2020 LOW-INCOME HOUSING TAX CREDIT

Idaho Housing and Finance Association

www.idahohousing.com

COMPLIANCE MANUAL

JUNE 26,2020

Forward

The Low-Income Housing Tax Credit Compliance Manual is a training and reference guide developed by the Idaho Housing and Finance Association to assist owners/agents in administering the Low-Income Tax Credit (LIHTC) program in the state of Idaho. It is designed to furnish guidance pursuant to Section 42 of the Internal Revenue Service (IRS) code (IRC). Owners/Agents must also be familiar with additional Idaho Housing and Finance Association (IHFA) requirements, which are set forth in the regulatory agreement as well as in the Qualified Allocation Plan (QAP).

This manual is for use as a supplement to existing laws and rules. It is not intended to be an all-inclusive guide to the LIHTC program. LIHTC compliance is solely the owner's responsibility. Please note, that as the designated compliance monitoring agency for the LIHTC program in Idaho, IHFA has been granted the regulatory authority to implement requirements in addition to those published by the IRS. IHFA has incorporated several provisions in this version of the manual that are additions to current IRS guidance. Additional requirements are implemented only in areas where existing program related information results in ambiguity or needs clarification. They are included in this compliance manual in order to help ensure that scarce low-income housing opportunities are afforded to households truly in need.

Owners are responsible for compliance with all applicable federal and state rules and regulations that govern their particular developments. The IRS is the sole determining agency as to whether an owner will face an audit or recapture of credits. IHFA will not assume liability for tax consequences because of noncompliance, IRS audit, or both. All errors made will be the responsibility of the owner.

Future IRS or HUD rulings more stringent than IHFA requirements must be adhered to in accordance with their effective date. IHFA will make every effort to provide technical assistance and appropriate interpretations where able to do so, but will not unilaterally defer or alter effective / implementation dates by so doing. Compliance with all applicable rules and regulations is the sole responsibility of the owner.

The manual is not meant to be a substitute for professional advice regarding the financial viability of developments. As a result, IHFA recommends all tax credit recipients consult with a tax accountant, attorney, and any other advisor needed regarding specific requirements of the LIHTC program and their financial obligations.

This manual may be superseded by changes in the Section 8 program and technical revisions in the LIHTC program without notice.

This manual can be found in its entirety, including updates, on the IHFA website: https://www.idahohousing.com/housing-compliance/housing-compliance/

Disclaimer

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

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

IHFA's compliance, monitoring, and reporting policy and procedure are reflective of instructions in the 8823 Guide.

This manual has not been reviewed or approved by either the Internal Revenue Service (IRS) or the U.S. Department of Housing and Urban Development (HUD) and should not be relied upon for interpretation of federal income tax legislation or regulations.

Introduction

Background

Congress enacted the Low-Income Housing Tax Credit program under the Tax Reform

Act of 1986. This program provides incentives for the investment of private equity capital in the development of affordable rental housing. The LIHTC program reduces federal tax liability of property owners in exchange for the acquisition, rehabilitation or construction of affordable rental housing units that will remain income and rent restricted over a long period. The amount of tax credits allocated are based on the number of qualified low-income units that meet federal rent and income targeting requirements.

Idaho Housing and Finance Association (IHFA) is the designated allocation agency for Idaho.

IHFA utilizes various financing sources including HOME, LIHTC, Neighborhood Stabilization Program (NSP), Housing Trust Fund (HTF), and bonds to provide funding for affordable housing. IHFA is committed to ensuring the availability of decent, safe, sanitary, energy efficient and affordable housing. In order to achieve this purpose, IHFA is active in lending and financing, allocating housing grants and subsidies, advocating for affordable housing, establishing state housing policies, and providing technical assistance to housing sponsors.

Compliance & Extended Use Periods

Compliance Period

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

The first year of the compliance period is the first year in which the owner claims credits. The first year must be either the year a building is placed in service or, at the owner's election, the year following the year a building is placed in service. All requirements of IRC Section 42 including the 1.42-5 monitoring regulations are in effect during the 15-year compliance period.

Extended Use Period
According to Section 42 of the IRS, all buildings that receive allocations of tax credit after

December 31, 1989, must comply with additional eligibility requirements in effect beginning January 1, 1990. Such developments are committed to an extended use period, as stated in each development's individual regulatory agreement. After developments are placed in service, they must comply with eligibility requirements for at least an additional 15 years beyond the initial fifteen 15-year compliance period, for a total of at least thirty 30 years.

Many developers have committed to longer extended use periods. Previous IHFA Qualified Allocation Plans (QAP) have granted preference points to those developers who were willing to expand the extended use period beyond the minimum fifteen 15-year requirement. Such commitments bind owners/agents to maintain specific occupancy, affordability, and physical requirements for the duration of the regulatory agreement which includes the extended use period. If the property is sold, the new owner must assume the regulatory agreement and maintain the affordability and physical requirements for the entire extended use period. Please refer to the regulatory agreement for the initial compliance period and extended use period.

An additional factor that affects management of LIHTC developments is the fact that these developments are often coupled with subsidy programs (both project-based and tenant-based) that involve other government housing regulations. There are times when conflicts between agency regulations arise. Owners/Agents must be aware of various funding sources and their regulatory restrictions.

Contents

Chapter 1 – Responsibility

IHFA Compliance Department Responsibilities

IHFA allocates and administers the LIHTC program for the state of Idaho.

Prepare Regulatory Agreement/ Restrictive Covenants

IHFA Multifamily Financing Department prepares a LIHTC regulatory agreement (RA) prior to issuance of IRS Form 8609. The RA can be referred to as restrictive agreement, restrictive covenants, land use restrictive agreement (LURA) or extended use agreement. This document is required to be recorded with the appropriate recording agency by the owner.

Issue IRS Form 8609: Low-Income Housing Credit Allocation and Certification

IRS Form 8609 is prepared by IHFA for each building in a LIHTC development. This officially allocates tax credits. Part I of the form is completed by the IHFA Multifamily Financing Department, and then sent to the owner when the property is placed in service and all required documentation has been received by IHFA.

The owner must complete Part II of Form 8609 within the first taxable year the credit is claimed. Once the form is complete, the owner MUST send a copy to the IHFA Compliance Department. The original Form 8609 is sent to the IRS with the owner's personal, partnership, or corporate tax return. Owners are encouraged to consult with legal and/or tax advisors for advice on completing and filing IRS tax forms. IHFA will not give legal or tax advice on filing or completion of any tax form. The owner must keep a copy of the completed Form 8609.

Typically, the issuance of IRS Form 8609 will begin IHFA's monitoring of the project. IHFA will conduct the first compliance inspection no later than the end of the calendar year following the year the last building is placed in service.

Compliance Monitoring

Overall Compliance

All properties monitored by the IHFA compliance department exist in one of three conditions: in good standing, on the watch list, or not in good standing.

An owner/agent of a property that is in good standing is showing good faith efforts to maintain general compliance through timely reporting and fee payment, communication, and average or above average audits.

When a property has significant physical deficiencies, tenant file violations, or problems maintaining general compliance, IHFA will place it on the watch list for one year. This temporary status change is a warning to the owner/agent that the property is troubled and needs immediate intervention to correct problem areas. Owners/Agents of properties on the watch list will be assessed a $1,500.00 fee to be billed along with the regular compliance monitoring fee the following January. If the property owner/agent fully addresses the area(s) of concern, the status will return to in good standing at the beginning of the next calendar year.

If the property owner/agent cannot or will not acknowledge and address the area(s) of concern, that caused the property to be placed on the watch list, the status will change to not in good standing at the beginning of the next calendar year. A property's status can change to not in good standing for gross or flagrant violations, without being placed on the watch list. In addition to the $1,500.00 annual fee and annual monitoring, owners/agents of properties not in good standing will be ineligible to apply for further funding from IHFA and may face other monetary or legal consequences.

Audits

IHFA will perform a physical inspection and tenant file review of each low-income housing development at least once every three years. IHFA has implemented a scoring system for audits, which can result in inspections that are more frequent. A property's overall score determines the frequency of monitoring, unless the property scores below average or unsatisfactory in any one category. Auditors score four categories to achieve an overall score and rating for the property.

1. General Physical Condition & Appearance – Exterior
2. General Physical Condition & Appearance – Units
3. Leasing & Occupancy
4. General Management Operations

Properties with a superior or above average overall rating are monitored every three years. Properties with a satisfactory overall rating are monitored every two years. Properties with a below average or unsatisfactory rating, either overall or for any one category, are monitored annually until a minimum satisfactory rating is earned overall or in the offending category. In addition, properties that earn a below average or unsatisfactory rating will be placed on the watch list. If the property again rates below average or unsatisfactory following the next inspection, the property status will be changed to not in good standing.

IHFA reserves the right to monitor a property at any time, regardless of the previous score. Some properties may score well on management operations and tenant files but fail the physical inspection. Those properties will have a physical inspection annually until a minimum satisfactory physical inspection is achieved.

IHFA performs inspections by sampling a minimum of 20% of household units in housing developments within their first 15 years and 10% of household units in housing developments in their extended use period and the same number of low-income tenant files. In addition to tenant units and files, auditors inspect all common areas, development grounds, building systems, building exteriors and maintenance facilities. IHFA auditors utilize standards contained in HUD's Uniform Physical Conditions Standards (UPCS) requirements and state and local code requirements.

Items and areas evaluated by IHFA Compliance Department in addition to property and unit physical condition may include, but are not limited to the following:

- Satisfaction of initial minimum set-aside within prescribed period, determined on a building-by-building basis, and continued maintenance of set-aside.
- Tenant qualifications, income calculations and appropriate supporting documentation.
- Gross rent calculations including utility allowance processes.
- Rental and social service requirements set forth in the property regulatory agreement. Owners/Agents should have knowledge of their property's additional regulatory requirements.
- Adherence to any QAP requirements for which additional points were awarded.

Audits are scheduled in a manner that provide owners/agents with advance notice to ensure arrangements for representative attendance, proper notice to tenants, and owner/agent preparation for inspection. **Owners/Agents should take time to address common physical deficiencies prior to the actual inspection.**

Note: *if the development has HOME units, ICRC financing or both, audits may be conducted on a more frequent basis.*

IHFA will notify owner/agent within 30 days after an inspection when developments are out of compliance with IRC or IHFA requirements. Owners/Agents are typically given 30 days to correct the noncompliant issue(s) and to respond to IHFA with either the corrective actions taken or a corrective action plan. Extensions must be requested in writing and submitted to IHFA prior to the original reporting deadline. Extensions may be granted under certain circumstances and are done on a case-by-case basis at the discretion of IHFA.

Any and all financial consequences to the owner as a result of noncompliance, whether identified by IHFA or the IRS, will be the responsibility of the owner.

IHFA retains the right to perform a physical inspection and/or file review at any time during the compliance or extended use period, with or without notice to the owner.

Outline of IHFA Compliance Process

All tax credit projects that claim the tax credit in Idaho must submit a completed certificate of continuing compliance and annual report to IHFA by the last business day in February.

- IHFA will conduct a compliance inspection of each development at least once every three years and will perform a file review and physical inspection on 20% of the low-income units.
- For new projects, IHFA will conduct a monitoring inspection no later than the end of the second year of the credit period.
- If changes in equity ownership are planned or have occurred, owner must submit a Notice of Intent to Transfer Ownership or Change Owner Name or Status, and other necessary documentation. (See Chapter 1 - Responsibilities – Owners Responsibilities Section for more detailed information.)
- In the event that IHFA (i) does not receive certification or documentation, or (ii) is not permitted to inspect tenant files, or (iii) upon inspection or review, IHFA becomes aware of an aspect of the project, which is not in compliance IHFA will provide written notice to the owner of the lack of certification, inspection, or other noncompliance.
- The owner will be given a time period, to be determined by

IHFA but not to exceed 90 days, to correct the noncompliance.

- IHFA will file IRS Form 8823 "Report of Noncompliance" no later than 45 days after the end of the correction period whether or not the noncompliance has been corrected.

Tenant Complaint Intake

IHFA has established procedures for processing tenant complaints made to IHFA Compliance Department regarding LIHTC properties. If the tenant complaint is regarding a health and safety concern or eligibility concern, IHFA will notify the owner/agent and request follow-up information regarding the outcome of the complaint. IHFA is not authorized to mediate landlord/tenant disputes. In these instances, IHFA will encourage the tenant to follow the agent's grievance policy or provide referrals to other agencies that may be able to assist.

Multiple complaints at the same property and of the same nature may be mentioned in the next scheduled audit and may also result in a lowered score.

IRS Form 8823 Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition

IHFA will notify the IRS of any reportable instance of noncompliance. The IRS requires Form 8823: Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition to be filed to report on IRS reportable findings discovered during a file review or physical inspection.

Under IRS regulations, IHFA findings of noncompliance, whether corrected or not, may be considered binding. IHFA may also site deficiencies that are not IRS violations, but IHFA preferences. IHFA is the only entity that can make final determination of noncompliance and only the IRS can determine what effect reported noncompliance will have on a development's stakeholders. The IRS stipulates that findings of noncompliance that are not reportable are a Housing Finance Agency (HFA) issue and must be resolved at the state level. All documented deficiencies, whether they are IRS or IHFA preferences, must be corrected by property owner/agent.

Record Retention of IHFA Monitoring

IHFA retains all records for no less than three years from the end of the calendar year in which they are received. IHFA retains records of noncompliance or failure to certify compliance for 6 years after the filing of IRS Form 8823.

Subcontracting of Functions

IHFA, at its sole discretion, may retain an agent or private contractor to perform some of the responsibilities listed above. IHFA uses reasonable diligence to ensure agents or private contractors properly perform delegated monitoring functions. IHFA retains the responsibility of notification to the IRS of any noncompliance of which it becomes aware.

Trainings and Technical Guidance

IHFA will offer continuing education for compliance regulations as time permits. IHFA will also share links to industry training available locally or via webinar. IHFA offers and provides ongoing technical assistance to owners and managers of LIHTC projects.

IHFA encourages owners/agents and on-site personnel to engage in continued education in affordable housing whenever possible. Industry training is available in many forms and does not always involve travel.

The IHFA website has online access to this manual and other required documents and resources at:

https://www.idahohousing.com/housing-compliance/housing-compliance/

IHFA Multi-Family Housing Compliance staff can be contacted at:

Idaho Housing and Finance Association
PO Box 7899
Boise, ID 83707-1899
Telephone: (208) 331-4700
Compliance Email Address: compliance@ihfa.org

Secure File Transmission

IHFA reviews a large portion of tenant files electronically. Much of the information collected will include personally identifiable information (PII) of residents. PII includes social security number, date of birth, full name or any other piece of information that can identify a particular person. PII should never be submitted via email.

IHFA uses Prolink file management software, which allows properties to upload files and documents securely. All owners/agents must set up a login in Prolink's work center, Procorem. Procorem is where each property will have a folder and owner/agents can communicate with IHFA. Once a login is established, all tenant files, annual reports, utility analysis requests, responses to audits and any other required documentation will be uploaded in the property file.. The use of this software is mandatory.

IHFA will upload the audit notification into the property work center. This will generate an automated notification to the owner/agent to alert them to the new upload for review. IHFA will no longer rely solely on email to send notifications and other official communications.

It is critical that the owner/agent set up an internal process to ensure these notifications are checked in a timely manner. Tenant files that auditors choose to review are required to be uploaded into the appropriate folder in the property work center no later than 3 weeks before the scheduled inspection date. It is up to the owner/agent to submit the requested documents correctly and on time. Submissions performed incorrectly will be rejected and the owner/agent will need to resubmit requested documents. Failure to upload documents in the time and manner requested will result in point deductions during the audit.

Owners/agents need to contact IHFA immediately if there is an issue in submitting documents into the property work center.

Owner Responsibilities

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

In exchange for housing tax credits, an owner is responsible for compliance with Section 42 of the IRC. The owner must take any lawful action required to fully comply with the IRC and with all other applicable rules, rulings, policies, procedures, regulations or official statements in effect or proposed by the U.S. Department of the Treasury, IRS, and HUD that pertain to the owner's obligations under the IRC. Successful operation of a LIHTC development is management-intensive and the owner is responsible for ensuring trained, knowledgeable staff properly administer the project.

A thorough understanding of LIHTC requirements and compliance monitoring procedures requires training and education of owners and managers. This training should occur before a development is occupied and should also be provided to the on-site property management staff.

Adequate training will cover key compliance terms, qualified basis rules, determination of rents, tenant eligibility, file documentation, available unit procedures, unit vacancy rules, agency reporting, record retention requirements, and site visits. Continuing education each year or at a minimum of every other year is strongly recommended in order to keep up with regulatory and procedural changes.

Owner Reporting

The owner must maintain a report of all tenants residing in each unit at the time of application through the end of the extended use period. Annual submission of reports to IHFA will be required in the form and manner requested by IHFA.

It is the responsibility of the owner to keep IHFA informed during all phases of construction, rehabilitation, lease-up and operation throughout the term governed by the regulatory agreement.

Owners are required to submit the following to IHFA:

- Occupancy reports during the initial lease-up process. Owners have 60 days after the building is fully leased to report all first year tenants.
- Certificate of continuing compliance (CCC): The IRC requires owners to certify that they have complied with all terms and provisions of Section 42. Owners must submit a completed certificate, including owner signature, on an annual basis. The CCC is due no later than the last business day of February. Failure to supply required annual paperwork is sufficient cause to file IRS Form 8823.
- Annual Occupancy Report (AOR): This report lists all tenants that have occupied a development for that year. The AOR is due no later than the last business day of September.
- IRS Forms 8609 and 8609-A: IRS Form 8609 must be filed for each building in a development for the first year, showing the development's owner, minimum set-aside designation and verifying the year and the amount of tax credits claimed. Form 8609-A is completed and filed by the owner annually during the 15 year compliance period. Owners are responsible for submitting both IRS forms to the IHFA Compliance Department while filing annual tax returns with the IRS.

Development Files for LIHTC Projects

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

- All approved tax credit applications together with applicable attachments.
- A recorded copy of the regulatory agreement (exception for pre-1990 credit projects).
- IRS Form 8609 for each building in the project.
- IRS Form 8586 for the project for each year credits are claimed.
- All applicable documents relating to any other form of housing or finance programs (i.e. HOME, HUD Section 8, etc.).
- Documentation that the project complies with any statutory set-asides and the qualified allocation plan requirements.
- Utility allowance documentation forms.
- A copy of the annual compliance certifications along with the required attachments for each year of the compliance period.

Preparation and Submission of Form 8586: Low-Income Housing Credit

One IRS Form 8586 must be completed to claim credits for the first taxable year in which credit is taken and every year thereafter in the credit period. IRS Form 8586 must be attached to IRS Form 8609 and Schedule A (IRS Form 8609) and submitted anually with the owner's federal tax return. Owner /agents should refer to the IRS website or legal counsel for guidance.

