

# LOUISIANA HOUSING CORPORATION

## Low-Income Housing Tax Credit Program Compliance Manual 2022

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# INTRODUCTION

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## PURPOSE OF THIS MANUAL

This manual is a guide to understanding compliance monitoring pursuant to Section 42 of the Internal Revenue Code (the Code) and the IRS Procedure for Monitoring Compliance, which govern the Low-Income Housing Tax Credit Program (LIHTC or the Program) administered by the Louisiana Housing Corporation (LHC or Corporation). It is intended for use by owners, managing agents, on-site personnel, as well as others involved in the operation of LIHTC developments. This manual should be used as a supplement to the Code, revenue procedures, revenue rulings, letter rulings, notices, announcements, and any other applicable IRS or Treasury regulations, as well as state and federal law. LHC policies and procedures may change with little or no notice if federal, state or local regulations governing the LIHTC program mandate such changes.

Compliance with the requirements of the Code and all other applicable regulations is the sole responsibility of the Owner of any building for which the Credit has been allocated. LHC's responsibility to monitor for compliance will not cause LHC to be liable for an Owner's non-compliance. Therefore, an owner should not rely solely on LHC to determine if the property and its records are in compliance. A project's owner is solely responsible for program compliance.

Use of this manual does not ensure compliance with the Code, Treasury regulations, or any other laws or regulations governing Low-Income Housing Tax Credits. In addition, it does not guarantee the financial viability of any property. As a result, LHC recommends that all tax credit recipients consult with their tax accountant, attorney, or advisors as to the specific requirements of the tax credit program and Section 42 of the Code.

This manual is intended to serve as a reference for owners and managers of LIHTC projects. It does not attempt to describe the day-to-day operating procedures for managing LIHTC projects. Property owners and managers will need to develop the procedures that they will follow to fulfill their responsibilities under the LIHTC program and train their staff to properly implement these procedures.

LHC is committed to helping owners of LIHTC projects understand and meet their obligations under the LIHTC program. This manual is an example of that commitment. Louisiana's compliance monitoring plan is modeled to meet federal and state regulations as well as the recommendations of the National Council of State Housing Agencies (NCSHA). The plan, as outlined in the QAP and this manual, is applicable to all low-income housing tax credit funded properties in the state of Louisiana. Additional guidance may be issued via memos, email communication, posts to the LHC website, training or other appropriate means. Additionally, this manual may be amended or revised from time to time to if the LHC determines that changes in the law, regulations, and/or practical application of the material contained within warrant such an amendment or revision.

It is essential that owners and managers understand both the requirements of the LIHTC program and the documentation needed to demonstrate compliance with these requirements.

## ORGANIZATION OF THIS MANUAL

This manual contains eight chapters. Each chapter is divided into several sections, using its chapter number as a prefix (e.g., Section 1.3 would be the third section of Chapter 1).

### **Chapter 1: The Low-Income Housing Tax Credit Program**

This Chapter lays out a basic program overview.

### **Chapter 2: LIHTC Program Requirements**

This Chapter describes program requirements and what owners need to do in order to achieve program compliance.

### **Chapter 3: LIHTC Income Limits**

This Chapter explains how to obtain and apply published program income limits.

### **Chapter 4: Restricted Rents**

This Chapter explains how to calculate and apply program rent limits and utility allowances.

### **Chapter 5: Household Information and Eligibility**

This Chapter describes the processes and documentation involved in qualifying households for the LIHTC program.

### **Chapter 6: Compliance Monitoring**

This Chapter describes long-term compliance requirements and compliance monitoring procedures

### **Chapter 7: Record-Keeping and Reporting**

This Chapter explains compliance reporting, file maintenance and record retention.

### **Chapter 8: Fair Housing**

This Chapter discusses fair housing and accessibility regulations and requirements.

### **Chapter 9: Multiple Funding Sources**

This Chapter outlines the differences between the LIHTC, HOME and Tax Exempt Bond Programs. It also details which program rule applies when a project has different sources of funding.

### **Chapter 10: The American Recovery and Reinvestment Act (ARRA)**

This Chapter examines the Tax Credit Assistance Program (TCAP) and the Tax Credit Exchange (TCE) program under section 1602.

## **1 THE LOW-INCOME HOUSING TAX CREDIT PROGRAM**

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### **1.1 PROGRAM OVERVIEW**

As part of The Tax Reform Act of 1986, Congress enacted the Low-Income Housing Tax Credit Program (LIHTC or the Program). This program provides incentives for the investment of private equity capital in the development of affordable rental housing. The LIHTC reduces the federal tax liability of property owners in exchange for the acquisition, rehabilitation or construction of affordable rental housing units that will remain income and rent restricted over a specified period of time. The amount of tax credits allocated is based on the number of qualified low-income units that meet federal rent and income targeting requirements.

The LIHTC program is authorized and governed by Section 42 of the Internal Revenue Code of 1986, as amended (the Code). Louisiana Housing Corporation (LHC) is the designated “housing finance agency” to allocate and administer tax credits for the entire state of Louisiana.

Each state allocating low-income housing tax credits must develop a Qualified Allocation Plan (QAP) which establishes the guidelines and procedures for the acceptance of non-competitive applications as well as the scoring, and ranking of competitive applications received for funding LIHTC developments and for the administration and monitoring of the LIHTC Program. As with each state, the LHC QAP and specific program regulations or preferences are developed to be relevant to Louisiana’s housing needs and consistent with the State’s housing priorities.

### **1.2 VARIOUS TAX CREDIT PERIOD REGULATIONS**

IRS regulations may differ depending on when a property was allocated tax credits. In some cases, the change in regulations brought forth by a technical correction is minor; in others, it is substantial. Management must not only be

aware of the differences in regulations, but must also clearly understand which rule governs each particular building and/or property.

The following is a summary of the changes that have had the most impact on compliance policies:

**1988**

- Fair housing amendments act of 1988 amended Title VIII of the Civil Rights Act of 1968, which prohibits discrimination on the basis of race, color, religion, sex or national origin in housing sales, rentals or financing.

**1990**

- Rent calculation now based on the number of bedrooms in the unit rather than household size
- Extended Use Agreement requirement was created

**1991**

- All properties – extension of deadline to meet set-aside (not retro-active)
- Farmer’s Home Administration (Rural Development) only – overage rule (not retro-active)
- AFDC Student Rule exception (retro-active)

**1992**

- IRS Revenue Ruling (Rev.Rul.92-61) regarding treatment of staff units as part of eligible basis (not retro-active)

**1993**

- Single parent student rule (not retro-active)
- Married student rule (retro-active to 1987)
- Section 8 requirements; properties cannot refuse to lease to Section 8 applicants (retro-active to 1987)

**1994**

- Revenue procedure (Rev.Proc.94-57) allows owners of LIHTC properties to irrevocably elect to establish the Gross Rent Floor to take effect on either: (1) the date of the credit allocation; or (2) the date the building(s) placed-in-service (not retro-active).

**1997**

- Available Unit Rule (Reg. §1.42-15) was adopted as an amendment to the regulations (not retro-active)

**1998**

- Fair Housing Act Design Manual update and published by the U.S. Department of Housing and Urban Development (HUD), providing comprehensive information about accessibility requirements which must be incorporated into the design and construction of multifamily housing

**2003**

- Safe Harbor Rule (Rev.Proc.2003-82) is applicable to properties receiving a second allocation of credits and applies to tax credit units where household incomes were at or below the applicable income limits prior to the first taxable year of credit period, but then later exceed the limits at the beginning of the credit period, when the household income is tested or recertified (effective for taxable years ending on or after November 24, 2003). The units could continue to be considered low-income if:
  - A reservation and extended use agreement is in place for previous allocation of tax credits;
  - The household income is tested for purposes of the Available Unit Rule at the beginning of the first credit year; and
  - The unit has been rent-restricted since the initial qualification date of the household.

## 2005

- Safe Harbor Rule (Rev. Proc. 2005-37) established how housing finance agencies and property owners may meet certain requirements of the Internal Revenue Code concerning extended low-income housing commitments (effective on or after 6/21/2005).

## 2007

- Student Households – clarification was made with HR 3648 to the full-time student household exception regarding single parents with children. The household will still qualify for a tax credit unit even if the children are listed as dependents on the absent parent's tax return (effective for past, present and future determinations)

## 2008

- Utility Allowance Regulations Update (IRS 26 CFR Part I) added the following utility allowance calculation options (not retro-active):
  - Estimate from the agency that has jurisdiction over the building (if available)
  - HUD Utility Schedule Model (see [www.huduser.org/resources/utlmodel.html](http://www.huduser.org/resources/utlmodel.html))
  - Energy Consumption Model – must be calculated by a licensed engineer or a qualified professional.
- The Housing and Economic Recovery Act (HERA) of 2008 (HR 3221), introduced many clarifications, amendments, and changes including, but not limited to the following:
  - General Public Use Rule – effective for buildings placed in service before, on or after July 30, 2008. Clarification was made with HR3221 [Sec.3004(g)(9)] to allow occupancy preferences for residents who:
    - Have special needs;
    - Are involved in literary and/or artistic activities; or
    - Are members of specified groups under state or federal housing programs
  - Effective July 30, 2008, the HERA Section 3010 modified existing regulation to eliminate the requirement for annual recertification of household income for projects with 100% low-income housing tax credits and tax-exempt bond financed developments under 142(d) of the Tax Exempt Bond Code. In response, the LHC modified its monitoring policy to be less restrictive while still maintaining a high degree of accountability as explained in this manual under “Recertification Requirements”.
  - Congress included a provision within HERA that required state housing finance agencies to annually submit tenant data to HUD, including race, ethnicity, family composition, age of household members, monthly rents, disability status, household incomes, and use of rental assistance. This information is submitted by the Owner's representative to LHC via LHC's annual reporting spreadsheet or by use of the Web Compliance Management System (WCMS). LHC forwards the required information to HUD on an annual basis. HUD compiles all of the information provided by state HFAs and releases the information in a report that details specific demographic information for each state.
  - Student Households – HR 3221 [Sec.3004(e)(II)(i)(4)] amended the list of full-time student household exceptions to include full-time students who previously received foster care assistance under Title IV of the Social Security Act (under parts B or E) (effective after the date of enactment).

## 1.3 MAJOR PARTIES AND RESPONSIBILITIES

### A. The Internal Revenue Service (IRS)

The IRS is responsible for the allowance and recapture of tax credits and the administration and oversight of the LIHTC program at the federal level. The IRS also provides LHC and other housing credit agencies with guidance on LIHTC requirements, rules and regulations.

## **B. Louisiana Housing Corporation (LHC)**

The Louisiana Housing Corporation's mission is to ensure that every Louisiana resident is granted an opportunity to obtain safe, affordable, energy-efficient housing. One of the ways LHC, as the designated State Housing Finance Agency (HFA) for Louisiana accomplishes this mission is through the allocation of low-income housing tax credits and the administration of the LIHTC Program.

### **i. Allocation of Credits**

The LHC allocates tax credits based on a fair and equitable application process that may be competitive, depending on the application type. Applications are received and evaluated under the Qualified Allocation Plan (QAP). The QAP provides information on the calendar year program, including minimum project requirements, competitive criteria, and underwriting criteria. The amount of credits to which a project is eligible is based on the amount of qualified development costs incurred and the percentage of low-income units within the development. Each qualified tax credit development must include a minimum percentage of units to be set aside for eligible low-income tenants. These set-aside units must also be rent restricted. To qualify for tax credits, a proposed development must involve new construction or substantial rehab of existing units occupied by low-income individuals and families. Prospective applicants apply for housing tax credits by submitting an application to the LHC.

Once LIHTCs have been awarded to a project and cost certifications have been completed, an IRS Form 8609 (Low-Income Housing Certification) is prepared by LHC for each building in the project and is issued to the owner. Part I of the IRS Form 8609 is completed by LHC, then sent to the owner when the property is placed-in-service and all required documentation is received by LHC.

Part II of the IRS Form 8609 must be completed by the owner in the first taxable year for which the credit is claimed. The original is sent to the IRS with the owner's personal, partnership, or corporate tax return in the first taxable year in which the credit is claimed. Each year thereafter, during the compliance period, owners must file form 8609-A to report compliance with the program and calculate the low-income housing credit. Owners should consult with their legal and/or tax advisors for advice on completing and filing the IRS tax form(s). LHC cannot give legal or tax advice on the filing or completion of tax forms.

After completion of Part II of the 8609, the owner is required to submit a copy of the completed form to the LHC Compliance Department. Further, it is the property owner's responsibility to provide full and complete information about the property to the management agent, including copies of the completed 8609s with placed-in-services dates and copies of all the regulatory agreements and declarations for all funding types.

The owner will need to know how the Line 8b election on the 1st year filing of the 8609 forms is treated or will be treated, and be able to relate that information to the management agent operating the property. Line 8b reads as follows:

*Are you treating this building as part of a multiple building project for purposes of Section 42? .....  Yes  No*

If the owner elects "Yes" and attaches the required statements to IRS Form 8609, all buildings are considered to be part of one project (multi-building project). All Section 42 regulations apply to all buildings. As such, transfers may be completed between buildings as long as the household does not exceed 140% of Area Median Income, and the Gross Rent Floor Election (GRFE) is the same for all buildings in the property.

If the owner elects "No", in response to Line 8b, each building is to be treated as its own project for IRS and compliance purposes. All Section 42 regulations must be applied to each building separately. As such, all transfers (except for reasonable accommodation requests) must retain income eligibility at the designated set-aside limit, the GRFE will be applied individually to each building, and there may be a different set of rent limits for each building based on the GRFE. LHC strongly recommends developing an internal tracking system and making sure management is aware of both the



owners' Line 8b election and the GRFE for each property in the portfolio to ensure that rents are being held at the correct limits. Over-charged rents are reportable to the IRS on Form 8823 as non-compliance.

The issuance of the IRS Form 8609 will begin the LHC monitoring and inspection cycle. LHC will conduct the first compliance review/inspection no later than the end of the calendar year following the year the last building in the property is placed in service. In some cases pre-8609 inspections are conducted. When this occurs, an additional inspection may need to be scheduled to meet IRS requirements once 8609 form(s) are issued.

**Once a building/project has been placed in service, LHC will:**

- Provide training and technical guidance to owners/managers on program requirements.
- Monitor properties for compliance with program requirements.
- Notify the IRS of non-compliance with the low-income housing tax credit provisions or any building disposition.
- Monitor and enforce corrective action in cases of non-compliance.
- Collect Monitoring Fees and Annual Owner Certifications.

**ii. Compliance Monitoring**

LHC is required to conduct in-depth compliance monitoring for each LIHTC property. Inspection frequency is based on several factors including each property's current risk of non-compliance, compliance rating and requirements of other funding sources that may be more restrictive (such as HOME or bond funding) and program requirements. Monitoring requires both file reviews and on-site physical inspections for all properties. Physical inspections of all buildings, common areas, grounds, and low-income units (occupied and vacant) at each property are conducted using Uniform Physical Conditions Standards (UPCS). File audits may be conducted on site or electronically and separate from the physical inspection. Files reviewed may be decoupled from the units inspected as allowed per IRS regulations. LHC reserves the right to perform compliance monitoring or request additional reporting of any property at any time as may be deemed necessary.

In order to determine a risk of non-compliance, each property is evaluated for asset management and compliance indicators that are compared with portfolio thresholds. Compliance indicators evaluated will include, but are not limited to, the following:

- Most recent rating received for management reviews;
- Physical inspections;
- Tenant file reviews;
- Real Estate Assessment Center (REAC) scores;
- Submission of required reporting, including financial audits and certification of program compliance;
- Owner and Management cooperation with reporting and communication; and
- Change of Ownership of Agent.

Properties at risk of or determined to be in non-compliance may be inspected more frequently, if determined to be necessary by the LHC.

**iii. Notice of Non-compliance**

IF there are issues of non-compliance, the LHC is required to file Form 8823 "Low-Income Housing Credit Agencies Report of Non-compliance or Building Disposition" with the IRS. The LHC uses Form 8823 to fulfill its responsibility under IRC section 42(m)(1)(B)(iii) to notify the IRS of non-compliance with the low-income housing tax credit provisions or any building disposition.

#### **iv. Other**

Additional duties and responsibilities of the LHC include, but are not limited to, the following:

- Collect and review Annual Owner's Certification for each property;
- Notify the owner when the property out of compliance;
- Establish timelines with the property owner for correction of noncompliance
- Perform follow-up reviews if deemed necessary
- Review rent increase requests and provide approval per regulatory, if required;
- Review and approve management agent changes;
- Review and approve non-revenue unit changes and other changes or requests, as applicable

#### **C. Owners**

Each owner has chosen to participate in the Low-Income Housing Tax Credit Program to take advantage of the available tax benefits. In exchange for these benefits, owners have agreed to provide affordable housing units. The program requirements listed in the IRS Code include meeting the elected minimum set-aside, charging appropriate rental rates for each qualified unit, and maintaining verification that housing units are leased to qualified low-income residents. After placing an LIHTC project in service, owners and their property managers must:

- Comply with occupancy and rent restrictions specified in the project's tax credit regulatory agreement and the extended use agreement.
- Maintain the physical condition of the units in accordance with HUD's UPCS and/or the local health, safety and building codes
- Maintain appropriate records, certifications, and documentation
- Report to LHC as required
- Certify property compliance annually
- Cooperate with LHC during compliance reviews
- Take required corrective actions if property is out of compliance
- Remain informed about LIHTC program changes and revenue rulings
- Pay annual monitoring fee

Additionally, the owner should make certain that property managers know, understand, and comply with all applicable rules, regulations, and policies governing the LIHTC program. LHC requires that all personnel who are responsible for compliance of an LIHTC property become tax credit certified. The LHC will provide LIHTC trainings that will qualify as a tax credit certification. Additionally, trainings conducted by organizations such as National Affordable Housing Management Association (NAHMA), Quadel Consulting and Training, National Center for Housing Management, Zeffert & Associates, Spectrum Enterprises, or TheoPro Compliance and Consulting, to name a few, also provide such certifications. Certificate of attendance at LIHTC compliance training must be maintained at the property. Personnel must attend training at least once every three years to learn about program updates or changes. It is also good practice for owners and agent personnel to receive regular training regarding fair housing and Louisiana landlord tenant law.

#### **D. Tenants**

Tenants of low-income units in LIHTC projects must provide information on an annual basis about household members and income in order to establish and maintain their eligibility.

HERA requires that the LHC collect specific data on residents of LIHTC properties on an annual basis and submit reports to HUD. In order to accomplish this LHC requires owners to collect data annually for all household members, including name, relationship to household, and date of birth, race, ethnicity, last four digits of social security number and disability status for tax credit properties in the initial 15-year compliance period and in the extended use period. Household members have the right to decline to provide information on race, ethnicity, or disability status.

## **1.4 ESSENTIAL PROGRAM DOCUMENTS**

The fundamental rules of the LIHTC program appear in Section 42 of the Federal Internal Revenue Service Code (The Code) and the State of Louisiana's Qualified Allocation Plan (QAP). In addition to Section 42 of the Code and the QAP, LIHTC project owners/managers should familiarize themselves with the following items:

### **A. IRS Revenue Notices and Rulings**

The IRS periodically publishes notices and revenue rulings that provide clarification on key topics for compliance. Owners/managers should be familiar with all notices and rulings that relate to the operation of LIHTC projects. A list of current notices and rulings are available from the IRS. Owners have final responsibility for staying current with LIHTC requirements by obtaining IRS regulations, notices, and revenue rulings.

### **B. LIHTC Application**

The Application Packet, which is online, includes the materials and instructions required to apply for LIHTCs in the state of Louisiana.

### **C. Tax Credit Regulatory and Extended Use Agreements (TCRA)**

LHC enforces income, rent, and occupancy requirements and agreements through covenants running with the land (deed restrictions). For all LIHTC projects, owners are required to execute a Tax Credit Regulatory Agreement (TCRA) with the LHC. This document must be recorded in the parish property and mortgage and conveyance record at the time that the LIHTC project is placed in service, and carries forward to all subsequent owners of the property. The TCRA also contains the requirements of the Extended Use Agreement as well as all necessary attachments, and establishes the occupancy and affordability requirements, called special conditions, for the property, as well as the owner's obligations to LHC. The owner agrees to the restrictions on the use of the property set forth in the regulatory agreement along with any other conditions not captured in the regulatory agreement but contained within the applicable QAP. When there is more than one financing source imposing land use restrictions on a project, e.g., a HOME Loan and LIHTC, there may be restrictions from one program that are more restrictive than similar restrictions in the other program(s). In such instances, the more restrictive requirements will apply to the project.

The TCRA binds the project owner and all succeeding owners for the full term of the agreement, regardless of sale, assignment or assumption of the property, and will be enforced by the LHC.

### **D. IRS Form 8609**

IRS Form 8609 is the Low-Income Housing Credit Allocation and Certification that is provided by the LHC to the project owners. A separate Form 8609 is issued by LHC for each building in a multiple building project. Each 8609 is completed by the owner and filed with the IRS. This form can be used to obtain a housing credit allocation from the housing credit agency and certify certain information.

### **E. IRS Form 8823**

IRS Form 8823 is a report that is made by the LHC to the IRS to fulfill the LHC's responsibility under IRC Section 42(m)(1)(B)(iii) to notify the IRS of non-compliance with the low-income housing tax credit provisions or any building disposition.

### **F. Guide for Completing Form 8823**

This guide provides a reference for determining whether a state agency must file Form(s) 8823 with the IRS under Treas. Reg. §1.42-5(e)(3).

### **G. HUD Handbook 4350.3**

This handbook describes the occupancy requirements and procedures governing the HUD-subsidized multifamily housing programs. Many of the guidelines in this handbook also apply to the LIHTC Program.

## **H. Fair housing amendments act of 1998**

The Fair Housing Act, also called Title VIII of the Civil Rights Act of 1968, as amended, which prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, on the basis of race, color, religion, sex, familial status, national origin, and disability.

## **I. HR 3221: The Housing and Economic Recovery Act of 2008 (HERA)**

HR 3221 was created in 2008 to help address the subprime mortgage crisis and had widespread impact on low and moderate income housing programs.

## **J. American Recovery and Reinvestment Act of 2009 (ARRA)**

ARRA was an economic stimulus package enacted by the 111th United States Congress and signed into law by President Barack Obama on February 17, 2009. This act established the Tax Credit Exchange Program and the Tax Credit Assistance Program.

# **2 LIHTC PROGRAM REQUIREMENTS**

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The percentage of a property's units that owners agree to lease to low-income households directly affects the amount of LIHTCs which can be claimed. Owners are eligible to claim the full amount of LIHTCs if their properties satisfy the rent restrictions and maintain the proper low-income occupancy during the time prescribed by the code.

## **2.1 GENERAL PUBLIC USE**

In order to be eligible for tax credits, low-income units must be offered for use by the general public. Low-income units are not offered to the general public if they are provided solely for a member of a social organization or provided by an employer for its employees. Effective July 30, 2008, the Housing and Economic Recovery Act of 2008 (HERA), HR 3221, amends the general public use requirement to allow for occupancy restrictions or preferences that favor tenants with special needs; who are involved in artistic or literary activities; or who are members of a specified group under a federal program, a state program, or a policy that supports housing for such a specified group.

## **2.2 LOW-INCOME OCCUPANCY REQUIREMENTS**

Owners of projects receiving LIHTCs agree to make a portion or all of the units in the property available for occupancy by low-income tenants. The LIHTC minimum set-aside requirement selected by the owner during the application process establishes the project's minimum low-income occupancy.

### **A. Qualified Basis Requirements**

The amount of LIHTCs an owner can claim is determined by the actual low-income occupancy of the project during the tax year for which the credits are claimed. The percentage of qualified units (applicable fraction) is applied to the allowable development costs (eligible basis) to establish a building/project's qualified basis. The qualified basis is then multiplied by the LIHTC credit percentage for the project to determine the amount of credit an owner can claim each year for the next ten years. In order to claim the maximum amount of tax credits available an owner must maintain the project's qualified basis as described in the project's special conditions attached to the TCRA.

Owners have until the end of the tax year in which the project is placed in service or, at their option, the close of the following tax year to establish the project's low-income occupancy (applicable fraction). The low-income occupancy achieved at this time will establish the project's qualified basis.

### **B. Restricted Rents**

LIHTC Owners also agree to keep the rents for these units affordable to low-income tenants. The program establishes maximum rents for qualified low-income units in a project, based on a percentage of the area median income and unit size.

### **C. Periods of Compliance**

There are three periods of compliance that must be taken into consideration when owning, managing, or monitoring a LIHTC property. These periods are commonly referred to as the Credit Period, Compliance Period, and Extended Use Period. Combined, these comprise the Affordability Period.

#### **i. Credit Period**

The Credit Period is the time frame in which a credit is generally claimed against a taxpayer's federal income tax. A building's credit period typically starts the year it is placed in service, but the owner has the option of beginning its credit period the year after the building is placed in service. For example, if a building was placed in service during 2016, the owner may begin its credit period during 2016 or 2017. The credit period duration is typically ten years but may be eleven in some cases.

#### **ii. Compliance Period**

The Compliance Period is the initial the fifteen year period over which noncompliance could result in the disallowance or recapture of credits. It is during this time period that the allocating agency (the LHC) reports noncompliance to the IRS on Form 8823. The year selected by the owner as the first year of the credit period also serves as the first year of the compliance period. Although the IRS allows the owner to claim credits over a ten year credit period, the tax credits are earned over the fifteen year compliance period.

#### **iii. Extended Use Period**

In 1990, a change in federal law required an additional fifteen years of compliance, which is known as the Extended Use Period. As a result, properties that were awarded tax credits in and post 1990 must comply with LIHTC program restrictions for at least fifteen additional years. After the initial fifteen year Low-Income Housing Tax Credit (LIHTC) Compliance Period has expired, the Internal Revenue Service (IRS) will no longer receive notification of noncompliance from the state HFA. Instead, the responsibility for addressing noncompliance during the extended use period rests with the state tax credit allocating agency and the Department of Justice, as applicable. During this period, the owner is no longer subject to recapture of tax credits by the IRS. However, owners committing compliance violations may be subject to administrative and judicial sanctions.

### **D. Sale, transfer or disposition of the project after the placed-in service date**

After an initial compliance period of 15 years, owners may sell a project only to a qualified buyer that agrees to maintain the low-income occupancy of the project if a qualified contract is presented to the owner by the housing credit agency within the prescribed time frame. Owners acquiring LIHTC projects must do so, subject to the restriction of the regulatory agreement.

As part of the scoring process and in accordance with the QAP, Owners may have elected to waive their rights to request a qualified contract from the LHC after end of year 14 of the Compliance Period. Project owners should review their applications and recorded TCRA and special conditions to determine whether there has been such a waiver for the project and the year in which a qualified contract may be requested from the LHC.

LHC must be notified of all changes in ownership interest or project participant structure. Current and potential owners are reminded that the TCRA will be enforced by LHC, and the TCRA will not be canceled or removed until end of the extended use period. LHC is required to notify the IRS via Form 8823 in the event of sale (including change in ownership or ownership interest – general and limited partners), foreclosure, abandonment, casualty, loss, and/or destruction; owners/managers must immediately notify LHC of such events.

Generally, any change in the ownership of a building or a partnership interest is considered to be a recapture event. Recapture amounts are reported using the IRS Form 8823.

The LHC's written consent is required prior to any transfer of ownership. Upon notification, the current owner as well as the prospective owner will receive a "Transfer of Ownership" package to be completed in full and returned to LHC. A

letter signed by the new owner acknowledging receipt of the package and copies of the Land Use Restriction Agreement and/or Regulatory Agreement, including all compliance restrictions and annual compliance monitoring, must be received before LHC will approve the transfer. The LHC will provide guidance, including a list of requirements to complete the transfer. Although a building disposition is not necessarily a non-compliance event, the LHC is required to issue an 8823 for all building dispositions to advise the IRS of a change in ownership.

The new owner must also include the following documents: a copy of the recorded deed indicating the change of ownership or a copy of the title policy indicating the owner as the vested owner of the property, copy of the amended or new partnership agreement or copy of the articles of incorporation and By-Laws, copy of the organizational documents, copy of the good standing certificate, attorney's opinion, copy of the purchase agreement, and copy of the low-income housing tax credit disposition bond.

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

**Note:** Under 42(j)(6), revised 7/30/2008, there is no recapture on dispositions as long as a) it is reasonably expected the building will continue to be operated as a qualified low-income building; and b) the taxpayer elects to be subject to the new longer statute of limitations. Owners are no longer required to post a Credit Disposition Bond or pledge Treasury Securities to avoid recapture.

