. The next complete recertification, if applicable, is due when the existing household's TIC expires, which should be the anniversary of move-in. \*However, if all the original members ever move out, the new members must initially qualify.

*\*A household may continue to add members if at least one member of the original low-income household continues to live in the unit. If it is determined that a household intentionally manipulated the income limit requirements, the unit may no longer be treated as low-income.*

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### D. Transfers

When a household moves to a different unit within the same building, the newly occupied unit adopts or swaps the status of the vacated unit. (See specific guidance in the third bullet below.) This becomes important especially when the household is transferring to a non-LIHTC unit or a different designated unit when average income is elected. The units swap status.

- In addition, a household may move to a different unit, in a different building, within the same low-income project without initially re-qualifying. The newly occupied unit adopts or swaps the status of the vacated unit. If the recertification process is applicable, the household income cannot be over 140% of the current income limit prior to the transfer. The last income certification may be used to verify that the household income is not greater than 140% of the current income limit.
- The next complete recertification is due on the anniversary date of the original move-in to the project (not the move-in date to the new unit). If the household income is above 140% at any recertification after the transfer to a new building, the Available Unit Rule must be applied.
- **OHFA will allow the transfer between buildings only when the buildings in the development have been chosen by selecting yes on the 8609's as part of a multiple project.** When Average Income is elected, OHFA requires that owners elect to treat all buildings as multi-building projects by checking yes. Owners should use discretion when transferring households on a mixed-income property.
- On a 100% tax credit property, a recertification is not required by OHFA. Therefore, if a transfer is requested on a 100% tax credit site, in which all buildings have been chosen as part of a multiple building project, if the household was not over-income at move-in,

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the transfer will be allowed by OHFA.

### **E. Lease Requirements**

In general, occupancy must be provided on a non-transient basis to the general public. However, provisions for housing for the homeless and Single Room Occupancy (SRO) developments are contained in 28 U.S.C., Sect. 42(i)(3)(B)(iii) and (iv). This means that, in certain cases, a 30-day lease may be signed by tenants of the low-income portion of the property and still qualify for tax credits. Tenants in all other types of developments must sign an initial lease term of six months, after which a new lease would not need to be executed as long as there are provisions in the initial lease that contain the required lease language that addresses the lease renewal: i.e., month to month leases, six-month leases, etc. (for more information see Chapter 4, page 9).

### **F. The Violence Against Women Act**

The Violence Against Women Reauthorization Act of 2013 (VAWA) was extended to include the Low-Income Housing Tax Credit program. An applicant or tenant assisted under a covered housing program may not be denied admission to or terminated from participation in or evicted from housing on the basis of being a victim of domestic violence, dating violence, sexual assault, or stalking.

- i. OHFA requires the Form HUD-91067 signed by all adult tenants and obtained in the file.
- ii. OHFA advises the following forms should be distributed to applicants and tenants:
  - HUD Form 5380 – Notice of Occupancy Rights

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- HUD Form 5382 – Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking.

The above forms are to be provided with an applicant's approval or denial, with notice of eviction and with termination of tenancy for good cause.

HUD Form 5381 – Emergency Transfer Plan is included in Appendix N of this chapter, if needed.

*VAWA forms can be found in Appendix N.*

### **G. Student Households**

Households made up entirely of full-time students are not eligible to live in units receiving tax credits. There are five exceptions to the full-time student restriction (Section 42 (i)(3)(D)). These exceptions are described in detail in Chapter 5 Page 17 of this manual. Student status of every household member is required annually by the IRS. (See Appendix G).

### **H. Felony Status**

Effective April, 2019 OHFA can no longer restrict an LIHTC household based on criminal history. This is at the Landlord/Owners discretion.

### **I. Available Unit Rule (AUR this is a building rule)**

If the household income in a low-income unit increases above 140% of the current maximum allowable income limit, the next available unit of comparable or smaller size in the **building** must be rented to a qualified household to remain a set-aside unit. The unit will cease to comply as a low-income unit if any residential rental unit in the building (of comparable or smaller size) is occupied by a new resident whose income exceeds the income limitation. In 100% LIHTC projects, this rule should have no impact

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since every unit **must** be rented to tax credit eligible household. In the case a mistake is made, and a unit is rented to a market household, all over-income units in that building lose their status. In less than 100% LIHTC projects, market rate units may have to be rented to LIHTC qualified households to remain in compliance.

**Income Averaging AUR** / The AUR is followed by renting each unit that comes vacant to a household that is at or below the set-aside that is designated to determine the 60% average required by the Average Income test.

### **J. Vacant Unit Rule (project rule)**

If a low-income unit becomes vacant during the year, reasonable attempts must be made to rent that unit or the next available unit of comparable size or smaller size to tenants having a qualifying income before any units of comparable or smaller size in the project is rented to non-qualifying tenants. Note: If the project is a 100% set-aside LIHTC project, non-qualifying tenants are not allowed under any condition without jeopardizing the credit.

If the unit has been vacant for more than 90 days, OHFA staff will request to see all reasonable attempts that were made to rent a vacant tax credit unit. The property must document all attempts made and keep documentation on file. Examples of reasonable attempts: signage, open house, advertising, rent concessions/incentives, outreach in community, waiting list, retaining marketing consultant in area. Under no circumstances can a tax credit unit be down. Vacant Units must always be available to the general public and

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suitable for occupancy at all times (i.e., prepared for immediate occupancy). See IRS Reg. 1.42-9 and 42(i) (3) (B) (i-ii) of the Code. OHFA will allow a reasonable period to make-ready a unit. 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.

### **K. Buildings with Four or Fewer Units**

Buildings with four or fewer units are not eligible to receive tax credits if the owner of the property, or a relative of the owner, occupies one of the units. An exception exists if the buildings are bought or rehabilitated according to a state, local government, or qualified non-profit's development plan. Developments in this category are subject to limitations on the applicable amount of credit.

### **L. Equality Between Low-Income and Market-Rate Units**

The amount of credit claimed for the low-income units in a development is contingent upon the comparable quality of the low-income and market-rate units. The following conditions apply:

- i. the low-income units of a development must be intermingled reasonably with all other dwelling units and on all floors of the building(s).
- ii. the low-income units shall be of a quality and offer a range of sizes and number of bedrooms, comparable to units which are available to other tenants.
- iii. tenants in the low-income units shall have equal access to and enjoyment of all common facilities of the development.
- iv. all units must be maintained to ensure a safe and sanitary condition.

### **M. Employee/Manager/Exempt-Staff Units**

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According to Revenue Ruling 92-61, the cost of an employee unit is included in the eligible basis of a building but excluded from the applicable fraction. This means that a staff person could live on site in a unit without qualifying under the income limits. Chief Counsel Memo dated June 2, 2014, states whether an owner charges rents, utilities, or both for common space units is not relevant in the treatment of units as facilities that are reasonable required for the project. Therefore, OHFA will no longer monitor this as a requirement. This will be the owners' decision.

**If an employee unit was not requested at application, the owner must request such unit through OHFA BEFORE one can be claimed.**

OHFA will need the following information to make a request: OHFA file #, BIN, Unit address, Unit bedroom size with square footage, and Reason for the request. Upon approval, owners will be allowed to have an employee unit on site.

Employees are always allowed to qualify just as the other low-income households. The purpose of this rule is to allow employees to live on site who cannot qualify under the income guidelines and still provide a benefit to the property (i.e., maintenance, security, manager). Free or discounted rent to an employee must be included as income if their household is being certified as tax credit qualified.

### **N. Model Units**

A unit on a tax credit property being claimed as such and being held as a full-

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time model is prohibited. According to the Code, once a unit is tax credit occupied, it will remain as such if reasonable attempts are being made to rent that unit to a qualified low-income household and as long as the next available unit of equal or smaller size is occupied by a qualified low-income household. If potential tenants request to view a model apartment, OHFA suggests creating a temporary model if applicants are aware the unit is available for lease.

