



**LIHTC Program  
Compliance Manual**

**2016**

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# **Chapter 1 - Introduction**

## **LIHTC Program Background**

In 1986, Congress enacted the Low-Income Housing Tax Credits 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” to allocate and administer tax credits for the entire state of Oregon.

Each State allocating the LIHTC program must develop a Qualified Allocation Plan (QAP) which establishes the guidelines and procedures for the acceptance, scoring, and competitive ranking of applications received for funding LIHTC developments, and for the administration and monitoring of the LIHTC Program. As with each State, 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.

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 communication, posts on the website, additional documents, and training is applicable to ALL owners of ALL low-income housing tax credit funded properties.

## **Three Periods of Compliance**

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 2016, the owner may begin its credit period during 2016 or 2017. 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 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 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.

## 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 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 9th

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

### 1993 – August 10th

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 24th

- 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 26th

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

### 2003 – November 24th

- **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 21st

- **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 20th

- **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 29th

- **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/utimodel.html](http://www.huduser.org/resources/utimodel.html));
  - ✓ Energy Consumption Model – must be calculated by a licensed engineer or a qualified professional pre-approved by OHCS.

2008 – July 30

- 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;
    - 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).** Third party verifications must be obtained to support the information reported for both the move-in and first year annual certifications. (Effective 1/1/2009).
  - ✓ 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 by the Owner/Agent to OHCS via the required form OHCS.10 Annual Reporting Spreadsheet or by use of the Web Compliance Management System (WCMS). 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).

## **Purpose of this Compliance Manual**

This manual is a guide to understanding compliance monitoring as practiced in Oregon under Section 42 of the Internal Revenue Code (“Code”) which governs the use of Low-Income Housing Tax Credit program. It was developed pursuant to Section 42 of the Code and the IRS Procedure for Monitoring Compliance and 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 tax credit program. It is intended to be used as a supplement to the Code, revenue procedures, revenue rulings, letter rulings, notices, announcements and any applicable IRS or Treasury regulations as well as state and federal law. 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.

**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.

## **OHCS Asset Management and Compliance**

The OHCS Asset Management Section provides compliance monitoring and asset management for all Affordable Housing administered by OHCS. The Section monitors and evaluates compliance with applicable rules, regulations and agreements relating to the numerous State and Federal funding programs provided through OHCS. The services provided by the Section ensure that the properties funded by OHCS are financially secure, the physical assets are maintained and in decent, safe and sanitary condition; and the owners and management agents are in compliance with applicable State and Federal rules, regulations, statutes, policies and procedures. The Section also provides technical assistance and training to owners, management agents, residents, government officials, and the public.

Compliance Officers in this Section maintain extensive program knowledge and ability to provide assistance to partners throughout the affordable housing industry within the State of Oregon. Asset Management staff provides guidance needed to maintain a high level of program expertise in the field and the sustainability of quality housing for low-income Oregonians. Compliance Officers work directly with Owners and Agents to provide program technical assistance, track Owner Compliance Certifications annually, monitor required Resident Services programs, review and approve Management Agents, answer public inquiries and handle a wide range of tenant complaint issues. Each Compliance Officer (CO) is responsible for a large number of properties in their portfolios. They work together as a team to conduct monitoring reviews at each property in the OHCS portfolio on a regular basis as determined by the requirements of each funding program. The on-site monitoring reviews include reviewing management practices and auditing tenant files to ensure program compliance is maintained. Compliance Officers also conduct physical inspections of each property that include reviewing maintenance and grounds keeping practices. They inspect a required number of randomly selected units, common areas, building exteriors and grounds to ensure decent, safe and sanitary housing is maintained. Many properties in the portfolio have multiple funding programs with overlapping regulatory requirements.

Asset Managers evaluate the OHCS multifamily housing portfolio to identify financial risk and perform in-depth analysis to discover areas of concern in operations. Asset Managers collaborate with stakeholders to formulate strategies for improvement and solutions to maximize property performance. Asset Managers also are the primary contact for ownership transfers involving all funding sources supported by OHCS, including grants, tax credits and multifamily loan programs. Transfer of all or any ownership interest in the property or collateral used as security for an OHCS funding source are addressed in the Oregon Administrative Rules (OAR) and the program documents, including but not limited to the Regulatory Agreement, Assignment of Leases and Rents, Project Use Agreement, Grant Agreement, and the Declaration of Restrictive Covenants.

## **Chapter 2 - Responsibilities**

Once tax credits are allocated to a property, LIHTC regulations require the State 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. Among the entities and persons involved in the compliance of the tax credit program are OHCS, the Property Owner and the Management Company. Various responsibilities of these parties are set forth below.

### **OHCS Responsibilities**

#### **Issuance of IRS Form 8609 (Low-Income Housing Certification)**

An IRS Form 8609 is prepared by OHCS for each building 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 Compliance 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 issuance of the IRS Form 8609 will normally begin the OHCS monitoring and inspection cycle. OHCS will conduct the first compliance review/inspection no later than the end of the calendar year following the year the last building in the property is placed in service. In some cases pre-8609 inspections are conducted, when this occurs an additional inspection may need to be scheduled to meet IRS requirements once 8609 form(s) are issued.

#### **Compliance Monitoring**

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. 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 UPCS 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 electronically and separate from the physical inspection. 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;
- REAC 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.

## **8823 Form Filing**

All state housing finance agencies responsible for allocating tax credits are required to file IRS Form 8823 low-income housing credit agencies 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.

## **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.

## **Conduct Training & Provide Technical Guidance**

**Training** - OHCS will offer continuing education on compliance regulations and requirements to property owners, management agents, and on-site personnel primarily through compliance training workshops, manual updates, and the OHCS website at: <http://www.oregon.gov/ohcs/Pages/asset-management.aspx>.

**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 Officer via phone or email.

## **Other OHCS duties include (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.

## **The following schedule outlines time frames for certain monitoring events:**

### **Event**

### **Timeline**

Inspection Scheduling

OHCS will contact Owner/Agent a minimum of 14 days in advance to schedule review/inspection\*.

Inspection results/findings report

Owner/Agent will receive findings report within 30 days following the inspection from OHCS.

Physical Inspection EH & S

Owner/Agent will receive list of findings that require 24 hour or 72 hour immediate action the day of the inspection. Owner/Agent is required to complete items in 24 or 72 hours as specified and report back to CO immediately upon completion.

Correction Period

Owner/Agent will have a minimum of 30 days to correct any reported non-compliance findings and respond to OHCS with the exception of EH&S items noted above.

## Closing

Once all items in review have been satisfactorily addressed and all corrections made, OHCS will close the review, assign a review rating and file 8823s as necessary.

\*In rare non-compliance situations, OHCS reserves the right to inspect a property with minimal or no advance notice.

## Preparing for OHCS Inspection/Review

The Owner/Agent will be required to submit documentation on or before the due date as indicated in the scheduling confirmation letter sent to the Owner/Agent prior to the review.

### Standard Documentation Requested:

- Completion of Management Review Questionnaire
- Resident Services Report Form
- Rent Roll with move-in dates
- Copy of Waiting List
- Current AFHMP
- Marketing Information
- Current Utility Allowance documentation
- Vacancy Report and turnover information
- Budgetary information reports
- Property map identifying all buildings and specific unit locations
- Other documentation as requested necessary for compliance review

Returning all documentation and information on or by the due date listed is important. The materials are requested prior to a review/inspection so that the compliance officer can prepare for the review. The materials also ensure that the property will be accurately monitored. All documentation submitted should be completed in full and double checked for accuracy. Late submittals may effect final result in the property' rating score.

Prior to the scheduled inspection the Owner/Agent **must** provide legal notice of entry to all tenants:

- Provide **all** tenants with at least 24-hour notice of entry for inspection. The notice must specify that it is for the **entire day** and be provided to **all** residents. Copies of the inspection notices must be kept on file.

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 or file uploading.
- Set up a quiet area (if available) where the compliance team can audit tenant files without interruption (if the file review will be conducted on site).
- Make sure that adequate staff is available to escort inspectors into units and around property for inspection.
- Have all required documents available for review such as the Administrative Notebook, waiting list, AFHMP, denied applications, and any other documents requested by the compliance team prior to the inspection.
- Have staff whom are knowledgeable of the property present during the inspection and exit interview so they can respond to and take notes of questions, suggestions or comments.

### Post Inspection:

- Exit Interview: The Compliance Officer/team will make an effort to provide a general overview of information to owner/agent regarding any results of the inspection found on the day of review.
- EH&S findings: Compliance Officer will provide a list of all physical inspection findings requiring immediate action to remedy (OHCS Annual Inspection Immediate Action Required Items form).
- Owner/agent is required to correct items on immediate action items list and report such correction date to the Compliance Officer within 24 hours for life-threatening items and 72-hours for non-life threatening items.
- OHCS will 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.

## **Electronic File Audit Procedures**

OHCS conducts the majority of file reviews electronically. This is completed using a file upload procedure into a shared folder with OHCS. The Compliance Officer will notify the Owner/Agent 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 the shared folder within 24 hours of official OHCS notification. Instructions for this process are provided both before and during the review.

