IHCDA Low Income Housing Tax Credit Compliance Manual: Revision February 2026

This manual is a reference guide for compliance for Section 42 Low Income Housing Tax Credit (LIHTC) Program in Indiana. It is designed to answer questions regarding procedures, rules, and regulations that govern LIHTC developments. This manual should be a useful resource for owner agents, developers, management agents, and onsite management personnel. It provides guidance with respect to the Indiana Housing and Community Development Authority's (IHCDA's) administration of monitoring for compliance under Section 42 of the Internal Revenue Code of 1986 and the Treasury Regulations there under (the "Code").

This manual is to be used as a supplement to compliance with the Code and all applicable laws and regulations. This manual should not be considered a complete guide to LIHTC compliance. The responsibility for compliance with federal program regulations lies with the owner (see disclaimer below).

****DISCLAIMER****

The publication of this manual is for convenience only. Your use or reliance upon any of the provisions or forms contained herein does not, expressly or impliedly, directly or indirectly, suggest, represent, or warrant that your project will be in compliance with the requirements of the Code, applicable regulations IRS guidance, or HUD guidance, as amended. IHCDA hereby disclaims any and all responsibility of liability which may be asserted or claimed arising from reliance upon the procedures and information or utilization of the forms in this manual. You are urged to consult with your own attorneys, accountants, and tax consultants.

Due to the complexity of federal regulations and the necessity to consider their applicability to specific circumstances, owner and management agents are strongly encouraged to seek competent legal and accounting advice regarding compliance issues. IHCDA's obligation to monitor for compliance with the requirements of the Code and regulations does not make IHCDA or its subcontractors liable for an owner's noncompliance.

Contents

Available Online

Table of Contents

APPENDICES & FORMS: All Appendices and compliance forms are located on the IHCDA compliance webpage.

APPENDIX A: HUD Handbook 4350.3 Excerpts & HOTMA Guidance

HUD Handbook 4350.3 REV-1 Change 4, Chapter 5
- Exhibit 5-1: Income Inclusions and Exclusions
- Exhibit 5-2: Assets
- Appendix 3: Acceptable Forms of Verification Table
- Appendix 6-C: Guidance About Types of Information to Request When Verifying Eligibility and Income Glossary

HOTMA Final Regulation

HOTMA Implementation Notice (HUD Notice H 2023-10 /PIH 2023-27)- REVISED February 2024

Federally Mandated Exclusions from income List- January 31, 2024

APPENDIX B: Tax Credit Rent and Income Limits

APPENDIX C: Utility Allowance Forms and Climate Zone Map
1. Approved Provider List
2. Application for Approved Utility Allowance Provider
3. Approval Request Letter- Energy Consumption Model
4. Approval Request Letter- HUD Schedule Model
5. Approval Request Letter- Qualified Engineer Estimate
6. IHCDA Tenant Usage Data Form (Flats & Townhomes)
7. Indiana Climate Zones Map

APPENDIX D: Qualified Contract Provision Policy
1. Qualified Contract Notification Letter
2. Qualified Contract Price Worksheet Assumptions
3. Qualified Contract Provision Policy
4. Qualified Contract Request Acknowledgements
5. Qualified Contract Worksheets A-E

APPENDIX E: Physical Inspection Guide and Forms
1. NSPIRE Standards
2. Casualty Loss Form K
3. Owner Affidavit Template

APPENDIX F: Fair Housing
1. Are You a Victim of Housing Discrimination brochure
2. Fair Housing Poster
3. Federal Register Volume 64, Number 63: Implementation of the Housing for Older Person's Act of 1995
4. HUD/DOJ Guidance on Reasonable Accommodations
5. HUD/DOJ Guidance on Reasonable Modifications
6. HUD Guidance on Criminal Background Checks (4-4-16)
7: Assessing a Person's Request to Have an Animal as a Reasonable Accommodation Under the Fair Housing Act

APPENDIX G: Tenant Guides
1. Section 42 Low Income Housing Tax Credit FAQ for Applicants and Residents
2. HOME Rental Housing FAQ for Applicants and Residents

APPENDIX H: VAWA Forms
1. HUD 5380: Notice of Occupancy Rights Under VAWA
2. HUD 5381: Model Emergency Transfer Plan
3. HUD 5382: Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking
4. HUD 5383: Emergency Transfer Request
5. IHCDA VAWA Lease Addendum for LIHTC
6. IHCDA VAWA Lease Addendum for HOME/HTF

COMPLIANCE FORMS
1. Annuity Verification
2. Asset Verification
3. Bank Verification
4. Child or Spousal Support Verification
5. *REDACTED*
6. *REDACTED*
7. Disposal of Assets Certification
8. Employment Verification
9A. Lease Addendum for Units Participating in Government Regulated Affordable Housing Programs- Section 42 LIHTC
9B. Lease Addendum for Units Participating in Government Regulated Affordable Housing Programs- HOME
9C. Lease Addendum Receipt of Required Pamphlets
9D. Lease Addendum for Units Participating in Government Regulated Affordable Housing Programs- CDBG/HTF/NSP
9E. Lease Addendum for Section 811 Project Rental Assistance- Receipt of Required Forms

10. Lease Renewal Addendum
11. Live-in Care Attendant Certification
12. Live-in Care Attendant Verification
13. Management Telephone Clarification
14. Marital Separation Status Certification
15. *REDACTED*
16A. Income Verification from Public Housing Authority for Households Receiving Section 8 Housing Assistance Payments
16B. Income Verification from Other Federal or State Rental Assistance Program (Not Housing Choice Vouchers)
17. Release of Information Authorization
18. Rental Housing Application
19. Self-Employment Certification
20. *REDACTED*
21. Student Status Verification
22. Tax Credit Tenant Income Certification
23. Income Certification Questionnaire
24. Self-Certification
25. Unborn Child Certification
26-2024. Under $50,000 Asset Certification
26-2025. Under $51,600 Asset Certification
26-2026. Under $52,787 Asset Certification
27. Zero Income Certification & Basic Needs Questionnaire
28: 100% Recertification Exemption Tenant Recertification
29A: Property Ownership Change Form (LIHTC Projects)
29B: Property Ownership Change Form (Non-LIHTC Projects)
29C: Proforma for Ownership Change
30: Property Management Change Form
31: Staff Unit Request Form
32: Extended Use Policy Request Form
33:*REDACTED*
34: Extended Use Policy Annual Household and Rent Update Form
35: Student Status Self-Certification for Rental Housing Tax Credit Program
36: Student Status Self-Certification for HOME Program
37: Race, Ethnicity, and Special Needs Data Reporting Form
38: HOME/HTF/CDBG/NSP Tenant Income Certification
38A: HOME TBRA Tenant Income Certification
38B: Housing First Program Tenant Income Certification
39: Recertification form for CDBG & NSP
40: Paystub Income Calculation Worksheet
41: Employment Verification Income Calculation Worksheet
42: Checklist for Desktop Reviews- Tax Credit
43: Checklist for Desktop Reviews- HOME/HTF/CDBG/NSP
44: Lease Addendum: Unit Transfer
45: Lease Addendum: Rent Decrease due to Utility Allowance Increase
46: HOME & HTF Rent Update Form
47: OOR & Homeowner Income Certification
48: Ramp Up Indiana Categorical Income Eligibility
49: Student Financial Assistance Verification
50: Qualifying Population Certification for HOME-ARP
51: Safe Harbor Income Verification for Means-Tested Forms of Federal Public Assistance

Summary of Changes

Minor formatting, wording, or grammatical changes are not identified in this list. In addition to the items below, website links referenced in the manual have been revalidated and updated where appropriate.

Yellow highlighting indicates a HOTMA related update; Green highlighting indicates an NSPIRE related update; Pink highlighting indicates a 2025 HOME Final Rule related update.

Policy Updates:

- 1.6: HOTMA-specific noncompliance issues identified prior to January 1, 2027 will not result in a penalty but must be corrected. This is an extension from the previous January 1, 2026 date.
- 2.2J: Due date for Annual Owner Certifications of Compliance changed from January 31st to February 15th
- 3.3E: Average Income Test language updated to conform to the Final AIT Regulations released 9/30/25
- 4.2(E)(5): Updated language on prohibited fees to include surety bonds, fees not customarily charged in rental housing, fees for processing reasonable accommodation or modification requests, and fees for processing VAWA protection requests
- 4.2(I): For tenants residing in units with USDA Rural Housing Service assistance, the current RD Form 3560-8 Tenant Certification must be included in the file.
- 5.3(E): Eviction screening cannot deny an applicant for "no fault" evictions or eviction proceedings where the tenant prevailed or where the matter was dropped.
- 5.4(B): Removed requirement that for HOME-assisted units the owner agent must obtain a certified copy of the tax return by completing IRS Form 4506 "Request for Copy of Tax Form."
- 5.4(B)(4): For HTF-assisted units, safe harbor for means-tested income verification cannot be used at move-in but may be used at recertification
- 5.4(H): Per HOME 2025 Final Rule, HOME now requires 60 days written notice of rent increase
- 6.1(A): For tenants residing in units with USDA Rural Housing Service assistance, the current RD Form 3560-8 Tenant Certification must be included in the file.
- 6.3(B)(1): Removed requirement that for HOME-assisted units the owner agent must obtain a certified copy of the tax return by completing IRS Form 4506 "Request for Copy of Tax Form." Added in HOTMA language about required documentation when using a tax return.
- 6.3(B)(6): For HTF-assisted units, safe harbor for means-tested income verification cannot be used at move-in but may be used at recertification
- 6.3(C)(6): Updated student financial assistance rules. The special Section 8 rule no longer applies due to changes in the 2026 HUD appropriations bill.
- 6.8: Per HOME 2025 Final Rule, HOME now requires 60 days written notice of rent increase
- 7.4A: Due date for Annual Owner Certifications of Compliance changed from January 31st to February 15th
- 7.6A: Due date for Annual Owner Certifications of Compliance changed from January 31st to February 15th
- 7.6A Table 2: Fee for late Annual Owner Certification submission applies to all projects approved for Extended Use Policy, even if the project would not normally have owed a fee
- 7.6D: Due date for Annual Owner Certifications of Compliance changed from January 31st to February 15th
- 7.6D: Added late fees for failure to report casualty loss events

Clarifications and Minor Updates:

- 5.3(E): Clarified language on VAWA protection "on the basis of" language per HUD final rule
- 5.3(G)(1): Clarified language on VAWA protection "on the basis of" language per HUD final rule
- 5.4(B)(1): Clarified self-certification of income requirement for HOME and HTF during years that are not every sixth year of the period of affordability. A TIC does not count as a self-certification of income for HOME or HTF. A separate self-certification form must be completed by the household to self-certify their annual income.
- 5.4(F): Added language referencing the requirement to swap Low HOME and High HOME units when a Low HOME household exceeds 50% AMI
- 5.5(A): Clarified that Development Fund rent limits are ignored when a tenant is receiving tenant-based or project-based rental assistance through a federal, state, or local rental assistance program.
- 5.6(E): Clarified that IHCDA implemented NSPIRE 1/1/24 and that NSPIRE replaces UPCS and applies to all projects.

- 6.1(A): Clarified an asset self-certification form must be in the file if the owner agent allows self-certification of assets under $50,000 (as adjusted by inflation). The TIC or Income Questionnaire alone does not count as an asset self-certification form.
- 6.3(C)(1): Added Social Security Cost of Living Adjustment of 2.8% for 2026
- 6.3(C)(4): Income exclusion for earned income of dependent full-time students increased from $480 to $500 for 2026
- 6.3(C)(6): Clarified language on student financial assistance calculations
- 6.4(A): Income exclusion for earned income of dependent full-time students increased from $480 to $500 for 2026
- 6.4(C): Clarified language on imputing asset income, including instruction to not impute income on cash on hand
- 6.4(C): Added passbook savings rate change for 2026. New rate is 0.40%.
- 6.8(D): Added language on process for selling lease purchase units after Year 15
- 7.6(B): Clarified language on 8823 correction fees
- 7.6(D): Clarified language on extension fees
- 7.6(E): Added clarifications on modification process

Section 1- Introduction & Program Background

Part 1.1|Background of the LIHTC Program

In 1986, Congress enacted the Low-Income Housing Tax Credit (LIHTC) Program to provide incentives for the investment of private equity as capital in the development of affordable rental housing. LIHTC reduces the federal tax liability of development owners/investors in exchange for the acquisition, rehabilitation, and/or construction of affordable rental housing. The amount of LIHTC allocated to a project is based on eligible costs and the number of qualified low-income units that will meet federal rent and income restrictions.

The LIHTC Program is authorized and governed by Section 42 of the Internal Revenue Code of 1986, as amended (the "Code"). The Indiana Housing and Community Development Authority (IHCDA) is the "housing credit agency" designated to administer the LIHTC Program for the state of Indiana.

Each housing credit agency develops a Qualified Allocation Plan (QAP) that establishes its guidelines and procedures for the submission and evaluation of applications and for the administration of the LIHTC Program, including compliance monitoring. The Indiana QAP is developed to be relevant to state-specific housing needs and consistent with state housing priorities. This compliance manual, as amended from time to time, is considered "Schedule A" of the Indiana QAP.

Part 1.2|Contents and Summary of Manual

Section 42 requires that each state's QAP identify procedures that the agency will follow in conducting compliance monitoring and notifying the Internal Revenue Service (IRS) when it discovers instances of noncompliance.

Indiana's compliance monitoring procedures follow the monitoring regulations prescribed in Treasury Regulation 1.42-5, as well as best practice recommendations from the National Council of State Housing Agencies (NCSHA), guidance issued by the IRS in the *Guide for Completing Form 8823 Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition: Revised January 2011* (commonly referred to as the "8823 Guide"), and the income calculation/verification rules found in Chapter 5 of HUD Handbook 4350.3 as amended by the Housing Opportunity Through Modernization Act (HOTMA).

The current edition of the Compliance Manual is applicable to <u>all owner agents of all buildings</u> that have ever claimed the Low Income Housing Tax Credit in Indiana since the inception of the program in 1986.

Part 1.3|Tax Exempt Bonds

Except as noted below, the compliance rules and regulations outlined in this manual also apply to projects funded with tax-exempt bonds under Internal Revenue Code Section 142.

- Projects funded with tax-exempt bonds should check with their bond issuer to see if they can utilize self-certification of assets (i.e., the Under $50,000 Asset Certification). If IHCDA is the bond issuer, self-certification of assets under $50,000, as adjusted by inflation, is acceptable.
- For projects funded only with tax exempt bonds, the Next Available Unit Rule is a project rule instead of a building rule. However, per the Housing and Economic Recovery Act of 2008 (HERA), the Next Available Unit Rule is a building rule for projects that are funded with both tax credits and bonds.
- Prior to HERA, projects with tax-exempt bonds could only apply one student status exemption (married and entitled to file a joint tax return). However, post HERA, all tax credit student status exemptions apply to bond projects.

Part 1.4|Housing and Economic Recovery Act of 2008 (HERA)

On July 30, 2008, Congress passed H.R. 3221, also known as the Housing and Economy Recovery Act of 2008 (HERA). This legislation was enacted as a response to the market conditions and economic issues of the time. Changes to Section 42 as a result of HERA included:

- The Recertification Exemption for 100% tax credit projects (see Part 6.7)
- The hold-harmless policy and HERA special rent and income limits (see Parts 4.1 and 4.2)
- Alignment of tax credit and tax-exempt bond compliance rules (see Part 1.3)
- Addition of a fifth student status exemption for individuals formerly in foster care (see Part 5.2 B2)
- Changes to the Applicable Credit Percentage rules (see Part 3.1 E)

Part 1.5|American Recovery and Reinvestment Act of 2009 (TCAP and Section 1602)

The American Recovery and Reinvestment Act of 2009 (ARRA) created two temporary funding programs to supplement the LIHTC program during a time of decreased investor demand for tax credits and decreased equity pricing.

The Tax Credit Assistance Program (TCAP) provided funding from HUD to be used as gap financing for tax credit awards. To receive a TCAP allocation, a project must also have an award of tax credits. All compliance rules and regulations within this manual apply to the TCAP program. TCAP generally follows tax credit ongoing compliance as outlined in this manual. However, in addition TCAP-assisted projects must follow Affirmative Fair Housing Marketing Plan requirements as described in Parts 2.2N and 5.3A and lead-based paint requirements as described in Parts 5.4G and 5.6C.

The Section 1602 Tax Credit Exchange Program (1602) provided an opportunity for unsold tax credits to be exchanged for cash. 1602 funds could be used to fully fund a project (full exchange of credits) or in conjunction with tax credits (partial exchange of credits). Therefore, some projects may be 1602 with no LIHTC, while others may be a combination of LIHTC and 1602 funding. All compliance rules and regulations within this manual apply to the 1602 program.

Part 1.6|Housing Opportunity Through Modernization Act of 2016 (HOTMA)

Section 102 of HOTMA redefines income and asset calculations and verification requirements and is applicable to certifications effective on or after 1/1/24. This manual has been updated to include HOTMA provisions, including requirements from the HOTMA final rule and the February 2, 2024 revised HUD Notice H 2023-10 / PIH 2023-27 “Implementation Guidance: Sections 102 and 104 of the Housing Opportunity Through Modernization Act of 2016.”

IHCDA will note HOTMA related noncompliance issues identified prior to January 1, 2027 and will require necessary corrective action, as applicable. However, IHCDA will not impose penalties for HOTMA specific issues identified prior to January 1, 2027- i.e., will not issue 8823s, suspend partners, or impose fines for items specifically linked to HOTMA changes.

Section 2 – Responsibilities

The entities involved in program compliance include IHCDA, the owner agent, and the management agent including onsite management and maintenance personnel. The various responsibilities for these entities are set forth below.

Part 2.1|Responsibilities of IHCDA

IHCDA allocates tax credits and administers the LIHTC program for the State of Indiana. IHCDA's responsibilities are as follows:

A. Issue IRS Form 8609 (Low-Income Housing Certification)

IHCDA prepares an IRS Form 8609 for each building in the development to officially allocate the tax credits. Part I of the Form 8609 is completed by IHCDA and sent to the owner when the development is placed-in-service and all required documentation (including the recorded Extended Use Agreement, cost certification, and final application) has been received.

The owner must complete Part II of Form 8609 in the first taxable year for which the credit is claimed. After completion of Part II, a copy of the form must be sent to IHCDA as part of the first year Annual Owner Certification submission.

IHCDA cannot provide legal or tax advice on the filing or completion of any tax forms. Owners are encouraged to consult with their appropriate attorneys, accountants, and consultants.

B. Prepare Extended Use Agreements

IHCDA will prepare and execute the Extended Use Agreement prior to issuance of the IRS Form 8609 for each development. The owner must record the Extended Use Agreement at the appropriate county recorder's office before the end of the first year of the Credit Period and return a copy of the executed, recorded agreement to IHCDA.

Depending on when the document was created, the actual recorded Extended Use Agreement may be titled any of the following. All these documents serve the same purpose and will be referred to in this manual as the "Extended Use Agreement."

-Declaration of Extended Low-Income Housing Commitment (DELHC)
-Declaration of Extended Rental Housing Commitment (DERHC)
-Lien and Restrictive Covenant Agreement (LRCA)
-Lien and Extended Use Agreement (LEUA)

C. Review Annual Owner Certifications and Annual Financial Information

IHCDA will review an Annual Owner Certification for each project. For information on Annual Owner Certifications, see Part 7.4.

In addition, for each HOME or HTF project with 10 or more units (total units, not assisted units), IHCDA must annually review the financial condition of the project to determine "the continued financial viability of the housing" in accordance with the Financial Oversight requirements of the HOME and HTF regulations. IHCDA must take actions, as feasible, to correct any problems identified through financial review. IHCDA staff will contact each affected property annually to request the necessary information.

D. Conduct File Monitoring and Physical Inspections

All projects will be subject to tenant file monitoring and physical inspections at least once every three years. IHCDA will perform a file review and physical inspection for each project within two years of the last building being placed-in-service and then every third

year thereafter. However, IHCDA reserves the right to monitor/inspect more frequently, with or without notification to the owner. Decisions to monitor/inspect more frequently may be based on tenant complaints or IHCDA's assessment that a project is high risk.

Tenant File Audits- Information to be reviewed will include, but is not limited to, Tenant Income Certifications, Income Questionnaires, documentation received to support those certifications (i.e., income and asset verifications), rent and utility allowance records, leases and lease addenda, tenant selection plans, etc. Owners must provide organized tenant files to IHCDA with documentation in chronological order. For more information on file audits, see Part 7.5.

Physical Unit Inspections- IHCDA staff or an IHCDA contractor will conduct a physical inspection to ensure that the development is suitable for occupancy per the NSPIRE inspection protocol.

IHCDA retains the right to perform a file review and/or physical inspection of any building and/or unit at any time during the Compliance and Extended Use Periods, with or without notice to the owner.

E. Notify the IRS of Noncompliance

IHCDA will notify the IRS of instances of potential noncompliance by issuing Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition. IHCDA must send Form 8823 to the IRS no later than 45 days following the end of the correction period. For information on noncompliance, see Section 9.

F. Suspension and Debarment

IHCDA may suspend or debar entities from participation in IHCDA programs if noncompliance issues are recurring or egregious, the owner agent is nonresponsive to IHCDA requests, funds are misused, an entity engages in fraudulent activity, etc. For information on suspension and debarment, see Part 9.12.

G. Retain Records

IHCDA will retain all Annual Owner Certifications and monitoring records for at least three years from the end of the calendar year in which they are received. IHCDA will retain records of noncompliance or failure to certify compliance for at least six years after its filing of an IRS Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance.

H. Conduct Training

IHCDA will conduct or arrange compliance trainings and will disseminate information regarding the dates and locations of such trainings to its partners. Trainings will be announced via IHCDA Real Estate Department Notices ("RED Notices").

I. Possible Subcontracting of Functions

IHCDA may, in its sole discretion, decide to retain an agent or private contractor to perform some of the responsibilities listed above.

J. Approve HOME and HTF Rents

IHCDA must approve, at least annually, the rents to be charged by all HOME or HTF-assisted projects. See Part 3.2 of the IHCDA *Federal Programs Ongoing Rental Compliance Manual* for additional information on approval of rents for HOME or HTF-assisted units. This rule only applies to the HOME and HTF programs.

Part 2.2|Responsibilities of the Owner

The owner must comply with all applicable program requirements and certify that such requirements have been met. Any violation of program requirements could result in the loss and/or recapture of credit allocated and may jeopardize future applications for IHCDA funding..

The responsibilities of owners include, but are not limited to, the following:

A. Leasing units to eligible households in a non-discriminatory manner

For information on general leasing requirements see Part 6.8. For information on fair housing, general public use, and tenant selection plans see Part 5.3.

B. Charging no more than the maximum allowable rents (including utility allowances and non-optional fees)

For information on rent limits and maximum allowable rent, see Part 4.2.

C. Maintaining the property in habitable condition

The owner is responsible for ensuring that the development is maintained in a decent, safe, and sanitary condition in accordance with appropriate standards. Failure to do so is a reportable act of noncompliance. See Part 5.6.

D. Record retention requirements

The owner of any building for which credit has been or is intended to be claimed must keep records that include all the information set forth below, on a building basis, for a minimum of six years after the due date (with extensions) for filing the federal income tax return for that year. However, the records for the first year of the Credit Period (i.e., the "initial tenant files") must be kept for six years beyond the filing date of the federal income tax return for the last year of the Compliance Period of the building. This means initial tenant files must be maintained for at least a total of 21 years.

In accordance with IRS guidance in Revenue Procedure 97-22 and Revenue Ruling 2004-82, IHCDA permits the electronic storage of records in lieu of hardcopies, as long as the electronic storage system includes reasonable controls for accuracy and reliability and maintains documents that are accessible, legible, and readable.

Per Treasury Regulation 1.42-5(b)(1), records must include the following:

- The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit)
- The percentage of residential rental units in the buildings that are low-income units and the percentage of unit floor space in the building that is occupied by low-income households (The Applicable Fraction)
- The rent charged on each residential rental unit, including any nonoptional fees and the applicable utility allowance. Utility allowance records must include copies of the annual supporting documentation.
- The number of occupants in each low-income unit
- Vacancy data, documentation of marketing efforts, and information that shows when and to whom the next available units were rented (this information must include the unit number, tenant name, move-in dates, and move-out dates for all tenants, including market rate tenants)
- The Tenant Income Certification and Income Questionnaires for each household and applicable documentation to support each household's income certification, and if applicable, student status eligibility
- The Eligible Basis and Qualified Basis of the building at the end of the first year of the Credit Period

- The character and use of the nonresidential portion of any building included in the development's Eligible Basis (for example, any community building, recreational facility, etc. available to all tenants and for which no separate fee is charged
- Any local health, safety, or building code violation reports or notices issued by the State or local government unit responsible for making local health, safety, or building code inspections

E. Attending IHCDA Compliance Training

Owner agents are encouraged to voluntarily attend IHCDA compliance training opportunities. IHCDA may require attendance from owner or management agents who are found to be out of compliance or to have a history of noncompliance. If IHCDA requires attendance due to an audit finding, the owner agent must provide proof of registration and participation in the required training. IHCDA will not issue an "issues resolved letter" or close the audit until verification of mandatory training has been provided.

For information on available IHCDA compliance training opportunities, stay tuned to IHCDA RED Notices.

F. Being knowledgeable about:

The owner is expected to know and maintain records regarding:

- The beginning and end dates of the Credit Period, Compliance Period, and Extended Use Period
- The year that credit was first claimed
- Placed-in-service dates for all buildings
- The Building Identification Number (BIN) and address of each building in the project
- The Minimum Set-Aside election applicable to the project (20/50, 40/60, or Average Income)
- The Applicable Fraction for each building
- The applicable income and rent restriction for each unit (20%, 30%, 40%, 50%, 60%, 70%, or 80%)
- If the buildings are considered separate projects or part of a multiple building project
- The terms under which the LIHTC reservation was made, including the QAP threshold and scoring elections applicable to the project
- Any restrictions required in the Final Application and Extended Use Agreement, including required amenities, services, design features, and special population targeting

The items listed above can be found in the Final Application, the Extended Use Agreement, and/or the Form 8609(s) for the project. To ensure compliance, it is important that the owner and management agents have copies of these documents and are familiar with the terms defined within.

G. Complying with the terms of the Initial and Final Applications and Extended Use Agreement

In addition to meeting rent and income restrictions, this obligation includes providing the agreed upon services, amenities, design features, and any special population targeting throughout the extended use period. IHCDA will monitor for compliance with these elections.

H. Remitting monitoring fees in a timely manner

For more information on annual monitoring fees, see Part 7.8A.

I. Reporting to IHCDA any changes in ownership or management of the property

If a change in ownership occurs, a detailed description of the change must be provided in writing to IHCDA via IHCDA Compliance Form #29A "Property Ownership Change Form (LIHTC Projects)." In addition, the following documentation must be submitted:

1. A copy of all sale documents;
2. The newly amended and stated partnership agreement;
3. A copy of the "Property Management Change Form" (IHCDA Compliance Form #30) if management agent has changed; and
4. Any other additional information that IHCDA may request.

IHCDA must pre-approve any change in ownership or transfer request if (1) the transfer occurs prior to the issuance of IRS Form 8609; (2) the development has other IHCDA financing, such as HOME, Housing Trust Fund, Development Fund loan, Project Based Vouchers, or Section 811 Project Rental Assistance; or (3) the project is subject to the non-profit material participation requirements.

If the project is subject to non-profit material participation requirements (per Form 8609), the request for IHCDA approval must include supporting documentation proving the new ownership will continue to meet the definition of a qualified nonprofit as defined in the IHCDA Qualified Allocation Plan under which the project received an allocation of tax credits.

If the project has HOME or HTF funds, the request for IHCDA approval must include the following documentation:

- Current year-to-date financial statements and previous two calendar year financial statements for the new owner entity
- An updated operating pro forma (IHCDA Compliance Form #29C) prepared by the new owner covering the remainder of the period of affordability

Changes in management company must be reported via IHCDA Compliance Form #30 "Property Management Change Form."

If the owner or management organization is not changing, but individual contacts have changed, the owner must notify IHCDA in writing of such changes in ownership or management contact information including the new contact person's name, address, e-mail address, and telephone number.

J. Reporting tenant events and submitting Annual Owner Certifications

1. Annual Owner Certification of Compliance / IHCDA Online Management System

The owner must annually certify compliance to IHCDA, under penalty of perjury, for each year of the Compliance Period and Extended Use Period. The Annual Owner Certification of Compliance is due on or before February 15th of each year and certifies information for the preceding calendar year. The report covers the period from January 1-December 31 of each year and is due to IHCDA by the close of business February 15th of the next calendar year. Complete submission includes the Owner Certification, finalization of all tenant events in the online reporting system, and payment of annual monitoring fees. A submission is not complete until the owner agent completes the finalization process by selecting "Finalize Year" in the online reporting system.

The first Annual Owner Certification and corresponding fees are due by February 15th of the year following the first year of the Credit Period. For example, if the Credit Period begins in 2025 then the property owes a 2025 Annual Owner Certification which is due by February 15, 2026. However, the owner must begin reporting tenant events in the online system as soon as the buildings are placed-in-service. When a property is awarded a subsequent allocation of credits (resyndication), the owner must continue reporting tenant events and submitting Annual Owner Certifications for the original award until the credit period begins for the new allocation, at which time the owner will report under the new allocation.

Effective January 1, 2009, all IHCDA assisted rental developments are required to enter tenant events using the Indiana Housing Online Management System. Tenant events include move-ins, move-outs, annual recertifications, unit transfers, rent and utility allowance changes, household composition updates, and student status updates. Tenant events that must be reported online do not include interim recertifications performed for other programs, such as Section 8 or Rural Development. **IHCDA requires the owner to enter all tenant events into the system within 30 days of the event date.**

It is mandatory that all tenant events be submitted electronically using the Indiana Housing Online Management System for all developments that contain IHCDA assisted units (e.g., HOME, HOME-ARP, HTF, CDBG, CDBG-D, NSP, Tax Credits, Section 1602, TCAP,

Bonds, and/or Development Fund/Trust Fund). This online tenant event reporting process eliminated the former process of submitting a "Tenant Beneficiary Spreadsheet."

To use the rental reporting system or register to become a user, please visit the Indiana Housing Online Management System and contact IHCDA's Data and System Specialist with any questions. Training and resource materials for Owner Certification and tenant event submission are available on IHCDA's compliance webpage.

IHCDA will set up the buildings for a project in the online reporting system and approve one project owner web user. It is then the responsibility of that project owner web user to approve designated management web users and to set up the individual units within the buildings. IHCDA's compliance webpage includes an online reporting system training and FAQ that further describes user roles and permissions.

2. HMIS Reporting

All IHCDA funded permanent supportive housing units and units set aside for persons experiencing homeless are required to report through IHCDA's Homeless Management Information System (HMIS), or through Indianapolis HMIS if located in Indianapolis. For more information see IHCDA's HMIS webpage. This requirement is in addition to Annual Owner Certification reporting. Units targeting survivors of domestic violence must report through the HMIS Comparable Database.

K. Training onsite personnel

The owner must ensure that onsite property management agents know, understand, and comply with all applicable federal and state code, regulations, and policies governing the project, including all elections made in the Final Application, Form 8609(s), and Extended Use Agreement.

As a best practice, IHCDA encourages the owner to make certain that property management and compliance personnel are familiar with the most current edition of the IHCDA Compliance Manual, the compliance forms and information on IHCDA's compliance webpage, and the online reporting requirements through the Indiana Housing Online Management System.

L. Notifying IHCDA of any noncompliance issues

If the owner determines that a unit, building, or entire project is out of compliance with program requirements, IHCDA should be notified immediately. The owner must formulate a plan to bring the development back into compliance and advise IHCDA in writing of such a plan.

Noncompliance issues identified and corrected by the owner prior to notification of an upcoming file monitoring or inspection by IHCDA will not be reported to the IRS. The owner must keep documentation outlining: the nature of the noncompliance issue, the date the noncompliance issue was discovered, the date the noncompliance issue was corrected, and a description and proof of the actions taken to correct the noncompliance. An IHCDA monitoring/inspection notification letter is considered by the IRS to be a "bright line date." Once the notification letter has been sent, any noncompliance corrected after that date is subject to being reported to the IRS via Form 8823.

Example: A household was initially income-qualified and moved into a unit on January 1, 2024. The maximum allowable LIHTC gross rent is $800. At time of recertification on January 1, 2025 property management increased the rent to the market rate of $1,000. During an internal audit dated February 1, 2025 the owner agent discovered that the unit was out of compliance, because the rent charged exceeded the maximum LIHTC rent limit. On February 1, 2025, the owner and/or management agent immediately corrected the noncompliance issue, notified IHCDA of the issue, and documented the file with an explanation of the noncompliance issue, the date that it was corrected, and a summary of the actions taken to correct the noncompliance. On June 21, 2025, IHCDA notified the owner of an upcoming compliance review. Because the noncompliance issue was discovered, documented, and corrected by the owner agent prior to the notice of IHCDA's upcoming compliance review, IHCDA will not report the noncompliance issue to the IRS.

M. Providing all pertinent property information to the management agent or any subsequent owners

To ensure compliance, the owner should provide management agents with copies of the following documents: the Final Application, the recorded Extended Use Agreement, the Carryover Agreement, Form 8609 for each building, the QAP for the year the project was awarded credits, and, if applicable, copies of any IHCDA approved modification letters and modified award documents.

If there is a change in management companies, the owner is responsible for providing all information and previous tenant files to the new management company. If there is a change in ownership, the existing/previous owner is responsible for providing all award documentation and previous tenant files to the new owner.

N. Affirmative Fair Housing Marketing Plan and Required Fair Housing Documents

For projects that have federal funding in addition to tax credits (e.g., HOME, Housing Trust Fund, CDBG, CDBG-D, NSP, and/or TCAP), the owner must follow the Affirmative Fair Housing Marketing procedures (if applicable) and distribute the Fair Housing brochures described below.

1. Affirmative Fair Housing Marketing Plans (AFHMP)

An Affirmative Fair Housing Marketing Plan (AFHMP) is required for all awards containing five or more applicable program-assisted units. The AFHMP must be created using HUD Form 935.2A to identify the populations least likely to apply for housing and the outreach/marketing efforts that will be utilized to reach that population.

For most IHCDA funding programs, HUD will not approve the AFHMP and as such the AFHMP should **not** be submitted to HUD to review and sign. An AFHMP should only be submitted to HUD for review and approval if one of the following HUD funding sources is included in the development:

- Section 221 (d)(2) Homeownership Assistance
- Section 221(d)(3) Below-Market Interest Rate
- Sections 235 and 236
- Sections 232, 234(c) and 213 - Condominium and Cooperative Housing
- Section 232 - Nursing Homes and Intermediate Care Facilities
- Section 207 - Mobile Home Courts
- Sections 207, 220, 221(d)(3) and (4) – Multifamily Rental Housing
- Rental Assistance Payment (RAP) and Rent Supplement
- Section 8 Project Based Assistance
- Section 202 Projects with Section 8 Assistance
- Rural Housing Section 515 Projects with Section 8 Assistance
- Loan Management Set Aside (LMSA)
- Property Disposition Set-Aside (PDSA)
- Section 202 with 162 Assistance – Project Assistance Grants (Section 202 PACs)
- Section 202 with Project Rental Assistance Contracts (Section 202 PRACs)
- Section 202 without Assistance (Income Limits Only)
- Section 203(b) and (1) - One-to-Four-Family Mortgage Insurance for Homeowners
- Section 811 with Project Rental Assistance Contracts (Section 811 PRACs)

The AFHMP must include the following information:

i. What segment has been determined the least likely to apply based on market demographics?
   - Families with children
   - Persons with disabilities
   - Specific race, ethnic group, religion, etc.

ii. What residency preferences are in place for the property?

iii. What marketing efforts are being made to reach those least likely to apply and how are marketing activities evaluated to determine if they are successful?

iv. Are the Fair Housing and Equal Opportunity Employment posters prominently displayed and where are they displayed? Is the AFHMP made available for public inspection and where is it displayed? Does the project site sign contain the HUD approved Equal Housing Opportunity logo, slogan, or statement and where is the sign displayed?

AFHMPs must be updated at least once every five years or more frequently when there are significant changes in the demographics of the local housing market area as described in the instructions for Part 9 on Form 935.2A.

2. Required Brochures and Poster

All households must be given the Fair Housing brochure entitled "Are You a Victim of Housing Discrimination" at the time of move-in. The household must sign documentation acknowledging the receipt of this brochure at time of move-in, and this receipt must be maintained in the household's file. IHCDA provides compliance Form 9C "Lease Addendum Receipt of Required Pamphlets" as a template acknowledgement form.

Additionally, all owners are required to post the Fair Housing and Equal Opportunity poster onsite in the leasing office and/or other common areas.

The above referenced brochure and poster are available in Appendix F.

O. Requesting Approvals for HOME or HTF Rents

Per HOME and HTF regulations, IHCDA must annually approve the rents to be charged for IHCDA funded HOME or HTF-assisted rental units. Therefore, owner agents of projects with IHCDA HOME or HTF-assisted rental units must complete IHCDA Compliance Form #46 "HOME and HTF Rent Update Form" and submit it to IHCDA via homerentupdate@ihcda.in.gov.

The form must be submitted annually at the time that new rent limits are released by HUD, even if the owner is not proposing a change in rents charged, as well as at any other time in the year that the owner is proposing to change rents. See Part 3.2 of IHCDA's *Federal Programs Ongoing Rental Compliance Manual* for additional information on HOME/HTF Rent Updates and reporting requirements.

P. Submitting Annual Financial Information for HOME or HTF Projects

Owners of HOME or HTF-assisted projects with 10 or more units (total units, not assisted units) must annually submit property financial information for IHCDA review as part of the Annual Owner Certification of Compliance submission. See Part 6.5(C) of IHCDA's *Federal Programs Ongoing Rental Compliance Manual* for additional information.

Part 2.3|Not-for-Profit Set-Aside and Material Participation

Per IRC § 42(h)(5), IHCDA must allocate at least 10% of its annual credit ceiling to projects involving nonprofit organizations. The qualified nonprofit organization must own an interest in the project (directly or through a partnership) and must materially participate in the development and operation of the project throughout the Compliance Period. Allocations under the nonprofit set-aside are generally made to partnerships for which the general partner is a qualifying nonprofit organization. IHCDA's QAP requires that the nonprofit must own 100% of the general partner interest in the development.

Any development that was competed in the nonprofit set-aside on its application for tax credits will be held to the requirements of this set-aside, even if it was funded under a different set-aside within the QAP. The development's reservation letter and Form 8609 Line 6g will note that the development is subject to the requirements of IRC § 42(h)(5).

A. Qualified Nonprofit Organization Defined

For purposes of IRC § 42(h)(5), a "qualified nonprofit organization" means any organization if:

(i) Such organization is described in paragraph (3) or (4) of IRC §501(c) and is exempt from tax under IRC § 501(a):
(ii) Such organization is determined by the state housing credit agency (IHCDA) not to be affiliated with or controlled by a for-profit organization; and
(iii) One of the exempt purposes of such organization includes the fostering of low-income housing.

B. Material Participation

The qualified nonprofit must materially participate in the development and operation of the project throughout the Compliance Period. Chapter 6 of the IRS *Audit Technique Guide* provides the following checklist to confirm material participation:

- Material participation is most likely to be established in an activity that constitutes the principal business/activity of the taxpayer:
- Involvement in the actual operations of the activity should occur. Simply consenting to someone else's decisions or periodic consultation with respect to general management decisions is not sufficient.
- Participation must be maintained throughout the year. Periodic consultation is not sufficient.
- Regular onsite presence at operations is indicative of material participation.
- Providing services as an independent contractor is not sufficient.

Therefore, the *Audit Technique Guide* says that a nonprofit entity can be considered as materially participating "where it is regularly, continuously, and substantially involved in providing services integral to the development and operation of a project."

Part 2.4|Responsibilities of the Management Agent & Onsite Personnel

The management agent and all onsite personnel are responsible to the owner for implementing all program requirements.

- Anyone who is authorized to lease apartment units to tenants should be trained on all federal and state laws, rules, and regulations governing certification and leasing procedures, including LIHTC regulations, Fair Housing and nondiscrimination, and Indiana State Code regarding leasing requirements.
- The management company must provide information, as needed, to IHCDA and submit all required reports and documentation in a timely manner.
- Management agents must be onsite during IHCDA onsite file monitorings and physical inspections to provide access to necessary documentation and to units.
- Management must enter each LIHTC property into the Indiana Housing Now online housing search database. Exception: 100% supportive housing developments that use Coordinated Entry for referrals are not required to list in Indiana Housing Now.

Part 2.5|Owner Agent

For the remainder of this Compliance Manual, the phrase "owner agent" collectively refers to the owner and their hired agents, including but not limited to the property management company, onsite property management, maintenance staff, and compliance personnel.

Part 2.6|Demonstrating "Due Diligence"

The owner is ultimately responsible for compliance and proper administration of the program and all award requirements. IHCDA expects all owner agents to demonstrate "due diligence," hereby defined as the appropriate, voluntary efforts to remain in compliance with all applicable Federal and State rules and regulations. Due diligence can be demonstrated through business care and prudent practices and policies.

Page 3-4 of the 8823 Guide states that due diligence requires the establishment of internal controls, including but not limited to: separation of duties, adequate supervision of employees, management oversight and review (such as internal audits), third party verifications of tenant income, independent audits, and timely recordkeeping.

Due diligence also includes keeping up to date with IHCDA policies by reading amended IHCDA Compliance Manuals, following IHCDA updates via RED Notices, and attending IHCDA sponsored tax credit trainings. These are all examples of voluntary efforts that owner agents can take to remain in compliance.

Another way in which the owner agent can demonstrate a commitment to due diligence is by establishing and maintaining a consistent file order. Consistent and well-organized files make it easier for management to recognize when documentation is missing and allow for easier audits.

If noncompliance issues are discovered, IHCDA may ask the owner agent to demonstrate due diligence by showing that the proper internal policies and procedures are in place to prevent noncompliance from occurring/recurring. It is understood that mistakes may occur from time to time, but it is the responsibility of the owner agent to have policies in place to minimize and remedy these errors.

Section 3 – Key Concepts and Terms

The following section discusses key concepts including Building Identification Numbers, Eligible Basis, Applicable Fraction, Qualified Basis, Applicable Credit Percentage, Annual Credit, calculating and claiming credits, Minimum Set-Aside, the 8609 Line 8b Election, Credit and Compliance Periods, and placed-in-service dates.

Part 3.1|Calculating Credits

A. Buildings and BINs

Tax credits are claimed on a building-by-building basis. Each building within a development is assigned a Building Identification Number (BIN) and issued a separate Form 8609. Every tax credit building has a unique BIN. The BIN consists of a two-character state designation (IN), followed by a two-digit designation representing the year the credit was allocated, followed by a five-digit numbering designation. For example, a BIN for a building allocated credit by IHCDA in 2025 would be IN-25-XXXXX.

Each building will have its own Eligible Basis, Applicable Fraction, Qualified Basis, and Annual Credit as described below.

B. Eligible Basis

The Eligible Basis of a building includes those costs incurred with respect to the construction, rehabilitation, or acquisition of the property, minus non-depreciable costs such as land and certain other excluded items such as federal grants and some soft costs. Eligible Basis is how much the building cost minus certain unallowable costs. The Eligible Basis is calculated as part of the final cost certification and is assigned to a building at the time of final credit allocation (issuance of IRS Form 8609).

C. Applicable Fraction

The Applicable Fraction is the percentage of a building that is designated for occupancy by low-income households. The Applicable Fraction is the lesser of (1) the number of low-income units divided by the total number of units in the building [the "unit fraction"] or (2) the total floor space of the low-income units divided by the total floor space of all units in the building [the "floor space fraction"]. For purposes of claiming credits in the initial year, the Applicable Fraction is calculated on a monthly basis. For all other years of the Compliance Period, the Applicable Fraction is a snapshot determined as of the end of the taxable year.

For a building to remain in compliance, the Applicable Fraction must be at or above the fraction assigned to that building in the Final Application. A decrease in Applicable Fraction results in a decrease in Qualified Basis (see Part 3.1 D below), which decreases the amount of credits that can be claimed for the building.

Example: Building A has 6 units. Units 1-3 are 2-bedroom units at 800 ft^2 and units 4-6 are 3-bedroom units at 1200 ft^2. According to the Final Application, the building's Applicable Fraction is 50%. The owner of Building A has rented units 4-6 as market rate units so that they can charge higher market rates for the larger sized units. The owner believes the building is in compliance because the unit fraction is 3 out of 6, or 50%. However, the owner must also consider the floor space fraction. In this case, the total square footage of the units is 6000 ft^2. The low-income square footage (sum of square footage for units 1-3) is 2400 ft^2. 2400 ft^2/6000 ft^2 is a floor space fraction of 40%. Since the Applicable Fraction is defined as the lower of the two ratios, the actual Applicable Fraction for this building is 40%. The owner is out of compliance for violating the Applicable Fraction.

Note: The Applicable Fraction and the Minimum Set-Aside are not the same thing. The Applicable Fraction is the percentage of units and floor space that must be reserved for qualified low-income households in a specific building. The Minimum Set-Aside is the minimum percentage of units that must be set-aside as tax credit units in the entire project (as defined on Form 8609) and the federal income and rent restriction at which these units must be set-aside. To comply, a project must meet its Minimum Set-Aside

and each building within that project must meet its Applicable Fraction. For more information on the Minimum Set-Aside, see Part 3.2.

