CHAPTER 5 – QUALIFYING TENANTS

Form OHCS.3 was revised on 03-16-10

Form OHCS.2 was revised on 10-25-10

OHCS recommends advising applicants for low-income, rent-restricted units early in their initial visit to the project that there are maximum income limits that apply to the units. Management should explain to potential tenants that the anticipated income of **all adult persons** expecting to occupy the unit must be verified and included on the Application, the Applicant/Tenant Questionnaire (see **Required Form OHCS.3**) and Tenant Income Certification (see **Required Form OHCS.2**) **prior to occupancy and annual recertification** for continued eligibility. After initial certification, household income may increase up to 140% of the maximum income limit and both the tenant and the unit will retain low-income status for program compliance. See **Available Unit Rule** (**Supplemental Information S.4**) for more information regarding income increases above 140%.

Section 42 states that determination of annual income of individuals must be made in a manner consistent with HUD Section 8 income definitions and guidelines. Refer to the HUD Handbook 4350.3 REV-1 Occupancy Requirements of Subsidized Multifamily Housing Program guide. A hard copy of the Handbook may be obtained from HUD by calling 1-800-767-7468, faxing a request to 1-202-708-2313, or accessing HUD's website: **http://www.huduser.org**.

The Tenant Application

It is critical to obtain **complete and accurate** tenant information in order to determine eligibility and retain low-income status for program compliance. Therefore it is imperative that owners/agents obtain fully completed applications in order to accurately determine tenant eligibility. The Managing Agent's application should request information regarding income, assets, and income derived from the assets.

At the time of application it is the Managing Agent's responsibility to obtain sufficient information on all prospective tenants to completely process the application to determine tenant eligibility. OHCS strongly recommends that roommates complete separate applications.

The Managing Agent/staff should handle all disclosed information in a confidential manner. Additionally, the applicant may need to be assured that the provided information is considered sensitive and will be handled accordingly.

Application Components

The application should include:

- The name and birth date of each proposed occupant. Legal names should be given and used on all documents;

- **All sources and amounts of current and anticipated annual income** expected to be received during the twelve month certification period (this includes income values calculated from non-income generating assets and other asset income);
- The signature of the applicant and the date the application was completed; and
- The signature of the management staff person who accepted the application and the date it was received.

Income Inclusions and Exclusions

Annual income is defined as the gross amount of income **anticipated to be received** by all members of the household, with some exceptions, during the twelve (12) months following the date of the certification or recertification.

Please refer to Exhibit 5-1, "Income Inclusions and Exclusions", of the HUD Handbook 4350.3, REV-1 (**see Exhibit E.9**).

Calculating Annual Income

Owners must verify an applicant or tenant's current income and the convert the verified income to an annual figure.

To annualize **full-time** employment, multiply:

1. Hourly wages by the number of hours worked per year;
   Example: $8.50/hour x 2080 hours/year = $17,680
   Example: $8.50/hour x 40 hours/week x 52 weeks = $17,680

2. Weekly wages by 52;
   Example: $300/week x 52 weeks = $15,600

3. Bi-weekly wages by 26;
   Example: $500/bi-weekely x 26 pay periods per year = $13,000

4. Semi-monthly wages by 24;
   Example: $500 paid twice a month x 24 pay periods = $12,000

5. Monthly amounts by 12.
   Example: $2,000/month x 12 months = $24,000

Note: For those individuals with an annual salary, the annual amount should be used to cover the full 12-month period regardless of the pay schedule.

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

1. Hourly wages by the anticipated number of hours to be worked;

> **Example:** Employer lists 15-20 hours worked per week on the verification. The owner must use the highest figure reported (20 hours per week). If this puts the household over the income limit, the owner can follow up with the employer to obtain further clarification.

2. Weekly amounts by the expected number of weeks to be worked;

3. Other periodic amounts by the expected number of pay periods to be worked.

Income that cannot be anticipated for a full 12 months (such as unemployment compensation) should be calculated assuming current circumstances will last a full 12 months **unless there is an foreseeable change in the future** that would cause the income calculation to be greater.

> **Example**:
> If the applicant/tenant is currently unemployed but will be starting work soon, owners/managing agents should use the person's unemployment compensation to the point of the start date of employment and then calculate the employment income from that point forward to the end of the certification period.

If an owner cannot adequately anticipate annual income based on current circumstances because a household reports little-to-no income or income fluctuates, the owner can determine annual income based on the actual income earned within the last 12 months.

Year-to-Date Income

Year-to-Date (YTD) income can be found either on the Employment Verification (**Required form OHCS.7**) or on the most recent paystub. However, typically paystubs do not include the date the YTD period began, which is needed in order to properly calculate YTD earnings.

When analyzing income, **year-to-date income must be considered and compared to the wage/salary calculation**. When annualizing year-to-date income, you may either round the number of weeks down to a whole week or use fractional weeks carried out **one decimal place (i.e. 13.47 would round to 13.5 weeks)**.

