OREGON HOUSING and COMMUNITY SERVICES

LOW INCOME HOUSING TAX CREDIT

- LIHTC –

Compliance Manual

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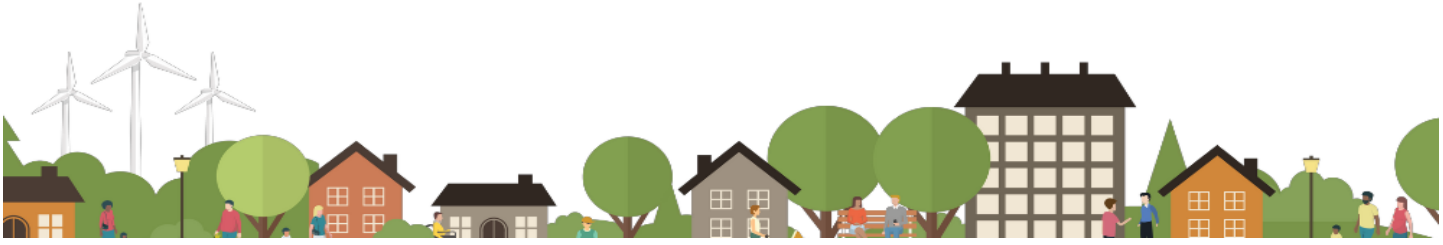

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INTRODUCTION

Oregon Housing & Community Services: Affordable Rental Housing

Oregon Housing & Community Services (OHCS) through Portfolio Management monitors the continuing compliance of properties that have received allocation of federal tax credits in accordance with Section 42 of the IRS Code.

Property Owners are required to retain the housing units as affordable throughout the affordability period. This manual covers procedures that apply to all rental properties which have received an allocation under Section 42 f the Internal Revenue Code (IRC) Code. Any violation in the requirements of Program regulations could result in a reduction or recapture of credits and OHCS not awarding future applications.

Successful operation of a Low-Income Housing Tax Credit (LIHTC) property is management intensive; the owner is responsible for ensuring that each program is properly administered. Thorough understanding of all program requirements and compliance monitoring procedures requires training of owners, property managers and site staff and should occur before a property is occupied. At a minimum, such training should cover key compliance terms, determination of rents, tenant eligibility, file documentation, procedures for maintaining the required affordability, reporting and record retention requirements, and site visits. Continuing education each year or at a minimum every other year is strongly recommended in order to keep up with regulatory and procedural changes to the LIHTC Program. When available, training opportunities will be posted on OHCS' website.

OHCS Low Income Housing Tax Credit (LIHTC) Compliance Manual

This Low-Income Housing Tax Credit (LIHTC) / Tax Exempt Bond Compliance Manual (Manual) is designed to assist owners and their agents to plan and maintain compliance with Section 42 LIHTC / Section 142 Bond regulatory requirements associated with the allocation and utilization of funds in multifamily rental properties.

The LIHTC manual was developed to be used as a guide in understanding compliance monitoring as practiced in Oregon under Section 42 / Section 142 of the Internal Revenue Code ("Code") which governs the use of the LIHTC program, and for use in conjunction with the Qualified Allocation Plan (QAP) and OHCS' Regulatory Agreement for each property. It is intended for use by Owners, Managing Agents, and on-site personnel as well as others involved with OHCS procedures for monitoring compliance with the LIHTC program.

OHCS policies and procedures may change with little or no notice if Federal, State or Local regulations governing the program mandate a need for change. This manual is intended to be used as a supplement to the existing laws, rules, and regulations as described in the Code, revenue procedures, revenue rulings, letter rulings, notices, announcements and any applicable IRS or Treasury regulations as well as state and federal law. It is not a comprehensive guide to the LIHTC Program requirements and is intended to provide the following:

- A guide to understanding the LIHTC Program requirements for implementation and ongoing compliance. It was developed, pursuant to Federal Regulations, for use by owners, management agents, on-site management personnel and others involved with management procedures for maintaining compliance with the LIHTC Program(s) at their properties.

- Compliance monitoring procedures are performed by OHCS's Portfolio Management (PM) for the LIHTC Program. It is the role of the PM Section to assist owners and management agents to stay in and maintain compliance with program regulations and requirements of LIHTC.
- This manual describes compliance monitoring procedures for the LIHTC Program. It is the role of both the Portfolio Management (PM) and Portfolio Support (PS) at OHCS to assist Owners and Agents (O/A) to stay in compliance with IRS regulations. It is the O/As' responsibility to maintain compliance with LIHTC program requirements/regulations.

Owners should review and become familiar with the Oregon Housing and Community Services Regulatory Extended Use Agreement (REUA) for the property. Additionally, they should thoroughly review and become familiar with the LIHTC regulations and compliance resources available and appropriate to the property.

If OHCS or Internal Revenue Service/Treasury determines that any provision of this manual is in conflict with Section 42 / Section 142 the federal regulation will govern. This Compliance Manual may be superseded without notice by changes in income determinations under Part 5 of the Section 8 Program and technical revisions in the LIHTC Program.

- This manual has not been reviewed by the Internal Revenue Service (IRS) and should not be cited or relied upon for interpretation of federal regulations

It is the responsibility of OHCS's Portfolio Management Section to monitor the continuing compliance of LIHTC projects in accordance with the IRS regulations and OHCS requirements and to ensure that property owners retain the housing units as affordable throughout the affordability period and the OHCS Compliance Period, if applicable.

Compliance with the requirements of the Code and all other applicable regulations 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 property 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 property. 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.

The LIHTC Compliance Manual is located on our website at Oregon Housing and Community Services : Low-Income Housing Tax Credit Program Compliance : Housing Compliance & Monitoring : State of Oregon

SECTION 1: PROGRAM OVERVIEW

Properties that have been developed using Low-Income Housing Tax Credits (LIHTC) are subject to specific rules designed to ensure that they remain affordable as identified and described in the Land Use Restrictive Covenant (LURC), a recorded document throughout the required affordability periods, and if applicable, specific populations as identified per the Regulatory Extended Use Agreement (REUA) and other regulatory documents.

The following provides a brief overview of LIHTC Program regulations directly affecting property compliance and does not represent a complete listing of all compliance regulations.

Part 1.01 – Low-Income Housing Tax Credit Program Background

In 1986, Congress enacted the Low-Income Housing Tax Credit Program (LIHTC). This program provides incentives for the investment of private equity capital in the development of affordable rental housing. The LIHTC reduces the federal tax liability of property owners in exchange for the acquisition, rehabilitation or construction of affordable rental housing units that will remain income and rent restricted over a long period of time. The amount of tax credit allocated is based on the number of qualified low-income units that meet federal rent and income targeting requirements.

The LIHTC is authorized and governed by Section 42 of the Internal Revenue Code of 1986, as amended (the "Code"). **Oregon Housing and Community Services** (OHCS) is the designated "**Housing Finance Agency**" (HFA) to allocate and administer tax credits for the entire state of Oregon and is responsible for allocating and monitoring tax credits.

Oregon's compliance monitoring plan is modeled to meet federal and state regulations as well as the recommendations of the National Council of State Housing Agencies (NCSHA). The plan as outlined in the QAP and this manual as well as other supplemental guidance that may be relayed in memos, email communications, posts on the website, additional documents, and training is applicable to ALL owners of ALL low-income housing tax credit funded properties.

Each State HFA develops a Qualified Allocation Plan (QAP) that establishes the guidelines and procedures for the submission and evaluation of applications and for the administration of the LIHTC Program, including compliance monitoring. The OHCS QAP and specific program regulations or preferences are developed to be relevant to Oregon's housing needs and consistent with the State's housing priorities.

Part 1.02 – Various Tax Credit Period Regulations

IRS regulations differ depending on when a property was allocated tax credits. In some cases, the change in regulations brought forth by a technical correction is minor; in others, it is substantial. Management must not only be aware of the differences in regulations but must also clearly understand which rule governs each particular building (project) and/or property.

The following is an outline of the changes that have created the most impact on compliance issues:

1990

- Rent computation now based on the number of bedrooms in the unit
- Extended Use Agreement requirement

1991

- All properties – extension of deadline to meet set-aside (not retro-active)
- FmHA (RD) only – overage rule (not retro-active)
- AFDC Student Rule exception (retro-active)

1992 – **September 9**

- IRS Revenue Ruling (Rev.Rul.92-61) regarding treatment of staff units as part of eligible basis (not retro-active).

1993 – **August 10**

Three new rules that remain applicable:

- Single parent student (not retro-active).
- Married student rule (retro-active to 1987).
- Section 8 requirements (properties cannot refuse to lease to Section 8 applicants – retro-active to 1987).

1994 – **August 24**

- 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 the credit allocation or (2) the date the building(s) placed-in-service (not retro-active).

1997 – **September 26**

- **Available Unit Rule** (Reg. §1.42-15) was adopted as an amendment to the regulations (not retro-active).

2003 – **November 24**

- **Safe Harbor Rule** (Rev.Proc.2003-82) is applicable to properties receiving a second allocation of credits and applies to tax credit units where household incomes were at or below the applicable income limits prior to the first taxable year of credit period, but then later exceed the limits at the beginning of the credit period, when the household income is tested or recertified (effective for taxable years ending on or after 11/24/2003). The units could continue to be considered low-income if:
  - A reservation and extended use agreement is in place for previous allocation of tax credits.
  - The household income is tested for purposes of the Available Unit Rule at the beginning of the first credit year, and
  - The unit has been rent-restricted since the initial qualification date of the household.

2005 – **June 21**

- **Safe Harbor Rule** (Rev. Proc. 2005-37) established how housing finance agencies and property owners may meet certain requirements of the Internal Revenue Code concerning extended low-income housing commitments (effective on or after 6/21/2005). Among the guidance found in this ruling, Section 42(h)(6)(B)(ii) provides that a commitment must allow individuals who meet the income limitation applicable to the building under § 42(g) (whether prospective, present, or former occupants of the building) the right to enforce in any state court the prohibitions of § 42(h)(6)(B)(i).

2007 – **December 20**

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

2008 – July 29, 2008

- **Utility Allowance Regulations Update** (IRS 26 CFR Part I) added the following utility allowance calculation options (not retro-active):
  - Estimate from the Agency that has jurisdiction over the building (if available)
  - HUD Utility Schedule Model (see www.huduser.org/resources/utilmodel.html);
  - Energy Consumption Model – must be calculated by a licensed engineer or a qualified professional pre-approved by OHCS.

2008 – July 30, 2008

- **The Housing and Economy Recovery Act of 2008 (HERA)** was passed by Congress in response to market conditions and economic issues. Changes to Section 42 that came about as a result of HERA included:
  - The Recertification Exemption for 100% tax credit projects (see Part 10.03)
  - 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 Section 1)
  - Addition of a fifth student status exemption for individuals formerly in foster care
  - Changes to the Applicable Credit Percentage rules

Part 1.03 – Housing and Economic Recovery Act (HERA)

2008 – July 30, 2008

- With the signing of the **Housing Economic and Recovery Act (HERA)** of 2008 (HR 3221), signed by the President, the following clarifications, amendments, or changes were introduced (list is not all inclusive):
  - **General Public Use Rule** – effective for buildings placed-in service before, on or after 7/30/2008. Clarification was made with HR3221 (Sec.3004(g)(9)) to allow occupancy preferences for residents who:
    - Have special needs; or
    - Are involved in literary and/or artistic activities, or
    - Are members of specified groups under State or Federal housing programs.
  - **Tenant Income Certifications -** the Bill allows owners with 100% tax credit (tax-exempt bond- financed) properties an annual recertification waiver. The waiver **does not** apply to mixed-funded properties 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 properties will be required to complete a formal certification at move-in as well as a formal certification for the first-year annual certification (OHCS Letter 10/16/2008).**
  - Congress included a provision within HERA that required state Housing Finance Agencies to annually submit to HUD tenant data including race, ethnicity, family composition, age of household members, monthly rents, disability status, household incomes and use of rental assistance. This information is submitted to OHCS via the appropriate Procorem WorkCenter by the Owner/Agent. OHCS forwards the required information to HUD on an annual basis. HUD compiles all of the information provided by State HFA's and releases the information in a report that details specific demographic information for each State.

- **Student Households** – HR 3221 (Sec.3004(e)(II)(i)(4)) 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).

Part 1.04 – 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 (IRC) 142.

- Projects funded with tax-exempt bonds should check with their bond issuer to see if they may utilize self-certification of assets (i.e., the Asset Self-Certification form). If OHCS is the bond issuer, self-certification of assets under the current HUD published limitation is allowed.
- 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 1.05 – 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 low 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 Part 7.07 and lead-based paint requirements as described in Part 4.23 and Section 504 descried in Part 4.25.

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 or in conjunction with tax credits. Therefore, some projects may be fully funded through 1602 while others may be a combination of LIHTC and 1602 Exchange funding. All compliance rules and regulations within this manual apply to the 1602 program.

NOTE: OHCS requires that all initial Tenant Income Certifications (TIC) be reviewed and approved by a Compliance Analyst (CA) prior to moving into the unit.

Part 1.06 – Housing Opportunity Through Modernization Act of 2016 (HOTMA)

Section 102 and Section 104 of HOTMA redefines income and asset calculations and verification requirements and is applicable to certifications effective on or after 1/1/25 as described in the November 6, 2024 Technical Advisory, Updated compliance forms to support HOTMA implementation. This manual has been updated to include HOTMA provisions, including requirements from the HOTMA final rule and

HUD Notice H 2023-10 / PIH 2023-27 “Implementation Guidance: Sections 102 and 104 of the Housing Opportunity Through Modernization Act of 2016.”

Part 1.07 – NSPIRE

Properties with LIHTC units must meet the National Standards for the Physical Inspection of Real Estate (**NSPIRE**) standards established by HUD. The NSPIRE final rule includes conforming changes and establishes specific deficiencies that must be corrected in LIHTC funded properties.

On June 22, 2023, HUD published the **NSPIRE Inspection Standards Federal Register Notice**, establishing a compliance date of October 1, 2023. On September 18, 2023, HUD published a notice in the Federal Register to extend the compliance date to October 1, 2024. OHCS issued a Technical Advisory, National Standards for the Physical Inspection of Real Estate (NSPIRE) Implementation Update on September 24, 2024 that full implementation of NSPIRE would be applied to all ongoing property standards and inspection policies and procedures to ensure compliance with the October 1, 2024, compliance date.

SECTION 2: KEY COMPLIANCE CONCEPTS AND TERMS

The following provides a brief overview of key compliance concepts and components for the Low-Income Housing Tax Credit (LIHTC) Program regulations that directly affect property compliance. Additional guidance is identified to assist in locating applicable rules, regulations and resources. It is not a complete listing of compliance regulations and additional review of specific requirements and regulations is encouraged.

Part 2.01 – Basic Concepts & Affordability Requirements

Affordability can best be described when the amount that a household is spending on rent and utilities (tenant rent burden) does not exceed 30% of their monthly income. LIHTC units have rent limits established by Housing and Urban Development (HUD), and Multifamily Tax Subsidy Project (MTSP) Income Limits that are relative to the income limits established for each property.

Definition: Area Medium Income (AMI)
As defined by HUD, AMI is specific to a location (county or multiple statistical area (MSA)) and is used to establish both income and rent affordability limits.

HUD issues income limits on an annual basis. Oregon Housing and Community Services (OHCS) posts the limits for each program on our website at: Oregon Housing and Community Services : Income and Rent Limits : Housing Compliance & Monitoring : State of Oregon

Definition: Multifamily Tax Subsidy Program Income (MTSP)
The tax credit program utilizes the Multifamily Tax Subsidy Program (MTSP) income limits. These are published by HUD annually and are specific to a location (county or multiple statistical area (MSA)) and used to establish both income and rent affordability limits for the LIHTC program.

Part 2.02 – Period of Affordability

OHCS and the property Owner are required to execute a legally binding written agreement holding the owner accountable for LIHTC Program regulations during the affordability period and additional OHCS Compliance Period, if applicable.

Owners must comply with any occupancy restrictions required by IRC Section 42 or the Declaration / REUA throughout the compliance period and extended use period.

The LIHTC restrictive covenants (set forth in the Regulatory Agreement) are recorded as an encumbrance against the property. Regulatory Agreements outline the restricted rent and income limits for households residing in a LIHTC unit and specify the required term of affordability that must be maintained.

Period of Affordability:

The minimum LIHTC program term of affordability can be found in the property's regulatory documents which will reflect the period of affordability. The extended affordability period will remain in effect as agreed and will not be shortened at a later date. It is important to be familiar with the regulatory agreements (Declaration, REUA, Grant, and Loan) to ensure compliance is maintained as required for the entire term of affordability. The affordability period begins once the first year of credits are claimed. OHCS generally requires a 60-year affordability period for multifamily rental housing projects. The affordability requirements will be imposed by deed restrictions and use restrictions.

Additional OHCS (State of Oregon) Compliance Period (if applicable):

Many LIHTC projects have an additional OHCS Compliance Period that begins with project completion and continues after the LIHTC (Federal and State required Affordability Period) has ended. For properties awarded with OHCS LIHTC, it is common for the affordability period to range from 30 to 60 years.

Part 2.03 – Written Agreements and Regulatory Agreements

The LIHTC Regulatory Agreements (Land Use Restrictive Covenant (Declaration) and Regulatory Extended Use Agreement (REUA)) each contain important information relative to the ongoing operations and compliance of a LIHTC project. The following chart describes examples of contents included in Agreements.

Written Agreement Compliance Items	
Housing Finance Agency Role	Project Description
Affordability Period	Number of Affordable Units
Rent Details	Reporting Requirements
Definition of Income	Insurance Requirements
Additional Compliance Requirements	Additional Set-Asides for Project, if any
Remedies	Guidance on Transfers or Other Dispositions

Part 2.04 – Building Identification Number (BIN)

Tax credits are claimed on a building-by-building basis. Therefore, each building within a development is assigned a unique Building Identification Number (BIN) and issued a separate IRS Form 8609. Each building is referred to as a "Project".

Each project (BIN) will have its own Eligible Basis, Applicable Fraction, Qualified Basis, and Annual Credit.

Part 2.05 – Credit, Compliance and Extended Use Periods

There are three periods of compliance that must be taken into consideration when owning, managing or monitoring a LIHTC property. These periods are commonly referred to as the Credit period, Compliance period and Extended Use period. **Please refer to Section 4, Part 4.05 Credit, Compliance and Extended Use Period.**

Part 2.06 – Minimum Set-Aside

At the time of application for the tax credit, the owner of the property must elect one of three minimum federal set-aside requirements. This election, once memorialized within the Declaration of Land Use Restrictive Covenants (Declaration / LURC) and once elected on the IRS Form 8609 is irrevocable. If the managing agent is unaware of which set-aside requirement must be met, they should contact the owner to be sure all information about the property has been provided as required.

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. **Please refer to Section 4, Part 4.06 Minimum Set-Aside Requirements**

Part 2.07 – Minimum Set-Aside Deadlines

For properties receiving credits in 1991 and later, the minimum set-aside must be met by December 31st of the year the property is placed-in-service, if the credits are to be claimed with the IRS for that year. If the start of the credit period is deferred until the second year, the minimum set-aside must be met by December 31st of the second year. Once the minimum set-aside is met, it must be maintained for the entire compliance period.

Part 2.08 – IRS Form 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.

Because Part II Line 8b election on Form 8609 is so important for ongoing compliance, it is crucial that Owner/Agents (O/A) have copies of the 8609s for each building and understand the elections that have been made. **Please refer to Section 4, Part 4.08.**

Part 2.09 – Utility Allowances

An allowance for the cost of any utilities, other than telephone, cable television, or Internet, paid directly by the tenant(s) and not by or through the owner of the building must be included in the computation of gross rent under IRC §42(g)(2)(B).

Utility allowances must be reviewed annually to ensure that allowances are used and are comparable to what the tenant is actually paying. **Please refer to Section 5, Part 5.07 Utility Allowances & Approved Methods.**

Part 2.10 – Student Eligibility Requirements

For a household to be eligible to reside in a tax credit unit, the household must meet the Low-Income Housing Tax Credit (LIHTC) student eligibility requirements. A household comprised entirely of full-time students (of any age) who attend an educational organization is not eligible to occupy a tax credit unit unless the household meets at least one of the five student exceptions. Owner/Agents are required to verify student status at move in and annually of all occupants that reside in a LIHTC unit. **Please Refer to Section 4, Part 4.17 for more information on student eligibility.**

Part 2.11 – Administrative Notebook

Each property is required to maintain on-site and have available for review an Administrative Notebook. **Please refer to Section 4, Part 33 Administrative Notebook Requirements.**

Part 2.12– Program Administration and Record Keeping

The Owner's record keeping requirements include, but are not limited to:

Inspections:

- Records **that demonstrate** each LIHTC unit meets applicable property standards – (annual NSPIRE inspection report or other inspection standards approved by OHCS)
- Owner/Agent inspections;
- Maintenance records;
- Unit turn-over work completion records.

Individual Tenant File Requirements

- **Please refer to Section 11 in this manual for a list of requirements.**

Part 2.13 – Suitable for Occupancy

In addition to being rent-restricted and occupied by qualified households, all program units and buildings must be maintained in decent, safe, sanitary, and in good repair. The Owners are required to ensure that all buildings and units in the project meet this standard and are in compliance with State and local code requirements and ordinances. If any health, safety, or building code inspections result in a notice of violation, this must be disclosed. Original reports/notices of violations must be maintained as part of the owner's recordkeeping and copies must be submitted to OHCS along with the Annual Owner Certification of Continuing Program Compliance (CCPC).

Vacant units must also be suitable for occupancy and cannot be cannibalized for parts. Because the owner is responsible for maintaining all 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 OHCS Compliance Analyst (CA) or contracted inspector may ask to inspect a mix of both occupied and vacant units. **Please Refer to Section 4, Part 4.10 for more information on the Vacant Unit Rule**

Casualty Loss

OHCS requires notification for units that have suffered physical damage which render the units, common areas, or buildings associated with the property and are determined unsuitable for occupancy and/or safe usage be reported. Failure to report may be determined as noncompliance with the NSPIRE or State and local standards. When reporting, please submit the Casualty Loss Tracker to the Compliance Analyst and Senior Asset Management Analyst assigned to the property. **Please refer to Section 4, Part 4.30 Casualty Losses.**

Part 2.14 – Record Retention

All records must be available upon request for Compliance staff review. If the property has Low Income Housing Tax Credits, refer to the LIHTC Compliance Manual for further record retention requirements.

OHCS Record Retention

OHCS will retain records of noncompliance for a minimum of six (6) years beyond OHCS's filing of the IRS Form 8823. In all other cases when 8823's are not a factor, OHCS must retain certifications and records submitted by the Owner for three (3) years from the end of the calendar year in which they were received by OHCS.

Owner Record Retention

The owner of any building for which a low-income housing tax credit has been or is intended to be

claimed must keep records that include all of the information above **on a building-by-building basis** for a minimum of six (6) years after the due date (with extensions) for filing the federal income tax return for that year.

NOTE: The records for the first year of the credit period, however, must be retained for the entire compliance period plus six (6) years beyond the end of the federal compliance period of each building in the property. Initial qualifying tenant files must be kept a total of 21 years.

Please refer to Section 4, Part 4.32 Record Keeping and Record Retention for additional details.

Part 2.15 – OHCS Portfolio Management

Once LIHTCs are allocated to a property, Internal Revenue Service (IRS) requires Oregon Housing and Community Services (OHCS), as the Housing Finance Agency (HFA) to monitor program compliance on an ongoing basis. However, program compliance is the responsibility of the property Owner and OHCS will not assume liability for consequences which result from the Owner's noncompliance.

OHCS' Compliance Monitoring and Asset Management duties include and are not limited to the following:

- Approve the property's rent structure at lease-up and approves rent increases prior to implementation throughout the affordability period as per OHCS Rent Increase Policy;
- Provide a LIHTC Compliance Manual and related materials;
- Offer continuing education on compliance to the Owner, Management Agent, and on-site personnel, primarily through the OHCS website and updates to the Compliance Manual;
- Notify the Owner when a property is found to be out of compliance with IRS or OHCS requirements, including reports and any other requested information not received by OHCS when due;
- Establish schedules with the property Owner for correcting any noncompliance;
- Perform follow-up reviews of any building within a property or the entire property, if deemed necessary. A follow-up review may include a physical inspection of the building(s) and/or a review of property tenant records; and
- Review and analyze of required annual Financial Reports.

Part 2.16 – The Compliance Analyst's Responsibilities

The Portfolio Management Compliance Analysts (CA) perform file reviews and on-site visits as scheduled to ensure the Owner and property management Agent (O/A) are operating the property in compliance with applicable rules, regulations, and policies.

The areas to be reviewed for compliance will include, and are not limited to:

- Tenant qualifications, income calculations, and appropriate supporting documentation;
- The gross rent (rent plus tenant-paid utility allowance);
- Provisions memorialized in the Regulatory Extended Use Agreement and Land Use Restrictive Declaration Covenant "Declaration";
- Resident Services;
- Property's waiting list and applicant placement procedures;
- Property's AFHMP and updates;
- Property's Fair Housing Violations; and

- Compliance with VAWA Requirements
- Physical Inspection of common areas and units (occupied and vacant)

The Compliance Analysts will also:

- Provide technical assistance to the sponsors, Owners, and Agents when needed or requested to assist in that the O/A understands compliance with program requirements;
- Review the vacancy history of both low-income and market-rate units and the marketing strategies used to fill vacancies;
- Report instances of noncompliance, when appropriate, to the IRS using IRS Form 8823.
- Maintain/keep the information used to complete the monitoring visit/audit for a period not less than six years following the calendar year in which it was received; and
- Work with Asset Management to establish each property's risk analysis and rating.

Part 2.17 – Procorem

Procorem is the secure file sharing system used by OHCS. There is a WorkCenter set up in Procorem for each property. All Owner/Agents are required to register with OHCS to gain access to Procorem and sign a user agreement to be established as collaborators in each property WorkCenter.

Procorem is used for sending the annual reporting CCPC forms to our partners and for our partners to return their financial data, completed annual reporting forms and supporting documentation to OHCS; including the submission of all Tenant Events for all properties funded with LIHTC, American Recovery and Reinvestment Act (ARRA) (TCAP & Section 1602 Exchange), OHCS HOME, National HTF, LIFT-Rental, Risk Share, or any combination thereof.

Required Process when utilizing Procorem:

- Each unit entered into Procorem should have an IC or MI in order to initiate the unit in the system.
- The first certification in each unit should be the move-in certification.
- All tenant data should be entered or uploaded into the system from move-in to move-out in each unit for each tenant.
- Tenant data should be uploaded or entered for all properties at least quarterly.

In addition to tenant data reporting, OHCS requires the use of Procorem for Financial data reporting.

If you are unsure if you have a Procorem account with access to your property WorkCenter, or have had staff changes in the last year, please contact OHCS at OHCS.CCPC@hcs.oregon.gov

Part 2.18 – Statewide & Federal Streamlining

OHCS participates in both statewide and federal streamlining compliance partnerships. Streamlining by housing industry agencies in Oregon and on a federal level combine monitoring and reporting efforts to diminish the overall impact on the residents and staff at each property and to aid in the reduction of duplicated monitoring practices across agencies.

OHCS collaborates with state and federal housing partners who are part of a Memorandum of Understanding (MOU) to complete property inspections and/or file audits at properties that have multiple layers of funding from different agencies. One inspection review and one review report are completed for the property and accepted by the participating agencies. OHCS may attend the physical inspection along with the partner agencies and/or NSPIRE and is responsible for completing the file audit, writing the review

report, and following the entire review/inspection to completion. OHCS may require files to be submitted electronically for the file audit portion of the review (noted above).

The following Federal and State assisted-housing programs are governed by the federal agreement:

- HUD's Section 8 Project-Based Rental Assistance Program
- HUD's Multifamily Mortgage Insurance Program
- HUD's Direct Loan and Capital Advance
- HUD's HOME Investment Partnership Program (HOME)
- HUD's Section 8 Project-Based Voucher Program
- Low-Income Housing Tax Credit Allocation
- RD's Section 515 Rural Rental Housing Program
- HFA Mortgage Loan Financing

Part 2.19 – Housing Opportunity Through Modernization Act of 2016 (HOTMA)

This manual has been updated to include HOTMA provisions, including requirements from the HOTMA final rule and HUD Notice H 2023-10 / PIH 2023-27 "Implementation Guidance: Sections 102 and 104 of the Housing Opportunity Through Modernization Act of 2016."

- Section 102 of HOTMA redefines income and asset calculations and verification requirements and is applicable to certifications effective on or after 1/1/24. **Notice updated 2/05/2024.**
- On December 8, 2023, HUD published the Housing Opportunity Through Modernization Act (HOTMA): Implementation of Sections 102, 103 and 104**;** Extension of Compliance Date Notice in the Federal Register to extend the compliance date of the HOTMA Final Rule to January 1, 2025, for all Community Planning and Development (CPD) programs that use HUD's 24 CFR Part 5 income regulations.
- On January 31, 2024, HUD published in the Federal Register a notice that listed federally mandated exclusions from consideration of income.

OHCS published a Technical Advisory on November 6, 2024 providing updated guidance on Compliance Forms to support HOTMA Implementation.

Part 2.20 – NSPIRE

Properties with HOME- / HTF- assisted units must meet the National Standards for the Physical Inspection of Real Estate (**NSPIRE**) standards established by HUD. The NSPIRE final rule includes conforming changes and establishes specific deficiencies that must be corrected in HOME- and HTF-assisted properties.

On June 22, 2023 HUD published the NSPIRE Inspection Standards Federal Register Notice, establishing a compliance date of October 1, 2023. On September 18, 2023, HUD published a notice in the Federal Register to extend the compliance date to October 1, 2024. This extension allows for OHCS to update ongoing property standards and inspection policies and procedures to ensure compliance

NSPIRE Standards | HUD.gov / U.S. Department of Housing and Urban Development (HUD)with the October 1, 2024, compliance date. **For information on OHCS inspection process, see Section 11.**

Part 2.21 – Electronic Signatures

Owners, management agents, and tenants associated with affordable multifamily housing programs, including the LIHTC, administered by Oregon Housing & Community Services (OHCS) are now permitted to utilize electronic signatures to endorse compliance-related documentation monitored by Portfolio Management. For guidance, please refer to OHCS's Electronic Signature Policy.

SECTION 3: RESPONSIBILITIES

The entities involved in project compliance of the tax credit program include Oregon Housing and Community Service (OHCS), the Owner and Management Agent (O/A), including onsite management personnel. Various responsibilities of OHCS, the Property Owner and the Management Company (O/A) are set forth below.

Part 3.01 – Responsibilities of OHCS

The program is jointly administered by OHCS, the Housing Finance Agency (HFA) authorized to allocate low-income tax credits, and the IRS. Each state receives tax credits on an annual basis, and under IRC §42(h) (3), the amount of credit available to the state for allocation to taxpayers for any calendar year is the "credit ceiling."

Once tax credits are allocated to a property, Low-Income Housing Tax Credit (LIHTC) regulations require OHCS to monitor program compliance on an ongoing basis. OHCS will not assume liability for tax consequences as a result of noncompliance and/or Internal Revenue Service audits. It is the responsibility of the property owner to ensure that compliance with all program requirements and regulations is met throughout the entire affordability period.

The following describes OHCS responsibilities to ensure compliance with the LIHTC Program.

1. **Qualified Allocation Plan (QAP)**

   OHCS is the state agency responsible for administering the LIHTC Program under Oregon Administrative Rule (OAR) Chapter 813, Division 90. 9, and determining which housing projects should receive credits and the dollar amount allocated.

   The Qualified Allocation Plan (QAP or Plan) is intended to comply with the requirements of Section 42(m)(1)(B) of the Code and describes 1) the selection criteria OHCS will use to determine its housing priorities, and 2) The preferences of OHCS in allocating housing credit dollar amounts among selected Projects, including:

   a. Projects serving the lowest income tenants.
   b. Projects obligated to serve qualified tenants for the longest periods.
   c. Projects that are located in qualified census tracts and the development of which contributes to a concerted community revitalization plan; and
   d. The procedures that OHCS will follow in monitoring for Program noncompliance in notifying 19 the IRS of such noncompliance and in monitoring for noncompliance with Project 20 habitability standards through regular site visits

   Under Section 42(m)(1)(C) of the Code, OHCS must develop a Qualified Allocation Plan (QAP) Identifies the selection criteria to be used for determining housing priorities that are appropriate to local conditions.

   The selection criteria must include project location, housing needs characteristics, project and sponsor characteristics, tenant populations with special needs, public housing waiting lists, tenant populations of individuals with children, projects intended for eventual tenant ownership, the energy efficiency of the project, and the historic nature of the project.

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

An IRS Form 8609 is prepared by OHCS for each building (BIN) in an LIHTC property. Part I of the Form is completed by OHCS and then sent to the owner when the property is Placed-in-Service, and all required documentation is received by OHCS.

Part II of the IRS Form 8609 must be completed by the owner in the first taxable year for which the credit is claimed. The original is sent to the IRS with the owner's personal, partnership, or corporate tax return in the first taxable year in which the credit is claimed and each year thereafter in the compliance period. Owners should consult with their legal and/or tax advisors for advice on completing and filing the IRS tax form(s). OHCS cannot give legal or tax advice on the filing or completion of tax forms.

After completion of Part II of the 8609, the owner is required to submit a copy of the completed form to the Portfolio Management Section of OHCS.

Further, it is the property owner's responsibility to provide full and complete information about the property to the management agent, including copies of the completing 8609s with placed-in-services dates and copies of all the regulatory agreements and declarations for all funding types.

3. Prepare Extended Use Agreements

OHCS will prepare and execute the Declaration of Land Use Restrictive Covenants (Declaration / LURC) prior to issuance of the IRS Form 8609 for each property. The Declaration must be recorded by the owner at the appropriate county recorder's office before the end of the first year of the Credit Period.

OHCS prepares the Regulatory Extended Use Agreement, which incorporates the Declaration, and extends the use requirements to be in effect the entirety of the Affordability Period.

4. Review Annual Owner Certifications

OHCS will review an Annual Owner Certification of Continued Compliance (CCPC) for each property. **Please refer to Section 4: Part 4.31**

5. Review Annual Owner Financial Information

In addition, OHCS annually reviews the financial condition of the project to determine "the continued financial viability of the housing" in accordance with the Financial Oversight requirements. OHCS must take action, as feasible, to correct any problems identified through a financial review.

OHCS Portfolio Management (PM) staff will contact each affected property annually to request the necessary information. **Please refer to Section 7, Part 7.09 Financial Oversight.**

6. Conduct Program Compliance Monitoring, including File Reviews and Physical Unit Inspections

All properties will be subject to a review of property management operations, including tenant file reviews and physical inspections at least once every three years. OHCS will perform a file review and physical inspection within two years of the last building being placed-in-service and then every third year thereafter. OHCS retains the right to perform a file review and/or physical inspection of any building and/or unit at any time during the Affordability Period, with or without notice to the owner.