D. Qualified Basis

The Qualified Basis of a building is the portion of the cost of the building that went into tax credit units. The Qualified Basis is calculated by multiplying the Eligible Basis by the Applicable Fraction. A decrease in Qualified Basis can be caused by either a decrease in Applicable Fraction or a decrease in Eligible Basis and may result in a loss of credits and/or recapture.

For 100% tax credit buildings, the Qualified Basis will equal the Eligible Basis because all units are tax credit (i.e., the Applicable Fraction is 100%).

E. Applicable Credit Percentage

The Qualified Basis is multiplied by the Applicable Credit Percentage to calculate the annual tax credit that can be claimed for a building. There are two categories of tax credits, known as 4% credits and 9% credits.

4% credits are for acquisition credits and projects with private activity tax-exempt bonds. Prior to HERA, 4% credits also applied to projects that were federally subsidized (e.g., projects with HOME funding, RD 515, Section 8 Project Based Rental Assistance, etc.).

9% credits apply to new construction and rehabilitation without private activity tax-exempt bonds, including federally subsidized projects post-HERA.

The applicable credit percentage for 4% credits is set at a true or "fixed" 4% minimum rate. The 4% rate was permanently locked under the Consolidated Appropriations Act of 2020.

The applicable credit percentage for 9% credits is set at a true or "fixed" 9% minimum rate. HERA temporarily set the 9% applicable credit percentage at a fixed 9% (unless the current rate is higher). That temporary provision, with extensions, applied to the credit percentage for 9% deals placed-in-service between 7/30/08 and 12/31/15. The 9% rate was then permanently locked under the Protecting Americans from Tax Hikes (PATH) Act of 2015.

F. Annual Credit Amount

The maximum amount of credit that can be claimed annually on a particular building is calculated by multiplying that building's Eligible Basis by its Applicable Fraction to ascertain the Qualified Basis and then multiplying the Qualified Basis by the Applicable Credit Percentage. Each of these items is defined and discussed in further detail above.

QUALIFIED BASIS = Eligible Basis x Applicable Fraction
ANNUAL LIHTC = Qualified Basis x Applicable Credit Percentage

The annual credit allocated may not exceed the amount derived from the calculation above. However, it may be less if IHCDA determines that this maximum amount is not necessary for the feasibility of the building or awarded less annual credits per QAP requirements.

Part 3.2Claiming Credits

A. Claiming LIHTC in the Initial Year

The credit is claimed annually for 10 years. The Credit Period begins in the year that the building is placed-in-service or the following year if the owner elects on Form 8609 Line 10a to defer the start of the Credit Period. Credits cannot be claimed until the Minimum Set-Aside has been met (see Part 3.3). Since the Credit Period must begin in either the year that a building is placed-in-service or the following year, the Minimum Set-Aside must also be met by this deadline. If the Minimum Set-Aside is not met by the deadline, no credits can ever be claimed. This is a non-correctable form of noncompliance.

During the first year of the Credit Period, the low-income occupancy percentage is calculated on a monthly basis. Occupancy for each month is determined on the last day of the month.

An IRS Form 8609 is completed for each building in the development receiving credits and is filed with the taxpayer's return for the first year of the Credit Period.

B. Initial Year Prorate / Disallowed 1st Year Credit Claimed in 11th Year

A building claiming credit in the initial year of occupancy is subject to a special provision that limits the credit to a proportionate amount based on average occupancy during the year, as calculated on a monthly basis. Any disallowed first year credit is then claimed in Year 11 (the first taxable year following the end of the credit period).

Example: A building has 40 units, all of which are restricted to tax credit qualified households. All units are completed and ready for occupancy at the end of October and move-ins begin in November. At the end of November, 20 out of 40 units are occupied. At the end of December, all 40 units are occupied. The prorated credit for the initial year of the Credit Period is calculated as follows, assuming the partnership has a calendar year taxable year:

Jan	*Feb*	*Mar*	*Apr*	*May*	*Jun*	*Jul*	*Aug*	*Sep*	*Oct*	*Nov*	*Dec*	*Total*
0/40	*0/40*	*0/40*	*0/40*	*0/40*	*0/40*	*0/40*	*0/40*	*0/40*	*0/40*	*20/40*	*40/40*	*60/480 (12.5%)*

In this example calculation, a prorated amount of 12.5% of the credits is allowed for the first year. In the 11th year, the disallowed first year credit (87.5%) will be claimed.

To be eligible for LIHTC in the first year of the credit period, a unit must be placed in service for the entire month and must be occupied by a qualified household by the end of the month.

-Example 1: A unit places-in-service on 9/15/25 and a qualified household moves in on 9/20/25. Credits begin on that unit in October 2025. Credits cannot be claimed in September since the unit was not placed in service the entire month. October is the first month for which the unit was placed in service for an entire month and in which there was a qualified household in place by the end of the month.

-Example 2: A unit places-in-service on 9/15/25 and a qualified household moves in on 10/10/25. Credits can begin on that unit in October 2025. October is the first month for which the unit was placed in service for an entire month and in which there was a qualified household in place by the end of the month. The unit does not have to be occupied an entire month to start claiming credits.

C. The Two-Thirds Rule

If a tax credit unit is not occupied by a qualified household by the end of the first year of the credit period, tax credits cannot be claimed on that unit for the first year. If the unit is initially occupied as a qualified tax credit unit after the end of the first year of the credit period, then two-thirds credit can be claimed each year for the remaining years of the 15-year compliance period.

For example, if only 80 out of 100 of the units in a 100% tax credit project are rented to eligible households in Year 1 of the credit period, the maximum Qualified Basis for the entire credit period would be based on 80% with the remaining 20% eligible for 2/3 credit if later rented to eligible tenants. If, for example, the remaining 20 units were rented in Year 2, those units would be eligible for 2/3 credit each year for Years 2 through 15 (Year 1 credits for those units are lost and cannot be recovered).

D. Claiming Credits in the Remaining Years of the Compliance Period

Owners must file an IRS Form 8586 (Low-Income Housing Credit) with the Internal Revenue Service each year of the Compliance Period. This form indicates continuing compliance and reports the Qualified Basis of the development each year of the Compliance Period.

E. Claiming Credits for Acquisition and Rehabilitation Projects

A development that is awarded LIHTC for the acquisition and rehabilitation of an existing building will receive two sets of credits, one for acquisition and one for rehabilitation, and will therefore have two Form 8609s for each building. Neither set of credits can be claimed prior to the date of acquisition, nor prior to the year in which the rehabilitation expenditure requirement is completed. There will be a separate acquisition placed-in-service date and rehabilitation placed-in-service date.

1. If Acquisition and Rehabilitation Occur in the Same Year

The owner agent has a 240-day window (120 days before and 120 days after the date of acquisition) in which to begin certifying in-place households, defined as existing households that are living in units at the time of acquisition. The owner agent may pre-qualify the households up to 120 days before the date of acquisition using the current income limits, or at any time up to 120 days after the date of acquisition using the limits in effect as of the date of acquisition. In either scenario, the effective date of the certification is the date of acquisition, and the certification is noted as a move-in even though the tenant has already been living in the unit. This allows the credit flow to begin on the date of acquisition, assuming rehabilitation is completed within the same year. If an existing household is not certified within the allowable timeframe, then the effective date of the certification cannot pull back to the date of acquisition but instead becomes the date on which the certification is completed. New move-in events are treated the same as in new construction projects with the effective date being the date that the household takes possession of the unit. For more information on certification effective dates in acquisition and rehabilitation projects, see Part 6.5 D.

Example 1-Claiming credits when acquisition and rehabilitation are completed in the same year:
A building is acquired on February 1st and rehabilitation is completed on October 1st of the same year. The owner may begin claiming credits back to February 1 (date of acquisition) for those units that were qualified.

Example 2-The 240-day window:
A building is acquired on July 1, 2023. In-place households may be qualified anytime from March 3, 2023 (120 days prior to the date of acquisition) through October 28, 2023 (120 days after the date of acquisition). Any certifications completed during this time will be dated effective as of July 1, 2023 (the date of acquisition). Any existing households that are not certified until after October 28, 2023 will be initially qualified with an effective date of the actual date that the certification was completed.

2. If Acquisition and Rehabilitation Occur in Different Years / Safe Harbor & "The Test"

The owner agent has a 240-day window (120 days before and 120 days after date of acquisition) in which to begin certifying in-place households, defined as existing households that are living in units at the time of acquisition. The owner agent may pre-qualify the households up to 120 days before the date of acquisition using the current income limits, or at any time up to 120 days after the date of acquisition using the limits in effect as of the date of acquisition. In either scenario, the effective date of the certification is the date of acquisition, and the certification is noted as a move-in even though the tenant has already been living in the unit. If an existing household is not certified within the allowable timeframe, then the effective date of the certification cannot pull back to the date of acquisition but instead becomes the date on which the certification is completed. New move-in events are treated the same

as in new construction projects with the effective date being the date that the household takes possession of the unit. For more information on certification effective dates in acquisition and rehabilitation projects, see Part 6.5 D.

However, when rehabilitation is not completed until the year after the date of acquisition, the owner cannot begin claiming credits on the date of acquisition but instead must wait until the beginning of the year in which the rehab is completed.

Example-Claiming credits when acquisition and rehabilitation are completed in different years:
A building is acquired on October 1, 2024 and rehabilitation is completed on April 1, 2025. The owner may begin claiming credits on January 1, 2025 (the beginning of the year in which rehabilitation was completed) for those units that were qualified.

Rev. Proc. 2003-82 states that a unit occupied before the beginning of the Credit Period will be considered a low-income unit at the beginning of the Credit Period, so long as (1) the household was income-qualified at the time the owner acquired the building or the date on which the household started occupying the unit, whichever is later, (2) the income of the household is tested for purposes of the Available Unit Rule at the beginning of the first year of the Credit Period, and (3) the unit remains rent-restricted. Therefore, (per requirement #2 of Rev Proc. 2003-82) at the beginning of the first year of the Credit Period, the incomes of the households that were initially certified in the previous year must be tested to determine if any units trigger the Available Unit Rule. However, if the effective date of the initial certification is 120 days or less prior to the beginning of the credit year, then the "test" does not have to be performed. In this way, the program provides a safe harbor provision so that households that income qualified before the beginning of the first year of the Credit Period but exceed the income limit at the beginning of the first year of the Credit Period are still considered qualified tax credit households.

NOTE: IHCDA waives this "test" requirement for 100% tax credit projects. The purpose of the "test" is to identify households that exceed 140% and invoke the Available Unit Rule. Since recertifications are waived for 100% tax credit projects and the Available Unit Rule applies differently (see Part 5.1(c)(3)) the "test" requirements are not required.

For those units that must be tested, the "test" consists simply of confirming with the household that the sources and amounts of anticipated annual income listed on the initial Tenant Income Certification form are still current. If additional sources of income are identified, the TIC must be updated based on the household's self-certification. It is not necessary to complete third-party verifications for purposes of conducting the "test." Any households that exceed the 140% limit at the time of the "test" will invoke the Available Unit Rule.

Example 1- "Test" needed:
A building is acquired on July 1, 2024 and rehabilitation is completed on March 1, 2025. The owner certified all existing households within the 240-day window, so the effective date of each certification is July 1, 2024 (the date of acquisition). Because rehabilitation is not completed until 2025, the owner cannot claim credits until January 1, 2025. As of January 1, 2025 (the beginning of the first year of the Credit Period) the owner must "test" the income of all households that were certified with an effective date more than 120 days prior to January 1, 2025 (this includes all of the in-place households that were certified effective as of July 1, 2024). However, IHCDA does not require the test if this is a 100% tax credit project.

Example 2- "Test" not needed:
A building is acquired on November 1, 2024 and rehabilitation is completed on June 1, 2025. The owner certified all existing households within the 240-day window, so the effective date of each certification is November 1, 2024 (the date of acquisition). Because rehabilitation is not completed until 2025, the owner cannot claim credits until January 1, 2025. In this scenario, the owner will not have to perform the "test," because all certifications had an effective date within 120 days prior to January 1, 2025 (the beginning of the first year of the Credit Period).

3. **Relocating Households during Rehabilitation**

An in-place household may have to be relocated from its unit, either temporarily or permanently, for the unit to be properly rehabbed. Credits cannot be claimed while a unit is uninhabitable. However, if a household is temporarily moved and then returned to the unit within the same calendar month, credits are not interrupted.

Example 1- Temporarily relocated but back within same calendar month:
Household is temporarily relocated on April 4th. Rehabilitation is completed and the household is returned to the unit on April 26th. The owner is eligible to claim credits on this unit for the month of April.

Example 2- Temporarily relocated but back in a different calendar month:
Household is temporarily relocated on August 15th. Rehabilitation is completed and the household is returned to the unit on September 5th. The owner may not claim credits on the unit for the month of August but may claim credits for September.

If a household permanently relocates to an empty (never qualified) unit, the credits stop on the original unit and begin in the new unit. If a household permanently relocates to a unit that has already been initially qualified, then the units swap status.

Example 3- Permanent relocation to an empty unit:
Household permanently relocates from Unit 1 to the empty (never qualified) Unit 12. The credits on Unit 1 stop and the owner cannot continue claiming credits on that unit until a new qualified move-in occurs. The owner may begin claiming credits on Unit 12.

Example 4- Permanent relocation to a previously qualified unit:
Household permanently relocates from Unit 1 to the previously qualified but now vacant Unit 4. The credits continue on both Units 1 and 4 as per the Vacant Unit Rule. The units swap status, meaning Unit 1 is now treated as a vacant, previously-qualified LIHTC unit.

4. Removing Unqualified In-place Households

It is possible that some in-place households will not qualify as tax credit households, either due to income or student status ineligibility. In a conventional apartment community, the owner can terminate leases at the end of the lease term. However, if the tax credits are being layered over an existing Section 8 or USDA Rural Development (RD) property, the households cannot be terminated due to ineligibility for the tax credit program. Any Section 8 or RD families that are over the tax credit income limits or ineligible under tax credit student status regulations cannot be certified as LIHTC households but cannot be evicted or terminated for this reason. The owner may not claim credits on those units until the households become eligible or vacate. Therefore, it may be in the owner's interest to negotiate a mutual agreement with the household to encourage them to voluntarily vacate the unit. This could include paying the household's moving expenses, offering other monetary incentives, etc.

If an existing tax credit development (i.e., a development where a tax credit Extended Use Agreement is still in place) receives an additional set of credits for rehabilitation, or if an existing tax credit development is purchased by a new owner who receives a set of acquisition and rehabilitation credits, the in-place tax credit households are grandfathered into the new allocation and considered qualified households. Households exceeding the 140% limit are considered qualified, but the Next Available Unit Rule remains in effect. See Part 5.1 C for additional information.

Part 3.3|Minimum Set-Aside

A. Minimum Set-Aside Elections: 20/50, 40/60, or Average Income

On Form 8609, the owner irrevocably elects one of the following Minimum Set-Aside elections on a project basis:

1. **20/50:** At least 20% of available rental units in the project must be rented to households with incomes not exceeding 50% of Area Median Income adjusted for family size. If the 20/50 Election has been made, tax credit units in the project may not be set aside at a rent or income level above 50% AMI.

2. **40/60:** At least 40% of available rental units in the project must be rented to households with incomes not exceeding 60% of Area Median Income adjusted for family size. If the 40/60 Election has been made, tax credit units in the project may not be set aside at a rent or income level above 60% AMI.
3. **Average Income:** See Part 3.3E below for more information on Average Income. *Note: Average Income was added as a new Minimum Set-Aside election under the Consolidated Appropriations Act of 2018 enacted on March 23, 2018 and is not retroactive to older tax credit projects.

The Minimum Set-Aside must be met on a project basis, as defined by the election made by the owner on IRS Form 8609 Part II, Line 8b. Therefore, if each building is its own project, then the Minimum Set-Aside must be met at each building (See Part 3.4 below).

Once the election of the Minimum Set-Aside is made by the owner on IRS Form 8609 Part II Line 10c, it is irrevocable. Thus, the elected Minimum Set-Aside and the corresponding rent and income restrictions apply for the duration of the Compliance Period and Extended Use Period applicable to the development.

The developer/owner may have also elected to target a percentage of the units to persons at lower income levels (e.g., 30% or 40% AMI) and/or to target a higher percentage of units to low-income households. The owner must comply with those additional elections as defined in the development's Final Application and Extended Use Agreement.

B. Minimum Set-Aside Violations in the Initial Year

Credits cannot be claimed until the Minimum Set-Aside has been met. Since the Credit Period must begin in either the year that a building is placed-in-service or the following year, the Minimum Set-Aside must also be met by this deadline. If the Minimum Set-Aside is not met by the deadline, no credits can ever be claimed on the project. This is a non-correctable form of noncompliance.

C. Minimum Set-Aside Violations in Subsequent Years

If the Minimum Set-Aside is violated for a particular year of the Compliance Period (not the initial year of the Credit Period), the project is out of compliance for that year and subject to recapture of previously claimed credits. Furthermore, credits are lost, and no additional credits can be claimed until the Minimum Set-Aside has been restored. The project is back in compliance for the taxable year in which the Minimum Set-Aside is restored.

The Minimum Set-Aside is violated if an insufficient number of units are qualified tax credit units. However, per the 8823 Guide (page 10-3), "noncompliance with the Minimum Set-Aside should also be reported if systemic errors affecting all the LIHC units are identified; e.g. using incorrect income or rent limits for all the units."

D. Minimum Set-Aside vs. Applicable Fraction

The Applicable Fraction and the Minimum Set-Aside are not the same thing. The Applicable Fraction is the percentage of units and floor space that must be reserved for qualified low-income households in a specific building. The Minimum Set-Aside is the minimum percentage of units that must be set-aside as tax credit units in the entire project (as defined on Form 8609), and the federal income restriction at which these units must be set-aside. To comply, a project must meet its Minimum Set-Aside and each building within that project must meet its Applicable Fraction. For more information on Applicable Fraction, see Part 3.1 C.

E. Average Income Test

Under the Average Income Test, the owner must designate two qualified groups of units- one to satisfy the Minimum Set-aside test and one to determine the Applicable Fraction. These requirements are defined in the final Average Income Test regulations (Treasury Regulations 1.42-19). IHCDA permits owners to report one single qualified group of units to cover compliance with both the Minimum Set-Aside and the Applicable Fraction.

Qualified Group of Units to Satisfy the Minimum Set-Aside: Per Treasury Regulation 1.42-19, a project (as defined by the election on Form 8609 Line 8b) with an Average Income Minimum Set-Aside Election meets the Minimum Set-Aside test if at least 40% of the total units in the project constitute a "qualified group of units." To be considered a qualified group of units, two tests must be met:

1. Each unit in the group must be a qualified low-income unit- i.e., must be occupied by an eligible household, properly rent-restricted, suitable for occupancy, and otherwise compliant with Section 42; and
2. The average of the imputed income limitations of all the units in the group must not exceed 60% AMI. Possible imputed income and rent limit designations under the Average Income Test are 20%, 30%, 40%, 50%, 60%, 70%, or 80% AMI. Other designations are not allowed. A project is not required to have units designated at each of these imputed income levels, as long as the average imputed income limitation for the qualified group is at or below 60% AMI.

The owner must designate units at the various imputed income limits in such a manner that the unit mix will result in a qualified group of units that meets the Minimum Set-Aside test. The average is calculated based on the imputed income designation of the unit, not on the actual income of the household residing in the unit. For example, if a unit is designated as a 60% AMI unit and the household moving into the unit is at 54% AMI, for purposes of calculating the average this unit is considered 60% AMI.

Qualified Group of Units to Determine the Applicable Fraction: All units to be counted towards the Applicable Fraction of any building in the project are collectively included in a qualified group of units for purposes of determining the Applicable Fraction. This qualified group of units must meet the same two tests as the qualified group of units for satisfying the Minimum Set-aside: the group must contain only low-income units and the average of the imputed income limitations of all the units in the group must not exceed 60% AMI.

Applicable Fraction is then calculated on a building-by-building basis. The Applicable Fraction for a particular building is computed using only those units that are in (1) that building and (2) the qualified group of units to determine the Applicable Fraction.

The unit designations within an individual building are not required to meet a 60% or below average imputed income limitation. The average must be met within the entire qualified group of units, not on a building basis.

IHCDA Policy: IHCDA has established the following policies for the Average Income Test:

- AMI designations are allowed to float between units within the project (i.e., a particular unit is not locked into a specific AMI level), but the total unit mix must be maintained as agreed upon in the Application and as recorded in the Extended Use Agreement. The number of units agreed upon for each AMI level must be maintained, with the exception that IHCDA may allow and approve changes if needed to resolve noncompliance.
- Final regulations state that an owner designates a unit's income level "by recording the limitation in its books and records." IHCDA will consider the owner to have "designated" a unit based on the AMI level being (1) recorded on the Tenant Income Certification form in the tenant's file and (2) reported through IHCDA's online reporting system as part of the Annual Owner Certification of Compliance.
- If a current qualified tenant transfers to another vacant unit in the project, the units swap AMI designations.
- The income and rent restriction on a unit must match. For example, a unit considered 40% AMI must be rented to a household at or below the 40% AMI income limit and gross rent must be at or below the 40% AMI rent limit.
- IHCDA does not impose any special rules on recertification requirements based on an Average Income election. A 100% tax credit project that has elected Average Income is still exempt from full recertifications.
- If a project requires recertification and the household's income has increased at time of recertification, IHCDA will continue to use the AMI level the household initially qualified under at time of move-in to calculate the Average Income Test, as long as the unit remains restricted at that rent level. The unit is not "redesignated" due to income increases at recertification.
    - *For example, at move-in, a household's income was under the 40% income limit and was treated as a 40% household with a 40% rent restriction. At recertification, the household's income now exceeds 40% AMI. As long as the unit continues to be rent-restricted at the 40% rent limit, IHCDA will continue to consider this a 40% unit for purposes of calculating the Average Income Test.*
- IHCDA allows Average Income projects to include market rate units. At least 40% of the units in the project must be tax credit units. Any market rate units are excluded from the Average Income calculation and are not included in the qualified group of units.

- IHCDA will work with owners to allow reasonable corrections to restore compliance with Average Income Test requirements. Such corrections may include adding or removing units from the qualified group of units. IHCDA will allow the submission of a corrected qualified group of units if a previously submitted group fails to be a qualified group.
    - If an issue is discovered by the owner agent, the owner agent has up to 180 days after discovery to provide IHCDA a revised submission, such as a revised qualified group of units.
    - If an issue is discovered by IHCDA, IHCDA will notify the owner agent of the noncompliance and allow a correction period following the same correction period procedures used for any other discovery of noncompliance as outlined in Treasury Regulation 1.42-5 and this Compliance Manual.

Part 3.4|8609 Part II Line 8b: Multiple Building Projects

On Form 8609 Part II Line 8b, the owner must answer the question "Are you treating this building as part of a multiple building project for purposes of Section 42?" If the owner elects "yes," then the building is part of a multiple building project along with other buildings in the development. The owner must attach to Form 8609 a listing of those buildings that are considered part of the multiple building project. If the owner elects "no," then each building in the development is considered its own project. This election has important compliance implications that affect the project for the duration of the Compliance Period.

- The Minimum Set-Aside must be met on a project basis. Therefore, if the owner elected "yes" on Line 8b, then the building is part of a multiple building project and the Minimum Set-Aside must be met across the entire project. If the owner has elected "no" on Line 8b, then the building is considered its own project and the Minimum Set-Aside must be met within each building.
- The Line 8b election affects unit transfer rules. If the owner elected "yes" to the multiple building project, then tenants may transfer between buildings within the project without having to recertify for the program, as long as the household is not above the 140% limit. If the owner has elected "no" to the multiple building project, then tenants may not transfer between buildings. If a household wants to move to another building it must be treated as a new move-in and re-qualified for the program based on current circumstances. For more information on unit transfer rules, see Part 5.1D.
- The Line 8b election impacts implementation of rent and income limits, specifically regarding the applicability of HERA special and hold-harmless limits, because limits are project-specific. For more information, see Parts 4.1 and 4.2.
- The Line 8b election impacts the 100% recertification exemption since this applies to a project per the 8609 definition. See Part 6.7 for more information.

Because the Part II Line 8b election on Form 8609 is so important for ongoing compliance, it is crucial that owner agents have copies of the 8609s for each building and understand what elections have been made.

Part 3.5|Credit and Compliance Period

Tax credits are claimed annually over a 10-year period (the "Credit Period") beginning either in the year the building is placed-in-service or the following year, depending on which option is elected by the owner. Developments must, however, remain in compliance for a minimum of 15 years (the "Compliance Period"). Additionally, all developments allocated credits in 1990 or after must enter into an Extended Use Agreement requiring at least an additional 15 years of compliance after the initial 15-year Compliance Period.

A. Compliance Period for Credit Allocations After December 31, 1989

Developments receiving a credit allocation after December 31, 1989 must enter into an Extended Use Agreement with IHCDA. These developments must comply with program requirements for an Extended Use Period. The Extended Use Period is either an additional 15 years beyond the 15-year Compliance Period (for a total of 30 years) or the a later date specified in the Extended Use Agreement.

Early termination of the Extended Use Period is provided for under certain limited circumstances in the Code. See Part 8.2

Additional information about the Extended Use Period can be found in Section 8.

B. Compliance Period for Credit Allocations for 1987 through 1989 Only

Developments receiving a credit allocation prior to January 1, 1990 did not enter into an Extended Use Agreement, and therefore only had a 15-year Compliance Period. However, any building in such a development that received an additional allocation of credit after December 31, 1989 must comply with the requirements in effect beginning January 1, 1990 and will be bound by an Extended Use Agreement per Revenue Ruling 92-79.

Part 3.6|Placed-in-Service Dates

Per IRS Notice 88-116, the placed-in-service date of a building is "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." A building may be placed-in-service regardless of whether the rental units are currently occupied.

The placed-in-service date is defined as follows:

- For new construction, the placed-in-service date is the date the building receives its certificate of occupancy ("C of O").
- For acquisition, the placed-in-service date is the date of acquisition.
- For rehabilitation, the placed-in-service date is based on expenditure tests. The building can be considered placed-in-service at the close of any two-year period over which the rehab expenditures are made. At least the greater of 20% of the adjusted basis or a set dollar amount per unit (adjusted annually for inflation) has been spent. However, the building should not be considered placed-in-service until the appropriate Eligible Basis has been met to maximize credits.

For multiple building projects, each building will have its own placed-in-service date. The project (as defined by the 8609 Line 8b election) will be considered placed-in-service on the date that the first building within the project placed-in-service. This is an important concept for determining rent and income limits.

Section 4- Income Limits, Rent Limits, and Utility Allowances

To remain in compliance, tax credit units must be income- and rent-restricted. This section provides guidance on how to properly apply income limits, rent limits, and utility allowances. Income and rent limit charts are provided in Appendix B.

Part 4.1|Income Limits

All tax credit units must be occupied by income-qualified households, based on the income limits published annually by HUD. HUD refers to tax credit projects as "Multifamily Tax Subsidy Projects" and provides a separate table of income limits specifically calculated for tax credit projects called the MTSP Limits. When new MTSP limits are published annually by HUD, IHCDA will post the new income limits and corresponding rent limits on its website via a RED Notice. This information is provided by IHCDA as a courtesy for the owner's convenience. However, it is the responsibility of the owner agent, not IHCDA, to verify its accuracy.

The owner agent must ensure that the correct set of income limits is being utilized based on the applicable funding sources. IHCDA releases separate sets of income limits for different programs as required by HUD. For example, each year IHCDA releases separate income limit charts for the tax credit program, the HOME program, and the HTF program. The income limits may differ across programs even in the same county for the same year.

When new MTSP income limits are released, the owner has 45 days from the HUD effective date to implement the new limits and corresponding rents. Owner agents may not anticipate increases in income limits and corresponding rents. Limits remain in effect until new annual limits are officially published by HUD. The owner agent must implement the new rent and income limits within 45 days of the HUD effective date of the limits. During the 45-day implementation period, the owner agent may rely on either set of limits (the previous or new set, whichever is more beneficial) for all purposes, including the election of gross rent floor and hold harmless limits. For more information on the 45-day period, see 4.1(D).

Household income must be determined in a manner consistent with the 24 CFR Part 5.609 methodology (commonly known as the "Part 5 methodology" or "Section 8 methodology") of calculating annual income as described in Chapter 5 of HUD Handbook 4350.3 and amended by HOTMA. When determining if a household's income is at or below the applicable income limit, the earned income from each adult household member 18 years of age or older and the unearned income of all members of the household (regardless of age) must be included in the total household income calculation. See Chapter 5 of HUD Handbook 4350.3 and HOTMA Implementation Notice (HUD Notice H 2023-10 /PIH 2023-27)- REVISED February 2024 for rules on calculating income.

If a household's income initially met the qualifying income limit but later increases above the 140% of AMI, the unit may continue to be counted as a qualifying unit as long as the unit continues to be rent-restricted and the next available unit of comparable or smaller size is rented to a qualified low-income household. See Part 5.1 C for information on the 140% Rule/Next Available Unit Rule.

A. Maximum Income Limits based on Set-Asides

Income limits for qualifying households depend on the Minimum Set-Aside election made by the owner. At move-in, qualifying households in projects operating under the "20/50" election may not have incomes exceeding 50% AMI adjusted for family size. At move-in, qualifying households in projects operating under the "40/60" election may not have incomes exceeding 60% AMI adjusted for family size. At move-in, qualifying households in projects operating under the "Average Income" election may not have incomes exceeding 80% AMI adjusted for family size, and the average income restriction across all program units within the project must be at or below 60% AMI.

An owner may have also elected to target a percentage of the units to persons at lower income levels (e.g., 20%, 30% or 40% AMI). The owner agent must comply with those additional elections as defined in the development's Final Application and Extended Use Agreement.

Developments funded by IHCDA prior to 2003 are both rent- and income-restricted at the AMI levels selected in their Final Application submitted to IHCDA and are required to meet those state set-asides identified and recorded in the Extended Use Agreement.

Developments funded in or after 2003 are rent-restricted at the individual AMI levels as selected in the Final Application submitted to IHCDA and recorded in the Extended Use Agreement. However, income restrictions for these developments might be set at the federal Minimum Set-Aside elected by the owner (either the 20/50 or 40/60 set-aside). The Final Application and Extended Use Agreement will identify if the lower restrictions apply to both income and rent limits or only to rent limits. This does not apply to projects electing the Average Income Minimum Set-Aside.

Example 1- Property funded prior to 2003: XYZ Apartments is a 100% tax credit development with 100 units. The federal Minimum Set-Aside is "40/60," but in the Final Application and Extended Use Agreement the owner elected that 70 units would be at the 60% AMI level and 30 units would be at the 50% AMI level. The 60% AMI units must be charged no more than the applicable 60% AMI rent limit and must be occupied by households not exceeding 60% AMI at move-in. The 50% units must be charged no more than the applicable 50% AMI rent limit and must be occupied by households not exceeding 50% AMI at move-in. All units are both rent- and income-restricted at the state set-aside, as elected in the Final Application and recorded in the Extended Use Agreement.

Example 2- Property funded in or after 2003: XYZ Apartments is a 100% tax credit development with 100 units. The federal Minimum Set-Aside is "40/60," but in the Final Application and Extended Use Agreement the owner elected that 70 units would be at the 60% AMI level and 30 units would be at the 50% AMI level. The 60% AMI units must be charged no more than the applicable 60% AMI rent limit and must be occupied by households not exceeding 60% AMI at move-in. The 50% AMI units must be charged no more than the applicable 50% AMI rent limit BUT may be occupied by households earning up to 60% AMI at move-in if the Extended Use Agreement and Final Application state that the lower designations only apply to rent restrictions.

For projects electing the Average Income Minimum Set-Aside, the income and rent restrictions must match for all units. For example, a 30% unit must be both income and rent-restricted at the 30% AMI level.

B. "Hold Harmless" Policy

The Housing and Economic Recovery Act of 2008 (HERA) amended Section 42 to include a "hold-harmless" policy for income and rent limits. According to the hold harmless provision, the income and rent limits for a particular project (as defined by the 8609 Line 8b election) will never decrease for any calendar year after 2008, even if there is a decrease in the HUD published limits for the county in which the project is located. However, a project is never eligible to use a set of limits if it was not placed-in-service during the time those limits were in effect. A multiple building project is considered placed-in-service on the date the first building in that project places in service.

Therefore, income and rent limits are not based solely on the county in which a development is located. Instead, limits are project-specific based on the placed-in-service date. If buildings within the same development are considered separate projects (i.e., if Line 8b of the 8609 is marked 'no'), then each building may have different sets of limits based on their different placed-in-service dates. Even if the multiple building project election is marked "yes," it is important to note that separate phases are always considered different projects and are likely to have different sets of income and rent limits.

A project that places in service during the 45-day implementation period after the release of a new set of income limits may rely on either set of limits (the old or new, whichever is more beneficial) for purposes of determining the gross rent floor and/or hold-harmless limits that will apply to the property. See LIHC Newsletters #47, 48, and 50 for more information on "relying" on income limits.

For more information on implementing income limits, see Part 4.1 D.

C. HERA Special Income Limits

In 2009, HUD began publishing "HERA special" income limits. Where applicable, the HERA special limits are used by all tax credit projects that placed in service on or before December 31, 2008. However, not all counties will have HERA special limits every year. Projects that placed in service in 2009 or later are not eligible to use the HERA special limits, including projects that receive a subsequent credit allocation. Reminder: project is defined by the election on Line 8b of Form 8609. A multiple building project is considered placed-in-service on the date the first building in that project places in service.

A project (as defined by Line 8b of Form 8609) is eligible to use the HERA special limits if:

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

For more information on implementing income limits, see Part 4.1 D. For additional guidance on the applicability of HERA special income limits, see Low Income Housing Credit Newsletter Issue #35 and the follow-up article in Issue # 47.

D. Which Income Limits Should Be Used?

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

1. A project that placed in service on or before 12/31/08 will use the current HERA special limits. If the county in which the project is located does not have HERA special limits published, then the project will use the regular limits for that county (See Step 2 below).
2. A project that placed in service on or after 1/1/09 will compare all sets of limits that were effective since the placed-in-service date and apply the highest set ("hold-harmless"). A project that placed-in-service after 12/31/08 will never be eligible for HERA special limits.

LIMIT YEAR	RELEASE DATE	LAST DAY OF 45 DAY IMPLEMENTATION PERIOD	1st DAY NEW LIMITS MUST BE USED
2009	3/19/09	5/2/09	5/3/09
2010	5/14/10	6/27/10	6/28/10
2011	5/31/11	7/14/11	7/15/11
2012	12/1/11	1/14/12	1/15/12
2013	12/4/12	1/17/13	1/18/13
2014	12/18/13	1/31/14	2/1/14
2015	3/6/15	4/19/15	4/20/15
2016	3/28/16	5/11/16	5/12/16
2017	4/14/17	5/27/17	5/28/17
2018	4/1/18	5/14/18	5/15/18
2019	4/24/19	6/7/19	6/8/19
2020	4/1/20	5/15/20	5/16/20
2021	4/1/21	5/15/21	5/16/21
2022	4/18/22	6/1/22	6/2/22
2023	5/15/23	6/28/23	6/29/23
2024	4/1/24	5/15/24	5/16/24
2025	4/1/25	5/15/25	5/16/25

A project that places in service during the 45-day implementation period after the release of a new set of income limits may rely on either set of limits (the old or new, whichever is more beneficial) for purposes of determining the hold-harmless limits that will apply to the property. See LIHC Newsletters #47, 48, and 50 for more information on "relying" on income limits.

Example #1: A project places in service between 3/19/09 and 5/13/10. This project placed-in-service during the effective term of the 2009 limits, so management would compare all limits from 2009 and beyond and use the highest set. The project is not eligible for HERA special limits but will apply the hold-harmless policy.

Example #2: A project places in service between 5/14/10 and 5/30/11. This project placed-in-service during the effective term of the 2010 limits, so management would compare all limits from 2010 and beyond and use the highest set. The project is not eligible for HERA special limits but will apply the hold-harmless policy. The project is not eligible to use 2009 limits because it was not in service during the effective term of those limits UNLESS the project placed-in-service during the 45-day window between 5/14/10 and 6/27/10 (inclusive) in which case it could rely on 2009 limits.

Example #3: A project places in service between 5/31/11 and 11/30/11. This project placed-in-service during the effective term of the 2011 limits, so management would compare all limits from 2011 and beyond and use the highest set. The project is not eligible for HERA special limits but will apply the hold-harmless policy. The project is not eligible to use 2009 or 2010 limits because it was not in service during the effective term of those limits, UNLESS the project placed-in-service during the 45-day window between 5/31/11 and 7/14/11 (inclusive) in which case it could rely on 2010 limits.

Example #4: A project places in service between 12/1/11 and 12/3/12. This project placed-in-service during the effective term of the 2012 limits, so management would compare all limits from 2012 and beyond and use the highest set. The project is not eligible for HERA special limits but will apply the hold-harmless policy. The project is not eligible to use 2009, 2010, or 2011 limits because it was not in service during the effective term of those limits, UNLESS the project placed-in-service during the 45-day window between 12/1/11 and 1/14/12 (inclusive) in which case it could rely on 2011 limits.

Example #5: A project places in service between 12/4/12 and 12/17/13. This project placed-in-service during the effective term of the 2013 limits, so management would compare all limits from 2013 and beyond and use the highest set. The project is not eligible for HERA special limits but will apply the hold-harmless policy. The project is not eligible to use the 2009, 2010, 2011, or 2012 limits because it was not in service during the effective term of those limits, UNLESS the project placed-in-service during the 45-day window between 12/14/12 and 1/17/13 (inclusive) in which case it could rely on 2012 limits.

Example #6: A project places in service on or after 12/18/13 and before the release of the 2015 limits. This project placed-in-service during the effective term of the 2014 limits, so management would compare all limits from 2014 and beyond and use the highest set. The project is not eligible for HERA special limits but will apply the hold-harmless policy. The project is not eligible to use the 2009, 2010, 2011, 2012, or 2013 limits because it was not in service during the effective term of those limits, UNLESS the project placed-in-service during the 45-day window between 12/18/13 and 1/31/14 (inclusive) in which case it could rely on 2013 limits.

Example #7: A project places in service on or after 3/6/15 and before the release of the 2016 limits. This project placed-in-service during the effective term of the 2015 limits, so management would compare all limits from 2015 and beyond and use the highest set. The project is not eligible for HERA special limits but will apply the hold-harmless policy. The project is not eligible to use the 2009, 2010, 2011, 2012, 2013, or 2014 limits because it was not in service during the effective term of those limits, UNLESS the project placed-in-service during the 45-day window between 3/6/15 and 4/19/15 (inclusive) in which case it could rely on 2014 limits.

Example #8: A project places in service on or after 3/28/16 and before the release of the 2017 limits. This project placed-in-service during the effective term of the 2016 limits, so management would compare all limits from 2016 and beyond and use the highest set. The project is not eligible for HERA special limits but will apply the hold-harmless

policy. The project is not eligible to use the 2009, 2010, 2011, 2012, 2013, 2014, or 2015 limits because it was not in service during the effective term of those limits, UNLESS the project placed-in-service during the 45-day window between 3/28/16 and 5/11/16 (inclusive) in which case it could rely on 2015 limits.

Example #9: A project places in service on or after 4/14/17 and before the release of the 2018 limits. This project placed-in-service during the effective term of the 2017 limits, so management would compare all limits from 2017 and beyond and use the highest set. The project is not eligible for HERA special limits but will apply the hold-harmless policy. The project is not eligible to use the 2009-2016 limits because it was not in service during the effective term of those limits, UNLESS the project placed-in-service during the 45-day window between 4/14/17 and 5/27/17 (inclusive) in which case it could rely on 2016 limits.

Example #10: A project places in service on or after 4/1/18 and before the release of the 2019 limits. This project is placed-in-service during the effective term of the 2018 limits, so management would compare all limits from 2018 and beyond and use the highest set. The project is not eligible for HERA special limits but will apply the hold-harmless policy. The project is not eligible to use the 2009-2017 limits because it was not in service during the effective term of those limits, UNLESS the project placed-in-service during the 45-day window between 4/1/18 and 5/14/18 (inclusive) in which case it could rely on 2017 limits.

Example #11: A project places in service on or after 4/24/19 and before the release of the 2020 limits. This project placed-in-service during the effective term of the 2019 limits, so management would compare all limits from 2019 and beyond and use the highest set. The project is not eligible for HERA special limits but will apply the hold-harmless policy. The project is not eligible to use the 2009-2018 limits because it was not in service during the effective term of those limits, UNLESS the project placed-in-service during the 45-day window between 4/24/19 and 6/7/19 (inclusive) in which case it could rely on 2018 limits.

Example #12: A project places in service on or after 4/1/20 and before the release of the 2021 limits. This project placed-in-service during the effective term of the 2020 limits, so management would compare all limits from 2020 and beyond and use the highest set. The project is not eligible for HERA special limits but will apply the hold-harmless policy. The project is not eligible to use the 2009-2019 limits because it was not in service during the effective term of those limits, UNLESS the project placed-in-service during the 45-day window between 4/1/20 and 5/15/20 (inclusive) in which case it could rely on 2019 limits.

Example #13: A project places in service on or after 4/1/21 and before the release of the 2022 limits. This project placed-in-service during the effective term of the 2021 limits, so management would compare all limits from 2021 and beyond and use the highest set. The project is not eligible for HERA special limits but will apply the hold-harmless policy. The project is not eligible to use the 2009-2020 limits because it was not in service during the effective term of those limits, UNLESS the project placed-in-service during the 45-day window between 4/1/21 and 5/15/21 (inclusive) in which case it could rely on 2020 limits.

Example #14: A project places in service on or after 4/18/22 and before the release of the 2023 limits. This project placed-in-service during the effective term of the 2022 limits, so management would compare all limits from 2022 and beyond and use the highest set. The project is not eligible for HERA special limits but will apply the hold-harmless policy. The project is not eligible to use the 2009-2021 limits because it was not in service during the effective term of those limits, UNLESS the project placed-in-service during the 45-day window between 4/18/22 and 6/1/22 (inclusive) in which case it could rely on 2021 limits.

Example #15: A project places in service on or after 5/15/23 and before the release of the 2024 limits. This project placed-in-service during the effective term of the 2023 limits, so management would compare all limits from 2023 and beyond and use the highest set. The project is not eligible for HERA special limits but will apply the hold harmless policy.

The project is not eligible to use the 2009-2022 limits because it was not in service during the effective term of those limits, UNLESS the project placed-in-service during the 45-day window between 5/15/23 and 6/28/23 (inclusive) in which case it could rely on 2022 limits.

Example #16: A project places in service on or after 4/1/24 and before the release of the 2025 limits. The project placed-in-service during the effective term of the 2024 limits, so management would compare all limits from 2024 and beyond and use the highest set. The project is not eligible for HERA special limits but will apply the hold hamrless policy. The project is not eligible to use the 2009-2023 limits because it was not in service during the effective term of those limits, UNLESS the project placed-in-service during the 45-day window between 4/1/24 and 5/15/24 (inclusive) in which case it could rely on 2023 limits.

Example #17: A project places in service on or after 4/1/25 and before the release of the 2026 limits. The project placed-in-service during the effective term of the 2025 limits and additional limits have not yet been published. The project has no choice but to use the 2025 limits until future sets of limits are published. The project is not eligible for HERA special limits and is not eligible to use the 2029-2024 limits because it was not in service during the effective term of those limits, UNLESS the project placed-in-service during the 45-day window between 4/1/25 and 5/15/25 (inclusive) in which case it could rely on 2024 limits.

For additional assistance in determining the correct limits for a particular project, refer to the following online resources:
-HUD MTSP Income Limits Documentation System: http://www.huduser.org/portal/datasets/mtsp.html
-Novogradac & Company, LLP "The Rent and Income Limit Calculator©": http://www.novoco.com/products/rentincome.php

Part 4.2|Rent Limits

All tax credit units must be rent-restricted based on the rent limits published annually by HUD. HUD refers to tax credit projects as "Multifamily Tax Subsidy Projects" and provides a separate table of income limits specifically calculated for tax credit projects called the MTSP Limits. When new MTSP limits are published annually by HUD, IHCDA will post the limits on its website. This information is provided by IHCDA as a courtesy for the owner's convenience. However, it is the responsibility of the owner agent, not IHCDA, to verify its accuracy.

The owner agent must ensure that the correct set of rent limits is utilized based on the applicable funding sources. IHCDA releases separate sets of rent limits for different programs as required by HUD. For example, each year IHCDA releases separate rent limit charts for the tax credit program, the HOME program, and the HTF program. The limits may differ across programs even in the same county for the same year.

When new MTSP limits are released, the owner has 45 days from the HUD effective date to implement the new limits and corresponding rents. Owner agents may not anticipate increases in income and rent limits. Limits remain in effect until new annual limits are officially published by HUD. The owner agent must implement the new rent and income limits within 45 days of the HUD effective date of the limits. During the 45-day implementation period, the owner may rely on either set of limits (the previous or new set, whichever is more beneficial) for all purposes, including the election of gross rent floor and hold harmless limits. For more information on the 45-day period, see 4.1(D).

A. Rent Limit Terminology

The **rent limit** is published annually by HUD per bedroom size. The published rent limit must account for tenant-paid rent plus a utility allowance for tenant-paid utilities (except telephone, cable television, and internet) plus any non-optional charges. Therefore, tenants cannot be charged rent in an amount equal to the rent limit unless all utilities are owner-paid and there are no additional non-optional charges. See Part 4.4 for more information on utility allowances.