### **O. Supportive Services and Programs**

If credits were allocated to a development and points were given to an owner that promised to provide supportive services and/or other programs to the residents of the community, these services, and programs \*must be offered to the current resident(s) no later than after the first household occupies a unit in the project.

*\*Offering programs and services to residents before minimum set aside is met, means to survey, and document interest. If an interest is present, program/service must be provided.*

Once the property reaches its minimum set-aside, services and programs must be provided, regardless of an interest is present.

### **P. Special Needs Units / Targeted Populations**

Effective 2009, if an owner was awarded credits for special needs units, the units may not be receiving Sect. 8 Project Based rental assistance to make up for the lower rent being charged. Effective 2013 or later, if an owner was awarded points for special needs units, **the units may not be**

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**receiving any rental assistance to make up for the lower rent, if promised.** Effective 01/01/2008, any unit promised in the original application to be set-aside for a special need or targeted population (homeless, disabled etc.) must have been vacant for a period of 90 days before it can be rented to a tenant that does not have the designated special need. In addition, the owner must show ongoing due diligence in attempting to locate a special needs tenant for the unit. Due diligence must include, but is not limited to, monthly advertisement in a newspaper of general circulation in the area, and proof of at least monthly contact with providers of services for individuals with the designated special need or targeted population, including advising such providers of the number and size of units available, the rents charged for the units, and the income limits for prospective tenants. Service providers must also be contacted immediately upon a special needs unit becoming available. The owner must have a plan in place.

OHFA may waive this requirement if the owner can demonstrate that continued compliance with this policy may cause a unit to lose tax credits or rental subsidy, but in no case will the requirement be waived if the unit has been vacant for less than 60 days. The waiver request must be submitted in writing to OHFA staff. *If special needs or targeted population households do not occupy the number of units promised in the application upon approval of a waiver or the expiration of the 90-day period, the next available unit must be marketed to a special needs or targeted population household.*

### **Q. Definitions for Special Needs / Targeted Populations:**

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### **Homeless:**

Proof of one or more of the following will satisfy the Homeless definition:

- i. The tenant stayed in a shelter and a written statement on letterhead from the shelter manager stating this must be obtained; or
- ii. If the town does not have a shelter, a written statement from a social service agency attesting to the fact that the prospective tenant is homeless, and no shelter exists to adequately shelter their family must be obtained; or
- iii. If the town has a shelter, but it is filled to capacity, a written statement from a social agency attesting to the fact that the prospective tenant is homeless and that the shelters in the immediate area are filled to capacity must be obtained.

A homeless household lacks a fixed, regular, and adequate nighttime residence; AND has a primary nighttime residence that is a supervised public or private shelter providing temporary accommodations or a public or private place not ordinarily used as a sleeping accommodation for human beings; OR

An individual or family who has been displaced due to a major disaster declared by the President of the United States AND receives temporary federal housing assistance within the state of Oklahoma AND has a valid personal federal disaster identification number issued by the Federal Emergency Management Agency (FEMA).

Homeless households are considered homeless for a period of twenty-four (24) months from the date of move-in, according to Section 103 of the Stewart B. McKinney Homeless Assistance Act and 42(i) (3) (B) (iii) (I) of the Code.

### **Youth Aging Out of Foster Care:**

This is for youth ages 18-24. Applicant must provide proof stating they are no longer age eligible to be a participant in the foster care system.

### **Military Veteran:**

A person who has served in the active military, naval, or air service and who was discharged or released from such service under conditions other than dishonorable.

### **Persons with Mental or Physical Disabilities:**

This means a household composed of one or more persons, at least one of whom is an adult, who has a disability.

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(1) A person is considered to have a disability if the person has a physical, mental, or emotional impairment that:

- (i) Is expected to be of long continued and indefinite duration;
- (ii) Substantially impedes his or her ability to live independently; and
- (iii) Is of such a nature that such ability could be improved by more suitable housing conditions.

(2) A person will also be considered to have a disability if he or she has a developmental disability, which is a severe, chronic disability that:

- (i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
- (ii) Is manifested before the person attains age 22;
- (iii) Is likely to continue indefinitely;
- (iv) Results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency; and
- (v) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated. Notwithstanding the preceding provisions of this definition, the term "person with disabilities" includes two or more persons with disabilities living together, one or more such persons living with another person who is determined to be important to their care or well-being, and the surviving member or members of any household described in the first sentence of this definition who were living, in a unit assisted with HOME funds, with the deceased member of the household at the time of his or her death.

### **Disabled Verification:**

Compliance will verify proof of a disabled household according to the owner's policy, per the above definition. The required proof must not violate Fair Housing.

### **R. Assistance Animals**

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Assistance animals are allowed with proper documentation by a qualified professional. Pet deposits are not allowed for assistance animals.

Assistance Animal Guidance from HUD Office of Fair Housing and Equal Opportunity issued Notice FHEO-2020-01 that can be found here:

<https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf>

### **5. Placing a Property in Service**

The minimum set-aside test must be met by the end of the first year of the credit period. This can be the year the building was placed in service or the next year. This is at the election of the owner. A building must be placed in service a FULL month before credits can be claimed.

#### **A. New Construction**

The placed in service (PIS) date is after the certificate of occupancy is issued. As the units are ready to be rented, they must be leased to households whose income is certified at or below the maximum income limits or credits cannot be claimed on the unit for that time.

#### **B. Acquisition/Rehab Properties**

The PIS date is arbitrary. For households occupying a unit at the time of acquisition by the owner, the initial tenant income certification is completed within 120 days after the date of acquisition using the income limits in effect on the day of acquisition. The effective date of the tenant income certification is the date of acquisition since there is no move-in date.

If the household occupies a unit at the time of acquisition, but the tenant income certification is completed more than 120 after the date of acquisition,

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the household is treated as a new move-in. Owners use the income limits in effect at the time of the tenant income certification and the effective date is the date the last adult member of the household signed the certification, (this is an exception to the general rule for effective dates because there is no move-in date).

When the household moves into a unit after the building is acquired but before the beginning of the first year of the compliance period, the tenant income certification is completed using the income limits in effect at the time of the certification and the effective date is the date the household moves into the unit.

### **C. Re-syndication**

If the original owner re-syndicates with rehab credits, and if a resident's income was over 140% of their income limit at their most recent recertification, the owner is subject to available unit rule for the new credit allocation. The owner must rent next available unit to an LIHTC resident to maintain the applicable fraction needed to produce the anticipated tax credit for the new allocation. Vacant units previously occupied by income qualified households continue to qualify for the LIHTC program under the Vacant Unit Rule for same owner. Conversely, if a new owner of a building receives credits, the vacant units previously occupied by income qualified households DO NOT continue to qualify for the LIHTC program. These vacant units will be considered never qualified.

The new owner must calculate the applicable fraction on a month-by-month basis for year one as required under the first-year reporting convention.

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Residents originally qualified during the initial compliance or extended use period are eligible provided that the owner has supporting documentation in resident file.

When a site is re-syndicated and time remains on the previous Regulatory Agreement, both sets of promises and requirements apply. Unless otherwise stated, the new Regulatory Agreement does not supersede the older agreement.

### **D. Rev-Proc 2003-82 (Safe Harbor)**

This procedure applies for buildings that begin their credits in the deferred year. This is a “safe harbor” procedure that is to be applied if the property has households occupying units whose incomes exceed 140% of the maximum income limit at the beginning of the deferred year. The AVAILABLE UNIT RULE must be applied at the beginning of the deferred year. The household will not need to vacate. It is highly recommended to consult a LIHTC attorney for specific program details and guidance in lease up or PIS for Acquisition/Rehab Properties.