## **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 is completed for the property and accepted by the multiple agencies. OHCS may attend the physical inspection along with the partner agencies and/or REAC 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 (as noted above).

The following Federal assisted-housing programs are governed by the federal agreement (Federal Alignment Initiative):

- 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

The following funders participate in the Oregon Statewide Streamlining Agreement:

- OHCS
- Portland Housing Bureau
- Lane County
- Clackamas County
- Washington County
- City of Salem
- Home Forward

## **Property Owner Responsibilities**

Each owner has chosen to participate in the Low-Income Housing Tax Credit 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.

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. Although an owner may have a managing agent and/or consultant acting on their behalf, the owner is ultimately responsible for ensuring compliance with all applicable low-income housing tax credit regulations and rules. **In selecting a managing agent and/or consultant, the owner should ensure 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.**

### **Program information needed to maintain compliance**

Owner should have knowledge of the following details and provide this information to the managing agent in order 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
- 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 8609 form
- Resident service requirements
- Established tenant preferences
- Restrictions of all other applicable funding sources

### **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 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. Owners/Agents 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 Owner/Agents 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.

### **HUD Tenant Demographic Data and WCMS**

The Housing Economic Recovery Act of 2008 established a requirement that all HFA's gather and report tenant demographic data to HUD for all participants in the LIHTC program on an annual basis. In November 2010, OHCS updated the Annual Reporting Tenant Data Spreadsheet for the purpose of collecting and reporting required information to HUD. In late 2013, OHCS began implementation of the Web Compliance Management System (WCMS). Several partner Agents began utilizing this program and entering tenant certification data. When information is entered correctly

into WCMS, the system replaces the need for the completion of the Annual Reporting Spreadsheet as the data is collected and stored in real-time electronically. All LIHTC properties will be required to utilize WCMS by the end of 2017. All WCMS users are required to register with OHCS to gain access to the system and sign a user agreement.

**Required Process that must be implemented to utilize WCMS:**

- Register with OHCS for a user ID and sign a user agreement
- Each unit entered into WCMS 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.
- Prior to any new lease-up activity, please contact OHCS to ensure the property is accurately set-up in the WCMS system. Tenant information will be required to be entered or uploaded as tenants move-in

In addition to tenant data reporting, OHCS has now implemented the use of WCMS for Financial data reporting.

**Prepare and Submit the Owner’s Annual Certification of Continuing Program Compliance (CCPC)**

The owner is responsible for reporting to OHCS by submitting the Owner’s Certification of Continuing Program Compliance. The owner is further required to submit tenant file documentation and unit turn-over rent readiness documentation for specified units upon request from OHCS.

**Annual Reporting is due and must be submitted by the end of February each year for the previous reporting year.**

The monitoring provisions of the Code require the owner of a low-income housing property to certify at least annually that the property meets the following:

1. The property meets the minimum requirements of:
  - A. 20-50 test under Section 42 (g)(1)(A) of the Code
  - B. 40-60 test under Section 42 (g)(1)(B) of the Code
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 or 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 #) on page 3 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) on page 3
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.

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.

### **Train On-Site Personnel**

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. Additionally, OHCS requires that all personnel who are responsible for compliance of a LIHTC property become Tax Credit certified by a nationally recognized trainer such as NAHMA, Quadel, NCHM, Zeffert, Spectrum or TheoPro (list is not all inclusive). Once certified, personnel should attend training on a periodic basis to learn about program updates or changes. It is also good practice for Owners and Agent personnel to receive regular training regarding Fair housing and Oregon landlord tenant law.

### **Ensure Proper Maintenance**

The owner is responsible to ensure that the LIHTC property is maintained in a decent, safe, sanitary condition and is in good repair. *Failure to do so is a reportable act of Uniform Physical Condition Standards (UPCS) noncompliance.* Further, all properties that have entered into the Extended Use Period must continue to comply with the UPCS requirements.

## **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 or 40@60 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.

**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.**

## **Maintain a Development File – Administrative Notebook**

An Administrative Notebook is required to be kept on-site and accessible to staff responsible for placing and tracking eligible households at the property. The Notebook should contain the following documents:

- Copies of all regulatory agreements associated with the property such as Declaration of Land Use Restrictive Covenants, Reservation and Extended Use Agreement.
- All applicable documents relating to any other forms of housing or finance programs (i.e. HOME, Risk Share, etc and HUD Section or RD).
- Documentation reflecting the current utility allowance and the source (method used to calculate) - NOTE: updates or revisions must occur at least annually.
- Current Income Limits.
- Current Rent Limits.
- Resident Services Plan and documentation.
- Property map indicating all building and unit locations.
- Copies of the completed & signed Forms 8609 for each BIN (Lower portion, Part II completed by the owner).
- All other information related to the property and program(s) compliance.

## **Maintain a Tenant/Unit File for Each Unit in the Property**

Tenant file requirements are detailed later in this manual. See Chapter 4 for more details.

## **Ongoing Administration and Notification**

The owner is responsible for keeping OHCS informed of any event that might affect the property's compliance status, for certifying annually the property's continued compliance and responding to OHCS inquiries. This includes written notification of changes in ownership, management, managing agent, address, email address and telephone changes.

As outlined below, Owners who desire to change managing agents must notify OHCS and submit a completed Management Agent Packet and Qualifications for the proposed agent **at least 60 days prior to the effective date of the change**. OHCS will make every effort to evaluate the proposed change and approve, conditionally approve or deny the change and notify the owner of the decision within 30 days. Decisions may be delayed if the packet received is outdated, does not contain all of the information requested, or is not signed by the proper parties. Once the Owner receives permission from OHCS to change Management, the owner can then give the managing agent in place a 30-day notice to terminate services. OHCS does maintain a list of Management Agents that will be provided upon request.

## **Management Agent Plan & Qualifications**

Owners/Management Agents of LIHTC properties are required to submit a Management Plan & Qualifications Packet. The packet must be reviewed and approved by Asset Management & Compliance prior to lease-up activities, property completion and anytime a change in management is needed. From time to time, OHCS will issue notices to explain, augment, or interpret these requirements. The Management Packet provides OHCS information regarding the Owner/Agent relationship; site staffing and specific responsibilities, marketing efforts, and resident services. In addition, it is used to document management's Fair Housing procedures and policies, the process for screening of applicants, mediation protocol, and compliance procedures, etc. OHCS does not issue blanket approval for any management company. Proposed management must be reviewed and approved on a property-by-property basis, regardless of the number of properties managed by the management company.

The Management Agent Plan and Qualifications Packet are available on the OHCS website at:

<http://www.oregon.gov/ohcs/Pages/asset-management-program-compliance-section.aspx>

## **Resident Services Plans**

At the time of funding or at reservation of awards, the Department 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.

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

OHCS reviews Resident Services Plans along with Management Packets. The resident service activities review is part of ongoing monitoring compliance of all properties. Agents are advised to work closely with the Owner in all aspects of the resident services requirement. However, the Owner carries the ultimate responsibility for compliance with the plan.

## **Resident Service Plan Requirements**

- Resident Services Plans must remain the same or similar to the original plan for the property.
- Owners must review the plan at least once every five years to determine if the plan remains relevant for the current resident population at the property.
- 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

## **Resident Services Reporting**

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

- Service Provider and their qualifications
- Agency providing services for the property
- 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: 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
- If the approved plan is being followed or appears to require an approved update
- Description of methods and tools used to evaluate the services plan
- Review of preferences established and MOU's in place as applicable

Each property's Owner/Agent is expected to complete the Resident Services Plan Report prior to each inspection/review and submit to the Compliance Officer as part of the required pre-inspection documentation.

## **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 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 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>.

## **Noncompliance**

The owner is responsible to correct any incidents of noncompliance 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.

## **Consequences of Noncompliance-Examples**

- 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.

### **Management Agent Responsibilities**

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. See owner responsibilities beginning on page 08.

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.

## **Chapter 3 – Federal Regulations & Compliance Guidance**

Section 42 of the Internal Revenue Code (“Code”) contains 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. The following discussion highlights some of the Code provisions directly affecting property compliance. **This manual does not provide a complete listing of compliance regulations.**

### **Building Identification Numbers (BINs)**

Every LIHTC is identified by a unique number. 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 – **16**
3. The remaining numbers are state specific identification numbers - **00000**

### **Minimum LIHTC Set-Aside Requirements**

#### **Minimum LIHTC Set-Aside Election**

At the time of application for the tax credit, the owner of the property must elect one of two minimum federal set-aside requirements. This election, once memorialized within the Declaration of Land Use Restrictive Covenants 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.

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:

1. At least 20% of the available rental units must be rent restricted and occupied by households whose income is 50% or less of area median income as adjusted for family size; or
2. At least 40% of the available rental units must be rent restricted and occupied by households whose income is 60% or less of area median income as adjusted for family size.

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 (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.**

### **Minimum Set-Aside Deadlines**

For properties receiving credits in 1991 and later, the minimum set-aside must be met by December 31<sup>st</sup> 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 31<sup>st</sup> of the second year. Once the minimum set-aside is met, it must be maintained for the entire compliance period.

