



**ILLINOIS HOUSING  
DEVELOPMENT AUTHORITY**

**Manual for Owners and Agents  
of Properties with**

# **Federal Low Income Housing Tax Credits (LIHTC)**

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**IHDA Manual for  
Owners and Agents of Projects with  
Federal Low Income Housing Tax Credits (LIHTC)**

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## Introduction

### The Low Income Housing Tax Credit Program

#### Program Description:

The **Low Income Housing Tax Credit** (LIHTC) is a dollar-for-dollar federal tax credit for affordable housing investments created under the Tax Reform Act of 1986. It gives incentives to raise private equity for the development of affordable housing for low income households. The tax credits are claimed through the Internal Revenue Service (IRS), and the US Treasury Department is the final authority on the program, but the program is administered at the state level by housing finance agencies such as the Illinois Housing Development Authority (IHDA).

#### How LIHTCs are Awarded:

In general, affordable housing generates lower rents than market rate housing. With less revenue to support debt service payments, developers need to tap non-market sources to help cover construction costs. The federal Low Income Housing Tax Credit (LIHTC) program is intended to help developers raise equity and reduce the amount of debt financing needed to build a project.

Illinois is allocated LIHTCs based on population. Developers apply for tax credits with IHDA, and IHDA selects developments to receive LIHTC Awards based on competitive application criteria.

IHDA's application criteria are spelled out in its federally required **Qualified Allocation Plan**, or **QAP**.

The maximum award a project qualifies for is based on project costs, adjusted by the portion of the project that will be affordable.

The total of qualified project costs is the **eligible basis**. The portion of the project that will be affordable is the **applicable fraction**. The eligible basis multiplied by the applicable fraction yields the **qualified basis**, or the total cost basis of the project that qualifies for credits. The maximum credit amount is determined by applying the credit rate (9% annual credit or 4% annual credit) to the qualified basis to yield the maximum **annual credit** amount.

The federal code requires that allocating agencies limit tax credit awards to the amount required to make a project financially feasible, so IHDA does not necessarily award credits for the maximum qualified basis. But developers take the tax credits awarded each year for a 10 year **credit period**, so the projected total tax credit amount is 10 times the annual award amount.

Developers convert the LIHTC award into equity by selling them to investors who use the credits to offset their tax liability. The equity generated allows the developer to minimize the amount of debt needed to pay project construction costs. Less debt means lower mortgage payments, which means the developer can afford to charge lower rents.

### **Owner Commitments:**

In exchange for LIHTCs, developers make commitments to lease units to low income households, to charge affordable rents, and to maintain the property in good condition.

In order to qualify to take *any* tax credits in any given year, the owner must meet a **minimum set aside**, under which either 20% of units are rented to households with incomes no more than 50% of the AMI, or 40% of units are rented to households with incomes no more than 60% of the AMI. As of 2018, a 3<sup>rd</sup> election is allowable with state approval, under which 40% of units are rent restricted with an average income of 60% AMI. The owner elects which minimum set aside to guarantee through the credit period the first year credits are claimed.

In order to take the *full amount* of tax credits in any given year, the owner must maintain the applicable fraction, or the portion of units that were committed to be affordable to low income households during the application process.

Owners will receive credits each year of the 10 year credit period.

Owners must comply with these commitments for a 15 year **compliance period**. Failure to meet these commitments during the tax credit compliance period can result in loss of some or all of the project's tax credits, depending on how severe the failure is, and when it occurs.

In addition to the tax credit compliance period, since 1990, developers are required to commit to extend affordability commitments at least 15 years beyond the initial 15 year compliance period. The extension is known as the extended use period, and the regulatory agreement in which the owner makes these commitments is known as the Extended Use Agreement.

Compliance failures during the extended use period do not result in loss of tax credits, but may result in other penalties imposed by IHDA as state monitor.

At the end of the initial 15 year tax credit compliance period, many investment partners seek to dispose of their ownership interest in the property. The Extended Use Agreement remains in effect even if a building or ownership interest in the property changes hands.

### **Responsibilities, Governance and Regulatory Authority:**

#### **Project Owner:**

Most investors with tax liabilities large enough to benefit from large tax credit awards are corporations. Often they buy LIHTCs through investment pools assembled by syndicators. To receive credits, and to maintain accountability, the investor must be part of the entity that owns the development.

Developers and investors, or investment funds, often create a limited partnership or limited liability company to serve as ownership entity for the tax credit project. The investor often serves as the **limited partner** with the majority ownership portion, based on their large equity contribution (through the purchase of the tax credits), but little or no involvement in day to day operations.

The developer often serves as the **general partner** or managing member, with a small ownership portion, but responsibility for building and managing the project, and ensuring compliance with tax credit regulations.

The roles and responsibilities of each party are spelled out in the **Partnership Agreement**, which governs the relationship of the partners with one another. Terms of the Partnership Agreement define the schedule for equity pay in, responsibility for operation and compliance, investors' recourse in case of default or loss of credits, and terms governing the sale or final dissolution of the partnership.

**Allocating and Monitoring Agent:**

Low Income Housing Tax Credits are claimed through the IRS, and final authority for the program lies with the US Treasury. IHDA serves as an allocating and monitoring agent for the IRS. As an allocating agent, IHDA is responsible for making tax credit awards within the guidelines of the federal tax credit program and the priorities specified in IHDA's federally required QAP.

As monitoring agent, IHDA makes sure that the project remains compliant with the owner's affordability commitments, and with federal program requirements. The owner's commitments under the tax credit program are spelled out in the **Extended Use Agreement** between the owner and IHDA. The Extended Use Agreement specifies the number of program units that will be affordable to low income households and maximum income limits for tenants moving in those units, as well as commitments to other program requirements such as affordability of rents and property conditions.

IHDA monitors project completion, reviews the owner's certification that it has achieved the qualified basis (i.e. spent the construction costs that qualify for tax credits), and issues the IRS Form 8609 that the owner will complete and file to claim its tax credits. Once a project is online, IHDA monitors the owner's ongoing compliance with its affordability commitments, and with regulations of the tax credit program.

**Regulatory Authority:**

Federal regulations governing the LIHTC program are defined in **Title 26 Section 42** of the US Legal Code (USC) and **Title 26 Section 1.42** of the Code of Federal Regulations (CFR).

Additional guidance for applying federal laws and regulations is issued through the US Treasury in the form of **Revenue Rulings, Revenue Procedures** and **IRS Notices**.

The Treasury refers to Chapter 5 of the **HUD 4350.3 Handbook** for determining tenant income, and relies on state agencies such as IHDA to monitor LIHTC projects for compliance with federal rules throughout the compliance period.

The **IRS Guide to Completing Form 8823** provides guidance to state monitors for reporting owners for non-compliance with the program. IRS Form 8823 is the "Low Income Housing Credit Agencies Report of noncompliance or Building Definition." The Guide is not intended to change Section 42 rules, but to provide definitions of what the IRS considers "in compliance," "out of compliance," and "back in compliance."

The **IHDA LIHTC Manual** is intended to minimize regulatory uncertainty for owners and agents by clarifying how IHDA will monitor compliance with Section 42 and apply instructions in the Guide to Form 8823. However it is not a substitute for legal and accounting advice as to compliance with Section 42 and applicable Treasury regulations. The IRS retains final authority for interpreting and applying the code.

## Chapter 1

### Qualified Projects

To qualify for federal tax credits *in any amount* under the federal Low Income Housing Tax Credit (LIHTC) program, an affordable housing project must have enough LIHTC qualified units to meet the minimum set aside: either 20% or 40% of project units, as elected by the owner on IRS Form 8609.

To claim *the full amount* of tax credits allowed under the project's LIHTC award, the owner must have enough qualified units to achieve the applicable fraction, which may be anywhere from 20% to 100% of units, as proposed in the project application, and committed in the Extended Use Agreement.

To qualify as LIHTC eligible, units must be:

- occupied by qualified tenants, [as described in **Chapter 2**]
- at qualified rents, [as described in **Chapter 3**]
- maintained in good physical condition that is suitable for occupancy, and leased as non-transient housing available to the general public. [as described in **Chapter 4**]

In order to qualify for tax credits, a project must meet the minimum set aside test by the end of the first year in which tax credits are claimed. [26 USC 42(g)(3)] The first year of credits may be either:

- the tax year in which the building is placed in service,
- or, at the election of the taxpayer, the following tax year. The owner makes this election on line 10a of IRS Form 8609.

In the first year, the owner may pro rate credits as units come online and are occupied by qualified tenants. That is, the owner may claim credits starting the first full month the building is placed in service, and based on the number of qualified units as of the last day of each month for the remainder of the year. [26 USC 42(f)(2)]

To take advantage of this rule, an owner's managing partner may have made commitments to investment partners to achieve qualified occupancy according to a monthly schedule. Property managers should be aware that if scheduled occupancy targets are not met as of the last day of each month in the initial year, investors may not be able to claim the full amount of credits promised, and managing partners may face penalties from their limited partner, according to the terms of their Partnership Agreement.

For years 2-15, the applicable fraction reached by the end of year 1 should remain constant, unless management moves in an unqualified tenant, charges rent higher than the affordable rent limit, or has allowed other changes at the property that affect the qualified basis the owner uses to claim credits each year. Changes in qualified basis will force an owner to claim fewer credits on their tax filings, and may prompt recapture of credits claimed in previous years, until compliance is corrected. [as described in **Chapter 5**]

As the state LIHTC agency, IHDA is responsible for monitoring program activities, including:

- confirming initial qualification of units
- monitoring ongoing compliance
- reporting noncompliance to the IRS, and
- determining when compliance has been restored.

## Chapter 2

### Qualified Tenants

**Basic Qualifications:** For an affordable unit to qualify for tax credits under the LIHTC program, the tenant household must be income qualified and must NOT be comprised entirely of full time students.

**Additional Criteria:** Owners may have additional qualification criteria under their Tenant Selection Plans, or under other funding programs used to develop the project. IHDA will distinguish between noncompliance with the federal LIHTC program, which is reportable to the IRS, and noncompliance with commitments made to IHDA, which carry other penalties.

**Citizenship is Not a Requirement:** Residents of LIHTC housing are not required to be United States citizens, or to have a social security number. If a resident has a social security number, it should be provided and reported in the Tenant Income Certification (described in section 2.4). If not, forms that request social security numbers may use 000-00-0000 as a placeholder number.

Projects that layer LIHTC with federal programs that carry citizenship requirements may need to verify citizenship status for those programs. Some owners may also incorporate citizenship or social security number requirements into their tenant selection criteria - to facilitate back ground checks for example.

Owners who choose to do so, however, must take care that their agents and staff apply any verification requirements consistently. Staff may not single out applicants who appear to be from foreign backgrounds for verification, for instance.

Owners, agents and their staff should be aware that inconsistent implementation of screening criteria can violate fair housing laws. Fair housing violations put a project out of compliance with the LIHTC Program requirement that project units be available to the general public, and be rented in a non-discriminatory manner. [26 CFR 1.42-9] By an agreement with the IRS, HUD and the Department of Justice (DOJ) report fair housing actions to state agencies, and adverse judgments may result in loss of tax credits.

**Simple and Accurate:** In general, IHDA intends to simplify procedures for making effective and accurate determinations of tenant qualifications, without making such determinations excessively onerous for tenants or owners, and without making qualification more restrictive than the LIHTC program requires.

#### Chapter Sections:

- 2.1 Income Limits
- 2.2 Determining Income and Assets
- 2.3 Student Status
- 2.4 Certifications: move-in & Annual

## 2.1 Income Limits:

Households must be income qualified at move-in. Income changes after move-in do not affect a household's eligibility to remain in the unit, but may affect leasing requirements for other units.

Income requirements include several components:

- A. **Maximum Income Limit** for qualified low income households, as determined by the owner's minimum set aside election.
- B. **Number of Units** that must be affordable to, and inhabited by, qualified households, as determined by the minimum set aside election and by the applicable fraction of affordable units.
- C. **Number of Years** affordable units must be inhabited by qualified households, as defined in the project Extended Use Agreement.

### A. Maximum Income Limit for Qualified Low Income Households

**Minimum Set Aside:** In the first year of tax credits, the owner chooses to rent a minimum number of units at rents affordable to households with incomes within a specified income limit, as defined by the following tests:

- 20-50 test: 20% of units to households with incomes at 50% of the area median income (AMI)
- 40-60 test: 40% of units to households at 60% AMI
- Average Income Test: at least 40% of units are rent restricted, with average income limit of 60% AMI, and with a maximum income limit no higher than 80% AMI. The maximum income limit of the any unit included in the average must be 20%, 30%, 40%, 50%, 60%, 70%, or 80% of the area median gross income.

The minimum set aside is declared on the IRS Form 8609 submitted by the owner when claiming the first year of tax credits. Owners and agents must honor the election proposed in the project application, as approved by IHDA, and incorporated into the Extended Use Agreement. Once an election has been made, it is irrevocable throughout the compliance and extended use periods.

The minimum set aside election determines the income limit applied to ALL affordable housing units at the project including those units covered by the applicable fraction, which may be larger than the 20% or 40% of units required to meet the minimum set aside. *[Guide 8823, Page 4-26]*

Maximum income limits are calculated as a percentage of the area median income, and are adjusted by household size. Area median incomes are calculated by the federal government on an annual basis to reflect changes in the economy. IHDA publishes income limit schedules each year and makes them available on the Property Managers section of the IHDA website.