Regulatory Reviews, Regulatory Audits and Regulatory Inspections are conducted to provide a review of property management operations, tenant file audits and physical unit inspections. The regulatory physical unit inspections will be conducted per the NSPIRE inspection protocol.

Decisions to monitor/inspect more frequently may be based on tenant complaints or OHCS's assessment that a project is high risk. **Please refer to Section 11: Compliance Monitoring for additional information.**

7. **Remedying Noncompliance**

   When noncompliance is discovered, OHCS will work with the owner and/or management agent to remedy the issue during a correction period. **Please see Section 12: Noncompliance.**

8. **Approve Rent Increases**

   OHCS must approve the property's rent structure at lease-up and approve as described in the Rent Increase Policy prior to implementation throughout the affordability period. A property is restricted to only one annual rent increase. **Please see Section 5: Part 5.11 for additional information on approval of rents for**

9. **IRS Form 8823 Filing**

   All state housing finance agencies responsible for allocating tax credits are required to file IRS Form 8823, the low-income housing credit agencies report of noncompliance or building disposition. OHCS is required to use IRS Form 8823 to fulfill their responsibility under section 42(m)(1)(B)(iii) to notify the IRS of noncompliance with the low-income housing tax credit provisions or any building disposition.

10. **OHCS Record Retention**

    OHCS will retain records of noncompliance for a minimum of six (6) years beyond OHCS's filing of the IRS Form 8823. In all other cases when 8823's are not a factor, OHCS must retain certifications and records submitted by the Owner for three (3) years from the end of the calendar year in which they were received by OHCS.

11. **Conduct Training and Provide Technical Guidance** –

    - **Training** - OHCS will conduct or arrange compliance trainings and will disseminate information regarding the dates and locations of such trainings to its partners when available.
    - **Continuing Technical Guidance** - OHCS offers continuing technical guidance to assist the owner, management company and on-site personnel in complying with federal regulations and state rules. Those seeking technical guidance should contact the property's Compliance Analyst (CA) via phone or email.

OHCS periodically sends Technical Advisories (TA) to our housing partners. Sign up to receive Technical Advisories.

Other OHCS Duties (list is not all inclusive)

- Collect and review Owner's Annual Certification of Continuing Compliance for each property.
- Provide an LIHTC Compliance Manual and related materials.
- Notify the owner when the property is found to be out of compliance.

- Establish schedules with the property owner for correction of noncompliance. Typically, 30 days are given to correct noncompliance. However, extensions may be granted under certain circumstances. The owner and managing agent must request the extension in writing and submit the request to OHCS prior to the deadline originally given to respond.
- Perform follow-up reviews if deemed necessary.
- Review rent increase requests and provide approval per regulatory agreements if required.
- Receive and address tenant complaints as well as other complaints or requests for information that may be received by the general public or other agencies.
- Review and approve management agent changes.
- Review and approve resident services, manager unit changes, tenant preferences, and other changes or requests as applicable.

Part 3.02 – Responsibilities of the Owner

Each owner has chosen to participate in the Low-Income Housing Tax Credit (LIHTC) Program to take advantage of the available tax benefits. In exchange for these benefits, certain requirements must be met by the owner that will benefit qualified low- income residents. The requirements listed in the IRS Code include owners meeting the elected minimum set-aside, charging appropriate rental rates for each qualified unit and maintaining accessible documentation and verification of qualified low-income residents. These are described in the Land Use Restrictive Covenant Declaration (Declaration / LURC) recorded by the Owner.

The owner must also meet all requirements and additional restrictions as agreed to in the Reservation and Extended Use Agreement (REUA) as well as all other applicable documents. The owner must certify annually that all program requirements have been met. Any violation of the program or reservation requirements may result in the loss of credits allocated or other consequences of non-compliance as outlined later in this manual.

An IRS Form 8609 is prepared by OHCS for each building (BIN) in an LIHTC property. Part I of the Form is completed by OHCS and then sent to the owner when the property is Placed-in-Service, and all required documentation is received by OHCS.

The owner must compete Part II of the IRS Form 8609 in the first taxable year for which the credit is claimed. The original is sent to the IRS with the owner's personal, partnership, or corporate tax return in the first taxable year in which the credit is claimed and each year thereafter in the compliance period. Owners should consult with their legal and/or tax advisors for advice on completing and filing the IRS tax form(s). OHCS cannot give legal or tax advice on the filing or completion of tax forms.

After completion of Part II of the 8609, the owner is required to submit a copy of the completed form to the Portfolio Management Section of OHCS.

Further, it is the property owner's responsibility to provide full and complete information about the property to the management agent, including copies of the completing 8609s with placed-in-services dates and copies of all the regulatory agreements and declarations for all funding types.

The Owner must certify each year that all program requirements have been met. Any violation of program requirements could result in the owner being issued an IRS Form 8823, the Notice of Noncompliance and may jeopardize future applications for OHCS funding.

In accordance with the **Section 42** the Owner of a property receiving an allocation of federal tax credits, is

required by acceptance of the allocation, and not limited to, the following responsibilities:

1. Manage the property in accordance with the LIHTC Regulations and all additional requirements agreed to during the allocation process for the duration of the compliance/affordability period. This includes continued compliance with regard to income and rent levels detailed in the initial application.
2. Certify annually that the property is being managed in accordance with all applicable federal, state, and local fair housing laws. (Annual Owner's Certification of Continuing Program Compliance (CCPC)).
3. The owner must verify and certify tenant income eligibility at move-in and recertify at least annually thereafter. Please see Section 10 and Section 13 of this Manual.
4. Leasing units to eligible households in a non-discriminatory manner.
5. Implement rent structure approved by OHCS at lease-up and follow the Rent Increase Policy when adjusting rents on existing households.
6. Charging no more than the maximum allowable rents (including utility allowances and non-optional fees). **Please refer to Section 5 for more information on rent limits and maximum allowable rent.**
7. The owner is responsible for ensuring that the property is maintained in a decent, safe, and sanitary condition in accordance with appropriate standards. Further, all properties that have entered into the Extended Use Period must continue to comply with the NSPIRE requirements. Failure to do so is an act of noncompliance. **Please refer to Section 11: Part 11.08 – On-Site Physical Inspections for more information.**
8. Retain records/property files documenting eligibility for the LIHTC as required by the IRS and OHCS retention policy.
9. Assume liability for any instances of non-compliance and the correction of such deficiencies
10. Submit, within 30 days of receipt, a copy of any formal housing discrimination complaint filed against the Owner or Agent.
11. Maintain a Development File/Administrative Notebook containing project specific documents.
12. Maintain a Tenant/Unit file for each unit in the project.
13. The owner should make certain that the Management they choose knows, understands and complies with all applicable rules, regulations and polices governing the LIHTC program.
    - OHCS requires that all personnel who are responsible for compliance of a LIHTC property successfully complete a program specific compliance training session conducted or approved by OHCS prior to the issuance of a Certificate of Occupancy (CO) establishing the Placed-In-Service (PIS) date for new construction or acquisition if new to OHCSs' portfolio, or prior to the execution of a management agreement for existing portfolio properties.
    - It is also good practice for Owners and Agent personnel to receive regular training regarding Fair Housing and Oregon landlord tenant law.

The Owner should have knowledge of the following details and provide this information to the managing agent to ensure program compliance:

- The date of allocation
- The credit year of the property
- The date(s) the building(s) was placed-in service
- The number of buildings in the property
- The Building Identification Number (BIN) for each building in the property
- The percentage of the residential units in the property that are tax credit eligible, or the percentage of the floor space that is tax credit eligible
- The year(s) the credit(s) was first claimed with the IRS
- The minimum set-aside elected:
  - ✓ 20 @ 50
  - ✓ 40 @ 60
  - ✓ Average Income (40 @ average of 60)
- The terms/representations made in the application for funding
- The terms under which the tax credit reservation was made, including statutory set-aside, deeper state targeting agreements, etc.
- Management unit designations
- If the property is a multi-building property as indicated on line 8b of the Form 8609
- Resident service requirements
- Established tenant preferences
- Restrictions of all other applicable funding sources

If the O/A fails to perform any of the provisions of the applicable regulatory agreements and does not correct such failure within the time frame that Compliance and Asset Management may authorize, OHCS may provide written notice of default to the Owner and require that they terminate the agreement with the current Management Agent.

Although an Owner may have a Management Agent (Agent) acting on his or her behalf, the Owner is responsible for ensuring compliance with all program regulations and rules. When selecting an Agent, the Owner should ensure the Agent, and all on-site personnel are knowledgeable of the provisions and requirements of the LIHTC Program and have adequate experience in managing properties. All Management Agents must be pre-approved by OHCS. **Please see Section 7, Part 7.01 Management Agent Plan & Qualifications of this manual.**

- In selecting a managing agent and/or consultant, **the owner MUST verify with the Oregon Real Estate Agency that the management agent selected holds either a current/active Principal Broker's license or Property Manager license**, in addition to ensuring that the agent and consultant and all on-site personnel are knowledgeable of the provisions and requirements of the tax credit program and are experienced with managing a tax credit property.

The Owner must ensure that onsite Agent representatives know, understand, and comply with all applicable federal and state rules, regulations, and policies governing the development, including all elections made in the application, award agreement, and lien/restrictive covenant.

As a best practice, OHCS encourages the Owner to make certain that the Agent and compliance personnel are familiar with the most current edition of the OHCS Compliance Manual, the required compliance forms, information on OHCS's compliance manual webpage, and the online reporting requirements through ProCorem, the OHCS Online Management System.

If the owner determines that a unit, building, or an entire property is out of compliance with program

requirements, OHCS should be notified immediately.

The owner must formulate a plan to bring the property back into compliance and advise OHCS in writing of such a plan. The owner must keep documentation outlining:

- ✓ the nature of the noncompliance issue,
- ✓ the date the noncompliance issue was discovered,
- ✓ the date that noncompliance issue was corrected, and
- ✓ a description and proof of the actions taken to correct the noncompliance.

If there is a change in management agent/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.

- ➢ **The IRS requires the submission of IRS Form 8823 when there is a change in Ownership.**

Record Keeping and Retention

Owners are required to keep records for each qualified low-income building in the property showing the following information:

1. The total number of residential units in the building; including the number of bedrooms and the size, in square feet, of each residential rental unit.
2. The percentage of residential units in the building that are low-income units meeting the election of 20@50, 40@60 or average income minimum set-aside.
3. The rent charged on each residential unit in the building; including the basis for determining the utility allowance.
4. The low-income unit vacancies in the building by date and the rentals of the next available unit(s) by date.
5. The low-income initial certification and annual certification of each low-income tenant/household and documentation to support those certifications; including Section 8 and Rural Development (RD) properties and must be available during any review.
6. The eligible basis and qualified basis of the building at the end of the first year of the credit period.
7. The character and use of the nonresidential portion of the building included in the building's eligible basis under the Code (e.g. tenant facilities that are available on a comparable basis to all tenants and for which no use fee is charged, except for laundry facilities which may be coin operated as demonstrated in the operating projections made at the time of application).
8. Evidence that resident services are being provided as per the LIHTC application materials or have been amended with OHCS approval.

Owner Record Retention: The owner of any building for which a low-income housing tax credit has been or is intended to be claimed must keep records that include all of the information above **on a building-by-building basis** for a minimum of six (6) years after the due date (with extensions) for filing the federal income tax return for that year.

NOTE: The records for the first year of the credit period, however, must be retained for the entire compliance period plus six (6) years beyond the end of the federal compliance period of each building in the property. Initial qualifying tenant files must be kept a total of 21 years. In addition, when an Owner hires a Management Agent, they must make sure that written agreements are in place regarding the

tenant files. Tenant files should be considered as part of the property. If files are maintained by the Agent, they must be provided to the Owner if a change in Management takes place and/or at the Owners request.

Please refer to Section 7: Management & Property Management Overview and Requirements for additional information.

Part 3.03 – Responsibilities of the Management Agent

The management agent selected is responsible to ensure that all Oregon Real Estate Licensing requirements are continuously met and holds a current and active Principal Broker's license or Property Manager license.

The managing agent and on-site personnel are responsible to the owner for implementing the LIHTC Program requirements as well as all other OHCS funding requirements. All personnel responsible for maintaining program compliance must have a thorough understanding of and follow all federal, state, local, fair housing and landlord/tenant laws, rules and regulations. Management agents are responsible for obtaining all necessary information pertaining to the property and the funding sources involved in order to maintain compliance.

Further, the managing agent must provide information requested by OHCS and submit on behalf of the owner all required reports and documentation in a timely manner. Annual certification documents may be signed on behalf of the owner by the managing agent with signature authority documented with OHCS. Managing agent personnel should ensure that tenant occupancy information remains confidential and is accessible to authorized representatives of OHCS, HUD, IRS and Fair Housing.

SECTION 4: FEDERAL REGULATIONS AND COMPLIANCE GUIDES

Section 42 of the Internal Revenue Code ("Code") contains Low-Income Housing Tax Credit (LIHTC) Program requirements. The Code incorporates Program changes and revisions made by the Budget Reconciliation Acts of 1989 and 1990. Additionally, the IRS publishes, on an ongoing basis, revenue notices, rulings and regulations that clarify and/or expand on the law.

This manual does not provide a complete listing of compliance regulations. The following is a partial listing of rules governing the eligibility of certain tenants, and highlights some of the Code provisions directly affecting property compliance. For more information on tenant eligibility, consult Section 42 of the Code or the IRS Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition Audit Technique Guide (8823 Guide) for completing IRS Form 8823.

Part 4.01 – Written Agreements and Regulatory Agreements

IRC Section 42(h)(6)(A)

OHCS and the property Owner are required to execute a legally binding written agreement holding the owner accountable for LIHTC Program regulations during the affordability period and additional OHCS Compliance Period, if applicable. For properties receiving LIHTCs, the written regulatory agreements are in full effect throughout the entire affordability periods.

Regulatory Agreements

The **Declaration of Land Use Restrictive Covenants** (LURC / Declaration) is recorded as a lien/encumbrance and creates a deed restriction against the property. The Owner/Recipient must record the Declaration (LURC) with the local Register of Deeds of each county within 30 days after receipt, and which must be in effect on or before the end of the first taxable year credits are claimed (IRC Section 42(h)(6)(A)). **Failure to timely and properly record the Declaration is an event of noncompliance and will be reported to the IRS.**

The **Regulatory Extended Use Agreement** (REUA) outlines the restricted rent and income limits for households residing in a LIHTC qualified unit and specify the required term of affordability that must be maintained throughout the extended use period.

Owners must comply with any occupancy restrictions required by IRC Section 42, the Declaration (LURC) and REUA throughout the compliance period and extended use period.

Part 4.02 – Building Identification Number (BINS)

Tax credits are claimed on a building-by-building basis. Therefore, each building within a development is assigned a unique Building Identification Number (BIN) and issued a separate IRS Form 8609.

Building Identification Numbers indicate the following:

1. The States abbreviation, i.e. (OR for Oregon) – **OR**
2. The year the building was allocated tax credits – **22**
3. The remaining numbers are state specific identification numbers – **00000**

For example, a BIN for a building allocated credit by OHCS in 2022 would be OR-22-12345.

Each building (BIN) will have its own Eligible Basis, Applicable Fraction, Qualified Basis, and Annual Credit.

Part 4.03 – Placed-In-Service Dates

Per IRS Notice 88-116, the placed-in-service date of a building (BIN) 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.

- 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. The deadline for placing in service is the end of the year of allocation or the year after if there is a carry-over of the allocation.

Multiple Building Projects

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

Acquisition/Rehab Placed-In-Service Dates

The acquisition credits and rehabilitation (rehab) credits are two separate credit allocations, meaning, for buildings allocated both acquisition and rehab credits, a separate calculation is made to determine the annual credit from both credit allocation streams. They each have distinct definitions of "placed-in-service" dates with compliance and required cost components and are considered in determining when credits are eligible to be claimed.

Placed-In-Service Date – Acquisition

The acquisition placed-in-service date is generally the date when the building was acquired (purchased) because the building is considered ready for its intended purpose as existing tenants are already in place and occupying the units.

NOTE: A copy of the Escrow Settlement Statement may assist in identifying the date of the new ownership.

Placed-In-Service Date – Rehabilitation (Rehab)

The rehab placed-in-service date is elected by the owner during any 24-month period, over which such expenditures are aggregated, where at least: (a) 20% of the adjusted basis, or (b) a required minimum per-unit amount is spent, which is annually published by the publication of a revenue procedure.

For buildings claiming both rehab and acquisition credits, both credits must begin in the same year (as there will never be two Credit Periods for a building).

Please see Section 6: Acquisition / Rehabilitation / Resyndication

Part 4.04 – Credit, Compliance and Extended Use Periods

There are three periods of compliance that must be taken into consideration when owning, managing or monitoring a LIHTC property. These periods are commonly referred to as the Credit period, Compliance period and Extended Use period.

1. **Credit Period**: The credit period is the period of time a building's investors plan on deducting the tax credit on their federal income tax return. A building's credit period typically starts the year it is placed in service, but the owner has the option of beginning its credit period the year after the building is placed in service. For example, if a building was placed in service during 2022, the owner may begin its credit period during 2022 or 2023. The credit period duration is ten years (eleven in some cases).
2. **Compliance Period**: The compliance period is the period of time an owner must comply with all program requirements to benefit from the anticipated tax credit. The first year of a building's compliance period is the first year of its credit period. The compliance period lasts for fifteen years. It takes an owner fifteen years to earn the tax credit the IRS allows them to take over the ten-year credit period. An owner must comply with all requirements established by the IRS and the housing finance agency (HFA) for the fifteen-year compliance period. During this time period noncompliance is reported to the IRS via IRS Form 8823 and tax credits can be recaptured.
3. **Extended Use Period**: In 1990 a change in federal law required an additional fifteen years of compliance, which is known as the extended use period. As a result, properties that were awarded tax credits post 1990 must comply with LIHTC program restrictions for at least fifteen additional years. Although in most cases the owner is no longer subject to recapture by the IRS, the owner of an LIHTC property signs a regulatory agreement (REUA) in which they commit to keep the property in the affordable housing inventory throughout its whole promised and documented affordability period. Every owner and manager must know the requirements for each property's extended use period based on the property's regulatory agreement(s), and the compliance monitoring standards established by OHCS for property's past year fifteen.

These three periods, the Credit, Compliance and Extended Use Period(s) all begin at the same time.

Part 4.05 – Minimum Set-Aside Requirements

At the time of application for the tax credit, the owner of the property must elect one of three minimum federal set-aside requirements. This election, once memorialized within the Declaration of Land Use Restrictive Covenants (Declaration / LURC) and once elected on the IRS Form 8609 is irrevocable. If the managing agent is unaware of which set-aside requirement must be met, they should contact the owner to be sure all information about the property has been provided as required.

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

The set-aside is the minimum number of units that must be rent restricted and reserved for low-income tenants in order for a building to be considered a qualified low-income building. Pursuant to the Code, the federal set-aside options are:

- **20/50 Election**: 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.

- **40/60 Election**: 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
- **Average Income Election**:

  Per the final and temporary Treasury Regulations 1.42-19 and 1.42- 19T, 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."

  *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. Please refer to Section 4, Part 4.06 Minimum Set-Aside requirements.

  For more information on Average Income, please review OHCS' updated Average Income Test (AIT) Policy.

  The Minimum Set-Aside (MSA) must be met on a project basis (project is 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. **(Please See Part 4.08 below.)**

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

The property owner may have also elected to be more restrictive and to target a percentage of the units to persons of lower income levels at lower rent levels and/or to target a higher percentage (number) of units to low-income persons.

Most OHCS funded properties are 100% affordable (i.e., 100% of units are income and rent restricted at or below 60%). The owner must comply with these deeper targeting elections even though federally the election may be less restrictive.

Actual compliance monitoring will be based upon the more restrictive representations agreed to by the Owner in the regulatory agreements. Other funding sources may further reduce the required limits. The most restrictive must be used throughout the duration of the agreements with all federal LIHTC program noncompliance items reportable on IRS Form 8823 during the Compliance Period.

Note: The owner must also comply with those additional elections as defined in the Owner's Final Application and Regulatory Extended Use Agreement (REUA) attached to the property.

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 and temporary Average Income Test regulations (Treasury Regulations 1.42-19 and 1.42-19T).

A. Qualified Group of Units to Satisfy the Minimum Set-Aside: Per the final and temporary Treasury Regulations 1.42-19 and 1.42- 19T, 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 of 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.

B. 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 of 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.

Part 4.06 – Minimum Set-Aside Deadlines

For properties receiving credits in 1991 and later, the minimum set-aside must be met by December 31st of the year the property is placed-in-service, if the credits are to be claimed with the IRS for that year. If the start of the credit period is deferred until the second year, the minimum set-aside must be met by December 31st of the second year. Once the minimum set-aside is met, it must be maintained for the entire compliance period.

If the property fails to meet the minimum set-aside by the deadline, the property may not be able to generate credits. For new developments, the move in and effective dates on the tenant income certifications (TICS) are the actual date that the household moves into the unit.

Part 4.07 – IRS Form 8609 Part II Line 8b: Multiple Building Projects

On IRS 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 and Extended Use Periods.

- 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, please see Part 4.14 below.**
- The Line 8b election impacts implementation of rent and income limits, especially regarding the applicability of HERA special and hold-harmless limits, because limits are project-specific.
- The Line 8b election impacts the 100% recertification exemption since this applies to a project per the IRS Form 8609 election.

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

If the owner elects "Yes" and attaches the required statements to IRS Form 8609, all buildings are considered to be part of one project (multi-building project). All Section 42 regulations apply to all buildings, transfers may be completed between buildings as long as the household does not exceed 140% of Area Median Income, and the Gross Rent Floor Election (GRFE) is the same for all buildings in the property.

If the owner elects "No", for IRS Section 42 purposes, each building is to be treated as its own project for IRS and compliance purposes. All Section 42 regulations must be applied to each building separately, all transfers must retain income eligibility at the set-aside limit of 20@50,40@60, or if applicable 40% of the average @60%, the Gross Rent Floor Election (GRFE) will be applied individually to each building, and there may be a different set of rent limits for each building based on the GRFE. OHCS strongly recommends developing an internal tracking system and making sure management is aware of both the owners Line8b election and the GRFE for each property in the portfolio, to ensure rents are being held at the correct limits. Over-charged rents are reportable to the IRS on Form 8823.

Part 4.08 – Overcharged Rents

The Low-Income Housing Credit Program mandates that **gross rents remain restricted on an annual basis** (under IRC §42(g)(2)(A)), **as well as on a monthly basis** (under IRC §42(g)(2)(B)). If it is discovered that an owner has overcharged rent to an LIHTC resident at any point during a calendar year, the following results will occur:

1. The owner will be required to refund the excess rent amount to the tenant for all months affected, and
2. The IRS may recapture tax credits on the affected unit for the remainder of the calendar year, beginning with the first month the rent was overcharged.

In some cases, rents become overcharged when owners assess fees not permitted under Section 42, such as fees for the use of resident facilities (i.e. swimming pools, parking areas, recreational facilities) that were included in the property's eligible basis. Other cases involve owners charging fees to residents as a condition of their occupancy, where the fees are in addition to gross rent (i.e. mandatory renters' insurance, fees for month-to-month tenancy, one-time washer/dryer hook- up fees).

Part 4.09 – Vacant Unit Rule

The Vacant Unit Rule (VUR) is violated in situations where an owner failed to make reasonable attempts to rent that unit, or the next available unit of comparable or smaller size, before renting units to tenants not having a qualifying income (applicable to mixed use buildings that are not 100% LIHTC).

As part of the requirements for the annual certification, Treas. Reg. §1.42-5(c)(1)(ix) states, "If a low-income unit in the project became vacant during the year, the Owner must be able to demonstrate that reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income. As long as reasonable attempts are being made to rent to qualified low-income households before renting units to non-qualifying tenants, vacant LIHTC units will continue to be included as qualified low-income units for purposes of determining the minimum set-aside (IRC§42(g)(1)) and calculating the applicable fraction (IRC §42(c)(1)(B)).

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 could affect what would be considered reasonable.

The Vacant Unit Rule (VUR) is also violated in situations where an owner failed to make units suitable for occupancy, i.e., prepared for immediate occupancy within a reasonable period of time.

Suitable for Occupancy

Owners are required to immediately make newly vacated units suitable for immediate occupancy in a reasonable amount of time. OHCS has defined "reasonable amount of time" to be 30 days or less. In addition, the O/A must make all reasonable attempts to market their vacant, rent-restricted units. ***The O/A should keep records to document the date the unit turnover work is completed and is ready for occupancy.***

The IRS states that, "all vacant LIHTC units that are not suitable for occupancy are out of compliance. The

out of compliance date is determined for each unit based on the date that particular unit was vacated." The units will not be considered back in compliance until they are occupied by income-eligible households.

Example: *At the time of physical inspection of a property it is discovered that 20 units are currently vacant and have been for more than 30 days. Only five of the 20 units were found to be ready for occupancy. Due to various reasons, management did not complete the turn-over work in all 20 of the units to make them ready to rent. The 15 units that have not been prepared for occupancy are out of compliance and an 8823 must be filed with the IRS.*

All vacant units that are not made suitable for occupancy, within a reasonable amount of time, will be considered as out of compliance from the date the unit became vacant.

NOTE: There may be extenuating circumstances that prevent an O/A from being able to timely prepare a unit (i.e., extraordinary repairs needed due to severe damage caused by a resident). These cases should be individually dealt with between the O/A and OHCS.

NOTE: OHCS recommends that units be made rent-ready at turnover between seven (7) to 10 days.

For additional guidance, please refer to Part 4.14 – General Public Use Requirements.

Part 4.10 – Next Available Unit Rule – 140% Rule

At recertification, if the household's income increases to over 140% of the current qualifying income limit, credits can continue to be claimed on the unit as long as the **next available unit** of comparable or smaller size in the building is rented to a qualified applicant. Over-income units must remain rent-restricted until the next available unit is rented. Mixed-use properties must have tracking methods in place to ensure the next available unit rule is applied. 100% LIHTC properties must always rent the next available unit to a low-income household.

Comparable Units

The definition of a comparable or smaller unit for purposes of the Vacant Unit Rule is the same as used for the Available Unit Rule, i.e., a residential unit that is comparably sized or smaller than the vacated unit. For purposes of determining whether a residential unit is comparably sized, a comparable unit must be measured by the same method used to determine qualified basis for the credit year in which the comparable unit became available. See Treas. Reg. §1.42-15(a). Since a comparable unit may need to be identified before the end of the year when the qualified basis is determined, an owner may consider a residential unit with the same number of bedrooms (or fewer) and comparable amenities to be a comparable unit.

Part 4.11 – Resident Manager's Unit

The resident manager's unit may be considered in one of two ways listed below:

1. The manager's unit can be considered a common area or other special facility within a rental property that supports and/or is reserved for the benefit of all the rental units in the property. If this option is elected and indicated in the property documents, the unit occupied by the resident manager is included in the building's eligible basis but excluded from the applicable fraction for the purposes of determining the building's qualified basis.
2. The manager's unit may also be treated as a rental unit and the unit could be included in the

low-income occupancy percentage calculation for the LIHTC building. Under this interpretation, the income level of the manager and the rent charged will affect the low-income occupancy percentage calculation for the building. The manager's unit could be considered a qualified low-income unit (the rent is restricted to a qualifying amount and the resident manager is a certified low-income tenant).

Rent should not be collected for a management unit considered a common area unit if the household (including employees) that occupy the unit are not LIHTC certified. Staff members that occupy management units must work full- time for the property. Designated management units that are not occupied by property staff may be rented to low-income certified tenants at or below the LIHTC rental rate. Designated management units cannot be considered "market units" or commercial units.

In a property that is 100% tax credit, changes may be permitted by OHCS to the location of the approved managers unit(s) noted in the regulatory agreements. A written request must be made by the O/A and sent to the Compliance Analyst for the property. The following required OHCS forms, found on OHCS website under Program Compliance, must be submitted to your OHCS Compliance Analyst for approval prior to unit placement or occupancy, or change is permitted:

1. Property Staff/Employee Unit Request Form
2. Staff/Employee Unit Certification Form

When approving requests for changes in management units, OHCS considers the following:

1. Management unit designation in regulatory agreements
2. If the property is designated as a multiple building property per Line 8b on IRS Form 8609
3. Square footage of units
4. Reason for request

When set-aside unit (manager unit) is no longer in use or required, the unit will return to an affordable housing unit, that must be occupied by an income and rent restricted household.

Part 4.12 – Eligible Basis

Eligible Basis may include the cost of facilities for use by tenants to the extent there is no separate fee for using the facilities and the facilities are available on a comparative basis to all tenants. It may also include the cost of amenities if the amenities are comparable to the cost of amenities in other units.

Example: Laundry Room and Coin Operated Washers and Dryers
An owner included the cost of a building housing a laundry facility in the eligible basis. For security reasons, the room is kept locked, but every household has a key and has access at any time. The owner installed coin operated washers and dryers. The owner can include the cost of the building in eligible basis; i.e., all tenants have access to the facility.

However, because the tenants must pay an additional fee to use the washers and dryers, the appliances should not be included in eligible basis.

Part 4.13 – Unit Transfers

Unit transfers are allowed in LIHTC properties. However, regulations apply regarding how the unit transfers are handled taking into consideration the applicable funding sources and the multiple building status.

For properties funded with LIHTC only, O/As are required to complete a Unit Transfer Certification form and prepare a new Tenant Income Certification (TIC) with each unit transfer. This form will assist in tracking the unit transfers within the property to ensure that compliance is maintained with respect to the property's set-asides.

Note: HOME and Risk Share program rules do NOT allow unit transfers.

Unit Transfers within the Same Building

A qualified household whose total income does not exceed 140% of the current income limit may transfer from one unit to another unit within the same building. Their tenant file which contains the tenant income certification (TIC) and lease for the original unit may transfer with them. A Unit Transfer Certification must be completed, and the lease must be updated as applicable. If any changes to the household composition have occurred between the time of last certification and the requested transfer, a new TIC should be completed.

Unit Transfers to a Different Building

A qualified household that requests a transfer to a unit in a different building may need to be requalified**.**

A transfer from one building to another building within the same property is allowed, if the property is part of a multiple building election. The transferring household's current income (based on the most recent TIC or self-cert) does not exceed 140% of the current applicable income limit for their household size. The vacated unit will assume the status the newly occupied unit had just prior to the transfer. The newly occupied unit will remain rent-restricted, and the household's tenant file will transfer with them.

If an existing household requests to move from one building to another and the property has not designated a multiple building election, all buildings are treated as separate projects. The existing household must qualify under the Section 42 income limits currently in effect. The Owner will need to complete a new TIC, obtain third-party verification of household income and assets and initiate a new lease for the new unit**. Multiple building elections are designated on IRS Form 8609, Part II Line 8b.**

Part 4.14 – General Public Use Requirements

Under program requirements, tax credit units must be available for use by the general public. Owners/Agents are allowed to establish preferences for certain population groups with OHCS approval (e.g. homeless persons, persons with disabilities, etc.). These preferences, however, must not violate HUD's anti-discrimination policies.

Owners must make reasonable attempts to make vacant low-income units available to the public for rent. Owners should advertise the availability of vacant units using advertising methods designed to be accessible to all prospective tenants. "Reasonable attempts" will vary depending on factors such as size and location of the property, tenant turnover rates, and market conditions. Advertising should include a variety of methods including printed and electronic media. Common examples include banners and "For Rent" signs at the entrance to the property, classified ads in local newspapers, electronic ads on Craigslist, and accessing the local public housing authority's list of section 8 voucher holders. Consider the appropriateness of the advertising for the location of the property.

The IRS 8823 Guide, indicates that a qualified, low-income property does not fail to meet the general

public use requirement solely because of occupancy restrictions or preferences that favor tenants 1) with special needs, (2) who are members of a specified group under a Federal program or State program or policy that supports housing for such a specified group, or (3) who are involved in artistic or literary activities.

Under Treas. Reg. §1.42-9(b), if a residential unit is provided only for a member of a social organization or provided by an employer for its employees, the unit is not for use by the general public and is not eligible for credit under IRC §42. In addition, any residential rental 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 for use by the general public.

An owner is generally in compliance with the general public use requirements when two conditions are met:

- The owner demonstrates that marketing and rental practices are no longer in violation of the general public use rules.
- All the units are made available to the general public.

Part 4.15 – Qualified Nonprofit Organization

For properties receiving allocations under the Qualified Non-profit Set-aside, documentation must be provided indicating that the non-profit organization is materially participating in the ongoing management and operation of the property.

Documentation that should be retained in the Owner's file is as follows:

- IRS documentation of designation as a 501(c)(3) or 501 (c)(4) corporation
- Proof of designation as a non-profit corporation/organization
- Proof that one of the exempt purposes of the corporation is to provide low-income housing

Material Participation:

- IRC §42(h)(5) requires that each state set aside at least 10% of its state housing credit ceiling for allocations to projects in which qualified nonprofit organizations own an interest and materially participate in the development and operation of the projects. "Qualified nonprofit organization" is defined as an IRC §501(c)(3) or 501(c)(4) organization exempt from tax under IRC §501(a) that is determined by the state agency as not being affiliated with or controlled by a for-profit organization, and one of the exempt purposes of the organization includes the fostering of low-income housing.
- For purposes of this allocation, a nonprofit organization must have an ownership interest in the low- income housing project throughout the 15-year compliance period and materially participate in the development and operation of the project. Whether a nonprofit sponsor materially participates will depend on the application of IRC §469(h) to the facts and circumstances of a given project.
- Under IRC §469(h)(1), the nonprofit must participate on a regular, continuous, and substantial basis in the development and operation of the project. Although this standard is vague, the legislative history suggests the following guidelines in defining material participation in a business activity:
    - 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. That is, the services provided must be integral to the operations of the activity. 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 on-site presence at operations is indicative of material participation.
- Providing services as an independent contractor is not sufficient.

Accordingly, a nonprofit entity will be considered to materially participate where it is regularly, continuously, and substantially involved in providing services integral to the development and operations of a project.

Part 4.16 – Student Eligibility Requirements

IRC §152(f)(2) defines, in part, a "student" as an individual, who during each of five calendar months during the calendar year in which the taxable year of the taxpayer begins, is a full-time student at an educational organization described in IRC §170(b)(1)(A)(ii) or is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational organization described in IR §170(b)(1)(A)(ii) or of a state or political subdivision of a state. **Treas. Reg. §1.151-3(b) further provides that the five calendar months need not be consecutive.**

The determination of student status as full or part-time should be based on the criteria used by the educational institution the student is attending. 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. The term "educational organization" includes elementary schools, junior and senior high schools, colleges, universities, and technical, trade and mechanical schools. It does not include on-the-job training courses.

Units Comprised Entirely of Full-Time Students

Units comprised of full-time students (no one of whom is entitled to file a joint return) do not qualify as low-income units. However, there are exceptions as outlined in IRC §42(i)(3)(D).