### **Initial Credit Certification**

#### **New Developments**

For new construction, the certificate of occupancy or substantial completion is also the placed-in-service date. 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. The owner has until the end of the year placed-in-service or to the end of the next taxable year (if credits are deferred) to meet the minimum set-aside and start claiming credits. Once the building/s have placed-in-service, the minimum set-aside must be met by the end of the year placed-in-service or the next taxable year (if credits are deferred) to start claiming credits. 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.

### **Acquisition/Rehab Credit Certification**

#### **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 Agent/Owner should certify the existing residents eligible for the LIHTC program will be based on several factors including:

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

When an owner completes the rehabilitation activities by December 31<sup>st</sup> 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.

#### **Certification**

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 a TIC is completed more than 120 days before the start of the credit period, the owner must test the resident's income by asking them to sign a statement certifying if their income has changed since completing their certification for the LIHTC program. The test should be done during the 120 days prior to the start of the credit period. If the resident indicates that their household income has changed since the initial TIC, the owner should ask for a copy of a document showing the change; e.g., a copy of a pay stub, bank statement, benefit award letter, etc. and the TIC should be updated as applicable. All changes should be clarified in writing and documented carefully. If the resident's income is above 140 percent of their income limit, the owner must implement the available unit rule.

#### **Effective dates**

For existing households occupying a unit at the time of acquisition by the owner, the initial tenant income certification is completed within 120 days of the date acquisition using the income limits in effect on the day of acquisition. The effective date of the tenant income certification is the date of acquisition since there is no move-in date.

In the event that the household occupies a unit at the time of acquisition, but the tenant income certification is completed more than 120 after the date of acquisition, the household must be treated as a new move-in. Owners use the income limits in effect at the time of the tenant income certification and the effective date is the date the last adult member of the household signs the certification, (this is an exception to the general rule for effective dates because there is no move-in date).

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.

#### **Transfers or Relocations**

During an acquisition/rehab it is common for an owner to relocate an existing resident within the same property while units are undergoing rehab. 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 8609 form. 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.

### **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

### **Re-syndication of tax credit properties**

If an owner plans to re-syndicate a project (obtain new tax credits on a property that already has/had tax credits), or to sell to a new owner planning to apply for new credits, 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

### **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.

### **New Applications and 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 all current income and asset information has been requested. In addition to the required LIHTC tenant questionnaire, an Owner should obtain a new application or written information regarding current asset and income sources. Using an outdated application to verify current information is not acceptable.

### **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. Leases should also be put in place with the start of new tax credits to demonstrate that the tenant has signed at least a six-month lease with the start of the credits. 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.

## Rent, Income and Utility Allowance Requirements

The maximum gross rent is the tenant paid portion of the rent plus the utility allowance (excluding telephone, cable and internet) and any other mandatory charge. Utility allowances must be determined according to program requirements and calculated using an approved method.

### Maximum Rent Limits

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.**

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)

<u>One Person</u>	<u>Two Persons</u>	<u>Three Persons</u>	<u>Four Persons</u>
\$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 allowable gross rent regardless of the number of persons actually occupying the two-bedroom unit.

### Allowable Fees and Charges

Customary fees that are reasonable and typically charged for low income rentals, such as refundable security deposits, cleaning deposits, pet deposits and screening 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.

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.

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.

## **Fees - Application Processing**

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.

## **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 (the regulations are different if the unit is also HOME assisted). 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, 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 (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.**

## **8609 Form 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 8609 to the Asset Management and Compliance Section of OHCS for record keeping and compliance monitoring purposes.

The owner will need to know how the Line8b election on the 1<sup>st</sup> year filing of the 8609 forms is treated or will be treated, and be able to relate that information to the management agent operating the property. 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, 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 (except for reasonable accommodation requests) must retain income eligibility at the set-aside limit of 20@50 or 40@60, the 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.

## **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).

**Example 1:**

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

**Example 2:**

Maximum LIHTC Gross Rent =	<b>\$550</b>	Tenant moves-in on March 1 <sup>st</sup> and receives a rent concession. Owner wants to recoup the concession during the remaining months of the year.
Tenant Rent (March) =	\$ 0	
Tenant Rent (April-December) =	<b>\$575</b>	
<b>Gross rent was overcharged from April through December.</b>		
Not only will the owner have to refund the amount overcharged for each month, they may 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 earliest date an overcharged LIHTC unit can regain compliance is the first day (January 1<sup>st</sup>) of the following tax year, provided the unit is rent-restricted under the applicable program rent requirements.

**Maximum Income Limits**

Maximum income limits for qualifying tenants depend on the minimum low-income set-aside election the owner has chosen. Qualifying tenants in properties operating under the “20@50” election may not have incomes exceeding 50% of area median income adjusted for family size. Tenants who qualify to live in properties that operate under the “40@60” election may not have incomes exceeding 60% of area median income adjusted for family size. **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.**

**MTSP Income Limits**

In addition to rent limits, the U.S. Department of Housing and Urban Development (HUD) also publishes MTSP income limits. This publication includes amounts for family sizes ranging from one to eight household members. Based on the age and/or location of the property, there are multiple income limits that may apply.

**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. 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.

## **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 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.

## **Locating Rent and Income Limits**

Upon receipt of the income limit information from HUD, OHCS calculates additional income levels with corresponding rent limits by County and makes them available to owners and agents and the general public within a few days of their release on the OHCS website at: <http://www.oregon.gov/ohcs/pages/research-income-rent-limits.aspx>.

**NOTE: It is the owner's responsibility to obtain the new rent and income limits each year.** Owners are not permitted to anticipate increases in income and rent limits. Income and rent limits become effective when published by HUD, and will remain in effect until HUD officially replaces with new updated limits. HUD typically publishes new limits during the spring of each year (subject to change). Owners typically have 45 days from the HUD publishing date to implement new limits.

## **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). 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 utilities are paid directly by the tenant, a utility allowance must be used when determining eligible unit rents. If utilities are included in gross rent, the utility allowance is zero. 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 allowances more than once per year. However, each time a review is completed, whether a mandated annual review, or a self-imposed review, Owners and Agents have a maximum of 90 days after the new allowances are determined to implement them into the maximum allowable rent computation.

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 Owner or Agent 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. Owners or Agents must submit the utility allowance documentation paperwork to OHCS each year with the CCPC, at inspection, and when requested. The information must be made available to all tenants at the beginning of the 90 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 U/As have been reviewed and no changes were required to be made.

## **Notification requirements**

- Obtain UA from PHA – 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.
- Obtain UA from utility company, using the HUD Model, or energy consumption model – the Owner must submit copies of the utility calculations with supporting documentation to OHCS and make the calculation 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.

## **Changing 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. 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 Utility Allowance Calculators is located on the OHCS website. Providers who would like to be added to the approved list should contact the Asset Management and Compliance 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. Owners/Agents are 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.

## **Sub-Metered Units**

IRS Notice 2009-44 clarified that utilities paid by a resident that are based on consumption in a sub-metered unit are to be treated as being paid directly by the resident. **NOTE:** The Final regulations state that cable television, telephone and internet costs are to be **excluded** from the utility allowance calculations. However if these items are required to be paid for as a condition of occupancy, the amount of the fee must be included in the gross rent calculation.

## **Properties with RD or Section 8 Rental Assistance**

Projects regulated by Rural Development (RD) and HUD (Section 8) project based rental assistance must continue to use the RD and HUD-approved utility allowance schedules, respectively. The maximum rent that may be paid by the tenant must be reduced by utility allowance(s) obtained in the following manner.

- If a building receives assistance from the Rural Housing Service (RHS-assisted building) then the utility allowance is determined using the method prescribed by the Rural Housing Service (RHS) for the building, regardless of whether the building or its tenants also receive other state or federal assistance.
- If any tenant in a building receives RHS rental assistance payments (RHS tenant assistance), the applicable utility allowance for all rent-restricted units is the applicable RHS utility allowance, including any units occupied by tenants receiving rental assistance payments from the Department of Housing and Urban Development (HUD).
- If neither a building nor any tenant in the building receives RHS housing assistance, and the building's rents and utility allowances are reviewed by HUD on an annual basis (HUD-regulated building), then the applicable HUD utility allowance is the utility allowance for all rent-restricted units in the building.
- If a building is neither an RHS-assisted nor HUD-regulated, and no tenant receives RHS tenant assistance, the applicable utility allowance for any rent-restricted unit occupied by tenants receiving HUD rental assistance payments (HUD tenant assistance) is the applicable Public Housing Authority (PHA) utility allowance established for the Section 8 Existing Housing Program.

## **Tenant-Based Rental Assistance**

Owners/Agents must use the applicable Public Housing Authority (PHA) utility allowance for those residents receiving tenant-based HUD rental assistance (housing choice vouchers) and occupy rent-restricted units in LIHTC buildings that are not FmHA (RD)-Assisted or HUD-regulated (project-based).