Management Agent Changes

All management companies must be approved by IHFA prior to the assumption of management duties for a development. The owner must submit a notice of management change form located on the website as well as provide:

- Management agreement.
- Management plan.
- Previous participation certificate, unless waived by IHFA.
- Corporate resume.
- Proof of industry training and certifications or experience of agent's compliance staff.
- Syndicator approval (if necessary and property is in compliance period).

Management changes without approval from IHFA, may result in a lower score during the next audit or a status change to "not in good standing", or both. Management companies must be able to demonstrate affordable housing experience or they will not be approved. IHFA must also be notified if there is any change to the project telephone number, fax number, or location where tenant files are maintained. Failure to expeditiously update contact information to facilitate scheduling and conducting audits, physical inspections and other monitoring activities will be deemed as a noncompliant event.

Prior to Placed-In-Service Date

Changes in management prior to the placed-in-service date are generally approved by IHFA's Multi-Family Finance Department. The Compliance Department provides a recommendation for approval or rejection. Only qualified management agents will be approved. If a change in management occurs prior to the placed-in-service date, the following information must be submitted to IHFA:

- Property management agreement
- Management plan
- Affirmative fair housing marketing plan or similar document
- Written consent from syndicator/LP and all lenders if applicable

Following Placed-In-Service Date

Changes in management agent after the placed-in-service date must be approved by IHFA's Compliance Department. Only qualified management agents will be approved. If a change in management occurs after the placed-in-service date, the following information must be submitted to IHFA:

- Notice of management change form
- Property management agreement
- Management plan
- Written consent from syndicator/LP and all lenders if applicable

If the property has HOME units, the following documents must also be submitted:

- Approved marketing plan
- Complete Lease with HOME Lease Addendum
- Tenant selection/Wait list plan
- VAWA documentation
- Management plan
- Management agreement

Forms are available on the IHFA website for tax credit only property management changes:

https://www.idahohousing.com/housing-compliance/tax-credit-compliance/

and additional forms for properties layered with HOME:

https://www.idahohousing.com/housing-compliance/home-program-compliance/

Owner/Agent Property Knowledge

Owners should have knowledge of the following and provide all outlined information to the managing agent in order to ensure program compliance.

LIHTC

- Credit year (year of allocation).
- The placed-in-service date for each building. The placed-in-service date is the date first occupancy is possible, not necessarily when actual occupancy occurs. Generally, the placed-in-service date is the date when property receives certificate of occupancy.
- Number of buildings in the project.
- Minimum set-aside elected.
- Percentage of residential units in the project or building that are tax credit and percentage of floor space that is tax credit.
- First year tax credits were claimed for the project or building.
- Terms under which the tax credit reservation was granted, including statutory set-aside, deeper targeting agreements, etc.
- Building Identification Number (BIN) for each building in the project.

Rehabilitation Project

- Whether or not tenants were required to move out during rehabilitation.
- Whether or not the building was occupied during rehabilitation.

LIHTC with IHFA Bond Financing

- Bond issue series and year of bond issuance.
- Percentage of residential units that are bond eligible and percentage of floor space that is bond eligible.
- Mortgage loan terms and qualified project period.
- Any additional requirements imposed by bond financing.

Proper Maintenance

The owner is responsible for ensuring the development is maintained in a decent, safe, and sanitary condition and is in good repair. Failure to do so is a reportable act of noncompliance as stated in the Uniform Physical Condition Standards (UPCS).

In addition, all properties that have entered into the extended use period must continue to comply with the UPCS requirements. Maintenance and on-site staff should be familiar with the UPSC requirements and should be providing regular and preventative maintenance to keep the property from falling out of compliance. IHFA requires that all properties maintain curb appeal and are conscientious about being an asset to the neighborhood and the community.

IRS and IHFA Compliance

Owners must meet all requirements agreed to in the placed-in-service application, regulatory agreement, and extended use agreement. Such requirements include maintenance of minimum set-aside elections, appropriate income and rental rate requirements, and annual certification processes.

Further, if the project received preference points in the application rounds to provide supportive services or adopt additional rental restrictions, owners/agents must ensure that they are fulfilling these commitments. Noncompliance with preference point commitments will not result in an 8823 filing; however, it will be considered a finding on the IHFA audit report and may result in default of the regulatory agreement.

Noncompliance Resolution and Oversight

It is solely the owner's responsibility to monitor a development's compliance status, overall well-being and to meet all LIHTC and IHFA requirements, even when the owner contracts out rental management functions to a third party. Regardless of whether the owner hires professional property management, the owner is held accountable for compliance and IHFA expects owners to provide oversight of their management agents. Owners must hold their management agents accountable for compliance, monitor their performance, and take corrective action if problems arise.

If the owner/agent determines or discovers noncompliance of a development, IHFA should be notified immediately. The owner/agent must formulate a plan to bring the development back into compliance and inform IHFA of such a plan in writing. Additionally, owners are responsible for correcting incidents of noncompliance discovered by IHFA within the prescribed period.

Noncompliance includes, but is not limited to the following items

- Failure to maintain low-income set-aside percentage outlined in regulatory agreement.
- Failure to document low-income occupancy correctly during certification and recertification of household members.
    - Lack of verification of all income.
    - Nondisclosure of all income and assets on Tenant Income Certification (TIC).
    - Incomplete TIC.
    - Undisclosed occupants in a unit.
- Failure to certify or recertify tenants on time.
- Failure to meet the next available unit rule.
- Failure by owner to submit annual certification or other required reports.
- Withdrawal from LIHTC program after final allocation.
- Violations of health, safety and local building codes.
- Household aggregate income exceeds maximum applicable income limit upon initial occupancy.
- Low-income units occupied by non-qualified full-time students.
- Failure to respond to requests for monitoring review.
- Changes in qualified basis of building (HC).
    - Common area changed to commercial space.
    - Fee charged for resident facilities, e.g. parking or swimming pool, formerly included in the eligible basis.
- Rent restrictions not met.
    - Rent exceeds maximum allowable amount.
    - Improper calculation of utility allowances.
    - Insufficient documentation of utility allowances.
- Other restrictions not met.
    - Transient use or units not available to the general public.
    - Failure to adhere to minimum lease term requirements.
    - Units unsuitable for occupancy.

Note: *Units shall meet HUD UPCS for housing that is decent, safe, sanitary, and in good repair (DSS/GR). [Reference: Title 24 Code of Federal Regulation (CFR) Subtitle A, Part 5.703;*

http://www.gpo.gov/fdsys/pkg/CFR-2001-title24-vol1/content-detail.html

Refer to:

https://www.hud.gov/sites/documents/DOC_26481.PDF

for an example of HUD's Uniform Physical Condition Standards and Inspection Requirements.

Marketing

The owner/agent is responsible for ensuring all marketing and advertising is consistent with the intent of IHFA's affordable housing programs. Copies of advertising are to be provided to IHFA upon request. All documentation is required to show marketing efforts directed at categorical and demographic commitments. (Please see the HOME section for properties with five or more HOME units regarding affirmative marketing plan requirements).

Qualified Contract

Any requests for pursuing a qualified contract must be presented to the Housing Compliance Manager directly. Prior to contacting the manager, please review the language in your regulatory agreement to determine whether this is a viable option for your property. Please reference the fee section of the manual for qualified contract fee.

Transfer of Ownership

The sale of a property or a transfer of ownership interest must be reported to the IHFA Compliance Department prior to closing. A notice of intent to transfer ownership form must be completed and submitted along with:

- Ownership transfer fee of $350.00 (this fee may be increased for transfer if actual cost is higher).
- Copy of the new or amended partnership agreement.
- Copy of articles of incorporation and by-laws if applicable.
- Copy of LLP/LLC organization documents.
- Attorney opinion letter if applicable (typically necessary in general partnership transfer).
- An assignment and assumption document **

**An assignment and assumption will also have to be completed and approved by IHFA legal counsel. This form will be forwarded to you once IHFA receives the notice of intent to transfer ownership and ownership transfer fee. The document must be reviewed and approved by IHFA legal counsel prior to closing. The assignment and assumption will be recorded at closing.

Management Agent Responsibilities

The owner is ultimately responsible for compliance with Section 42 and proper administration of the LIHTC program, but the management agent takes care of day-to-day operations. This includes but is not limited to screening applicants, lease enforcement, collection of rents, and maintenance of the property.

The owner is responsible to ensure that the management company and all on-site personnel properly implement all LIHTC program requirements. The management company and all on-site personnel are responsible to the owner for implementing the applicable Regulatory Agreement and program requirements correctly.

Agents and staff that are authorized to lease units to tenants should be thoroughly familiar with all federal laws, rules, and regulations governing certifications and leasing procedures. Agents must ensure that the development is in compliance with all LIHTC and IHFA program requirements. In cases of tenant fraud and casualty loss, agents must notify IHFA immediately and outline the steps that will be taken to correct noncompliance.

Agents may sign documents on behalf of the owner only with appropriate signature authority.

It is imperative that the management company representative attend management reviews and physical inspections conducted by compliance monitoring staff.

The Agent is also responsible for:

- Submitting timely responses to IHFA monitoring reports.
- Monitoring fee payment.
- Submission of the annual HUD required Tenant Data.
- Setting up Procorem users.

Suitability of Units and Casualty Loss

In order for owners to claim tax credits, a development and its units must be suitable for occupancy in accordance with state and local codes. If a unit is not habitable, no tax credits can be claimed. The IRS states in Chapter 6 of the Revised 8823 Guide that if a unit is destroyed (i.e. fire, flood, or any other casualty loss disaster), credits cannot be claimed while the unit is being restored. If the unit is restored within a reasonable time, credits can again be claimed with no recapture ramifications.

According to the Revised 8823 guide, casualty loss is defined as, "the damage, destruction, or loss of property resulting from an identifiable event that is sudden, unexpected, or unusual." Casualty losses include events such as car accidents, fires, government demolition, hurricanes, mine cave-ins, sonic booms, storms, tornados, and vandalism. Property damages due to normal use, willful cause, willful negligence, or progressive deterioration are not considered casualty losses.

Physical damage due to casualty loss must be reported to IHFA as noncompliance with UPCS code or local standards as follows:

- In writing within ten business days of the incident.
- IHFA is required to file an IRS Form 8823, taking the unit or building off line.
- Owners/Agents must notify IHFA in writing when all repairs are completed. IHFA will then file an IRS Form 8823 form putting the unit or building back into compliance.
- The IRS states that credits will be protected if a unit/building is restored within a reasonable period of time and each unit is occupied by qualified tenants by December 31st of the year the casualty loss occurred. If reasonable time takes an owner into January to get units back into service, credits will be disallowed for the affected units for the year of casualty loss.

Note: *There is no relief for owners who experience a casualty loss on December 15th and units come back online on January 10th. In this instance, an owner's credits would essentially be lost for the year.*

Tax credit units that are vacant during the course of unit turn over must be made rent ready as soon as possible. Otherwise, they may not be considered suitable for occupancy and will be subject to IRS Form 8823 filing.

According to the Revised 8823 guide, if an owner has a high vacancy rate with a large

number of empty units not suitable for occupancy, they are considered in noncompliance. "Not suitable for occupancy" can be defined as the failure of unit to be rent ready within 30 days.

Chapter 2 – Low-Income Housing Tax Credit

The following is a brief summary of the requirements of the tax credit program. It is not intended to be exhaustive, but to provide general guidance.

Minimum Set-Aside Election

The owner of a property must elect one of three minimum federal set-aside requirements at the time of application. Once made within the declaration of Land Use Restrictive Agreement (LURA) and on IRS Form 8609, this election is irrevocable.

Pursuant to the IRC, the federal set-aside options are:

- No less than 20% of the housing units must be set aside for tenants whose incomes are 50% or less of the area median income; or
- No less than 40% of the housing units must be set aside for tenants whose income are 60% or less of the area median income.
- No less than 40%of the housing units must be set aside for tenants whose income average, ranging in 10% increments from 20% to 80%, is 60% or less of the area median income. Specific income averaging guidance is discussed on page 23.

Each building is considered a separate project under IRC Section 42(g)(3)(D), and the minimum set-aside applies separately to each building unless the owner elects to treat buildings as part of a multiple-building project, in which case the minimum set-aside and other project rules apply to the identified project. Owners identify the buildings in a multiple-building project by attaching a statement to their first-year tax return. See instructions for Form 8609, line 8b for details. This election also determines procedures for unit transfers.

Rental agents or managers should confirm the set-aside that was established by the building owner at the time the set-aside option was made (the election is made on Form 8609 for the first year of the credit period), to ensure continued compliance. Once selected, the option cannot be changed. Note that this is only the minimum set-aside. All low-income units must comply with the respective minimum set-aside income and rent election.

Owners may elect additional state-established set-aside requirements (additional rent restrictions, service of specified target populations, etc.) as a condition of obtaining credits. These additional requirements will be reflected in allocation documents for the project including the regulatory agreement. If such additional set-asides are elected, they must be maintained throughout the compliance period and extended use period, and will be monitored at the same time as, and in a manner similar to, the Section 42 requirements.

Minimum Set-Aside Deadlines

The minimum set-aside elected must be met by December 31st of the year the property is placed in service, if the credits are to be claimed with the IRS for that year. If the start of the credit period is deferred until the second year, the minimum set-aside elected must be met by December 31st of the second year. Once the minimum set-aside is met, it must be maintained for the entire compliance and extended use periods.

Income Averaging in Tax-Exempt Bond Developments

The Consolidated Appropriations Act (The Act) of 2018 permanently established income averaging as an available minimum set-aside election for new tax credit developments in addition to the 20-50 or 40-60 standards already contained in IRC Section 42. Income averaging allows developments to serve households earning as much as 80 percent of area median income (AMI) provided the average income/rent limit in the property equals 60 percent or less.

General requirements of income averaging are listed below:

- Owners must commit to a minimum of 40% of all units in the development to be affordable to eligible tenant households.
- Income averaging applies to both the designated income and rent levels of the unit, not just the incomes of individual households.
- Area median income and rent targeting must be established at 10% increments from 20% to 80%.
- The minimum set-aside election for income averaging is made on Form 8609 and is irrevocable. Developments already placed in service are not eligible to change the minimum set-aside election to income averaging.
- The 30% AMI income and rent level, for purposes of income averaging for LIHTC, is not the same as the Housing Trust Fund's extremely low-income limits. Extremely low-income limit is defined as the greater of 30% of AMI or the federal poverty line for an applicable household size. If there is a conflict, the most restrictive income and rent designations will prevail. Developments with layered financing need to be mindful of the requirements of other financing sources.
- The Act modifies IRC Section 42 to allow for income averaging, but neglects to modify IRC Section 142 which governs multi-family housing bonds. Consequently, income averaging is allowed in bond-financed developments only if the income averaging minimum set-aside election and the tax-exempt bond minimum set-aside (20-50 or 40-60) are both independently satisfied.

IHFA policy is to make the income averaging election in Idaho available only for 100% affordable tax-exempt bond financed developments. In targeting specific AMI levels, reasonable parity between different bedroom sizes and unit types at each targeted income/rent level must be offered at the development. Units must be disbursed in a manner that does not violate Fair Housing. The market study submitted with the request for housing credits must reflect adequate rental demand for the proposed AMI levels and unit types.

Rent and Income Requirements

The income necessary to be eligible to rent a unit is based on the household income limits adjusted for family size for the area in which the project is located. Income determination is similar to Section 8 income qualifications as described in 24 Code of Federal Regulations (CFR) 813.106. The formula for computing maximum gross rent is based on 1.5 persons per bedroom, not to exceed 30% of the corresponding income election.

Rent and Income Figures

HUD publishes annual median income amounts for all Idaho counties. IHFA uses these figures to calculate the maximum allowable rent and tenant income for rental units receiving tax credits.

The following web address leads to the Novogradac Rent & Income Calculator, published by Novogradac & Company LLC: http://www.novoco.com/products/rentincome.php. This calculator generates LIHTC income and rent limits using the project's county, placed-in-service date, and gross rent floor date, if applicable.

With the enactment of the Housing and Economic Recovery Act of 2008 (HERA), income limits for projects funded with tax credits and/or financed with tax-exempt housing bonds (TE Bonds) are now calculated and presented separately from Section 8 income limits. Beginning with the publication of FY2009 Median Family Income Estimates and Income Limits, the Section 8 income limits cannot be used for tax credit or TE Bond properties.

Gross Rent

IRC defines gross rent as the sum of unit rent, utility allowance (used for utilities a tenant is required to pay), and any other charges routinely imposed on tenants that are not considered optional. Telephone and internet service are not considered utilities for this calculation. If low-income tenants are charged more than the allowable rent, the unit is in noncompliance and recapture of credits may result. The gross rent cannot exceed the applicable maximum rent as listed on the current applicable income and rent limit tables provided by Novogradac at http://www.novoco.com/products/rentincome.php. Certain exclusions and inclusions must be considered when determining gross rent.

Gross Rent does not include:

- Any payment under Section 8 of the United States Housing Act of 1937 or any comparable rental assistance program. If the rent requested by the owner exceeds the rent for non-voucher holders, the Housing Authority must perform a rent reasonableness test. They must also cap the rent at the payment standard for the bedroom size so the rent to owner is the lesser of the reasonable rent or payment standard. Please check with your local housing authority for further guidance. Many PHA's have implemented policy regarding voucher holders in LIHTC properties and you will need to follow their policies.
- Fees for supportive services
- Any rental payment to the owner of the unit to the extent such owner pays an equivalent amount to Rural Development (RD) under Section 515 of the Housing Act of 1949.

Rent Increases

Rent increases may only be processed once per year, unless the rent change is due to a change in the utility allowance. Tenants experiencing a rent increase due to a utility change must be notified in writing that the utility allowance is the cause of the increase and a contact number provided if the resident has any questions.

Rent increases are capped at 5% on existing residents without regard for published income and rent limits. Any rent increase over 5% must be approved by IHFA. This applies to voucher holders as well as non-voucher holders. Owners/Agents are required to submit a written request along with financial and other relevant documentation to support the need for a rent increase exceeding 5%. If an owner/agent increases rent more than 5% without IHFA approval they will be required to reduce the rent to satisfy the 5% increase cap and refund any rent overpayment made by the tenant.

If a unit becomes vacant, the owner/agent may raise the rent on that unit to the published income and rent limits at that time.

Permanent Supportive Housing Units

The QAP in place at the time of allocation will identify the targeted population for Permanent Supportive Housing Units (PSH) units. Properties granted points for PSH units must follow guidelines in the QAP and be able to substantiate compliance with the QAP. Properties that fail to identify the PSH units or follow the guidance provided in the QAP will have their status updated to not in good standing until IHFA is able to verify the correction.