1. Meet/talk with investors.
2. Read 8823 Audit Guide, Chapter 4 and Understand Uniform Relocation Act (URA) of 1970.
3. Review all resident files and diligently track resident relocation.
4. Meet with residents.
5. Be prepared to implement all necessary (if applicable) income limit or rent decreases.

### **6. Determining Family Income**

All families occupying a low-income residential rental unit in a building receiving tax credits must declare all sources of income that are received by

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the household. The total household income must be at or below the income limits established by the Code.

**Income limits can be found in Appendix A of this manual.**

The owner must determine if a family earns the correct amount of annual income to be eligible to live in the tax credit development. Determination and the verification requirements of income are discussed in detail in Chapter 5 of this manual.

### **7. Live-In Aide**

A person who resides with one or more elderly persons, near-elderly persons, or persons with disabilities, and who:

1. Is determined to be essential to the care and well-being of the persons;
2. Is not obligated for the support of the persons; and
3. Would not be living in the unit except to provide the necessary supportive services.

It is at the owner's discretion to allow live-in-aides with minor children and/or family members to reside in the unit with the household member who is authorized for a live-in-aide.

If a live-in aide is needed to occupy a unit, please ensure the application notes such or the file is otherwise noted.

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*Question: Can a live-in aide have one of his/her family members reside in the unit (such as children, etc.); or, is only the live-in aide allowed to reside in the unit with whom he/she is providing care?*

*Answer: Each individual property establishes its own occupancy standards which must be included in the Tenant Selection Plan. Although HUD provides some general guidelines, the decision is with the owner. There is no requirement that requires a live-in aide to have his/her own bedroom or room nor is there a restriction against a live-in aide having a child. When approving the live-in aide and/or live-in aide with a child, the property has to maintain compliance with the written occupancy standards of the property.*

Based on this new guidance, HUD is leaving it up to property owners as to whether or not to permit occupancy by family members of live-in aides.

🕒 July 25, 2019 👤 A. J. Johnson ➔ Fair Housing, Guidance, Information for Your Business, Section 8

### **8. Training Opportunities**

All LIHTC owners and management are encouraged and may be required before obtaining Forms 8609, to attend an OHFA sponsored Tax Credit Compliance Training. Current site management staff is also encouraged to attend every few years at a minimum. Information will be posted and updated to OHFA website. State specific items, (reporting requirements, etc.) should be addressed as such in the class. OHFA staff will be present to answer questions.

### **9. Physical Condition of Units**

All low-income units must meet the standards set forth according to the Uniform Physical Condition Standards (UPCS). Guidance for this standard can be found here: <https://www.govinfo.gov/app/details/FR-1998-09-01/98-23421/summary> and here: [https://www.hud.gov/sites/documents/DOC\\_26481.PDF](https://www.hud.gov/sites/documents/DOC_26481.PDF)

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Carbon Monoxide detectors are strongly encouraged if an affordable unit contains a fire-fuel burning appliance and/or an attached garage. These detectors are required in all applicable units with a post-2018 LIHTC award. HUD encourages these in all other applicable affordable units. As of the published date of this manual, a required deadline has not been set for pre-2019 LIHTC awards.

# Rent Restrictions and Lease Requirements

## 1. Rent Restrictions

To ensure that Housing Tax Credit units are affordable to low-income residents, OHFA calculates income limits based upon the Area Median Gross Income that HUD publishes each year, to establish the maximum rents that owners can charge for these units. The agency updates the rent limits each year based on changes in area income figures.

It is the Owner's responsibility to ensure the accuracy of the rent and income limits that are used to establish eligibility for each of its Tax Credit units.

*Special Note: Owners of developments that received Tax Credits in 1987 through 1989 were given the option of selecting the method of determining rent based on unit size or based on household size.*

## 2. Maximum Allowable Rents for TC Units

To determine the maximum allowable rent for a TC unit, owners must:

1. Use the corresponding set of rent limits for the development.
2. Refer to the appropriate LIHTC rent limit. (Chart provided by OHFA can be found in Appendix A and is subject to change.)
3. Choose rent limits that apply to the county where the development is located.
4. If the resident pays any of his or her own utilities, subtract the appropriate utility allowance.

This amount represents the maximum allowable rent the owner can charge the resident of a Tax Credit unit.

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### **3. Rental Application Fees**

Effective 10/01/07, application fees will be limited to a maximum of \$30.00 per adult household member. This is in addition to the existing rule that no application fees may be charged more than the average expected out-of-pocket costs of checking tenant qualifications. Application fees may only be charged to cover the actual costs of checking a prospective tenant's income, credit history, landlord references, and criminal background. Employee time expended in checking tenant qualifications cannot be included.

**Administrative fees are prohibited and never allowed.**

### **4. Optional Services Available to Residents**

Owners/managers may charge fees for optional services provided to residents (meals, transportation, etc.), if they are optional. These fees are not included in the rent amount restricted by Tax Credit rent limits but must be reasonable and customary for the local area. **NEW:** Effective 1-1-2022, monthly pet rent or a monthly pet fee will be considered as included as part of the total rent charged.

A washer/dryer hookup fee, built in storage room fee, and month to month fee are considered non-optional and will be considered rent. Fees that are non-refundable and a condition of occupancy are included in rent.

\*\*Note: You may charge a refundable pet deposit. However, this is not applicable to service animals.

### **5. Charges for Development Facilities**

Owners/managers may not charge fees for use of development facilities, such as garages or swimming pools, which were included in the eligible

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basis for the development.

Owners/managers may charge fees for the use of optional development facilities **as long as the facilities were not included in the eligible basis** for the development.

The fees for optional facilities will not be included in the restricted rent amount. If the facilities are not optional, any fees charged for use of these facilities will be considered part of the rent that is restricted by the maximum allowable rent for that unit.

### **6. Rents for Units Receiving Assistance**

Tax Credit rent limitations apply only to the tenant-paid portion of the rent. The limits do not include the portion of unit rents paid by Section 8 rental assistance or any other comparable rental assistance. The Housing Choice Voucher Program limits the family's portion of the rent to no more than 40 % of their monthly adjusted income during the initial term of the lease. See Chapter 3 "Special Needs Units" on how to treat rental assistance for such.

Owners of RD sites must pay the overage back to RD to comply. The portion of rent paid by Section 8 tenants can exceed the LIHC rent ceiling if the owner receives a Section 8 assistance payment on behalf of the resident.

Check with the subsidy provider to ensure this is allowed. If no subsidy is provided, the tenant may not ever pay more than the LIHC rent ceiling. See IRC 42(g)(2)(E). Rent cannot exceed the LIHC rent ceiling for a new move-in or initial TIC. *The actual rent for the unit may be higher than the Tax Credit limit but may not exceed the rent limit of the program providing*

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*tenant assistance.*

### **7. Changes Affecting Allowable Rents for TC Units**

The Tax Credit rent limits and utility allowances that apply to TC units will change periodically. When this happens, the maximum allowable rents for TC units also change. This section describes the circumstances when these changes occur and how to properly adjust unit rents.

#### **A. Annual Revisions to LIHTC Rent Limits**

Each year, OHFA will revise the Housing Tax Credit rent limits applicable to developments in Oklahoma based on changes in area median incomes. The revisions will be made after HUD publishes its updated income figures. HUD generally issues these figures during the first half of the year. The existing limits may be used until the later of:

- Effective date of new limits
- 45 days after HUD publication effective date

#### **B. HUD Hold Harmless “HERA Special” Limits**

In 2007 and 2008, HUD modified the methodology used to calculate AMGI to include additional data sources. In some areas, the change in methodology resulted in a significant decrease in the area’s median gross income. As a result, HUD used a “hold harmless” policy to keep the AMGI at the existing level (the HUD hold harmless policy).