## **RUBS-Ratio Utility Billing Systems**

In notice 2009-44 the IRS published that ratio unit billing systems (RUBS) will be disallowed in sub-metering. RUBS calculations are based on a unit's relative floor space, number of occupants, or some other measure, but not on the actual

use by the unit. In sub-metering arrangements, the billed amount must reflect the unit's actual consumption of the particular utility. The utility rate charged to the tenants cannot exceed the utility company rate incurred by the building owner for a particular utility. If two or more utilities, such as electric or water are sub-metered, then the building owner or manager must separately state the amount billed for each sub-metered utility. Any amount paid by a tenant for utilities using RUBS calculations must be included in gross rent.

### **Utility Allowance Noncompliance**

- 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 and
- 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.

### **Rules Governing Low-Income Eligibility of Units**

The following is a partial listing of IRS rules and regulations that commonly result in noncompliance. Further information on additional regulations can be found in IRS code or the 8823 Guide.

#### **Vacant Unit Rule**

The Vacant Unit Rule 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 LIHC 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 would affect what would be considered reasonable.

#### **Available Unit Rule – 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.

## **Suitable for Occupancy**

Owners are required to make newly vacated units suitable for occupancy in a reasonable amount of time. Reasonable amount of time can be defined as 30 days. In addition, 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.

## **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 Owner to OHCS and sent to the Compliance Officer for the property. OHCS Form “Request for Change of a Common Area/Employee Unit Designation” must be submitted and approved before a change is permitted.

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

- A. Management unit designation in regulatory agreements
- B. If the property is designated as a multiple building property per Line 8b on the 8609 form
- C. Square footage of units
- D. Reason for request

## **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.

## **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.

## **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.

**Rules Governing the Eligibility of Particular Tenants**

The following is a partial listing of rules governing the eligibility of certain tenants. For more information on tenant eligibility, consult Section 42 of the Code or the IRS 8823 guide.

**Student Eligibility**

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.

## Live-in Aide/Caregiver

A live-in aide for a tax credit tenant should not be counted as a household member for purposes of determining the eligible income and rent limits. The need for a live-in aide must be certified with documentation included in the tenant file. A live-in aide is in the unit solely for the care of the tenant. If the qualified tenant vacates the unit, the live-in aide must vacate as well. If a live-in aide would like to be certified as a qualified tenant and remain in the unit, they must submit their application for the waiting list like all other applicants at the property.

A live-in aide is defined as:

A person who resides with one or more elderly persons, near elderly persons, or person with disabilities, and who:

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

Further requirements:

1. The Owner/Agent must verify the tenant's need for a live-in aide. The verification documentation should include the amount of hours the tenant will need care and should indicate the tenant requires the care of a live-in aide.
2. The Owner/Agent must approve a live-in aide as a reasonable accommodation request in accordance with 24 CFR Part 8. However, the Owner/Agent must only verify the tenant's need for a live-in aide and never require the tenant to provide information regarding their disability or other reason that they require the services of a live-in aide and must never obtain access to confidential medical records or require a physical examination be performed.
3. The live-in aide qualifies for occupancy only as long as the tenant needing the supportive services requires the aide's services and remains a tenant. The live-in aide may never qualify the household as a remaining household member.
4. Since the live-in aide is not counted in the tenant's household composition, the income and assets of a live-in aide is not considered. Live-in aides are also not to be added to the lease or the Tenant Income Certification.
5. A live-in aide may not bring in additional family members to live in the unit.
6. OHCS may question if a live-in aide is either working full-time outside the unit or going to school full-time. If the aide is working or going to school, then he or she may not be meeting the requirement of only being in the unit for the essential care of the tenant.
7. The OHCS Live-In Caregiver Affidavit form is a recommended form. However, Owner/Agent must document the need for a live-in aide utilizing a form that contains at a minimum the wording that is in the OHCS form.

## Household Members and Family Size

In order to determine the appropriate household composition and family size for purposes of rent and income limits. **The Owner/Agent must consider all individuals who will reside in the unit.** Household members include all adults and children who live in the unit including foster children and foster adults. There will be times when absent family members will be included as part of the household composition and for determining the applicable income limit for the household. Such family members include:

- Children temporarily placed in a foster care home.
- Children present at least 50% of the time, as mandated by joint custody arrangements.
- Children who are away at school but return to the household during school recesses.
- Unborn children.
- Children in the process of being adopted.
- Temporarily absent members still considered part of the family (due to military service or out-of-state job assignment).
- Family members in rehabilitation facilities or hospitals for a limited time period (or longer).
- Family members who are permanently confined to a nursing home or hospital- the family makes the decision as to whether or not to include the permanently confined family member as part of the household's composition.

There will also be other instances when an occupant of the unit is **NOT** considered part of the household composition for purposes of determining the applicable income limit. **Do NOT count** the following individuals to determine the income limit based on family size:

- Live-in Aides;
- Guests; and

- Family members who are permanently confined to a nursing home or hospital- when the family has made the decision not to include the permanently confined family member as part of the household's composition.

### **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 in to a unit of comparable size or smaller, the building will remain in compliance.

### **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 new LIHTC-qualified household 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. For a 100% LIHTC Building:  
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.

### **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.

## **Tenant Fraud and/or Misrepresentation**

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. 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 discovers that a tenant has deliberately misrepresented their income level, student status, household size or any other item used to determine eligibility, the Owner/Agent 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 Owner'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 from 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).

## **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, Owners/Agents are required to complete a Unit Transfer Certification form 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 Line 8b**

### **Leases**

The LIHTC program does not mandate the use of a specific lease agreement form. 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 the 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

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

#### **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.

#### **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.

## **Chapter 4 – Compliance Monitoring Procedures**

OHCS is responsible for establishing compliance monitoring procedures and will report incidences of noncompliance 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.

Monitoring each property is an ongoing activity that extends throughout the initial 15 year Federal Credit 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. Further, OHCS will report to the IRS no later than 45 days following the period of time allowed for corrections. Notification to the IRS by OHCS is required whether or not the noncompliance has been corrected.

### **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.
- Technical advice offered within the Guide for Completing Form 8823 (IRS Publication, last revised Oct. 2009).
- IRS technical advice memos, private letter rulings and other credit related information released by the IRS from time to time.

### **LIHTC Compliance Training Workshops**

OHCS will conduct LIHTC Compliance training workshops either independently or thru collaboration with Oregon Affordable Housing Management Association (AHMA) boot camps/conferences and other organizations as applicable. OHCS strongly recommends that all persons directly involved in the ownership and/or management of a LIHTC property, including site staff, attend compliance training on a regular basis.

The purpose of training is to provide:

- A sampling of the basic LIHTC Program (Code) compliance requirements and updates.
- IRS Final Regulations for compliance monitoring and updates.
- OHCS policies and procedures for compliance monitoring and reporting.
- General information on low-income tenant certification and eligibility.

Compliance Training Classes are not intended to substitute for general program knowledge that is required of all staff responsible for compliance. The Owner is responsible to ensure property management is capable of the tasks required to maintain program compliance for their property. If workshops are not currently being offered by OHCS, outside

contractors are available to provide LIHTC training opportunities at least on an annual basis. Such contractors include (but not limited to):

- Oregon Affordable Housing Management Association (AHMA)
- Zeffert & Associates
- National Center for Housing Management (NCHM)
- Quadel Consulting
- Spectrum Enterprises, Inc.

### **Owner Certification of Continuing Program Compliance (CCPC)**

The Owner's Certification of Continuing Program Compliance is due annually. The due date for submission of all required reporting is February each year for the previous reporting year (February 2017 for reporting year 2016). 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:

- Low-income rent levels and tenant qualifications.
- Units being suitable for occupancy and in compliance with local health, safety and building codes and full explanation for units that are not suitable for occupancy in a reasonable time (30 days or less).
- Units being available for the general public on a non-transient basis.
- All tenant facilities that are included in the eligible basis are and have been available to all tenants, without fees, on a comparable basis.
- Units of comparable or smaller sizes are and have been rented only to income qualified persons when a unit formerly rented by a low-income tenant is vacated, or as a low-income tenant's income increases beyond the limit allowed in IRC Section 42 (g)(2)(D)(ii).
- Resident services.
- No changes in the eligible basis and/or applicable fraction.
- All other applicable federal and state laws, OHCS regulations, policies and procedures.

### **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.

**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.

### **Web Compliance Management System – WCMS**

In 2008, the Housing and Economic Recovery Act (HERA) included a provision directing state HFA's (OHCS) to submit to HUD demographic and economic information on tenants living in LIHTC properties.

Required tenant data includes: race, ethnicity, family composition, ages of household members, monthly rents, disability status, household incomes and use of rental assistance.

After HERA, HUD revised the submissions process and began requiring electronic submissions through the same process as established for tenant data. This requires HFA's to produce XML formatted files of the data noted above and to submit the files directly to HUD.

Therefore, OHCS requires all LIHTC properties to submit tenant certification data to OHCS thru the Web Compliance Management System otherwise known as WCMS. For Owners/Agents, this can be completed via XML file uploads from a database (i.e. Yardi, Real Page etc.) into WCMS or thru the completion of manual data entry directly in WCMS. **The**

**use of this system is required for all LIHTC properties.** Entry or upload of all tenant certification data must be maintained in the system with a minimum of quarterly uploads or ongoing manual entry throughout the year. The information in WCMS (if accurate and complete) replaces the OHCS.10 Annual Reporting Spreadsheet (or Tenant Data Sheet) for annual reporting purposes.