Example:
You receive an Employment Verification listing YTD earnings of $4,350 through July 15, 2010. The hire date listed is March 9, 2010. The number of weeks during this period (03/9/10 to 07/15/10) is 18.428571, which can be rounded to **18.4**. The YTD figure of $4,350 divided by 18.4 wks x 52 wks = annualized income of $12,293.478, or **$12,293.48**.

Asset Inclusions and Exclusions

Assets are items of value, other than necessary personal items. Income from assets is added to regular income to determine the eligibility of a household. Asset information (total value and any income) must be obtained from the applicant/tenant.

If an applicant/tenant declares a combined total asset value of less than $5,000, obtaining third-party verification will not be necessary; however, they must complete an Under $5,000 Asset Certification (see **Required Form OHCS.4**). Any actual income the applicant/tenant receives from the asset must be added to regular income.

Note: Households declaring that they have **NO** assets are no longer required to complete the Under $5,000 Asset Certification.
If an applicant declares a combined total asset value of $5,000 or more, third-party verification of each asset must be obtained, and the greater of the actual income from assets or the imputed income of the total value of the assets must be added to regular income.

Please refer to Exhibit 5-2, "Asset Inclusions and Exclusions", of the HUD Handbook 4350.3, REV-1 (**see Exhibit E.9**).

Sale or Disposition of Assets

At the time of application or annual certification, all adult members of the household must declare any assets sold for less than fair market value in the past two years before the effective date of the Certification (see **Recommended Form R.6**). If there is more than $1,000 difference between the amount received for the asset and the fair market value, then include in asset value the entire difference. Do not count it if the difference is less than $1,000.

Example:
Six months before move-in, an applicant sold his house to his nephew for $5,000. The house could have been sold on the open market for $60,000. The difference between the value and the sale price is more than $1,000. Include $55,000 as the asset value.

Note: Assets disposed of for less than fair market value as a result of foreclosure, "short sales" in lieu of foreclosures, bankruptcy, or divorce or separation settlement are **not** to be included in the fair market value determination. However, if an individual is still the owner of record of property, include as an asset the value of the individual's share of the property.

Calculating Income from Assets

When computing asset value, use the cash value of the assets. The cash value is the amount an individual would receive if the asset(s) were converted to cash. Expenses that may be deducted from the value include:

Determining the Value of an Asset

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

Determining Income from Assets

When the value of net family assets is less than $5,000, add to the total verified income the amount of actual income from the asset(s). When assets are $5,000 or more, add to the total verified income **the greater of**:

1. The actual income from assets; or
2. The imputed income from assets based on the passbook rate established by HUD (currently 2%).

> **Example**:
> An applicant has $6,400 in assets. Actual income from assets has been verified at $168. Imputed income from assets is calculated at $128 ($6,400 x .02 = $128). Use the greater amount, or in this case **$168**, to include as part of gross annual household income.

Rounding Calculations

When calculating income, figures should be carried out to two decimal places. If rounding to the whole dollar is preferred, rounding is only acceptable after the entire calculation has been performed and income must **always** be rounded up.

> **Example**:
> An applicant's only source of income is from Social Security benefits. The verification indicates that the monthly gross benefit amount is $570.60. Multiply $570.60 by twelve months for an annual gross income figure of $6,847.20. If rounded, income should be reflected on the Tenant Income Certification as $6,848.00.

Tenant Income and Asset Verifications

All regular sources of income, including asset income, must be verified. Verification must be received by the Managing Agent **prior to the execution of the Tenant Income Certification and the actual move-in date**. Verifications must contain complete and detailed information, and include, at a minimum, direct written information from all sources of regular income.

Please refer to **Chapter 5** of the HUD Handbook 4350.3 REV-1, for a detailed explanation of how to determine annual income, household assets, and income earned from assets.

Effective Term of Verification

Third-party verifications of income are valid for 120 days. After this time, a new verification must be obtained if the move-in or annual certification occurs after the effective verification term.

Methods of Verification

At a minimum, an attempt to obtain written third-party verification is required. Any request for income verification must:

⇨ *Written Verification*

1. State the reason for the request;
2. Include a release statement signed and dated by the applicant (refer to the Forms Section for an example); and
3. Provide a section for the third-party source to disclose the requested information. The signature of the third party source, their job title (if applicable), phone number and date must be included.

⇨ *Verification Transmittal*

Suggestions for verification transmittals:

1. OHCS strongly recommends that applicants sign two (2) copies of each verification form. The second copy may be used if the first request has not been returned in a timely manner.
2. Income verification requests must be sent directly to and returned by the source, **not through the applicant**. OHCS suggests including a self-addressed, stamped envelope with the request for verification.
3. Income verifications may be sent directly to and returned from the source via facsimile or e-mail. **Both methods of verification must clearly indicate from where it originated** (i.e. management agent) **and from where it was returned** (i.e. employer).

4. The owner should review and check verifications for accuracy and completeness. Verifications should be date stamped as they are received.

⇨ *Verbal Verification*

Verbal verifications are only acceptable to clarify information already provided on written documentation. Any other use of verbal verification is not acceptable. If written verification cannot be obtained, the Managing Agent should consider the household ineligible until eligibility can be established through appropriate documentation.