## 2.3 ESTABLISHING A QUALIFIED BASIS

The amount of tax credits that owners can claim for their projects is determined by multiplying the allowable tax credit percentage by the project's qualified basis. A project's maximum qualified basis is initially determined by the LHC as the proportion of units and their square footage that qualify as TC units and the amount of allowable costs.

### A. Qualified Basis

The qualified basis for a building reflects eligible costs attributable to qualified units. A project's qualified basis is determined by taking the amount of allowable project costs (eligible basis) and adjusting this amount by the lower of the unit fraction or floor space fraction of the qualified units (applicable fraction).

$$\text{Eligible Basis} \times \text{Applicable Fraction} = \text{Qualified Basis}$$

If a project's qualified basis for a given tax year has decreased from the previous year, the IRS will recapture some or all of the accelerated portion of the project's credits claimed in previous years plus interest. *(The accelerated portion refers to the additional amount of credits that the owner has been allowed to claim as a result of the program's use of a 10-year credit period rather than a 15-year credit period. Generally, the accelerated portion is equal to one-third of the credits claimed.)*

#### i. Eligible Basis

A project's eligible basis reflects the amount of project costs on which credits can be claimed, such as acquisition and rehabilitation costs, allowable under the LIHTC program.

Eligible Basis may include the cost of facilities for use by tenants to the extent there is no separate fee for using the facilities, and the facilities are available on a comparative basis to all tenants. It may also include the cost of amenities if the amenities are comparable to the cost of amenities in other units.

**ii. Applicable Fraction**

The applicable fraction is the portion of a project leased as qualified TC units. The fraction is determined at the end of the tax year and is the lesser of:

$$\frac{\text{Total Number of TC Units}}{\text{Total Number of Units in the building (whether or not occupied)}}$$

Or

$$\frac{\text{Total Rentable TC Square Footage}}{\text{Total Residential Square Footage in the building}}$$

**NOTE:** *Units that have never been occupied cannot be included in the numerator of these fractions.*

In determining the applicable fraction, owners/managers do not have to count the manager's unit in the calculation. The total number of units in the building/project is simply reduced by one unit. This option is particularly important for 100% low-income occupancy projects because full-time resident managers may not qualify under LIHTC income requirements (see IRS Ruling 92-61).

The number of units and their square footage qualified as LIHTC units during the lease-up period will be used to establish the initial qualified basis for a project. A project's maximum qualified basis is formally established by IRS Form 8609 being issued by the LHC. An owner must start the credit period no later than the year following the year the project was placed in service.

**B. Electing the First Year of the Credit Period**

As discussed above, the credit period for a building/project is elected by the owner on IRS Form 8609.

Owners have two options:

- Elect the tax year in which the project is placed in service; or
- Elect the tax year following the year in which the project is placed in service.

Starting the credit period involves more than simply deciding when to begin using the credits. There are several factors owners should take into account when deciding when to elect the first year of the credit period for a building/project.

- i.** *Compliance with Minimum Set-Aside* - The project must meet the selected minimum set-aside before any credits can be claimed. If the project is not expected to meet the minimum set-aside by the end of the year in which the building/project was placed in service, the owner must wait until next year to begin the credit period.
  
- ii.** *Sufficient Qualified Units to Meet Low-Income Occupancy Target* - The applicable fraction of qualified units at the end of the first year of the credit period will determine the building/project's original qualified basis. If the building/project's qualified units are insufficient to obtain the desired qualified basis at the end of the first year in which the project is placed in service, the owner may wish to wait until the end of the following year rather than accept a lower original qualified basis. (See Section 3.6-D below for further guidance regarding the amount of credits potentially available when a project's qualified basis during the credit period exceeds its original qualified basis.)

- iii. *Obligation to Investors* - If a project's limited partners are expected to begin receiving tax benefits at the end of the year the building/project was placed in service, this consideration will need to be balanced against the two factors above. In some cases, the owner may decide that it is more important to begin claiming the credit even though the original qualified basis is less than desired.

LHC recommends that managers coordinate closely with owners during the lease-up period to ensure that the credit period begins at the desired time.

### **C. Starting the Credit Period for Buildings within a Project**

When buildings within a project are placed in service over a period of time, owners do not have to start the credit period for the whole project in the same year. For example, an owner could start the credit period for half of the buildings in one year and the credit period for the remaining buildings the following year.

However, if an owner opts to establish different credit periods, the project must meet its minimum set-aside at the time the owner claims the credits on the first building or set of buildings. In other words, the first buildings on which the owner claims credits must contain enough qualified units to meet the minimum set-aside for the entire project.

### **D. Calculating the First Year's Applicable Fraction; First-Year Convention**

Final determination of a building's applicable fraction is made on the last day of the first year of the credit period. For the first year of the credit period, calculate the applicable fraction by dividing the sum of each month's applicable fraction by 12. Include any unit that has been occupied as of the last day of each month.

If all qualified units have not been occupied by the end of the first year of the credit period, tax credits cannot be claimed on empty (i.e. never occupied) units in that year. Should additional qualified units be occupied after the end of the first year of the credit period, two-thirds (2/3) of the credit can be claimed each year for the remaining years of the 15-year compliance period.

### **E. Availability of Additional Credits in Subsequent Tax Years**

During the Credit Period, owners of mixed income projects may be eligible to claim additional credits if a project's qualified basis increases above the original qualified basis in the first year of the credit period. If an owner cannot claim all allocated credits for the initial year of the period because the qualified basis for that year was less than the maximum qualified basis established by LHC on Line 3A of IRS Form 8609, the owner may be eligible to claim two-thirds of the additional credits in subsequent years. In no case can an owner claim credits in excess of the maximum established for the building/project on IRS Form 8609. Owners can continue to claim this additional credit during subsequent years of the compliance period as long as the building/project's low-income occupancy maintains the increased qualified basis.

### **F. Maintaining Sufficient Qualified Units**

Once an owner has begun claiming a project's tax credits, the qualified basis for the project must be maintained at the amount established for the initial year of the credit period. If the qualified basis for a project drops below this amount, the owner risks recapture of tax credits and faces possible administrative actions. A project's qualified basis will drop if the owner fails to maintain enough qualified units to keep the applicable fraction at the level that set the original qualified basis.

The length of time owners/managers must maintain a project's qualified basis depends on the year the project received its LIHTC allocation:



- *Projects from 1987 to 1989*- Projects that received tax credits in 1987, 1988, or 1989 are required to maintain the qualified basis throughout the Compliance Period. The Compliance Period lasts for 15 consecutive tax years beginning with the first year of the credit period.
- *Projects from 1990 and Later* - Projects that received tax credits in 1990 or later are required to maintain the qualified basis for the 30 year life of the extended use agreement – the 15-year Compliance Period plus the 15- year Extended Use period.

### **G. Replacing Vacated Qualified Units**

If the tenant of a qualified unit moves out, owners/managers may continue to count the vacated qualified unit as a qualified unit as long as the next available unit of comparable or smaller size is rented to an eligible tenant. Like the procedure for qualified units with over-income tenants, this provision allows the owner/manager to replace the tenant without reducing the project’s qualified basis.

When the tenant of a qualified unit moves out, owners/managers must:

- Lease the vacated unit to an eligible tenant; or
- Replace the vacated qualified unit with another qualified unit.

Refilling vacated units with eligible tenants is the only option for 100% low-income projects. All the requirements for counting units as qualified units must be met at the time new tenants assume occupancy.

For mixed income projects, owners/managers may also lease a unit occupied by an eligible tenant but not previously qualified as an LIHTC unit, and then lease the vacated qualified unit to a household that is not an eligible tenant. Before the vacated qualified unit can be re-occupied, a new qualified unit needs to be occupied by an eligible tenant and established as a qualified unit.

### **H. Non-revenue Units**

Non-revenue units are units such as manager’s units or units provided for on-site security that do not produce income for the project. These units are allowable only on a very limited basis and may be considered in one of two ways:

1. A non-revenue unit can be considered a common area or other special facility within a rental property that supports and/or is reserved for the benefit of all the rental units in the property. If this option is elected and indicated in the property documents, the unit occupied by the resident manager is included in the building’s eligible basis, but excluded from the applicable fraction for the purposes of determining the building’s qualified basis.
2. A non-revenue unit may also be treated as a rental unit, and the unit could be included in the low-income occupancy percentage calculation for the LIHTC building. Under this interpretation, the income level of the manager and the rent charged will affect the low-income occupancy percentage calculation for the building. A non-revenue unit could be considered a qualified low-income unit (the rent is restricted to a qualifying amount and the resident manager is a certified low-income tenant).

Rent should not be collected for a management unit considered a common area unit if the household (including employees) that occupies the unit is not LIHTC qualified. Staff members that occupy management units must work full- time for the property. Designated management units that are not occupied by property staff may be rented to low-income certified tenants at or below the LIHTC rental rate. Designated management units cannot be considered “market units” or commercial units.

In a property that is 100% tax credit, changes may be permitted by LHC to the location of the approved managers unit(s) noted in the regulatory agreements. A written request must be made by the Owner to LHC and sent to the Compliance

Officer for the property. The LHC form entitled “Request for Change of a Common Area/Employee Unit Designation” must be submitted and approved before a change is permitted.

When approving requests for changes in management units, LHC considers the following:

- A. Management unit designation in regulatory agreements
- B. If the property is designated as a multiple building property per Line 8b on the 8609 form
- C. Square footage of units
- D. Reason for request

## **2.4 LOW-INCOME OCCUPANCY**

Owners receive tax benefits from LIHTC projects in return for renting some or all of the units to eligible low-income tenants. To claim the tax benefits of LIHTCs, owners must maintain the minimum set-aside for the project for 15 years. Owners of projects receiving LIHTCs in 1990 or subsequent years agree to continue making low-income units available to low-income tenants for a minimum of an additional 15-year extended use period.

### **A. Placed In Service Date (PIS)**

The placed in service (PIS) date is the date that the first unit in an LIHTC building is certified as suitable for occupancy under state or local law. This date determines the beginning of the compliance period and the credit period in an LIHTC project. A building must be placed in service before an owner can begin formally qualifying units. The owner can identify qualified tenants, document their eligibility, and take other steps to meet the criteria for qualified units in the building prior to this time. However, qualified units could not be counted as such until the building is placed in service. Tenant income certifications prepared more than 12 months prior to a building’s placed in service date must be examined again and recertified for initial eligibility. Projects must be placed in service by the end of the second calendar year following the year of allocation. Requirements to be placed in service are different for newly constructed and rehabilitated buildings.

Prior to placing a building/project in service, owners must certify that the building is ready for occupancy. After the project has been placed in service, owners must complete several steps. These steps include, but are not limited to, providing LHC with the required documentation of the building’s expenses and financing, and returning to LHC an executed extended use agreement for the project that has been properly recorded against the deed for the property. Once an owner has properly submitted the necessary materials, LHC will prepare an IRS form 8609 for each building on which the owner will record and report the official PIS date to the IRS.

#### **i. PIS for New Developments**

For new construction, the certificate of occupancy or substantial completion date is also the placed-in-service date. The deadline for placing a building in service is the end of the year of allocation or the year after if there is a carry-over of the allocation. Once the building(s) are placed-in-service, the minimum set-aside must be met by the end of the year placed-in-service or the next taxable year (if credits are deferred) to start claiming credits. If the property fails to meet the minimum set-aside by the deadline, the property may not be able to generate credits. For new developments, the move-in and effective dates on the tenant income certifications (TICS) are the actual date that the household moves into the unit.

#### **ii. PIS for Rehabilitation Projects**

Qualified Rehabilitation Costs are rehabilitation costs incurred within any 24 month period selected by the building owner. These costs are allocable to or substantially benefit one or more low-income units in a building. For rehabilitations which qualify as a separate new building, the Placed in Service date occurs at the end of the 24-month period over which such expenditures are aggregated.

### **B. Qualified Tax Credit Units (Qualified Units)**

Units that can be counted for purposes of establishing the project’s low-income occupancy are referred to as qualified units. To ensure that a unit qualifies as an LIHTC unit, an owner must provide tenant income eligibility documentation,

and executed lease with a term of at least six months. The unit must be leased at or below current published program rent limits and the unit must maintain a physical condition in accordance with UPCS or local health, safety and building codes.

Most LIHTC projects developed in Louisiana are new construction. Until units are leased to LIHTC eligible tenants at restricted rent levels, the “never-leased” units are considered market rate units and are not counted as qualified units.

The two basic methods for establishing qualified units are leasing “never-leased” units in a building to eligible tenants or identifying eligible in-place tenants in a building and qualifying their units.

Depending on a project’s circumstances, owners/managers may decide to use just one of the methods or adopt a combination of the two.

When tenants are residing in a building that has been allocated tax credits for acquisition and/or rehabilitation the leasing agent will need to work closely with the owner to develop a plan for certifying the existing tenants that will maximize the credit allocation. How and when an Agent/Owner should certify the existing residents eligible for the LIHTC program will be based on several factors including:

1. The date of acquisition
2. If the owner will be relocating the resident during a building’s rehabilitation activities
3. When the owner plans to complete a building’s rehabilitation
4. When an owner plans to elect to start the credit period

When an owner completes the rehabilitation activities by December 31<sup>st</sup> of the same year as acquisition, the units occupied by qualified residents may be counted as a qualified unit at acquisition if the tenants are certified in time. When an owner completes a building’s rehab the year following acquisition, the units occupied by qualified residents may be counted as a qualified unit in January of the year the owner completes the rehab activities.

#### **i. Leasing**

Before a unit can be designated a qualified unit, the owner/manager must execute an acceptable lease with the tenant. LHC does not specify a model lease to be used. Owners have flexibility in determining the format, duration, and most other aspects of their lease documents. However, owners must use lease agreements that conform to federal regulations as well as state and local laws and are enforceable in a court of law.

The lease should be signed and dated within five days of the execution of the initial Tenant Income Certification by all household members 18 and over. Possession should occur no more than ten days after execution of the lease.

LIHTC requirements prohibit qualified units from being used as transient housing. By executing initial dwelling leases with a minimum term of six months, an owner can establish that TC units are not being used for transient housing. Subsequent month-to-month renewals are acceptable.

The restriction against the use of LIHTC units for transient housing does not apply to units providing transitional housing for the homeless and single room occupancy (SRO) units. Qualified units can be used for short-term occupancy if an LIHTC building meets the following requirements:

- The unit contains sleeping accommodations, kitchen, and bathroom facilities;
- The building is used exclusively to facilitate the transition of homeless individuals to independent living within 24 months; and
- The building is operated by a government entity or qualified nonprofit organization which provides temporary housing and support services.

Transitional housing includes housing primarily designed to serve de-institutionalized homeless individuals and other homeless individuals with mental disabilities, and homeless families with children.

## ii. Prohibited Lease Language

The LIHTC program does not establish a required lease or lease format. However, lease provisions not allowed under other federally-related affordable housing programs may not appear in the lease for any qualified unit. Disallowed lease language in the LIHTC program includes:

- **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.
- **Treatment of Personal 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 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.
- **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.

## iii. Certification

The Owner must certify all existing residents within 120 days of the acquisition date. When certifying existing residents before acquisition, delays an owner may experience with the closing on the purchase of a property can often hinder certification timing. It is a standard recommended practice to begin completing Tenant Income Certification(s) (TIC) for existing residents no more than 60 days before an owner expects to close on the purchase of an LIHTC property. The effective date of the tenant income certification is the date of acquisition since there is no move-in date.

If a TIC is completed more than 120 days before the start of the credit period, the owner must test the resident's income by asking them to sign a statement certifying whether or not their income has changed since completing their certification for the LIHTC program. The test should be done during the 120 days prior to the start of the credit period. If the resident indicates that their household income has changed since the initial TIC, the owner should ask for a copy of a document showing the change; e.g., a copy of a pay stub, bank statement, benefit award letter, etc., and the TIC should be updated as applicable. All changes should be clarified in writing and documented carefully. If the resident's income is above 140% of their income limit, the owner must implement the available unit rule.

In the event that 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, the household must be 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 signs 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.

In qualifying enough units before the end of the lease-up period, owners must not improperly terminate the occupancy of in-place tenants. In-place tenants may not be removed without good cause and notification as required under state and local tenant-landlord laws. As with all tenants, owners/managers may decide not to renew an expiring lease as long as adequate notice is given. However, the owner must be prepared to demonstrate if challenged in state court that the nonrenewal of a lease is not a “termination of tenancy” for other than good cause.

#### **iv. Transfer or Relocations**

Unit transfers are allowed in LIHTC properties. However, regulations apply regarding how the unit transfers are handled, taking into consideration the applicable funding sources and the multiple building status. The IRS provides guidance on this in Chapter 4 of the “Guide for Completing Form 8823 Low-Income Housing Credit Agencies Report of Non-compliance or Building Disposition”

During an acquisition/rehabilitation, it is common for an owner to relocate an existing resident within the same property while units are undergoing rehabilitation. When tenants are relocating within the same project, the tenant may take their TIC and LIHTC status to their new unit. The tenant stops producing a credit in their old unit and will start producing a credit in their new unit (the units swap status). It is very important to take into consideration whether or not the building(s) will be part of a multiple building project as elected on line 8b of the 8609 form. When the tenant transfers or relocates, the resident’s first unit stops producing a tax credit and cannot be included in the applicable fraction until occupied by an LIHTC-qualified tenant. Subsequently, the resident may move back to their original unit, or another qualified tenant may occupy the unit and re-start its ability to produce a tax credit after the rehabilitation of the unit is complete.

For properties funded with LIHTC, owners/agents are required to complete a Unit Transfer Certification form. This form will assist in tracking the unit transfers within the property to ensure that compliance is maintained with respect to the property’s set-asides.

**Note:** *HOME and Risk Share program rules do NOT allow unit transfers.*

- **Same Building**

A qualified household whose total income does not exceed 140% of the current income limit may transfer from one unit to another unit within the same building. The household file which contains the tenant income certification (TIC) and lease for the original unit may transfer with them. A Unit Transfer Certification must be completed, and the lease must be updated. If any changes to the household composition have occurred between the time of last certification and the requested transfer, a new TIC should be completed.

- **Different Building**

A qualified household that requests a transfer to a unit in a different building may need to be requalified. A transfer from one building to another building within the same project is allowed, if the building is part of a multiple building project indicated on line 8b of Form 8609. The transferring household’s current income cannot exceed 140% of the current applicable income limit. LIHTC properties must perform an income recertification prior to the unit transfer to assess whether household income exceeds 140% of the income limit. Households that have incomes exceeding 140% of the income limit are not allowed to transfer to a different building unless the request is connected to a reasonable accommodation under Fair Housing.

When a household whose income is not greater than 140% of the income limit moves to a low-income unit in a different building within the development [see IRC §42(g)(1) and IRC §142(d)(4)(B)], the vacated unit assumes the status of the newly occupied unit immediately before it was occupied by the transferring household.

The IRS considers buildings that are not part of a multiple building project to be separate projects. Therefore, transfers between buildings that are not part of a multiple building project will be considered a new move-in. In order to treat the newly occupied unit as a qualified tax credit unit the household must meet initial eligibility requirements.

LHC policy is that an Annual Tenant Income Certification with supporting verification of income (if older than 120 days), a new lease and move-in inspection should always be completed regardless if the transfer was within the building or to a different building. The effective date and signature date on the new certification should be the date of the transfer and the household's annual recertification or self-certification date will remain the anniversary date of move-in.

There may be conflicts with regard to transfers for HUD or RD projects. Both Federal agencies require transfers in certain cases, which may conflict with current LIHTC regulations. We recommend consulting the Compliance Staff at LHC and the applicable federal agency before implementing any transfers that result in conflicts with either agency's regulations.

#### v. Vacant Units

As part of the requirements for the annual certification, **Treas. Reg. §1.42-5(c)(1)(ix)** states, *“If a low-income unit in the project became vacant during the year, the Owner must be able to demonstrate that reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income. As long as reasonable attempts are being made to rent to qualified low-income households before renting units to non-qualifying tenants, vacant LIHTC units will continue to be included as qualified low-income units for purposes of determining the minimum set-aside [IRC §42(g)(1)] and calculating the applicable fraction [IRC §42(c)(1)(B)]. What constitutes reasonable attempts to rent a vacant unit is based on facts and circumstances and may differ from project to project depending on factors such as the size and location of the project, tenant turnover rates, and market conditions. Also, the different advertising methods that are accessible to owners and prospective tenants would affect what would be considered reasonable.”*

A unit may not be counted as a qualified unit until it is occupied by a qualified tenant and other requirements have been fulfilled. Owners **cannot** count a vacant unit as a qualified unit if the unit did not qualify as an LIHTC unit prior to being vacated. Under LIHTC requirements, a vacant unit **cannot** be counted as a qualified unit simply because the unit is being held for a qualified tenant.

If a low-income unit in the project became vacant during the year, reasonable attempts should be made to re-rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income. Only units that have been previously occupied by an eligible household may be included as a qualifying low-income unit for compliance and credit purposes. If a unit has never been occupied by an eligible household or has been vacated by a market rate household, that unit is not counted as a qualifying low-income unit. This means when a unit becomes vacant, the credit is still available so long as reasonable attempts are made to market the unit, and the next available unit in the project of the same size or smaller size, is rented to a Tax Credit eligible household. Documentation of marketing attempts should be on file with the project's records.

Owners/Agents are required to prepare vacant units for occupancy within a reasonable amount of time. LHC has defined “reasonable amount of time” to be **30 days or less**. In addition, Owners must make all reasonable attempts to market their vacant, rent-restricted units. Owners/Agents should keep records to document the date the unit “make-ready” work is completed and the unit is ready for occupancy.

All vacant units that are not made suitable for occupancy, within a reasonable amount of time, will be considered out of compliance from the date the unit became vacant.

There may be extenuating circumstances that prevent an Owner from being able to prepare a unit in a timely manner (i.e. extraordinary repairs needed due to severe damage caused by a resident). These cases may be dealt with on a case-by-case basis.

### **C. Reaching the low-income occupancy target**

The size of a project's maximum qualified basis and qualified basis each year of the credit period determines the amount of tax credits that an owner can claim. Once a project reaches the credit period, the primary factor affecting the size of its qualified basis is the share of all units that are leased and occupied as qualified units. As the share of qualified units increases, the qualified basis for a project also goes up. In addition to meeting the minimum set-aside for a project, owners/managers also determine the number of qualified units needed to reach the maximum qualified basis for a project – its low-income occupancy target.

#### **i. Low-Income Occupancy Target**

The low-income occupancy target for a LIHTC project is the number of qualified units needed to reach the owner's desired qualified basis for a project. The owner's performance in establishing qualified units will determine whether the project reaches this goal.

The low-income occupancy target is generally established in the LIHTC application where the owner indicates the percentage of units in the project that will be leased as qualified units. If the owner expects that every unit will be a qualified unit, the project has a low-income occupancy target of 100%.

If an owner has established enough qualified units to reach the low-income occupancy target by the end of the tax year for which the project's credits must be claimed, the owner will receive the full LIHTC tax benefits from the project.

If owners fail to establish enough qualified units to reach the low-income occupancy target, the amount of credits that the owner can claim will be reduced. For example, if a project was designed to be a 100% low-income project and the owner was only able to lease and occupy 95% of the project's units as qualified units by the end of the lease-up period, the owner would only be able to claim 95% of potential credits for the project.

#### **ii. Lease-Up Plan**

Prior to the time a project is placed in service, it is recommended that owners/managers develop a lease-up plan describing how they will reach the project's low-income occupancy target. Finding eligible tenants and qualifying enough units can be very time consuming, particularly in projects that are almost fully occupied or that have 100% low-income occupancy targets. Without a careful plan, owners/managers may not obtain the number of qualified units needed to meet their low-income occupancy target.

An effective plan would:

- identify the total number of qualified units needed to reach the low-income occupancy target;
- present a strategy for marketing vacant units to eligible tenants;
- describe a method of surveying in-place tenants to assess their eligibility;
- establish procedures for ensuring that ineligible existing tenants are not improperly terminated; and
- include a system for tracking progress in qualifying qualified units

The LIHTC program does not specify the order in which units need to be leased and does not require owners to hold vacant units available for eligible tenants. Owners/managers simply need to follow acceptable leasing practices as they lease and qualify qualified units during the lease-up period. Owners/managers may decide to hold vacant units available for eligible tenants and turn away applicants who do not meet LIHTC eligibility requirements (see Chapter 4).

Certain housing programs, such as Federal Deposit Insurance Corporation (FDIC) Affordable Housing Disposition Program (AHDP), require that owners/managers follow specific leasing procedures until the necessary occupancy by low-income tenants is achieved. If the project is receiving assistance through other affordable housing programs like AHDP, preparing a lease-up plan can help owners/managers make sure they are meeting the occupancy requirements of each program.

### **iii. Tenant Selection Procedures**

The Owner/Agent is responsible for establishing tenant selection procedures. These procedures describe the methods and procedures for taking applications and screening tenants at the property.

Tenant selection procedures should at a minimum:

- Be consistent with the purpose of providing housing for low-income and very low-income families
- Be reasonably related to LIHTC Program eligibility and the tenant's ability to perform the obligations of the lease
- Provide for the selection of tenants based on a written waiting list in the chronological order of application, to the extent practicable
- State that the owner or manager will give prompt written notice to any rejected applicant, with an explanation of the grounds for rejection.

It is legally acceptable for housing providers to use income level as criteria in selecting applicants. For conventional housing providers, this usually means applicants must have an income level well above the cost of the rent; for example, requiring an income two or three times the amount of the rent. Subsidized housing providers ordinarily have an income cap: an applicant can't have an income above a specified amount. As always, these requirements must be consistently applied to all applicants.

### **iv. Waiting Lists**

The Owner's representative should establish a waiting list containing the names of eligible applicants listed in the order each application was received. The waiting list should be maintained in such a way that LHC and/or HUD can easily follow the progression of applicant placements.

Applicants should be notified of their eligible/ineligible status. A written application or pre-application is required for placement on the waiting list. Once an application is received, the applicant should be notified in writing that either they are ineligible and the reason for such determination or they appear to be eligible and they will be contacted when an appropriate unit becomes available. The notification of apparent eligibility should include the approximate amount of time it will take for a unit to become available.

Applicants should be housed in the order indicated by a written Tenant Selection Policy. Applicants must be accepted or rejected before the unit is offered to the next applicant on the list.

#### **• Rejected Applicants**

When Owners/Agents deny an applicant because they do not meet eligibility requirements, proper notice of the determination should be provided to the applicant, and documentation should be kept on file. The application along with the denial notice should be made available to the LHC, HUD, or Fair Housing personnel as requested.

### **D. Minimum set-aside**

To qualify for LIHTCs, a project must contain a minimum number of qualified units. This number is determined by the minimum set-aside selected for the project by the owner. The income requirement that qualified units must satisfy differs according to the minimum set-aside selected. An owner must choose one of two set-asides defined by the LIHTC program at the federal level.

#### **i. 20/50 Set-Aside.**

This set-aside requires that a minimum of 20% of the units in a project be qualified LIHTC units leased to tenants with incomes less than or equal to 50% of the area median income, adjusted for household size.

#### **ii. 40/60 Set-Aside.**

This set-aside requires that a minimum of 40% of the units in a project be qualified LIHTC units leased to tenants with incomes less than or equal to 60% of the area median income, adjusted for household size.



### **iii. Average Income Test.**

A taxpayer may elect to apply the average income test if at least 40% of the units in the project are both rent restricted and occupied by individuals whose income does not exceed the imputed income limitation designated by the taxpayer with respect to the respective unit. The taxpayer must designate an imputed income limitation percentage of 20%, 30%, 40%, 50%, 60%, 70% or 80% to such designated units provided that the average of the imputed income limitation of the respective designated units may not exceed 60% of the area median gross income.

### **E. Owner Elected Deep-Rent and Targeting Requirements**

Deep-Rent targeting requirements are common in LIHTC projects. This is normally an owner election at the state level. The owner elects to designate units with more restrictive rent and income requirements than at the federal level. This election is separate and often more restrictive than the federally elected set-aside that is indicated on IRS form 8609. The deeper targeting is usually determined by the owner at the time of application or loan underwriting and will be monitored by LHC on an ongoing basis. The goal of deep-rent set-aside units is to provide lower rents to lower income households. When a lower set-aside unit household has income that increases to the point where they meet a higher set-aside and can afford a higher rent, efforts should be taken to float the lower set-aside, or rent the next available unit to those who meet the deep-rent set-aside income limit and will benefit from the rent reduction. Tenant selection policies should indicate the owner's procedure on how lower set-asides will be designated. Leases should indicate unit designations may be changed as applicable when a household's income changes. Even though violations of the more restricted State elected set-aside may not appear to be federal violations, it is common practice among states to report violations as non-compliance with the Reservation and Extended Use agreement.

