Georgia Department of Community Affairs

Low Income Housing Tax Credit Program Compliance Manual Revised March 2019

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Introduction

The LIHTC program is an indirect Federal subsidy used to finance the development of affordable rental housing for low-income households. The Georgia Housing and Finance Authority (GHFA) is authorized to allocate and issue low income housing credits under Section 42 of the Internal Revenue Code of 1986, as amended, to increase the supply of affordable housing in Georgia communities. The Georgia Department of Community Affairs (DCA), a legislatively created executive branch of State government, administers the housing programs of GHFA. DCA is the agency responsible for the administration and monitoring of Low Income Housing Tax Credits for the state of Georgia.

The mission of the Georgia Department of Community Affairs Agency (DCA) is to partner with communities to help create a climate of success for Georgia's families and businesses. In order to achieve this mission, DCA seeks to promote and ensure the availability of decent, safe, energy efficient, and affordable housing to low and moderate- income households.

This manual has been developed to assist recipients of Federal and State Tax Credits in maintaining a multi-family rental property during the compliance and extended use periods. **This manual is not a substitute for the requirements of the Internal Revenue Code (I.R.C.) Section 42 pertaining to Tax Credits.** Compliance with the IRS and HUD requirements are the sole responsibility of the owner of any building for which Tax Credit or HOME funds have been allocated.

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

In January 2007, the Internal Revenue Service (IRS) released its Guide for Completing Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition (8823 Guide), updated it in October, 2009, and again in January 2011. The 8823 Guide was not intended to change any Section 42 rules or policies, but to provide definitions of what IRS considers "in compliance" and for consistency in reporting "out of compliance," and "back in compliance," on IRS Form 8823.

DCA's compliance, monitoring, and reporting policy and procedure are reflective of instructions in the 8823 Guide. This manual has not been reviewed or approved by the

Internal Revenue Service (IRS) and should not be relied upon for interpretation of federal income tax legislation or regulations.

Background and Overview

Section 42 (m)(i)(B)(iii) of the Internal Revenue Code (Code) requires housing credit agencies to include in their Housing Tax Credit Allocation Plan a procedure to monitor all tax credit projects for compliance with the requirements of Section 42, the Low Income Housing Tax Credit Program (LIHTC), throughout the compliance period.

An allocating agency must have a procedure for monitoring compliance with the provisions of the Code and notifying the Internal Revenue Service (IRS) of any noncompliance of which it becomes aware whether or not it is corrected. The monitoring requirements became effective on January 1, 1992, were amended on January 14, 2000, and apply to all tax credit projects, even if the projects received an allocation prior to 1992. GHFA, as the state allocating agency, is authorized by the Code to charge a reasonable fee to cover the costs of compliance monitoring. The IRS has issued final regulations, Income Tax Regulation 1.42-5 ("1.42-5"), relating to the requirements for compliance monitoring.

The purpose of this manual is to set forth the procedures to be followed by DCA and the owners of tax credit projects in order to comply with the requirements of Section 42. The compliance monitoring requirements are subject to modification by the IRS and income determination requirements are subject to modification by HUD. DCA will review this manual annually to determine if revisions are needed.

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

It is the responsibility of the owner/manager to ensure that they are using the most current version of all program documents and forms. Federal agencies such as HUD and the IRS frequently update materials. DCA makes every effort to post these changes to our website in a timely manner. To keep abreast of all of the changes, the owner/manager should check the HUD, IRS and DCA websites on a regular basis.

Tax Exempt Bond Projects. Some tax credit properties receive their allocation of credits through the use of tax-exempt bonds. DCA will monitor developments that received an allocation through the issuance of tax-exempt bonds, except where the bonds were issued in a sub-allocator jurisdiction. In those cases, the sub-allocator will be responsible for compliance monitoring unless other arrangements are made. Tax-exempt bond developments must comply with the same IRS requirements and LIHTC compliance monitoring procedures as non-tax exempt bond developments.

Chapter 1 – Program Summary

The following is a brief summary of the requirements of the tax credit program. It is not intended to be detailed or comprehensive.

1.1 Occupancy Requirements

Projects eligible for housing tax credits must meet low-income occupancy threshold requirements known as the minimum set-aside.

Two options are available for the minimum set aside requirement:

1. No less than 20% of the housing units must be set aside for tenants whose incomes are 50% or less of the area median income; or
2. No less than 40% of the housing units must be set aside for tenants whose incomes are 60% or less of the area median income.

Once the minimum set-aside is selected, the option **cannot** be changed.

The IRS form 8609 is issued to document the housing credit allocation from DCA (the housing credit agency). Each building is considered a separate project under IRC Section 42(g)(3)(D), and the minimum set-aside applies separately to each building, unless the owner elects to treat buildings as a multiple-building project. If the owner elects to treat buildings as a multiple building project, the minimum set-aside and other project rules apply to all buildings with this election. Owners identify the building(s) in a multiple-building project by attaching a statement to the owner's first-year tax return including IRS Form 8609, line 8b. This election also determines procedures for unit transfers, (See chapter 5.12, Project Rental Requirements, unit transfers).

Rental agents or managers should confirm the set-aside that was established by the building owner at the time the set-aside option was made (the election is made on form 8609, line 10c for the first year of the credit period), to ensure continued compliance.

Owners may elect additional state-established set-aside requirements (such as additional rent restrictions, serving certain targeted populations, etc.) as a condition of obtaining credits. These may be reflected in the allocation documents, which include the Application, Carryover Agreement, and Declaration of Land Use Restrictive Covenants. If such additional set-asides are elected, they must be maintained throughout the compliance period and extended use period (unless modified by the state HFA), and will be monitored at the same time as, and in a manner similar to, the Section 42 requirements.

1.2 Rent and Income Requirements

The U.S. Department of Housing and Urban Development (HUD) is required by law to set income limits that determine the eligibility of applicants for housing programs, including the Tax Credit (Section42 program. HUD annually publishes median income figures for all Georgia counties, and DCA uses these figures to calculate the maximum allowable rents and tenant

incomes for rental units in Tax Credit projects.

The rent for each unit and established limits are based upon a percentage of area median income as adjusted by unit size. Maximum rents are based on tenants at maximum income paying no more than 30% of their income for housing. Maximum rents are set by the expected occupancy, regardless of the number of people who actually live in the unit. The formula for computing maximum gross rent is based on 1.5 persons per bedroom not to exceed 30% of the corresponding income election.

Due to the Housing and Economic Recovery Act of 2008 (HERA), income limits for projects funded with Tax Credits and/or financed with Tax Exempt Bonds are now calculated and presented separately from the Section 8 income limits. The Multifamily Tax Subsidy Projects (MTSPs) income limits were developed to meet the requirements established by the Housing and Economic Recovery Act of 2008 (HERA Public Law 110-289). The MTSP income Limits are used to determine qualification levels as well as set maximum rental rates for projects funded with tax credits under section 42 of the Internal Revenue Code. HERA permits the income limits for projects placed in service in 2007 and 2008 to increase over time. Beginning with the publication of FY2009 Median Family Income estimates and Income Limits, the section 8 income limits cannot be used for Tax Credit or Tax Exempt Bond properties.

Placed in Service Date

The owner must ensure that the correct limit tables are used for the property. According to HERA, the Placed in Service (PIS) date for a project determines which table to use. Projects that used income limits based on the FY2009 publication from HUD should use the higher income limits of FY2009 or the current year. See the LIHTC income and rent limit tables and instructions for which tables apply to which range of placed in service dates at the following link: http://www.huduser.org/portal/datasets/mtsp.html. Records must be maintained showing the project qualifies to use these limits.

When determining which table to use for properties with placed in service dates both before and after the income limit effective dates, also consider the following:

- The earliest PIS date for a building governs.
- Under Section 42, each building is considered a separate project unless the owner elects to treat buildings as a multiple-building project. The multiple-building election is made by the owner on line 8b in Part II of IRS form 8609. However, since IRS form 8609 is typically issued well after the placed in service date, owners of properties with buildings placed in service both before and after the publication of new limits must determine what this election will be and which buildings are part of the project. The Owner must document this determination in the property's records, and when completing Part II of form 8609, the election must be consistent.
- The earliest PIS date for any building that is part of a multiple-building project determines which table will be used by all of the buildings that are part of that multiple building project. Line 8b on form 8609 is or will be checked "yes" and owner has identified the buildings that will be part of the multiple-building project.
- If buildings are not part of a multiple-building project, then each building may us

a different table depending on their respective placed in service dates. Line 8b is or will be checked “no” and therefore each building will be treated as a separate project.

1.3 Eligible Basis

In general, the Eligible Basis of a building is the amount of all depreciable development costs that may be included in the calculation of Tax Credit housing. The eligible basis is equal to the building's adjusted basis for acquisition, rehabilitation or construction costs for the entire building, subject to certain conditions and modifications set forth in Section 42 (d). Some of the special provisions for determining eligible basis are included in Section 42 (d). The Eligible Basis, as of the end of the first year of the credit period, is reported to the IRS on Part II of the form 8609, and does not change from year to year.

1.4 Calculating the First Year Applicable Fraction

The applicable fraction is the lesser of:

- The unit fraction, which is the number of LIHTC units in a building divided by the total number of residential rental units; or
- The floor space fraction, which is the total floor space of the LIHTC units in the building divided by the total floor space of the residential rental units in the building.

To determine the applicable fraction for the first year, find the low-income portion as of the end of each full month that the building was in service during the year. Add these percentages together and divide by 12 (per instructions on IRS Form 8609 and 8609-A). Note that the applicable fraction must be calculated for both the unit and floor spacefraction.

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

- Units that have never been occupied or are occupied by a nonqualified household cannot be included in the numerator, but must be included in the denominator.
- Vacant units that were last occupied by a nonqualified household cannot be included in the numerator, but must be included in the denominator.
- Units not suitable for occupancy, including tax credit units being rehabilitated in the first year of the credit period, cannot be included in the numerator, but must be included in the denominator.
- Common space units (units for FT manager, FT maintenance or security – See Chapter 5), are not included in either the numerator or denominator.

1.5 Qualified Basis

Qualified basis is the portion of the eligible basis applicable to Housing Tax Credit units in a building. Qualified Basis is the product of a project's Eligible Basis multiplied by the Applicable Fraction. The original qualified basis is determined as of the last day of the first year of the credit period and is reported to the IRS on Part II of Form 8609.

1.6 Claiming Credits

Once a property is placed in service, the tax credits are usually claimed over a 10 year period and are based on a percentage of the qualified costs of the building. This time period is known as the credit period. The applicable rates are 9 percent for new construction and substantial rehabilitation and 4 percent for buildings with federal subsidies and for acquisition (with the rehabilitation of existing buildings). In order for an existing building to qualify for the credit in connection with substantial rehabilitation, there must be a period of at least 10 years between the date of acquisition and the date the building was last placed in service. In order to claim the full tax credits awarded, the project must satisfy specific low-income housing compliance rules throughout the compliance period and the extended use period, which is at least 30 years.

1.7 Compliance and Extended Use Period

All developments receiving a credit allocation must comply with eligibility requirements for a period of 15 years beginning with the first taxable year of a building's credit period. This is typically referred to as the “compliance period”.

Extended Use Period - All developments receiving a credit allocation after December 31, 1989, must enter into a Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits with DCA at the time a final allocation of credit is issued, which requires developments to comply with eligibility requirements for a minimum additional 15 years beyond the 15-year compliance period for a total of 30 years. This is typically referred to as the “extended use period.”

See Chapter 9, “Compliance and Monitoring After Year 15” for details on requirements in the extended use period.

1.8 Outline of DCA Compliance Process

DCA is responsible for establishing compliance monitoring procedures and will report instances of non-compliance, whether corrected or uncorrected to the Internal Revenue Service (IRS) using IRS form 8823. Monitoring is an on-going activity that extends throughout the Extended Use Period, which is a minimum of 30 years. Please note, DCA inspections are not the same as an IRS audit. Compliance with Tax Credit regulations is the responsibility of the Owner. Owners are urged to seek legal counsel and/or tax advice when establishing management and accounting practices for their Tax Credit projects. Refer to the IRS 8823 Audit Technique Guide revised January 2011 for additional compliance monitoring requirements.

1.9 Owner's Responsibility

Each owner has chosen to utilize the LIHTC Program to take advantage of the tax benefits provided. In exchange for these tax benefits, certain requirements must be met.

Prior to issuance of a final tax credit allocation, the owner must certify to the total project costs and provide an audit of such prepared by an independent Certified Public Accountant. The owner must also certify that all Program requirements have been met. Any violation of the requirements of the Program could result in the loss of tax credits to the owner.