A site may use the HERA Special limits if at least one building included in the same project, per Line 8b of the 8609 Form, was placed in service (PIS) on or before 12/31/2008. The owner of an acquisition/rehab project may use the HERA Special limits if its acquisition credits were placed in

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service by 12/31/2008. Sites PIS 01/01/2009 or later may use the greater of the PIS limit or any years' AMGI limit after. Therefore, you will never have to use a lower limit.

### C. National Nonmetropolitan Median Gross Income

Effective July 30, 2008, rural projects (as defined in 42(d)(5)(B)(iv)(IV)) can use the greater of the area median gross income (AMGI) or the National Nonmetropolitan Median Gross Income (NNMGI). *If a site is qualified as rural and located in an MSA, the site is **eligible** to use the NNMGI limits.* To determine if an area is qualified as rural, use the USDA's determination of rural, go to the website at <http://eligibility.sc.egov.usda.gov/eligibility/welcomeAction.do?pageAct>

**This does not apply to 4% Tax Exempt Bond financed properties.** If a site is subject to the HERA Special limits and the NNMGI limits, the greater of the two limits may be used.

### D. Adjusting Unit Rents

If a decrease in Housing Tax Credit rent limits result in lower maximum allowable rents for TC units, owners are required to bring the rents for TC units into compliance with the new rent limits at the time they become effective.

When Housing Tax Credit rent limits increase, owners can raise the rents for TC units, up to the amount of the new limit, after considering the necessary allowance for tenant-paid utilities. However, any adjustments in a unit's rent must be consistent with the dwelling lease for the unit. Unless specifically stated in the dwelling lease, owners may not raise unit rents until a new lease term begins.

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### **E. Rent Floors**

When annual adjustments are made in Tax Credit rent limits, it is possible that rents can go down. However, Housing Tax Credit regulations have established a floor to protect owners from decreasing rents. Tax Credit regulations protect owners who received allocations in 1990 or later years by establishing a rent floor that keeps the applicable Tax Credit rent limits for the development from dropping below the rent limits that were in effect on the date the initial Tax Credit allocation was made to the building/development.

In determining the maximum allowable rent for a TC unit, the current utility allowance is always subtracted from the rent limit — regardless of whether the rent floor or the current rent limit is used.

### **F. Rents for TC Units with Over-Income Tenants**

As discussed in Chapter 5, owners/managers must conduct annual re-examinations of tenants in TC units to assess their continued eligibility. Changes in household composition or increases in income can affect a tenant's eligibility. Tenants whose income at re-examination exceeds 140 % of the applicable income limit are considered over-income and the unit is an over-income TC unit. The rent for an over-income unit remains restricted until the unit is no longer counted as a TC unit.

#### **1. Mixed Income Developments**

In a building with fewer than 100 % TC units, if a tenant's income exceeds 140 % of the applicable limit at recertification, the unit remains a TC unit

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until the next available unit in that building, which is of comparable or smaller size, is designated to replace this unit. Once an over-income TC unit is replaced, the rent for that unit is no longer restricted under Tax Credit requirements. Rent increases, if any, should comply with lease provisions and local tenant-landlord laws.

Note: The applicable fraction MUST be restored or maintained BEFORE lifting a rent restriction.

### **2. 100% Low-Income Developments**

In buildings that consist of 100 % TC units, unit rents may never exceed the maximum allowable rent for TC units, even if tenant incomes increase.

### **G. Developments Receiving Other Forms of Assistance**

Like the Housing Tax Credit Program, most federal affordable housing programs restrict the rents property owners may charge eligible tenants. When developments receive more than one type of assistance, owners must follow the most stringent program guidelines.

### **8. Utility Allowances**

Tenants responsible for utilities must be paying the utilities directly to the utility providers. An averaged third-party billing system is not allowed (e.g. RUBs).

Tax Credit rent limits include an allowance for the cost of utilities (e.g., heat, lights, air conditioning, water, sewer, oil, or gas). In developments where the owner pays all utilities, no adjustment in the tax credit rent limits is needed to determine the maximum rent that can be charged for a tax credit unit. In developments where tenants pay some or all their own

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utilities, the rent established for a tax credit unit plus an allowance for tenant-paid utilities must not exceed the applicable tax credit rent limit for that unit. In other words:

- $Unit\ Rent + Utility\ Allowance \leq Tax\ Credit\ Rent\ Limit$

When using the PHA utility allowance, the proper usage type must be determined, multi-family or single-family.

**A. Multi-family** is used when there are other households living above a unit or there is a space designated for a separate household. This would be for 2 story buildings and above (i.e., low-rise and high-rise).

**B. Single-family** is used no matter how many levels a unit has, if it is intended for one household (i.e., house, duplex, row house, town house).

### **C. Utility Allowance Development Type**

The method of determining utility allowances depends on the type of development receiving credits (IRS Regulation 1.42-10).

- RHS Assisted Buildings**: The utility allowance used for these units is determined under the method prescribed by the Rural Housing Service (RHS) for the building.
- Buildings with RHS-Assisted Tenants**: If any tenant in a building receives RHS rental assistance payments, all housing credit units are governed by the RHS utility allowance. This includes HUD assisted units.
- HUD-Regulated Buildings**: If rents and UAs are regulated by HUD (OHFA considers HOME buildings funded post-2012 as

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such), the HUD required allowances must be used for all rent restricted units in a building. (Buildings that contain units leased to tenants holding Section 8 vouchers but receiving no project-based HUD (or post-2012 HOME) assistance falls into the “other buildings” category below).

**d. Other Buildings:** If a building has none of the above, the UA that applies to tax credit units is determined as follows:

1. *Tenants receiving HUD (section 8) Rental Assistance:*

If a tenant is receiving HUD rental assistance (i.e., Section 8 vouchers) the applicable Public Housing Authority (PHA) utility allowance must be used unless HUD regulated building. You can find a copy of the PHA utility allowance chart in Appendix B. NOTE: PHA utility allowances are subject to change.

2. *All Other Tenants in Rent Restricted Units:* The applicable PHA utility allowance should be used for all other rent restricted units in the development unless another option is selected.

All utility allowances need to be updated annually. Any changes in applicable utility allowances will impact the maximum allowable rents for TC units. Even if a resident is on a lease, the owner must implement the current UAs. If the UA goes up, the rent must go down if the tenant is charged the maximum allowed rent.

- Each year, local PHAs revise their standard utility allowances. Owners who rely on PHA figures must adopt these new allowances

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no later than 90 days after the effective date (see pages 7 thru 11 of this chapter for more information on utility allowances).

- For buildings receiving other federal assistance, the administering agency provide annual utility allowance updates.
- **When the applicable utility allowance for a tax credit unit increase, the owner must reduce the rent for the unit, if needed, to make it consistent with the maximum allowable rent under the new utility allowance within 90 days after the date of the change.** To summarize, any increase in UA's must be used to reduce the net rent paid by ALL low-income tenants within 90 days of the change. **If at any time a low-income tenant is over the maximum rent limit (net rent + current UA > max rent), the owner will be out of compliance.**
- Copies of the applicable utility allowance for all years of operation must be kept on site.

### D. Utility Allowance Options

Effective 07/29/08, additional options have been added to determine more accurate utility allowances for housing credit buildings that are not subject to the RHS, PHA, or HUD approved UA. If any of these options, described below, are obtained for any unit in the building, this estimate becomes the applicable utility allowance for all rent restricted units of similar size and construction in the building.

1. **Utility Company Estimate**: This is not management staff averaging actual utilities. This is an estimate provided by the utility provider based on their methodology. Any interested party

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may request the utility company estimation of consumption in the building's geographic area. The estimate is obtained when the interested party receives, in writing, information from a local utility company providing the estimated cost of that utility for a unit of similar size and construction for that geographic area. The owner of the building must make estimate available to all tenants in the building.