All LIHTC projects must contain enough qualified TC units to satisfy the chosen set-aside by the end of the tax year following the year that the project was placed in service. If a project does not have enough TC units, the owner cannot claim the project's LIHTCs.

When submitting an LIHTC Application to LHC, owners indicate which set-aside will be used in developing the project.

The minimum set-aside selected at this time and the low-income requirement, established by the set-aside applies throughout the life of the project.

## **2.5 HABITABILITY**

Section 42(i)(3)(B) of the Code requires that low-income units be suitable for occupancy, taking into account local health, safety and building codes. State Housing Finance Agencies are required to conduct physical inspections at least once every three years during the 15 year compliance period to ensure that LIHTC properties are providing buildings and units that are suitable for occupancy (Treas. Reg. §1.42-5). The frequency of monitoring in the extended use period is at the discretion of the LHC. The LHC conducts inspections of selected units using the Uniform Physical Conditions Standards established by HUD.

Health and Safety deficiencies are the most serious violations and can be divided into non-life threatening and exigent, life threatening conditions. Non-life threatening events include items such as pavement and walkway problems that create the potential for tripping and falling; missing or non-functioning sinks and bathroom components in individual units that impair human sanitation; missing exterior doors; and floor covering damage.

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

UPCS identifies the following inspectable areas:

1. The site;
2. Building exterior;
3. Building systems;
4. Dwelling units;
5. Common areas; and
6. Health and safety considerations.

#### **A. The Site**

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

#### **B. The Building Exterior**

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

#### **C. Building Systems**

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

#### **D. Dwelling Units**

Each LIHTC dwelling unit must be structurally sound, habitable, and in good repair. All areas and aspects of the dwelling unit (for example the unit's bathroom, call-for-aid, if applicable, ceiling, doors, electrical systems, floors, hot water heater, HVAC (where individual units are provided), kitchen, lighting, outlets/switches, patio/porch/balcony, smoke detectors, stairs, walls, and windows) must be free of health and safety hazards, functionally adequate, operable, and in good repair. Where applicable, the dwelling unit must have hot and cold running water; including an adequate source of potable water (note for example that single room occupancy units need not contain water facilities. If the dwelling unit includes its own sanitary facilities, it must be in proper operating condition, usable in privacy, and adequate for personal hygiene and the disposal of human waste. The dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit.

#### **E. Common Areas**

The common areas must be structurally sound, secure, and functionally adequate for the purposes intended. The basement/garage/carport, restrooms, closets, utility, mechanical, community rooms, halls/corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony and trash collection areas, if applicable, must be free of health and safety hazards, operable, and in good repair. All common area ceilings, doors, floors, HVAC, lighting, outlets/switches, smoke detectors, stairs, walls, and windows, to the extent applicable, must be free of health and safety hazards, operable, and in good repair. These standards for common areas apply to all housing but will be particularly relevant to congregate housing, independent group homes/residences, and single room occupancy units in which the individual dwelling units (sleeping areas) do not contain kitchen and/or bathroom facilities.

#### **F. Health and Safety Concerns**

All areas and components of the housing must be free of health and safety hazards. These areas include, but are not limited to, air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation, and lead-based paint. For example, the buildings must have fire exits that are not blocked and have handrails that are undamaged and have no other observable deficiencies. The housing must have no evidence of infestation by rats, mice, or other vermin, or of garbage and debris. The housing must have no evidence of electrical hazards, natural hazards, or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold, odor, (e.g., propane, natural gas, methane gas), or other observable deficiencies. The housing must comply with

all requirements related to the evaluation and reduction of lead-based paint hazards and have available proper certifications of such, if applicable.

The Uniform Physical Condition Standards stated herein do not supersede or preempt applicable State and local codes for building and maintenance. A low-income housing project must satisfy the local standards and LHC is obligated to report known violations to the IRS. If there is a conflict between UPCS and state or local codes, an official of a governmental entity, such as the fire marshal's office or municipal building inspector, must provide a written notice to the compliance department of the LHC explaining the nature of the conflict. LHC will evaluate and determine if the project or unit is in compliance.

#### **i. Lead-Based Paint Requirements**

Owners are required to take actions to reduce lead-based paint hazards in their units. Owners must comply with the Lead-Based Paint Poisoning Prevention Act along with requirements for dealing with lead-based paint found in the Uniform Physical Condition Standards.

Owners must distribute a HUD or Environmental Protection Agency (EPA) approved pamphlet to prospective buyers and renters of pre-1978 homes, and tenants of homes where renovations will take place. A widely used EPA pamphlet entitled "Protect Your Family from Lead in Your Home" is available for download in both English and Spanish on the LHC website.

LHC requires that owners obtain evidence of tenant receipt of any pamphlet distributed. Owners may create their own receipt of disclosure form or use the form, "Disclosure of Information on Lead" located on the LHC website. The Compliance section will audit for proof of receipt.

Effective October 4, 2011, The Environmental Protection Agency (EPA) revised various materials including the "Renovate Right" brochure that must be provided to residents prior to any repairs that may disturb lead based paint in home built prior to 1978.

The Lead-Based Paint Poisoning Prevention Act applies to all units in a property. During the compliance review, the Asset Management & Compliance Section Compliance Officer will monitor to ensure that the owner has conducted all necessary activities and maintained appropriate documentation in their files.

#### **ii. Exempt Housing**

- Properties built after January 1, 1978
- Properties found not to have lead-based paint during earlier testing that meets the requirements of prior evaluations
- Properties where all lead-based paint has been identified and removed using approved methods
- Properties where rehab will not disturb paint and no paint hazards are identified
- Properties where occupancy by a child is unlikely, typically elderly and disabled housing or SRO units

### **3 LIHTC INCOME LIMITS**

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The LIHTC program establishes specific income requirements (income limits) for determining who qualifies as a low-income tenant. The minimum set-aside selected by the owner determines the income requirement that must be used in determining whether a household qualifies as a low-income tenant.

The income limits are based on HUD's annual determination of area median income. Under applicable IRS requirements, HUD's limit corresponds to the 50% of median income limit for the LIHTC program. Owners/managers should only use the income limits provided by LHC and/or published by HUD.

When determining eligibility, owners must use the income limits in effect on the date the tenant's income is certified. The HUD publication of income limits will normally indicate the effective date of the new limits. IRS procedures require that owners begin applying new limits no later than 45 days after HUD's effective date.

Rural projects will use the greater of the area median gross income (AMGI) or the national non-metropolitan median income for determinations made after July 30, 2008.

HERA created multiple sets of income limits for projects funded with tax credits and/or financed with tax exempt housing bonds (TE Bonds). These limits are now calculated and presented separately from the Section 8 income limits. Projects may be subject to three different income limits.

1. If the project, as defined on IRS Form 8609, Line 8b, consists of multiple buildings, the placed in service date for purposes of using the correct income limit is the earliest placed in service date for all of the buildings in the defined project. If each building is defined as a separate project, use the placed-in service date for each building separately for determining the correct income limit.
2. Projects that were placed-in-service January 1, 2009 or later are subject to the published Multifamily Tax Subsidy Project (MTSP) income limits.
3. HERA Special Income Limits - In 2009, HUD began publishing "HERA" income limits for parishes impacted by HUD's "hold-harmless" policy. The Housing and Economic Recovery Act established a second set of income and rent limits because of the hold harmless provision that was enacted in 2007. The new publication includes income limits for Very Low Income (or 50% AMGI), and the HERA Special limits at 50% and 60% for those properties in service in 2007 and 2008 with HUD Hold Harmless status. Where applicable, the HERA limits may be used by all tax credit projects that were placed-in-service on or before December 31, 2008. However, not all parishes in Louisiana have HERA special limits.

### **3.1 WHICH INCOME LIMITS SHOULD BE USED?**

To determine which set of income limits to use for a particular project, the owner/management must first properly define the project based on election made on line 8b of Form 8609 and then identify the first placed-in-service date for that project. A multiple building project is considered placed-in-service on the date the first building in that project places in service.

1. A project that placed-in-service on or before December 31, 2008 will use the current HERA special limits. If the parish in which the project is located does not have HERA special limits published, then the project will use the regular limits for that parish.
2. A project that placed-in-service on or after January 1, 2009 will compare all sets of limits that were effective since the placed-in-service date and apply the highest set. A project that placed-in-service after December 31, 2008 will never be eligible for HERA special limits.

### **3.2 NATIONAL NON-METROPOLITAN INCOME LIMITS**

In addition to the HUD Hold-Harmless Income limits, HERA provides certain LIHTC properties with the option to use the National Non-Metro Median Income Limit versus the areas Actual Income Limit should it be higher. The U.S. Department of Agriculture (USDA) determines whether or not the property is located in an area designated as rural. Regardless of location, non-metro limits cannot be used for any project without prior, written approval from the LHC. This rule went into effect on July 31, 2008, is not retroactive, and only applies to rural or non-metro LIHTC properties with 9% credit allocations. LIHTC properties with tax exempt bond financing or HOME funding are not eligible to use

the National Non-Metro Income Limits. If the property was placed-in-service on or prior to December 31, 2008, is in a HUD Hold-Harmless Impacted area, and has an address designated as rural (by the USDA), the owner may use the highest of the three income limits available.

### **3.3 OBTAINING RENT AND INCOME LIMITS**

Upon receipt of the income limit information from HUD, LHC calculates additional income levels with corresponding rent limits by Parish and makes them available to owners and agents and the general public within a few days of their release on the LHC website at: <http://www.lhc.la.gov/page/compliance-forms>

It is the owner's responsibility to obtain the new rent and income limits each year. Owners are not permitted to anticipate increases in income and rent limits. Income and rent limits become effective when published by HUD, and will remain in effect until HUD officially replaces with new updated limits. HUD typically publishes new limits during the spring of each year (subject to change). Owners typically have 45 days from the HUD publishing date to implement new limits.

## **4 RESTRICTED RENTS**

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To ensure that qualified units made available to low-income tenants are affordable, LIHTC establishes the maximum rents that owners can charge for qualified units. The rent limits are set at levels affordable to low-income households, based on unit size and the median income for the area in which the property is located and include an allowance for tenant-paid utilities.

Generally, there are two sets of rent limits – one for projects using the 20/50 minimum set-aside and one for projects using the 40/60 minimum set-aside. The owner may have also elected to use the average income test or rent a percentage of the units at lower rent limits. These elections are recorded in the “Special Conditions” attached to the TCRA. The owner must also comply with those additional elections as defined.

### **4.1 BASIS FOR RENT LIMITS**

Prior to 1990, rent limits were calculated based on household size. Properties receiving tax credit allocations after January 1, 1990 must be rent-restricted based on an imputed, not actual, household size. Household size is imputed based on the number of bedrooms in the unit. Under this method, the actual size of the household occupying a qualified unit does not affect the rent that can be charged for the unit. The imputed household size is determined by assuming 1.5 persons per bedroom with the exception of efficiency units where the standard is one person.

### **4.2 RENT LIMIT CALCULATIONS**

The rent limit for qualified units is 30% of the Area Median Gross Income for the imputed household size divided over a twelve month period. Where the imputed household size includes a theoretical .5 persons, an average of income limits must be used. For example, to calculate the income limit for a one bedroom unit (1.5 persons) the average of the appropriate one and two person income limits should be multiplied by 30% to determine the maximum gross rent for the unit.

### **4.3 RENT LIMIT PUBLICATION**

Under the HERA Act of 2008, HUD publishes a set of rent limits specifically for the LIHTC program. These limits are referred to by HUD as Multifamily Tax Subsidy Project Limits (MTSP). These limits are different from HUD AMI limits and will never go down for a property in subsequent years. Existing LIHTC properties that receive new allocations of credits must use the actual income limits applicable to the new allocation date.

Each year, the LIHTC rent limits applicable to projects in Louisiana are revised based on changes in area median incomes. The revisions will be made after HUD publishes its updated figures for area median incomes. HUD generally issues these

figures during the first half of the year. When new income limits are released, the owner has forty-five (45) days from the HUD effective date to implement the new limits and corresponding rents. Owners may not anticipate increases in income limits and corresponding rents. Limits remain in effect until new annual limits are officially published each year by HUD.

#### **4.4 ADJUSTING UNIT RENTS**

If a decrease in LIHTC rent limits results in lower maximum allowable rents for qualified units, owners are required to bring the rents for qualified units into compliance with the new rent limits at the time they become effective.

When LIHTC rent limits increase, owners can raise the rents for qualified units up to the amount of the new limit after taking into account 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.

##### **Rent Floors**

When annual adjustments are made in LIHTC rent limits, it is possible that rents can go down. However, LIHTC has established a floor to protect owners from decreasing rents. LIHTC regulations protect owners who received allocations in 1990 or later years by establishing a rent floor that keeps the applicable LIHTC rent limits for the project from dropping below the rent limits that were in effect on the date the initial LIHTC allocation was made to the building/ project. For buildings/projects that have not yet been placed in service, the owner may elect to use the LIHTC rent limits in effect on the placed in service date as the rent floor.

In determining the maximum allowable rent for a qualified unit, present utility allowances are always subtracted from the rent limit – regardless of whether the rent floor is the current rent limit being used.

#### **4.5 “HOLD HARMLESS” POLICY**

The Housing and Economic Recovery Act of 2008 (HERA) amended Section 42 to include a “hold-harmless” policy for income and rent limits.

According to the hold harmless provision, the income limits and corresponding rent limits for a particular project (as defined on Line 8b of the 8609) will never decrease for any calendar year after 2008, even if there is a decrease in the published limits for the parish in which the project is located. However, a project is never eligible to use a set of limits if it was not placed-in-service during the time those limits were in effect.

A multiple building project is considered placed-in-service on the date the first building in that project places in service. Therefore, income and rent limits are no longer based solely on the parish in which a development is located. Instead, limits are project-specific based on the placed-in-service date. If buildings within the same development are considered separate “projects” (i.e. if Line 8b of the 8609 is marked ‘no’), then each building may potentially have different sets of limits based on their different placed-in-service dates.

Even if the multiple building project election is marked “yes,” it is important to note that separate phases are always considered different projects and are therefore likely to have different sets of income and rent limits. For more information on properly implementing rent limits, see section on which Rent limits should be used below.

#### **4.6 HERA SPECIAL RENT LIMITS**

In 2009, HUD began publishing “HERA special” limits for parishes impacted by HUD’s “hold-harmless” policy. Where applicable, the HERA limits must be used by all tax credit projects that placed-in-service on or before December 31, 2008. However, not all parishes in Louisiana have HERA special limits. Projects that placed-in-service in 2009 or later are not eligible to use the HERA Special limits. Reminder: project is defined by the election on Line 8b of Form 8609. A

multiple building project is considered placed-in-service on the date the first building in that project places in service. Note: a project (as defined by Line 8b of Form 8609) is eligible to use the HERA special limits if:

1. The parish in which the project is located has HUD published HERA special limits for the year; AND
2. The project placed-in-service on or before December 31, 2008.

For more information on the applicability of HERA special limits, see Low-Income Housing Credit Newsletter Issue #35, May 2009.

#### **4.7 WHICH RENT LIMITS SHOULD BE USED?**

To determine which set of rent limits to use for a particular project, the owner/management must first properly define the project based on election made on Line 8b of Form 8609 and then identify the first placed-in-service date for that project. A multiple building project is considered placed-in-service on the date the first building in that project places in service.

1. A project that placed-in-service on or before 12/31/08 will use the current HERA special limits. If the parish in which the project is located does not have HERA special limits published, then the project will use the regular limits for that parish.
2. A project that placed-in-service on or after 01/01/09 will compare all sets of limits that were effective since the placed-in-service date and apply the highest set. A project that placed-in-service after 12/31/08 will never be eligible for HERA special limits. For examples on applying this principle, see section HERA Special Rent Limit above.
3. Compare the rent limit from either step #1 or #2 above to the gross rent floor and use the higher of the two limits.

#### **4.8 VIOLATIONS OF THE RENT LIMIT**

A unit is in compliance when the rent charged does not exceed the gross rent limitations on a monthly basis. A unit is out of compliance if the rent exceeds the limit on a tax year basis or on a monthly basis.

Once a unit has exceeded the rent limits, that unit is out of compliance for the entire tax year, regardless of how quickly the rent is adjusted or if the tenant is reimbursed for the overcharge. Once a unit is determined to be out of compliance with the rent limits, the unit ceases to be a low-income unit for the remainder of the owner's tax year. A unit is back in compliance on the first day of the owner's next tax year if the rent charged on a monthly basis does not exceed the limit. The owner cannot avoid the disallowance of the LIHTC by rebating excess rent or fees to the affected tenants. Therefore, if LHC discovers a violation of the rent limit for a unit, an 8823 will be issued and that unit will be considered out of compliance for the remainder of the year. A corrected 8823 will be issued once the rent has been properly adjusted and is now below the applicable limit. Refunding the overage does not prevent the non-compliance 8823 from being issued. However, the LHC will require the owner to reimburse the household before a corrected 8823 will be issued for the unit. If the owner or management discovers that rent has been overcharged, LHC should be notified immediately and the owner should take action to correctly adjust the rent and reimburse the overages.

#### **4.9 UTILITY ALLOWANCES (UA)**

An allowance for the cost of any utilities, other than telephone, cable television, or Internet, (e.g., heat, electricity, water, sewer, oil or gas) paid directly by the household must be included in the calculation of gross rent under IRC§42(g)(2)(B). A separate estimate is computed for each utility. In projects where the owner pays all utilities, no adjustment in the LIHTC rent limit is needed to determine the gross rent for a qualified unit. In projects where tenants pay some or all of their own utilities, the total tenant payment plus an allowance for tenant-paid utilities must not exceed the applicable LIHTC rent limit for that unit.

$$\text{Gross Rent} \leq \text{LIHTC Rent Limit} - \text{Utility Allowance}$$

Utility allowances are computed on a building-by-building basis and must be reviewed and updated annually to ensure that they are comparable to what the household is actually paying. Owners may choose to review allowances more than once per year. However, each time a review is completed, whether a mandated annual review, or a self-imposed review, owners have a maximum of 90 days to implement them. The Owner must submit copies of the utility calculations with supporting documentation to LHC and make the calculation available to all tenants in the building at the beginning of the 90-day period before the new utility allowance can be used to calculate rent. LHC may require additional documentation from the Owner during the 90-day period.

Each year when the allowances are reviewed, the Owner or Agent must retain all source documentation and any supporting documentation or data collected that is used to calculate the UA. This information should be kept on file in order to provide proof of compliance during the entire credit period and made available to the IRS or LHC upon request. Owners or Agents must also submit utility allowance documentation to LHC each year with the Annual Owner Certification, and during compliance reviews. Proof of resident notification should be kept on file for LHC review. If the utility allowances are not changed, documentation must be obtained to show that the UA has been reviewed and no changes were required.

#### **A. Utility Allowance Determination**

There are multiple acceptable methods for determining the utility allowance to be used at a property. The method of determining utility allowances depends on the type of project assisted by LIHTC. For buildings or households receiving Rural Housing assistance the method for determining the UA is defined by the Rural Housing Service (RHS). If there is no Rural Housing assistance involved and HUD reviews rent and UA annually the applicable HUD UA should be used. If any households in the building are receiving assistance from HUD the applicable PHA allowance should be used. If a building is not regulated by HUD or RHS and no units in the building are receiving assistance from these agencies, the owner may choose one of the following acceptable options for determining that UA:

##### **i. Louisiana Housing Corporation Estimates**

The Louisiana Housing Corporation administers a project-based voucher rental assistance program through the Louisiana Housing Authority (LHA). Through this program, the LHA annually publishes a UA Schedule for parishes in Louisiana. This schedule is acceptable for use at LIHTC projects.

##### **ii. The PHA utility allowance**

Local Public Housing Authorities (PHA) publish their own UA. In some cases the PHA may publish multiple UAs. The owner is responsible for ensuring that a UA is current and applicable to the building for which it is used.

##### **iii. Utility Company Estimate**

It is acceptable to obtain from a utility company providing service to a building the estimated cost of that utility for units of similar size, construction and location. The LHC should be provided an original copy of the estimate from the utility company. If a local utility company estimate is obtained for any unit in the building in accordance with Exhibit 5-1, this estimate becomes the applicable utility allowance for all qualified units of similar size and construction in the building where the tenant does not receive rental assistance supported with HUD funds. The estimate must be documented in the project's files.

Any party (including a low-income tenant, a building owner, or a public agency) may obtain a local utility company estimate for a unit to establish the utility allowance for TC units of similar size. (NOTE: This estimate does not apply to TC units where the tenant receives HUD-funded rental assistance or in HUD or RD-assisted projects.) This type of estimate may be used when an interested party obtains, in writing, information from a local utility company providing the estimated cost of that utility for a unit of similar size and construction for the geographic area in which the building containing the unit is located. Interested parties can request this type of utility estimate at any time during a building's compliance or extended use periods. The party requesting the allowance must bear the costs incurred in obtaining the estimate. The party must retain the original, written estimate and provide a copy to both the owner and LHC.



#### **iv. HUD Utility Schedule Model**

The HUD Utility schedule model can be found on HUD's website (www.huduser.org) and used to calculate the UA for buildings in LIHTC properties. Rates used for this model must be applicable no more than 60 days prior to the 90 day review and implementation period. This model can be complicated and it is the responsibility of the owner to ensure that the UA derived from this model is accurate. Inaccurate UAs will lead to non-compliance at the expense of the owner. The 90 day review and implementation period begins on the date entered as the form date on HUD Form 52667.

#### **v. Energy Consumption Model**

This model is perhaps the most complex and must be calculated by a qualified professional approved by LHC. It uses actual and verifiable consumption data to estimate utility usage for like units. Several factors must be taken into account, including, but not limited to unit and building size and location and mechanical systems. Consumption data for use with this model must be from the 12 month period ending no more than 60 days prior to the 90 day review and implementation period.

#### **B. Tenants Receiving HUD Rental Assistance**

The applicable utility allowance for any rent-restricted units occupied by tenants receiving HUD rental assistance payments is the Public Housing Authority (PHA) utility allowance established for the Section 8 Existing Housing Program.

#### **C. Sub-Metered Units**

IRS Notice 2009-44 clarified that utilities paid by a resident that are based on consumption in a sub-metered unit are to be treated as being paid directly by the resident.

In Notice 2009-44, the IRS made clear that ratio unit billing systems (RUBS) will be disallowed in sub-metered situations. RUBS calculations are based on a unit's relative floor space, number of occupants, or some other measure, but not on the actual household usage. In sub-metering arrangements, the billed amount must reflect the unit's actual consumption of the particular utility. The utility rate charged to the tenants cannot exceed the utility company rate incurred by the building owner for a particular utility. If two or more utilities, such as electric or water are sub-metered, then the building owner or manager must separately state the amount billed for each sub-metered utility. Any amount paid by a tenant for utilities using RUBS calculations must be included in gross rent.

#### **D. Changing Methods**

Owners are not prohibited from changing methods used for calculating a utility allowance in order to most accurately calculate the utility allowance for a property. LHC must be notified and approve of the proposed change.

#### **Low-income housing projects are considered out of compliance when:**

1. The appropriate utility allowance is not used
2. The utility allowance is not properly calculated
3. Rents are not reduced for a utility allowance when utilities are paid directly by the tenant to the utility provider
4. The owner did not review the basis on which the utility allowance is established at least once during the calendar year
5. The owner failed to update rents for a revised utility allowance after the 90-day period (if necessary)
6. The owner failed to maintain adequate documentation regarding the computation of utility allowances; without proof of the amount of the allowance and how it was estimated, there is no way to correctly compute the rent.

### **4.10 FEES AND MISCELLANEOUS CHARGES**

Application fees may be charged to cover the actual cost of checking a prospective tenant's eligibility including credit history, criminal history, and landlord references. The fee is limited to recovery of the actual out-of-pocket costs. No amount may be charged in excess of the average expected out-of-pocket costs of checking tenant qualifications at the

property. It is also acceptable for the applicant to pay the fee directly to the third party actually providing the applicant's information to determine eligibility.

Owners must provide pledged supportive services as designated in the project's special conditions or other applicable selection criteria through the duration of the extended use period. In addition, pledged supportive services will be monitored for existence during compliance monitoring reviews. No change may be made in supportive services without the express written consent/approval of the LHC. Owners may charge fees for optional services provided to residents (meals, transportation, etc.). As long as they are truly optional, these fees are not included in the rent limits, but must be reasonable and customary for the local area.

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

If project facilities, such as garages or a swimming pool, were included in the eligible basis for the project, tenants of qualified units may not be charged fees for the use of these facilities.

Owners may charge fees for the use of optional project facilities as long as the facilities were not included in the rent amount restricted by LIHTC rent limits. If the facilities are not optional, any fees charged to tenants of qualified units for use of these facilities are considered part of the unit rent that is restricted by the maximum allowable rent for that unit.

Customary fees that are reasonable and typically charged for low-income rentals, such as refundable security deposits, cleaning deposits, pet deposits, and screening fees are normally permissible. However, LHC does not support and will not approve the use of pet rent in affordable housing units. Collection of pet rent in excess of program rent limits is considered a violation of compliance program rules. In addition, eligible tenants must not be charged a fee for work involved in completing the forms or documentation required by the LIHTC program, including completion of the Tenant Income Certification.

#### **4.11 RENTS FOR UNITS RECEIVING TENANT-BASED ASSISTANCE**

Subsidy payments to an owner under various HUD Section 8 programs or any other comparable program are excluded and not considered in determining gross rent. The tenant's portion of the rent payment, plus the applicable utility allowance and any mandatory charges are considered in determining if the rent exceeds the gross rent maximum for the parish. [IRC Sec. 42(0)(2)(B)(i)]. Similarly, when considering rent-to-income ratios, owners/managers must compare income only to the tenant paid portion of the rent – not including the subsidy payment.

LIHTC rent limitations apply only to the tenant-paid portion of the rent. They do not cover the portion of unit rents paid by Section 8 rental assistance or any other comparable rental assistance. The actual rent for the unit may be higher than the LIHTC limit but may not exceed the rent limit of the program providing tenant assistance. For example, the rent setfor units occupied by tenants with Section 8 Certificates cannot exceed the applicable Fair Market Rents.

A tenant who receives Section 8 rental assistance and who originally qualified for a set-aside unit may later be required to pay an amount in excess of the tax credit limit due to their increased earnings and decreased subsidy. In this case, the Code does allow an exception as long as the following requirements apply to the tenant:

- The tenant originally qualified for a set-aside unit;
- The tenant is a participant under a housing subsidy program; and
- At least one dollar of subsidy is being received by the tenant.

If at any time the subsidy is revoked, the owner may not charge a gross rent greater than the LIHTC rent limit. [IRC, 42(g)(2)] With the passage of the Omnibus Budget Reconciliation Act of 1993, owners are prohibited from refusing to lease to a prospective tenant based solely on the fact that the applicant holds a Section 8 rental voucher or certificate.

## **5 HOUSEHOLD INFORMATION AND ELIGIBILITY**

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Before a unit can be counted as a qualified unit, the owner must establish that the tenant is eligible as a low-income household. To determine a tenant's eligibility, the owner must document household composition and compare the household's gross annual income to the LIHTC income limits that apply to the project.

To help ensure that a tenant's eligibility is correctly established, owners must verify the household's income and have the tenant certify its accuracy. Because income and household composition may change over time, the owner must re-examine the eligibility of tenants in LIHTC units at least once a year. If an income eligible household is composed entirely of students, the household may be disqualified by LIHTC restriction against students. There are exceptions to the student restrictions. Owners must carefully document that a household with students meets at least one of these exceptions before the tenant can occupy an LIHTC unit.

### **5.1 RENTAL APPLICATION**

Because the LIHTC Program uses special definitions for income and households, standard property management application forms may not collect sufficient information to determine tenant eligibility. Owners/managers need to make sure that their applications collect all the necessary information. The following items shall be included in the application:

- Name, birth date, and relationship to the head of the household for each person in the household who will occupy the unit (legal name should be given as it will appear on the dwelling lease).
- Full-time student status, if applicable.
- All anticipated changes to the household composition within the next 12 month period following certification (if the applicant voluntarily discloses a pregnancy, the unborn child may be counted as a household member for income-qualification purposes).
- All sources and amount of current and anticipated income to be derived during the twelve-month certification period.
- Estimated value of all assets, including estimated income from these assets disposed of for less than fair market value during the preceding 24 months.
- Signatures of all household members who are 18 and older and signature dates indicating when the application was completed.

The application form can also be used to gather information from in-place tenants whom the owners/managers would like to qualify.