Targeted population must be identified in the tenant selection policy of the proposed management plan. Some examples of groups that are considered targeted populations include, but are not limited to:

- Homeless
- Homeless families
- Chronically homeless
- Hospice patients
- Veterans
- Young adults transitioning from foster care
- Victims of domestic violence
- Victims of sexual assault
- Victims of human trafficking

Special housing needs population is made up of households that meet all of the criteria listed below:

- Individual or family with incomes at or below 30% area median income; AND
- Individual or family who is disabled. Federal law defines a person with a disability as "any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment;" AND

- Individual or family who is literally homeless, at imminent risk of homelessness, or fleeing or attempting to flee domestic violence as defined in 24 CFR 576 Subpart A 576.2 (1), (2), and (4).
- At its sole discretion, the Association may expand or adjust the above-defined targeted population consistent with special housing needs preferences identified in Idaho's Consolidated Housing Plan.

Supportive services for Special Housing Needs Tenants:

- Must be documented in the proposed management plan or in a separate supportive services plan that is referenced in the management plan.
- Supportive services plan should demonstrate the adoption of housing first practices that confirm:
  - voluntary participation by tenants in services
  - commitment for monthly case management by an experienced provider to determine appropriate support and services to be offered based on individual need.
  - development of flexible, person-centered, and client-informed individual service plans. Case management provider's resume must demonstrate at least 3 years of experience providing services to special housing needs populations or services for at risk populations.
- Case management provider must have access to Homeless Management Information System (HMIS) and record services provided on a monthly basis.
- Support and services must be accessible on site at the development, unless alternative transportation arrangements have been made by the development or a partnering agency.

Chapter 3 – Owner IRS Reporting Requirements and Tax Credit Basics

IRS Form 8609: Low-Income Housing Credit Allocation and Certification

One IRS Form 8609:Low-Income Housing Credit Allocation and Certification, will be issued by IHFA for each building within a project. If allocations were issued in multiple years, a separate 8609 will be issued for each year's allocation. If rehabilitation and acquisition credits are issued on the same building, the acquisition and rehabilitation will receive separate Form 8609s.

Part I of Form 8609 is completed by IHFA and sent to the owner after the project is placed in service and all documentation required by IHFA is reviewed and approved. IHFA files the original with the IRS for their records to compare with the taxpayer's return. If IHFA becomes aware that an owner or agent has filed a self-prepared Form 8609 with the Internal Revenue Service, IHFA reserves the right to determine that no party involved will be eligible for future participation in Idaho's LIHTC Program for a period of ten years.

The owner completes Part II, signs, and files Form 8609 with the IRS at the Philadelphia Service Center, for the first Taxable Year in which the credit is claimed. See the instructions on IRS Form 8609 and 8609-A for details.

The owner must submit a copy of the completed Form 8609 to the compliance department at the same time it files the form with the IRS. Failure to supply the completed Form 8609 to the compliance department in a timely manner may result in a status change to not in good standing until the form is received.

Owners should consult with legal and tax advisors for advice on completing and filing IRS tax forms. IHFA cannot give legal or tax advice on the filing or completion of tax forms.

Placed in Service

The placed-in-service (PIS) date is the date that a building is considered fit for occupancy. Depending on the nature of the tax credit project, two possible placed-in-service dates may be used. New construction or unoccupied rehabilitation buildings will have one PIS date. The PIS date will be the date when the local building official certifies the building for occupancy, generally referred to as the certificate of occupancy. Acquisition/Rehabilitation projects may have two PIS dates. The acquisition PIS date is the date of acquisition, provided the building is fit for occupancy. If it is not habitable on the acquisition date, the PIS date is the date it does become habitable. The second date is the rehabilitation PIS date. At any time during the owner-elected 24-month period in which rehabilitation expenses meet program requirements, the rehabilitation PIS date becomes effective. The date will be indicated on a separate 8609 issued specifically for credits allocated based on rehabilitation expenditures.

The placed-in-service date is recorded on IRS Form 8609, issued for the building based upon the type of credit allocated.

Form **8609**
(Rev. December 2008)
Department of the Treasury
Internal Revenue Service

Low-Income Housing Credit Allocation and Certification
▶ See separate instructions.

OMB No. 1545-0988

Part I Allocation of Credit

Check if: ☐ Addition to Qualified Basis ☐ Amended Form

A Address of **building** (do not use P.O. box) (see instructions)

B Name and address of **housing credit agency**

C Name, address, and TIN of **building owner** receiving allocation

TIN ▶

D Employer identification number of agency

E Building identification number (BIN)

1a Date of allocation ▶ / / b Maximum housing credit dollar amount allowable — 1b

2 Maximum applicable credit percentage allowable (see instructions) — 2 %

3a Maximum qualified basis — 3a

b If the eligible basis used in the computation of line 3a was increased, check the applicable box and enter the percentage to which the eligible basis was increased (see instructions) — 3b 1 _ _ %

☐ Building located in the Gulf Opportunity (GO) Zone, Rita GO Zone, or Wilma GO Zone

☐ Section 42(d)(5)(B) high cost area provisions

4 Percentage of the aggregate basis financed by tax-exempt bonds. (If zero, enter -0-.) — 4 %

5 Date building placed in service ▶ / /

6 Check the boxes that describe the allocation for the building (check those that apply):

a ☐ Newly constructed and federally subsidized b ☐ Newly constructed and **not** federally subsidized c ☐ Existing building

The importance of the PIS date relates to when credits can begin to be calculated and subsequently claimed. A building must be placed-in-service for a full month before its occupancy can be used in calculating the applicable fraction. Usually a building is considered placed-in-service when at least one or more of its units is available for occupancy.

Line 8 b on the 8609 is extremely important. If the owner selects no on line 8 b, every building is its own project. If the owner selects yes on line 8 b, the property is a multi-building project. Once a selection is made, it can't be changed.

IRS Form 8586: Low-Income Housing Credit

IRS Form 8586: Low-Income Housing Credit must be completed for the first taxable year in which credit is taken and every year thereafter in the compliance period.

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

Eligible Basis

The eligible basis is the total amount of development cost that would be eligible for credit if all of the units are used for low-income housing and all the costs must be depreciable.

Eligible basis consists of the following:

- The cost of new construction; or
- The cost of rehabilitation; and/or
- The cost of acquisition of existing buildings acquired by purchase.

Eligible basis includes low-income units, facilities for use by the tenants (i.e. common areas, elevators, corridors and roofs) and facilities reasonably acquired by the development. The allowable costs of tenant facilities such as swimming pools, other recreational facilities, and parking areas may be included, provided there is no fee for the use of these facilities and they are made available on a comparable basis to all tenants in the development. Rehabilitation costs may not be included in Eligible Basis if such expenditures improve any unit beyond comparability with the low-income units.

Note: Eligible basis does not include commercial space. The cost of land is also not included in the adjusted basis as well.

Any change in the eligible basis that results in a decrease in the qualified basis of the project is noncompliance that must be reported by IHFA to the IRS by filing IRS Form 8823.

Applicable Fraction and Qualified Basis

The applicable fraction is the percentage of the property that is dedicated to low-income residents. It is the lesser of the affordable units as a percentage of total units, or the square footage as a percentage of the total project square footage.

The qualified basis is the amount of eligible basis that will be used to generate low-income housing tax credits. This is based on the proportion of the property that will be used for affordable housing.

The amount of tax credits an owner can claim depends on the number of rent-restricted,

LIHTC units in each building of the development. The percentage of tax credit units (applicable fraction) in the building multiplied by the allowable development costs (eligible basis) establishes the building's qualified basis.

Qualified Basis is determined in building-by-building manner and not on a development level. For tax credit developments that are not 100% affordable, the qualified basis can change annually if there is a change in the number of low-income units in any given building.

Tax credit properties must have a minimum percentage of units used for affordable housing.

Owners have until the end of the first year credit period to establish the development's original low-income occupancy or applicable fraction for each building. The low-income occupancy achieved by the end of the initial credit period establishes the development's original qualified basis. Once the basis has been established and credits claimed, the qualified basis is locked in, and must be maintained for the entire 15-year compliance period.

A decrease in a development's applicable fraction reduces its qualified basis. If a development's qualified basis for a given tax year decreases from the previous year, it results in noncompliance and potential credit recapture of some or all of the accelerated portion of the development's credits claimed in prior years.

Note: Issues may occur in establishing or maintaining the qualified basis due to lease-up problems including admittance of non-qualified tenants into tax credit units or misuse of common areas. Owners should be vigilant when renting units in the initial leasing period of the development. IHFA can and will monitor for potential noncompliance that could affect continuation of the tax credits.

Applicable Percentage

There are three credit rates used in calculating credit:

- 9% annual credit is applied to eligible construction and substantial rehabilitation costs
- 4% annual credit is applied to the acquisition of existing buildings

- Tax-exempt bonds are limited to a 4% annual credit for all eligible costs

Calculating the First Year Applicable Fraction

The applicable fraction is the percentage of a building that is treated as low-income use and generally eligible for the credit. The applicable fraction is the lesser of the unit fraction or the floor space fraction.To determine the applicable fraction for the first year, find the low-income portion at the end of each full month the building was in service during the year. Add these percentages together and divide by 12 (per instructions on IRS Form 8609 and 8609- A). Note that the applicable fraction must be calculated for both the unit and floor space fractions.

Claiming Credits

The first 10 year period during which the property claims the credit on their federal tax return is called the Credit Period or the Initial Credit Period. IRC 42 (f) (1).

The credits are taken annually for 10 years and are based on a percentage of the qualified costs of the building. In order for a project to qualify for the credit in connection with substantial rehabilitation, there must be a period of at least 10 years between the date of acquisition and the date the building was last placed in service.

Compliance Period

All developments receiving tax credits must comply with eligibility requirements for a period of 15 years, beginning with the first tax year of a building's credit period. This is typically referred to as the compliance period. So the Credit Period is the first 10 years, but non-compliance can be reported to the IRS during the first 15 years. This can also be referred to as the Federal Compliance Period. IRC 42 (i) 1.

All developments receiving tax credits after December 31, 1989, are required to enter into a regulatory agreement with IHFA, which requires compliance with eligibility requirements for a minimum of 15 years beyond the compliance period, for a total of 30 years. This additional 15-year period is typically referred to as the extended use period. The regulatory agreement is a recorded covenant, and will list the initial and extended use periods. Many IHFA properties have more than the minimum 15 year extended use period. Owner/agents should check the regulatory agreement to determine the actual dates.

Noncompliance

If an owner/agent discovers that a building or entire project is not in compliance with program requirements, IHFA must be notified immediately. The owner/agent must formulate a plan to bring the project back into compliance, and advise IHFA in writing of such a plan.

Termination of Program Participation during the Compliance Period

The IRS stipulates that there are several ways regulatory agencies can terminate tax credit

participation. According to Treasury Regulation 1.42-14(d) (2) (iv), a state agency such as IHFA may recapture the entire amount of credits allocated to owners/agents due to the following:

- Building is not placed in service within the required time period.
- Building fails to meet set-aside requirements.
- Building fails to comply with the terms of its credit allocation.
- Mutual agreement between owner and IHFA to cancel an allocation of credit.
- Tax credits allocated to a development are not necessary for the financial feasibility of the development.
- Egregious noncompliance.
- Voluntary withdrawal from the LIHTC program.
- Failure of owner/agent to respond to notices, submit required reports, or resolve noncompliance in the required period.

When tax credits are recaptured or a property is subject to foreclosure, that building or development is no longer a participant in the LIHTC program and the extended use period is terminated. Owners/Agents must note that the termination of participation in the program and of the extended use agreement does not mean tenant rights under the LIHTC program are forfeit.

Units with income-qualified tenants remain rent-restricted for three years or until the tenants vacate, whichever comes first. For tenants who are in place at the time the extended use agreement is terminated, eviction (other than for good cause) and gross rent increases for three years following termination of the extended use agreement are prohibited.

Regulatory Agreement

The building owner must record an approved IHFA Low-Income Housing Tax Credit Regulatory Agreement. This regulatory agreement must be in effect on or before the end of the first taxable year credits are claimed 42(h)(6)(A). Failure to properly record this instrument in a timely manner is an event of noncompliance and will be reported to the Internal Revenue Service.

IRS Form 8611: Recapture of Low-Income Housing Credit
IRS Form 8611: Recapture of Low-Income Housing Credit is used by taxpayers who are subject to recapture of tax credits claimed in previous years. Form 8611 must be filed with the IRS upon completion by the owner.

Chapter 4 – Record Keeping and Record Retention Requirements

Record Keeping

Under the record keeping provision of IRC Section 1.42-5, the owner must keep records for each building in the project for each year in the compliance period showing:

- The total number of residential rental units in the building, including number of bedrooms and size (square feet) of each unit.
- The number of occupants in each LIHTC unit and the household student status.
- The number and percentage of residential rental units in the building that are LIHTC units, offices, and management units.
- The rent charged on each residential rental unit in the building (including utility allowance) as well as any additional charges to tenants. Documentation must include tenant ledgers, leases, and utility allowances as required by the IRS.
- The LIHTC unit vacancies in the building, marketing information, and information which shows when and to whom each of the next available units was rented.
- The annual income and student certifications of each LIHTC household.
- Documentation to support each LIHTC tenant income certification, including application or recertification questionnaire and verifications. Anticipated income of all persons expecting to occupy the unit must be verified and included on tenant income certification prior to occupancy and recertified annually for continued eligibility. Written income verifications should be sent directly from management to the source and returned by the source directly to management, avoiding passing through the tenant/applicant.
- The character and use of nonresidential portions of the building included in the building's eligible basis under Section 42(d) (e.g. tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project).
- The eligible basis and qualified basis of the building at the end of the first year of the credit period.
- Any records demonstrating compliance with state established set-aside, elected by the owner, for each year of the compliance period.

Record Retention

The owner must retain the records described above for at least six years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period, however, must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.

See Revenue Ruling 2004-82, published August 30, 2004, which clarifies that owners may comply with the record retention provisions under IRC Section 1.42-5(b) by using an electronic storage system instead of maintaining hardcopy books and records, provided that the electronic storage system satisfies the requirements of Revenue Procedure 97-22.

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

Electronic File Storage of Tenant Data

Owners have the option to maintain copies of the records described in electronic storage systems, provided they comply with the requirements listed in Revenue Procedure 97-22 and referenced in IRS Revenue Ruling 2004-82 Q&A. In addition, IHFA has established more restrictive retention rules specific to tenant files as follows:

- All initial qualifying tenant files must be maintained in hard-copy form for the duration of the 15-year compliance period, plus six years beyond, for a total of no less than 21 years. In other words, the move-in files for all tenants that occupied a unit during the first year of the credit period must be maintained in hardcopy form for at least 21 years.
- The owner must maintain tenant files for current and past residents in original hard copy form for the most recent 36-month period (i.e. the three-year period ending with today's date). These include any move-in certifications and re-certifications that were conducted during that time.
- For current households that have occupied units for more than three years, all original move-in and first-year annual certifications, as well as corresponding backup documentation, must be available upon request during an audit. In addition, all records for recertification for current residents that were conducted within the past 36 months must be maintained in hardcopy form as previously outlined.

Note: The average shelf-life for a scanned disc is approximately ten years. Re-saving to a new disc is recommended for proper storage of archives.

Chapter 5 –Monitoring, Certification, and Review

Annual Certification of Continued Compliance

The owner must certify annually, under penalty of perjury, using an owner's certification of continuing program compliance that the project is in compliance with the requirements of Reg. 1.42-5 paragraph (c) (1), certification and review provisions. Annual certifications and reporting are required for the entire period of affordability governed by the regulatory agreement. This includes the compliance and extended use periods. The owner's certification requires the owner to attest that the project met the following for the preceding year:

- The project met the minimum requirements elected on the executed Form 8609.
- There has been no change to the applicable fraction (as defined in Section 42(c) (1) (B) of the IRC) for any building in the project.
- At initial occupancy, the owner received a TIC with supporting documentation and a certification of student status from each low-income household. At annual recertification, the owner received a certification of student status and where applicable, a TIC with supporting documentation from each low-income household.
- Each low-income unit in the project has been rent-restricted under Section 42(g) (2) of the IRC.
- No tenants in low-income units were evicted or had their tenancies terminated other than for good cause and no tenants had an increase in the gross rent with respect to a low-income unit not otherwise permitted under Section 42.
- All units in the project have been for use by the general public and used on a non-transient basis (except for transitional housing for the homeless provided under Section 42 (i) (3) (B) (iii) of the IRC). The General Public Use Rule, clarified July 30, 2008, and stipulated in the Revised 8823 Guide in Chapter 12, allows occupancy restrictions or preferences that favor the following tenants:
    - Tenants with special needs.
    - Tenants who are members of a specified group under a federal or state program or policy that supports housing for such a specified group
    - Tenants who are involved in artistic or literary activities.
- No finding of discrimination under the Fair Housing Act, 42 U.S.C 3601-3619, has occurred for the project. A finding of discrimination includes an adverse final decision by the Secretary of Housing and Urban Development, 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C 3616a(a)(1), or an adverse judgment from a federal court.
- Each building in the project has been suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the state or local government unit responsible for making building code inspections did not issue a violation for any building or low-income unit in the project.
- There has been no change in the eligible basis (as defined in Section 42(d) of the Code) of any building in the project since the last certification.
- All tenant facilities included in the eligible basis, under Section 42(d) of the IRC, of any building in the project, such as swimming pools, other recreational facilities, parking areas, washer/dryer hookups, and appliances were provided on a comparable basis without charge to all tenants in the buildings.
- If a low-income unit in the project has been vacant during the year, reasonable attempts were made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units were rented to tenants not having a qualifying income.
- If the income of tenants of a low-income unit in the project increased above the limit allowed in Section 42(g) (2) (D) (ii) of the Code, the next available unit of comparable or smaller size was rented to residents having a qualifying income.
- An extended low-income housing commitment as described in Section 42(h) (6) was in effect, including the requirement under Section 42(h) (6) (B) (iv) that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the Unites States Housing Act of 1937, 42 U.S.C. 1437f. Owner has not refused to lease a unit to an applicant based solely on their status as a holder of a Section 8 voucher and the project otherwise meets the provisions, including any special provisions, as outlined in the extended low-income housing commitment (not applicable to buildings with tax credits from years 1987-1989).
- If the owner received its credit allocation from the portion of the state ceiling set-aside for a project involving "qualified non-profit organizations" under Section 42(h)(5) of the Code and its non-profit entity materially participated in the operation of the development within the meaning of Section 469(h) of the Code.
- There has been no change in ownership or management of the project.

Annual Submission Requirements

The owner certification must be submitted to IHFA by the last business day in February. The owner certification must be submitted to IHFA by the owner of any and all projects, including those which have received a carryover allocation of tax credits or a preliminary determination letter, in the case of tax exempt bond allocations (even if the project has not yet been placed in service).

Beginning the first year of the credit period and every year through the end of the extended use period, the owner must submit the following:

- A fully completed, signed, and dated owner certification. Only a person authorized to sign for the respective property's ownership entity may sign the certification. IHFA may ask for signatory authorization if one is not on file. Note that the owner certification provides that all months within each 12-month period are subject to certification and all certification items must be checked. Owner certification is due the last business day in February.

- A fully completed annual occupancy report (AOR). The report must include all tenant activity, by unit for the preceding calendar year. This report is due on the last business day in September.
- Compliance monitoring fees are due the last business day in February.