The **gross rent** for a unit is the sum of tenant-paid rent + utility allowance + non-optional charges. The gross rent may never exceed the applicable published rent limit.

The **maximum allowable rent** is the most the owner agent is permitted to charge for rent after a utility allowance for tenant-paid utilities (except telephone, cable television, and internet) and other non-optional charges have been deducted. The maximum allowable rent can never exceed the applicable published rent limit. Maximum allowable rent may also be referred to as the "maximum chargeable rent" or the "net rent."

The **tenant-paid rent** or **lease rent** is the actual rent charged to the household by the owner, as defined in the lease. The lease rent may never exceed the maximum allowable rent or the applicable published rent limit.

Each project has a **gross rent floor**, defined as the lowest rent limit that the owner will ever be required to implement for that project. For more information on gross rent floors, see Part 4.2 D below.

B. Calculating Rent Limits

Units are rent-restricted based on an imputed, not actual, household size. Household size is imputed by number of bedrooms in the following manner:

1. An efficiency, studio, or a unit that does not have a separate bedroom – imputed household size of one person.
2. A unit that has 1 or more separate bedrooms – imputed household size of 1.5 individuals for each separate bedroom.

The maximum gross rent is calculated as 30% of the applicable income limit for the imputed household size (notwithstanding that the actual household size may be different).

Example:
Income Limits (by household size)

One Person	*Two Persons*	*Three Persons*	*Four Persons*
$10,000	*$15,000*	*$20,000*	*$25,000*

The rent for a two-bedroom unit is calculated based on the imputed household size of three persons (1.5 persons per bedroom multiplied by two bedrooms). Annual rent is 30% of the income limit for the imputed household size [($20,000 x 30%) divided by 12 months equals $500 monthly]. The rent limit is $500 regardless of the number of persons actually occupying the two-bedroom unit.

C. Maximum Rent Limits based on Set-Asides

Rent limits depend on the Minimum Set-Aside election made by the owner. Tax credit units in projects operating under the "20/50" election may not have rents exceeding the 50% AMI rent limit. Tax credit units in projects operating under the "40/60" election may not have rents exceeding the 60% AMI rent limit. Tax credit units in projects operating under the "Average Income" election may not have rents exceeding the 80% AMI rent limit, and the average rent restriction across all program units within the project must be at or below 60 AMI%.

An owner may have also elected to rent a percentage of the units at lower rent limits (e.g., 20%, 30% or 40% AMI). The owner agent must comply with those additional elections as defined in the development's Final Application and Extended Use Agreement.

Developments funded by IHCDA prior to 2003 are both rent- and income-restricted at the AMI levels selected in their Final Application submitted to IHCDA and are required to meet those state set-asides identified and recorded in the Extended Use Agreement.

Developments funded in or after 2003 are rent-restricted at the individual AMI levels as selected in the Final Application submitted to IHCDA and recorded in the Extended Use Agreement. However, income restrictions for these developments might be set at the federal Minimum Set-Aside elected by the owner (either the 20/50 or 40/60 set-aside). The Final Application and Extended Use Agreement will identify if the lower restrictions apply to both income and rent limits or only to rent limits. This does not apply to projects electing the Average Income Minimum Set-Aside.

Example 1- Property funded prior to 2003: *XYZ Apartments is a 100% tax credit development with 100 units. The federal Minimum Set-Aside is 40/60, but in the Final Application and Extended Use Agreement the owner elected that 70 units would be at the 60% AMI level and 30 units would be at the 50% AMI level. The 60% AMI units must be charged no more than the applicable 60% AMI rent limit and must be occupied by households not exceeding 60% AMI at move-in. The 50% units must be charged no more than the applicable 50% AMI rent limit and must be occupied by households not exceeding 50% AMI at move-in. All units are both rent- and income-restricted at the state set-aside, as elected in the Final Application and recorded in the Extended Use Agreement.*

Example 2- Property funded in or after 2003: *XYZ Apartments is a 100% tax credit development with 100 units. The federal Minimum Set-Aside is 40/60, but in the Final Application and Extended Use Agreement the owner elected that 70 units would be at the 60% AMI level and 30 units would be at the 50% AMI level. The 60% AMI units must be charged no more than the applicable 60% AMI rent limit and must be occupied by households not exceeding 60% AMI at move-in. The 50% AMI units must be charged no more than the applicable 50% AMI rent limit BUT may be occupied by households earning up to 60% AMI at move-in if the Extended Use Agreement and Final Application state that the lower designations only apply to rent restrictions.*

For projects electing the Average Income Minimum Set-Aside, the income and rent restrictions must match for all units. For example, a 30% unit must be both income and rent-restricted at the 30% AMI level.

D. Gross Rent Floors

Every tax credit project has a gross rent floor, defined as the lowest rent limits that will ever be in place for that project. If the current year's HUD published MTSP limits drop below the gross rent floor, a project may continue to use the rent limits established by the gross rent floor. It is important to note that there is no floor for income limits.

For 9% tax credit projects, the gross rent floor is either the rent limit in effect at the placed-in-service date of the first building in the project (if elected by the owner) or on the allocation date (per the IRS this is the default gross rent floor lock-in). The allocation date is defined as the date of the Carryover Agreement. The owner's gross rent floor election can be found in the Carryover Agreement document. *NOTE: Since all projects are held harmless using the rent limits in effect at the placed-in-service date (as described in Part 4.2E below), there is no benefit to waiting and selecting to lock in the gross rent floor at time of placed-in-service. IHCDA recommends all owners elect to lock into the gross rent floor on the allocation date.

For 4% tax credit/ private activity tax-exempt bond projects, the gross rent floor is either the rent limit in effect at the placed-in-service date for the first building in the development (if elected by the owner) or on the determination letter date (per the IRS this is the default rent floor lock-in). *NOTE: Since all projects are held harmless using the rent limits in effect at the placed-in-service date (as described in Part 4.2E below), there is no benefit to waiting and selecting to lock in the gross rent floor at time of placed-in-service. IHCDA recommends all owners elect to lock into the gross rent floor on the determination letter date.

A project that places-in-service during the 45-day implementation period after the release of a new set of income and rent limits may rely on either set of limits (the old or new, whichever is more beneficial) for purposes of determining the gross

rent floor and/or hold-harmless limits that will apply to the property. See LIHC Newsletters #47, 48, and 50 for information on "relying" on income limits.

If an existing tax credit project receives a subsequent credit allocation for resyndication/rehabilitation, the gross rent floor is reset. The gross rent floor from the original allocation does not carry forward.

See Revenue Procedure 94-57 for more information on gross rent floor.

E. "Hold Harmless" Policy

The Housing and Economic Recovery Act of 2008 (HERA) amended Section 42 to include a "hold-harmless" policy for income and rent limits. According to the hold harmless provision, the income and rent limits for a particular project (as defined by the 8609 Line 8b election) will never decrease for any calendar year after 2008, even if there is a decrease in the HUD published limits for the county in which the project is located. However, a project is never eligible to use a set of limits if it was not placed-in-service during the time those limits were in effect. A multiple building project is considered placed-in-service on the date the first building in that project places in service.

Therefore, income and rent limits are not based solely on the county in which a development is located. Instead, limits are project-specific based on the placed-in-service date. If buildings within the same development are considered separate projects (i.e., if Line 8b of the 8609 is marked 'no'), then each building may have different sets of limits based on their different placed-in-service dates. Even if the multiple building project election is marked "yes," it is important to note that separate phases are always considered different projects and are likely to have different sets of income and rent limits.

A project that places in service during the 45-day implementation period after the release of a new set of income and rent limits may rely on either set of limits (the old or new, whichever is more beneficial) for purposes of determining the gross rent floor and/or hold-harmless limits that will apply to the property. See LIHC Newsletters #47, 48, and 50 for more information on "relying" on income limits.

For more information on properly implementing rent limits, see Part 4.1 G below.

F. HERA Special Rent Limits

In 2009, HUD began publishing "HERA special" limits. Where applicable, the HERA special limits are used by all tax credit projects that placed in service on or before December 31, 2008. However, not all counties will have HERA special limits every year. Projects that placed in service in 2009 or later are not eligible to use the HERA special limits, including projects that receive a subsequent credit allocation. Reminder: project is defined by the election on Line 8b of Form 8609. A multiple building project is considered placed-in-service on the date the first building in that project places in service.

A project (as defined by Line 8b of Form 8609) is eligible to use the HERA special limits if:

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

For more information on properly implementing income limits, see Part 4.1 D below. For additional guidance on the applicability of HERA special limits, see Low Income Housing Credit Newsletter Issue #35, May 2009.

G. Which Rent Limits Should Be Used?

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

1. A project that placed in service on or before 12/31/08 will use the current HERA special limits. If the county in which the project is located does not have HERA special limits published, then the project will use the regular limits for that county (see Step 2 below).
2. A project that placed-in-service on or after 1/1/09 will compare all sets of limits that were effective since the placed-in-service date and apply the highest set ("hold-harmless"). A project that placed-in-service after 12/31/08 will never be eligible for HERA special limits. For examples on applying this principle, see Part 4.1 D above.
3. Compare the rent limit from either step #1 or #2 above to the gross rent floor (see 4.2 D above) and use the higher of the two limits.

For additional assistance in determining the correct limits for a particular project, refer to the following online resources:
-HUD MTSP Income Limits Documentation System: http://www.huduser.org/portal/datasets/mtsp.html
-Novogradac & Company, LLP "The Rent and Income Limit Calculator©": http://www.novoco.com/products/rentincome.php

H. Section 8 Rents & Other Rental Assistance

Gross rent does not include any rental assistance payments (tenant-based or project-based) made to the owner to subsidize the tenants' rent, including Section 8 Housing Choice Vouchers or Project Based Vouchers (PBV), Section 8 Project Based Rental Assistance (PBRA), Section 811 Project Rental Assistance, Continuum of Care, or any comparable federal, state, or local government rental assistance program. The gross rent limit applies only to payments made directly by the tenant.

Example 1 from 8823 Guide page 11-5- Household Portion of Rent is Below Limit
A Section 8 household moved into a unit on January 1, 2000; the maximum LIHC gross rent is $500 and market rate is $600. Household pays $200 and the assistance (Section 8) pays $400; the total rent is $600. There is no noncompliance since the household portion of rent is below the maximum LIHC rent allowed.

Gross rent for Section 8 households can exceed the tax credit rent limit if (1) the owner receives at least one dollar of rental assistance payment on behalf of the household and (2) the rent limit is exceeded due to Section 8 requirements for calculating the tenant rent portion. If no rental assistance is provided (e.g., if the Housing Assistance Payment ["HAP"] portion is $0), gross rent may not exceed the tax credit rent limit. If a household was previously receiving HAP but HAP is reduced to $0 due to change in income or termination from the Section 8 program, the owner agent must immediately ensure that rent is adjusted to comply with the tax credit rent limit. The same rule applies for other federal rental assistance programs, including but not limited to Continuum of Care and Section 811 Project Rental Assistance.

Example 2 from 8823 Guide page 11-5: Tenant's Portion of Rent Exceeds Rent Limit
A Section 8 household with an annual income of $18,000 applies for an LIHC unit for which the rent is restricted to $500 and for which the market rent is $750. Assistance will pay a maximum of $500, and the applicant's portion is $600 (40% of income). Since the applicant is required to pay $600, Section 8 will pay $150. There is no noncompliance. Note: This example reflects HUD's requirement under the Section 8 housing choice program. The family share may not exceed 40 percent of the family's monthly adjusted income when the family initially moves into the unit or signs the first assisted lease for a unit.

For tenants with **tenant-based Housing Choice Vouchers**, a copy of either (1) the original Housing Assistance Payment (HAP) Contract and the current HAP Amendment from the public housing authority, or (2) a copy of the current HUD Form 50058 must be kept in the household's tax credit file to verify the Section 8 rental assistance received.

For tenants residing in units with **Section 8 Project Based Vouchers (PBV)**, a copy of either (1) the current HUD Form 50058 showing the amount of rental assistance, or (2) HUD Form 52530 Tenancy Addendum Section 8 Project-Based Voucher Program must be included in the file.

For tenants residing in units with **Section 8 Project Based Rental Assistance (PBRA) or Section 811 Project Rental Assistance (811 PRA)**, the current HUD Form 50059 showing the amount of rental assistance must be included in the file.

I. Rural Development (RD) Rents

Gross rent does not include any rental payment to the owner of the unit to the extent such owner pays an equivalent amount back to USDA Rural Housing Service under Section 515. As long as the owner pays back to Rural Development the rent amount that is above the tax credit limit (referred to as "the overage"), the unit is considered in compliance.

> *Example: The rent limit is $500 and the gross rent (sum of utility allowance and tenant paid rent) is $650. The owner provides documentation that the $150 that is above the tax credit rent limit has been remitted directly to Rural Development. The unit is in compliance even though the gross rent exceeds the tax credit rent limit.*

For tenants residing in units with USDA Rural Housing Service assistance, the current RD Form 3560-8 Tenant Certification must be included in the file.

J. Violations of the Rent Limit

The 8823 Guide states:

> "A unit is in compliance when the rent charged does not exceed the gross rent limitations on a monthly basis" (Page 11-8).
>
> "A unit is out of compliance if the rent exceeds the limit on a tax year basis or on a monthly basis. A unit is also considered out of compliance if an owner charges impermissible fees" (Page 11-9).

Per Page 11-10 of the 8823 Guide, once a unit has exceeded the applicable rent limit, that unit is out of compliance for the entire tax year, regardless of how quickly the rent is adjusted or if the tenant is reimbursed for the overcharge.

> "Once a unit is determined to be out of compliance with the rent limits, the unit ceases to be a low-income unit for the remainder of the owner's tax year. A unit is back in compliance on the first day of the owner's next tax year if the rent charged on a monthly basis does not exceed the limit. The owner cannot avoid the disallowance of the LIHC by rebating excess rent or fees to the affected tenants."

Therefore, if IHCDA discovers a violation of the rent limit for a unit, an 8823 will be issued and that unit will be considered out of compliance for the remainder of the year. A corrected 8823 will be issued with the correction date marked as the beginning of the next year, if the rent has been properly lowered and is now below the applicable limit. While refunding the overcharge does not prevent the 8823 from being issued, **IHCDA will still require the owner to reimburse the tenant and adjust the rent before a corrected 8823 will be issued for the unit.**

If the owner or management discovers that rent has been overcharged, IHCDA should be notified immediately and the owner should act to correctly adjust the rent and reimburse the overcharges. Noncompliance issues identified and

reported by the owner to IHCDA prior to notification of an audit will not result in issuance of 8823s. For more information on the owner's responsibility to report noncompliance, see Part 2.2 L.

Part 4.3|Allowable Fees and Charges

A. General Rule

Customary fees that are normally charged to all tenants, such as security deposits, pet deposits/fees, application fees, late payment fees, and parking fees (if such fees are customary in the neighborhood and the parking area was not included in tax credit eligible basis) are permissible. However, an applicant or tenant cannot be charged a fee for the work involved in completing the additional forms of documentation required by the LIHTC Program, such as the Tenant Income Certification and income/asset verification documents.

The 8823 Guide clarifies that refundable fees associated with renting units (such as security deposits) and one-time penalty fees (such as late payment fees and fees for prematurely breaking a lease, as long as such fees are clearly defined within the lease) are allowable fees that are excluded from the gross rent calculation.

B. Condition of Occupancy Rule (Optional Vs. Non-optional Fees)

Any fee that is charged for a service that is a condition of occupancy (i.e., a fee for a service that is non-optional / mandatory) must be included in the gross rent calculation when checking rent against the applicable rent limit. This is true even if federal or state law requires that the services be offered to tenants by the owner.

Assuming they are truly optional, fees may be charged for elected services or additional amenities (such as pet fees, fees for extra storage units, transportation, meals, etc.) and these fees are not included in the gross rent calculation. A service or amenity is considered optional only if (1) a tenant may opt out of the service or amenity without penalty still move in or continue to live at the development, and (2) "reasonable/practical alternatives" exist. A fee may only be charged if that service or amenity is provided to the tenant.

Any services the tenant pays for that are provided by the development (whether optional or non-optional) must be listed in the tenant's lease with the cost of each individual service clearly listed. See IRS Notice 89-6 and IRS Revenue Ruling 91-38.

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Per Treasury Regulation 1.42-11 Provision of services:

(a) General rule. The furnishing to tenants of services other than housing (whether or not the services are significant) does not prevent the units occupied by the tenants from qualifying as a residential rental property eligible for credit under Section 42. However, any charges to low-income tenants for services that are not optional generally must be included in gross rent for purposes of Section 42(g).

(b) Services that are optional.
  (1) *General rule.* A service is optional if payment for the service is not required as a condition of occupancy. For example, for a qualified low-income building with a common dining facility, the cost of meals is not included in gross rent for purposes of Section 42(g)(2)(A) if payment for the meals in the facility is not required as a condition of occupancy and a practical alternative exists for tenants to obtain meals other than from the dining facility.
  (2) *Continual or frequent services.* If continual or frequent nursing, medical, or psychiatric services are provided, it is presumed that the services are not optional and the building is ineligible for the credit, as is the case with a hospital, nursing home, sanitarium, lifecare facility, or intermediate care facility for the mentally and physically handicapped. See also 1.42-9(b).
  (3) *Required services.*

(i) General rule. The cost of services that are required as a condition of occupancy must be included in gross rent even if federal or state law requires that the services be offered to tenants by buildings owners.

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Example: Fees for paying with credit/debit card

Some owner agents may accept payment via credit or debit card using an onsite credit/debit card reader. A fee for making payment via credit or debit card can be passed onto the tenants if it is an optional fee. The fee would be considered optional if the tenants have alternative methods of paying rent that do not include a fee (e.g., cash, money order, check, etc.). In this scenario, credit/debit card payment would be an optional service offered for the tenants' convenience. The amount of the fee for paying with credit/debit card, as well as a list of all accepted alternative methods of payment, must be disclosed to all tenants. Furthermore, the fee may not exceed the actual costs incurred by the owner agent to cover technology costs and fees they incur for processing such payments. Owner agents must keep documentation showing the actual costs incurred and the amount of the fee being charged to tenants.

If credit/debit card is the only means of paying monthly rent, then the fee is not optional, but rather a condition of occupancy (as paying rent is a condition of occupancy). In this case, the credit/debit card fees would have to be included as part of the gross monthly rent calculation.

Example: Fees for making online payments

Some owner agents may accept online payment of rent. A convenience fee may be charged to the tenant and this fee would be considered optional if the tenants have alternative methods of paying rent that do not include a fee (e.g., cash, money order, check, etc.). In this scenario, the online payment would be an optional service offered for the tenants' convenience. The amount of the fee for paying online, as well as a list of all accepted alternative methods of payment, must be disclosed to all tenants. Furthermore, the fee may not exceed the actual costs incurred by the owner agent for offering online payment. Owner agents must keep documentation showing the actual costs of processing online payments and the amount of the fee being charged to tenants.

If online payments are the only means of paying monthly rent, then the fee is not optional, but rather a condition of occupancy (as paying rent is a condition of occupancy). In this case, the fees for online payments would have to be included as part of the gross monthly rent calculation.

C. Application Processing Fees

Reasonable application fees may be charged to prospective tenants to cover the actual cost of processing the application and checking criminal history, credit history, landlord references, etc. However, the fee cannot exceed the amount of the average expected out-of-pocket costs incurred by the owner agent for processing an application.

D. Mandatory Renter's Insurance

If renter's insurance is required as a condition of occupancy, then the amount of renter's insurance must be included in the gross rent calculation. In this scenario, the owner agent must obtain proof of renter's insurance for the tenant, locate the annual premium, and divide by 12 to obtain a monthly cost of renter's insurance. This monthly cost must then be added to the tenant-paid rent portion, the utility allowance, and any other non-optional fees when calculating gross rent.

E. Month-to-month Tenancy Fees

Although month-to-month fees may seem optional (i.e., the tenant could choose to renew the lease for another year), the 8823 Guide states that month-to-month fees are considered non-optional fees and are included in gross rent computation. Page 11-2 states:

"Required costs or fees, which are not refundable, are included in the rent computation. Examples include fee(s) for month-to-month tenancy and renter's insurance."

F. Prohibited Fees

The following fees may not be charged, regardless of whether they are included in the gross rent calculation:

1. Fees for work involved in completing the Tenant Income Certification and other program specific documentation. The owner agent cannot charge an applicant or tenant for costs incurred to receive or complete income verification forms. If there is a fee associated with obtaining verification, the owner agent may choose to pay the fee or may instead use a different source of verification.

2. Fees for inspecting a unit, preparing a unit for occupancy, or correcting deficiencies in a unit. The owner agent is responsible for maintaining all units in a manner suitable for occupancy at all times. If a tenant is to be charged decorating, cleaning, or repair fees, the owner agent must document the file with photos of the damage to prove that the unit was damaged by the tenant and is in condition beyond normal expected wear and tear. Charges cannot exceed the actual amount spent on repair. IHCDA will expect to see documentation in the tenant file as to the nature of the damage, including photos and receipts or invoices for the repair work.

   This requirement is not only a program requirement, but also a requirement under Indiana Code 32-31-7-6 which states that "at the termination of a tenant's occupancy, the tenant shall deliver the rental premises to the landlord in a clean and proper condition, excepting ordinary wear and tear expected in the normal course of habitation of a dwelling unit."

3. Fees for the use of facilities and amenities included in Eligible Basis. For example, an owner agent may not charge a tenant for the use of a clubhouse, swimming pool, parking area, etc. if those items were included in Eligible Basis. Tenants may be charged a security deposit for the use of common areas included in Eligible Basis if the deposit is refundable and a reasonable amount. If the facilities are damaged, the security deposit may be retained and/or the responsible tenant(s) may be charged fees in accordance with Item F.2 above. The nature and extent of the damage must be documented and the amount of security deposit that is not returned plus any fee charged may not exceed the actual costs of repair.

4. An owner agent may not charge pet deposits or fees for assistance animals (including both service and support animals). See Part 5.3B for additional information.

5. A "move-in fee" that is not a refundable security deposit or a reasonable application fee per Part 4.3C.

6. Surety bonds, security deposit insurance, or instruments similar to surety bonds or security bond insurance in lieu of or in addition to a security deposit.

7. Fees that are not customarily charged in rental housing, e.g. laundry room access fees.

8. Fees for processing a reasonable accommodation or modification request under Fair Housing.

9. Fees for processing an emergency transfer or other protection requested under VAWA.

Part 4.4|Utility Allowances

A. General Information

Gross rent includes an allowance for tenant-paid utilities. Utilities include heating, air conditioning, water heating, cooking, other electricity, water, sewer, oil, gas, and trash, where applicable. Utilities do not include telephone, cable television, or internet. *NOTE: HUD Form HUD-52667 "Allowances for Tenant-Furnished Utilities and Other Services" includes line items for range/microwave and refrigerator. These items are only included in the utility allowance calculation if they are not provided in the unit (i.e., if the tenant must furnish their own appliances).

If all utilities are paid by the owner, a utility allowance is not required. When utilities are paid directly to the utility provider by the tenant, a utility allowance must be used to determine maximum allowable rent. To be in included in the utility allowance, a utility must be paid directly by the tenants, not by or through the owner of the building. If the owner or a third-party (not the utility provider) bills the tenant for a utility, the payment designated for the utility must be considered rent and may not be included in the utility allowance (unless the utilities are sub-metered as described in Part 3.4 B below). The utility allowance for utility costs paid directly by the tenant must be subtracted from the applicable rent limit to determine the maximum allowable tenant-paid rent.

For example: If the rent limit on a unit is $650 and the tenant pays utilities with a utility allowance of $66 per month, the maximum allowable rent chargeable to the tenant is $584 ($650 minus $66).

B. Sub-metering

Some buildings in qualified low-income housing developments are sub-metered. Sub-metering measures tenants' actual utility consumption and tenants pay for the utilities they use. A sub-metering system typically includes a master meter, which is owned or controlled by the utility company supplying the electricity, gas, or water, with overall utility consumption billed to the building owner. In a sub-metered system, building owners use unit-based meters to measure utility consumption and prepare a bill for each residential unit based on consumption. The building owners retain records of resident utility consumption and tenants receive documentation of utility costs as specified in the lease.

Per IRS Notice 2009-44, utility costs paid by a tenant to the owner/development based on actual consumption in a sub-metered rent-restricted unit are treated as paid directly by the tenant for purposes of the LIHTC utility allowance regulations. The notice states:

> For purposes of § 1.42-10(a) of the utility allowance regulations, utility costs paid by a tenant based on actual consumption in a sub-metered rent-restricted unit are treated as paid directly by the tenant, and not by or through the owner of the building. For RHS-assisted buildings under § 1.42-10(b)(1), buildings with RHS tenant assistance under § 1.42-10(b)(2), HUD-regulated buildings under § 1.42-10(b)(3), and rent-restricted units in other buildings occupied by tenants receiving HUD rental assistance under § 1.42-10(b)(4)(i), the applicable RHS or HUD rules apply. For all other tenants in rent-restricted units in other buildings under § 1.42-10(b)(4)(ii):
>
> (1) The utility rates charged to tenants in each sub-metered rent-restricted unit must be limited to the utility company rates incurred by the building owners (or their agents);
>
> (2) If building owners (or their agents) charge tenants a reasonable fee for the administrative costs of sub-metering, then the fee will not be considered gross rent under § 42(g)(2). The fee must not exceed an aggregate amount per unit of 5 dollars per month unless State law provides otherwise; and

(3) If the costs for sewerage are based on the tenants' actual water consumption determined with a sub-metering system and the sewerage costs are on a combined water and sewerage bill, then the tenants' sewerage costs are treated as paid directly by the tenants for purposes of the utility allowances regulations.

The utility allowance regulations will be amended to incorporate the guidance set forth in this notice.

EFFECTIVE DATE
This notice is effective for utility allowances subject to the effective date in § 1.42-12(a)(4). Consistent with § 1.42-12(a)(4), building owners (or their agents) may rely on this notice for any utility allowances effective no earlier than the first day of the building owner's taxable year beginning on or after July 29, 2008.

C. Ratio Utility Billing System (RUBS)

While sub-metered utilities may be included in a utility allowance per IRS Notice 2009-44 (see 4.4 B above), utilities paid using a ratio utility billing system (RUBS) cannot be included in utility allowance.

RUBS is a billing system, usually used only for water or sewer, that uses one master meter for the entire property or building instead of separate sub-meters for each unit. The owner agent then divides the total utility cost for the property among all tenants using a determined formula. The formula is generally based on factors such as number of occupant in the units, square footage of the unit, number of bathrooms in the unit, etc.

Utilities paid through RUBS are not includable in utility allowances because RUBS bills tenants using an allocation formula instead of actual consumption. If tenants pay a utility fee based on RUBS, the actual amount paid each month must be counted as a non-optional fee that is counted in the gross rent calculation. The owner agent must ensure on a monthly basis that the gross rent (including the RUBS-based utility fee for the month) does not exceed the applicable rent limit.

D. Approved Utility Allowance Sources

The IRS requires that utility allowances be set in accordance with IRS Notice 89-6 and Treasury Regulation 1.42-10 which list the following sources of utility allowances for LIHTC developments. Utility allowances are a building rule and must be applied on a building basis as follows:

1. **Rural Development (RD) Assisted Buildings:** Buildings assisted by RD or with RD-assisted tenants must use the applicable USDA Rural Development approved utility allowances. If a building is both RD-assisted and HUD-regulated, use the RD approved utility allowance.

2. **HUD-Regulated Buildings (e.g., Section 8 Project Based Rental Assistance):** Must use the applicable HUD approved utility allowance that is specific to the building. However, if the building is also RD-assisted, use the RD approved utility allowance instead. A building is considered HUD-regulated if HUD reviews the rents and utility allowances for the building on an annual basis.

3. **HUD Assisted Units (e.g., Section 8 Housing Choice Voucher Tenant-Based Rental Assistance):** For those individual units occupied by residents that receive HUD tenant-based rental assistance (e.g., a Section 8 Housing Choice Voucher), the owner must use the applicable utility allowance as provided by the Public Housing Authority (PHA) administering the rental assistance. However, if the building is RD-assisted or HUD-regulated, use the RD or HUD approved utility allowance instead. *NOTE: The PHA chart was not an allowable option for HOME compliance for projects that received a commitment of HOME funds after 8/23/13 from time of commitment through April 20, 2025. Those projects were required to use a project-specific utility allowance during that time period. This rule is no longer effective as of April 20, 2025. PHA UA charts are now allowable for all HOME projects.

4. **Buildings that are not RD-Assisted or HUD-Regulated:** LIHTC buildings that are not RD-assisted or HUD-regulated may use any of the following utility allowance options:
    - Use the applicable local PHA's utility allowance. Owner agents are advised to check every 60 days to see if the PHA has updated its UA charts. *NOTE: The PHA chart was not an allowable option for HOME compliance for projects that received a commitment of HOME funds after 8/23/13 from time of commitment through April 20, 2025. Those projects were required to use a project-specific utility allowance during that time period. This rule is no longer effective as of April 20, 2025. PHA UA charts are now allowable for all HOME projects;
    - Use the county-specific PHA utility allowance schedule from IHCDA's utility allowance webpage. *NOTE: The IHCDA county charts were not an allowable option for HOME compliance for projects that received a commitment of HOME funds after 8/23/13 from time of commitment through April 20, 2025. Those projects were required to use a project-specific utility allowance during that time period. This rule is no longer effective as of April 20, 2025. PHA UA charts are now allowable for all HOME projects;
    - Utility Company Estimate: An interested party may request the utility company's written estimation of actual utility consumption for a unit of similar size and construction in the geographic area in which the building is located. Such an estimate must be in writing, signed by an appropriate local utility company official, prepared on the utility company's letterhead, and maintained in the development file. Prior to July 29, 2008, use of the actual utility company estimate rates, whether higher or lower, was required once they had been requested. With the IRS revised utility allowance regulations, this is no longer a requirement and the owner is not stuck with this as a permanent election.
    - Options 5, 6, or 7 as described below. *NOTE: These options below are all project-specific utility allowances and are eligible for use by HOME projects that received a commitment of HOME funds after 8/23/13.

5. **Energy Consumption Model:** Upon request, IHCDA will approve a utility allowance estimate for a development based on actual tenant consumption (utility usage) data. Requests for approval of an Energy Consumption Model Estimate must be made by submitting the letter entitled "Approval Request Letter- Energy Consumption Model" (available in Appendix C) to ua@ihcda.in.gov. Along with the request letter, the owner must complete and submit the "IHCDA Tenant Usage Data Form" (available in Appendix C), a $100 fee, and a copy of the receipt confirming payment of the fee. This usage data form must include information for 30% (rounded up) of the units of each unit type (flat or townhome) for each bedroom size. (Note: There are two separate usage data forms for flats and townhomes). The usage data must contain a full 12 months of consumption. The usage data forms may be completed by the owner, management agent, or an approved qualified engineering/professional firm on behalf of the owner (see Option #7 below for more information on using approved engineers).

    To be included in the estimate, a unit must have at least 44 weeks of continuous consumption data (i.e., the unit cannot have been vacant for more than eight weeks of the year). The consumption data can be no more than 60 days old. Additionally, the owner must submit verification of the tax rate for the county in which the development is located.

    Example: A development has 48 LIHTC units with 20 one-bedroom units and 28 two-bedroom units. The sample must include 30% of the one-bedroom units (6 units) and 30% of the two-bedroom units (9 units rounded up from 8.4).

    For new construction developments or renovated buildings with less than 12 months of consumption data available, IHCDA will allow consumption data for the 12-month period of units of similar size and construction in the geographic area in which the new development is located. The existing development that will be used for the comparison must be in the State of Indiana and must be in the same climate zone as the development for which the estimate is being completed. Please reference the Climate Zone Map in Appendix C. Once the project achieves 90% occupancy for 90 consecutive days, the owner is required to resubmit usage data to IHCDA using the actual units in the development.

At the time the owner submits the request for approval to IHCDA, they must also make the proposed utility allowance available to all tenants. The owner may not implement the utility allowance until the **later of** (1) the date of IHCDA approval or (2) at least 90 days from the date the proposed utility allowance was submitted to IHCDA and made available to the tenants.

When IHCDA approves the estimate, the owner will receive an IHCDA Utility Allowance Approval letter.

6. **HUD Utility Schedule Model:** The owner may calculate utility allowances using the HUD Utility Schedule Model found at https://www.huduser.gov/portal/resources/utilallowance.html. Requests for approval of a HUD Utility Schedule Model must be made by submitting the letter entitled "Approval Request Letter- HUD Utility Schedule Model" (available in Appendix C) to ua@ihcda.in.gov Along with the request letter, the owner must also submit the model, the supporting documentation used in the model, a $100 fee, and a copy of the receipt confirming payment of the fee.

   At the time the owner submits the request for approval to IHCDA, they must also make the proposed utility allowance available to all tenants. The owner may not implement the utility allowance until the **later of** (1) the date of IHCDA approval or (2) at least 90 days from the date the proposed utility allowance was submitted to IHCDA and made available to the tenants.

   When IHCDA approves the estimate, the owner will receive an IHCDA Utility Allowance Approval letter.

7. **IHCDA/Qualified Engineer Estimate:** The owner may use an independent licensed engineer or qualified professional approved by IHCDA to calculate a utility estimate model. A list of approved engineers/professionals is maintained in Appendix C. The qualified professional must (1) be approved by IHCDA and (2) not be related to the development owner as defined in Internal Revenue Code Section 267(b) or 707(b). To become IHCDA approved, the engineer/ qualified professional must submit the "Application for Approved Utility Allowance Provider" (available in Appendix C).

   Per IRS requirements, the estimate must consider local utility rates, property type, climate and degree-day variables by region in the state, taxes and fees on utility charges, building materials, and mechanical systems. Considerations under "property type" should include the types of appliances, building location, building orientation, and unit size. Alternatively, the qualified engineer may create an allowance using actual consumption data as described in Option #5 above.

   Requests for approval of an IHCDA/Qualified Engineer Estimate must be made by submitting the letter entitled' Approval Request Letter- Qualified Engineer Estimate" (available in Appendix C) to ua@ihcda.in.gov. Along with the request letter, the owner must also submit the model, the supporting documentation used in the model, a $100 fee, and a copy of the receipt confirming payment of the fee.

   At the time the owner submits the request for approval to IHCDA, they must also make the proposed utility allowance available to all tenants. The owner may not implement the utility allowance until the **later of** (1) the date of IHCDA approval or (2) at least 90 days from the date the proposed utility allowance was submitted to IHCDA and made available to the tenants.

   When IHCDA approves the estimate, the owner will receive an IHCDA Utility Allowance Approval letter.

E: Updating Utility Allowances

The owner agent must use the most current applicable utility allowance and update utility allowances at least annually. Owner agents may combine utility allowances from different sources. When using multiple utility allowance sources for

different utility types, the owner agent must clearly document which source is being used for each utility type. The owner agent may elect to change the utility allowance source from year to year.

To remain in compliance, owner agents must utilize the correct and most current utility allowance to properly determine rents. An increase in the utility allowance will increase the gross rent and may cause the gross rent to be greater than the maximum allowable rent, in which case the tenant-paid rent portion must be lowered. When a utility allowance change causes gross rent to exceed the allowable rent limit, rents must be adjusted within 90 days of the effective date of the change to avoid violating the rent limit. The owner cannot wait until the next recertification to adjust rent.

Utility allowances must be reviewed and updated as follows:

- If there is a change in who pays the utilities
- Within 90 days of an allowance update by IHCDA, HUD, Rural Development, or the local PHA
- At least once per calendar year for developments or buildings with documentation from a local utility supplier
- At least once per calendar year for developments or buildings using an IHCDA/Qualified Engineer Estimate, HUD Utility Schedule Model, or Energy Consumption Model. These utility allowance types must be submitted to IHCDA for approval prior to implementation.

F: Noncompliance with Utility Allowances

Tax credit units are considered out of compliance when the gross rent exceeds the applicable rent limit. In LIHC Newsletter Issues #44 May 2011 and #45 July 2011, the IRS clarified that utility allowance issues that do not cause rent limits to be exceeded should not be reported via Form 8823. However, if use of an incorrect or outdated utility allowance causes rent limits to be exceeded, an 8823 will be issued and both line items 11G (violation of gross rent limit) and 11M (utility allowance noncompliance) will be checked as out of compliance on the form. For additional information on utility allowance compliance and noncompliance issues, see Chapter 18 of the 8823 Guide.

Therefore, determining noncompliance related to utility allowances requires a two-pronged test. If the answer to both questions is yes, then an 8823 will be issued to report noncompliance.

1. Did the owner make an error when applying the correct utility allowance?
2. Did the error cause the rent paid by the tenant(s) to exceed the applicable rent limit?

Utility allowance noncompliance may occur when:

1. Rents are not updated within the 90-day time after a new utility allowance is effective;
2. The owner agent did not update the utility allowance annually;
3. The wrong utility allowance type was used (for example the HUD allowance was not used for a HUD-regulated building or the RD allowance was not used for an RD regulated building);
4. The utility allowance was incorrectly calculated;
5. Utilities are tenant-paid but a utility allowance was not used; or
6. The owner agent did not maintain proper documentation to show how the utility allowance was computed.

Section 5- Compliance Regulations

The following section highlights some of the statutory and regulatory provisions directly affecting compliance. However, this is not meant as an exhaustive listing of compliance regulations (see the Preface and Disclaimer on Page 1).

Part 5.1|Rules Governing the Eligibility of Particular Residential Units

A. Empty Units

Vacant units that have never been occupied (referred to as "empty units") cannot be counted as low-income units but must be included in the total unit count for purposes of determining the Applicable Fraction. The transfer of existing tenants to empty units is not allowed for purposes of meeting the Minimum Set-Aside or Applicable Fraction- upon such a transfer the previously occupied unit gains the status of an empty, never-occupied unit.

B. Vacant Unit Rule

Vacant units formerly occupied by qualified low-income households may continue to be treated as occupied by a qualified low-income household for purposes of the Minimum Set-Aside and Applicable Fraction requirements (as well as for determining Qualified Basis), provided that reasonable attempts are being made to rent the unit (or the next available unit of comparable or smaller size) to an income-qualified household before any units in the development were or will be rented to a nonqualified household. The owner agent must document that reasonable attempts were made to rent vacant tax credit units before renting vacant market-rate units.

The definition of reasonable attempts to rent tax credit units may differ between projects. Per Revenue Ruling 2004-82:

> "What constitutes reasonable attempts to rent a vacant unit is based on facts and circumstances, and may differ from project to project depending on factors such as the size and location of the project, tenant turnover rates, and market conditions. Also, the different advertising methods that are accessible to owners and prospective tenants would affect what is considered reasonable."

Units cannot be left permanently vacant and still satisfy the requirements of the LIHTC program. Vacant units must remain suitable for occupancy and cannot be left in an uninhabitable condition or cannibalized for parts. IHCDA reserves the right to question vacancies that are noted during a physical inspection, file review, or Annual Owner Certification review, especially when there is a high quantity of vacancies or when units have been vacant for longer than 90 days.

Note: The Vacant Unit Rule does not apply for developments that have been approved for the Extended Use Policy. For more information on the Extended Use Policy see Part 8.1, specifically part 8.1 D, Compliance Requirements.

C. 140% Rule/Next Available Unit Rule

1. General Rule

Under § 1.42-15(a), a low-income unit in which the aggregate income of the occupants of the unit rises above 140% of the applicable income limitation under § 42(g)(1) is referred to as an "over-income unit."

If the income of the occupants of a qualifying unit increases to more than 140% of the federal Minimum Set-Aside (i.e. more than 140% of the 50% AMI limit for 20/50 projects or more than 140% of the 60% AMI limit for 40/60 projects), due either to an increase in income or a decrease in the Area Median Gross Income subsequent to the initial income qualification, the unit may continue to be counted as a low-income unit as long as the following criteria is met: 1) the unit continues to be rent-restricted at the state set-aside, and 2) the next available unit of comparable or smaller size in the same building is rented to a qualified low-income household.

If the income of the occupants of a qualifying unit increases over the140% limit and if any residential unit of comparable or smaller size in the same building is occupied by a new resident whose income exceeds the limit, then the qualifying unit will no longer qualify as a low-income unit and the building is out of compliance with the Next Available Unit Rule. The determination of whether the income of the occupants of a qualifying unit qualifies for the purposes of the low-income set-aside is made on a continuing basis, with respect to both the household's income and the qualifying income for the location, rather than only on the date the household initially occupied the unit. In developments containing more than one low-income building, the Next Available Unit Rule applies separately to each building in the development. Additionally, the property must maintain all state and federal set-aside requirements stated in the development's Final Application and recorded in the Deed Restriction.

As described above, for tax credit projects the Next Available Unit Rule is a building rule. However, for tax exempt bond projects that do not also have tax credits, the Next Available Unit Rule is a project rule. For projects with both tax credits and tax-exempt bonds, the Next Available Unit rule is a building rule.

2. Next Available Unit Rule at Mixed-Income Projects

In mixed-income projects, the Next Available Unit Rule may cause market rate units to be converted into tax credit units. The owner must continue renting the next available unit of comparable or smaller size to a tax credit eligible household until the Applicable Fraction is restored. Therefore, multiple market units may have to be converted into tax credit units until the Applicable Fraction is restored (remember the Applicable Fraction includes both the unit and floor space fraction).

Once the Applicable Fraction is restored (without counting the unit that invoked the Next Available Unit Rule), the over-income unit may then be converted from tax credit to market rate status and the rent may be raised as allowed by the language in the tenant's lease.

Example 1: In Compliance

A building contains 10 units of equal size. Units 1-7 are qualified low-income units, Units 8 and 9 are market rate units, and Unit 10 is a currently vacant market rate unit. The Applicable Fraction of the building is 70%. On September 1, the income of the tenants in Unit 4 is determined to exceed the 140% limit. The rent for this unit continues to be rent-restricted, and therefore the building continues to be in compliance and the Applicable Fraction decreases to 60%. In order to remain in compliance, Unit 10 (the vacant market rate unit) must be rented to a qualified household to replace Unit 4 as a qualified low-income unit. On November 1, a qualifying household moves into Unit 10, thus the current Applicable Fraction is restored at 70%. When the lease language allows, Unit 4 may be converted from tax credit to market rate.

Example 2: Out of Compliance

A building contains 10 units of equal size. Units 1-7 are qualified low-income units, Units 8 and 9 are market rate units, and Unit 10 is a currently vacant market rate unit. The Applicable Fraction of the building is 70%. On September 1, the income of the tenants in Unit 4 is determined to exceed the 140% limit. The rent for this unit continues to be rent-restricted, and therefore the building continues to be in compliance and the Applicable Fraction decreases to 60%. On November 1, a market rate household moves into Unit 10. At the time of the move in, the current Applicable Fraction was equal to 60%, excluding all over-income units. The market rate unit moving into Unit 10 is a Next Available Unit Rule violation and all over-income units (Unit 4) cease to be treated as low-income units. The date of noncompliance is November 1.

Example 3:

A property contains 6 units. Units 1-3 are 1000 ft^2. Unit 1 is a tax credit unit and Units 2 and 3 are market rate. Units 4-6 are 800 ft^2. Units 4 and 5 are tax credit units and Unit 6 is currently vacant market rate unit. The assigned Applicable Fraction is 48%. The current floor space fraction is 2600 ft^2 /5400 ft^2 for a total of 48.15%. The current unit fraction is 3/6 for a total of 50%. The current Applicable Fraction is 48.15% (the lower of the unit fraction vs. the floor space fraction) which is in compliance with the assigned fraction of 48%.

On September 1, the income of the tenants in Unit 1 is determined to exceed the 140% limit. The rent for this unit continues to be rent-restricted, and therefore the building continues to be in compliance and the Applicable Fraction (not counting the over-income unit) decreases to 29.63% (unit fraction is 2/6 or 33.33% and the floor space fraction is 1600/5400 or 29.63%).

On November 1, the management moves a qualified tax credit household into Unit 6 (the vacant market rate unit) converting the unit from market rate to tax credit. The unit fraction (excluding the over-income unit) is now 3/6 (50%) but the floor space fraction is still below the assigned fraction at 2400/5400 (44.44%). Therefore, the next available unit rule is still in effect, even though one market rate unit has already been converted to tax credit. Unit 1 (the over-income unit) will continue to be rent-restricted.

Now on January 1 of the following year, the market rate family in Unit 2 vacates the unit. Management moves in a qualified household. The unit fraction is now 4/6 (66.67%) and the floor space fraction is 3400/5400 (62.96%), for a total Applicable Fraction of 62.96%. Since the fraction has been restored (without including the over-income unit), the over-income unit (Unit 1) can now be converted to market rate when lease language allows and no longer has to be rent-restricted.

3. Next Available Unit Rule at 100% Tax Credit Projects

Noncompliance with the Next Available Unit Rule can have significant consequences even in 100% LIHTC buildings. If any comparable unit that is available or that subsequently becomes available is rented to a non-qualified resident, all over-income comparably sized or larger units for which the available unit was a comparable unit within the same building lose their status as low-income units and are out of compliance.

Example: A property contains 10 units of equal size. All 10 units are qualified low-income units. The Applicable Fraction of the building is 100%. On September 1, the income of the tenants in Unit 4 is determined to exceed the 140% limit. The rent for this unit continues to be rent-restricted, and therefore the property continues to be in compliance. On November 1, a non-qualified household moves into Unit 10, due to an error. At the time of the move-in, the current Applicable Fraction was equal to 90%, excluding all over-income units. The non-qualified household moving into Unit 10 caused a Next Available Unit Rule violation and all over-income units (Units 4 & 10) cease to be treated as low-income units. The Applicable Fraction is now 80% and the date of noncompliance is November 1.