The owner is responsible for compliance with the Code. Owner must take any lawful action to comply fully with the Code and with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury, or the Internal Revenue Service, (IRS) or the Department of Housing and Urban Development (HUD) from time to time pertaining to Owner's obligations under Section 42 of the Code. Any and all financial consequences to the owner as a result of noncompliance, whether identified by DCA or the IRS, will be the responsibility of the owner.

Successful operation of a LIHTC development is management intensive and the owner is responsible for ensuring that the project is properly administered. Thorough understanding of LIHTC requirements and compliance monitoring procedures requires training of owners and managers. This training should occur before a development is occupied and should be provided to the on-site property management staff. At a minimum, such training should cover key compliance terms, qualified basis rules, determination of rents, tenant eligibility, file documentation, available unit procedures and unit vacancy rules, agency reporting and record retention requirements, and site visits. Continuing education each year or at a minimum every other year is strongly recommended in order to keep up with regulatory and procedural changes.

DCA is committed to providing training to the participants in the LIHTC and HOME programs. Periodically, DCA will offer training courses on basic and advanced principals of the Tax Credit Program. A representative for the owner/general partner of a funded project is required to successfully complete a compliance-training seminar prior to the beginning of lease-up. The training may be sponsored by DCA or other organizations which provide Low Income Housing Tax Credit (LIHTC) training. The owner of a Tax Credit property may be required to submit proof

of the Tax Credit training prior to the project's application for 8609's.

1.10 Noncompliance

If the management agent and/or the owner determines that a building or entire project is not in compliance with program requirements, DCA must be notified immediately. The management agent and/or the owner must formulate a plan to bring the project back into compliance, and advise DCA in writing of such a plan. The owner will be responsible to confirm through documentation to DCA as the plan is implemented and completed as planned.

Chapter 2 – IRS Reporting Requirements

The IRS and DCA require owners to file specific forms for compliance and reporting purposes. Failure to submit required forms as outlined in this manual to either the IRS or DCA as appropriate will constitute non-compliance and may make the owner subject to recapture or ineligible for credit.

2.1 Low Income Housing Allocation Certification (IRS Form 8609)

One IRS Form 8609, Low Income Housing Allocation Certification ("8609") will be issued by DCA for each building within a project.

Note: If allocations were issued in multiple years, a separate 8609 will be issued for each year's allocation. If rehabilitation and acquisition credits are issued on the same building, the "acquisition" and "rehabilitation" will receive separate 8609 forms.

Part I of the form 8609 will be completed by DCA and sent to the owner after the project is placed in service and all documentation required by DCA is reviewed and approved. DCA files the original with the IRS for their records to compare with the taxpayer's return.

The owner completes Part II and files the Form(s) 8609 with the IRS with an original signature in Part II, for the first Taxable Year in which the credit was claimed. See the instructions on IRS Form 8609 and 8609-A for details.

Owners should consult with their legal and/or tax advisors for advice on completing and filing the IRS tax forms. DCA cannot give legal or tax advice on the filing or completion of tax forms since that area is out of its jurisdiction.

Part I of form 8609 is to be prepared **by DCA only**. If DCA becomes aware that an owner or its agent has filed a self-prepared 8609 with the Internal Revenue Service, DCA reserves the right to determine that all parties involved will not be eligible for future participation in Georgia's LIHTC Program.

2.2 Low Income Housing Credit (IRS Form 8586)

One Low Income Housing Credit (IRS Form 8586) form must be completed to claim credits for the first Taxable Year in which credit is taken and every year thereafter in the Compliance Period.

If the owner is claiming credits on IRS Form 8586 from a flow-through entity, (such as a partnership, S corporation, estate or trust) the individual investor must complete only Part I of Form 8586.

2.3 Declaration of Land Use Restrictive Covenants

The building owner must record an approved DCA Declaration of Land Use Restrictive Covenants for Low Income Housing Tax Credits (extended use agreement) which must be in effect on or before the end of the first taxable year credits are claimed 42(h)(6)(A). Failure to timely and properly record this instrument is an event of noncompliance and will be reported to the Internal Revenue Service.

2.4 Recapture of Low Income Housing Credit Form 8611

IRS Form 8611 is used by taxpayers who must recapture tax credits claimed in previous years.

Chapter 3 – Record Keeping and Record Retention Requirements

3.1 Record Keeping

Under the record keeping provision of Reg. 1.42-5, the owner must keep records for each building in the project for each year in the compliance period proving that the units were leased to qualified households under the LIHTC program requirements showing the:

- Total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);
- Number of occupants in each LIHTC unit and the household's student status.
- Number and percentage of residential rental units in the building that are LIHTC units, offices, and management units;
- Rent charged on each residential rental unit in the building (including utility allowance) as well as any additional charges to tenants. Documentation must include tenant ledgers, leases, and utility allowances as required by Internal Revenue Service;
- LIHTC unit vacancies in the building, marketing information, and information which shows when and to whom each of the next available units was rented;
- Annual income certification of each LIHTC household;
    1. First year files must be maintained throughout the compliance period (15 years) plus an additional 6 years for a total of 21 years from the date of the tax return claiming the applicable credits, including all extensions.
    2. The files for all subsequent households must be maintained for 6 years from the date of the tax return claiming the applicable credits, including all extensions.
- Documentation to support each LIHTC Tenant's Income Certification including, but not limited to income eligibility, rent restriction, full-time student limitations, and non-exclusion of Section 8 applicants.
- Character and use of the nonresidential portion of the building included in the building's eligible basis under Section 42(d) (e.g. tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project);
- First year applicable fraction for the project at the end of the first year of the credit period.
- Eligible basis and qualified basis of the building at the end of the first year of the credit period.
- Records demonstrating that the owner has complied with any state established set-aside elected for each year of the compliance period.

3.2 Record Retention

The owner must retain the records described above for at least six (6) years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period, however, must be retained for at least six (6) years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building. See Revenue Ruling 2004-82, published August 30, 2004, which clarifies that owners may comply with the record retention provisions under IRC Section 1.42-5(b) by using an electronic storage system instead of maintaining hardcopy (paper) books and records, provided that the electronic storage system satisfies the requirements of Revenue Procedure 97-22.

Owners must maintain applicant and tenant information in a way to ensure confidentiality. Any applicant or tenant affected by negligent disclosure or improper use of information may bring civil action for damages and seek other relief, as appropriate. Owners must dispose of records in a manner that will prevent any unauthorized access to personal information, e.g., pulverize, shred, etc.

Chapter 4 – Monitoring: Certification and Review

4.1 Annual Certification

The owner must certify to DCA, under penalty of perjury, at least annually for each year of the 15 year compliance period on the Annual Owner's Certification (AOC) that the project is in compliance with the requirements of Reg. 1.42-5 paragraph (c (1), certification and review provisions. The AOC requires the owner to certify that the project meets the following for the preceding12-month period:

- The project met the minimum requirements of the 20/50 test under Section 42(g)(1)(A) of the Code; or the 40/60 test under Section 42(g)(1)(B) of the Code, as indicated on the IRS form 8609, line 10c.
- There has been no change in the applicable fraction (as defined in Section 42(c)(1)(B) of the Code) for any building in the project.
- At initial occupancy, the owner has received a Tenant Income Certification with supporting documentation and an Affidavit of Student Status from each low-income household.
- At annual recertification, the owner has received an Annual Student Certification and, where applicable, a Tenant Income Certification with supporting documentation from each low-income household.
- Each low-income unit in the project has been rent-restricted under Section 42(g)(2) of the Code.
- No tenants in low-income units were evicted or had their tenancies terminated other than for good cause and no tenants had an increase in the gross rent with respect to a low-income unit not otherwise permitted under Section 42.
- All units in the project are and have been for use by the general public and used on a non-transient basis (except for transitional housing for the homeless provided under Section 42 (i)(3)(B)(iii) of the Code).
- No finding of discrimination under the Fair Housing Act, 42 U.S.C 3601-3619, has occurred for this project. A finding of discrimination includes an adverse final decision by the Secretary of Housing and Urban Development (HUD), 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C 3616a(a)(1), or an adverse judgment from a federal court.
- Each building in the project is and has been suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or low income unit in the project.

- There has been no change in the eligible basis (as defined in Section 42(d) of the Code) of any building in the project since last certification submission.
- All tenant facilities included in the eligible basis under Section 42(d) of the Code of any building in the project, such as swimming pools, other recreational facilities, parking areas, washer/dryer hookups, and appliances were provided on a comparable basis without charge to all tenants in the buildings.
- If a low-income unit in the project has been vacant during the year, reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units were or will be rented to tenants not having a qualifying income.
- If the income of tenants of a low-income unit in the project increased above the limit allowed in Section 42(g)(2)(D)(ii) of the Code, the next available unit of comparable or smaller size was or will be rented to residents having a qualifying income.
- An extended low-income housing commitment as described in section 42(h)(6) was in effect, including the requirement under section 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f. Owner has not refused to lease a unit to an applicant based solely on their status as a holder of a section 8 voucher and the project otherwise meets the provisions, including any special provisions, as outlined in the extended low-income housing commitment (not applicable to buildings with tax credits from years 1987-1989).
- The owner received its credit allocation from the portion of the state ceiling set-aside for a project involving "qualified non-profit organizations" under Section 42(h)(5) of the code and its non-profit entity materially participated in the operation of the development within the meaning of Section 469(h) of the Code.
- There has been no change in the ownership or management of the project.

4.2 Annual Submission Requirements

The owner's certification must be submitted to DCA by the deadline stated in each calendar year, generally March 31, which may be changed with prior notice from DCA. The Annual Owner's Certification form must be submitted to DCA by the owner of the completed project(s).

When you receive the forms 8609 final allocation of Tax Credits for each low income building, a copy of theses form, with Part I and Part II completed (Part II must be signed by the owner) must be provided to DCA. They may be transmitted electronically to compliance@dca.ga.gov with subject line showing the project number, name and '8609s' (xx-xxx Property 8609s). If you answered 'yes' to Part II 8.b. (that building is s part of a multiple building project) you must provide a list of all of the buildings contained in that multiple building project. Failure to submit forms IRS Forms 8609, and 8609-A to DCA will be considered noncompliance.

4.3 Compliance Monitoring Review Requirements

State housing agencies are required to review IRC §42 projects at least once every 3 years. As a part of the review, DCA will physically inspect the property and at least 20% of the low-income units and the associated tenant files maintained for the households. All observed noncompliance is reported to the IRS on IRS form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition, regardless of whether the noncompliance has been corrected.

Owners must maintain ongoing tenant records to provide a historical record of tenant compliance for each unit. Under the DCA review process, DCA shall inspect the tenant income certification(s), the documentation to support the certification(s), and the rent record for each tenant in at least 20% of the low- income units in those projects. In addition, DCA will also conduct a physical inspection of 20% of the low-income units in the selected developments. The first inspection for new projects will occur no later than the end of the second year of the credit period. DCA reserves the right to adjust any given project's inspection schedule for any reason.

The LIHTC units to be inspected or reviewed must be chosen in a manner that will not give owners of LIHTC projects advance notice that their records will or will not be inspected. DCA may give an owner reasonable notice that an inspection will occur so that the owner may assemble records. Noncompliance that is identified and corrected by the owner prior to notification of an upcoming compliance review or inspection need not be reported to IRS.

DCA reserves the right to conduct a review of **any** building after serving appropriate notice and to examine all records pertaining to rental of tax credit units throughout the extended use period of the buildings in the project.

4.4 Procedure for Compliance Inspection

In the year a compliance inspection is due, DCA will notify the owner and request to schedule the inspection. Once the date and time of inspection has been upon, DCA will issue a notification of site visit approximately 30 days in advance of the inspection. Unless otherwise clarified, compliance violations that are uncorrected as of the date of the site visit letter may be reported on form 8823. Other information, resident selection plans, house rules, tenant ledgers, and other information must be submitted to DCA or made available upon request or at the time of the tenant file review.

The compliance inspection includes, but is not limited to, a review of: (1) at least 20% of the low-income tenant files including a full inspection and calculation of income eligibility and student status, (2) utility allowance information and other documentation, and (3) an inspection of the general physical condition of the property including 20% of the low-income units.