Note: *IHFA uses the above information for monitoring. IHFA is also required to supply information on occupants of housing tax credit units to the Department of Housing and Urban Development (HUD) annually via LIHTC Tenant Data Collection addressed below.*

Failure to submit legible and thoroughly completed certifications and annual occupancy reports when they are due constitutes noncompliance. Properties that fail to provide required reports or provide them late are subject to change of property status to not in good standing.

Annual LIHTC Tenant Data Collection

The Housing and Economic Recovery Act of 2008 (HERA) requires HUD to collect and report on the following information for LIHTC tenants:

- Property information
- Family composition
- Race
- Ethnicity
- Age
- Disability
- Income
- Use of Section 8 or other rental assistance
- Monthly rental payment
- Rent and income restrictions

Collecting this data is an annual function performed by HUD and mandated by Congress. IHFA and all property owners are legally bound to participate in the collection. This data provides a snapshot of occupancy of all LIHTC units on December 31st of each year of the collection.

The tenant data must be submitted to IHFA by April 1st, or the next business day if the 1st falls on a weekend. Failure to submit complete tenant data when it is due will be considered noncompliance.

Compliance Forms

The following forms have been approved and are required by IHFA. They can be downloaded from:

https://www.idahohousing.com/housing-compliance/tax-credit-compliance/

- Annual Occupancy Report
- Certification of Student Status (For Tax Credit Only)
- Employment Verification
- IHFA Annual Self Cert
- IHFA Common Area & Staff Unit Status Affidavit
- IHFA Tenant Income Certification
- Owner's Cert of Continuing Program Compliance (NEW)
- VAWA Lease Addendum
- VAWA Notice of Rights 5380

No other forms will be accepted. Please discard old forms and replace with those that have been newly revised.

Suggested forms can be found on the website as well.

Correction of Documents

Sometimes it is necessary to make a correction or change to documents. Documents that have been altered with correction fluid or whiteout will not be accepted by IHFA. When a change is needed on a document for the LIHTC program, the person making the correction must draw a line through the incorrect information, write or type the correction, and have all parties initial and date the change.

Annual Monitoring Fees

All projects are required to pay a compliance monitoring fee. Fees are billed annually at the beginning of the year, in advance of the upcoming compliance monitoring year. Invoices are emailed to owners and agents. Fees are due no later than the last business day in February. Fees are subject to change from year to year.

New Project Monitoring Fees

First year monitoring fees will typically be submitted, by the owner, with the placed-in-service application. All subsequent years will be billed and payable as outlined above.

Existing Project Monitoring Fees

The annual, per unit fee, rate is adjusted using the Consumer Price Index (CPI). Every property will be billed with an annual invoice.

The fee must be submitted to IHFA by the last business day in February of each year covered by the project's regulatory agreement (including the extended use period).

Failure to submit the annual fee will be considered an act of noncompliance and the property status will be changed to not in good standing until the compliance monitoring fee is paid. Late payments will result in a score deduction for the next audit.

Extended Use Monitoring Fees

Projects that have moved out of the compliance period, but are still in the extended use period, as defined by the regulatory agreement, must also pay a compliance monitoring fee by the last business day in February of each year of the extended use period. The rate at which these units are billed will be set at 67% of the rate used for units in the compliance period.

Annual Monitoring Fees			
Property Type	**Billing Basis**	**Frequency**	**Duration**
New Property	Per unit. Full fee	One-time submission with PIS application.	N/A
Existing Property in the compliance period	Per unit. Full fee.	Annually	Years 2 - 15
Existing property in the extended use period	Per unit. Fee calculated at 67% of the full fee paid in the compliance period.	Annually	Year 16 through the end of the extended use period.

Other Fees

All fees listed are subject to review and change on a yearly basis.

Utility Allowance Review

IHFA will assess a fee of $250.00 for review of a consumption method utility allowance on 100% tax credit properties or on properties layered with HOME before August 2013. There is no fee associated with a review of the HUSM or engineer method of utility allowance or consumption method utility allowance for a LIHTC project layered with HOME, starting in August 2013.

Qualified Contract Application

IHFA will assess a $20,000.00 fee, due with application.

Noncompliance for Watch List or Not in Good Standing

IHFA will assess a $1500.00 fee for all properties with a watch list or not in good standing status as of December 31st. This fee will be billed alongside the annual compliance monitoring fee and will be due at the same time.

No Show

IHFA will assess a $1,000.00 fee if an owner fails to have a representative present for tenant file audit or physical inspection at the scheduled date and time, resulting in an auditor's inability to conduct the audit or inspection. This fee will be billed with the annual compliance monitoring fee and will be due at the same time.

Change of ownership

IHFA will assess a $350.00 fee to process a property's transfer of ownership. This fee is due before the sale of property closes and will be assessed every time there is a change in ownership.

Miscellaneous Fees		
Fee Type	**Billing Basis**	**Frequency**
Utility Allowance Review	$250.00	Per Occurrence
Noncompliance	$1,500.00	Per Occurrence
No Show	$1,000.00	Per Occurrence
Change of Ownership	$350.00	Per Occurrence
Qualified Contract Application	$20,000	One-time

Liability

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

LIHTC Development Combined with Other Assistance Programs

Properties that combine LIHTC with HOME or other federal programs have a unique set

of rules that must be observed in order to maintain compliance with program regulations. It is imperative that applicants are tax credit eligible before any additional regulatory requirements are met. In other words, the LIHTC program is the primary program and all requirements associated with it must be satisfied before additional requirements related to other programs are observed. Below is a discussion of the types of programs that may be associated with the LIHTC program.

HOME

If HOME funds are layered on a LIHTC development, at least 20% of the total units must be reserved for households with incomes at or below 50% of the area median income (AMI) and 80% of the HOME funded units must be rented to households at 60% or less of area median income.

For HOME units to qualify as low-income units, rents and income cannot exceed either program limit. Low HOME rents are subject to 50% HOME income and rent limits. High HOME rents are subject to 65% of AMI or Fair Market Rent (FMR), whichever is less. Further, high HOME income limits are at 60% of AMI. HOME units can be deep skewed at the 30% or 40% income and rent limits. Owners/Agents must be aware that both deep skewed unit types have HOME income limits, however rent limits are not stated on the HOME rent limit charts. Therefore, Owners/Agents must use the tax credit rent charts to obtain 30% and 40% rent limits. If a unit is being counted under both programs, the stricter rent income and rent limit will apply.

Note: *Owners/Agents may have to obtain both tax credit and HOME income and rent limits to determine household eligibility.*

When tenants receive additional subsidy through rental assistance such as Project - Based Section 8 or Rural Development (RD), rent may be raised to the rental assistance program limit only if the following HOME requirements are met:

- Tenant is paying no more than 30% of their adjusted income
- Subsidy is project-based (affects the entire development, not just a single unit)
- Tenant's income is less than 50% of the AMI

Note: *The tax credit rule, allowing the tenant's rent to be raised to the higher Project Based Section 8 rent limit as long as the tenant pays no more than 30% of their adjusted monthly income, does not apply when a unit is combined with HOME funds. According to the Revised 8823 Guide, the "portion of the rent paid by Section 8 tenants can exceed the LIHTC rent ceiling as long as the owner receives a Section 8 assistance payment on behalf of the tenant." This does not apply to HOME units.*

Unless the subsidy is project-based (not tenant-based), the total HOME rent is the **maximum amount from all sources** that the owner/agent may receive for HOME assisted units. Therefore, a tenant's rent, utility allowance, and rental subsidy amount CANNOT equal more than the applicable HOME rent limit.

In addition to obtaining the HOME income and rent limits, owners/agents must follow four HOME Program requirements.

- Owners/Agents must complete affirmative housing marketing plans and have them available during IHFA audits if there are 5 or more HOME units.
- Tenants who live in HOME designated units, must sign a one-year initial lease.
- The HOME program also dictates that all leases include a HOME lease addendum. Addendum can be downloaded: https://www.idahohousing.com/housing-compliance/home-program-compliance/ The lease addendum must be included with every new lease signed by a HOME unit tenant.
- An annual HOME student certification must be completed for each tenant in the HOME unit.

HOME regulation requires third-party verification of all assets, whereas LIHTC program rules require third-party verification of assets only if the household's combined assets are greater than $5,000. For units that combine both HOME and LIHTC units, the stricter HOME rules apply and all assets must be verified third-party.

For those owners/agents who must adhere to both program requirements in one development, IHFA ensures compliance through annual review of the AOR and CCC. Under the Tax Credit program, the affordability period is generally 30 years, unless developments agree to longer extended use periods. Developments with HOME dollars may have affordability periods of 5 - 40 years depending upon the type of development and the amount of HOME dollars invested. As a result, developments with combined HOME and LIHTC units may be subject to two sets of affordability periods and will be monitored according to each specific program requirement.

Note: *You may find the affordability period in the regulatory agreement documents of your development. Failure to establish and maintain compliance with HOME regulations could result in default under the HOME note, deed of trust and regulatory agreements, which would be noted as a program violation.*

For additional HOME information please see the HOME program compliance section of this manual.

Rural Development (RD)

Rural Development subsidy may be included in LIHTC developments. Owners/Agents must certify, through the subsidy process, that the tenant is receiving rental subsidy and qualifies to live in a LIHTC unit. A tenant income certification must be completed for these units.

Deeper Skewed Units

In addition to an election of the minimum set-aside, owners/agents may elect to provide housing to households with incomes of 40% or less of the AMI. The deeper skewed units election is a means for developers to gain additional points in the qualified allocation process. By agreeing to allocate units at a 30% or 40% AMI, owners/agents agree to rent units to those households whose income is extremely low.

Once elected and committed to in the regulatory agreement, the minimum set-aside and deeper-skewed elections are irrevocable. Therefore, the applicable minimum set-aside and deep-skewed designations are set for the duration of the 15-year compliance period as well as the extended use period.

For developments with unit restrictions deeper than 60% AMI, Owners/Agents must apply the 140% or next available unit rule at annual recertification. Based on the assumption that the household is a qualified household at a lower set-aside at move-in, the household continues to be a qualified household provided income does not increase above 140% of the 60% income limit, 50% or 60%, depending on the elected minimum set-aside on the 8609. The Next Available Unit Rule is discussed in detail on page 57.

In a building with even one market unit, if a household's income increases over 140% of the maximum limit for the unit, the next available unit rule is triggered. This means the next available unit of equal size or smaller (subject to the established square footage applicable fraction) must be rented to an income-qualified tenant, such that the building's set-aside mix and applicable fraction will again be the same as the set-asides and applicable fraction originally designated for the property.

For example, if it is a 30% or 40% unit that has exceeded 140% of the maximum income limit (per the MSA on Form 8609), the next available unit must have a 30% or 40% income-qualified household move into it to maintain the set-aside mix. Once the next available unit is rented to the qualified household, the rent of the over-income household can be converted to the highest AMI Level, depending on the minimum set-aside, or market rents.

Note: *LIHTC regulations only require a minimum set-aside of 20/50 or 40/60. However, the Revised 8823 Guide does state that a development is in compliance when the elected minimum set-aside are met by the end of the first year of the owner's/agent's credit and compliance period and continues to be met each year throughout the compliance period. Owners/Agents must be aware of the minimum set-aside and deep-skewed designations for their own developments. The PIS application and regulatory agreement should be available to those who are responsible for adhering to these requirements.*

Project-Based Section 8

Project-based Section 8 developments may include tax credit allocations. Such allocations come with separate compliance regulations. See IHFA QAP for step-by-step information on acquisition rehab or rehab requirements.

During a compliance audit, Enterprise Information Verification (EIV) information used in verifying Project-Based Section 8 income, must not be in the same file as the tax credit documentation. IHFA Tax Credit and HOME auditors must not have access to EIV information. If so, IHFA auditors have the obligation to inform the IHFA Housing Compliance Manager. Owners/Agents may have their EIV privileges revoked by HUD if they are in violation of this rule.

Chapter 6 - Project Rental Requirements

Allowable Fees and Charges

Application fees may be charged to cover the actual cost of checking a prospective tenant's income, credit history, and landlord references. The fee allowed is limited to recovery of the actual out of pocket costs. No amount may be charged in excess of the average expected out of pocket costs to check tenant qualifications at the project. Customary fees, normally charged, such as damage deposits and pet deposits are permissible. However, an eligible tenant cannot be charged a fee for the work involved in completing the additional forms or documentation required for program compliance.

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

If after occupying a unit an eligible tenant cannot pay the rent or is otherwise in violation of the lease provisions, the owner has the same legal rights in dealing with the eligible tenant as with any other tenant. However, during the compliance period, extended use period, and for three years after expiration of the regulatory agreement, households in qualified tax credit units may not be evicted or tenancy terminated for reasons other than good cause.

Decorating Fees

It is the owner's responsibility to physically maintain units in a manner suitable for occupancy. Fees for preparation of a unit for occupancy must not be charged unless the owner can clearly document what these fees cover and that they are not being used to prepare a unit for occupancy. Fees for preparation of occupancy include unit transfer, decorating, and similar fees.

Gross Rent

Gross rent includes rent paid by tenants (excluding federal or state rental assistance such as Section 8) for the tax credit unit, an allowance for utility costs paid directly by tenants (except telephone, cable, and internet), and any other mandatory charges. Charges for non-optional services or fees must always be included in gross rent. Non-optional services can include things like a washer and dryer hookup, built-in storage shed or locker (paid month-to-month or in a single payment), and excess utility charges. The total gross rent cannot exceed the applicable Multifamily Tax Subsidy Project (MTSP) rent limits for the project. The IRS has clarified that month-to-month lease fees and mandatory renter's insurance are also considered rent. The fees are allowable, but the gross rent must include these amounts and must be below the applicable rent limit.

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

Housing Choice Vouchers and Rental Assistance

The regulation at 24 CFR 982.507(C)(1) says that in LIHTC or HOME units, rent reasonableness is not required if the rent requested by the owner does not exceed the rent for other

LIHTC or HOME-assisted units in the project that are occupied by non-voucher holders. This makes sense since the requirements for these programs restrict rents at an affordable level. However, LIHTC program regulations allow owners to charge higher rents to families that receive Section 8 assistance. In such cases, if the rent requested by the owner exceeds the rents for non-voucher families in the project, then the rent cannot exceed the lesser of the reasonable rent or the PHA's payment standard. Please check with your local housing authority for further guidance. Many PHA's have implemented policy regarding voucher holders in LIHTC properties and you will need to follow their policies.

With the passage of the Omnibus Budget Reconciliation Act of 1993, owners are prohibited from refusing to lease to a prospective tenant based solely on the fact that the applicant is a Section 8 voucher holder in the Housing Choice Voucher Program.

Overcharging Rent

A unit is considered out of compliance when the gross rent exceeds maximum rent limits. LIHTC owners pay taxes based on the calendar year. Unit non-compliance for the tax year will affect minimum set-aside requirements and can cause applicable fraction violations. This may result in recapture of credit or the inability to claim credits for the year in which the unit was non-compliant. Please see the following examples.

In Compliance

The 2018 50% rent limit for a two-bedroom unit in Mountain Home is $657 per month. The

owner/agent charges $606 with a PHA utility allowance of $51 per month, paid by the tenant for a gross rent of $657. When the 2019 limits are released, the owner/agent has 45 days to establish the new rent. The two-bedroom rent limit increases to $698 and the PHA utility allowance decreases to $50. The owner changes the tenant paid rent to $648 and the utility allowance to $50 for a gross rent of $698.

If owner/agent correctly adjusts rent within the appropriate time-frame, the development will be in compliance.

In June of 2018, the maximum rent for a 50% two-bedroom unit in Mountain Home is $657 per month. The owner/agent charges $607 with a PHA utility allowance of $50 per month paid by the tenant. In 2019, the two-bedroom rent limit increases to $698 per month and the utility allowance increases to $51 per month. The owner/agent increases rent to $648 and the utility allowance to $51 for a gross rent of $699.

The total gross rent for the two-bedroom unit is $699, $1 over the maximum allowable gross rent for the unit. This unit would be out of compliance.

Apartment Development A has a policy to charge applicants a one-time, optional fee of $125 to clean their future apartment before move-in. An applicant has the choice to either pay the non-refundable cleaning fee or move into the unit as is. The applicant pays the $125 cleaning fee and moves into the unit on April 12, 2008.

According to the Revised 8823 Guide, it is not permissible for owners/agents to charge applicants a fee for maintaining low-income units in a condition suitable for occupancy under IRC Section 42(i)(3). Compliance with Section 42 is the responsibility of the owner and that includes keeping all units in rent ready condition. This unit would be out of compliance as of April 12, 2008 and would not be back in compliance until January of 2009, the beginning of the next tax year.

The units illustrated in the examples above would be out of compliance and cease to be low-income units for the remainder of the tax year they went out of compliance. According to the Revised 8823 Guide, "the unit is back into compliance on the first day of the owner's next tax year if the rent charged on a monthly basis does not exceed the limit." Owners/Agents must also refund the overcharged rent and cleaning fee in the examples above, but these actions do not prevent the filing of IRS Form 8823.

According to the Revised 8823 Guide, overcharging tenants for rent in the first year of the compliance period can **disqualify** the owner from claiming credits. If the owner of a 100% LIHTC building overcharged rent to all units resulting in the failure to meet the minimum set-aside for the first year of the credit period, the building would not qualify for tax credits.

Note: *It is very important for owners/agents to establish rent with the knowledge of applicable utility allowances and current rent limits. The IRS views overcharging tenants in the first year of compliance as an incurable offense. For more guidance please see Chapter 11 in the Revised 8823 Guide.*

Minimum Lease Requirement

All tenants occupying LIHTC units are required to be income qualified and to execute at least an initial six-month lease. The six-month requirement may include Succeeding leases are not subject to a minimum lease period.

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

At a minimum, the lease must include:

- Legal name of parties to the agreement and all other occupants.
- Description of the unit to be rented.
- Date the lease becomes effective.
- Term of the lease.
- Amount of rent.
- Use of the premises.
- Rights and obligations of the parties, including the obligation of the household for annual recertification of its income and student status.
- Signatures of all household members 18 years of age or older.
- Statement explaining that the development is participating in the LIHTC program and that tax credit units are under certain program regulations including income eligibility, student eligibility, and annual recertification of household income.

Violence Against Women Act – VAWA

While not a compliance requirement of Section 42, the Violence Against Women Reauthorization Act of 2013 (VAWA 13) was extended to include the LIHTC program. Owners must comply with the lease requirements found in Section 601 of VAWA 2013. IHFA highly encourages owners to use the VAWA Lease Addendum, form HUD-91067 or its successor VAWA Lease Addendum form. In general, owners may not construe an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking as a serious or repeated violation of a lease term by the victim or threatened victim or as good cause for terminating tenancy. In accordance with VAWA 2013, owners may bifurcate a lease to terminate the tenancy of an individual who is a tenant or lawful occupant and engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against another lawful occupant living in the unit or other affiliated individual as defined in VAWA 2013.