However, per page 14-5 of the 8823 Guide, the Next Available Unit Rule is only violated for 100% tax credit projects if:

1. Management fails to rent a unit to an income-qualified household and cannot exhibit due diligence when completing the initial certification; OR
2. Management deliberately rented the unit as a market-rate unit.

If due diligence can be demonstrated, the violation is reported on Form 8823 only as an over-income move-in event and not as an Available Unit Rule violation.

4. Additional Notes

-Section 1.42-15(c), provides that a unit is not available for purposes of the Next Available Unit Rule when the unit is no longer available for rent due to contractual arrangements that are binding under local law (for example, a unit is not available if it is subject to a preliminary reservation that is binding on the owner under local law prior to the date a lease is signed or if the unit is occupied).

-The fact that a household's income exceeds the 140% limit at recertification is not considered good cause for eviction or termination of tenancy.

-Once the Next Available Unit Rule has been invoked by an over-income household, the rule can be satisfied if: (1) the over-income household experiences a subsequent decrease in income that makes total household income fall below 140% of the federal Minimum Set-Aside income limit; or (2) if the applicable income limits decrease and the household is no longer above 140% of the federal Minimum Set-Aside income limit.

-The Next Available Unit Rule does not apply for developments that have been approved for the Extended Use Policy. For more information on the Extended Use Policy see Part 8.1.

5. Next Available Unit Rule for Projects That Have Elected Income Averaging

For projects that have elected the Average Income Minimum Set-Aside, the Next Available Unit Rule is invoked if a household's income at recertification exceeds "140% of the greater of 60% of AMI or the designated limit applicable to the unit."

- For a unit designated at 20%, 30%, 40%, 50%, or 60% AMI, the Next Available Unit Rule is invoked if household income at recertification exceeds 140% of the 60% AMI income limit.
- For a unit designated at 70% AMI, the Next Available Unit Rule is invoked if household income at recertification exceeds 140% of the 70% AMI income limit.
- For a unit designated at 80% AMI, the Next Available Unit Rule is invoked if household income at recertification exceeds 140% of the 80% AMI income limit.

D. Unit Transfer of Existing Tenants

When a transfer between units is permitted, the household's lease and Tenant Income Certification are moved over to the new unit. Management does not need to execute a new lease or a new TIC for a transfer but must report the transfer as a tenant event in IHCDA's online reporting system. The household's annual recertification effective date remains the anniversary date of the initial move-in, not the transfer date.

Management is not permitted to transfer qualifying tenants to non-qualified vacant units (i.e., empty units that have never been occupied by qualified households) in order for the development to meet the Minimum Set-Aside requirements elected at the time of application. Upon such a transfer the previously occupied unit gains the status of an empty, never-occupied unit. One household cannot be used to qualify multiple units.

The unit transfer rule is a project rule, so proper implementation is based on the definition of project as defined on Form 8609 Line 8b.

1. Unit Transfers within the Same Building

Effective September 6, 1997, the Next Available Unit Rule was modified to allow residents of LIHTC units to transfer to other units ***within the same building*** without having to re-qualify for the program. The vacated unit assumes the status that the newly occupied unit had immediately before the transfer (i.e., the units swap status). This provision applies only to households under leases entered into or renewed after September 26, 1997 and is not retroactive. For prior leases, all transfers, including those within the same building, must have been treated as new move-ins.

The main implication for this change in regulation is that households that are over-income at recertification have the ability to move into a different unit within the same building without being disqualified from the program.

2. Unit Transfers Outside the Same Building

Developments that contain multiple buildings within one project may allow residents of LIHTC units to transfer to other LIHTC units outside of the same building (but within the same the project) without having to recertify them for the program, similar to unit transfers within the same building. However, the transferring household's income may not be above the 140% AMI income limit. The vacated unit assumes the status the newly occupied unit had immediately before the current resident occupied it (i.e., the units swap status). NOTE: This provision applies only if the owner has selected "Yes" under Part II 8b on the IRS Form 8609 to the question, "Is the building part of a multiple building project?" While a household may transfer between buildings within the same project, transfers are not permitted between different phases of a development. A household that wishes to transfer into a different phase is transferring into a different project and must be treated as a new move-in in the manner described below.

If the owner has selected "No" under Part II 8b on the IRS Form 8609 to the question, "Is the building part of a multiple building project?" then a household must be treated as a new move-in if it desires to transfer to a LIHTC unit in a different building. All application, certification, and verification procedures must be completed for the transfer including the execution of new income and asset verifications to determine continued eligibility, a new Tenant Income Certification, and a new lease.

Part 5.2|Rules Governing the Eligibility of Particular Tenants and Uses

A. Household Composition

When determining household size for purposes of implementing the correct income limits, do not include live-in aides, guests, or foster children and foster adults as household members. See Part 5.2 F for information on live-in aides.

A household has the right to decide whether or not to include individuals permanently confined to a hospital or nursing home as a household member. If the individual is included as a household member, their income must be certified and included in household income.

Military members away on active duty are only counted as household members if they are the head, spouse, or co-head or if they leave behind a spouse or dependent child in the unit.

All other individuals, including temporarily absent family members (e.g., dependents away at school, etc.), unborn children, and children in joint custody agreements that are in the unit at least 50% of the time, must be included as household members for purposes of determining the applicable income limit.

Household composition may change after the initial tenant(s) moves into a unit. However, at the time of application an applicant should be asked if there are any expected changes in household composition during the next 12 months. If so, the composition change and any subsequent changes in estimated income should be reflected on the initial Tenant Income Certification.

If all original members of a household vacate a unit, the remaining members may have to be treated as a new move-in, and if so, would no longer be treated as a qualified unit if the current household's income is above the LIHTC limits*. To determine if at least one of the original members of the household still resides in the unit, household composition information must include the size of the household and the names of all individuals residing in the unit. This information must be gathered annually at recertification and any time a change in household composition occurs.

*See Part 6.6 B for more information and examples on documenting changes in household composition and certifying new household members.

B. Student Status

1. General Rule and Definitions

Student status and household composition must be monitored carefully. A unit that becomes occupied entirely by full-time students could become a non-qualified household that is no longer tax credit eligible. This section only defines the tax credit student status rule. Other programs (Section 8, RD, and HOME) use the Section 8 student status rule which is different than the LIHTC rule. If a project has multiple funding sources, a household must meet all applicable student status rules in order to qualify.

For purposes of the LIHTC Program, IRC § 151(c)(4) defines a "student" as an individual, who during parts of each of five calendar months (may or may not be consecutive) during the calendar year in which the taxable year of the taxpayer begins, is a full-time student (based on the criteria used by the educational institution the student is attending) at an educational organization described in IRC §170(b)(1)(A)(ii). The number of credit hours and the definition of full-time are defined by the school the student attends.

An educational organization, as defined by IRC §170(b)(1)(A)(ii), is one that normally maintains a regular faculty and curriculum, and normally has an enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. This term includes elementary schools (kindergarten inclusive), junior and senior high schools, colleges, universities, and technical, trade and mechanical schools. This does not include on-the-job training courses. The full-time student definition applies to students taking courses online if they are considered full-time by the educational organization.

Most households in which <u>all</u> members are full-time students are not LIHTC eligible, and units occupied by these households may <u>not</u> be counted as LIHTC units, even if the household has an income that would qualify under the applicable income limits. A household with an unborn child does not invoke the full-time student rule since at least one household member (the unborn child) is not a full-time student.

2. Student Status Exceptions

There are five exceptions to the full-time student restriction. Full-time student households that are income eligible and that satisfy one or more of the following conditions can be considered an eligible household. A household comprised entirely of full-time students may not be counted as a qualified household under the LIHTC program unless it meets one of the following five exceptions:

i. All household members are full-time students, and such students are married and are ***<u>entitled</u>*** to file a joint tax return.

Note: Revenue Ruling 2013-17 (released August 2013) states that for federal tax purposes, the terms "spouse," "husband and wife," "husband," and "wife" include an individual married to a person of the same sex, if the individuals are lawfully married under state law. This applies to a marriage that was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is living in a state that does not recognize the validity of same-sex marriages. The terms "spouse," "husband and wife," "husband," and "wife" do not include individuals (whether of the opposite sex or the same sex) who have entered into a registered domestic partnership, civil union, or other similar formal relationship under state law that is not denominated as a marriage under the laws of that state. Therefore, the full-time student status exception for students who are married and entitled to file a joint tax return applies to married same sex couple as described above. Furthermore, the exception can be applied retroactively to same-sex couples living in tax credit units: for example, if a same-sex couple is in the process of being evicted because they are both full-time students and were determined to be ineligible under the exception, the exception can be applied retroactively, and the couple does not violate the full-time student rule.

Required Documentation: Copy of the most recent tax return or the marriage license.

ii. The household consists entirely of single parents and their children, and such parents and children are not tax dependents of another individual, with the exception that the children may be claimed by the absent parent. Single parent means that only one of the parents lives in the unit. Therefore, the exemption is not met if both parents live in the unit but are not married. Consisting "entirely of single parents and their children" means that the only household members are single parents and their children. Therefore, if one member of the household is not a single parent or his/her child, then the exemption is not met. For example, if the household composition is a single mother, her two children, and a family friend, the exemption is not met because the family friend is not a single parent or his/her child. However, if the household was a single mother, her two children, a family friend who is also a single mother and her child, then the household would meet the exemption since all members are single parents and their children.

Required Documentation: Copy of the most recent tax return.

iii. At least one member of the household receives assistance under Title IV of the Social Security Act [Aid to Families with Dependent Children (AFDC) or Temporary Aid to Needy Families (TANF)].

Other forms of assistance such as food stamps, Social Security, and SSI are <u>not</u> considered exemptions under Title IV and therefore receipt does not make a household eligible under this exemption.

Required Documentation: Third-party verification of the AFDC / TANF award.

iv. At least one member of the household is enrolled in a job training program receiving assistance under the Job Training Partnership Act (replaced by the Workforce Initiative Act) or similar federal, state, or local laws. The mission of the Job Training Partnership Act, as amended by the Job Training Reform Amendments of 1992 and the School-to-Work Opportunities Act of 1994 Sec. 2 is as follows:

It is the purpose of this Act to establish programs to prepare youth and adults facing serious barriers to employment for participation in the labor force by providing job training and other services that will result in increased employment and earnings, increased educational and occupational skills, and decreased welfare dependence, thereby improving the quality of the work force and enhancing the productivity and competitiveness of the nation.

Note: IHCDA considers the Veterans Retraining Assistance Program (VRAP) as an eligible program under this exemption.

Required Documentation: Third-party verification of enrollment and a mission statement from the job training program.

v. At least one member of the household was previously under the care and placement responsibility of the state agency responsible for administering a plan under Part B or Part E of the Title IV of the Social Security Act. The member claiming to have been a foster child must have been placed into foster care through an official state foster agency. NOTE: This exemption only applies to eligibility determinations made on or after 7/30/08.

Required Documentation: Third-party verification from the foster care agency or self-affidavit from the tenant if third-party verification cannot be obtained.

3. Implementing the Student Status Rule

For purposes of qualifying households containing students, IHCDA will:

- Consider a single person household ineligible if they are a full-time student at the time of initial occupancy, has been a full-time student for parts of five or more months out of the calendar year (the five months need not be consecutive), or will be a full-time student at any time during the certification period, unless the individual meets one of the student exceptions described above;
- Consider a household of students eligible if it includes at least one part-time student, one non-student, or if the household meets one of the student exemptions described above;
- Consider a household containing full-time students and at least one child (who is not a full-time student) or unborn child an eligible household.

Example- "5 months out of the calendar year"
An applicant applies to live in a tax credit unit on June 2, 2024. She graduated college on May 16, 2024 and will be living in the unit by herself. Since the applicant was a full-time student for parts of five months of the calendar year (January-May), she is ineligible for the tax credit unit, even though she is no longer a student. The applicant could apply again in January 2025, if she certified that she would not be returning to school full-time during that calendar and certification year.

REMINDER: If at least one member of the household is not a student or is a part-time student, then the household is not considered a full-time student household and is a LIHTC eligible household (if income-qualified).

4. Student Status Documentation

IHCDA requires that all tax credit developments use a version of student status self-certification form released by the IRS in the Revised 8823 Guide as "Exhibit 17-1: Student Status Verification on page 17-5 of the Guide. A PDF version of the form, entitled "Student Status Self-Certification for LIHTC" is available online in IHCDA's compliance forms as Form #35. This form, or a substantially similar form, must be included in all tax credit tenant files, and a separate form must be completed by each adult household member. This policy applies to all move-in and recertification files (including recertification files for 100% tax credit projects) with an effective date on or after 5/1/10. If an applicant or tenant indicates part-time status or claims an exemption on the certification form, IHCDA will expect to see third-party documentation verifying the information provided.

IHCDA requires owners to include a lease provision in the lease or lease addendum for all LIHTC units requiring tenants to notify management of any change in student status during the lease term. If student status changes at any time, the household's tax credit eligibility must be re-evaluated.

5. Important Distinctions between Student and Income Eligibility Rules

Student status is treated differently than income eligibility in several important ways:

-While income eligibility is based on anticipated income for the next 12 months, student status eligibility must consider not only if the applicant/tenant is or anticipates becoming a student within the next year, but also whether that applicant/tenant was previously a student parts of any five months of the current calendar year. In this way, while income eligibility is only looking forward, student status eligibility is looking forward and backward at student history.

-Income verifications are not required at recertification for 100% tax credit projects. However, those projects must continue to certify student status on an annual basis. HERA eliminated the annual income verification requirement, but not the student status requirement for recertifications.

-A change in student status at any time, even during the middle of a lease term, can immediately affect eligibility. Once a household income qualifies, they are considered income eligible regardless of future changes in income (although the Next Available Unit Rule may go into effect). However, a household that was eligible at move-in can later become ineligible based on student status, either at annual recertification or in the middle of a lease term.

C. Unborn Children and Child Custody

An owner agent must count an unborn child (or children) when determining household size and applicable income limits. The owner agent must obtain a self-certification from the household certifying the pregnancy and such statements must be placed in the tenant file. If the unborn child has been self-certified by the household, then it must be included in household size. Per the HUD Handbook 4350.3 Appendix 3, the owner "may not verify further than self-certification"

When determining household size, owner agents must include children subject to a joint custody agreement if such children live in the unit at least 50% percent of the time.

D. Units Occupied by Onsite Managers, Maintenance Personnel, or Security

Resident manager or employee units (including maintenance or security units) may be considered in one of the following ways:

1. The resident manager/employee unit could be considered as an "exempt unit" (a special facility within the development that is functionally related to the residential rental units and reasonably required by the project), provided the employee works full-time for the development in which they live. Under this option, the unit is excluded from the low-income occupancy calculation and the unit can be used by the manager without concern as to the income level of the manager. Previously, if the resident manager/employee unit was treated as an exempt unit, then no rent could be charged for the unit as this was said to suggest that the manager was not necessary for the project and could be interpreted as the owner charging rent for a facility included in Eligible Basis. However, in the Audit Technique Guide and a Chief Counsel Advice Memo dated June 2, 2014, the IRS clarified that "charging resident managers or maintenance personnel rents, utilities, or both for units in a qualified low-income building does not make the units residential rental units and not facilities reasonably required for the project." Therefore, rent and utilities can now be charged on exempt units.

   In Revenue Ruling 92-61, the Internal Revenue Service ruled to include the unit occupied by the resident manager in the building's Eligible Basis, but to exclude the unit from the Applicable Fraction for purposes of determining the building's Qualified Basis.

   NOTE: IHCDA will not allow staff units to be considered "exempt units" in developments that have market rate units.

   OR

2. The manager/employee unit could be treated as a tax credit rental unit and the unit would then be included in the Applicable Fraction and Eligible Basis calculation for the LIHTC building. Under this option, the employee must be income-qualified and the unit must be rent-restricted.

IHCDA must approve the use of all manager/employee units. The consideration of a resident manager's unit must be specified in the development's Initial & Final Applications and must be approved by IHCDA.

IHCDA will consider requests to approve additional manager/employee units during the Compliance / Extended Use Period. To request a manager/employee unit that was not previously approved in the Final Application, the owner must submit the request in writing with documentation supporting the need for the manager/employee unit. Requests must be submitted to IHCDA using IHCDA Compliance Form #31 "Staff Unit Request Form." All staff unit requests submitted during the Compliance

Period/Extended Use Period will be subject to a non-refundable $500 modification request fee payable through IHCDA's online payment portal, regardless of whether the request is approved by IHCDA.

E. Model Units

IHCDA recognizes that it may be an industry practice to utilize a model unit(s) as a marketing tool during a development's lease-up period to show a unit to prospective tenants.

A model unit is considered a rental unit and can be included in the building's Eligible Basis and in the denominator of the Applicable Fraction when determining a building's Qualified Basis. There are several different ways a project can utilize a model unit:

1. Model unit is utilized during the lease-up period but is later used as a rental unit that is rented to a qualified household. The cost of the unit should be included in the building's Eligible Basis. In the years that the unit was utilized as a model unit, it should be included in the denominator of the Applicable Fraction when determining a building's Qualified Basis; however, it should not be included in the numerator of the Applicable Fraction. Once the unit is rented to a qualified household, the owner should follow the rules outlined in IRC §42(f)(3) for increases in Qualified Basis, i.e., the 2/3 Credit Rule. For more information on the 2/3 Credit Rule, see Part 3.1).

2. Model is utilized during the lease-up period, as well as the entire Compliance Period. If a model unit is never rented as a LIHTC unit, then it should not be included in the numerator of the Applicable Fraction when determining a building's Qualified Basis. However, the costs of the unit should be included in the building's Eligible Basis and it should be included in the denominator of the Applicable Fraction.

3. A qualified unit that becomes vacant is utilized as a model unit on a temporary basis. Provided that the unit remains available for rent and is treated like all other qualified units, it may be included in both the numerator and denominator of the Applicable Fraction. The unit should be listed as "Vacant" in the Annual Owner Certification of Compliance and on the rent roll, not as a model unit. The owner agent must continue to make reasonable attempts to rent vacant units used as model units and must be able to document these efforts. IHCDA recommends that the owner place an "available for rent" sign in the model unit so that applicants, tenants, and management understand that the model unit is an available rental unit, not a permanent model.

F. Live-in Care Attendants (Live-in Aides)

A live-in care attendant (a.k.a. a live-in aide) is a person who resides with one or more elderly or near-elderly persons or persons with disabilities. To qualify as a live-in care attendant, the individual (a) must be determined to be essential to the care and well-being of the tenant, (b) must not be financially obligated to support the tenant, and (c) must certify that they would not be living in the unit except to provide the necessary supportive services. Family members, including spouses, may qualify as live-in aides if they meet these criteria. A live-in care attendant cannot move a spouse, child, or other member into the unit, as doing so would indicate that they are living in the unit for reasons other than the care of the tenant.

A live-in care attendant is not counted as a household member for purposes of determining the applicable income limits, their income is not counted as part of the total household income, and they do not need to be listed on the TIC. The need for a live-in care attendant must be certified with documentation from a medical professional (e.g., a letter from the tenant's doctor or other healthcare provider) and included in the tenant file. The owner agent may verify whether the live-in care attendant is necessary only to the extent to document that the applicant/tenant has a need for the requested accommodation. The owner agent may not require applicants/tenants to provide access to confidential medical records, to submit to physical examination, or to disclose specific information about the nature of their disability.

If the qualified tenant vacates the unit, the live-in care attendant must vacate as well. If an attendant would like to be certified as a qualified tenant and remain in the unit, normal certification procedures must be performed, and the individual must meet the applicable eligibility requirements of the program.

While the live-in care attendant is not considered a household member, they are still subject to criminal background checks (as per the tenant selection criteria effective at the property) and must comply with tenant house rules. An owner agent may deny a live-in care attendant that does not pass criminal background checks or remove an attendant who exhibits behavior that is disruptive, illegal, or endangering to other tenants, as defined in the tenant selection criteria and lease.

Sample forms to verify and document a live-in care attendant are available as IHCDA Compliance Forms #11 and 12.

G. Non-Transient Occupancy

Under program requirements, a unit is not LIHTC eligible if it is used on a transient basis. A unit is deemed to be in transient use and therefore out of compliance if the initial lease term is less than six months. To avoid noncompliance for transient occupancy, there must be an initial lease term of at least six months on all LIHTC units. The six-month requirement may include free rental periods. Lease renewals are not subject to a minimum lease period.

The 8823 Guide provides the following clarification in Footnote 2 on Page 11-2:

> "Leases commonly include fees for early termination of the rental agreement. The fact that the lease contains terms for this contingency is not indicative of transient use."

Therefore, a unit is in compliance if the initial lease is signed for a term of at least six months, regardless of whether or not the household actually remains in the unit for that length of time.

Federal regulations do allow shorter leases for certain types of transitional housing for homeless individuals and for SRO units. The following types of housing are exempt from the six-month minimum lease period:

1. Certain transitional housing for the homeless may be considered used other than on a transient basis provided that the rental unit contains sleeping accommodations and kitchen and bathroom facilities and is located in a building:
   -which is used exclusively to facilitate the transition of homeless individuals (as defined in the McKinney Homeless Act 42 USC 11302) to independent living within twelve months; AND
   -in which a government entity or qualified nonprofit organization provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing
2. SRO units which permit the sharing of kitchen, bathroom, and dining facilities are not treated as used on a transient basis merely because they are rented on a month-by-month basis.

If a development has units set aside for persons experiencing homelessness, those tenants must have leases with at least six month term unless the building's primary use is described in Exemption #1 above and IHCDA has approved the building to operate as transitional housing. Tax credit units may never be used as emergency shelters.

H. Community Service Facilities

In Revenue Ruling 2003-77, the Internal Revenue Service ruled that Community Service Facilities can be included in a building's Eligible Basis if certain criteria are met, including the requirement that the development must be located within a qualified census tract. The services provided at the facilities can include, but are not limited to, daycare, career counseling, literacy training, education, recreation, and outpatient clinical health care.

Community service facilities must be designed to primarily serve individuals with incomes at or below 60% of AMI. In order to demonstrate that this requirement is met, the following conditions should be demonstrated:

1. The facility must provide services that will improve the quality of life for community residents;
2. The services must be appropriate and helpful for individuals with incomes at or below 60% AMI living in the area;
3. The facility must be located on the same tract of land as one of the buildings in the low-income housing project; and
4. Services must be provided either free of charge or at a fee that is affordable for individuals at or below 60% AMI.

Additional information on community service facilities is available on page 8-7 of the 8823 Guide and in Revenue Ruling 2003-77.

I. Home-Based Business / Office in a Unit

A tenant may use a LIHTC unit to conduct a home-based business as long as they are income-qualified for the unit and the unit is their primary place of residence. The 8823 Guide states on page 4-13:

"A low-income tenant may use a portion of a low-income unit exclusively and on a regular basis as a principal place of business, and claim the associated expenses as tax deductions, as long as the unit is the tenant's primary residence. If the tenant is providing daycare services, the tenant must have applied for (and not have been rejected), be granted (and still have in effect), or be exempt from having a license, certification, registration, or approval as a daycare facility or home under state law."

J. Foster Children/Foster Adults

Per HOTMA, foster children and foster adults living in a unit are not considered household members for purposes of determining income limits. Their income and asset sources are not treated as household income. However, they should be considered when determining the appropriate sized unit for a household. In this way, foster children and foster adults are treated "similar to a live-in aide."

K. Special Needs Populations & Referral Agreements

Per the threshold requirements and scoring criteria defined in the Qualified Allocation Plan (QAP) and based on requirements for special needs units found in Indiana State Code, a tax credit developer must commit to set aside a percentage of total development units to qualified tenants who meet the State's definition of "special needs population" (as provided in IC 5-20-1-4.5). Special needs populations include:

1. Persons with physical or developmental disabilities
2. Persons with mental impairments
3. Single parent households
4. Survivors of domestic violence
5. Abused children
6. Persons with chemical addictions
7. Persons experiencing homelessness
8. The elderly

Required Documentation:

1). The owner and a qualified organization that provides and has the capacity to carry out services for the special needs population must enter into an agreement (signed by all parties) acceptable whereby the owner agrees to: (a) set aside a number of units for the special needs population and (b) notify the qualified organization when vacancies of the set-aside units occur at the development. The qualified organization must agree to: (a) refer qualified households to the development and (b) notify households of the vacancies of the set-aside units at the development. This is called the "referral agreement."

The owner may enter into multiple referral agreements throughout the Compliance Period. Referral agreements may expire or terminate, as long as at least one active referral agreement with a qualified service provider is in place at all times. IHCDA encourages developments to annually evaluate the affordability and demographic demands of the special needs population in their market area in order to identify potential qualified entities that may provide additional referrals. IHCDA will request to see a copy of current referral agreements when conducting file audits.

2). The resume of the organization providing services for the special needs population (resume must demonstrate ability to provide services).

3). For those tenants referred to the development by the qualified service organization, a copy of the referral should be placed in the file. For special needs tenants who were not referred to the development by the qualified organization, the tenant should self-certify that they meet the definition of special needs population. For persons with disabilities, the owner agent may not inquire into the specific nature of the disability (i.e., cannot ask the tenant details about their disability or ask for medical documentation- see Part 5.3B for more guidance).

4). When reporting tenant events through the Indiana Housing Online Management website, the owner agent must designate which units meet the special needs population set-aside.

5). For information on marketing accessible units or units designated for special needs populations, see Part 5.3 F.

Part 5.3|Nondiscrimination

A. Fair Housing: Protected Classes and Affirmative Marketing Requirements

1. Protected Classes and Prohibited Activities

The owner or agents of the owner shall not discriminate in the provision of housing on the basis of race, color, sex, national origin, religion, familial status, or disability (the seven protected classes under the Fair Housing Act) or ancestry or veteran status (additional protected classes under the Indiana Fair Housing code IC 9-22.5 and Indiana Civil Rights code IC 9-22). Prohibition on sex discrimination includes discrimination based on sexual orientation or gender identity.

Nondiscrimination means that owner agents cannot refuse to rent a unit, provide different selection criteria, fail to allow reasonable accommodations or modifications, evict, or otherwise treat a tenant or applicant in a discriminatory way based solely on that person's inclusion in a protected class. Owner agents may not engage in steering, segregation, false denial of availability, denial of access to services or amenities, discriminatory advertising, or retaliation against individuals that make fair housing complaints.

2. Required Actions- General

All owner agents should be familiar with state and federal civil rights and fair housing laws. IHCDA strongly encourages owner and management agents to provide Fair Housing and Equal Opportunity training for all staff, including maintenance staff, at least annually.

All tenant selection plans must acknowledge that the property follows the Fair Housing Act's nondiscrimination requirements, as well as the requirements of VAWA.

IHCDA has established procedures for processing Fair Housing complaints made to IHCDA. The procedures are as follows: 1) IHCDA will forward all Fair Housing complaints to the Fair Housing and Equal Opportunity Office at HUD and also to the Indiana Civil Rights Commission for investigation; 2) IHCDA will notify the owner and management company of such complaint; and 3) if at any time during the Compliance Period it is found that a violation of the Fair Housing Act has occurred

at any LIHTC development, the property is out of compliance and IHCDA will report such noncompliance to the IRS via IRS Form 8823.

3. Required Actions- Affirmative Fair Housing Marketing Plan

All properties with TCAP funding or with five or more HOME/CDBG/CDBG-D/NSP/HTF assisted units must create and implement an Affirmative Fair Housing Marketing Plan (AFHMP) using HUD Form 935.2a prior to lease up. In addition, AFHMPs must be evaluated at least once every five years and updated according to the policies of the Fair Housing and Equal Opportunity Office of the Department of Housing and Urban Development (HUD). See Part 2.2 N for more information.

B. Fair Housing: Reasonable Accommodations and Modifications

The Fair Housing Act requires owners to make reasonable accommodations and modifications when necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling. For purposes of the Fair Housing Act, disability is defined as a person who has/is:

- A physical or mental impairment which substantially limits one or more of such person's major life activities; or
- A record of having such an impairment; or
- Regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act).

The owner agent may verify the disability only to the extent necessary to document that the applicant/tenant has a need for the requested accommodation. The owner agent may not require applicants/tenants to provide access to confidential medical records or to submit to physical examination. The owner agent may not ask about or verify the specific nature and extent of the disability. The verification form used must be signed by the applicant/tenant to authorize release of such information and should request that the source verify (1) whether the applicant meets the Fair Housing definition of disability as provided above and (2) whether the requested accommodation or modification relates to the person's specific needs. Receipt of Social Security disability payments is adequate verification of an individual's disability status, but the correlation between the disability and the requested accommodation or modification may still need verified.

Housing providers are not required to provide individually prescribed or personal items such as hearing aids, wheelchairs, etc.

1. Reasonable Accommodations and Assistance Animals

A reasonable accommodation is a change, exception, or adjustment in rules, policies, practices, or services when such a change is necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling, including public and common spaces. Only persons with disabilities are provided reasonable accommodations. Per the Fair Housing Act, a housing provider must allow a reasonable accommodation unless doing so will be an undue financial burden or fundamentally alter the nature of the housing provider's operations. When a reasonable accommodation will result in an undue financial burden, the owner agent must provide all other accommodations up to the point at which further accommodations will result in the undue financial burden. For more information on reasonable accommodation, refer to the HUD and Department of Justice (DOJ) Joint Statement "Reasonable Accommodations Under the Fair Housing Act" released May 17, 2004 (available in Appendix F).

A common type of reasonable accommodation involves assistance animals. IHCDA uses the term assistance animals in this manual to broadly describe a category that includes service animals and support animals. These types of animals are not pets and therefore must be permitted even in "no-pet" housing, assuming that an individual with a disability has requested an accommodation to the "no-pet" rule and that the need for the assistance animal can be verified. The owner agent cannot charge an upfront security deposit or a fee (one-time or recurring) for the assistance animal. However, the owner agent can charge the tenant the cost of repairing any damage caused by the assistance animal.

Clarifications on assistance animals:

- A resident may request a reasonable accommodation at any time, including before or after acquiring the assistance animal.
- Since pet rules do not apply to assistance animals, owner agents cannot limit the breed or size of an assistance dog. An accommodation could potentially be denied or revoked based on a specific animal's specific behaviors, a direct threat, or a resident's inability to maintain or control an animal.
- "Animals commonly kept in households" can be considered support animals. This includes dogs, cats, small birds, rabbits, hamsters, gerbils, other rodents, fish, turtles, or other small, domesticated animals "traditionally kept in the home for pleasure rather than commercial purposes." Uncommon/unique animals include reptiles (besides turtles), barnyard animals, monkeys, kangaroos, or other non-domesticated animals.
- Uncommon animals could still potentially qualify as an assistance animal, but there is a substantial burden on the person making the accommodation request to prove "a disability-related need for the specific animal or the specific type of animal." Consideration may be given to if the animal can be kept outdoors in a fenced area and appropriately maintained, if applicable.
    - Example 1- if the animal is trained to do something an assistance dog cannot do
    - Example 2- if a healthcare provider confirms a need for that type of animal, perhaps because the resident is allergic to common animals such as dogs and cats

Another common example of reasonable accommodation is a live-in care attendant / live-in aide. For more information on this topic, see Part 5.3F.

2. Reasonable Modifications

A reasonable modification is a change to the physical structure of the premises when such a change is necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling, including public and common spaces. Only persons with disabilities are provided reasonable modifications. Per the Fair Housing Act, a housing provider must allow a reasonable modification at the expense of the tenant. However, if the changes needed by the tenant are items that should have already been included in the unit or common space in order to comply with code or design and construction accessibility standards, then the owner agent will be responsible for paying for the modifications. For more information on reasonable modification, refer to the HUD and Department of Justice (DOJ) Joint Statement "Reasonable Modifications Under the Fair Housing Act" released March 5, 2008 (available in Appendix F).

While the Fair Housing Act allows an owner agent to pass on costs of reasonable modifications to the tenants, Section 504 of the Rehabilitation Act of 1973 (which applies to housing that receives federal assistance) requires the housing provider to pay for reasonable modifications unless providing them would be an undue financial and administrative burden or result in a fundamental alteration of the program. While the LIHTC program is not considered federal assistance for this purpose, tax credit projects receiving other federal assistance through programs including, but not limited to, HOME, HTF, CDBG, CDBG-D, NSP, Project Based Section 8 Vouchers, or Section 811 Project Rental Assistance are covered by Section 504 and thus this rule applies.

3. Internal Procedures and Documentation

IHCDA strongly advises all owner agents to have a written policy describing how they will handle requests for reasonable accommodations and modifications. The main steps are outlined below. In this context, "owner agent" means the person receiving the request for a reasonable accommodation or modification, most likely the onsite management agent:

i. Resident or a family member or someone else acting on the resident's behalf makes a request for an accommodation or modification. A request can be made either orally or in writing. If this request is made orally, the owner agent should document the nature of the request and the date and time received. An owner agent cannot deny a request because it was made orally instead of in writing.

ii. Owner agent verifies the need only if (1) the disability is not obvious, (2) if unsure if the disability is permanent or temporary, and/or (3) if unsure how the request relates to the need (i.e., does not understand correlation between the person's needs and the request made). The form used to request verification cannot ask specific information

about the nature of a person's disability. The purpose of verification is to verify that the person meets the Fair Housing Act definition of disability and that the requested accommodation or modification is necessary for that person's equal opportunity to enjoy and use the housing.

iii. If verification supports the need, then the owner agent must take the necessary steps to provide the reasonable accommodation or modification. An undue delay is noncompliance and is treated in the same manner as a denial.

iv. If verification does not support the need, then the owner agent should schedule an interactive meeting with the resident to request clarification and attempt to achieve a mutually acceptable resolution of the issue. The owner agent should carefully explain the concerns or questions related to the request and, if applicable, why the request is being denied.

v. Document the tenant file with all related information.

C. General Public Use and Acceptance of Vouchers

LIHTC units must be available for use by the general public. Owner agents are allowed to establish preferences for certain population groups (e.g., persons experiencing homelessness, persons with disabilities, older persons who meet Housing for Older Persons Act age restrictions, etc.). Such preferences must not violate Fair Housing or any other nondiscrimination regulations or policies, must be documented in the project's written tenant selection plan, and must be approved by IHCDA. Per the changes under HERA, artist housing is a permissible exception under general public use.

Any residential unit that is part of a hospital, nursing home, sanitarium, life care facility, retirement home providing significant services other than housing, dormitory, trailer park, or intermediate care facility for the mentally and physically disabled is not considered for use by the general public and is therefore not an eligible LIHTC unit.

If a residential rental 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. (See Section 1.42-9).

Owner agents cannot refuse to accept a prospective tenant based solely on the fact that the applicant holds a Section 8 Housing Choice Voucher or receives assistance through a similar tenant-based rental assistance program.

Violations of General Public Use and/or Fair Housing are reportable to the IRS via Form 8823. Depending on the nature of the violation, the noncompliance may be determined at the unit, building, or project level. Any unit found in violation of General Public Use and/or Fair Housing will fail to be considered a qualified low-income unit for purposes of determining the Applicable Fraction.

D. General Occupancy Guidelines and Household Size

There are no current LIHTC requirements governing minimum or maximum household size for a particular unit. Owner agents must comply with all applicable local laws, regulations, and/or financing requirements (e.g., if HUD or Rural Development, follow HUD or RD requirements). IHCDA advises owner agents to be consistent when accepting or rejecting applications. Occupancy guidelines or requirements must be incorporated into the project's written tenant selection plan. Owner agents should be aware of any occupancy standards set by federal, state, or local code or funder requirements that may establish a maximum or minimum number of persons per unit.

For guidance on determining household size, see Part 5.2A.

E. Tenant Selection Plans

All developments must have a written tenant selection plan that describes the applicable program eligibility requirements and the screening policies implemented by management. IHCDA will review the tenant selection plan as part of its monitoring efforts.

There are no federal or state requirements regarding criminal or credit background checks, landlord references, or a minimum income. Implementation of these selection criteria is up to owner agent discretion, as long as the screening criteria are applied consistently to all applicants and do not violate Fair Housing or any related nondiscrimination regulations. Screening criteria must comply with requirements of any other funding sources on the development. Minimum income requirements may not be applied to applicants with tenant-based rental assistance or for units with project-based rental assistance.

Owners implementing criminal background checks must ensure that such screening policies do not violate Fair Housing. Tenant selection plans and screening criteria must be established in compliance with HUD's "Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate Related Transaction" notice issued on April 4, 2016 (included in Appendix F). Per that notice, arrest records are not sufficient basis for denying an application. Conviction records may be used for tenant screening, but "a blanket prohibition on any person with any conviction record- no matter when the conviction occurred, what the underlying conduct entailed, or what the convicted person has done since then" is not permissible. Tenant selection policies must "accurately distinguish between criminal conduct that indicates a demonstrable risk to resident safety and/or property and criminal conduct that does not" and must "take into account the nature and severity of an individual's conviction."

There are no regulations governing citizenship requirements for LIHTC tenants. Since the Fair Housing Act does not prohibit discrimination based solely on citizenship status, owner agents may require applicants to provide documentation of citizenship or immigration status as part of the screening process. If an owner agent chooses to implement such a policy, the screening criteria must be established in writing and applied in a uniform, nondiscriminatory fashion with caution to avoid any discrimination based on Fair Housing protected classes- particularly race, color, national origin, or ancestry. Owners should be aware that other housing programs (such as Section 8, other HUD programs, or RD programs) may have stricter citizenship requirements that must be followed if the project has additional funding sources.

Because many of these tenant selection criteria are left to the discretion of the owner agent, it is required that each development implements a written tenant selection plan. This document must be made available to all applicants and tenants and will be reviewed by IHCDA during compliance monitoring.

At a minimum, a tenant selection plan must include the following:

- Occupancy standards in effect (how many tenants can live in a unit based on size of the unit);
- Program eligibility factors, including income limits and student status eligibility;
- Any minimum income requirements imposed by management, if applicable. Minimum income requirements may not be applied to applicants with tenant-based rental assistance or for units with project-based rental assistance. While a minimum income requirement may be imposed, the tenant selection plan cannot require all applicants to be employed as this could have a disparate impact under Fair Housing;
- Any citizenship requirements imposed by the owner agent or required by another funding source, if applicable;
    - Specifics on the information that is analyzed when performing credit checks, criminal background checks, and previous landlord references. The tenant selection plan must clearly spell out what findings constitute a rejection of an application. - Criminal screening must be based only on conviction records, not arrest records.
    - Eviction screening cannot deny an applicant for "no fault" evictions or eviction proceedings where the tenant prevailed or where the matter was dropped.

- Per VAWA protections, if an individual has a poor rental or credit history, a criminal record, or other adverse factors that directly result from being a victim of domestic violence, dating violence, sexual assault, or stalking, the individual cannot be denied assistance if the individual otherwise qualifies for the program.
- Explanation of the application and waiting list process, including a process through which an applicant is notified in writing of rejection and can then choose to appeal the rejection decision;
- Explanation of the transfer policies in effect;
- Breakdown of any special preferences set aside at the project (e.g., units reserved for special needs populations or a Housing for Older Persons Act age restriction on the project); and
- List of any other relevant items used in considering the household's eligibility for occupancy

When creating a development's tenant selection plan and implementing screening practices , the owner agent must be careful to follow all applicable program eligibility requirements (including General Public Use), nondiscrimination requirements including Fair Housing, the Violence Against Women Reauthorization Act (VAWA), HUD guidance on criminal background checks, and applicable local occupancy standards. Owner agents should review the guidance issued by HUD's Fair Housing and Equal Opportunity office on April 29, 2024 entitled "Guidance on Application of the Fair Housing Act to the Screening of Applicants for Rental Housing" which provides considerations and potential Fair Housing impacts when considering the use of third-party screening systems. Owner agents should only use screening criteria that are relevant, recent, accurate, and are related to the ability to comply with tenancy obligations. Past actions that are unlikely to recur or that are unrelated to tenancy should not be considered. Owner agents should allow applicants the opportunity to dispute contested information on a screening report.

With the exception of accessible units (see Part 5.3 F below), all units must be leased on a first-come first-served basis with tenants selected in chronological order from the waiting list.

Units designated as permanent supportive housing for persons experiencing homelessness are subject to special tenant selection requirements. See Part 5.7C for additional information.

F. Marketing/Leasing Accessible Units

At initial lease-up, accessible units should be marketed to persons with disabilities requiring an accessible unit. For ongoing leasing, the following order must be followed for marketing/leasing the accessible units:

i. First, offer accessible units to existing residents that require accessibility features but are currently occupying a unit that does not offer such features.
ii. Next offer accessible units to qualified applicants on the waiting list that require an accessible unit.
iii. Market the unit to attract new qualified applicants that require an accessible unit.
iv. Finally, offer the unit to a non-disabled household on the waiting list (a household that does not need the accessible features of the unit). The household must be informed, and have an agreement in writing, that it may later be asked to transfer to another comparable, but non-accessible, unit if the accessible unit is needed by a person with a disability. While the household may have to transfer if a comparable, vacant, non-accessible unit is available, it would not be evicted nor otherwise have its tenancy terminated to make room for a household in need of the accessible features. This agreement must be incorporated into the lease or a lease addendum.

G. Violence Against Women Reauthorization Act of 2013 and 2022 (VAWA)

The 2013 reauthorization of the Violence Against Women Act (VAWA) expanded the act's coverage to include LIHTC projects. The 2022 reauthorization of VAWA provides that the Secretary of HUD and the US Attorney General shall implement VAWA enforcement in a manner consistent with Fair Housing enforcement.

1. Prohibited Denial/Termination

No applicant for or tenant of LIHTC housing may be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis or as the direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.

HUD clarified the meaning of the phrase "on the basis" in the "Violence Against Women Reauthorization Act of 2013; Implementation in HUD Housing Programs" final rule published in the Federal Register on November 16, 2016.

> "HUD interprets the term "on the basis" in VAWA 2013's statutory prohibitions…to include factors directly resulting from the domestic violence, dating violence, sexual assault, or stalking. For example, if an individual has a poor rental or credit history, or a criminal record, or other adverse factors that directly result from being a victim of domestic violence, dating violence, sexual assault, or stalking, the individual cannot be denied assistance under a HUD program if the individual otherwise qualifies for the program."

2. Lease Terms

The owner agent shall ensure that an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as:

- A serious or repeated violation of a lease by the victim or threatened victim of such incident; or
- Good cause for terminating the assistance, tenancy or occupancy rights to housing of the victim of such incident.

3. Termination on the Basis of Criminal Activity & Bifurcation of Lease

No person may deny assistance, tenancy, or occupancy rights to an applicant or tenant solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking that is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, if the tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking. Notwithstanding the foregoing, the owner agent may bifurcate a lease for the housing in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant of the housing and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual, without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant of the housing. The owner agent must provide any remaining tenants with an opportunity to establish eligibility and a reasonable time to find new housing or to establish eligibility.

4. Confidentially of Tenant Information Related to Domestic Violence, Dating Violence, Sexual Assault, or Stalking

The owner agent shall ensure that any information submitted to the staff, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking shall be maintained in confidence and may not be entered into any shared database or disclosed to any other entity or individual, except to the extent that the disclosure is:

- Requested or consented to by the individual in writing;
- Required for use in an eviction proceeding against any individual who is a tenant or lawful occupant of the housing and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking; or
- Otherwise required by applicable law.

5. Required Notices

HUD has developed, and may amend from time to time, notices of the rights of individuals under VAWA including the right to confidentiality and the limits thereof. The owner agent must ensure that these notices are utilized and disseminated at the project as directed by HUD and/or IHCDA. See item #7 below for information on required forms.

6. Emergency Transfer

HUD has developed, and may amend from time to time, guidance regarding a model emergency transfer plan that allows tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to transfer to another available and safe dwelling unit. The owner agent must ensure that any guidance developed will be utilized as directed by HUD and/or IHCDA. See item #7 below for information on required transfer plan format.

7. Required Forms

IHCDA mandates the use of the following VAWA forms for all LIHTC developments. All forms are available in Appendix H:

- HUD 5380: Notice of Occupancy Rights Under VAWA. Must be provided at the following times, along with a copy of the HUD 5382:
  - At the time of initial admission; and
  - At the time of denial of tenancy; and
  - When termination / eviction notices are sent.
- HUD 5381: Model Emergency Transfer Plan. The owner must create a model plan specific to each project. The plan must be made available for review by tenants and by IHCDA.
- HUD 5382: Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking. This form is to be used by tenants as a self-certification form. A copy must be attached when the HUD 5380 is given to tenants.
- HUD 5383: Emergency Transfer Request. This form is used by tenants to request a transfer under VAWA.
- IHCDA or HUD VAWA Lease Addendum. If the property is HUD-assisted and required to use a HUD-approved lease addendum, use the HUD VAWA Lease Addendum instead of the IHCDA version.
  - If the project is tax credit only, use the IHCDA tax credit VAWA lease addendum or the HUD VAWA lease addendum.
  - If the project includes HOME or HTF, use the IHCDA HOME/HTF VAWA lease addendum or the HUD VAWA lease addendum. There is no need to also use the tax credit VAWA lease addendum. Only one VAWA lease addendum is required per household.

8. Nonretaliation Provisions (Added in VAWA Reauthorization of 2022)

An owner agent may not discriminate against any person because they have opposed any act or practice made unlawful by VAWA or testified, assisted, or participated in any VAWA-related matter.