### **5.2 TENANT RELEASE AND CONSENT FORM**

Households seeking to qualify under the program need to sign a Tenant Release and Consent form authorizing the owner/manager to verify the information they provide. The form should be completed at the time the application is completed. All adult members of the household with income and assets must sign and date the form.

### **5.3 HOUSEHOLD SIZE**

Because income limits vary by size of household, owners must determine the number of people in a tenant's household to decide whether the household is income eligible.

#### **A. What Constitutes a "Household"?**

Owners may classify any single person, or group of persons who choose to live together as a household. A group of full-time students living together in a unit does not constitute a household under LIHTC requirements unless one of the five exceptions listed in Section 5.6 applies. Student households that fail to meet at least one of these exceptions cannot be considered an eligible tenant in an LIHTC project, regardless of their income.

#### **B. Who Counts as a Household Member?**

When determining family size for income limits, include as household members all adults and children who will live in the unit. Household members also include the following persons who do not reside in the unit:

- i. Children temporarily absent due to placement in a foster home;
- ii. Children in joint custody arrangements who are present in the household 50% or more of the time;
- iii. Children who are away at school, but who live with family during school recesses;
- iv. Unborn children of pregnant women;
- v. Children being adopted;
- vi. Military member on active duty who is head, co-head, or spouse;
- vii. Temporarily absent persons who are still considered family members and approved to reside in the unit;
- viii. At the family's discretion, persons permanently confined to a hospital or nursing home may be included in the household size for determining the income limit. However, any such family member cannot be named as head, co-head, or spouse.

#### **C. Unborn Children, Live-In Aides, Foster Children**

- i. Unborn children are included in determining the size of a household and for purposes of determining the maximum allowable income. A self-certification must be obtained from the pregnant woman as documentation. A household in the process of adopting a child is treated in the same manner as a household with an unborn child.
- ii. A live-in aide should be included for the purpose of determining the appropriate unit size for the household, but is not included for purposes of determining the maximum allowable income.
- iii. Foster children should be included for the purpose of determining the appropriate unit size for the household, but applicable under the LIHTC Program.

#### **D. Adding New Household Member**

LHC does allow the addition of new household members within the first six months of occupancy. However, when an addition to the household is made within the first six months of occupancy the household must requalify at the applicable income limit as a new household. This policy was established to prevent the manipulation of applicable LIHTC income limits. Owners should include language in the lease prohibiting the addition of new household members prior to the expiration of the initial six-month term, with the exception of children born to or adopted by a member of the original household. In addition, owners should ask prospective tenants if they expect to have any additions to the household within the first six months of residency. This is commonly seen as a question on the application for tenancy.

After the initial six-month lease term has been fulfilled, the addition of a new household member would require management to obtain third-party verification of the income and assets for the new individual. Upon receipt of the third-party verifications and documentation, management would add the new member's information to the existing household's most recent certification (TIC). The new member would then sign and date the TIC using the current date (actual date of signature).

If the combination of the income and assets of the existing household and new member exceeds 140% of the income limit, the Available Unit Rule applies. As long as the unit remains rent-restricted and the next available unit is granted to an income-qualified household moving in to a unit of comparable size or smaller, the building will remain in compliance.

## 5.4 ANNUAL INCOME

To determine whether a household is income eligible, an owner must compare the anticipated annual income for the next 12 months to the income limits for the appropriate household size. The program uses the definition of annual income as defined in Section 8 of the United States Housing Act of 1937. This is the same definition used by HUD to determine the gross annual income of families and individuals receiving housing assistance through the Section 8 program. **Annual Income** is the amount of verifiable gross income **anticipated by all members of the household (except dependent minors)** during the 12-month period following certification of eligibility or re-examination of eligibility. This method should be used even when it is not clear that the type of income currently received will continue in the coming year. In general, owners should assume that today's circumstances will continue for the next 12 months unless there is verifiable evidence to the contrary.

Under this definition, annual income includes not only income from employment and benefits, but also income from assets. There are very specific requirements regarding the sources of income that must be included and excluded when determining annual income. The "*HUD Handbook 4350.3*" provides detailed information on how to calculate annual income (See Appendix A).

### A. Components of Annual Income

#### i. Earned income

The IRS defines earned income as all the taxable income and wages you get from working or from certain disability payments, including:

- Wages, salaries, tips, and other taxable employee pay;
- Union strike benefits;
- Long-term disability benefits received prior to minimum retirement age;
- Net earnings from self-employment if:
  - ✓ You own or operate a business or a farm or
  - ✓ You are a minister or member of a religious order;
  - ✓ You are a statutory employee and have income.

#### ii. Unearned Income

The IRS defines unearned income as income from investments, assets and sources other than employment. Assets are defined as items of value other than necessary personal items. Income which is generated by savings accounts, real estate, and other investments is asset income. Asset income is calculated based on the cash value of the asset.

**Cash value** is the amount the household would receive if the asset(s) were converted to cash. It is the market value minus any reasonable expenses that would be incurred in selling or converting the asset(s) to cash, such as:

- Penalties for early withdrawals.
- Broker and legal fees.
- Settlement costs for real estate.

If the total cash value of all assets is \$5,000 or less, a signed certification from the tenant is the only verification that is required. Beginning January 2020, LHC will require the use of the “Under \$5,000 Asset Certification Form” found on the LHC website. Owners must include the actual income to be derived from these assets in the gross income.

If the total cash value of all assets is greater than \$5,000, additional documentation must be obtained from either the tenant or by third-party verification. “Self-certification” from the tenant is not acceptable. Owners include in annual income the greater of the following:

- The actual annual income to be derived from these assets; or
- An “imputed income” of the assets derived by taking the total of all assets and multiplying by a HUD-provided passbook rate.

#### **B. Assets Owned Jointly**

Assets owned by more than one person should be prorated according to the percentage of ownership. If no percentage is specified or provided by state or local law, prorate the assets evenly among all owners. Remember that simply having your name on an account does not mean that you “own” it. Documentation must be in the file to demonstrate the intent and purpose of the account.

Some things to consider when determining ownership of an asset are:

- Who receives any income from the asset?
- Who pays taxes on the income received from the asset?
- Is there frequent or immediate access to the account in question?

#### **C. Asset Inclusions and Exclusions**

As in the case of regular income, there are a number of inclusions and exclusions that owners/managers must follow when determining asset income. Greater detail on what assets include and do not include for the purpose of income calculation can be found in the HUD Handbook 4350.3, Chapter 5 (see appendix A).

#### **D. Annual Income Inclusions**

Annual income includes all amounts that are not specifically excluded by regulation. A full list of included income sources can be found in the HUD Handbook 4350.3, Chapter 5 (see appendix A).

#### **E. Annual Income Exclusions**

Regulations for multifamily housing programs specifically exclude certain types of income when determining a household’s annual income. However, many of the items listed as exclusions from annual income under HUD requirements are items that the IRS includes as taxable income. Therefore, it is important for owners and agents to focus specifically on the HUD program requirements regarding annual income as outlined in the HUD Handbook 4350.3, Chapter 5 (see appendix A).

#### **F. Military Pay Differences; Section 3005 of the American Housing and Economic Recovery Act of 2008**

Military Basic Housing Allowance (BAH) must now be included as income for all properties that were placed in service, received an allocation of credits, or were financed with tax exempt bonds before July 30, 2008, or after January 1, 2012. BAH is excluded indefinitely for properties that were placed in service, received an allocation of credits, or were financed with tax exempt bonds after July 30, 2008, and before January 1, 2012. The low-income building owner is responsible for documenting that the exception under IRC §142(d)(2)(B)(ii) is applicable.

### G. Zero Income Household

It is possible that a household living in a qualified unit will have total annual income of \$0. This is possible if the household is receiving rental assistance, food stamps, or other forms of assistance that are not counted as income. Program regulations require that income from all sources be disclosed, verified and included on the Tenant Income Certification. Households with zero income or with income insufficient to cover reasonable basic living expenses are required to provide a statement outlining how these basic living expenses are currently being paid. If an individual applicant/tenant within the household has zero income, LHC requires a “Zero Income Certification” form be completed. This form asks the household member to certify that he or she has no employment, allows them to answer questions about other forms of excluded income, and provides an option to claim zero income.

### H. Income Calculations

Verified income other than annual salary must be converted to an annual figure. The following formulas may be used to annualize income from employment:

Calculation Method	Examples
Hourly wages by the number of hours worked per week	$\$9.25 \text{ per hour} \times 2,080 \text{ hours per year} = \$19,240$ $\$9.25 \text{ per hour} \times 40 \text{ hours per week} \times 52 \text{ weeks} = \$19,240$
Weekly wages by 52 weeks	$\$190 \text{ per week} \times 52 \text{ weeks} = \$9,880$
Bi-weekly wages by 26 weeks	$\$500 \text{ bi-weekly} \times 26 \text{ weeks} = \$13,000$
Semi-monthly wages by 24 weeks	$\$400 \text{ twice a month} \times 24 \text{ pay periods} = \$9,600$
Monthly wages by 12 months	$\$1,000 \text{ per month} \times 12 \text{ months} = \$12,000$

For those individuals with an annual salary, the annual amount should be used to cover the full 12-month period regardless of the pay schedule.

#### To annualize income from other than full-time employment, multiply:

1. Hourly wages by the average number of hours worked;
2. Average weekly amounts by the average number of weeks worked;
3. Other periodic amounts by the average number of periods worked

#### i. Rounding when Calculating Income

When calculating income, rounding must only be done after all of the applicable calculations have been performed. Income may be rounded up to the nearest dollar but must never be rounded down. It is important to note that when qualifying a household, a household’s income must always be less than or equal to the maximum income limit.

### I. Whose income should be included?

#### i. Adults:

Count the annual income of the head, spouse or co-head, and other adult members of the household.

#### ii. Dependents:

The head of the family, spouse, co-head, foster child, or live-in aide are never dependents. Some income received on behalf of family dependents or foster children is counted and some is not.

- Earned income of minors (family members under 18 years of age) is NOT counted.
- Benefits or other unearned income of minors IS counted.
- The unearned income of a foster child or foster adult including SSI disability payments and income from assets owned by or on behalf of a foster child or foster adult is counted.
- For full-time students who are 18 years of age or older and are dependents, a small amount of their earned income will be counted. Count only earned income up to a maximum of \$480 per year for full-time students, age 18 or older, who are not the head of the family, spouse, or co-head. If the earned income is less than \$480, count all of the income. If the earned income exceeds \$480 annually, count \$480 and exclude the amount that exceeds \$480.
- All income of a full-time student, 18 years of age or older, is counted if that person is the head of the family, spouse, or co-head.
- Payments received by the family for the care of foster children or of foster adults are not counted. This rule applies only to payments made through the official foster care relationships with local welfare agencies.
- Adoption assistance payments in excess of \$480 are not counted.

**iii. Income of Temporarily Absent Family Members:**

- Owners must count all income of family members approved to reside in the unit, even if some members are temporarily absent.
- If the owner determines that an absent person is no longer a family member, the individual must be removed from the lease and Tenant Income Certification.

**iv. Deployment of Military Personnel to Active Duty**

A temporarily absent individual on active military duty (most often a son/daughter) is removed from the household, and his or her income must not be counted unless that person is the head of the family, spouse, or co-head. However, if the spouse or a dependent of the person on active military duty resides in the unit, that person's income must be counted in full, even if the military member is not the head or spouse of the head of the family. The income of the head, spouse or co-head will be counted even if that person is temporarily absent for active military duty. *See 4350.3 Rev1, Change 4, Chapter 5.*

Owners are encouraged to accommodate the unique circumstances of households where a member is called to active duty in the Armed Forces. Specific actions that owner can take and remain in compliance include, but are not limited to:

1. Allow a guardian to move into the low-income unit on a temporary basis to provide care for any dependents the military person leaves in the unit. The guardian's income is not included in the household's income.
2. Allow a tenant living in a low-income unit to provide care for any dependents of person called to active duty in the Armed Forces on a temporary basis as long as the head and /or co-head of the household continues to serve on active duty. Income of the dependent (e.g., SSI benefits, military benefits) is not included in the household's income.
3. Allow leases to remain in effect for a reasonable period of time without recertification (if required) depending on the length of deployment beyond that required by the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. §501- 591, even though the adult members of the military family are temporarily absent from the assisted unit.

**v. Income of Permanently Confined Members**

An individual permanently confined to a nursing home or hospital may not be named as head of household, spouse, or co-head but may continue as a household member at the family's discretion. The family's decision on whether or not to



include the permanently confined family member as a family member determines if that person's income will be counted as follows:

- If the family chooses to include them; include the individual as a family member on the TIC and include their income.
- If the family chooses to exclude them; exclude the individual as a family member on the TIC and exclude their income.

**vi. Full Time Students**

When a full-time student, 18 years of age or older, is not the head of household, co-head, or spouse, only the first \$480 of earnings is counted. If the student is the head, co-head, or spouse, all income is counted.

**J. Verifying Tenant Income**

If the anticipated annual income of a prospective or existing tenant appears to fall within the appropriate income limit, the next step is to verify that the income information provided by the tenant is accurate.

The verification process is a very important step in establishing a tenant's eligibility. To ensure that the steps for verifying tenant income provide reliable results, the verification procedures for LIHTC properties follow methods quite similar to those used in other affordable housing programs.

- There are three basic methods of verification:
- **Third-party written verifications** are preferred. The owner must attempt to use this method wherever feasible. This method is not feasible for tenants who are self-employed.
  - **Electronic.** Per HUD's Occupancy Handbook 4350.3 REV-1. The owner may obtain accurate third-party written verification by facsimile, e-mail, or Internet, if adequate effort is made to ensure that the sender is a valid third-party source.
  - **Facsimile.** Information sent by fax is most reliable if the owner and the verification source agree to use this method in advance during a telephone conversation. The fax should include the company name and fax number of the verification source.
  - **E-mail.** Similar to faxed information, information verified by e-mail is more reliable when preceded by a telephone conversation and/or when the e-mail address includes the name of an appropriate individual and firm.
  - **Internet.** Information verified on the Internet is considered third party verification if the owner is able to view web-based information from a reputable source on the computer screen. A printout from the Internet may also be adequate verification in many instances.
- **Firsthand documentation** should be used in cases where third-party verification is not feasible. Examples of acceptable forms of firsthand documentation include paycheck stubs, W-2 forms, certified tax returns, and bank statements.
- **Third-party oral verification** may be used when there is no response to the employer's request for written verification. Oral verifications also may be used to update written verifications (Section 4.5 provides more detailed information on acceptable verification procedures. See "*HUD Handbook 4350.3*" for additional guidance on tenant income verification.

**K. Additional forms of Income Verification**

There are additional forms of verification that may be used for tenants who receive assistance through the following sources:

- Rural Development (RD) Section 515 or 515/8
- HUD Section 8 Certificate

- HUD Section 8 Voucher; HUD Section 8 New Construction Contract
- HUD Section 8 Moderate Rehabilitation Contract

For these tenants only, acceptable forms of verification include a copy of the appropriate HUD or RD certification form (HUD form 50058 or 50059, or RD form qualified 1944-8) or a letter from the HUD Contract Administrator (e.g., local PHA) stating that the tenant's annual gross income is less than the applicable LIHTC income limit.

(CAUTION: *Rural Development uses adjusted income to determine eligibility. For LIHTC eligibility, these figures must be modified to show annual gross income.*)

#### **L. Documenting Income Verifications**

All attempts to verify tenant information should be documented. Owners should:

- Keep copies of all letters sent to third-party sources.
- Keep copies of all correspondence from third-party sources.
- Maintain telephone log-sheets for oral inquiries.
- Make appropriate notations in the tenant file.

#### **M. Tenant Release and Consent**

In order to gather and verify information about household income and composition, owners must have tenants complete a Tenant Release and Consent Form. This form authorizes key parties to furnish or release information necessary to evaluate the household's eligibility. When seeking tenants for TC units, owners/managers should ask all potentially eligible applicants to sign this form. The Tenant Release and Consent Form authorize the following parties to provide information regarding the household:

- Depository institutions.
- Private sources of income.
- Any federal, state or local agency.

Disclosure or use of information obtained from a household or from another source pursuant to the Tenant Release and Consent Form must be limited to purposes directly connected with determining a tenant's eligibility to occupy a qualified unit.

#### **N. Timing of Verifications**

Verifications must be valid at the time the tenant signs a Tenant Income Certification. When verifying a tenant's income, owners/managers need to remember the following:

- Verified information is acceptable and valid for 120 days; and
- If the TIC is not signed within 120 or if verifications are more than 120 days old, the owner must obtain new verification.

Owners or their representative should be prepared to clearly document the receipt date of all verification received. All oral verification, including owner clarification of written verification, must be documented in the applicant's file. Documentation must include facts, time and date of contact, name and title of the third party being contacted. Supporting documents should be included in the file as well (examples are check stubs, bank statements, divorce decree, etc.). Once the tenant has executed the TIC, owners/managers do not need to re-verify the tenant's income until re-examination.

## **5.5 ASSESSMENT OF ELIGIBILITY**

After determining a household's size and annual income, owners should make an initial assessment of whether the tenant meets program eligibility requirements. Households that are potentially eligible warrant taking further steps to document their eligibility.

### **A. Is the Household Potentially Eligible?**

Households that meet both of the conditions below are potentially eligible tenants.

- If the household consists of full-time students, it must meet one of the full-time student exceptions to be eligible. Documentation that the household meets one of the exceptions is required.
- The household's annual income does not exceed the appropriate income limit given the household's size.

When assessing eligibility, the proper income limits must be used. Managers should confirm that the income limits used correctly correspond to the applicable income requirement for their project based on the selected minimum set-aside.

**i. Household Appears Eligible**

If the initial assessment indicates that the tenant is an eligible low-income tenant, proceed to verify and document the household's eligibility.

**ii. Household is Ineligible**

For mixed-income projects, if the initial assessment reveals that the household's income exceeds the applicable income limit, the next steps depend upon whether the household is a new applicant or an existing tenant. For new applicants, owners/managers can:

- Offer the applicant an unrestricted unit if one is available (this assumes the next available unit does not need to be held open for an eligible tenant); or
- Inform the applicant that they are above the applicable income limits, and that there are no vacancies other than for eligible households.

If the household is an existing tenant, the tenant's unit cannot be designated as a qualified unit.

**B. Tenant Income Certifications (TIC)**

Owners must have tenants of qualified units sign a certification that the information they provided regarding their income and household composition is complete and accurate. This Tenant Income Certification (TIC), must be completed before a unit can be counted as a qualified unit. For new tenants, the certification should be signed at the time the tenant signs the lease.

Effective January 2020, owners must use a Louisiana Housing Corporation approved TIC in certifying households. A copy of an approved TIC can be found on the LHC website. The form provides a place to record all necessary information about household composition, tenant income, and unit rent. The owner should fill out the section on household income with the verified income figures for the tenant. The tenant must then sign and date the form, certifying to the accuracy of the eligibility information shown. The owner/manager then completes the remainder indicating that the tenant's income shown on the certification does not exceed the applicable income limit for the project and size of household. The owner's representative must also sign and date the form, indicating that it was properly prepared and true to the best of their knowledge.

For new tenants, the verification of income and completion of the TIC should be performed prior to occupancy to ensure that an applicant is an eligible tenant. For existing tenants, these steps must be completed prior to designating a unit as a TC unit.

**C. Tenant Fraud and/or Misrepresentation**

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

If an owner's representative discovers that a tenant has deliberately misrepresented their income level, student status, household size, or any other information used to determine eligibility, the owner's representative must contact LHC and

consult local tenant landlord law for next steps regarding termination of tenancy or raising the household's rent to the market rate.

An owner's opportunity to identify and self-correct misrepresentation or fraud by a tenant for purposes of the low-income housing credit terminates upon notification from LHC of an intended review/inspection of the LIHTC property. Any non-compliance arising from such a misrepresentation or fraud discovered during an LHC review/inspection will be reported to the IRS on Form 8823 under the appropriate category of non-compliance, regardless of the cause.

If the owner discovered and addressed an event of tenant fraud or misrepresentation prior to receiving notification from LHC of a review of the property, a report of non-compliance on IRS Form 8823 may not be filed. However, documentation of the following may be required:

- Proof of discovery and correction made prior to LHC sending notification of intended review.
- Adequate proof that the tenant knowingly provided false information clearly demonstrating the event is not a result of owner negligence or error.
- Proof that the owner's representative performed due diligence at the time the tenant moved-in and during recertification to obtain the most accurate information available.
- Documentation demonstrating that the owner has implemented additional safeguards since the event in order to prevent the same situation from occurring again.
- Evidence that the owner does not show a pattern of neglecting due-diligence and accepting fraudulent tenants.
- Clear evidence that appropriate action was taken.

## **5.6 RE-EXAMINING TENANT ELIGIBILITY**

When required, owners must re-examine the eligibility of tenants of qualified units. During this process, owners must gather current information on household members and annual income, verify the accuracy of this information, assess the tenant's continued eligibility, and execute a TIC. The process should be started no more than 120 days prior to the deadline (i.e. when initial TIC ends). The effective date of the tenant's income certification should be no later than the date the tenant moves into the unit. All adult members of the household should sign the certification. If the certification is more than 120 days old, the tenant must provide a new certification. Income recertification, if required, must be completed annually based on the anniversary of the effective date regardless of the lease term.

Once the re-certification has been completed, owners must assess whether the tenant occupying the qualified unit remains eligible. In assessing ongoing eligibility, tenants in 100% low-income tax credit properties remain eligible if they were eligible at initial certification, regardless of their current income. In mixed-income properties, tenants remain eligible as long as their income does not exceed 140% of the applicable LIHTC income limit.

If the re-certified income of a tenant in a qualified unit exceeds 140% of the applicable LIHTC income limit, the household may still be eligible, but is considered over-income and the "next available unit rule" applies.

### **A. Recertification Requirements**

Effective July 30, 2008, Section 142(d)(3)(A) of the IRC was modified to eliminate the federal requirement for annual recertification of household income for existing residents of 100% LIHTC (no market rate) and Tax Exempt bond financed developments under 142(d) of the Tax Exempt Bond Code.

LHC has not eliminated the requirement for annual recertification at the state level. However, the annual income recertification requirement for 100% tax credit projects in Louisiana has been modified. Households must continue to annually verify household composition and each adult member must continue to complete a separate student status certification on an annual basis. The Annual Self-Certification will be sufficient to satisfy the IRS's requirements for reporting changes in household status.

Before the modified Annual Income Recertification regulation can be applied, properties must have completed the first year in service or initial credit year, whichever is later. Further, the LHC must have completed its first compliance monitoring review at the property. Lastly, there can be no unresolved compliance issues at any of the owner's properties in Louisiana. The Compliance Department of the LHC must confirm compliance before the development can start using the recertification exception. The LHC may require complete annual recertification, including source documentation at any or all projects under the same owner or management if a determination is made that any of the projects have been cited for non-compliance.

If a property participates in other programs (e.g. HOME, Section 8, USDA Rural Development), the LHC requires full and complete annual recertification along with third-party verifications of income. If a project is not 100% LIHTC, then the complete Annual Income Recertification is still required. If there is one market unit in the project, or if a staff unit is treated as a market unit, then all units in the project must be recertified annually.

It is important to correctly define "Project" for each tax credit development. If "No" was checked on Part II 8b of IRS Form 8609, then the building is considered its own project. If "Yes" was checked on Part II 8b of IRS Form 8609, then the building is considered part of a "multi-building project." The recertification exemption applies on a project by project basis.

**i. 100% LIHTC Properties**

Households residing in LIHTC properties with a 100% set-aside must be recertified upon the first-year anniversary of the move-in date with complete source documentation. In subsequent years, self-certifications including Certification of Student Status must be completed annually no later than the anniversary of the household's move-in date. Source documentation is not required for the Self-Certifications.

**ii. Mixed-Income Properties (not 100% LIHTC)**

All LIHTC households in mixed-income properties must be recertified upon the first-year anniversary of the move-in date with complete source documentation and annually thereafter throughout the entire compliance period.

**B. Eligibility of Student Households**

Under LIHTC requirements established by the IRS, most households where all of the members are full-time unmarried students are not eligible tenants and units occupied by these households may not be counted as qualified units. IRC §152(f)(2) defines, in part, a "student" as an individual, who during each of five 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 IR §170(b)(1)(A)(ii) or of a state or political subdivision of a state. Treas. Reg. §1.151-3(b) further provides that the five calendar months need not be consecutive. Student status must be verified at annual recertification to confirm continuing eligibility of the household.

The determination of student status as full or part-time should be based on the criteria used by the educational institution the student is attending. An educational organization, as defined by IRC §170(b)(1)(A)(ii), is one that normally maintains a regular faculty and curriculum, and normally has an enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. The term "educational organization" includes elementary schools, junior and senior high schools, colleges, universities, and technical, trade and mechanical schools. It does not include on-the-job training courses. Children in grades K-12 are considered full-time students.

There are five exceptions to the full-time student restriction. Please note, however, that all exceptions must be carefully verified and thoroughly documented because student status is not subject to any "grandfather" clauses as income limits may be. Full-time student households that are income eligible and satisfy one or more of the following conditions can be considered an eligible tenant:

- All members of the household are full-time students, and are married and file a joint tax return.
- The household consists of single parent(s) and their child or children, and no one in the household is a dependent of a third party. Effective immediately upon the enactment of the Mortgage Forgiveness Debt Relief Act of 2007 (H.R. 3648) a household comprised of a single parent and his/her children can be full-time students and still qualify for housing in LIHTC unit if the single parent is not being claimed on the tax return of a third party.
  - Owners or their representatives should obtain a copy of any divorce decree showing custody and dependent status and a signed copy of the current tax return verifying the dependent status.
- At least one member of the household receives assistance under Title IV of the Social Security Act (i.e., Aid to Families with Dependent Children/Temporary Assistance for Needy Families).
- At least one member of the household is enrolled in a job training program receiving assistance under the Job Training Partnership Act, or similar federal, state, or local laws.
- At least one member of the household was formerly in foster care. In order for a unit to qualify under this exception, third party documentation must be obtained from the Foster Care Agency.

Before leasing a unit to a household of full-time students, owners must have the tenant complete the Certification of Student Eligibility Form establishing that one of the five exceptions applies (see the LHC website for a sample form) and obtain any necessary supporting documentation. These documents must be kept in the tenant's file.

The owner should complete student status verifications for each low-income household within 120 days of the anniversary of the effective date of the original student verification. The student status verification can be combined with the tenant income recertification, or self-certification. However, student status verification is required annually for all LIHTC properties regardless of the requirement to complete additional certifications.

When a student household ceases to meet at least one of the exceptions, that unit no longer qualifies as an LIHTC unit. Under current legal interpretations of federal LIHTC regulations and requirements, the "next available unit" rule that applies to qualified units with tenants that are no longer income eligible (see Section 3.6-B) does not apply to student households that qualify under one of the exceptions above and later cease to qualify. A unit occupied by a student household that no longer meets one of the above exceptions ceases to count as a qualified unit immediately.

**Please Note:** For Tax Exempt Bond financed developments, the exceptions are the same for bonds issued after July 31, 2008. Bonds issued before July 31, 2008 have only one exception that may be applied to student households: married and entitled to file a joint tax return.

### **C. Distinctions Between Student and Income Eligibility Rules**

Student status is treated differently than income eligibility in a number of important ways. While income eligibility is based on anticipated income for the next months, student status eligibility must consider not only if the applicant/tenant is or anticipates becoming a student within the next year, but also whether or not that applicant/tenant was a student for part of any five (5) months of the current calendar year. In this way, while income eligibility is only looking forward, student status eligibility is looking forward and back at student history. Income verifications are not required at recertification for 100% tax credit projects. However, those projects must continue to certify student status on an annual basis. HERA eliminated the annual income verification requirement, but not the student status requirement for recertification. A change in student status at any time, even during the middle of a lease term, can immediately affect eligibility. Once a household is income qualified, they are considered income eligible regardless of future changes in income (although the Next Available Unit Rule may go into effect). However, a household that was eligible at move-in can later become ineligible based on student status, either at annual recertification or in the middle of a lease term.

#### **D. Next Available Unit**

Owners may continue to count qualified units occupied by tenants who are found to be over-income at re-examination as long as the unit rent remains rent restricted and the owner continues to lease the next available unit of comparable or smaller size in the same building to an eligible low-income tenant. Once a subsequent unit of the same or smaller size in the building is leased to an ineligible tenant, any qualified unit in the building occupied by an over-income tenant ceases to count as a qualified unit. If the owner has already leased a new qualified unit, the unit with the over-income tenant is no longer needed to maintain the project's low-income occupancy. If a new qualified unit has not been leased, the number of qualified units in the building drops by one unit.