In general, LIHTC projects use the **Multifamily Tax Subsidy Project (MTSP)** income limits, developed to meet the requirements of the Housing and Economic Recovery Act (HERA) of 2008. Projects

placed in service prior to January 1, 2009 may be eligible to use **HERA special limits**, if they are also located in qualified counties.

HERA includes 2 measures to protect LIHTC owners from falling median incomes that would otherwise force a drop in income and rent limits:

- First, it applies a **hold harmless policy** to income and rent limits for all LIHTC projects that protects them from dropping after a project has been placed in service.

In other words, the limits in effect at an existing project will not be forced downward in years when the area median income drops, causing that year's MTSP limits to decline. However the new, lower MTSP limits will be in effect for any new LIHTC projects that were not already in service during the previous year.

- Second, it creates **HERA special income and rent limits**. HERA special limits apply only in those counties where MTSP income and rent limits would have dropped in 2009 due to dropping area median incomes, but where the hold harmless policy was applied to stop them from doing so.

Within those qualified counties, the HERA special limits apply only to those LIHTC projects that were in service before January 1, 2009, and so would have been affected if the hold harmless policy was not applied.

Projects that have been refinanced with a new round of tax credits after 2009 no longer qualify for HERA special incomes and rents because their placed in service date is re-established with the new LIHTC allocation, and they are no longer considered to have been in service prior to 2009.

Owners and agents with projects that qualify for HERA special limits under the LIHTC program should also take care that they are not required to use more restrictive limits by other programs tied to their project. See paragraphs on "Most Restrictive Limits" below.

IHDA publishes both regular MTSP, and HERA special limit schedules when it publishes annual Rent and Income Limits. MTSP limits are referred to as "Regular" limits on the IHDA tables. Annual Limits for current and past years are available on the Property Managers section of IHDA's website.

Because all LIHTC projects qualify for HERA's hold harmless protection, HUD publishes a table that shows which year's MTSP limits a project should use based on its placed in service date, to help owners determine if they are eligible to use the higher limits from a previous year. HUD's tables can be found [here](#). *[Select the correct geography, and scroll past the MTSP income limit table to see the HUD table specifying which year's limits apply.]*

If you are unsure which income limits apply to your project, please contact your IHDA Asset Manager for clarification.

**Most Restrictive Limits:** Where LIHTC projects have other sources that also carry income and rent limits, owners must use the most restrictive limits that apply to that unit.

For instance, a project that has both LIHTC and HOME funding may qualify to use HERA special limits for any LIHTC units in the project that do NOT use HOME funds. However the project's HOME units are also bound to HOME income and rent limits. Any units that are covered by both HOME and LIHTCs must compare the HOME limits to the HERA special limits, and use whichever is most restrictive.

**Non Compliance with Other Commitments:** An owner may make commitments to make units affordable to households with incomes lower than the 50% or 60% AMI tax credit limits, either to score points on their original application for LIHTC funding, or in agreements for other funding programs. The owner must apply the most restrictive rule to these units.

Non-compliance with these commitments will not be reported to the IRS. However, events that are not specifically reportable to the IRS may constitute noncompliance with respect to an owners commitments to IHDA in the Extended Use Agreement. IHDA will require corrections of such noncompliance events. An owner's failure to make corrections will result in other penalties, up to and including prohibition from further participation in IHDA programs.

## **B. Number of Units Leased to Tax Credit Eligible Households**

**Minimum Set Aside:** In choosing a minimum set aside, the owner commits to lease either 20% or 40% of project units to income qualified households at affordable rents. The minimum set aside election is made on the IRS Form 8609 filed in the first year tax credits are claimed, and cannot be changed for the remainder of the 15 year compliance period. It represents the minimum number of units that must be qualified and maintained to claim any tax credits for that project at all.

If the number of units leased to qualified households falls below 20%, or 40%, depending on the election, the owner is not eligible to claim any credits until the minimum set aside is restored. If the project fails to achieve the minimum set-aside in the initial tax credit year, it forfeits the right to claim credits for all 10 years.

**Applicable Fraction:** In addition to the minimum set aside, the owner has committed to lease an applicable fraction of units to qualified households as part of the application process. The applicable fraction may be as low as 20% of units [to meet the 20% of units at 50% AMI minimum set aside] and as high as 100% of project units.

The applicable fraction is first proposed as a scoring factor in the owner's application for a LIHTC award. It is codified in the project Extended Use Agreement. If the number of units leased to income eligible households falls short of the applicable fraction, the owner cannot claim credits for the non-qualified units until they are occupied by eligible households.

The amount of credits lost is proportionate to the unit's impact on the project's qualified basis, as reported by the owner in its annual tax filings. IHDA reports non-compliance events to the IRS. The

IRS monitors the accuracy of owner tax filings, and whether noncompliance requires recapture of credits.

**C. Number of Years in the Compliance Period:**

The LIHTC compliance period is 15 years. Affordable units must be occupied by qualified households throughout the LIHTC compliance period. Failure to meet the applicable fraction during the compliance period may result in the loss of tax credits.

Additionally, since 1989, the federal LIHTC program requires owners to enter an agreement to extend the affordable use of the project for at least 15 years beyond the tax credit compliance period. Owners commit to maintain the applicable fraction of low income units at the same income limit elected under the minimum set aside for the duration of the extended use period. Detailed terms of the extended affordability period are specified in the Extended Use Agreement.

Penalties for non-compliance during the extended use period do not include recapture of tax credits or reporting non-compliance to the IRS. But IHDA will require corrections of noncompliance and impose penalties, up to and including prohibition from future participation in IHDA programs.

*[Guide 8823, 4-26]*

**Other Factors in Income Qualification:**

**Household Size:** Tax credit income limits are adjusted by household size. Therefore, household income qualification must take account of the number of people living in the household. In general, household size includes everybody who lives in the unit, whether they are related or unrelated.

There are some exceptions. Households do not include temporary guests, or live in aids. *[Guide 8823 pg 4-3 & 4-4]*

On the other hand, a household may include adults or children who either split their residence at other locations, or do not currently reside in the unit, such as:

- children who are in foster care, away at school, or under joint custody arrangements where they are present 50% or more of the time,
- adults who work in a different state,
- children in the process of being adopted,
- unborn children of pregnant woman (based on the woman's self-certification),
- family members in the hospital or rehab, including persons permanently confined to a hospital or nursing home if the family decides to include them as part of their household.

In the past, foster children and foster adults were not considered household members for purposes of calculating income limits, in keeping with guidance provided in HUD's 4350.3 Manual. However HUD has changed its guidance and no longer excludes foster children or adults when determining household size for income purposes. Since the LIHTC program bases income calculations on HUD's methods, owners may include foster children or adults when determining household size if the household declares that they are members of the household.

In general, it is up to the household to declare who resides in their apartment unit, and the project owner may rely on the household's declaration for purposes of determining household size and maximum income limit.

If an owner or agent has reason to suspect fraud, they may ask for verification that a household member resides in a unit. However owners and agents must also take care to observe fair housing laws, and avoid selectively requiring verification from some households, but not from others, simply because the household strikes them as unconventional.

#### **Allowances for Extenuating Situations:**

HUD encourages owners and agents to be as lenient as responsibly possible to support households with members that are called to active duty in the military. [HUD 4350.3, Section 5.6.C, Page 5-10] The federal Violence Against Women Act [VAWA] also encourages flexibility to accommodate victims of domestic violence.

Actions an owner might take to show leniency while remaining in compliance include, but are not limited to, allowing a guardian to move-into a unit on a temporary basis to provide care without counting the guardian's income, or allowing a tenant in a low income unit to provide care for dependents of persons called to active duty without counting the dependent's income.

#### **Changes in Household Size:**

Household composition should not change within the first 6 months of tenancy. Exceptions may be made for dependents, or live in aides, or extenuating circumstances. However if a new adult wishes to join the household within the first 6 months, the household must be requalified. If the new person's income would put the household over the income limit, and that person is allowed to move-in, the unit will be considered out of compliance as of the household's original move-in date.

After the first 6 months of occupancy, new household members may move-in without affecting the household's qualification to live in a tax credit unit. However their income may raise the household income sufficiently to trigger the next available unit rule [see paragraphs below]. Therefore, the new household member must certify their income, and the owner must verify it prior to move-in.

The household's original income qualification remains in place so long as at least 1 original household member remains in the unit, unless IHDA has reason to determine that the household manipulated the rules to qualify, such as by intentionally staggering the move-in of high earning individuals.

If **all** of the original household members are replaced, the household must be treated as a new move-in, unless each new member was income qualified when independently certified at move-in. *[Guide 8823, pg 4-4, 5 & 6]*

**Changes in Household Income and the next available unit rule:** Income qualification is determined at move-in. If the household's income increases after move-in, it remains income qualified so long as household income does not exceed 140% of the income limit elected on the project's IRS Form 8609.

For example:

- If the project's income limit, as elected on IRS Form 8609, is 50% AMI, and

- 50% AMI for the household size is \$50,000
- 140% limit = \$50,000 x 140% = \$70,000
- After move-in, a qualified household's income may increase up to \$70,000 without being considered over-income for purposes of the next available unit rule.

If the household's income grows to exceed 140% of the income limit elected on IRS Form 8609, the household is considered over-income. However, the owner can still claim tax credits for that unit as long as the rent remains restricted to the LIHTC maximum, and as long as the next available unit of a comparable or smaller size is leased to a tax credit eligible household. All comparable units must continue to be leased to qualified low income households until the applicable fraction is restored. [26 USC 42(g)(2)(D)(ii)]

For example, if 100% of the units at a property are tax credit units, then vacant units must always be filled with qualified low income households.

If 50% of the units at a property are tax credit units, and a household who was income qualified at move-in experiences an increase that brings their income to more than 140% of the low income limit elected on IRS Form 8609, that household is over-income. However, the household does not need to move out, and the owner may continue to claim credits for that unit, so long as the next unit that becomes available is leased to a tax credit qualified household. Vacant units must continue to be leased to tax credit qualified households until 50% of the units are occupied by qualified low income households.

## 2.2 Determining Income & Assets

Households are income qualified based on their combined gross income. According to US Treasury regulations, the tax credit program will determine household income in a manner consistent with income determinations under Section 8, as opposed to the rules for determining gross income for federal income tax liability. [Guide 8823, 4-31]

**HUD Handbook 4350.3:** In practice, this means both the IRS and IHDA refer to the *HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs [HUD 4350.3]*. Owners and agents should be familiar with the following sections of the HUD 4350.3 and refer to them when determining tenant income qualifications:

- Chapter 5: Determining Income
- Appendix 3: Acceptable Forms of Verification
- Exhibit 5-1: Income Inclusions and Exclusions
- Exhibit 5-2: Asset Inclusions and Exclusions

There are some details in which LIHTC requirements diverge from rules in the HUD 4350.3. For instance, the LIHTC program does not adjust income for medical or child care expenses as described in the HUD Handbook. For the LIHTC program, the timeliness of income and asset verifications are measured against the effective date of the certification, even though the HUD 4350.3 specifies they will be measured against the date of receipt by the owner. If you are unsure whether, or how a provision in the HUD Handbook applies to the LIHTC Program, please contact your IHDA Asset Manager for clarification.

In response to the Change 4 to the HUD 4350.3, issued in 2013, the IRS reminded LIHTC program participants that Chapter 5 is to be used in guidance for verification, but that it is not codified as part of Section 42 (the federal regulations that create the LIHTC program), and that state agencies may be more specific in their verification requirements for LIHTC properties.

Furthermore, as the LIHTC industry grows over time, practices have emerged among industry participants that go above and beyond written regulations in the HUD 4350.3 or the federal regulations governing the LIHTC program. As the state Allocating Agency for LIHTCs, IHDA is responsible for project monitoring, and for interpreting and applying federal regulations to determine if LIHTC projects are compliant.

This section of the IHDA's LIHTC Manual does not reproduce the directions in the HUD 4350.3. Instead, it is intended to clarify how IHDA will monitor or interpret certain points where IRS guidance differs from income determinations for other programs, or where practices are emerging in the tax credit housing industry beyond those codified in federal regulations.

In general, IHDA intends to simplify procedures for making effective and accurate income determinations, without making such determinations excessively onerous for tenants or owners, and without making income qualification more restrictive than the LIHTC program requires.

Owners and agents may ask their IHDA Asset Manager to clarify IHDA's interpretation of regulations in cases where there may be disagreement among partners, or to request certain clarifications be incorporated into updated versions of this manual.

**Imperfections vs. Reportable Noncompliance:** In determining if income documentation is adequate, the IRS recognizes a difference between noncompliance and documentation that is "imperfect, yet sufficient for the monitoring agency to make a reasonable determination that a household is eligible." In such cases, the IRS states that the owner should be advised to use improved procedure in the future. But "Imperfections are not of a nature that would cause the unit to be considered out of compliance and will not result in reportable noncompliance." [Guide 8823, pg 4-31]

IHDA reminds owners that procedures that meet requirements as written in the legal code or written federal guidance will be sufficient to make a reasonable determination.

**A. Income Determination:**

A household's annual gross income will reflect anticipated income for the 12 months following the effective date of the income certification. It must include income from all sources including potential income from assets, and the combined income of all household members, whether they are related or not.