9. Noncoercion Provisions (Added in VAWA Reauthorization Act of 2022)

An owner agent may not coerce, intimidate, threaten, interfere with, or retaliate against any person who exercises VAWA protections, assists another person in exercising their VAWA protections, or participates in a VAWA investigation or enforcement activity.

10. Protection to Report Crimes from Home (Added in VAWA Reauthorization Act of 2022)

Owner agents, residents, guests, and applicants have the right to seek law enforcement or emergency assistance on their behalf or on the behalf of another person seeking assistance and shall not be penalized based on such requests for assistance or their status as a victim of criminal activity. Prohibited penalties include actual or threatened:

- Assessment of monetary or criminal penalties, fines, or fees
- Eviction
- Refusal to rent or renew tenancy
- Refusal to issue occupancy permit or landlord permit
- Closure of the property or designation of the property as a nuisance or similarly negative designation

H. Housing for Older Persons

The Housing for Older Persons Act of 1995 (HOPA) exempts certain types of "housing for older persons" from the Fair Housing Act's prohibitions against discrimination on the basis of familial status.

Therefore, developments may be designated as housing for older persons (as defined in the project's Final Application and recorded Extended Use Agreement) in one of the following ways and not be in violation of Fair Housing:

1. 100% of the units are restricted for households in which all members are age 62 or older (see 24 CFR Part 100.303); or

2. At least 80% of the units in the entire development (not affected by the 8609 definition of "project") are occupied by households in which at least one member is age 55 or older. The remaining 20% of the units may also be restricted for households in which at least one member is 55 or older, may have a lower age restriction, or may be left open without any age restrictions; however, the owner agent must ensure that at least 80% of the units remain occupied by households that

meet the age definition. The policy elected by the owner agent in regards to the remaining 20% of the units must be implemented consistently for all applicants and must be placed in writing as part of the development's tenant selection plan. Any units not counted for purposes of meeting the 80% requirement may not be segregated within the development

HUD has noted that phrases such as "adult living," "adult community," or similar statements should not be used to market developments that fall under the 80% at 55 requirements. Rather, the property should be more specifically advertised as housing for households in which at least one household member is 55 years of age or older.

The owner agent may not evict or terminate the leases of families with children or other individuals under the age of 55 in order to achieve the HOPA occupancy requirements on the 80% of the units.

For more information on the 80% at 55 restrictions, see 24 CFR Part 100.304 through 100.308. This regulation is also available as "Implementation of the Housing for Older Persons Act of 1995; Final Rule" located in the Federal Register, Vol. 64 No. 63 from April 2, 1999. This document is included in Appendix F.

A project's age restrictions should be clearly defined in the Final Application and Extended Use Agreement, and the owner agent must follow the restrictions defined therein.

If a project receives federal funding from HUD or USDA, the owner should check those regulations for other potential definitions. Units in HUD and RD age-restricted housing generally can be occupied by households that meet the age requirements or that are disabled. Persons with disabilities do not qualify for age-restricted units in LIHTC projects unless they also meet the age restrictions. However, when tax credits are mixed with HUD or RD funding that allows an elderly or disabled definition, the HUD or RD definitions should be followed.

Part 5.4|Tax Credits Developments with HOME/CDBG/NSP/HTF-Assisted Units

A LIHTC development may also receive HOME/CDBG/CDBG-D/NSP/HTF funds, resulting in a certain number of units reserved as both tax credit and HOME/CDBG/CDBG/NSP/HTF assisted units. Units that are under multiple funding programs must follow the compliance rules of all applicable programs. In some cases when program compliance regulations differ, the owner agent should follow the stricter of the two rules, while in others cases the rules are completely different and both sets must be applied.

The following is a non-exhaustive list of common issues an owner agent may face when combining tax credits with HUD CPD capital funding programs. This is not meant as an exhaustive listing. For more information on IHCDA's HOME/CDBG/CDBG-D/NSP/HTF compliance regulations, please refer to the current edition *Federal Programs Ongoing Rental Compliance Manual*. However, if the HOME funds on a project were awarded by another participating jurisdiction (i.e., the project received city HOME funds instead of IHCDA HOME funds), check with that PJ for compliance guidelines and expectations.

NOTE: Most items discussed below are based on HOME requirements since IHCDA generally applies the HOME rental regulations to CDBG, CDBG-D, and NSP rental projects. Exceptions are noted as "HOME only."

A. Combining Programs: Rent and Income Limits and Utility Allowances

1. HOME/CDBG/CDBG-D/NSP/HTF and LIHTC rent and income limits may be different within the same county for the same year. HUD releases a separate set of limits for each program. For a unit under multiple programs, the owner agent must check against all sets of income and rent limits to ensure compliance with all funding programs. EXCEPTION: For HOME compliance, a Low HOME unit that is also a tax credit unit may ignore the HOME rent limit and charge the rent allowable under the tax credit program. *NOTE: The HTF program requires all HTF-assisted units to be income and rent-restricted at 30% HTF limits. The HTF program has its own HUD published set of income and rent limits. Owners with HTF-assisted units must refer to this specific income and rent limit chart.

2. The LIHTC program does not include rental assistance in the gross rent calculation. For HTF-assisted units only, tenant-based rental assistance is included in the HTF gross rent calculation. For purposes of determining whether a program assisted unit is in compliance with the HTF rent limits, the sum of the tenant-paid rent portion + tenant-based rental assistance + utility allowance + non-optional fees must be at or below the applicable HOME/CDBG/CDBG-D/NSP/HTF rent limit. Special rules apply for project-based rental assistance. See Part 3.2(B) of the *Federal Programs Ongoing Rental Compliance Manual* for more information.

3. OUTDATED HOME UA RULE FOR COMPLIANCE PRIOR TO 4/20/2025: The following rule is no longer in effect but was required for previous years of compliance. HOME funded projects that received a commitment of HOME funds after 8/23/13 must use a project-specific utility allowance for all HOME-assisted units. A PHA chart is not an acceptable utility allowance methodology for HOME-assisted units that received a commitment of HOME funds after 8/23/13. If a unit is both LIHTC and HOME-assisted and the tenant has a Section 8 voucher, this creates a conflict between program rules, because the LIHTC program requires the PHA chart to be used when the tenant has a voucher. In this case, two separate rent checks must be performed.
    - LIHTC Compliance: tenant rent + PHA utility allowance + non-optional fees = gross rent. Gross rent must not exceed the applicable LIHTC rent limit.
    - HOME Compliance: tenant rent + rental assistance + project-specific utility allowance (not the PHA chart) + non-optional fees = gross rent. Gross rent must not exceed the applicable HOME rent limit.

4. IHCDA must specifically approve rents for projects with HOME- and/or HTF-assisted units. The owner agent must submit IHCDA Compliance Form # 46: HOME & HTF Rent Update Form via homerentupdate@ihcda.in.gov at least annually to request approval of its proposed rents for HOME and/or HTF assisted units, even if no they are proposing no change.

B. Combining Programs: Certifications and Verifications

1. 100% tax credit projects do not have to perform annual income recertifications. However, those units that are also HOME or HTF-assisted must have a full income recertification every sixth year of the project's period of affordability and in other years the household must complete a self-certification form to disclose its self-certified income. A TIC must be completed, but the TIC alone does not count as a self-certification form. Income recertifications do not apply to CDBG/CDBG-D/NSP assisted units unless that unit is also HOME or HTF-assisted.

   Example: A project's HOME award is closed out and the HOME period of affordability begins in 2025. The project has a 20-year period of affordability. Full income certifications are due in the sixth year of the period of affordability (2030), the twelfth year of the period of affordability (2036), and the eighteenth year of the period of affordability (2042).

2. In HOME/CDBG/CDBG-D/NSP/HTF, verifications are valid for six months. For LIHTC, verifications are only valid for 120 days. Therefore, for units subject to multiple programs, use the stricter tax credit rule and make sure that all verification documents are no older than 120 days as of the effective date of the certification.

3. If paystubs are used to verify employment income, for HOME/CDBG/CDBG-D/NSP/HTF the number of paystubs obtained must amount to a full two consecutive months of pay. For LIHTC, the owner must obtain the two most recent, consecutive paystubs. When combining programs, obtain the number of paystubs need to satisfy both of these requirements.

4. For HTF-assisted units, the safe harbor for means-tested income verification cannot be used at move-in but may be used at recertification.

C. Combining Programs: Student Status

1. The 2013 revision to the HOME final rule added a student status requirement for all HOME-assisted units. Information about the HOME student rule can be found in Part 4.1G of the *IHCDA Federal Programs Ongoing Rental Compliance Manual.* Households applying/ residing in units that are both LIHTC and HOME-assisted must meet both program definitions of student status eligibility. The HOME student rule does not apply to CDBG, CDBG-D, NSP, or HTF-assisted units.

2. The CDBG, CDBG-D, NSP, and HTF programs do not limit occupancy by full-time students. However, for CDBG/CDBG-D/NSP/HTF assisted LIHTC units, the tax credit full-time student rules apply.

D. Combining Programs: Fair Housing and Related Nondiscrimination Requirements

1. Upon project entry, households living in all HOME/CDBG/CDBG-D/NSP/HTF assisted units must be given the Fair Housing brochure entitled "Are You a Victim of Housing Discrimination." The household must sign documentation acknowledging the receipt of this brochure at time of move-in. Although this is not a LIHTC requirement, all HOME/CDBG/CDBG-D/NSP/HTF assisted units in a tax credit development must have a signed copy of the acknowledgement located in the tenant file.

2. Effective March 5, 2012, all HUD funded properties (including HOME/CDBG/CDBG-D/NSP/HTF funding) are subject to the rule entitled "Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity." According to this rule, HUD-assisted properties must make housing available without regard to actual or perceived sexual orientation, gender identity, or marital status. HUD-assisted housing providers are prohibited from inquiring about the sexual orientation or gender identity of applicants and occupants for the purpose of determining eligibility for housing.

3. HOME/CDBG/CDBG-D/NSP/HTF assisted units are covered by Section 504 accessibility requirements, including the requirement that the owner must pay for reasonable modification requests. A tax credit development with these funding sources is subject to the Section 504 requirements and the owner must pay for reasonable modifications.

4. A project is subject to VAWA compliance if it has tax credits, HTF, or HOME funding (if the HOME funds were committed on or after December 16, 2016).

E. Combining Programs: IHCDA Monitoring and Inspection

A development with tax credits and IHCDA HOME/CDBG/CDBG-D/NSP/HTF funds will be monitored/inspected by IHCDA for compliance with each program.

1. The tax credit file monitoring will occur once every three years (see Part 7.5 for an explanation of the tax credit monitoring cycle and sample size).
2. The HOME/CDBG/CDBG-D/NSP/HTF assisted units will be monitored for program compliance at least once every three years of the period of affordability. The timing of monitoring and sample size selected may be different for these programs than for tax credit compliance. See Part 6.4C of the *Federal Programs Ongoing Rental Compliance Manual* for more information on financial review.
3. A HOME- or HTF-assisted project containing 10 or more total units is subject to annual financial review. See Part 6.5C of the *Federal Programs Ongoing Rental Compliance Manual* for more information on financial review.

F. Combining Programs: Adjusting Rent for Over-income HOME Units and Redesignating Low HOME Units

1. For tax credit purposes, a unit is not considered to be an over-income unit until the household income exceeds 140% of the federal Minimum Set-Aside election. When this occurs, the 140% Rule or Next Available Unit Rule goes into effect. See Part 5.1 C for more information on the Next Available Unit Rule.

   For HOME purposes, a unit is considered to be over-income (and therefore a temporarily noncompliant unit) when household income exceeds 80% of AMI. Under the HOME program, households that exceed 80% AMI are charged 30% of their adjusted income as rent and special rules go into effect to replace the over-income unit.

   For units that are under both programs, the tax credit over-income rule overrides the HOME over-income rule. An over-income HOME household (over 80% HOME AMI) living in a tax credit unit is not subject to increased rent under the HOME over-income rules. Gross rent must remain below the applicable tax credit rent limit.

   Neither program permits eviction or termination of tenancy due to income increases, even if the household exceeds the 140% or 80% AMI levels.

2. If a household that is designated as Low HOME (30%, 40%, or 50% AMI) exceeds the Low HOME income limit (i.e., the 50% AMI limit), the unit is temporarily noncompliant even though household income does not exceed 80% AMI. In this scenario, the unit remains temporarily noncompliant until a High HOME unit (unit at 60% or 80% AMI) is vacated at which point the units must swap status. The vacant High HOME unit becomes a vacant Low HOME unit and must be rented to a household at 30%, 40%, or 50% AMI depending on the set-aside assigned to temporarily noncompliant unit. The temporarily noncompliant unit is re-designated as a High HOME unit at the appropriate set-aside and rent may be increased when the lease permits (with at least 60 days notice). NOTE: Until the units swap status, the temporarily noncompliant unit remains rent-restricted at the applicable Low HOME rent restriction. This rule applies to LIHTC developments with HOME.

G. Combining Programs: Lead-Based Paint Requirements (also applies to TCAP)

1. Households living in assisted units built prior to 1978 must be given the Lead-Based Paint brochure entitled “Protect Your Family from Lead in Your Home.” The household must sign documentation acknowledging the receipt of this brochure at time of move-in. Although this is not a LIHTC requirement, households residing in HOME/CDBG/CDBG-D/NSP/TCAP/HTF assisted units in a tax credit development must have a signed copy of the acknowledgement located in the tenant file.

2. Federally funded projects built prior to 1978 are subject to ongoing compliance with lead-based paint regulations, as described in Part 5.6 C below. Tax credit properties with HOME/CDBG/CDBG-D/NSP/TCAP/HTF funding must comply with these regulations.

H. Combining Programs: Lease Prohibitions

For CDBG/CDBG-D/HOME/NSP/HTF assisted units, the following lease language is prohibited:

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

- **Waiver of legal proceedings:** Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;
- **Waiver of a jury trial:** Agreement by the tenant to waive any right to a trial by jury;
- **Waiver of right to appeal court decision:** Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease;
- **Tenant chargeable with cost of legal actions regardless of outcome:** Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses;
- **Mandatory supportive services:** Agreement by the tenant (other than a tenant in transitional housing) to accept supportive services that are offered.
- For HOME-assisted units, the lease cannot permit a rent increase without at least 60 days written notice per 24 CFR 92.252(e)(3)
- For HOME-assisted units, the lease cannot permit termination without at least 30 days written notice per 24 CFR 92.253(c)

Part 5.5|Tax Credits Developments with Development Fund Loans or Grants

The Indiana Affordable Housing and Community Development Fund ("Development Fund"), formerly known as the Trust Fund, was established in 1989 to provide financing options for the creation of safe, decent, and affordable housing development projects in Indiana communities. Development Fund requirements may be found in Indiana Code 5-20-4.

A. Income and Rent Restrictions

The Development Fund can be used to finance assisted units for occupancy by households up to 80% of area median income. However, Indiana Code governing the Development Fund requires that at least 50% of the dollars allocated be used to serve very low-income households (those earning less than 50% AMI). **Therefore, at least 50% of the Development Fund assisted units in a project must be designated for households at or below the 50% AMI rent and income limits, even if for tax credit purposes all units are restricted at 60%**. Development Fund assisted units may target special needs populations.

When Development Fund is combined with a LIHTC allocation, the tax credit program income and rent limits (HUD's MTSP Limits) apply.

For purposes of rent limits, gross rent must be below the applicable rent limit. Gross rent for Development Fund is defined as the sum of tenant-paid rent portion + utility allowance + non-optional fees (the same calculation as for tax credits). Rental assistance/subsidy is not included in the gross rent calculation for purposes of Development Fund compliance.

Development Fund rent limits are ignored when a tenant is receiving tenant-based or project-based rental assistance through a federal, state, or local rental assistance program. For Development Fund purposes, the owner agent may accept the rent allowed by the rental assistance program.

B. Income Recertification

For purposes of income eligibility, household income must be calculated and verified at the time of initial move-in using the methodology described in 24 CFR Part 5 and in Chapter 5 of HUD Handbook 4350.3, as amended by HOTMA. Eligibility is based on gross income, not adjusted income. This is the same income certification procedure as used for the LIHTC program. Follow the recertification requirements of the other funding programs applicable to the project.

Development Fund assisted units are not required to complete a full annual recertification of household income but must annually certify household size and rent. Therefore, 100% tax credit projects with Development Fund assisted units may follow the Recertification Exemption policy found in Part 6.7 of this manual.

C. Lien and Restrictive Covenants

Development Fund-assisted projects are subject to a Development Fund Lien and Restrictive Covenant Agreement ("LRCA") that must be executed and recorded against the property. When Development Fund is combined with a LIHTC allocation, the term of the Development Fund LRCA will be the applicable tax credit compliance and extended use period.

Upon occurrence of any of the following events during the Development Fund affordability period, the entire sum secured by the lien, including all accrued interest, shall be due and payable by the owner upon demand. Repayment may be demanded upon: (1) transfer or conveyance of the real estate by deed, land contract, lease, or otherwise during the affordability period; (2) commencement of foreclosure proceedings or deed in lieu of foreclosure by any mortgagee during the affordability period; (3) notice of default by any lender or partner; or (4) determination that the assisted units are not being used as a residence by a qualifying tenant or not leased according to the program affordability requirements. The award recipient will be responsible for repaying IHCDA.

IHCDA will release the lien at the end of the affordability period if the borrow/recipient has met all conditions, including paying off the final loan balance.

Part 5.6|Suitable for Occupancy

A. General Requirements and Recordkeeping

In addition to being rent-restricted and occupied by qualified households, all tax credit units and buildings must be "functionally adequate, operable, and free of health and safety hazards." Owners must annually certify that all units and buildings in the development meet this standard. If any health, safety, or building code inspections result in a notice of violation, the owner must disclose such findings to IHCDA. Original reports/notices of violations must be maintained as part of the owner's recordkeeping and copies must be submitted to IHCDA along with the Annual Owner Certification of Compliance.

Vacant units must also be suitable for occupancy and cannot be cannibalized for parts. Because the owner is responsible for maintaining all tax credit units in a manner that is suitable for occupancy at all times, the cost of preparing vacant units for occupancy cannot be passed on to tenants or applicants. During the inspection process, the IHCDA inspector may ask to inspect a mix of both occupied and vacant units.

Tax credit units that are not suitable for occupancy at the end of the taxable year are not considered qualified units and cause a deduction in Applicable Fraction (and thus Qualified Basis).

Properties must meet the National Standards for the Physical Inspection of Real Estate (NSPIRE) standards established by HUD. NSPIRE requires an inspection of the following inspectable areas: unit, inside, and outside. See Part 5.6E for a list of the Affirmative Habitability Requirements under NSPIRE. NSPIRE standards are included in Appendix E.

For information on IHCDA's inspection process, see Parts 7.5C and 7.5D.

In addition to program specific compliance, Indiana Code 32-31-8-5 "Landlord Obligations" states:

"A landlord shall do the following:

(1) Deliver the rental premises to a tenant in compliance with the rental agreement, and in a safe, clean, and habitable condition.

(2) Comply with all health and housing codes applicable to the rental premises.

(3) Make all reasonable efforts to keep common areas of a rental premises in a clean and proper condition.

(4) Provide and maintain the following items in a rental premises in good and safe working condition, if provided on the premises at the time the rental agreement is entered into:

(A) Electrical systems.

(B) Plumbing systems sufficient to accommodate a reasonable supply of hot and cold running water at all times.

(C) Sanitary systems.

(D) Heating, ventilating, and air conditioning systems. A heating system must be sufficient to adequately supply heat at all times.
(E) Elevators, if provided.
(F) Appliances supplied as an inducement to the rental agreement."

B. Casualty Loss

1. Definition

A casualty loss is defined by the IRS as "damage destruction, or loss of property resulting from an identifiable event that is sudden, unexpected, or unusual" (IRS Publication 547 and Publication 584). Page 6-5 of the 8823 Guide defines those terms as follows:

- Sudden event: "one that is swift, not gradual or progressive."
- Unexpected event: "one that is ordinarily unanticipated and unintended."
- Unusual event: "one that is not a day-to-day occurrence and that is not typical."
- This explicitly does not include property damage "if the damage occurred during normal use, the owner willfully caused the damage or was willfully negligent, or was progressive deterioration such as damage caused by termites."

2. Reporting Requirements

An owner that experiences a casualty loss must:

- Inform IHCDA of the loss in writing within 10 days of the incident;
- Submit a plan to IHCDA within 30 days that sets a timeframe for reconstruction or replacement of lost units; and
- Inform IHCDA when the units have been reconstructed or replaced and provide supporting documentation including an Owner Affidavit and work orders, invoices, or other documents proving completion of reconstruction/repair.

Casualty loss information must be reported via "Casualty Loss Form K" (see Appendix E). Failure to report casualty loss events may result in penalties including suspension.

IHCDA must report the loss and replacement of the units to the Internal Revenue Service (IRS) via IRS Form 8823. After receiving information about the casualty loss event, IHCDA will initially issue an uncorrected 8823. Once all units have been restored, IHCDA will then issue a corrected 8823.

3. Effect of Casualty Loss on Credits

Generally, the amount of credit that can be claimed is determined as of the close of each taxable year. Credits are only determined on a monthly basis during the first year of the Credit Period. Therefore, if a building is damaged by a casualty loss event and fully restored within the same taxable year, the IRS has stated that there will be no recapture or loss of credits, as long as the following criteria are met:

1. The restored units are occupied by the end of the taxable year; or
2. The owner has initiated what the IRS refers to as "continual and certifiable measures" to rent the restored vacant units.

Although recapture will not occur as long as the units are restored to suitable condition within a reasonable period, credits cannot be claimed during the time the units are not suitable for occupancy. In Chief Council Advice Memorandum CCA200134006, the IRS clarified that a period of up to two years following the end of the tax year in which the casualty loss occurred is consistent with general replacement principles involving casualties and thus considered a reasonable period. In order to avoid recapture and continue claiming credits as soon as possible, the owner of a building damaged by casualty loss should act quickly to remedy the issue. Per IRS guidance, the state housing finance agency must define the reasonable period. IHCDA will allow the owner the maximum reasonable period, as defined above, in all cases rather than setting a case-by-case deadline for each individual casualty loss event.

Example 1: Restored within same taxable year as casualty loss event
A fire occurs on 6/30/13 and two units are no longer suitable for occupancy. The units are restored (suitable for occupancy) and either occupied or properly marketed before 12/31/13. Because the units were restored before the end of the taxable year, there is no loss of credits or recapture.

Example 2: Restored in next taxable year
A fire occurs on 11/30/13 and two units are no longer suitable for occupancy. The units are not restored until 3/15/14. Because the units were not restored before the end of the taxable year (in this example 12/31/13), the affected units are not eligible for 2013 credits. However, since the units were restored within the "reasonable period", recapture does not apply.

For additional IRS guidance on casualty loss, refer to CCA200134006, Low Income Housing Credit Newsletter Issue #35 May 2009, and Low Income Housing Credit Newsletter Issue #43 February 2011.

C. Ongoing Lead-Based Paint Compliance (*applies to federal funding including TCAP)

Projects with federal funding (e.g., HOME/HTF/CDBG/CDBG-D/NSP & TCAP) built before 1978 are subject to ongoing compliance with lead-based paint regulations. Tax credit properties with these funding sources must comply with the regulations.

1. Owners must inform current and new occupants of the lead hazard reduction methods that took place and where lead-based paint exists in their units. The brochure entitled "Protect Your Family from Lead in Your Home" must be provided to all new occupants upon move-in. Signed documentation of the receipt of this brochure by the household must be maintained in each tenant file.
2. Owners should request, in writing, that the residents monitor lead-based paint surfaces and inform the owner of potential hazards.
3. Regular maintenance and evaluation of the lead hazard reduction must be performed. The owner is responsible for:
    - A visual inspection of lead-based paint at unit turnover or at least annually on occupied units;
    - Repair of all unstable paint;
    - Repair of encapsulated or enclosed areas that are damaged; and
    - Owners must continue to comply with the notification requirements when additional lead hazard evaluation and hazard reduction activities are performed.

D. Common Area Noncompliance

It is critical that owners maintain all common areas and quickly resolve inspection issues related to such areas. If common areas fail to pass inspection standards and the noncompliance is uncorrected at the end of the taxable year, eligible basis is reduced and the building is subject to recapture. However, common area noncompliance does not impact the building's applicable fraction.

Per an IRS Office of Chief Counsel Memorandum dated May 22, 2019, the reduction in basis is equal to the "amount of total costs attributable to the specific common area that was included in eligible basis of the building." The IRS notes that "the reduction in the eligible basis is not the amount of the costs attributable only to the portion of the noncompliance common area." The Memorandum provides an example of a laundry room where the space and the laundry machines were included in eligible basis. During an inspection, it was determined that half of the laundry machines were not operating. The IRS notes that in this case, the reduction in eligible basis equals the total costs of the laundry room included in basis and specifies that "the reduction is not limited to the amount of the costs attributable to the nonfunctional laundry machines.

E. NSPIRE Affirmative Habitability Requirements

NSPIRE requires the following minimum Affirmative Habitability Requirements. IHCDA implemented NSPIRE on January 1, 2024. NSPIRE applies retroactively to all projects and replaces the former Uniform Physical Conditions Standards.

Inspectable Area = Unit: the interior components of an individual dwelling where the resident lives

3. Hot and cold running water in both bathroom and kitchen, including adequate source of safe drinking water in the bathroom and kitchen
4. Bathroom or sanitary facility that is in proper operating condition and usable in privacy that contains a sink, a bathtub or shower, and an interior flushable toilet
5. At least 1 battery-operated or hard-wired smoke detector in proper working condition
    a. On each level of the unit
    b. Inside each bedroom
    c. Within 21' of any door to a bedroom measured along a path of travel; and
    d. Where a smoke detector installed outside a bedroom is separated from an adjacent area by a door, must also be installed on the living area side of the door

    If the unit is occupied by a hearing-impaired person, the smoke detectors must have an alarm system designed for hearing-impaired persons.
6. Living room and kitchen area with a sink, cooking appliance, refrigerator, food preparation area, and food storage area
7. For units with Housing Choice Vouchers or Project Based Vouchers, at least one bedroom or living/sleeping room for each two persons in the household
8. Must meet carbon monoxide detection standards established through Federal Register notice and the NSPIRE standard, if applicable
9. Two working outlets or one working outlet and a permanent light within all habitable rooms
10. Outlets within 6' of a water source must be GFCI protected*. Note: A washing machine's water connection is considered a water source. Therefore, all outlets within 6 feet of the washing machine connection must be GFCI protected.
11. Must contain a permanently installed heating source. Units may not contain unvented space heaters that burn gas, oil, or kerosene.
12. Must have a guardrail when there is an elevated working surface drop off of 30' or more measured vertically
13. Permanently mounted light fixture in the kitchen and each bathroom

Inspectable Area = Inside: the common areas and building systems within the building interior that are not inside a unit

1. At least one battery-operated or hard-wired smoke detector in proper working condition on each level
2. Must meet carbon monoxide detection standards established through Federal Register notice and the NSPIRE standard, if applicable
3. Outlets within 6' of a water source must be GFCI protected*. Note: A washing machine's water connection is considered a water source. Therefore, all outlets within 6 feet of the washing machine connection must be GFCI protected.
4. Must have a guardrail when there is an elevated walking surface drop off of 30" or more measured vertically
5. Permanently mounted light fixtures in any kitchens and each bathroom
6. May not contain unvented space heaters that burn gas, oil, or kerosene

Inspectable Area = Outside: the building site, building exterior components, and any building systems located outside of the building

1. All outside outlets must be GFCI protected
2. Must have a guardrail when there is an elevated walking surface drop off of 30" or more measured vertically

*The requirement that all interior outlets within 6' of a water source must be GFCI protected does not apply in the following circumstances:

- The requirement does not apply to an outlet dedicated to a major appliance (e.g., water heater, HVAC, refrigerator, washing machine, dishwasher, garbage disposal, appliance that is wall-mounted or installed within a cabinet, etc. A "dedicated outlet" is a receptacle outlet that is only capable of serving that specific appliance. A dedicated outlet cannot be a dual/duplex outlet.
- The requirement does not apply to an outlet below a countertop and within an enclosed cabinet, regardless of its distance from the water source.

Smoke Alarm Placement Requirements
Smoke alarms must be installed in all areas listed in the affirmative habitability requirements. The following placement requirements must be met.

- If mounted on the ceiling, smoke alarm must be greater than 4 inches from the wall
- If mounted on the wall, the top edge of the smoke alarm cannot be closer than 4 inches or greater than 12 inches from the ceiling
- It is recommended, but not required, that smoke alarms be installed at least 10 feet from a cooking appliance and not near windows, doors, or ducts where drafts might interfere with their operation

CO Detector Placement Requirements
CO detectors are only required if required by NFPA 72 or NSPIRE standards, for example, if a unit (1) contains a fuel-burning appliance or fuel-burning fireplace, (2) has adjacent spaces from which byproducts of combustion gas can flow, or (3) is located one story or less above or below an attached private garage that does not have natural ventilation or is enclosed and does not have a ventilation system for vehicle exhaust. See HUD's NSPIRE carbon monoxide alarm standard.

Part 5.7|Additional QAP Requirements

The owner must ensure that all threshold requirements and applicable scoring criteria of the Qualified Allocation Plan (QAP) under which the project was funded are maintained throughout the Extended Use Period. This includes the provision of all services and amenities committed to in the application. In addition, the following requirements may apply.

A. Smoke-free Housing

Applications funded in the 2018-2022 QAP may have committed to providing smoke-free housing. Applications funded in the 2023 or later QAP are required to operate as smoke-free housing. Projects that have agreed to or that are required to operate as smoke-free housing must utilize a lease addendum that includes the following information:

- Definition of smoking, which includes electronic cigarettes and vaping as a form of prohibited smoking
- Language stating that smoke-free rules apply not only to residents but also their guests on the property, staff, and all others
- Explanation of where smoking is prohibited on the property. Smoking must be prohibited in individual units and all interior common space. The addendum must establish either the entire property as smoke-free or identify a designated smoking area on the property. A designated smoking area must not be within 25 feet of any buildings.
- Explanation of how smoke-free rules will be enforced.

IHCDA recommends the American Lung Association of Indiana's "Smoke Free Housing Toolkit" as a resource for creating a smoke-free housing policy.

B. Eviction Prevention and Low-Barrier Tenant Screening

Applications funded in the 2020 or later QAP may have committed to implementing eviction prevention strategies and/or low-barrier tenant screening.

If an application received points for eviction prevention, the owner must create and implement an Eviction Prevention Plan for the project. The plan must address how the owner will implement management practices that utilize eviction only as a last resort and must describe all strategies that will be taken with tenants on an individualized basis to attempt to prevent evictions when issues arise. The Eviction Prevention Plan must be reviewed prior to lease-up and then on an ongoing basis as part of IHCDA compliance monitoring. Additional resources are available on IHCDA's Eviction Prevention and Low-barrier Screening webpage.

Eviction prevention strategies may include, but not be limited to:

- Providing or connecting tenants with supportive services and education
- Implementing payment plans for nonpayment of rent

- Creating tenant-specific housing retention plans that outline a specific tenant's lease violations and plans to remedy those violations. Housing retention plans should focus on specific lease violations,
- Using other methods of termination (non-renewal of lease, voluntary termination) when needed instead of eviction.

If an application received points for low-barrier tenant screening, the owner must implement a tenant selection plan and screening procedures that do not screen out applicants for evictions that occurred more than 12 months prior to the date the household applies for a unit. The tenant selection plan must be reviewed prior to lease-up and then on an ongoing basis as part of IHCDA compliance monitoring.

C. Supportive Housing Units for Persons Experiencing Homelessness

Applications funded as supportive housing for persons experiencing homelessness are subject to the following requirements:

- Supportive housing units are permanent, rental housing units. There is no time limit on occupancy- i.e., supportive housing is not a transitional housing or temporary housing model.
- Supportive housing tenants have a lease and all the rights and responsibilities of a lease holder. The lease may not include language mandating participation in services.
- Supportive housing units must serve persons experiencing homelessness who are identified through local Coordinated Entry as being the most vulnerable and in need of supportive housing. Rather than creating a project-specific waitlist, vacant units must be filled by utilizing names from the top of the local Coordinated Entry list.
- Tenant selection plans:
    - Must be written specific to supportive housing principles
    - Must utilize Coordinated Entry as the referral source
    - May not screen out individuals based on a minimum income test, credit history, previous landlord history including previous evictions, a history of or active substance use, history of victimization, or history of homelessness
    - Must include low-barrier criminal background screening
- Supportive services must be voluntary, not a condition of occupancy. However, staff must continually engage and build relationships with tenants to encourage participation in services. Participation in services cannot be required for the tenant to obtain or maintain housing, unless part of a tenant-specific housing retention plan to avoid an eviction due to specific lease violations.
- Must utilize eviction prevention philosophy, strategies, practices, and policies as formulated in a written eviction prevention plan specific to the project. IHCDA provides eviction prevention best practices and templates on its Eviction Prevention and Low Barrier Screening webpage.
- Must report through the Homeless Management Information System ("HMIS")
- Supportive housing units must include owner-paid utilities

D. Community Integration Units for Persons with I/DD

The following requirements apply to all developments subject to the Community Integration set-aside of the QAP, regardless of which QAP year they were funded under. In the event of any conflicts between the QAP language and the requirements below, these requirements prevail.

Applications funded in the 2018 or later QAP may have elected to meet the QAP's Community Integration definition. Community Integration projects agree to reserve 20-25% of the total project units for households in which at least one member is a person with an intellectual or developmental disability ("I/DD") or traumatic brain injury. The qualifying member does not have to be the head of household or co-head. Intellectual or developmental disability is based on the definition found in Indiana Code 12-7-2-61. The intellectual or developmental disability or related condition must have an onset prior to 22 years of age (except in the case of traumatic brain injury) and the condition must be expected to continue indefinitely.

To create integrated housing settings and discourage segregation based on disability, the number of units reserved for this population cannot exceed 25% of the total development units. In addition, the units must be spread throughout the property, must float, and cannot be concentrated or clustered into a separate designated area (building, floor, wing, etc.). The owner may not establish a limit or preference for a specific disability.

All Community Integration Projects must maintain at least one active Memorandum of Understanding (MOU) with a provider that serves persons with I/DD. The provider(s) must agree to refer clients to the project and to connect residents with appropriate supportive services. This does not mean that the provider must directly provide those services, nor can the provider mandate participation in services as a condition of occupancy.

Proof of a qualifying disability can be obtained through any of the following methods. Proof obtained through one of the first three methods listed below serves as documentation that the individual has a qualifying disability, and property management may not inquire further into the disability during the application process or tenant screening:

- A referral from the identified MOU provider, one of the independent I/DD case management organizations contracted by the Division of Disability and Rehabilitative Services, or another qualified I/DD service provider who has documented the individual's I/DD diagnosis.

- If an individual receives a Home and Community Based Services Waiver through the Indiana Division of Disability and Rehabilitative Services, or is on the waitlist for such a waiver, waiver or waitlist status shall be deemed proof of eligibility.

- If the individual with I/DD is a student, referral or documentation from the school or educational system demonstrating that the student is eligible for special education services under one or more of the following areas of eligibility: Autism Spectrum Disorder, Intellectual Disability, Developmental Delay, Multiple Disabilities, Specific Learning Disability, or Traumatic Brain Injury.

- An applicant who was not referred by the identified provider and does not have any of the documentation above must provide third-party verification demonstrating an intellectual or developmental disability. Third-party verification could come from sources such as a physician, physician's assistant, nurse practitioner, doctor of osteopathy, psychiatrist, or psychologist. This verification must follow the Fair Housing Act requirements for verification of disability and cannot inquire into the nature of the disability.

Part 5.8|Procedures for the Transfer of LIHTC and Developments

A. Transfer of Ownership Prior to Issuance of Form 8609

Any change in ownership or transfer prior to issuance of Form 8609 must be preapproved in writing by IHCDA. Failure to notify IHCDA of such ownership changes or transfer could result in the allocation being rescinded and/or other penalties imposed upon the developer. A request must be submitted in writing notifying IHCDA of the nature and structure of the proposed ownership change or transfer. Such submission must also include payment of a $1500 ownership change fee. IHCDA staff will advise on any additional required documentation, which may include but not be limited to submission of an updated application form and supplemental materials.

IHCDA may approve or disapprove the proposed transfer in its sole and absolute discretion. No consent or approval of the Authority with respect to the proposed transfer shall be effective without the written consent of the Authority and any attempt to affect a transfer without such prior consent shall be void from inception. Such approval may be conditioned upon receipt by the Authority of any and all documents or instruments to be executed by the proposed transferor and transferee in order to effectuate the transfer contemplated hereby and such future conditions as the Authority may impose from time to time. Consent to a transfer shall not be deemed to be the consent to any subsequent transfer or waiver of the Authority's right to require the Authority's consent to any future transfers. Any consent, action, review, recommendation, approval, or other activity taken by or on behalf of the Authority shall not, expressly or impliedly, directly or indirectly, suggest, represent,

or warrant that the sponsor, owner, and/or development qualify for the credit, or that the development complies with applicable statutes and regulations or that the development is or will be economically feasible.

B. Transfer of Ownership After Issuance of Form 8609

Sale of a building(s) or an interest therein

After the issuance of Form 8609, upon the sale, transfer, or disposition of a qualified low-income building or an interest therein, the transferee shall immediately submit a "Property Ownership Change Form" to IHCDA, along with the following supplemental documentation:

1. A copy of all sale documents;
2. The newly amended and stated partnership agreement;
3. A copy of the "Property Management Change Form" if management agent has changed; and
4. Any other additional information that IHCDA may request.

However, if there is other IHCDA financing in the project (e.g., HOME, Housing Trust Fund, Development Fund loan, Project Based Vouchers, or Section 811 Project Rental Assistance) or if the project is subject to the non-profit material participation requirements, the owner must notify IHCDA in advance of the transfer and receive written approval prior to transfer.

If the project has HOME or HTF funds, the request for IHCDA approval must include the following documentation:

- Current year-to-date financial statements and previous two calendar year financial statements for the new owner entity
- An updated operating pro forma prepared by the new owner covering the remainder of the affordability period

If the project is subject to non-profit material participation requirements (per Form 8609), the request for IHCDA approval must include supporting documentation proving the new ownership will continue to meet the definition of a qualified nonprofit as defined in the IHCDA Qualified Allocation Plan under which the project received an allocation of tax credits.

Receivership Information and Foreclosure

If a building(s) is in the foreclosure process, the receivership documents must be submitted to IHCDA immediately. Additionally, once final foreclosure occurs, the foreclosure (or instrument in lieu of foreclosure) documents must be submitted to IHCDA so that proper reporting to the IRS may occur.

Section 6 – Qualifying Households for LIHTC Units

Household income must be calculated and verified in a manner consistent with the methodology found in 24 CFR Part 5.609, as amended from time to time (often referred to as the "Section 8 methodology"). Note: The Section 8 asset limitation which denies eligibility to households with assets exceeding $100,000 (adjusted annually by inflation) or who own a home that is suitable for occupancy does not apply to the tax credit program.

For additional information on determining income eligibility, refer to the following resources:

- Chapter 5 of HUD Handbook 4350.3 *Occupancy Requirements of Subsidized Multifamily Housing Projects*. *CAUTION: The current HUD Handbook has not been updated to include the streamlining rules or HOTMA updates, as listed below.
    - Section 1- Determining Annual Income
    - Section 3- Verification
    - Exhibit 5-1- Income Inclusions and Exclusions
    - Exhibit 5-2- Assets
    - Appendix 3- Acceptable Forms of Verification
- Streamlining Administrative Regulations for Public Housing, Housing Choice Voucher, Multifamily Housing, and Community Planning and Development Programs: Final Rule 3/8/17
- Streamlining Administrative Regulations for Multifamily Housing Programs and Implementing Family Income Reviews Under the Fixing America's Surface Transportation (FAST) Act: Final Rule 5/27/20
- Housing Opportunities Through Modernization Act of 2016 (HOTMA); Final Rule 2/14/23, Effective 1/1/24
- Notice H 2023-10 / Notice PIH 2023-27: Implementation Guidance: Sections 102 and 104 of the Housing Opportunity Through Modernization Act of 2016 (HOTMA), as revised February 2, 2024

*Note: the 8823 Guide has not been updated to reflect HUD Handbook 4350.3 Change 4, the streamlining rules, or HOTMA. Therefore, Chapter 4 of the 8823 Guide is considered outdated and should not be used for guidance on income calculations and verification. This was confirmed by the IRS in *LIHC Newsletter #54*.

Part 6.1|Tenant Qualification & Certification Process

A. Necessary Documentation for a Tenant File

Households are qualified for the program only if proper documentation verifying the household's eligibility is obtained and maintained in the tenant file. Per the 8823 Guide (Page 4-33), units are considered out of compliance "if the initial tenant income certification is inaccurate, documentation of initial eligibility is insufficient, or no initial tenant file is on record." Forms referenced below can be found on IHCDA's compliance webpage.

IHCDA accepts electronic signatures from tenants, owner agents, and third-party income verifiers.

At a minimum, the following items must be included in the file and must be organized in chronological order for ease of review:

1. Initial Tenant Application for residency (IHCDA provides a sample as Compliance Form #18);
2. Income Certification Questionnaires (Form #23, see Part 6.2 below) completed at time of application, including certification of assets and disposal of assets if applicable. A separate Tenant Income Certification Questionnaire must be completed by each adult household member annually, except for recertifications at 100% tax credit projects;
3. Tenant Income Certification (Form #22, see 6.1 B below) signed by each adult member of the household for every year the household resides at the property. The TIC must have proper signature and effective dates clearly stated (effective date of TIC must be date of move-in or recertification, see Part 6.6 B for more information on effective dates);

4. Verifications of all sources of earned and unearned income and of all asset sources noted on the Tenant Income Certification Questionnaires. See Part 6.3 for more information on verification requirements;
5. If the value of net family assets is less than or equal to $50,000 (as adjusted by inflation) and the owner agent is utilizing the allowable asset self-certification, an asset self-certification form completed for the household. The TIC or Income Questionnaire alone does not serve as a self-certification of assets.
6. A separate "Student Status Self-Certification for LIHTC" (Form #35) completed by each adult member of the household each year, along with any additional student status verifications needed (e.g., verification of part-time status, verification of a student exemption, etc.). For HOME-assisted units, the "Student Status Self-Certification for HOME" (Form #36) must also be completed by each adult household member;
7. Any other documentation verifying the household's eligibility (e.g., unborn child self-certification, joint custody of a child documentation, management clarification documents, etc.);
8. Initial and subsequent leases and all lease addenda executed by the tenant and owner; and
9. For tenants receiving Housing Choice vouchers (tenant-based Section 8), a copy of either (1) the original Housing Assistance Payment (HAP) Contract and the current HAP Amendment from the public housing authority, or, (2) a copy of the current HUD Form 50058. For tenants in Section 8 Project Based Voucher (PBV) units, a copy of either (1) the current HUD Form 50058 showing the amount of rental assistance or (2) HUD Form 52530 Tenancy Addendum for Section 8 Project-Based Voucher Program. For tenants in Section 8 Project Based Rental Assistance (PBRA) or Section 811 Project Rental Assistance (811 PRA) units, a copy of the current HUD Form 50059 showing the amount of rental assistance.
10. For tenants residing in units with USDA Rural Housing Service assistance, the current RD Form 3560-8 Tenant Certification must be included in the file.

NOTE: A recertification file for 100% tax credit projects will only include the following documentation: a new Tenant Income Certification Form, new student status certifications for each adult member of the household, and the new lease and all addenda. Verification of income and assets is not necessary at recertification for 100% tax credit projects. It is also unnecessary to complete a Questionnaire at recertification for 100% tax credit projects.

All documents included in the tenant file must be fully completed, signed, and dated. IHCDA will not accept documents that are incomplete, that have been marked with correction fluids (e.g., whiteout), or where information has been obliterated with pen or marker. See 6.1 C below for information on how to properly correct documents in a tenant file.

B. Tenant Income Certification (TIC) Form

Every tenant file must contain a tax credit Tenant Income Certification (TIC) form, regardless of whether or not that unit/tenant also has an income certification from another program in the file (e.g., HUD Form 50058/50059 or RD Form 3560-8). IHCDA's Tenant Income Certification form used for the tax credit program includes information that is not found on these other forms, such as the BIN number, the tax credit income and rent limits, household student status, the tax credit set-aside for the unit, the tax credit certification effective dates, etc. Therefore, properties that have multiple funding sources will need to have multiple signed tenant income certification forms in their files to demonstrate compliance with each separate program.

IHCDA's TIC (Form #22) is a mandatory form that must be used in all tenant files. IHCDA will not accept any other TIC form, unless the TIC is submitted to IHCDA and specifically approved. IHCDA revised the TIC in April 2024 with HOTMA revisions. That revised version of the form must be utilized for all files with an effective date on or after January 1, 2025.

The TIC must list the IHCDA rent and income set-aside for the unit/household. Therefore, the rent and income restrictions should be listed as 20%, 30%, 40%, 50%, 60%, 70%, or 80%, not the actual AMI % of the household. For example, at time of move-in, a household may actually have income at 47% of AMI. IHCDA does not need to know this, but rather only needs to know the tax credit set-aside the household qualifies under, in this case, either the 50%, 60%, 70%, or 80% AMI limit depending on the designation of the unit.