Tenants who are found to be over-income at the time of re-examination do not need to be removed to maintain the project's low-income occupancy and should not be evicted without proper cause. Owners may not terminate the occupancy of an over-income tenant simply because that tenant is no longer income eligible.

#### **E. Self-Certification**

Annual recertification requirements were eliminated for 100% LIHTC properties without blended occupancy requirements. However, the LHC requires recertification upon the first-year anniversary of the move-in date with complete source documentation and annual self-certification thereafter for tenants in these properties. The approved Tenant Income Certification form provided on the LHC website should be used for annual self-certification. Therefore, the TIC must indicate that the resident is self-certifying the information. However, owners/managers must continue to ensure compliance with the student rule. The owner's representative should use a questionnaire to obtain income and asset information from residents at recertification similar to the application used to obtain information from prospective residents at move-in. The owner/manager will prepare the TIC based on the information provided by the resident and have all adult household members sign and date the TIC on or before the effective date of the certification.

The re-certification form must be executed no later than 12 months from the initial certification date for the unit. The anniversary of move-in date will serve as the standard re-certification date. Owners may establish different re-certification dates as long as the re-certification is completed within 12 months of the initial certification or the most recent re-certification. Late annual recertifications are a violation of the LIHTC program. Owners who are habitually late completing annual recertification will be reported to the Internal Revenue Service using IRS form 8823.

## **6 COMPLIANCE MONITORING**

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LHC is responsible for establishing compliance monitoring procedures and reporting cases of non-compliance to the IRS. Compliance monitoring is an ongoing activity that extends throughout the initial 15 year Compliance Period and the Extended Use Period. In order to verify compliance with property standards and LIHTC requirements, LHC must conduct an inspection of all buildings in the low-income housing project and must review low-income certifications of the low-income housing project:

1. By the end of the second calendar year following the year the last building in the low-income housing project is placed in service; and
2. At least once every three years thereafter for properties for projects in the compliance period. The LHC will typically provide written notification to the owner's representative no more than 15 days prior to the inspection and/or review.

The following table outlines time frames for certain monitoring events:

**Table 6.1**

<b>Monitoring Event</b>	<b>Timeline</b>
<b>Inspection Scheduling</b>	LHC will typically contact the owner 15 days in advance of a scheduled inspection. However, LHC reserves the right to conduct monitoring reviews and inspections with minimal or no advanced notice as may be required in the LHC's discretion.
<b>Monitoring Report</b>	A monitoring report will typically be issued within 30 days of a compliance review or inspection.
<b>Exigent Health and Safety Issues</b>	An owner's representative may receive list of findings that require immediate action. The owner's representative is required to correct deficiencies and submit evidence of the corrections to the CO within 72 hours.
<b>Correction Period</b>	Owners will typically receive 30 days to correct any reported non-compliance findings and respond to LHC with exception of exigent health and safety issues.
<b>Closing</b>	Once all findings and/or non-compliance issues have been satisfactorily addressed, LHC will close the review, assign a review status, and file Forms 8823s as necessary.

## **6.1 COOPERATION DURING COMPLIANCE MONITORING**

LHC monitoring staff will conduct periodic on-site reviews of LIHTC properties and their records to evaluate owner compliance with program requirements. During a review, owners and their property management staff must provide monitoring staff access to all documents regarding an owner's continued compliance with the LIHTC requirements specified in the TCRA. Owners are required to prepare all information requested by LHC prior to the review, and it must be printed and available on site at the time the review is scheduled to begin. Information reviewed will include but is not limited to annual income certifications, the documentation received to support those certifications, rent records, and overall management practices.

With the exception of special inspections, LHC will give owners reasonable advance notice prior to conducting an on-site visit. The managing owner and key on-site staff should be present during the review whenever possible. Prior to the scheduled inspection, the owner's representative must provide all tenants with notice of entry for inspection. The notice must be given at least three days prior to the inspection, specify that it is for the entire day and be provided to all residents. Copies of the inspection notices must be kept on file.

The LHC will conduct a physical inspection of the project's low-income units and review the tenant eligibility, the documentation supporting eligibility and the rent records for the tenants in qualified units. The LHC will randomly select a sample of low-income units and tenants' records to be inspected and reviewed. The units and tenant records to be inspected will be chosen in a manner that will not give owners notice of which records will be reviewed. In addition to unit inspections, the site and grounds, all buildings exteriors, common areas and building systems will be physically inspected. The owner must ensure that all units are accessible for physical inspection by LHC.

## **6.2 WORKING ENVIRONMENT**

On the day of the review, the compliance officer will arrive at the property. A work area should be designated and prepared in advance for the officer, preferably in a quiet location, ideally removed from front door traffic and



interruptions. If no such area is available at the property, arrangements should be made in advance with the compliance officer to arrange for an alternate work area.

### **6.3 SPECIAL INSPECTIONS**

Special inspections may be conducted at the discretion of the LHC. Advanced notice may not be given prior to a special inspection.

### **6.4 THE MONITORING PROCESS**

During the monitoring visit, compliance officers utilize many sources of information and various inspection methods to review and inspect the aspects of an LIHTC project that are subject to regulation and required for review. The information gathered serves as the basis for conclusions to be included in the monitoring report and follow-up letter.

The owner's representative will be required to provide documentation on or before the due date as indicated in the scheduling confirmation letter sent to the Owner's representative prior to the review.

There are six basic elements to any monitoring visit.

#### **A. Notification**

LHC begins the monitoring process by sending a formal notification to property owner/managers to explain that a monitoring visit is planned and to confirm a date. In that correspondence, LHC also requests the information needed for review during the visit and that tenants be informed. The LHC reserves the right to inspect any LIHTC unit/tenant file at any time at its discretion without prior notification. LHC will not provide advance notice of which tenant files will be reviewed during an onsite audit. Management must have all tenant files accessible (including initial and move-out files) when the LHC compliance officer arrives onsite. The monitoring officer will choose a selection of the files for review based on sample sizes indicated in Table 6.4 of this manual.

#### **B. Entrance Conference**

Entrance conferences are held at the beginning of the monitoring visit to emphasize the purpose, scope and schedule for the monitoring. Since the LHC is prohibited from communicating the review sample to the owner prior to the day of the review, the information will be communicated to owner/manager at the time of the review. This will allow staff to pull the keys and resident files for the selected units.

#### **C. Document/File Inspection and Review**

As provided in the IRS compliance monitoring regulations, LHC has the right to review tenant files and/or perform physical inspections of LIHTC properties as deemed necessary throughout the entire affordability period for each property. The required federal monitoring frequency is a minimum of once every three years for projects in the initial 15 year compliance period. However, LHC may inspect the property more frequently if the property is identified as being at risk of or in non-compliance, or if the inspection requirements of other funding sources in the property are more restrictive. LHC selects a sample of no fewer than the number of units specified for projects of the relevant size in table 6.4 below. Both occupied and vacant units may be selected. Typically a sample of the same number of tenant files will be selected for household certification review.

**Table 6.4** (Treas.Reg. §1.42-5)

Number of Low-Income Units in the Low-Income Housing Project	Number of Low-Income Units Selected for Inspection or for Low-Income Certification Review (Minimum Unit Sample Size)
1	1
2	2
3	3
4	4
5-6	5
7	6
8 - 9	7
10 - 11	8
12 - 13	9
14 - 16	10
17 - 18	11
19 - 21	12
22 - 25	13
26 - 29	14
30 - 34	15
35 - 40	16
41 - 47	17
48 - 56	18
57 - 67	19
68 - 81	20
82 - 101	21
102 - 130	22
131 - 175	23
176 - 257	24
258 - 449	25
450 - 1,461	26
1,462 - 9,999	27

LHC may separate the physical inspection from the file review and conduct tenant file reviews electronically via WCMS, as allowed under the program regulations. The compliance officer will notify the Owner's representative if the review will include an electronic file audit. When files are reviewed electronically, the LHC will request that the owner's representative ensure that files are properly and completely uploaded into WCMS within 48 hours of the LHC's notification of such review. Instructions for this process are provided both before and during the review. Longer time frames may be allowed on a case by case basis as deemed necessary by the LHC Compliance Department. Instructions for this process are provided both before and during the review.

Submitting all documentation and information by the requested date is important. Some materials are requested prior to a review so that the compliance officer can be prepared. The materials also ensure that the compliance review will be accurate. All documentation submitted should be completed in full and double checked for accuracy. Late submittals may affect compliance findings and project rating.

One of the documents that may be requested for compliance monitoring is the Schedule (II) A Unit Status Report. This report is used by the LHC to help expedite the verification that owners have met required set-asides, the applicable

fraction of LIHTC properties, and special conditions set forth in regulatory agreements. This form must be completed prior to any monitoring review and may be requested on an as-needed basis if deemed necessary by the LHC Compliance Department. The Schedule (II) A and instructions for completing the form can be found in Appendix B of this manual.

The following documentation may be requested during the review process and should be readily available:

- Management Review Questionnaire
- Resident Services Report Form
- Rent Roll with move-in dates
- Schedule (II)A (instructions for completion of this form may be found in Appendix B of this manual)
- Copy of Waiting List
- Marketing Information
- Current Utility Allowance documentation
- Vacancy Report and turnover information
- Budgetary information reports
- Property map identifying all buildings and specific unit locations
- Tenant Files, including TIC and supporting source documentation

#### **D. Unit/Habitability Inspection**

The LHC is required to conduct physical inspections of LIHTC properties at least once every three years during the 15 year compliance period to ensure that LIHTC properties are providing buildings and units that are suitable for occupancy (Treas.Reg.§1.42-5). LHC conducts inspections of selected units using UPCS. A sample of no fewer than the number of units specified for projects of the relevant size in table 6.4 will be selected. The units inspected will usually, but not always correspond directly with the files reviewed during a compliance review. If an owner of a multiple building property has elected to treat one or more of the buildings as “separate projects” (i.e. answered “No” to line 8b on IRS Form 8609), LHC is required to select at least the number of units and household files indicated by Table 6.4 in each building in order to satisfy the monitoring requirements under the IRC Section 42. This may result in a larger number of units and files being inspected than if buildings are treated as part of the same project. In using the UPCS inspection standards, LHC Compliance Staff will inspect five major areas of the project. (1) Site; (2) Building Exterior; (3) Building Systems; (4) Dwelling Units; and (5) Common Areas.

Following the completion of the physical inspection, the Compliance Officer will provide documentation of all exigent health and safety defects that must be corrected immediately. The owner’s representative is then required to correct all of the items listed and submit evidence of the corrections to the compliance officer within 72 hours.

**All exigent health and safety issues identified in the Critical Violations form must be given immediate attention.**

The Compliance Officer may ask for documentation supporting the correction of the critical violations. This documentation may include things like completed work orders, materials invoices, contractor’s estimates, photographs (including date stamps) or city inspector’s reports.

The LHC Compliance Officers must be accompanied at all times while performing the physical inspection. The review may be terminated if the compliance officer is left unaccompanied. Site staff will gain access, enter the unit and all interior rooms, ahead of the compliance officer. Units may not be entered, if the following conditions are found:

- There is an obvious threat to the Compliance Officer’s safety or there are visible signs or evidence of criminal activity;
- There are unrestrained pets in the unit;
- There are unsupervised minor children (under 18 years of age) in the unit; or

- There are no essential utilities in or to the unit. For the purposes of physical inspection, the Compliance Officer will deem essential utilities as those utilities that, if not present or connected, prevent the Compliance Officer from inspecting the building/unit systems.

When any of these conditions are present the Compliance Officer may select an alternate unit for inspection. Any unit selected as part of a monitoring sample that cannot be inspected thoroughly will be considered noncompliant and subject to report on IRS Form 8823, which may lead to a decrease in the applicable fraction.

**i. Selection of Vacant Units for Inspection:**

Vacant units may be inspected, but depending on severity, physical findings may not be reported on units vacant for less than 30 days, depending on severity of the findings. Units vacant for more than 30 days are assumed to be ready for occupancy and will be inspected accordingly.

**ii. Lock Outs**

If an owner/management does not have access to any units randomly selected during the monitoring visit, there is a Level 3 UPCS violation which must be reported as noncompliance on Form 8823. Owner/management will have to provide a written certification (not a work order) that access to the unit has been obtained and certify the unit has been inspected by the owner's representative, all systems are operational and the unit is in safe decent sanitary condition. The unit may be scheduled for re-inspection once the LHC Compliance Department receives certification that the noncompliance has been corrected.

**iii. Tenant Refuses Inspection**

If a tenant refuses to allow an inspection of the unit, the unit may be found in noncompliance. The right for LHC compliance staff to inspect a unit, with or without notice, should be explicitly provided in all lease agreements. At the time of the attempt to enter the unit, the owner's representative should inform the tenant of a possible lease violation if access is denied. If the tenant continues to refuse to allow access for the inspection, the Compliance Officer may proceed with additional inspections and return to the unit later during the monitoring review. The owner/manager should not instigate an argument with the tenant. If the Compliance Officer is not allowed access for inspection upon returning at the end of the review, the unit must be deemed non-compliant. The owner/manager must provide evidence to the LHC that actions were taken to address the lease violation and must also provide photographs of the unit to the LHC once able to access the unit. Whether such evidence satisfies the correction of the non-compliance will be determined on a case-by- case basis after inspection.

**iv. Streamlining of Inspections and Reviews**

LHC participates in both statewide and federal streamlining compliance partnerships to combine monitoring and reporting in an effort to diminish the overall impact on the residents and staff at each property and aid in the reduction of duplicated monitoring practices across agencies.

To ensure a streamlined process, LHC collaborates with state and federal housing partners to align property inspections and/or file audits at properties that have multiple layers of funding from different agencies. The goal of streamlining is to conduct one inspection and one tenant file review for the property that can be accepted by the multiple agencies. LHC may also conduct complete HUD Real Estate Assessment Center (REAC) inspections for HUD in an effort to streamline inspection and review. Such inspections will be conducted by certified REAC inspectors in accordance with REAC protocol.

**The following federally-assisted housing programs are governed by the Federal Alignment Initiative:**

- HUD's Section 8 Project-Based Rental Assistance Program
- HUD's Multifamily Mortgage Insurance Program
- HUD's Direct Loan and Capital Advance
- HUD's HOME Investment Partnership Program (HOME)
- HUD's Section 8 Project-Based Voucher Program

- Low-Income Housing Tax Credit Allocation
- RD's Section 515 Rural Rental Housing Program
- HFA Mortgage Loan Financing

**The following funders participate in the Louisiana Statewide Streamlining Agreement:**

- LHC
- RD's Section 515 Rural Rental Housing Program

**E. Exit Conference**

At the end of the monitoring visit, the Compliance Officer will meet with the representatives of the property during an Exit Conference to present the preliminary results of the monitoring and provide an opportunity for the owner/manager to correct any inaccuracies or misinterpretations. LHC staff may also request or be provided with additional information to clarify or support actions or information or provide an opportunity for the owner/manager to report on steps that have already be taken to address areas of noncompliance.

At the Exit Conference, the Compliance Officer may also provide to the owner's representative a copy of a Critical Violations form identifying all exigent health and safety issues that may have been observed at the time of the inspection and that require immediate corrections.

**F. Follow-Up**

Typically within 30 days LHC will provide the owner's representative with formal written notification of the results of the monitoring review in a Monitoring Report. This report outlines concerns and findings and sets deadlines for a written response and corrective actions. The report will require that all noncompliance issues be corrected within a defined time frame that will be specified in the Monitoring Report. If there are findings, the report will require that legible evidence of the corrections (such as work orders, receipts, and/or invoices) along with an affidavit from the owner's representative be forwarded to the LHC within the time frame indicated in the inspection report. The Compliance Officer will review the documentation and provide a response concerning the review of the documentation and whether further action is required.

**6.5 COMPLIANCE VIOLATIONS (NON-COMPLIANCE)**

The IRS requires that any housing credit agency that becomes aware that an LIHTC building is not in compliance with the provisions of Section 42 during the compliance period report the non-compliance using IRS Form 8823, regardless of whether the compliance issues have been corrected or not. The forms are mailed directly to the IRS and a copy is mailed to the building owner. The forms may not be sent electronically.

After the initial 15-year Compliance Period has expired, the Internal Revenue Service (IRS) will no longer receive notification of noncompliance by the States' issuance of 8823 forms. Instead, the onus for compliance enforcement during the remainder of the affordability period rests with the LHC.

Uncorrected non-compliance at any time during the Affordability Period may result in the following actions:

- The status of owners, managing agents, and/or general partners will be designated as "Not-in-Good Standing" with the agency.

*Note: LHC reserves the right to publish a list of "Not-in-Good Standing" entities on our website for future reference if deemed necessary.*

- LHC may choose to enforce compliance with the Regulatory and Extended Use Agreement through the courts.
- Future applications for funding may be subject to automatic denial.

If LHC discovers that an owner has failed to follow LIHTC requirements, the LHC will notify the owner that the property is out of compliance. All findings of non-compliance reported to the owner must be corrected in a timely manner. Late correction of items may result in consequences for the property.

When the owner's response is received, the LHC determines whether the owner provided sufficient evidence to demonstrate one of four things:

1. **Clarification establishing that the owner was always in compliance.** If the LHC determines that the owner was always in compliance, findings are not required to be reported to the IRS.
2. **Documentation that issue(s) of noncompliance have been remedied within the correction period** (meaning that the project was previously noncompliant and may now be deemed compliant).
3. **No documentation that issue(s) of non-compliance have been remedied within the correction period** (otherwise referred to as un-corrected non-compliance).
4. **Documentation that issue(s) of non-compliance were remedied but the non-compliance was not corrected until after the end of the correction period.** If corrected within three years after the end of the correction period, a Form 8823 must be submitted to the IRS to report the correction of previously reported non-compliance (meaning that the project may now be deemed compliant).

It is the responsibility of the Owner to submit documentation to LHC when an uncorrected Form 8823 can be corrected within the allowable three year period. LHC does not assume responsibility for following up with the Owner once a Form 8823 form has been filed.

#### **A. Types of Non-compliance**

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

1. There has been a change in the Applicable Fraction or Eligible Basis that results in a decrease in the Qualified Basis of the building from one year to the next.
2. The building no longer meets the Minimum Set-Aside requirements of Section 42 the gross rent requirements of Section 42, or the other requirements for the units which are set-aside.
3. There is a failure to submit the Annual Owner Certification, compliance monitoring fees, along with any applicable supporting documentation in a timely manner.
4. An ineligible household resides in an LIHTC unit.
5. A unit or building is no longer suitable for occupancy or otherwise in violation of physical inspection criteria.
6. The owner does not comply with requests to conduct a physical inspection or file audit.

##### **i. Nonqualified Units**

Units that do not satisfy each of the requirements of a qualified LIHTC unit cannot be counted as a part of the applicable fraction. When reviewing a project's low-income occupancy, LHC will disqualify any unit listed as a qualified unit if the owner/manager cannot properly document that the unit meets each of these conditions. Findings of ineligible units can lower a project's applicable fraction and cause a reduction in the project's qualified basis. A reduction in a project's qualified basis will result in the recapture of some or all of the project's credits.

#### **B. Consequences**

If non-compliance is discovered, a penalty could apply to some or all units in the development. Non-compliance may be determined at the unit, building, or project level. Penalties include, but are not limited to the following:

1. Recapture of the accelerated portion of the credit for prior years.
2. Disallowance/loss of the credit for the entire year in which the non-compliance occurs.
3. Notification to the IRS via Form 8823.
4. Low or negative points on any subsequent LIHTC reservation applications.

5. Rejection of future funding.
6. Repayment of rent overages.
7. An increase in the frequency of LHC audits/inspections.

LHC will submit Form 8823 to the IRS documenting that a violation has occurred. LHC must explain the nature of the non-compliance or failure to certify and state whether the non-compliance has been corrected. Any change in either the eligible basis or applicable fraction that results in a decrease in the qualified basis of the property must be reported to the IRS. Owners/managers should thoroughly review their management practices to ensure that they will maintain the project's low-income occupancy and keep in compliance with program requirements.

### **C. Non-compliance-Notification to Owner**

The IRS requires LHC to provide written notice of non-compliance to the Owner if:

1. An Annual Owner's Certification is not received by the due date;
2. Any non-compliance issues found in the AOC;
3. Tenant Income Certifications (TICs), supporting documentation, and rent records are not submitted when requested by LHC or are found to be in non-compliance;
4. The property is found to be out of compliance through inspection, review, or other means with the provisions of
5. IRC Section 42 or representations made in the property application and noted in the Reservation Agreement;
6. The Owner fails to give notice to LHC of the sale or transfer of the property.

Owners will typically have advance notice of the intent to file IRS Form(s) 8823 for any/all non-compliance issues found.

### **D. Notification of Non-compliance to LHC by Owner**

If the owner and/or management agent determines that a unit, building, or an entire development is not in compliance with LIHTC program requirements or suffers any casualty loss, the Compliance Department of the LHC must be notified immediately. The owner and/or his/her representative must formulate a plan to bring the development back into compliance and advise LHC in writing of such a plan. Non-compliance issues identified and corrected by the owner prior to notification of an upcoming compliance review or inspection by the LHC need not be reported to the IRS by LHC. The owner and/or management agent must keep documentation outlining: the non-compliance issue, date the non-compliance issue was discovered, date that non-compliance issue was corrected, and actions taken to correct non-compliance.

## **7 RECORD-KEEPING AND REPORTING**

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Owners of LIHTC properties are subject to record-keeping and reporting requirements and must cooperate with the LHC during site visits.

### **7.1 REPORTING FOLLOWING PLACED IN SERVICE DATES**

When the building/project is placed in service, owners must notify LHC and submit the following documents: (i) Financial Certification, (ii) Syndication Certification and (iii) Audit of the Certification of Actual Costs.

Owners must also submit an LIHTC Annual Owner Compliance (AOC) Submission showing the occupancy of the project as of the end of each tax year following the year the Project was placed in service. This requirement applies whether the owner is claiming the credits for the year the building is placed in service, or has waited until the end of the following tax year to begin claiming the credits.

## **7.2 ON-SITE RECORDS**

All records concerning an LIHTC property must be kept separate from any business unrelated to the LIHTC property and in a condition that allows for a proper audit. The records must be maintained as required by LHC. Representatives of the IRS or LHC may examine or photocopy documents pertaining to the LIHTC project during regular business hours.

### **A. Tenant Files**

Owners must keep a tenant file for each qualified unit. Each file must contain:

- Applications – Separate application for each adult
- All Tenant Income Certifications and all related source documentation
- Annual Certification of Student Status
- Lease Agreement and all related documents
- Section 42 Lease Addendum

These items are considered project records and must be maintained as required by LIHTC record retention policies, as set forth by the IRC.

### **B. Continuous Unit Listings**

Owners also must keep unit listings that correctly reflect continuous occupancy at the property. Owners must keep a separate log which states when a unit ceases to be rented to one tenant and when such unit is thereafter rented. These listings will provide the Corporation with an up-to-date record of qualified units and will also allow monitoring staff to track changes in the status of qualified units and unrestricted units to confirm that over-income and vacated qualified units were properly replaced. The information to be retained for each unit will include the following:

- Building identification
- Unit number
- Move-in/move-out date
- Tenant name
- Household income (current and annual update)
- Monthly rent
- Utility allowance (specify items and amounts deemed paid by tenant)
- Housing assistance payment (copy of HAP contract)
- Number of bedrooms
- Floor space (square feet)
- Date of last income certification/re-certification
- Household size (including any changes)
- Unit status (qualified unit, HOME-assisted unit or unrestricted unit)

Owners may meet this requirement by simply adapting their rent rolls to provide the necessary information.

LHC may request that owners provide a copy of the most recent unit listing at any time during the monitoring year.

### **C. Administrative File**

Properties are required to keep an administrative file on-site and accessible to both the LHC and the property's staff who is responsible for maintaining and tracking program regulatory information. Documents to be maintained in the file include but are not limited to:

- Copies of all regulatory agreements associated with the property such as TCRA, Compliance Monitoring Agreement, & Special Conditions
- All applicable documents relating to any other forms of housing or finance programs administered by LHC
- Documentation reflecting the current utility allowance and the source (method used to calculate)



- Current Income Limits
- Current Rent Limits
- Resident Services Plan and documentation
- Property map indicating all building and unit locations
- Copies of the completed & signed Forms 8609 for each Building Identification Number (Lower portion, Part II completed by the owner)
- All other information related to the property and program(s) compliance

#### **D. Project and Building Files**

Owners must maintain files for the project and individual buildings within the project documenting the eligible basis and qualified basis at the end of the first year of the credit period. These documents must be kept for at least six years after the tax filing date for the last year of the compliance period, as set forth by the IRC.

Also, owners must document the character and use of any nonresidential area of the building that is included in the building's eligible basis. The documentation should establish that tenant facilities included in the eligible basis are available to all tenants and that no fee is charged for use of these facilities. For example, if the cost of renovating the project's community room was included in the eligible basis, the owner/manager may not charge residents a fee for use of the room.

#### **E. Maintaining Records**

Owners must maintain all required project and building records for at least six years beyond the due date (with extensions) for filing the tax return for that year. Project-related records for the first year of the credit period must be kept for at least six years beyond the date (with extensions) for filing the owner's federal tax return for the last year of the compliance period.

### **7.3 REPORTING**

In addition to on-site record keeping and monitoring, there are reporting requirements that an LIHTC project must meet in order to be compliant with program rules.

#### **A. HUD Tenant Demographic Data and WCMS**

In late 2012, LHC began implementation of the Web Compliance Management System (WCMS), in accordance with the provisions of HERA. When information is entered correctly into WCMS, the system replaces the need for the completion of the Annual Reporting Spreadsheet as the data is collected and stored in real-time electronically. Therefore, LHC now requires all LIHTC properties to submit tenant certification data through WCMS. For owners/agents, this can be completed via XML file uploads from a database (i.e. Yardi, Real Page etc.) or through the completion of manual data entry directly into WCMS. Entry or upload of all tenant certification data must be maintained in the system with a minimum of quarterly uploads. All WCMS users are required to register with LHC to gain access to the system and sign user agreement. In addition to tenant data reporting, LHC has now implemented the use of WCMS for financial data reporting and tenant file review.

**Effective January 1, 2020, all LIHTC properties must use WCMS for submittal of their tenant data. NOTE: LIHTC properties are required to submit their tenant data from the previous calendar year in the subsequent calendar year (e.g., tenant data from 2019 must be submitted in 2020).**

#### **B. Annual Owner Compliance Submissions**

Owners of LIHTC Projects must submit annual compliance reports to LHC for each year of the affordability period. These reports not only document a property's low-income occupancy but also provide information about the eligibility of tenants living in qualified units and document the rents charged for these units. As a part of annual reporting, owners must also submit quarterly vacancy reports through WCMS. LHC reviews these reports to assess owner compliance with LIHTC requirements.

Owners must submit annual compliance reports to LHC no later than February 15<sup>th</sup> of each calendar year. For Section 1602 & TCAP properties, the first annual owner certification is due by February 15<sup>th</sup> of the year following the year the first building places in service.

The Annual Compliance Submission includes Schedule II (A) - Unit Status Report which can be found on the LHC website.

LHC may ask owners to include additional documentation with their annual reports to assist in evaluating whether a property's qualified units comply with LIHTC requirements.

### **C. Compliance Monitoring Fees**

To offset the cost of monitoring compliance, the LHC requires the payment of an annual compliance monitoring fee, the amount of which depends on the number of units in a project.

The owner is required to pay an annual monitoring fee for the life of the project. The amount of this fee is established in the Compliance Monitoring Agreement in the Tax Credit Regulatory Agreement.

The annual compliance monitoring fee covers the preceding 12-month period. The first payment is due on or before February 15<sup>th</sup> following the first year in which the project is placed in service. It is the responsibility of the owner to ensure that payment is received. If payment is for more than one development or year, all applicable information must be listed on the method of payment including the LIHTC project number.

## **7.4 FILE MAINTENANCE AND RECORD KEEPING**

### **A. File Clarifications**

When a change or clarification is needed for an incomplete or unclear verification, it is important to remember that verifications must never be altered and should instead be clarified or re-verified as applicable. When there is information in the tenant file that requires further clarification, the management agent should include written statements to provide such clarification. When the clarification statements are provided by the tenant or contain information clarified by the tenant, the tenant should always sign and date each clarification. Any clarification that is demonstrating eligibility (if the first verification received indicates that the tenant may not be eligible) should be re-verified by the source (employer, etc.) and not management or the tenant.

Sometimes it is necessary to make corrections or changes to documents. A document with correction fluid or "white-out" will not be accepted by LHC. Correction fluid should never be used to change, alter, or conceal original information. It is recommended that when a change is needed on a document for the LIHTC program, the person making the correction should draw a line through the incorrect information, write or type the correct wording or number, and initial the change.