Owner/Agent should include a copy of HUD-91066 or its successor form with each tenancy termination or eviction notice to allow an individual to certify that he or she is a victim of domestic violence, dating violence or stalking. The form is to be completed and submitted to owner/agent within 14 business days or on an agreed upon extension date, in order for the individual to receive protection under the VAWA.

Household Size

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

While IRS regulations do not specifically address occupancy requirements, IHFA encourages maximum utilization of space. IHFA recommends that written occupancy policies be established which reflect maximum utilization (at least 1 person per bedroom is recommended as a minimum) and set maximum standards of no more than two persons per bedroom. In situations where there is more than one qualified applicant for a unit, IHFA recommends giving preference to the household that is most suitable to the unit size. Owners should comply with state and local laws, regulations, and financing requirements (e.g., if Rural Housing Service, use RHS regulations).

Factors that Affect Household Size for Income Limits

When determining family size for income limits, the owner must include the following individuals who are not living in the unit 100% of the time:

- Children temporarily absent due to placement in a foster home.
- Children in joint custody arrangement who are present in the household 50% or more of the time (if disputed, determine which parent claimed the children as dependents for purposes of filing a federal income tax return).
- Children who are away at school but who live with the family during school breaks.
- Unborn children of an applicant. When a pregnant woman is an applicant, the unborn child is included in the size of the household and may be included for purposes of determining the maximum allowable income. The rental application should ask the following question, "Will there be any changes in household composition within the next 12 month period?" If an applicant answers that a child is expected, the manager should explain to the tenant that in order to count the child as an additional household member and use the corresponding income limit, a self-certification of pregnancy must be provided.
- Children who are in the process of being adopted.
- Temporarily absent family members who are still considered family members. For example, the owner may consider a family member who is working in another state on assignment to be temporarily absent. Persons on active military duty are considered temporarily absent (except if the person is not the head, co-head or spouse, or has no dependents living in the unit). If the person on active military duty is the head, co-head or spouse, or if the spouse or dependents of the person on active military duty reside in the unit, that person's income must be counted in full.
- Family members in the hospital or at a rehabilitation facility for periods of limited or fixed duration. These persons are temporarily absent as defined above.
- Individuals permanently confined to a hospital or nursing home. The family decides if such individual is included when determining family size for income limits. If such an individual is included, they must be listed on the TIC as other adult family member. If the family chooses to include the permanently confined person as a member of the household, the owner must include income received by this person when calculating family income.

Live-in Aide

When determining family size for establishing income eligibility, the owner must include all persons living in the unit except a live-in aide or attendant who resides with one or more elderly tenants, near elderly tenants, or tenants with disabilities and who:

- Is determined as essential to the care and well-being of the tenant(s) in their care.
- Is not obligated for the support of the tenant(s) in their care.
- Would not be living in the unit except to provide necessary supportive services.

While a relative may be considered a live-in aide or attendant, they must meet the above requirements, especially the last. The live-in aide qualifies for occupancy only as long as the individual needing supportive services requires the aide's services and remains a tenant, and may not qualify for continued occupancy as a remaining family member. Managers must obtain verification of the need for a live-in aide or attendant and should not add the attendant to the lease.

Deployment of Military Personnel to Active Duty

Owners are encouraged to accommodate unique circumstances of households related to military service. Specific actions that an owner can take and remain in compliance include, but are not limited to:

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

Utility Allowance

The Internal Revenue Service requires that utility allowances be set according to 26 C.F.R. 1.42-10 (April 24, 1994), effective May 2, 1994, and amended July 29, 2008. Please read these regulations carefully.

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

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

Section 42 lists the different sources of utility allowances for tax credit developments. The following is a summary of the utility allowances that may be used for Section 42 units.

- USDA Rural Housing Service (RHS) financed projects, or units with tenants receiving RHS assistance, use the RHS utility allowance.
- Tenants residing in project based Section 8 properties use the utility allowance established for the subsidized units
- Individual apartments occupied by tenants who receive HUD assistance known as tenant based Section 8 or Housing Choice Voucher (HCV) rental assistance, use the utility allowance established for the voucher.

100% tax credit properties may use any of the below methods to calculate the applicable utility allowance.

Public Housing Authority (PHA) Utility Allowance

Owners/Agents may obtain utility allowances from their local city, county, or regional public housing authority.

Actual Consumption Utility Allowance

The utility analysis methodology described below is premised on calculating average utility consumption based on actual tenant consumption by unit size.

For detailed guidance on using this method, reference HUD Notice H-2015-04: Methodology for Completing a Multifamily Housing Utility Analysis.

Owners/Agents may obtain utility consumption data from each utility company for every LIHTC unit on the property. Data for this type of utility allowance must include tenant paid utility consumption statements for the same 12 month period for every unit. Monthly actual usage must be categorized by utility type (gas, electric, etc.) and by unit size (number of bedrooms). If the property consists of multiple identical buildings, or buildings that are substantially similar, then the sampling may be performed at the property level (including all buildings on the site) for each bedroom size. If the buildings are not identical, the sampling must be done for each bedroom size for each building.

Exclude units that have been vacant for more than two months. Units included in the sample must have at least ten full months of occupancy. This occupancy can be from more than one household. Exclude units that are receiving a flat utility rate as part of a low-income rate assistance utility program.

Utility costs for each bedroom size are averaged by entering the data from the utility company in the excel spreadsheet provided by IHFA and using the sample size in the table below, provided by HUD.

Number of Units	Minimum Sample
1 - 20	All
21 - 61	20
62 - 71	21
72 - 83	22
84 - 99	23
100 – 120	24
121 - 149	25
150 - 191	26
192 - 259	27
260 - 388	28
389 and above	29

If the HUD recommended minimum sample for each bedroom size is smaller than the actual number of units, owners/agents may use all of the applicable units or the HUD recommended sample size. If using the UHD recommended sample size, the units used must be a random sampling. If using all of the units, do not remove the highest or lowest utility cost household when calculating the average. If the HUD recommended sample size is larger than the number of actual units, owners/agents should use all of the applicable units in the project.

Averages ending in cents must be rounded up to the next whole dollar.

Once the calculation is complete the owner/agent must upload the excel spreadsheet and the consumption statements for every LIHTC unit to Procorem for the IHFA Compliance Department to approve. Approval of the utility allowance does not constitute a guarantee that the utility allowance is correct. If at any time it is determined that a utility allowance has be understated and, therefore some or all of the units are not rent restricted, under Section 429(g)(2) IHFA must report the non-compliance to the IRS using Form 8823.

Note: *Owner/Agents must remit a non-refundable utility consumption analysis fee of $250.00 for 100% tax credit properties.*

IHFA will review the submission and determine the acceptability of the analysis. An IHFA approved utility allowance is effective for one year and must be renewed at the same time every year at the request of the owner/agent.

HUD Utility Schedule Model

Owners/Agents may calculate a utility allowance using the HUD Utility Schedule Model (HUSM) that can be found online:

https://www.huduser.gov/portal/resources/utilallowance.html.

Utility rates used for the HUD Utility Schedule Model must be no older than the rates in place 60 days prior to the beginning of 90 days after the change (90 day period).

The utility allowance is considered "obtained" based on the date entered as the "form date" on the "location" spreadsheet of the HUD Utility Schedule Model. The date begins the ninety (90) day period after which the new utility allowance must be used to compute gross rents.

Engineering Consumption Model

Owners/Agents may calculate utility estimates by using an engineering consumption model. The engineering consumption model must take into consideration factors such as, unit size, building orientation, design, and materials, mechanical systems, appliances, and characteristics of the building location.

The date used to compute the estimate must be limited to the building's consumption data for a 12-month period ending no earlier than 60 days prior to the date the utility allowance will change. For new construction or renovated buildings with less than 12 months of consumption data, use consumption data for the 12-month period for similarly sized and constructed units in the geographical area in which the building is located.

The utility consumption estimates must be calculated by either a licensed engineer or a qualified professional approved by IHFA. The qualified professional and owner/agent must not have a conflict of interest.

Utility allowances must be updated annually or whenever changes are made by the source. Regardless of the utility analysis method used, owners/agents must clearly identify, on all source documentation, which utility allowance is being utilized for the development. Written documentation should be obtained from the source each year of the compliance and extended use periods indicating whether or not there has been a change in the utility allowance or rates. This documentation must be kept on file for audit purposes and maintained in accordance with record retention requirements in the IRC.

If the property has LIHTC and HOME, it may not use the PHA utility schedule. The HOME final rule established a revised utility allowance requirement for HOME units. IHFA has determined that the following methods may be used to calculate the utility allowance for properties with HOME:

- The HUD Utility Schedule Model (HUSM)
- Actual Consumption Utility Model (also referred to as the Utility Company Model)
- Engineer Consumption Model (also referred to as the Energy Consumption Model)

Properties with both LIHTC and HOME may only use one UA so the PHA schedule is not permitted.

With the exception of HUD and RD regulated properties, failure to maintain or provide the utility allowance and supporting documentation annually is considered noncompliance; without proof of the amount of the allowance, there is no way to correctly compute the rent. In addition, an incorrect utility allowance calculation may result in noncompliance for rent that exceeds the tax credit rent limits.

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

Utility allowances and supporting documentation for the HUD Utility Schedule or Energy Consumption Models must be submitted to IHFA at the beginning of the 90-day period before utility allowances can be used in determining the gross rent.

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

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

Utility Review During Initial Lease Up

According to the Revised 8823 Guide, a utility allowance review is not necessary until a building has achieved 90% occupancy for a period of 90 consecutive days, or by the end of the first year of the credit period, whichever is earlier.

If the review is conducted at the end of the first year, the consumption rates for the first year of occupancy must be determined by December 31st. The 90-day period will begin no later than March 1 of the year before the first year of the credit period.

Notification Requirement

If the owner obtains a utility allowance from a utility company using the HUD Utility

Schedule Model or calculated using the Engineering Consumption Model, the owner

must submit copies of the utility allowance estimates to IHFA and make the utility allowance estimate available to all tenants in the building at the beginning of the 90-day period. IHFA may require additional information from the owner during the 90-day period.

Note: *If an owner/agent decides to calculate allowances through the utility company one year, they CAN, decide the next year to obtain allowance information from the local PHA or pursue the other previously mentioned utility allowance consumption models. However, owners/agents must decide prior to the lease-up process which avenue to take to obtain the first year credit utility allowances.*

Under Treas. Reg. 1.42-10 (c) (2), a building owner must review the basis on which utility allowances have been established at least once during each calendar year and must update the allowance if required. Building owners may choose to calculate new utility allowances more frequently than once during a calendar year, provided the owner complies with the requirement of Treas. Reg. 1.42-10, including the requirement to notify IHFA and tenants.

If utility allowances change, Owner/Agents may need to adjust rents accordingly to remain in compliance with the Code's rent restriction requirement. A unit is in noncompliance when tenant rent charged exceeds the maximum rent limits. If an Owner/Agent does not follow the utility allowance process correctly, IRS Form 8823s will be filed.

Physical Requirements of Qualified Units, Suitable for Occupancy

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

- Must have substantially the same equipment and amenities as other units in the project.
- Must be substantially the same size as other units in the project.
- Cannot be geographically segregated from other units in the project.

LIHTC units must be suitable for occupancy under UPCS and local health, safety, and building codes. Units that are not suitable for occupancy, including previously qualified low-income units being rehabilitated in the first year of the credit period, are considered out of compliance. The noncompliance is corrected when the unit is again suitable for occupancy and the unit type will be determined based on the household that occupied the unit immediately preceding the rehabilitation.

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

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

Discrimination Prohibited in Project and General Public Use

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

The following Idaho localities have expanded discrimination prohibitions to include sexual orientation and gender identity as protected classes.

- Ada County
- City of Boise
- City of Bellevue
- City of Coeur d'Alene
- City of Driggs
- City of Hailey
- City of Idaho Falls
- City of Ketchum
- City of Lewiston
- City of Meridian
- City of Pocatello
- City of Sandpoint
- City of Victor

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

HUD enforces the Fair Housing Act. IHFA will refer complainants to HUD for follow-up and investigation. Any finding of discrimination, adverse final decision by HUD, adverse final decision by an equivalent state or local fair housing agency, or an adverse judgment from a federal court is a violation that IHFA will report to the IRS.

Anyone with questions regarding the accessibility requirements can obtain the Fair Housing Act Design Manual from HUD by calling **(800) 343-3442**.

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

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

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

Unit Status

The following terminology defines unit status that should be considered when leasing units in a LIHTC building:

- Vacant Unit: LIHTC unit, which a qualified tenant has vacated.
- Empty Unit: LIHTC unit that has NEVER been rented.
- Market Unit: Unit without LIHTC, occupied or not.
- Occupied Unit: LIHTC unit that is currently rented.

Empty Unit

Units that have never been occupied are referred to as empty units rather than vacant

units. Empty units cannot be counted as low-income units, but they must be included in the building's total unit count for purposes of calculating the applicable fraction.

According to the definitions above, it is considered a best practice to rent empty units before renting vacant units. Empty units are not eligible for tax credits until an income-qualified tenant rents the unit. Therefore, the initial tenant gives the unit its tax credit status.

Vacant Unit

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

Only units that have been previously occupied by an eligible household and are suitable for occupancy may be included as a qualifying low-income unit for compliance purposes. If a unit has never been occupied by an income eligible household or has been vacated by a market rate household, that unit is not counted as a qualifying low-income unit.

The Vacant Unit Rule is the subject of Revenue Ruling 2004-82, Answering 12 Questions about Low-Income Housing Credit under IRC Section 42 (see questions #8, #9, and #10), and published August 30, 2004. The Revenue Ruling clarifies that an owner may not move a household from building to building to qualify more than one unit in a property (question #8); that "reasonable attempts" are customary methods of advertising apartment vacancies in the area of the property for identifying prospective tenants and may include, but are not limited to: displaying a banner and for-rent signs at the entrance to the property, placing classified advertisements in local newspapers, and contacting prospective low-income tenants on a waiting list for the property and on a Section 8 and public housing waiting list with the local public housing authority (question #9); and that a unit is not an available vacant unit if the unit is no longer available for rent due to contractual arrangements that are binding under local law, such as a reservation entered into between the owner and a prospective tenant (question #10).

Change in Household Composition

For all **properties**, if there is a change in household composition within the **first six months** of occupancy, owners or managers must certify the household as if it were a new move-in. This requirement to certify does not apply in cases of natural changes in household composition such as birth, adoption, or death, or in cases covered under the Violence Against Women Act (VAWA). The combined household income must be at or below the applicable move-in income limit for the new household size. The purpose of this rule is to disallow the addition or removal of household members in order to manipulate move-in eligibility.

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

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

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

Decrease in family size after the first six months does not trigger an immediate income certification. Subsequent annual income recertifications will be based on the income of the remaining members of the household.

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

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

Available Unit Rule

The next available unit rule does not apply to 100% affordable properties. This is an important building rule and if violated, may result in loss of credit.

Following initial certification, an eligible household's income can increase up to 140% of the maximum income level, as elected as the minimum set-aside on the IRS 8609 form. As long as the income remains at or below 140%, the unit and building are in compliance

A unit can be over income if the household's income exceeds the maximum income level by more than 140% of the 50% or 60% limit as election on the IRS form 8609. The unit remains in compliance as long as the unit continues to be rent restricted and the next available unit or any available unit of comparable or smaller size in the same building is rented to an income eligible household at the qualifying rent. The owner must continue to rent any available comparable unit to a qualified household until the original mix of set-asides and applicable fraction of the building are met. At that point, failure to maintain the over-income units as low-income units has no immediate significance.

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

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

Student Eligibility

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

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

An educational organization, as defined by IRC Sec. 170(b) (1) (A) (ii) is one that normally maintains a regular faculty and curriculum, and normally has an enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. The term educational organization includes elementary, junior, and senior high schools, colleges, universities, and technical, trade, and mechanical schools. It does not include on-the-job-training courses.

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

Students are married and entitled to file a joint tax return. A married couple that is entitled to file a joint tax return, but has not filed one, still satisfies the exception.

The household consists of a single parent with children and the parent is not a dependent of someone else, and the children are not dependents of someone other than a parent.

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

At least one member of the household participates in a program receiving assistance under the Job Training Partnership Act (JTPA) or other similar federal, state, or local laws**.

At least one member of the household was previously in foster care***.

** The JTPA program was repealed in 1998, and replaced with the Workforce Investment Act (WIA). WIA (and JTPA when it existed) funds programs such as adult literacy, English as a second language, General Education Diploma (GED) courses, vocational services for the blind, employment and training programs for Native Americans and migrant and seasonal farm workers, job corps, veterans employment programs, summer youth employment and training, employment and training for dislocated workers and displaced homemakers, etc. Students in those programs are eligible for the JTPA exemption provided the school or community education department, verifies that the applicant/resident is a participant in a program similar to those funded under JTPA or WIA.

*** Previously means within five years of the effective date of the initial income certification. "Foster care" means substitute care for children placed away from parents or guardians and for whom the state agency has placement and care responsibility. This includes, but is not limited to, placement in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes.

A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the state or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is a Federal matching of any payments that are made.

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

Verification also must be obtained, when applicable, to support the full or part-time student status. Part-time students are not considered students for the purposes of this section and their eligibility is not subject to special restrictions. However, verification of part-time status is required for households comprised entirely of students that do not meet one of the exemptions.

Loss of Eligibility upon Becoming a Full-Time Student

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

Unit Transfers

IRS considers each building in a property to be a separate project unless owner elects to treat certain buildings as part of a multiple building project. Owners make the election for multiple building projects on Part II, line 8b of IRS Form 8609. Until IHFA becomes aware of an owner's election, IHFA will treat the property as if all buildings are separate projects.

Unit transfers between buildings that are not part of the same project are prohibited. If a household moves to another project within the same property, it must be reported as a move-out and must be income qualified for the new unit.

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

Transfer within Same Building

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

Transfer to Different Building in the Same Multi-BIN Project According to Form 8609 Line 8b

When a tenant, whose income is no greater than 140% of the current income limit, moves to a low-income unit in a **different** building within the development, the vacated unit assumes the status of the newly occupied unit. Therefore, the tenant remains qualified.

If a tenant income **exceeds** 140% of the current income limit at the last certification and wishes to move to a different building, the newly occupied unit will be treated as a non-qualifying unit and owners would be required to decrease the tax credit amount for that building until the non-qualified unit is rented to a qualified tenant and is brought back into compliance.

Note: *In a transfer, units need not be of a comparable nature as long as the household is not over 140% of the current income limit.*

The tenant's income status is determined from the most recent recertification. If a tenant's most recent recertification is more than 12 months prior to the transfer, then a recertification must be completed as soon as possible. In addition, for those developments that are exempt from performing annual recertification requirements, owners must conduct an income recertification prior to the unit transfer to assess whether the tenant income exceeds the 140% income limit stipulation.