Household Income must also reflect any anticipated changes, if information is reasonably available. However, unanticipated income learned about after the fact does not make the owner's initial determination of eligibility invalid. [Guide 8823, pg 4-1]

**B. Documentation Requirements:**

The LIHTC program specifically requires that income verification begin with an application or a questionnaire that the owner will use to identify information related to eligibility. The owner or agent must obtain verification of all Income and Assets identified on the questionnaire. Once the household's income and eligibility have been verified, all adults in the tenant household must sign a Tenant Income Certification (TIC), which certifies household composition and household income, effective as of the date that they move-in to the unit if it is an initial certification, or the anniversary of their move-in if it is a recertification. [Guide to 8823 pg 4-30]

**Questionnaire:** IHDA will accept either an application form or a questionnaire as fulfilling the first requirement, provided it is signed by all adults in the household over age 18, and it identifies the following information related to eligibility:

- Household composition [including number of persons in household and whether they are children, head of household, spouse or other adults]
- Sources of Income
- Household Assets
- Student Status for any members of the household that are students

**Verifications:** The owner must verify all known income and assets, including any items identified on the questionnaire. In keeping with the HUD 4350.3, acceptable methods of verification include

- Information obtained by the owner directly from a third party, such as an employer, agency or banking institution.
- Third party documents provided by the tenant, such as paystubs or bank statements.
- Tenant certifications made under penalties of perjury. [26 CFR 1.52-5(b)(vii) and (c)(1)(iii)]

**Forms of 3<sup>rd</sup> Party Verification:** 3<sup>rd</sup> party verification is preferred, both by HUD and by US Treasury rules [Guide to 8823 4-7]. IHDA recognizes any one of the following as third party verification:

- A letter written by the third party.
- Verification form provided by the owner, filled out by the third party, and returned by US Mail, by fax, or by e-mail. Verification forms should request the name & position of the third party verifier and the effective date of the information.
- Up Front income verification databases are acceptable, with the exception of EIV. The IRS is not party to the information sharing agreement behind EIV, so EIV reports may not be used to verify income for the LIHTC program. If used for other programs, EIV reports should not be present in files provided to a LIHTC auditor for review.
- Under change 4 to HUD 4350.3, HUD recognizes “an original or authentic document generated by a third-party source” – such as paystubs as valid form of 3<sup>rd</sup> party verification for employment income, or bank statements for verification of assets. IHDA recognizes paystubs and bank statements as 3<sup>rd</sup> party verification for the LIHTC program.
- A third party contact via phone or interview, documented in the tenant file, with date and time of contact, name and position of third party interviewer. [Guide to 8823 4-7]

In general, IHDA prefers written third party verification wherever possible. A phone call documented with a memo to file may be used if the owner can demonstrate that written verification has been attempted. It may also be used to clarify incomplete information on a written verification. The memo should include the date and time of the phone call, the name and title of the person contacted, and the name of the project agent who made the call and authored the memo.

All verifications must be no older than 120 days prior to effective date of the Tenant Income Certification (TIC).

### **C. Additional Information About Verifications:**

**Timeliness:** Third party verifications must be no older than 120 days of the effective date of the Tenant Income Certification [Guide to 8823, pg 4-31]. In the case of multiple paystubs or bank statements, the most recent documents must be dated within the 120 day timeframe, but older documents in the series may be aged more than 120 days.

**Paystubs:** Where paystubs are used, they must include the most recent 4-6 consecutive paystubs. Annual income should be calculated **by annualizing the average** of gross pay among all 4 to 6 paystubs.

Using year to date income represented on a paystub to annualize income is not required to determine income. Year to date income represents historical, as opposed to recent income. To the extent it reaches beyond the 120 day timeframe, it may be significantly out of date by program standards for LIHTC, as well other program sources, such as HOME. It may unfairly disqualify households that would qualify under the strict application of the IRS description of anticipated income.

**LIHTC Projects with HOME:** owners / agents of projects with both LIHTC and HOME should be aware that the HOME program requires 2 months of paystubs. For example, if paystubs are issued bi-weekly, HOME requires a minimum of 4 paystubs, but if they are issued weekly, HOME requires a minimum of 8. Owners should apply the most restrictive rule based on programs that have funded the project, and use 8 paystubs.

**Third party verification forms:** Where 3<sup>rd</sup> parties are asked to fill out a verification form, owners should use consistent forms, and ask each 3<sup>rd</sup> party to fill them out completely.

**Incomplete Forms:** In some cases 3<sup>rd</sup> parties filling out verification forms may leave items that do not apply, or that they are not able to estimate, blank. Owners should request clarification from the source. If the 3<sup>rd</sup> party source declines to speculate, the owner may use the information provided, so long as the verifier has signed a statement certifying that it is accurate to the best of his or her knowledge. The owner should add a statement to the tenant file that documents attempts to obtain clarification, and explains the results.

**Where the 3<sup>rd</sup> Party Provides a Value Range:** When asked to specify hours worked, or dollar amounts for wages, tips, bonuses, etc., some 3<sup>rd</sup> parties may provide a range rather than a specific value. Owners may use the average within the range rather than highest figure in the range. In most cases, using an average will yield a more reasonable estimate of expected income, and this method is also compatible with methods used for the HOME program.

**Sporadic or Seasonal Income:** owners are expected to make a reasonable judgment based on information available to project probable annual income from sporadic or seasonal employment. [Guide to 8823, 4-7]

In most cases, owners should not follow the HUD 4350.3, which recommends annualizing seasonal or sporadic income as if it were consistent throughout the year. This method is used for HUD programs where the tenant may file an interim certification when their income changes in the middle of the year, but the LIHTC program which does not recognize interim certifications. Instead, owners should ask for information about the expected term or periods of employment in an effort to make an informed judgement.

**Self-certification:** If 3<sup>rd</sup> party verification cannot be obtained, tenants may self-certify their anticipated income, in the form of a notarized statement or signed affidavit. The owner should also retain documentation of attempts to obtain 3<sup>rd</sup> party verification in the tenant's file. [Guide 8823, pg

4-31] Owners of projects with HOME should remember that HOME will not accept self-certification of income on an initial certification.

**Corrections or clarifications:** Tenants, applicants or 3rd parties may make corrections to verification forms they have previously submitted if they also initial and date the correction.

Additionally, an owner or agent may follow up with the respondent by telephone to seek clarification. Clarifications initiated by the owner or agent must document the name and title of the person contacted and the time and date of the clarification.

**Tax Returns:** If income cannot be readily determined based on current information [as in cases where a tenant currently has zero income, or is self-employed and income is irregular] an income determination may be based on actual income from last 12 months as reported on a tax return.

**Social Security and SSI benefits:** [Guide to 8823 – pg 4-16] The income calculation should be based on the gross amount of periodic Social Security payments, before any deductions for health insurance or tenant repayments to the Social Security Administration.

**Lump sum payments** from the Social Security Administration, such as back-payments or corrections of underpayments from the past, should be excluded from the calculation of a tenant's current income.

**Timelines of verification:** Because Social Security payments are consistent for 12 months, and because Social Security offices are not always responsive to requests for interim letters to 3<sup>rd</sup> parties, verifications may be older than 120 days.

However, because Supplemental Security Income (SSI) payments may change in the course of the year, SSI verifications must be dated within 120 days of the certification effective date.

**Cost of Living Adjustments:** Certifications made in the months after the Social Security Administration has announced a cost of living adjustment (COLA) for the coming year must adjust projected income to include the COLA for that portion of the certification year where it will apply.

**Letters with Multiple Account Codes:** Award letters from the Social Security Administration sometimes reference more than 1 account code. For instance, a separate account code with the same digits but a different suffix may indicate a recipient's disability status. IHDA accepts the award letter as a statement of the total income amount for the codes referenced on the letter. However, the letter must be present in its entirety.

**Fixed Income:** The federal FAST Act permits owners of Section 8 Properties to streamline verification procedures, if 90% or more of the household's income comes from fixed sources. In such cases, the owner must complete a fully verified income certification for the first year, but may use the original verification, plus a COLA adjustment, in the 2<sup>nd</sup> and 3<sup>rd</sup> years, provided the household self certifies that the fixed income sources have not changed, and that fixed sources still comprise 90% of the household's total income. Because the LIHTC program uses rules for Section 8 as guidance for making income determinations, IHDA will recognize the FAST Act's rules for verifying fixed income for LIHTC income certifications. [Federal Register 58355] [IRS Notice 88-80]

**Child Support:** Alimony or Child Support that is court ordered or supported by written agreement should be included in household income. [Guide to 8823, pg 4-20]

**Non receipt of Child Support:** If a tenant has been awarded child support payments but is not receiving them, the amount of the award must still be included in household income, UNLESS the tenant certifies that payments are not being made AND that he or she has taken all reasonable legal actions to collect.

Specifically, the statement should state clearly:

- that the tenant is not receiving payments,
- that reasonable efforts have been made to collect, including filing with courts or agencies responsible for enforcing payments,
- whether the tenant is seeking or expects to receive payments in next 12 months, and
- that the tenant will notify owner of changes in status.

Treasury regulations state that a signed sworn self-certification by tenant is sufficient for non-inclusion of child support payments in household income. [26 CFR 1.42-5(b)(1)(vii)][Rev. Proc. 94-65]

However, if there appears to be evidence contrary to the tenant's statement, such that a reasonable person in the owner's position would conclude that the tenant's income is higher than the tenant represents it to be, the owner / agent should not rely on the tenant's self-certification alone. [26 CFR 1.42(b)(1)(viii)] owners may ask for verification of efforts to collect payment, and may determine to include payments as income if they are not provided.

**Student Income:** In general, the earned income of full time students is counted toward household income, with the following caveats and exceptions:

- If the full time student is over age 18 and is either the Head of Household, Spouse or Co-Head, all of the student's income, whether earned or unearned, is included in household income.
- If the full time student is over age 18 and also a dependent, a token amount of the student's earned income – up to \$480 --- is counted toward household income. Unearned income and income from assets are counted in full. But any earned income in excess of \$480 is not counted.
- If the full time student is under age 18, earned income is NOT counted at all. Only unearned income, and income from assets is counted toward household income.

**Financial Aid:** [Guide to 8823, 4-18] In general for LIHTC properties, all forms of student financial assistance are excluded from income, unless the tenant is also receiving Section 8 assistance.

For tenants receiving **Section 8 assistance**, student financial assistance in excess of tuition must be counted as income. Student loans are not counted as financial assistance. Also, some students are exempt from this requirement, including:

- students who are over age 23 with dependent children, and
- students living with their parents who are receiving Section 8 assistance.

If a student receiving both Section 8 rental assistance and student financial assistance qualifies for one of these exceptions, the leasing agent should add a memo to file explaining the exemption. [Guide to 8823, 4-19]

**Assets:** A household's assets are listed on the Tenant Income Certification for the purpose of imputing potential interest income. In general, owners should follow HUD guidelines for verifying assets, for calculating actual and imputed income, and determining which to use in the household's total income calculation as found in Chapter 5 of the HUD 4350.3.

**Self-Certification:** However, if a household's combined **assets worth are \$5,000 or less**, the household may self-certify their assets instead of providing 3<sup>rd</sup> party verification.

To qualify, the household must create a single certification that lists ALL assets, owned by ALL members of the household. All the adults in the household must sign the same form, because they are certifying that their collected assets fall under \$5,000.

Owners / agents may use the model form for declaring Less than \$5,000 in Assets available on IHDA's website.

If the household has combined assets that exceed \$5,000, the self-certification form is not applicable. Though the model form may still be used to meet the disposal of assets requirement described below. The owner must obtain verification for ALL the household's assets, not just those in excess of \$5,000. Owners should refer to the HUD 4350.3 for guidance in verifying assets.

**Disposal of Assets:** Owners of LIHTC properties must ask all households to certify if they have disposed of assets, as described in the HUD 4350.3. Households must comply with this requirement whether or not they are declaring less than \$5,000 in assets. Owners may use IHDA's model \$5,000 Asset Affidavit form to meet this requirement, but are not required to use this form specifically. Assets that have been disposed for less than fair market value must be counted as household assets for 2 years from the date of disposal.

**LIHTC Projects with Section 8:** For projects with project based Section 8 rental assistance, assets must be verified prior to move-in and at least once every 3 years thereafter, but households with combined assets of less than \$5,000 may now self-certify those assets in the intermediate years.

**LIHTC Projects with HOME:** The HOME program does not currently accept self-certification of assets. For LIHTC projects that also have HOME, tenant assets must be fully verified.

## 2.3 Student Status

**LIHTC Student Rule:** LIHTC eligible units may not be occupied by households composed entirely by full time students unless they qualify for certain exemptions.

Households must be screened for student status at move-in, and every year of their tenancy. Unlike income qualification, where a household whose income changes may remain in the unit without threatening the unit's eligibility for tax credits, households must qualify under the student rule throughout their tenancy.

Properties that are 100% LIHTC, and are exempt from annual income re-certifications, must still verify student eligibility each year at lease renewal.

If, when recertifying a tenant or renewing their lease, an owner discovers that a household is composed entirely of full time students, and does not qualify for one of the exemptions, the owner should not renew their lease. If the owner does renew their lease, that unit does not qualify for tax credits until the household's status changes, or until they move out and replaced by a qualified household.