### **B. Enterprise Income-Verification (EIV)**

LHC compliance officers may not be authorized by HUD to view any documentation obtained through EIV. Therefore, LIHTC tenant files should not contain EIV verifications. The EIV documentation will either need to be removed from the tenant files prior to an auditing visit or kept in separate files for ease of tenant file maintenance.

## **8 FAIR HOUSING**

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### **8.1 FAIR HOUSING & EQUAL OPPORTUNITY (FHEO)**

Title VIII of the Civil Rights Act of 1968, as amended (also known as The Fair Housing Act or FHA) makes it unlawful to discriminate in the sale, rental, and financing of housing based on race, color, sex, religion, national origin, familial status, or disability (known as the protected classes). In addition, states and local jurisdictions may establish ordinances

that identify additional “protected classes” within that jurisdiction. Owners should be aware of the individual laws and ordinances enacted in their areas that may have established additional protected classes.

#### Federal Protected Classes:

- **Race:** Family, tribe, or group of people coming from the same common ancestors.
- **Color:** Color of an individual’s skin
- **Sex:** Gender/gender identity
- **Religion:** A person's religion or lack thereof
- **National Origin:** Where the person or their ancestors came from
- **Disability:** A mental or physical impairment that substantially limits one or more of a person’s major life activities.
- **Familial Status:** Familial status means having a child under the age of 18 in the household, whether living with a parent, a legal custodian, or their designee. It also covers a woman who is pregnant, and people in the process of adopting or gaining custody of a child.

## 8.2 ACCESSIBILITY

The Fair Housing Act Amendments (FHAA) of 1988 governs the accessibility requirements of LIHTC units. Properties constructed after March 13, 1991 must be designed and built in a manner that meets FHAA requirements, including:

- Public and common use areas readily accessible to and usable by disabled persons;
- Accessible building entrance on an accessible route;
- All the doors sufficiently wide to allow passage by disabled persons in wheelchairs;
- An accessible route into and throughout the dwelling unit;
- Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
- Reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower, stall and shower seat, where such facilities are provided;
- Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

These requirements apply to all units in buildings containing four or more units if such buildings have one or more elevators, and all ground floor units in other buildings containing four or more units.

### A. The Americans with Disabilities Act (ADA)

In most cases, the ADA does not apply to residential housing. Rather, the ADA applies to places of public accommodation such as restaurants, retail stores, libraries, and hospitals as well as commercial facilities such as office buildings, warehouses, and factories. However, Title III of the ADA covers public and common use areas at housing developments when these public areas are, by their nature, open to the general public. For example, it covers the rental office since the rental office is open to the general public.

Title II of the ADA applies to all programs, services, and activities provided or made available by public entities. This includes housing when the housing is provided or made available by a public entity. For example, housing covered by Title II of the ADA includes public housing authorities that meet the ADA definition of "public entity," and housing operated by States or units of local government, such as housing on a state university campus.

HUD does recognize the ADA as amended as a safe harbor.

#### i. ADA 504 and Fair Housing Accessibility

Most housing properties are subject to fair housing accessibility laws. Federal programs and the age of the property determine which laws apply.

- Title VIII of the Civil Rights Act of 1968 (Fair Housing Act) protects race, color, religion, sex and national origin.
- The Fair Housing Amendments Act of 1988 (Amendments Act - FHAA) added disability and familial status.

- The Americans with Disabilities act (ADA) of 1990 addresses public accommodations (rental offices and common areas are considered public accommodations).
- Section 504 of the Rehabilitation Act of 1973 (Section 504) applies to those receiving federal assistance.
- Persons with disabilities have their rights protected under three main laws (ADA, FHAA, and 504).

## **ii. Disability Rights in Housing**

Definition of Disability: Federal laws define a person with a disability as "Any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such impairment."

In general, a physical or mental impairment includes hearing, mobility and visual impairments, chronic alcoholism, chronic mental illness, AIDS, AIDS Related Complex, and mental retardation that substantially limits one or more major life activities. Major life activities include walking, talking, hearing, seeing, breathing, learning, performing manual tasks, and caring for oneself.

## **iii. Disability Rights in Private and Public Housing**

Regardless of whether a person resides in private or public housing, Federal laws provide certain rights to persons with disabilities. These laws prohibit discrimination against persons with disabilities. It is unlawful for a housing provider to refuse to rent or sell to a person simply because of a disability. A housing provider may not impose different application or qualification criteria, rental fees or sales prices, and rental or sales terms or conditions than those required of or provided to persons who are not disabled. They also require housing providers to make reasonable accommodations for persons with disabilities. A reasonable accommodation is a change in rules, policies, practices, or services so that a person with a disability will have an equal opportunity to use and enjoy a dwelling unit or common space. A housing provider should do everything they can to assist, but they are not required to make changes that would fundamentally alter the program or create an undue financial and administrative burden. Reasonable accommodations may be necessary at all stages of the housing process, including application, tenancy, or to prevent eviction. They require housing providers to allow persons with disabilities to make reasonable modifications. A reasonable modification is a structural modification that is made to allow persons with disabilities the full enjoyment of the housing and related facilities. Finally they require that new multifamily housing covered by 504 regulations be designed and constructed to be accessible. In covered multifamily housing consisting of 4 or more units with an elevator built for first occupancy after March 13, 1991, all units must comply with the following seven design and construction requirements of the Fair Housing Act:

- Accessible entrance on an accessible route
- Accessible public and common-use areas
- Usable doors
- Accessible route into and through the dwelling unit
- Accessible light switches, electrical outlets, thermostats, and environmental controls
- Reinforced walls in bathrooms
- Usable kitchens and bathrooms

In multifamily housing covered by 504 regulations without an elevator that consists of 4 or more units built for first Occupancy after March 13, 1991, all ground floor units must comply with the Fair Housing Act's seven design and construction requirements.

For information on how to comply with the physical accessibility requirements of the Fair Housing Act, visit the Fair Housing Accessibility FIRST web site: <http://www.fairhousingfirst.org/>.

These requirements apply to most public and private housing. However, there are limited exemptions for Owner-occupied buildings with no more than four units, single-family housing sold or rented without the use of a broker, and housing operated by organizations and private clubs that limit occupancy to members.

Federally assisted multifamily housing consisting of 5 or more units, 5% of these units (or at least one unit, whichever is greater) must meet more stringent physical accessibility requirements. Additionally, 2% of units (or at least one unit, whichever is greater) must be accessible for persons with visual or hearing disabilities.

### **8.3 APPLICANTS HOLDING SECTION 8 HOUSING VOUCHERS**

Federal LIHTC regulations include a specific requirement pertaining to households holding a Section 8 Certificate or Voucher. When leasing units that will be counted as qualified units, owners/managers may not refuse to rent these units to applicants holding a HUD Section 8 Certificate or Voucher simply because they receive rental assistance through these programs. These applicants are still subject to all tenant selection criteria that the owner/manager applies to other applicants, as long as the criteria are permissible under federal, state, and local law.

### **8.4 GENERAL OCCUPANCY GUIDELINES/FAMILY SIZE**

There are no current tax credit requirements governing the minimum or maximum household size for a particular unit size. However, owners must comply with all applicable local laws, regulations, and/or financing requirements (HUD, RD, etc.). LHC advises all owner/agents to be consistent when accepting or rejecting applications on this basis. Occupancy guidelines or requirements should be incorporated into each property's management plan. Management should be aware of occupancy standards set by federal, state, HUD, PHA, civil rights laws, tenant/landlord laws, and municipal code that may establish a maximum or minimum number of persons per unit. When establishing occupancy guidelines, the owner/agent should take into consideration local fire code as well as fair housing guidance.

### **8.5 HOUSING FOR THE ELDERLY**

Because LHC's QAP provides a degree of preference for projects for the elderly, it is useful to understand the treatment of "housing for older persons" under Fair Housing Act and its relation to the protected class of familial status. The FHA exempts "housing for older persons" from the Act's prohibition against discrimination on the basis of familial status in two categories: (1) 100% of the occupants must be 62 years of age or older; or (2) 80% of the occupied units must be occupied by at least one person who is 55 or older.

The Act also requires that a facility or community seeking to claim 55 and older exemption show the following two factors: (1) that the housing be intended and operated for persons 55 years of age or older; and (2) the housing facility or community publish and adhere to policies that demonstrate its intent to qualify for the exemption. The housing facility or community must also comply with rules issued by HUD for the verification of occupancy.

### **8.6 MARKETING**

Owners must make reasonable attempts to make vacant low-income units available to the public for rent. Owners should advertise the availability of vacant units using advertising methods designed to be accessible to all prospective tenants. "Reasonable attempts" will vary depending on factors such as size and location of the project, tenant turnover rates, and market conditions. Advertising can include printed and electronic media, banners, and classified ads in local newspapers. This becomes particularly important to mixed-use properties that do not have 100% tax credit qualified units. If a tax credit unit becomes vacant and a market unit is also vacant, reasonable attempts must be made to rent the tax credit unit before the market unit or the vacant unit rule is violated regardless of whether the units are in the same or different buildings.

Also, if the owner fails to market vacant low-income units, the owner has violated the General Public Use Rule. The LHC will report this as non-compliance under Category 11h on form 8823.

The Affirmative Fair Housing Marketing Regulations (24 CFR 200.600) implement HUD's policy of assuring that persons of similar income levels in a housing market area have a like range of housing choices available to them, regardless of race, color, religion, sex, national origin, familial status or disability. The act, pattern, or intent of discrimination also extends to classes or groups.

Owners must comply with all fair housing laws, which prohibit discrimination in housing based on race, color, religion, sex, familial status, national origin, and disability. Affirmative Fair Housing Marketing Plans (AFHMP) for LIHTC properties must be established. Owners must conduct special outreach to those groups least likely to apply for the LIHTC housing. Accessible units in LIHTC properties must be offered first to persons with disabilities.

Owners/agents of LIHTC properties must treat applicants and tenants fairly and equitably by:

- Establishing and following standard tenant selection procedures
- Using leases that protect tenants' rights
- Using established procedures to resolve conflicts with tenants
- Maintaining wait lists that meet HUD standards

If the LHC determines that an owner is not making reasonable attempts to rent vacant low-income units, the owner will need to provide the LHC a list of all vacant low-income units in the project. Under Treas. Reg. §1.42-5(b)(1)(v), owners are required to maintain records identifying vacant low-income units and information that shows, when, and to whom, the next available unit was rented. Failure to provide the needed information will result in a finding of non-compliance under 11f, on form 8823. A copy of the AFHMP and Management Plan, with all attachments, should be retained on site for reference and provided to LHC, HUD, or other entity responsible for furthering fair housing upon request.

It is unlawful to make, print, or publish any notice, statement, or advertisement with respect to the sale or rental of a dwelling which indicates a preference, limitation, or discrimination based on race, color, religion, sex, disability, familial status, or national origin. All written or oral notices or statements by a person engaged in the sale or rental of a dwelling are subject to this provision.

A file must be maintained with all marketing efforts related to the property including newspaper ads, social service contacts, photos of signs, etc. Records will be reviewed during the monitoring of the property to ensure that all efforts are in compliance with federal requirements and are being adequately documented. Marketing efforts should be reviewed by owners/agents on a continual basis and the AFHMP must be updated at least once every five years. Marketing efforts should be sent to various sources. Limiting efforts to one source is not acceptable. Using the internet must not be relied upon as the only source of marketing as some people do not have access to the internet. Further, if a vacancy problem exists at a property, owners should update the plan to extend outreach areas or re-evaluate and expand the target populations.

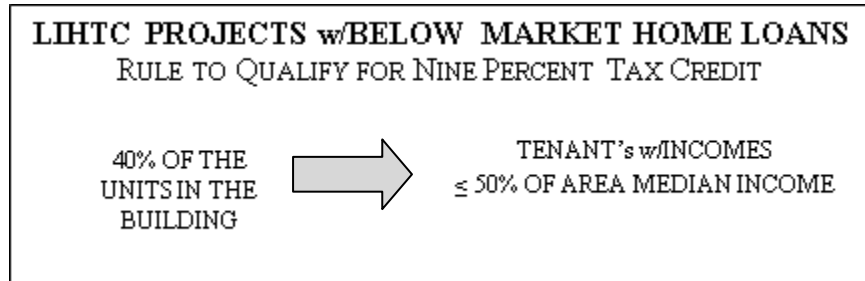
## **9 MULTIPLE FUNDING SOURCES**

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LIHTC projects may also be receiving assistance from other federal or state housing programs. In Multiple Funding Source (MFS) projects where LIHTC requirements differ from those of other programs, owners/managers should follow the most restrictive requirements. Taking this approach will ensure owners/managers meet LIHTC requirements and their responsibilities under other applicable programs. For example, the Federal Deposit Insurance Corporations Affordable Housing Disposition Program (AHDP) requires that the dwelling lease for qualifying units include certain provisions. If an LIHTC project was purchased through AHDP, the leases of qualified units that are also counted as qualifying units under AHDP must contain the required provisions.

## 9.1 QUALIFYING HOME PROJECTS FOR THE NINE PERCENT TAX CREDIT

Owners of LIHTC projects receiving a below market rate loan supported with HOME program funds can claim a credit percentage of 9% if a special occupancy requirement is met. To qualify for the 9% credit, owners of these projects must lease at least 40% of the units in each building as qualified units occupied by tenants with incomes less than or equal to 50% of area median income. Owners of HOME-assisted projects that choose not to meet this requirement are still eligible for LIHTCs at a credit rate of four percent.



Meeting and maintaining this low-income occupancy enables the owner to claim the higher credit percentage (i.e., 9% credit) if all other necessary requirements are met. If an owner fails to maintain a sufficient number of qualified units that satisfy this requirement, the buildings in the project will be treated as federally-subsidized buildings and subject to the low tax credit percentage (4%).

The IRC and LIHTC regulations are silent on the issue of how changes in tenant income affect a property's compliance with this provision. It is reasonable to assume that the rule which allows owners to continue to count tenants whose income at re-examination does not exceed 140% of the applicable LIHTC income limit would also apply to units used to meet this provision.

The IRC and LIHTC regulations are also silent regarding the rent restriction that applies to units used to meet this special occupancy provision. It is logical that rents for 40% of the units in LIHTC/HOME projects with a 40/60 minimum set-aside are subject to the lower of LIHTC rents at the 60% income limit or low HOME rents, usually low HOME rents.

## 9.2 USING LIHTC WITH HOME FUNDS

Prior to the passage of the Omnibus Budget and Reconciliation Act of 1993 (OBRA), HOME funds were treated like other federal funds in calculating the amount of the LIHTC. Owners faced the choices of excluding HOME funds from the eligible basis or borrowing the funds at a market rate of interest in order to qualify for the 9% credit or including the funds and qualifying only for the 4% credit.

OBRA revised the requirements and declared that a project is not considered federally subsidized solely because of the use of HOME funds. However to receive the 9% credit, HOME/ LIHTC projects must meet stricter requirements.

There are four ways that HOME funds may be invested in a tax credit property.

- **Market rate loan**

If the HOME funds are provided at or above the applicable federal rate, these funds are not treated like a federal subsidy. The project qualifies for the 9% credit and is eligible for the 130% basis for projects in "qualified census tracts" or "difficult development areas" (QCT/DDA).

- **Below market rate loan with 9% credit**

If HOME funds are provided at an interest rate below the applicable federal rate, they may still be counted in the eligible basis and the project may receive a 9% credit if the project meets stricter occupancy requirements. Under the OBRA, the

project may receive the 9% credit if 40% of the LIHTC units are occupied by tenants with incomes at or below 50% of the area median income. However, such projects are not eligible for the 130% basis for projects in QCT/DDAs.

- **Below market rate loan with 4% credit**

Some projects qualify only for a 4% credit regardless of the way HOME funds are invested in the project. For example, a project with other federal or tax-exempt mortgage revenue bond funds, or an acquisition only project, is only eligible for a 4% credit under any circumstance, so HOME funds can be lent at any below market interest rate terms without consequence to the credit.

- **Grant**

HOME funds may be provided in the form of a grant, but they may not be counted in the eligible basis for the project, and therefore, do not contribute to the credits for which the project is eligible. Therefore, a loan is generally preferable to a grant. In some cases, however, a grant of a small amount of HOME funds may be preferable to a below market interest rate loan, particularly if the project is eligible for the 130% QCT/DDA basis.

**A. Establishing tenant eligibility**

Both the HOME and LIHTC programs require owners/managers to certify tenants' incomes to ensure that they are income-eligible and that the program is in compliance with its initial occupancy requirements. To demonstrate eligibility under both programs, owners must have tenants certify their income and obtain supporting documentation. This documentation must be kept in tenant files for review by LHC monitoring staff.

Under LIHTC rules, the Section 8 annual (gross) income definition of income is used, whereas, under HOME, there is a choice among three definitions – Section 8, Census long form, or the IRS definition of adjusted income. Projects using HOME funds and LIHTCs must use the Section 8 definition of income.

Another difference between HOME and LIHTC rules is that HOME requires verification of all asset income, whereas the LIHTC rules require verification of asset income if the household's assets are greater than \$5000. For total assets less than \$5000, LIHTCs allow the tenant to provide a signed statement of asset income. A tenant in a unit with both sources of funds would have to comply with the stricter HOME requirements.

**B. Re-examination of tenant eligibility**

Under the HOME program, after initial third party source documentation verification, LHC allows owners/managers to conduct such reviews only every 6 years. The LHC requires LIHTC properties blended with HOME funds to perform complete tenant recertification annually including source documentation to demonstrate their annual income and assets. In the interim years, tenants may provide either letters from government agencies that verify the household's income for other purposes (e.g., AFDC or Section 8), or a statement of annual income from the family with a certification that the information is complete and accurate. Every sixth year, owners/managers are required to perform a full review of tenant eligibility in all units and collect complete third party source documentation.

**C. Over-income tenants**

The definition of an over-income tenant differs under the LIHTC and HOME programs. LIHTC rules define "over-income" as having income above 140% of the project income limit. Under HOME, the tenants are considered over-income if their income rises above 80% of area median income.

Further, the HOME and LIHTC programs have different rules for over-income tenants. Although both programs permit the tenant to remain in the unit, the LIHTC program continues to restrict the rent until the unit is replaced, while the HOME program permits the rent to be raised to the lower of 30% of the tenant's adjusted income or the local market rent.

To resolve this conflict, HOME rules state that when funds from both programs are used on the same unit, the LIHTC rules should be followed.



## **D. Monitoring**

Both the LIHTC and HOME programs require annual monitoring to ensure compliance with program rules during the affordability period. Under the LIHTC program, the affordability period is a minimum of 30 years. Under the HOME program, affordability periods are determined by the per unit investment of HOME funds and the type of activity funded. Projects combining HOME funds and LIHTC are subject to two sets of affordability periods. These periods may be equal in length or the project may be subject to one set of requirements for a shorter period than the other. The LIHTC Program, like most federal affordable housing programs, restricts the rents that property owners may charge eligible tenants. When projects receive more than one type of assistance, owners must follow guidelines to determine appropriate rents. Projects subject to rent requirements under other programs must use the most restrictive rent limit. In other words, the owner should compare the maximum allowable LIHTC rent to the rent limit under the other programs and set a rent that meets the lowest rent requirement.

### **A. HOME Assisted projects**

When combining HOME funds and LIHTC, two sets of rent rules apply. Qualified units must not exceed LIHTC limits, while HOME-assisted units must meet High and/or Low HOME rent requirements. If a unit is being counted under both programs, the stricter rent limit applies:

- Low HOME rent units are subject to the lower of the Low HOME rent and the LIHTC rent (usually the Low HOME rent).
- High HOME rent units are subject to the lower of the High HOME rent and the LIHTC rent (usually the LIHTC rent).

### **B. RD-Assisted Projects**

Occasionally, LIHTC rent limits will be less than the amount that RD has determined that a tenant is able to pay. In this case, the owner may continue to charge the tenant the higher, RD-determined maximum allowable rent. The owner, however, must turn this “overage amount” (the RD maximum allowable rent minus the LIHTC rent limit) back to RD. This provision applies only to projects with allocations from 1991 and beyond. Projects with allocations prior to 1991 may not charge the higher RD rent.

## **9.3 LIHTC PROPERTIES WITH TAX EXEMPT BONDS**

Compliance requirements for Multifamily Bond projects are outlined in Sections 103 and 142 of the Internal Revenue Code, and in the relevant bond documents, as required by the issuer of the bonds. The compliance expectations for a Multifamily Bond project (Bond Project) are not significantly different than those for an LIHTC project and many Bond Projects are also financed using LIHTC. The fact is a majority of Bond Projects are also financed using LIHTC. In this case, the property must then maintain compliance with both the tax-exempt bond rules and the tax credit program. While certain rules overlap, such as the property meeting the minimum set-aside requirement, the rules do not exactly match and the owner is responsible for being aware of and complying with both sets of requirements.

The rules for determining income are the same for both programs. The primary difference is that compliance with tax-exempt bond requirements is determined on a property-wide basis, while the LIHTC requirements are determined on a building-by-building basis. Owners must comply with both sets of requirements, which may result in maintaining more affordable units than originally planned in order to maintain compliance with both programs. Many bond-financed properties are mixed income and many of the tax credit rules will apply to these properties.

According to Section 142(d)(2)(A), the compliance period, or the “qualified project period”, for Bond Projects begins on the first day that 10% of the residential units are occupied, and ends the latter of:

- 15 years after the date on which 50% of the residential units in the project are occupied;
- The 1st day on which no tax-exempt private activity bond, issued with respect to the project, is outstanding; or
- The date on which any assistance provided with respect to the project under Section 8 of the United States Housing Act of 1937 terminates.

Projects must comply continuously with the set-aside requirements throughout the qualified project period. Projects that do not comply have a “reasonable” period of time to comply. IRS regulation 1.103.8(b)(6)(ii) defines a reasonable period as 60 days. Failure to remain in compliance can result in the bond being declared taxable, a significant financial penalty for the bondholders, who may then seek compensation from the owner.

Projects with bonds issued by LHC are required to report annually to the Corporation. It is recommended that a management plan include detailed strategies for lease-up, filling vacancies and addressing over-income units on recertification be developed with the advice of qualified tax credit professional. Properties with tax-exempt bond financing have additional requirements that must be met.

Some of the minimum requirements are as follows:

- Meet the selected federal set-aside at bond closing on acquisition/rehabilitation properties. Follow same tax credit reporting requirements after buildings are placed in service.
- The most restricted set-aside (either federal or state) should always be used.
- Bond documents and bond regulatory agreements should be obtained for the management agent for all requirements.
- Projects funded with tax exempt bonds cannot use self-certification of assets (i.e. the under \$5,000 Asset Certification). All assets must be third-party verified for bond projects.
- For projects funded only with tax exempt bonds, the Next Available Unit Rule is a project rule instead of a building rule. However, under HERA for projects that have both tax credit and bonds, the Next Available Unit Rule is a building rule. Therefore, when a low-income household’s income increases above 140% of the area median gross income, the next comparable or smaller unit in the building must be leased to a qualified low- income household. This process must be followed until the set-aside is restored.
- Pre-HERA, projects with tax exempt bonds could only apply one student status exemption (married and entitled to file a joint tax return). However, post-HERA all five tax credit student status exemptions now apply to bond projects.

## **10 THE AMERICAN RECOVERY AND REINVESTMENT ACT**

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On February 17, 2009, President Barack Obama signed into law The American Recovery and Reinvestment Act (ARRA). The act included two provisions involving low-income housing tax credits: 1) the Tax Credit Assistance Program (TCAP) and 2) A Tax Credit Exchange (TCE) program under Section 1602 of the Act (Section 1602 or Exchange Program).

### **10.1 TAX CREDIT ASSISTANCE PROGRAM**

TCAP amounts were expected to fund capital investments and fill the gap caused by lack of investor interest for tax credits after the credit market stalled in 2008. TCAP amounts were used for developments that received an award of tax

credits. Therefore, all tax credit rules and regulations apply to projects with TCAP. All TCAP funds were to be fully expended and drawn down on or before February 16, 2012. The TCAP is administered by HUD.

Owners will report to the LHC on:

- All information applicable to HOME Investment Partnership Act funding
- Project's completion status
- An estimate of the number of jobs created and the number of jobs retained
- Any other information necessary for the LHC's federal reporting requirements after the end of each calendar quarter
- Non-compliance of award terms will be subject to recapture under the terms from the U.S. Treasury
- Non-compliance of award terms can negatively affect future LIHTC reservations from LHC

## **10.2 SECTION 1602, TAX CREDIT EXCHANGE PROGRAM**

Section 1602 TCE amounts were expected to temporarily fill the gap caused by lack of investor interest for tax credits; after the tax credit market stalled in 2008. TCE funds were used for projects that had received an award of tax credits, and were also used for projects that did not receive an award of tax credits. All Section 1602 Program funds were to be fully expended and drawn down on or before December 31, 2010.

Section 1602 is administered by the United States Department of the Treasury (Treasury). ARRA Section 1602 authorized Treasury to issue cash assistance to state housing credit agencies in lieu of low-income housing tax credits (LIHTC). Sub-awards were made to projects which were selected through the standard LIHTC application process. Selected projects are required to meet all the requirements of the LIHTC Program including the Qualified Allocation Plan (QAP), Extended Use Agreement, and policy manuals.

### **A. Section 1602: Reporting Requirements for Post-Sub-Award Compliance**

It should be noted that most terms and conditions of Section 1602 mirror that of LIHTC. However, there are two differences that must be noted:

- For projects of the Section 1602 program the credit period begins January 1st of the year following the Placed in Service date.
- Recapture events are defined, enforced, and recaptured differently than those of LIHTC.

The guidance provided in this manual regarding the 1602 program is subject to change as additional information is received from the U.S. Department of Housing and Urban Development and the U.S. Department of Treasury.

The executed TCAP and/or TCE Regulatory Agreement outlines the specific requirements for these projects. Specific attention should be given to the following:

- Occupancy restrictions outlined
- Staff units
- Percentage of units to be rented to the various income limitations
- Preferences for wait list positioning
- Supportive services
- Quarterly financial and project reporting requirements
- Affirmative Fair Housing Marketing Plan requirements
- Yearly submission of proposed rental rates and budgets
- Creation of separate accounts to hold security deposits and replacement cost reserves
- Monthly deposit requirements into the replacement cost reserve account
- Requirements for making changes to the management agent of the property

- Submission of the annual financial statements
- Submission of monthly occupancy reports (if applicable)
- Move in, annual and other inspection requirements

Properties funded with TCAP and/or Section 1602 Program funds must comply with LHC regulatory documents and with IRC Section 42 for the full term of the compliance and extended use periods, as evidenced by a Declaration of Land Use Restrictive Covenants or its equivalent. Additionally, during the compliance and extended use period, both programs are subject to asset management oversight by the LHC.

**B. 1602 Monitoring and Reporting**

LHC will monitor compliance with TCAP and the Section 1602 Program in the same manner as the LIHTC Program as described in this manual. However, Section 1602 will require reporting violations to Treasury in a form and manner required by Treasury, and not to IRS on Form 8823. Asset management includes, but is not limited to lease-up compliance monitoring, operational and financial reporting, and other monitoring pursuant to a Regulatory Agreement with LHC.

The Compliance Period begins the first year of the credit period. Projects with both Credit and Exchange dollars may have more than one “initial year” to consider at rent up.

PLACED IN SERVICE DATE – For purposes of the Section 1602 program, if a project has multiple buildings the placed in service date is the date the last building in the project is placed in service.

## GLOSSARY OF TERMS

**20/50 TEST:** In the LIHTC program, requirement whereby 20% or more of the residential rental units are rent-restricted and occupied by households with incomes of 50% or less of the area median gross income, adjusted for family size. This test is referred to as one of the “minimum set-aside” requirements. Compliance with the minimum set-aside requirements must be maintained at all times during the 15-year compliance period. Failure to meet the test would disqualify a Project from being eligible for the LIHTC.

**40/60 TEST:** In the LIHTC program, requirement whereby 40% or more of the residential rental units are rent-restricted and occupied by households with incomes of 60% or less of the area median gross income, adjusted for family size. This test is referred to as one of the “minimum set-aside” requirements. Compliance with the minimum set-aside requirements must be maintained at all times during the 15-year compliance period. Failure to meet the test would disqualify a Project from being eligible for the LIHTC.

**AFFORDABILITY PERIOD:** In the LIHTC program, this is the length of time that the project must carry rent, habitability and occupancy restrictions. The length of time may depend on the Owner Elected Special Conditions.