Compliance monitoring regulations, require housing credit agencies to conduct physical inspections consistent with standards governed by the Department of Housing and Urban Development's (HUD) Uniform Physical Conditions Standards (UPCS). These standards require properties to be in "decent, safe and sanitary condition and in good repair" and require agencies to inspect the following five major areas:

1. **Site** – The site includes components such as fencing and retaining walls, grounds, lighting, mailboxes, signs (such as those identifying the development or areas of the development), parking lots/driveways, play areas and equipment, refuse disposal, roads, storm drainage and walkways. The site must be free of health and safety hazards and be in good repair.
2. **Building exterior** – Each building on the site must be structurally sound, secure, habitable, and in good repair. The building's exterior components such as doors, fire escapes, foundations, lighting, roofs, walls and windows, where applicable, must be free of health and safety hazards, operable, and in good repair.
3. **Building systems** – The building's systems include components such as domestic water, electrical system, elevators, emergency power, fire protection, HVAC, and sanitary system. Each building's systems must be free of health and safety hazards, functionally adequate, operable, and in good repair.
4. **Dwelling units** – (i) Each dwelling unit within a building 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, 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. (ii) Where applicable, the dwelling unit must have hot and cold running water, including an adequate source of potable water. (iii) If the dwelling unit includes its own sanitary facility, it must be in proper operating condition, usable in privacy, and adequate for personal hygiene and the disposal of human waste. (iv)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.
5. **Common areas** – The common areas must be structurally sound, secure and functionally adequate for the purposes intended. The common areas include components such as, restrooms, closets, utility, mechanical, community rooms, day care, halls/corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony, basements, garages, and trash collection areas, if applicable. The common areas 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.

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 regulations and requirements related to the ownership of pets, and the evaluation and reduction of lead-based paint hazards and have available proper certifications of such.

Notwithstanding the above inspection requirements, a low-income housing project under Section 42 must continue to satisfy local health, safety, and building codes. DCA may rely on local code inspections rather than performing a separate physical inspection of the property. In addition, DCA may elect to conduct follow-up inspections under certain conditions such as severe physical and/or health and safety deficiencies, or failure to correct the identified issues in a timely manner.

4.5 Compliance Forms

Mandatory Forms

DCA mandates that certain forms and formats be utilized by LIHTC program participants. To ensure that the current form is being utilized, visit the compliance page on the DCA website. Mandatory Forms are found on the Compliance page under the Mandatory Forms link, http://www.dca.ga.gov/housing/HousingDevelopment/programs/compliance.asp

Failure to use these forms can result in state non-compliance and increased scrutiny during DCA property reviews. Penalties can include loss of future funding and diminished compliance scores as outlined in the Qualified Allocation Plan.

Suggested Forms

Suggested forms, while not required for use, are recommended as a best practice. There is no penalty for failing to use these forms provided that all the information requested or required is presented to DCA.

4.6 Corrections to Documents

Sometimes it is necessary to make corrections or changes to documents. A document that has been altered, with correction fluid or "white-out" will not be accepted by DCA. When a change is needed on a document for the LIHTC Program, the person making the correction must draw a line through the incorrect information, write or type the correct wording or number, and have all parties initial and date the change.

If corrections are needed on the Tenant Income Certification Form (TIC) you are not required to re-do the form. As long as the information on the form is clear and legible, you can place one line through the incorrect information and write in the correct information. All parties required to sign the TIC must initial and date the change(s).

4.7 Compliance Monitoring Fees

Fees are charged on all units within each project and are submitted once the project is awarded Tax Credit funding. Recipients of tax credit funding will be required to pay the entire fee covering the 15-year Compliance Period as indicated in the Qualified Allocation Plan Schedule of Fees and Deadlines.

4.8 Mitas System Upload

The Mitas system ("Mitas") is a web based property management system used by DCA to compile and monitor tenant and building data for properties receiving funding through DCA. Using Mitas makes it easier for owners and managers to prepare for DCA audits and to tract anomalies and problems with compliance at their sites. Under a congressional mandate through the Housing and Economic Recovery Act (HERA), certain tenant data (including but not limited to ethnic and demographic data) has to be submitted to HUD on an annual basis. **Thus the use of Mitas is mandatory.** The monthly deadline for updating previous month's tenant data is the 10th of each month.

Failure to enter tenant transactions into the Mitas system may result in a) audit findings, b) delay in receiving 8609s, and c) point deduction in scoring for future DCA funding

4.9 DCA Records Retention

DCA will retain records of non-compliance or failure to certify for six years beyond the filing date of the respective Form 8823. In all other cases, DCA will retain the certifications and records described in Reg. 1.42-5(e)(3)(ii) for three years from the end of the calendar year the Agency receives the certifications and records.

4.10 Liability

Compliance with the requirements of Section 42 is the responsibility of the owner of the building for which the credit is allowable. DCA's obligation to monitor for compliance with the requirements of Section 42 does not make the Agency liable for an owner's non-compliance (Reg. 1.42-5(g)).

5.1 Allowable Fees and Charges

Gross rents for the tax credit program are the rents paid by tenants (excluding federal or state rent assistance such as Section 8) plus an allowance for utility costs paid directly by tenants (except telephone and cable) and any other mandatory charges. Charges for non-optional services such as a washer and/or dryer hookup fee and built in/on storage sheds or lockers (paid month- to-month or in a single payment), excess utility charges, etc. must always be included within gross rent. The total gross rent cannot exceed the applicable Multifamily Tax Subsidy Project (MTSP) rent limits for the project. In addition, month-to- month lease fees and mandatory renter's insurance are considered rent. The fees are allowable, but the gross rent must include these amounts and the total rent charged must be below the applicable rent limit. When completing the Tenant Income Certification and reporting in MITAS, please include the fee amount as a non-optional charge with the tenant paid rent.

It is permissible to charge eligible tenants the first and last months' rent if the same is charged to other tenants.

Proposed rent increases that exceed 5% of the net tenant rent for in-place tenants require 120 days written notification of the increase to the tenant, and must include the option for the tenant to terminate the lease contract with no penalty or fees. A tenant that is properly notified of the 5% proposed rent increase, may terminate or not renew the lease using notification in accordance with the terms of the lease, and by providing a move-out date or lease-end date that is effective on or following the proposed implementation date of the rent increase.

Application fees may be charged to cover the actual cost of checking a prospective tenant's income, credit 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 project. Customary fees, normally charged, such as damage deposits and pet deposits are permissible. However, an eligible tenant cannot be charged a fee for the work involved in completing the additional forms or documentation required, such as the Tenant Income Certification.

Please Note: If tenant facilities (e.g. parking, garages, swimming pools, community rooms, laundry hookups, storage lockers, etc.) were included in the eligible basis, they must be made available to all tenants on a comparable basis, and a separate fee must not be charged for their use.

Decorating fees or fees for preparing a unit for occupancy must not be charged; owners are responsible for physically maintaining units in a manner suitable for occupancy. This includes "Unit Transfer Fees" and similar fees. If these fees are charged, DCA will request documentation from the owner which must clearly document what the fees cover and whether the fees are used for preparing a unit for occupancy.

For further information on how DCA will determine and report noncompliance, see the IRS 8823 guide: Chapter 11, Category 11g – Gross Rent(s) Exceed Tax Credit Limits.

5.2 Section 8 Rents

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 (non-optional) charges are considered in determining whether the rent exceeds the applicable gross rent maximum Sec. 42(0)(2)(B)(i). Similarly, when considering rent-to-income ratios, managers must compare income only to the tenant paid portion of the rent – not including the subsidy payment.

The portion of the rent paid by Section 8 tenants can exceed the tax credit rent ceiling as long as the owner receives a section 8 assistance payment on behalf of the resident. If no subsidy is provided, the tenant may not pay more than the maximum allowable tax credit rent. If the property has deeper rent restrictions, the tenant payment cannot exceed the applicable maximum rent for the set-aside.

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.

5.3 Minimum Lease Requirement

All tenants occupying LIHTC units are required to be certified and to execute at least an initial six-month lease. Exceptions include transitional housing programs, housing for the homeless, and single room occupancy. The six-month requirement may include free rental periods of one month or less. Succeeding leases are not subject to a minimum lease period.

The lease must reflect the correct date of move-in, or the date the tenant takes possession of the unit.

At a minimum, the lease must include:

- The legal name of parties to the agreement and all other occupants
- A description of the unit to be rented
- The date the lease becomes effective
- The term of the lease
- The total amount of rent charged for the unit, including subsidy payments
- The use of the premises
- The rights and obligations of the parties, including the obligation of the household to annually recertify its income and student status. This may be included as in an addendum to the lease.

- The signatures of all household members (18 years of age or older) and/or persons under the age of 18 who are the head of household, co-head or spouse. There may be exceptions on the signature requirements (i.e., FT student over 18 who is treated as a dependent.)
- A statement explaining that the development is participating in the Low Income Housing Tax Credit Program, and that tax credit units are under certain program regulations including income eligibility, student eligibility, and annual recertification of household income. This may also be included in an addendum to the lease.

Single room occupancy (SRO) housing must have a minimum lease term of one month. Tenants in SRO housing may share bathrooms, cooking facilities, and dining areas.

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

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

Effective March 2013, the Violence Against Women Reauthorization Act of 2013 was extended to include the Low Income Housing Tax Credit program. Owners must comply with the lease requirements found in the VAWA Reauthorization Act of 2013, Section 601. DCA highly encourages owners to use the VAWA Lease Addendum and the VAWA Certification form created by HUD. In general, owners may not construe an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking as a serious or repeated violation of a lease term by the victim or threatened victim or as good cause for denying an applicant or terminating tenancy. The owner must revise their tenant selection criteria and lease language or addendums to include the tenant protections under VAWA.

VAWA requires a notice of tenant rights to be provided to tenants at the time a person applies for housing, when a person is denied residency, when a person is admitted as a tenant of a housing unit, and when a tenant is threatened with eviction or termination. Although HUD is required to develop a notice of rights, this does not relieve the owner of their responsibility of notifying their residents of the protections under VAWA. Failure to implement the requirements under VAWA may result in a finding of non-compliance or other violation.

5.4 Household Size

The number of household members is needed in order to determine the maximum allowable income.

Minimum and Maximum Household Size.
While IRS regulations do not specifically address occupancy requirements; DCA encourages maximum utilization of space. Therefore, it is DCA's recommendation that written occupancy policies be established which reflect your management policy. Owners must confer with legal representation to ensure the requirements in the document comply with state and local laws, regulations, and financing requirements.

Factors that Affect Household Size for Income Limits.
When determining family size for income limits, the owner must include the following individuals who are not living in the unit:

- Children temporarily absent due to placement in a foster home;
- Children in joint custody arrangements who are present in the household 50% or more of the time (may need to document which parent claimed the children as dependents for purposes of filing a federal income tax return);
- Children who are away at school but who live with the family during school recesses;
- Unborn children of pregnant women. When a pregnant woman is an applicant, the unborn child is included in the size of the household, and may be included for purposes of determining the income limit for the household. A self-certification of pregnancy must be provided;
- Children who are in the process of being adopted;
- Temporarily absent family members who are still considered family members. For example, a family member who is working in another state on assignment, family members in the hospital or at a rehabilitation facility (for limited or fixed duration), or persons on active military duty. If the person on active military duty is the head, co- head, or spouse, or if the spouse or dependents of the person on active military duty resides in the unit, that person's income must be counted in full; and
- Persons permanently confined to a hospital or nursing home. The family decides if such persons are included when determining family size for income limits. If such persons are included, they must be listed on the Tenant Income Certification as "other adult family member", and the owner must include income received by these persons in calculating the total family income.

Household Size for Income Eligibility. When determining family size for establishing income eligibility, the owner must include all persons living in the unit except the following:

- A live-in aide/attendant is a person who resides with one or more elderly persons, near-elderly persons, or persons with disabilities, and who:
  - Is determined to be essential to the care and well-being of the person(s);
  - Is not obligated for the support of the person(s); and
  - Would not be living in the unit except to provide the necessary supportive services.

While a relative may be considered to be a live-in aide/attendant, they must meet the above requirements, especially the last. The live-in aide qualifies for occupancy only as long as the individual needing supportive services requires the aide's services and remains a tenant. The live-in aide may not qualify for continued occupancy as a remaining family member once the eligible resident moves out or is no longer qualified. Managers must obtain verification of the need for a live-in care attendant and should not add the attendant to the lease. The live-in aide should not be permitted to add additional occupants to the household (i.e., Live-in aide's child)

Change 4 to HUD Handbook 4350.3, published in 2013, requires foster adults and foster children to be counted as household members for both income and occupancy purposes.

5.5 Full Time Resident Manager's Unit

The full time resident or on-site manager's unit may or may not be included in determining the applicable fraction depending on the circumstances. According to IRS Revenue Ruling 92-61, the ways in which the on-site manager's unit may be considered are:

- For buildings that have been placed in service after September 9, 1992, the full time manager's unit must be treated as common space (i.e., it would not be included in either the numerator or denominator of the applicable fraction).
- For buildings that were placed in service prior to September 9, 1992, the full time manager's unit may be treated as follows:
    - The full time manager's unit is considered a qualified low-income unit (the rent is restricted to a qualifying amount and the resident manager is a certified low- income tenant); or
    - The full time manager's unit is considered common space. As common space, the unit would not be included in either the numerator or the denominator of the applicable fraction.