In addition to tenant certification data, Owners/Agents must also enter financial information into WCMS for HOME (with 10 units or more), LIHTC, ARRA (TCAP and 1602 exchange) and BOND (Risk Share, Elderly/Disabled, and Conduit) within 90 days of the property's fiscal year end. A copy of the property's annual audited financials that support the information entered into WCMS is required. Every WCMS user must register for a login and sign a user agreement that will be kept on file with OHCS.

### **LIHTC Compliance Forms**

#### **Tenant File Required Documents**

The following is a list of documents that are required to be maintained in each tenant file:

- Applications – Separate application for each adult
- Applicant/Tenant Questionnaire
- All related verification forms and clarifications
- Annual Certification of Student Status (annually throughout the entire compliance period including extended use)
- Lease Agreement and all related documents
- Section 42 Lease Addendum – if language is not in the lease agreement

### **Forms**

**OHCS has created several verification forms that are either required or recommended.** The OHCS forms are updated from time-to-time.

#### **Required Forms**

Any **deviation** from the required forms is **not permitted**.

- Owner's Certification of Continuing Program Compliance – Initial and Extended Use Period Versions
- Tenant Income Certification – TIC
- Applicant/Tenant Questionnaire
- Under \$5,000 Asset Certification
- Annual Certification of Student Status
- Verification of Student Status/Financial Assistance
- Employment Verification
- Income Status Certification
- Unit Transfer Certification
- Common Area/Employee Unit Designation
- LIHTC/Risk Share Self-Certification

**Owners/Agents must implement the use of the OHCS required forms when they are made available on the OHCS Website, and no later than 30 days beyond their creation/revision dates as noted on the forms and the website.**

#### **Recommended Forms**

In addition to the required forms, there are a number of recommended forms that are available for use to assist in obtaining required information in order to adequately verify all income, assets and other information needed to establish eligibility. Any format the Owner/Agent chooses that provides, **at a minimum**, the information requested on the recommended forms is acceptable to OHCS. These forms include and are not limited to:

- Assessment of Household Demographics
- Divestiture of Assets
- Asset Verification
- Live-in Caregiver

Please visit the OHCS website at <http://www.oregon.gov/ohcs/Pages/compliance-monitoring-manual-lihtc.aspx> for the complete listing of recommended forms.

### **OHCS Tenant File Reviews & On-Site Inspections**

As provided in the IRS compliance monitoring regulations, OHCS has the right to review tenant files and/or to perform physical inspections of LIHTC properties as deemed necessary throughout the entire affordability period for each property. The required federal monitoring frequency is a minimum of once every three years. However, OHCS may inspect the property more frequently if the property is identified as being at risk and/or in potential non-compliance, or if the inspection requirements of other funding sources in the property are more restrictive. OHCS selects a random sampling of at least 20% of the building/properties' units (occupied and vacant) along with the corresponding tenant files for each review and inspection conducted. Units and files may be decoupled as allowed by IRS regulation. File audits may be performed electronically.

When a property is scheduled for review/inspection, the OHCS Compliance Officer will:

- Contact the Agent to make arrangements for an inspection date.
- Notify the Owner and Agent in writing of the date and approximate time of inspection.
- Perform the on-site or electronic file review and property inspection.
- Provide the Owner and Agent a complete Review Report notifying them of any noncompliance issues found during the review/inspection.

Recommended Tips to Owners/Agents for Submitting Satisfactory Corrective Action/s:

- Review the findings letter to ensure that the information sent to OHCS is addressing specifically what was requested.
- 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 documentation in the same order as the findings identified in 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.
- Review response to make sure that all items have been addressed.
- Submit response on time.
- Ask OHCS Compliance officer for an extension if response cannot be sent by due date. Requests for extensions must be received prior to the due date and must indicate the reason that the response is expected to be late.

**NOTE:** If an Owner of a multiple building property has elected to treat one or more of the buildings as 'separate projects' (answered "No" to line 8b on IRS Form 8609), OHCS is required to randomly select at least 20% of the units and tenant files in each building in order to satisfy the monitoring requirements under the Section 42 Program. This may result in a larger number of units and files being inspected.

### **On-Site Physical Inspections - UPCS/Property Standards**

State Housing Finance Agencies are mandated to conduct physical inspections at least one every three years to ensure that LIHTC properties are providing buildings and units that are suitable for occupancy (Treas.Reg.§1.42-5). OHCS conducts inspections of selected units using the Uniform Physical Conditions Standards (UPCS).

The following is an excerpt from the General Instructions for completing Form 8823 that provides explanation of what the inspectable areas of a property are and how they should be reported to the IRS:

"Housing credit agencies must use, (a) local health, safety and building codes (or other habitability standards) or the (b) Uniform Physical Conditions Standards (UPCS) (24CFR Section 5.703) to inspect the property, but not in combination. The UPCS does not supersede or preempt local codes. Thus, if a housing credit agency using the UPCS becomes aware of any violation of local codes, the agency must report the violation. The Department of Housing and Urban Development's Real Estate Assessment Center has developed a comprehensive description of the types and severities of deficiencies entitled "Dictionary of Deficiency Definitions".

The link to the document is: <http://www.hud.gov/offices/reac/products/pass/PDFs/appendix2-finaldictionary.pdf>.

**Under Regulations section 1.42-5 (e)(3), the Housing Finance Agency must report all deficiencies (even level 1 deficiencies) to the IRS whether or not the noncompliance or failure to certify is corrected at the time of inspection.**

In using the UPCS inspection standards, reportable deficiencies in the five major inspectable areas (defined here) of the project include: (1) Site; (2) Building Exterior; (3) Building Systems; (4) Dwelling units; and (5) Common Areas.

UPCS inspection standards are divided into inspectable areas and items are separated into Level 1, Level 2 and Level 3 deficiencies that indicate the severity of the defects (findings) that must be corrected. Level 1 is the least severe with Level 3 being the most severe. For the Level 3 (and some Level 2) defects there are 3 categories of defect as follows:

Level 3 – **Life Threatening:** This level of defect must be addressed and corrected *immediately*

*Some examples follow (not limited to this list):*

- Propane/natural gas/methane gas odor,
- Exposed wires/open panels; water leaks on or near electrical equipment
- Missing smoke detector
- Open fuses/breaker slots

Level 3/2 – **Non-Life Threatening:** This level of defect must be addressed within **72-hours**

*Some examples follow (not limited to this list):*

- Mold/mildew/sewer odors
- Blocked heaters
- Flammables stored in a way that cause risk
- Trip hazards

Level 1 – Correction completed timely; same as all other defects found

*Some examples follow (not limited to this list):*

Busted or missing window pane  
Missing electrical cover  
GFCIs won't test  
Clogged drain  
Missing sink stopper

Immediately following the completion of the physical inspection, the Compliance Officer/s (COs) will complete an Immediate Action Required Items form indicating all of the Life Threatening or Non-Life threatening defects that need corrected immediately or within the following 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. The COs may ask for documentation to support the correction 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

Additionally, housing built before 1978 may contain lead-based paint. Lead from paint, 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. Tenants must receive a federally approved pamphlet on lead poisoning prevention entitled **“Protect Your Family from Lead in Your Home”**.

For more information about lead-based paint requirements, you can visit the **HUD website** at:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/healthy\\_homes/enforcement/disclosure](http://portal.hud.gov/hudportal/HUD?src=/program_offices/healthy_homes/enforcement/disclosure) and or the **FHCO website** at: <http://www.fhco.org>.

## 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.”

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

A Casualty Loss Report Form is located on the OHCS website at: <http://www.oregon.gov/ohcs/Pages/asset-management-resources.aspx>.

## Vacant Unit Turnover

As stated earlier in this Manual, Owners/Agents are required to prepare vacant units for immediate occupancy within a reasonable amount of time. OHCS has defined “reasonable amount of time” to be **30 days or less**. In addition, Owners/Agents must make all reasonable attempts to market their vacant, rent-restricted units. Owners/Agents should keep records to document the date the unit turnover work is completed and is ready for occupancy.

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 Owner 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 Owner/Agent and OHCS.

## Noncompliance – Notification to Owner

The IRS requires OHCS to provide written notice of noncompliance to the Owner if:

- An annual Owner’s Certification of Continuing Program Compliance (CCPC) is not received by the due date;
- Any noncompliance issues found in the Annual CCPC;
- Tenant Income Certifications (TICs), supporting documentation, and rent records are not submitted when requested by OHCS or are found to be in noncompliance;
- 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
- 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 Periods

Owners/Agents will have a **minimum of 30 days** from the date of notification by OHCS to correct findings of noncompliance. In some circumstances, extensions will be granted upon receipt of a written request for extension from the Owner or Agent. 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.