Exceptions:

- A student receiving assistance under Title IV of the Social Security Act (TANF).
- A student who was previously under the care and placement responsibility of the State agency responsible for administering a plan under part B or part E of title IV of the Social Security Act (State Foster Care).
- A student enrolled in a job training program receiving assistance under the Job Training Partnership Act or Workforce Investment Act or under other similar Federal, State or local laws.
- Entirely by full-time students if such students are:

1) Single parents and their children and such parents are not dependents (as defined in IRC §152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual and such children are not dependents (as so defined) of another individual other than a parent of such children,

2) Married and file a joint return.

In the case of a single parent with children, the legislative history explains that none of the tenants (parent or children) can be a dependent of a third party.

Verification and Documenting Student Status

- **Verifying Student Status at Move-In:** Owners should verify student status at the time households are initially qualified to move into low-income units.
- **Annual Student Status Verification**: The owner should complete student status verifications for each low-income household within 120 days before the anniversary of the effective date of the original student verification. The student status verification can be combined with the tenant income recertification, recertification or self-certification. However, student status verification is required annually for all LIHTC properties regardless of the requirement to complete additional certifications.

Part 4.17 – Adding a New Household Member

OHCS does not allow the addition of new household members within the first six months of occupancy. This policy was established to prevent the manipulation of applicable LIHTC income limits. Owners/Agents should include language in the lease prohibiting the addition of new household members prior to the expiration of the initial six-month term of the lease, **with the exception of children born to or adopted by a member of the original household**. In addition, Owners should ask prospective tenants if they expect to have any additions to the household within the first six months of residency. This is commonly seen as a question on the application for tenancy.

After the initial six-month lease term has been fulfilled, the addition of a new household member would require management to obtain third-party verification of the income and assets for the new individual. Upon receipt of the third- party verifications and documentation, management would add the new member's information to the existing household's most recent certification (TIC). The new member would then sign and date the TIC using the current date (actual date of signature).

If the combination of the income and assets of the existing household and new member exceeds 140% of the income limit, the Available Unit Rule applies. As long as the unit remains rent-restricted and the next tenant placement is granted to an income-qualified household moving into a unit of comparable size or smaller, the building will remain in compliance.

Part 4.18 – No Original Qualifying Member Remains in the Household

If over time, there have been changes to the household composition in a unit and all of the original household members are no longer residing in the unit, **the remaining members must be certified as a <u>new LIHTC-qualified household</u> at the time the last original household member moved out**.

The only time the remaining, non-original, members in a unit would not be required to certify as a new LIHTC-qualified household would be if one of the following circumstances had previously occurred:

1. <u>For a 100% LIHTC Building:</u>
   The Owner/Agent independently certified the remaining member(s) at the time they were added to the unit (this is highly recommended by OHCS), or

2. For a Mixed-use Building:
    a) The Owner/Agent independently certified the remaining member(s) at the time they were added to the unit, or
    b) The Owner/Agent certified the newly created household at the time the additions to the unit were made.

Part 4.19 – Evictions for Good Cause

IRC Section 42(h)(6)(E)(ii) and Revenue Ruling 2004-82 requires all Extended Use Agreements (Regulatory Agreements) for Housing Tax Credit properties to include a prohibition against evicting or terminating tenancy of tenants in low- income housing units for other than good cause. This prohibition must extend throughout the duration of the entire extended use period.

The Regulatory Agreement for each property requires compliance with all conditions under Section 42 of the Internal Revenue Code (Code). In accordance with Revenue Ruling 2004-82, effective July 30, 2004, no low-income resident of any LIHTC property may be evicted or otherwise have their lease terminated for any reason other than for good cause. This prohibition includes the non-renewal of a lease or rental agreement for any reason other than for good cause. The reason for the "good cause" eviction or non-renewal of lease must be provided to the tenant in writing. LIHTC unit occupants have the right to specifically enforce this prohibition in State court. Generally, "good cause" is defined as "the serious or repeated violations of a material term of the lease" as that definition is applied with respect to federal public housing. OHCS will not mediate in disputes between the tenant and the Owner/Agent regarding evictions.

Part 4.20 – Tenant Fraud and/or Misrepresentation

Owners of LIHTC properties should demonstrate due diligence to prevent tenant fraud. Fraud includes deliberate misrepresentation of fact in order to induce someone else to part with something of value or surrender a legal right. In this case, the outcome of deliberate misrepresentation by a tenant can result in the property owner renting a residential unit to an ineligible tenant at a below market rate.

If an Owner/Agent (O/A) discovers that a tenant has deliberately misrepresented their income level, student status, household size or any other item used to determine eligibility, the O/A must contact OHCS and consult local tenant landlord law for next steps regarding termination of tenancy or raising the household's rent to the market rate.

An O/A's opportunity to identify and self-correct misrepresentation or fraud by a tenant for purposes of the low-income housing credit **terminates upon notification from OHCS of an intended review/inspection of the LIHTC property**. Any noncompliance arising from such a misrepresentation or fraud discovered during an OHCS review/inspection will be reported to the IRS on Form 8823 under the appropriate category of noncompliance, regardless of the cause.

If the Owner discovered and addressed an event of tenant fraud or misrepresentation prior to receiving notification from OHCS of a review of the property, a report of noncompliance on IRS Form 8823 *may not* be filed. However, full documentation regarding the following must be provided:

- Proof of discovery and correction made prior to OHCS sending notification of intended review.
- Provide adequate proof to OHCS that the tenant provided false information clearly showing the event is not a result of O/A negligence or error.

- Proof O/A performed due diligence at the time the tenant moved-in and during recertification to obtain the most accurate information possible form the tenant and all applicable third-party sources.
- Documentation is provided to support O/A has implemented additional safeguards since the event in order to prevent the same situation from occurring again.
- O/A **does not show a pattern** neglecting due-diligence and accepting fraudulent tenants.
- O/A has legally terminated the tenancy resulting with the resident vacating the unit (where possible).

Part 4.21 – Leases

The LIHTC program does not mandate the use of a specific lease agreement form. The O/A must therefore develop and adopt their own. OHCS does require that all tenants occupying LIHTC units be income certified and residing in the unit under a valid lease agreement. The Owner/Agent and all adult household members must sign and date, at the signature line, every lease. Lease provisions should include:

- The legal name of the parties to the agreements and all other occupants;
- A description of the unit to be rented;
- The term of the lease (a six-month minimum term is required);
- The rent amount (including all non-optional fees as part of the gross rent);
- The permitted and restricted use of the premises (i.e. the prohibition of subletting the unit not approved by management);
- A statement (or attached addendum) regarding certain LIHTC program requirements, such as income and student eligibility
    - (LIHTC Lease Rider/Addendum if not included in the Lease);
- The right to release information to OHCS and/or the IRS for inspection/audit;
- Fees being charged for optional services;
- The rights and responsibilities of the parties, including obligation of the tenant to certify income annually as defined herein and language that addresses income, utility allowance increase/decrease, income limit increase, basic rent changes, household composition change or any other change and its impact on the tenant's rent and 'good cause' eviction or non-renewal of lease;
- The lease should reflect the correct date of move-in, or the date the tenant takes possession of the unit. This date should also match the move-in date reflected on the initial/move-in Tenant Income Certification (TIC).
- Standard Section 42 language including the student rule

Initial occupancy lease terms must be for a minimum of six months with the following two exceptions:

1. **Buildings Used for Transitional Housing for the Homeless Under IRC §42(i)(3)(B)(iii)**

   Certain transitional housing for the homeless may be considered used other than on a transient basis provided the residential 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 to independent living within 24 months, and
   - In which a government entity or qualified nonprofit organization provided such individuals

with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing.

2. **Single-Room Occupancy (SRO) Units Under IRC §42(i)(3)(B)(iv)**
   SRO units which permit the sharing of kitchen, bathroom, and dining facilities, shall not be treated as used on a transient basis merely because it is rented on a month-by-month basis.

   Rents may not exceed the maximum rents as allowed by the Code, or as otherwise agreed per representations made in the Owner's application for funding.

Part 4.22 – Lead-Based Paint

Housing built before 1978 may contain lead-based paint. Lead from paint, chips and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, owners must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. All tenants renting pre-1978 units must receive a federally approved pamphlet on lead poisoning prevention entitled "Protect Your Family from Lead in Your Home".

Exempt Housing

The following properties are exempt from disclosure requirements:

- Properties built after January 1, 1978;
- Properties found not to have lead-based paint during earlier testing that meets the requirements of prior evaluations;
- Properties where all lead-based paint has been identified and removed using approved methods;
- Properties where rehab will not disturb paint, and no paint hazards are identified; and
- Properties where occupancy by a child is unlikely; typically, Elderly, and disabled housing, or SRO units

Basic Requirements

Owners must comply with 24 CFR 35, the regulations implementing the Lead-Based Paint Poisoning Prevention Act along with requirements for dealing with lead-based paint found in the Uniform Physical Condition Standards (UPCS). Current Part 35 regulations require that all occupants receive and acknowledge notice of the possible presence of lead paint.

Notification Requirements

Owners must distribute a HUD or Environmental Protection Agency (EPA) approved pamphlet to prospective buyers and renters of pre-1978 homes, and tenants of homes where renovations will take place. A widely used EPA pamphlet entitled "Protect Your Family from Lead in Your Home" is available for download in both English and Spanish on the OHCS website with the NOFA materials. **OHCS requires that Owners obtain evidence of tenant receipt of any pamphlet distributed**. Owners may create their own receipt of disclosure form or use the form, *"Disclosure of Information on Lead"* located on the OHCS website. The Compliance Analyst in Portfolio Management will audit for proof of receipt.

Effective October 4, 2011, The Environmental Protection Agency (EPA) revised various materials including the "Renovate Right" Brochure that must be provide to residents prior to many repairs that may disturb lead-based paint in homes built prior to 1978.

All of these changes are in addition to the requirement to distribute the booklet entitled "Protect Your Family

from Lead in Your Home" from the EPA and HUD and get the "Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards" signed by renters prior to their becoming obligated under a rental contract and the pre-existing Renovation Repair and Painting rule of 2008.

Applicability

The Lead-Based Paint Poisoning Prevention Act applies to **all units** in a property. During the compliance review, the Compliance Analyst will monitor to ensure that the Owner has conducted all necessary activities and maintained appropriate documentation in their files.

Part 4.23 – Fair Housing and Equal Opportunity

24 CFR part 8; 28 CFR parts 35 and 36; and 24 CFR 100.205 as applicable

Owners/Agents (O/A) must comply with all fair housing laws, which prohibit discrimination in housing based on race, color, religion, sex, familial status, national origin, age and disability. Affirmative Fair Housing Marketing Plans (AFHMP) for Low-Income Housing Tax Credit (LIHTC) properties must be established. The O/A must conduct special outreach to those groups least likely to apply for the LIHTC housing. Accessible units in LIHTC properties must be offered first to persons with disabilities.

The O/A must comply with all fair housing laws, which prohibit discrimination in housing and must demonstrate that all applicants and tenants are treated fairly and equitably by:

- Establishing and following standard **tenant selection procedures**
- Using **leases** that protect tenants' rights
- Using established procedures to resolve conflicts with tenants

Most housing properties fall under several different laws. Federal programs and the age of the property determine which laws apply.

- **Title VIII of the Civil Rights Act of 1968 (Fair Housing Act)** protects race, religion, sex, and national origin.
    - Makes it unlawful to discriminate in any aspect relating to the rental of dwellings, or in the provision of brokerage services or facilities in connection with the rental of a dwelling, because of ***race, color, religion, or national origin,*** (protected classes).
    - Amended in 1974 to include ***sex*** (gender) as a protected class.
- **The Fair Housing Amendments Act of 1998 (Amendments Act - FHAA)** added two additional protected classes.
    - Expanded coverage of Title VIII to prohibit discriminatory housing practices based on **disability and familial status** (protected classes).
- **The Americans with Disabilities act (ADA) of 1990** addresses public accommodations (rental offices and common areas are considered public accommodations.)
- **Section 504 of the Rehabilitation Act of 1973 (Section 504)** applies to those receiving federal assistance.

TCAP and the Exchange Program provide direct funding. Properties that receive funds through these programs must fully comply with the requirements of Section 504.

Persons with disabilities have their rights protected under three main laws (ADA, FHAA, and 504)

In addition, states and local jurisdictions may establish ordinances that identify additional "protected

classes" within that jurisdiction. Owners should be aware of the individual laws and ordinances enacted in their areas that may have established "protected classes".

Federal Protected Classes

- Race: Racial Background
- Color: Additional distinction within the category of race
- Gender: Male/female
- Religion: A person's religion; or lack thereof
- National Origin: Where the person or their ancestors came from
- Disability: A mental or physical impairment that substantially limits one or more of a person's major life activities.
  - Familial Status Means having a child in the household, whether living with a parent, a legal custodian, or their designee. It also covers a woman who is pregnant, and people in the process of adopting or gaining custody of a child.

HUD published a final rule in the Federal Register entitled *Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity* effective March 5, 2012. This rule will ensure that HUD programs, including programs administered by the Office of Community Planning and Development (CPD) (e.g., CDBG, HOME, NSP, and HOPWA) are open to all eligible individuals regardless of sexual orientation or gender identity.

- HUD-assisted and HUD-insured housing, including housing acquired, rented, or rehabilitated with CPD funds, must be made available without regard to actual or perceived sexual orientation, gender identity, or marital status.
- The definition of "family" is revised to include families regardless of the actual or perceived sexual orientation, gender identity, or marital status of its members.
- Owners and administrators of HUD-assisted housing and HUD-insured housing are prohibited from inquiring into an applicant or occupant's sexual orientation and gender identity for the purpose of determining eligibility or otherwise making housing available. *
- Sexual orientation and gender identity may not be taken into consideration by an FHA lender in determining the adequacy of a mortgagor's income.

Failure to comply with the requirements of this rule will be considered a violation of program requirements and will subject the non-compliant grantee to all sanctions and penalties available for program requirement violations.

*Please note: This prohibition on inquiries does not prohibit lawful inquiries of an applicant or occupant's sex where the housing provided or to be provided to the individual is temporary, emergency shelter that involves the sharing of sleeping areas or bathrooms, or inquiries made for the purpose of determining the number of bedrooms to which a household may be entitled. This provision is intended to ensure privacy, safety, and modesty in temporary, emergency shelters.

**Please also note: This provision does not prohibit voluntary or anonymous reporting of sexual orientation or gender identity pursuant to local, state, or federal data collection requirements.

Sexual Harassment

Sexual harassment in housing includes demands for sex or sexual acts in order to buy, rent, or continue renting a home. In October 2017, the Justice Department's Civil Rights Division announced the Sexual Harassment in Housing Initiative (SHHI). Sexual Harassment is the following:

- Unwanted sexual advances, comments and touching
- Offering to reduce, overlook or excuse late or unpaid rent in exchange for sex
- Offering to reduce, overlook or excuse deposits in exchange for sex
- Evicting or threatening to evict tenants who object or refuse the sexual advances
- Demanding or pressuring tenants or potential tenants to engage in sexual acts in order to obtain or keep their housing or refusing needed maintenance services to those who refuse the harassment
- Enter the homes of tenants without their consent
- Creating a hostile environment

Sexual Harassment behavior can be any of the following:

- Verbally (Sexually explicit questions, jokes, or anecdotes)
- Communication (oral, written, electronic, etc.)
- Visually (images, videos)
- Written (email, notes)
- Non-verbally (looking up and down a person's body; derogatory gestures)
- Physically (repeatedly standing too close to or brushing up against a person; grabbing and/or touching

Disparate Impact

A facially neutral practice, procedure or policy that does not appear to be discriminatory on its face; rather is in one that is discriminatory in its application or effect.

Examples of practices that potentially may cause an issue, include:

- Use of credit scores
- Co-Signers
- Income 4x rent requirement
- Crime provisions in lease agreements or house rules that do not take into account the impact on victims

Elderly Exemptions

The Fair Housing Act provides a specific exemption for housing providers who designate housing for the elderly or near-elderly. Housing may be reserved for the elderly who meet the guidance under the "Housings for Older Persons" program (HOPA). The key to this exemption is not the desire to exclude children, but the intent to provide housing for seniors. Those who intend to operate a senior housing should get adequate information about meeting the qualifications.

"62 and Over"

- Intended for, and **solely** (100%) occupied by persons 62 years of age or older; or

"55 and Over"

- Intended and operated for occupancy by households where **at least** 80% of the units are occupied by households containing **at least** one person 55 years of age or older.

Other Exemptions

- Housing which could result in common use of bath or bedroom facilities by men and women who are not related to each other
- The rental of rooms within one's home
- A duplex where one unit is Owner-occupied
- The rental of space in a church or other religious institution

2016 HUD Notice - Application of Fair Housing Act Standards to the Use of Criminal Records

In April of 2016, HUD provided guidance on "*Application of Fair Housing Act Standards to the Use of Criminal Records*" that addresses screening for criminal history. Specifically, the guidance addresses how the discriminatory effect and disparate treatment methods of proof apply in Fair Housing Act cases in which a housing provider justifies an adverse housing action, such as refusing to rent or renew a lease, based on an individual's criminal history.

Owners/Agents are encouraged to review and to adopt policies to ensure to ensure fair housing practices are in place.

State of Oregon Protected Classes

The State of Oregon has additional fair housing laws that are substantially equivalent to the Federal Fair Housing Act. Additionally, some of these laws may impose more stringent design and construction standards for new multifamily housing.

The following are state specific protected classes:

- ❖ Marital Status
- ❖ Sexual Orientation and Gender Identity
- ❖ Source of Income (Including Section 8 Vouchers, agency and nonprofit rent payments and public assistance income, Social Security)
- ❖ Domestic Violence (survivors of domestic violence receive protections under Oregon Landlord Tenant Laws that serve similarly as a protected class status)

Local Jurisdictions: Counties and Cities in Oregon Protected Classes

In addition to Federal and State protected classes, some counties and cities in Oregon have additional designated protected classes such as age, student status, or occupation.

For a complete list of local protected classes in Oregon jurisdictions, please visit Oregon Protected Classes - Fair Housing Council of Oregon

The Americans with Disabilities Act

In most cases, the Americans with Disabilities Act (ADA) does not apply to residential housing. Rather, the ADA applies to places of public accommodation such as restaurants, retail stores, libraries, and hospitals as well as commercial facilities such as office buildings, warehouses, and factories. However, Title III of the ADA covers public and common use areas at housing developments when these public areas are, by their nature, open to the general public.

- **For example, it covers the rental office since the rental office is open to the general public.**

Title II of the ADA applies to all programs, services, and activities provided or made available by public entities. This includes housing when the housing is provided or made available by a public entity. For example, housing covered by Title II of the ADA includes public housing authorities that meet the ADA definition of "public entity," and housing operated by States or units of local government, such as housing on a state university campus.

Zoning and Land Use

It is unlawful for local governments to utilize land use and zoning policies to keep persons with disabilities from locating to their area. For more information, please refer to the Joint Statement of DOJ and HUD on Group Homes, Local Land Use and the Fair Housing Act.

More Information can be found at the following:

- Oregon 's fair housing laws can be found in the Oregon Revised Statues (ORS), Chapter 659A at: http://www.oregonlegislature.gov/
- For more information regarding fair housing in Oregon, view the Fair Housing Council of Oregon's website at: http://www.fhco.org
- For more information on the Americans with Disabilities Act, visit the Department of Justice ADA Home Page at: http://www.ada.gov/.
- For information on how HUD processes housing discrimination complaints, see Fair Housing- It's Your Right at: The Americans with Disabilities Act | ADA.gov

Part 4.24 – Section 504 / Accessibility

24 CFR part 8; 28 CFR parts 35 and 36; and 24 CFR 100.205 as applicable

TCAP funds qualify as federal financial assistance, resulting in Section 504 becoming applicable to developments that receive any funding through the program. Under Section 504's governing regulations, "federal financial assistance means any assistance provided or otherwise made available by OHCS through any grant, loan, contract or any other arrangement.

The statute's language specifically prohibits the HUD secretary from waiving requirements related to fair housing and nondiscrimination. HUD has confirmed that Section 504 of the Rehabilitation Act applies to all TCAP grants. The Exchange Program qualified TCAP grants as federal financing assistance when agencies used the program for awarding grants in lieu of low-income housing credit allocations. This resulted in developments receiving funds from the Exchange Program subject to Section 504

The housing must meet the accessibility requirements of 24 CFR part 8; 28 CFR parts 35 and 36; and 24 CFR 100.205 as applicable; and other improvements that are not required by the regulations or statute that permit use by a person with disability.

Persons with disabilities have their rights protected under three main laws: ADA, FHAA, and Section 504.

Section 504 prohibits discrimination based on disability in any program, service, or activity, and requires certain levels of accessibility. Section 504 applies to a smaller number of units than the Fair Housing Act since it does not apply to private owners, but its requirements are stricter.

- **For example, housing providers must not only allow reasonable modifications, as required by the Fair Housing Act, but also pay for them.**

The statute prohibits providers from offering housing that is unnecessarily different or separate, requiring that housing for disabled individuals be as integrated as appropriate. In order to ensure accessibility, Section 504 also mandates:

- 5% of a new building or substantial rehabilitation be accessible to those with mobility impairments, and
- an additional 2% be accessible to persons with hearing or vision impairments.

Requires that new multifamily housing covered by 504 regulations be designed and constructed to be accessible.

In covered multifamily housing consisting of 4 or more units with an elevator built for first occupancy after March 13, 1991, all units must comply with the following seven design and construction requirements of the Fair Housing Act:

- Accessible Entrance on an Accessible Route
- Accessible Public and Common-Use Areas
- Usable Doors
- Accessible Route Into and Through the Dwelling Unit
- Accessible Light Switches, Electrical Outlets, Thermostats, and Environmental Controls
- Reinforced Walls in Bathrooms
- Usable Kitchens and Bathrooms
- In multifamily housing covered by 504 regulations without an elevator that consists of 4 or more units built for first occupancy after March 13, 1991, all ground floor units must comply with the Fair Housing Act's seven design and construction requirements.

Further, the law required not only accessibility, but also targeting, through affirmative outreach to the public.

For more information, on Disability Rights in HUD Programs visit Section 504 Questions and Answers

Disability Rights in Housing

Definition of Disability: Federal laws define a person with a disability as "Any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment."

In general, a physical or mental impairment includes hearing, mobility and visual impairments, chronic alcoholism, chronic mental illness, AIDS, AIDS Related Complex, and mental retardation that substantially limits one or more major life activities. Major life activities include walking, talking, hearing, seeing, breathing, learning, performing manual tasks, and caring for oneself.

Regardless of whether a person resides in private or public housing, Federal laws provide the following rights to persons with disabilities:

- **Prohibits discrimination against persons with disabilities.** It is unlawful for a housing provider to refuse to rent or sell to a person simply because of a disability. A housing provider may not impose different application or qualification criteria, rental fees, or sales prices, and rental or sales terms or conditions than those required of or provided to persons who are not disabled.
    - *Example: A housing provider may not refuse to rent to an otherwise qualified individual with a mental disability because they are uncomfortable with the individual's disability.*

Such an act would violate the Fair Housing Act because it denies a person housing solely on the basis of their disability.

- **Requires housing providers to make reasonable accommodations for persons with disabilities.** A reasonable accommodation is a change in rules, policies, practices, or services so that a person with a disability will have an equal opportunity to use and enjoy a dwelling unit or common space.
- A housing provider should do everything they can to assist, but they are not required to make changes that would fundamentally alter the program or create an undue financial and administrative burden. Reasonable accommodations may be necessary at all stages of the housing process, including application, tenancy, or to prevent eviction.
    - *Example: A housing provider would make a reasonable accommodation for a tenant with mobility impairment by fulfilling the tenant's request for a reserved parking space in front of the entrance to their unit, even though all parking is unreserved.*
- **Requires housing providers to allow persons with disabilities to make reasonable modifications.** A reasonable modification is a structural modification that is made to allow persons with disabilities the full enjoyment of the housing and related facilities.
    - Examples of a reasonable modification: would include allowing a person with a disability to install a ramp into a building, lower the entry threshold of a unit, or install grab bars in a bathroom.
    - Reasonable modifications are usually made at the resident's expense. However, there are resources available for helping fund building modifications.

Additionally, if you live in federally assisted housing the housing provider may be required to pay for the modification if it does not amount to an undue financial and administrative burden.

For more information, see the Reasonable Accommodations Section of the Section 504 Frequently Asked Questions page.

The Americans with Disabilities Act

In most cases, the Americans with Disabilities Act (ADA) does not apply to residential housing. Rather, the ADA applies to places of public accommodation such as restaurants, retail stores, libraries, and hospitals as well as commercial facilities such as office buildings, warehouses, and factories. However, Title III of the ADA covers public and common use areas at housing developments when these public areas are, by their nature, open to the general public.

- **For example, it covers the rental office since the rental office is open to the general public.**

Title II of the ADA applies to all programs, services, and activities provided or made available by public entities. This includes housing when the housing is provided or made available by a public entity. For example, housing covered by Title II of the ADA includes public housing authorities that meet the ADA definition of "public entity," and housing operated by States or units of local government, such as housing on a state university campus.

Part 4.25 – Violence Against Women Act (VAWA)

Violence Against Women Act (VAWA) 2013 was signed into law on March 7, 2013. VAWA 2013 extends the documentation and confidentiality provisions found in all existing VAWA requirements to all HUD covered programs.

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.

A property 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). OHCS requires all **LIHTC** properties to develop and adhere to written policies and procedures in providing protections under VAWA.

A. VAWA Protections

The property's written **policies** must contain **procedures** describing the implementation of statutory provisions addressing "reasonable time" and "notice of rights" when providing protections under VAWA. Certain policies and practices that treat victims of domestic violence, dating violence, sexual assault, or stalking different from other tenants may be considered to be discrimination on the basis of sex under the federal Fair Housing Act.

1. **Prohibited Denial/Termination**
   No applicant for or tenant of OHCS housing may be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis 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.

2. **Lease Terms**
   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:
   - 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 and/or manager 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 and or manager must provide any remaining tenants with an opportunity to establish eligibility and a reasonable time to find new housing or to establish eligibility.

4. **Confidentiality of Tenant Information Related to Domestic Violence, Dating Violence, Sexual Assault, or Stalking**
   The owner 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**
   Housing protections in VAWA 2013 includes the requirement that each appropriate agency develops a notice of rights for applicants and tenants and provide such notice at the time a person applies for housing, when a person is admitted as a tenant of a housing unit, and when a tenant is threatened with eviction or termination of housing benefits.

6. **Emergency Transfer**
   VAWA requires **each appropriate agency** to adopt 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.

   OHCS as the PJ for properties with HOME-assisted units and the Grantee for HTF-assisted units requires the use of HUD 5381 Emergency Transfer Plan and the HUD 5383 Emergency Transfer Request be provided to Tenants requesting an emergency transfer.

   Owner(s)/Agent(s) are required to incorporate VAWA provisions into their lease document or use a VAWA Addendum for this purpose.

B. OHCS Required VAWA Forms

Oregon Housing and Community Services (OHCS) requires the use of the following VAWA forms for all **LIHTC properties**. All forms are available as a template requiring property specific details to be included, which can be located at Violence Against Women Act (VAWA) | HUD.gov / U.S. Department of Housing and Urban Development (HUD).

The O/A is responsible for updating the HUD provided VAWA template to be specific to the property.

- 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 OHCS.

- **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.

  NOTE: This is NOT a required form; tenant/applicant can choose method of certification.

- **HUD 5383: Emergency Transfer Request.**
  This form is used by tenants to request a transfer under VAWA.

- HUD 5384: **VAWA Emergency Data Collection (NEW)**
  This form is completed by the O/A and kept on file; must be submitted to HUD annually

The VAWA Final Rule does not require the applicant/household to sign an acknowledgement of receipt of the Notice of Occupancy Rights (HUD Form 5380) and certification form (i.e., HUD Form 5382), however, it is strongly recommended that the O/A obtain an acknowledgement or maintain a note of receipt describing dates and times Forms provided.

The VAWA Lease Addendum, Form HUD-91067 is required to be attached to the lease. This form is intended to be completed by each individual adult that is party to the lease and is available on the OHCS website.

C. VAWA Reauthorization of 2022 – Additional Provisions

The following are additional provisions included within the 2022 reauthorization of VAWA.

- **Nonretaliation**

  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.

- **Noncoercion**

  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.

- **Elder Abuse**

- **Protection to Report Crimes from Home**

  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

Part 4.26 – Collection of Demographic Data

OHCS requires the collection and reporting of the following information for all program tenants:

Race	Age (Date of Birth)	Family Composition
Ethnicity	Income	
Sex	Disability Status	

To meet demographic data collection requirements, owners must annually report demographic data for all household members (each member not just the head of household) living in their properties. OHCS provides a recommended "Assessment of Household Demographics Form" that owners may utilize to gather this information. This form can be found on OHCS website, Recommended Forms.

NOTE: The Owner/Agent is required to make the form available to the household, however, the household is NOT required to provide the data.

In order to reduce administrative burden, it is OHCS's intent to capture all demographic information through the online reporting system as part of the Annual Owner Certification tenant event submission. Therefore, the owner must obtain demographic data for each household member and report this information when submitting tenant events online through "Procorem".

Part 4.27 – Uniform Relocation Act of 1973

The Uniform Relocation Act (URA) is a federal law that establishes minimum protections afforded to persons displaced from their home due to a real property acquisition for a federally funded project.

The LIHTC program by itself does not trigger the Uniform Relocation Act (URA) because it is not considered federal financial assistance under 24 CFR §24.2(a) (11). However, the regulations for many of the other funding sources owners use to finance LIHTC projects—HOME, Section 8 Project-Based Rental Assistance (PBRA) and Project-Based Vouchers (PBV), and Section 811 Project Rental Assistance, for example—do require the ownership entity extend the rights afforded under URA to existing tenants.

The Owner must ensure that it has taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, non-profit organizations, and farms) as a result of a project allocated tax low-income housing tax credits. To the extent feasible, displaced residential tenants must be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary, and affordable dwelling unit in the building/complex upon completion of the project.

Part 4.28 – Property Condition Standards

The O/A must ensure units are maintained decent, safe, and sanitary, and in good repair throughout the affordability period and in compliance with OHCS identified property standards, which include all inspectable items and inspectable areas specified by HUD based on the HUD physical inspection procedures (NSPIRE). In addition, the property standards to be maintained will address health and safety, lead-based paint, frequency of inspection, corrective or remedial actions, and inspection procedures during the affordability period as specified in the regulation

Part 4.29 – Casualty Losses

Per the IRS 8823 Guide, "a casualty loss is defined as the damage, destruction, or loss of property resulting from an identifiable event that is sudden, unexpected, or unusual." A casualty loss includes events such as fires, floods, damage caused by vandalism, car accidents, tornadoes, and hurricanes.

The Guide states further that, "physical damage to LIHC properties caused by casualty events and which render LIHTC residential units or buildings, or common areas associated with the property, unsuitable for occupancy is reported as noncompliance with the UPCS or local standards."

OHCS requires notification for units that have suffered physical damage which render the units, common areas, or buildings associated with the property and are determined unsuitable for occupancy and/or safe usage be reported. Failure to report may be determined as noncompliance with the NSPIRE or State and local standards. When reporting, please submit the Casualty Loss Tracker to the Compliance Analyst and Senior Asset Management Analyst assigned to the property.

Owners and/or Agents are required to notify OHCS immediately upon discovering that a LIHTC property has experienced a casualty loss.

The Casualty-Loss-Report.pdf (oregon.gov) is located on OHCS website.

Part 4.30 – Annual Certification of Continuing Program Compliance (CCPC)

Throughout the affordability period, the Owner shall prepare a LIHTC Certification of Continuing Program Compliance (CCPC), in the form required by OHCS and certify under penalty of perjury and submit to OHCS by the last day of February. Complete submission includes finalizing the Annual Owner Certification questions, submitting all tenant events in Procorem, the online reporting system.

The due date for submission of all required reporting is February each year for the previous reporting year (February 2025 for reporting year 2024). OHCS will track the receipt of and review the submissions for each property annually for compliance during the preceding calendar year (reporting year) with regard to all items noted on the CCPC document, including:

Per Treasury Regulation 1.42-5(c)(1) and OHCS 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 for purposes of the Minimum Set-Aside and the Qualified Group of Units for purposes of the Applicable Fraction.
2. There has been no change in the applicable fraction (as defined in Section 42(c)(1)(B) of the Code) for any building in the property. If a change has occurred, the applicable fraction to be reported to the IRS for each building in the property for the certification year on page 3. Do not include units with households that do not qualify for the LIHTC Program in the building's applicable fraction.
3. For 100% LIHTC properties, the owner has obtained a Tenant Income Certification from each low-income household at initial occupancy and at the first-year anniversary, along with third-party documentation to support each certification.
4. Each low-income unit in the property has been rent-restricted under Section 42(g)(2) of the Code.

- Is there a unit designated for staff?
- Is there more than one designated staff unit?
- Does each staff-household LIHTC income qualify? Is rent being collected for the staff unit/s?
- Has staff unit been approved by OHCS? Has staff unit been changed?
- List current staff unit/s

5. All low-income units in the property are and have been for use by the general public and used on a non-transient basis (except for transitional housing for the homeless provided under Section 42(i)(3)(B)(iii) of the Code).
6. No finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, has occurred for this property. A finding of discrimination includes an adverse final decision by the Secretary of Housing and Urban Development (HUD), 24 CFR 180.680, an adverse final decision by a substantially equivalent state of local fair housing agency, 42 U.S.C 361a(a)(1), or an adverse judgement from a federal court.
7. Each building in the property is and has been suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the state or local government unit responsible for making building code inspections did not issue a report of violation for any building or low-income unit in the property. Additionally, all low-income units have been continually occupied, vacant but rent-ready, or vacant for redecorating and/or minor repairs for a period of less than 30 days, throughout the reporting period. If not, state nature of violation of habitability standards or provide a detailed explanation of the vacancy (include unit #) and attach a copy of the violation report as required by 26 CFR 1.42-5 and any documentation of corrections made.
8. There have been no changes in the eligible basis (as defined in Section 42(d) of the Code) of any building in the property since last certification submission. If change, state nature of change (e.g. common area has become commercial space, a fee is now charged for a tenant facility formerly provided without charge, or the property owner has received federal subsidies with respect to the property which had not been disclosed to the allocating authority in writing).
9. All tenant facilities included in the eligible basis under Section 42 (d) of the Code of any building in the property, such as swimming pools, other recreational facilities, parking areas, washer/dryer hookups, and appliances were provided on a comparable basis without charge to all tenants in the building.
10. If low-income unit in the property has been vacant during the year, reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units were or will be rented to tenants not having a qualifying income.
11. If the income of tenants of a low-income unit in any building increased above 140% of the applicable income limit as allowed in Section 42(g)(2)(D)(ii) of the Code, the next available unit of comparable or smaller size in that building was or will be rented to residents having a qualifying income.
12. Any evictions of tenants of a low-income unit in any building were executed only for good cause, as required in Section 42(h)(6)(B)(i) of the Code, as described in Q&A of Rev. Rul. 2005-82.