C. Correcting Documents

IHCDA will not accept documents that are incomplete, that have been marked with correction fluids (e.g., whiteout), or where information has been obliterated with pen or marker. To correct a document, management should draw one line through the erroneous information and write the corrected information to the side. All corrections should be dated and initialed. Corrections on forms filled out by the management should be initialed by the management agent. Corrections on forms filled out by the tenant should be initialed by the tenant. Corrections to the lease should be initialed by both parties.

If management fails to obtain the necessary paperwork at time of certification, verifications can be retroactively created to document the income and assets that were in place at the time of certification. All retroactive documents must be signed with the current date but noted as being "true and effective" as of the actual certification effective date. The "true and effective" statement must be written on each form that is created or signed after the effective date. Neither tenants nor management are ever permitted to backdate documents. The recertification effective date continues to be the anniversary date of the move-in, not the date the documents were completed retroactively.

Example: Mrs. Smith is due for her annual recertification on December 20th. However, the property manager was distracted putting up holiday decorations and forgot to send out a recertification notice. Therefore, Mrs. Smith does not come to the office to complete her paperwork until January 2nd. Mrs. Smith should sign all paperwork with the current date (January 2nd) but should make a note at the bottom of each form stating "information true and effective as of December 20th."

D. One Form per Household or One Form per Member?

Form	1 form per household signed by all adults	1 separate form per each adult member
Income Certification Questionnaire	-	YES
Tenant Income Certification	YES	-
Student Status Certification	-	YES
≤ $50,000 Asset Certification (as adjusted by inflation)	YES	-
Zero Income Certification	YES- if the entire household is claiming zero income	-
All other verification documents	-	YES

Part 6.2|Tenant Application & Income Certification Questionnaire

A fully completed Application and Income Certification Questionnaire is critical to an accurate determination of tenant eligibility. An Application must be completed by the household at initial move-in. An Income Certification Questionnaire must be completed annually (at initial move-in and at annual recertification) by each adult member of the household (a separate questionnaire for each adult member). However, it is not necessary to create questionnaires for recertification files at 100% tax credit projects.

IHCDA's Income Certification Questionnaire form (Form # 23) is a mandatory form that must be used in all tenant files. IHCDA will not accept any other Questionnaire form, unless the Questionnaire is submitted to IHCDA and specifically approved. IHCDA revised the Income Certification Questionnaire in April 2024. That revised version of the form must be utilized for all files with an effective date on or after January 1, 2025.

At the time of application, it is the owner agent's responsibility to obtain sufficient information on all prospective tenants to completely process the application, determine household eligibility, and complete the Tenant Income Certification (TIC) form.

IHCDA requires that each adult household member complete a separate Income Certification Questionnaire at time of application and at each annual certification (except at 100% tax credit projects). The Application and Income Certification Questionnaire are the first steps in the tenant certification process. The information furnished on the Application and Income Certification Questionnaire should be used as a tool to determine all sources of income (including total cash value of assets and income from assets), household composition, and student status.

HUD Handbook 4350.3 lists guidelines which the owner may want to adopt for the application process. The Application should include:

1. The name of each person that will occupy the unit (legal name should be given just as it will appear on the Lease and Tenant Income Certification form);
2. All sources and amounts of current and anticipated annual income expected to be derived during the 12-month certification period. Include assets now owned and indicate whether or not household members disposed of assets for less than Fair Market Value during the previous two years;
3. The current and anticipated student status of each applicant during the 12-month certification period and current calendar year;
4. A screening process (i.e., previous landlord's rental history, credit information, criminal background, etc.). Owners should ask applicants whether the family's assistance or tenancy in a subsidized housing program has ever been terminated for fraud, nonpayment of rent, or failure to cooperate with recertification procedures;
5. The signature of the applicant and the date the application was completed. It may be necessary to explain to the applicant that all information provided is considered confidential and will be handled accordingly; and
6. Collection of demographic data: The Housing and Economic Recovery Act (H.R.3221) passed by Congress on July 31, 2008 requires HUD to collect and report the following information for <u>all</u> LIHTC tenants:
    -Race
    -Ethnicity
    -Sex
    -Family composition
    -Age (Date of birth)
    -Income
    -Use of Section 8 (or similar) Rental Assistance Program
    -Disability Status; and
    -Monthly Rental Payment

    To meet the data collection requirements established in HERA, LIHTC owners must annually report demographic data for all household members (each member, not just the head of household) living in their developments. IHCDA then reports this information in aggregate form to HUD. IHCDA provides a sample "Race and Ethnicity Data Reporting Form" (Form #37) that owners may utilize to gather this information. This information should only be obtained after a move-in has been approved so that it cannot be construed that the information was used as part of tenant selection / screening.

    In order to reduce administrative burden, it is IHCDA's intent to capture all demographic information for HUD through the online reporting system as part of the Annual Owner Certification tenant event submission. Therefore, the owner of a LIHTC development must obtain demographic data for each household member and report this information when submitting tenant events online through https://online.ihcda.in.gov.

Part 6.3| Income Verification

Owner agents are responsible for obtaining third-party verification of household income, assets, and other factors that affect the determination of eligibility. Third-party verification must be obtained from a third-party or from the household. Owner agents must document the reason why third-party verification was not available, except in cases where regulations specifically permit households to self-certify (i.e., when net assets do not exceed $50,000, adjusted by inflation).

A. Effective Term of Verification

Verifications of income are valid for 120 days from the date of receipt by the owner agent and must be obtained prior to move-in or recertification effective date. After this time, if the tenant has not yet moved in or recertified, new verification must be obtained. Verifications that are more than 120 days old as of the effective date of the move-in or recertification event are invalid and the owner agent must obtain updated verification documents.

B. Methods of Verification

Owner agents must follow HUD's verification hierarchy (see HUD Notice H 2023-10 / PIH 2023-7) which lists verification documentation from most acceptable to least acceptable. The owner agent must demonstrate efforts to obtain third-party verification prior to accepting self-certification, except in instances where self-certification is explicitly allowed (i.e., when net assets do not exceed $50,000 adjusted by inflation).

Verification Hierarchy*

Level	Verification Technique	Ranking/Order of Acceptability
5	Upfront Income Verification (UIV) using non-EIV system- e.g., The Work Number, web-based state benefit systems, etc.	Highest
4	Written third-party verification from the source provided by the tenant- e.g., paystubs, bank statements, benefit letters, tax returns, etc.	High
3	Written, third-party verification form	Medium- use if applicant or tenant is unable to provide Level 4 documentation
2	Oral, third-party verification	Medium
1	Self-certification (not third-party)	Low- use as last resort if unable to obtain any third-party verification or use when specifically permitted such as when net assets do not exceed $50,000 (adjusted by inflation)

*Adapted from Table J2: Verification Hierarchy from HUD Notice H 2023-10 / PIH 2023-7. Note: Level 6 EIV has been removed from this chart as it is not applicable to the tax credit program.

1. Third-Party Tenant-Provided Documents (Level 4)

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

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

When using tenant-provided information, the owner must consider the following:

- Is the document current?
- Is the document complete?
- Is the document an unaltered original copy?

The following requirements apply to tenant-provided documents:

a. **Using Paystubs for Employment Verification**: If utilizing paystubs for employment verification, the owner must obtain the two most recent, consecutive paystubs from the tenant/applicant. However, if the unit is also HOME/CDBG/CDBG-D/NSP assisted, then the paystubs obtained must also cover at least a full two months of consecutive payments.
b. **Using Bank Statements:** If utilizing bank statements, the owner agent must obtain the most recent statement to verify the current balance (if net assets exceed $50,000 adjusted for inflation and third-party asset verification is required).
c. **Using Tax Returns:** Per the HOTMA Implementation Notice, income tax returns "with corresponding official tax forms and schedules attached and including third-party receipt of transmission for income tax return filed (i.e., tax preparer's transmittal receipt, summary of transmittal from online source, etc.) are an acceptable form of written, third-party verification."

The owner agent must be able to reasonably project anticipated income for the next 12 months from the tenant-provided documents.

2. Third-Party Written Verification (Level 3)

IHCDA does not require that the owner agent use particular forms for third-party verifications; however, sample third-party verification forms are provided online in IHCDA's compliance forms. All requests for income verification must:

a) State the reason for the request;
b) Include a release statement signed and dated by the applicant or tenant; and
c) Provide a section for the employer or other third-party source to state the applicant/tenant's anticipated gross annual income or rate of pay, number of hours worked, and frequency of pay. Over-time hours, bonuses, tips, and commissions must be included, as well as the effective date of any verifiable increase during the next 12 months. Spaces should also be available for a signature, job title, phone number, and date. If forms are returned with any information incomplete, management must contact the source and complete a clarification form to document incomplete information.

Owner agents must send and receive verification forms directly to/from the third-party, not through the applicant or tenant.

3. Third-Party Oral Verification (Level 2)

When written verification is not possible, direct contact with the source to obtain oral verification will be acceptable to IHCDA only as a last resort. The conversation must be documented in the tenant file to include all information that would have been contained in a written verification. The information must include the name, title, and phone number of the third-party contact, the name of the onsite management representative accepting the information, and the date the information was obtained.

If the owner agent receives third-party verifications that are unclear or incomplete, a documented verbal clarification may be accepted if it includes the name and title of the third-party contact, the name and signature of the onsite management representative accepting the information, and the date the information was obtained.

Furthermore, if after requesting third-party verification, the third-party indicates that the information must be obtained from an automated telephone system, the owner may document the information provided from the telephone system. The documentation must state the date the information is received, all of the information provided, and the name, signature, and title of the person receiving the information.

4. **Self-Certification (Level 1)**

As a last resort, the owner may accept a tenant's signed affidavit if third-party verification cannot be obtained. The owner agent should try to refrain from using self-certifications, except where specifically allowed such as when net family assets do not exceed $50,000 (adjusted for inflation).

If self-certification must be used (except when specifically allowed), the owner agent is required to document the tenant file by explaining the reason third-party or tenant-provided verification could not be obtained and showing all efforts that were made to obtain verification. Per Chapter 5 of the HUD Handbook 4350.3, the following documents should be placed in the tenant file:

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

The owner may accept self-certification if there is a fee associated with receiving the third-party verification. If the owner chooses to pay the fee to obtain the third-party verification, this cost cannot be passed on to the tenant or applicant.

5. **Income Verified for a Rental Assistance Program / Public Housing Authority Verification of Income for Section 8 Recipients**

In lieu of conducting their own income calculation, the owner agent may accept an income determination that has already been made by a federal or state project-based rental assistance program or a federal tenant-based rental assistance program. For example, in the case of a tenant receiving housing assistance payments under the Section 8 Housing Choice Voucher or Project Based Voucher program, the third-party income verification requirement is satisfied if the Public Housing Authority (PHA) provides a statement to the building owner certifying that the household's income does not exceed the applicable income limit under Section 42(g) of the Internal Revenue Code.

The only documents that will be acceptable from the Public Housing Authority are (1) the most recent HUD Form 50058 or (2) the IHCDA Compliance Form #16A "Public Housing Authority Verification Form" dated no more than 120 days prior to the household's effective date. The form must be completed in its entirety by a qualified representative of the PHA and list the members of the household and the gross income of the household before any deductions that the household may be eligible for under the Section 8 Program. For other rental assistance programs, the owner agent must obtain a copy of IHCD Compliance Form #16B from the applicable rental assistance program administrator.

Once the owner agent receives this documentation, no other verification of income is required. However, verifications for other eligibility requirements such as student status must still be obtained, and the household must still complete a Tenant Income Certification Form and Income Questionnaire. The 50058 or PHA Form replaces the third-party income verifications but does not replace the TIC. A TIC must be included in the file regardless of whether there is a 50058.

The owner agent must obtain traditional third-party verification if the PHA or other rental assistance administrator does not respond to requests or is unwilling to provide the necessary statement.

The owner may not rely on the HUD Form 50058 or PHA form if a reasonable person in the owner's position would conclude that the tenant's actual annual income is higher than the tenant's represented annual income. Additionally, the HUD/PHA form must be signed by both the tenant and the PHA Representative when used as the income verification.

Because the HUD Form 50059 used for Section 8 Project Based Rental Assistance is not signed by a PHA representative, the Form 50059 cannot be used as income verification. However, the 50059 should be maintained in the file to verify the amount of rental assistance on the unit.

Note: The tax credit program cannot accept the Enterprise Income Verification (EIV) system used by Section 8 to verify income. EIV documentation must be kept in a separate file from the tax credit verifications so that it is completely inaccessible to the tax credit auditor.

6. Safe Harbor Income Determination for "Means-Tested" Assistance

In lieu of conducting their own income calculation, the owner agent may rely on the income determination completed for another "means-tested" form of federal public assistance within the previous 12-month period. Approved "means-tested" programs are as follows:

- Temporary Assistance for Needy Families (TANF)
- Medicaid
- Supplemental Nutrition Assistance Program (SNAP)- e.g., food stamps
- Earned Income Tax Credit (EITC)
- Low Income Housing Tax Credit (LIHTC)
- Special Supplemental Program for Women, Infants, & Children (WIC)
- Supplemental Security Income ("SSI")
- Other programs determined by HUD to have comparable reliability as announced through the Federal Register

The owner agent must obtain a third-party verification from the applicable program administrator that indicates household size, includes all household members, and provides the household's annual income. This may be in the form of a benefit award letter from the relevant program/agency.

Such verification is valid if any of the following dates falls into the 12-month period prior to receipt of the verification by the owner agent:

- Income determination effective date
- Program administrator's signature date
- Family's signature date
- Report effective date
- Other report-specific dates that verify the income determination date

If this verification is not available or the household disputes the verification, then the owner agent must conduct a traditional income verification and calculation.

EXCEPTION: For HTF-assisted units, the safe harbor for means-tested income verification cannot be used at move-in but may be used at recertification.

C. Guidance for Specific Income Sources

The following section provides guidance on some common and/or complicated sources of income to verify.

For complete information concerning included income and acceptable forms of income verification, see HUD Handbook 4350.3 CHG-4, specifically Chapter 5 and "Appendix 3: Acceptable Forms of Verification," and the HOTMA Implementation Guidance HUD Notices.

1. Social Security and Supplemental Security Income

IHCDA will accept the Annual Benefit Award Letter provided from the Social Security Administration to verify Social Security benefits. However, all Supplemental Security Income (SSI or SSDI) is required to be verified and dated within 120 days prior to the certification date. When interpreting Social Security benefit letters, use the gross amount before deductions unless the deduction is for a prior overpayment of benefits. Since HUD considers Social Security benefits

(including SSI & SSDI) to be fixed income sources, management may follow the Streamlining Rule for verification of income and is only required to obtain third-party documentation at move-in and at every third recertification. See Part 6.3(D)(8) below for more information.

The Social Security Administration (SSA) may no longer issue Social Security printouts or provide benefit verification letters. Clients can obtain an instant verification letter online by creating a personal mySocialSecurity account or by calling the national toll-free number 1-800-772-1213 and using the automated application to have a letter sent via mail.

Benefits received through direct deposit or a Direct Express Debit Card are treated as income. In addition, the balance on a Direct Express Debit Card is also considered as an asset and must be verified consistent with the verification procedures for a checking or savings account. A current balance must be provided and included as an asset in addition to the benefit income. This balance can be obtained through an online account service, a paper statement, or an ATM balance.

Delayed SS and SSI payments received as a lump sum are not counted as income but are included as a lump sum asset (see the second income exclusion example on page 5-21 of HUD Handbook 4350.3). Delayed SS and SSI payments received as periodic payments are excluded from income (see item #13 in Exhibit 5-1 of HUD Handbook 4350.3)

When a Social Security cost of living adjustment (COLA) increase is announced, the increase must be factored into all income determinations with effective dates after the date the increase was announced. Recent COLA increases include:

- On October 19, 2011, the SSA announced a 3.6% COLA increase for 2012.
- On October 16, 2012, the SSA announced a 1.7% COLA increase for 2013.
- On October 30, 2013, the SSA announced a 1.5% COLA increase for 2014.
- On October 22, 2014, the SSA announced a 1.7% COLA increase for 2015.
- On October 15, 2015, the SSA announced there would be no COLA increase for 2016.
- On October 18, 2016, the SSA announced a 0.3% COLA increase for 2017.
- On October 13, 2017, the SSA announced a 2.0% COLA increase for 2018.
- On October 11, 2018 the SSA announced a 2.8% COLA increase for 2019.
- On October 10, 2019, the SSA announced a 1.6% COLA increase for 2020.
- On October 13, 2020, the SSA announced a 1.3% COLA increase for 2021.
- On October 13, 2021, the SSA announced a 5.9% COLA increase for 2022.
- On October 13, 2022, the SSA announced an 8.7% COLA increase for 2023.
- On October 12, 2023, the SSA announced a 3.2% COLA increase for 2024.
- On October 10, 2024, the SSA announced a 2.5% COLA increase for 2025.
- On October 24, 2025, the SSA announced a 2.8% COLA increase for 2026.

2. Child or Spousal Support

The amount of child or spousal support included in annual income is "all amounts received," **not** any amount the household may be legally entitled to but is not receiving. HUD's HOTMA Implementation Guidance specifically states that "child support or alimony must be based on the payments received, not the amounts to which the family is entitled by court or agency orders."

The owner agent must verify the amount of support actually received to annualize income. HUD's HOTMA Implementation Guidance notes that "a copy of a court order or other written payment agreement alone may not be sufficient verification of amounts received by a family" since that order would demonstrate the amount the household is entitled to, not the amount they are receiving.

3. Unemployment and Welfare Benefits

When anticipating income from unemployment, the owner must annualize the weekly benefit amount regardless of whether the benefit end date suggests that benefits will not last for the full year. The owner may not use the total maximum benefit amount, the remaining benefit amount, or an average of the benefits received.

The only exception is if the tenant knows a date on which they will return to work or begin a new job. In this case, the owner would calculate unemployment benefits up until the hire date and then calculate employment income for the rest of the year. IHCDA will expect to see verification of the unemployment benefits and an employment verification showing the start date for the job, including all other information applicable to employment.

Welfare payments in the form of Temporary Assistance to Needy Families (TANF) are included as household income. Food stamps are not included as household income.

Settlement payments from claim disputes over unemployment or welfare are treated as lump sum assets. However, lump sum payments caused by delays in processing periodic payments in unemployment or welfare are included as income (see page 5-18 and Figure 5-3 on page 5-19 of HUD Handbook 4350.3).

4. Employment Income (Earned Income)

Earned income is defined as income or earnings from wages, tips, salaries, other employee compensation, and net income from self-employment. Worker's compensation payments, regardless of length or frequency of payments, are always excluded from annual income.

Owner agents must calculate the total anticipated employment income for the next 12 months based on current income and any verifiable changes. Employment income must be third-party verified when possible. Per HUD's HOTMA Implementation Guidance hierarchy of verification, an upfront income verification system such as the Work Number is the preferred source of employment verification, followed by tenant-provided source documents (e.g., paystubs), followed by a written third-party verification form completed by the employer.

If utilizing tenant-provided source documents:

- For tenants with jobs that provide steady employment, the owner must obtain the two most recent, consecutive paystubs.
- For seasonal workers or day laborers, the owner may need to obtain additional paystubs or an alternate form of verification. Seasonal workers and day laborers are considered to have recurring earned income and these income sources must be annualized and counted in total household income.

If employment verification indicates a range of hours worked, IHCDA will calculate based on the average hours worked, not the highest in the range.

Note: IHCDA no longer requires a year-to-date (YTD) calculation as part of income calculation. If the owner agent chooses to utilize a year-to-date calculation methodology, they must be consistent when calculating income for all households.

When full-time students who are 18 years of age or older are dependents of the household, only a maximum of $480 of their total annual earned income is counted in the total household income calculation. Continue to count the full amount of unearned and asset income. *NOTE: Per HOTMA, the $480 amount will be indexed for inflation and will change annually.

- For 2026, the income exclusion is $500.

When full-time students who are 18 years of age or older are the head-of-household, co-head, or spouse, the full amount of earned, unearned, and asset income is counted in the total household income calculation.

5. Recurring Gifts / Regular Contributions to Household

Any regular contributions and gifts to the household from persons not living in the unit must be included in annual income. This includes payments paid on behalf of the family and other cash or noncash contributions provided on a regular basis. Temporary, nonrecurring, or sporadic contributions or gifts are not counted.

The following items are specifically excluded as income:

- Groceries provided directly to the household (not money given to buy groceries)
- Childcare payments paid directly to the childcare provider on behalf of the tenant
- Non-monetary goods such as food, clothing, or toiletries received from a food bank or similar organization
- Gifts for holidays, birthday, or other significant life events or milestones such as weddings, baby showers, or anniversaries

Recurring gifts/contributions should be third-party verified when possible by having the contributor sign a certification stating the amount and frequency of the gift/contribution as well as any anticipated changes in the gift.

6. Student Financial Assistance

Treatment of student financial assistance depends on whether a household is receiving Section 8 assistance (HCV, PBV, or PBRA). To properly calculate student financial assistance, the owner agent must verify and calculate (1) actual covered costs, (2) student financial assistance received under the Higher Education Act, and (3) other student financial assistance, as defined below.

Actual Covered Costs

Actual covered costs include tuition, books, supplies, equipment to support students with disabilities, room and board, and other fees required by an institution of higher education. If the student is not the head of the household, co-head, or spouse, actual covered costs also include the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit.

Student Financial Assistance Received Under Section 479B of the Higher Education Act ("HEA Assistance")

HEA assistance includes Federal Pell Grants, Teach Grants, Federal work study programs, Federal Perkins Loans, student financial assistance received under the Bureau of Indian Education, Higher Education Tribal Grants, Tribally Controlled Colleges or Universities Grant Program, or employment training programs under Section 134 of the Workforce Innovation and Opportunity Act (WIOA).

Other Student Financial Assistance ("Non-HEA Assistance")

Other student financial assistance includes grants or scholarships received from such sources as the Federal government; a state, territory, Tribe, or local government; a private foundation registered as a 501(c)(3) nonprofit; a business entity such as a corporation, general partnership, LLC, LP, joint venture, business trust, public benefit corporation, or nonprofit; or; an institution of higher education.

Other student financial assistance does **not** include financial support provided in the form of a fee for services performed (e.g., a work study or teaching fellowship that is not excluded under Section 479 B of the HEA) or gifts from family or friends.

Other student financial assistance may be paid directly to the student or to the educational institution on the student's behalf.

Determining Student Financial Assistance Income for Households without Section 8 Assistance OR for Households with Section 8 Assistance for Certifications Effective on or after February 3, 2026

If all student financial assistance is HEA Assistance, exclude the entire amount.

If all student financial assistance is other student financial assistance (Non-HEA Assistance), include the amount that exceeds actual covered costs.

If student financial assistance is a combination of HEA Assistance and other student financial assistance (Non-HEA Assistance), the amount of student financial assistance to include as income is calculated as follows:

- Step 1: Actual covered costs MINUS amount of HEA Assistance = amount of actual covered costs exceeding HEA assistance ("X")
    - If "X" is negative, count the full amount of other student financial assistance (Non-HEA Assistance) as income
    - If "X" is positive, proceed to Step 2
- Step 2: Amount of other student financial assistance (Non-HEA Assistance) MINUS "X" = student financial assistance counted in income ("Y")
    - If "Y" is negative, student financial assistance income = $0

Determining Student Financial Assistance Income for Households with Section 8 Assistance *ONLY APPLICABLE FOR CERTIFICATIONS EFFECTIVE BEFORE FEBRUARY 3, 2026*

If the household receives Section 8 assistance and the student is the head of household, co-head, or spouse and is over the age of 23 with dependent children, follow the rule above for non-Section 8 households.

If the student is the head of household, co-head, or spouse but is age 23 or younger or does not have dependent children, include as income any amount of student financial assistance (sum of amounts received under the Higher Education Act and other student financial assistance) in excess of actual covered costs. The formula to calculate the excess amount of financial assistance included in annual income is to subtract the total tuition plus required fees and charges from the total student financial assistance from all sources.

7. Periodic Payments and Withdrawals

Periodic payments from such sources as annuities, insurance policies, retirement funds, pensions, and disability or death benefits are included in annual income.

Retirement Accounts: The distribution of periodic payments from retirement accounts is included as income and must be verified. Retirement accounts include IRAs, employer plans such as 401(k) or 403(b) plans, and retirement plans for self-employed individuals. Retirement accounts are not considered assets. The owner must verify the amount of distributions. The balance of the account does not matter since retirement accounts are never counted as assets.

Irrevocable Trusts: The distribution of periodic payments from the trust's principal is excluded as income. The distribution of periodic payments from interest earned on the trust's principal is included as income, unless the distributions are used to pay for the health and medical expenses of a minor. An irrevocable trust is never counted as an asset and asset income (actual income earned by the trust) is excluded.

Revocable Trusts (Where the Trust Grantor is Not Part of the Household and Household Does Not Otherwise Have Control of the Trust): The distribution of periodic payments from the trust's principal is excluded as income. The distribution of periodic payments from interest earned on the trust's principal is included as income, unless the distributions are used to pay for the health and medical expenses of a minor. This type of revocable trust is not counted as an asset and asset income (actual income earned by the trust) is excluded.

Revocable Trusts (Where the Trust Grantor is Part of the Household or Household Otherwise Has Control of the Trust): The distribution of periodic payments from the trust's principal is excluded as income. The distribution of periodic

payments from interest earned on the trust's principal is excluded as income. This type of revocable trust is counted as an asset and asset income (actual income earned by the trust) is included as income.

8. Verifying Fixed Income Sources

General Rule and Definition of Fixed Income

The "Streamlining Administrative Regulations for Public Housing, Housing Choice Voucher, Multifamily Housing, and Community Planning and Development Programs Final Rule" (a.k.a. the Streamlining Rule) provides a simplified manner of verifying fixed income sources effective April 7, 2016. IHCDA has adopted these streamlining rules to verify fixed income as described below.

Per the Streamlining Rule as codified through regulation in 24 CFR Part 5.657 and Part 982.516, fixed income sources are defined as "periodic payments at reasonably predictable levels." Fixed income sources include, but are not limited to, the following:

- Social Security payments, including Supplemental Security Income (SSI) and Supplemental Disability Insurance (SSDI);
- Federal, state, local, and private pension plans;
- Annuities or other retirement benefit programs, insurance policies, disability or death benefits, or other similar types of periodic receipts; and
- Any other source of income subject to adjustment by a verifiable COLA or current rate of interest

Fixed income sources must initially be verified through third-party verification. The owner is not required to reverify until the household's third recertification and every three recertifications thereafter (referred to as the "triennial verification"). For years that do not require third-party verification, the owner utilizes the existing verification form and applies an adjustment factor that comes from either (1) a public source (e.g., the Social Security Administration's annual COLA announcement) or (2) tenant-provided third-party generated documentation. The adjustment factor used must be verified and documented in the file. If no public or third-party verification of the COLA/increase is available, then a traditional verification must be obtained.

Special Rule When 90% or More of Household Income is from Fixed Income Sources

The "Streamlining Administrative Regulations for Multifamily Housing Programs and Implementing Family Income Reviews Under the Fixing America's Surface Transportation (FAST) Act Interim Final Rule" (a.k.a. the FAST Act) further expands the streamlining rule for verifying fixed income sources effective March 12, 2018. IHCDA has adopted these additional streamlining rules to verify fixed income as described below.

When 90% or more of a household's gross income comes from fixed income sources (as defined above), in addition to the streamlining requirements above, the owner may accept the household's self-certification of income sources that are not fixed during years that do not require the full "triennial verification."

Example 1: Household where fixed income source is 90% or more of gross income. Example assumes the project is subject to recertification of income (i.e., that the project is not 100% tax credit). If the project is 100% tax credit, annual income recertification is not required for tax credit compliance.

- Move-in: Owner obtains full verification of all income sources.
- 1st Recertification: Owner obtains verification of COLA increases for fixed income sources and applies the adjustment to the previously obtained verification of the fixed income source (from the move-in file). Non-fixed income sources are verified by self-certification of the household, as long as the household certifies an amount that is less than 10% of the total gross household income. If non-fixed income sources are greater than 10% of gross household income, they must be verified through the traditional verification methodology.

- 2nd Recertification: Owner obtains verification of COLA increases for fixed income sources and applies the adjustment to the previously obtained verification of the fixed income source (from the move-in file). Non-fixed income sources are verified by self-certification of the household, as long as the household certifies an amount that is less than 10% of the total gross household income. If non-fixed income sources are greater than 10% of of gross household income, they must be verified through the traditional verification methodology.
- 3rd Recertification: Owner obtains full verification of all income sources, similar to process at move-in.
- 4th Recertification: Owner obtains verification of COLA increases for fixed income sources and applies the adjustment to the previously obtained verification of the fixed income source (based on the 3rd recertification file). Non-fixed income sources are verified by self-certification of the household, as long as the household certifies an amount that is less than 10% of the total gross household income. If non-fixed income sources are greater than 10% of gross household income, they must be verified through the traditional verification methodology.
- Process continues to cycle as demonstrated above.

Example 2: Household where fixed income source is less than 90% of gross income. Example assumes the project is subject to recertification of income (i.e., that the project is not 100% tax credit). If the project is 100% tax credit, annual income recertification is not required for tax credit compliance.

- Move-in: Owner obtains full verification of all income sources.
- 1st Recertification: Owner obtains verification of COLA increases for fixed income sources and applies the adjustment to the previously obtained verification of the fixed income source (from the move-in file). Non-fixed income sources are third-party verified.
- 2nd Recertification: Owner obtains verification of COLA increases for fixed income sources and applies the adjustment to the previously obtained verification of the fixed income source (from the move-in file). Non-fixed income sources are third-party verified.
- 3rd Recertification: Owner obtains full verification of all income sources, similar to process at move-in.
- 4th Recertification: Owner obtains verification of COLA increases for fixed income sources and applies the adjustment to the previously obtained verification of the fixed income source (based on the 3rd recertification file). Non-fixed income sources are third-party verified.
- Process continues to cycle as demonstrated above.

D. Differences in Reported Income

The owner agent should give the applicant/tenant the opportunity to explain any significant differences between the amounts reported on the Application/ Income Questionnaire and amounts reported on income verifications in order to determine actual income. The explanation of the difference should be documented in the tenant file on a clarification form or self-affidavit.

E. Zero Income Households

It is possible that a household will have total annual income of $0. This is possible if the household is receiving rental assistance, food stamps, and other forms of assistance that are not counted as income. However, it is often the case the households claiming zero income are in fact receiving some type of recurring gift from friends or family members (see Part 6.3 D5 above).

If the entire household is claiming zero income, the household must complete IHCDA Form #27 “Zero Income Certification and Basic Needs Questionnaire” or a similar form. This form asks the household to identify how various expenses will be paid and often serves as a way of identifying recurring gifts and contributions to the household.

While zero income households may exist, it is the responsibility of the owner agent to prove due diligence when reporting households as zero income. Zero income households can raise a red flag for auditors, especially if the household that is claiming zero income is responsible for a portion of rent.

Part 6.4|Annual Income

A. Whose Income and Assets are Counted?

Member	Earned Income	Unearned/Asset Income
Head of household	Yes	Yes
Spouse/ Co-head	Yes	Yes
Other adult	Yes	Yes
Dependent Child Under 18	No	Yes
Full-time student over 18 **	See Note Below	Yes
Non-members (live-in aides, guests, foster children, foster adults, etc.)	No	No

**If a full-time student over 18 is a dependent of the household, only a maximum of $480 (adjusted by inflation) of earned income is included in annual household income.

- For 2026, the income exclusion is $500.

B. Income

Annual income is defined as the gross amount of earned and unearned income to be received by all adult members of the household (18 years of age and older, including full-time and part-time students) and the gross unearned income of minors during the 12 months following the date of certification or recertification.

The owner agent must generally use current circumstances to anticipate income. However, if information is available on known changes expected to occur during the year, the owner must use that information to determine the total anticipated income.

1. **Nonrecurring income:** Income that is not recurring is not counted as income. Examples of income that is considered nonrecurring and thus excluded include:
    - payments from the U.S. Census Bureau for employment lasting no longer than 180 days and not culminating in permanent employment
    - direct federal or state payments for economic stimulus or recovery
    - amounts directly received by the family as a result of state or federal refundable tax credits or tax refunds at the time they are received
    - gifts for significant life events or milestones (holidays, birthdays, weddings, baby showers, etc.)
    - lump sum additions to net family assets, including lottery or contest winnings
    - non-monetary, in-kind donations such as food, clothing, or toiletries received from a food bank or similar organization
    - nonrecurring, non-monetary in-kind donations from friends and family
    - nonrecurring payments made to the family or to a third-party on behalf of the family to assist with utilities or eviction prevention
    - security deposits to secure housing
    - payments for participating in research studies (depending on the duration)
    - other general one-time payments

2. **Unsecured income**: IHCDA does not require owners to include unsecured income sources when calculating household income. For example, if an applicant or tenant is unemployed IHCDA does not require that individual to anticipate income they may earn if a job is secured, unless it is verifiable that a job has been secured for a future start date.

3. **Sporadic or seasonal income**: The owner must use reasonable judgment to determine the most reliable method of calculating income in scenarios where income fluctuates, such as when income is received as an independent contractor, day laborer, or seasonal worker.

    - A day laborer is defined as "an individual hired and paid one day at a time without an agreement that the individual will be hired or work again in the future."
    - An independent contractor is defined as "an individual who qualifies as an independent contractor instead of an employee in accordance with the Internal Revenue Code Federal income tax requirements and whose earnings are consequently subject to the Self-Employment tax." Individuals considered "gig workers," such as babysitters, landscapers, rideshare or app-based delivery drivers, and house cleaners, typically fall into the category of independent contractors.
    - A seasonal worker is defined as "an individual who is: 1) hired into a short-term position (e.g., for which the customary employment period for the position is six months or fewer); and 2) employment begins about the same time each year (such as summer or winter). Typically, the individual is hired to address seasonal demands that arise for the employer or industry." Examples include employment linked to holidays, agricultural seasons, lifeguards, ballpark vendors, snowplow drivers, etc.

    Such income does **not** meet HUD's definition of "nonrecurring" and must be counted as income. If income cannot be determined using current information, the owner may anticipate income based on the actual income that was earned within the last 12 months prior to the income determination. However, prior year's income should not be used if information is available that shows the situation has changed.

4. **Garnished or withheld wages or benefits:** When a household member's wages or benefits are garnished, levied, or withheld to pay restitution, child support, tax debt, student loan debt, or other applicable debts, the gross amount of income prior to the reduction must be used to determine annual income.

Any income source not specifically excluded by HUD regulation must be included in the calculation of household income. See the list of income exclusions at 24 CFR 5.609.

Note that income limits are based on gross annual income, not adjusted annual income. Allowances commonly used in some federal housing programs, such as childcare allowance, elderly household allowance, dependent allowance, handicapped assistance allowance, medical deductions, etc., are not permitted to be subtracted from the household's gross annual income to determine income eligibility for LIHTC units.

C. Assets

Net Family Assets Defined

Net family assets are defined as the net cash value of all assets owned by the family (except necessary personal property and specifically excluded assets), after deducting reasonable costs that would be incurred to dispose of real property, savings, stocks, bonds, and other forms of investment.

Net family assets is calculated as follows: real property + non-necessary personal property (if combined value > $50,000 adjusted by inflation) – federal tax refunds received in previous 12-month period.

There are three types of assets:

- Real property is **included** in net family assets. Real property includes land or a home.
- Necessary personal property is **excluded** from net family assets. Necessary personal property includes (1) items essential to the family for the maintenance, use, and occupancy of the premises as a home, (2) items necessary for employment, education, or health and wellness, (3) items that assist a household member with a disability or that may be required for a reasonable accommodation for a person with a disability, and (4) personal effected including items that are convenient or useful to a reasonable existence and that support and facilitate daily life within the home.
- Non-necessary personal property includes bank accounts, other financial investments, luxury items, and other items not counted as necessary personal property. Non-necessary personal property is treated as follows:
    - If combined value > $50,000 (adjusted by inflation) **include** in net family assets

- If combined value ≤ $50,000 (adjusted by inflation) exclude from net family assets, but actual income from the assets is still included as income

See Table F1 from HUD Notice H 2023-10/PIH 2023-27 (copied below) for examples of necessary personal property versus non-necessary personal property.

Table F1: Examples of Necessary and Non-Necessary Personal Property

Necessary Personal Property	Non-Necessary Personal Property
• Car(s)/vehicle(s) that a family relies on for transportation for personal or business use (e.g., bike, motorcycle, skateboard, scooter) • Furniture, carpets, linens, kitchenware • Common appliances • Common electronics (e.g., radio, television, DVD player, gaming system) • Clothing • Personal effects that are not luxury items (e.g., toys, books) • Wedding and engagement rings • Jewelry used in religious/cultural celebrations and ceremonies • Religious and cultural items • Medical equipment and supplies • Health care–related supplies • Musical instruments used by the family • Personal computers, phones, tablets, and related equipment • Professional tools of trade of the family, for example professional books • Educational materials and equipment used by the family, including equipment to accommodate persons with disabilities • Equipment used for exercising (e.g., treadmill, stationary bike, kayak, paddleboard, ski equipment)	• Recreational car/vehicle not needed for day-to-day transportation (campers, motorhomes, travel trailers, all-terrain vehicles (ATVs)) • Bank accounts or other financial investments (e.g., checking account, savings account, stocks/bonds) • Recreational boat/watercraft • Expensive jewelry without religious or cultural value, or which does not hold family significance • Collectibles (e.g., coins/stamps) • Equipment/machinery that is not used to generate income for a business • Items such as gems/precious metals, antique cars, artwork, etc.

The market value of an asset is its dollar value on the open market. The cash value of an asset is the market value minus reasonable expenses incurred to convert the asset to cash, including for example:

- Penalties or fees for converting financial holdings. Any penalties, fees, or transaction charges incurred when an asset is converted to cash are deducted from the market value to determine its cash value.
- Costs for selling real property. Settlement costs, real estate transaction fees, payment of mortgages/liens against the property, and any legal fees associated with the sale of real property are deducted from the market value to determine equity in real estate.

If an asset is not effectively owned by an individual, do not include as a household asset. An asset is not considered "effectively owned" by an individual when the asset is held in the individual's name but the asset and income it earns accrue to the benefit of someone else who is not a member of the family, and that other person is responsible for taxes on income generated by the asset.

NOTE: Some income sources (including benefits such as Social Security) may be paid onto special pay cards / prepaid debit cards instead of through direct deposit into a checking or savings account. These cards are included as assets and are verified in the same way as a checking or savings account. A current balance must be provided and included as an asset in addition to the benefit income being counted as income. This balance can be obtained through an online account service, a paper statement, or an ATM balance.

Disposed of Assets

Assets disposed of for less than fair market value are included as assets for a period of two years from the date of disposal. The amount to be included as an asset is the difference between the cash value of the asset and the amount that was actually received (if any) in the disposition of the asset.

Assets disposed of for less than fair market value as a result of foreclosure or bankruptcy or those lost through a separation or divorce settlement are not included in this calculation. Assets moved to a retirement account held by a member of the household are not considered to be disposed of for less than fair market value.

Jointly Owned Assets

If assets are owned by the household and one or more individuals outside of the household, the owner agent must include the total value of the asset in the calculation of net family assets unless (1) the asset is specifically excluded, (2) the household can demonstrate that the asset is inaccessible to them, or (3) the household cannot dispose of any portion of the asset without the consent of another owner who refuses to comply. If the household has access to only a portion of the asset, then only that portion's value is counted in the calculation of net family assets.

If the household member is a beneficiary who is entitled to access the account's funds only upon the death of the account's owner, and may not otherwise draw funds from the account, then the account is not counted as an asset for the household.

Assets with Negative Equity

The value of real property or other assets with negative equity is considered $0 for purposes of calculating net family assets.

Excluded Assets:

The following are excluded from net family assets. Any asset source not specifically excluded must be included in net family assets.

- The value of necessary items of personal property (see below)
- The value of non-necessary items of personal property with a combined value ≤ $50,000 (adjusted by inflation). However, actual income earned from such assets is still included as income.
- The value of any account under a retirement plan recognized as such by the IRS, including Individual Retirement Accounts (IRAs), employer retirement plans such as 401(k) or 403(b) plans, and retirement plans for self-employed individuals.
- The value of real property that the household does not have the effective legal authority to sell. Examples include co-ownership situations where one party cannot unilaterally sell the real property (including situations where one owner is a victim of domestic violence), property tied up in litigation, or inherited property in dispute.
- Amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a household member arising out of law that resulted in a member of the family being a person with disabilities.
- The value of any Coverdell education savings account under Section 530 of the Internal Revenue Code, the value of any qualified tuition program under Section 529 of the Internal Revenue Code, and the amounts in, contributions to, and distributions from an Achieving a Better Life Experience (ABLE) account under Section 529A of such code.
- The value of any "baby bond" account created, authorized, or funded by the federal, state, or local government (money held in a trust by the government for children until they are adults)
- Interests in Indian trust land
- Equity in a manufactured home where the family receives assistance under 24 CFR Part 982
- Equity in property under the Homeownership Option for which a family receives assistance under 24 CFR Part 982
- Family Self-Sufficiency accounts
- Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family
- The full amount of assets held in an irrevocable trust
- The full amount of assets held in a revocable trust where a member of the household is the beneficiary, but the grantor/owner and trustee of the trust is not a member of the household

Subtraction of Federal Tax Refunds or Refundable Tax Credits

Amounts received in the form of a federal tax refund or refundable tax credit are excluded from net family assets for a period of 12 months after receipt by the family.

If a tax refund was received during the previous 12-month period preceding the effective date of certification, then the amount of the refund must be subtracted from the total value of net family assets. If the subtraction results in a negative number, then net family assets are considered $0. When calculating this amount, the owner agent must use the refund amount actually received, not an amount anticipated.

Asset Income

1. Actual Income from Assets
   The income generated by an asset, such as interest or dividend payments. Actual income from assets is always included in annual income, regardless of whether the asset itself is included or excluded from net family assets, unless the income is specifically excluded.

   Example: Household has a $20,000 savings account with a 2% interest rate. The household has no other assets.
   - *Total value of assets is $20,000*
   - *Net family assets = $0 (the total value of assets is less than $50,000 as adjusted by inflation so net family assets is considered $0)*
   - *Actual asset income from the savings account is $400 (2% interest x $20,000 balance) even though the net family assets is $0*

2. Imputed Income from Assets
   Imputed income must be calculated for specific assets (not all assets) when three conditions are met:
   - The value of net family assets exceeds $50,000 (adjusted by inflation)
   - The specific asset is included in net family assets (i.e., is not a specifically excluded asset); and
   - Actual asset income cannot be calculated for that specific asset. When actual income for an asset can be calculated (even if calculated as $0), imputed income is not calculated for that asset.
     - An asset where asset income cannot be computed is different from a financial asset with an actual return of $0. If a financial asset generates zero actual asset income, then imputed income is not calculated. For this reason, imputed income is not calculated, for example, on an account with a 0% interest rate or on cash on hand.

   If actual income from assets can be computed for some assets but not all, the owner agent must add up the actual income from assets for those assets where actual income can be calculated and then calculate imputed income just for those assets where actual income cannot be calculated.

   Imputed income from assets is calculated using the passbook rate.
   - Prior to 2/1/15, the passbook rate was 2.00%
   - From 2/1/15 through 12/31/23, the passbook rate was 0.06%
   - For 2024, the passbook rate is 0.40%
   - For 2025, the passbook rate is 0.45%
   - For 2026, the passbook rate is 0.40%
   - HUD will calculate a new passbook rate annually

D. Computing the Total Annual Household Income

After all income and asset information has been verified for a household, all included sources of income are added together to calculate the total household income. In order for the household to qualify for a LIHTC unit, the total household income must be at or below the income limit in effect at the time of tenant certification. If the total household income is greater than the income limit, then the household cannot be certified for a LIHTC unit. Income and assets must be verified and calculated in accordance with the Section 8 methodology as described in 24 CFR 5.609 and in further Chapter 5 of HUD Handbook 4350.3 as superseded by Notice H 2023-10/PIH 2023-27, as revised February 2, 2024 (HOTMA Implementation Guidance) where applicable. Any income and asset source not specifically excluded must be included.

Income limits are based on gross annual income, not adjusted annual income. Allowances commonly used in some federal housing programs, such as childcare allowance, elderly household allowance, dependent allowance, handicapped assistance allowance, medical deductions, etc., are not permitted to be subtracted from the household's gross annual income to determine income eligibility for LIHTC units.

Part 6.5|Move-In Dates

A. LIHTC Developments Involving the Acquisition and Rehabilitation of a Building(s)

If a building is occupied at the time it is acquired and remains occupied throughout the period in which it is being rehabilitated, all existing households (those who occupied the building when it was acquired) must be documented as having been income-eligible no earlier than 120 days prior to the date of acquisition using the current income limits or no later than 120 days after the date of acquisition using the income limits in effect on the day of acquisition, providing a 240 day window during which the certification can be performed. The effective date of the Tenant Income Certification is the date of acquisition and the initial TIC is considered a "move-in event," even though the tenant has already lived in the unit prior to the effective date.

If an existing household is not certified within 120 days before or after the date of acquisition, the effective date of the TIC will be the actual date the household is income certified and all documentation is completed. The initial TIC will be considered a "move-in event," even though the tenant has already lived in the unit prior to the effective date.

Households that move into the unit after the date of acquisition must be documented as LIHTC eligible at the time of actual move-in to the unit. If the building is not occupied during rehabilitation, a household must be LIHTC eligible at the time of actual move-in to the unit, using the income limits that are in effect at time of move-in.