A new certification is not required when a tenant moves to another unit because the tenant's current income recertification, as well as the lease, moves with them. When a tenant moves within a building, the recertification documentation moves with the tenant to the new unit's file folder.

As indicated above, it is now permissible for those tenants whose incomes are less than 140% of the income limitations to transfer between buildings in a development. However, the IRS Code excludes tenants who earn more than 140% of the income limitations from transferring between buildings within the same development.

Transfer to Different Building in a Different Project According to Form 8609 Line 8b

A unit transfer from one building in a multi-building development when line 8b on Form 8609 is checked "no" must be done as a move out, move in, and the household must be income qualified for the new unit.

Unit Percentage Swapping

Unit percentage swapping may occur when a household is over the income limit of a particular unit's set aside percentage. Swapping unit set asides can only occur with comparable units but may occur throughout the development.

For example: A tenant moves into Unit #101, a 30% 1 bedroom unit in Building A, on December 1, 2017. At recertification, the agent finds that the tenant is over the 30% income limit. Unit #303, a 50% 1 bedroom unit is vacant in Building B during this time. An owner may swap unit designations so that Unit #101 becomes the 50% unit and the unit in Building B assumes the 30% set-aside. The tenant does not physically move out of Unit #101, but the percentage designation changes.

Note: *Unit percentage swapping may occur within a building and/or throughout a development. Market units cannot be swapped throughout a development. A market unit may only be swapped with a unit of the same size or smaller in the building that the market unit has been designated.*

Full-Time Resident Manager's Unit

The full-time resident manager's unit may or may not be included in determining the applicable fraction depending on the circumstances. Referencing IRS Revenue Ruling 92-61:

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

Example: A building contains 24 units and the applicable fraction is 100%. Credits were allocated on 23 units. This means that the manager unit was treated as common space when the credit was allocated. The applicable fraction would be 23/23 or 100%.

A full-time manager or maintenance person must occupy a resident manager unit. The number of hours worked does not define full-time; rather it is defined that the manager's presence on site is reasonably required for the development. Some things to consider are: what is warranted by the type, size and/or location of the development, as well as what is needed in terms of the resident population. Some developments may not need to employ a resident manager for what is normally considered full-time and other developments may need to employ more than one on-site manager or maintenance person. Full-time is considered to be whatever is reasonably required to make operations run smoothly at the development. As a general guide, a manager who performs management functions such as leasing units, preparing certification paperwork, cleaning, general maintenance, preparing turnovers, collecting rent, etc., and is available to the site on an on-call basis to respond to emergencies may be considered a full-time manager under this ruling. According to Revenue Ruling 2004-82, dated August 30, 2004, a unit may also be occupied by a full-time security officer and be treated as common space, if reasonably required.

All developments, especially those that are new allocations, need to notify IHFA of the status of common space unit(s) and which method is being used. When notifying IHFA, it is necessary to include the project name and LIHTC number, the building address and BIN number, the unit number, the number of bedrooms in the unit, the square footage, the current resident manager, maintenance person, or security personnel's name and a description of duties and time involved. If not previously considered as part of the allocation process, IHFA will issue a letter acknowledging such common space unit. For the most part, IHFA will rely on the owner's determination of whether a full-time unit is reasonably required by the development. However, if IHFA becomes aware that the unit is not occupied by a full-time manager, maintenance, or security personnel, as represented by the owner, it may become a noncompliance issue.

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

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

Owners are required to submit IHFA Common Area/Staff Unit Status Affidavit for any unit or change in status to a unit utilized as a site office, or occupied by a full time resident manager, a full-time maintenance person, or a full time security person as defined in Chapter 8, page 5 of the 8823 Guide and Revenue Ruling 92-61. The following conditions require submission of this form at the time any change is anticipated:

- Initial request for a common space unit
- Change to a different unit
- Common space unit no longer required

Chapter 7 – Qualifying Tenant & Income Determination

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

This chapter of the manual outlines procedures for the application and determination of income and assets. According to compliance monitoring regulations contained in Section 1.42-5 for the LIHTC program, "Tenant income is calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937 (Section 8), not in accordance with the determination of gross income for federal income tax liability."

Owners and managers should use current circumstances to project income, unless verification forms or other verified documents indicate that an imminent change will occur. For guidance in this section and in determination of tenant income, the HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs, is used and is recommended as a reference guide. The HUD Handbook 4350.3 and HUD notices can be obtained by visiting the HUD web site:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips

To determine if a household meets the income test, use sources of income included in 24 CFR 813.106, which is the test for the HUD Section 8 program (IRS Notice 88-80). If the sum from these sources is equal to or less than the applicable income limit for the county and household size, then the household is an income-qualified household.

Please keep in mind that rental agents sometimes attempt to establish only that the applicant has sufficient income to support monthly rent payments. Tax credit projects are both rent restricted and income restricted. Therefore, if a rental agent intends to include the applicant as an eligible tenant, income from all required sources must be verified and included in the income calculation.

Procedures in Qualifying Tenants

Due to the scarcity of affordable housing resources and the need to allocate those

resources to eligible households, owners/agents must ensure that they take the necessary steps to provide housing only to those whose incomes qualify. Owners/Agents must ensure that they adhere to appropriate procedure within the application process to assure an effective allocation of housing resources.

Application Process

Owners/Agents must be diligent in obtaining complete and accurate tenant information when collecting tenant applications. The application form is the first step in determining tenant eligibility. Therefore, the application should request complete and comprehensive information regarding income, assets, student status, and previous rental and employment history.

Owners/Agents should also demonstrate due diligence in determining applicant eligibility by obtaining, at least, the following:

- Full name
- Date of birth
- Student status
- Household status
- Current employer
- Previous employer
- Current address
- Previous addresses for the last 2 years
- Whether or not the household receives rental assistance
- Anticipated changes to the household in the next 12 months

In addition, an income and asset declaration form should be included to detail all sources of an individual's income and assets. Due diligence on the part of the owner/agent to determine applicant eligibility must be verifiable. IHFA strongly suggests that owners/agents alter or add proper verbiage to income and asset declarations to ensure applicants are asked anticipated income questions. Standardized move-in questions help to ensure compliance, consistency, and may protect owners/agents against tenant misrepresentation when anticipating income.

IHFA strongly suggests that all anticipated adult household members complete a separate application to ensure all documentation is covered and owners/agents have performed due diligence when determining move-in eligibility.

Note: *Please refer to Example 7, Insufficient Documentation of Initial Eligibility on page 4-35 in the Revised 8823 Guide for additional information.*

IHFA also strongly suggests that owners/agents adopt a resident selection policy that requires credit/criminal background screening and landlord references for every potential tenant. Screening criteria, when properly and consistently employed, may decrease the likelihood of problems going forward.

Note: *Tax Credit developments that have HOME units are required to have a resident selection policy, per HOME regulations. Owners/Agents must have the policy available for review during IHFA audits.*

Income Certification

It is the owner's responsibility to select and rent to qualified tenants. IHFA will not qualify or approve eligible tenants. A tenant income certification is required and must be completed, signed, and dated by the owner or manager as well as all adult household members.

Initial Eligibility Determination

Initially, tenant eligibility is determined at the time of move-in certification. Before a household takes occupancy, owners or managers must determine that the household will cause the unit to be a qualifying LIHTC unit.

Since the LIHTC program uses special definitions for income and households, standard property management application forms may not collect sufficient information to determine tenant eligibility. Owners and managers need to make sure applications collect all necessary information. The information furnished on the application should be used as a tool to determine all sources of income, including total assets and income from assets. If any information provided by the applicant is unclear, then owner/agent must pursue additional information to clarify the matter.

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

- The full name and birth date of each person that will occupy the unit (legal names should be given, just as they will appear on the lease and tenant income certification).
- The student status of each applicant.
- All sources and amounts of current and anticipated annual income to be received during the 12-month certification period (this should include assets and asset income).
- The name of any person not listed on the application expected to move into the unit during the next 12 months.
- The signature of all applicants age 18 and older, and the date the application was completed. It may be necessary to explain to the applicant that all information provided is considered sensitive and will be handled accordingly.

In addition, the certification of student status must be completed at the time of application. After all of the initial information is gathered, managers should start third party verification. Verifications are only valid for 120 days **from the date they are received by the owner.** The application is only valid for 120 days. Any incomplete, inconsistent, or missing information on verifications must be followed up on with the source and a notation made to the resident file. A phone verification/clarification record can be used for this purpose. Finally, management should calculate income and income from assets based on information provided on the verification forms and complete the TIC. This process must take place prior to the initial certification (move-in date). The TIC must be signed no later than the move-in date. The TIC should be effective as of the move-in date. An initial certification that is done after the move-in date is considered late and a noncompliant event.

If a tenant is unable to sign the forms on time due to extenuating circumstances, the owner must document the reasons for the delay in the tenant file and indicate how and when the tenant will provide the proper signatures.

Changed Income after Move-In

The LIHTC program exists to provide affordable housing resources to those that are truly

in need of such assistance. Changes in an individual's income can and do occur with a fair degree of regularity. IHFA acknowledges this and is supportive of an individual's effort to better their life circumstances. However, due to the potential for misrepresentation by applicants in this area, IHFA has determined that a defined timeframe is appropriate in order to address ambiguity surrounding this issue and in order to assist owners/agents with compliance in this area.

Thus, an increase in income within the first 6 months of tenancy that puts a household over the initial income limits will be considered a misrepresentation of eligibility unless the owner/agent can demonstrate through due diligence, and to a reasonable degree of certainty, that the changes were unintended and unanticipated as of the date of move-in. If this level of assurance cannot be demonstrated, the household will be deemed ineligible, and the unit deemed to be noncompliant as of the move-in date. To reiterate, owners/agents must be able to demonstrate that the changes were unintended, with a reasonable degree of certainty, in order to avoid a noncompliant event.

Note: *It is the owners/agents responsibility to demonstrate due diligence through comprehensive applications and documentation. IHFA considers owner/agent move-in documentation and how much due diligence was performed to prevent tenant fraud at move-in. Please reference the Revised 8823 Guide, pages 4-33, for further guidance.*

In order to illustrate this requirement, consider the following example: An applicant states on the application that they are not working and do not intend to work in the next 12 months. They also have no prior employment history. Further, the applicant completes a statement of no income, wherein they further state they are currently not working and do not intend to seek employment in the next 12 months. After move-in, the tenant decides within the first 60 days of tenancy to seek employment. Therefore, the household may be considered over-income and the unit may be noncompliant if income from these changed circumstances places the household's income over the current income limits.

When the owner/agent discovers this circumstance at the tenant's first annual recertification, they must perform due diligence and re-qualify the household at the point where income changed in order to ensure the household was not over the income limits in effect at the time of original move-in. If the household is determined over-income as a result of the re-qualification process, the owner/agent must either perform the necessary due diligence required to effectively demonstrate that the change was neither anticipated nor intended at the time of move-in or recognize a noncompliant condition and proceed with the appropriate corrective action necessary to bring the unit back into compliance.

Acquisition and Rehab

For a household occupying a unit at the time of acquisition, an initial TIC must be completed up to 120 days before or after the date of acquisition using the income limits in effect on the day of the acquisition. The effective and move-in dates on the TIC will be the same as the acquisition placed-in-service date. This is the only exception to the general rule that all verifications must be completed prior to the effective date of the TIC.

If a TIC is completed more than 120 days after an acquisition, the effective date will be the date the last adult member of the household signs the certification. Note that the above-referenced exception does not apply; all verifications must be no older than 120 days from the date of receipt by the owner and all verifications must be complete prior to the effective date.

Rehab Only Properties

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

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

LIHTC Property Receiving Additional LIHTC Allocation

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

Annual Recertification

Mixed Income Projects

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

Reminder: *Owners are not allowed to use information obtained through EIV for non-HUD programs, including Section 42. If a property has both HUD and LIHTC, EIV cannot be used to verify income for Section 42, nor can it be in the LIHTC portion of a tenant's file.*

The recertification process should begin 120 days prior to the anniversary date of the previous certification. The residents must complete a recertification application/questionnaire (see the household questionnaire provided by IHFA) to disclose income, assets, family composition and student status and also complete the top portion of relevant verification forms for release of information. In addition, the certification of student status must be completed at the time of recertification. After all of the initial recertification information is gathered, managers should start third party verification. Any incomplete, inconsistent, or missing information on verifications must be followed up on with the source and a notation made to the resident file. A phone verification/clarification record can be used for this purpose. Finally, managers calculate income and income from assets based on information provided on the verification forms, and complete a TIC. The TIC is to be signed after all verifications are received and management has completed the form, but it must be on or before the anniversary date of the previous certification. It is acceptable to do a recertification effective before the anniversary date (to conform to the annual recertification date for a Section 8 household, for example). A recertification completed or effective after the anniversary date is noncompliant.

If an owner sends timely notice informing a tenant that annual recertification is due, but the household vacates the unit, the unit will not be considered out of compliance. Owners must document the file regarding attempts to obtain the recertification and the date the tenant actually moves out of the unit. For further information on how IHFA will review and report noncompliance, see the 8823 Guide: Chapter 5, page 2, Category 11b – Topic: Household Vacates Unit.

100% LIHTC Projects

Effective January 1, 2009 annual income re-certifications are not required for 100% low-income projects. A project is 100% low-income when the allocation was based on all units in the project and all units (common space units are not part of the equation) are in compliance. It is essential that each initial certification in a 100% low-income project be done very carefully and thoroughly. If a tenant income certification has insufficient documentation of gross annual household income or it is determined for any reason that one or more households do not qualify, the owner must resume conducting annual re-certifications until 100% of the units are back in compliance.

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

Note: *Annual self-certification, certification of student status, and any applicable supporting documentation for exemptions, are required annually, no later than the anniversary of the move-in date.*

Tenant Income Certification

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

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

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

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

Tenant Income Certification Effective Dates

The effective date of an applicant/tenant TIC is the date the tenant actually moves into

the unit. All adult members of the household must sign the certification at the time of move-in. Per the Revised 8823 Guide, if the certification is more than 120 days old, the applicant/tenant must provide a new certification.

Annual income re-certifications must be based on the anniversary of the move-in effective date. If the property is 100% LIHTC, the tenant may sign a self-certification and complete a new student status form on the anniversary of the effective date of the previous certification. These forms can be found here:

https://www.idahohousing.com/housing-compliance/tax-credit-compliance/

If the property is a mix of tax credit and market units or has funding sources in addition to LIHTC, a full recertification must be completed annually on each affordable unit.

If an owner/agent is late in completing an annual recertification, the TIC effective date will be the tenant signature date. The next annual recertification, if performed in a timely manner, will again be the anniversary date of the original move-in. All recertification documentation must be obtained and the TIC generated before tenants sign the late recertification paperwork. Backdating a TIC is a noncompliant event.

Tenant Income Certification Signatures

Pursuant to the Revised 8823 Guide, all adult household members must sign all documents and forms, either before the effective date of a recertification or the day they move-in to the unit in order to be in compliance with LIHTC guidelines. This stipulation includes the lease and the TIC. There will be situations where obtaining signatures will be impractical. In these circumstances, owner/agents should document the reason for the delay in the tenant file and secure the signature as soon as possible.

Owners/Agents must ensure that TICs are thoroughly and accurately completed, and that all required signatures have been obtained. An incomplete or inaccurate TIC will represent an event of noncompliance. Common errors include:

- Incorrect effective or move-in dates
- Incorrect income limit.
- Incorrect rent limit.
- Incorrect or missing BIN.
- Incomplete Section 8 rental assistance information.
- Incomplete information for HOME program units.

Verifications

All regular sources of income must be verified. In order of their acceptability under LIHTC and HUD guidelines, verifications should be accomplished in the following order:

1. Through a third-party via direct written communications
2. Through second-party activities such as check stubs, W-2's, bank statements, and divorce decrees that are supplied by the tenant/applicator
3. Through tenant/applicant self-certifications.

Methods other than third-party verification should be used only when third-party verification has been attempted and attempts documented for a minimum of two weeks, and is deemed either impossible or impractical. Third-party verification activities must be independently conducted, without tenant involvement. Tenants are not allowed access to verification documentation by hand-carrying forms or documents to or returning forms from third parties.

Verifications must contain complete and detailed information and must, at a minimum, include direct written information from all sources of regular income. The required employment verification must be thoroughly completed by the employer. If any mandatory information is not provided, the owner/agent must follow-up with a phone clarification to obtain the information that was omitted in the original verification. Clarifications must be documented in the tenant file. Complete verifications and phone clarifications are a key program requirement and thus are subject to in-depth review during compliance audits.

Note: *An Owners/Agents failure to obtain complete and detailed information from employers will be determined by IHFA to be deficient in owner due diligence.*

According to the HUD Handbook 4350.3 REV1 CHG 3, Page 5-55, if third-party verifications are not received after several attempted requests, owners/agents may attempt to verify income and assets using a second-party verification such as pay stubs. However, before second-party verification is pursued, owners/agents must document their attempts to obtain third-party verification. Such documentation may include fax cover sheets or written notes indicating follow-up efforts to obtain the third-party verification. The follow-up evidence and documentation must be placed in the tenant file.

Note: *Third-party verifications must never be altered.*

Owners/Agents must never write on the verification. Writing in calculation information, or filling in incomplete areas of the verification will invalidate that verification. Additionally, white-out must never be used, as it will call the validity of the original information into question. If there is a need to clarify information, a phone clarification document should be used to obtain and record any additional information not appearing on the third-party verification. Clarification documents must have the name and signature of the party completing the clarification document, the date and time performed, and the source of the additional information, including his or her name and title.

A phone clarification must never be used in place of third-party verification. The phone clarification should only be used when third-party verification is not clear or complete or there is conflict-ing information. Clarifications will not supersede any information originally obtained through third-party verification. The third-party information must be used to qualify applicants/tenants.

Third-party verifications are valid up to 120 days before the effective date of move-in.

Note: *Verifications must be received by the owner/agent prior to the execution of the TIC and the actual move-in date. They may not be obtained after the actual move-in date, as this is considered noncompliant.*

Forms for Verification of Income

IHFA provides forms to assist in qualifying eligible tenants at the following web address:

https://www.idahohousing.com/housing-compliance/tax-credit-compliance/.

There is a release of information section at the top of the form that must be completed and signed by the person who is the subject of the verification prior to sending the form to an employer or other income source. Completed and returned verifications must be attached to the TIC.

The use of a calculation worksheet is highly recommended to assist managers in showing the individual calculations of income and asset income.

Calculating Income

Income is determined based on the annual gross income a household anticipates it will receive for the 12-month certification period. Verification of all sources of current and anticipated income for all household members age 18 and older, and unearned income of minor children must be obtained in order to establish that the income limits are not exceeded.

Annualized Income

Owners must convert all verified incomes to annual amounts. To annualize full-time employment, multiply:

- Hourly wages by 2,080 hours
- Weekly wages by 52
- Bi-weekly wages by 26
- Semi-monthly wages by 24
- Monthly wages by 12

To annualize income from less than full-time employment multiply:

- Hourly wages by the number of hours expected per week, then by 52.
- Periodic amounts (monthly, bi-weekly, etc.) by the number of periods the individual expects to work.