⇨ *Difference in Reported Income*

The owner must give the applicant the opportunity to explain any significant differences between the amount reported on the application and amounts reported on third-party verifications. The file should be documented to explain the disparity and support the actual income figure used.

⇨ *Altering Documents*

Verifications must never be altered but can be clarified if the information on the documentation needs to be changed. **White-out must never be used to conceal original information** (raises audit concerns). If there is a need to clarify information, attach a clarification memo. Clarifications must include the name and signature of the party completing the clarification, as well as the name of the source from which the revisions were (along with the appropriate contact information).

Acceptable Forms of Income Verification

Specific information must be obtained on income verifications. With the exception of the required forms, Agents may develop their own forms or use the forms provided in the Exhibit Section of this manual.

Listed below are the types of income and their corresponding acceptable sources of verification in order of verification preference.

⇨ *Employment Income*

Employment income includes (but is not limited to) hourly wages, salary, overtime pay, tips, bonuses, commissions and shift differentials **prior to any deductions** and can be verified by obtaining:

Form OHCS.7 was revised on 04-09-10

1. An Employment Verification Form (see **Required Form OHCS.7**) completed by the employer or a statement from the employer on company letterhead (which must include the anticipated income for the following 12 months);
2. Several current check stubs from the employer showing gross income per pay period and frequency of pay; or
3. A copy of the most recent income tax return signed by the

applicant/tenant or copies of Form W-2 providing the amount of income, including income from tips and other gratuities, supported by current check stubs from the employer.

Note: Per IRS guidance, "Earned income from employment of children (foster children included) is excluded."

➪ *Military Employment*

Military employment income includes (may not be limited to) base and longevity pay, sea and foreign duty pay, allowances for housing, food and clothing, and hazardous duty pay. Military income should be verified by obtaining the service member's Leave and Earnings Statement (LES) (see **Military Employment Verification**).

Military employment exclusions include (may not be limited to):

1. Hostile Fire Pay
2. Basic Allowance for Quarters (BAQ) – if the LIHTC unit is located in a county in which a qualified military installation is located (see Section 6 of **IRS Notice 2008-79**)

Note: Military income earned by a temporarily absent family member who is serving in the military should not be included as household income unless the service member is (1) listed as the head, co-head, or spouse, or (2) the spouse or dependent(s) of the active service member resides in the unit.

➪ *Self Employment Income*

Forms R.13 and R.14 were revised on 07-22-10

Self Employment can be verified by use of OHCS Recommended forms (see **Form R.13** and **Form R.14**) **and** by obtaining one of the following documents:

1. Statement of net income prepared by an accountant or bookkeeper (if not the business Owner) and a statement from the business Owner regarding anticipated income;
2. Financial statement(s) of the business along with an affidavit or notarized statement from the applicant forecasting the anticipated income for the 12 months following certification; or
3. The prior year's income tax return (Schedule C and 1069 and 1040 or K-1) and a statement from the applicant/tenant that forecasts the anticipated income for the 12 months following the effective date of the certification.

The NET INCOME from the operation of a business is included as household income. NET income is calculated by subtracting from GROSS income all eligible business expenses, interest on loans, and depreciation computed on a straight-line basis. Business expenses do NOT include payments on loans or interest on loans (and other expenses) for expansion or capital improvements.

Salaries paid to, and any cash or assets withdrawn by, any household members from the business must be **included** as household income. However, do not include as income any withdrawal made if its purpose is to reimburse an employee (household member) for cash or assets invested in the business.

Note: If net income is reflected as a negative amount, it cannot be used to offset other household income. Instead, the negative figure must be counted as zero income.

Example #1:
Your applicant, Mark, reports starting a business of his own on January 1st of the current year. His new business has been in operation through August 31, 2010. The current NET Year-To-Date earnings are $24,000.

In order to anticipate annual NET Income from the business for the 12 months following the effective date of certification, see the following calculation:

YTD Earnings of **$24,000** = $3,000 x **12** months = **$36,000**
8 (# months in operation)

Example #2 (from 8823 Guide):
John and Mary are married. John operates a sole proprietorship business whose net income is -$3,500. John does not take a salary from the business but pays Mary $27,000 each year, which is reflected on her W-2. The two have no other income.

Because net income is a negative amount, it counts as $0. The only income to be counted is Mary's, which is **$27,000**.

⇨ In-Home Office

If the LIHTC unit is the tenant's primary residence, a portion of the unit may be used to operate a business and all associated business expenses are tax deductable. The "business" portion of the unit will be claimed on **IRS Form 8829**, which must be attached to the Schedule C filed by the business owner (resident). See **IRS Publication 587**, "Business Use of Your Home", for more details.

If **daycare services** are being provided in the LIHTC unit, the IRS requires that the business owner (resident) "must have applied for (and not have been rejected), been granted (and still have in effect), or be exempt from having a license, certification, registration, or approval as a daycare center or as a family or group daycare home under state law."