In the case of utility deregulation, an estimate from only one company serving the area is required. If the provider refuses, there are other options available to the owner.

2. **HUD Utility Schedule Model (HUSM)**: An owner may calculate a utility estimate using the HUD model found at [www.huduser.org/datasets/lihtc.html](http://www.huduser.org/datasets/lihtc.html). Please obtain all supporting documentation used to calculate this option.
3. **Energy Consumption Model**: This estimate uses an energy, water, and sewage consumption analysis model. This model must be prepared by a professional engineer or other qualified person that has no identity of interest relationship with the owner.

### **E. Notification Requirements:**

If the owner obtains a utility allowance from a Utility Company, the HUD Utility Schedule Model, or the Energy Consumption Model, the owner must:

- (1) submit copies of the utility estimates to the Tax Credit Compliance Department having jurisdiction over the building and
- (2) make the utility estimate available to all tenants in the

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building at the beginning of the 90-day period.

*\*Utility allowances must be implemented no later than 90 days from when the utility allowance is made available. If other programs require a different method of use not allowed for the LIHTC program, use the most stringent.*

The building owner is not required to review the UA's or implement new UAs, until the building has achieved 90 % occupancy for a period of 90 consecutive days or the end of the first credit year, whichever is earlier. A building owner must review, at least once during the calendar year, the basis on which utility allowances have been established and must update the applicable UAs.

### **9. Dwelling Lease Requirements**

Owners must execute a lease with tenants occupying TC units. LIHTC gives owners flexibility regarding the contents of their leases if they:

- a. Comply with state and local laws; and
- b. Do not contain prohibited provisions.
- c. The Lease Contract must have an addendum disclosing that the Owner is participating in a government-regulated affordable housing program and that execution of same is verification of the household annual income, that the Resident agrees to comply with requests for information regarding annual income and eligibility, and that failure to answer or to provide accurate information respecting same is a substantial violation of the Lease Contract and the tenant can be evicted. **The Tax Credit Lease Addendum with the appropriate language can be found in Appendix K.** The lease language must include a

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statement by the household that they agree to notify the owner if any member becomes a full-time student.

OHFA requires the head of household, spouse, any co-head, and all adult members of the household to sign the lease at move-in as well as any lease renewals.

### A. Term of Lease

The only way to satisfy this requirement is to use an initial lease term of at least six months. To simplify record-keeping, owners may want to put TC unit tenants on annual leases that correspond to their recertification dates. **Re-letting and sub-leasing is prohibited.**

OHFA wants to see that the intent to occupy a unit for a full 6 months is present, thus preventing transient housing. It is permissible to hold a resident responsible through the end of a lease term.

### B. Prohibited Lease Provisions (Landlord Tenant Act)

Lease provisions not allowed under other federally related affordable housing programs may not appear in the dwelling lease for any TC unit.

Prohibited provisions include:

Agreement to be sued. Agreement by the tenant to be sued, admit guilt or to a judgment in favor of the owner in a lawsuit brought in connection with the lease.
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Treatment of property. Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning the disposition of personal property remaining in the unit after the tenant has moved out. The owner may dispose of this personal property in accordance with State Law.
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Excusing the owner from responsibility. Agreement by the tenant not to hold the owner or the owner's agents legally responsible for actions or failure to act, whether intentional or negligent.

Waiver of notice. Agreement by the tenant that the owner may institute a lawsuit without notice to the tenant.

Waiver of legal proceedings. Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense or before a court decision on the rights of the parties.

Waiver of a jury trial. Agreement by the tenant to waive any right to a jury trial.

Waiver of right to appeal court decision. Agreement by the tenant to waive the tenant's right to appeal or otherwise challenge in court a decision in connection with the lease.

Tenant chargeable with cost of legal actions regardless of outcome. Agreement by the tenant to pay attorney fees or other legal costs even if the tenant wins the court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

### **C. State and Local Law**

In addition to keeping up to date with LIHTC regulations and requirements, OHFA expects owner/managers to stay abreast of state and local law concerning the management and operation of rental properties.

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# DETERMINING TENANT ELIGIBILITY FOUR STEPS

(These steps should be completed in this exact order)

1. Complete Rental Application
2. Compare Income to LIHTC Limits
3. Verify <b>all</b> Annual Gross Income
4. Complete Tenant Income Certification

**IF YOU ARE NOT USING THE REQUIRED OHFA FORMS, THE FORMS YOU ARE USING ALONG WITH JUSTIFICATION FOR THE USE OF THOSE FORMS MUST BE SUBMITTED TO OHFA IN WRITING FOR APPROVAL.**

The required forms can be found in the appendices in the back of the Manual:

Under 5K Asset Certification	Appendix D, this form is not necessary if assets are less than 5K but are third party verified.
Student Verification	Appendix E, if applicable.
Employment Verification	Appendix F
Zero Income Certification	Appendix F, if applicable.
*Tenant Income Certification	Appendix G
OHFA Household Information Form	Appendix G (if eliminating recertification)

*\*Rural Housing may use the Rural Housing TIC, however the OHFA Tax Credit effective date is ALWAYS the move-in date or the anniversary of, regardless of RD requirements.*

Effective 01/01/2008, all applicable re-certifications, must be completed within 120 days of the anniversary date of move-in.

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# STEP 1: COMPLETE RENTAL APPLICATION

*OHFA will accept electronic signatures on all forms using DocuSign or other software methods of obtaining electronic signatures.*

### A. Determine Household Eligibility

- Who to count:
  - Year-round occupants
  - Members temporarily away (children away at school or family member working in another state on assignment)
  - Children under joint custody or who are present in the household 50% or more of the time, if a question about status arises additional records may be requested (ie. Court documents, tax returns)
  - Children temporarily absent due to foster home placement
  - Children in the process of being adopted
  - Unborn Children (self-certification)
  - Foster Children or Adults
- Don't Count:
  - Live in Aids

*\*Effective 08/01/09, HUD states unearned income of foster child(ren) and all income from foster adult(s) is counted toward the total household income.*

### B. Evaluate Annual Income

Definition of Annual Income: Annual income is the verifiable, current income from all sources received by the head of household and each additional member of the household, including all income derived from assets. Use current circumstances unless there is documentation of an imminent change.

Owners are not required to anticipate income for members of the household that are currently unemployed. However, owners should ask the appropriate questions regarding whether an unemployed household member is planning to seek employment. If a household is accepted as low-income and subsequently becomes over-income, the owner should be

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prepared to prove due diligence. If a person is actively seeking employment but is currently unemployed, the owner/mgmt. is allowed to be more restrictive than the state and determine that household is not qualified. The IRS Notice 88-80 states that annual income should be determined in a manner consistent with HUD Section 8 income. The HUD Handbook 4350.3 Chapter 5 should be used to determine income. This handbook can be found by as a Housing Tax Credit Reference or by going to: <http://www.hud.gov>.

Income from the following **MUST** be counted:

- 1. Regular Income:** (page 4-8 inclusions and exclusions)
  - The income of every person, age 18 or older, should be included in the income calculation.
  - The income of any minor who is considered the head of household, co-head, or spouse.
  - The non-employment income of household members under age 18.
- 2. Asset Income:** (page 11-inclusions and exclusions)
  - Cash on Hand
  - Checking
  - Account
  - Savings Account
  - Real Estate

Convert earned income to annual income as follows:

- Multiply hourly wages by the number of hours worked/year (2080 hours for full-time employment for a 40-hour work week).
- Multiply weekly wages by 52.
- Multiply bi-weekly wages by 26.
- Multiply semi-monthly wages by 24.
- Multiply monthly wages by 12.
- Multiply Overtime hours by rate given by employer.