13. An extended low-income housing commitment as described in Section 42(h)(6) was in effect, including the requirement under Section 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the property to an applicant because the applicants holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437s. Owner has not refused to lease a unit to an applicant based solely on their status as a holder of a Section 8 voucher and the property otherwise meets the provisions, including any special provisions, as outlined in the extended low-income housing commitment.
14. The owner received its credit allocation from the portion of the state ceiling set-aside for a property involving "qualified non-profit organizations" under Section 42(h)(5) of the code and its non-profit entity materially participated in the operations of the development within the meaning of Section 469(h) of the Code.
15. There has been no change in the ownership or management of the property in the past 12 months or there is the possibility that a change in ownership or management may occur in the next 12 months. Provide details of the change or possible change.

Required CCPC Attachments

- Current utility allowance calculation method and supporting documentation.
- Request to Change Common Area Staff Unit – If needed.
- Completed Owner/Agent/Site Contact information page.
- IRS forms 8609 for each building with Part II for the First Year completed by the owner – if not previously submitted.
- OHCS Initial Certification Excel Spreadsheet
- Average Income Test Annual Reporting Excel Worksheet
- Procorem/ProLink Owner Worksheets (Average Income)

The owner is further required to submit tenant file documentation and unit turn-over rent readiness documentation for specified units upon request from OHCS.

Section 42 regulations consider failure to supply a completed annual Certification of Continuing Program Compliance to be reportable noncompliance. The CCPC is to be signed by the Owner or an Agent (who must have signature authority provided by the Owner). Proof of signature authority is required to be submitted with any CCPC that is signed by an Agent or authorized representative of the Owner. If the CCPC is not submitted along with all required attachments by the specified due date, OHCS may submit a Form 8823 to the IRS reflecting the entire property as out of compliance.

- The Owner should review the CCPC documents prepared by their Agent before signing them. Providing false or erroneous information may result in non-compliance and /or tax consequences.

Annual Reporting - Noncompliance

Failure to submit a completed annual Owner's Certification of Continuing Program Compliance and all required attachments/documents is considered to be noncompliance**.** The Certification is to be signed by the Owner or a Managing Agent with legal signature authority and submitted to OHCS annually. All CCPCs are due annually by the last day of February.

Part 4.31 – Record Keeping and Record Retention

The records for the first year of the credit period must be retained for the entire compliance period plus six (6) years beyond the end of the federal compliance period of each building in the property. Initial qualifying tenant files must be kept a total of 21 years.

Owners are required to keep records for each qualified low-income building in the property showing the following information:

1. The total number of residential units in the building; including the number of bedrooms and the size, in square feet, of each residential rental unit
2. The percentage of residential units in the building that are low-income units meeting the election of 20@50, 40@60 or the average income minimum set-aside
3. The rent charged on each residential unit in the building; including the basis for determining the utility allowance
4. The low-income unit vacancies in the building by date and the rentals of the next available unit(s) by date
5. The low-income initial certification and annual certification of each low-income tenant/household and documentation to support those certifications; including Section 8 and Rural Development (RD) properties and must be available during any review
6. The eligible basis and qualified basis of the building at the end of the first year of the credit period
7. The character and use of the nonresidential portion of the building included in the building's eligible basis under the Code (e.g. tenant facilities that are available on a comparable basis to all tenants and for which no use fee is charged, except for laundry facilities which may be coin operated as demonstrated in the operating projections made at the time of application) and
8. Evidence that resident services are being provided as per the LIHTC application materials or have been amended with OHCS approval.

The owner of any building for which a low-income housing tax credit has been or is intended to be claimed must keep records that include all of the information above **on a building-by-building basis** for a minimum of six (6) years after the due date (with extensions) for filing the federal income tax return for that year.

In addition, when an Owner hires a Management Agent, they must make sure that written agreements are in place regarding the tenant files. Tenant files should be considered as part of the property. If files are maintained by the Management Agent, they must be provided to the Owner if a change in management takes place and/or at the owner's request.

Part 4.32 – Administrative Notebook Requirements

The Notebook **must** contain the following:

- Copies of all Regulatory Agreements (Reservation, Declaration, Loan or Grant Agreement and all others that apply) applicable to all program and funding types
- Applicable current, yearly income limits
- Applicable yearly minimum and maximum rent limits (HUD established)
- Minimum and Maximum Rent Limits in Effect at Initial Grant or Loan Agreement
- Proposed rental and utility rates for the following year; including OHCS rent approval
- Latest utility allowance documentation
- Resident Services Plan with supporting documentation

- Current Affirmative Fair Housing Marketing Plan and records demonstrating reviews of the plan on a periodic basis; including copies of advertising – ads, flyers etc.
- Copy of VAWA Policy, Notice and Emergency Transfer Plan Documents
- Copy of e-signature Policy (if applicable)

OHCS recommends that the following be placed/maintained in the Administrative Notebook:

- Current Management Plan
- Current and previous years income limits, i.e. 2020, 2021 ,2022, 2023, 2024
- Current and previous years minimum and maximum rent limits; i.e. 2020, 2021 ,2022, 2023, 2024

Part 4.33 – Permanent Supportive Housing for Persons Experiencing Homelessness

Applications funded as permanent supportive housing ("PSH") for persons experiencing homelessness are subject to the following requirements:

- Must utilize a Housing First approach. Housing First is an evidence-based approach to engage and rapidly house individuals experiencing homelessness without any test of housing readiness and without a requirement for participation in services.
- PSH units are permanent, rental housing units. There is no time limit on occupancy- i.e., PSH is not a transitional housing or temporary housing model.
- PSH tenants have a lease and all the rights and responsibilities of a lease holder. The lease may not include language mandating participation in services.
- PSH 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, 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 specific housing retention plan to avoid an eviction due to specific lease violations.
- Services must be provided using a harm reduction approach to substance use disorders. Abstinence or participation in services/treatment cannot be mandated as a condition of occupancy.
- Must utilize eviction prevention philosophy, strategies, practices, and policies as formulated in a written eviction prevention plan specific to the project.
- Must report through the Homeless Management Information System ("HMIS")
- PSH units must include owner-paid utilities

SECTION 5: INCOME LIMITS, RENT LIMITS, & UTILITY ALLOWANCES

To remain in compliance, all Low-Income Housing Tax Credit (LIHTC) units must be determined income eligible and remain rent restricted throughout the affordability period. This section provides guidance on how to properly apply income limits, rent limits, and utility allowances.

All LIHTC units must be occupied by income qualified households, based on the income limits published annually by Housing and Urban Development (HUD). HUD refers to tax credit projects as "Multifamily Tax Subsidy Projects" (**MTSP**) 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, OHCS will publish a Technical Advisory (TA) and post the new income limits and corresponding rent limits on OHCS website: Income and Rent Limits

This information is provided by OHCS only for the owner's convenience as a courtesy. However, it is the responsibility of the owner, not OHCS, to verify its accuracy.

The applicable income and rent limits for a property depend upon the low-income set-asides the owner selected as identified on IRS Form 8609, Part II Line 10c, a nonrevocable election and the election of Line 8b, establishing the project as a multiple-building project. These elections are furthermore described in the property's REUA and Declaration.

Part 5.01 – Income Limits

The owner must ensure that the correct set of income limits is being utilized based on the applicable funding sources. The income limits may differ across programs even in the same county for the same year.

MTSP Income Limits

All tax credit units must be occupied by income qualified households, based on the MTSP income limits published annually by HUD. 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. The Owner/Agent (O/A) 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.

Maximum Income Limits

HUD establishes the MTSP income limits for different localities and adjusts them for household size, from one to eight persons. These limits establish the specific maximum annual dollar amount that a household can earn in order to qualify to reside in a LIHTC unit.

The maximum income limits for qualifying households depends on the Minimum Set-Aside election made by the owner on IRS Form 8609, Line 10c.

- Qualifying households in projects operating under the "20/50" election may not have incomes exceeding 50% of Area Median Income adjusted for family size.

- Qualifying households in projects operating under the “40/60” election may not have incomes exceeding 60% of Area Median Income adjusted for family size.
- Qualifying households in projects operating under the “Average Income” election may not have incomes exceeding 80% of Area Median Income adjusted for family size, and the average income restriction across all program units within the project must be at or below 60% AMI.

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

The 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 also comply with those additional elections as defined in the owner’s Final Application and Reservation Extended Use Agreement (REUA).

- **Reduced elections agreed to by the owner for tax credits will be required to be maintained and will be reviewed for continued compliance. Other funding requirements or state set-aside elections may further reduce the required limits. The most restrictive limit must be used**.

IRS Form 8609 Line 8b Election

OHCS issues the IRS Form 8609 for each building in a property once the cost certifications have been completed. The owner then completes Part II and submits the form to the IRS in order to start claiming credits on the property. The owner is also required to send a completed copy of the IRS Form 8609 to OHCS for record keeping and compliance monitoring purposes.

The owner will need to know how the Line 8b election on the first year filing of the Form 8609 is treated or will be treated and be able to relate that information to the management agent operating the property. IRS Form 8609, Part II, Line 8b states:

Are you treating this building as part of a multiple building project for purposes of Section 42? □ ***Yes*** □ ***No***

If the owner elects “Yes” and attaches the required statements to IRS Form 8609, all buildings are considered to be part of one project (multi-building project). All Section 42 regulations apply to all buildings, transfers may be completed between buildings as long as the household does not exceed 140% of Area Median Income (AMI), and the Gross Rent Floor Election (GRFE) is the same for all buildings in the property.

If the owner elects “No”, each building is to be treated as its own project for IRS Section 42 purposes, and for compliance purposes. All Section 42 regulations must be applied to each building separately, all transfers (except for reasonable accommodation requests) must retain income eligibility at the set-aside limit of 20@50, 40@60, or Average Income, the Gross Rent Floor Election (GRFE) will be applied individually to each building, and there may be a different set of rent limits for each building based on the GRFE.

OHCS strongly recommends developing an internal tracking system and making sure management is aware of both the owners Line 8b election and the GRFE for each property in the portfolio, to ensure rents are being held at the correct limits. Over-charged rents are reportable to the IRS on Form 8823.

HERA Special Income Limits

The Housing and Economic Recovery Act of 2008 (HERA) defines properties eligible to use the HERA Special limits as those that were in service in 2007 or 2008 and located in a HUD Hold Harmless Impacted area. Not all counties will have HERA special limits every year.

OHCS has added further interpretation of the HERA legislation that defines "in service" to mean any property that was placed-in-service on or prior to December 31, 2008. **Projects placed-in-service on or after January 1, 2009, will defer to the current year's Actual Income Limits published,** though once placed-in-service will be held harmless to any future decline in the actual income limit amount as allowed by IRS regulation.

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.

"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 potentially 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 therefore 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.

National Non-Metro Income Limits

In addition to the HUD Hold-Harmless Income limits, HERA provides certain LIHTC properties with rural or non-metro designations the option to use the **National Non-Metro Median Income Limit** versus the areas Actual Income Limit should it be higher. The United States Department of Agriculture (USDA)

determines whether or not the property is located in an area designated as rural. **This rule went into effect on 7/31/2008, is not retroactive and only applies to rural or non-metro LIHTC properties with 9% credit allocations. LIHTC properties with tax exempt bond financing or HOME funding are not eligible to use the National Non-Metro Income Limits.** If the property was placed-in-service on or prior to 12/31/2008, is in a HUD Hold-Harmless Impacted area, and has an address designated as rural (by the USDA), the owner may use the highest of the three income limits available.

Part 5.02 – Rent Limits

All LIHTC units must be rent-restricted based on the rent limits published annually by HUD. Under the HERA Act of 2008, LIHTC properties have their own rent limits calculated and published by HUD. These limits are referred to by HUD as Multifamily Tax Subsidy Projects (MTSPs). These limits are different from HUD AMI limits and will never go down for a property in subsequent years. Some counties are held harmless by HUD and have their own limits referred to as HERA Special Limits. **Existing LIHTC properties that receive new allocations of credits must use the Actual Income Limits applicable to the new allocation date.**

The owner must ensure that the correct set of rent limits is being utilized based on the applicable funding sources. The limits may differ across programs even in the same county for the same year.

The applicable rent limits for a property are determined by the Minimum Set-Aside election, line 10c, made by the owner on IRS Form 8609 and are included in the regulatory documents.

Rent Limit Terminology

Rent Limit is the maximum rent amount 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 the amount of any non-optional charges. Therefore, tenants cannot actually 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 5.07 below for more information on utility allowances.**

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 the amount of any non-optional charges. Therefore, tenants cannot actually 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 5.5 for more information on utility allowances.

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

Note: Rental assistance is not included when determining gross rent for the LIHTC unit.

Maximum Allowable Rent is the most an owner is permitted to actually charge for rent once a utility allowance for tenant-paid utilities (except telephone, cable television, and internet) and other non-optional charges are 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.”

Tenant-Paid Rent or lease rent is the actual rent charged to the household, as defined in the lease. The lease rent may never exceed the maximum allowable rent or the applicable published rent limit.

Gross Rent Floor is the rent limit in effect at the time funds are awarded and is defined as the lowest rent limit that the owner will ever be required to implement for a particular property. If the current year's HUD published MTSP limits drop below the gross rent floor, the owner is not required to accept lower rents, and a project may continue to use the rent limits established within the gross rent floor. It is important to note that there is no floor for income limits.

Calculating Rent Limits

Properties receiving tax credit allocations after January 1, 1990, must be rent-restricted based on an imputed, not actual, household size. Household size is imputed by the number of bedrooms in the following manner:

- An efficiency or a unit that does not have a separate bedroom – 1 person; and
- A unit that has 1 or more separate bedrooms – 1.5 person per each separate bedroom

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

For 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 for each of the 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). The $500 amount would be the maximum.

Part 5.03 – Maximum Rent Limits

Rent limits for qualifying households depend on the **Minimum Set-Aside** election made by the owner on IRS Form 8609. Qualifying units in projects operating under the "20/50" election may not have rents exceeding the 50% rent limit. Qualifying households in projects operating under the "40/60" election may not have rents exceeding the 60% rent limit. Qualifying units in projects operating under the "Average Income" election may not have rents exceeding the 80% rent limit, and the average rent restriction across all program units within the project must be at or below 60%.

The 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 also comply with those additional elections as defined in the owner's Final Application and Reservation Extended Use Agreement (REUA).

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

Part 5.04 – Federal, State or Local Rental Assistance

Gross rent does not include any rental assistance payments (tenant-based or project-based) made to the owner to subsidize the tenant's rent including Section 8 Housing Choice Vouchers or Project Based Vouchers (PBV), Section 8 Project Based Rental Assistance (PBRA), or any comparable federal, state, or

local government rental assistance program or any comparable rental assistance program to a unit or its occupants. The gross rent limit applies only to payments made directly by the tenant.

Only the tenant-paid portion of the rent payments (inclusive of tenant-paid utilities) is considered in determining if the rent exceeds the maximum gross rent permissible. Additionally, the gross rent may exceed Tax Credit limits at recertification, as long as the initial rent at move-in was under the limit and the household is receiving at least $1 (one dollar) in subsidy (rental assistance). If at any time the tenant is no longer eligible to receive the rental assistance, the owner must lower the tenant's rent to be at or below the maximum applicable program rent allowed.

- ***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**.***

The portion of the rent paid by Section 8 households can exceed the tax credit rent limit as long as the owner receives a Section 8 assistance payment on behalf of the household and the rent limit is exceeded due to Section 8 requirements for calculating the household rent portion. If no subsidy is provided (e.g., if HAP is $0), the household may not pay more than the tax credit rent limit allows. The same rule applies for other federal rental assistance programs, including but not limited to Continuum of Care 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 (PHA), **or** (2) a copy of the current HUD Form 50058 must be kept in the household's tax credit file in order to verify the Section 8 rental assistance received. For tenants residing in units with Section 8 Project Based Vouchers (PBV), the current HUD Form 50058 showing the amount of rental assistance 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.

NOTE: In relation to Housing Choice Section 8 Vouchers utilized within OHCS affordable housing units, the rent cannot be raised resulting in the tenant portion of the rent exceeding the calculated rent based on the tenant's income as established by the PHA (30% of AGI). Rents must be capped at or below the required housing authority payment standard per unit type to ensure the tenant portion of the rent is not increased.

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*

Part 5.05 – Utility Allowances

The utility allowance is an allowance included in the computation of gross rent under IRC §42(g)(2)(B) for the cost of any utilities, other than telephone, cable television, or internet, paid directly by the tenant(s) and not by or through the owner of the building.

Utilities may include heating, air conditioning, water heating, cooking, other electricity, water, sewer, oil, gas, and trash, where applicable.

A separate estimate is computed for each utility and different methods can be used to compute the individual utility allowances. The utility allowance is computed on a building-by-building basis.

If all utilities are paid by the owner and included in gross rent, the utility allowance is zero.

If all utilities are included in the household's gross rent payment, a utility allowance is not required. When utilities are paid directly by the tenant (as opposed to being paid by the owner/ development), a utility allowance must be used to determine maximum allowable rent. To qualify as part of the utility allowance, the cost of any included utility must be paid directly by the tenants, not by or through the owner of the building. If the owner or a third-party separately 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 below). The utility allowance for utility costs paid 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 $450 and the tenant pays utilities with a utility allowance of $66 per month, the maximum allowable rent chargeable to the tenant is $384 ($450 minus $66).***

*NOTE: HUD Form HUD-52667 "Allowances for Tenant-Furnished Utilities and Other Services" includes line items for range/microwave and refrigerator. These items only need to be included in the utility allowance calculation if they are not provided in the unit (i.e., if the tenant must furnish their own appliances).

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.

For tenants in LIHTC rent-restricted units in 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.

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 and sewer, that uses one master meter for the entire property or building instead of separate sub-meters for each unit. Management 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 occupants, 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 data. Instead, 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. Management 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.

Part 5.06 – Utility Allowance Annual Review

Utility Allowances must be reviewed annually to ensure that allowances used are comparable to what the tenant is actually paying. Owners may choose to review the utility allowance (UA) more than once a year, however, each time a review is completed, whether a mandated annual review, or a self-imposed review, the O/A will have a maximum of 90 days after the new allowances are determined to implement them into the maximum allowable rent computation.

The following provides when the 90-day implementation period begins, for:

- PHA – When the PHA makes the revision available.
- Utility Company – With receipt date of the new information.
- HUD Model – The date entered as the form date on the HUD form 52667.
- Energy Consumption Model - 60 days after the end of the last month of the 12-month period used to compute the estimate.

Each year when the allowances are reviewed, the O/A must retain **all source documentation,** and any supporting documentation or data collected that is used to calculate the utility allowance. This

information should be kept on file in order to provide proof of compliance during the entire credit period and made available to the IRS or OHCS on request.

The O/A must submit the utility allowance documentation paperwork to OHCS each year with the Certification of Continue Program Compliance (CCPC), at inspection/review when requested. The information must be made available to all tenants at the beginning of the 90-day period before the new utility allowance can be used to calculate rent. Proof of resident notification should be kept on file for OHCS review. If the utility allowances are not changed, documentation must be obtained to show that the UAs have been reviewed, and no changes were required to be made.

Notification Requirements

PHA provided UA: If the Owner obtained a utility allowance from the PHA, the Owner must make the utility allowance calculation notification available to all tenants at the beginning of the 90-day period.

Utility Company, HUD Model, Energy Consumption Model provided UA: The Owner must submit copies of the utility calculations with supporting documentation to OHCS and make the calculations available to all tenants in the building at the beginning of the 90-day period. OHCS may require additional documentation from the Owner during the 90-day period.

Part 5.07 – Changing Utility Allowance Methods

Owners are not prohibited from changing methods used for calculating a utility allowance in order to most accurately calculate the utility allowance for a property.

The O/A is responsible for knowing the allowed method of each funding source and should check with OHCS when trying to determine if a specific method can be utilized. Allowable methods for utility allowance calculations are based on the funding that the property has received. Some calculation methods are not allowed by certain funding types and are subject to change as revisions are made by the funding sources.

For established properties and a change in utility allowance method, OHCS will review and acknowledge the source chosen

OHCS must be notified of the proposed change and must approve the provider of the energy consumption model calculation if applicable.

A contact list of Approved-UA-Calculators.pdf is located on the OHCS website.

Providers who would like to be added to the approved list should contact the Portfolio Management Section at OHCS. Allowable methods for utility allowance calculations are based on the funding that the property has received. Some calculation methods are not allowed by certain funding types and are subject to change as revisions are made by the funding sources.

Part 5.08 – Approved Methods

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), they must use the applicable HUD utility allowance as given by the Public Housing Authority (PHA) administering the assistance. However, if the building is RD-assisted or HUD-regulated, use the RD or HUD approved utility allowance instead.

LIHTC buildings that are not RD-assisted or HUD-regulated may use any of the following utility allowance options:

4. Use the applicable local **PHA's utility allowance**. This is the most common utility estimate method used by LIHTC properties that are not regulated by RHS or HUD. Most PHA allowances are published by the Housing Authority for each County on at least an annual basis. If multiple local PHA's serve one area, owners must choose the PHA that serves the property location. Each PHA is required to review and update utility allowance information on an annual basis and publish new calculations if there has been a ten percent or more (either higher or lower) change since the utility schedule was last revised. When submitting proof of the documented PHA UA to OHCS you should circle and total the items in the utility allowance(s) that apply to the units and calculation for the property. Owner agents are advised to check every 60 days to see if the PHA has updated its UA charts; or

5. **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. This method requires written documentation from the utility company stating that the specific rates indicated are "estimates for this specific property". For this method the utility company provides the estimated cost of the utility for units of similar size and construction for the geographic area that the property is located in. In deregulated areas the IRS regulation requires that the written local estimate must include all component deregulated charges for providing the utility service. A utility company estimate must come from a provider that actually offers utility services to the building. A copy of the utility company estimates, and backup documentation must be provided and retained by the owner of the building. The estimate must be documented on the utility company's letterhead

6. **Energy Consumption Model:** Upon request, OHCS will approve a utility allowance estimate for a new construction project based on actual tenant consumption (utility usage) data. A building owner may calculate utility estimates using an energy and water and sewage consumption and analysis model (energy consumption model). The energy consumption model must, at a minimum, take into account specific factors including, but not limited to, unit size, building orientation, design and materials, mechanical systems, appliances, characteristics of the building location, and available historical data.

Utility rates used for the energy consumption model must be no older than the rates in place 60 days prior to the beginning of the 90-day period. Owners using this modeling method must maintain and provide documentation providing the source and content of all factors considered when computing the utility allowance calculation. The utility consumption estimates must be calculated by a properly licensed engineer or other qualified professional.

The qualified professional and the building owner must not be related. Energy Modeling Consultants that are not licensed engineers utilized by Owners/Agents must be pre-approved by OHCS.

The list of OHCS qualified and approved calculators can be found on the OHCS website at: Approved-UA-Calculators.pdf

Requests from energy consulting firms and utility consumption analysts are considered for approval by OHCS on an individual basis. To qualify for the OHCS referral/ approved consultant list for such services the energy professional must submit a current resume demonstrating education and experience, an LIHTC energy modeling sample, and proof of licensing to work in the State of Oregon (more information may be requested upon review). Upon request those with successful submissions will be placed on the Approved list of Energy Modeling Consultants (found on the OHCS website at the link above) from which organizations seeking UA calculators may select. Licensed Engineers do not have to be pre-approved by OHCS however they must be properly licensed to work in Oregon and must be able to demonstrate that they are familiar with modeling LIHTC building UA modeling and calculations. Further, regardless of the type of the qualified professional/licensed engineer, the Agency may approve or disapprove of the energy consumption model proposed and/or require information before permitting its use.

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, OHCS 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 Oregon and must be in the same climate zone as the development for which the estimate is being completed.

Once the project achieves 90% occupancy for 90 consecutive days, the owner is required to resubmit usage data to OHCS using the actual units in the development.

At the time the owner submits the request for approval to OHCS, 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 OHCS approval or (2) at least 90 days from the date the proposed utility allowance was submitted to OHCS and made available to the tenants.

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

7. 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

At the time the owner submits the request for approval to OHCS, 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 OHCS approval or (2) at least 90 days from the date the proposed utility allowance was submitted to OHCS and made available to the tenants.

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

8. OHCS/Qualified Engineer Estimate: The owner may use an independent licensed engineer or qualified professional approved by OHCS to calculate a utility estimate model. A list of approved engineers/professionals is available at Approved-UA-Calculators.pdf. The qualified professional must:
    a) be approved by OHCS, and
    b) not be related to the development owner as defined in Internal Revenue Code Section 267(b) or 707(b).

   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.

   At the time the owner submits the request for approval to OHCS, 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 OHCS approval or (2) at least 90 days from the date the proposed utility allowance was submitted to OHCS and made available to the tenants.

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

Part 5.09 – Utility Allowance Noncompliance

The following events may determine a property out of compliance with the utility allowance requirements:

- The appropriate utility allowance is not used.
- The utility allowance is not calculated properly.
- Rents are not reduced when the tenant is paying for the utility.
- Owner/Agent did not review the basis on which the utility allowance was established at least once during the calendar year.
- Owner failed to update rents for a UA changed within the 90-day period
- Owner failed to maintain adequate documentation regarding the computation of utility allowances. Without proof of the UA or how it was calculated, there is no way to correctly calculate the rent.

General Rule

Customary fees that are reasonable and normally charged to all low-income tenants, such as refundable security deposits, pet deposits, application fees, and late payment fees are normally permissible. However, OHCS does not support and will not approve the use of pet rent in affordable housing throughout the State. Collection of pet rent is considered a violation of compliance. In addition, eligible tenants must not

be charged a fee for work involved in completing the forms or documentation required by the LIHTC program, including completion of the Tenant Income Certification.

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.

Charges for any mandatory amenities and/or services, such as garages, carports, meals, laundry, and housekeeping, must be counted as part of the gross rent for those units. Charges for optional services other than housing do not have to be included in gross rent, but they truly **must be optional**. No separate fees should be charged for tenant facilities (i.e., pools, parking, storage, use of recreational facilities) if the cost of the facilities were included in eligible basis.

Under Treas. Reg. §1.42-11(a)(3), 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 building owners.

Application fees may be charged to cover the actual cost of checking a prospective tenant's eligibility including credit history, criminal history, and landlord references. The fee is limited to recovery of the actual out-of-pocket costs. No amount may be charged in excess of the average expected out-of-pocket costs of checking tenant qualifications at the property. It is also acceptable for the applicant to pay the fee directly to the third party actually providing the applicant's rental history.

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.

Refundable fees associated with renting an LIHTC unit are not included in the rent computation. Required costs or fees, which are not refundable, are included in the rent computation. Examples of items that must be included in rent computation include fee(s) for month-to-month tenancy and renter's insurance. Fees for preparing a unit prior to occupancy must not be charged.

Owners are responsible for physically maintaining LIHTC units in a manner suitable for occupancy. Gross rent does not include any fee for a supportive service paid to the owner by any governmental program (such as State Medicaid or Elderly and Disabled Services assistance) if the amounts paid for rent and assistance are not separable. Under Treas. Reg. §1.42-11, supportive services mean any service designed to enable residents to be independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped.

Examples of supportive services include transportation, housekeeping, or planned social activities. Supportive services do not include continual or frequent nursing, medical, or psychiatric services.

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, etc.) and these fees would not be 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.

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.

Part 5.11 – Rent Adjustments

OHCS must approve the property's rent structure at lease-up and must pre-approve all rent increases as described in the most recently published OHCS Rent Increase Policy throughout the affordability period.

Owners must annually provide OHCS with information on rents and occupancy of all LIHTC units to demonstrate compliance with this section.

Annual Rent Increase Notifications (RIN) and Rent Rate Approval increase requests must be submitted to OHCS Portfolio Administration Section, Portfolio Management (PM) and must follow the guidelines as outlined in the current OHCS Rent Increase Policy

NOTE: OHCS may update the policy when determined appropriate and will notify owners and agents with a published Technical Advisory.

The written request must be submitted no later than 90 days prior to the intended implementation date and must include the following:

- Explanation of the need to increase rents at the property
- Comparison of the current rents with the proposed rents
- A copy of the current utility allowance documentation
- A copy of the current operating budget for the property

Further, only one request to adjust/increase rents per year will be considered.

OHCS no longer provides approval of rents to the maximum allowed regardless of the actual amount of rents being charged at the property. The requested rent increase must be for actual rents being charged at the property per unit type from the effective date of the new rents forward until the next change is needed (not more than once per year). OHCS considers multiple criteria when reviewing a request to increase rents for a property. The requested rent adjustment/increase will be reviewed for the following:

- Reasonableness for market; market comparable study
- Reasonableness for the tenant population
- Compared to the current maximum HOME rent limits for the property
- Property's vacancy rate history
- Lease; should allow for rent adjustment/increase with notice

If the information reviewed does not support the need for an increase, the request may not be approved. Contact the Senior Asset Management Analyst for the property with any questions.

Please note, the property will be considered out of compliance if a change/increase in actual rents being charged has taken place without the required pre-approval from OHCS. Further, retro-active rent increase approvals are no longer provided.

Rent increases might occur when:

- HUD-published rent limits increase;
- The tenant pays utilities, and the utility allowances decrease;

Rent decreases might occur when:

- The HUD-published rent limits decrease; or
- If the tenant pays utilities and the utility allowance increases causing the total rent plus the utility allowance to be more than the HUD published rent limits.

OHCS notifies owners and managers by email and posts the new rent limits on its website when they are released. Owners/Agents are never required to charge rents that are lower than the rent limits that were in effect at the time OHCS made its initial credit allocation to the property. Any changes in rents for occupied units are subject to the terms of the tenant's lease.

Further, in relation to Housing Choice Section 8 Vouchers utilized within OHCS affordable housing units, the rent cannot be raised resulting in the tenant portion of the rent exceeding the calculated rent based on the tenant's income as established by the public housing authority.

NOTE: The owner must give existing tenants a 90-day notice of a rent increase as well per ORS 90.323.

Part 5.12 – Violations of the Rent Limit

In some cases, rents become overcharged when owners assess fees not permitted under Section 42, such as fees for the use of resident facilities (i.e. swimming pools, parking areas, recreational facilities) that were included in the property's eligible basis. Other cases involve owners charging fees to residents as a condition of their occupancy, where the fees are in addition to gross rent (i.e. mandatory renters' insurance, fees for month-to-month tenancy, one-time washer/dryer hook- up fees).

The Low-Income Housing Tax Credit Program mandates that **gross rents remain restricted on an annual basis** (under IRC §42(g)(2)(A)), **as well as on a monthly basis** (under IRC §42(g)(2)(B)). If it is discovered that an owner has overcharged rent to an LIHTC resident at any point during a calendar year, the following results will occur:

3. The owner will be required to refund the excess rent amount to the tenant for all months affected, and
4. OHCS will file IRS Form 8823

The IRS may recapture tax credits on the affected unit for the remainder of the calendar year, beginning with the first month the rent was overcharged.

Example 1:

Maximum LIHTC Gross Rent =	$550	Rent is due on or before the 5th day of each month
Tenant Rent =	$525	A Tenant doesn't pay their rent until the 8th day
Late Fee Assessed =	$ 75	The owner has the right to assess a late fee because of
Total Paid by Tenan =	$600	the lease violation committed by the tenant.
		Gross rent has not been overcharged in this case.

Example 2:

Maximum LIHTC Gross Rent =	*$550*	Tenant moves in on March 1st and receives a rent
Tenant Rent (March) =	*$ 0*	concession. Owner wants to recoup the concession
Tenant Rent (April-December) =	*$575*	during the remaining months of the year.

Gross rent was overcharged from April through December
Not only will the owner have to refund the amount overcharged for each month, but they may also lose credits on the unit from April through December. If the unit is rent restricted as of January of the next year and the tenant has received a refund for the overcharged rent, the unit can be placed back into compliance.

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).**

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.

The 8823 Guide states on Page 11-10:

- ***"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."***

The earliest date an overcharged LIHTC unit can regain compliance is the first day (January 1) of the following tax year, provided the unit is rent restricted under the applicable program rent requirements.

Therefore, if OHCS 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, OHCS 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, OHCS should be notified immediately, and the owner should act to correctly adjust the rent and reimburse the overcharges.

Part 5.13 – State Elected Deeper Income and Rent Targeting Requirements

Deeper targeting requirements are common in 9% competitive tax credit deals as well as 4% bond deals. This is normally a State election (Owner elects to designate units with more restrictive requirements than the federal requirement) and is separate and most often more restrictive than the federally elected

set-aside of 20@50 or 40@60 that is indicated on the IRS Form 8609 form. The deeper targeting is usually determined by the owner at application or loan underwriting and will be monitored by OHCS on an ongoing basis. O/As are required to track all set aside requirements and monitor units to make sure that they are being utilized in the best manner possible. The goal of deeper set-aside units is to provide lower rents to lower income Oregonians. When a lower set-aside unit household has income that increases to the point where they meet a higher set-aside and can afford a higher rent, efforts should be taken to float the lower set-aside (or rent the next available unit) to those who meet the lower set-aside income limit and will benefit from the rent reduction. Tenant Selection policies should indicate the O/A's procedure on how lower set-asides will be designated. Leases should indicate that set-asides may be swapped as applicable when a household's income increases. Even though violations of the more restricted State elected set-aside may not appear to be federal violations, it is common practice among States to report violations as non-compliance with the Reservation and Extended Use agreement.

***Example**: A property has a federal set-aside of 40@60 however the Owner agreed to provide 100% of the units to tenants who were at or below 60%. Per the REUA ten of the units at the property are designated to be rented to tenants who are at or below 40% of the income limit at rents of 40%. A family who resides in and qualified for one of the deeper set-aside 40% units has an increase in annual income (bringing the household to 60% AMI at recertification). This family is now able to pay a higher 60% rent, and the lower 40% rent should either be 1) floated out to a family who meets the lower set- aside of 40% or 2) offered to the next person on the wait list who meets the lower set-aside limits.*

SECTION 6: ACQUISITION, REHAILITATION, RESYNDICATION

A property being acquired by a new ownership entity, may be awarded tax credits for the acquisition and rehabilitation (rehab) of an existing building that does not already have tax credits. In the first year, Initial Certifications must be completed to qualify existing households in the Low-Income Housing Tax Credit (LIHTC) Program.

Part 6.01 – Acquisition / Rehabilitation Credit Certification

For projects that have both acquisition and rehab credits, those credits are always earned simultaneously. Section 42(e) (4)(b) of the Code says the applicable fraction for the rehab shall be the applicable fraction for the existing building. The “existing” building means the building that is being acquired.

A property awarded tax credits for both, the acquisition and rehabilitation (rehab) of an existing building, will receive two sets of credits, one for acquisition and one for rehabilitation, and will therefore have two (2) 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.