For purposes of Rev. Proc. 2003-82, the incomes of the individuals occupying a unit occupied before the beginning of the first year of the Credit Period must be tested for the Next Available Unit Rule under IRC §42(g)(2)(D)(ii) and Treas. Reg. 1.42-15 at the beginning of the first year of the building's Credit Period using the following requirements:

1. The "test" must be completed within 120 days prior to the beginning of the first year of the Credit Period. However, if the effective date of the initial certification is 120 days or less prior to the beginning of the credit year, then the "test" does not have to be performed.
2. The "test" consists of confirming with the household that sources and amounts of anticipated income included on the TIC are still current. If additional sources or amounts of income are identified, all additional sources must be self-certified and added to the current TIC. Regardless of whether or not the household notes a change in income sources, the "test" does not require third-party verifications.
3. If the household is over-income based on current income limits, the household remains eligible, but the Next Available Unit Rule must be applied.

The test will be necessary if acquisition and rehabilitation are not completed within the same year, because the Credit Period cannot begin until the year in which rehabilitation is completed. If acquisition and rehabilitation are completed within the same year, the "test" will not need to be completed unless the owner elects to defer credits. **Note: IHCDA does not require the "test" to be completed for 100% tax credit projects.**

If the household is eligible and proper documentation has been obtained for each tenant, the standard annual certification requirement will then be implemented annually, beginning with the initial certification date.

See Section 3, Part 3.1 F for more information on acquisition/rehabilitation projects, the 240-day certification window, and the "test."

B. LIHTC Developments Involving Rehabilitation Only

If a building is occupied during rehabilitation, all existing households (those who occupied the building while it was being rehabilitated) must be documented as having been LIHTC -eligible by no later than 120 days after the rehabilitation placed-in-

service date. Households that move into the unit after the rehabilitation placed-in-service date must be documented as LIHTC eligible at the time of actual move-in to the unit. If the building is not occupied during rehabilitation, a household must be LIHTC eligible at the time of actual move-in to the unit.

C. Rehabilitation of an Existing Tax Credit Development

It is possible for the owner of an existing tax credit development to be issued another set of credits for rehabilitation after the initial 15-year Compliance Period has ended. This is often referred to as a "subsequent allocation."

Tax credit households that qualified for the original credits are grandfathered into the new allocation without being recertified as a new move-in. Therefore, the move-in date for the household remains the original move-in date and the recertification cycle does not change. Any households that were over the 140% limit at their last recertification are treated as qualified units but continue to invoke the Next Available Unit Rule. Note: In order to be grandfathered into a subsequent credit allocation, units/households must have been in "continuous compliance" which includes compliance with the full-time student rule. Therefore, owners should not stop verifying student status in extended use even if approved for IHCDA's Extended Use Policy" (see Part 8.1) if they are considering applying for a subsequent credit allocation.

Vacant units previously occupied by income-qualified households continue to qualify as LIHTC units as long as the owner properly follows the Vacant Unit Rule.

When a subsequent allocation occurs, the project's gross rent floor is reset based on the new allocation date. In addition, a project that was previously eligible to use HERA income and rent limits would no longer be able to do so if the new placed-in-service date is after 12/31/08.

D. Acquisition and Rehabilitation of an Existing Tax Credit Development (Resyndication)

It is possible for an existing tax credit development to be sold to a new owner and then issued a new allocation of acquisition/rehabilitation credits. This is often referred to as "resyndication."

Tax credit households that qualified for the original credits are grandfathered into the new allocation without being recertified as a new move-in. Therefore, the move-in date for the household remains the original move-in date and the recertification cycle does not change. However, when the new credits are allocated and the Credit Period begins, the new owner must conduct the "test" as described in Part 6.5 A above, and any households exceeding the 140% limit are subject to the Next Available Unit Rule. Note: In order to be grandfathered into a subsequent credit allocation, units/households must have been in "continuous compliance" which includes compliance with the full-time student rule. Therefore, owners should not stop verifying student status in extended use even if approved for IHCDA's Extended Use Policy" (see Part 8.1) if they are considering applying for an allocation of credits for acquisition/rehab.

Once the new Credit Period begins, any vacant units that were previously occupied by income-qualified households cease to be treated as qualified LIHTC units. Instead, these units are treated as empty (never-occupied) units until a qualified household is moved-in.

The project's gross rent floor is reset based on the new allocation date. In addition, a project that was previously eligible to use HERA income and rent limits would no longer be able to do so if the new placed-in-service date is after 12/31/08.

E. LIHTC Developments Involving New Construction

In newly constructed buildings, all households must be documented as being LIHTC eligible at the time of actual move-in to the unit.

F. Mixed Income Developments- Converting a Market Rate Household to a Qualified Household

In developments that have an Applicable Fraction of less than 100%, a household that is designated as market rate at the time of actual move-in to the unit may later be re-designated as a LIHTC household. When this happens, the household must be certified as a LIHTC household at the time of re-designation. In this scenario, the household would be treated as a new move-in event. The move-in date and effective date of the initial TIC would both be the date the household was designated as a tax credit eligible household, not the date the household moved in as market rate.

Part 6.6|Annual and Interim Income Recertification Requirements

The owner must perform, at least on an annual basis, an income certification for each low-income household and receive documentation to support that certification. IHCDA monitors recertification 365 days from the latter of: the move-in date or the one-year anniversary of the effective date of the previous certification. Upon receipt of all verifications, owners or managers should determine if the unit still qualifies for participation in the LIHTC program.

A. Effective Dates of Certifications

Owners may utilize effective dates when performing Tenant Income Certifications. Therefore, the tenant may sign the Tenant Income Certification (TIC form) before the date the certification takes effect. However, all income and eligibility verifications must be valid (not older than 120 days) on both the signature date and effective date of the Tenant Income Certification. The owner should have language in the Tenant Certification/application packet indicating that the tenant must inform management of any changes of income, student status, or household composition that may occur between the date the tenant signs the TIC and the effective date of the TIC.

Please note the following excerpt and example from the 8823 Guide, pages 4-22 and 4-23:

Tenant Income Certification Effective Date
Once all sources of income and assets have been properly verified, owners or managers perform an income calculation using the applicant's tenant income certification to determine whether the applicant qualifies for IRC §42 housing.

The effective date of the tenant's income certification is the date the tenant actually moves into the unit. All adult members of the household should sign the certification. HUD Handbook 4350.3, 5-17B. If the certification is more than 120 days old, the tenant must provide a new certification. **The income recertifications, if required, must be completed annually based on the anniversary of the effective date.**

Example 1: Determining the Tenant Income Certification Effective Date
A potential household consisting of John and Jane Doe and their two children completed a rental application and income certification on April 12, 2004. The property manager completed the third-party verifications and determined that the household was income eligible on April 21, 2004. John and Jane signed the rental lease on April 25th and took possession of the unit on May 1, 2004. The effective date of the tenant income certification is May 1, 2004. All subsequent tenant income recertifications must be performed within 120 days before May 1st of each subsequent year of the 15-year Compliance Period.

When additional adult individuals join the household, the effective date will remain the same until the unit is completely vacated.

Therefore, the LIHTC recertification date for a household may not change to align with the recertification date for other programs, even if this means that a household must be certified multiple times annually for multiple programs. The effective date of recertification is the anniversary date of the move-in. Recertifications must be completed within 120 days of the anniversary date.

Example 1: A household moves into a tax credit unit on January 1, 2008. On March 1, 2008 the household begins receiving Section 8 rental assistance and its income is verified and certified for this program. The effective date for the household's annual tax credit recertification is January 1, 2009, NOT March 1, 2009.

Example 2: A household moves into a tax credit unit on July 15, 2009. The first annual recertification is due with an effective date of July 15, 2010. The effective date of the recertification TIC does not move up to the first of the month (July 1, 2010) or get pushed back to the first of the next month (August 1, 2010) as may be the case with other low-income housing programs.

NOTE: While the effective date of the annual Tenant Income Certification will never change, the effective date of the lease may change. For example, when a tenant receives a Section 8 voucher, a new lease will be executed to coincide with the voucher. As long as the initial lease was signed for at least a six-month term (regardless of whether the term is completed prior to the new lease being executed) there is no tax credit violation. Therefore, the effective date of the lease and the effective date of the Tenant Income Certification may not always be concurrent. The effective date regulations discussed in this section are only referring to the effective dates of the tax credit Tenant Income Certification, not the lease.

B. Changes in Household Composition

1: Adding a New Household Member to an Existing Qualified Household

Composition changes include a birth, a death, a new tenant moving into the household, or an existing tenant vacating the household. In the event that a new adult household member is added to a qualified household, the following steps must be taken:

1. The new household member completes an Application and Tenant Eligibility Questionnaire. An independent Tenant Income Certification form (TIC) and verification of income and assets must be completed for the new member.
2. The new household member's income must be included as part of the household's certified income. For 100% LIHTC projects, the new tenant's income is added to the original household income at move-in. For mixed-income projects (projects with both LIHTC and market rate units), the new tenant's income is added to the household income as of the most recent annual recertification. A new household TIC does not have to be created, but management should notate the file to show that a new total household income has been computed. A management clarification form will suffice. Additionally, a household update event must be input into the online reporting system detailing the new total household member count, new total household income, and the demographic data for the new member.
3. The combined household income must be compared to the maximum allowable income limit in effect at the time and based on actual household size. If the combined household's income is greater than the 140% limit, the Next Available Unit Rule will go into effect.

Example: 1 person Household income limit = $15,000
2 person Household income limit = $17,000
140% of 2 person income limit = $23,800

<u>Example 1: Mixed-income Project</u>
Tenant A is a qualified tenant living alone in a one-bedroom unit. Her income at initial certification (March 14, 2008) was $9,000. The tenant recertifies on March 14, 2009 with an income of $10, 500. Eight months later, she informs management that she is getting married and that her new husband, Tenant B, will be moving into the unit on December 1, 2009. Tenant B completes an Application and Questionnaire, his income and assets are verified through third-party sources, and an independent TIC is completed showing only the income and assets of Tenant B. Tenant B is certified as having an annual income of $12,900. The household's combined income will be $23,400 (the sum of Tenant A's income at the last recertification and the newly certified income for the new household member Tenant B). The household still qualifies, since it is below the 140% limit of $23,800. If the combined income of Tenants A and B would exceed 140% of the current income limit, the Next Available Unit Rule would go into effect. The independent TIC for the new tenant is

dated December 1, 2009, but the annual household recertification is still due March 14, 2010 (the anniversary of Tenant A's initial move-in).

Example 2: 100% Tax Credit Project
Tenant A is a qualified tenant living alone in a one-bedroom unit. Her income at initial certification (March 14, 2008) was $9,000. The tenant recertifies on March 14, 2009, but since this is a 100% Tax Credit Project management does not verify her income at this time. Eight months later, she informs management that she is getting married and that her new husband, Tenant B, will be moving into the unit on December 1, 2009. Tenant B completes an Application and Questionnaire, his income and assets are verified through third-party sources, and an independent TIC is completed showing only the income and assets of Tenant B. Tenant B is certified as having an annual income of $12,900. The household's combined income will be $21,900 (the sum of Tenant A's income at move-in and the newly certified income for the new household member Tenant B). The household still qualifies, since it is below the 140% limit of $23,800. If the combined income of Tenants A and B would exceed 140% of the current income limit, the Next Available Unit Rule would go into effect. The independent TIC for the new tenant is dated December 1, 2009, but the annual household recertification is still due March 14, 2010 (the anniversary of Tenant A's initial move-in).

NOTE: Only the income and eligibility of the new resident is required to be verified when adding a member to a household before the Annual Tenant Income Certification is due (i.e., the existing members do not need to be recertified if it is not time for their annual recertification). Owners must verify the new resident's income and complete an independent TIC for that resident. This income must then be added to the existing household's certified income to determine if the household's income has exceeded the 140% income limit. The household's annual recertification will remain on the anniversary of the original move-in date, not the date that the new member was added.

The new resident should sign an independent Tenant Income Certification form and complete all verification documents. The independent TIC should not include information about the other household members or their income. The TIC will be noted as a "household update" rather than a move-in or recertification. The importance of an independent TIC is discussed in the section below. The new total household income (combined from the new member and existing members) will not show on the independent TIC but can simply be listed on a management clarification sheet to prove whether or not the household invokes the Next Available Unit Rule.

2: Qualifying Units When All Original Household Members Vacate the Unit

The 8823 Guide includes a section on "Changes in Family Size" (pages 4-4 through 4-7 of the Guide). The following excerpt (from page 4-5) is of particular importance:

> "A household may continue to add 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 new income-qualified households unless:
>
> 1. For mixed-use projects, the newly created household was income-qualified, or the remaining tenants were independently income-qualified at the time they moved into the unit.
>
> 2. For 100% LIHC buildings, the remaining tenants were independently income-qualified at the time they moved into the unit."

So, even if all of the original household members vacate a unit, tenants who moved in at a later date may be eligible to remain in the unit without being treated as a new move-in if they meet one of the two exceptions above.

Example 1: Mixed-income Project

Jerry moves into a two-bedroom LIHTC unit (in a mixed-income project) on May 1, 2007 and is recertified on May 1, 2008. His friend Thomas decides to move into the unit on October 1, 2008. Thomas completes all of the necessary paperwork and his income is added to Jerry's income as of the most recent certification (the May 2008 recertification). The combined household income from both members is below the applicable income limit for a two-person household. On January 1, 2009, Jerry (the original member) moves out to live with his new fiancée. Thomas does not have to be certified as a new tenant, because the newly created household was below the income limits when he moved in on October 1, 2008.

Example 2: 100% Tax Credit Project

Jerry moves into a two-bedroom LIHTC unit (in a 100% tax credit project) on May 1, 2007 and is recertified on May 1, 2008. His friend Thomas decides to move into the unit on October 1, 2008. Thomas completes all of the necessary paperwork and his income is added to Jerry's income at move-in (the May 2007certification). On January 1, 2009 Jerry (the original member) moves out to live with his new fiancée. Management must determine if Thomas independently qualified as a one-person household at the time he moved into the unit. If so, he may remain as a qualified tax credit household. If not, Thomas must be immediately certified and treated as a new household. If his current conditions allow him to qualify as a new move-in, he may stay. If not, he will have to vacate the unit. Management's need to determine if the tenant independently qualified illustrates the necessity to complete an independent TIC when a new member is added to an existing household.

C. Additional Comments on Tenant Certifications

Also, note the following recertification requirements:

1. If tenants in a previously qualified household become full-time students at any time, the household can only be considered as a qualified LIHTC household if at least one of the exceptions under the Full-Time Student Rule is met as described in Part 5.2B. This eligibility determination must be made immediately upon the tenant becoming a full-time student and cannot be delayed until a recertification of the household is due.

2. In the event that a tenant moves into a building prior to the placed-in-service date of the building (as shown on the building's IRS Form 8609), and the verification of the tenant's income was performed more than 120 days prior to the placed-in-service date, the tenant must be recertified on the placed-in-service date. All income verifications must be valid (no older than 120 days) on the placed-in-service date.

3. In the event household composition changes in any way (e.g., birth, death, marriage, divorce, a family member or roommate vacates or moves into the unit, etc.), the household should notify management of the changes (See Part 6.6 B above for guidance on adding household members).

4. See Part 5.1D for information regarding unit transfers.

Part 6.7|100% Recertification Exemption

Effective July 31, 2008 with the passing of the Housing and Economic Recovery Act (a.k.a. HERA or H.R.3221), IHCDA will exempt the annual income recertification requirement for 100% tax credit projects. This policy applies only to recertifications due after the effective date of July 31, 2008 and is not retroactive.

Projects that choose to use the 100% Recertification Exemption Policy only have to obtain verifications of household income and assets at move-in. However, the household must continue to annually complete a TIC to verify household composition and each adult member must continue to complete a separate student status certification on an annual basis. This must be done on the annual recertification date for the household. IHCDA recommends using the "100% Recertification Exemption Tenant Recertification" TIC (Form #28). This form is only valid for recertifications, not for move-in events at 100% tax credit projects.

The recertification exemption automatically applies to all projects with 100% LIHTC units (i.e., those projects that have no market rate units). Projects do not need to apply for or ask for IHCDA permission to stop performing annual income recertifications. This policy replaces IHCDA's former waiver request policy and procedures.

If a project (as defined on Form 8609 Line 8b) is not 100% LIHTC, then annual income recertification is still required. If there is one market unit in the project, or if a staff unit is treated as a market unit, then all units in the project must be recertified annually. It is important to correctly define "project" for each tax credit development. If "No" was checked on Part II 8b of IRS Form 8609, then the building is considered its own project. If "Yes" was checked on Part II 8b of IRS Form 8609, then the building is considered part of a "multi-building project." The recertification exemption applies on a project basis.

100% tax credit projects with Section 8, HUD, RD, HOME and other funding sources are still required to annually obtain income verifications (as required for those programs) for all units receiving the additional sources of funding. Development Fund assisted units may follow the Exemption and are not subject to full annual recertification requirements.

Example 1: XYZ Apartments is a 100% tax credit project with 50 units. 10 of these units are HOME assisted units. The 10 HOME assisted units must continue to recertify income on an annual basis, since IHCDA's HOME program rules have not changed in regards to recertification requirements. The 40 tax credit only units may follow the 100% Recertification Exemption Policy.

Example 2: XYZ Apartments is 100% tax credit with RD funding. For tax credit compliance purposes, XYZ Apartments may institute the 100% Recertification Exemption policy. However, management will need to continue following all applicable RD regulations in order to comply with RD funding.

IHCDA may allow the recertification exemption for buildings financed with tax-exempt bonds (50% or more of the aggregate basis of the building and land). The owner must demonstrate to IHCDA that the local bond issuer has granted the project permission to stop performing annual income recertifications. If IHCDA is the bond issuer, the exemption is applied automatically.

When monitoring files at projects that are using the 100% Recertification Exemption, IHCDA will look at the current certification to ensure that the rent limits are not exceeded and to check that there is still a TIC, lease/lease renewal, and verification of student status on file. The IHCDA auditor will then go back and look at the initial move-in file for the household to verify income eligibility. Thus, the 100% Recertification Exemption puts extra importance on correctly performing move-in certifications.

Note: IHCDA encourages the owner/management to check with their investor before initiating the 100% Recertification Exemption Policy.

Part 6.8|Lease and Rent Requirements

All residents occupying LIHTC units must be certified and under a lease no later than the time that the household moves into the unit.

A signed lease must be in effect for each household/unit. Once executed, the lease terms cannot be modified without at least 30 day written notice to the tenant in accordance with Indiana Code 32-31-5-4. For HOME-assisted units, rent increases require at least 60 days written notice per regulation.

A. Lease Requirements

A signed lease must be in effect for each year that a household resides in a unit. A new lease and/or a lease renewal addendum must be completed annually. Leases must reflect the correct date that the household moves into or otherwise takes possession of the unit.

A unit must be leased directly to the household, not to an organization that is providing services to the household.

The household may have a cosigner, if necessary, but the cosigner must sign a self-affidavit stating that (1) they will not reside in the unit and (2) disclosing whether or not they will be providing income to the household in the form of rent or utility payments or other recurring gifts. If income is provided, this must be treated as recurring gift income per Part 6.3 (D)(5).

At a minimum, the lease language must include, but is not limited to, the following. Note: Language about programmatic requirements may be included in a lease addendum instead of the main body of the lease.

1. The legal name of all parties to the agreement and all other occupants;
2. Address and description of the unit to be rented
3. The date the lease becomes effective;
4. The term of the lease (initial leases must be for at least six months to comply with non-transient occupancy);
5. The rental amount;
6. Language addressing security deposits;
7. The utility allowance requirements, including a clear breakdown of which utilities are owner-paid and which are tenant-paid;
8. The use of the premises including language addressing that only members listed on the lease/TIC may dwell in the unit, that the unit must be the household's primary residence, and that the unit may not be sublet;
9. The rights and obligations of the parties, including the obligation of the tenant to recertify annually (or more frequently as required);
10. Language addressing income decreases and increases (i.e., the 140% Rule), utility allowance increases/decreases, basic rent changes (in Rural Development or 236 Developments), household composition changes, student status changes, or any other change and its impact on the tenant's rent and eligibility;
11. Language addressing the right of the development representatives and/or other funding providers to enter the units for physical inspections;
12. Description of the lease renewal process
13. Description of the termination process;
14. Signature of at least the head of household and co-head;
15. Signature of owner/management representative; and
16. Date of execution.

There are specific lease language prohibitions that apply to lease for any units that are also CDBG, CDBG-D, HOME, HTF, or NSP assisted. A list of these prohibitions is available in Part 5.4 H.

As a convenience to its partners, IHCDA provides the following sample lease addendum documents online in its compliance forms and strongly encourages use of these forms. The VAWA Lease Addendum is mandatory.

- Lease Addendum for Units Participating in Section 42 (See Form 9A);
- Lease Addendum for Units Participating in HOME (See Form 9B);
- Lease Addendum for Units Participating in HTF/CDBG/NSP (See Form 9D);
- Lease Renewal Addendum (See Form 10);
- Lease Addendum- Unit Transfer (See Form 44);
- Lease Addendum- Rent Decrease due to Utility Allowance Increase (See Form 45); and
- IHCDA or HUD VAWA Lease Addendum (MANDATORY FORM). If using the IHCDA addendum, the September 2022 revision of the IHCDA VAWA Lease Addendum must be used for all move-ins dated on or after January 1, 2023.
    - If the project is tax credit only, use the IHCDA tax credit VAWA lease addendum or the HUD VAWA lease addendum.
    - If the project includes HOME or HTF, use the IHCDA HOME/HTF VAWA lease addendum or the HUD VAWA lease addendum. There is no need to also use the IHCDA tax credit VAWA lease addendum. Only one VAWA lease addendum is required per household.

B. Rents and Security Deposits

Rents on LIHTC units may not exceed the maximum allowable rent. Any violation of overcharging rents is considered noncompliance, the owner will have to adjust rent and repay the overcharged rents, and an IRS Form 8823 will be issued. For more information on rent limits, see Part 4.2.

Security deposits must be treated in accordance with Indiana Code 32-31-3. Landlords cannot ask tenants to waive the security deposit regulations/rights under Indiana Code. Upon termination of a rental agreement, the full amount of security deposit must be returned to the tenant, minus any amount applied for (1) the payment of accrued unpaid rent, (2) the amount of damages (not including normal wear and tear) caused by the tenant, and (3) unpaid utility charges that the tenant is obligated to pay.

Per Indiana Code, within 45 days of the termination of the rental agreement, the landlord must send to the tenant (1) a written notice including an itemized list of all charges to be deducted from the security deposit including the estimated cost of repair for each damaged item and (2) payment for the difference between the security deposit held and the amount of damages claimed.

The landlord's liability (i.e., the 45-day timeframe) does not begin until the tenant has supplied in writing a new address to deliver the notice and refund. If the landlord fails to comply with these requirements, then the tenant is entitled to recover the full amount of the security deposit and reasonable attorney's fees. Failure to provide notice of damages constitutes agreement that no damages are due and return of the full security deposit.

C. Initial Minimum Term of Lease (Non-transient Use)

Under program requirements, a unit cannot be LIHTC eligible if it is used on a transient basis. A unit is deemed to be in transient use and therefore out of compliance if the initial lease term is less than six months. In order to avoid noncompliance for transient occupancy, there must be an initial lease term of at least six months on all LIHTC units. The six-month requirement may include free rental periods. Succeeding leases are not subject to a minimum lease period.

The 8823 Guide provides the following clarification in Footnote 2 on Page 11-2:

> "Leases commonly include fees for early termination of the rental agreement. The fact that the lease contains terms for this contingency is not indicative of transient use."

Therefore, a unit is in compliance so long as the initial lease is signed for a term of at least six months, regardless of whether or not the household actually remains in the unit for that length of time.

Federal regulations do allow shorter leases for certain types of transitional housing for homeless individuals and for SRO units. The following types of housing are exempt from the six-month minimum lease period:

1. Certain transitional housing for the homeless may be considered used other than on a transient basis provided that the rental unit contains sleeping accommodations and kitchen and bathroom facilities and is located in a building:
   -which is used exclusively to facilitate the transition of homeless individuals (as defined in the McKinney Homeless Act 42 USC 11302) to independent living within twelve months; AND
   -in which a government entity or qualified nonprofit organization provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing
2. SRO units which permit the sharing of kitchen, bathroom, and dining facilities are not treated as used on a transient basis merely because they are rented on a month-by-month basis.

*Note: If a development has special needs units set aside for homeless households and/or transitional housing units, those tenants must have leases with at least six-month terms, unless the building's primary use is described in Exemption #1 above. Tax credit units may never be used as emergency shelters.

D. Lease-to-Own Program / Lease Purchase Program

Section 42 (g)(6) allows a low-income tenant to purchase a LIHTC unit after the end of the 15-year Compliance Period. The purchase of the unit is not permitted until after the completion of the 15-year federal Compliance Period. The goal of the Lease-to-Own Program (referred to as "the Program" for the rest of this section) is to enable low-income families to purchase a home – something that often would not be possible without the Program. The development owner also benefits from the Program because the residents who opt for the Program agree to assist in maintaining the unit.

Program requirements include:

- "Eligible tenant" shall mean the current tenant of the unit, so long as that tenant is eligible to occupy the unit under the requirements of Section 42 of the Internal Revenue Code. This expressly includes a tenant whose income would not currently qualify, but who was qualified at the time of the tenant's original occupancy of the unit.
- The development owner must partner with a non-profit organization dedicated to assisting low to moderate income families in obtaining clean, safe and affordable housing.
- The development owner and the non-profit organization must enter into a written Right of First Refusal whereby the owner agrees not to sell the low-income housing unit to anyone else at the end of the fifteen year Compliance Period before offering it to the non-profit organization for a price equal to (i) the sum of all outstanding indebtedness secured by the development (including capital improvement debt) plus any accrued interest and (ii) all federal, state, and local taxes attributable to the sale.
- The non-profit organization must enter into an agreement with IHCDA regarding the release of the extended use agreement for that particular unit upon sale to an eligible tenant.
- The non-profit organization must enter into an option agreement (approved by IHCDA) with the resident for the purchase of the unit.
- The Program must be structured so that the tenant's total monthly payments for principle, interest, insurance, taxes, utilities, and maintenance after purchase are equivalent to the tenant's monthly rent and utilities before purchase (the Equivalency Principle).
- The unit must meet I.R.C. §42 standards regarding the condition of the unit and habitability.
- The Program must provide for sale at the end of the 15-year Compliance Period to an "eligible tenant" for a minimum purchase price (as defined in I.R.C. §42(i)(7)(B)).
- The Program must include a system whereby a resident is rewarded for long-term residency by obtaining a credit against the purchase price of the unit.
- The Program should include periodic workshops for residents enrolled in the Program on issues of property maintenance and financial counseling.
- The Program must address common tenant misconceptions including:
  - The misconception that the tenant will acquire the property free and clear after the Compliance Period;
  - The misconception that the tenant is an equity owner in the property rather than simply a tenant;
  - The misconception that the tenant will be compensated for any capital improvements made to the property by the tenant; and
  - The misconception that the tenant's rent will never increase.

When an owner wishes to sell a unit to a tenant, they must notify IHCDA of the intended sale. IHCDA will confirm that the purchaser is a current LIHTC renter who was income qualified at time of move-in. IHCDA will also review and approve the proposed sale price to confirm it conforms with the Equivalency Principle defined above and that it also provides consideration for the length of the tenant's residency as a renter. After IHCDA confirms the tenant is an eligible buyer and approves the sale

price, but before the sale is complete, IHCDA will conduct an inspection of the unit using NSPIRE standards. The unit must pass inspection, or have all inspection findings remedied, before the sale can be completed.

E. Eviction or Termination of Tenancy

If a household cannot pay the rent or otherwise commits material violation of the lease, the owner has the same rights in dealing with the income-eligible tenant as with any other tenant, including, if necessary, eviction.

IHCDA encourages owners to utilize eviction only as a last resort and to implement eviction prevention strategies. IHCDA's Eviction Prevention and Low Barrier Screening webpage provides templates and resources for eviction prevention. Note: Permanent supportive housing projects and projects that received eviction prevention points under IHCDA's Qualified Allocation Plan are required to implement project-specific eviction prevention plans.

1. Program Requirements and Guidance

IRS regulations state that there must be just cause for eviction or other form of termination of tenancy (e.g., non-renewal of lease). This provision is often referred to as "good cause eviction." Language outlining actions that constitute good cause for eviction or termination of tenancy must be included in writing at the time of initial occupancy, preferably in the lease. Examples of good cause evictions may include nonpayment of rent, violations of the lease agreement, destruction or damage of the property, interference with other tenants, tenant fraud, or use of the property for an unlawful purpose. When dealing with tenant conduct issues, the owner must provide written notice to the tenant prior to beginning eviction. This notice should include a statement that continued poor conduct could constitute a basis for future termination.

All leases should address changes in student status. If a household becomes an unqualified student household at recertification or at any time during the lease term, it is no longer qualified and the lease can be non-renewed or terminated as allowed in the lease language.

For HOME-assisted units, the tenant must be given at least 30 days notice to vacate per regulation.

For more information on prohibitions against eviction or termination of tenancy other than for good cause, see Rev. Proc. 2005-37 – Safe Harbor.

For more information on tenant fraud issues, see Part 9.10.

2. Items Not to be Construed as Good Cause for Eviction

- Income increases that cause the household to exceed the unit set-aside or the 140% limit at recertification is not considered good cause for eviction or termination of tenancy.
- Eviction is not permitted if such eviction is discriminatory based on the tenant/household's protected class under the Fair Housing Act (see part 5.3 A).
- Per the Violence Against Women Reauthorization Act of 2013 (see Part 5.3 G) the owner/manager shall ensure that an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as either:
    - A serious or repeated violation of a lease by the victim or threatened victim of such incident; or
    - Good cause for terminating the assistance, tenancy or occupancy rights to housing of the victim of such incident.

3. Indiana Code Requirements

Indiana Code 32-31-1-6 states that the landlord may terminate the lease with not less than 10-day notice to the tenant if a tenant refuses or neglects to pay rent when due, unless (1) the parties otherwise agreed or (2) the tenant pays the rent in full before the notice period expires.

4. Documenting the File

When the owner determines that eviction or termination of tenancy is necessary, the tenant must be served written notice to vacate. For HOME-assisted units, the tenant must be given no less than 30 days to vacate. The owner must document the justification and keep copies of the notifications sent to the tenant.

When a tenant is evicted or a lease is terminated, IHCDA will expect to see documentation outlining the specific cause for non-renewal and proof that proper written notices were provided to the tenant. It is the owner's responsibility to document and defend the good cause for eviction if challenged in state court. Per the 8823 Guide, good cause is determined by state and local law and therefore the determination of the state court. IHCDA reserves the right to request copies of all documentation to support good cause eviction.

Section 7 – Compliance Monitoring Procedures

This section outlines IHCDA's procedures for monitoring, in accordance with the monitoring requirements of Section 42 of the Internal Revenue Code and Treasury Regulation 1.42-5.

Monitoring is an ongoing activity that extends throughout the Compliance and Extended Use Periods. IHCDA is required by regulation to conduct compliance monitoring and to take the appropriate steps when noncompliance is discovered. IHCDA is required to inform the IRS of noncompliance, or the failure of an owner to certify to compliance, no later than 45 days following the end of the correction period. IHCDA is required to notify the IRS of noncompliance whether or not the noncompliance has been corrected.

Part 7.1|Owner and Management Contacts

IHCDA will send correspondence regarding compliance monitoring and physical inspections to the primary owner contact person and primary management contact person provided in the development's Final Application for LIHTC and annually updated in the Annual Owner Certification of Compliance. As part of the Annual Owner Certification documentation, the owner is able to elect one designated primary owner contact and one designated primary management contact per development. IHCDA will allow no more than one primary owner contact and one primary management contact name and address per development.

If at any time the primary contact person for the owner or management agent changes, it is the sole responsibility of the owner to inform IHCDA in writing of such change. Changes in ownership entity must be reported to IHCDA via the "Property Ownership Change Form- LIHTC Projects" (Form #29A). Changes in management entity must be reported to IHCDA via the "Property Management Change Form" (Form #30). The forms are available on IHCDA's compliance webpage.

IHCDA must approve any change in ownership or transfer request if (1) the transfer occurs prior to the issuance of IRS Form 8609; (2) the development has other IHCDA financing (such as a HOME, Housing Trust Fund, Development Fund loan, or Project Based Vouchers); or (3) the project is subject to the non-profit material participation requirements. See Part 2.2I for additional information on ownership and management company changes.

Changes in contact information only (no change to the ownership or management entity), can be reported via e-mail to IHCDA's Data and System Specialist.

Part 7.2|The Compliance Manual

IHCDA provides this Compliance Manual as a resource to owner agents. The manual describes the compliance regulations that owner agents must follow and the compliance monitoring procedures used by IHCDA. **An amended Compliance Manual will be released periodically and the newest edition overrides all previous editions. Except where otherwise noted, all amendments to the Compliance Manual apply to all developments, regardless of year of allocation**.

All appendices to the Compliance Manual are available online on IHCDA's Compliance Webpage.

Part 7.3|Compliance Training

IHCDA will periodically conduct or sponsor compliance trainings in both live and virtual formats. Trainings will be held throughout the year and information regarding the times and dates of the trainings will be distributed by IHCDA via RED Notices.

While participation in training is usually voluntary, IHCDA compliance staff may, at their sole discretion, mandate training attendance for those owner agents that exhibit trends in noncompliance, are issued non-corrected 8823s, or otherwise demonstrate a need for compliance training.

Part 7.4 Annual Owner Certification of Compliance

A. The Annual Owner Certification

The owner must annually certify project compliance to IHCDA under penalty of perjury. The Annual Owner Certification of Compliance is due on or before February 15th of each year and certifies information for the preceding calendar year. Complete submission includes finalizing the Annual Owner Certification questions, submitting all tenant events in the online reporting system, and payment of annual monitoring fees. A submission is not complete until the owner completes the finalization process by submitting the Annual Owner Certification, inputting all tenant events, and then selecting "Finalize Year" in the online reporting system.

The first Annual Owner Certification and corresponding fees are due by February 15th of the year following the first year of the Credit Period. For example, if the Credit Period begins in 2026, the property owes a 2026 Annual Owner Certification which is due on February 15, 2027. **However, the owner must begin reporting tenant events in the online system as soon as they occur.** The report covers the period from January 1-December 31 of each year and is due to IHCDA by the close of business February 15th of the next calendar year.

Per Treasury Regulation 1.42-5(c)(1) and IHCDA requirements, the owner must annually certify that:

1. The development meets the minimum set-aside requirements of the 20/50 test, the 40/60 test, or the Average Income Test (whichever was selected on Form 8609). For Average Income projects, the owner must designate the Qualified Group of Units.
2. There was no change in the Applicable Fraction as defined in the Code of any building in the development; or there was a change in the Applicable Fraction, and a description of that change is attached to this certification.
3. The owner has completed a Tenant Income Certification form and supporting documentation to support the certification for each low-income household in the development, including income and student status eligibility.
4. Each program unit in the development was rent-restricted as provided under the Code.
5. The development is in continuing compliance with all promises, covenants, set-asides, and agreed upon restrictions as set forth in the application for credits and the Extended Use Agreement.
6. The unit types, gross rents, utility allowance, and actual rents charged for each unit. The owner must upload documentation for all utility allowances used during the calendar year (January 1st – December 31st).
7. All units in the development are for use by the general public and no finding of discrimination under the Fair Housing Act or VAWA occurred for the development. If such findings have occurred, documentation of such findings must be attached to the certification.
8. All units are used on a non-transient basis (except for transitional housing units allowed for in the Code).
9. All units in the development are suitable for occupancy, taking into account all federal, state, and local health, safety, and building codes and the state or local government unit responsible for making health, safety, or building code inspections did not issue a violation report for any building or low-income unit in the development. If a violation report or notice was issued by the governmental unit, the owner must attach a statement summarizing the violation report or notice to the certification.
10. There has been no change in the Eligible Basis of any building in the development (as defined in the Code); or there has been a change in the Eligible Basis (as defined in the Code) and documentation setting forth the nature and amount of such a change (e.g., a common area has become commercial space or a fee is now charged for a tenant facility formerly provided without charge) must be attached to the certification.
11. All tenant facilities included in the Eligible Basis of the development under the Code, such as swimming pools, recreational facilities, and parking areas, are provided on a comparable basis without charge to all tenants of the development.
12. No low-income units in the building became vacant during the applicable year; or one or more low-income units in the building became vacant during the applicable year and reasonable efforts were or are being made to rent such units or the next available unit or units of comparable size in the building to tenants having a qualifying income. IHCDA reserves the

right to question any vacancies, to ask for proof of reasonable marketing efforts, to request a copy of a waiting list for the property, and to verify through owner certification or inspection that vacant units are habitable and rent ready.

13. No tenant of any low-income units in the development experienced an increase in income above the limit allowed in the Code; or income of tenants of a low-income unit in the development increased above the limit allowed in the Code, and the next available unit of comparable or smaller size in the same building was or will be rented to tenants having a qualifying income. (The Next Available Unit Rule does not apply to developments approved for the Extended Use Policy. For more information, see Part 5.11).
14. The development meets smoke detector requirements.
15. There have been no changes in entity ownership or if there have been, IHCDA has been provided with all details and all necessary documentation.
16. A recorded Extended Use Agreement is in effect and the development is in continuing compliance with the Extended Use Agreement (i.e. Declaration of Extended Low-Income Housing Commitment or Lien and Restrictive Covenant) applicable to the development and filed in the office of the Recorder of the Indiana County in which the property is located, including certification that the owner cannot refuse to lease a unit in the project to an applicant because that applicant holds a Section 8 voucher.
17. All units were used on a non-transient basis (except for transitional housing for the homeless provided under section 42(i)(3)(B)(iii) or single-room-occupancy units rented on a month-by-month basis under section 42(i)(3)(B)(iv)).
18. The development is otherwise in compliance with the Code, including any Treasury Regulations pursuant thereto, and applicable laws, rules, regulations, and ordinances.

For the first year of reporting, the owner must upload a copy of the completed IRS Form 8609 for each building with Part II completed and signed by the owner.

When a property is awarded a subsequent allocation of credits (resyndication), the owner must continue reporting tenant events and submitting Annual Owner Certifications for the original award until the credit period begins for the new allocation, at which time the owner will report under the new allocation.

B. Reporting Tenant Events Online

The Indiana Housing Online Management System was designed as a tool for IHCDA to receive Annual Owner Certifications and conduct compliance checks. All IHCDA-assisted rental developments are required to enter tenant events using the Indiana Housing Online Management rental reporting system. Tenant events include move-ins, move-outs, annual recertifications, unit transfers, rent and utility allowance changes, household composition updates, and student status updates. Tenant events that must be reported online do not include interim recertification performed for other programs, such as Section 8 or RD. **All tenant events must be entered into the system within 30 days of the event date.**

It is mandatory that all tenant events be submitted electronically using the Indiana Housing Online Management website for all developments that contain IHCDA-assisted units (e.g., HOME, CDBG, CDBG-D, NSP, HTF, LIHTC, Section 1602, TCAP, Bonds, and/or Development Fund/Trust Fund). This online tenant event reporting process eliminated the former process of submitting a hardcopy "Tenant Beneficiary Spreadsheet."

To use the rental reporting system or register to become a user, please visit the Indiana Housing Online Management System.

IHCDA will set up the buildings for a project in the online reporting system and approve one project owner web user. It is then the responsibility of that project owner web user to approve designated management web users and to set up the individual units within the buildings. IHCDA's compliance webpage includes an online reporting system training and FAQ that further describes user roles and permissions.

After reviewing the Owner Certification and the online tenant events, IHCDA will notify the owner in writing of any errors or incompleteness and will allow an appropriate correction period. All correspondence to the owner will be sent electronically.

Part 7.5|IHCDA Tenant File Reviews and Inspections

IHCDA reserves the right to review a development's tenant/unit files and related records either via desktop review (files submitted electronically to IHCDA offices) or onsite at the development and to perform physical inspections as deemed necessary throughout the Compliance and Extended Use Periods.

IHCDA is required by regulation to monitor and physically inspect each project within two years of the placed-in-service date and at least once every three years thereafter. IHCDA reserves the right to inspect the files and/or physical units at any time at its discretion, with or without advance notice to the owner agent. Decisions to monitor/inspect more frequently may be based on tenant complaints or IHCDA's assessment that a project is high risk. A project may be deemed high risk based on compliance issues identified through the Annual Owner Certification, previous monitorings or inspections, or on financial issues identified through the annual financial review (if applicable).

Example of regular monitoring/physical inspection schedule:
A development consists of three buildings. The last building placed in service in 2019. IHCDA's first monitoring and physical inspection will occur in 2021 (two years after the year of the placed-in-service date of the last building). After this initial monitoring/inspection, a regularly scheduled monitoring will occur once every three years (2024, 2027, 2030 etc.). However, IHCDA has the right to perform additional monitorings/inspections at any time, with or without notice to the owner/management.

Per Treasury Regulation 1.42-5, a file monitoring or physical inspection must include a review of at least a number of units equal to the lesser of (1) 20% of the LIHTC units rounded up or (2) the number of units identified in the Minimum Unit Sample Size Chart below. Inspectable areas under NSPIRE will be inspected for all buildings. Inspectable areas include unit, inside, and outside. See the NSPIRE affirmative habitability requirements in Part 5.6(E).

The IHCDA Auditor or Inspector may, at their sole discretion, choose to expand the sample size. Per the 8823 Guide (page 3-3), circumstances warranting an expansion of the sample size could include, but are not limited to:

- Poor internal controls (significant risk of error);
- Multiple problems;
- Significant number of nonqualified units;
- Significant number of households that are not income-qualified; or
- Credible information from a reliable source suggesting problems exist.

Table: Minimum Unit Sample Size Chart per Treasury Regulation 1.42-5

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

A. Onsite File Reviews

When performing an onsite (at the development or management office) review, IHCDA will do the following:

1. As a courtesy, IHCDA will notify the owner agent 10-14 days in advance of the intended site visit. However, **IHCDA reserves the right to monitor or inspect any unit/tenant file at any time at its discretion without prior notification.**
2. IRS guidance in the 8823 Guide (page 3-2), states: "A random selection of tenant files or LIHC units is required. The method of choosing the sample of files or units to be inspected must not give the owner advance notice of which units and tenants records are to be inspected and reviewed." Treasury Regulation 1.42-5(c)(1) and (c)(2) codifies this requirement that the units must be selected randomly, and that the monitoring agent must not give advance notice of specific units to be reviewed. Therefore, IHCDA will not provide advance notice of which tenant files will be reviewed during an onsite audit. The owner agent must have all tenant files accessible (including initial and move-out files) when the IHCDA Compliance Auditor arrives onsite. The auditor will randomly choose a selection of files for review, using the sample size methodology described above.
3. Provide an exit interview summary to the onsite representative.
4. Inform the owner agent of any findings of noncompliance with regard to such review.
5. Allow the owner 90 days to notify IHCDA of correction of noncompliance.
6. Report all instances of federal noncompliance to the IRS via Form 8823 within 45 days of the end of the correction period, whether or not the noncompliance has been corrected.

NOTE: If files are not available or are in such an unorganized condition that the IHCDA Auditor cannot effectively review the files, the 90-day correction period will begin immediately.

B. Desktop File Reviews

When performing an in-house/desktop (at IHCDA offices) review, IHCDA will:

1. Notify the owner agent in writing which unit files have been selected for review.
2. Request that electronic copies of selected files and documentation be submitted through an IHCDA approved file transfer site. Contact your IHCDA Compliance Auditor to set up the file transfer folder.
3. Ask for a current rent roll and utility allowance information.
4. Securely delete all tenant files and confidential information after the review is completed.
5. Give a time frame in which the tenant file documentation must be submitted. IHCDA requires files to be submitted within 14 days of notification of the monitoring.
6. Inform the owner agent of any findings of noncompliance with regard to such review.
7. Allow the owner 90 days to notify IHCDA of correction of noncompliance.
8. Report all instances of federal noncompliance to the IRS via Form 8823 within 45 days of the end of the correction period, whether or not the noncompliance has been corrected.

NOTE: The desktop notification/file request letter will include a checklist of the items that must be included in each tenant file submitted. When reviewing copies of the files, IHCDA will expect to see all applicable documents listed on the checklist, in the approximate order that they are listed (leasing information, tenant information, income verifications, asset verifications, other clarifications). Auditors will not review files that are submitted in a disorderly or incomplete fashion. If files are not available or are in such an unorganized condition that an IHCDA Auditor cannot effectively review the files, the 90-day correction period will begin immediately.

C. Physical Inspections

Prior to performing an onsite development inspection, IHCDA or its third-party inspector will:

1. Notify the owner agent of the date and approximate time the inspection will take place.
2. Request that an owner representative be present and accompany the inspector throughout the entire inspection process.

All units and buildings must be available for interior and exterior inspections (vacant units, occupied units, and common areas inclusive). Staff will ask to inspect specific units regardless of whether the unit is occupied and will not give advance notice as to which units will be inspected. Units to be inspected will be selected randomly at the time of inspection.