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

Seasonal or Sporadic Income

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

If a eligible tenant is in a seasonal line of work like that dependent on weather conditions such as roofing, and normally collects unemployment during off months, both incomes are used for the appropriate number of months.

Example: Individual makes $1,200 per month, typically works 9 months per year and collects unemployment payments of $600 per month for the remaining 3 months, income is calculated as shown in the table.

Seasonal income	$1,200 x 9 months			$10, 800
Unemployment	600 x 3 months		+	$ 1,800
	Total annualized income =			**$12,600**

Unemployed Applicants

Unemployed applicants with regular income from any source must be verified the same as employment income. Examples of regular income include, but are not limited to Social Security benefits, pension distributions, and recurring gifts.

If an applicant is currently unemployed with no regular verifiable income from any source and claims zero income, he/she must execute a certification of zero income, certification of daily needs, and provide a signed copy of his or her prior year tax return.

Annual Income

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

Annual income is the gross income the household anticipates it will receive from all sources, including all net income derived from assets, during the 12-month perSound following the effective date of the income certification or recertification. This includes income received by all adult members of the household, 18 years of age or older including full-time students, and unearned income of minor children.

Note: *Annual income is not the same as adjusted income. Annual income corresponds to gross income with no deductions for childcare, medical expenses, or dependents. Gross income is the annual income before any deductions. Adjusted income is used in some federal housing programs, such as Section 8 and Rural Development Section 515, to determine the level of benefit provided to a household. Adjusted income is* **not used** *for the LIHTC program.*

Annual income has two components, earned and unearned income and income from assets.
Earned and unearned income includes gross wages, salary, tips, overtime, social security and welfare benefits, and payments in lieu of earnings (unemployment and worker's compensation). There are mandated inclusions and exclusions that apply when determining earned and unearned income.

Asset income is the amount generated by bank accounts, retirement accounts, real estate, and other investments. Assets are items of value and are considered along with verified income to determine the eligibility of a household. Necessary personal items are not considered assets.

Please refer to the HUD Handbook 4350.3 for a complete listing and discussion of earned and unearned income as well as asset income.

Earned and Unearned Income

The following are examples of income included as annual income. Also listed are specific types of income that are excluded from income. Generally, if a particular type of income is not specifically mentioned as being excluded, it is included in annual income.

Employment

Include as annual income any gross amount earned, before payroll or other deductions, for all adults in the household, including foster adults:

- Wages
- Salary
- Overtime pay
- Commissions
- Fees
- Tips
- Bonuses
- Salary from family-owned business
- Interest, dividends and other income from net family assets.

Self-Employment

Include as annual income:

- Net income from operation
- Withdrawal of cash or assets from the business

Verification of Business Income

The following documents show income verification for the previous year. Owners or their agents must consult with tenants and use data from sources listed below to estimate income for the next 12 months.

- Individual federal income tax return, Form 1040, along with any schedules below that apply
    - Schedule C – Small Business
    - Schedule E – Rental Property Income
    - Schedule F – Farm Income
- Corporate or partnership tax return
- Audited or unaudited financial statements of the business (profit and loss)
- Notarized statement or affidavit declaring net income realized from the business for the prior year

Note: *All tax returns and related documents must be signed and dated if not filed electronically. If the business is new and the applicant/resident has not yet filed a tax return showing income from a business, a self-employment affidavit should be completed and the applicant/resident must self-certify realistic and reasonable anticipated net income from the business. Use any available supporting documents (trip sheets, financial statements, contracts, etc.) and include in the applicant/resident file.*

Self-employment income should be annualized using the current year's business activity based on the number of full months in business. The formula is:

$$\frac{\text{Net Income Year to Date x 12 months}}{\text{Number of Months in business during the current year}}$$

Social Security and Other Benefits

The withdrawal of cash or assets from an investment received as periodic payments should be counted as income. If benefits are received through periodic payments, remaining assets in the account are not counted as an asset.

Include as annual income the gross amount of periodic payments received from:

- Social Security
    - Payments received by an adult for his or her own benefit
    - Payments received by an adult on behalf of someone under the age of 18, includes foster children
    - Payments received by someone under the age of 18 for their own support.
- Annuity
- Insurance policy
- Retirement fund
- Pension
- Disability or death benefits
    - Black lung sick benefits
    - Veteran disability
    - Dependent indemnity compensation (widow or widower of service member killed in action)

Exclude as annual income:

- Delayed payments received during certification period, but intended for period before certification
- Past overpayments

Benefits Altered by Divorce, Annulment, and Separation

Federal government, uniform services, state or local government, social security or private pension funds paid directly to a former spouse pursuant to the terms of a court decree are **not counted as annual income**. The state court has, in the settlement of the marital assets, determined the extent to which each party shares in the ownership of the pension. The portion of the pension that is ordered by the court and authorized by the Office of Personnel Management (OPM), to be paid to the former spouse is no longer an asset of the applicant/tenant and therefore is not counted as income.

If the tenant/applicant is the former spouse of the pension plan member, any amount received as a result of the court decree, is reflected on IRS Form 1099 and **is counted as annual income**.

Verification of Social Security and Other Benefits

An annual award letter or current benefit statement should be provided for each benefit counted as income. This statement shows the gross amount received and is issued when the benefit commences or when a change in the benefit occurs, such as a cost of living adjustment.

If an eligible tenant does not have the most recent annual benefit statement from Social Security that lists the gross monthly benefit, the applicant/tenant may contact the Social Security Administration (SSA), either by visiting the local office, using the website for benefit recipients, or requesting a statement through the SSA toll-free number. Any Social Security document, other than the annual award letter, must be dated within 120 days of the certification date.

Payment in Lieu of Earnings

Include as annual income any payments that begin during the 12-month certification period from:

- Unemployment compensation
- Disability compensation
- Worker's compensation
- Severance pay

These amounts must be annualized unless there is clear documentation that such payments are limited to a defined period of time that is less than 12 months.

Verification of Unemployment Compensation

Unemployment compensation may be verified using a verification form completed by the unemployment compensation agency, records from the unemployment office listing payment dates and amounts, or a print-out of the applicant/tenant unemployment information from the unemployment office's official web site. Note that such print-outs may not contain the person's name only their account number. If the print-out does not contain the person's name, have the applicant/tenant sign and date the print-out with a short statement that this information accurately represents his or her account information.

Student Financial Assistance

Exclude from annual income all forms of student financial assistance paid either to the student or directly to the educational institution, including:

- Grants
- Scholarships
- Educational entitlements
- Work study programs
- Bureau of Indian Affairs assistance programs
- Financial aid packages

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

See Paragraph 3-13 of HUD Handbook 4350.3 for further information on eligibility of students to receive Section 8 assistance.

Public Assistance

Include as annual income:

- Temporary Assistance for Needy Families (TANF) cash benefits
- Aid to Aged, Blind, or Disabled (AABD)
- Temporary Aid for Families in Idaho (TAFI)

Exclude as annual income:

- Delayed payments received during certification period, but intended for period before certification
- Past overpayments
- Supplemental Nutrition Assistance Program (SNAP) benefits

Verification of Public Assistance

To verify income from public assistance, a written statement from the welfare agency is required. The statement should address the type and amount of assistance the family is currently receiving and note any changes in assistance expected during the next 12 months. Some agencies no longer complete verification form. Preferred second party verification is an online printout or a current award letter.

Annual Income for Section 8 Household

The annual income for a household receiving housing assistance payments under Section 8 may be verified by obtaining a statement from the Public Housing Authority (PHA). The owner must submit the public housing authority statement to the PHA for completion. If the form shows that the tenant's income does not exceed the applicable income limit, the household is eligible to occupy a rent-restricted unit. This form then replaces all other verifications of income and assets.

Note: *Annual income is the gross annual income without any adjustments or Section 8 program allowances. Due to the seriousness of accurate income eligibility, IHFA recommends that the owner or the agent verify and calculate the household income directly from its source and not rely on PHA verification for initial certifications.*

Court Awarded Child Support and Alimony

Owners must count alimony or child support amounts awarded by the court as income unless the applicant certifies that payments are not being made and that he or she has taken all reasonable legal actions to collect amounts due, including filing with the appropriate courts or agencies responsible for enforcing payment.

Verification of Child Support and Alimony

If alimony or child support is being received, obtain one of the following.

- Verification form completed by party paying the support
- Verification form completed by support enforcement office detailing payment amount
- Separation or settlement agreement or divorce decree detailing type of support ordered, payment amount, and payment schedule
- Copy of the most recent check received

When no documentation of child support, divorce, or separation is available, owner may accept a certification from the family stating the amount of child support received.

In many cases, child support has been court ordered but the full amount is not being received. If this is the case, verification from the child support enforcement agency will be sufficient. Applicant/Tenant can also provide a statement attesting to the facts that support payments are not being received, the likelihood of support payments being received in the future, and that reasonable efforts were made to collect the amount due.

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

Recurring Gifts

Include as annual income:

- All periodic cash contributions
- All periodic non-cash contributions

Exclude as annual income:

- Groceries, not the money to buy them
- Childcare paid directly to provider on behalf of household

Verification of Recurring Gifts

Gifts may include rent, utility and other payments paid on behalf of the household, and other cash or noncash contributions provided on a regular basis. Verification of continuing cash or noncash gifts may be obtained either by a verification of regular contribution signed by the party providing the contribution or affidavit from the applicant/tenant detailing purpose, date, and value of contributions.

Assets and Asset Income

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

Verification of assets is required. The asset information (total value and income to be derived) must be obtained at the time of application or recertification. The applicant will affirm accuracy of information by executing the TIC.

Third party verification of assets is required when the combined value of assets exceed $5,000. Effective October 11, 1994, an owner may satisfy the third party documentation requirement for a tenant's income from assets if the tenant submits to the owner a signed, sworn statement that the value of the combined assets is less than $5,000. The use of IHFA's **Under $5000 Asset Certification** is required for this procedure. The certification must also be used for applicant/tenant declaration of no assets. If participation in another housing program (Section 8, HOME), owner policy, or management company policy requires third party verifications, the Under $5000 Asset Certification is not required.

Note: Neither the Under $5000 Asset Certification nor third party verification of assets is required if a Housing Choice Voucher recipient's household gross annual income is verified by a PHA using a verification of Section 8 eligibility form.

IHFA monitoring procedure and IRS Revenue Procedure 94-65 do not permit an owner to rely solely on a low-income tenant signed and sworn statement of annual income from assets if a reasonable person, in the owner's position, would conclude that the tenant's income is higher than the tenant represents. In this case, the owner must complete third party verification of asset income.

The following information is based upon the HUD Section 8 Program. The owner must use the definition of Net Family Assets in 24 CFR 813.102, which provides definitions for the HUD Section 8 Program.

Household Assets

Cash Held In

- Saving and checking accounts
- Use the current balance for saving accounts.
- Use the average balance for the last six months for checking accounts.
- Safe deposit boxes
- Homes

Note: Assets held in foreign countries are considered assets. Balances held on re-fillable gift/debit cards are treated like savings accounts. A photo copy of the Direct Express card balance from an ATM may also be used.

Documentation Required

Verification forms, account statements (must obtain 6 consecutive months of statements to determine 6 month average balance for checking accounts), passbooks, certificates of deposit, letters or documents from a financial institution or broker.

If an owner accepts IRS Form 1099 from the financial institution, the owner must adjust the information to project earnings expected for the next 12 months.

Revocable Trusts

Include the cash value of any revocable trust available to the household.

Equity in Rental Property or Other Capital Investment

Include the current fair market value less any unpaid balance on loans secured by the property and reasonable costs that would be incurred to sell the asset.

Note: If the person's main business is real estate, any income is counted as business income. Owners should not count it as an asset and as business income.

Documentation Required

Only the interest portion of the monthly payment received by the tenant is included. For interest income from the sale of real property, if said property was sold on an installment sales contract, request:

- Letters from the accountant, attorney, real estate broker, buyer, or a financial institution detailing interest due for the next 12 months. A copy of the check paid by the buyer to the tenant is NOT sufficient.
- Amortization schedule showing interest for the 12 months following the date the buyer intends to occupy.

For rental income from property owned by the tenant, request:

- IRS Form 1040 with Schedule E: Rental Income
- Lease between the tenant and the tenant's renter
- Lessee's written statement identifying monthly payments due the tenant and tenant's affidavit as to net income realized.

In the case of real estate that is in the process of foreclosure, the most recent property tax statement showing current market value of the home and the most recent mortgage statement or foreclosure notice showing the balance owed, is sufficient documentation.

Stocks, Bonds, Treasury Bills, Certificates of Deposit, Money Market Accounts, and Mutual Funds

Interest or dividends earned are counted as income from assets even when the earnings are reinvested. The value of stocks and other assets vary from one day to another. The value of the asset may go up or down the day before or after income is calculated and multiple times during the year thereafter. The owner may assess the value of these assets at any time after the authorization for the release of information has been received.

Documentation Required

Verification form, broker's quarterly statements showing value of stocks or bonds and any earnings or dividends or quotes from a stockbroker as to net amount the family or household would receive if they liquidated securities, copy of most recent statement from asset source.

Individual Retirement and Keogh Accounts

These are included when the holder has access to the funds, even though a penalty may be assessed. If the individual is making occasional withdrawals from the account, determine the amount of the asset by using the average balance for the previous six months. Do not count infrequent withdrawals as income.

Retirement (401k, 403b) and Pension Funds

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

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

Life Insurance Policy

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

Personal Property Held as an Investment

Include gems, jewelry, coin collections, and antique cars held as investments. Tenant/applicant wedding rings and other personal jewelry are not considered assets.

Lump sum receipts or one-time receipts

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

Mortgage or Deed of Trust

Include mortgage or deeds of trust held by applicant/tenant (contract for deed). Payments on this type of asset are often received as one combined payment of principal and interest with the interest portion counted as income from the asset.

This combined figure needs to be separated into the principal and interest portions of the payment. This can be done by using an amortization schedule that relates to the specific term and interest rate of the mortgage.

To count the actual income for this asset, use the interest portion due, based on the amortization schedule, for the 12-month period following the certification.

To count the cash value of this asset, determine the unpaid principal as of the effective date of the certification. Each year this balance will decline as more principal is paid off.

Payments made to a tenant from a reverse mortgage are not considered income.

Net Family Assets DO NOT Include

- Necessary personal property including clothing, furniture, cars, etc.
- Interests in Indian trust land.
- Term life insurance policies.
- Equity in the cooperative unit in which the family lives.
- Assets that are part of an active business, not including rental of properties that are held as investment and not a main occupation.
- Assets that are not effectively owned by the applicant. That is, when assets are held in an individual's name, but the assets and any income they earn accrue to the benefit of someone else who is not a member of the household, and that other person is responsible for income taxes incurred on income generated by the assets.
- Assets that are not accessible to the applicant/tenant and provide no income to the applicant/tenant. For example, if a battered woman/man owned a home with their spouse, but because of the domestic situation, the battered spouse receives no income from the asset and cannot convert the asset to cash. Non-revocable trusts do not apply for this exception.

Jointly Owned Assets

Assets owned by more than one person are prorated in accordance with percentage of ownership. If no percentage is specified or provided by state or local law, divide the assets evenly among all owners.

Valuing Assets

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

- Any penalty for withdrawing funds before maturity
- Broker/legal fees assessed to sell or convert the asset to cash
- Settlement costs for real estate transactions

For non-liquid assets, enough information should be collected to determine the current cash value.

Applicant/Tenant must disclose any assets that were disposed of, for less than fair market value, for the two year period preceding the certification or recertification. The amount counted as an asset is the difference between the cash value and the amount actually received, if more than $1,000. If an applicant/tenant has sold a home or disposed of other assets within the past two years for less than fair market value, request:

- Closing documents (HUD-1, settlement statement) showing sale price, distribution of the proceeds, and net amount paid to the tenant.
- Divestiture of assets verification identifying the disposed asset, cash value and amount actually received.

If net household assets exceed $5,000.00, the annual income must include the greater of the actual or imputed income from assets.

Owner must determine estimated asset income by multiplying total net assets by the interest rate specified by HUD. Until further notice, use a rate of 0.06%. This rate is effective February 1, 2015.

Example:

Type of Asset	Cash Value	Income per Year
Checking Account	$ 300	$ 0
Savings Account	$ 2,000	$ 115
Certificates of Deposit	$ 10,000	$ 986
Rental Property	+ $ 15,000	+ $ 0
	$27,300	$1,101

Total assets exceed $5,000, imputed income must be calculated: Total Assets x 0.06% = $27,300 x 0.06% = $16.38.

Annual income must include the $1,101 actual income because it is greater than the imputed income received from assets.

Chapter 8 – Compliance in the Extended Use Period

Extended Use Period

IRC Section 42(h) (6) establishes that buildings are eligible for tax credits only if there is a minimum long-term commitment to low-income housing. Specifically, in order to receive a credit allocation in 1990 and later, the owner must record an extended low-income housing commitment. The document that evidences this commitment is the regulatory agreement. The regulatory agreement is recorded with the respective county recorder and/or registrar of titles and runs with the land, regardless of subsequent changes in ownership.

For purposes of this section, extended use period means the period:

- Beginning on the last day in the compliance period on which such building is part of a qualified low-income housing project, and ending the later of either the:
    - Date specified by the agency in the regulatory agreement or
    - Date which is 15 years after the close of the compliance period.

IRC Section 42(h)(6)(E) provides exceptions to the extended use period in the case of a legitimate foreclosure or deed in lieu for projects that have not waived this right, if the agency is unable to present a qualified contract pursuant to IRC Section 42(h)(6)(F). This compliance manual does not contain guidance for the provisions of IRC 42(h) (6) (F) regarding the qualified contract referenced in IRC Section 42(h) (6) (E) (i) (II).

Under IRC Section 42(h) (6)(E)(ii) the termination of an extended use period due to foreclosure or deed in lieu or for failure to present a qualified contract shall not be construed to permit before the close of the 3-year period following such termination:

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

Under the IHFA regulatory agreement, the owner agrees to comply with each of the following for the term of the agreement:

- Property will maintain the cumulative applicable fraction by leasing units to individuals or families whose income is 50% or 60%, as irrevocably elected by the owner at the time of allocation, or less of the area median gross income (including adjustments for family size) as determined in accordance with IRC Section 42.
- Property will maintain the Section 42 Tax Credit rent and income restrictions.
- All units subject to the credit will be leased and rented or made available to members of the general public who qualify as low-income tenants (or otherwise qualify for occupancy of the low-income units) under the applicable election specified in IRC Section 42(g) (Section 42(g) pertains to the minimum set-aside election).
- Owner agrees to comply fully with the requirements of the Fair Housing Act as it may from time to time be amended.
- Owner will not refuse to lease a unit to the holder of a Section 8 voucher because of the status of the prospective tenant as such a holder.
- Each low income unit will remain suitable for occupancy.
- Determination of whether tenants meet low-income requirements, at least annually, on the basis of the current income of such low- income tenant.
- Other restrictions as required under the applicable QAP and related points the owner received in order to obtain the credit allocation. These restrictions are property-specific and outlined within the respective regulatory agreement and to the extent they are not otherwise time-limited, the additional restrictions remain in full force and effect during the extended use period.