**APPLICABLE FRACTION:** In the LIHTC program, the fraction used to determine the Qualified Basis of the qualified low-income building, which is the smaller of the unit fraction (the number of low-income units divided by the number of all residential rental units) or the floor space fraction (the floor space of the low-income units divided by the floor space of all residential rental units).

**ADJUSTED INCOME:** The income of a household after allowable deductions have been subtracted, as defined at 24 CFR 5.611.

**ANNUAL INCOME:** As defined in 24 CFR 5.609, the amount of regular income plus asset income anticipated to be received during the 12-month period following certification of eligibility of a household.

**AVERAGE INCOME TEST:** A minimum set-aside test added to the LIHTC program by the omnibus spending bill of 2018.

**BUILDING IDENTIFICATION NUMBER (BIN):** In the LIHTC program, this is the nine digit, alpha numeric designation assigned by the LHC to a low-income building. Essential to the monitoring process for IRC § 42, IRS Notice 88-91 provides information regarding building identification number requirements.

**CODE:** The Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements of other official pronouncements issued thereunder by the United States Department of the Treasury or the Internal Revenue Service relating to the LIHTC program authorized by the Code, §42, and as may be amended from time to time.

**COMPLIANCE PERIOD:** In the LIHTC program, this is the 15-year period over which the Project must maintain compliance with IRC, §42(i)(1). This period begins with the first taxable year of the credit period.

**CREDIT PERIOD:** In the LIHTC program, this is a ten-year period which generally begins in the year a Property is placed in service. A taxpayer may instead elect to begin the credit period in the year following the one in which the building was placed in service. The LIHTC is claimed annually for this 10-year period.

**ELIGIBLE BASIS:** In the LIHTC program, it consists of: (i) the cost of new construction, (ii) the cost of rehabilitation, or (iii) the cost of acquisition of an existing building. Eligible basis includes only the adjusted basis of the building (including certain items of personal property and site improvements) and does not include the cost of land. Basis is generally determined at the time the building is placed in service. Basis is the amount of allowable costs on which credits can be claimed.

**ELIGIBLE IN-PLACE TENANT:** For rehabilitation projects, existing tenants who meet program eligibility requirements. See Low-Income Household.

**ELIGIBLE TENANT:** A documented, income-eligible tenant.

**EXTENDED USE PERIOD:** In the LIHTC program, this requirement is applicable to projects receiving credits in calendar years after 1989. The extended use period begins with the first day of the 15-year compliance period and ends 15 or more years after the close of the initial compliance period -- creating a 30 or more year period under which the building owner must be in compliance with IRC §42.

**FIRST YEAR CONVENTION:** In the LIHTC program, in the first year of the credit period, an averaging convention is used to reflect credits allowed only for low-income units for the months in which the units were occupied during the first year. In calculating the first year credit, the sum of the applicable fractions as of the close of each month during the credit period is divided by 12 which determines the average applicable fraction to apply to the eligible basis in determining qualified basis. Any reduction in credit due to the first year computation is allowable in the 11<sup>th</sup> year.

**FLOOR SPACE FRACTION:** The proportion of low-income related floor space to all residential rental floor space (whether occupied or not) in the building.

**FULL-TIME STUDENT:** A student carrying a full-time subject load as defined by the institution being attended.

**GROSS RENT RESTRICTION:** 30% of the imputed income limit reduced by any utility allowance.

**HANDICAPPED ACCESSIBILITY:** As described in the Fair Housing Act, units which meet the minimal accessibility requirements specified in the Act (i.e., usable doors, an accessible route, accessible environmental controls, and usable kitchen and bathrooms) and the adaptable structural feature of reinforced bathroom walls for later installation of grab bars. As described in Section 504 of the Rehabilitation Act of 1973, at least 5% of the total dwelling units in projects must be equipped for and usable by persons who are mobility-impaired and an additional 2% of the units must be equipped for and usable by persons with hearing or vision impairments. Projects receiving LIHTCs must comply with the Fair Housing Act. Projects with HOME funds must comply with both the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973.

**HOME INVESTMENT PARTNERSHIPS ACT (THE HOME PROGRAM):** Administered by HUD, the program provides grants to state and local governments for use in projects which increase homeownership and affordable housing opportunities for low and very low-income households.

**HOUSEHOLD INCOME:** Gross income of all appropriate household members, aged 18 and older.

**HOUSEHOLD SIZE:** The individual, family or group of individuals living together as a unit.

**HOUSING QUALITY STANDARDS (HQS):** The Housing Quality Standards promulgated in HUD Regulations at 24 CFR 882.109, including the basic "performance requirements" with respect to the following: (i) sanitary facilities, (ii) food preparation and storage space, (iii) space and security, (iv) structure and materials, (v) interior air quality, (vi) water supply, (vii) lead-based paint, (viii) access, (ix) site and neighborhood, and (x) sanitary condition.

**HUD:** The U.S. Department of Housing and Urban Development.

**IMPUTED INCOME LIMIT:** Percentage of area median income for households based upon minimum set-aside elections, assuming one person occupies an efficiency unit and 1.5 persons occupy each bedroom.

**INCOME CERTIFICATION:** This is the documentation to support the household income limitation at initial lease-up and throughout the compliance period required for all qualifying units.

**INCOME LIMITS:** The maximum annual gross income, adjusted for household size, that a household can have in order to be eligible for either the LIHTC program or the HOME program, as determined by HUD.

**INITIAL CERTIFICATION:** The first determination, verification and certification of eligibility for a tenant.

**IRS:** The Internal Revenue Service.

**IRS FORM 8609:** In the LIHTC program, this form is issued to the taxpayer/building owner for each building in a project in the year in which the building is placed in service or the subsequent year.

**IRS FORM 8823:** In the LIHTC program, this form is used by LHC to notify the IRS of a building that is not in compliance with the low-income housing tax credit provisions.

**LIHTC PROGRAM:** The program established for the Louisiana Housing Corporation to allocate low-income housing tax credits from the state's credit ceiling.

**LOW-INCOME HOUSEHOLD:** A low-income family whose annual income does not exceed the applicable percentage of the median family income for the area, as determined by HUD with adjustments for smaller and larger families.

**LOW-INCOME UNIT:** Any unit in a qualified low-income building if the household occupying such unit meets the income limitations and if the unit meets the gross rent restrictions.

**MAXIMUM QUALIFIED BASIS:** In the LIHTC program, the portion of the eligible basis which represents the low-income units and which is approved by the housing credit agency.

**MINIMUM LOW-INCOME OCCUPANCY:** The number of low-income units which must exist in a project based upon the minimum set-aside election throughout the compliance period.

**MINIMUM SET-ASIDE TEST:** In the LIHTC program, this is a requirement which must be met at all times during the Project's 15-year compliance period. This test restricts rent and dictates which households qualify as low-income and how many units must be occupied by the qualifying households. The three general minimum set-aside tests are the 20/50 test, the 40/60 test and the average income test.

**MIXED-INCOME PROJECTS:** Mixed-income projects are buildings with both low-income and market rate tenants.

**NEXT AVAILABLE UNIT RULE:** In the LIHTC program, the rule states that if a tenant's income in a low-income unit increases above 140% of the applicable income limitations (over-income unit), available units of comparable or smaller size must be rented to low-income tenants to continue treating the over-income unit as a low-income unit. In the HOME program, if a tenant's income in a HOME-assisted unit increases above 80% in a project with floating units, then the next available unit of comparable or larger size must be rented to a HOME-eligible household.

**ORIGINAL QUALIFIED BASIS:** In the LIHTC program, the Applicable Fraction of qualified units multiplied by the Eligible Basis as established at the close of the first year of the credit period.

**OVER-INCOME UNIT:** In the LIHTC program, a low-income unit in which the income of the occupants of the unit increases above 140% of the applicable income limitation in LIHTC properties. In the HOME program, a low-income unit in which the income of the occupants of the unit increases above 80% of the applicable income limitation in HOME properties.

**PLACED IN SERVICE DATE:** In the LIHTC program, the date on which the first unit in a building of the Project is available for occupancy in accordance with the requirements of the Code and the local jurisdiction within which the Project is located. For rehabilitations which qualify as a separate new building, such date occurs at the end of the 24-month period over which such expenditures are aggregated.

**QUALIFIED ALLOCATION PLAN (QAP):** Plan adopted by the LHC which sets forth the methods, criteria, preferences and priorities used to select projects to receive LIHTC to address the housing needs for the state of Louisiana.

**QUALIFIED BASIS:** In the LIHTC program, with respect to a building within a Project, the building's Eligible Basis multiplied by the Application Fraction, within the meaning of the Code, §42(c)(1). The qualified basis of a low-income building may increase after the initial credit year. The increase may be the result of an increase in the number and/or floor space of low-income units. Credit from such an increase is claimed in an amount equal to 2/3s of the previously unclaimed allocated credits over the entire 15-year compliance period. The combination of the initial credit and this increase in credit may not exceed the original allocation granted.

**RECAPTURE:** In the LIHTC program, recapture refers to an adjustment in which the accelerated portion of the credit plus interest and penalties is recovered as a result of reduction in qualified basis, including, but not limited, to the partial or full dispositions of the building or interest. If a project ceases to meet the minimum set-aside requirement, the project no longer qualifies as a low-income housing project until the minimum set-aside is again met, and recapture is applied to all credits previously taken on the entire project.

**RECERTIFICATION:** The process of annually determining, verifying and certifying a tenant's eligibility.

**RENT-RESTRICTED:** Maximum rent for a low-income unit may not exceed 30% of imputed income limit for such unit.

**RESIDENT MANAGER'S UNIT:** The unit occupied by a full-time resident manager or by on-site maintenance personnel in the Project. Whether rented or provided free of charge, the unit will not be considered as a low-income unit for the purpose of determining the applicable fraction. This unit is included in the eligible basis of the low-income building. The number of units in the building, in conjunction with the normal management practice of the property controlled by HUD, may be used as a guide for determining whether the unit occupied by a manager is appropriate.

**RHS:** The Rural Housing Service, formerly known as Farmers Home Administration, is an agency of the U.S. Department of Agriculture.

**SECTION 8 PROGRAM:** Refers to the rental assistance programs under Section 8 of the United States Housing Act of 1937.

**SELECTION CRITERIA:** Criteria used to determine housing priorities of the State of Louisiana under the LIHTC program and the HOME program.

**SPECIAL CONDITIONS:** Occupancy requirements selected by the project developer during the application process. The Project must adhere to the special conditions throughout the low-income life of the Project.

**UNIFORM PHYSICAL INSPECTIONS STANDARDS:** Physical condition standards for HUD housing promulgated at HUD Regulations 24 CFR 5.703 addressing major areas of the housing: the site; the building exterior; the building systems; the dwelling units; the common areas; and health and safety considerations.

**UTILITY ALLOWANCE:** The estimate of the average monthly utility costs (other than telephone and cable) for those utilities paid directly by the tenant.



# APPENDIX A

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## ANNUAL INCOME INCLUSIONS AND EXCLUSIONS

**For further details, see the HUD Handbook 4350.3 Rev. 1 CHG.3**

*Note: This list of inclusions and exclusions to annual income is based on the HUD handbook 4350.3*

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

ii. 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 will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.

iii. Interest, dividends and other income of any kind from real or personal property (including income distributed from an irrevocable trust). 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 (ii) above. Any withdrawal of cash or assets from an investment will be included in income, except to extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family asset or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD.

iv. Gross amount (before deductions for Medicare, etc.) of periodic social security payments. Includes payments received by adults on behalf of individuals under the age of 18 or by individuals under the age of 18 for their own support. (However, see Section 5.3 D Annual Income Excludes.)

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

**Example:** Mr. Richards' social security payment of \$475 per month is being reduced by \$50 per month for a period of 6 months to make up for a prior overpayment. Count his social security income as \$425 per month for the next 6 months and for the remaining 6 months as \$475 per month.

v. The gross amount of annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (e.g. Black Lung Sick Benefits, Veterans Disability, Dependent Indemnity Compensation, payments to the surviving spouse of a service person killed in action). Count the total amount of such amounts received. Do not reduce the amount by any amounts the individual previously paid into the account in order to receive the pension, annuity or insurance policy.

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

**Note:** Delayed periodic payments of supplemental security benefits and social security benefits that are received in a lump sum are excluded from annual income.

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

viii. Alimony and child support received by the household.

- a. For alimony or child support received by a member of the household count the amount specified by the court, in a divorce settlement or separation agreement unless the applicant:
  - 1) Certifies that the income is not being provided; and
  - 2) Has made reasonable efforts to collect the amounts due, including filing with courts or agencies responsible for enforcing payment.

**Note:** Child support paid by a private source to the state child support enforcement agency can be passed on to the applicant/tenant in different ways. These amounts must be counted as annual income. In some states this will be shown as part of the AFDC grant and in others it will be shown as a separate "pass-through" amount.

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

**Example:** Mr. Rawlings pays \$200 per month in child support. It is garnished from his monthly wages of \$1,000. After the child support is deducted from his salary, he receives \$800. Mr. Rawlings's income must be counted as \$1,000 per month.

ix. Recurring monetary contributions or gifts regularly received from persons not living in the unit.

Exceptions:

- a. Exclude recurring monetary contributions that are paid directly to a child care provider by persons not living in the unit.
- b. Exclude gifts of groceries.

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

xi. Actual income distributed from trust funds that are not revocable by or under the control of any member of the tenant household.

xii. All regular pay, special pay, and allowances of a member of the Armed Forces, except as provided under Annual Income Excludes under 5.3 D.

xiii. 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:
- c. The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities, plus
- d. The maximum amount that the welfare assistance agency could in fact allow the family for shelter and 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.

xiv. Educational Scholarships or Grants

All forms of student financial assistance (grants, scholarships, educational entitlements, work study programs, and financial aid packages) are excluded from annual income except for students receiving Section 8 assistance.\* This is true whether the assistance is paid to the student or directly to the educational institution.

\*For students receiving Section 8 assistance, all financial assistance a student receives (1) under the Higher Education Act of 1965, (2) from private sources, or (3) from an institution of higher education that is in excess of amounts received for tuition is included in annual income except if the student is over the age of 23 with dependent children or the student is living with his or her parents who are receiving Section 8 assistance.

## **ANNUAL INCOME EXCLUDES**

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

ii. Income from employment of children (including foster children) under the age of 18 years.

iii. Amounts paid by a State agency to a household with a developmentally disabled family member living at home, to offset the cost of services and equipment needed to keep the developmentally disabled family member in the home. This includes SSI-E.

iv. Grants or other amounts received specifically for:

a. Medical expenses (including Medicare premiums paid by an outside source).

b. Set aside for use under a Plan to Attain Self Sufficiency (PASS) and excluded for purposes of Supplemental Security Income (SSI) eligibility.

**Note:** A PASS permits a person with disabilities who is receiving Supplemental Social Security (SSI) and who is also receiving other income, to set aside a portion of the other income in order to achieve a work-related goal.

c. Out-of-pocket expenses for participation in publicly assisted programs. Such amounts must be made solely to allow participation in these programs. These expenses include special equipment, clothing, transportation, childcare, equalized.

v. Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household, co-head, and spouse).

vi. Adoption assistance payments in excess of \$480 per adopted child.

vii. Loans (e.g., personal or student loans).

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

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

x. The special pay to a household member serving in the Armed Forces who is exposed to hostile fire (e.g., in the past, special pay included Operation Desert Storm).

xi. Amounts received under training programs funded by HUD (Comprehensive Improvement Assistance Program).

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

xiii. 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 project, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to; fire patrol, hall monitoring, lawn maintenance, or resident initiative coordination. No resident may receive more than one such stipend during the same period of time.

xiv. 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.

xv. Deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum payment.

**Note:** This exclusion became effective for the Section 8 programs on October 28, 1992. For all other programs (e.g. section 42) this exclusion became effective on May 5, 1995.

xvi. Payments received for the care of foster children or foster adults. (Foster adults are usually adults with disabilities, who are unrelated to the household member(s), and who are unable to live alone.)

xvii. Income of a live-in aide, as defined in 24 CFR 5.403.

xviii. Amounts that are received on behalf of someone who does not reside with the household, as long as the amounts:

- a. Are not intermingled with the household member's funds; and
- b. Are used solely to benefit the person who does not reside with the tenant household.

**Note:** For such amounts to be excluded, the individual must provide the owner with an affidavit stating that the amounts are received on behalf of someone who does not reside with the household and the amounts meet the conditions in paragraphs a. and b. above.

**Examples:**

Cecilia lives in a section 42 project. Her 14-year-old sister, Julie, lives with her mother in other housing in the same city. Cecilia has been designated as the Representative Payee for Julie's SSI payments. The Social Security Administration designated Cecilia. Julie makes sure that Julie's SSI payments are used exclusively for Julie.

Rose receives royalty income that is reported on IRS Form 1099. Rose distributes this income to the designated heirs in accordance with her aunt's will and retains only the amount to which she is entitled. Only count the royalty income that is designated specifically for Rose. Rose will have to show that she distributes this income to the other heirs.

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

xx. Income excluded by federal statute:

- a. The value of the allotment provided to an eligible household under the Food Stamp Act of 1977.
- b. Payments received under Domestic Volunteer Service Act of 1973 (employment through VISTA, Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions).
- c. The following income:
  - 1) Interests of individual Indians in trust or restricted lands, and the first \$2,000 per year of income received by individual Indians that is derived from trust or restricted lands.

- 2) Payments received under Alaskan Native Claims Settlement Act received from a Native Corporation, including:
- i) Cash (including cash dividends on stock received from a Native Corporation) to the extent that it does not, in the aggregate, exceed \$2,000 per individual per annum;
  - ii) A partnership interest;
  - iii) Land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock); and
  - iv) Interest in a settlement trust.

**Note:** For paragraphs iii) and iv), some tribal corporations receive payments on individual's behalf and invest these amounts. The proceeds from these investments are then paid to the individuals. Such amounts also would be excluded from income.

3) Payments from certain submarginal U.S. land held in trust for certain Indian tribes.

4) Payments from disposal of funds of Grand River Bank of Ottawa Indians.

5) The first \$2,000 of per capita shares received from judgments awarded by the Indian Claims Commission or the Court of Claims or from funds the Secretary of Interior holds in trust for an Indian tribe.

d. Payments, rebates or credits received under Federal Low-Income Home Energy Assistance Programs. Includes any winter differentials given to elderly (e.g., Department of Health and Human Services Low-Income Home Energy Assistance Program).

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

f. Payments received under Title V of the Older Americans Act (Green Thumb, Senior Aides, and Older American Community Service Employment Program).

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

h. Payments received under the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96-420, 9z Stat.1785).

i. Any earned income tax credit to the extent it exceeds income tax liability. [26 U.S.C. 32(j)]

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

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

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

m. Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act (42 U.S.C. 10602).

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

o. The value of any childcare 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 (CCDBG) (42 U.S.C. 9858q). Participating families may either pay a reduced amount based on a sliding fee scale or they may receive a certificate for childcare services.

**Note:** This exclusion does not apply to amounts received by a childcare provider for services paid through the CCDBG.

**Examples:**

The following is excluded from Annual Income. Ms. Lucy receives a certificate for childcare services under CCDBG. The amount of the certificate is not included in Ms. Lucy's income.

The following is included in Annual Income. Ms. Collins, a tenant who is receiving Section 8 assistance, is paid through the CCDBG for childcare services she provides to Ms. Lucy. The income she receives for providing this childcare is included in annual income.

**ASSETS**

Assets are items of value that may be turned into cash. Income from assets is taken into consideration when determining the eligibility of a household. Asset information (asset value and income from the asset) must be obtained at the time of application. The applicant will affirm that this information is correct by executing the Tenant Income Certification.

Third party verification of assets is required when the household's combined value of assets exceeds \$5,000. Owners of LIHTC projects will not have to obtain third-party verification of income from assets if the tenant(s) submit to the owner a signed, sworn statement (under penalty of perjury) that the value of their combined assets are less than \$5,000. The tenant's income from net household assets that are less than \$5,000 must still be included in the calculation of the annual income amount when initially qualifying a household and upon recertification.

**A. Net Household Assets Include:**

i. Cash held in Savings and Checking Accounts, Safety Deposit Boxes, Homes, etc.  
For savings accounts, use the current balance.

a. For checking accounts, use the average balance for the last six months.

ii. Revocable Trusts

Include the cash value of any revocable trust available to the household.

iii. Equity in Real Estate or Other Capital Investments

Include current **fair market value** less:

a. any unpaid balance on any loans secured by the property; and

b. reasonable costs that would be incurred in selling the asset (e.g., penalties or broker fees, etc.).

c. When a household indicates they own real estate assets, it is important to determine disposition of the real estate as of the date of move-in, or in the case of a recertification, the effective date of the certification. This disposition includes:

· If there is a pending offer to purchase or settlement date set.

· If there is any income from the real estate from the rental of the property or land contract, including occupancy in exchange for the payment of taxes or mortgage payments .

Any income from the real estate or liquidation must be projected for the 12 month period of the certification.

**Note:** If the person's main business is real estate, then count any income as business income.

iv. Stocks, Bonds, Treasury Bills, Certificates of Deposit, Mutual Funds, and Money Market Accounts

- a. Interest or dividends earned are counted as income from assets even when the earnings are reinvested. The value of stocks and other assets vary from one day to another.

v. Individual Retirement Accounts (IRAs) and Keogh Accounts

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

**Example:** Mrs. William has an IRA account valued at \$25,000. When she turns 70 years old, she begins withdrawing \$1,500 per year. Continue to include this account as an asset using the guidance in valuing assets. Do not count the \$1,500 she withdraws as income.

vi. Retirement and Pension Funds

**a. While the person is employed:**

Include only amounts the household can withdraw without retiring or terminating employment. Count the whole amount less any penalties or transaction costs.

**b. At retirement or termination of employment:**

Periodic receipts from pension and retirement funds are counted as income. Lump sum receipts from pension and retirement funds are counted as assets. Count the amount as an asset or as income as provided below:

- i) If benefits will be received in a lump sum, include the lump sum receipt in Net Household Assets.
- ii) If benefits will be received through periodic payments, include the benefits in annual income. Do not count any remaining amounts in the account as an asset.
- iii) If the individual initially receives a lump sum benefit followed by periodic payments, count the lump sum benefit as an asset as provided in the example below and treat the periodic payment as income. In subsequent years, count only the periodic payment as income. Do not count the remaining amount as an asset.

**Example:** Upon retirement, Mrs. Byron receives a lump sum amount of \$10,000 plus she will receive an annuity of \$400 per month. Count the \$400 as income and count only that portion of the \$10,000 receipt that is placed into an asset.

vii. Cash Value of Life Insurance Policies Available to the Individual Before Death (e.g., the surrender value of a whole life policy or a universal life policy). It would not include a value for term insurance, which has no cash value to the individual before death.

viii. Personal property held as an investment includes such items as gems, jewelry, coin collections, or antique cars held as an investment. An applicant's wedding ring and other personal jewelry are not considered assets.

ix. Lump Sum Receipts or One-Time Receipts

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

x. A Mortgage or Deed of Trust Held by an Applicant (Land Contract)

- a. Payments on this type of asset are often received as one combined payment of principle and interest with the interest portion counted as income from the asset.

- b. This combined figure needs to be separated into specific principle and interest portions of the payment. (This can be done by referring to an amortization schedule that relates to the specific term and interest rate of the mortgage.)
- c. To count the actual income for this asset, use the interest portion paid on the amortization schedule for the 12-month period following the certification.
- d. To count the imputed income for this asset, determine the asset value at the end of the 12-month period following the certification. Since this amount will continually be reduced by the principle portion paid during the previous year, the owner will have to determine this amount at each annual recertification.

**Example:** Computation of Imputed Income: An elderly tenant sells her home and holds the mortgage for the buyer. The cash value of the mortgage is \$60,000. The combined payment of principle and interest expected to be received for the upcoming year is \$5,000. The amortization schedule breaks that payment into \$2,000 in principle and \$3,000 in interest. In completing the asset income calculation, the cash value of the asset is \$60,000 and projected annual income from the asset is \$3,000. In this example, to compute the imputed income, the mortgage would be reduced to \$58,000 after the first year. The owner would multiply this amount by the current passbook savings rate provided by the HUD Field Office.

xi. Assets disposed of for less than Fair Market Value within Two Years of the Effective date of the Certification/Recertification, including assets put into irrevocable trusts.

- a. Applicants and tenants must declare whether an asset has been disposed of for less than fair market value at each certification and recertification.
- b. Assets are considered to be disposed of for less than fair market value if the cash value of the disposed asset exceeds the gross amount the applicant/tenant received by more than \$1,000.
- c. In such cases, the **whole** difference between the cash value of the asset and the amounts received must be included. If the difference is less than \$1,000, ignore it.

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

d. Do consider:

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

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

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

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

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

- 1) A foreclosure;
- 2) Bankruptcy; or
- 3) A divorce or separation agreement if the applicant or tenant receives important consideration not measurable in dollars.



## **B. Net Household Assets Do Not Include:**

*Important:* Do not compute income from any assets listed in this section.

- i. Necessary personal property (clothing, furniture, cars, wedding ring, vehicles specially equipped for persons with disabilities, etc.)
- ii. Interest in Indian trust land
- iii. Term Life insurance policies (i.e., where there is not cash value)
- iv. Equity in the cooperative unit in which the household lives
- v. Assets that are part of an active business. **Note:** "Business" does not include rental of properties that are held as an investment and not a main occupation.

**Example:** Mr. and Mrs. George own a copier and courier service. None of the equipment that they use in their business is counted as an asset (e.g., the copier, the FAX machines, the bicycles, etc.)

**Example:** Mrs. Thomas rents out the home that she and her husband lived in for 30 years. This home is not an active business asset. Therefore, it is considered an asset and the owner must determine the annual income that Mrs. Thomas receives from it.

vi. Assets that are not effectively owned by the applicant **Note:** Irrevocable trusts are not covered by this paragraph. When assets are held in an individual's name but:

- a. the assets and any income they earn accrue to the benefit of someone else who is not a member of the household; and
- b. that other person is responsible for income taxes incurred on income generated by the assets.

**Example:** Assets held pursuant to a power of attorney because one party is not competent to manage the assets or assets held in a joint account solely to facilitate access to assets in the event of an emergency.

**Example:** Mr. Collins and his daughter, Ms. Collins, have a bank account with both names on the account. Ms. Collins' name is on that account for the convenience of her father in case an emergency arises that would result in Ms. Collins' handling payments for her father. Ms. Collins has not contributed to this asset, does not receive interest income from it, nor does she pay taxes on the interest earned. Therefore, Ms. Collins does not own this account. If Ms. Collins applies for assisted housing, the owner must not count this account as her asset. This asset belongs to Mr. Collins and would be counted entirely as the father's asset must he apply for assisted housing.

vii. Assets that are not accessible to the applicant and provide no income to the applicant.

**Note:** Irrevocable trusts (irrevocable trusts) are not covered by this paragraph.

**Example:** A battered spouse owns a house with her husband. Because of the domestic situation, she receives no income from the asset and cannot convert the asset to cash.

## **Assets Owned Jointly**

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

1. If an asset is not effectively owned by an individual, do not count it as an asset. An asset is not effectively owned when the asset is held in an individual's name, but (a) the asset and any income it earns accrue to the benefit of

someone else who is not a member of the family, and (b) that other person is responsible for income taxes incurred on income generated by the assets.

2. Determining which individuals have ownership of an asset requires collecting as much information as is available and making the best judgment possible based on that information.

**Example:** Mrs. Rene is a tax credit tenant. She and her daughter, Ms. Jasmine, who lives 1,200 miles away, have a joint savings account. Assume that in this example, State law does not specify ownership. Even though either Mrs. Rene or Ms. Jasmine could withdraw the entire asset for her own use, count Mrs. Rene's ownership as 50% of the account.

## Determining the Value of Assets

In determining income from assets, owners must use the cash value of the assets (the amount the applicant/tenant would receive if the assets 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 that 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; and/or
- Loans on the asset

## i. Assets Converted to Trusts

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

### a. Revocable Trusts

The grantor of a revocable trust can change this type of trust as often as he or she wishes and therefore has access to this asset at any time. Therefore you include the cash value of any revocable trust available to the household.

### b. Irrevocable Trusts (Irrevocable Trusts)

- 1) This is a trust agreement that allows an individual to permanently transfer assets during his or her lifetime to someone else.
- 2) Trusts, which are not revocable by or under the control of any member of the household, are not considered assets.
- 3) Instead, the regulation requires that the actual income distributed to the applicant/tenant from such a trust be counted when determining Annual Income. (As with all income, this is the gross amount received before taxes or other deductions.)
  - As long as the trust exists, any income distributed from the trust to the applicant/tenant must be counted as income.
  - If there is no income distributed from the trust, then do not count any income from the trust (e.g., income from the trust that is reinvested into the trust).
- 4) If an asset is disposed of for less than fair market value by being converted to an irrevocable trust, assuming that no consideration is received or the consideration which is received is less than fair market value, then the owner must count such an asset for a period of two years.