**Documentation:** Owners must document student eligibility before move-in and each year of lease renewal. Owners may use IHDA Certification of Student Eligibility Form, or other comparable forms to ask that the household:

- Certify if all members of household are full time students or not, and if they are
- Declare if the household qualifies for one of the exceptions to the rule described below.

Owners may use additional questionnaires and forms to ask individual adults to answer questions about their student status, and to ask the educational institution to verify whether a student is full or part time, and the months of their enrollment during the calendar year.

**Defining Full Time Status:** School-age children from grades K-12 are considered full time students. Generally speaking, preschool age children are not. Adult students are counted as full time students if they are enrolled full time in school for any part of 5 calendar months during the Calendar year.

- Full time enrollment is determined by the standards of the school where the student attends.

For instance, a school might define full time enrollment as 12 credit hours during the spring and fall semesters, but only 9 during the summer months. If a student at that school is enrolled for 9 credit hours in the Fall Semester, their enrollment is not full time during those months. But if they are enrolled for 9 credit hours during the Summer Semester, their enrollment during that term is full time.

- A student does not need to be enrolled through the entire month for it to be counted. For instance, a student who is enrolled full time from January 25<sup>th</sup> through May 1<sup>st</sup> has been enrolled during 5 calendar months, even though they have not been enrolled for 150 days.

- The months do not need to be consecutive. A student may be enrolled for 3 months in the spring, then re-enroll for 2 months in the fall, and therefore be counted as a full time student for LIHTC purposes.
- However, because the 5 months are counted within a calendar year, not the school year, a single person who enrolls as a student for 4 months in the fall of 2017, and for 4 months in spring 2018, then graduates at the end of the spring semester, could still qualify to live in a LIHTC apartment for 2018, so long as they are enrolled during no more than 4 months of the 2018 calendar year.
- Owners should be aware, an adult who is not currently enrolled as a student at the time they reports their status on an application or questionnaire may still be a full time student for LIHTC purposes. For instance, an applicant who applies to move-in to an apartment in September, 2017, and is no longer a student, but who was enrolled as a full time student for the months of January through May of 2017, is still a full time student for purposes of the LIHTC Program until the end of the 2017 calendar year.

**Exceptions:** [26 USC 42(i)(3)(D)][Guide to 8823, pg 17-2] If a household is comprised entirely of full time students, the household may still qualify to live in LIHTC housing if they meet at least one of five exceptions. If a household declares it qualifies under an exception, the exception must be verified.

1. At least one member of the household receives assistance under Title IV of the Social Security Act (for example, payments under AFDC).
2. At least one member of the household was previously in a Foster Care Program (administered under part B or part E of title IV of the Social Security Act).
3. At least one member of the household is enrolled in a job training program that receives assistance under the Job Training Partnership Act (JTPA) or similar federal, state or local laws.
4. The students are comprised of a single parent and his or her children, and the children are not dependents of another individual other than a second parent. For verification of the exemption for single parents with children, self-certification of the parent is sufficient.
5. The members of the household are married and are entitled to file a joint federal tax return. Married household members do not need to have actually filed a joint tax return, the exemption is based on their eligibility to file jointly.

**LIHTC Projects with HOME or Section 8:** The LIHTC Student Rule differs from the HUD Student Rule that applies to both Section 8 and HOME. Broadly speaking, these differences are as follows:

- Definition of student household  
LIHTCs: when **ALL members** of a household are **full time students**  
HOME/Section 8: when **ANY member** of a household is a **Full Time or Part Time** Student at an institution of higher learning.
- Exceptions under which student households may qualify

HOME and Section 8 do not recognize the LIHTC student rule exceptions listed above, but they do make exceptions for students who meet other criteria, including those who are:

- Over 23 years old, or
  - Living with parents, or
  - Qualified Independent, or
  - Married, or
  - with dependents other than a spouse, or
  - Veterans
- What happens if student household is not qualified
    - LIHTC: Unit is not eligible for LIHTCs
    - HOME: Household is treated as over income
    - Section 8: the Household is not eligible for rent subsidy

Non-compliance with the HUD student rule does not affect LIHTC compliance, but owners should be aware that non-compliance under the HUD rules affect tenant rents under both the HOME and Section 8 program. These impacts are addressed in in **Chapter 3: qualified rents**.

## 2.4 Certifications: Move - In & Annual

**Tenant Income Certification:** Tenant Income Certifications (TIC) must be prepared by the owner using IHDA's Form TST-3. The IHDA TST-3 is a joint form recognized by IHDA, the City of Chicago and Cook County, and can be generated using IHDA's online data portal, DMS Authority Online. It is a statement of household income and composition. It will be based on the information provided by the household and verified by the owner / agent. It must be signed by all adult household members prior to move-in, and at the time of annual recertification.

**Move In Certification:** In order to qualify to move-in to a LIHTC unit, applicants must be qualified with fully verified Income and Student Certifications.

**Recertification:** Re-certifications, if required, must be completed annually based on the anniversary of the move in date. Student status must be verified annually for tenants of tax credit units at all LIHTC projects, as of the anniversary of their move-in. [Guide 8823, pg 17-2]

At LIHTC projects where a fraction of units that is less than 100% are affordable under the program, households must also be income certified each year in order to determine if household income has grown to exceed 140% of the applicable income limit, triggering implementation of the next available unit rule.

**Waiver of Annual Income Recertification:** At LIHTC projects where 100% of units are affordable under the program, annual Income Recertification is not required. Projects that are 100% LIHTC effectively implement the next available unit rule for every move-in, and households that have been qualified at move-in will continue to be treated as income qualified by the IRS so long as the owner/agent continues to implement rent restrictions.

Prior to 2008, owners of 100% Affordable LIHTC projects could request a waiver of annual income certification requirements. Since 2008, Housing and Economic Recovery Act (HERA) extended the waiver to all 100% affordable LIHTC projects without need for individual waiver.

This exemption from annual income re-certifications is a significant paperwork reduction measure that benefits tenants as well as owners and agents. IHDA encourages owners or agents to contact their Asset Manager if they have questions about implementing the exemption.

**Next Available Unit Rule:** The IRS indicates that for purposes of applying the next available unit rule, households that were income qualified at move will be treated as income qualified as long as the owner demonstrates due diligence. However owners should be aware that failure to demonstrate due diligence when completing the initial income certification or deliberately renting a unit as a market rate unit could result in loss of tax credit basis. [Guide 8823, pg 14-5, 14-6]

**Student Status:** The exemption from income certification requirements does not apply to Student Status. Households must continue to certify their student status each year.

Owners may also choose to ask tenants to self-certify their income at lease renewal, particularly if the project has other sources, such as HOME.

**100% LIHTC Properties with HOME:** Some 100% Affordable LIHTC projects also have HOME funds. HOME requires that owners recertify tenant incomes every year. However federal HOME regulations allow participating jurisdictions (PJs) to accept 3 kinds of annual income certification, after initial move-in. One of these is a statement on which tenant certifies their annual income, swears to the truth and accuracy of this certification, and agrees to make documentation available if it is requested. If the PJ opts for this form of certification, the PJ must still require fully verified certifications every 6<sup>th</sup> year of the HOME Award.

As a PJ for HOME, IHDA will recognize the self-certification option, and encourages owners of properties with HOME that are also 100% LIHTC to have tenants self-certify using the Tenant Income Certification form at time of lease renewal.

Owners should remember that annual student certifications will still be required to maintain LIHTC compliance, and that fully verified income certifications are required on every 6<sup>th</sup> year of the HOME affordability or compliance period.

For Example:

If a HOME project that is also 100% LIHTC is completed in 2018, and has a 20 year compliance period under the HOME program, tenants may self-certify their income at lease renewal according to the following timeline:

**2018:** 1<sup>st</sup> year of HOME Program Period [Year Project Completed]

All tenants must certify, and all income certifications must be fully verified, for both HOME & LIHTC Program.

**2019 – 2022:** Year 2-5 of HOME Program Period

Any Initial Income Certifications must be fully verified prior to move-in, but renewing tenants self-certify their income.

**2023:** 6<sup>th</sup> Program Year under HOME

All income certifications must be fully verified

**LIHTC Projects with Section 8:** LIHTC Projects with Section 8 must continue to conduct annual and interim income re-certifications to meet requirements of the Section 8 program.

**Different Certification Methods:** Income certifications under Section 8 require a different form and mode of calculating income, and can access privileged information through the Enterprise Income Verification (EIV) system that cannot be made available to the IRS or anyone monitoring the LIHTC program. Some projects may choose to maintain a separate set of files for each program. However, the certifications can be conducted at the same time. For a 100% LIHTC project, income re-certifications are not required, though household qualification under the LIHTC student rule must be verified annually throughout the 15 year compliance period.

**Aligning Certifications:** Projects with existing Section 8 contracts that have a new LIHTC award will have 2 different move-in dates. Move in dates under the Section 8 program will reflect the date the household first occupied the building, and may be spread throughout the year. Move in

dates for the LIHTC project will reflect the date the household was qualified for the LIHTC program, and will cluster near the date of acquisition, or the new placed in service date.

The HUD 4350.3 indicates that owners may request permission from their HUD Field Office to align the Section 8 annual recertification date with the LIHTC program {HUD 4350.3 Par 7.5(C)}.

### **Effective Dates and Signatures:**

For new **move-ins**, the effective date of the **initial certification** is the date the tenant moves into the unit. Documents should be signed by all the adult members of a household prior to move-in. [Guide 8823, 4-22, 4-23]

In general, late signatures can be treated as self-corrected non-compliance, provided the signature date is prior to IHDA's notification of a compliance review. [Guide 8823, pg 5-1]

The greater risk in cases of late signatures on move-in certifications is that the owner may inadvertently move-in a non-qualified household before the household has fully certified to their income.

**Acquisition / Rehab** projects begin to qualify apartments for the LIHTC program within 120 days of acquisition in order to lock in certain benefits. Details are described in **Chapter 4: Leasing Requirements**.

**Income Re-certifications** should be completed within 120 days before the anniversary of the effective date of the original TIC. [Guide 8823, pg 4-22, 4-23]

Late re-certifications are out of compliance as of the date the recertification was due -- that is, the first day of the anniversary month of original move-in -- but are back in compliance as of the signature date.

If the owner is able to verify income as of the anniversary date, the effective date of the certification should be the 1<sup>st</sup> of that anniversary month. However the signature dates must reflect the dates the tenants actually signed the document. Signature dates must not be backdated.

If the owner is unable to verify income as of the anniversary date, the effective date of the recertification will reflect the actual date of the recertification, with current verifications and income limits. The signature dates will reflect the dates the tenants signed the document.

In both cases, the completed re-certification can be treated as self-corrected noncompliance if the re-certification is completed prior to IHDA's notification of a compliance review. [Guide 8823, pg 5-4, pg 5-5]

The greater risk of late re-certifications is that the owner may inadvertently violate the Available Unit Rule during the period before an income certification is complete.

Furthermore, a recurring pattern of late re-certifications demonstrates a lack of due diligence that may exacerbate penalties for accidentally renting a unit to a non-qualified household by

triggering a determination of noncompliance with the next available unit rule, particularly at 100% LIHTC properties.

## Chapter 3

### Qualified Rents

Owners make a commitment to provide certain proportions of LIHTC qualified affordable units in their minimum set aside election and in the applicable fraction that informs the basis for their LIHTC award.

In order to qualify as LIHTC eligible, units must be leased at affordable rents. Qualified rents are defined by a maximum gross rent calculation designed to be no more than 30% of maximum household income, adjusted by unit size, and updated annually to reflect changes in area median incomes.

To be LIHTC eligible, units must also be leased to qualified low income tenants, as addressed in **Chapter 2** of this manual. The units themselves must be in good condition, available to the general public and leased on a non-transient basis, as addressed in **Chapter 4**.

#### Chapter Sections:

- 3.1 Rent Schedules
- 3.2 Gross Rent and Tenant Rent
- 3.3 Calculating Maximum Rent
- 3.4 Utility Allowances
- 3.5 Gross Rent Floor
- 3.6 Gross Rent Violations
- 3.7 Blended Projects: LIHTCs & HOME

### 3.1 Rent Schedules

IHDA publishes schedules of maximum rent limits each year when it updates maximum income limits. The LIHTC program references several distinct limit schedules.

**MTSP:** Multifamily Tax Subsidy Program (MTSP) limits are published for use with the LIHTC program. These may differ from limits used for other HUD programs. MTSP rents are called “Regular Rents” on the maximum rent schedules published by IHDA.

**HERA:** Projects placed in service prior to January 1, 2009 may be eligible to use special limits created under the Housing and Economic Recovery Act (HERA) of 2008, as described in **Chapter 2** of this manual. HERA special rents are higher than regular MTSP rents.

**Non-Metro:** Non Metro areas may use maximum rents specific to their area. But they may also use national non-metro rent limits or state non-metro rent limits if those are higher than their local limits.

**Other Programs:** LIHTC projects that are also funded with other affordable housing programs that come with rent restrictions must compare rent limits for all the applicable programs and use the most restrictive.