The owner must review the regulatory documents to confirm the status of the units.

A full time manager or maintenance person must occupy a resident manager's unit. The number of hours worked does not define full-time; rather it is defined that the manager's presence on site is reasonably required for the development. As a general guide, a manager who performs management functions such as leasing units, preparing certification paperwork, cleaning, general maintenance, preparing turnovers, collecting rent, etc., and is available to the site on an on-call basis to respond to emergencies may be considered a full-time manager under this ruling. A unit may also be occupied by a full-time security officer and be treated as common space, if reasonably required. (Revenue Ruling 2004-82, dated August 30, 2004)

In our routine review of the property, DCA will review the regulatory documents to confirm whether a common space unit is included. The unit designation and status must be updated and maintained in MITAS at all times.

Request to Add or Remove a Common Space Unit

If not previously considered as part of the allocation process, a request to add or remove an employee or security unit or to change a low-income unit to a model unit must be submitted to DCA via Project Change Request, Attention: Compliance Manager. The written request must include the following information:

1. The project name
2. LIHTC number
3. Building address,
4. BIN number
5. The occupant information (e.g., current resident manager, maintenance person, or security personnel) including the name and a description of duties and time involved.
6. The unit number
7. The number of bedrooms in the unit
8. The unit square footage

Once the request is received, a response will be provided within 30 days of receipt of the completed request and payment (if applicable). The response will acknowledge the addition or removal of the common space or model unit. An amendment to the LURC is necessary if the addition or removal of an existing common space unit is considered a permanent change. The request for a permanent change must be accompanied by a check for $1,500, as an amendment of the LURC is necessary. A temporary approval which does not require a change to the LURC may be granted for an initial period of 1 year.

For the most part, DCA will rely on the owner's determination of whether a full time unit is reasonably required by the development. However, if DCA becomes aware that the unit is not occupied by a full time manager, maintenance, or security personnel, as represented by the owner, it may become a noncompliance issue.

Note: Rent and utilities should not be charged for a common space unit if it is to be excluded from the applicable fraction. If the owner is charging rent or utilities for the unit, the Internal Revenue Service (IRS) may determine that the unit is not reasonably required by the project because the owner is not requiring the manager, maintenance or security personnel to occupy the unit as a condition of employment.

A unit occupied by a part time manager, caretaker, or maintenance person must either be treated as a qualified low-income unit or as a market rate unit. Utilities can be charged for units occupied by part-time employee units treated as low-income or market rate. If the unit is treated as a qualified low-income unit, then the household must meet all tax credit eligibility criteria. Please note that any reduction in rent in exchange for services must be considered as income.

Deployment of Military Personnel to Active Duty. 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:

- 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.
- Allow a tenant living in a low-income unit to provide care for any dependents of persons 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 in active duty. Income of the dependent (e.g., SSI benefits, military benefits) is not included in the household's income.
- 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 unit.

5.6 Utility Allowance

If a utility (other than telephone, cable television or internet) is paid directly by the tenant(s), and not by or through the owner of the building, the gross rent includes a utility allowance. If all utilities are paid by or through the owner, the utility allowance is zero.

Utility allowances are applied individually to each building in the development. Therefore, depending on the development, an owner or manager could have buildings in the same development using different utility allowances.

Utility allowances must be reviewed and updated at least annually. Regulations require that new utility allowances be used to compute rents that are due 90 days after the effective date of the new allowances. For new buildings, owners are not required to review or implement new utility allowances until a building has achieved 90 percent occupancy for a period of 90 consecutive days or the end of the first year of the credit period, whichever is earlier.

Section 42 lists the different sources of utility allowances for tax credit developments. The following is a summary of the sources of utility allowances:

- USDA Rural Housing Service (RHS) financed projects (formerly called the Farmer's Home Administration, or FmHA), or units with tenants receiving RHS assistance, must use the RHS utility allowance. The USDA-approved allowance applies even if the building is assisted by any other program or agency.

- HUD regulated buildings must use the HUD utility allowance (project based HUD financing). If neither a building nor any resident in the building receives USDA assistance, and HUD annually reviews the rents and utility allowances for the property (such as for Section 8 and Section 236 projects), the HUD-prescribed utility allowance is used. This rule does not apply to buildings that have only FHA-insured mortgages.
- Any individual apartments occupied by residents who receive HUD assistance (Section 8 Existing, etc.), must use the HUD utility allowance from the Public Housing Authority (PHA) administering the assistance. (Many Public Housing Agencies utility allowance tables for the Section 8 Program include a deduction for "elderly". This deduction can only be used at DCA funded properties that are 100% PBRA properties and which satisfy DCA's definition of Elderly.) **If no local PHA** is located in the project's jurisdiction, then the owner may elect to utilize DCA's Section 8 utility allowance.

For Section 42 buildings without RHS or HUD assistance, the following options may be used:

- A PHA utility allowance from the local housing authority administering section 8 vouchers for the area in which the property is located.
- A utility company estimate. Any interested party (including a low-income tenant, a building owner, or an agency) may request the utility company estimation of utility consumption in the building's geographic area. The estimate is obtained when the interested party receives, in writing, information from a local utility company providing the estimated cost of that utility for a unit of similar size and construction for that geographic area. Costs incurred in obtaining the estimate are borne by the initiating party. The party that obtains the local utility company estimate must retain the original of the utility company estimate and must furnish a copy to the owner and the monitoring agency. The owner of the building must make copies available to all tenants in the building. In the case of deregulated utility services, the interested party is required to obtain an estimate only from one utility company even if multiple companies can provide the same utility service to a unit. However, the utility company must offer utility services to the building in order for that company's rates to be used. The estimate should include all component deregulated charges for providing the utility service.
- An "Agency Estimate" based on actual utility usage data and rates for the building. The Housing Credit Agency (DCA) may provide an allowance. The regulation states that the owner of a project requesting such an allowance will be responsible for the costs associated with such allowance.
- A HUD Utility Schedule Model. This model can be found on HUD's website at http://www.huduser.org/portal/resources/utilmodel.html, or successor URL. Utility rates using the HUD utility model must be no older than the rates in place 60 days prior to the effective date of the utility allowance.

- An Energy Consumption Model using an energy and water and sewage consumption and analysis model. The model must at a minimum take into account specific factors including, but not limited to, unit size, building orientation, design and materials, mechanical systems, appliances, and characteristics of the building location. The utility consumption estimates must be calculated by a mechanical engineer properly licensed in the State of Georgia (with no identity of interest to the owner). The engineer and building owner must not be related within the meaning of IRC section 267(b) or 707(b), to which the engineer and building owner must certify. The owner and engineer must also certify that the model complies with the minimum requirements described above. Use of the energy consumption model is limited to a building's consumption data and local rates for the 12 month period ending no earlier than 60 days prior to the effective date of the utility allowance. In the case of new buildings with less than 12 months of consumption data, 12 months of data can be used for units of similar size and construction in the geographic area.

With the exception of HUD and RD-regulated properties, owners may combine any methodology for each utility service type (electric, water gas etc.). If the effective date of the PHA allowance is different than another methodology used (i.e. Owner's Average of Actual Consumption), there will likely be adjustments to utility allowances and, potentially, rents multiple times during the year.

Failure to maintain or provide the Utility Allowance and supporting documentation annually is considered noncompliance; without proof of the amount of the allowance, there is no way to correctly compute the rent. In addition, an incorrect utility allowance calculation may result in noncompliance for rents that exceed the tax credit rent limits.

It is the owner's responsibility to contact the appropriate organization to request current utility allowance information. DCA does not collect or maintain the various utility allowances. Unless otherwise provided for above, any costs incurred in obtaining a utility allowance are the responsibility of the owner.

Utility allowances and supporting documentation for the HUD Utility Schedule or Energy Consumption Models must be submitted to DCA at the beginning of the 90-day period before utility allowances can be used in determining the gross rent. This documentation should include the totals for each building and unit size, all source documentation used to calculate the allowances. The effective date of the utility allowance must be no later than 60 days after the rates used in the supporting documentation.

The owner must maintain and make the data upon which the utility allowance schedule is calculated available for inspection by the tenants. Records shall be made available at the resident manager's office during reasonable business hours or, if there is no resident manager, at the dwelling unit of the tenant at the convenience of both the apartment owner and tenant. The HUD Utility Schedule Model and energy consumption model must be made available to tenants no later than 90 days after the effective date.

Rents may need to be adjusted more than once in a year because the release of income limits and utility estimates may occur at different times. Any increase in the utility allowance may cause gross rent to exceed the limit. For example, assume the rent charged on an apartment is at the maximum allowable rent; if the $50 utility allowance is increased to $60, the rent paid by the tenant must be lowered by $10 in order to remain below the rent limit. The new utility allowance must be implemented within 90 days of the effective date. Any change to resident paid rent must be in conformance with respective resident leases.

5.7 Physical Requirements of Qualified Units, Suitable for Occupancy

Qualified Units rented to, or reserved for, eligible tenants:

- Must have substantially the same equipment and amenities (excluding luxury amenities such as a fireplace) as other units in the Project;
- Must be substantially the same size as other units in the Project; and
- Cannot be geographically segregated from other units in the Project.
- LIHTC units must be suitable for occupancy under Uniform Physical Conditions Standards (UPCS) and local health, safety and building codes. Units that are not suitable for occupancy, including previously qualified low-income units being rehabilitated in the first year of the credit period, are considered “out of compliance”. The noncompliance is corrected when the unit is again suitable for occupancy, and the unit’s character will be determined based on the household that occupied the unit immediately preceding the rehabilitation.

The UPCS do not supersede or preempt local health, safety and building codes. A low income housing project under Section 42 must also satisfy the local standards.

Units intended for eligible tenants must be comparable in size, location, and quality to those rented to other tenants. In the event that units rented to non-qualifying households are above the average quality standards of the units rented to LIHTC households, then the basis in the project which is used to determine the amount of tax credits must be reduced by the portion which is attributable to the excess costs of the above-standard units. This reduction in eligible basis need not occur if an election is made to exclude such excess costs pursuant to Section 42(d)(3) of the Code.

5.8 Discrimination Prohibited in Project and General Public Use

Housing tax credit properties are subject to Title VIII of the Civil Rights Act of 1968, also known as the Fair Housing Act. The Fair Housing Act prohibits discrimination in the sale, rental and financing of dwellings based on race, color, religion, sex, national origin, familial status, and disability. See 42 U.S.C. Sections 3601 through 3619. Georgia law additionally prohibits discrimination based on race, sex, religion, disability, national origin, familial status or color.

The Fair Housing Act also mandates specific design and construction requirements for multifamily housing built for first occupancy after March 13, 1991, in order to provide accessible housing for individuals with disabilities. The failure of housing tax credit properties to comply with the requirements of the Fair Housing Act will result in the denial of the housing tax credit on a per unit basis.

The Department of Housing and Urban Development (HUD) enforces the Fair Housing Act. DCA will refer complainants to the Georgia Commission on Equal Opportunity (GCEO) and/or the U.S. Department of Housing and Urban Development (HUD). Any finding of discrimination, adverse final decision by HUD, adverse final decision by a substantially equivalent state or local fair housing agency, or an adverse judgment from a federal court is a violation that DCA must report to the Internal Revenue Service.

IRS also requires LIHTC properties be otherwise available to the general public. If a residential unit is provided only for a member of a social organization or provided by an employer for its employees, the unit is not for use by the general public and is not eligible for credit under Section 42. Residential rental units either designated for a single occupational group, or through a preference for an occupational group, also violate the general public use requirements. (Treas. Reg.1.42-9(b))

Note that the General Public Use Rule was clarified on July 30, 2008, to allow occupancy restrictions or preferences that favor tenants 1) with special needs, 2) who are members of a specified group under a federal or state program or policy that supports housing for such specified group, or 3) who are involved in artistic or literary activities.

In accordance with the Violence Against Women Reauthorization Act of 2013, tenant selection criteria cannot deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault or stalking. Owners should provide to each applicant/tenant HUD form 91066 or its successor form to allow the applicant/tenant to provide information regarding his or her status as a victim of domestic violence, dating violence or stalking.

5.9 Vacant Units

If a low-income unit in a property becomes vacant, reasonable attempts must be made to rent that unit or the next available unit of comparable or smaller size to a qualifying household before any units can be rented to non-qualified households. The owner or manager must be able to document reasonable attempts to rent the vacant units to eligible tenants.

Only units that have been previously occupied by an eligible household and <u>are suitable for occupancy</u> may be included as a qualifying low-income unit for compliance 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.

Please refer to The Code and the 8823 Guide for a complete explanation of implementing the Vacant Unit rule. In addition, the IRS and DCA mandate that all units be made ready for occupancy within 30 days of the last qualified tenant vacating the unit.