In addition, any actual income distributed from the irrevocable trust must also be counted as income under paragraph 3) above. Therefore, for a two-year period, the owner's representative will consider this asset for

purpose of income computation and, in addition, count actual income distributed from the irrevocable trust to the applicant/tenant.

Following the two-year period, the owner will count only the actual income distributed from the trust to the applicant/tenant.

### **Imputed Income from Assets**

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

- i. The actual income from the assets; or
- ii. Imputed income from the assets. (Impute income by multiplying total net household assets by the passbook rate specified by HUD. As of February 1, 2015, the rate was .06%.)

## APPENDIX B

### Louisiana Housing Corporation Policies

#### **B.1 Fair Housing and Tenant Selection with Regard to Criminal Record Screening 7/14/21**

The Louisiana Housing Corporation (“LHC”) has a responsibility to affirmatively further fair housing within its housing programs. The Fair Housing Act prohibits discrimination in the sale, rental, or financing of dwellings and in other housing-related activities on the basis of race, color, religion, sex, disability, familial status or national origin. The Fair Housing Act applies to all housing and prohibits both intentional housing discrimination and housing practices that have an unjustified discriminatory effect because of race, national origin or other protected characteristics. Very limited exemptions to the Fair Housing Act are available for owner-occupied buildings with no more than four (4) units, single-family housing sold or rented without the use of a broker and housing operated by organizations and private clubs that limit occupancy to members

On April 4, 2016, the Department of Housing & Urban Development (HUD) released the Office of General Counsel Guidance (“HUD Guidance”) concerning how the Fair Housing Act applies to the use of criminal history by providers or operators of housing and real-estate related transactions. Specifically, the HUD Guidance addresses how the discriminatory effects and disparate treatment methods of proof apply in Fair Housing Act cases in which a housing provider justifies an adverse housing action – such as a refusal to rent or renew a lease – based on an individual’s criminal history.<sup>1</sup> The HUD Guidance concludes:

Because of widespread racial and ethnic disparities in the U.S. criminal justice system, criminal history-based restrictions on access to housing are likely disproportionately to burden African Americans and Hispanics. While the Act does not prohibit housing providers from appropriately considering criminal history information when making housing decisions, arbitrary and overbroad criminal history-related bans are likely to lack a legally sufficient justification. Thus, a discriminatory effect resulting from a policy or practice that denies housing to anyone with a prior arrest or any kind of criminal conviction cannot be justified, and therefore such a practice would violate the Fair Housing Act.

Louisiana has had one of the highest incarceration rates in the country for years. Louisiana’s criminal record database shows 1.7 million adults have criminal records in the state.<sup>2</sup> With 3.6 million total adults in the state, 49% of adults, and likely an even higher percentage of adults applying for affordable housing through one or more of LHCs’ housing programs, have a criminal record.<sup>3</sup>

LHC will complement the Governor’s and Legislature’s efforts to address the effects of mass incarceration by applying the HUD Guidance to all LHC funded housing without any exemptions to the Low-income housing tax credit program (“LIHTC Program”) and other programs administered by LHC.

To that end the LHC has modified its requirements for tenant selection policies to comply with the HUD Guidance. Owners and/or managers of properties that have received LIHTC awards, program funds or

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<sup>1</sup> Office of the General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions. U.S. Department of Housing and Urban Development. April 4, 2016. Available:

[www.hud.gov/sites/documents/HUD\\_OGCGUIDAPPFHASTANDCR.PDF](http://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF).

<sup>2</sup> Becki Goggins and Dennis DeBacco. Survey of State Criminal History Information Systems. National Consortium for Justice Information and Statistics. November 5, 2020. Pg. 34. Available:

[www.ojp.gov/pdffiles1/bjs/grants/255651.pdf](http://www.ojp.gov/pdffiles1/bjs/grants/255651.pdf). (1,743,500 adults in the state criminal history file)

<sup>3</sup> U.S. Census Bureau. American Community Survey, 2019 1-year Estimates, TableID: S0101. (3,563,908 total adults in Louisiana).

other subsidies from LHC are now required to submit a certified copy of their tenant selection policy or practice (“Tenant Selection Policy and Practice”) by January 1, 2022 to evidence compliance with the requirements of the HUD Guidance.

## **Tenant Selection Policies**

All criteria used in the decision-making process must be included in the written Tenant Selection Policy and Practice. The written Tenant Selection Policy and Practice must be specific so that an applicant or a third party may read the Tenant Selection Policy and Practice and reasonably determine the applicant’s likelihood of acceptance to the property. The written Tenant Selection Policy and Practice also must include a nondiscrimination statement, describe any appeals process, and state the applicant’s right to request a reasonable accommodation if the applicant is disabled.

When LHC receives complaints that applicants to any property have been unfairly turned down for housing, LHC will ask for a summary of the facts and circumstances used in the decision to deny the applicant and to compare against the written Tenant Selection Policy and Practice on file at the LHC for the property. Should LHC find that an applicant was denied admission in violation of the approved Tenant Selection Policy and Practice or that the Tenant Selection Policy and Practice in use by the property violates this LHC policy, the property will be subject to compliance action by LHC.

The information above is not intended as legal advice and does not provide a legal opinion as to the matters stated. It is recommended that all property owners consult with an attorney that is well versed in fair housing law when making decisions regarding their Tenant Selection Policy and Practice.

## **Policy on Screening Applicants with Criminal Records**

### Screening and Appeal Process

- In an addendum to the application form, the management company must explain Tenant Selection Policy and Practice based on an individual’s criminal history how its Tenant Selection Policy and Practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest. An applicant must have the right to submit evidence of mitigating circumstances to provide for an individualized assessment of the applicant’s specific criminal history. Individualized assessment of relevant mitigating information beyond that contained in an individual’s criminal record is likely to have a less discriminatory effect than categorical exclusions that do not take such additional information into account. Relevant individualized evidence might include: the facts or circumstances surrounding the criminal conduct; the age of the individual at the time of the conduct; evidence that the individual has maintained a good tenant history before and/or after the conviction or conduct; and evidence of rehabilitation efforts. In accordance with the HUD Guidance, LHC recommends delaying consideration of criminal history until after an individual’s financial and other qualifications are verified in order to minimize any additional costs that such individualized assessment might add to the applicant screening process.
- The management company may conduct a criminal background check on each adult member of an applicant household. An adult is defined as a person 18 years of age or older.

If a criminal background report reveals negative information about a household member and admission is denied due to an individual's criminal history, the subject of the record (and the applicant, if different) will be provided a detailed notice of the proposed adverse action and an opportunity to dispute the accuracy of the record and/or appeal the determination of the property.

### Admissions Criteria

1. The housing provider must deny admission to applicants with household members who have the following criminal convictions:
  - Sex offenses subject to lifetime registration requirement; and
  - Manufacture or production of methamphetamine on the premises of federally assisted housing.
2. The housing provider may not consider the following in its determination of whether to accept or deny an applicant household:
  - Arrests;
  - Criminal charges that were resolved without conviction;
  - Juvenile records, or any expunged, vacated, or sealed records;
  - Nonviolent misdemeanor convictions;
  - Violent misdemeanor convictions and nonviolent felony convictions that are over three (3) years old at the date of screening; and
  - Violent felony convictions that are over five (5) years old at the date of screening.
3. Charges that are pending for eligible crimes at the time of screening may be considered, subject to the "individualized" assessment described in #5 below.
4. If a member of an applicant household has been convicted of a felony offense or violent misdemeanor offense during the applicable "further review period" (dated from the day of conviction), the housing provider may choose to consider that record in determining whether to accept or deny an applicant household based on the criteria in #5 below.
5. The housing provider will conduct an individualized assessment of the criminal record and its impact on the household's suitability for admission. This individualized assessment should include consideration of the following factors:
  - The seriousness of the case, especially with respect to how it would affect other residents;
  - The effects that denial of admission may have on other members of the family who were not involved in the action or failure;
  - The age of the household member at the time of the offense;
  - The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities, or a victim of domestic violence, dating violence, sexual assault, or stalking;
  - The length of time since the violation occurred, with particular weight being given to significant periods of good behavior, as well as the family's recent history, and the likelihood of favorable conduct in the future;
  - Evidence of the applicant family's participation in or willingness to participate in social service or other appropriate counseling service programs;
  - Evidence of rehabilitation, such as employment, participation in a job training program, education, participation in a drug or alcohol treatment program, or recommendations from a parole or probation officer, employer, teacher, social worker, or community leader; and
  - Tenancy supports or other risk mitigation services the applicant will be receiving during tenancy.

6. If the applicant's criminal conviction was related to his or her disability, the management company will consider a reasonable accommodation.
7. The owner shall ensure that this policy is uniformly applied to all applicants in a non-discriminatory manner and in accordance with applicable fair housing and civil rights laws.

***Disclaimer: This policy is not intended as legal advice and does not provide a legal opinion as to the matters stated. It is recommended that all property owners consult with an attorney that is well versed in fair housing law when making decisions regarding tenant selection criteria.***

## B.2 Tax Credit Program Addendum

THIS RESIDENTIAL LEASE ADDENDUM (hereinafter referred to as the "Addendum") is made and entered into this \_\_\_\_ day of \_\_\_\_, 20 \_\_\_\_, to that certain Residential Lease Agreement dated, 20 \_\_\_\_ (hereinafter referred to as the "Lease") and is entered into by and between \_\_\_\_\_ (hereinafter referred to as "Lessor") and \_\_\_\_\_ (hereinafter referred to as "Lessee") for the unit located at \_\_\_\_\_ in the Apartment Complex commonly referred to as \_\_\_\_\_ (the "Premises").

NOW THEREFORE, notwithstanding any other provisions to the contrary contained in the Lease, the parties here to covenant and agree that the Lease shall be modified and amended as follows:

1. THE PARTIES ACKNOWLEDGE AND AGREE that the Premises participates in the federal Low Income Housing Tax Credit Program. This means the provisions of Section 42 of the Internal Revenue Code of 1986, as amended, are applicable to this Lease including, without limitation:
  - a. Lessor may not terminate a lease or refuse to renew a lease except for "good cause." Good cause is defined as a serious or repeated violation of the lease by the Tenant.
  - b. Lessee is protected by the Violence Against Women Act ("VAWA"), as amended from time to time. Incidents of domestic violence, dating violence, or stalking, or criminal activity directly relating to abuse, do not constitute "good cause" for termination of the victim's tenancy.
  - c. Lessee is protected by the Fair Housing Act, as amended from time to time. Under the Fair Housing Act a tenant with disabilities is entitled to a "reasonable accommodation," or exception to normal rules and policies, when certain conditions are met as enumerated in the Act.
2. THE PARTIES ACKNOWLEDGE AND AGREE that the subject Premises are specifically identified and under the administrative control of the Section 42 Low Income Housing Tax Credit Program (hereinafter referred to as the "Program"), which limits occupants to an annual income level and provides lower rent rates to households who meet certain Program criteria (hereinafter referred to as "Qualified Households").
3. THE PARTIES ACKNOWLEDGE AND AGREE that under the Low Income Housing Tax Credit program the Lessor may not charge rent in excess of the maximum allowable rents annually revised and published by the U.S. Department of Housing and Urban Development ("HUD"). Participation in the Program allows the owner or its agent to increase the monthly rent rate based upon maximum allowable rents annually revised and published by the U.S. Department of Housing and Urban Development ("HUD"). Lessor reserves the right to increase rent rates in accordance with Program guidelines, subject to thirty (30) days written notice to Lessee, effective for the balance of said lease term.
4. THE PARTIES ACKNOWLEDGE AND AGREE that participation in the Program also requires that Qualified Households must meet certain income limitations based upon the number



of persons residing in the Premises and Lessee(s) agrees to notify Lessor immediately of any increases or decreases in the number of persons residing in the Premises.

5. THE PARTIES ACKNOWLEDGE AND AGREE that participation in the Program requires re-certification by the Lessee every twelve (12) months as required by the Program. Lessee(s) agrees to submit all necessary documentation required by the Program to Lessor for the purpose of insuring that Lessee(s) remains a Qualified Household. In the event that Lessee(s) fails to deliver such information thirty (30) days prior to re-certification deadline, Lessor reserves the right to issue a written Notice to Vacate to Lessee(s). Lessee has the right to provide the requested documents and thereby correct the default at any time before a judgment of eviction is rendered. Lessee acknowledges that he/she has received the information on the Program re-certification and understands such requirements.
6. THE PARTIES ACKNOWLEDGE AND AGREE that participation in the Program is limited to specific restrictions with respect to students and that qualification to remain a Qualified Household is at all times dependent upon the household meeting all student status requirements. Should Lessee(s) fail to meet these requirements at any time, Lessee(s) will be deemed an unqualified household and will be subject to immediate eviction and shall be issued a written thirty (30) day notice to vacate. Lessee(s) agrees to notify Lessor immediately of any change in student status by any member of the household.

Except as otherwise modified and amended herein, all other terms and conditions shall remain in effect under the original lease. This addendum is enforceable by the parties as part of the lease agreement. To the extent that any portion of this addendum conflicts with the lease agreement, this addendum controls.

LESSOR:

By:

Title:

Date:

LESSEE(S):

By:

Title:

Date:

**APPENDIX C**

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**Approved Forms**



**SCHEDULE II (A) - LOW-INCOME UNIT DETERMINATION COMPLIANCE REPORT UNIT STATUS  
REPORT INSTRUCTIONS**

This report reflects the property's occupancy on: Enter the date of the report, as requested by the LHC.

PROJECT NAME: Enter the name of the project.

Project TC#: If the project has LIHTCs, enter the assigned Tax Credit number, i.e., 88-07.

BIN #: If the project has LIHTCs, enter the assigned Building Identification Number, i.e., LA88-00033.

Project HOME #: If the project has HOME funds, enter the HOME number assigned by the LHC. If you do not have HOME funds, simply draw a line through this space.

COLUMN A: Enter the number of the unit. Each unit number should be listed in this column.

COLUMN B: Enter the date of the resident's move-in. If the unit is vacant, enter the move-out date of the previous tenant.

COLUMN C: Enter the last name of the resident(s) listed on the lease. If the unit is vacant, enter "vacant."

COLUMN D: Enter the gross annual income for the household.

COLUMN E: Enter the total amount of rent paid by the tenant.

COLUMN F: Enter the amount of the utility allowance for this unit.

COLUMN G: Enter the total Housing Assistance Payment received by the owner.

COLUMN H: Enter the total number of bedrooms in the unit.

COLUMN I: Enter the floor space square footage of the unit.

COLUMN J: Enter the most recent certification date of the Tenant Income Certification.

COLUMN K: Indicate with "Y" if household is a re-certification.

COLUMN L: Enter the number of people living in this unit.

COLUMN M: Use the Unit Qualification Key to indicate the occupancy requirement that the household meets. If the project has LIHTCs, enter "X50", "X60" or "OI" to indicate if the household satisfies the 50% or 60% income requirement or is over-income (over 140% of the income requirement).

If the project has HOME funds, enter "A", "B", "C" or "D" to indicate if the household satisfies the 50%, 60% or 80% income requirement or is over-income (over the 80% income requirement).

If a project has both LIHTCs and HOME funds, indicate which units satisfy the 40/50 set-aside by placing "A" in the HOME column and leaving the LIHTC column blank.

COLUMN N: If Special Needs points were awarded during the application process, indicate which Special Needs category the unit satisfies, per the Unit Qualification Key.

## TENANT INCOME CERTIFICATION

Property Name: \_\_\_\_\_ Unit #: \_\_\_\_\_  
 (Transfer from Unit # \_\_\_\_\_)  
 Tax Credit #: \_\_\_\_\_ HOME #: \_\_\_\_\_ FDIC# \_\_\_\_\_

Effective Date: \_\_\_\_\_

### PART I: HOUSEHOLD COMPOSITION AND INCOME

*(To be completed by owner/manager)*

Ending Date: \_\_\_\_\_

#### A. Household Composition - (List all members in household including minors)

1. Name (Last, First)	Age	2. Total # of Persons in Household	3. (For LIHTC Properties Only) # of Full-Time Students in Household
A. _____	_____		<b>If Box 2 = Box 3, then student certification must be attached</b>
B. _____	_____		
C. _____	_____		
D. _____	_____		

#### B. Asset Information

Household Member	Asset Description	Total Cash Value	Income from Assets
A.			
B.			
C.			
D.			
4. Total Net Value of Assets		4. \$	
5. Total Actual Asset Income			5. \$
6. If line 4 is greater than \$5,000, multiply line 4 by passbook savings rate and enter result here; otherwise, leave blank. Passbook savings rate = _____%			6. \$

#### C. Annual Income Information

Household Member	a. Wages/Salaries	b. Benefits/Pensions	c. Public Assistance	d. Other Income	e. Asset Income
A.					Enter the greater of lines 5 or 6 in Box e.
B.					
C.					
D.					
7. Totals	a.	b.	c.	d.	e.
8. Enter total of items 7a. through 7e. This is Annual Income.					8. \$

**WARNING:** Section 1001 of Title 18 of the U.S. Code makes it a criminal offense to willfully falsify a material fact or make a false statement in any matter within the jurisdiction of a federal agency.

<b>Unit #:</b> _____ <b>Household Name:</b> _____ <b>Annual Income:</b> _____
---

**PART II: HOUSEHOLD CERTIFICATION**

I/We certify that the information presented in Part I of this form is true and complete to the best of my/our knowledge and belief. I/We consent to the disclosure of such information to the Federal or State agency with oversight of the program(s), and to the Louisiana Housing Corporation in its capacity to monitor the property’s compliance with applicable program requirements. I/We under that this certification is part of the application process and does not guarantee occupancy.

\_\_\_\_\_  
*(Signature - Head of Household)* \_\_\_\_\_ *(Date)* \_\_\_\_\_ *(Signature - Co-Head of Household)* \_\_\_\_\_ *(Date)*

\_\_\_\_\_  
*(Signature - Household Member over 18)* \_\_\_\_\_ *(Date)* \_\_\_\_\_ *(Signature - Household Member over 18)* \_\_\_\_\_ *(Date)*

**PART III: ELIGIBILITY DETERMINATION**

**A. Type of Certification**

~ Initial Certification     ~ Recertification
---

**B. Applicable Programs and Income Status**

Mark the program(s) listed below (a. through d.) for which this household’s unit will be counted toward the property’s occupancy requirements. Under each program marked, indicate the household’s income status as established by this certification/recertification.

a. LIHTC ~  <i>Income Status</i> ~ Income Eligible ~ ≤ 50% AMI ~ ≤ 60% AMI ~ Over Income**	b. HOME ~  <i>Income Status</i> ~ ≤ 50% AMI ~ ≤ 60% AMI ~ ≤ 80% AMI ~ Over Income**
** Upon recertification, this household was determined to be over-income according to the eligibility requirements of the program(s) marked above.	

**C. Unit Information**

a. Tenant Paid Rent: _____	b. No. of Bedrooms: _____
c. Housing Assistance Payment: _____	d. Move-in Date: ____/____/____
e. Utility Allowance (U.A.): _____	f. Source of U.A.: <u>PHA/RD/HUD/Local Est.</u>

**PART IV: OWNER CERTIFICATION**

I have verified the information presented in Part I of this form is in accordance with the requirements of the programs(s) marked in Part III-B and the provisions of any applicable deed restrictions. I possess the documentation necessary to support this certification/recertification. To the best of my knowledge, the information presented on this form is complete and accurate.

\_\_\_\_\_  
*(Signature of Owner or Authorized Representative)* \_\_\_\_\_ *(Date)*

\_\_\_\_\_  
*(Printed Name)* \_\_\_\_\_ *(Printed Title)*

**WARNING:**     Section 1001 of Title 18 of the U.S. Code makes it a criminal offense to willfully falsify a material fact or make a false statement in any matter within the jurisdiction of a federal agency.

## TENANT INCOME CERTIFICATION INSTRUCTIONS

### PART I: HOUSEHOLD COMPOSITION AND INCOME

#### A. Household Composition

In Box 1, list each occupant of the household, including minors, and their ages.

In Box 2, enter the total number of persons in the household.

In Box 3, if your property has Tax Credits, enter the number of full-time students in the household. If the number of full-time students equals the total number of persons in the household, complete the Low- Income Housing Tax Credit Certification of Student Eligibility.

#### B. Asset Information

For each household member listed in PART I-A, Item 1, describe each asset, the cash value of each asset and the income, if any, from each asset, with the alphabet corresponding with person's name.

In Box 4, enter the net value of all assets.

In Box 5, enter the asset income.

In Box 6, if Box 4 is greater than \$5,000, multiply by passbook saving rate of 2.0 and enter results. If not, then leave Box 6 blank.

#### C. Annual Income Information

For each household member listed in PART I-A, Item 1, enter the total anticipated income of each member, with the alphabet corresponding with person's name.

In Box 7a through 7e, enter the total of each income type.

In Box 8, enter the total of Box 7a through 7e. This is Annual Income.

### PART II. HOUSEHOLD CERTIFICATION

The head of household, co-head, if any, and each household member age 18 or older must certify that the information provided in PART I is complete and accurate by signing and dating the TIC. For move-ins, it is recommended that the TIC be signed no earlier than 5 days prior to the effective date of the certification.

### PART III. ELIGIBILITY CERTIFICATION

In Box A, indicate if certification is initial or a recertification.

In Box B, mark the programs for which the unit will be counted toward the property's occupancy requirements. Under each program marked, indicate the household's income status as established by this certification/recertification.

In Box C, Item a, enter the amount of rent paid by the tenant. In Item b, enter the number of bedrooms in the unit. In Item c, enter the amount of the Housing Assistance Payment. In Item d, enter the move-in date. In Item e, enter the amount of the utility allowance. In Item f, circle the source of the utility allowance.

### PART IV. OWNER CERTIFICATION

The owner or an authorized representative must certify that information presented in PART I is in accordance with requirements of the programs indicated in PART III-B and the provisions of any applicable regulatory agreements, that they possess the necessary documents to support the certification/recertification and that the information presented is complete and accurate, to the best of their knowledge by signing and dating the TIC immediately following execution by the resident(s).

### Supplement to Tenant Income Certification

This information is optional. However, if the property provides "Special Needs" housing, indicate the age of the tenant and the special needs category which is applicable. This will aid in monitoring compliance with Special Conditions of the regulatory agreement.

# Louisiana Housing Corporation

## ZERO INCOME CERTIFICATION

(To be completed by adult household members only, if appropriate)

Household Name: \_\_\_\_\_ Unit No. \_\_\_\_\_

Development Name: \_\_\_\_\_

1. I hereby certify that I do not individually receive income from any of the following sources:
  - a. Wages from employment (including commissions, tips, bonuses, fees, etc.);
  - b. Income from operation of a business;
  - c. Rental income from real or personal property;
  - d. Interest or dividends from assets;
  - e. Social Security payments, annuities, insurance policies, retirement funds, pensions, or death benefits;
  - f. Unemployment or disability payments;
  - g. Public assistance payments;
  - h. Periodic allowances such as alimony, child support, or gifts received from persons not living in my household;
  - i. Sales from self-employed resources (Avon, Mary Kay, Shaklee, etc.);
  - j. Any other source not named above.
  
2. Check (a) or (b), as applicable:
  - (a) I have no income of any kind at this point in time and do not anticipate income from any source within the next 12 months.
  - (b) I am not presently employed, but anticipate becoming employed within the next 12 months.

Based upon my educational background, skills, and past work experience, and with adjustments to reflect circumstances anticipated within the next year, I anticipate earning \$ \_\_\_\_\_ over the next 12 months.

In support of this estimate, I have submitted:

- Most recent year's tax return, or
- Previous job and salary history, or
- Other supporting documentation

3. Please explain the source of funds you will be using to make your rent payments: \_\_\_\_\_

Under penalty of perjury, I certify that the information presented in this certification is true and accurate to the best of my knowledge. The undersigned further understand(s) that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of a lease agreement.

\_\_\_\_\_  
Signature of Applicant/Resident

\_\_\_\_\_  
Printed Name of Applicant/Resident

\_\_\_\_\_  
Date

**WARNING:** Section 1001 of Title 18 of the U.S. Code makes it a criminal offense to willfully falsify a material fact or make a false statement in any matter within the jurisdiction of a federal agency.



# Certification of Unit Transfer

(For use when transferring households when at least one unit is a tax credit unit)

Do not use this form when transferring between buildings that are not part of the same multiple-building project as identified on IRS forms 8609. This is considered a move out and a new move-in and the household must initially qualify. Do not use this form when a partial household moves to a new unit. Members of an existing household who move to another unit is treated as a new move-in and must initially qualify for the new unit.

Head of Household Name: \_\_\_\_\_

Date of Unit Transfer: \_\_\_\_\_

Transferring From BIN: \_\_\_\_\_ Transferring To BIN: \_\_\_\_\_

Transferring From Unit #: \_\_\_\_\_ Rent Amount: \$ \_\_\_\_\_

Transferring To Unit #: \_\_\_\_\_ New Rent Amount: \$ \_\_\_\_\_

Last (Re) Certification Date: \_\_\_\_\_ Annual Income: \$ \_\_\_\_\_

BIN and Unit # of original unit this household occupied, if different: BIN: \_\_\_\_\_ UNIT: \_\_\_\_\_

Compliance status of transferring household at time of transfer (check one):

- Not a Section 42 household (market rate)
- First Section 42 household to qualify unit after Placed in Service (month from \_\_\_\_\_ to \_\_\_\_\_)
- Section 42 household (qualified tax credit unit)
- Section 42 household (qualified tax credit unit subject to the Available Unit Rule) with recertified income over 140% If transferring to a different building, the newly occupied unit will be considered non-qualifying, or a market rate unit.

Compliance status of vacant unit to which household is transferring (check one):

- Not a Section 42 unit (market rate)
- Qualified vacant unit (Section 42 household was previous occupant)
- Designated Section 42 unit never occupied by qualified household (month from \_\_\_\_\_ to \_\_\_\_\_)

**Remember: units swap status when the household lease is transferred. Since a household can qualify only one unit for Section 42 status, it is important to note carefully any transfers between units where at least one of the units has never been occupied by a qualified household. If a household with recertified income that exceed 140% of the applicable income limit transfers to a new unit in a different building, the newly occupied unit is considered a market unit.**

**Place a copy of this form in each respective unit file and report a unit transfer in WCMS.**

Notes: \_\_\_\_\_

Manager signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print your name: \_\_\_\_\_ Title: \_\_\_\_\_

# STUDENT STATUS AFFIDAVIT

**TENANT/APPLICANT:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**PROPERTY NAME:** \_\_\_\_\_

**UNIT NUMBER:** \_\_\_\_\_

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**Please check as applicable**

- No members of the household are currently full or part-time students, and no members of the household anticipate becoming full or part-time students within the next twelve (12) months (including school-age children).
  
- The following household members are full-time students or anticipate becoming full-time students within the next twelve (12) months (including school-age children).


**To be completed only if the household is entirely, or anticipates being entirely, comprised of full-time students:**

- At least one member of the household receives assistance under Title IV of the Social Security Act, i.e. TANF payments. (Office Personnel: Attach a verification from the agency administering the grant.)
- At least one member of the household is currently enrolled in a job-training program that receives assistance under the Job Training Partnership Act (JTPA) or is funded by a state or local public agency. (Office Personnel: Attach a verification from the agency administering the program.)
- The head of household is a single parent with children and neither the parent nor the children is the dependent of another individual. (Office Personnel: Attach a signed copy of the most recent signed tax return reflecting the dependent status.)
- At least one member of the household is married and filing a joint federal tax return. A married couple that is entitled to file a joint tax return, but has not filed one, still satisfies the exception under IRC 42(i)(3)(D)(ii)(II). (Office Personnel: Attach a copy of the couple's actual marriage certificate and a signed copy of their latest joint income tax return.)
- A student previously under the care and placement responsibility of the State's Agency (whom is responsible for administering a plan under part E of the Title IV of the SS Act) must be coming directly out of foster care AND must meet the definition of Foster Care under 45 CFR 1355.20.
- None of the above is applicable.

I/We hereby certify that the statement above is true and complete to the best of my/our knowledge.

\_\_\_\_\_  
(Signature of Applicant/Resident)                      (Date)

\_\_\_\_\_  
(Signature of Applicant/Resident)                      (Date)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Signature of Applicant/Resident)                      (Date)

\_\_\_\_\_  
(Signature of Applicant/Resident)                      (Date)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Name)