### 3.2 Gross Rent and Tenant Rent

Rent schedules [see section 3.1 above] indicate the maximum gross rent. Gross rent includes any required payments made directly by the tenant, including:

- Contract or tenant rent, paid by the tenant to the owner
- Tenant paid utilities
- Non optional fees, such as service fees that are required as a condition of occupancy

**Utilities paid by the owner** are not included in gross rent for the LIHTC program.

**Rental Subsidy paid to the owner:** Gross rent does not include rental assistance payments made under Section 8 of the US Housing Act, or any comparable rental subsidy program. So if a tenant receives rental assistance, whether it be tenant or project based, only the tenant paid portion must meet the LIHTC rent limit. [26 USC 42 (g)(2)(B)(i)]

Furthermore, federal regulations allow that if the income of a tenant receiving rental assistance exceeds the LIHTC income limit, causing the tenant paid rent portion to exceed the LIHTC Rent Limit, the unit will still be LIHTC qualified, or treated as rent restricted under the LIHTC program, so long as the tenant also receives rental assistance. [26 USC 42 (g)(2)(E)(i)]

### 3.3 Calculating Maximum Gross Rent:

Affordable rents for the LIHTC program are calculated as 30% of maximum household income, adjusted by unit size.

Maximum Rent Limits are therefore informed by the owner's **minimum set aside Election**. Maximum Rents for projects that have elected to make 40% of apartments affordable at 60% of the Area Median Income will be higher than Maximum Rents allowed at projects that have elected to make 20% of apartments affordable at 50% AMI.

The minimum set aside election determines the Maximum Limits for all of a project's qualified affordable Units. In other words, a property may be 100% affordable, with a minimum set aside of 20% of units at 50% AMI. In that case, all 100% of affordable units must be affordable to households at 50% AMI.

Income Limits vary with the number of people in a household. Maximum Rent Limits vary by unit size, based on a presumed occupancy ratio of 1.5 people per bedroom. Efficiency units, or units without separate bedrooms are treated as occupied by 1 person.

**For Example:** In the case of a 4 person household in a 2 bedroom apartment, in a project where the minimum set aside election is 60% AMI.

Occupancy Estimate = 1.5 people x 2 bedrooms = 3 people. [Not the actual number of people in the household.]

60% AMI for 3 person household in that location for that year is \$45,060.

Monthly income =  $\$45,060/12 = \$3,755$ .

30% of Monthly =  $\$1,126.50$ , or  $\$1,126$ . Where the maximum rent must be rounded, it is always rounded down.

If the 1.5 person per bedroom ratio generates a count that is not a whole number, maximum rent is calculated by taking an average of the maximum incomes for the higher and lower whole numbers.

**For Example:** In the case of a 3 person household in a 3 bedroom apartment, in a project where the minimum set aside election is at 50% AMI.

Occupancy Estimate = 1.5 people x 3 bedrooms = 4.5 people.

Because the Occupancy Estimate is not a “whole” person, use the average income limit between 4 and 5 people to calculate maximum gross rent.

50% AMI for a 4 person household is  $\$41,700$ .

50% AMI for a 5 person household is  $\$45,050$ .

The Income Limit for 4.5 persons = the average or  $\$43,375$ .

That yields a monthly income of  $\$3,615$ . ( $\$43,375/12$ )

30% of the monthly income is  $\$1,084.36$ , or  $\$1,084$ . Where the maximum rent must be rounded, it is always rounded down.

Maximum gross rents are adjusted annually when income limits are updated. IHDA publishes both MTSP (“regular”) and HERA special gross rent limits when it publishes income limits.

The maximum gross rent is a ceiling, it is not a floor. The owner may choose to charge rents below the maximum gross rent, if market conditions would not support the maximum allowable rent, for instance, or if the project is subject to deeper rent limits associated with another affordable housing program.

### 3.4 Utility Allowances

Gross rent limits include allowances for tenant paid utilities. To calculate the maximum rent payable by the tenant, owners must subtract the utility allowance from the maximum gross rent. [26 CFR 1.42-10]

Utility allowances only include the cost of basic utilities paid by the tenant, such as gas, electric and water. They do not include services such as phone, internet or cable, or any basic utilities paid by the owner. Sub-metered utilities that are paid by the tenant directly to the owner are treated as utilities paid by the tenant. [IRS Notice 2009-44]

Owners must update utility allowances annually. In general, owners of LIHTC projects that are not specifically required to use an RHS or HUD model for calculating utility allowances are encouraged to use Allowances published by the local **public housing authority (PHA)**.

However, in cases where source may require a different method for any unit at the property, the LIHTC program requires that the owner use the same source or method for all units of the same size. [26 CFR 1.42-10(b)(ii)]

For instance, buildings with Rural Housing Assistance or with any tenant who receives tenant based rural assistance should use the utility allowance determined in the method prescribed by RHS.

HUD sources or programs monitored by HUD require use of a HUD allowance method, except for units with tenants receiving HUD rental assistance, which should use the PHA Allowance.

For example,

Projects funded under HOME after 8/23/13 may not use PHA published utility allowances. (Though projects funded prior to 8/23/13, as determined by the date of their HOME Regulatory Agreement, may continue to do so.)

The HOME program requires use of a project specific methodology for determining utility allowances. Participating Jurisdictions (PJs) are required to determine utility allowances, but may do so by requiring property owners to use a specific method and submit the analysis for the PJ's review and determination.

As a HOME PJ, IHDA requires property owners to submit a utility allowance schedule based on one of the following methods for its determination:

- Multifamily Housing Utility Analysis following the instructions published by HUD in MF Notice H-2015-4, or
- Utility company estimates for each of the utilities used in the project.

Once IHDA has made its determination based on the analysis submitted by the project owner, the schedule is applicable for both the HOME and the LIHTC programs.

Other utility allowance sources identified as allowable under the LIHTC program regulations include:

- **Utility Company Estimate:** An interested party, such as an owner or a tenant, may obtain a written estimate of utility cost for a unit of similar size and construction in same geographic area. If the owner uses a utility company estimate, they must make the information available to building tenants.
- **Agency Estimate:** Owners are allowed to use an estimate provided by the agency with jurisdiction over the unit if the agency agrees to provide it.
- **HUD Model:** A building owner may use the HUD utility schedule model to calculate an estimate, but rates must be current, no older than 60 days at the time they are implemented.
- **Consumption Model:** With approval from a monitoring agency, such as IHDA, a building owner may calculate an allowance based on a model created by a licensed engineer who takes into account information about building orientation and design as well as unit size and historical information.

Annual updates to utility allowances, and any rent adjustments needed to comply with maximum gross rent limits, must be applied to new leases or lease renewals within 90 days of when they are issued.

### 3.5 Gross Rent Floor:

When financing a new project, underwriters typically project that operating expenses will rise with inflation, and that rents will be increased at a modest rate to cover projected expenses. When area median incomes increase each year, maximum rent limits also rise to accommodate rent increases.

However, in some cases realities fall short -- area median incomes, and the maximum income Limits derived from them, may drop from one year to the next. The LIHTC program recognizes a gross rent floor to protect owners from being forced to lower rents, potentially jeopardizing the project's ability to meet expenses.

The gross rent floor is based on income limits effective at the time a project is qualified as a low income project. [26 USC 42 (g)(2)(A)] By default, this is counted as the maximum gross rent in effect at the time at which LIHTCs are allocated. But the owner may choose to establish the floor based on gross rent limits in effect at the time the property is placed-in service by notifying IHDA of this preference.

Once established, the LIHTC program will never require the owner to reduce rents below the gross rent floor. Owners retain the option to lower rents below the floor, to meet realities of the rental market for instance, but they will never be required to do so to remain in compliance with the LIHTC program.

### 3.6 Gross Rent Violations:

Owners must be compliant with the maximum gross rents each month of the tax year. [Guide 8823, 11-2] Owners should be aware that if a LIHTC tenant is charged rent or fees in excess of the maximum gross rent for any single month in the year, the unit ceases to be counted as a low income unit for the remainder of the owner's tax year, even if the owner corrects or rebates excess rent or fees. The unit may be brought back in compliance on the first day of the owner's next tax year if the gross rent, including tenant rent, utilities and fees does not exceed the limit. [Guide 8823, 11-10]

### 3.7 Blended Projects: LIHTCs and HOME

Owners of LIHTC projects that also have other sources of affordable housing financing must compare rent restrictions between programs and use the most restrictive rent. LIHTC projects with project based subsidies apply the maximum rent limit to the tenant paid portion, or the tenant rent, only.

**Rent Limits:** HOME projects do not use regular MTSP rents or HERA special rents. HUD publishes separate rent limits for the HOME program annually. A project with units covered by both LIHTCs and HOME should be careful to compare rent limits from the applicable LIHTC and HOME schedules, and use whichever is most restrictive, keeping in mind the following:

HOME maximum rent limits apply to the rent plus the utility allowance, but do not include the mandatory fees that must be included in LIHTC gross rents. [24 CFR 92.252(a)]

Maximum rents for High HOME units are calculated as 30% of the income for a household at 65% AMI. HUD further compares this calculation with local fair market rents and uses whichever is lower.

Maximum rents for Low HOME units are calculated to be 30% of the income of a household at 50% AMI. [24 CFR 92.252 (b)]

In some cases, High HOME rents may be more restrictive than LIHTC rents using the 40% / 60% election.

The HOME program does not use HERA special income or rent limits. If the project qualifies to use HERA special limits under the LIHTC program, the owner must compare HERA special and HOME limits and use the most restrictive.

**Rents for Over-Income Households:** Both the LIHTC and HOME program implement rules for bringing unit mix back in balance if households who qualified at move-in become over-income during their tenancy. They differ in how they treat rent restrictions during this process.

The LIHTC program requires that over-income units remain rent restricted under the LIHTC maximum rent limits, until implementation of the next available unit rule allows the over-income LIHTC unit to be replaced with a former market unit. Over-income units at 100% LIHTC projects that do not have market units must remain rent restricted throughout the extended use period.

The HOME program requires that owners charge higher rents to households who are over-income at recertification. The adjustment required depends on whether the household is still low income or not, whether the unit is a Low HOME, or High HOME, unit, and whether the HOME units at the project are fixed or floating.

However if the unit is also a LIHTC unit, the adjusted rent may not exceed the LIHTC maximum rent limit. [HOME Guidebook for PJs, pg 57].

**Rental Subsidy:** Under the LIHTC program, gross rent limits apply only to payments made directly by the tenant. Federal, state or local subsidy payments are not included in gross rent. Furthermore, the tenant portion can exceed the LIHTC Maximum Rent as long as the owner is also receiving rental subsidy through Section 8 or a comparable program. [Guide 8823, pg 11-5]

Under Low HOME, if the unit receives project based rental subsidy, the maximum rent is the rent allowable under the rental subsidy program, so long as the tenant portion is no more than 30% of the tenant's income. [24 CFR 92.252(b)(2)]

This rule does not specifically apply either to tenant based rental subsidy, or to any rental subsidy payments made to HOME units that are not Low HOME. So under High HOME, the total contract rent, including both tenant portion and rental subsidy amount, is capped at the published HOME limit for 65% AMI. [24 CFR 92.252(a)(2)]

Furthermore, under HOME, rents charged to tenants receiving tenant based subsidy must be same as rents charged to other tenants.

**Gross Rent Floor:** Both the HOME and the LIHTC programs protect owners from being forced to lower rents below a certain base level if stagnant incomes would otherwise force them to do so.

Under the LIHTC program, this base level is called the Gross Rent Floor, and is based on the income limits in effect when LIHTCs were allocated, or those in effect when the building was placed in service. [26 USC 42(g)(2)(A)]

Under the HOME program, a project will never be required to be lower rents below the HOME rent limits in effect at the time of allocation. [24 CFR 92.252(f)]

## Chapter 4

### Leasing Requirements

To be LIHTC eligible, units must be leased to qualified low income tenants, as addressed in **Chapter 2**, and at affordable rents, as addressed in **Chapter 3**. The project must also be maintained in good physical condition and leased according to program rules. This chapter addresses the additional program requirements for leasing and maintaining LIHTC eligible units.

#### Chapter Sections:

- 4.1 General Provisions
- 4.2 Initial Lease Up: New Construction
- 4.3. Initial Lease Up: Acquisition / Rehab

#### 4.1 General Provisions

**In Good Condition:** owners must maintain LIHTC units and properties in good condition, as measured by federal and local standards. IHDA will conduct physical inspections of LIHTC properties using HUD's uniform physical condition standards (UPCS). The federal standards do not supersede local health, safety or building codes, and owners are required to share any local health, safety or building code violation reports or notices with IHDA for IHDA's review.

**Not Leased on a Transient Basis:** The LIHTC program is intended to provide permanent housing, and comes with a restriction against leasing units on a transient basis. All units should be leased for periods of no less than 6 months. However, there is an exception for single room occupancy units which may be leased on a month to month basis, as provided for in the project's Extended Use Agreement.

**Available to the General Public:** LIHTC units must be available to the general public. They must be compliant with fair housing laws, including those laid out in HUD rules in the federal code and the most current edition of the HUD 4350.3. [26 CFR 1.42 subtitle A and chapters I through XX] [26 CFR 1.42-9(a)]

Some preferences are allowed without violating the general public use requirement. The federal code of regulations specifically allows preferences for 3 types of tenants, including those:

- (1) with special needs,
- (2) who are members of a specified group under a federal program or state program or policy that supports housing for such a specified group, or
- (3) who are involved in artistic or literary activities. [26 USC 42(g)(9)]

Federal regulations also give examples of housing that is **not** considered to be available to the general public. For instance, if a residential unit is made available only to members of a particular social organization, or employees of a particular employer. Units that are part of a nursing care facility, or are restricted to persons with a medical condition or disability are not considered to be available to the general public.