## Notification to the IRS

The IRS must be notified whether or not the noncompliance or failure to certify is corrected. OHCS must explain the nature of the noncompliance or failure to certify and state whether the noncompliance has been corrected. Any change in either the eligible basis or applicable fraction that results in a decrease in the qualified basis of the property must be reported to the IRS.

## **Monitoring Fees**

OHCS assesses an annual charge to all properties during the entire term of affordability. The monitoring fee is currently \$35.00 per unit per year throughout the initial compliance period and is then reduced to \$25.00 per unit per year during the extended use period.

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

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.

## **Reporting Non-Compliance to the IRS**

The IRS requires that any authorized housing credit agency that becomes aware that a low-income housing building is not in compliance with the provisions of section 42 must file Form 8823 whether corrected or not. The forms are mailed directly to the IRS with a copy being mailed to the building Owner. The forms can never be sent electronically.

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 Owner/Agent 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 Owner/Agent 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.

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”.

The areas identified on the 8823 form include:

- 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 UPCS 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 Uniform Physical Conditions Standards (UPCS) established by HUD. The IRS requires that all levels of deficiencies as described in UPCS protocol must be reported. For example, a missing sink pop-up is a level one UPCS finding and must be reported to the IRS even if corrected.

### **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.

Many areas of non-compliance result in the state agency trying to determine if the Owner/Agent displayed “due diligence”. Compliant behavior can be demonstrated when a LIHTC property owner exercises ordinary business care and prudence in fulfilling its obligations. For the LIHTC program, due diligence can be demonstrated in many ways, including (but not limited to) establishing strong internal controls (policies and procedures) to identify, measure, and safeguard business operations and avoiding material misstatements of LIHTC property compliance or financial information. Internal controls include: separation of duties, adequate supervision of employees, management oversight and review (for example internal audits), third party verifications of tenant income, independent audits (third party), and timely recordkeeping. The determination of due diligence is made on the individual circumstance and basis of all available facts presented, including facts supporting the owner’s position. Evidence is something that tends to prove a fact or point in question. Physical documentation is generally regarded as providing proof or evidence.

### **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 owner discovers that a tenant has deliberately misrepresented their income level, student status, household size, or any other item used to determine eligibility, the owner should consult state or local landlord-tenant laws to determine whether the tenant can be asked to vacate the LIHTC unit.

### **Reporting Fraud and Misrepresentation**

So that possible loss of low-income housing 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, Owners should immediately report any suspected deliberate misrepresentation of fraud by a tenant to the state agency\*.

The Low-Income Housing 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 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.

The IRS publishes a Guide for Completing Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition that can be found on the web at:

<http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Guide-for-Completing-Form-8823-Low-Income-Housing-Credit-Agencies-Report-of-Noncompliance-or-Building-Disposition>.

## **Chapter 5 – Qualifying Tenants**

OHCS recommends advising applicants for rent-restricted and income-restricted housing that there are maximum income limits that apply to affordable housing units. Management should explain to potential tenants that the anticipated income of **all household members** expecting to occupy the unit must be verified and documented on the Tenant Income Certification (TIC). Applicants/Tenants must report all income and sources of income on the Application and the Applicant/Tenant Questionnaire. This is completed **prior to occupancy and at annual recertification as required by the program funding source**. Section 42 states that determination of annual income of individuals must be made in a manner consistent with HUD Section 8 income definitions and guidelines. Refer to HUD Handbook 4350.3 REV-1; Change 4, Chapter 5.

### **The Tenant Application**

It is critical to obtain complete and accurate tenant information in order to determine eligibility. The information furnished on the application should be used as a tool to determine all sources of income, including total assets and income from assets. Therefore, it is imperative that Owners/Agents use adequate application documents and obtain fully completed applications in order to accurately determine tenant eligibility.

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

### **Required Application Components**

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

- The name and date of birth of each person that will occupy the unit (legal name should be given just as it will appear on the lease and TIC).
- All sources and amounts of current and anticipated annual income expected to be received during the first 12 months following occupancy (this includes all earned, unearned, and asset income).
- The current and anticipated student status of each applicant.
- The signatures of each adult applicant along with the date the application was completed.
- The signature of management staff person who received the application along with the date the application was received.
- Any expected changes to the household composition.

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

### **Waiting Lists**

The Owner/Agent should 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.

Applicants should be notified of their eligible/ineligible status. A written application or pre-application is required for placement on the waiting list. Once an application is received, the applicant should 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.

Applicants should be housed in the order indicated by a written Tenant Selection 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 do not meet eligibility requirements, proper notice of the determination should be provided to the applicant and documentation should be kept on file. The application along with the denial notice should be made available to the OHCS, HUD or Fair Housing personnel as requested.

## **Determining Household Size**

Based on information provided by the applicant and through careful interviews with management staff, applicant/tenant household size and composition must be determined.

Household Members include:

- All persons who will consider the unit their primary residence
- Those expected to reside in the unit during the next 12 months such as a future spouse or roommate, unborn children, children under joint custody, those who are temporarily away in a hospital, nursing home, or foster care, and children in the process of being adopted.

Household Members excluded:

- Guests
- Live-in aides

## **Tenant Income Certifications**

After obtaining, verifying and calculating all sources of income and assets the Owner/Agent must prepare a Tax Credit (LIHTC) Tenant Income Certification (TIC) for each household. After reviewing the TIC with the household, Owner/Agent must have all adult household members sign and date the TIC at the time of lease signing. In no case should the TIC be signed more than ten (10) days prior to actual move-in/lease effective date. The first-year annual recertification must be completed and signed any time after all verifications are collected before the effective date. However, in no case may it be completed more than 120 days prior to the effective date and no later than one year from the date of move-in. Interim certifications are not required for the LIHTC program.

## **Recertification Requirements**

### **100% LIHTC Properties-**

All households residing in 100% LIHTC properties must be recertified upon the first-year anniversary of the move-in date with full third-party verifications completed. After that, self-certifications including Annual Certification of Student Status must be completed annually by the anniversary of the household's move-in.

### **Mixed-Use Properties (not 100% LIHTC)-**

All LIHTC units within mixed-use properties must be recertified upon the first-year anniversary of the move-in date with full third-party verifications completed **and annually** throughout the entire compliance period. Third party verifications **must** be obtained to support the information reported in order to demonstrate due diligence with the next available unit rule.

## **Self-Certification Requirements**

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.

## **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

For data reporting purposes, LIHTC Self-Certifications are required in order to accurately report information required for HERA data reporting. 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 WCMS. 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.

## Certification Schedule

### Certification:

Move-In:  
First Year Anniversary:  
Second Year & Beyond:

### Required Documentation:

- Full Certification with 3<sup>rd</sup> party verifications
- Full Certification with 3<sup>rd</sup> party verifications (see project-based exemption)
- 100% LIHTC – Self Certifications
- Non-100% LIHTC - Full Certification with 3<sup>rd</sup> party verifications
- LIHTC with Risk Share – Self-Certifications with copy of filed IRS Tax Returns\*

\*All household members must have a filed IRS Tax Return in order to complete a self-certification

## Income Inclusions and Exclusions

Owners/Agents must determine the full amount of a household's income before the family is allowed to move into a LIHTC unit. Third-party verifications through outside sources are required.

**Annual income** is defined as the gross annual income that the household expects to receive in the next 12 months.

### **Annual income includes:**

1. All amounts (earned and unearned), monetary or not, that go to or are received on behalf of the family head, spouse or co-head (even if the family member is temporarily absent), or any other family member; or
2. All amounts anticipated (verifiable) to be received from a source outside the family during the 12-month period following move-in.
3. Full amount of *periodic income* received from annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts.

### **Types of Income:**

Earned Income  
+ Unearned Income  
+ Income from Assets  
= Annual Income

## Elements of Household 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 (Includes Foster adult)	Yes	Yes
Dependents (Under 18)	No	Yes
Foster Child (Under 18)	No	Yes
Full-Time Student (Over 18)	See Note Below*	Yes
Temporarily Absent Member	Yes	Yes
Member permanently living in hospital or nursing home	A household decision	A household decision
<b>Non-Household Members</b>		
Live-in Aide	No	No
Guest	No	No

\*The earned income of a full-time student 18 years old or older who is a dependent is excluded to the extent that it exceeds \$480.

### **Adults:**

Count the annual income of the head, spouse or co-head, and other adult members of the household.

### **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 or foster children 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.
- The unearned income of a foster child or foster adult including SSI disability payments and income from assets owned by or on behalf of a foster child or foster adult is counted.
- 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.
- 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.

## **Deployment of Military Personnel to Active Duty**

1. A temporarily absent individual on active military duty (most often a son/daughter) is 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.

\*See 4350.3 Rev1, Change 4, Chapter 5.