Initial Certification Type	Income and Rent Limits	Move-in Date	Effective Date	Other Information
Existing Households Certified within 120 Days Before or After the Building Acquisition Date Use the limits in effect as of the building	Use the limits in effect as of the building acquisition date.	Use the initial certification effective date.	Use the building acquisition date.	OHCS recommends including a clarification record with the household's original property move-in date.
Existing Households Certified More Than 120 Days After the Building Acquisition Date	Use the limits in effect as of the certification effective date.	Use the initial certification effective date.	Use the date the last adult member signs the TIC	OHCS recommends including a clarification record with the household's original property move-in date
New Households Certified After the Building Acquisition Date	Use the limits in effect as of the certification effective date.	Use the date the new household takes occupancy of the unit	Use the move-in date.	N/A

Part 6.02 – Acquisition / Rehabilitation Certification Requirements

Existing tenants (Previously Non-LIHTC Buildings)

When tenants are residing in a building that has been acquired for acquisition and/or rehab the Agent will need to work closely with the Owner to develop a plan for certifying the existing tenants that will maximize the credit allocation. How and when an Owner/Agent (O/A) should certify the existing residents eligible for the LIHTC program will be based on several factors including:

- The date of acquisition.
- If the owner will be relocating the resident during a building's rehabilitation activities.
- When the owner plans to complete a building's rehabilitation.
- When an owner plans to elect to start the credit period.

When an owner completes the rehabilitation activities by December 31st of the same year as acquiring the building, the units occupied by qualified residents may begin to produce a tax credit at acquisition if the tenants are certified in time. When an owner completes a building's rehab the year following acquisition, the units occupied by qualified residents may begin to produce a tax credit in January of the year the owner completes the rehab activities.

NOTE: Acquisition and rehab credits are satisfied with one set of certification paperwork.

Existing Households at time of Acquisition

The Owner must certify all existing residents within 120 days of the acquisition date. When certifying existing residents before acquisition, delays an owner may experience with the closing on the purchase of a property can often hinder certification timing. It is a standard recommended practice to begin completing TICs for existing residents no more than 60 days before an owner expects to close on the purchase of an LIHTC property.

If Acquisition and Rehabilitation Occur in the Same Year

The owner 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 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 an Initial Certification 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.

- ***Example – Claiming credits when acquisition and rehabilitation are completed in the same year****: A building is acquired on February 1, 2023, and rehabilitation is completed on October 1, 2023. The owner may begin claiming credits back to February 1 (date of acquisition) for those units that were qualified*

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, e.g., last adult signature and date.

- ***Example – 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.

New Households after Acquisition Date

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. When the household moves into a unit after the building is acquired but before the beginning of the first year of the compliance period, the tenant income certification is completed using the income limits in effect at the time of the certification and the effective date is the date the household moves into the unit.

If Acquisition and Rehabilitation Occur in Different Years

For all in-place tenants qualified within the 120-day window before or after acquisition, the acquisition date is used as the effective date on the Tenant Income Certification (TIC).

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. The acquisition date is used as the effective date on the Tenant Income Certification (TIC).

- ***Example – Claiming credits when acquisition and rehabilitation are completed in different years:***
  A building is acquired on October 1, 2022, and rehabilitation is completed on April 1, 2023. The owner may begin claiming credits on January 1st, 2023 (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.

This only applies when credits are deferred and has the most impact on projects that are mixed income.

Safe Harbor & "The Test"

The IRS created the safe harbor to allow owners to use existing tenants as tax credit qualifying households in an event where the household was income eligible when the owner purchased the building but then went over the income limit during the rehab construction period before credits were initiated.

If the credits are deferred, units qualified before the start of the credit period with households who are still in-place at the start of the credit period will not need to be re-qualified. However, if they have been at the project more than 120 days before the start of the first credit year an "income test" will likely be needed at the beginning of that year. The income test is self-certification by the household on whether their income has changed since they were initially qualified. If their income has changed, they will need to provide documentation so that their income can be requalified.

For those units that must be tested, the "test" consists simply of having the household complete a Self-Certification that identifies all current sources of income. 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, 2022, and rehabilitation is completed on March 1, 2023. The owner certified all existing households within the 240-day window, so the effective date of each certification is July 1, 2022 (the date of acquisition). Because rehabilitation is not completed until 2023, the owner cannot claim credits until January 1, 2023.*

  As of January 1, 2023 (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, 2023 (this includes all of the in-place households that were certified effective as of July 1, 2022).

  Example 2 – "Test" not needed: *A building is acquired on November 1, 2022, and rehabilitation is completed on June 1, 2023. The owner certified all existing households within the 240-day window, so the effective date of each certification is November 1, 2022 (the date of acquisition). Because rehabilitation is not completed until 2023, the owner cannot claim credits until January 1, 2023. 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, 2023 (the beginning of the first year of the Credit Period).*

Annual Recertification

After the initial LIHTC certification is completed for an existing household, the LHTC annual recertification date should be tied to that initial certification effective date. However, if another affordable housing program has established a date that conflicts with the LIHTC annual recertification date, OHCS allows

owners to align the LIHTC recertification dates to the other affordable housing program, as long as the household never goes more than 12 months without a LIHTC annual recertification

Part 6.03 – Rehabilitation (Only)

The rehabilitation placed-in-service date does not directly relate to occupancy. 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. Please see Part 6.05 Resyndication existing LIHTC properties.

Part 6.04 – Transfers or Relocations

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.*

When tenants are relocating within the same property, the tenant may take their TIC and LIHTC status to their new unit. The tenant stops producing a credit in their old unit and will start producing a credit in their new unit (the units swap status).

It is very important to take into consideration if the building(s) will be part of a multiple building property as elected on line 8b of the IRS Form 8609 (owner elects ‘yes’ to the 8609 8b election).

- If owner elects ‘yes’, owners can transfer tenants between buildings so long as the household is not over the 140% AMI limit at the most recent certification.
- However, if a household is over the 140% AMI limit even if the project is a multiple building project, the owner cannot transfer between buildings. The owner must do a move-out and a new move-in to the other building.

If the owner elects ‘no’ to the 8609 8b election, households cannot transfer between buildings even if the household is under the 140% AMI limit at their most recent recertification without being certified.

When the tenant transfers or relocates, the resident’s first unit stops producing a tax credit and cannot be included in the applicable fraction until occupied by an LIHTC qualified tenant. Subsequently the resident may move back to their original unit, or another qualified tenant may occupy the unit and re-start its ability to produce a tax credit after the rehabilitation of the unit is complete.

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 LIHTC unit.*

Tracking

Tracking the credit and initial tax credit qualification dates for all lease-ups determined on a unit-by-unit basis is very important to the tax credit lease up process. When relocating tenants, it is also very important that the owner tracks specific months that tenants produced a tax credit in their first unit and in what months they produced a tax credit in their second unit. Owners should establish a tracking system to document monthly activity for each unit. For every tenant, the owner must track by unit:

1. The effective date of the initial TIC
2. The original unit and date of occupancy
3. Any unit the tenant relocated to and the date of the move
4. The months during the first year of the credit period the tenant generated a tax credit specific to each unit that they may have occupied.

Removing Unqualified In-place Households

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. 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.

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.

The Owner must ensure that it has taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, non-profit organizations, and farms) as a result of a project allocated tax low-income housing tax credits. Please see Section 4, Part 4.26 for details on the Uniform Relocation Act (URA)of 1973.

Part 6.05 – Resyndication

If an existing tax credit development plans to re-syndicate a project (obtain new tax credits on a property that already has/had tax credits), and 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.

Resyndication allows grandfathering; Acquisition/Rehab will allow "grandfathering" but must comply with 240-day rule to establish acquisition credits with the acquisition date.

Management should continue following all rules required during the 15- year compliance period including but not limited to:

1. The full-time student rule;
2. The available unit rule;
3. The vacant unit rule;
4. The transfer rule.

Qualifying Information for Existing Tenants

It is imperative that Owners/Agents obtain documentation demonstrating that current information regarding income and asset information has been obtained to demonstrate that existing tenants have been qualified properly, and the annual LIHTC student status verified.

OHCS will allow the original move-in (MI) certification or annual recertification (AR) completed prior to the new allocation for purposes of demonstrating the household to be determined fully income qualified and the unit eligible for tax credits.

If the original file or a recent annual recertification is not available or sufficient to prove eligibility, a full recertification must be completed using limits in effect at the time of the recertification. This establishes a point in which the household qualified even if after move-in. The required LIHTC tenant certification questionnaire, in addition to applicable mandatory forms must be completed, and must be dated within 120 days of the effective date of the certification.

Investors

LIHTC investors may impose requirements beyond those imposed by the IRS and/or OHCS. It is important that the Management Agent work with the Owner and Investor to make sure that the requirements for all parties are met.

Leases

New leases should be implemented when a new Owner or Management Company is in place so that the lease is enforceable in a court of law if need be. In addition, when tenants are transferred from one unit to another unit, it is important that a proper lease is put in place for the unit that they reside in indicating the updated unit number and other applicable information.

A LIHTC Lease Rider/Addendum must be obtained if the lease does not contain LIHTC requirements.

Over Income Tenants Who Were Previously Qualified for Credits at Same Property

When re-syndicating, an LIHTC unit occupied before the beginning of the credit period will be considered a low-income unit at the beginning of the credit year even if the LIHTC tenant income exceeds the income limit at the beginning of the credit period. To be considered eligible for the new credit, the property must be under a Reservation and Extended Use agreement and the Owner must be able to produce the initial tax credit qualifying paperwork for the tenant. The tenant should be income certified for the new credits (even if over-income) and a copy of the previous tenant income certification (that qualified them for the original credits) must be kept in the new file.

Households exceeding the 140% limit are considered qualified, but the Next Available Unit Rule remains in effect.

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.

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.

Acquisition and Rehabilitation of an Existing Tax Credit Development

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.

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 6.02 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.

To satisfy the Acquisition and Rehab requirements, the initial Tenant Income Certification must be completed and signed by all adult households within 120-days before or after the Acquisition date.

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.

SECTION 7: MANAGEMENT AGENT & PROPERTY MANAGEMENT

This Section provides an overview of management agent and OHCS property management required documents and processes, and policies.

Part 7.01 – Management Agent Plan & Qualifications

The Owner/Agent (O/A) of Low-Income Housing Tax Credit (LIHTC) properties are required to obtain approval of a property management agent from OHCS which requires the submission of the Management Agent Packet (MAP) to OHCS. The packet and required supporting documents within the MAP must be reviewed and approved by OHCS prior to lease-up activities, property completion and any subsequent change in management or ownership throughout the period of affordability. From time to time, OHCS will issue notices to explain, augment, or interpret these requirements. The MAP collects information regarding the O/A relationship, site staffing and their operational responsibilities, marketing efforts and resident service programs. In addition, it identifies management's Fair Housing procedures and policies, the process for screening of applicants, mediation protocol, and compliance procedures. The O/A must amend elements of the MAP to reflect any future changes in program requirements or management policies when applicable.

Third-party Management Agents are subject to licensing requirements by the OR Real Estate Agency per ORS Chapter 696. Owners must confirm prior to entering into a Management Agreement.

The O/A must hold an active registration with Oregon Secretary of State to conduct business activities.

Changes of Management Agent

The selection of the Management Agent is the responsibility of the Owner; however, the Agent is subject to approval by the Portfolio Support (PS) section of OHCS. A completed MAP is required and must be submitted to OHCS for any proposed change in property management. Owners must submit requests for changes in the Management Agent at least 60 days prior to implementation. OHCS does not give blanket approval for any management agent. Proposed property management must be reviewed and approved on a property-by-property basis, regardless of the number of LIHTC properties currently managed by the proposed management company.

All Owner and Agent changes must be pre-approved by OHCS.

Copies of the Management Agent Packet (MAP) pdf are available on the OHCS website at: Oregon Housing and Community Services : Management agent approval process : Housing Compliance & Monitoring : State of Oregon

Part 7.02 – Management Agreement

The Management Agreement (Agreement) between the Owner and the Agent stipulates the contractual requirements for property management operations.

The Agreement will continue in force until canceled by either party. A provision for this must be included in a section of the Agreement titled: EXPIRATION AND TERMINATION.

A copy of the Agreement must be submitted to OHCS along with the completed Management Plan and Management Agent Packet (MAP) to demonstrate that the Agent is qualified as described (required) in the MAP.

The Owner is responsible for keeping OHCS Portfolio Management informed of any event that might affect the property's compliance with program regulations as described in Section 42 and for certifying annually the property's Certification of Continued Property Compliance (CCPC). The Owner must submit written notification of changes in Ownership, the Management Company, Portfolio/Asset Manager or Agent, and site manager.

All changes of contact information such as the email address, mailing address, telephone number and fax number must be submitted in a timely manner.

Management Agent and On-site Personnel

The Agent and on-site personnel are responsible to the Owner for implementing the LIHTC Program requirements and the provisions of the property's Management Plan. Anyone who is authorized to lease apartment units to tenants should be thoroughly familiar with and follow all federal and state laws, rules, and regulations governing certification and leasing procedures including but not limited to Oregon Landlord/Tenant Law and Fair Housing Law.

The Agent must provide information requested by the Portfolio Management Section and submit, on behalf of the Owner, all required reports and documentation in a timely manner. Annual certification documents may be signed on behalf of the Owner by the Managing Agent with legal signature authority. Proof of legal signature authority may be requested by OHCS.

Management Agent/staff should ensure that tenant occupancy information remains confidential but is accessible to authorized representatives of OHCS and/or HUD.

Part 7.03 – Monitoring Fees

OHCS assesses an annual charge to all properties during the entire term of affordability. The monitoring fee is a per unit fee, as described in OHCS-Funding-Charges-Document.pdf per year throughout the initial compliance period and is then reduced per unit, dependent on funding and property type (i.e. scattered site), per year during the extended use period.

OHCS will email the invoices for all properties each year in November with the **payments due the first business day after January 1st**. A late fee of $5.00 per unit will be assessed for all monitoring fees not paid by the due date.

Monitoring charges are not stacked. If unit funded by more than one source, the largest eligible monitoring charge will be used.

NOTE: OHCS reserves the right to adjust annual monitoring fees with proper notification to owners as circumstances change. Furthermore, OHCS may initiate additional fees associated with various monitoring functions and/or noncompliance issues, should it be deemed necessary.

Part 7.04 – Resident Services Plans

At the time of funding or at reservation of awards, OHCS requires the Owner of the property to complete and subsequently implement an approved Resident Services Plan. The Resident Services requirement has two major objectives:

- Through coordination, collaboration, and community linkages, residents will be provided the opportunity to access appropriate services which promote self-

sufficiency, maintain independent living, and support them in making positive life choices; and

- To effectively maintain the fiscal and physical viability of the development by incorporating into ongoing management the appropriate services to address resident issues as they arise or change over time.

General, low-income population support and services may include improving residents' ability to maintain their lease obligations, enhance quality of life through programs for employment, education, income/asset building, child and youth development, community building and improving access to services.

OHCS reviews the Resident Services Plans along with Management Plans. Both plans share common goals and in many instances one person performs the duties of both site manager and resident services coordinator. In other cases, the Owner will hire or work with an Agency to help coordinate and deliver the services outline in the plan.

The resident services activities review is part of ongoing monitoring compliance of a State- funded property. When the Agent and its employees perform the duties of a resident service coordinator, they are advised to work closely with the Owner in all aspects of the resident services requirement. The Owner carries the ultimate responsibility for compliance.

Resident Service Plan Requirements:

- Resident Services Plans must remain the same or similar as originally planned for the property until a substantial change is explicitly approved by OHCS Portfolio Management.
- Owners must review the plans at least every 5 years to determine they remain relevant for the current resident population at the property. Owners may utilize resident surveys for determining that the current services being offered are what the current resident population desires or needs.
- When a plan is changed the Owner must be able to demonstrate that the new proposed plan is comparable to the original plan and that it meets the need of the current resident population
- All changes made to the Resident Services Plan must be pre-approved by OHCS. Any proposed changes to the plan must be comparable or better than the original services plan and meet the needs of the current tenant population; contact the OHCS Compliance Analyst for questions.

Resident Services Reporting and Monitoring

OHCS approves and monitors the resident services plans and the O/A's implementation and ongoing provision of the approved services plan for each property. The following is a sample list of items that OHCS will review during each review/inspection:

- Service Provider and their qualifications;
- Agency or organization providing services for the property through an MOU;
- Owner's oversight process for services with property management;
- Method of services delivery; including who is responsible for delivery and plan monitoring;
- Description of how onsite resources (community room, etc.) are utilized;

- Examples of promotional activities: copies of calendars, fliers, newsletters, and marketing efforts;
- Detailed list of actual services provided, who provided them and the number of resident participants in each;
- Whether or not the approved plan is being followed or changed; and
- Description of methods and tools used to evaluate the services plan.

Each property's O/A is expected to complete the Resident Services Plan Report prior to each inspection/review and submit to the Compliance Analyst as part of the required review documentation.

Part 7.05 – Affirmative Fair Housing Marketing Plans

Owners/Agents must comply with all fair housing laws, which prohibit discrimination in housing based on race, color, religion, sex, familial status, national origin, age, and disability. The Affirmative Fair Housing Marketing Regulations (24 CFR 200.600) implement HUD's policy of assuring that persons of similar income levels in a housing market area have a like range of housing choices available to them, regardless of race, color, religion, sex, or national origin. The act, pattern, or intent of discrimination also extends to classes or groups.

A project must adopt and follow the Affirmative Fair Housing Marketing Plan (AFHMP) specific to the property and must be made readily available for review by OHCS staff**. The AFHMP must be updated, at a minimum, every five years, or sooner if determined appropriate,**

The plan must define the affirmative marketing procedures and actions that will provide information and otherwise attract eligible persons in the program service area to the available housing or assistance without regard to race, color, national origin, sex, religion, familial status, or disability.

Most LIHTC properties should have an approved (reviewed) Affirmative Fair Housing Marketing Plan (AFHMP) before the property is transferred to the Portfolio Management Section. This document outlines the strategies that will be addressed to market the property. More specifically, it outlines the strategies necessary to attract to the property those applicants who are considered least likely to apply. It also specifies racial and ethnic targets, not quotas, and the marketing strategies to attract this mix. The AFHMP must be completed at certain times throughout the affordability period of the property as follows:

- At development/new property
- When new funding is being added
- When new management begins at the property
- At the required review period

Required elements of the AFHMP include:

- Identification of those persons across the protected classes that are expected to be "least likely to apply";
- Description of how the owner generally will inform potential participants about fair housing and the project's affirmative marketing policy;
- Specific procedures or activities that will be used to inform and solicit applications "who are not likely to apply" without special outreach; and
- Delineation of the records that will be kept documenting the affirmative efforts.
    - **OHCS requires the use of HUD 935.2A**

- **For assistance, please refer to the** OHCS-AFHMP-Guide.pdf

The plan must be reviewed by OHCS staff. When submitting for review, the AFHMP document must be fully completed, including the attachment of census data print outs from the US Census Bureau website showing the percentages of demographic groups identified, and copies of all proposed marketing materials. Upon review, and if determined complete, the CA will provide letter of approval.

Advertising & Marketing Efforts

Owners of properties are required to perform the following.

- Must maintain records documenting outreach efforts in accordance with the AFHMP. Outreach and advertising efforts must include varied places and formats. It is NOT acceptable to advertise in only one place such as the internet.
- Must retain data on race and ethnicity of the head of household for all applicants who are accepted or rejected for LIHTC units.
- The Equal Housing Opportunity Slogan, logo, or statement should be used in all advertisement, public service announcements, press releases, and information mailings.
- Fair housing posters must be posted in conspicuous places (i.e., anywhere management meets with the public) within the property for public viewing. Non-discriminatory advertisements, statements and notices should be used. Discriminatory words, phrases, photographs, symbols, or forms that convey that rental units are available or not available to a particular group of persons because of race, color, religion, sex, handicap, familial status, or national origin must not be used.

A copy of the AFHMP with all attachments, should be retained on site for reference and provided to OHCS, HUD, or Fair Housing upon request. **Please see Section 4, Part 4.33 Administrative Notebook**.

Part 7.06 – Tenant Selection Plan

Tenant Selection Plan – Overview

Owners and Agents must comply with requirements to help ensure that all households have fair and equal access to affordable housing under the LIHTC program. The Owner/Agent (O/A)) is responsible for establishing tenant selection procedures. These procedures describe the methods and procedures for taking applications and screening tenants at the property.

OHCS requires the owner to have a written Tenant Selection Plan (TSP) that clearly specifies how households will be selected from the waiting list by describing eligibility requirements and the screening policies implemented by the O/A. The TSP must comply with all program requirements, and affirmative marketing requirements established by the Affirmative Fair Housing Marketing Plan (AFHMP).

Tenant Selection Plan Procedures

The Tenant Selection Plan (TSP) should outline tenant selection procedures describing the LIHTC requirements that affect tenants and tenant selection in terms that are clear and easy to understand. Specifically, the procedures related to LIHTC compliance are described in the following examples:

- How vacant units will be filled;
- LIHTC unit occupancy requirements
- Nondiscrimination policies and the affirmative marketing procedures, including accessibility requirements;

- Waiting list procedures;
- Tenant selection records that must be maintained; and
- Procedure for assigning lower set-aside rents

Owners should adopt and following tenant selection policies, procedures, and criteria that:

- Limit the housing to Program eligible families; income and student status
- Are reasonably related to the applicant's ability to perform the obligations of the lease;
- Clearly identify the criteria and articulate all requirements of occupancy and any locally established preferences or priorities;
- Do not exclude applicants and vouchers under Section 8 Tenant-based Assistance; Housing Choice Voucher program or HOME Tenant-based Rental Assistance;
- Provide for the selection of tenants from a written waiting list in the chronological order of their applications, including when properly assigning Section 504 accessible units (when applicable) to fill vacancies at the property;
- With the exception of accessible or special needs units, and approved preferences all units should be leased on a first-come first-served basis with tenants selected in chronological order from the waiting list;
- Provide immediate written notification to any rejected applicant of the specific grounds for rejection and maintain records of the rejection;
- Provide for reasonable accommodations for persons with disabilities to ensure they have equal access;
- Grievance and appeal rights
- Details describing VAWA protections and procedures

Tenant Selection Plan – Required Elements

The TSP must contain all of the required elements listed below and OHCS must pre-approve the TSP prior to implementation of any marketing or tenant selection as part of the Management Agent Packet (MAP) approval process. The written policy must clearly state the procedures and criteria the owner will consistently apply in drawing applicants from the waiting list, screening for suitability for tenancy, and implementing income targeting requirements, if any. Existing tenants of units who will remain in the unit are subject to other LIHTC/Program eligibility requirements, but not to the selection policies and procedures outlined in the TSP. The TSP must be made available to all applicants and tenants and will be reviewed by OHCS during compliance monitoring.

Tenant selection procedures must be consistent with the purpose of providing housing for low-income and very low-income families.

Tenant Selection Procedures

The Owner/Agent is responsible for establishing tenant selection procedures. These procedures describe the methods and procedures for taking applications and screening tenants at the property.

Tenant selection procedures should at a minimum:

- Be consistent with the purpose of providing housing for low-income and very low-income families
- Be reasonably related to LIHTC Program eligibility and the tenant's ability to perform the obligations of the lease
- Provide for the selection of tenants based on a written waiting list in the chronological order of application, to the extent practicable
- State that the owner or manager will give prompt written notice to any rejected applicant, with an explanation of the grounds for rejection.

Elements of Tenant Selection Procedures

The following are required and recommended elements of tenant selection procedures (additional items may be needed):

- Tenant selection procedures should identify the criteria that will be used to select tenants.
    - Tenants should be selected based on objective criteria, related solely to program qualification and ability to pay the rent and abide by the terms of the lease. These criteria should include household income & lack of criminal history and might include housing history & credit history. Property owners/agents must apply the criteria consistently to all applicants, in accordance with fair housing laws.
    - Tenant selection criteria should expressly prohibit bias in the selection process including discrimination or favoritism toward friends or relatives, or other situations in which there may be a conflict of interest.
    - Tenant selection criteria can give preference to persons with special needs if OHCS has so directed.
- **Section 8 voucher** holders **may not** be refused tenancy based upon status as a voucher holder as long as they are otherwise eligible for the LIHTC unit. When determining income to rent ratio for a voucher holder, the rent considered should be the tenant portion of the rent payment as calculated by the local Housing Authority.
- **Source of Income:** It is legally acceptable for housing providers to use income level as criteria in selecting applicants. For conventional housing providers, this usually means applicants must have an income level well above the cost of the rent; for example, requiring an income two times the amount of the rent. Subsidized housing providers ordinarily have an income cap; an applicant can't have an income above a specified amount. As always, these requirements must be consistently applied to all applicants.

    While housing providers may make selection decisions based on level of income, they cannot refuse to rent based on the source of income, assuming the source is legal and ongoing. This means, for example, a landlord may not deny an applicant because their source of income is a public assistance program, such as Social Security, Social Security Disability, SSI or TANF. If a social service provider, such as the Oregon Department of Human Services (DHS), is providing ongoing income, it is illegal to reject the applicant because the landlord does not want to accept checks from a government or nonprofit agency.
- Tenant selection procedures must state that Owners/Agents will promptly notify an applicant in writing if he/she has been rejected and will explain the grounds for rejection.
- Owners/Agents must maintain a written an/or electronic waiting list and must select tenants in the

chronological order of application, to the extent practicable. The tenant selection procedures should describe how the waiting list will be maintained.

There are no federal or state requirements regarding criminal or credit background checks, landlord references, or a minimum income necessary for occupancy. Implementation of these types of selection criteria is up to O/A discretion, as long as the screening criteria is applied equally, and consistently to all applicants and do not violate any Fair Housing or related regulations. Screening criteria must also comply with requirements of any other funding sources.

Tenant Selection Plan – Criminal Background Checks

Owners implementing criminal background checks must ensure that they do not violate Fair Housing. Tenant selection plans and screening criteria should 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.

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."
The Notice can be found at: Office of the General Counsel

Tenant Selection Plan – Citizenship

Additionally, there are no regulations governing citizenship requirements for units assisted by the programs covered in this manual. Since the Fair Housing Act does not prohibit discrimination based solely on citizenship status, owners may ask applicants to provide documentation of citizenship or immigration status as part of the screening process. If the owner 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 discriminatory impact based on Fair Housing protected classes- particularly race, color, or national origin. **It is recommended that legal consultation be considered**. Owners should be aware that other housing programs (such as Section 8, or other HUD programs) may have stricter citizenship requirements that must be followed if the project has additional funding sources.

Property Owners/Agents must apply the criteria consistently to all applicants, in accordance with fair housing laws. Tenant selection criteria should expressly prohibit bias in the selection process including discrimination or favoritism toward friends or relatives, or other situations in which there may be a conflict of interest.
When creating a property's Tenant Selection Plan, the owner must be careful to follow all applicable eligibility regulations, nondiscrimination requirements including Fair Housing, the Violence Against Women Reauthorization Act (VAWA), the Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity Rule, HUD guidance on criminal background checks, and applicable local occupancy standards.

Therefore, it is acceptable to:

- Set reasonable eligibility criteria as long as it is applied consistently for all applicants.

- Require sufficient income to meet rent and utility payments (see exception for voucher holders below).
- Require certain terms and conditions such as security deposits for fees (if approved), provided they are consistently applied for all applicants.
- Inquire whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.
- Restrict the number of occupants in a unit according to policy standards.

Tenant Selection Plan – Preferences

The Tenant Selection Plan must state whether or not there are any preferences in the admission of tenants, citing supporting documentation to ensure nondiscrimination in the selection of tenants.

Elderly Exemptions

The Fair Housing Act provides a specific **exemption** for housing providers who designate housing for the elderly or near- elderly. Housing may be reserved for the elderly who meet the guidance under the "Housing for Older Persons" program (HOPA). The key to this exemption is not the desire to exclude children but the intent to provide housing for seniors. Those who intend to operate senior housing should get adequate information about meeting the qualifications. The language of the Fair Housing Act can be found at: The Fair Housing Act: Housing for Older Persons | HUD.gov / U.S. Department of Housing and Urban Development (HUD)

"62 and Over"

- Intended for, and **solely** (100%) occupied by persons 62 years of age or older; or

"55 and Over"

- Intended and operated for occupancy by households where **at least** 80% of the units are occupied by households containing **at least** one person 55 years of age or older.

Important Note: OHCS pre-approval of preferences is required and approved preferences must be included in the Tenant Selection Plan. If such a preference is approved, the owner may advertise the project as offering services for a particular type of disability/preference, but the project must be open to all otherwise eligible persons with disabilities who may benefit from the services provided in the project.

Part 7.07 – Creating and Maintaining Waiting Lists

The Owner/Agent must establish a waiting list containing the names of eligible applicants listed in the order each application was received. The waiting list should be maintained in such a way that OHCS and/or HUD can easily follow the progression of applicant placements.

A written application or pre-application is required for placement on the waiting list. Once an application is received, the applicant must be notified in writing that either they are ineligible and the reason for such determination or they appear to be eligible, and they will be contacted when an appropriate unit becomes available. The notification of apparent eligibility should include the approximate amount of time it will take for a unit to become available. It should be noted that final determination of program and property eligibility is made when processing the application from the

waiting list.

Applicants must be housed in the order indicated by a written Tenant Selection Plan/Policy. Applicants must be accepted or rejected ***before*** the unit is offered to the next applicant on the list.

Rejected Applicants

- When Owners/Agents deny an applicant because they are ineligible to reside in the LIHTC unit and proper notice of the determination has been provided to the applicant, documentation must be kept on file. The applications along with the denial notice should be made available to the OHCS Compliance Analyst during the onsite monitoring visit or other review. When rejecting an applicant, both the VAWA Notice of Occupancy Rights (HUD Form 5380) and Certification (HUD Form 5382) must be provided at the same time to the applicant.

Part 7.08 – Waiting List Requirements

The waiting list should provide an auditable record for the selection of tenants in the chronological order on a first-come, first-served basis of their application, with the exception of when properly assigning Section 504 accessible or special needs units (when applicable) to fill vacancies at the property.

Waiting lists may be maintained in paper form, with the data being manually recorded in such a manner as that is easily readable by an independent party. A waiting list may also be maintained in an electronic format; however the O/A must have methods in place to track data input and changes made to the list.

Manual Waiting Lists

A manually maintained waiting list must be maintained as a permanent record. Items to consider when establishing and creating the waiting list should include the following:

a. The list must not be rewritten.
b. The list must be maintained in a manner that cannot easily be altered.
c. The list must be kept in a manner that can be audited.

The manual waiting list must provide a record of the date and time of the application received, and the date and time of selection from the waiting list.

Electronic Waiting Lists

Electronic waiting lists must have a mechanism for recording and maintaining the date and time of each applicant's placement on the waiting list and a way to document any changes made to the list.

The following are examples of methods that owners may use to track inputs to the electronic waiting list and changes to it.

a. Use a data backup function to record the time and date of entry of new applications and changes to existing records in the electronic waiting list.
b. Print a record of the waiting list's appearance as applicant's placement on the selection from the list.
c. Whenever status changes occur, such as changes in household composition and unit size the change should be recorded with an explanation, and the recorded list should be printed.

It is important to use electronic safeguards, such as assigning waiting list password access only to individuals responsible for maintaining the system.

A system should record the following information whenever a record is changed or entered into the system:

- Username
- Time and date of action
- Type of action

The electronic waiting list must be printed monthly and readily available for review by OHCS.

Part 7.09 – Financial Oversight

OHCS must annually examine, at a minimum, the financial condition of LIHTC rental housing to determine the continued financial viability of the housing and take actions to correct problems.

LIHTC program recipients must provide annual financial information to OHCS for each project within 90-days (or 120 for TCAP/1602 Exchange funded properties) of that project's fiscal year end. A copy of the property's internal annual financials that support the information must be uploaded to the Procorem WorkCenter established for the property. If annual audited financials are available for a property, they must be uploaded to the Procorem WorkCenter as well.

Part 7.10 – Transfer of Ownership

An Owner which has received a grant, tax credit, or loan from OHCS shall not transfer ownership, lease, or otherwise encumber any property which serves or will serve as security for a program without prior written approval from OHCS. Approval will not be unreasonably withheld. The Property's program regulatory documents should be reviewed for more information.

If a transfer is completed without prior OHCS approval, OHCS may, at its sole discretion, enforce remedies as provided under the program documents or OARs which may include additional charges assessed up to reversal of transfer of Ownership.

For more information view the Transfer of Ownership request for Approval Sale, Partial Sale, Lease, or Merger and Ownership Entity Changes document on OHCS website.

Part 7.11– Annual Training

Fair Housing

Owners/Agents (O/A) should be aware of the Federal, State and Local Fair Housing Laws and ordinances enacted in their areas that may have established "protected classes". All O/As must comply with all fair housing laws, which prohibit discrimination in housing and must demonstrate that all applicants and tenants are treated fairly and equitably. **Please refer to Section 4, Part 4.24 Fair Housing and Equal Opportunity.**

To ensure continued awareness, OHCS recommends all O/As and site staff attend annual training in Federal

and/or State Fair Housing courses. For more information regarding fair housing training opportunities in Oregon, you may view the Fair Housing Council of Oregon's website at: FHCO Training

SECTION 8: QUALIFYING HOUSEHOLDS

A household must be certified as income eligible to reside in a Low-Income Housing Tax Credit (LIHTC) unit. Documentation of household income and composition is needed to ensure the correct income limit for the household is being applied. A household's income must be within program guidelines and the rent amount must be restricted.

Part 8.01 – Qualifying Households Overview

The Owner/Agent (O/A) should advise applicants early in the application process there are maximum income limits that apply to the units and ALL anticipated earned income of every adult person and ALL unearned income of every household member, including dependent children expecting to occupy the unit, must be verified and included on the Tenant Applications, Applicant/Tenant Questionnaires, Verifications, Mandatory forms and the Tenant Income Certification (TIC) **prior to occupancy and prior to the household's first anniversary date for continued eligibility.**

Student Status: Each household in a LIHTC unit must complete, and every adult sign and date the required LIHTC Annual Student Certification upon move-in and then annually throughout the extended use period. This form and supporting documentation must be maintained in the tenant file along with the tenant income certification throughout tenancy and required retention requirements.

OHCS mandates that all owners use the methodology and income definition found in **24 CFR Part 5.609**, as amended from time to time (often referred to as the "Section 8 methodology"). This methodology is also required by properties funded by the tax credit program. 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.

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

- Chapter 5 of HUD Handbook 4350.3 Occupancy Requirements of Subsidized Multifamily Housing Programs. *CAUTION: The current HUD Handbook has not been updated to include the Streamlining Rules or HOTMA updates, as listed below; Part 5 has been updated with additional exceptions identified in HOTMA.
    - Section 1- Determining Annual Income
    - Section 3- Verification
    - Part 5 (Section 8) Income Inclusions and Exclusions*
      *Replaces Exhibit 5-1 and Exhibit 5-2
    - Appendix 3- Acceptable Forms of Verification
- 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); updated 2/05/2024. OHCS requires implementation of HOTMA effective January 2025

Part 8.02 – The Tenant Qualification & Certification Process

When establishing eligibility, proper documentation verifying that the household is determined qualified must be obtained and maintained in the tenant file. All mandatory OHCS forms to ensure proper verification are available on the OHCS website.