➩ *Social Security, Pensions and Disability Income*

Form R.15 was created on 11-15-10

For Social Security, Pensions, Disability Income, etc., obtain one of the following:

1. A benefit verification form completed by the agency providing the benefits (for Social Security see **Form R.16**)(for Pensions see **Form R.15**);
2. An award or benefit notification letter prepared by the authorizing agency. Copies of checks, bank statements reflecting automatic deposits, or deposit slips **are not acceptable** forms of verification (in most cases reflected as NET amounts, versus GROSS).

Annual income is determined from the **GROSS** amount (prior to any deductions) of benefits being received. Benefits received on behalf of a minor are also included in the determination of household income.

Because income calculations are to be based upon what is expected to be received during the future 12 months, if the Social Security Administration or other plan provider has published a Cost of Living Adjustment (COLA)**, include the increase as appropriate**. COLAs are published every November and can be found on-line at **http://www.ssa.gov/cola/**.

Note: Social Security or SSI payments made in a lump sum as a result of deferred periodic payments are to be **excluded** from household income.

Note: Per the Housing & Economic Recovery Act of 2008, any **deferred** disability benefits paid by the Veterans Administration (VA), whether on a monthly basis or in one lump sum, should be **excluded** from income. Owners should continue to count regular periodic payments of disability income from the VA as income to the household.

➩ *Annuities*

Annuities are contracts sold by financial institutions and purchased by individuals that are designed to secure cash and earn interest that will provide steady income at a later date, most commonly during the retirement years.

Form R.10 was created on 11-15-10 (replaces Project Summary Sheet)

The annuity can be verified by obtaining a current statement from the insurance or brokerage firm or by use of the OHCS-recommended Annuity Verification (see **Form R.10**).

If the annuity is being paid to a household member in **periodic installments** and the balance **CANNOT** be withdrawn, **the annuity should be treated as income** to the household.

Example:
Tammy is retired and receives monthly annuity payments in the amount of $600. The owner has verified that the balance of the annuity is $195,000 and that Tammy does **NOT** have the option of withdrawing from the balance.

Management should record **$7,200** ($600 x 12 months) as regular income under Part III, "Gross Annual Income", of the applicable certification. Do NOT count any part of the balance as an asset.

Note: In some cases, an annuity holder can withdraw an initial lump sum and then receive periodic payments. When this occurs the periodic payments should be listed as regular income under Part III of the certification, while the lump sum should be counted as an asset (during the year it was received) under Part IV. The owner should also include the applicable interest earned from the asset.

⇨ Unemployment Compensation

Unemployment compensation is verified by obtaining:
1. A verification form completed by the unemployment compensation agency; or
2. Records from the unemployment agency stating payment dates and amounts.

Form OHCS.8 was revised on 11-05-10

In addition to verifying a person's unemployment benefits (or lack of), the owner must also have the applicant/resident complete an Unemployed and/or Zero Income Certification (see **Required Form OHCS.8**).

Note: The weekly benefit amount should be multiplied by 52 weeks regardless of how many weeks the applicant/tenant is entitled to collect unless there is an imminent change (see example on page 5-3, under "Calculating Annual Income").

⇨ Educational Scholarships or Grants

With the October 2009 revision to the 8823 Guide, the IRS clarified that "the treatment of educational scholarships or grants is dependent on whether the student is receiving Section 8 assistance," and applies to both part and full-time students.

For LIHTC purposes only, all forms of student financial assistance, no matter how it is used, are EXCLUDED from annual income.

Financial assistance includes grants, scholarships, educational entitlements, work study programs, assistance from private sources and financial aid packages.

Example:
A part-time student applies on his own for a one-bedroom unit at your tax credit property. He has income and assets as follows:

- $5,000 annual Pell Grant
- $1,000 per term from dad (for books and part of tuition)
- $8,000 from part-time employment
- No forms of Section 8 assistance
- Non-interest bearing checking account with average 6-month balance of $800

The only income that should be included as part of annual household income is the **$8,000** earned from his part-time employment.

Because he does **NOT** receive Section 8 assistance, **NONE** of the Pell Grant is considered. Also, the IRS has clarified that financial assistance includes assistance received from private sources and that it does not matter how that assistance is used. As such, do **NOT** count the $1,000 provided by his father (for books and tuition) as part of household income.

For LIHTC households that **receive Section 8 assistance**, all financial assistance received **in excess of tuition is INCLUDED** as income unless:

1. The student is over the age of 23 with dependent children, **or**
2. The student is living with his or her parents who are applying for or receiving Section 8 assistance.

Please refer to the HUD Handbook 4350.3, REV-1, Chapter 3 (paragraph 3-13) and Chapter 5 (section 5-6, E) for additional guidance regarding students residing in LIHTC units who receive Section 8 assistance.

Form OHCS.5 was revised on 03-10-10

The OHCS-mandated student forms (**Required Form OHCS.5** and **Required Form OHCS.6**) are used to verify student status and financial assistance (if households receive Section 8 assistance).

Owners can disregard any financial assistance reported on form OHCS.6 for LIHTC households NOT receiving Section 8 assistance.