Such units may be part of a building or project that has LIHTC units, but the cost of those units must be excluded from the basis of costs considered eligible for tax credits, and counted as non-program units when calculating the applicable fraction.

Owners should also be aware that certain preferences could put them in violation of fair housing laws that prohibit non-discrimination. For instance, owners sometimes propose to institute a preference for local residents of the particular town or neighborhood where a project is located. Such a preference would conflict with project's Affirmative Fair Housing Marketing Plan, in which owners identify populations least likely to apply to their property, and implement specific strategies for marketing to them. [26 USC 42(g)(9), 26 CFR 1.42-9]

Fair housing violations also put projects out of compliance the LIHTC program by violating the requirement that project units be available to the general public and rented in a non-discriminatory manner. [26 CFR 1.42-9] By an agreement with the IRS, HUD and the Department of Justice (DOJ) report fair housing actions to state agencies. Adverse judgments under fair housing laws may result in loss of tax credits.

**Fair Housing:** In its role as LIHTC monitor, IHDA will hold owners accountable to compliance with federal fair housing laws, including, but not limited to, the preparation and use of an Affirmative Fair Housing Marketing Plan.

**Occupancy Standards:** The LIHTC program does not have occupancy requirements. Owners are encouraged to set their own occupancy requirements in their Tenant Selection Plans, in consultation with HUD and local requirements.

**Leases:** The LIHTC program does not have a prescribed lease.

IHDA provides a model Lease Addendum with language that should be included either in the lease, or as an addendum to the lease that is signed both by the owner or property management agent and by all the adults in the tenant household:

The lease between the above mentioned and (Project Name) dated (Lease effective date) is hereby amended as follows effective (Certification/Recertification date):

**FEDERAL LOW INCOME HOUSING TAX CREDIT:** The Tenant acknowledges that (Project Name) is operated pursuant to the rules and regulations of the Federal Low Income Housing Tax Credit Program (the "Program"). The Program provides for a specific maximum monthly rent, which may be charged for the Premises, which amount is subject to an annual adjustment based upon median incomes determined by HUD.

**SECTION 42 OF THE INTERNAL REVENUE CODE of 1986:** The Program requires the Lessor to lease to "Qualified Households" as defined by Section 42 of the Internal Revenue Code. At this property, Qualified Households must meet certain income and student status limitations. Tenant(s) agrees to notify the Landlord immediately if any material changes in income, number of persons residing within the Premises or the change in the student status of any occupant residing within the Premises.

**REQUIREMENT TO VACATE:** The owner must not evict or terminate the tenancy of, an existing tenant of any Low-Income unit for other than for good cause. [Guide 8823, pg 12-1]

**Tenant Services:** Owners of LIHTC projects may provide services other than housing without jeopardizing eligibility for LIHTCs. If services are required as a condition of tenancy at the project, any fees charged to tenants for these services must be included in gross rent for purposes of compliance with the maximum gross rent limit.

**Lease LIHTC Units First:** For projects that are not 100% affordable, owners must make reasonable attempts to lease any low income units that may become vacant during the year to qualified low income tenants before renting market units, or before renting any units to tenants with a non-qualifying income. [26 CFR 1.42(c)(ix)]

**Next Available Unit Rule:** If the income of a tenant of a low income unit in a LIHTC project has increased above 140% of the low income limit (as elected on IRS Form 8609), the tenant is considered over-income. The over-income tenant may remain in the unit, and the unit will still be eligible for tax credits, so long as:

- the unit remains rent restricted, and
- the next unit of comparable or smaller size to become available in that building is leased to a LIHTC qualified low income household.

[26 CFR 1.42-15(e)]

The next available unit rule applies separately to each building in a project.

Properties that are 100% affordable are in effect always implementing the next available unit rule. In mixed income properties, the rule must be applied until the next available market unit can be leased to a qualified household.

Applying the next available unit rule thus restores the project's applicable fraction, or the percentage of the building that is treated as eligible for tax credits.

However, if the next market unit to become available is NOT leased to a LIHTC qualified tenant, all of the comparable Over-Income units in that building lose their status as qualified units. [26 CFR 1.42-15(f)]

When the next available unit rule is applied at a mixed income property, the 2 units may, at the owner's discretion, effectively exchange status. The formerly market unit becomes a LIHTC unit going forward; the over-income unit does not need to be income or rent restricted.

On the other hand, by maintaining rent restrictions on the over-income unit, the owner may maintain its low income status, giving the owner more flexibility in leasing market units in the future. [26 CFR 1.42-15 (b)(1) and (d)]

At 100% LIHTC projects, the over-income unit must remain rent restricted, and must be leased to a LIHTC qualified tenant when it next becomes available.

**Unit Transfers:** Qualified tenants may transfer to new units within the same building without being re-certified as new move-ins. The two units effectively trade status – with the new unit adopting the status of the vacated unit, and vice versa.

Transfers between buildings in the same project are only allowed if the owner indicated that the building is part of a multi-building project on 8609 Tax Form. [8609 Line 8b "Are you treating this building as part of a multiple building project for purposes of section 42?"]

If the owner indicated the building is NOT part of a multiple building project when filing the first 8609, then a tenant moving between buildings must be treated as a new move-in, and must qualify based on their current income.

**Tenants with Vouchers:** LIHTC regulations explicitly prohibit an owner from refusing to lease a unit in a LIHTC 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.

**VAWA:** The LIHTC program is subject to the Violence Against Women Act (VAWA), which seeks to afford protections for, and prevent housing discrimination against, victims of domestic violence. Domestic violence covered by VAWA includes dating violence, sexual assault or stalking, regardless of gender or marital status.

Project owners must notify tenants of their rights under VAWA. Owners must also establish an Emergency Transfer Plan for handling both internal and external requests for Emergency Transfer by tenants seeking protection from domestic violence.

HUD provides model documents for owners to meet VAWA requirements. Owner's may use HUD's forms, or may adapt them for their use. The HUD forms include:

- HUD-91067 – Lease Addendum amending lease to include provisions of VAWA
- HUD 5380 – Notice of Occupancy Rights under VAWA – owners are required to provide all applicants and existing tenants a notice of their occupancy rights under VAWA. Applicants must be notified of their rights under at the time their application is accepted or rejected.
- HUD 5381 – Model Emergency Transfer Plan – all owners of LIHTC properties must have an Emergency Transfer Plan, HUD's model addresses many, but not all, plan requirements.
- HUD 5382 – Certification for VAWA – if owners require documentation of domestic violence they must accept a tenant's written certification as sufficient. HUD's form provides a model for tenant certification of domestic violence.
- HUD 5383 – Emergency Transfer Request form – owners may ask victims of domestic abuse to use a form to request an emergency transfer – HUD provides a model of such a form.

IHDA provides a model Emergency Transfer Plan that addresses federal requirements, including those that do not appear in the HUD 5381.

Finally, in its role as a Participating Jurisdiction under HOME, IHDA maintains a list of affordable properties in its jurisdiction for victims of domestic abuse looking for other housing.

Both IHDA's model Emergency Transfer Plan, and the list of affordable properties, are available on the Property Managers section of IHDA's website.

## 4.2 Initial Lease-Up: New Construction

Owners and their property management agents should be aware of the timing commitments related to lease up. All units included in applicable fraction must be leased to qualified tenants in order to qualify them for LIHTCs. Units not qualified by the end of the year after the building has been placed in service, or by the end of the deferred year, will not be eligible for tax credits during the 10 year tax credit period.

If the owner fails to qualify enough units to meet the minimum set aside by the end of the year after the building has been placed in service, the property will not qualify as a LIHTC project, and will not be eligible for tax credits in any amount.

Property managers should be aware of the lease up schedule agreed upon in the owner's Partnership Agreement, because investment partners may take credits for units as they come online on a month by month basis, and the managing partner may incur penalties for not achieving these targets. Additionally, project equity payments may be tied to qualified occupancy of the units.

### 4.3 Initial Lease-Up: Acquisition/Rehab

**Acquisition / Rehab:** Existing residents of an acquisition/rehab project may qualify for certain safe harbors.

**Tenants May be Qualified prior to the Tax credit period:** In projects involving acquisition and rehab of an existing building, owners may begin to qualify apartments for the LIHTC program immediately after acquisition even if the credit period will not begin until rehab is complete.

- Existing tenants who are determined to be income qualified based on income certifications that occur within 120 days of acquisition will be considered income qualified even if they are over-income by the time the building is placed in service and the tax credit period starts. The effective date of their initial certification is the date of acquisition.
- Existing tenants who are not income certified within 120 days of acquisition, will be treated as new move-ins at the time they are certified. If they qualify when certified, they will also remain qualified even if they are over income by the start of the tax credit period. The effective date of initial certification is the date of the last adult household member's signature.
- New tenants who move-in after acquisition may also be income qualified within 120 days of their move-in date, and will be considered income qualified, even if they are over income by the time the Tax credit period starts. The initial certification date is the date of move-in.

Units qualified under this provision must be rent restricted during the period between the effective date of their certification and the start of the tax credit period. Furthermore, household incomes that qualify under this provision must be tested within 120 days prior to the start of the new tax credit period for purposes of the next available unit rule (unless the initial certification occurred within 120 days of the start of the tax credit period). [Rev Proc 2003-82][Guide to 8823, pg 4-25]

The next Available Unit Rule test consists of confirming with the household if the information on the Initial Certification is still current. If the household has additional income, the TIC will be updated. Third party verifications are not required. If the household is over income, the next Available Unit Rule applies. [Guide 8823, pg 4-26]

Changes to the updated certification should be dated as of the date they were made. The effective date of the certification remains the unchanged.

**Existing Tenants Qualified Under a Previous LIHTC Allocation:** If the property was funded under a previous allocation of LIHTCs, existing households who qualified at move-in under the initial round of tax credits will remain income qualified for any subsequent allocation of tax credits, even if their income has increased and they would otherwise be over income.

Because these households are considered income qualified, their income does not need to be re-qualified within 120 days of acquisition. If the owner/agent has not been conducting annual re-certifications and the project will not be 100% LIHTC, the household's current income should be documented for purposes of the next Available Unit Rule.

A new "test" certification may be generated for this purpose that is effective as of the start of the new tax credit period. However care should be taken to clarify that the test certification is not the qualifying certification. A clarification memo may be used for this purpose. The Initial Certification completed at move-in must be retained in the tenant file. The effective date of any annual re-certifications should reflect the anniversary of the Initial Certification, when the household was first qualified.

This Safe Harbor provision does not extend to student status. The household's student status must be re-certified as of the start of the new tax credit period. If the household is comprised entirely of full time students and does not qualify for one of the exceptions identified in the rule, the household is not LIHTC qualified. [Guide 8823, pg 4-27]

The student rule is not in effect during the extended use period. Owners do not need to demonstrate that the household continued to qualify under the student rule during the extended use period, it is sufficient to show that they qualify at the start of the new tax credit period.

## Chapter 5

### Compliance Reporting & Monitoring

As a state housing credit agency, IHDA is responsible for monitoring LIHTC project compliance – including **initial year compliance** and **ongoing / annual compliance** for the length of the extended use period. In general, IHDA monitors compliance through:

- Owner Certifications and Reports to IHDA
- IHDA Management Reviews
- IHDA Tenant File Reviews
- IHDA Physical Inspections

Where IHDA finds noncompliance, IHDA will notify the owner of the finding and extend a correction period in which to cure the deficiencies.

Deficiencies may be related to requirements of the federal LIHTC program, commitments the owner has made to IHDA in its Extended Use Agreement, or other management criteria that reflect best practices upheld by IHDA. Uncorrected deficiencies of any category may result in penalties imposed by IHDA.

If the issues raised in a compliance review impact eligibility under the federal LIHTC program, and the project is within the 15 year compliance period, IHDA must file a Report of noncompliance [IRS form 8823] with the IRS. IHDA will make the filing after the correction period, and the report will indicate if the deficiency has been corrected or not. If it remains uncorrected, the IRS will notify the owner that it must consult with IHDA, as state monitor, to correct the noncompliance.

If the noncompliance is such that a unit or units are not qualified for tax credits, noncompliance may result in an IRS Audit, a reduction in tax credits, or recapture of tax credits already taken.

#### Chapter Sections:

- 5.1 Initial Year Compliance
- 5.2 Ongoing / Annual Compliance
- 5.3 Noncompliance
- 5.4 Record Keeping

#### 5.1 Initial Year Compliance:

Initial Year compliance has special weight because it determines baseline qualification for the LIHTC program. Projects failing to qualify enough units to meet the minimum set aside by the end of the first year of the credit period do not qualify for the LIHTC program, and are not eligible to take tax credits in any amount. New projects have until end of the year the project was placed in service, or to the end of the next taxable year, to achieve the minimum set aside, thus becoming a **qualified low income project** eligible to claim tax credits. [26 USC 42(f)(1) & 42(g)(1)]

#### Initial owner Certifications & Reports:

**IRS Form 8609:** The 8609 is the tax form used to allocate and claim credits under the LIHTC program. IHDA fills out Part I of the form; the owner completes Part II and files the form with the IRS.

A separate form is used for each building in a multi-building project.