Note: *Regulatory agreements have changed from year-to-year according to the applicable QAP, but the basic language pertaining to the extended use period required by IRC has not materially changed.*

Note: *Should an owner wish to apply for a new allocation of credits, households determined to be income-qualified for purposes of the IRC Section 42 credit during the 15-year compliance period may be concurrently income-qualified households for purposes of the extended use period as long as all Section 42 requirements are met in the extended use period. These include annual certification of student status and not renting to ineligible full time student households, verification of income and assets for annual recertification at mixed- income properties, and adherence to rules regarding unit transfer between buildings that are not part of the same project as defined by Section 42.*

Tenant Eligibility Criteria

During the extended use period, IHFA requires tenant eligibility and certification of income, as outlined below.

Initial Occupancy

Initial income certification is required (calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937 ("Section 8"), not in accordance with the determination of gross income for federal income tax liability).

Any household that experiences a change in composition within the first six months of occupancy (not including birth or death) must meet initial eligibility requirements and a new initial tenant income certification must be performed.

Annual Recertification

Properties that are 100% tax credit are not required to recertify tenant income annually. On the anniversary date of move-in or the last certification effective date, tenants must complete the IHFA annual self-certification and certification of student status.

Other Requirements

Unit Transfers

Transfers from building to building are allowed without triggering noncompliance regardless of the multiple-building election or whether a household's income is over the applicable limit at the time of transfer.

Available Unit Rule

The available unit rule is revised to provide that if a household's income goes over 140% of the applicable income limit, a currently vacant unit or the next unit in the same building must be rented to a qualifying household (the "comparable or smaller" requirement no longer applies). This is essentially a one-for- one unit replacement.

Applicable Fraction

Only the unit fraction will be examined to determine a building's applicable fraction and only on an aggregate basis of the entire project.

Minimum Set-Aside

Rent limits, as elected by the owner at the time of allocation, continue to be in force during the extended use period. Owners awarded selection points for additional rent restrictions must maintain these restrictions throughout the extended use period.

Utility Allowance

Utility Allowances must continue to be updated annually. Revised utility allowances must be implemented within 90 days of their published effective date.

Monitoring Compliance

Annual Certification

A fully completed, signed and dated owner certification of continuing program compliance is due the last business day in February of each extended use period year. Only a person authorized to sign for the respective property ownership entity may sign the certification. IHFA may ask for signatory authorization if not on file.

Note: *Owner certification of continuing program compliance provides that all months within each 12-month period are subject to certification and all certification items must be checked.*

Annual Reporting

IHFA requires all owners to submit a fully completed annual occupancy report (AOR). The report must include all tenant activity, by unit, for the past 12 months. The AOR is due the last business day in September of each extended use period year

Inspections

At least every three years, IHFA will perform a physical inspection of the property and review of tenant files and other pertinent documentation. The first review in the extended use period will be no more than three years from the last inspection conducted during the compliance period. A maximum of 10% of the low-income units not to exceed 15 units in any development will be inspected. Different units may be chosen for the file review as those receiving a physical inspection. IHFA reserves the right to conduct a review of any building after serving appropriate notice and to examine all records pertaining to rental of tax credit units. IHFA may perform a review at least through the end of the extended use period of the buildings in the project.

Annual Monitoring Fees

The amount of annual compliance monitoring fee is reduced to two-thirds of the standard annual fee. Should the property become non-compliant to the extent that its status changes to not in good standing, the property will be charged an additional $1,500.00 non-compliance fee. This additional fee will be billed with the annual monitoring fees.

Consequences of Noncompliance

After the 15-year compliance period has expired, there may be no tax impact in the event of noncompliance. Therefore, filing IRS form 8823 to report noncompliance is no longer an effective consequence. The following are the procedures for handling noncompliance.

- Properties whose compliance period has expired and are subject to the requirements of the extended use period will be placed on the watch list or have status changed to not in good standing.
- If an owner fails to comply with monitoring requirements and terms of the regulatory agreement, IHFA will issue a notice of noncompliance and recommendations for correction, similar to what is issued during the compliance period. All owners will be given a period of time not to exceed 90 days with which to clarify or correct noncompliance and report to IHFA that all corrections have been made. An extension of an additional 90 days may be granted, with good cause and at the discretion of IHFA compliance staff. If a property has one or more compliance violation, but the owner is making a good faith effort to correct within a reasonable time, then the property can be considered in good standing. If the violation cannot be corrected within the 90-day correction period or any granted extension period, IHFA may request that the owner or management agent formulate a plan with a reasonable timeline to bring the property back into compliance and to advise IHFA in writing of such a plan. Owners will have demonstrated good faith efforts by carrying out the plan within the referenced timeline and the property will remain in good standing.

If an owner repeatedly delays or ignores requests for monitoring reviews, fails to submit annual certifications, reports or compliance monitoring fees, does not correct violations in a timely manner or according to an agreed-upon plan, where applicable, or otherwise chooses to ignore the compliance and monitoring requirements (serious and/or flagrant noncompliance) the following consequences may apply:

- A report of development not in good standing will be issued for serious and flagrant noncompliance. This report will be sent to the owner and filed with the IHFA Development Team. No further IHFA funds or tax credits will be awarded to the owner, its partners, or proposed developments to be managed by the management company until the property is back in good standing. Once good faith efforts are demonstrated to the agency's satisfaction, the agency will reinstate the property, owner, and management company in good standing.
- The agency and any interested party have the right to enforce specific performance of the regulatory agreement through court action.

Important: Owners and management agents must keep careful track of when a development, and in some cases certain buildings within a development, transition from the compliance period to the extended use period. Premature implementation of the extended use period may result in noncompliance with IRC Section 42 for which IHFA would be required to file IRS Form 8823.

Eventual Tenant Ownership

If a project received selection points for eventual tenant ownership, a detailed proposal for such ownership was required to be submitted as part of the allocation. The proposal was required to incorporate a financially viable plan to transfer 100 percent of the LIHTC unit ownership after the 15-year compliance period from the owner of the project to tenant ownership.

The unit purchase price at the time of sale must be affordable to incomes meeting LIHTC eligibility requirements. To be eligible, a buyer must have a LIHTC qualifying income at the time of initial occupancy or at the time of purchase. The plan required an ownership exit strategy and the provision of services including home ownership education and training. The regulatory agreement contains provisions ensuring compliance with the home ownership program commitment by the owner.

As each tenant ownership plan will be unique, owners who are preparing to implement a plan should contact IHFA to discuss the steps that will be necessary.

Chapter 9 – Tax Credit Assistance Program (TCAP) and Section 1602 (Tax Credit Exchange) Program

Background

The American Recovery and Reinvestment Act of 2009 established two new programs providing state allocating agencies, including IHFA, with tools to help certain housing credit-financed rental housing projects close financing gaps created by reduced credit pricing and lack of syndicator equity: the Tax Credit Assistance Program (TCAP), administered by HUD, and a program authorizing state allocating agencies to exchange Housing Credits for cash (the Section 1602 Program), administered by the U.S. Department of Treasury (Treasury). TCAP funds may only be awarded to projects where there is an allocation of housing tax credits. Section 1602 funds may be awarded to projects with or without housing tax credits.

Compliance and Asset Management

Properties funded with either TCAP or Section 1602 program funds must comply with Idaho housing loan documents and with IRC Section 42 for the full term of the compliance and extended use periods, as evidenced by a regulatory agreement. Additionally, during the compliance and extended use periods, both programs are subject to asset management oversight by IHFA.

Monitoring and Reporting

IHFA will monitor compliance with TCAP and the Section 1602 program in the same manner as the LIHTC program, described in this manual. Asset management includes, but is not limited to, lease-up compliance monitoring, operational and financial reporting, and other monitoring pursuant to a regulatory agreement with IHFA.

TCAP and Section 1602 properties are required to submit:

- Quarterly financial and project reporting requirements. Quarters end March 31, June 30, September 30 and December 31. **Reports are due ten working days after the end of each quarter.**
- Annual submission of proposed rental rates and operating budgets due not less than 60 days prior to the beginning of each fiscal year.
- Submission of annual financial statements is due within ninety 90 days following the end of each fiscal year.

IHFA reserves the right to modify this Housing Tax Credit Compliance Manual including but not limited to the foregoing policy and procedure for compliance and monitoring during the Extended Use Period, as needed.

Glossary

Annual Household Income Gross income of all persons who intend to permanently reside in a unit. The annual income is defined as income as of the date of occupancy for the next 12 months.

Annual Income Total gross income anticipated to be received by a tenant from all sources including assets for the next twelve (12) months.

Annual Income Recertification The tenant re-certifies their household annual income, for the purpose of determining whether the tenant will continue to be low-income according to the provisions of the LIHTC program.

Annual Inspection or Review A review of a property which may be made annually by IHFA, which includes an examination of records, review of operating procedures and a physical inspection.

Applicable Fraction The applicable fraction is the lesser of (a) the ratio of the number of low-income unit to the total number of units in the building or (b) the ratio of the total floor space of the low-income units to the total floor space of all units in the building.

Applicable Credit Percentage 9% Competitive or 4% Bond – Although credits are commonly described as 9% and 4% credits, the percentages are approximate figures. The US Department of the Treasury publishes exact credit percentages each month. The monthly percentages may be greater or less than exactly 9% and 4%. Once the percentage is established for a building, the percentage applies for the entire credit period.

Application Form completed by a person or family seeking rental of a unit in a property. An application should solicit sufficient information to determine the applicant's eligibility and compliance with federal and state guidelines.

Assets Items of value, other than necessary personal items, which the cash value of each asset is considered in determining the eligibility of a household.

Asset Income The amount of money (cash) received by a household from items of value as defined in HUD Handbook 4350.3 REV 1, Change 4.

Certification Year The twelve (12) month time period beginning on the date the unit is first occupied and each twelve (12) month period commencing on the same date thereafter.

Compliance The act of meeting the requirements and conditions specified under the law and the LIHTC program requirements.

Correction Period A reasonable time as determined by IHFA within regulations for an owner to correct any violations as a result of noncompliance.

Credit Period The period of ten (10) taxable years during which credit may be claimed, beginning the taxable year the building is placed in service or at the election of the taxpayer, the succeeding year, but only if the building is a qualified low-income building as of the close of the first year of such building and remains qualified throughout succeeding years.

Current Anticipated Income Gross anticipated income for the next twelve (12) months as of the date of occupancy that is expected to be received by the tenant(s).

Effective Term of Verification A period of time not to exceed one hundred twenty (120) days.

Eligible Basis The eligible basis of a qualifying project generally includes those capital costs incurred with respect to the construction, rehabilitation, or acquisition in certain circumstances, of the property minus non-depreciable costs such as land and certain other items such as financing fees. While it may not include any parts of the property used for commercial purposes, it may include the cost of facilities for use by tenants to the extent that there is no separate fee for the use of the space/s and they are available to all tenants. It may also include the cost of amenities if the amenities are comparable to the cost of amenities in other units. Eligible basis is reduced by an amount equal to the portion of a building's adjusted basis which is attributable to non-low-income units which exceed the average quality standard of the low-income units unless the cost of building the market rate units does not exceed the cost of the average low-income units by more than 15% and the excess cost is excluded from the eligible basis.

Eligible basis is further reduced by the amount of any federal grants applied towards the project and should the owner elect, it may be reduced by "federal subsidies" to take advantage of the higher applicable tax credit percentage. It is determined without regard to depreciation.

Eligible Person One or more persons or a family determined to be of low-income.

Employment Income Wages, salaries, tips, bonuses, overtime pay, or other compensation for personal services from a job.

Extended Use Period The additional fifteen years of compliance for the Low Income Housing Tax Credit (LIHTC), this additional fifteen year period is known as the extended use period. Properties that were awarded Housing Credits in or after 1990 must comply with program restrictions for a total of thirty years (or more as indicated in agreements), subject to certain exceptions.

Fair Market Value An amount which represents the true value at which assets including property would be sold on the open market.

First Year of Credit Period Either the year a building is placed in service, or at the owner's option, the following year.

Gross Income See Annual Household Income.

Gross Rent The gross rent includes the amount of the utility allowance (exclusive of telephone, cable, internet) paid by the tenant for the unit. Therefore, the gross rent for a unit includes the tenant's portion of rent plus the utility allowance. This must be less than the maximum rent allowed for the unit size.

Household The individual, family, or group of individuals living together as a family unit.

Imputed Income The estimated earning potential of assets held by a tenant using the potential earning rate established by HUD. This amount can change at least annually. IHFA will provide the current amount when it is made available by HUD.

Income Limits Maximum incomes as published by IHFA for properties providing the maximum income amounts (limits) for the local area adjusted for family size for low-income units (30%, 40%, 50%, 60% AMI). These limits will be adjusted periodically by IHFA based on median income figures provided by HUD (MTSP).

Ineligible Person One or more persons, or a family who apply for residency in a rent-restricted low-income unit and whose combined household income exceeds the income limit for family size and income limitation (%AMI) selected by the owner for the unit. Or, is one or more persons living in a set-aside unit who is not certified & not on the lease agreement or in some circumstances, full-time students not meeting any of the exceptions.

Initial Compliance The twelve (12) month period, commencing with the date the building is placed in service, in which the minimum set-aside must be met to receive the tax credits. NOTE: Properties consisting of multiple buildings with phased completion must meet the set-aside requirements on a building by building basis with the twelve (12) month period commencing with the individual date each building is placed in service.

Initial Compliance Period A fifteen (15) year period, beginning with the first taxable year in which credit is claimed, during which the appropriate number of units must be marketed and rented to tax credit eligible households, at restricted rents. For properties that received 1990 tax credits or later, each building must have an extended low-income housing commitment which is for at least an additional fifteen (15) years.

Lease The legal document (s) between the tenant and the landlord (owner) which delineates the terms and conditions pertaining to the rental of a unit.

LIHTC Low-Income Housing Tax Credit.

Low-Income Household Households whose incomes are not more than the maximum allowed per the required %AMI for the local area adjusted for family size.

Low-Income Tenant An individual whose income is not more than the maximum allowed per the required % AMI for the local area adjusted for family size.

Management Company A company selected by the owner & approved by IHFA to oversee the operation and management of the property.

Maximum Allowable Rent Calculation The maximum allowable rent calculation includes costs to be paid by the tenant for utilities inclusive of heat, electricity, air conditioning, water, sewer, oil, or gas where applicable.

Maximum Chargeable Rent-Tenant Paid Rent (Net Rent) Gross rent less utility allowance paid by the tenant. Maximum amount of rent the tenant can pay for the unit.

Median Income A determination made through statistical methods establishing a middle point for determining income limits. Median is the amount that divides the distribution into two equal groups, one group having income above the median and one group having income below the median.

Minimum Set-Aside The minimum number of units that the owner has elected under the statute to be income and rent- restricted – either 20% at 50% or 40% at 60%.

IHFA Idaho Housing and Finance Association

Owner or Developer Any individual, association, corporation, joint venture or partnership that owns a LIHTC property.

Personal Property Considered as Assets Property held as an investment (such as gems, jewelry, coin collections, antique collectable cars, etc.). Necessary items (such as clothing, furniture, etc.) are not considered assets.

Placed-In-Service (PIS) Date The date on which the building is ready and available for its specifically assigned function, i.e. the date on which the first unit in the building is certified as being suitable for occupancy in accordance with state or local law. NOTE: Rehabilitation expenditures that are treated as a separate new building are placed-in-service at the close of any 24-month period over which such expenditures are aggregated.

Project Property/Rental housing development receiving an LIHTC allocation.

Qualified Allocation Plan The Federal Low-Income Housing Tax Credit program required allocating agencies to allocate low-income housing tax credits pursuant to a Qualified Allocation Plan (QAP). IHFA is the state agency responsible for implementing the federal and state low-income housing tax credit programs in Oregon.

Qualified Basis The portion of the eligible basis attributable to low-income rental units; it is equal to the eligible basis multiplied by the applicable fraction. The qualified basis is determined annually on the last day of each taxable year. NOTE: this is the lesser of the proportion of low-income units to all residential units or the proportion of floor space of the low-income units to the floor space of all residential units.

Qualified Low-Income Building Any building that is part of a qualified low-income housing project at all times during the period beginning on the first day in the compliance period on which the building is part of a project and ending on the last day of the compliance period for the property.

Qualified Persons Individuals and families who at the time each such individual or family first occupies a unit in a development, are low-income, having annual income not exceeding the required %AMI for the local area adjusted by family size. And, is not a household that is comprised entirely of full-time students who do not meet any of the exceptions.

Qualified Unit A unit that is occupied by qualified persons paying the required allowable rent for the unit.

Regulatory Agreement/Restrictive Covenant The agreements that include the Reservation and Extended Use Agreement and The Declaration – the agreement between IHFA and the owner restricting the use of the property during the entire term of the LIHTC compliance period – including extended use.

Roommates Two or more unrelated persons occupying one dwelling unit as a household.

Student Any individual who has been, or will be, a student at an educational institution during any part of five months of a calendar year. Refer to the manual for complete guidance pertaining to student rules and regulations.

Tax Credit The tax credit amount is calculated by multiplying the qualified basis by the applicable credit percentage. The credit percentage, determined monthly, changes so as to yield over a 10-year period, a credit equal to either 30% or 70% of the present value of the qualified basis of the building. An owner may elect to lock in the applicable credit percentage either at the time a commitment is made by IHFA or at the time the allocation is made.

Tenant Occupant of a unit to whom the unit is leased.

Tenant/Unit File Complete and accurate records pertaining to each dwelling unit, containing the application for each tenant, verification of income, assets and student status of each tenant, annual income certifications, utility schedules, rent records, lease and lease addendums. Any authorized representative of IHFA or the Department of Treasury may be permitted access to these files upon receipt by the property owner and/or management agent of prior written notice of not less than two calendar days.

Utility Allowance (UA) The amount of utilities, for a particular unit, set by a utility allowance schedule. See the manual for details regarding utility allowances.

Verification Information from a third-party which is collected in order to corroborate the accuracy of information about income provided by applicants and tenants of a property.

140% Rule If upon recertification, a low-income tenant household's income is greater than 140% of the applicable income limited adjusted for family size, the unit will continue to be counted toward satisfaction of the required set-aside, providing the unit continues to be rent-restricted and the next available unit of comparable or smaller size in the property is rented to a qualified low-income household.

20% at 50% (20/50) 20% or more of the residential units must be rented to households with aggregate gross income of 50% or less of AMGI adjusted for family size.

40% at 60% (40/60) 40% or more of the residential units must be rented to households with aggregate gross income of 60% or less of AMGI adjusted for family size.