After performing an inspection, IHCDA will:

1. Immediately provide the owner representative, if applicable, a copy of a Critical Violations Letter identifying all life-threatening or severe issues (per the NSPIRE severity classification) observed at the time of the inspection that require immediate corrections. **All life-threatening or severe issues identified in the Critical Violations Letter must be corrected within 24 hours after completion of the inspection and IHCDA must be notified of the completed corrections within 72 hours after issuance of the inspection report. Critical violations that are not corrected within 24 hours will be fined $250 per day, starting the first hour after the 24-hour correction period expires. Exception: The fine will not be imposed if the owner agent can provide proof that appropriate corrective action was initiated during**

the correction period and the correction is in progress- e.g., parts have been ordered, repair is scheduled with a technician, etc.

2. Send a copy of the inspection report to the owner agent. The report will identify all issues and define the correction time frame per the NSPIRE severity classifications and correction period. Life-threatening or severe issues must be corrected within 24 hours. Moderate severity issues must be corrected within 30 days. Low severity issues must be corrected within 60 days.
3. Request that all noncompliance issues be corrected within the time frame specified in the inspection report.
4. Request that legible copies of the proof of the corrections, in the form of work orders, photos, receipts, and/or invoices, along with an owner-signed affidavit attesting completion of repairs, be forwarded to IHCDA within the allotted correction time frame indicated in the inspection report.
5. Schedule a second inspection if necessary. IHCDA will charge re-inspection fees if IHCDA staff must return to a site for an additional physical inspection or file review. These fees will equal the greater of (a) $250 or (b) $35 per unit. For more information on these additional fees, see Part 7.8 C.
6. Review the correction documents for correlation with the inspection report to ensure issues are properly remedied.
7. Send a letter either indicating that no further corrective actions are needed or identifying what deficiencies still exist.
8. Report all instances of noncompliance to the IRS via Form 8823 within 45 days of the end of the correction period, whether or not the noncompliance has been corrected.

Part 7.6|Compliance Fees

All compliance fees must be paid online using IHCDA's online payment portal.

A. Annual Monitoring Fees

Annual monitoring fees are due with the submission of each Annual Owner Certification of Compliance. Fees are outlined in Table 1 below.

If IHCDA does not receive a complete Annual Owner Certification of Compliance, submission of all tenant events, and monitoring fees by February 15th then a fee equal to double the property's annual monitoring fee will be due to IHCDA by April 30th. After April 30th, failure to pay fees due to the Authority and submit the required documents shall constitute a violation by the owner and IHCDA will report the noncompliance to the IRS via Form 8823 as failure to submit a complete Annual Owner Certification of Compliance. Complete submission includes finalization of the Annual Owner Certification of Compliance forms and tenant events in the online reporting system and payment of annual monitoring fees. A submission is not complete until the owner representative completes the finalization process by submitting the Annual Owner Certification, inputting all tenant events, and then selecting "Finalize Year" in the online reporting system.

Table 1: Annual Monitoring Fees for Submissions on or Before February 15th

Annual Fee Per Unit	Minimum Annual Fee Per Development	Maximum Annual Fee Per Development
$25	$200	$6,500
$10 (if approved for Extended Use Policy for the **entire calendar year** for which the fee is due) Exception: If approved for EUP, IHCDA will not charge a fee for units that have Rural Development or Section 8 Project Based Rental Assistance funding if documentation is provided to prove that the project receives such funding.	$110 (if approved for Extended Use Policy for the **entire calendar year** for which the fee is due) Exception: If approved for EUP, IHCDA will not charge a fee for units that have Rural Development or Section 8 Project Based Rental Assistance funding if documentation is provided to prove that the project receives such funding.	$2730 (if approved for Extended Use Policy for the **entire calendar year** for which the fee is due) Exception: If approved for EUP, IHCDA will not charge a fee for units that have Rural Development or Section 8 Project Based Rental Assistance funding if documentation is provided to prove that the project receives such funding.

Table 2: Annual Monitoring Fees for Submissions After February 15th (Fees are doubled)

Annual Fee Per Unit	Minimum Annual Fee Per Development	Maximum Annual Fee Per Development
$50	$400	$13,000
$20 (if approved for Extended Use Policy for the **entire calendar year** for which the fee is due) Late fees apply even if project would normally qualify for the exception outlined in Table 1 above. The late fee is calculated as $20 per unit.	$220 (if approved for Extended Use Policy for the **entire calendar year** for which the fee is due) Late fees apply even if project would normally qualify for the exception outlined in Table 1 above. The late fee is calculated as $20 per unit.	$5460 (if approved for Extended Use Policy for the **entire calendar year** for which the fee is due) Late fees apply even if project would normally qualify for the exception outlined in Table 1 above. The late fee is calculated as $20 per unit.

B. 8823 Correction Fees

File Monitoring: A charge of $100 per unit will be imposed for any noncompliant unit where documentation must be re-reviewed after the issuance of an uncorrected IRS Form 8823 due to a finding of noncompliance during a tenant file review.

Inspection: A charge of $200 per unit/common area will be imposed for any noncompliant unit/common area that must be re-inspected after the issuance of an uncorrected IRS Form 8823 due to a finding of noncompliance during a physical inspection.

Annual Owner Certification: A flat fee of $250 will be imposed for any Annual Owner Certification that must be re-reviewed after the issuance of an uncorrected IRS Form 8823 due to a finding of noncompliance during an Annual Owner Certification review.

Table 3: 8823 Correction Fees

Type of Correction	Fee
File Monitoring re-review	$100 per unit
Inspection re-inspection	$200 per unit
Owner Certification re-review	$250 flat fee

C. Re-inspection or Re-monitoring Fees

IHCDA will charge additional monitoring fees if IHCDA staff must return to a site for an additional physical inspection or file review. These fees will equal the greater of (a) $250 or (b) $35 per unit reviewed. These fees will be applied in the following situations:

1. If staff must return to check on deficiencies or errors noted during the initial inspection/monitoring; or
2. If staff could not complete the initial inspection/monitoring because an owner representative was not available onsite at the designated time and location; or
3. If other reasons limited the auditor's access to files or the inspector's access to the building/units during the initial monitoring or inspection.

Table 4: Re-inspection / Re-monitoring Fees

Per Unit Fee	Minimum Fee Per Development
$35	$250

D. Miscellaneous Penalty Fees

Extension Fee: IHCDA will impose a $150 fee for the advance request of an extension for a deadline related to submitting files or corrections for a file monitoring. Extension requests must be submitted in writing to the IHCDA Compliance Auditor conducting the relevant review. Approval of the extension, and the length of the extension allowed, is at the sole discretion of IHCDA.

- Extension requests or waivers of late fees will **not** be accepted for Annual Owner Certifications as the deadline is February 15th every year and therefore management can plan accordingly to submit by the deadline.
- Extension requests will **not** be accepted to extend correction periods on physical inspections.
- Extension requests for submission of tenant files for a desktop audit must be submitted at least three business days prior to the deadline for submission.
- Extension requests for correction documentation for a file audit must be submitted at least five business days prior to the end of the correction period.

Late Submission Fee: IHCDA will impose a $250 fee for desktop files or correction documents submitted late. Therefore, if a deadline will not be met it is better to instead notify IHCDA in advance and request an extension for $150 as outlined above.

Late Notification of Casualty Loss Event: IHCDA will impose a $250 late fee if a casualty loss is not reported to IHCDA within 10 days of the date of the event, per the requirements of Part 5.6(B) of this manual. If the casualty loss is reported more than three months after the date of the event, the fee increases to $500. If the casualty loss is reported more than six months after the date of the event, the fee increases to $1000. If the casualty loss is reported more than a year after the date of the event, the fee increases to $2500.

Late Correction of Life Threatening or Severe Inspection Issues: All life-threatening or severe issues identified in an inspection Critical Violations Letter must be corrected within 24 hours after completion of the inspection and IHCDA must be notified of

the completed corrections within 72 hours after issuance of the inspection report. Critical violations that are not corrected within 24 hours will be fined $250 per day, starting the first hour after the 24-hour correction period expires. Exception: The fine will not be imposed if the owner agent can provide proof that appropriate corrective action was initiated during the correction period and the correction is in progress- e.g., parts have been ordered, repair is scheduled with a technician, etc.

Resubmission Fee: IHCDA will impose a $150 resubmission fee if requested tenant files are not submitted in a complete and orderly fashion.

Rescheduling Fee: IHCDA may impose a $150 fee if an owner or management agent requests to reschedule an onsite audit/inspection.

Note: In special circumstances and at its sole discretion, IHCDA may waive any of the fees described above.

E. Modification Fees

IHCDA imposes a $500 fee when an owner makes a modification request to change the characteristics of the development, such as unit types, unit distribution, income and rent limits, target population, etc. The fee is due at the time of request and is not refundable if IHCDA does not approve the modification. A modification request must be made by submitting a formal request letter to IHCDA that includes a narrative explanation of the nature of the requested modification and a justification as to why the modification is needed. IHCDA will impose an additional $1500 fee to modify any legal documents, such as the recorded extended use agreement, if the modification request is approved.

For example, if an owner agent requested a modification to change the number of 30% AMI units at the property, the owner agent would submit a $500 modification request fee and then if the request was approved they would owe an additional $1500 fee to have IHCDA modify the recorded extended use agreement on the property to reflect the new unit mix.

Approval of modification requests is at the sole discretion of IHCDA. IHCDA must evaluate each request to see how the change would have affected original scoring and underwriting of the project, as well as to ensure the proposed change will not cause noncompliance with any program regulations. IHCDA will request appropriate supporting documentation when reviewing a modification request. Such documentation may include property financial statements, rent rolls, updated underwriting and project pro formas, etc.

IHCDA will not accept modification requests:

- To change the minimum set-aside imposed on a project- the minimum set-aside election is irrevocable
- To convert program units to market rate units or otherwise reduce the applicable fraction of a building
- To move market rate units between buildings, even if the buildings are part of a multiple building project per the 8609 elections

Part 7.7|Amendments to Compliance Monitoring Procedures

The compliance monitoring procedures and requirements set forth herein are issued by IHCDA pursuant to applicable Treasury Regulations, Section 42 of the Internal Revenue Code, and published IRS and HUD guidance. These provisions may be amended by IHCDA for purposes of conforming with the regulations and guidance and/or as may otherwise be appropriate as determined by IHCDA. In the event of any inconsistency or conflict between this manual and code or regulations, the provisions set forth in the code or regulations shall prevail.

IHCDA periodically releases Real Estate Department (RED) Notices containing updates on policies, forms, and other issues relevant to the LIHTC Program. These notices are available online at the RED Notices Webpage.

Section 8 – Extended Use

Developments receiving a credit allocation after December 31, 1989, will have entered into an Extended Use Agreement (Declaration of Extended Low-Income Housing Commitment or Lien and Restrictive Covenant) with IHCDA prior to the issuance of Form 8609. These developments must comply with eligibility requirements for an "Extended Use Period." The Extended Use Period lasts either an additional 15 years beyond the expiration of 15-year federal Compliance Period (a total of 30 years) or the date specified in the Extended Use Agreement, whichever is longer.

Earlier termination of the Extended Use Period is provided for under certain circumstances in the Code. However, if a development received ranking points for delaying or waiving enactment of such earlier termination, the owner will be bound by this election as made in the Extended Use Agreement. See Part 8.2 for more information.

Developments that have completed their initial 15-year Compliance Period may apply for IHCDA's Extended Use Policy to have less restrictive compliance requirements. A description of this policy as well as the criteria to qualify for the policy is found below in Part 8.1. The owner may not request approval for the Extended Use Policy until such time that all buildings (BINs) in the development have completed their initial 15-year Compliance Period, regardless of the 8609 Line 8b definition of project that applies to the buildings.

Part 8.1|Extended Use Policy

The purpose of the Extended Use Policy is to outline the inspection and monitoring requirements for each tax credit development after the initial 15-year Compliance Period has ended. The Compliance Period is the time period for which a building must comply with the requirements set forth in Section 42 of the Internal Revenue Code and credits can be recaptured for noncompliance (i.e., the development's first 15 taxable years). The Extended Use Period ends 15 years after the end of the Compliance Period, or the on the date specified by IHCDA in the Extended Use Agreement, whichever is longer.

A. Qualifying for the Extended Use Policy

In order to qualify for the Extended Use Policy, the following criteria must be met:

1) The owner must request use of the Extended Use Policy via the "IHCDA Extended Use Policy Request Form" (Form #32). The request must be sent to extendeduse@ihcda.in.gov.
2) The development's Annual Owner Certifications, onsite inspections, and tenant file monitoring reviews must be free of noncompliance for the three consecutive years (the "Qualifying Period") leading up to Year 16 (Years 13-15) **or** any three consecutive years thereafter (Years 14-16, 15-17, 16-18, etc.). Free of noncompliance means that IHCDA did not issue IRS Form 8823 during this time period and that there are no outstanding compliance issues.

   NOTE: The only exceptions to this rule are if Form 8823 is filed to show (1) physical inspection issues that were marked as corrected at the time of issuance of 8823 or (2) the correction of a previously reported noncompliance problem and only if that previous noncompliance was reported prior to the three-year Qualifying Period.

   Example 1: Noncompliance discovered and corrected during same year of the Qualifying Period
   A development is issued an 8823 in Year 13. Later that year, a corrected Form 8823 is issued to show that the noncompliance has been resolved. Although the issue has been resolved, Year 13 is not free of noncompliance and thus the Qualifying Period cannot begin this year.

   Example 2: Noncompliance discovered and corrected during a later year of the Qualifying Period
   A development is issued an 8823 in Year 13. The issue requires a significant amount of time to correct, and the noncompliance continues for part of Year 14. Later in Year 14, a corrected Form 8823 is issued to show that the noncompliance has been resolved. Years 13 and 14 are both considered to have noncompliance and the Qualifying Period cannot begin until Year 15 at the earliest.

Example 3: Previously reported noncompliance is reported as corrected during Qualifying Period
A development is issued an 8823 in Year 12 and the issue is resolved by the owner within that same year. In Year 13, IHCDA reviews the correction documentation and a corrected Form 8823 is issued. Since the noncompliance was found and cured in Year 12, Year 13 is considered to be "free of noncompliance" as the Form 8823 filed in this year was only to report the correction of noncompliance that occurred prior to the beginning of the Qualifying Period.

Example 4: Previously reported noncompliance continues into the Qualifying Period
A development is issued an 8823 in Year 12. The issue requires a significant amount of time to correct and the noncompliance continues for part of Year 13. Later in Year 13, a corrected Form 8823 is issued to show that the noncompliance has been resolved. Years 12 and 13 are both considered to have noncompliance and the Qualifying Period cannot begin until Year 14 at the earliest.

3) Upon approval of the request, the owner agent must work with IHCDA to amend the development's Extended Use Agreement to include the Extended Use Policy provisions. The cost of recording the amendment will be incurred by the owner. After the amendment is sent to the owner by IHCDA, the owner must have the document recorded and returned to IHCDA within 90 days.

B. Reporting Requirements

The reporting requirements for developments approved for the Extended Use Policy are as follows:

1) The owner will continue to submit the Annual Owner Certification for every year of the Extended Use Period
2) The annual monitoring fee will be reduced to $10 per unit, with a minimum fee of $110 and a maximum fee of $2730. However, IHCDA will not charge a fee for units that have Rural Development or Section 8 Project Based Rental Assistance funding if documentation is provided to prove that the project receives such funding. The reduced monitoring fee goes into effect for the first full calendar year during which the project was approved for the Extended Use Policy.
3) The owner must continue to enter all tenant events in the IHCDA Online Reporting System within 30 days of the event date. For more information on online reporting requirement see Part 2.2 J.
4) The owner must continue to update utility allowances annually. For more information on utility allowances, see Part 4.4.

C. Compliance Requirements

The compliance requirements for developments approved for the Extended Use Policy are as follows:

1) All program units must remain income- and rent-restricted as agreed upon in the Final Application and recorded Extended Use Agreement.
2) Move-in files must contain third-party verification of income. Additionally, if new members are added to the household after initial move-in, third-party verification of income for the new members is required.
3) Annual recertifications only require completion of the IHCDA "Extended Use Annual Household and Rent Update Form" (Form #34). This means that income verifications will only be required at initial move-in during the Extended Use Period.
4) The 140%/ Next Available Unit Rule will not apply during the Extended Use Period.
5) The Full-time Student Rule will not apply during the Extended Use Period. **WARNING: If the property wants to be considered for a subsequent credit allocation (i.e., receive another allocation of tax credits for rehabilitation/resyndication), the student rule must continue to be followed even after the property is approved for the Extended Use Policy. In order to be grandfathered into a subsequent credit allocation, units/households must be in "continuous compliance" which includes the full-time student rule.**

6) File monitoring and physical inspections will continue once every three years. IHCDA reserves the right to monitor or inspect more frequently if deemed necessary.
7) Projects that did not elect to be treated as "Multiple Building Projects" on form 8609 during the Compliance Period will automatically be treated as multiple building projects during the Extended Use Period. Therefore, households may transfer between buildings in the development without being treated as new-move-ins and will not trigger an initial move-in certification. (See Part 5.1D for information on unit transfers).
8) Management must continue to list units in the Indiana Housing Now online housing search database.
9) All Fair Housing, VAWA, and other nondiscrimination requirements continue to apply.
10) All other rules and requirements of this Compliance Manual will continue to apply, including documentation and record retention requirements, unless specifically waived or modified in the list above.

D. Noncompliance with Extended Use Policy

Issues of noncompliance identified during the Extended Use Period may be addressed by IHCDA in one or more of the following manners:

1) IHCDA may enforce the recorded Extended Use Agreement through all applicable legal remedies.
2) The owner agent may be considered not in good standing with IHCDA and may be suspended or debarred.
3) IHCDA reserves the right to reinstate all prior declaration requirements (i.e., to revoke the Extended Use Policy).

Part 8.2|Release from Extended Use Agreement

A. Qualified Contract

At any time after Year 14 of the Compliance Period has ended, the owner of a tax credit development may contact IHCDA and request that the agency attempt to find a buyer for the property at a specified price (the price is calculated using a precise formula required by regulation). If IHCDA cannot identify a buyer and a period of one year has passed since submission of the Qualified Contract request, then the Extended Use Agreement recorded against the development (i.e., the Declaration of Extended Rental Housing Commitment or Lien and Restrictive Covenant Agreement) will be terminated. Termination of the Extended Use Agreement results in the development being converted to market rate after the initial 15-year Compliance Period has expired. However, certain protections continue to apply for a three-year period following termination as described in 8.2D below. For complete information on requesting a Qualified Contract, see Appendix D of this manual.

Note: The Qualified Contract policy does not apply to projects funded through the 2020 QAP or any subsequent QAP, or projects with Section 1602 Tax Credit Exchange funding. Such projects have **irrevocably** waived their right to request release through Qualified Contract as part of threshold.

B. Exemption Request to Serve Qualified Tenants for the Longest Period

Owners that have waived their right to apply for a Qualified Contract at the end of the 15-year Compliance Period and committed to "Serve Qualified Tenants for the Longest Period" may request an exemption from that commitment. Owners that received points for that commitment in their original tax credit application may be eligible to request a Qualified Contract if granted an exemption from the original commitment.

In order to be considered for an exemption, a project must be in good standing with IHCDA. A project with outstanding noncompliance issues or unpaid fees is not eligible to request an exemption. In addition, the owner must submit documentation to IHCDA to demonstrate at least one of the following criteria:

1. The economic viability of the property is poor and cannot be maintained throughout the extended use period through its current rental structure. **Required documentation**: Narrative describing financial condition of the property including estimated costs for capital needs along with the development's current year-to-date financials and financials for past two years; or

2. Current rents are approximately the same as local market rents for units of similar size and structure and will remain similar for the foreseeable future. **Required documentation**: Breakdown of current rents and analysis comparing those rents to the local HUD Fair Market Rent and rents charged at comparable properties in the area. This analysis does not have to be performed by a third-party market analyst.

Any owner that received points for an extended commitment in the original tax credit application and wishes to be considered for a Qualified Contract must pay an exemption fee equal to the remaining amount of Owner Certification fees in the Extended Use Period (based on the Extended Use Policy rate of $10 per unit). For example, if there are 10 years remaining in the Extended use Period on a project that contains 40 tax credit units and the compliance fee for each unit is $10 per year, the fee to request an exemption would be $4000 (10 years x 40 units x $10 per unit).

If the exemption is approved, the owner may then follow the policy to request a Qualified Contract as described in Appendix D of this manual. If the exemption is denied, IHCDA will retain $1500 of the exemption fee and remit the balance back to the owner. The owner must wait at least one year prior to resubmitting a request for exemption.

Note: All projects funded with Section 1602 Tax Credit Exchange Program funding or in the 2020-2021, or later, Qualified Allocation Plan are required to irrevocably waive their right to request release through Qualified Contract. Such projects are not eligible for the exemption process outlined above.

C. Foreclosure

1. Foreclosure defined:

A foreclosure is a legal procedure occurring when an owner defaults on a loan and the lender takes legal action because the property was used as security for the loan. As a result, the property is sold to recover the debt. Alternately, an owner may deed the property directly to the lender in a "transaction in lieu of foreclosure" in full or partial satisfaction of the mortgage debt.

Foreclosures do not include: (1) bankruptcy proceedings, although the property may ultimately be sold to pay the owner's debt; or (2) selling a property to a third party who will assume the debt, with the lender's approval.

2. Effect on Extended Use Agreement

Per Section 42(h)(6)(E)(i)(I), the extended use period for any building shall terminate on the date such building is acquired by foreclosure or instrument in lieu of foreclosure. However, certain protections continue to apply for a three-year period following termination as described in 8.2D below. The owner must provide proof of the foreclosure to IHCDA as soon as possible. Upon receipt, IHCDA will release the Extended Use Agreement.

However, in the event of foreclosure or transaction in lieu of foreclosure the lender or new owner may elect to continue operating the project in compliance with LIHTC in order to avoid loss/recapture of credits. In this case, the lender or new owner must enter into a new Extended Use Agreement with IHCDA by the end of the year of the foreclosure event and must continue to maintain compliance.

3. "Planned Foreclosures"

Under Section 42(h)(6)(E)(i)(I), the Extended Use Agreement is terminated under foreclosure "unless the Secretary determines that such acquisition is part of an arrangement with the taxpayer the purpose of which is to terminate such period." Owners may not arrange for "planned foreclosure" events with the purpose of getting out of the Extended Use Agreement. If IHCDA believes a "planned foreclosure" has occurred, it is obligated to notify the IRS per the instructions in *LIHC Newsletter Issue #54.*

D. Protection of Tenant Rights/ "Decontrol Period"

The Code {IRC 42 (h)(6)(E)(ii)} provides a specific "Protection of Tenant Rights" for those tenants living in projects that are released from their Extended Use Agreement through Qualified Contract or foreclosure. Two requirements must be met when an Extended Use Agreement is terminated.

1. The owner may not evict or terminate the tenancy (other than for "good-cause") of any existing tenant of a former tax credit unit before the close of the three-year period following the termination of the Extended Use Agreement. The owner may not remove a protected household solely because that household has a Section 8 voucher or similar rental assistance; doing so would constitute termination without good cause.

2. The owner may not increase the gross rent of any unit occupied by a formerly qualified tax credit household (except as permitted under Section 42) before the close of the three-year period following the termination of the Extended Use Agreement. Therefore, all existing tax credit households remain rent-restricted for three years. Rent restrictions continue to be based on the original restrictions recorded in the Extended Use Agreement and the rent restriction that was applicable to the household/unit at the time the decontrol period began. For example, a household that was under a 40% rent restriction at the time the decontrol period began would remain subject to the 40% rent restriction until the end of the decontrol period.

All existing tax credit households are protected by items #1 and #2 above for the three-year period following the termination of the Extended Use Agreement. This period is often referred to as the "decontrol period." However, new households moving into the project on or after the date the Extended Use Agreement is terminated are not subject to income or rent limits.

The owner agent is not required to submit Annual Owner Certifications of Compliance or online tenant event reporting during the decontrol period. However, IHCDA may ask for information to be submitted in a prescribed format and frequency to verify compliance with the decontrol period requirements. Therefore, during the decontrol period the owner agent must retain tenant files including leases, rent rolls, and utility allowance documentation.

Section 9 - Noncompliance

Part 9.1|Types of Noncompliance

Generally, a development is out of compliance if during the Compliance Period or Extended Use Period:

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

Part 9.2|Consequences

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

1. Penalty fees paid to IHCDA;
2. Notification to the IRS via Form 8823, which may result in disallowance/loss of the credit for the entire year in which the noncompliance occurs and recapture of the accelerated portion of the credit for prior years;
3. The investor/limited partner may impose penalties on the general partner per the terms of the limited partnership agreement, such as the assessment of adjustors to cover lost or recaptured tax credits;
4. Negative points on a future applications;
5. Rejection of future applications (i.e., suspension or debarment);
6. Repayment of rent overages;
7. Mandatory attendance at an IHCDA sponsored compliance training; and/or
8. An increase in the frequency of IHCDA audits/inspections.

Part 9.3|Notification of Noncompliance to Owner by IHCDA

IHCDA will provide written notice of noncompliance to the owner agent if:

- Any required submissions are not received by the due dates;
- Tenant files including Tenant Income Certifications, Income Questionnaires, supporting verification documentation, and rent records are not made available during an audit or not submitted when requested by IHCDA; and/or
- The development is found to be out of compliance through physical unit inspection, Annual Owner Certification review, file audit, or other means.

IHCDA will not provide documentation (e.g., copies of Form 8823, Form 8609, etc.) for specific developments to more than one contact person in an ownership entity (usually the general partner). If other individuals within an ownership entity wish to receive such documentation, they must obtain it from the contact person designated as the "Primary Owner" contact.

Part 9.4|Notification of Noncompliance to IHCDA by Owner

If the owner agent determines that a unit, building, or an entire development is out of compliance with LIHTC program requirements, IHCDA should be notified immediately. The owner agent must formulate a plan to bring the development back into compliance and advise IHCDA in writing of such a plan.

Noncompliance issues identified and corrected by the owner prior to notification of an upcoming compliance review or inspection by the IHCDA need not be reported to the IRS by IHCDA. The owner management agent must keep documentation outlining: the noncompliance issue, date the noncompliance issue was discovered, date that noncompliance issue was corrected, and actions taken to correct noncompliance. The notification letter is considered by the IRS to be a "bright line date." Once the notification letter has been sent, any noncompliance corrected after that time is still subject to being reported via Form 8823.

> *Example: A household was initially income-qualified and moved into a unit on January 1, 2007. The maximum allowable LIHTC gross rent is $500. At time of recertification on January 1, 2008 the owner increased the rent to the market rate of $1,000. During an internal audit dated February 1, 2008 the owner and/or management agent noticed that the unit was out of compliance, because the rent charged exceeded the maximum LIHTC rent limit. On February 1, 2008, the owner and/or management agent immediately corrected the noncompliance issue, notified IHCDA of the issue, and then documented the file with an explanation of the noncompliance issue, the date that it was corrected, and a summary of the actions taken to correct the noncompliance issue. On June 21, 2008, IHCDA notified the owner and/or management agent of an upcoming compliance review. Because the noncompliance issue was discovered, reported, and corrected by the owner/management agent prior to the notice of IHCDA's upcoming compliance review, IHCDA is not required to report the noncompliance issue to the IRS.*

Part 9.5|Correction Period

Should IHCDA discover (through physical inspection, file monitoring, Annual Owner Certification review, or in any other manner) that a development is out of compliance with program requirements or that credit has been claimed or will be claimed for units that are ineligible, IHCDA shall notify the owner agent. The owner agent must commence appropriate action to cure such noncompliance.

The owner shall have a maximum of 90 days from the date of notice to cure the noncompliance. However, if IHCDA determines that there is good cause, an extension may be granted for a total correction period not to exceed six months.

For physical inspections, the maximum correction period under NSPIRE standards is 24 hours for life-threatening or severe issues, 30 days for moderate severity issues, or 60 days for low severity issues.

Part 9.6| Reporting Noncompliance to the Internal Revenue Service

Potential noncompliance of which the owner agent becomes aware must be reported to IHCDA (see Part 9.4 above). Potential noncompliance discovered by IHCDA during a file audit, physical inspection, Owner Certification review, etc. must be reported to the IRS. The IRS ultimately determines whether or not there is noncompliance that impacts claiming credits.

IHCDA is required to file IRS Form 8823 "Low-Income Housing Credit Agencies Report of Non-Compliance" with the IRS no later than 45 days after the end of the correction period (as described above, including extensions) and no earlier than the end of the Correction Period, regardless of whether or not the noncompliance or failure to certify is corrected.

IHCDA must identify on IRS Form 8823 the nature and dates of the noncompliance and indicate whether the owner has corrected the noncompliance.

If a building is entirely out of compliance and will not be in compliance at any time in the future, IHCDA will report it the noncompliance as "no longer participating in the program" on IRS Form 8823 one time and need not file IRS Form 8823 in subsequent years to report that building's noncompliance.

Part 9.7| Loss of Credits and Recapture

Loss of credits (a.k.a. disallowance of credits) is a reduction in the amount of credits that can be claimed for a particular year due to a decrease in Qualified Basis. Qualified Basis can decrease either due to decrease in Applicable Fraction or a decrease in Eligible Basis (Qualified Basis = Eligible Basis x Applicable Fraction). Depending on the circumstance, decrease in Qualified Basis may also result in recapture.

Recapture is defined as an increase in the owner's tax liability because of a loss in tax credit due to noncompliance with program requirements. Recapture is the return of the accelerated portion of the credits that was claimed during the 10-year Credit Period.

The IRS will make the determination as to whether or not the owner faces loss of credits and/or recapture of credits as a result of noncompliance.

IRS Form 8611 is used by taxpayers who must recapture previously claimed tax credits. A copy of IRS Form 8611 must be sent to the IRS and IHCDA upon completion by the owner.

Part 9.8|Retention of Noncompliance Records by IHCDA

IHCDA will retain records of noncompliance or failure to certify for six years beyond IHCDA's filing of the respective IRS Form 8823. In all other cases, IHCDA will retain the certifications and records for three years from the end of the calendar year in which IHCDA received the certifications and records.

Part 9.9|Noncompliance during the Extended Use Period

For information on noncompliance during the Extended Use Period, see Parts 8.1 F & 8.1 G.

Part 9.10|Tenant Misrepresentation or Fraud

If fraud or misrepresentation of information is discovered while processing an application for residency, the applicant should be denied. Handling tenant fraud/misrepresentation becomes more problematic when discovered at recertification. In this scenario it may be determined that the household was never initially qualified and has been inappropriately occupying the unit. Fraud is considered material noncompliance with the lease and program requirements and is therefore grounds for termination of tenancy. For more information on termination of tenancy, see Part 6.8(E).

The footnote on Page 25-2 of the 8823 Guide makes the IRS's position on tenant fraud very clear, stating that "the IRS wants to provide an incentive for owners to identify, and remove (if possible) fraudulent tenants." In this spirit, the IRS provides leniency for owners/management agents that discover tenant fraud as long as they can exhibit due diligence. Page 25-2 of the 8823 Guide states:

> "As a general rule, the Internal Revenue service does not want to disturb the credit when the owner has demonstrated due diligence to avoid fraudulent tenants, timely removes fraudulent tenants when identified, and timely notifies the state agency of their actions."

Therefore, if tenant fraud/misrepresentation is discovered, the following three steps must be followed immediately.

1. Notify IHCDA that an incident of tenant fraud has been identified and provide a written explanation of what happened. As long as the incident was identified prior to an IHCDA audit, the incident will not be considered reportable noncompliance (i.e., an 8823 will not be issued).

2. If the fraud is believed to have been intentional, the owner may choose to report the suspected fraud to the Internal Revenue Service's Whistleblower's Office via Form 211. For more information on how to report the event to the IRS, refer to Chapter 25 of the 8823 Guide.
3. Begin the process of removing the fraudulent unqualified household and replacing it with a qualified household. Every tax credit lease should include language stating that providing inaccurate information regarding program eligibility is cause for termination of tenancy. Thus, the fraud becomes not only a violation of program rules but also a lease violation and grounds for eviction.

In order to try and reduce the number of instances of tenant fraud/misrepresentation, management should ensure that the forms used in tenant files address the seriousness of providing fraudulent information. As mentioned above, all tax credit leases should include language that fraud is grounds for eviction or non-renewal of a lease. Additionally, it is a best practice to include language on other forms signed by the tenant/applicant stating that the forms are signed under penalty of perjury.

The following documentation may help the owner establish that tenant fraud/misrepresentation occurred:

- Documentation proving the tenant was made aware of program requirements and prohibitions and did not follow those requirements such as signed lease documents and program agreements.
- Documentation showing that the tenant intentionally misstated or withheld information including but not limited to:
    - Evidence that false names or Social Security Numbers were used;
    - Copies of falsified, forged, or altered documents;
    - Proof that tenant omitted material facts that were known to the tenant such as proof of income and assets sources that were not disclosed by the tenant; and
    - Admission by the tenant that information was falsified or omitted.

Part 9.11|Owner Fraud

If IHCDA becomes aware of an apparent act of fraud by the owner, management company, or other entity involved with the management and compliance of a project, the project will be considered out of compliance and the following steps will be taken:

1. The entity will be placed on IHCDA's suspension list until further investigation is completed.
2. A noncompliance 8823 will be issued to the IRS;
3. Per the 8823 Guide, Form 3949-A "Information Report Referral" may be submitted to the IRS along with the applicable supporting documentation to demonstrate the fraudulent actions of the owner; and
4. Other noncompliance penalties such as increased auditing, as outlined in Part 9.2 may also apply.

Part 9.12|Suspension and Debarment

A. Purpose of Policy

As a recipient of federal and state funds, IHCDA has a moral and legal obligation to ensure that those funds are used as intended. To fulfill this duty, IHCDA must have the discretion to suspend or debar those who misuse, abuse, or otherwise fail to use funds correctly.

The purpose of this policy is to define suspension as it relates to noncompliance or misuse of funds on IHCDA funded rental projects during the affordability period and to explain how suspension is recommended, approved, and maintained.

This policy, while in alignment with the agency's overall suspension policy, applies specifically to the programs administered and monitored by IHCDA's Real Estate Development Department. These programs include Low-income Housing Tax Credits, tax-exempt bonds, the HOME Investment Partnerships Program, Tax Credit Assistance Program (TCAP), Section 1602 Exchange, Community Development Block Grants (CDBG & CDBG-D), the Neighborhood Stabilization Program (NSP), the National Housing Trust Fund (HTF), the Indiana Affordable Housing & Community Development Fund ("Development Fund"), Project Based Vouchers, and Section 811 Project Rental Assistance.

B. Scope of Persons Affected

This policy applies to all persons directly or indirectly receiving, administering, or associated with funds from an IHCDA Program, whether or not such person has a contractual relationship with IHCDA, including but not limited to the following persons:

- Contractors
- Sub-contractors
- Applicants
- Award/ grant recipients
- Borrowers
- Sub-recipients
- Sub-grantees
- Property owners
- Developers
- Syndicators
- Administrators
- Management companies/agents
- Individuals employed by, contracted by or affiliated with any of the persons listed

Such persons will be referred to as "affected persons" in this policy. For the purposes of this policy, the term "person" shall be interpreted broadly to mean any individual, trust, cooperative, association, organization, or any other entity.

C. Definitions

Affected person is defined as any person directly or indirectly receiving, administering, or associated with funds from an IHCDA Program, whether or not such person has a contractual relationship with IHCDA. For the purposes of this policy, the term "person" shall be interpreted broadly to mean any individual, trust, cooperative, association, organization, or any other entity. Examples of types of affected persons can be found in Part B above.

Debarment is defined as a determined period of time during which an affected person is prohibited from participating in an IHCDA Program(s). The determined period of time may be permanent / in perpetuity. See Part K below for additional information on debarment.

Suspension is defined as an *indefinite but temporary* status assigned to an affected person making it ineligible to apply for additional funding until such time that the suspension status is revoked. Suspension is generally invoked for failure to meet federal and/or state compliance obligations and reporting requirements. Other considerations leading to suspension could include but are not limited to: fraudulent activity, financial health concerns, failure to meet funding obligations, or record of poor past performance. Unlike debarment, suspension is not for a set amount of time and can generally be revoked as soon as IHCDA's concerns and any identified issues have been resolved.

Parts D through G below discuss suspension recommendations based on noncompliance. Other scenarios resulting in the recommendation of suspension are not discussed in detail but will follow the same basic guidelines herein, including issuance of (1) preliminary issue letters giving the affected person the opportunity to satisfy concerns, (2) a suspension recommendation letter notifying the affected person that suspension has been recommended, and (3) an official notice that suspension has been invoked.

Suspension does not waive any compliance requirements or release the project from its affordability period. A suspended organization must continue to keep its project(s) in compliance and work towards remedying any issues with the project(s) that caused the suspension recommendation. Failure to do so could result in further penalties as outlined in Part L below.

Suspension list is defined as IHCDA's internal roster of entities and persons that have been officially suspended.

Suspension recommendation is defined as the act of an IHCDA employee recommending (usually based on the persistence of uncorrected noncompliance) that an entity be disqualified from future IHCDA funding by being placed on the IHCDA's Suspension List. A suspension recommendation does not implement an actual suspension until approved by the appropriate IHCDA staff.

Watch list is defined as IHCDA's internal roster of entities and persons that have not yet been officially suspended but that have been recommended for suspension or are otherwise on track for a potential suspension.

D. Suspension Recommendation Based on Failure to Submit Annual Owner Certification

If an Annual Owner Certification is not received for a particular project/award, IHCDA will send a notification letter to the designated contacts giving a final 10-day correction period to submit. There are two possible results following issuance of this letter:

- If the Annual Owner Certification is submitted, it will be reviewed by the assigned Compliance Auditor. Issues identified could result in a suspension recommendation.
- If the Annual Owner Certification is not submitted, the organization will be recommended for suspension.

A recommendation for suspension can be made by any Compliance Auditor by issuing the letter entitled "Notice of Suspension List Recommendation." This letter serves only as a notice that suspension has been recommended, not that suspension has actually gone into effect.

If suspension is implemented, a letter will be issued directly by the Chief Real Estate Development Officer as described in Part I below.

E. Suspension Recommendation Based on Failure to Correct Owner Certification Issues

After review of an Annual Owner Certification of Compliance, the affected person is sent either a "no issue" or an "issues identified" letter. If issues are identified, the owner/recipient is given a 30-day correction period to respond. There are three possible results following issuance of an issues identified letter:

- If a correction response is received that adequately resolves the issues, the Annual Owner Certification is closed and an "issues resolved" letter is sent.
- If a correction response is received but the issues are not adequately resolved, a follow-up letter is sent identifying the remaining issues and giving an additional 10 days to submit additional documentation. If no response is received after this additional 10 days, a follow-up letter is sent giving a final 10-day correction period. This letter states that failure to submit the requested response will result in recommendation of suspension.
- If no response is received during the correction period, a follow-up letter is sent giving a final 10-day correction period. This letter states that failure to submit the requested response will result in recommendation of suspension.

If the response is not received after the final letter is sent, the affected person will be recommended for suspension. A recommendation for suspension can be made by any Compliance Auditor by issuing the letter entitled "Notice of Suspension List Recommendation." This letter serves only as a notice that suspension has been recommended, not that suspension has actually gone into effect.

If suspension is implemented, a letter will be issued directly by the Chief Real Estate Development Officer as described in Part I below.

F. Suspension Recommendation Based on Failure to Cooperate with File Audit Request

If files are not submitted for a desktop request or the auditor is not given access to files for an onsite audit, IHCDA will send a notification letter giving a final 10-day correction period. There are two possible results following issuance of this letter:

- If the files are submitted, they will be reviewed by the assigned Compliance Auditor. Issues identified could result in a suspension recommendation as defined in Part G below.
- If the files are not submitted, the organization will be recommended for suspension.

A recommendation for suspension can be made by any Compliance Auditor by issuing the letter entitled "Notice of Suspension List Recommendation." This letter serves only as a notice that suspension has been recommended, not that suspension has actually gone into effect.

If suspension is implemented, a letter will be issued directly by the Chief Real Estate Development Officer as described in Part I below.

G. Suspension Recommendation Based on Failure to Correct Audit Issues

After completion of a tenant file audit, the affected person is sent either a "no issues" or an "issues identified" letter. If issues are identified during a file audit, the affected person is given a 90-day correction period to respond. There are three possible results following issuance of an issues identified letter:

- If a response is submitted that resolves the issues, the audit is closed and an "issues resolved" letter is sent.
- If a response is submitted but the issues are not adequately resolved, a follow-up letter is sent identifying the remaining issues and giving an additional 30 days to submit additional documentation. If no response is received after this additional 30 days, a follow-up letter is sent giving a final 10-day correction period. This letter states that failure to submit the requested response will result in recommendation of suspension.
- If no response is provided during the correction period, a follow-up letter is sent giving a final 10-day correction period. This letter states that failure to submit the requested response will result in recommendation of suspension.

If the response is not received after the final letter is sent, the affected person will be recommended for suspension. A recommendation for suspension can be made by any Compliance Auditor or Inspector by issuing the letter entitled "Notice of Suspension List Recommendation." This letter serves only as a notice that suspension has been recommended, not that suspension has actually gone into effect.

If suspension is implemented, a letter will be issued directly by the Chief Real Estate Development Officer as described in Part I below.

H. Suspension Recommendation Based on Physical Inspection Issues

If IHCDA is denied access to conduct a physical inspection or issues identified during an inspection are not corrected (and proof of correction provided to IHCDA) within the correction timeframe established by the NSPIRE inspection protocol, IHCDA's inspector may issue a recommendation for suspension by issuing the letter entitled "Notice of Suspension List Recommendation." This letter serves only as a notice that suspension has been recommended, not that suspension has actually gone into effect.

If suspension is implemented, a letter will be issued directly by the Chief Real Estate Development Officer as described in Part I below.

I. Suspending an Organization

After a suspension recommendation letter has been sent, the recommendation will be reviewed by the Chief Real Estate Development Officer and Director of Real Estate Compliance. This review will ensure that the proper steps were taken by IHCDA staff and that the issue (1) has not been resolved and (2) warrants the suspension recommendation.

If suspension is invoked, the affected person will receive an official "Notice of Suspension" letter stating that the organization has been added to IHCDA's Suspension List effective the date of the letter. All suspension letters will come directly from the Chief Real Estate Development Officer, not from a Compliance Auditor or Inspector. A copy of the letter will be sent to IHCDA's General Counsel. Copies of the suspension letter and all prior notifications will be maintained by IHCDA in the file for the applicable organization.

Suspension is at the sole discretion of IHCDA. Unless otherwise stated, a suspension or debarment will apply to not only the affected person, but to any entity owned, controlled, or managed by the affected person or a spouse, domestic partner, child, sibling, aunt, uncle, niece, nephew, cousin, grandchild, parent or grandparent of the affected person, including "in-laws", "half" or "step" relations.

J. Maintaining a Suspension and Debarment List

IHCDA will internally maintain a list of entities recommended for suspension, suspended entities, and debarred entities (for more information on debarment see Part K below). This list will be available to IHCDA management and appropriate staff. Because the suspension list will apply to the entire agency and be made available across departments, suspension based on performance on a Real Estate award could affect future funding from other IHCDA departments' funding sources.

K. Removal from Suspension List / Reinstating an Organization

An affected person can be removed from the suspension list if the original issues that invoked the suspension are sufficiently resolved, the necessary documentation proving such is submitted to IHCDA, and the project is considered otherwise in compliance.

To request removal from the suspension list, the affected person must send a letter to IHCDA's Chief Real Estate Development Officer requesting such removal and providing a narrative of how the outstanding issues have been resolved. All necessary supporting documentation to prove compliance should be attached to the letter. Upon receipt of the request, the Chief Real Estate

Development Officer, Director of Real Estate Compliance, and the Compliance Auditor or Inspector that originally recommended suspension (if applicable) will meet to review and make a determination. Removal from the suspension list is at the sole discretion of IHCDA.

L. Debarment

In its sole discretion, IHCDA may debar an affected person from participation in an IHCDA Program(s) for a set of time based on reasonable evidence that the affected person has behaved or is behaving improperly with regard to an IHCDA Program(s), whether intentionally or unintentionally. The period of debarment may be permanent/in perpetuity or a set number of years.

The difference between suspension and debarment is that a suspension is used to allow IHCDA to determine whether a debarment or other action is warranted pending completion of an investigation. Therefore, suspension is an indefinite but temporary measure, while debarment is for a set amount of time.

An IHCDA decision to debar an affected person may be appealed within 30 calendar days of notice to the affected person of that decision. The appeal must be in writing and contain, at a minimum, the reasons for the appeal and supporting documentation or evidence. The appeal should be sent to IHCDA, 30 South Meridian Street, Suite 900, Indianapolis, IN 46204, Attn: Chief Real Estate Development Officer. The Chief Real Estate Development Officer will review with IHCDA's General Counsel and respond to the appeal within 45 calendar days of the receipt of the appeal. The response to the appeal is not appealable.

An IHCDA decision to suspend an affected person is not appealable because it does not represent final disposition on the matter.

IHCDA will maintain a publicly available list on its website of all debarred entities.

M. Potential Recapture

In addition to suspension or debarment by IHCDA, affected persons found to be out of compliance with Section 42 face potential recapture and loss of credits.

In addition to suspension or debarment by IHCDA, affected persons found to be out of compliance with the HOME, CDBG, CDBG-D, HTF or NSP programs are subject to all recourse under the regulations and statutes of those programs, including possible recapture of funds. If an affected person remains on the suspension or debarment list for more than 90 days and has not informed IHCDA of corrective actions in progress, IHCDA will consider that affected person noncompliant and begin the process of recapturing funds for the project(s) that invoked the suspension.