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To calculate an annual income amount for a household member with other than full-time employment, multiply:

- hourly wages by the number of hours the family member expects to work annually; or
- average weekly amounts by the number of weeks the family member expects to work.
- overtime hours that are verified by employer.

**All Adult members, 18 and older, must sign an application and answer all required questions.**

### **3. Income Inclusions - 24 CFR 5.609(b) and (c)**

1. The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions fees, tips and bonuses, and other compensation for personal services.
2. The net income from operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in operation by family.
3. Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (2) above. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursements of cash or assets invested by the family. Where the family has net family assets more than \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of value of such

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assets based on the current passbook savings rate, as determined by HUD;

4. The full amount of periodic amounts received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (e.g., Black Lung Sick benefits, Dependent Indemnity Compensation, payments to the widow of serviceman killed in action). Do not count any remaining retirement benefit amounts in the account as an asset if periodic payments are received. See paragraph 13 under Income Exclusions for an exception to this paragraph.
5. Payments in lieu of earnings, such as unemployment, disability compensation, worker's compensation,
6. Welfare Assistance.
  - a. Welfare assistance received by the family.
  - b. If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:
    - i. The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus
    - ii. The maximum amount that the welfare assistance agency could in fact allow the family for shelter and
    - iii. utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage;
7. Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling; and
8. All regular pay, special pay, and allowances of a member of the Armed Forces, except as provided in paragraph (7) under

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### Income Exclusions.

9. The first \$480 of earned income of a full-time student, 18 years or older, who is not the head, spouse, or co-head.
10. Student financial assistance for students (less tuition and required fees) receiving Section 8 assistance (see #6 income exclusions).

### **4. Income Exclusions**

1. Income from employment of children (including foster children) under the age of 18 years
2. Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);
3. Lump- sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains, and settlement for personal or property losses, except as provided in paragraph (5) under Income Inclusions;
4. Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
5. Income of a live-in aide, as defined in 24 CFR 5.403;
6. The full amount of student financial assistance for the student receiving Section 8 assistance if recipient is over age 23 with dependent child(ren) or recipient is living with his or her parents who are receiving Section 8 assistance. See Income Inclusion #10.
7. The special pay to a family member serving in the Armed Forces who is exposed to hostile fire (e.g., in the past, special pay included Operation Desert Storm);
8. Amounts received under training programs funded by HUD (e.g., training received under Section 3);
  - a. Amounts received by a person with a disability that are disregarded for a limited time for purposes of supplemental security income eligibility and benefits because they are set-aside for use under a Plan to Attain Self-Sufficiency (PASS);
  - b. Amounts received by a participant in other publicly assisted programs that are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing,

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- transportation, childcare, etc.) and which are made solely to allow participation in a specific program;
- c. Amounts received under 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, on a part-time basis, that enhances the quality of life in the project. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, and resident-initiative coordination. No resident may receive more than one such stipend during the same period of time; or
  - d. Incremental earnings and benefits resulting to any family member from participation in qualifying state or local employment training programs (including training programs not affiliated with a local government) and training of a family member as a resident management staff person. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment-training program.
- 9. Temporary, nonrecurring, or sporadic income (including gifts);
  - 10. Reparation payments paid by a foreign government pursuant to claims filed 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 the Nazi era);
  - 11. Earnings in excess of \$480 for each full-time student 18 years or older (excluding the head of household and spouse);
  - 12. Adoption assistance payments in excess of \$480 per adopted child;
  - 13. Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump-sum amount or in prospective monthly amounts;
  - 14. Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit;
  - 15. Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled

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family member at home; or

16. 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 include assistance under any program to which the exclusions set forth in 24 CFR 5.609© apply. A notice will be published in the Federal Register and distributed to housing owners identifying the benefits that qualify for this exclusion. Updates will be published in distributed when necessary. The following is a list of income sources that qualify for the 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 offender incarceration alternatives, senior companions);
  - c. Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626[c]);
  - e. Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);
  - f. Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624[f]);
  - 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 share 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 interest held in such trust or restricted lands (25 U.S.C. 1407-

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- 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). For Section 8 programs, the exception found in § 327 of Public Law 109-115 applies and requires that the amount of financial assistance in excess of tuition shall be considered income in accordance with the provisions codified at 24 CFR 5.609(b)(9), except for those persons with disabilities as defined by 42 U.S.C. 1437a(b)(3)(E) (Pub. L. 109-249);
  - j. Payments received from programs funded under Title V of the Older American 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. litigation, M.D.L. No. 381 (E.D.N.Y.);
  - m. Payments received under the Main Indian Claims Settlement Act of 1980 (25 U.S.C. 1721);
  - n. 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);
  - o. 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]);
  - p. 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. 95-43);
  - q. Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637[d]);
  - r. Any amount of crime victim compensation (under the Victims of Crime Acts) received through crime victim assistance (or

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payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of crime against the applicant under the Victims of Crime Act (42 U.S.C. 2931).

- s. Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931);
- t. Amounts received under the School Lunch Act and the Child Nutrition Act of 1966 (42 U.S.C. 1780(b)), including reduced-price lunches and food under the Special Supplemental Food Program for Women, Infants, and Children (WIC);
- u. Payments received by members of the Seneca Nation under the Seneca Nation Settlement Act of 1990;
- v. Payments from any deferred Department of Veteran Affairs disability benefits that are received in a lump-sum amount or
- w. in prospective monthly amounts [Editor's note: This exclusion will be added to 24 CFR 5.609(c)(14) when the May 15, 2012, proposed rule "The Housing and Economic Recovery Act of 2008 (HERA): Changes to the Section 8 Tenant-Based Voucher and Section 8 Project-Based Voucher Programs" is finalized.];
- x. Amounts received by or on behalf of a veteran for service-connected disability, death, dependency, or indemnity compensation if the recipient is assisted under a program authorized by the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA);
- y. A lump sum or a periodic payment received by an individual Indian pursuant to the class action settlement agreement in *Elouise Cobell et al. v. Ken Salazar et al.*, as provided in the Claims Resolution Act of 2010.

### **C. Evaluate Asset Income**

The method of calculation depends on the value of the assets.

If Total Value of Assets Does Not Exceed \$5,000: Count the actual income from assets received by the household (i.e., interest, dividends, cash

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payments). Third- party verification is not required, and the tenant would sign an Under \$5,000 Asset Verification Form (a sample form can be found in Appendix D) establishing the total value of assets and the expected asset income. This expected amount must be counted as income.

If Total Value of Assets is Greater Than \$5,000: The assets must be verified by third party verification and the amount counted as income would be the greater of actual income from assets (e.g., interest, dividends, cash payments) or imputed income from assets (total value of assets x current passbook rate). At the current time, the HUD passbook rate is 0.06% (NOTE: This amount is subject to change).

### **D. Guidelines for Determining Value of Assets**

Valuing Assets. In determining income from assets, owners must use the cash value of the asset (i.e., the amount the family 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.

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 (for business loans, only subtract interest paid on, unless used for business expansion or capital improvement).

Note: Cash Value is found by subtracting costs and expenses from Market Value.
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Value of Assets Owned Jointly. If assets are owned by more than one person, prorate the assets according to their percentage of ownership. If no percentage is specified or provided by State or local law, prorate the assets evenly among all owners.

Value of Assets Disposed of For Less Than Fair Market Value. Count the asset for two years from date of disposal on the certification or recertification, including assets put into non-revocable trusts.

Use the following procedures in determining the value of disposed assets:

- If the fair market value of the disposed asset exceeds the gross amount the family received by more than \$1,000, include the difference between the cash value and the amounts received. If the difference is less than \$1,000, ignore it.
- Do NOT consider assets disposed of for less than fair market value as a result of a foreclosure, bankruptcy, or a divorce or separation settlement.