UPDATE: OHCS accepts electronic signatures from tenants, Owner/Agents, and third-party income verifiers. Please refer to the Technical Advisory Electronic Signature Policy for Compliance-Related Documentation

All documents included in the tenant file must be fully completed, signed, and dated. OHCS will not accept documents that are incomplete, that have been marked with correction fluids (i.e., whiteout), or where information has been obliterated with pen or marker. **Please refer to Part 8.08 of this Section for information on how to properly correct documents in a tenant file.**

Part 8.03 – Tenant Income Certification (TIC)

After all income and asset information has been obtained, verified, and calculated, the O/A must prepare a Tenant Income Certification (TIC) for each household placed in a LIHTC unit.

At move-in or initial qualifying event, every tenant file must contain a 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). OHCS's Tenant Income Certification form used for the LIHTC program includes information that is not found on these other forms, such as the program income and rent limits, the program set-aside for the unit, the certification effective dates, etc.

OHCS's LIHTC TIC (CM.02) is a mandatory form that must be used and maintained in all LIHTC tenant files. OHCS will not accept any other TIC form unless the TIC is submitted to OHCS and specifically approved.

The TIC must identify the OHCS rent and income set-aside for the unit/household. Therefore, the rent and income restrictions should be listed the actual AMI % of the household that supports the income restriction for the unit.

The Tenant Income Certification must be executed, along with the lease, on or just prior to the move-in date; must be signed by the tenant no more than 10 days prior and never after the move-in date. If household members sign the certification prior to the move-in date, management must verify at actual move-in that the information included on the Certification (TIC) is still accurate and has not changed since signing and make the determination that the household remains eligible for the unit.

NOTE: The statement "True and Correct as of the Effective Date" is not allowed on move-in/initial certifications.

Part 8.04 – The Tenant Application

Households are qualified for the program only if proper documentation verifying the household's eligibility is obtained and maintained in the tenant file.

At the time of application, it is critical to obtain complete and accurate tenant information in order to determine income eligibility status as described on IRS Form 8609 to ensure continued program

compliance. It is the O/A's responsibility to obtain a fully completed application and to ensure sufficient information on all prospective tenants is received. Obtaining accurate and complete information is critical in order to make an accurate determination of tenant eligibility.

- OHCS recommends that the O/A's application should request information regarding all household members, their sources of income, assets, income from assets and student status.
- OHCS requires each adult to complete and submit a separate application.

Applicants and tenants must meet the following requirements to be eligible for occupancy:

1. The household's gross annual income must not exceed the MTSP Income Limits applicable to the household size.
2. The household must agree to identify/report the gross amount of all income and assets coming into the household.
3. Student Status

The Owner/Agent should handle all disclosed information in a confidential manner. Additionally, the applicant may need to be assured that the information they provide is considered sensitive and will be handled appropriately.

OHCS does not require a specific application format. However, certain criteria should be captured to appropriately determine tenant eligibility. At a minimum, the application **should** include the following information:

- The name and birth date of each person that will occupy the unit. The applicant's legal name, as it will appear on the lease and other documents, should be provided;
- All sources and amounts of annual income (earned and unearned) expected to be received by household members during the twelve-month certification period;
- All assets and income values calculated from assets (this includes income values calculated from non-income generating assets);
- The current and anticipated student status of each applicant;
- A screening process (i.e. previous landlord's rental history, credit information, criminal background, etc.). Owners should ask applicants whether the household'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;
- 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 and time it was received.
- When the O/A denies an applicant because they are ineligible to reside in LIHTC housing and proper notice of the determination, including VAWA notification has been provided to the applicant, documentation must be kept on file. The applications along with the denial notice should be made available to the OHCS Compliance Analyst during the onsite monitoring visit or other review.

Part 8.05 – Determining Household Size

Based on information provided by the applicant and through careful interviews with Owner/Agent staff, applicant/tenant household size and composition must be determined. Some households may include persons who are not counted as family members for the purposes of LIHTC Program Income Limits and whose income, if any, is considered when calculating total household annual (gross) income.

There are no current tax credit requirements governing the minimum or maximum household size for a particular unit size. However, Owners must comply with all applicable local laws, regulations and/or financing requirements (HUD, RD, Etc.). OHCS advises all Owner/Agents to be consistent when accepting or rejecting applications. Occupancy guidelines or requirements should be incorporated into each property's management plan. Management should be aware of occupancy standards set by federal, state, HUD, PHA, civil rights laws, tenant/landlord laws and municipal code that may establish a maximum or minimum number of persons per unit. When establishing occupancy guidelines, the owner/agent should take into consideration local fire code as well as fair housing guidance. The occupancy standards must be included in the Tenant Selection Plan.

Household Composition

When determining household size for purposes of implementing the correct income limits, **do not** include the following when determining household size for the purpose of comparing "annual income" to applicable LIHTC Program Income Limits.

- Guests
- Live-in aides
- Children of live-in aides
- Children being pursued for legal custody or adoption who are not currently living with the household
- Foster Children (HOTMA)
- Foster Adults (HOTMA)

When determining household size for purposes of implementing the correct income limits, **the owner must** include the following individuals that may not currently be residing in the unit or considered to be temporarily absent when determining household size for the purpose of comparing "annual income" to LIHTC Program Income Limits.

- Children temporarily absent due to placement in a foster home;
- Children in joint custody arrangements who are present in the household **50 percent or more** of the time;
- Children who are away at school but who live with the family during school recesses;
- Unborn children of pregnant women; when a pregnant woman is an applicant, the unborn child is included in the size of the household and may be included for purposes of determining the maximum allowable income.
    - The rental application should ask the following question: "Will there be any changes in household composition within the next 12-month period?" If an applicant answers that a child is expected, the manager should explain that in order to count the child as an additional household member and use the corresponding income limit, a self-certification of pregnancy must be provided.
- Children who are in the process of being adopted

- Temporarily absent family members who are still considered family members;

Persons Permanently Confined

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.

Military Household Members

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.), and children in joint custody agreements that are in the unit at least 50% of the time, must be included in household size for purposes of determining the applicable income limit.

Live-in Aides or Attendants

When determining family size for establishing income eligibility, the owner must include all persons living in the unit except a live-in aide or attendant.

A live-in aide or attendant is: "A person who resides with one or more elderly persons, near-elderly persons or persons with disabilities" and who:

1. Is determined to be essential to the care and well-being of the person(s); and
2. Is not obligated for the support of the person(s); and
3. Would not be living in the unit except to provide the necessary supportive services.

While a relative may be considered to be a live-in aide/attendant, they must meet the above requirements, especially the last. The live-in aide qualifies for occupancy only as long as the individual needing supportive services requires the aide's services and remains a tenant. Owners must obtain verification that the live-in aide is needed to provide the necessary supportive services essential to the care and well-being of the person and should not add the attendant to the lease. The owner may not require applicants or tenants to provide access to confidential medical records or to submit to a physical examination.

The income of a live-in aide is excluded from the household's annual income. Live-in Aides or Attendants should not be included on the Tenant Income Certification (TIC) and must not be included or added to the lease. Since the live-in aide does not have any rights to, and is not party to the lease, they must vacate the unit when the tenant they assist moves out of the unit. Further, a live-in aid may never be a dependent. Verification of the tenant's need for a live-in aide/attendant must be obtained and kept in the tenant's file along with a Live-in Caregiver Addendum/Affidavit.

Part 8.06 – Establishing Eligibility

Income Determination

The O/A must determine that a household is income-eligible before signing a lease to rent a LIHTC unit. The income of all household members must be included, and the determination must be based on income that is expected in the next twelve months. For the initial income-eligibility determination, the O/A must examine income source documents and/or obtain appropriate third-party verifications to ensure the

accuracy of the income information that the tenant reports on the application. **Please refer to Section 9; Part 9.03 Methods of Verification.**

Applicant/Tenant Questionnaire

A fully completed "Applicant/Tenant Questionnaire" is a mandatory form and critical to an accurate determination of eligibility. OHCS requires that each adult household member complete the Questionnaire at move-in and at the first annual recertification. The information furnished on the Questionnaire should be used as a tool to determine all sources of anticipated income and assets. Any differences in reported information on the application versus the questionnaire should be investigated to ensure accurate information is received and verified. The file must be clarified and well documented.

After the household completes the "Applicant/Tenant Questionnaire", the Owner/Agent must verify all household income and income from assets. The application, questionnaire, income and asset verifications, and lease are to be executed prior to move-in.

A detailed discussion of what is included in annual income, income exclusions and income from assets is provided in Chapter 5 of HUD Handbook 4350.3; Chapter 3 of HUD Handbook 4350.3 provides a detailed discussion of the factors that affect household size and whose income is counted as part of household income. The income of all persons in the household (including nonrelated individuals) must be counted when establishing eligibility for LIHTC units. Additional updated guidance on HOTMA is provided in HUD Notice H 2023-10 / PIH 2023-7. **Please refer to Section 9: Annual Income and Verification Methods for additional information.**

All occupants in a LIHTC unit must be certified and have a valid lease on file. All household members aged 18 and over, or determined to be of legal age, must sign ALL the documents.

The Owner/Agent determines the applicant household's income-eligibility with respect to applicable income limits as declared in the IRS Form 8609, line 10c.:

- – **50%** AMI limit for OHCS funded properties. (20/50)
- – **60%** limit for OHCS funded properties (40/60)
- – **20%, 30, 40, 50, 60, 70, 80%**: if Average Income selected for OHCS funded properties.

Part 8.07 – Mandatory Forms

Mandatory Form & Verification Documents	Household Form One (1) Form signed by all adults	Individual Form One (1) Form signed by each adult member
Income Certification Questionnaire		**Yes**
Tenant Income Certification (TIC)	**Yes**	
Asset Self-Certification (HOTMA)*	**Yes**	
Asset Self-Certification Worksheet (HOTMA)*		
All other Verification Documents		**Yes**
Student Status Certification	**Yes**	

*Used when assets are at or below the current limitation threshold allowing for the household to provide an Asset Self-Certification.

OHCS "Mandatory Forms" forms are located on our website. Oregon Housing and Community Services: Low-Income Housing Tax Credit Program Compliance: Housing Compliance & Monitoring: State of Oregon

Part 8.08 – Correcting Documents

Oregon Housing and Community Services (OHCS) 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 on forms and lease documents MUST be dated and initialed by both parties.

Recertification

If management fails to obtain the necessary paperwork at time of recertification, verifications can be retroactively created to document the income and assets that were in place at the time of recertification. All retroactive documents must be signed with the current date but noted as being "true and correct" as of the actual certification effective date. The "true and correct" 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 on its regular annual cycle, 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 correct as of December 20th."

SECTION 9: ANNUAL INCOME AND VERIFICATION METHODS

The Owner/Agent (O/A) must determine tenant eligibility by calculating the full amount of a household's annual income before the family is allowed to move into a LIHTC unit. OHCS requires for all LIHTC units that the household's annual income be determined in accordance with definition 24 CFR 5.609.

The most frequent errors encountered in reviews of annual income determinations in tenant files are:

- Applicants/tenants failing to fully disclose income and asset information.
- Applicants/tenants may fully disclose income and asset information, and O/A fails to follow up on it or does not notice inconsistency from the Application to the Applicant/Tenant Questionnaire.
- Failure to fully verify all disclosed income and asset information.
- Incorrect income calculations.
- Not reading employment verifications or pay stubs correctly (regarding extra income earned such as tips or over- time).
- Not converting assets to cash to determine income from assets (real estate, etc.).
- Not using correct forms or methods of verification.
- Not obtaining and documenting adequate clarification of details when needed; tenants should sign and date all clarifications they have provided.

Management's careful interviewing and thorough verification practices can minimize the occurrence of these errors.

The goal in qualifying applicants to live in a LIHTC unit is to use a reasonable and appropriate method to anticipate and calculate, with supporting verification, when determining the total annual income for the household.

Part 9.01 – Annual Income

Annual Income is the amount of income that a household receives and that is used to determine a household's income eligibility to reside in a LIHTC unit.

Annual income is defined as follows:

- Annual income includes all amounts, not specifically excluded in 24 CFR part 5.609, paragraph (b), and is the total gross earned income from all sources received by each member of the family who is 18 years of age or older or is the head of household, plus unearned income received by all household members including by or on behalf of each dependent who is under 18 years of age, and includes all income from assets, anticipated to be received for the 12-month period following the date of certification of income.

The O/A must generally use current circumstances to anticipate income. However, if information is available on known changes, and is expected to occur during the year, the owner must use that information to determine the total anticipated income.

Part 9.02 – Income Verification

All sources and amounts of income must be verified. Verification must be received by the O/A prior to the execution of the Tenant Income Certification (TIC) 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 income and income from assets. Verifications are required to establish a

household's eligibility to reside in a LIHTC property. If income and income from assets cannot be adequately verified, then eligibility of a household to reside in a LIHTC unit has not been established.

Effective Term of Verifications

Verifications of income ***are valid for 120 days of the effective date***. After this time, if the tenant has not moved in or recertified, new verifications must be obtained. Verifications that are more than 120 days old as of the effective date of the move-in or recertification are invalid.

Part 9.03 – Methods of Verification

The O/A must demonstrate efforts to obtain third-party verification and appropriate source documentation prior to accepting self-certification, except in instances where self-certification is explicitly allowed (i.e., when net assets do not exceed current asset limitation, adjusted by inflation).

The O/A 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. Note: Level 6 EIV has been removed from this chart as EIV is not applicable to the programs covered in this manual.

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	Highest
4	Written third-party verification from the source provided by the tenant – e.g., paystubs, bank statements, benefit letters, etc. Also, may be referred to as UIV.	High
3	Written, third-party verification form	Medium – use if applicant or tenant is unable to provided 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

*Adapted from Table J2: Verification Hierarchy from HUD Notice H 2023-10 / PIH 2023-7.

A note regarding Enterprise Income Verification (EIV)

OHCS Compliance Analysts are not authorized to view any documentation obtained through Enterprise Income Verification (EIV). Therefore, any tenant files that contain EIV verifications will need to be re-formatted; the EIV documentation will need to be removed from the tenant files prior to an auditing visit or kept in separate files for ease of tenant file maintenance.

When submitting tenant files electronically to Procorem, please ensure that all EIV reports have been removed prior to uploading for review.

Source Documentation

For complete information concerning included income and acceptable forms of income verification, see HUD Handbook 4350.3 CHG4, specifically Chapter 5 and "Appendix 3: Acceptable Forms of Verification," The Technical Guide for Determining Income and Allowances, and the HOTMA Implementation Guidance HUD Notices.

Acceptable source documents, as outlined in Table J2: Verification Hierarchy from HUD Notice H 2023-10 / PIH 2023-7 include and are described as follows:

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

An original or authentic document generated by a third-party source. 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.

Note: HUD 4350.3, Rev. 1, Change 4, Chapter 5 refers to this type of verification as ***Upfront Income Verification (UIV).***

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

- Is the document current? Circumstances may have changed since the document was created.
- 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 agent must obtain the four most recent, consecutive paystubs from the tenant/applicant, or the number of paystubs that covers the two most recent, consecutive months (HOME).

a) **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 current asset limitation, adjusted by inflation, a third-party asset verification is required).

b) **Using Tax Returns for Income Verification**: If utilizing tax returns as income verification, the owner agent must obtain copies of income tax returns with corresponding official tax forms and schedules attached and including third-party receipt of transmission for the income tax return filed (i.e., tax preparer's transmittal receipt, summary of transmittal from online source, etc.) or a certified copy by completing IRS Form 4506 "Request for Copy of Tax Form." These are examples of acceptable form(s) of written, third-party verifications.

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)

OHCS does require that the Owner/Agent use particular forms for third-party verifications. These can be found on our website, in addition to recommend third-party verification forms recommended to assist with the verification process. All requests for income verification must:

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.

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

Verification Transmittal

1. Applicant/tenant must sign and date each verification form.
2. Income verification requests must be sent directly to and returned by the source, **not through the applicant**. It is suggested that a self-addressed, stamped envelope be included with the request for verification.
3. If forms are returned with any information incomplete, management must contact the source and complete a clarification form to document incomplete information.
4. The management Agent should review and check verifications for accuracy and completeness. Verifications should be date stamped as they are received.
5. Verifications may be hand-carried by the applicant only if reasonable attempts to mail or fax the request(s) for verification to the third-party have failed. When using this method, the file should be documented with a phone verification indicating the name and title of the person contacted and confirmation the information received by hand-carry method is accurate.

3. Third-Party Oral Verification (Level 2)

When written verification is not possible prior to move-in, direct contact with the source will be acceptable to OHCS only as a last resort and must be followed by written verifications. The telephone or personal conversation should be documented in the applicant's tenant file to include all information that would be included in a written verification.

Include the name and title of the contact, the name of the on-site management representative accepting the information, and the date.

- 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 assets do not exceed $50,000 (adjusted by inflation).

If a 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.

HOTMA Update: Additional Verification Methods

- **Income Verified for a Rental Assistance Program:** Currently OHCS does not allow the PHA verification of income (HUD 50058), or Project Based Section 8 (HUD 50059) to be used when determining income eligibility for the LIHTC program. *

  *NOTE: HOME requires these verifications to be used for when determining income eligibility for households that hold Housing Choice Vouchers with the PHA at move-in and certification HOME-assisted units. The HOME Tenant Income Certification (TIC) must still be completed.

- **Other Means-Tested Program Determinations:** OHCS does not allow for "Other Means-Tested" Program Determinations to be used when determining initial eligibility, or during annual recertifications at mixed-income LIHTC properties. HUD refers to this process as "safe harbor".

Unearned Income and/or Exempt/Zero Income Households

It is possible that a household will have a total annual income of zero dollars ($0). This is possible if the household is receiving rental assistance, food stamps, and other forms of assistance that are not counted as income; commonly referred to as "exempt income". However, it is often the case that households claiming zero income are in fact receiving some type of recurring gift from friends or family members.

If the entire household is claiming zero income, and/or the household is receiving unearned income and/or exempt income, the household must complete the required form "Income Status Certification". This form asks the household to identify how various expenses will be paid and often serves as a way of capturing recurring gifts and contributions to the household.

While zero income households do 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.

Differences in Reported Income

The Owner/Agent should 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.

File Clarifications

Verifications must never be altered and should be clarified when information that was provided on a verification document needs to be changed. White-out should never be used to change, alter, or conceal original information. When there is information in the tenant file that needs further clarification, the Owner/Agent should include written statements that are signed and dated by management to provide such clarification. When the clarification statements are provided by the tenant or contain information clarified by the tenant, the tenant should sign and date each clarification as well.

Part 9.04 – Elements of Annual Income

Household Members' Income: Count Income per the following:

Household Members	Employment Income	Other Income-Unearned (Including income from assets)
Head of Household	Yes	Yes
Spouse	Yes	Yes
Co-Head	Yes	Yes
Other Adult	Yes	Yes
Dependents (Under 18)	No	Yes
Full-Time Student (Over 18)	See Note Below*	Yes
Non-Household Members		
Live-in Aide	No	No
Foster Child (Under 18)	No	No
Foster Adult	No	No
Guest	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.

Adults:

Count the annual income of the head, spouse, or co-head, and other adult members of the household. In addition, persons who are under 18 and have entered into a lease under state law are treated as adults and their annual income must also be counted. These persons will be either the head, spouse, or co-head; they are sometimes referred to as emancipated minors.

Dependents:

The head of the family, spouse, co-head, foster child, or live-in aide are never dependents. Some income received on behalf of family dependents is counted and some is not.

- **Earned income** of minors (family members under 18 years of age) is **NOT** counted.
- Benefits or other **unearned income** of minors **IS** counted.

When more than one family shares custody of a child, and both families live in assisted housing, only one family at a time can claim the dependent. The family that counts the dependent also counts the unearned income of the child. The other family claims neither the dependent nor the unearned income of the child.

For full-time students, who are 18 years of age or older and are dependents, a small amount of their earned income will be counted. Count only earned income up to a maximum of $480 per year for full-time students, age 18 or older, who are not the head of the family, spouse, or co-head. If the earned income is less than $480, count all of the income. If the earned income exceeds $480 annually, count $480 and exclude the amount that exceeds $480. This amount is subject to annual inflation adjustments.

- The income of full-time students 18 years of age or older who are members of the household but away at school is counted the same as the income for other full-time students. The income of minors who are members of the household but away at school is counted as the income for other minors.
- All income of a full-time student, 18 years of age or older, is counted if that person is the head of the family, spouse, or co-head. Payments received by the family for the care of foster children or of foster adults are **not** counted. This rule applies only to payments made through the official foster care relationships with local welfare agencies.

Adoption assistance payments in excess of $480 are **not** counted.

Income of Temporarily Absent Family Members

1. Owners must count all income of family members approved to reside in the unit, even if some members are temporarily absent.
2. If the Owner determines that an absent person is no longer a family member, the individual must be removed from the lease and Tenant Income Certification.
3. A temporarily absent individual on active military duty must be removed from the household, and his or her income must not be counted unless that person is the head of the family, spouse, or co-head.

    a) However, if the spouse or a dependent of the person on active military duty resides in the unit, that person's income must be counted in full, even if the military member is not the head or spouse of the head of the family.
    b) The income of the head, spouse or co-head will be counted even if that person is temporarily absent for active military duty.

Income of Permanently Confined Family Members

An individual permanently confined to a nursing home or hospital may not be named as head of household, spouse, or co- head but may continue as a household member at the family's discretion. The family's decision on whether or not to include the permanently confined family member as a family member determines if that person's income will be counted. Count as follows:

1. Family chooses to include them – include the individual as a family member on the TIC and include their income
2. Family chooses to exclude them – exclude the individual as a family member on the TIC and exclude their income.

Part 9.05 – Common Sources of Annual Income Inclusions – Income Sources

Annual income includes all amounts that are not specifically excluded by regulation. 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.

The following is intended to provide guidance on common and/or complicated sources of income to verify:

Employment Income (Earned Income/Wages)

Earned income is defined as income or earnings from wages, tips, salaries, other employee compensation, and net income from self-employment.

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 the HOTMA Implementation Guidance's 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 no less than four recent consecutive paystubs, or the number of paystubs that covers the two most recent, consecutive months (HOME).
- 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.

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.

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

Self-Employment

Self-Employment is the act of engaging in a trade or business except as an employee. An individual is NOT self-employed if performing services that can be controlled by someone else such as an employer. Source of income and individual activity from which income is generated determines if it is self-employment income. Some types of work that are often thought of as self-employment may not actually be self-employment such as babysitting.

A licensed childcare business could be determined as self-employment.

For example, a person is NOT self-employed if anyone other than themselves determines the amount of

pay they will receive. Therefore, it is possible a person who appears to be self-employed may actually be receiving income that can be verified using a Verification of Employment or Verification of Periodic Income (babysitting, lawn-mowing, odd jobs). A self-employed person must maintain factual business records. The type of business affects the type of records that must be kept. The records should include a summary of business transactions and is usually made in the business books – accounting journals, ledgers and business checking account statements. The books must show gross income as well as any deductions and credits. Most small businesses will be able to show this record with the business checking account as it is usually the main source for entries in the business books. See types of records noted below. ***For more examples, please refer to Sporadic Income in this Section.***

Determining Income from Self-Employment

When determining income from a business, Owner/Agent must include salaries paid to adult family members, net income from the business and other cash or assets withdrawn by any family member, except if the withdrawal is the reimbursement of cash or assets the family invested in the business. When computing net income –

- ✓ **Do <u>NOT</u> deduct**: principal payments on loans, expenses for business expansion, or outlays for capital improvements'
- ✓ **Do <u>NOT</u> deduct** depletion or depreciation/sec. 179 expenses (lines 12 and 13 on Schedule C);
- ✓ **Do deduct**: <u>business expenses</u> (must directly relate to the production of income); interest payments on loans (unless the expenses or loans are for business expansion or capital improvements); depreciation computed on a straight-line basis.

Disallowed business expenses include those derived from capital investments

- Non-sufficient funds charges
- Some business start-up costs (refer to IRS Publication 535)
- Personal & entertainment expenses
- Payments on principal portion of loan payments
- Interest on loans for business expansion or capital improvements
- Other expenses for business expansion
- Outlays for capital improvements
- Personal transportation
- All expenses for which receipts are not provided

The following documents show income for the previous year. Owners/Agents must consult with the applicant/resident and use this data to estimate income for the next 12 months.

1. **Using Tax Returns for Income Verification**: If utilizing tax returns as income verification, the owner agent ***must obtain copies of the*** **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.) or** ***a certified copy of tax returns filed by completing IRS Form 4506 "Request for Copy of Tax Form."***
2. Official tax forms and schedules to be attached with the individual federal income tax return (1040) include, but not limited to are the following:
   - ✓ Schedule C for Small Business
   - ✓ Schedule E for Rental Property Income
   - ✓ Schedule F for Farm Income
   - ✓ Schedule 1

Note: If a resident is employed by a business owned by the resident's family, a copy of a recent paystub verifying year-to-date earnings is also required.

3. Copy of Corporate or Partnership tax return (if applicable)
4. Audited or unaudited financial statement(s) of the business
5. If the resident has been in business for **less than one year**, they must complete an actual IRS Schedule C for the period of time the business has been in operation and a *Self-Employment Income Verification Form.* The Schedule C profit and loss statement should be supported with valid business records such as receipts, etc. The amount of net income will then be projected for the full 12-months for the certification.

Business records include:

- Bookkeeping records
- Tax returns
- Receipts for ALL allowable expenses
- Lease agreements for your business (not apartment) – building, vehicle, chair (beauty salon)
- Bank statements (personal & business)
- Signed time sheet and receipt of payroll (if you have employees)
- For rental property: copies of recent checks, leases and receipts for expenses

If a resident is engaged in a business partnership, Owner/Agent must obtain a copy of the partnership's tax return, along with as a copy of the resident's personal tax return.

Note: All tax returns and related documents must be signed and dated by the taxpayer. Obtain a current signature/date when accepting/receiving unsigned copies of federal tax returns.

Things to watch for on Schedule C:

- ✓ Make sure that the last year's tax return represents a full year's income; otherwise, you will need to annualize - **(Line-Item H).**
- ✓ Make sure to include any wages or contract labor listed on the Schedule C that Owner paid to him or herself or any other household member - **(Line Items 11 and 26).**
- ✓ Make sure that if depreciation is listed, clarification is obtained to demonstrate what method of depreciation was used. If an accelerated depreciation method was used, the applicant/tenant must provide an accountant's calculation of depreciation using the straight-line method. The net income should then be determined using the expense based on the straight-line method – **(Line Item 13).**
- ✓ If net business income is negative, income is zero. It does not offset other household income **– (Line Item 31).**

If an individual's only income is from self-employment, the net amount on the Schedule C should be the same as the gross amount on the first page of the 1040. However, if the household had additional income such as part-time wages or interest income from savings, the net income from Schedule C should be used. Then Owner/Agent must obtain third-party verification for the additional income from wages and assets. Verifying self-employment can be intimidating. Remember, if an applicant/tenant reports self-employment yet is not able to provide the required documentation to support their business/work income, etc. then they have not proven eligibility to reside in a unit subject to LIHTC eligibility requirements.

Social Security (SS) & Supplemental Security Income (SSI) Benefits

OHCS 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 six months prior to the certification date. When interpreting Social Security benefit letters, remember to 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.

Note: Applicants/Tenants can go to the Social Security Administration website at http://www.ssa.gov/ under Online Services to obtain current benefits statements.

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 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. The document used as verification must identify the account and the account holder.

Because income calculations are based upon what is expected to be received during the next 12 months, if the Social Security Administration or other plan provider has published a cost-of-living adjustment (COLA), include the increase as appropriate in the annual income calculation.

Delayed SS and SSI payments received as a lump sum are not counted as income but are included as a lump sum asset. Delayed SS and SSI payments received as periodic payments are excluded from income.

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 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. OHCS will expect to see third-party 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 in 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)

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.

A review of historical payments received in the prior 12-month period may be used when determining annual income of child or spousal report.

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.

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 amounts received of the 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 trusts' 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 trusts' 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 trusts' 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

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.

1. **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.
2. **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).
3. **Other Student Financial 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.

Student Financial Assistance Income for Households without Section 8 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 as income
- Otherwise, proceed to Step 2

Step 2: Amount of other student financial 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

If the household is receiving Section 8 assistance and the student is the head, 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, 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.

For complete information concerning included income and acceptable forms of income verification, see HUD Handbook 4350.3 CHG. 4 (November 2013) specifically Chapter 5, "Appendix 3: Acceptable Forms of Verification, "Technical Guide for Determining Income and Allowances, and the HOTMA Implementation Guidance HUD Notices.

Part 9.06 – Fixed Income Sources: Streamlining Rule

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. OHCS 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 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. OHCS has adopted these additional streamlining rules to verify fixed income.

When 90% or more of a household's gross income comes from fixed income sources, in addition to the streamlining requirements described 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% of more of gross income. Example assumes the project is subject to recertification of income.

- **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 gross household income, they must be verified through the traditional verification methodology.
- **3rd Recertification**: Owner obtains full verification of all income sources, similar to what was done at the time of 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.

- 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 what was done at the time of 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

Part 9.07 – Annual Income Exclusions

Regulations for multifamily housing programs covered here specifically exclude certain types of income from annual income. However, many of the items listed as exclusions from annual income under HUD requirements are items that the IRS includes as taxable income. Therefore, it is important for Owners and Agents to focus specifically on the HUD program requirements regarding annual income.

The following types of income (partial list) are excluded when calculating annual income.

- Payments received for the care of foster children or foster adults (usually persons with disabilities unrelated to the tenant family, who are unable to live alone).
- The value of the allotment provided to an eligible household under the Food Stamp Act of 1977.
- Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains, and settlement for personal or property losses.
- Income of a live-in aide, as defined in 24 CFR 5.403.
- Temporary, nonrecurring, or sporadic income (including gifts).
- Earnings in excess of $480 for each full-time student 18 years or older (excluding the head of household and spouse).
- Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump-sum amount or in prospective monthly amounts.

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
- tax refunds or tax credits
- 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 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

Unsecured Income

OHCS does not require owners to include unsecured income sources when calculating household income. For example, if an applicant or tenant is unemployed OHCS does not require that individual to anticipate income he or she may earn if a job is secured, unless it is verifiable that a job has been secured for a future start date.

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."
- 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 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.

Any income source not specifically excluded must be included. See the list of income exclusions at 24 CFR 5.609. 2024-01873.pdf (govinfo.gov)

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 income to determine income eligibility for program assisted units.

Part 9.08 – Calculating Annual Income

The Low-Income Tax Credit (LIHTC) regulations require that, for the purpose of determining eligibility, O/A(s) must project a household's income in the future. To do so, a "snapshot" of the household's current circumstances is used to project future income. In general, Owner/Agents should assume that today's circumstances will continue for the next 12 months, unless there is **verifiable** evidence to the contrary.

This method should be used even when it is not clear that the type of income received currently will continue in the coming year. For example, assume a family member has been receiving unemployment benefits of $100 per week for 16 weeks at the time of income certification. It is unlikely that the family member will continue receiving unemployment for another 52 weeks. However, because it is not known whether or when the family member will find employment, the Owner/Agent should use the current circumstances to anticipate annual (gross) income. Income would therefore be calculated as follows: $100 per week X 52 weeks, or $5,200.

The exception to this rule is when documentation is provided verifying that current circumstances will change. For example, the family member has been offered a job projected to start in two weeks and has received confirmation of a planned start/hire date. Another common example would be when a third-party verification of employment indicates that the family member will be receiving a pay rate increase/raise in the next 12 months.

In addition to hourly earnings, Owners/Agents must account for ***all earned income***. In addition to the base salary, this will include annual cost-of-living adjustments, bonuses, raises, and over-time pay. In the case of over-time, it is important to clarify whether over-time is sporadic or a predictable component of family member's income. If it is determined that the family member has earned and will continue to earn over-time pay on a regular basis, Owner/Agent(s) should calculate the average amount of over-time pay and add it to the total amount of projected income. For those whose annual employment is less stable or does not conform to a 12-month schedule, Owner/Agent(s) should examine income documentation covering the entire previous 12-month period.

Gross anticipated employment income must be annualized (converted to an annual figure) by using the household's current circumstances, unless the verification indicates that a change will occur in the next 12 months, as explained below.

- For The Work Number, pay stubs, or a payroll summary, the average gross earnings per pay is annualized.
- For Verification of Employment, the wage and frequency of pay are used to annualize income.

To annualize full-time employment, multiply:

Calculation Method	Examples
Hourly wages by the number of hours worked per week	$9.25 per hour x 2080 hours per year = $19,240 $9.25 per hour x 40 hours per week x 52 weeks = $19,240
Weekly wages by 52	$190 per week x 52 weeks = $9,880
Bi-weekly wages by 26 weeks	$500 bi-weekly x 26 weeks = $13,000
Semi-monthly wages by 24 weeks	$400 twice a month x 24 pay periods = $9,600
Monthly wages by 12 months	$1,000 per month x 12 months = $12,000

When using paystubs, O/As must collect the same number from all applicants. OHCS requires a minimum of four (4) paystubs.

Additional verification may be collected when necessary to document the reason for inconsistent information or other items that need clarification.

Calculating Employment Income Using Upfront Income Verification (UIV), Pay Stubs, or Payroll Summary

This calculation is conducted using gross earnings from the four (4) most recent paystubs (pay periods) prior to the date of the certification.

- Determine how often the applicant is paid and the number of pay periods per year.
  - Weekly – every week (52 pay periods)
  - Bi-weekly – every two weeks (26 pay periods)
  - Semi-monthly – two times per month (24 pay periods)
  - Monthly – once per month (12 pay periods)
- Calculate the average gross earnings received over the four pay periods.
  - Include all wages, overtime pay, shift differential pay, bonuses, tips, commissions, and other employee compensation.
  - If an increase in the hourly rate is noted, add up the hours, calculate the average and multiply the average hours by the new hourly rate. Then add in the total of additional items included in the gross pay.
- Multiply the average gross earnings per pay period by the number of pay periods per year to obtain annual income.
- In addition to reviewing income figures reported on the paystubs, it is important to take note of other items of importance that may be reflected in the pay stubs, such as:
  - Marital Status
  - Additional Assets

Example Using Paystubs *– Hudson is applying for a unit and wants to move-in on June15th. His employer reported that Hudson makes $13 an hour, working 35 hours per week. In addition, the employer reported that it is anticipated that Hudson will be receiving a pay increase on March 29th, where he is expected to make $14 an hour, working 35 hours per week.*

Certification Date: June 15th
Current Rate of Pay: $13 an hour, working 35 hours per week
Increase in Pay: $14 an hour, working 35 hours per week, effective March 29th (From June15th–March 28th there are 287 days, or 41weeks.)