**Part I** of form 8609 is the Allocation of Credit, where IHDA records the Maximum Tax Credit that the owner may take. IHDA also records other information that Asset & Property Managers should be aware of, such as:

- the Building Identification Number (**BIN**) for that building [field E]
- the maximum **qualified basis** that an owner may claim if all units are qualified [line 3a]
- the **placed in service** date, which determines the start of the tax credit and compliance periods. [line 5a]
- whether the project is being counted toward the state's **Non-Profit Set Aside**. [line 6f] Section 42(h)(5) of the federal Code requires that a certain portion of a State's annual credit ceiling be allocated to projects in which a qualified nonprofit participates in ownership, development and operation throughout the compliance period. Changes in non-profit participation are one of the items owners must declare in the annual owner's Certification.

Once IHDA has prepared and signed Part I, IHDA provides the 8609 to the owner for completion.

**Part II** of form 8609 is the owner's First Year Certification, where the owner elects a **minimum set aside** [line 10c], which determines the minimum affordability requirements a project must achieve to be to qualify for tax credits as a Qualified Low Income Housing Project.

The owner also records other information that Asset and Property Managers should be aware of, including:

- the building's **eligible basis** [Line 7] and original **qualified basis** [Line 8a] at the close of the first year of the tax credit period. These lines inform the project's qualification for tax credits, based on eligible costs and the portion of the building that is Low Income. In every subsequent year of the tax credit period, the owner will be asked to re-calculate their tax credits based on the actual portion of the building that qualifies as Low Income as of the annual filing.
- whether the building is part of a **multi-building project**. [Line 8b] This will affect whether tenants can transfer between buildings without being re-qualified as new move-ins. Tenants may not transfer between different projects, but may transfer between buildings of the same project.
- which year the owner elects to begin taking credits vis-a-vis the placed in service date. This year marks the 1<sup>st</sup> year of the **tax credit** and **compliance periods**.

#### **IHDA Initial Project Forms:**

When projects are transferred from IHDA's Multi-Family Development Department to the Asset Management Department for monitoring, the Asset Management Team will send the owner / agent contacts an Initial Project Packet, requesting information that IHDA will use to set the Project up in our systems and facilitate accurate compliance monitoring. The accuracy of this information is particularly

important for ensuring the owner / agent is able to use DMS Authority Online, IHDA's online reporting portal, without errors or complications.

**Low Income Housing Data for Tax Credit Projects form (TST-4):** Owners report project data and units allocated by income level target. This form is completed once, as part of the owner's initial report to Asset Management, and should agree with commitments in the Extended Use Agreement. In subsequent years, owners will be asked to certify that project data reported on this form is still accurate, or else to report any changes.

**Low Income Housing Project Data form (TST-4A):** Owners submit a separate form for each BIN, reporting the number of bedrooms, total square feet and income target for each unit. This form is completed once, as part of the owner's initial report to Asset Management. Accuracy is imperative for seamless use of DMS Authority Online for future compliance reporting. Unit numbers in particular must match the format used in the owner / agent's system of record.

**Low Income Housing Tax Credit Initial Monitoring Form (TST-8):** Owners report the type of credit requested, minimum set aside election, construction information and occupancy status, the project owner and project manager. This form is submitted once as part of the owner's initial report to Asset Management. For the remainder of the compliance period, owners must certify annually that the information remains accurate, or else report any changes.

### **Registration for DMS Authority Online**

Much of the owner's ongoing compliance reporting will be made through DMS Authority Online, an online portal into IHDA's data management system. Owners must register for access to their project, using an Organization ID provided by IHDA, and using the LIHTC Award Number.

The owner's registration request must be approved by IHDA. IHDA staff will complete project set-up in DMS using the forms from the Initial Project Packet, prior to approving an owner's request. Once the owner is fully registered in DMS, the owner can manage and approve other users who request access to the Project.

For example, a Property Manager would submit a registration request through the system using the Organization Code for the Property Management Company and the same LIHTC Award Number. The owner can approve the registration request and grant the Property Manager access for the functions the Manager will perform.

Detailed instructions for registering and using DMS Authority Online are available in the *User Manual for Owners and Agents* on the Property Manager's section of IHDA's website.

### **IHDA's Initial Inspection & Tenant File Review**

For new LIHTC projects, IHDA will conduct an on-site Physical Inspection and Tenant File Review no later than the end of the second calendar year following the year when the last building is Placed-in-Service. [Guide 8823, 3-1]

Units will be selected randomly, to include units in each building included in the LIHTC project. Owners will not be notified in advance which units are chosen for inspection, so owners should notify tenants of all the project's low income units that their apartments may be inspected. [Rev Procedure 2016-15, Section 4]

For the Initial Inspection, IHDA will review the tenant files for the units that are selected for inspection. In future years, tenant file reviews and physical inspections may be conducted at different times and cover different units.

Tenant files must contain the following documents, completed in their entirety, to enable IHDA to determine the qualification of the household and the apartment unit:

- Tenant Lease
- LIHTC Lease Addendum [if LIHTC language is not incorporated in the lease]
- Violence Against Women Act Addendum
- application or Eligibility questionnaire
- Any screening materials identified in the Tenant Selection Plan [such as credit checks, criminal background checks]
- Tenant Income Certifications (TIC)
- Verification of Income & Assets
- Disposal of Assets Form [may be incorporated into another questionnaire or form]
- Student Status Certification and documentation
- move-in Inspection

**Waitlist:** During the Initial File Review, IHDA will also review the Project Waitlist to verify that applicants were contacted in order.

## 5.2 Ongoing / Annual Compliance

**IRS Form 8609-A:** Owners submit the **Annual Statement for Low Income Housing Credits** to the IRS with their tax return each year of the 15 year compliance period. IHDA does not fill out any part of the 8609-A. owners submit a separate form for each BIN to report compliance with the LIHTC program and to calculate the annual tax credit amount based on the current qualified basis.

**IRS Form 8586:** The Low Income Housing Credit Form is filed by the owner with the IRS to claim credits each year of the compliance period, starting with the first taxable year in which the credit is taken.

### **Owner Certifications & Reports to IHDA:**

Owners must also make annual reports to IHDA for LIHTC monitoring purposes. IHDA will notify owners of their annual IHDA reporting requirements each year in an **Annual Compliance Package**. This package contains all the IHDA requirements for the property, for all the IHDA programs or loans awarded to it.

Owners of projects with awards under TCAP and the Section 1602 equity replacement program are subject to the same requirements as LIHTC projects under Section 42 of the US Code, including the same annual reporting to IHDA.

**Owner's Annual Certification of Compliance:** [formerly IHDA Form TST-1] The owner's Certificate of Continuing Compliance must be filled out annually in DMS Authority Online, IHDA's Online Portal to its Data Management System. To meet this requirement, the owner must register for access to the DMS Authority Online: see *Registration for DMS* in section 5.1 of this chapter, and the *DMS Authority Online User Guide* on the Property Managers section of IHDA's website.

The owner of a federal LIHTC project must certify to IHDA that the project meets, and has met for the past 12 months, the requirements of Section 42 of the federal tax code, and the provisions of its Extended Use Agreement. These provisions include project information reported in IHDA's forms:

- Low Income Housing Data on project composition (TST-4)
- Housing Data Report on individual units (TST-4A), and
- Initial Monitoring Form (TST-8)
- Form 8609 as filed with the IRS.

**Tax Credit Program Project Information form (TST-1A)** must be completed ONLY if there has been a change in the property's applicable fraction, ownership Information and/or Management Company.

**Annual Utility Allowance Reporting:** Each year, owners are required to submit utility allowances, together with documentation that supports them, for IHDA's approval. Upon approval, owners must update utility allowances in DMS Authority Online.

**Annual Tenant Event Reporting:** Each year, owners / agents must report income, rent and student status for all households of the LIHTC project, using DMS Authority Online.

This requirement also applies to projects funded under TCAP and Section 1602 equity replacement grants, and to projects that are 100% affordable.

Owners of 100% affordable projects, in which tenants are not required to complete annual income certifications, must still report updates to lease, rent and household information, including changes in student status.

In previous years, this report was completed on a Multi-Agency Tenant Profile Compliance Report (IHDA form TST-2) used jointly by IHDA, the City of Chicago and Cook County for owner for reporting on multiple programs.

LIHTC projects are NOT required to complete the Tenant Profile Compliance Report if they comply with IHDA's requirement to use the DMS system for tenant event updates. Those who do not use Authority Online must submit the Tenant Profile Compliance Report, and will be charged higher compliance fees help defer the expense of IHDA staff updating tenant information in DMS.

Detailed instructions for entering tenant event information and penalties for not using the DMS System are available in the *User Manual for DMS Authority Online*, available on IHDA's website.

Owners and agents should also be aware that they may use DMS Authority Online to complete and generate Tenant Income Certification's throughout the year. Doing so has the added benefit of ensuring this information is already entered in the DMS System, so that the owner / agents will not need to upload this information later.

**Tenant File Reviews:**

IHDA will conduct on-site management reviews for all LIHTC projects at least once every third year during the compliance and extended use period. During the management review, the Asset Manager will review a sample of tenant files. However if extensive noncompliance is found, IHDA may expand the sample.

The Asset Manager will review the following documents:

- application or Most Recent Eligibility questionnaire
- Tenant Lease
- LIHTC Lease Addendum
- VAWA Lease Addendum
- Initial Tenant Income Certification [IHDA Form TST-3]
- Verification of All Income & Assets on the TIC
- Disposal of Assets questionnaire: this may be an independent form, or incorporated into another questionnaire.
- Most recent Income Recertification, if applicable.
- Student Status Form (TST-6), or comparable form
- Verification of exemption or part time status, as needed to demonstrate household eligibility.

**Physical Inspections:**

IHDA is required to conduct Physical Inspections of LIHTC properties at least once every three years after the Initial Inspection to ensure habitability of the project. In general, LIHTC Annual Inspections will conform to the following:

- **Standards:** local health, safety & building codes and HUD Uniform Physical Condition Standard (UPCS)
- **Scope:** examination of the grounds, the exterior of the building(s), common areas, and a random sample of the affordable units. [Guide to 8823, pg 3-3]
- **Sample Size:** a random sample based on project size, including no fewer than the minimum number of units set forth in 26 CFR 1.42-5(c)(2)(iii). If extensive noncompliance is found, IHDA may expand the sample. [Guide 8823, pg 3-3]

Extensive noncompliance might include:

- Evidence of poor internal controls
- A large number of inspection findings
- A Significant number of non-qualified units or households
- Or other credible information from a reliable source.
- **Timing:** IHDA will conduct physical inspections within one year of new buildings being placed in service, and at least once every three years thereafter.

For tax credit projects receiving mortgage financing from IHDA, the inspections may be more frequent and more detailed due to other monitoring requirements.

Where possible, IHDA will combine inspections for different programs. For instance, federal regulations allow use of the HUD REAC protocol for LIHTC inspections. If a REAC inspection has been conducted at

the LIHTC property within the last 3 years, IHDA will use the REAC inspection and adjust the inspection schedule for that property to conduct the next inspection within 3 years from the REAC.

### 5.3 Noncompliance

IHDA differentiates between noncompliance that is directly related to requirements of the federal LIHTC Program and noncompliance is related to commitments the owner has made to IHDA in its Extended Use Agreement, or other management criteria that reflect best practices upheld by IHDA. IHDA will require correction of noncompliance in any of these categories, and may impose penalties for failure to do so, up to and including extra monitoring fees and prohibition from further participation in IHDA programs.

Noncompliance that is directly related to requirements of the federal LIHTC program must be reported to the IRS, using IRS form 8823. The IRS has published the Guide for Completing Form 8823 to give monitoring agencies guidance on how to identify noncompliance, how it may be corrected, and how and when it should be reported to the IRS.

The IRS Guide identifies categories of findings that it does not consider to be reportable non-compliance. IHDA includes some of these categories here to encourage owners / agents to make effective and accurate determinations of tenant qualification, without making such determinations more restrictive than the LIHTC program requires.

#### A. Findings that do not Constitute Reportable Non-Compliance:

**Imperfections vs. noncompliance:** Following the guidance of the IRS, IHDA will differentiate between imperfections and noncompliance. Imperfections are errors or problems of a nature that do not compromise IHDA's ability to make a reasonable determination about the qualification of the tenant and/or the unit. IHDA will respond to imperfections by giving verbal and/or written guidance, but will not file a report with the IRS. [Guide 8823, pg 4-31]

For example:

1. If the owner has used an incorrect method to calculate income from assets, but household income is thousands of dollars below the income limit, the Asset Manager may make a reasonable determination that interest from household assets would not put household income over the limit. The owner should be instructed to implement the correct method through their written procedures, but the deficiency would not be reported on line 11a of the 8823.
2. However, if an adult household member's income has not been verified, the Asset Manager cannot make a reasonable determination that the household is income qualified and must assume the household is not income qualified and **must report** this on line 11a of the 8823.

**Compliance with Other / Non-LIHTC Programs:** For properties with sources in addition to LIHTCs, IHDA will differentiate between noncompliance with the LIHTC program, and noncompliance with **other programs**. Noncompliance with other programs, including failure to meet additional income or rent commitments, will not be reported to the IRS, or result in loss of federal tax credits.

Similarly, failure to meet management criteria or best practices upheld by IHDA but not specific to federal LIHTC eligibility will not be reported to the IRS, or result in loss of federal tax credits.