⇨ Student Income

A full-time student's age, type of income he/she receives, and household status will determine how the student's income will be treated. If the full-time student is:

1. 18 years or older and the head of household, co-head, or spouse, **include all income**.
2. 18 years or older and the dependent of one of the household members, include:
   (a) **The lesser of** actual income earned or $480.00, and
   (b) **All** unearned income received, as well as any income earned from assets.
3. Under the age of 18 years (a minor), **only count** unearned income received, along with any income earned from assets. If employed, **do not count** any income earned.

⇨ Alimony or Child Support Payments

Alimony or child support that is **court ordered or otherwise supported by written agreement** must be included as income unless:

Form R.4 was revised on 03-25-10

1. The recipient of the child support or alimony certifies the funds are not being received and are not expected to be received during the certification period (see **Recommended Form R.4**); **and**
2. reasonable efforts have been made to collect the amount due, including filing with courts or agencies responsible for enforcing payments.

Child support and/or alimony can be verified through the following documentation:

1. A copy of a separation or settlement agreement, a divorce decree or verification from a clerk of the court stating the amount and type of support payment schedule;
2. A printout or statement from the Support Enforcement agency (for child support verification) addressing support for all children in the household;
3. A notarized affidavit from the person paying support;
4. A copy of the most recent check and documentation regarding the frequency of payments;

5. As a last alternative, the applicant's/tenant's statement or affidavit of the amount being received. The file should include a detailed explanation of why none of the alternatives listed above could be provided.

Examples of appropriate documentation:

Example #1:
A man moves in with his minor son. He divorced the son's mother two years ago. The divorce decree gives him the greater percentage of custody (establishing this as a two-person household) and provides for a child support monthly payment of $275 from the mother. The man claims she has never made a payment. He also claims he has filed with Support Enforcement but has received nothing.

The owner/managing agent should obtain a copy of the divorce decree and a printout from Support Enforcement.

Example #2:
A father moves in with minor son. He reports he and the boy's mother were never married and he is not eligible for child support because there is no court order for it.

The owner/manager should obtain a self-affidavit from the father indicating he is not eligible for child support and a printout from Support Enforcement.

Example #3:
A mother moves in with her three minor children. Two of the children are from her first marriage. The third is from her second marriage. She reports neither father is paying child support. Her application shows she was living in Washington before her most recent address.

The owner/manager should obtain a copy of both divorce decrees. The divorce decrees should indicate what court had jurisdiction for each divorce. The owner/managing agent should then obtain a Support Enforcement printout from any state that had jurisdiction in the divorces as typically support comes from the state where the divorce was executed.

➩ *Pregnancy*

Form R.1 was revised on 03-16-10

When an unborn child will be included with the household composition **in order to qualify the unit**, the household must certify their claims of eligibility by signing an Affidavit of Pregnancy (see **Recommended Form R.1**), or a similar form.

Note: Per IRS guidance, it has been determined that unborn children can be included as part of the family to qualify the household under the current income limits, **as well as to qualify a full-time student household**.

Example #1:
A pregnant, single mother of one child (in elementary school) is a full-time student. Her unborn child could qualify the household, provided the mother cannot be claimed as a dependent on someone else's tax return.

Example #2:
A married couple applies for a two-bedroom unit. Based on their combined annual income, they do not qualify under the two-person maximum income limit, but because the wife is pregnant, they do qualify under the maximum three-person income limit and therefore are allowed to move in to the unit. Two months later the wife has a miscarriage.

Per recent IRS guidance (8823 Guide, page 4-7), recertification is not required for the remaining household members. If it is discovered that the couple's combined income exceeds 140% of the income limit in effect at the time the first-year recertification is completed, the owner/agent will apply the Next Available Unit Rule.

➩ *Temporarily Absent Children*

There are other scenarios where management should include children currently absent from the household but will be living in the unit within the upcoming twelve (12) months. These include:

- Children temporarily absent due to placement in a foster home,
- Children who are in the process of being adopted,
- Children who will reside in the household for at least 50% of the certification year (as established by joint custody agreements), and
- Children who are currently away at school but live with the household while school is not in session.

Per the HUD Handbook 4350.3, **include ALL unearned income** of any minors (household members under the age of 18) considered to be part of the household. Third-party verifications must be obtained to substantiate the income being received. The **earned income of minors is NOT included** within the determination of household income.

Note: Children cannot be included in the household composition of more than one tax credit unit.

➩ *Estrangement or Separation*

If an applicant states that he/she is married but is estranged from or in the process of a separation from his/her spouse, a verification must be obtained in order to prove that the spouse will not be residing in the unit (see **Recommended Form R.7**).

➩ *Recurring Contributions and Gifts*

Verify recurring contributions or gifts to the household by obtaining:

1. A signed affidavit by the person providing the assistance. The statement should include the purpose, dates, and value of the contributions or gifts (see Periodic Monetary Assistance Verification, **Recommended Form R.9**);
2. A letter from the bank, attorney, or trustee providing the necessary information; or
3. A statement from the applicant/tenant providing the necessary information. The statement must include an explanation detailing why neither of the alternatives listed above could be obtained.

