

CHAPTER 1 - INTRODUCTION

Background

The Low-Income Housing Tax Credit (LIHTC) Program was created by Congress as part of the Tax Reform Act of 1986. Governed by Section 42 of the Internal Revenue Code of 1986 ([IRC Section 42](#) or “Code”), as amended, the US Treasury Department, through the Internal Revenue Service (IRS) administers the program nationwide in conjunction with state housing agencies.

Under the provisions of the Code, the Governor of the State of Oregon appointed Oregon Housing and Community Services (OHCS) as the “housing finance agency” to allocate the tax credits (the “Credit”) within the State.

The Omnibus Budget Reconciliation Act of 1990 amended the Code to require that designated state tax credit agencies provide a procedure for monitoring adherence to compliance with the low-income occupancy requirements of the LIHTC Program. Guidelines and rules outlined in this manual are reflective of that amendment and as enforceable as the regulations themselves.

The Omnibus Budget Reconciliation Act of 1990 also gave housing credit agencies the additional responsibility of monitoring all projects for compliance that have been placed in service for which the Credit is, or has been, allowable *at any time* since the inception of the program in 1987. This definition includes projects financed with tax-exempt bonds that have received credit outside the State’s annual LIHTC cap. The Program compliance monitoring became effective January 1, 1992.

The Compliance Manual

The Program Analysis and Enforcement Section have created this Tax Credit Manual for your reference, which can be downloaded at: http://www.ohcs.oregon.gov/OHCS/HPM_LIHTC_Compliance_Manual.shtml.

The manual describes OHCS compliance monitoring procedures that the Owner and Managing Agent must follow. As changes to the law and/or procedures occur, updates will be provided and made available for your review on our website.

Links within the manual will lead you to required and recommended forms provided by OHCS, Section 42 of the Internal Revenue Code and final compliance monitoring regulations as published in the Federal Register. Also, a variety of other links will allow you to enter internet sites of outside agencies (such as the Social Security Administration, HUD, IRS, etc.) that may assist you in maintaining compliance with the Housing Credit program.

Purpose of the Manual

This manual is a guide to understanding compliance monitoring, as practiced in Oregon, under Section 42 of the Internal Revenue Code ("Code") which governs the use of the Low Income Housing Tax Credit. It was developed, pursuant to Section 42 of the Code and the IRS Procedure for Monitoring Compliance, for use by Owners, Managing Agents, on-site management personnel and others involved with OHCS procedures for monitoring compliance of tax credit projects. It is intended to be used as a **supplement** to the Code, revenue procedures, revenue rulings, letter rulings, notices, announcements, any applicable Treasury regulations and federal law.

The Internal Revenue Service (IRS) has made it clear that **compliance with the requirements of the Code is the sole responsibility of the Owner** of any building for which the Credit has been allocated. OHCS's responsibility to monitor for compliance will not cause OHCS to be liable for an Owner's noncompliance. Therefore, an Owner should not rely solely on OHCS to determine if the project and its records are in compliance. In addition, the Owner should not rely solely on any outside service, organization or agency in their dealings with the Owner's tax credit buildings. Any error that is made will be the responsibility of the Owner.

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

Compliance Period

Projects that received tax credit allocations *prior to* January 1, 1990 were only subject to a 15-year compliance period. However, any *building* in such a project that received an additional allocation of credit after December 31, 1989 must comply with eligibility requirements in effect beginning January 1, 1990.

Credit Allocations After December 31, 1989

Projects receiving a Credit allocation after December 31, 1989 must commit to an extended-use period in the Reservation and Extended Use Agreement (see [Exhibit E.1](#)). When the project is placed in service, a final allocation of Credit is issued when such commitments are recorded in the Declaration of Land Use Restrictive Covenants (see "Declaration", [Exhibit E.2](#)). These projects must comply with eligibility requirements for at least an additional 15 years (the "Extended Use Period") **beyond** the initial 15-year compliance period for a total of **at least 30** years.

***Other Allocation
Year
Considerations***

Earlier termination of the extended use period is provided under certain circumstances in the Code. However, if a project offered to defer this right, the term of deferment will be recorded in the Declaration specifically or by reference.