## **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.

## **Annual Income Inclusions**

Annual income includes all amounts that are not specifically excluded by regulation. The following types of income (partial list) are included when calculating annual income and a full list of countable income sources can be found in the HUD Handbook 4350.3 – subject to change at HUD's discretion:

- The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services.
- The net income from operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income.
- Interest, dividends, and other net income of any kind from real or personal property.
- When the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD.
- The full amount of periodic amounts received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts.
- Payments in lieu of earnings, such as unemployment, disability compensation, worker's compensation, and severance pay.
- Welfare Assistance such as TANF received by the family (does not include non-cash food benefits/SNAP/WIC).
- All regular contributions or gifts received from organizations or from persons not residing in the dwelling.
- Annual and periodic child support and/or alimony payments.
- All regular pay, special pay, and allowances of a member of the Armed Forces, except as provided under Income Exclusions.

**NOTE: the above listed income inclusions are NOT a complete listing. Refer to Chapter 5 of the current HUD Handbook 4350.3 for full details regarding all income inclusions.**

## **Annual Income Exclusions**

Regulations for multifamily housing programs specifically exclude certain types of income when determining a household's 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. A full list of exclusions can be found in the HUD Handbook 4350.3 – subject to change at HUD’s discretion:

- 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 (SNAP).
- 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.

**NOTE: The above listed income exclusions are NOT a complete listing. Refer to Chapter 5 of the current HUD Handbook 4350.3 for full details regarding all income exclusions.**

### **Calculating Annual Income**

The LIHTC Program requires that for the purpose of determining eligibility, Owners/Agents 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 if the family member will find employment or when the family member will stop receiving the benefits (due to unknown extensions) 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.

Owners/Agents must account for all earned income. In addition to the base salary, this will include annual cost-of-living adjustments, bonuses, raises, commissions, tips, 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 the family member’s income. If it is determined that the family member earns over-time pay, Owners/Agents should calculate the average amount of over-time pay and add it to the total amount of projected income. In situations where a tenant may work sporadically or seasonally, Owners/Agents must make a reasonable determination of expected household income. This can be determined based on actual income received or earned within the last 12 months before the determination.

Verified income must be converted to an annual figure by using the following calculations:

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

Calculation Method	Examples
Hourly wages by the number of hours worked per week	\$9.25 per hour x 2,080 hours per year = \$19,240 \$9.25 per hour x 40 hours per week x 52 weeks = \$19,240
Weekly wages by 52 weeks	\$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

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 one decimal place**. 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.** YTD income must always be considered and compared to the wage/salary calculation. Verification/clarification with the employer of the applicant/tenant's hire date or employment start date should be obtained.

**When annualizing YTD income there are important factors to remember:**

- The start day must be included in the calculation (05/02/16 to 05/30/16 equals 29 days).
- Fractional weeks must be carried out to one decimal place (29 days divided by 7 days in a week equals 4.142 which would be rounded to 4.1).
- Fractional weeks must be rounded appropriately (Numbers 4 and below round down and 5 (+) round up). For example if 25.44 round to 25.4 weeks and if 25.45 round to 25.5 weeks.

**Example One:**

An Employment Verification form is received listing gross YTD earnings of \$8,649 from April 2, 2015 to August 31, 2015. The number of weeks during this period (04/02/15 to 08/31/15) is 21.71, which rounds to 21.7 weeks. The gross YTD earnings of \$8,649 is divided by 21.7 weeks then multiplied by 52 weeks; resulting in an annualized calculation of income totaling \$20,725.71.

**Example Two:**

An Employment Verification form is received listing gross YTD earnings of \$7,318 from March 3, 2016 to June 17, 2016. The number of weeks during this period (03/03/16 to 07/17/16) is 15.28, which rounds to 15.3 weeks. The gross YTD earnings of \$7,318 are divided by 15.3 weeks then multiplied by 52 weeks; resulting in an annualized calculation of income totaling \$24,871.63.

**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 is expected to be increased as published by BOLI) or there is an expected or published cost of living adjustment (COLA) during the next 12 months, you must include the increased income amount in the calculation of annualized income as applicable.

**Example:** A tenant is employed and their employer verifies they will receive an increase in their hourly rate of pay five months after they move-in. A proper calculation of wages would include using both rates of pay for the specified time period – the lower rate for the first five months and the higher rate of pay for the remaining seven months of the 12-month calculation.

### **Tips for Social Security, VA and TANF Income Calculation**

- Count amounts **before** Medicare is deducted (gross amount of benefits).
- 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 (typically announced in October of each year).

### **Asset Calculation Inclusions and Exclusions**

Assets are defined as items of value rather than necessary personal items. Income from assets is added to regular income to determine the eligibility of a household. Asset information (total value and any applicable income) must be obtained from the applicant or tenant. All income from all household members' assets must be included in the annual income. All household assets that are \$5,000 or more must be third-party verified. The greater of the actual income from assets or the imputed income of the total value of the assets must be added to regular income. See HUD Handbook 4350.3 REV 1 Change 4 for more detail on imputed income.

An asset has "Market" and "Cash" value:

- Market value is the amount that another person is willing to pay to acquire the asset.
- Cash value is the dollar value of the asset on the open market.

### **Assets include:**

- Cash held in savings and checking accounts, safe deposit boxes, homes, etc. For savings accounts, use the current balance. For checking accounts, use the average balance for the last six months. Assets held in foreign countries are considered assets.
- Revocable trusts. Include the cash value of any revocable trust available to the family. (Do not include irrevocable trusts, e.g., ones that no household or family member can control).
- Equity in rental property or other capital investments. Include the current fair market value less (a) any unpaid balance on any loans secured by the property and (b) reasonable costs that would be incurred in selling the asset (e.g., penalties, broker fees, etc.).

**NOTE:** If the person's main business is real estate, then count any income as business income. Do not count it both as an asset and business income.

- Stocks, bonds, Treasury bills, certificates of deposit, mutual funds, and money market accounts. Interest or dividends earned are counted as income from assets even when the earnings are reinvested. The value of stocks and other assets vary from one day to another. The value of the asset may go up or down the day before or after rent is calculated and multiple times during the year thereafter. The Owner may assess the value of these assets at any time after the authorization for the release of information has been received.
- Individual retirement, 401K, and Keogh accounts. These are included when the holder has access to the funds, even though a penalty may be assessed.
- Retirement and pension funds.
  1. While the person is employed, include only amounts the family can withdraw without retiring or terminating employment. Count the whole amount less any penalties or transaction costs. Follow paragraph 5-7 G.4 of the HUD Handbook 4350.3 on determining the value of assets.
  2. At retirement, termination of employment, or withdrawal; Periodic receipts from pension and retirement funds are counted as income. Lump-sum receipts from pension and retirement funds are counted as assets. Count the amount as an asset or as income, as provided below:
    - a) If benefits will be received in a lump sum, include the lump sum receipt in net family assets.
    - b) If benefits will be received through periodic payments, include the benefits in annual income. Do not count any remaining amounts in the account as an asset.

- c) If the individual initially receives a lump-sum benefit, followed by periodic payments count the lump-sum benefit as an asset and treat the periodic payment as income. In subsequent years, count only the periodic payment as income. Do not count the remaining amount as an asset.  
**NOTE:** This paragraph assumes that the lump-sum receipt is a one-time receipt and that it does not represent delayed periodic payments. However, in situations in which a lump-sum payment does represent delayed periodic payments, the amount would be considered as income and not an asset.
- Cash value of life insurance policies available to the individual before death (e.g., the surrender value of a whole life policy or a universal life policy). It would not include a value for term insurance, which has no cash value to the individual before death.
  - Personal property held as an investment. Include gems, jewelry, coin collections, or antique cars held as an investment. Personal jewelry is NOT considered an asset.
  - Lump-sum receipts or one-time receipts. These include inheritances, capital gains, one-time lottery winnings, victim's restitution, settlements on insurance claims (including health and accident insurance, worker's compensation, and personal or property losses), and any other amounts that are not intended as periodic payments.
  - A mortgage or deed of trust held by an applicant:
    - a) Payments on this type of asset are often received as one combined payment of principal and interest with the interest portion counted as income from the asset.
    - b) This combined figure needs to be separated into the principal and interest portions of the payment. (This can be done by referring to an amortization schedule that relates to the specific term and interest rate of the mortgage.)
    - c) To count the actual income for this asset, use the interest portion due based on the amortization schedule for the 12-month period following the certification.
    - d) To count the imputed income for this asset, determine the asset value as of the effective date of the certification. Since this amount will continually be reduced by the principal portion paid during the previous year, the Owner will have to determine this amount at each annual recertification.
  - Assets disposed of within two years before effective date of certification/recertification:
    1. If the cash value of the disposed assets exceeds the actual amount the family received by more than \$1,000, include the whole difference between the cash value and the amounts received. Do not include if the difference is less than \$1,000.
    2. Do not consider assets disposed of for less than fair market value as a result of a foreclosure, bankruptcy, or a divorce or separation agreement.
    3. Do consider:
      - a) Assets put into trusts.
      - b) Business assets disposed of for less than fair market value. (Business assets are excluded from net family assets only while they are part of an active business.)

**Assets do not include:**

- Necessary personal property such as clothing, furniture, automobiles, personal jewelry, etc.
- Vehicles specially equipped for the handicapped.
- Interest in Indian Trust Land.
- Value of term life insurance.
- Equity in a cooperative unit in which the family lives.
- Assets that are a part of an active business ("business" does not include rental properties that are held as investments and not a main occupation).
- Assets held in the applicant's/tenant's name but are actually owned by someone else, such as:
  1. Assets and earned income that is accrued or paid to the benefit of someone else.
  2. A situation wherein another person is responsible for income taxes incurred on income generated by the asset(s).
  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.