➩ *Unemployed / Zero-Income*

Form OHCS.8 was revised on 11-05-10

Unemployed and zero-income applicants/residents must complete an Unemployed and/or Zero-Income Certification (see **Required Form OHCS.8**), regardless of whether or not unearned income is being received (i.e. social security). Applicants/residents must select each option that applies to their situation.

All unearned income must be verified as described previously, and includes (but is not limited to) Social Security or disability benefits, income from pensions, and recurring gifts.

Per guidance provided by the IRS: "If the household's income cannot be determined based on current information because the household reports little to zero income, or income fluctuates, income may be determined based on actual income received or earned within the last twelve months before the determination (effective date of the certification)."

Applicants/residents claiming to be (1) unemployed, (2) not receiving unemployment benefits, and (3) not receiving unearned income will be required to obtain (and submit) a printout from the Employment Division, that details the employment history (or lack of) for the 12 months prior to the effective date of the certification.

➯ *PHA-Verified Income*

For households receiving assistance from a Public Housing Authority (PHA), **third-party verifications of income and assets are required for all LIHTC certifications completed at move-in**. The PHA Statement can be used as proof of income for any other certification completed after the initial certification (see **Recommended Form R.12**). Income and assets must continue to be verified within 120 days of the effective date of the tax credit certification.

➯ *Resident Services Stipend*

A resident service stipend is a payment made to an on-site resident in exchange for part-time services that are performed on behalf of the owner or managing agent, and are considered to be a benefit to the property. Examples of part-time services include (but not limited to) weekend key-holder, lawn maintenance, hall monitoring, and fire patrol.

If the resident services stipend exceeds $200 per month, the owner must include it as part of the resident's annual household income. However, if the **monthly stipend is $200 or less**, the income should be **EXCLUDED**.

➯ *Live-in Aide*

Form R.17 was revised on 03-16-10

In order to determine a household member's need for a live-in aide, the owner or managing agent must obtain third-party verification (see **Recommended Form R.17**) from a healthcare professional that confirms the live-in aide to be:

1. essential to the care and well being of the resident,
2. in no way obligated to support the household member, and
3. only in the unit to provide supportive services to the tenant.

Once third-party verification has been received establishing the need for a live-in care provider, the owner should:

Form R.8 was revised on 03-16-10

- conduct a background screening for the individual intending to be the live-in care provider to ensure there is no criminal history, **and**
- have the live-in care provider sign a self-affidavit (see **Recommended Form R.8**) declaring that he/she understands they

have no rights to the unit, that they must follow the rules established within the lease signed by the resident, and that the caregiver will vacate the unit if the tenant no longer requires supportive services or moves out of the unit.

If the caregiver wants to remain in the unit, **he/she would need to establish eligibility under the Section 42 program**.

Owners should NOT do the following:

- Consider the caregiver's income with that of the household's annual income,
- Have the caregiver sign a lease agreement, or
- Include the live-in aide on the Tenant Income Certification.

Note: The children or other family members of a live-in care aide are not allowed to reside in the unit because they do not meet the definition or requirements to be considered live-in care providers (per the HUD Handbook 4350.3 FAQs, released in July of 2005).

Acceptable Forms of Asset Verification

Households with combined assets of $5,000 or more must have their assets verified by a third-party, and may be documented by using an Asset Verification (see **Recommended Form R.3**).

⇨ *Account held by a bank*

Account held by a bank (checking, saving, etc.)
1. Verification of assets completed by the bank where held;
2. Copies of bank statements. For checking accounts, obtain the most recent six months worth of statements to get the average six-month balance. For savings accounts, obtain the most recent statement for the current account balance.

⇨ *Trust Funds*

Trust Funds
1. A letter from the trust administrator or representative;
2. A copy of the most current fund statement.

⇨ *Personal Property Held as an Investment*

Personal Property Held as an Investment
A copy of a current appraisal of value.

⇨ *Real Estate*

Real Estate
1. Copy of the most current tax assessment or statement from a real estate broker;
2. If under a contract of sale, a copy of the contract;
3. For the outstanding loan balance, a payoff statement from the mortgage holder.

➩ *Stocks, Bonds, T-Bills, CDs, Mutual Funds, Money Market Accounts*

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

1. Copy of the most current account statement from a brokerage firm;
2. A statement from a brokerage account representative.

Interest or dividends earned from these assets must be included as income from the assets, even if they are reinvested. Do **NOT** include as income to the household any monthly withdrawals taken from these types of assets as the asset itself has already been accounted for under Part IV, "Income From Assets", of the tenant income certification.

Example:
Mark owns 150 shares of ABC stock. Each share is valued at $16.25 and earns $0.15 in quarterly dividends. If Mark were to sell his stock, he would be assessed a 4% commission fee.