Down Units Vacant units not ready for occupancy within the above stated guidelines may be considered down units and reported to the IRS on form 8823. Units with major Health and Safety violations will also be reported as such. All units and common areas must satisfy UPCS requirements.

Notice of Causality Loss DCA must be notified within 24 hours if the loss results from a major event such as fire or flood, the loss results in a household being transferred or removed from the unit for more than 48 hours, or if an occupied unit will not pass a Uniform Physical Conditions Standards inspection.

5.10 Student Eligibility

Under Section 42 Regulations, most households where all of the members are full-time students are not eligible and units occupied by these households may not be counted as LIHTC units. IRS Code Section 151(c)(4) defines a "student" as an individual, who during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins, is a full-time student at an educational organization described in IRC Sec 170(b)(1)(A)(ii). Treas. Reg. Sec. 1.51- 3(b) further provides that the five calendar months need not be consecutive.

The determination of student status as full or part-time should be based on the criteria used by the educational institution the student is or was attending.

An educational organization, as defined by IRC Sec. 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.

There are five (5) exceptions to the limitation on households where all members are full-time students. Full-time student households that are income eligible and satisfy one or more of the following conditions are considered eligible:

1. Students are married and entitled to file a joint tax return. A married couple that is entitled to file a joint tax return, but has not filed one, still satisfies the exception.
2. The household consists of a single-parent with child(ren) and the parent is not a dependent of someone else, and the child(ren) is/are not dependent(s) of someone other than a parent;

3. At least one member of the household receives assistance under Title IV of the Social Security Act (formerly Aid to Families with Dependent Children (AFDC), now known as Temporary Assistance for Needy Families (TANF); or

4. At least one member of the household participates in a program receiving assistance under the Job Training Partnership Act (JTPA) or other similar federal, state, or local laws. The school or community education department must verify that the applicant/resident is a participant in a program similar to those funded under JTPA or the Workforce Investment Act (WIA).

5. At least one member of the household was previously in foster care. "Foster care" means substitute care for children placed away from parents or guardians and for whom the state agency has placement and care responsibility. This includes, but is not limited to, placement in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the state or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is a Federal matching of any payments that are made.

In order to properly document student eligibility, all households must complete a Full-Time Student Affidavit as part of the initial certification and annually thereafter. Properties that are 100% tax credit qualified and not required to recertify income are **not** exempt from this annual requirement. This is a required form.

Verification also must be obtained, when applicable, to support the student status and the applicable exemptions(s).

Part-time students are not "students" for this section and their eligibility is not subject to special restrictions. However, verification of part time status is required for households comprised entirely of students that do not meet one of the exemptions.

5.11 Loss of Eligibility Upon Becoming a Full-Time Student

If a previously qualified LIHTC household becomes a full-time student household, the household **must** meet at least one of the above exemptions and be able to prove such status in order for the unit to remain in compliance. Under current legal interpretations of federal HTC regulations and requirements, the "available unit rule" that applies to LIHTC units with households that are no longer income eligible does not apply to student households that qualify under one of the exceptions above and later ceases to qualify. Unlike changes in income, a unit occupied by a full-time student household that does not meet or no longer meets one of the above exceptions ceases to count as a tax credit unit immediately.

5.12 Unit Transfers

Your first reference for unit transfers should be the IRS 8823 Audit Technique Guide. The IRS considers each building in a property to be a separate project unless the owner elects to treat certain buildings as part of a multiple building project. Owners make the election for multiple building projects on Part II, line 8b of IRS form 8609. Until DCA becomes aware of an owner's election, DCA will treat the property as if all buildings are separate projects.

Transfer to Different Building/Not part of the same multiple-building project. According to IRS, there is no such thing as a "transfer" between buildings that are **not part of the same multiple-building project**. If a household moves to another project within the same property, it must be reported as a move-out for the vacated unit. In order to treat the newly occupied unit as a qualified tax credit unit the household must be certified and meet initial eligibility requirements. The newly occupied unit must be reported as a new move-in.

Managers of properties containing buildings treated as separate projects must obtain copies of the owner's filed 8609's and use caution when determining if a transfer or move-out/move-in applies.

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

Transfer to Different Building/Same Project. When a household whose income is no greater than 140% of the income limit moves to a low income unit in a different building within the same project during any year of the 15-year compliance period, the vacated unit assumes the status the newly occupied unit had immediately before it was occupied by the current resident. If a household whose income exceeds 140% of the applicable income limit wishes to move to a different building in the same project, the newly occupied unit will be treated as a non- qualifying unit. Mixed income properties can rely on the most recent income certification. Properties that are exempt from income recertification requirements may allow transfers between buildings in the same project even though the household's current income is not known.

Chapter 6 – Income Determinations

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

This section of the Manual explains the procedures for determination of income. According to the Compliance Monitoring Regulations contained in Section 1.42-5 for the LIHTC Program, "Tenant income is calculated in a manner consistent with the determination of annual income under section 8 of the United States Housing Act of 1937 ("Section 8"), not in accordance with the determination of gross income for federal income tax liability."

Owners and managers should use current circumstances to project income, unless verification forms or other verifiable documentation indicate than an imminent change will occur. For guidance in this section and in determination of tenant income, the HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs, is used and is recommended as a reference guide. While the documentation requirements described in Chapter 5, Section 3 of the HUD Handbook 4350.3 are sufficient for IRC §42 purposes, the Handbook is not the authority for documentation requirements. All taxpayers are held to a documentation standard of sufficiency under Treasury Regulation §1.6001-1. Specific to determining whether a household is income qualified, Treasury Regulation §1.42-5(b) provides guidance on the documentation required to be maintained as proof of qualified households.

Tax Credit projects are both rent restricted and income restricted. Therefore **income from all required sources must be verified and included in the income calculation.** Income determination is described in 24 Code of Federal Regulations (CFR) 813.106

6.1 Initial Income Certification/Recertification

It is the owner's responsibility to create policy and procedures for screening and processing applications and selecting qualified tenants to lease a unit. DCA will not qualify or approve tenants, and cannot offer guidance on management policies, including lease or house rules. DCA is only responsible for the administration and monitoring of the affordable housing programs. The owner would need to consult with a tax accountant, attorney or other professional for specific questions regarding income certifications and processing tenant files.

The Tenant Income Certification is to be completed, signed and dated by the owner or manager and signed and dated by all adult household members (adults include persons over the age of 18 who are treated as adults because they are the head, spouse or co-head of household).

Initial Eligibility Determination. Initially, tenant eligibility is determined at the time of move-in certification (see "special instructions for newly placed in service properties with existing residents" in the **Annual Income Re-Certification** section of this chapter). Before a household takes occupancy, owners or managers must determine that the household is eligible.

Since the LIHTC Program uses special definitions for income and households, owners and managers must ensure that their application forms are used to collect the necessary information to determine tenant eligibility. The information furnished on the application should be used as a tool to determine all sources of income, including total assets and income from assets.

An application must be fully completed by the applicant in their own handwriting, unless assistance is requested or required. A fully completed application is critical to an accurate determination of tenant eligibility. The following items need to be included in the application:

- The full name and birth date of each person who will occupy the unit (legal name should be given just as it will appear on the lease and tenant income certification).
- The student status of each applicant.
- All sources and amounts of current and anticipated annual income expected to be received during the twelve-month certification period (this should include total assets and asset income from the anticipated date of move-in).
- The name of any person not listed on the application expected to move into the unit during the next 12 months.
- The signature of all applicants age 18 and older, and the date the application was completed.

The application can be obtained up to 120 days prior to the initial or annual certification. It is important to verify all income and assets as of the date of move-in. An Initial Certification that is done after the move-in date is considered late and would cause a noncompliance event.

If a tenant over the age of 18 is unable to sign the forms on time, the owner must document the reasons for the delay in the tenant file and indicate how and when the tenant will provide the proper signature.

6.2 Annual Income Re-Certification

Each year the tenant remains in the low-income unit, a re-examination or recertification must be performed. To ensure the tenant continues to remain LIHTC program eligible. Failure to prove initial eligibility and annual re-examination of continued eligibility is a finding of noncompliance and reportable on IRS form 8823

Special instructions for newly placed in service properties with existing residents.

- **Acquisition/Rehab**: For households occupying a unit at the time of acquisition, an initial TIC may be completed up to 120 days after the date of acquisition using the income limits in effect on the day of acquisition. The effective date and move-in date on the TIC is the acquisition placed in service date. This is the only exception to the general rule that all verifications must be completed prior to the effective date of the TIC. If a TIC is completed more than 120 days after the acquisition, the effective date will be the date

the last adult member of the household signs the certification. Note that the above-referenced exception to the general rule does not apply; all verifications must be no older than 120 days from the date of receipt by the owner and all verifications must be complete prior to the effective date.

- For **rehab-only properties**, the initial certification may be completed any time on or after the rehab placed in service date. The move-in date on the TIC must be no earlier than the rehab placed in service date. The effective date may be any date the owner chooses on or after the placed in service date (note that verifications must be no older than 120 days from the date of receipt by the owner and all verifications must be complete prior to the effective date).

It is important to note that even if a unit is occupied by a household that appears to be qualified, until the Tenant Income Certification is fully and properly completed and signed, the unit is treated as non-qualifying and tax credits are not available.

Properties with an existing allocation of housing tax credits that receive an additional allocation: Households determined to be income-qualified for purposes of the IRC §42 credit during the 15-year compliance period may be concurrently income-qualified households for purposes of the extended use period. As a result, as long as all §42 requirements continue to be met in the extended use period, any household determined to be income qualified at the time of move-in for purpose of the extended use agreement is a qualified low-income household for any subsequent allocation of IRC §42 credit. If the new allocation is for rehabilitation only, vacant units will continue to be treated as low-income units subject to the vacant unit rule. If the new allocation is for acquisition/rehabilitation, vacant units lose their status as low-income units until they are occupied by qualified households that are properly certified.

Enterprise Income Verification (EIV)

Owners are not allowed to use information obtained through Enterprise Income Verification (EIV) system for non-HUD programs, including Tax Credits (Section 42). If a property has both HUD programs and Tax Credits, EIV still cannot be used to verify income for Section 42, nor can it be in the Tax Credit portion of a tenant's file. For the Tax Credit initial certification of Annual Contribution Contract (ACC), Project-Based Section 8, or other HUD or Rural Development subsidized units (HUD programs), DCA will accept an annual certification but not an interim recertification effective within 120 days of the initial effective date of the certification and/or the placed in service date as applicable.

Annual Recertification

- **Mixed Income Projects**: Owners of mixed income projects are required to recertify annually as to the gross annual income of LIHTC households. Income recertification should be performed in accordance with the verification requirements for an initial certification.

  The recertification process should begin 120 days prior to the anniversary date of the previous certification. Recertifications that are done or effective after the anniversary date cause a noncompliance event.

However, if an owner sends timely notice(s) informing a tenant that annual recertification is due, but the household vacates the unit, the unit will not be considered out of compliance. Owners must document the file regarding attempts to complete the recertification by the due date and the tenant moves out of the unit. This must also be disclosed on the TIC. For further information on how DCA will review and report noncompliance, see the 8823 Guide: Chapter 5, page 2, Category 11b – Topic: "Household Vacates Unit."

- **100% Housing Tax Credit Projects***: Effective 7/30/2008, Section §142(d)(3)(A) of the Internal Revenue Code was modified to reflect the elimination of the requirement for annual recertification of household income for existing residents of projects with 100% Low-Income Housing Tax Credit units with no market units. Annual income recertifications are not required for 100% low-income projects. A project is 100% low-income when the allocation was based on all units in the project and all units (common space units are not part of the equation) are in compliance. It is absolutely essential that each initial certification in a 100% low-income project be done very carefully and thoroughly. If a tenant income certification has insufficient documentation of gross annual household income or it is determined for any reason that one or more households do not qualify, the owner must resume conducting annual recertifications until 100% of the units are back in compliance.

***Important**: IRS considers buildings to be separate projects unless owner elects to treat certain buildings as a multiple-building project. Owners make the election for multiple building projects on Part II, line 8b of IRS form 8609. Until DCA becomes aware of an owner's election, DCA will treat the property as if all buildings are separate projects. Managers of properties containing some 100% buildings and some mixed-income buildings must obtain copies of their filed 8609's and use caution when determining if 100% buildings are exempt from recertification. If the 100% buildings are part of a multiple-building project that includes mixed income buildings the 100% buildings do not qualify for the exemption. If the 100% buildings are treated as a separate project or are part of a multiple-building project that contains only 100% LIHTC buildings, then they do qualify for the exemption.

The recertification exemption applies only to the Housing Tax Credit Program. Units funded by certain other programs (e.g., HOME, Section 8, etc.) have income recertification requirements that must be separately met.