IRS regulations differ for the various tax credit periods. In some cases the change in regulations brought forth by technical correction is minor; in others, substantial. Management must not only be aware of the differences in regulations but must also be very clear on what tax credit period is involved with the particular building and/or project. The following is an outline of some of the changes that have created the most impact on compliance issues:

1990:

1. Rent computation now based on the number of bedrooms
2. Extended Use Agreement requirement

1991:

1. All projects: extension of deadline to meet set-aside (not retroactive)
2. FmHA (RD) only: overage rule (not retroactive)
3. AFDC Student Rule exception (retroactive)

September 9, 1992:

IRS Revenue Ruling ([Rev. Rul. 92-61](#)) regarding treatment of staff units as part of eligible basis (not retroactive)

August 10, 1993:

Three new rules that remain applicable:

1. Single parent student (not retroactive)
2. Married student rule (retroactive to 1987)
3. Section 8 requirement (projects cannot refuse to lease to Section 8 applicants – retroactive to 1987)

Gross Rent Floor

August 24, 1994:

Revenue Procedure ([Rev. Proc. 94-57](#)) allows owners of LIHTC properties to irrevocably elect to establish the **Gross Rent Floor** to take effect on either (1) the date of credit allocation or (2) the date the building(s) is placed-in-service (not retroactive).

Available Unit Rule

September 26, 1997:

Available Unit Rule ([Reg § 1.42-15](#)) was adopted as an amendment to the regulations (not retroactive).

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Safe Harbor Rule

November 24, 2003:

Safe Harbor Rule ([Rev. Proc. 2003-82](#)) applies to tax credit units where household incomes were at or below the applicable income limits **prior** to the first taxable year of the credit period, but then later exceed the limits at the **beginning** of the credit period, when the household incomes are tested or recertified (effective for taxable years ending on or after 11/24/03). The units would continue to be considered low income if:

1. The household income is tested for purposes of the Available Unit Rule at the beginning of the first credit year, and
2. The unit has been rent-restricted since the initial qualification date of the household.

June 21, 2005:

Safe Harbor Rule ([Rev. Proc. 2005-37](#)) established that housing credit agencies and project owners may meet certain requirements of the Internal Revenue Code concerning **extended low-income housing commitments** (effective on or after 06/21/05).

*Student
Clarification*

December 20, 2007:

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

*Utility Allowance
Update*

July 29, 2008:

Utility Allowance Regulations Update ([IRS 26 CFR Part 1](#))—**added** the following utility allowance calculation options (not retroactive):

1. Estimate from the Agency that has jurisdiction over the building (if available),
2. HUD Utility Schedule Model
(see <http://www.huduser.org/resources/utlmodel.html>), and
3. Energy Consumption Model – must be calculated by a licensed engineer or a qualified professional approved by OHCS.

*Housing Economic
and Recovery Act of
2008*

July 30, 2008:

With the signing of the Housing Economic and Recovery Act of 2008 (H.R. 3221), signed by the President, the following clarifications, amendments, or changes have been made or introduced:

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⇒ *General Public
Use Clarification*

1. **General Public Use Rule** – effective for buildings placed-in-service before, on or after 07/30/08, clarification was made with H.R. 3221 ([Sec. 3004\(g\)\(9\)](#)) to allow occupancy preferences for residents who:
 - a. have special needs,
 - b. are involved in literary and/or artistic activities, or
 - c. are members of specified groups under State or Federal housing programs.

⇒ *Tenant Income
Certifications*

2. **Tenant Income Certifications** – the Bill allows owners with **100% tax credit** (and tax-exempt bond-financed) properties an annual recertification waiver. The waiver **does not** apply for mixed-projects with market rate units.

However, OHCS has chosen to exercise their right as the state agency responsible for monitoring Oregon’s LIHTC properties, by establishing the policy that all 100% LIHTC projects will be required to complete a formal certification at move-in, as well as a first-year annual certification (see [OHCS Letter 10/16/08](#)). Third-party verifications must be obtained to support the information reported for both the move-in and first-year annual certification. This policy is effective immediately (no later than 01/01/09).

⇒ *Tenant Data
Collection*

3. Congress included a provision within HERA that now requires state Housing Finance Agencies (HFAs) to annually submit to HUD tenant data including race, ethnicity, family composition, ages of household members, monthly rents, disability status, household incomes, and use of rental assistance.

In order to assist owners/agents in collecting this information, OHCS has revised the Tenant Income Certification (TIC) (OHCS.2), modeled after the OMB-approved HUD form, and the Annual Reporting Spreadsheet ([OHCS.10](#)) which is now a “Required” form. Also, the “Assessment of Household Demographics” ([R.2](#)) is a new “Recommended” form that can assist owners/agents with the collection of the tenant data required.

*Form OHCS.10 was
revised on 09/22/10*

*Form R.2 was created
on 10/06/10*

⇒ *Full-time Student
Exception*

4. **Student Households** – H.R. 3221 ([Sec. 3004\(e\)\(II\)\(i\)\(4\)](#)) has amended the list of full-time student household exceptions, **to include** full-time students who previously received Foster Care assistance under Title IV of the Social Security Act (under parts B or E) (effective after the date of enactment).