Market Value = 150 shares x $16.25/share = $2,437.50
Commission Fee = $2,437.50 x 0.04 = $97.50
Quarterly Dividends = 150 shares x $0.15 x 4 = $90

Cash Value of the Asset (2437.50 – 97.50) = **$2,340**
Annual Income from the Asset (dividends) = **$90**

➩ *Retirement Accounts (IRA, 401K, Keogh, etc.)*

Retirement Accounts (IRA, 401K, Keogh, etc.)

1. Copy of the most current account statement showing the ownership (vesting) percentage;
2. Copy of the most current benefit statement;
3. Written documentation from the bank, brokerage firm, or employer summarizing the details of the account;
4. Obtain a completed Retirement Account Verification (see **Form R.19**) from the bank, brokerage firm, or employer.

Form R.19 was created on 11-15-10

Note: Upon retirement, any amount received as a lump-sum should be counted as an asset (under Part IV of TIC). However, any periodic payments being received would be counted as part of annual household income (under Part III of TIC).

➩ *Pension Funds*

Pension Funds

1. Copy of the most current account statement;
2. Written documentation from the pensioning entity summarizing the details of the fund;
3. Obtain a completed Pension Verification (see **Form R.15**) from the pensioning organization.

Form R.15 was created on 11-15-10

➩ Annuities

Annuities

If a household member **has access to withdraw the balance** at any time, the annuity should be **treated as an asset**. Actual interest earned from the annuity must be determined, as does its cash value. Subtract any surrender/withdrawal fees and taxes/tax penalties from the full face value of the annuity to determine what the **CASH VALUE** (or "Cash Surrender Value") is. (see recommended Annuity Verification, **Form R.10**)

Form R.10 was created on 11-15-10

Example:
Sam holds an annuity with a current balance of $115,000, and has a fixed interest rate of 5%. He currently does not receive payments but he is allowed to withdraw the balance at any time. A 10% tax penalty and a 5% surrender/withdrawal fee would be assessed in the event Sam withdrew the balance.

Full Value	=	**$115,000**	
	-	11,500	(tax penalty)
	-	5,750	(surrender penalty)
Cash Value	=	**$ 97,750**	

Actual Interest Earned = **$ 5,750** ($115,000 x .05)
The owner will list the annuity as an asset under Part IV of the certification with a cash value of **$97,750** and actual interest earned as **$5,750** (based on the full value).

Note: The imputed interest income is determined from the total **cash value** of ALL household assets (if $5,000 or more).

➩ Whole Life or Universal Life Insurance Policy

Whole Life or Universal Life Insurance Policy
1. Copy of the most current statement of cash value;
2. Written documentation from the insurance company as to the value of the policy.

➩ Contract Sale/Deed of Trust of Real Estate

Contract Sale / Deed of Trust
Real estate may be sold by use of a contract sale, or Deed of Trust, where the buyer and seller agree to a transfer of title to real estate after the buyer has made a specified number of payments to the seller. Each payment made will include principal and interest. All interest paid will be counted as income, while the principal portions will simply reduce the balance owed each year. The value of the asset is the unpaid principal as of the effective date of certification.

Obtain a copy of the **Sales Contract or Escrow Agreement**, which will explain the specific terms of the arrangement between the buyer and the seller. In addition, the owner should request a copy of the **amortization schedule** which will assist in the determination of how much principal and interest is paid during a 12-month period.

Example:
Betty has applied for your LIHTC project. She informs you that she is selling her home on contract and still holds the mortgage for the buyer. The amount of unpaid principal is $85,000. She receives an annual payment from the buyer in the amount of $12,000, of which $4,000 is applied to the unpaid principal. As of the effective date of the certification:

Cash Value of Asset (unpaid principal)	=	**$85,000**
Actual Income from Asset ($12,000 - $4,000)	=	**$8,000**

Note: The cash value of this asset will be reduced each year by the principal portion of the payments received.

➪ Lump-Sum Receipts

Lump-Sum Receipts
Lump sum payments come in several different forms (i.e. capital gains, one-time lottery winnings, inheritances, auto insurance proceeds, workers' compensation) and should be listed as assets on the certification. Interest from the asset should be determined as previously described (page 5-5).

Assets Owned Jointly

If an asset is owned jointly by a resident and someone who resides elsewhere, the asset must be prorated according to the percentage of ownership. This may be difficult to prove, but management must show that due diligence has been performed. Please refer to the HUD Handbook 4350.3, REV-1 (paragraph 5-7 D) for further guidance.

Tenant Income Certification

Initial Certification

After obtaining and computing all income and asset information, management personnel must prepare a tax credit Tenant Income Certification (see **Required Form OHCS.2**) for each household placed in a set-aside unit. After reviewing the document with the household, management should have all adult household members sign the Tenant Income Certification (TIC) before signing the Lease, **but in no case more than ten (10) days prior to move-in**. The tax credit TIC must be completed at initial move-in.

First-Year Annual Certification (100% LIHTC Projects)

Effective January 1, 2009, all units within 100% LIHTC properties must be recertified upon the first-year anniversary of the move-in date only. After that, there will be no subsequent recertification requirements. The first-year annual certification may be signed any time after all verifications are collected but before the effective date, (in no case more than 120 days prior to the effective date). The first-year annual certification must be effective **no later than** one year from the date of move-in.