All Projects: The Student Affidavit Form and any applicable supporting documentation for exemptions, is always required annually, no later than the anniversary of the Initial Certification.

Change in Household Composition. For all properties, if there is a change in household composition within the first six (6) months of occupancy, owners or managers must certify the household as if it were a new move-in. This requirement to certify does not apply in cases of natural changes in household composition such as birth, adoption, or death, or in cases covered

under the Violence Against Women Act (VAWA). The combined household income must be at or below the applicable move-in income limit for the new household size. The purpose of this rule is to not allow the addition or removal of household members in order to "manipulate" move-in eligibility.

For mixed-income properties, after six months, the addition of a household member to an existing low-income household requires the income certification for the new member of the household, including third party verification. The new tenant's income is added to the income disclosed on the existing household's most recent tenant income certification. The household continues to be considered income-qualified; however, if the combined income exceeds 140%, owners must apply the available unit rule. Note that a certification done in conjunction with adding a household member does not "re-set" the due date for the annual recertification. The annual recertification will be due on its regular anniversary date.

For 100% LIHTC properties that are exempt from annual income recertification, the new tenant's income is added to the income disclosed on the existing household's original income certification or, if a recertification is on file because the household occupied the unit for more than a year prior to 1/1/2009 when the exemption became effective, the most current recertification.

DCA strongly recommends owners and managers screen subsequent household members in the same manner as any new household (i.e., credit check, landlord reference, etc.) prior to allowing them to occupy a unit and to add them to the lease at the time they move-in.

Decreases in family size after the first six months, do not trigger an immediate income certification. Subsequent annual income recertification will be based on the income of the remaining members of the household.

For all properties, a household may continue to add and remove members as long as at least one member of the original low-income household continues to live in the unit. Once all the original tenants have moved out of the unit, the remaining tenants must be certified as a new income-qualified household unless the remaining tenants were income qualified at the time they moved into the unit. For this reason, managers must document all decreases in household composition even where an annual income recertification is not required.

If an owner takes action to remove a noncompliant household by initiating an eviction action, the unit will not be considered out of compliance. If the household does not vacate the unit, a recertification will be required within 120 days of the determination.

Available Unit Rule. Following initial certification, an eligible household's income can increase to 140% of the maximum income level. A household whose income exceeds the maximum income level by more than 140% (an "over-income" household) will remain in compliance as long as the unit continues to be rent restricted and the next available unit or any available unit of comparable or smaller size in the same building is rented to an eligible household at the qualifying rent. The owner must continue to rent any available comparable unit to a qualified household until the percentage of low-income units in a building (excluding the over-income units) is equal to the percentage of low-income units on which the credit is based. At that point, failure to maintain the over-income units as low-income units has no immediate significance.

If any comparable unit that is available or that subsequently becomes available is rented to a nonqualified household, all over-income units for which the available unit was a comparable unit within the same building lose their status as LIHTC units; thus, comparably sized or larger over-income units would lose their status as LIHTC units.

A comparable unit must be measured by the same method the taxpayer used to determine qualified basis for the credit year in which the comparable unit became available (i.e., floor space fraction or unit fraction). An owner may consider a residential unit with similar square footage and amenities to be a comparable unit. A unit that is no longer available for rent due to a reservation that is binding under local law is not an “available unit” for purposes of this rule.

6.3 Tenant Income Certification

The Tenant Income Certification is used to certify a project's eligible households. The use of this Tenant Income Certification form is required in order to ensure the continuity necessary for accurate monitoring of these projects. The form is a legal document which, when fully executed, qualifies the applicant to live in a LIHTC unit. It is not to be used as a rental application.

After all income and asset information has been verified and computed, management personnel must prepare the Tenant Income Certification. It must be signed and dated by all household members over age 18 (and by any household members under age 18 who are treated as adults because they are the head of household, co-head or spouse) and by the owner or owner's agent at initial move-in and upon annual recertification. The effective date of the initial certification should be the move-in date. For projects receiving their credit allocation due to acquisition and/or rehabilitation and where there are existing households, the effective date of the first LIHTC certification for those existing households cannot be earlier than the first placed in service date (i.e., the acquisition placed in service date). DCA recommends that the initial Tenant Income Certification be signed no earlier than 5 days prior to the effective date and no later than the effective date. Annual recertification must be effective on or before the anniversary of the effective date of the previous certification.

A Tenant Income Certification that is unsigned, undated, or completed late - either after the date the household occupied the unit, or after the anniversary date of the previous certification, will cause the unit to be considered out of compliance until a proper and complete certification or recertification is performed. To avoid issues of noncompliance, DCA strongly advises owners and managers to certify and recertify on a timely basis.

Note: Supporting documentation (application/questionnaire, income verifications, asset verifications, student certification, etc.) is considered part of the Tenant Income Certification and must be included in the file.

Management should instruct the prospective tenant(s) to sign the Tenant Income Certification exactly as the name appears on the form. The tenant's legal name should be given and used just as it will appear on the lease. A unit does not qualify for tax credits unless the household is certified and under lease.

6.4 Annualized Income

Income determination is based on the annual gross income a household anticipates it will receive for the 12-month certification period. Verification of all sources of current and anticipated income for all household members age 18 and older, persons under the age of 18 who are treated as adults because they are the head of household, co-head or spouse, and unearned income of minor children must be obtained in order to establish that the income limits are not exceeded. Owners must convert all verified incomes to annual amounts. To annualize full-time employment, multiply:

- Hourly wages by 2,080 hours
- Weekly wages by52
- Bi-weekly wages by26
- Semi-monthly wages by24
- Monthly wages by12

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

- Hourly wages by the number of hours the individual is expected to work per week by 52. If verification shows a range of hours, use the average number of hours (i.e., verification shows 30-35 hours per week, use 32.5 hours).
- Average weekly amounts by the number of weeks the individual is expected to work.
- Other periodic amounts (monthly, bi-weekly, etc.) by the number of periods the individual expects to work.

Use an annual wage without additional calculations. For example, if the resident is paid $25,000 a year, use $25,000, whether the payment is made in 12 monthly installments, 9 installments or some other payment schedule.

Seasonal or Sporadic Income. If an eligible tenant indicates that income might not be received for the full 12 months (e.g. unemployment insurance), the owner should still determine an annual income as described below.

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

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

Unemployed Applicants. The income of unemployed applicants with regular income from any

source, such as Social Security, Pension, recurring gifts, etc., must be verified as covered previously.

6.5 Annual Income

The LIHTC Program uses HUD's definition of “annual income” as contained in the U.S. Housing Act of 1937 as amended. HUD's definition of annual income is very specific and is not simply the amount contained on tax returns.

Annual income is the gross income the household anticipates it will receive from all sources, including all net income derived from assets, during the 12-month period following the effective date of the income certification or recertification. This includes income received by all adult members of the household (18 years of age and older, including full-time students), and unearned income of minor children. In addition, persons under the age of 18 who have entered into a lease under state law are treated as adults, and their annual income must also be counted. These persons will be either the head, spouse, or co-head; they are sometimes referred to as emancipated minors.

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

Annual income has two components: Earned/Unearned income and Asset income.

Earned/Unearned income includes the following sources: gross wages and salaries including tips and overtime; gross income from social security or welfare; and payments in lieu of earnings (e.g., unemployment compensation, workers' compensation). There are certain mandated inclusions and exclusions which apply when determining earned/unearned income.

Asset income is the amount generated by bank accounts, retirement accounts, real estate, and other investments. Assets are items of value, other than necessary personal items, and are considered along with verified income to determine the eligibility of a household.

Please refer to the HUD Handbook 4350.3, Chapter 5 for a complete discussion of determining income and exclusions from income.

6.6 Income from Assets

Assets are items of value, other than necessary personal items, and are considered along with verified income to determine the eligibility of a household. Assets of all household members, including minors, foster children, and foster adults must be considered.

The asset information (total value and income to be derived) must be obtained at the time of

application or recertification. The applicant will affirm that this information is correct by executing the Tenant Income Certification.

Third party verification of assets is required when the combined value of assets exceed $5,000. An owner may satisfy the third party documentation requirement for a tenant's income from assets if the tenant submits to the owner a signed statement that the value of the combined assets is less than $5,000. The DCA's Asset Verification form may be used for this procedure.

6.7 Household Assets Do Not Include

- Necessary personal property including clothing, furniture, cars, etc.
- Interests in Indian trust land.
- Term life insurance policies.
- Equity in the cooperative unit in which the family lives.
- Assets that are part of an active business (not including rental of properties that are held as investment and not a main occupation).
- Assets that are not effectively owned by the applicant. That is, when assets are held in an individual's name, but the assets and any income they earn accrue to the benefit of someone else who is not a member of the household, and that other person is responsible for income taxes incurred on income generated by the assets.
- Assets that are not accessible to the applicant and provide no income to the applicant (i.e., 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). Nonrevocable trusts are not covered under this paragraph.

6.8 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.

6.9 Instructions for Valuing Assets

In computing assets, owners must use the cash value of the asset; that is, the amount the family or household would receive if the asset were converted to cash. Cash value is the market value of the asset minus reasonable costs that were or would be incurred in selling or converting the asset to cash. Expenses which may be deducted include:

- Penalties for withdrawing funds before maturity;
- Broker/legal fees assessed to sell or convert the asset to cash; and
- Settlement costs for real estate transactions.

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

Owners must count assets disposed of for less than fair market value during the two years preceding certification or recertification. The amount counted as an asset is the difference between the cash value and the amount actually received, if the difference is more than $1,000. If a tenant has sold his/her home or disposed of other assets within the past two years for less than fair market value, request:

- Copies of closing documents (HUD-1, settlement statement) showing the selling price, the distribution of the sales proceeds and the net amount to the tenant.
- Divestiture of Assets Verification identifying the disposed-of asset, the cash value and amount actually received.

If net family/household assets exceed $5,000.00, the annual income must include the greater of:

- The actual income from assets; or
- An imputed income from assets.

Owners must determine estimated asset income by multiplying total net assets by the interest rate specified by HUD.

6.10 General Income Verification Requirement

All income and asset sources must be disclosed on the eligibility application and verified. A good application must be used as the basis for determining what verifications will be necessary. The application, along with all supporting documentation and the Tenant Income Certification, will be reviewed by DCA staff during a tenant file review.

The following describes the types of third-party verification in order of acceptability:

Third-party verification from source (written): An original or authentic document generated by a third party source that is dated within 120 days from the date of receipt by the owner. Such documentation may be in possession of the tenant (or applicant), and commonly referred to as tenant-provided documents. These documents are considered third-party verification because they originated from a third-party source.

Examples of tenant-provided documentation that may be used includes, but is not limited to: pay stubs, payroll summary report, employer notice/letter of hire/termination, SSA benefit letter, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices.

1. **Written documentation sent directly to the third-party source by mail or electronically by fax, email or internet:** Verification forms must contain a release authorization signed by the applicant/tenant. Do not use a blanket release authorization as this entitles the owner or manager to obtain information to which it is not entitled or needed for eligibility determination.

2. **Third-party verification from source (oral):** When verifying information over the

Telephone, it is important to be certain that the person on the telephone is the party he or she claims to be. Generally, it is best to telephone the verification source rather than to accept verification from a source calling the property management office. Oral verification must be documented in the file. When verifying information by phone, the owner must record and include in the tenant's file the following information:

a. Third-party's name , position , and contact information;

b. Information reported by the third party;

c. Name of the person who conducted the telephone interview; and

d. Date and time of the telephone call.

3. **Family Certification:** An owner may accept a tenant's notarized statement or signed affidavit regarding the veracity of information submitted only if the information cannot be verified by another acceptable verification method. In these instances, the owner must document the file why third-party verification was not available. The owner may witness the tenant signature(s) in lieu of a notarized statement or affidavit.

Electronic Verification. The owner may obtain accurate third-party written verification by facsimile, email, 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.
- Email. Similar to faxed information, information verified by email is more reliable when preceded by a telephone conversation and/or when the email 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. Use of a printout from the Internet may also be adequate verification in many instances.

Steps used to obtain written verification as described above must be documented to show just cause for using other types of verification. The owner must include the following documents in the tenant file:

- A written note explaining why third-party verification is not possible; or
- A copy of the date-stamped original request that was sent to the third party;
- Written notes or documentation indicating follow-up efforts to reach the third party to obtain verification; and
- A written note indicating the request has been outstanding without a response from the third party.

Note: If a tenant is employed by a business owned by the tenant's family or is employed by the

Property owner or the management company, a copy of a recent pay stub, verifying year-to- date earnings, is also required.

Upon receipt of all verifications, owners or managers must determine if the resident is qualified for participation in the LIHTC Program. All verifications should be reviewed and calculations made as necessary.