Here's the math:

$13× 35 (hours per week) ×41(weeks) =	*$18,655*
$14× 35(hours per week) ×11(weeks) =	*$5,390*
Annual Income from Wages:	***$24,045***

Note: Make sure the number of weeks adds up to 52 weeks per year

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 average number of hours worked;
2. Average weekly amounts by the average number of weeks worked;
3. Other periodic amounts by the average number of periods worked.

Year-to-Date Income

When analyzing income, **year-to-date income must be considered and compared** to the wage/salary calculation. When annualizing YTD income, you must either round the number of weeks down to a whole week or use fractional weeks carried out to two decimal places.

Year–to-Date (YTD) income can be found either on the Verification of Employment or on the applicant's/tenant's most recent (current) paystub. However, typically paystubs do not include the beginning date of the YTD period which is needed to properly calculate YTD earnings.

OHCS requires YTD income to be compared with annual income calculated by use of verification sources.

Minimum Wage Increases & Cost of Living Adjustments (COLA)

Because income calculations are based upon what is expected to be received during the next 12 months, if the minimum wage increases or there is a cost-of-living adjustment (COLA) during the next 12 months, include the increased income amount annualized as applicable.

For example: a tenant is employed, and their employer verifies they will receive an increase in their hourly rate of pay 5 months after they move-in. You would calculate their wages using both rates of pay for the specified time period – the lower rate for the first 5 months and the higher rate of pay for the remaining 7 months.

Social Security, VA and TANF

- Count amounts **before** Medicare is deducted.
- Delayed SS and SSI payments are not counted as income (also applies to VA payments).
- Count amounts **after** adjustments for past overpayments (also applies to TANF and unemployment).
- Watch for Cost-of-Living Adjustment (COLA) each year (usually announced in October of each year).

Part 9.09 – Asset Inclusions and Exclusions

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.

There are three types of assets:

1. **Real property** is included in net family assets. Real property includes land or a home.
2. **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 effects including items that are convenient or useful to a reasonable existence and that support and facilitate daily life within the home.
3. **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 is greater than (>) $50,000 (adjusted by inflation) include in net family assets
    - If combined value is less than (<) $50,000 (adjusted by inflation) exclude from net family assets, ***but actual income from the assets is still included as income***

    Determining what is a necessary item of personal property requires owners and agents to gather enough facts to qualify whether an asset is necessary or non-necessary personal property.

An asset has “Market” and “Cash” value:

- Market value is the amount that another person is willing to pay to acquire the asset
- Cash (Net) value is just the dollar value of the asset on the open market

When determining the Cash Value of the asset, the cost of reasonable expenses incurred to convert the asset to cash are deducted from the Market Value of the asset. The following are examples of reasonable expenses that may be deducted.

- 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) are being 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.

Sale or Disposition of Assets

At the time of application or annual certification, all adult members of the household must declare any assets sold or given away for less than fair market value in the past two years before the effective date of the Certification. For certification purposes, the value of the disposed of asset should be counted only for two (2) years from the date of disposal not the certification date. If there is more than $1,000 difference between the amounts received for the asset and the fair market value of the asset, include the entire difference as the asset. If there is less than $1,000 difference, do not count it.

Note: Assets disposed of for less than fair market value as a result of foreclosure, bankruptcy, 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.

Example: *A couple gave $2,000 to each of their three grandchildren and deeded a home to their son. The home had a cash value of $40,000 and the son paid his parents $12,000 for the home. $34,000 ($40,000 less $12,000 plus $2,000 x 3) is counted as an asset until such time as the household can certify on an Income Certification form that they did not dispose of any assets during the two years preceding the certification date. (The $12,000 paid by the son may also be counted as an asset, depending on what was done with the payment.)*

Third party verification of disposed of assets is not required. However, a certification completed and signed by the owner should be obtained that describes details of the asset disposed.

- Type of asset/s disposed of;
- Date the asset/s was disposed of;
- The amount received for the disposed of asset; and
- The market value of the asset at the time of disposal

OHCS recommended form "Divestiture of Assets Certification" can be used for this purpose.

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.

Examples include:

1. Assets and earned income that is accrued or paid to the benefit of someone else; or
2. A situation wherein another person is responsible for income taxes incurred on income generated by the asset(s); or
3. An applicant/tenant is responsible for disbursing someone else's money, such as in the case of having Power of Attorney, but the money is not his/hers and no benefit is received.

Helpful questions for determining ownership of an asset:

- Who receives any income from the asset?
- Who pays taxes on the income received from the asset?

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.

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 the account into

which it was deposited. If the subtraction results in a negative number, the balance of the asset is considered $0. When calculating this amount, the owner agent must use the refund amount actually received, not an amount anticipated

Reverse Mortgages

Reverse mortgages are loans for seniors taken out against the equity in a home.

- These loans may be paid to the senior in installments or in lump sums.

Such a loan does not require monthly payments be made by the senior to pay it back. However, before the homeowner can permanently move out of the property, or at their death, the loan must be paid off in full.

Since reverse mortgages are actually loans against the property and decrease the cash value, they should be treated the same as other mortgages. Payments made to the homeowner are not considered income as they are proceeds of the loan. The home will continue to be considered an asset to the owner.

The following is not an exhaustive list of examples that describe necessary and 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.

Part 9.10 – Calculating Income from Assets

The asset may provide the household with income that is required to be included when calculating the annual income. There are two distinct types of income and specific rules that determine what to include in a household's annual income:

- The actual income from assets; or
- The imputed income from assets based on the passbook rate established by HUD

Actual Income from Assets

Actual income from assets is always included in a family's annual income regardless of the total value of net family assets or whether the asset itself is included or excluded from net family assets unless that income is specifically excluded by 24 CFR 5.609(b).

The income generated by an asset, such as interest, dividend payments and other actual income earned on the asset are generally considered.

Example: Actual Asset Income from an Asset Excluded from Net Family Assets

Eugene Park owns a checking account with $3,500 that earns zero percent interest and a savings account with a balance of $10,000 earning an interest rate of 3%. Mr. Park does not have any other assets. Because those assets are classified as non-necessary personal property, and their combined value of $13,500 does not exceed $50,000, the combined value of all non-necessary personal property is excluded from the calculation of net family assets.

- *Total value of assets is $13,500 ($3,500 + $10,000)*
- *Net family assets = $0.00 (the total value of assets is less than $50,000 so net family assets is considered zero ($0.00)*
- *Actual asset income from the savings account is $300 ($10,000 balance x 3% interest rate) even though the net family assets is $0.00*

Imputed Income from Assets

Imputed income from assets is no longer determined based on the greater of actual or imputed income from the assets. Instead, imputed asset income must be calculated for specific assets when three conditions are met:

1. The value of net family assets ***exceeds $51,600*** (2025, as adjusted for inflation);
2. The specific asset is included in net family assets; and
3. Actual asset income cannot be calculated for the specific asset.

If the actual income from assets can be computed for some assets but not all assets, the O/A must add up the actual income from those assets, where actual income can be calculated, and then calculate the imputed income just for those assets where actual income cannot be calculated.

After the O/A has calculated both the actual income and imputed income, the housing provider must combine both amounts to account for income on net family assets with a combined value of over $51,600.

When the family's net family assets ***do not exceed $51,600*** (2025, as adjusted for inflation), imputed income is not calculated. Imputed asset income is never calculated on assets that are excluded from net family assets. When actual income for an asset — which can equal $0 — can be calculated, imputed income is not calculated for that asset.

Example: Combining Actual and Imputed Asset Income

The Jorgensen family owns a small piece of vacant land with a cash value of $25,000. The family also owns a savings account with a verified balance of $55,000, with an interest rate of zero (0%) percent.

- *The family's total net assets are $80,000 ($25,000 + $55,000)*
- *The owner/agent can calculate the actual income of the savings account as zero ($0.00)*
- *The owner/agent is unable to calculate the actual income earned for the property because the property neither generates any income, nor could an annual income be computed on interest or dividend earnings*
- *Therefore, imputed asset income for the real property must be calculated (See Steps 1, 2, and3*
- *Imputed Income for the real property (vacant land) is $25,000 x 0.40% = $100 imputed income*
- *Total asset income is $100 ($0 + $100)*

Imputed income is calculated using the current published HUD Passbook Savings Rate.

- For 2024, the passbook savings rate is 0.40%
- For 2025, the passbook savings rate is 0.45%
- HUD will calculate the new passbook savings rate each year, in July

Part 9.11 – Computing the Total 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 program assisted 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 program assisted unit.

Income and assets must be calculated in accordance with the Section 8 methodology as described in 24 CFR 5.609 and in further detail in Chapter 5 of HUD Handbook 4350.3 as superseded by Notice H 2023-10/PIH 2023-27 (HOTMA Implementation Guidance) where applicable.

Any income and asset source not specifically excluded from household income must be included.

SECTION 10: GENERAL OCCUPANCY GUIDELINES

Households are qualified for the program only if proper documentation verifying the household's eligibility is obtained and maintained in the tenant file. Mandatory Forms and Recommended Forms can be found on OHCS's compliance webpage. Oregon Housing and Community Services: Low-Income Housing Tax Credit Program Compliance: Housing Compliance & Monitoring: State of Oregon

Part 10.01 – Tenant Qualification & Certification Process Overview

Necessary Documentation for a Tenant File

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

1. Tenant Income Certification (TIC) 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;
2. Worksheet used to calculate income
3. Applicant/Tenant Certification Questionnaire completed at time of processing the application, including certification of assets and disposal of assets if applicable. A separate Applicant/Tenant Income Certification Questionnaire must be completed by each adult household member.;
4. Verifications of all sources of earned and unearned income noted on the Tenant Income Certification Questionnaires.
    - Employment Income Verification- submit all documents used to calculate income
        - Paystubs- if used paystubs must submit no less than four, current and consecutive months; if HOME, two months source documents
        - Employment Verification- include any clarification documents if applicable
5. Asset Verifications noted on the Tenant Income Certification Questionnaires.
6. All third-party verifications and information used to determine total household income and assets.
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 Tenant Application for residency
9. "LIHTC Student Status Certification" completed by the household each year, along with any additional student status verifications needed.
10. HOME Student Certification (HOME Funded Properties)
11. Initial and subsequent leases and all lease addenda executed by the tenant and owner;
12. LIHTC Lease Rider/Addendum (if missing within the Lease)
13. VAWA Lease Addendum;
14. HOME Lease Compliance Form (HOME-assisted units)
15. HTF Lease Compliance Form (HTF-assisted units)
16. Initial Tenant Application for residency
17. Initial and subsequent leases and all lease addenda executed by the tenant and owner;

18. Documentation of receipt of the applicable brochures: Fair Housing & Lead Based Paint
19. If applicable, copies of HUD Form 50058, HUD Form 50059, and RD 3560-8 when the household is receiving rental assistance.
20. Household Demographics
21. Move-In Inspection Form
22. Annual Recertification

All documents included in the tenant file must be fully completed, signed, and dated. OHCS will not accept documents that are incomplete, that have been marked with correction fluids (i.e., whiteout), or where information has been obliterated with pen or marker. ***Please refer to Section 8, Part 8.08 Correcting Documents for information on how to properly correct documents in a tenant file.***

Part 10.02 – Tenant Qualification

A household must be determined income and program eligible prior to occupying a LIHTC program restricted unit at move in and annually throughout the property's affordability period.

Initial Certification

After all income and asset information has been obtained, verified, and calculated, the O/A must prepare a Tenant Income Certification (TIC) for each household placed in a LIHTC unit.

The TIC must be executed, along with the lease, on or just prior to the actual move-in date; not to be no more than 10 days before the move-in date and never after the move-in date. If household members sign the certification prior to move-in date, management must verify at actual move-in that the information included on the TIC is still accurate and has not changed since signing and make the determination that household remains eligible for the LIHTC unit.

Recertifications Requirements

100% LIHTC Affordable:

OHCS may provide a waiver of the annual income recertification requirements under Rev. Proc. 2004-38, 2004-2 C.B. 10 or Rev. Proc. 94-64, 1994-2 C.B. 797, which applies to owners of qualified low-income housing projects that consist entirely of 100 percent low-income projects.

Under IRC §142(d)(3)(A), if all the low-income buildings in the *project* are 100% low- income buildings, owners are not required to complete annual tenant income recertifications. "Projects" are identified based on the owner's election as documented on Form 8609, line 8b.

All households residing in 100% LIHTC properties must be recertified upon the first-year anniversary of the move-in date with a Tenant Income Certification (TIC) completed and/or verifications obtained. After that, self-certifications including Annual Certification of Student Status must be completed annually by the anniversary of the household's move-in.

If noncompliance with the tenant income certification requirements is sufficiently serious, OHCS may give consideration to revoking the waiver. Revocation is not required, but the IRS would revoke the waiver at the state agency's request.

Mixed-Income/Use Properties (not 100% LIHTC):

All LIHTC units within mixed-use properties, under IRC §142(d)(3)(A), must be recertified upon the first-year anniversary of the move-in date with full verifications completed **and** annually throughout the entire compliance period. Verifications **must** be obtained by one of the verification methods to support the information reported in order to demonstrate due diligence with the next available unit rule.

OHCS will accept annual TICs with an effective date of the first day of the anniversary month, i.e., the initial move-in date is March 15, 2023, the effective date of the Annual Recertification may be either March 1, 2024, or March 15, 2024. The O/A should implement a policy and be consistent in applying to all assisted units.

LIHTC Units with Project-Based Rental Assistance

Tenants who receive project-based rental assistance through Rural Development (RD 515) or HUD Section 8 are exempt from the annual recertification requirements if the household is being certified in the applicable year by the effective date their first-year annual recertification for the LIHTC program would be due.

Data Reporting Self-Certifications

After the required first-year annual recertification, all LIHTC households must be recertified annually by completing a Self-Certification. Third-party verifications are not required for the Self-Certifications. However, the Annual Certification of Student Status must be completed annually along with the Self-Certification.

For data reporting purposes, LIHTC Self-Certifications are required in order to accurately report information required for HERA data reporting.

Tips for Reviewing Self-Certifications

Owner/Agent must have the resident complete the Self-Certification information so that the data can be input in applicable software and submitted to OHCS through Procorem. When submitting information for a household that receives project-based subsidy, the RD or Section 8 gross amounts of income and assets must be used. The LIHTC program does not recognize any allowance deductions for the rental assistance programs.

Self-Certifications are in place to ease the burden of completing third-party verifications annually. However, the use of Self-Certifications does not absolve the Owner/Agent from maintaining accurate compliance with LIHTC regulations. Compliance with income limits and rent limits must be maintained when households are completing the required Self-Certifications. The O/A is required to review the information supplied by the tenants in order to take the necessary actions to keep the property in compliance.

Certification Schedule Overview

Review of documents should include:

- Check for fully completed information; if information is missing or incomplete ask the tenants to correct the documents.

- Compare information provided to the household's most recent certification; if the new information is quite different than the most recent certification it could indicate the need for further investigation/verification.
- Check for changes in household composition and student status; if the reported household members are different than those last certified, a full certification of the new household is required.

Certification Schedule

Certification:	**Required Documentation:**
➢ Move-In	Full Certification with Verifications & Source Documentation
➢ First Year Anniversary	Full Certification with Verifications & Source Documentation*
➢ Second Year & Beyond	100% LIHTC: Self-Certifications* Non-100% LIHTC: Full Certification with Verifications and Source Documentation LIHTC with Risk Share: Self-Certifications with a copy of filed IRS Tax Returns* * **All household members must have filed an IRS Tax Return in order to complete a Self-Certification.

*If the property has project based rental assistance, and Annual Recertifications (ARs) for that Program (Section 8 / RD) are completed annually, LIHTC Self-Certifications are not required.

Part 10.03 – Recertification / Determining Continued Eligibility

RD & Project-Based Section 8 Programs

For LIHTC properties, Tenant Income Certifications (TICs) must be completed at initial move-in, along with a full certification with the required verifications and source documents.

Further, O/As are not required to complete LIHTC TICs or Self-Certifications when completing RD and/or Section 8 Annual/Interim Recertifications. However, Self-Certifications at recertification are required during each of the interim years if project-based certifications are not being completed annually.

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

NOTE: Annual Certification of Student Status for the LIHTC Program is required annually regardless of the type of certification being completed.

Part 10.04 – Federal, State, or Local Rental Assistance Programs

Gross rent does not include any payments made to the owner to subsidize the tenant's rent (rental assistance payments), including Section 8 or any comparable rental assistance program to a unit or its occupants. Only the tenant-paid portion of the rent payments (inclusive of tenant-paid utilities) is

considered in determining if the rent exceeds the maximum gross rent permissible. Additionally, the gross rent may exceed Tax Credit limits at recertification, as long as the initial rent at move-in was under the limit and the household is receiving at least $1 in subsidy (rental assistance). If at any time the tenant is no longer eligible to receive the rental assistance, the owner must lower the tenant's rent to be at or below the maximum applicable program rent allowed.

In relation to Housing Choice Section 8 Vouchers utilized within OHCS affordable housing units, rents must be capped at or below the required housing authority payment standard per unit type to ensure the tenant portion of the rent is not increased.

Part 10.05 – Leases

OHCS does not provide a model lease agreement and the LIHTC program does not mandate the use of a specific lease agreement form. However, Owners must execute lease agreements with tenants that incorporate specific provisions that establish tenant responsibilities and avoid certain prohibited provisions.

Owners/Agents must therefore develop and adopt their own. OHCS does require that all tenants occupying LIHTC units be income certified and residing in the unit under a valid lease agreement. The Owner/Agent and all adult household members must sign and date, at the signature line, every lease.

Lease provisions should include:

- The legal name of the parties to the agreements and all other occupants;
- A description of the unit to be rented;
- The term of the lease (a six-month minimum term is required);
- The rent amount (including all non-optional fees as part of the gross rent);
- The permitted and restricted use of the premises (i.e. the prohibition of subletting the unit not approved by management);
- 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/audit;
- Fees being charged for optional services;
- The rights and responsibilities of the parties, including obligation of the tenant to certify income annually as defined herein and language that addresses income, utility allowance increase/decrease, income limit increase, basic rent changes, household composition change or any other change and its impact on the tenant's rent and 'good cause' eviction or non-renewal of lease;
- The lease should reflect the correct date of move-in, or the date the tenant takes possession of the unit. This date should also match the move-in date reflected on the initial/move-in Tenant Income Certification (TIC).
- Standard Section 42 language including the student rule
- A provision that upon a 24-hour written notice to the tenant, OHCS, accompanied by the O/A, shall be permitted to enter the dwelling unit during reasonable hours for the purpose of performing an inspection:
- A mechanism that will allow termination of the agreement and eviction for violation of the lease; An Owner may not terminate the tenancy or refuse to renew the lease except for serious or repeated violation of terms and conditions of the lease; for violation of applicable federal, state, or local law; for completion of the transitional housing tenancy period; or for other good cause.

Initial lease terms must be for a minimum of six months with the following exceptions:

1. **Buildings Used for Transitional Housing for the Homeless Under IRC §42(i)(3)(B)(iii)**

   Certain transitional housing for the homeless may be considered used other than on a transient basis provided the residential 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 to independent living within 24 months, and
   - In which a government entity or qualified nonprofit organization provided such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing.

2. **Single-Room Occupancy (SRO) Units Under IRC §42(i)(3)(B)(iv)**

   SRO units which permit the sharing of kitchen, bathroom, and dining facilities, shall not be treated as used on a transient basis merely because it is rented on a month-by-month basis.

   Rents may not exceed the maximum rents as allowed by the Code, or as otherwise agreed per representations made in the Owner's application for funding.

Part 10.06 – Grievance Procedures

Generally, it is acceptable business practice for the Owner to act as the first intermediary in a conflict under limited circumstances, such as when one tenant complains about noise from another tenant's unit. However, the O/A should establish an impartial way to address complaints about property management staff or the way in which the property is being operated. This generally requires the involvement of a neutral third party**.**

Part 10.07 – Occupancy Guidelines / Household Size

There are no current tax credit requirements governing the minimum or maximum household size for a particular unit size. However, Owners must comply with all applicable local laws, regulations and/or financing requirements (HUD, RD, Etc.). OHCS advises all Owner/Agents to be consistent when accepting or rejecting applications. Occupancy guidelines or requirements should be incorporated into each property's management plan. Management should be aware of occupancy standards set by federal, state, HUD, PHA, civil rights laws, tenant/landlord laws and municipal code that may establish a maximum or minimum number of persons per unit. When establishing occupancy guidelines, the owner/agent should take into consideration local fire code as well as fair housing guidance.

Part 10.08 – Occupancy Rules / Tenant Handbook

It is recommended that properties develop occupancy rules / tenant handbook. This provides management with the assurance that tenants have written reference and access to a more comprehensive explanation of general property residency requirements and rules that may be outlined in the lease and house rules.

Suggested Components:

1. Letter of Welcome and an introduction to the property. The introduction should help to establish the necessary rapport between the manager and each tenant.
2. Emergency phone numbers should be listed prominently. Some important numbers to include are: police station, fire department, rescue squad, ambulance, hospitals, electric, gas, water, telephone, and the resident manager.
3. A section should describe the neighborhood. Information offered might include data on community recreation facilities, nearby schools with addresses and telephone numbers, a map with an index, and more.
4. Property information should pertain to the following categories:
    a. A summary of information about paying rent, including the date it is due, the name to whom checks are payable and the address where checks are to be sent or delivered.
    b. List all charges to be assessed for damages, delinquent rents, and returned checks.
    c. Describe the visitor policy.
    d. Explain the lead-based paint notice procedure and acknowledgment requirements.
    e. All community facilities should be listed along with the hours they are open and rules for their use. Describe recreational programs sponsored by management or tenants
    f. The cost of using utilities should be emphasized in terms of the relationship between waste and rent increases. Tips should be given concerning how to conserve energy.
    g. The tenant should be informed of regulations regarding garbage disposal, parking, noise, guests, windows, balconies, appliances, storage rooms, pets, televisions antennas, flammable materials, solicitors, waterbeds, etc.
    h. How to report maintenance problems and who will be responsible for maintenance.
    i. Outline both tenant and landlord responsibilities.
    j. Clearly define process and reasons for eviction along with cause for grievances and procedure to follow in reporting these.
    k. A section of the Occupancy Rules / Handbook should describe the Owner's policy regarding:
        - ✓ Methods for payment.
        - ✓ Delinquencies and follow up.
        - ✓ The procedures that are to be followed in evicting a tenant.
        - ✓ Security deposits.
        - ✓ Transfer Policy (Must be treated as new move-in).

Investors LIHTC investors may impose requirements beyond those imposed by the IRS and/or OHCS. It is important that the Management Agent work with the Owner and Investor to make sure that the requirements for all parties are met.

SECTION 11: COMPLIANCE MONITORING

OHCS is responsible for determining whether owners are compliant with the requirements of Internal Revenue Code (IRC) Section 42 and its regulations and for establishing compliance monitoring procedures. Incidences of noncompliance must be reported to the Internal Revenue Service (IRS). However, OHCS's inspections are not the same as IRS Audits. Compliance with tax credit regulations is ultimately the responsibility of the Owner. The Owner will be liable for consequences of noncompliance regardless of Owner reporting or OHCS inspection procedures. Owners are urged to seek legal counsel and/or tax advice when establishing management and accounting practices for their tax credit properties.

OHCS is required by regulation to conduct compliance monitoring and to take appropriate steps when noncompliance is discovered. It is the sole responsibility of the Owner to remain in compliance.

Part 11.01 – OHCS Compliance Monitoring Overview

Monitoring each property is an ongoing activity that extends throughout the initial 15-year Federal Credit and Compliance Period, as well as the Extended Use Period (combined minimum of 30 years). OHCS is required by law to conduct this compliance monitoring and inform the IRS of noncompliance, or the failure of an Owner to certify to compliance.

OHCS provides a report to the Owner/Agent within 30 days following the review/inspection outlining all items of noncompliance. All state housing finance agencies responsible for allocating tax credits are required to report of noncompliance or building disposition. The housing credit agencies use Form 8823 to fulfill their responsibility under section 42(m)(1)(B)(iii) to notify the IRS of noncompliance with the low-income housing tax credit provisions or any building disposition.

State agencies are responsible for determining whether owners are compliant with the requirements of IRC Section 42 and its regulations. OHCS is required to conduct in-depth compliance monitoring for every tax credit property in the state. Inspection frequency is based on several factors including each property's current risk and/or compliance rating (properties at risk or determined to be in potential non-compliance may be inspected more frequently), other funding inspection requirements that may be more restrictive (such as HOME or BOND funding), and/or when the property is due for its required normal inspection rotation (required federal rotation is based on a three year schedule).

Both file reviews and on-site physical inspections for all properties are required to be conducted.

Part 11.02 – OHCS Compliance Monitoring Process Overview

The compliance monitoring process is based upon but not limited to the following components:

- IRC Section 42 and promulgated regulations including the Oregon Administrative Rules (OARs) for LIHTC Programs and the Qualified Allocation Plan (QAP) for properties with Building Identification Numbers (BINs) as established on the IRS Form 8609 for each building.
- The OHCS LIHTC Compliance Manual (including all future updates per IRS not yet incorporated).
- Compliance Training Workshops.
- Owner's Certification of Continuing Program Compliance and all attachments
- OHCS Management Review Questionnaire.
- Resident Services Plans.
- Utility Allowance Calculation Method and supporting documentation.

- Use of correct income and rent limits.
- LIHTC required and recommended forms.
- Lease and Tenant Selection Plans/Criteria – Review and approval.
- Tenant file reviews and property site inspections.
- Exemptions and special circumstances.
- Record keeping and retention.
- Noncompliance/plans to correct noncompliance.
- Forms 8823.
- Monitoring fees.
- Fair Housing Requirements
- Property Standards
- Tenant Communication
- Technical advice offered within the Guide for Completing Form 8823 (IRS Publication, last revised January 2024).
- IRS technical advice memos, private letter rulings and other credit related information released by the IRS from time to time.
- All other applicable documentation

Compliance Forms

OHCS requires the use of certain forms. No other forms will be considered acceptable. All mandatory forms are located on our website – see link noted below.

All mandatory and recommended forms listed above, and more are located on the OHCS website at: Oregon Housing and Community Services : Compliance Monitoring: What We Do : Housing Compliance & Monitoring : State of Oregon

When a property is scheduled for inspection, the Compliance Analyst (CA) will:

- Notify the Owner and Agent in writing of the date and approximate time of inspection;
- Perform the on-site file review, property inspection, and unit inspections (file audits may be conducted electronically);
- Inform the Owner and Agent of any findings of noncompliance with regard to the review- conduct an exit interview summarizing issues found while onsite;
- Provide Owner with findings letter that includes time period to correct non-compliance findings and respond to OHCS accordingly with corrective action/s required.

Recommended Tips for Submitting Satisfactory Corrective Action/s

- Review the findings letter to ensure that what you are sending was requested. Sending too much information could result in additional questions and/or additional findings;
- Submit the documentation in an organized manner. Accurately label items. Be sure that the property's name is on the materials;
- Prepare cover letter to explain the corrective action/s and put the corrective action in the same order as the findings letter;
- If e-mailing, request an acknowledgement that the person has received the corrective action/s;
- Always send with identifying information or explanation.

Don't wait until the last minute to start working on the response-corrective action/s. Incomplete and/or late responses could result in a lower review rating. It is always acceptable to turn in your fully completed response prior to the due date. However, don't be late. As a last resort and prior to the response due date, contact the Compliance Analyst for an extension if needed.

Electronic File Audit Procedures

OHCS at the Compliance Analyst's (CA) discretion may conduct the file audit portion of some reviews electronically. This is completed using Procorem for file upload into a shared folder with OHCS. The CA will notify the O/A if the review will include an electronic file audit and will provide instructions for its completion. The tenant files that have been chosen for the review will need to be scanned into an electronic file format and must be uploaded into Procorem within 24 hours upon receipt of the selected files.

Part 11.03 – Initial Physical Inspection and Tenant File Review

Treas. Reg. §1.42-5(c)(2)(ii)(A) requires state agencies to conduct on-site inspections of all buildings in the project, inspect the units and review the certifications, the documentation supporting the certifications, and the rent records for the tenants in those units, **by the end of the second calendar year following the year the last building is placed in service.**, and at least once every once every three (3) years thereafter during the period of affordability.

Under Treas. Reg. §1.42-14(d)(2)(ii), an allocation of credit may not be returned any later than 180 days following the close of the first tax year of the credit period. Therefore, it is highly recommended that the first review of the LIHTC project be conducted within that timeframe. Under specific circumstances, previously allocated credits can be reclaimed and returned to the state's credit ceiling if necessary. Timely review of the initial lease-up provides owners an opportunity to correct problems early in the compliance period.

Owners are required to provide all information requested by OHCS prior to the review. Information reviewed will include but is not limited to annual income certifications, the documentation received to support those certifications, rent records and overall management practices.

- Physical inspections are conducted using NSPIRE protocol of all buildings, common areas and grounds, and the low-income units (occupied and vacant) in each property. For more information regarding NSPIRE regulations visit NSPIRE Standards | HUD.gov / U.S. Department of Housing and Urban Development (HUD).
- *File audits will be conducted on-site for the first initial review.

The sample size for both units inspected, and tenant files reviewed will be the lesser of at least 20 percent of the project's low-income units ***and/or*** the minimum sample size set forth in the IRS provided reference chart (Table).

*File audits for subsequent reviews may be conducted electronically and separate from the physical inspection.

Part 11.04 – Subsequent Physical Inspections and Tenant File Reviews

After the initial compliance review, Treas. Reg. §1.42-5(c)(2)(ii)(B) requires that, at least once every 3 years, state agencies conduct on-site inspections of all buildings in the project. OHCS will inspect the units and review the certifications, documentation supporting the certifications, and the rent records for all the tenants living in the units.

The sample size for both units inspected, and tenant files reviewed will be the lesser of at least 20 percent of the project's low-income units ***and/or*** the minimum sample size set forth in the IRS reference chart.

Owners are required to provide all information requested by OHCS prior to the review. Information reviewed will include but is not limited to annual income certifications, the documentation received to support those certifications, rent records and overall management practices.

- Physical inspections are conducted using NSPIRE protocol of all buildings, common areas and grounds, and at least 20% of the low-income units (occupied and vacant) in each property.
- File audits may be conducted on-site or electronically for subsequent reviews. This method will be listed on the Inspection Confirmation Letter sent by OHCS
- Owners will get a minimum of 15 days advance notice of an inspection with instructions on the confirmation notice.

Files reviewed may be decoupled from the units inspected as allowed per IRS regulations. OHCS reserves the right to perform compliance monitoring or request additional reporting of any property at any time necessary for asset management purposes.

To determine a risk rating, each property is evaluated using a standardized internal process reviewing asset management and compliance categories with portfolio thresholds. Compliance categories evaluated will include but are not limited to the following:

• Most recent rating received for management reviews;
• Physical inspections;
• Tenant file reviews;
• NSPIRE scores;
• Submission of required reporting including financial audits and certifications of program compliance
• Owner and Management cooperation with reporting and communication; and
• Change of Ownership or Agent.

Inspection Frequency

After the initial compliance review, Treas. Reg. §1.42-5(c)(2)(ii)(B) requires that, at least once every 3 years, state agencies conduct on-site inspections of all buildings in the project and, for at least 20 percent of the project's low-income units, inspect the units and review the certifications, documentation supporting the certifications, and the rent records for all the tenants living in the units.

Properties with no asset management or compliance concerns will be inspected and audited a minimum of once every three years. Properties that have compliance concerns may be audited more frequently depending on the specific concern and need for additional follow-up or oversight.

Sampling Size

The minimum number of low-income units for which OHCS must conduct on-site inspections and review of certifications is the lesser of:

- ❖ 20% of the low-income units in the low-income housing project, rounded up to the nearest whole number of units; **or**
- ❖ The Minimum Unit Sample Size set forth in the reference chart.

Inspectable areas under NSPIRE will be inspected for all buildings. Inspectable areas include unit, inside, and outside. Please refer to the NSPIRE affirmative habitability requirements in **Part 11.07** below.

Part 11.05 – OHCS Regulatory Review and Inspection Time Frames

State agencies are responsible for determining whether owners are compliant with the requirements of IRC §42 and its regulations. Professional judgment should be used to identify significant noncompliance issues, establish the scope and depth of the project/building review, and apply the law and regulations to the facts and circumstances of the case in a fair and impartial manner. The following provides an outline of the review and inspection process.

Physical Inspection and Tenant File Review Time Frame

The following schedule outlines the time frames for certain monitoring events:

Event	Timeline
Review/Inspection Scheduling	**OHCS will contact Owner/Agent a minimum of 15 days in advance to schedule review/inspections.**
Review/Inspection Results and Findings Report	**Owner/Agent will receive findings report within 30 days following the inspection from OHCS.**
Physical Inspection for Severe or Life-Threatening Findings)	**Owner/Agent will receive a list of findings that require 24-hour immediate action the day of the inspection. Owner/Agent is required to complete items in 24 hours and will have 72 hours to report back to CA immediately upon completion.**
Correction Period	**Owner/Agent will have a minimum of 30 days, for physical inspection findings, to correct any reported non-compliance findings and respond to OHCS.**
Closing	**Once all items in review have been completely addressed and corrections made, OHCS will close the review and submit report to HUD.**

Note: If there are observed deficiencies for any inspectable items the O/A must include *supporting documentation as verification with the Report response to demonstrate corrective actions are completed.

*Supporting Documentation includes pictures of the deficiencies corrected, copies of invoices and work orders.

Part 11.06 – Preparing for OHCS Review/Inspection

The Owner/Agent is required to accurately and fully complete and submit the following items prior to any LIHTC Review/Inspection and will be requested when the scheduling confirmation letter is sent to Owner/Agent:

- Management Review Questionnaire (MRQ)
- Resident Service Report Form
- Rent Roll with move-in dates and annual income
- Copy of Waiting List
- Current Utility Allowance Documentation
- Vacancy Report
- Other documentation as requested necessary for compliance review

Returning all documentation and information on or by the due date listed in the confirmation letter is important. The materials are requested prior to a review/inspection so that the Compliance Analyst (CA) can prepare in advance to allow time while onsite for specifically reviewing files, affirmative marketing, supportive services, performing physical inspections and other program requirements. All documentation submitted should be completed in full and double-checked for accuracy.

Owner/Agent **must** provide notice of entry:

- Provide **all** tenants with at least a 24-hour notice of entry for inspection. The notice must specify that it is for the **entire day** and be provided to **all** residents.

Before the OHCS compliance team arrives at your property, it is recommended that Management:

- Pre-inspect units to avoid any common physical findings.
- Make sure that tenant files are organized in a consistent manner for ease of auditing.
- Set up a quiet area (if available) where the compliance team can audit tenant files without interruption.
- Make sure that adequate staff is available to accompany compliance team into units for inspection.
- Have all required documents available for review such as the Administrative Notebook, waiting list, AFHMP, denied applications, and any other documents requested and not received by the compliance team prior to the inspection.
- Have staff who are knowledgeable of the property present during the inspection and exit interview so they can respond to questions, suggestions, or comments.