### EXAMPLE OF ASSET DISPOSED OF FOR LESS THAN FAIR MARKET

VALUE: Mrs. Smith had \$8,000 in the bank. She decided to give half of it to her daughter and to keep the other half. The fair market value of the disposed asset is \$4,000, which exceeds the amount she received by more than \$1,000. Therefore, the owner is required to count the \$4,000 she gave to her daughter as an asset for a period of two years. The other \$4,000 is still in the bank and the owner will count it as a current asset.

### EXAMPLE OF ASSET DISPOSED OF FOR LESS THAN FAIR MARKET

VALUE: Mr. Grant had a stamp collection valued at \$995 which he gave to his son. Since the fair market value of the stamp collection is less than \$1000,

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this would not be considered an asset disposed of for less than fair market value because its value is less than \$1,000.

Rental Property Income: Determine cash value of rental property and consider rental income as asset income. (To avoid double counting)

1. Determine cash value of property.
2. Determine asset income. (Verify amount owner receives from tenant and subtract expenses incurred as part of operations. Expenses include: insurance, taxes, mortgage interest, utility bills etc.)

### 1. Pre-Paid Debit Cards

The IRS has recently provided guidance to count the balances of pre-paid debit cards as assets. These include debit cards issued for Social Security, child support and paychecks. The amount remaining on the debit card upon move-in is an asset equivalent to a bank account. The balance on the card will need to be verified only if the total household assets exceed \$5,000. This is treated and verified as a savings account. Ensure this question is documented on the rental application.

### 2. Asset Inclusions and Exclusions

#### ASSETS INCLUDE:

1. Cash held in savings and six month balance in checking accounts, safety deposit boxes, homes, etc.
2. Stocks, bonds, saving certificates, money market funds and money market accounts.
3. Equity in real property or other capital investments. Equity is the estimated current market value of the asset less the unpaid balance on all loans secured by the asset and reasonable costs (such as broker fees) that would be incurred in selling the asset.
4. Revocable trusts. The cash value of trusts that are available to the household.
5. IRA, Keogh and similar retirement savings accounts, even though withdrawal would result in a penalty unless benefits are

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being received through periodic payments. (See #4 of Income Inclusions for retirement periodic payments).

6. Contributions to company retirement/pension funds that can be withdrawn without retiring or terminating employment.
7. Cash value of life insurance policies. Assets which, although owned by more than one person, allow unrestricted access by the applicant.
8. Lump sum receipts such as inheritances, capital gains, lottery winnings, insurance settlements, and other claims.
9. Personal property held as investments such as gems, jewelry, coin collections, antique cars, etc.
10. Assets disposed of for less than fair market value during two years preceding certification or recertification.
11. A mortgage or deed of trust held by the applicant.
12. Pre-paid debit cards for Social Security, child support and paychecks.

### **ASSETS DO NOT INCLUDE:**

1. Necessary personal property, except as noted in #9 above.
2. Interest in Indian trust lands.
3. Assets that are a part of an active business or farming operation.
  - NOTE: Rental properties are considered personal assets held as an investment rather than business assets unless real estate is the applicant's/tenant's main occupation.
4. Assets not accessible to the family and which provide no income for the family.
5. Vehicles especially equipped for the handicapped.
6. Equity in the cooperative unit in which the family lives.
7. Term life insurance policies (i.e. where there is no cash value)
8. Assets held in the applicant's name but which are actually owned by someone else;
  - a. Assets and any earned income that is accrued or paid to the benefit of someone else;
  - b. A situation wherein another person is responsible for
  - c. income taxes incurred on income generated by the assets; or
  - d. If the applicant is responsible for disbursing someone else's money, such as in the case of having the Power of Attorney, but the money is not his/hers and no benefit is received.

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### Sample Asset Worksheets

#### House Not Rented or Sold Yet

Asset:	Value:	Imputed Income:	Actual Income:
		(value x 0.06%)	
Checking Account (verify avg. last 6 mos.)	\$225		\$0
Savings Account (verify current mo.)	\$2,500		\$125
House:			
market value	\$65,000		
mortgage bal.	-20,000		
expenses	<u>-6,500</u>		
<b>cash value</b>	<b>\$38,500</b>	<u>\$38,500</u>	<u>\$0</u>
TOTAL (add higher total to gross income)	\$41,225	\$24.74	\$125
			<b>USE</b>

NOTES:

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### Sample Asset Worksheet

#### House Rented

Asset:			Value:	Imputed Income:	Actual Income:
				(value x .06%)	
Checking Account			\$225		\$0
(verify avg. last 6 mos.)					
Savings Account (verify current mo.)			\$2,500		\$125
House					
Rent amount:	\$8,400				
(\$700 mo. X 12)					
Expenses:					
(mortgage Interest, taxes, water, and trash)	<u>\$3,200</u>		(Previous page calculation)		
<b>Asset Income</b>	<b>\$5,200</b>		\$38,500		\$5,200
				<u>\$0</u>	<u>\$0</u>
<b>TOTAL</b> (add higher total to gross income)			\$41,225	\$24.74	\$5,325

USE

NOTES:

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### E. Student Households

OHFA has adopted the National Council of State Housing Agencies (NCSHA) Recommended Best Practices in Compliance Monitoring which addresses the student issues as follows:

- (1) Consider a single person household ineligible if he or she is a full-time student at the time of initial occupancy or will be at any time during the certification period. (unless the individual meets one of the student exceptions described below);
- (2) Consider a household of students eligible if it includes at least one part-time student or meets one of the student exceptions described below;
- (3) Consider a household containing full-time students and at least one child (who is not a full-time student) an eligible household;
- (4) Consider TANF an acceptable Title IV program exception.
- (5) Consider at least one member of the household was previously under the care and placement of a foster care program under Title IV of the Social Security Act.

<p><i>NOTE: Effective 01/01/06, OHFA will consider children enrolled in grades K-12 as full-time students.</i></p>
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IRC 152(f)(2) 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) or is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational organization described in the IRC

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170(b)(1)(A)(ii) or of a state or political subdivision of a state. Treas. Reg. 1.151-3(b) further provided that the five calendar months needs not be consecutive. For example, Susie attends college full-time from Jan 10, 2007 to May 5, 2007. According to the IRS, Susie is considered a student who is not eligible for the tax credit program in the year 2007 unless she can meet one of the exceptions below.

A household comprised entirely of full-time students is not eligible unless the household meets one of the following 5 exceptions:

### **EXCEPTIONS:**

1. All adult household members are married and eligible to file a joint tax return;
2. Household consists of single parent and their children, and such parent and child(ren) are not dependents of another individual other than a parent of such children;
3. at least one member of the household receives assistance under Title IV of the Social Security Act (i.e., AFDC or TANF assistance); or
4. at least one member of the household is enrolled in a job training program receiving assistance under the Job Training Partnership Act (known as the Workforce Investment Act), or similar federal, state, or local law.
5. at least one member of the household was previously under the care and placement of a foster care program under Title IV of the Social Security Act.

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The rental application must ask if all household members are full-time students. If “yes” is checked, the tenant will need to certify to the fact that one of the above exceptions applies to their household situation (a copy of this certification can be found in Appendix E). It is required that a lease provision be utilized that requires residents to notify management of any changes in the student status. The student question must be asked at initial certification and recertification and annually for 100% Tax Credit properties eliminating re-certifications.

*NOTE: verification must be provided and placed in the tenant file to verify the exception that is being claimed. See Appendix E – Certification of Student Eligibility.*

### F. Sign a Release and Consent Form

All adult household members age 18 and over must sign the Tenant Release and Consent Form. A sample release and consent form can be found in Appendix C. OHFA wants to see all individual verification forms signed, if possible.