6.11 Effective Term of Verification

Verifications are valid for 120 days from the effective date of the Tenant Income Certification. If verifications are more than 120 days old from the effective date of the Tenant Income Certification, the owner must obtain new verification(s).

Chapter 7 – Sale, Transfer or Disposition of the Project after the Placed-In-Service Date

DCA is required to notify the Internal Revenue Service via form 8823 in the event of sale (including change in ownership or ownership interest), foreclosure, abandonment, casualty loss, and/or destruction. Owners must notify DCA of such events. Notification should occur in advance of a transfer so that the appropriate documentation is obtained.

When a sale or transfer is planned after the placed-in-service date, the owner must submit a Project Concept Change Request Form advising and requesting DCA's approval in advance of the transfer of ownership. DCA must be notified of **all** changes in ownership interest or project participant structure. Current and potential owners are reminded that the Declaration of Land Use Restrictive Covenants for Low Income Housing Tax Credits will be enforced by DCA. The Extended Use Agreement will not be removed until the agreement has expired. Owners are encouraged to contact their tax consultant prior to the sale of any Housing Credit property. If a transfer is approved, the previous owner must provide a completed Property Information Form to DCA prior to disposition of the property.

DCA will recognize a new owner or ownership entity only after all required documentation has been submitted. Until such time, all compliance requirements will be the responsibility of the owner of record and any compliance violations will be reported to the IRS under the name of the owner of record.

The IRS has also suggested in Reg. 1.42-5 that, if a building is sold or otherwise transferred by the owner, the transferee should obtain from the transferor all information related to the first year of the credit period so the transferee can substantiate credits claimed.

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.

Chapter 8 – Correction and Consequences of Non-Compliance

In January 2007, the Internal Revenue Service issued its Guide for Completing Form 8823, Low Income Housing Credit Agencies Report of Noncompliance or Building Disposition (8823 Guide), which provides instructions for monitoring agencies to determine noncompliance, what constitutes correction, and how and when noncompliance and property dispositions are to be reported. The Guide has been updated from time to time, most recently in October 2009 and January 2011.

Owners and property managers are encouraged to read the guide and refer to it when questions arise as to how noncompliance should be corrected.

NOTE: The Internal Revenue Service issued the IRS Audit Technique Guide. Unlike the 8823 Audit Guide, the IRS Audit Technique gives insight into the IRS internal audit process.

8.1 Notice to Owner

DCA is required to provide prompt written notice to the owner of a housing tax credit project if DCA does not receive or is not permitted to inspect the tenant income certifications, supporting documentation, and rent records, or discovers by inspection, review, or in some other manner, that the project is not in compliance with the provisions of Section 42 or its Declaration of Land Use Restrictive Covenants.

8.2 Correction Period

The correction period will be established by DCA and set forth in the notice of non-compliance and will be a for period of up to 90 days from the date of the notice to the owner described in paragraph (e)(2) of Reg. 1.42-5. DCA is permitted to extend the correction period for up to six total months, but only if DCA determines there is good cause for granting the extension. Requests for an extension must be in writing, must be received by DCA prior to the last day of the correction period identified on the Report of Noncompliance, and must include an explanation of the efforts to correct the noncompliance and the reason the extension is needed.

DCA will review the owner's response and supporting documentation, if any, to determine whether the noncompliance has been clarified or corrected.

8.3 Notice to Internal Revenue Service

DCA is required to file Form 8823, "Low Income Housing Credit Agencies Report of Non-Compliance or Building Disposition," with the IRS no later than 45 days after the end of the correction period (including permitted extensions).

DCA must check the appropriate box on Form 8823 indicating the nature of the non-compliance or failure to certify and indicate whether the owner has corrected the non- compliance or failure to certify. If the non-compliance or failure to certify is corrected, DCA will provide a date on which the noncompliance was corrected. If DCA cannot determine that an owner's actions have corrected all noncompliance, no correction date will be provided; however, an attachment to the 8823 will be provided which identifies any noncompliance that is corrected. Any change in either the applicable fraction or eligible basis under paragraph (c)(1)(ii) and (vii) of Reg. 1.42-5, respectively, that results in a decrease in the qualified basis of the project under Section 42 (c)(1)(A) is non-compliance that must be reported to the IRS. DCA will send the owner a copy of the form 8823 at the time it is filed with the IRS.

If uncorrected noncompliance is reported to the IRS, a corrected 8823 cannot be filed until all instances of noncompliance are corrected for that building.

If the noncompliance is corrected within three years after the end of the correction period, a Form 8823 will be submitted to the IRS to report the correction of the previously reported noncompliance.

8.4 Recapture of Credit

Generally, during the Compliance Period a project is out of compliance and recapture applies if:

- There is a decrease in the qualified basis of the building from one year to the next; or
- The building no longer meets the minimum set-aside requirements of Section 42(g)(1), the gross rent requirements of Section 42(g)(2), or the other requirements for the units which are set-aside.

Vacant units that were previously occupied by Low Income Housing Tax Credit tenants can continue to be counted for minimum eligibility as long as the owner/manager has made reasonable attempts to rent the unit to an eligible tenant. See Revenue Ruling 2004-82, Q9 for guidance on what constitutes reasonable attempts.

If the project is out of compliance, a penalty will apply to all units in the Project (IRS Form 8611). If the non-compliance is due to a reduction in qualified basis and the minimum eligibility requirements of twenty percent (20%) or forty percent (40%) are still met, recapture and disallowance of credit will apply only to units not in compliance.

If there is a minimal reduction in the floor space fraction or number of Qualified Units, no recapture will occur, provided the building remains a qualifying Low Income Housing Tax Credit building.

Recapture will not occur if, within a reasonable time after the non-compliance was discovered, the situation is corrected.

In the event of a casualty loss, recapture will not occur if the property is restored or replaced within a reasonable period of time.

The above information has been provided for informational purposes in order to give a general understanding of recapture procedures. The Internal Revenue Service bears the responsibility for determining whether a building owner has claimed the correct amount of credit each year and whether a building owner is subject to recapture. DCA is not responsible for determining whether or not a specific event of noncompliance is a recapture event.

Chapter 9 – Compliance and Monitoring After Year 15

9.1 Background

After the 15-year Compliance Period has expired, there may be no tax impact in the event of noncompliance. Therefore, filing IRS form 8823 to report noncompliance is no longer required. By creating reasonable and less frequent inspection criteria, and by redefining some of the reporting and eligibility criteria as identified below, it is hoped that it will be administratively easier and less costly for owners and managers to operate tax credit properties and maintain compliance at a time when the tax benefit is no longer available. Therefore, after year 15, compliance can be achieved much easier, but the spirit of the program is not compromised and the housing will continue to serve the people for whom the program was intended.

IRC Section 1.42-5 contains the regulations for agencies' compliance monitoring during the Compliance Period; however, the regulations do not require agencies to monitor according to these regulations in the Extended Use Period. IRS officials and other experts have indicated that agencies should not report noncompliance to IRS after the Compliance Period is over. Therefore, DCA must establish policy regarding how properties are to be monitored and consequences for noncompliance during the Extended Use Period.

In addition, based on the requirements of the Extended Use Period specified in IRC Section 42 regulations and in Declaration of Land Use Restrictive Covenants referenced below, the agency has the authority to establish different criteria for eligible/ineligible student households, available unit rule, unit transfers, and the process for performing annual recertification's during the Extended Use Period, as long as income and rent restrictions, general use requirements (fair housing), Section 8 acceptance, minimum set-aside, applicable fraction, and initial and annual recertification's are required. Note, however, that should an owner wish to apply for a new allocation of credits, households determined to be income-qualified for purposes of the IRC §42 credit during the 15-year compliance period may be concurrently income-qualified households for purposes of the extended use period **as long as all §42 requirements are met in the extended use period**, including annually certifying student status and not renting to ineligible full time student households, verifying income and assets for annual recertification for mixed- income properties, following rules regarding unit transfers between buildings that are not part of the same project as defined by section 42, etc. Management companies should consult with their owners before implementing any changes noted in this chapter.

9.2 Compliance Period

Under Internal Revenue Code (IRC) Section 42(j)(1) the Compliance Period means, with respect to any building the period of 15 taxable years, beginning with the first taxable year of the credit period.

The first year of the Compliance Period is the first year in which the owner claimed credits. The first year must be either the year the building(s) are placed in service, or at the owner's election the year following placed in service. All requirements of IRC Section 42 including the 1.42-5

Monitoring regulations are in effect during the 15-year Compliance Period.

9.3 Extended Use Period

IRC Section 42(h) (6) establishes that buildings are eligible for the credit only if there is a minimum long-term commitment to low-income housing. Specifically, in order to receive a credit allocation in 1990 and later, the owner must record an extended low-income housing commitment. The document that evidences this commitment is called the Land Use Restrictive Covenants (LURC) for Low Income Housing Credits. The LURC is recorded with the respective County Recorder and/or Registrar of Titles and "runs with the land", regardless of subsequent changes in ownership.

For purposes of this section, the term "Extended Use Period" means the period:

- beginning on the last day in the Compliance Period on which such building is part of a qualified low-income housing project, and
- ending on the later of:
  - o the date specified by the agency in the LURC, or
  - o the date which is 15 years after the close of the Compliance Period

IRC Section 42(h)(6)(E) provides exceptions to the Extended Use Period for any building that is part of the Project shall terminate:

- On the date the building is acquired by foreclosure (or instrument in lieu of foreclosure) unless DCA determines that such acquisition is part of an arrangement with the taxpayer ("the owner") a purpose of which is to terminate such period; or

- On the last day of the one-year period beginning on the date (after the 14th year of the compliance period) on which the owner submits a written request ("Qualified Contract") to DCA to secure an offer to purchase the project for a price that is determined by the statue (the "qualified contract price"); or if DCA is unable to secure a Qualified Contract within the required one year period.

In the event of any occurrence under the Termination of the Extended Use Period, the project is subject to a three year decontrol period set forth in Section 42 to prevent:

- the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit, or
- Any increase in the gross rent with respect to such unit not otherwise permitted by the applicable rent limits.

Waiver of Right to Opt Out. As part of its scoring process, some projects have elected to waive their right to request a qualified contract from the Authority after the end of year 14 of the compliance period. Project Owners should review their Applications and recorded LURCs to determine whether there has been such a waiver for the project.

Under the DCA Declaration of Land Use Restrictive Covenants for Housing Tax Credits, the owner agrees to comply with the following for the term of the agreement:

- it will maintain the applicable fraction by leasing units to individuals or families whose income is 50% or 60%, as irrevocably elected by the owner at the time of allocation, or less of the area median gross income (including adjustments for family size) as determined in accordance with IRC Section 42;
- it will maintain the Section 42 rent and income restrictions;
- all units subject to the credit shall be leased and rented or made available to members of the general public who qualify as low-income tenants (or otherwise qualify for occupancy of the low-income units) under the applicable election specified in IRC Section 42(g) (Section 42(g) pertains to the minimum set-aside election);
- the owner agrees to comply fully with the requirements of the Fair Housing Act as it may from time to time be amended;
- the owner will not refuse to lease a unit to the holder of a Section 8 voucher because of the status of the prospective tenant as such a holder;
- each low income unit will remain suitable for occupancy;
- whether or not the property was allocated credits under the nonprofit set aside;
- the determination of whether a tenant meets the low-income requirement shall be made by the owner at least annually on the basis of the current income of such low- income tenant ; and
- other restrictions as required under the specific year's Qualified Allocation Plan (QAP) and related points the owner received in order to obtain a credit allocation. These restrictions are property-specific within the respective Declarations and to the extent they are not otherwise time-limited, the additional restrictions remain in force and effect during the Extended Use Period.

Note that the LURCs have changed from year-to-year according to the respective Qualified Allocation Plans. However, the basic language pertaining to the Extended Use Period required by IRC has not materially changed.

9.4 Tenant Eligibility Criteria During the Extended Use Period

During the Extended Use Period, DCA requires tenant eligibility and certification of income, as follows:

- **Tenant Eligibility and Certification.** At initial occupancy, all tenants must complete an application, and all tenant household income must be verified. A Tenant Income Certification (TIC) must be completed. Tenant income and rent must remain under the maximum as stated in the Land Use Restrictive Covenant (LURC). Each year after the initial certification the tenant household may use the DCA Self Certification Form.
- **Applicable Fraction.** Only the unit fraction will be examined to determine a building's applicable fraction.
- **Rent Limits.** Rent limits as elected by the owner at the time of allocation continue to be in force during the Extended Use Period. Owners of properties that were awarded selection points for additional rent restrictions should refer to the respective Qualified Allocation Plan or Declaration to determine whether those additional rent restrictions are time-limited or if they are in effect for the full term of the Extended Use Period.
- **Utility Allowances.** Utility Allowances must continue to be updated annually. Revised utility allowances must be implemented within 90 days of their published effective date.