Post Inspection: Include file review items

- Exit Interview: The Compliance Analyst/team will make an effort to provide a brief overview of information to Owner/Agent regarding results of the inspection/review.
- Severe and Life-Threatening Findings: The Compliance Analyst will provide a list of all physical inspection findings requiring immediate action to remedy.
- Owner/Agent is required to correct items on immediate action items list and report such correction dates to the Compliance Analyst (CA). All Severe and Life-Threatening items need corrected within 24 hours and must be reported within 72 hours. Follow up by providing Owner/Agent a detailed findings report within 30 days following the inspection/review outlining all findings and noting any issues requiring attention.
- Owner/Agent is required to respond to the findings report by the due date indicated in the report: usually within 30 days.

Part 11.07 – On-Site Physical Inspections

The Owner/Agent must keep all property units in decent, safe, and sanitary condition at all times and in compliance with National Standards for the Physical Inspection of Real Estate **(NSPIRE),** along with any other local/state/federal building codes, including OHCS state standards.

OHCS is required to perform on-site inspections of all LIHTC properties throughout the affordability period. If there are any additional funding sources for which OHCS is responsible for monitoring compliance, the time frame for inspections and reviews may be extended accordingly (longer affordability periods). The inspection will include monitoring of the Owner's/Agent's property management practices including routine maintenance, capital planning, property standards, unit turn-over, security concerns and marketability.

Properties must meet the **NSPIRE** standards established by HUD. NSPIRE requires an inspection of the following inspectable areas: ***unit***, ***inside***, and ***outside***.

These on-site physical inspections will include physical inspections of the unit interiors, building exteriors, property grounds, common spaces, and a reasonable sampling of LIHTC units in each building. Additionally, if other programs are allocated by OHCS, such as HOME, HTF, Risk Share, Oregon Affordable Housing Tax Credit (OAHTC), HELP, Tax- Exempt Bond financing, GHAP, Trust Fund or any other source, a review of all requirements may be conducted along with the LIHTC program review.

NSPIRE requires the following minimum Affirmative Habitability Requirements.

Inspectable Area = Unit

1. Hot and cold running water in both bathroom and kitchen, including adequate source of safe drinking water in the bathroom and kitchen
2. Bathroom or sanitary facility that is in proper operating condition and usable in privacy that contains a sink, a bathtub or shower, and flushable toilet
3. At least 1 battery-operated or hard-wired smoke detector
    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
4. Living room and kitchen area with a sink, cooking appliance, refrigerator, food preparation area, and food storage area
5. 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
6. Must meet carbon monoxide detection standards established through Federal Register notice
7. Two working outlets or one working outlet and a permanent light within all habitable rooms
8. Outlets within 6’ of a water source must be GFCI protected
9. Must contain a permanently installed heating source. Units may not contain unvented space heaters that burn gas, oil, or kerosene.
10. Must have a guardrail when there is an elevated working surface drop off of 30’ or more measured vertically
11. Permanently mounted light fixture in the kitchen and each bathroom

Inspectable Area = Inside

1. At least one battery-operated or hard-wired smoke detector on each level
2. Must meet carbon monoxide detection standards established through Federal Register notice
3. Outlets within 6’ of a water source 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

1. Outlets within 6’ of a water source must be GFCI protected
2. Must have a guardrail when there is an elevated walking surface drop off of 30” or more measured vertically

Immediately following the completion of the physical inspection, the Compliance Analyst(s) (CAs) will complete an Immediate Action Required Items form indicating all of the Severe and Life-Threatening defects need corrected in 24 hours, and all Non-Life-Threatening defects need corrected within 30 days. Any 24-hour corrections need to be reported within 72 hours.

Owner/Agent is then required to correct all of the items listed within the required time frame and send the completed report to the Compliance Officer by the due date noted. The CAs may ask for documentation to support the correction has been completed and the date of completion. The supporting documentation requested may include but is not limited to:

- **Completed work orders**
- **Invoices**
- **Contractor’s reports**
- **City or county inspector’s reports**
- **Photos with date imprint**
- **Budgetary Reports**

Part 11.08 – Compliance Records

Record Keeping and Retention

- **Owners must retain project records that document the compliance of their LIHTC rental properties for at least 6 years after the due date (with extensions) for filing the federal income tax return for that year.** The records for the first year of the credit period, however, must be retained for at least 6 years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building, for a total of 21 years.
- Owners must maintain applicant and tenant information in a way to ensure confidentiality. Any applicant or tenant affected by negligent disclosure or improper use of information may bring a civil action for damages against the Owner and/or Agent and seek other relief as appropriate. Owners must dispose of records in a manner that will prevent any unauthorized access to personal information, e.g., burn, pulverize, shred, etc.

Part 11.09 – Program Training

In addition to providing a Program Compliance Manual, OHCS will conduct periodic Compliance Trainings. The purpose of the state-sponsored training is to provide Owners and Agents with the tools to maintain property compliance.

Typical trainings will cover:

- A sampling of the basic LIHTC compliance requirements
- OHCS policies and procedures for compliance monitoring

Specific information on the following low-income tenant eligibility requirements:

- ✓ Income and Rent Limits
- ✓ Definitions of Income and Assets
- ✓ Tenant Income and Asset Certification

- ✓ Leases
- ✓ Other Owner responsibilities, including notifying Asset Management and Compliance of any change in management or Ownership of the property.

Compliance training workshops are not intended to be the only training resource or a substitute for more formal certification or other technical recordkeeping training.

SECTION 12: NONCOMPLIANCE

Throughout the affordability period, the Owner is required to maintain compliance and correct all non-compliance findings within the required time frame. OHCS must report to the IRS any violation of the requirements of the Low-Income Housing Tax Credit Program. Failure to correct any violation within the allotted time frame as specified by OHCS may result in the loss of tax credits.

Part 12.01 – Types of Noncompliance

Generally, a property is out of compliance if during the Affordability Period:

1. The property no longer meets the set-aside requirements of the application, the income and rent restriction requirements of the program, or other requirements for the units which are set-aside; or
2. The owner fails to submit the annual utility allowance documentation, Annual Owner Certification (CCPC), or tenant events, along with any applicable supporting documentation in a timely manner; or
3. An ineligible household, income and student status, resides in a LIHTC unit; or
4. A unit or building is no longer suitable for occupancy or otherwise in violation of NSPIRE physical inspection standards; or
5. The owner does not comply with OHCS's requests to conduct a physical inspection or file audit.
6. The rent charged exceeds the maximum gross rent; or impermissible fees are charged

Part 12.02 – Consequences

Penalties include, but are not limited to, the following:

- A recapture/reduction of credits.
- The status of Owners, managing agents, and or general partners may be designated as "not in good standing" with the agency.
- Future approvals for management companies may be denied portfolio wide.
- Additional monitoring may be conducted.
- Change in management or site staff may be required.
- A professional consultant may be required to be hired. *
- Required third-party audits for compliance. *
- 100% file and/or physical inspections by OHCS or third party* as required by OHCS.
- Additional reporting may be implemented.
- Additional charging of non-compliance fees.
- Required training of staff. *
- Future applications for housing credits or other funding may be subject to automatic denial.

*At Owners expense.

Part 12.03 – Notification of Noncompliance to Owner

The IRS requires OHCS is required to provide written notice of noncompliance to the owner if:

1. An annual Owner's Certification of Continuing Program Compliance (CCPC) is not received by the due date
2. Any noncompliance issues found in the Annual CCPC;
3. Any required submissions are not received by the due dates;

4. Tenant Income Certifications (TICs), supporting documentation, and rent records are not submitted when requested by OHCS or are found to be in noncompliance.
5. The property is found to be out of compliance through inspection, review, or other means with the provisions of IRC Section 42 or representations made in the property application and noted in the Reservation Agreement; and/or
6. The Owner fails to give notice to OHCS of the sale or transfer of the property.

Owners will typically have advance notice of the intent to file IRS Form(s) 8823 for any/all noncompliance issues found.

Correction Period and Consequences of Non-Compliance

Upon receipt of the inspection/review results, the owner is to take appropriate action to resolve and cure the identified deficiencies.

Owners/Agents will have a **minimum of 30 days** from the date of notification by OHCS to correct findings of noncompliance.

If presented with supporting documentation or reason to determine that there is good cause, an extension may be requested and granted. Extension requests should be in writing and include supporting documentation or reason to determine that there is good cause for the extension request.

Extensions must be requested prior to the end of the initial correction period of 30 days. OHCS is required to submit IRS Form 8823 “Low-Income Housing Credit Agencies Report of Noncompliance” to the IRS no later than 45 days after the end of the correction period, including any granted extensions.

The maximum correction period under NSPIRE standards is 24 hours for life-threatening or severe issues, and 30 days for moderate severity or low severity issues.

If OHCS does not receive the required certifications and/or compliance reports when due or discovers by audit, inspection, review, or in some other manner that the property is not in compliance with the requirements of the LIHTC Program or with the property’s loan documents, including the Declaration, OHCS will notify the Owner as soon as possible.

Owner’s Response

OHCS will review the Owner’s response and supporting documentation, if any, to determine whether the noncompliance has been clarified, corrected, or remains out of compliance.

- **Clarified noncompliance** is, for example, where income eligibility was not properly documented and the Compliance Analyst (CA) cannot make a reasonable determination that the unit is in compliance, but the Owner/Agent (O/A) conducts a retroactive (re)certification which completely and clearly documents the sources of income and assets that were in place at the time the certification should have been effective, and applies income and rent limits that were in effect on that date. If documentation is complete and it supports that the household was eligible as of the effective date, the file is considered clarified.
- **Corrected non-compliance** is when a violation is observed, there is a period of time during which the unit is out of compliance, but the unit is ultimately brought back into compliance. For example, a late certification or re-certification is out of compliance on the certification due date, and back in compliance as of the date the last tenant signs the Tenant Income Certification.

- **Uncorrected non-compliance** is a violation that is not corrected or clarified by the end of the correction period.

Consequences of Non-Compliance

Owners will typically have advance notice of the intent to file IRS Form(s) 8823 for any/all noncompliance issues found.

Part 12.04 – Notification of Noncompliance to OHCS by Owner

If the Owner/Agent (O/A) determines that a unit, building, or an entire development is not in compliance with program requirements, OHCS should be notified immediately. The O/A must formulate a plan to bring the property back into compliance and advise OHCS in writing of such a plan. The O/A 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.

Part 12.05 – Reporting Noncompliance to the IRS

The IRS requires that any authorized housing credit agency that becomes aware that a low-income housing tax credit building is not in compliance with the provisions of Section 42 must file Form 8823 whether corrected or not. The forms are faxed directly to the Internal Revenue Service (IRS) with a copy emailed (encrypted) to the building Owner.

When the owner's response is received, the state agency determines whether the owner provided sufficient evidence to demonstrate one of four things:

1. Clarification establishing that the owner was always in compliance*;
2. Documentation that issue(s) of noncompliance have been remedied within the correction period (out and back in compliance);
3. No documentation that issue(s) of noncompliance had been remedied within the correction period (out of compliance), otherwise referred to as un-corrected non-compliance or
4. Documentation that issue(s) of noncompliance have been remedied but the noncompliance was not corrected until after the end of the correction period. **If corrected within three years after the end of the correction period, a Form 8823 **must be** submitted to the IRS to report the correction of previously reported noncompliance (back in compliance).

*If the state agency determines that the owner was always in compliance, findings are not required to be reported to the IRS.

**It is the responsibility of the O/A to submit documentation to OHCS when an uncorrected 8823 form can be corrected within the allowable three-year period. OHCS does not assume responsibility for following up with the O/A once an 8823 form has been filed.

All findings of non-compliance reported to Owner/Agent must be corrected and responded to in a timely manner. Late correction of items may result in tax consequences for the property.

According to the 8823 Guide, upon receipt of the Form 8823 at the IRS, the "back in compliance" Forms 8823 are processed without contacting the owner. The "out of compliance" Forms 8823 are assigned to technicians to prepare owner notification letters. The letters are specific to the type of noncompliance reported on Form 8823 and explain that noncompliance may result in the loss and recapture of the tax credit. Simultaneous to notifying the owner, the IRS processes the Forms 8823 and transcribes the

information into a database. Forms 8823 are immediately evaluated when received from the state agencies and IRS databases are routinely analyzed to determine whether an audit of the owner's tax return is needed. The taxpayer's three latest filed income tax returns and all Forms 8823 filed for the property are evaluated. If it is determined that an audit is warranted, the case file is sent to the appropriate field office for examination. The taxpayer is notified that an audit has been scheduled.

When an owner receives the notification letter, the letter instructs the owner to contact the state agency to resolve the issue. If the noncompliance is resolved within three years, a "back in compliance" Form 8823 must be filed with the IRS and a copy sent to the owner concurrently. (Note: some issues of noncompliance cannot be remedied.) Please note that adjusting tax returns as applicable is the responsibility of the owner and/or the owner's tax consultant.

IRS Form 8823

Under Treas. Reg. §1.42-5(a), state agencies are required to report any noncompliance of which the agency becomes aware. Agencies report all noncompliance, without regard to whether the identified outstanding noncompliance is subsequently corrected. Most often noncompliance is detected when an agency conducts a physical inspection, file inspection, or desk review of the annual certification of continuing program compliance (CCPC) however, noncompliance can also be reported or detected at any time throughout the year. Noncompliance issues identified and corrected by the owner prior to notification of an upcoming compliance review or inspection by the state agency need not be reported in most cases. There are approximately seventeen areas of noncompliance identified on the 8823 form with a miscellaneous area for reporting of "other noncompliance issues".

<u>The areas identified on the IRS Form 8823 include:</u>

a) Household income above income limit upon initial occupancy
b) Owner failed to correctly complete or document tenant's annual income recertification
c) Violation(s) of the NSPIRE or local inspection standards
d) Owner failed to provide annual certifications or provided incomplete or inaccurate certifications
e) Changes in Eligible Basis or the Applicable Percentage
f) Project failed to meet minimum set-aside requirement (20/50, 40/60 test)
g) Gross rent(s) exceed tax credit limits
h) Project not available to the general public
i) Violation(s) of the Available Unit Rule under section 42(g)(2)(D)(ii)
j) Violation(s) of the Vacant Unit Rule under Reg. 1.42-5(c)(1)(ix)
k) Owner failed to execute and record extended-use agreement within time prescribed by section 42(h)(6)(J)
l) Low-income units occupied by nonqualified full-time students
m) Owner did not properly calculate utility allowance
n) Owner has failed to respond to agency requests for monitoring reviews
o) Low-income units used on a transient basis
p) Building is neither no longer in compliance nor participating in the section 42 program
q) Other noncompliance issues

The state is required to assess whether low-income housing tax credit properties are in safe, decent, sanitary condition and in good repair. The physical inspection standard that Oregon and most state agencies use for inspecting is set by the National Standards for the Physical Inspection of Real Estate (NSPIRE) established by HUD. The IRS requires that all levels of deficiencies as described in NSPIRE protocol must be reported. For example, a missing sink pop-up is a low level NSPIRE finding and must be reported to the IRS even if corrected.

Part 12.06 – Due Diligence

Due diligence can be defined as an investigation of a business or person prior to signing a contract, or an act with a certain standard of care. It can be a legal obligation, but the term will more commonly apply to voluntary investigations. The theory behind due diligence holds that performing this type of investigation contributes significantly to informed decision making by enhancing the amount and quality of information available to decision makers and by ensuring that this information is systematically used to deliberate in a reflexive manner on the decision at hand and all its costs, benefits, and risks.

Part 12.07 – Tenant Fraud or Misrepresentations

LIHTC property owners should demonstrate due diligence to prevent tenant fraud. Fraud includes deliberate misrepresentation of fact in order to induce someone else to part with something of value or surrender a legal right. The outcome of deliberate misrepresentation by a tenant can result in the property owner renting a residential unit to an ineligible tenant at a below market rate.

If misrepresentation is suspected by the Owner or Agent, additional steps should be taken to verify the accuracy of information provided by the tenant. If an O/A discovers that a tenant has deliberately misrepresented their income level, student status, household size, or any other item used to determine eligibility, the O/A must contact OHCS, and should consult state or local landlord-tenant laws for next steps regarding termination of tenancy or raising the household's rent to the market rate.

An Owner's opportunity to identify and self-correct misrepresentation or fraud by a tenant for purposes of the low-income housing tax credit **terminates upon notification from OHCS of an intended review/inspection of the LIHTC property**. Any noncompliance arising from such a misrepresentation or fraud discovered during an OHCS review/inspection will be reported to the IRS on Form 8823 under the appropriate category of noncompliance, regardless of the cause.

If the Owner discovered and addressed an event of tenant fraud or misrepresentation prior to receiving notification from OHCS of a review of the property, a report of noncompliance on IRS Form 8823 may not be filed. However, full documentation regarding the following must be provided:

- Proof of discovery and correction made prior to OHCS sending notification of intended review.
- Provide adequate proof to OHCS that the tenant provided false information clearly showing the event is not a result of O/A negligence or error.
- Proof O/A performed due diligence at the time the tenant moved-in and during recertification to obtain the most accurate information possible form the tenant and all applicable third-party sources.
- Documentation is provided to support O/A has implemented additional safeguards since the event in order to prevent the same situation from occurring again.
- O/A **does not show a pattern** neglecting due-diligence and accepting fraudulent tenants.
- O/A has legally terminated the tenancy resulting with the resident vacating the unit (where possible).

Part 12.08 – Reporting Fraud and Misrepresentation

So that possible loss of low-income housing tax credit might be avoided if it is determined upon later review by the state agency that a tenant is not qualified for low-income housing tax credit unit, Owners should immediately report any suspected deliberate misrepresentation of fraud by a tenant to the state

agency*.

The Low-Income Housing Tax Credit Program will not consider there to have been reportable noncompliance if tenant fraud is discovered and addressed by the owner prior to a state agency review or an IRS audit, and the owner satisfies the state agency that:

(1) the tenant provided false information;
(2) the owner did everything a prudent person would do to avoid fraudulent tenants (due diligence) and has implemented any needed changes to avoid future problems;
(3) the tenant has vacated the unit (if possible); **and**
(4) there is not an observable pattern of accepting fraudulent tenants.

This administrative position applies only when the owner notifies the state agency before notice is given by the state agency that a review of the tenant records or a site inspection is to be conducted.

An owner's opportunity to identify and self-correct misrepresentations or fraud by a tenant for purposes of the low-income housing tax credit terminates upon notification of a state agency's intended review/inspection of the LIHTC project. Any noncompliance arising from such a misrepresentation or fraud discovered during a state agency's review/inspection must be reported to the IRS on Form 8823 under the appropriate category of noncompliance, regardless of the cause. As noted in Treas. Reg. §1.42-5(a), state agencies are required to report any noncompliance of which the agency becomes aware. Agencies must report all noncompliance, without regard to whether the identified outstanding noncompliance is subsequently corrected.

*The IRS has indicated to state agencies that they want to provide an incentive for Owner/Agents to identify and remove (if possible) fraudulent tenants. By working with the state agency as situations are discovered, an opportunity to resolve the problem without harming the property's tax credits exists. For guidance on navigating compliance at a LIHTC property the IRS publishes **Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition Audit Technique Guide** which describes noncompliance items and how to correct.

In 1990 a change in federal law required an additional fifteen years of compliance for the Low-Income Housing Tax Credit (LIHTC), this additional fifteen-year period is known as the extended use period. As a result, properties that were awarded Housing Credits in or after 1990 must comply with program restrictions for a total of thirty years (or more as indicated in agreements), subject to certain exceptions. The applicable restrictions are indicated in the Reservation and Extended Use Agreement (REUA) and the Declaration of Land Use and Restrictive Covenants (Declaration/LURC) for each property.

After the initial fifteen-year Low-Income Housing Tax Credit (LIHTC) Compliance Period has expired for the LIHTC allocations, the Internal Revenue Service (IRS) will no longer receive notification of noncompliance by the States' issuance of 8823 forms. Instead, the responsibility for addressing noncompliance during the extended use period rests with the state tax credit housing finance allocating agency and the Department of Justice as applicable.

What is a credit period? The credit period is the period of time a building's investors plan on taking a tax credit on their federal income tax return. A building's credit period typically starts the year it is placed in service, but the owner has the option of beginning its credit period the year after they place it in service. For example, if a building was placed in service during 2020, the owner may begin its credit period during 2020 or 2021.

What is a compliance period? There are two important compliance periods for LIHTC properties. The first compliance period is the period of time an owner must comply with all program requirements to benefit from their anticipated tax credit. The first year of a building's compliance period is the first year of its credit period. The first compliance period lasts for fifteen years. It takes an owner fifteen years to earn the tax credit the IRS allows them to take over a ten-year credit period. An owner must comply with all requirements established by the IRS and the housing finance agency (HFA) for the fifteen-year compliance period. During this time period noncompliance is reported to the IRS via form 8823 and tax credit recapture for noncompliance during the entire fifteen years is possible.

Part 13.01 – Extended Use Period Requirements

The second compliance period is known as the extended use period. The extended use period (EUP) continues beyond the compliance period for at least fifteen additional years. Although the owner or investor is no longer eligible to receive a federal tax credit deduction, the owner of an LIHTC property is required to stay in compliance with the regulatory agreements in which they committed to keep the property affordable for low-income Oregonians, and in compliance with LIHTC regulations throughout the Extended Use Period (EUP).

It is important that every property owner and manager know the requirements for the extended use period based on the regulatory agreement(s), and the compliance monitoring standards established by the HFA for projects past year fifteen.

Owner Responsibilities

1. Maintain the applicable fraction and set-aside requirements by leasing units to households whose income at placement is consistent with the restrictions outlined in the property documents, as adjusted for family size;
2. Maintain the rent and income limit restrictions in accordance with the current Reservation

and Extended Use Agreement;
3. Lease, rent, market, or make available to the general public (who qualify under the applicable election) all units subject to the credit;
4. Comply fully with the requirements of the Fair Housing Act;
5. Not refuse to lease a unit to a Section 8 voucher holder solely because of the prospective tenant's status as a voucher holder;
6. Maintain all units as suitable for occupancy;
7. Certify tenants initially at move-in (for units subject to income qualification requirements stated within the Reservation and Extended Use Agreement);
8. Continue to update utility allowances annually. Revised utility allowances must be implemented within 90 days of their published effective date;
9. Comply with other restrictions as required under the specific year's Qualified Allocation Plan (QAP) or representations made during the application process;
10. Provide supportive resident services as stated in the initial application; and
11. Comply with all other property funding restrictions and documents as applicable.

Part 13.02 – Revised Tenant Eligibility Issues

After the initial fifteen-year Low-Income Housing Tax Credit (LIHTC) Compliance Period has expired for the LIHTC allocations, the Internal Revenue Service (IRS) will no longer receive notification of noncompliance by the States' issuance of 8823 forms. Instead, the responsibility for addressing noncompliance during the extended use period rests with the state tax credit housing finance allocating agency and the Department of Justice as applicable.

Tenant Income Certifications

1. Move-in Certification: **The initial income certification is required**. Income will be verified by third-party sources and calculated in a manner consistent with the determination of income as defined under Section 8 requirements.
2. Annual Certifications: For 100% LIHTC properties, t**he completion of annual tenant income certifications will no longer be required.** If the property is found to be in non-compliance OHCS may implement the requirement of annual certifications.
    a) Mixed-Use Property: Properties that are <u>not</u> 100% LIHTC **must** certify all residents annually in order to comply with the Next Available Unit Rule.
3. Self-Certifications: Are required for all households after the initial move-in certification for HERA data reporting purposes which requires state agencies to submit current resident information to HUD on an annual basis.
4. Changes in household composition: Any additions to household composition (excluding births or adoptions) will not be permitted during the first six months of occupancy.

Student Status

Federally, a Full-Time student is not considered to be "low-income" or meet "low-income" requirements. Authority: Code Section 151(c)(4). Reference: Code Section 42(i)(3)(D) – Student defined.

LIHTC Student status rules will continue to apply during the extended use period and will be monitored by OHCS. Student status must be checked for each household member annually.

The Annual Certification of Student Status form is a mandatory form.

Unit Transfers

Unit transfers anywhere within a project (even building to building) are allowed regardless of the household's income at the point of transfer, provided the household initially qualified at move-in, and **the property must be part of a multiple building property as indicated on line 8b of the Form 8609.**

Next Available Unit Rule

Under the Code, special rules apply when an originally qualified household's income increases above 140% of the applicable income limitation (i.e., 140% above either 50% AMGI or 60% AMGI). Provided the Available Unit Rule is followed, a unit continues to be treated as Qualified even if the household's income exceeds 140% of the applicable income limitation on recertification as long as the next available unit is rented to a qualified household. Authority: Treasury Regulation 1.42-15. **Extended use properties will be subject to the Next Available Unit Rule.**

Properties With Other Funding

Housing Credit properties with RD, HOME, HTF, Risk Share, BOND, Grants, Section 8 funding, or other applicable funding will continue to be subject to comply with the applicable rules as established by the corresponding program regulations, documents and program guidance.

Part 13.03 – Extended Use Period Monitoring

The monitoring procedure OHCS will adopt once properties have entered into the extended use affordability period may change based on risk analysis of the property. The property and the Owner/Agent's current portfolio of properties monitored by the Department must be in compliance with program requirements and other applicable department regulations.

Each property is evaluated using a standardized internal process reviewing asset management and compliance categories with portfolio thresholds. Compliance categories evaluated will include but are not limited to the following:

- Most recent rating received for management reviews;
- Physical inspections;
- Tenant file reviews;
- NSPIRE scores (formerly REAC);
- Submission of required reporting including financial audits and certifications of continuing program compliance;
- Owner and Management cooperation with reporting and communication; and
- Change of Ownership or Agent.

Most properties will be audited once every three years, and properties that have compliance concerns may be audited more frequently depending on the specific concern and need for additional follow-up or oversight. The unit and file sample will be at least 20% for each building or property as applicable. More files and units may be reviewed as deemed necessary.

Properties with no asset management or compliance concerns may be inspected and audited once every five years.

Annual Reporting

Owners are required to complete a Certificate of Continuing Program Compliance (CCPC) on an annual basis, throughout the term of the Extended Use period. The owner will also be required to complete the Tenant Events Data information in the Procorem data system as applicable.

Monitoring Fees

Monitoring charges will be reduced during the post-15, extended use period. Invoices will continue to be sent to the Owner (or agent) of record annually in November, with a due date in January of the following year. Late payments of monitoring charges are subject to an additional $5.00 per unit fee.

Note: OHCS reserves the right to adjust the monitoring charges as determined by the agency.

Extended Use Expiration

Once the Extended Use Period has expired (or has been terminated), the owner may not evict or displace any households (other than for "good cause") and must maintain restricted rents for the following three years, as stated within IRC Section 42(h)(6)(E)(ii).

Three Year Good Cause Eviction and Rent Increase Protection for Tenants

The term of the property agreement is at least 30 years, beginning on the first day of the compliance period and ends on the later of the date specified by the state agency or 15 years after the close of the first 15-year compliance period under IRC §42(i)(1).

IRC §42(h)(6)(E)(i) describes two circumstances by which the extended use agreement can be terminated:

- The building is acquired through foreclosure, or
- The state agency fails to present a qualified contract if applicable for the acquisition of the LIHTC building (or part thereof) by a party who will continue to operate the building (or part thereof) as low-income housing.

In the event that the extended use agreement is allowed to be terminated, IRC §42(h)(6)(E)(ii) provides existing low- income tenants protection against two events for three years following the termination. These events are: The eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit, or any increase in the gross rent with respect to such unit not otherwise permitted under IRC §42.

Transfer of Ownership

An Owner which has received a grant, tax credit, or loan from OHCS shall not transfer ownership, lease, or otherwise encumber any property which serves or will serve as security for a program without prior written approval from OHCS. Approval will not be unreasonably withheld. Review the Project's program documents for more specific transfer information.

A transfer agreement is required in the event of a transfer of ownership or ownership interest. Such agreement will put the new owner or partner on notice that it is subject to the terms of the Declaration of Restrictive Covenants and the Reservation and Extended Use Agreement (tax credit documents), including all compliance restrictions, annual compliance monitoring and monitoring fees. OHCS must be notified in writing prior to a transfer or change of ownership and the owner will be subject to charges as applicable for the type of transfer involved.

If a transfer is completed without prior OHCS approval, OHCS may, at its sole discretion, enforce remedies as provided under the program documents or OARs which may include additional charges assessed and up to reversal of transfer of ownership.

For more information, view the Transfer of Ownership request for Approval Sale, Partial Sale, Lease, or Merger and Ownership Entity Changes document at:

http://www.oregon.gov/ohcs/Pages/asset-management-transfer-of- ownership.aspx.

GLOSSARY

100% Tax Credit Project:	A project in which all units are LIHTC qualified units (i.e., there are no market rate units).
140% Rule:	If upon recertification, a low-income household's income is greater than 140% of the income limit adjusted for family size, the unit will continue to be counted toward satisfaction of the required set-aside, providing that the unit continues to be rent-restricted and the next available unit of comparable or smaller size in the same building is rented to a qualified low-income household.
240-day Window:	For acquisition/rehabilitation projects, the owner may certify households as RHTC eligible up to 120 days prior to the date of acquisition (using the current income limits) or up to 120 days after the date of acquisition (using the income limits in effect as of the date of acquisition). In either scenario, the effective date of the certification is the date of acquisition. 20%/50% Test: One of the Minimum Set-aside options. 20% or more of the residential units must be rented to household
20%/50% Test:	One of the Minimum Set-aside options. 20% or more of the residential units must be rented to households with gross annual income of 50% or less of the Area Median Income adjusted for family size.
40%/60% Test:	One of the Minimum Set-aside options. 40% or more of the residential units must be rented to households with gross annual income of 60% or less of the Area Median Income adjusted for family size.
Actual Income from Assets:	The income generated by an asset, such as interest or a dividend. This is counted as income even if the income is not received by the household, for example if the interest or dividend is automatically reinvested into the asset.
Adjusted Basis:	The cost basis of a building adjusted for capital improvements minus depreciation allowable.
Affirmative Fair Housing Marketing Plan:	Also referred to as the AFHMP or Affirmative Marketing Plan. A plan in which the owner/management of a property confirms that they are following Fair Housing regulations and are making efforts to market the property to those groups determined to be least likely to otherwise apply for residency.
Allowable Fee:	A fee that may be charged to tax credit tenants. An allowable fee may or may not have to be included in the gross rent calculation, depending on whether the fee is for a service that is optional or mandatory.
AMI	Area Median Income

Annual Household Income:	The combined anticipated, gross annual income of all persons who intend to reside in a unit.
Annual Income:	Total anticipated income to be received by a tenant from all sources including assets for the next twelve (12) months.
Annual Income Recertification:	Document by which the tenant recertifies his/her income for the purpose of determining whether the tenant will be considered low-income according to the provisions of the LIHTC Program.
Applicable Credit Percentage:	Although the credits are commonly described as 9% and 4% credits, these percentages are approximate figures. The U.S. Department of the Treasury publishes the exact credit percentages each month. 4% credits are for acquisition and tax-exempt bond financed projects. 9% credits are for new construction and rehabilitation credits not involving tax exempt bonds.
Applicable Fraction:	The portion of a building that is occupied by low-income households. The Applicable Fraction is the lesser of a) the unit fraction, defined as the ratio of the number of low-income units to the total number of units in the building or b) the floor space fraction, defined as the ratio of the total floor space of the low-income units to the total floor space of all units in the building.
Area Medium Income:	The median income for a specific county, as published by HUD.
ARRA:	The American Recovery and Reinvestment Act of 2009, which created the Section 1602 and TCAP programs.
ARRA Programs:	Section 1602 & TCAP.
Assets:	Items of value, other than necessary and personal items, that are considered in determining the income eligibility of a household
Asset Income:	The amount of money received by a household from items of value as defined in HUD Handbook 4350.3.
Assistance Animal:	An animal that assists an individual with a disability. This term includes service animals and support animals. These animals are not treated as pets but rather as reasonable accommodations under Fair Housing.
Average Income:	One of the Minimum Set-aside options. At least 40% of the units must constitute a qualified group of units in which the average imputed income limitation does not exceed 60% AMI.
Bifurcation of Lease:	The act of amending a lease to remove some household members while keeping others on the lease. A bifurcation of lease may be required under VAWA to remove a tenant who engages in criminal activity related to

	domestic violence, dating violence, sexual assault or stalking without removing or otherwise penalizing the victim of such activity.
Cash Value of Asset:	The market value of the asset minus the reasonable expenses incurred to convert the asset to cash.
Casualty Loss:	A loss of a unit due to fire, natural disaster, or other similar circumstance. 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.
COLA:	Cost of living adjustment increase for Social Security as announced by the Social Security Administration.
Comparable Unit:	A unit of the same size and number of bedrooms with similar amenities and features as another unit.
Compliance:	The act of meeting the requirements and conditions specified under the law and the LIHTC program requirements.
Compliance Period:	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. The development’s first fifteen (15) taxable years.
Correction Period:	A reasonable time as determined by OHCS for an owner to correct any violation as a result of noncompliance
Date of Acquisition:	The date on which a building is acquired through purchase.
Day Laborer:	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. Such income does not meet HUD’s definition of “nonrecurring” and must be counted as income.
Declaration of Land Use Restrictive Covenant	The written and recorded agreement between OHCS and the owner restricting the use of the development during the term of the Extended Use Period. The official document from OHCS is now called the “Declaration”.
Decontrol Period:	The three-year period following the termination of an Extended Use Agreement (either through qualified contract release or foreclosure) during which tenant protections apply to all existing low-income households. The protections include a prohibition against eviction except for good cause and against increases in gross rent except as allowable under Section 42.
Disposed of Asset:	An asset disposed of for less than fair market value must be counted as a household asset when determining income.

Due Diligence:	The appropriate, voluntary efforts to remain in compliance with all applicable Section 42 rules and regulations. Due diligence can be demonstrated through business care and prudent practices and policies. The 8823 Guide (page 3-4) indicates that part of due diligence is the establishment of internal controls, including but not limited to: separation of duties, adequate supervision of employees, management oversight and review (internal audits), independent audits, and timely recordkeeping. OHCS expects all LIHTC projects to demonstrate due diligence.
Earned Income:	Income or earnings from wages, tips, salaries, other employee compensation, and net income from self-employment. The earned income of all adult household members is included in the Annual Household Income calculation. The earned income of minors (members under age 18) is not included. Earned income includes income of day laborers, independent contractors, and seasonal workers.
Effective Date of Tenant Certification:	The date the Tenant Income Certification becomes applicable. For initial certifications, this date must be the move-in date of the household. For annual recertifications, this date must be the anniversary date of the move-in.
Effective Term of Verification:	A period of time not to exceed one hundred twenty (120) days. After this time, if the tenant has not yet moved in or been recertified, a new written third-party verification must be obtained. A verification document must be dated within the effective term at time of Tenant's Income Certification.