## STEP 2: COMPARE INCOME TO LIHTC INCOME LIMITS

After receiving the information from the application in Step 1, is the household potentially eligible?

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If the answer is yes,

- Compare household income to LIHTC income limits which are published annually, by counties and MSA's, and by household size.

Please verify that your income limits are correct and up to date.

**THIS IS YOUR RESPONSIBILITY!**

### **STEP 3: VERIFY ALL ANNUAL GROSS INCOME**

#### **A. Basic Methods**

- Third-party verifications are preferred. Third party is considered pay stubs, written verification from the employer, SSA benefit letter, etc. *See HUD 4350.3 Chapter 5 section 5-13 for additional information.* If obtaining paystubs obtain at least four to six paystubs (if site has layered HOME funds must obtain at least two months of paystubs (with a minimum of 4)), or W-2 Forms. W-2's are acceptable if applicant has had same employer for at least two years and increases can be accurately projected.

***No W-2's unless applicant has had same employer for two yrs and increases are projected.***

- Oral (telephone verification) may be used only if third party verifications are not obtainable. The owner must complete, sign and date a form identifying the third-party oral source and stating the reason why other methods were not obtainable.

#### **B. Section 8 Voucher Holders**

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**Effective October 1, 2008 OHFA will not accept the PHA income verification statement for an initial certification; this form will be accepted only at recertification. The sample verification forms can be found in Appendix F.**

If the resident is a Section 8 Voucher holder, you can provide a statement from the PHA, certifying the names of the residents and that those particular residents' income(s) are below the LIHTC Median Income Limits, and below the required Section 8 income limits. This only relieves you of the obligation of verifying income; all other required documentation must be in the resident file.

The forms that must be in a Section 8 file if using the PHA statement:

1. Application
2. Under \$5,000 Asset Cert (if applicable)
3. Tenant Income Certification
4. Lease and Section 42 Language

When renting to a Section 8 household, you must **FIRST** qualify the household for the tax credit program and **THEN** request an inspection date.

**Effective June 1, 1999--OHFA will no longer accept the HUD Forms 50058 or 50059 as Tenant Income Certifications, you must use a separate Tenant Income Cert (TIC) approved by OHFA. (OHFA accepts the Rural Housing Certification in place of the TIC found in Appendix G)**

### **C. Acceptable Methods of Verification**

Verifications must be dated within 120 days prior to the effective date of the Tenant Income Certification.

- (1) Time period for the 120 days begins once the verification is received in your office. Be sure to date stamp the verification.

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*NOTE: OHFA does not require verification forms to be notarized. A notary does not verify that the information is true and correct. By requiring this practice, an extra monetary burden may be placed upon the applicant/resident.*

For acceptable methods of verification see HUD Handbook, Occupancy Requirements of Subsidized Multifamily Housing Programs (4350.3), Appendix 3: Acceptable Forms of Verification  
<https://www.hud.gov/sites/documents/43503A3HSGH.PDF>

### **STEP 4: OBTAIN TENANT INCOME CERTIFICATION (TIC)**

USE ONLY OHFA APPROVED FORMS (unless otherwise authorized by OHFA)

- The TIC in Appendix G is REQUIRED (OHFA will accept the Rural Housing Certification) Effective 01/01/2008, all TIC's including Rural Housing TIC's must be completed within 120 days of the anniversary date of move-in.
- The TIC must be signed by the Head of Household, all household members age 18 or older, and the owner or a member of the management staff.
- The Initial TIC should be effective the date of move-in and signed no more than 5 days prior.
- The HUD LIHTC TIC in Appendix G includes the household composition data that is required by HUD. The TIC is on the OHFA website in pdf format and data can be entered directly and printed out. This TIC may be used for initial certifications and all

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applicable recertification as long as appropriate back-up is obtained.

### A. Annual Recertification

Effective 01/01/2009, OHFA will eliminate the annual recertification requirement for 100% tax credit properties. This provision waives the annual recertification requirement under the low-income housing tax credit regulation. This rule will not apply to mixed income properties with tax credit buildings mixed with market buildings. **The properties in which this provision of elimination will apply will still be required to annually obtain the student status of each household as these rules continue to be applicable. For properties eliminating re-certifications, Appendix G “OHFA Household Information Form” is required.**

#### **Guide for properties eligible to eliminate recertifications:**

Each year the following must be obtained:

1. Student question documented and verified, if applicable
2. Annual OHFA Household form (Appendix G)

**OHFA strongly encourages the use of a recertification application to document #1 above.** This application would need to obtain information regarding household composition, full-time student status, etc.; the application would not need to obtain rental history or income information. A **Tenant Release and Consent** form should be obtained in the event student status will need to be verified. The Annual OHFA Household form found in Appendix G

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should be completed by the site staff with the exception of the demographic information to be completed by the household and then executed.

### **Guide for properties that must continue to recertify:**

1. The effective date of the tenant income certification (TIC) is the date of move-in or initial certification. The recertification is due on the anniversary of the effective date. The effective date can be no more than 120 days prior to the anniversary date of the actual move-in or initial certification.
2. Complete the same four steps below that were used in determining Tenant Eligibility.
  - Complete Rental Application.
  - Compare Income to LIHTC Income Limits (Don't forget the 140% or Available Unit Rule Chapter 3, Page 16).
  - Verify all Annual Gross Income.
  - Complete Tenant Income Certification.
3. Start early enough to allow time to verify all income.
4. If an owner sends timely notices informing the household that the annual recertification is due, but the household does not provide the certification and supporting documentation prior to vacating the unit, the vacant unit will not be considered out of compliance. Please note these units and attach copies of notices, when submitting unit data reports to OHFA.
5. If a recertification is discovered late, the owner may retroactively recertify the household as to the occupancy and income earned as of the retro date forward 12 months. The effective date of the TIC will be the retroactive verification date. (Please note if a pattern of late

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recertification's performed retroactively is detected, the IRS will be notified.) Remember that the signature dates on any form must always be dated the present day. **DO NOT EVER BACKDATE.**

You may date a form the current day and write the "true and correct as of" with the date next to it but be sure that the income is verified back to that date. For the retroactive recertification, the signature date will always be after the TIC effective date. A sample 120 day, 90 day, 60 day, and 30 day notice can be found in Appendix K.

### B. Recertification Examples:

Example 1:	
Resident moves-in on 04/20/15	next recert due 04/20/16
TIC is discovered late on 08/20/16	
Resident was retro-actively recertified on 08/21/16 true and correct as of 04/20/16	Next recert is due no more than 120 days before 04/20/17

### Rural Housing Services site:

Example 2:	
Resident moves-in on 04/20/15 and signs TIC on 04/19/15. RD TIC is effective 05/01/15	Next recert due 04/20/16
Resident recertifies on 03/15/16 and signs RD TIC same day. RD TIC is effective 05/01/16	Next recert is due no more than 120 days before 04/20/17

**REMINDER:** Be sure to document student status at recertification in addition to HUD demographic data listed in Chapter 3.

### C. Average Income

#### A. Restoring Non-Compliance

As units are lost to non-compliance at lower designations, additional units may have to be removed from the applicable fraction and set-aside to restore the average. Re-

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designation is a possible solution to restore the average, if there are existing household's income and rent appropriate for another designation than originally designated. Vacant units may also be re-designated once rented to another household at a different set-aside. However, keep in mind this can happen only once a new move-in occurs.

### **B. Bond Properties and Average Income Test (AIT)**

Congress did not make any changes in IRC Section 142, which details tax exempt bonds. Income Averaging may continue to be utilized in bond-financed developments as long as both the Average Income set-aside and the tax-exempt bond set-aside are met. Therefore, the income designation above 50% or 60%, as applicable, will not count for purposes of bond compliance.