DCA will continue to update the Low Income Housing Tax Credit Program income and rent limits published by HUD annually.

9.5 Monitoring Compliance During the Extended Use Period

The following is the monitoring procedure DCA will follow during the Extended Use Period:

1. Annual Certification: By the stated deadline, DCA requires all owners to submit an annual certification of compliance.
2. Annual Reporting: Owners will be required to enter the respective certification answers for properties in the extended use period.
3. Inspections: At least every five years, DCA will conduct a Windshield Review of the property. The agency reserves the right to conduct a complete tenant file review and Uniform Physical Conditions Standards (UPCS) inspection of the property, if needed.
4. Expiration or Termination of Extended Use Period: During the 3-year period after the LURC has expired or terminated pursuant to IRC Section 42(h)(6)(E)(ii), owners are required to annually update the Mitas transactions on all low-income households that occupied a unit at the end of the term, including the respective tenant-paid rent, utility allowance, and move- out date, if applicable, along with the annual certification that no low- income residents have been evicted or displaced for other than good cause.

The LURC allows for an amendment by written agreement between DCA and the owner. An amendment to the Declaration may be negotiated in the event a property suffers from a decline in market conditions that is not expected to improve and subsequent vacancies compromise the economic viability of the property. Owner must demonstrate that reasonable efforts have been made to meet all compliance requirements. A change in applicable fraction, rent limits or other terms may be negotiated with DCA in order to preserve as many low-income units as possible, but still protect the economic viability of a property.

9.6 Consequences of Noncompliance During the Extended Use Period

The following are the procedures for and consequence(s) of noncompliance:

1. If an owner fails to comply with the monitoring requirements and/or terms of the LURC, DCA will classify the property as having open noncompliance similar to what is issued during the Compliance Period. All owners will be given a period of time not to exceed 90 days with which to clarify or correct noncompliance and report to DCA that all corrections have been made. An extension of an additional 90 days may be granted, with good cause. If the violation(s) cannot be corrected within the 90-day correction period (or within the 90-day extension, if granted) DCA may request that the owner and/or management agent formulate a plan and reasonable timeline to bring the violation(s) back into compliance and advise DCA in writing of such a plan.
2. If an owner repeatedly delays or ignores requests for monitoring reviews, fails to submit annual certifications, reports and compliance monitoring fees, does not correct violations timely or according to the agreed-upon plan, where applicable, or otherwise chooses to ignore the compliance and monitoring requirements (serious and/or flagrant noncompliance) the following are consequences: **the owner and management company will not be considered to be in compliance with program or state requirements which may impact the ability to receive future funding by DCA.**

Important: Owners and management agents must keep careful track of when a development, and in some cases certain buildings within a development, transition from the Compliance Period into the Extended Use Period. Premature implementation of the Extended Use Period compliance and monitoring guidelines may result in noncompliance with IRC Section 42 for which DCA would be required to file IRS form 8823.

Chapter 10 – Using LIHTC with Other Programs HOME, Neighborhood Stabilization Program (NSP), Tax Credit Assistance Program (TCAP) and Section 1602 Exchange (Tax Credit Exchange) Program

10.1 Background

The American Recovery and Reinvestment Act of 2009 established two new programs providing state allocating agencies, including DCA, with tools to help certain Housing Credit-financed rental housing projects close financing gaps created by reduced credit pricing and lack of syndicator equity: the Tax Credit Assistance Program (TCAP), administered by HUD, and a program authorizing state allocating agencies to exchange Housing Credits for cash (the Section 1602 Program), administered by the U.S. Department of Treasury (Treasury). TCAP funds may only be awarded to projects where there is an allocation of Housing Tax Credits. Section 1602 Exchange funds may be awarded to projects with or without Housing Tax Credits. Although the TCAP program is administered by HUD and aligned under the HOME program, the HOME program requirements do not apply to TCAP funds.

10.2 Compliance and Asset Management

Properties funded with HOME, NSP, TCAP and/or Section 1602 Exchange Program funds must comply with requirements in the loan 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 and/or Land Use Restriction Agreements. Additionally, during the Compliance and Extended Use period, all programs are subject to asset management oversight by DCA.

10.3 Monitoring and Reporting

DCA will monitor compliance with TCAP, and the Section 1602 Exchange Program in the same manner as the Low-Income Housing Tax Credit Program as described in this manual. However, the Section 1602 Exchange program 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 DCA. The HOME and NSP program will be monitored under the HOME program requirements, which are outlined in the DCA HOME Compliance Monitoring manual. The owner is reminded that properties layered with differing sources of financing are subject to the most restrictive of any of those programs' restrictions.

20/50 Minimum Set-Aside Test	Minimum set-aside tested used to determine if a building is a qualified low-income housing project. A building is generally a qualified low- income building if at least 20% of the units are both rent restricted and are occupied by tenants whose income is less than or equal to 50 % of area media gross income.
40/60 Minimum Set-Aside Test	Minimum set-aside tested used to determine if a building is a qualified low-income housing project. A building is generally a qualified low- income building if at least 40% of the units are both rent restricted and are occupied by tenants whose income is less than or equal to 60 % of area media gross income.
140% Next Available Unit Rule	The “Next Available Unit Rule” which applies if the household income increase more the 40% above the current maximum income limit per person.
8609 IRS Form	IRS form is issued by the state allocating agency and details the tax credits allocated for each building in the project.
8586 IRS Form	IRS form the owner uses to claim credits for the first taxable year in which the credit is taken and every year thereafter.
8823 IRS Form	IRS form used to report non-compliance
Annual Income	All amounts, monetary or not, that go to, or on behalf of, the family head or spouse/co-head (even if temporarily absent) or to any other family member; or are anticipated to be received from a source outside the family during the 12 month period following admission or annual re- examination effective date; and which are not specifically excluded. Annual income also means amounts derived (during 12 month period) from assets to which any member of the family has access.
Annual Owner Certification(AOC)	IRS regulations require owners to certify annually that they have complied with all the terms and provisions of Section 42 of the IRS code and the extended use agreement for the project. The certification must be signed by the owner or a representative with full authority to legally bind the ownership entity (e.g., general partner, etc.).
Applicable Fraction	The portion of a building that is treated as low income, equal to the smaller of the Unit Fraction or the Floor Space Fraction, relative to the total residential building (units or square footage). Relates to the Qualified Basis formula selected for credits claimed.
Available Unit Rule (AUR or NAUR,140% Rule)	For mixed use projects, requires that when a low-income household's income exceeds 140% of the income limit, the next available unit of smaller or comparable size must be rented to a LIHTC qualified household until the applicable fraction is restored.

Term	Definition
Building Identification Number (BIN)	The number that is assigned to each building on the IRS form 8609
Co-head	An adult member of the family who is treated the same as a head of household for purposes of determining income, eligibility and rent.
Compliance Period	15 year period over which a project must continue to satisfy the various LIHTC requirements in order to avoid tax credit recapture. The period begins with the first taxable year of the credit period.
Credit Period	10 year period over which the LIHTC is claimed. Generally beings on the date a property is placed in service, but a taxpayer may elect to start the credit period as of the beginning of the year following the year the LIHTC property is placed in service.
Dependent	A member of the family other than the head, spouse, or co-head, who is younger than 18 or is a person with disabilities or a full-time student. A foster child, foster adult, or live-in aide may never be a dependent regardless of age or disability.
Eligible Basis	The portion of the property allocated credits and for which credits are allowable either for acquisition, rehab, or construction.
Empty Unit	An LIHTC unit that has never been rented.
Extended Use Period	The agreement between the taxpayer and the state housing credit agency which complies with Code Section 42(h)(6)(B), extends certain compliance provisions for the Tax Credit beyond the compliance Period (15 years) for at least an additional 15-year period, is binding on all successors of the taxpayer and must be recorded in the local real property records as a restrictive covenant.
Existing Building	A building that has been previously placed in service
Floor Space Fraction	The fraction, the numerator of which is the total floor space of the low-income units in a building, and the denominator of which is the total floor space of the residential rental units (whether or not occupied) in such building.
General Partner	The partner in a partnership who is also commonly responsible for the day to day operations of the business.
Gross Income	All income from whatever source derived including the value of property or services as well as cash.

Term	Definition
Head of Household	Adult member of the family who is the head of the household for purposes of determining income eligibility and rent.
HERA	The Housing and Economic Recovery Act of 2008, enacted into law on July 30, 2008.
HUD	U.S. Department of Housing & Urban Development
Income Limits	50% or 60% of the median income on a per person basis.
Land Use Restriction Covenant (LURC)	The extended low income housing commitment (or tax credit regulatory agreement) between the Authority and the owner that maintains the affordability of a project through the Extended Use Period and satisfies the requirements of Section 42(h)(6)(B) of the Code
LIHTC	Low Income Housing Tax Credit
LP	Limited Partner - A partner in a partnership whose liability is limited to the extent of the partner's share of ownership, generally is not active in day to day operations.
LLC	Limited Liability Company - A corporate structure whereby the members of the company cannot be held personally liable for the company's debts or liabilities.
Live-in Aide	A person who resides with one or more elderly persons, near-elderly persons, or persons with disabilities and who is determined to be essential to the care and well-being of the persons; is not obligated for the support of the persons; and would not be living in the unit except to provide the necessary supportive services.
Low-Income Unit	Unit that (1) is rent-restricted and (2) has individuals occupying it who meet the income limitation applicable under the elected minimum set- aside test
Market Unit	Any non-Low Income Housing Tax Credit unit whether occupied or not.
Minimum Set Aside	The Federally required minimum level of tax credit units in a property – 20% or 40%.
MTSP	Multifamily Tax Subsidy Program
New Building	A building that was not placed in service prior to ownership by its current owner, although it may include qualifying substantial rehabilitation costs incurred with respect to existing buildings.
Occupied Unit	A LIHTC unit which has been rented.

Placed in Service Date	(PIS) The key date which triggers compliance monitoring. The date on which a building is ready and available for its specifically assigned function, i.e., the date on which the first unit in the building is certified as being suitable for occupancy in accordance with state or local law (often meaning the receipt of a certificate of occupancy).

QAP	Qualified Allocation Plan (QAP) is the mechanism by which a state housing finance agency sets out the criteria by which it will select to whom it will award tax credits. Each state must develop a QAP. The QAP also lists all deadlines, application fees, restrictions, standards and requirements.
Qualified Basis	Is the base that is multiplied by the credit percentage to determine the annual credit? The qualified basis equals the applicable fraction times the eligible basis
Qualified Contract	A bona fide contract to acquire the non-low-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the applicable fraction (specified in the LURC) of the Qualified Contract Price
One (1) Year Period (Extended Use)	The one year period commencing on the date on which the Authority and the owner agree to the Qualified Contract Price (QCP) in writing, as defined in Section 42(h)(6)(I) of the Code
Qualified Low-Income Building	Any building which is part of a Qualified Low-Income Housing Project at all times during the period beginning on the first day of the Compliance Period on which such building is part of such a project, and ending on the last day of the Compliance Period with respect to such building, and to which Depreciation rules effective after 1986 apply.
Qualified Low-Income Housing Project	A residential rental project that meets either the 20-50 Test or the 40- 60 Test.
Recapture	As of the close of any taxable year in the Compliance Period, the amount of the Qualified Basis of any building is less than the amount of such building's Qualified Basis as of the close of the preceding taxable year, as provided for in Section 42(j)(1) of the Code.
Recertification	The annual redetermination of household income.
Restricted Rent	The maximum allowable rent according to the IRS formula including any utilities or service that must be paid by the resident.
State Credit Agency	Georgia Department of Community Affairs (DCA) - The state or local housing agency that is designated the authority to allocate and commit Tax Credits to a building within its geographical jurisdiction.
Tax Credit	The low income housing tax credits authorized by Section 42 of the Code.
Tax Credit Reservation	The receipt by the project of a reservation of Tax Credit from a State Credit Agency.

Tenant Income Certification(TIC)	The Tenant Income Certification form is used to certify tenant income eligibility for the household.
Tenant Rent	Amount payable monthly by the family as rent to the owner. Where all utilities (except telephone etc.) and other essential housing services are supplied by the owner, tenant rent equals total tenant payment. Where some or all utilities (except telephone etc.) and other essential housing services are note supplied by the owner, tenant rent equals total tenant payment less the utility allowance.
Unit Fraction	The fraction, the numerator of which is the number of low-income units in the building, and the denominator of which is the number of residential rental units (whether or not occupied) in such building.
Unit Transfer	With owner approval, a tenant moves from one unit to another unit within the same property. (check 8609 line 8a to see if you property is able to transfer among multiple buildings)
Utility Allowance	The amount the PHA determines is necessary to cover the resident's reasonable utility costs.