Example:
If a household moved in to a unit on May 21, 2008, the effective date of the first-year annual certification could be May 1, 2009 but no later than May 21, 2009.

Annual Certifications (Mixed-use Projects)

For Housing Credit projects that are not considered to be 100% LIHTC (market rate units exist), all LIHTC households are required to complete the LIHTC Tenant Income Certification at move-in and annually during the entire time the household remains in occupancy, and throughout the Initial compliance period of the project. **LIHTC interim recertifications are not required**.

For projects with subsidy under Rural Development 515, when recertifications are completed prior to the anniversary of the move-in, the recertification becomes the new annual date under the RD program. If management chooses to complete a tax credit Tenant Income Certification (TIC) concurrently, the new RD annual date can also be used as the annual date for the purposes of recertification under the tax credit program.

⇨ *Adding Members*

In the event a tenant in a set-aside unit wishes to add an additional person to the household, the following steps must be taken:

- The prospective tenant must complete an application and provide verification of income and assets as required of the initial tenant;
- Once accepted as a qualified tenant, the new household member must sign a lease; and
- The new tenant's income and assets should be added to the most recent LIHTC TIC completed. The new tenant would then sign and date the certification (use the actual date the form was signed). Management can choose to execute a new TIC immediately to reflect the new composition and income of the household; however, it is not required.

Note: As mentioned in Chapter 3, new members cannot be added to a LIHTC household until the members who originally qualified to occupy the unit have **fulfilled the initial six month lease term** (exceptions include unborn children and children in the process of being adopted).

Exceptions for RD 515 and Section 8 Projects

For projects that are considered to be 100% tax credit, the Tenant Income Certification (TIC) must be completed at initial move-in and upon the first-year anniversary of the move-in certification. The following exceptions for completing the LIHTC TIC apply:

- Properties that were financed through the RHS Section 515 Program and complete the RD Tenant Income Certification Form 1944-8 for each household (with all adult household member signatures), must complete a tax credit TIC for households **at move-in only.**
- Properties that receive project-based Section 8 rental assistance and complete the Form HUD-50059 (which includes all adult household member signatures) must complete a tax credit TIC for households **at move-in only.**

Remember, the LIHTC TIC must show annual gross income at move-in (prior to considering allowances and deductions for the RD or Section 8 programs).

Form OHCS.5 was revised on 03-10-10

Owners/management agents must continue to address student status for each household annually throughout the Initial compliance period by having the adult household members complete an Annual Certification of Student Status (see **Required Form OHCS.5**).

Leases

The Tax Credit Program does not mandate the use of a specific lease agreement. Owners must therefore develop and adopt their own. OHCS does require that all tenants occupying set-aside units be income certified and under a lease agreement. The owner/managing agent and the tenant(s) must sign and date, at the signature line, every lease. Lease provisions should include:

- The legal name of the parties to the agreement and all other occupants;
- A description of the unit to be rented;
- The term of the lease (a six-month minimum term is required except as noted below) and the renewal date or automatic renewal;
- The rent amount (including **non-optional** fees);
- The permitted and restricted use of the premises (i.e. prohibition of subletting the unit not approved by management);
- The rights and responsibilities of the parties, including the obligation of the tenant to certify annually income as defined herein;
- A statement (or attached addendum) regarding certain LIHTC program requirements, such as income and student eligibility;

- The right to release information to OHCS and/or the IRS for inspection;
- Fees being charged for **optional** services

Rents may not exceed the maximum rents as allowed by the Code, or as otherwise agreed per representations made in the owner's application. **Initial lease terms must be for at least six months with exception to**:

1. Single Room Occupancy (SRO) units in projects receiving McKinney Act and Section 8 Moderate Rehabilitation assistance; or
2. SRO units intended as transitional housing and operated by a governmental or nonprofit entity that provide certain supportive services.

Fees and Deposits

In general, owners cannot assess additional fees for the use of any part of the project for which the cost was included in the eligible basis (i.e. pool, parking, dining room).

⇨ Non-Optional Fees

Any **non-optional** fees charged to tenants as a condition of their occupancy **must be included in the gross rent** (Treas. Reg. 1.42-11). For example, an owner may require residents to have renter's insurance. In this scenario, the cost to carry the insurance must be included with the resident's gross rent.

The IRS has determined that charging application/screening fees are acceptable as long as the fees charged are reasonable and compliant with state and local laws. These fees are assessed to reimburse owners for the **actual costs** associated with processing the applications and screening reports, **not to make a profit**.

⇨ Optional Fees

Optional fees can be charged to tax credit households for optional services, as long as the service is not a condition of occupancy and reasonable alternatives for the service is provided free of charge.

The IRS does not view one-time refundable security deposits or pet deposits as being included with gross rent. As such, owners are allowed to charge these deposits provided they are reasonable and compliant with state and local laws.

Because it is the owner's responsibility for physically maintaining tax credit units that are suitable for occupancy, standard preparation or decorating fees cannot be charged.