**Owner Corrections:** If the documentation at the time of an income certification was insufficient, but the owner corrects the insufficiency before IHDA's notice of a compliance review, IHDA will not report the corrected documentation as noncompliance to the IRS. [Guide 8823, pg 4-31]

**Actual Income Exceeds Projected Income:** Owners should also note that income certifications are statements of anticipated income. In some cases, a tenant's actual income may prove to be higher than anticipated at the time of certification. The IRS instructs IHDA and other HFAs to make its determination of compliance based on the best information available at the time of the certification. However, IHDA will consider expanding the sample of its tenant file review if evidence is found that income is under-anticipated repeatedly. [Guide 8823, pg 4-33]

**Requests for Clarification:** IHDA recognizes that multiple parties from an ownership team may review tenant files, especially files for the Initial Year which qualify units for Tax Credits. If the ownership parties have questions about whether a particular feature would amount to a finding of Non Compliance, they may contact their IHDA Asset Manager for clarification without penalty or without forfeiting the owner's right to make a correction before notice of IHDA's file review.

## **B. Reportable Noncompliance:**

**IHDA** is responsible for reporting noncompliance to the IRS, including noncompliance that affects any change in the project's applicable fraction or eligible basis. **Owners** are responsible for calculating the tax credits they are eligible for each year based on the project's current qualified basis when making their tax filings with the IRS. The **IRS** is responsible for determining whether owners have claimed the correct amount of credits each year, or whether an owner is subject to recapture of credits. IHDA does not determine if noncompliance requires recapture of credits, but the IRS relies on IHDA's filings of IRS Form 8823 to identify noncompliance.

**Notice to Owner:** In cases where reportable noncompliance is identified, IHDA must provide the owner with written notice that identifies the specific deficiency and give the owner a correction period to address the noncompliance.

**Correction Period:** In general, IHDA provides a 30 day correction period from the date of IHDA's written notice. Owners may request an extension if they are unable to make corrections within that timeframe. Requests for extension must meet these requirements:

- Must be made in writing
- Must be received by IHDA no later than the last day of the initial correction period
- Must describe the owner's efforts to correct the deficiency
- Must explain why an extension is needed.

IHDA will acknowledge in writing the term of any extension, if it is granted. The IRS limits any extension period to no more than 6 months from the date of IHDA's notice to the owner.

**IHDA Review:** At the end of the correction period, including any IHDA approved extension, IHDA will make a determination whether:

- The unit or property was always in compliance
- The unit or property was out of compliance, but has made corrections that put it back in compliance.
- The unit or property or remains out of compliance. [Guide 8823, pg 1-1]

If IHDA concludes that the unit was always in compliance, no report will be made to the IRS. IHDA will notify the owner that no 8823 will be filed and that the finding is closed. [Guide 8823, pg 1-6]

If IHDA concludes that the tenant or unit was not always in compliance, IHDA must report the noncompliance to the IRS, even if the noncompliance has been corrected.

**IHDA's Report to the IRS:** IHDA will file the Report of Noncompliance, Form 8823, within 45 days of the end of the correction period or approved extension, and will indicate on the 8823 if the noncompliance has been corrected.

If noncompliance is corrected after the 8823 has been filed, but within 3 years, IHDA will file a new Form 8823 to indicate that the property is back in compliance. [Guide 8823, pg 1-1]

**IRS Notice to Owner:** On receipt of the 8823, the IRS will send a notification letter to the owner, indicating the type of noncompliance reported, and instructing the owner to contact IHDA to resolve the issue. The IRS notice instructs the owner not to include any non-qualified low income housing units in its tax credit filing, and notifies the owner that noncompliance may result in recapture of previously claimed credits.

**Owner's Tax Filing:** Owners are responsible to report any reduction in qualified basis when filing their annual 8609A. In cases where tax credits are being recaptured, the owner must submit a Form 8611 with their tax return, following the instructions on the form.

### **C. Loss of Tax Credits**

Property managers should be aware of how noncompliance translates into recapture of a project's tax credits. Recapture is triggered when noncompliance results in a decrease in a project's qualified basis. Recapture may also be triggered if an owner disposes of its ownership interest in a LIHTC project without following federal rules.

**Disposition of Ownership Interest:** Owners that dispose of their interest in a LIHTC property during the project compliance and extended use period may be subject to recapture of tax credits, unless they sell their interest to a new owner who agrees to maintain the affordability commitments. Owners who retain an ownership interest but change the amount for which they are financially at risk may also be subject to recapture. [Instructions to Form 8611; 26 USC 42(j)(6)]

**Changes in Qualified Basis:** Qualified basis is the calculation of project costs that are eligible for tax credits, as described in the Introduction. It reflects the **eligible basis**, or qualified costs from the construction budget, and the **applicable fraction**, or portion of project units that are qualified affordable units.

Changes in eligible basis are caused by changes to the building, such as the conversion of common areas to commercial space. Changes in applicable fraction reflect changes to the proportion of units that are qualified for tax credits. They can be caused by the leasing of low income units to households who are not income qualified, or not qualified under the LIHTC student rule. Qualified basis may also be affected by physical problems that make a unit uninhabitable.

**Start of Noncompliance:** When a tenant is found to be unqualified to live in a low income unit, the unit is considered to be out of compliance as of the date an ineligible household moved into the unit through the date it is determined that an income-qualified household occupies the unit. A unit will also be considered out of compliance if the initial certification is inaccurate, documentation of eligibility is insufficient, or no tenant file is on record. If a tenant is charged rent that does not qualify under the LIHTC rent limits, the unit will be out of compliance as of the date the rent exceeds the rent limit, and until the first day of the first calendar year when qualified rent is charged.

**Back in Compliance:** Units that were out of compliance because they were occupied by an unqualified tenant are back in compliance when it is determined that an income qualified household occupies the unit. The owner may adjust their credit amount on the next tax return.

Noncompliance due to inadequate documentation of income eligibility may be cured by:

1. A new certification, using current income and income limits. If the household is eligible, the unit would be out of compliance as of date of move-in, and back in compliance as of the date the new certification is signed. In this case, since the unit was out of compliance, IHDA will file a form 8823.
2. A retroactive certification documenting income at time of initial certification, using income limits in effect at that time. If certification documents that the household was qualified as of move-in, the owner has clarified the unit's compliance and IHDA will not file a form 8823. [Guide 8823, page 4-35]

Noncompliance due to move-in of an over-income household may be cured by re-certifying the household as if it is a new move-in, if the household's income has dropped. If the household is eligible as of the new certification, the unit is considered "back in compliance."

Noncompliance due to a late Initial Certification can be cured by completing the certification. The unit is considered out of compliance as of the date of the tenant's move-in, and back in compliance on the date the Initial Certification, indicating that the household is qualified, is signed by all the adults in the tenant's household. [Guide 8823, pg 4-36.]

**Recapture Determination:** IHDA must report changes in qualified basis to the IRS as part of the Report on noncompliance, Form 8823. [Guide 8823, pg 3-2] However, IHDA is not responsible for determining if noncompliance will result in recapture of tax credits. Owners are responsible to re-calculate their tax credits based on the project's current qualified basis when preparing their tax filings each year. The IRS is responsible for determining if their filing is accurate, or if noncompliance requires a recapture event.

## **5.4 Record Keeping:**

Federal LIHTC regulations require that owners retain records for each building in the project for at least 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 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.

Owners who may want to re-syndicate should retain move-in files longer, because owners may qualify existing tenants based on their initial move-in, if they have retained these files.

Additional state regulations may apply.

## Chapter 6

### Post Year 15

#### 6.1 General Requirements

Federal law requires new LIHTC projects placed in service since 1990 to enter an extended low income housing commitment for at least 15 years beyond the original 15 year tax credit compliance period.

During this extended use period owners are required to meet basic affordability requirements including:

- leasing tax credit units to qualified low income households,
- maintaining affordable rents, and
- maintaining fair housing and other leasing and occupancy protections.

Other aspects of tax credit compliance are relaxed during this period, when the owner is no longer receiving a tax benefit to offset program restrictions. For instance:

- the student rule is not in effect.
- annual income re-certification, where required, is simplified.
- compliance reporting is simplified.
- Fees are reduced for owners who remain in compliance.

Federal requirements for the extended use period are defined in 26 USC 42(h)(6). Details of the owner's commitments to remain in compliance are defined in the Extended Use Agreement between the project owner and IHDA.

In general, the owner's commitments remain defined by the owner's original minimum set aside Election and the project's applicable fraction.

#### **Qualified Households:**

Throughout the extended use period, owner / agents must continue to maintain the same number of affordable units defined in the project's applicable fraction, and to lease these affordable units to low income households who qualify under the maximum income defined in the minimum set aside election. Owners must also maintain any deeper affordability commitments made in the Extended Use Agreement during this period. However, the LIHTC student rule does not apply during the extended use period.

If the project receives an additional round of tax credits, households that were previously income qualified at the time of move-in are income qualified for any subsequent allocation of tax credits.

**However, each household must also qualify under the tax credit student rule as of the date of the new allocation.** It is not necessary that the household have qualified under the student rule throughout the extended use period prior to the new allocation of tax credits. [Guide 8823, pg 4-27]

**Income Certifications:**

Throughout the extended use period, each household must certify their income using the Tenant Income Certification (TIC) prior to move-in. Owners must fully verify the information provided on the Initial TIC, with the exception of student status, which is not required.

During the extended use period, mixed income properties [properties that are **not** 100% affordable] must continue to monitor household income after move-in to ensure compliance with the next available unit rule. After move-in, households must self-certify their income on an annual basis, effective as of the 1<sup>st</sup> of the month of their original move-in date. However, during the extended use period, owners are not required to verify income certified in the TIC, except prior to move-in, and every 5<sup>th</sup> year thereafter.

If household income increases, the household does not become ineligible to remain in the affordable unit, but if the household income increases to 140% or more of the maximum income limit, the owner must lease the next market unit that becomes available to an income qualified household at a qualified or restricted rent.

Properties that are 100% Affordable will not be required to monitor household income for purposes of the LIHTC program after move-in, because they always apply the next available unit rule by default. Households at these properties are not required to complete a Tenant Income Certification after move-in for the term of the extended use period. They may be required to monitor incomes for other programs tied to the project.

**Qualified Rents:**

Owners are prohibited from increasing gross rents for affordable units in excess of the LIHTC maximum rents throughout the extended use period. The sole exception is affordable units that have been converted to market units, by application of the next available unit rule, for which LIHTC program rent restrictions no longer apply.

Owners should be aware that federal regulations allow individuals who would qualify for a project's affordable units to enforce the continued affordability provisions in state court. The enforceable provisions include prohibitions against increasing gross rent over the affordable rent limits. The individual does not have to be a current tenant to seek enforcement through the courts, he or she may be a prospective, present or former occupant of the project.

**Other Occupancy Provisions:**

Other laws and regulations that continue to apply throughout the extended use period include:

- Prohibition against evictions of existing low income tenants for other than good cause. This prohibition is one of the guarantees that an individual might seek to enforce through the state courts.
- Fair housing laws
- Prohibition against discriminating against tenants holding Section 8 Vouchers

- All parts of the project included as basis for the original LIHTC award, whether in residential, commercial or common areas, must be available to the general public.

## 6.2 IHDA Monitoring

**Annual Owner's Certification:** Owners must continue to submit the annual owner's Certification that the project has maintained compliance with its Extended Use Agreement.

**Tenant Event Reporting:** Owners must continue to enter annual Tenant Event Information in DMS as required. For example, mixed income projects will still report tenant income certifications as well as rents; 100% affordable projects must enter lease renewals, including lease dates, rents, utility allowance and subsidy amounts. Projects with other IHDA program awards may be required to report additional tenant event information for those awards.

**Ongoing Inspection / Tenant File Review:** IHDA will continue to conduct compliance inspections once every 5 years, including unit inspections and tenant file reviews.

**Training Requirements:** IHDA requirements for regular staff training continue to apply during the LIHTC extended use period.

**Compliance Fees:** Compliance fees during the extended use period will be lower than during the LIHTC compliance period. However, owners who fail to report or correct substantial noncompliance will be charged substantial penalty fees.

**Penalty Fees:** Owners that fail to report or to make themselves available for Management Reviews and Inspections will be subject to penalty fees, and may be placed on IHDA's No Further Participation List. IHDA may also take legal action to collect fees from owners that fail to pay.

**Correction of Findings:** Where IHDA finds noncompliance, IHDA will send a letter notifying the owner of the noncompliance along with a cure period for corrections. Owners must make corrections and send evidence to IHDA within the correction period. Failure to address noncompliance may cause IHDA to place the owner on its No Further Participation list, causing the owner to be barred from any further IHDA funding.

## 6.3 Disposition /Termination of Agreement:

Terms of the Extended Use Agreement are in force for the full term of the Agreement.

Foreclosure may result in termination of Extended Use Agreement commitments, unless the Treasury determines that acquisition by foreclosure is part of an arrangement with the taxpayer to escape the Extended Use Agreement.

Owners who seek to sell their ownership interest in a LIHTC project are required by federal rules to give IHDA opportunity to present a qualified contract that would maintain the project's affordability. Certain provisions, such as the income targeting, rent restrictions and prohibitions on evictions without cause are, by law, in effect for 3 years after qualified contract. [26 USC 42(h)(6)(E)]