## **Calculating Income from Assets**

### **Determining the Value of an Asset**

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

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

### **Determining Income from Assets**

All income from household assets that total \$5,000 or more must be verified using third-party verification and source documentation. Assets under \$5,000 can be verified using the Under \$5,000 Asset Certification form.

#### **Include in Household Asset Income Calculation:**

1. The actual income from assets or
2. The imputed income from assets based on the passbook rate established by HUD (currently .06%\*). Imputed income must be considered when combined household assets exceed \$5,000. If combined household assets are \$5,000 or less, calculate the actual income received.

Example: A household has \$6,400.00 in calculated combined assets. The actual income from these assets has been verified at \$168.53. The imputed income from these assets is calculated at \$3.48 ( $\$6,400.00 \times .06\% = \$3.48$ ). In this case the greater amount \$168.53 should be used (listed on the TIC) and added to the household's annual income.

\*NOTE: the passbook rate is subject to change periodically as published by HUD.

### **Rounding when Calculating Income**

When calculating income and rounding calculation figures, rounding must only be done after all of the applicable calculations have been performed. Income must always be rounded up. It is important to note that when qualifying a household, a household's income must always be less than or equal to the maximum income figure. A combined household income amount that exceeds the appropriate income limit by even \$.01 is over-income. Consistency is required when rounding.

### **Assets Owned Jointly**

Assets owned by more than one person should be prorated according to the percentage of Ownership. If no percentage is specified or provided by state or local law, prorate the assets evenly among all Owners. Remember that simply having your name on an account does not mean that you "own" it. Documentation must be in the file to demonstrate the intent and purpose of the account.

*For example: adult children could be on their parents accounts for survivorship reasons.*

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?
- Is there frequent or immediate access to the account in question?

### **Tenant Income and Asset Verifications**

All sources and amounts of income must be verified. Verification must be received by the management agent prior to the execution of the Tenant Income Certification and the actual move-in date. Verifications must contain complete and detailed information and include, at a minimum, direct written information from all sources of income and income from assets. Faxed verifications will be accepted as long as the verifiable source receives and re-submits the fax. Verifications are required in order to establish a household's eligibility to reside in low-income LIHTC housing. If income and income from assets cannot be adequately verified, then eligibility of a household to reside in LIHTC housing has not been established.

### **Effective Term of Verifications**

Verifications of income are valid for 120 days from the date of receipt by Owner/Agent. After 120 days, the verifications become invalid and new verifications must be obtained.

### **Written Verification Attempt**

At a minimum, an attempt to obtain written third-party verification is required. If Owner/Agent is unable to obtain third-party verifications, documentation must be maintained in the tenant file to document Owner/Agent attempts to obtain the third-party verifications. Any request 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.

### **Source Documentation**

Source documents that may be obtained include:

- Third party verifications from employers, banks or other organizations containing documented information about the household's income or assets.
- Wage statements for approximately the preceding three months of employment
- Interest statements
- Unemployment compensation statements
- Social Security award letters

Unacceptable source documents include:

- An applicant's income self-certification
- The certification from another program ( such as a PHA Statement or subsidy certification Section 8/RD)

### **Verification Transmittal**

- Applicant/tenant must sign and date each verification form.
- 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.
- 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.
- The Management Agent should review and check verifications for accuracy and completeness. All missing information should be clarified or re-verified. Verifications should be date-stamped as they are received.

### **Acceptable Forms of Income Verification**

Specific information must be obtained on income verification forms or alternate methods must provide the same detail or information as contained on the verification forms. The LIHTC Program requires Owners/Agents to obtain third-party verifications of all income and all assets totaling \$5,000 or more. Assets Under \$5,000 can be verified using the OHCS Under \$5,000 Asset Certification form.

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

**Employment Income - (Including Tips, Gratuities, Over-time & Bonuses)**

1. OHCS Employment Verification Form completed by the employer;
2. Statement from the employer on company letterhead (which must include the anticipated income for the next 12 months);
3. Three months of current and consecutive pay check stubs from the employer showing gross income per pay period and frequency of pay; or
4. A copy of the most recent filed Federal Form 1040 signed by the applicant/tenant or copies of Form W-2 providing the amount of income, including income from tips and other gratuities, supported by current pay-check stubs from the employer.

**Self-Employment Income**

**What is 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 or lawn mowing. 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.

**Examples:**

**Not Self-Employed –**

Sally is a stay-at-home mom and takes care of two kids that are not her own in her apartment. She babysits for a neighbor and her sister. Sally indicates that she is babysitting because she is at home with her own baby anyway, and she doesn't officially keep track of what she has been paid for babysitting and does not report the income to the IRS. Her neighbor and her sister can complete a verification indicating how much they pay her for babysitting. Sally's bank statements show deposits that support the information provided by her sister and neighbor. This is an example of a person who is not considered self-employed.

**Self-Employed –**

Jane is running a day-care in her home. She is licensed by the state and she advertises her services as a child care provider. Jane keeps factual business records that include keeping track of her transactions through day-care records. She also keeps track of her income and expenses in her business checking account. She files taxes each year including a Schedule C. This is an example of a person who is considered self-employed.

**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 NOT deduct:** principal payments on loans, expenses for business expansion, or outlays for capital improvements?
- ✓ **Do NOT deduct** depletion or depreciation/sec. 179 expenses (lines 12 and 13 on Schedule C);

- ✓ **Do deduct:** business expenses (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. Signed copy of individual federal income tax return (1040) including all schedules and attachments for the following:
  - ✓ Schedule C for Small Business
  - ✓ Schedule E for Rental Property Income
  - ✓ Schedule F for Farm Income

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.

2. Copy of Corporate or Partnership tax return (if applicable)
3. Audited or unaudited financial statement(s) of the business
4. 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 as along with as a copy of the resident's signed, personal tax return.

Note: All tax returns and related documents must be signed and dated by the taxpayer.

**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 LIHTC housing.

### **Social Security and Supplemental Security Income (SSI) Benefits**

1. An award or benefit notification letter prepared by the authorizing agency- applicant/tenants can go to the Social Security Administration website at <http://www.ssa.gov/> under Online Services to obtain current benefits statements.
2. A Social Security verification form completed by the agency providing the benefits;
3. As of March 1, 2013, most recipients started to receive their monthly benefits either by direct deposit into their bank account or they receive benefits with a **“Direct Debit Express Card.”** This card is automatically loaded with a recipients benefit amount on the appropriate payment day of each month. Benefits received on this card are considered income. Further, any balance remaining on the card is considered an asset and must be verified and treated in the same manner as a savings account. Card balance amounts can be obtained thru ATM slips, online account service or paper statements. 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, include the increase as appropriate.

### **TANF Benefits**

When individuals or families qualify for cash benefits, Oregon Trail accounts are set up for them. Benefits are deposited into the accounts each month. The Oregon Trail card, along with a personal PIN number is used to access the benefits provided. Oregon Trail cards are used for food benefits (SNAP) as well. The food benefit amount is **not** counted as income. However, the cards are also used for cash benefits through the TANF program. The TANF cash benefits are counted as income. Further, any balance remaining on the card is considered an asset and must be verified and treated in the same manner as a savings account. Card balance amounts can be obtained through ATM slips or current sales receipts. The document used as verification must identify the account and the account holder.

1. A verification form completed by the state agency; DHS office.
2. ATM Slips (Do not take a copy of the actual card).

### **Pensions (IRAs, 401Ks & Keogh Accounts) and Annuities treated as Income**

Verification must be obtained that indicates whether or not the tenant is receiving periodic payments from their account/s. Annuities are treated as income only when there is no 'lump sum' that can be cashed in and only periodic payments are being received.

1. A verification form completed by the retirement account administrator.
2. A current account statement.

### **Unemployment Compensation**

Frequency of payments and expected length of benefit term must be verified. Most often specific end dates are not verifiable and benefits may be extended. The weekly benefit amount is normally calculated for a full year (52 weeks).

1. A verification form completed by the unemployment compensation agency;
2. Records from the unemployment agency stating payment dates and amounts;
3. Benefit notification letter from authorizing agency.

### Alimony or Child Support

1. A copy of a court-ordered separation or divorce agreement provided by ex-spouse or court indicating type of support, amount and payment schedule;
2. A printout or statement from the Support Enforcement Agency (for child support verification), recent original letters from the court;
3. Notarized statement indicating type of support, amount and payment schedule provided by ex-spouse or obligated parent.

### Recurring Contributions and Gifts

(Sporadic contributions and gifts are not counted as income).

1. A notarized statement or affidavit signed by the person providing the assistance giving the: purpose, dates and value of the gifts;
2. A written statement or affidavit signed by the applicant/tenant stating the purpose, dates and value of gifts.

### Unemployed Applicants/Tenants & Zero Income

1. The income of unemployed applicants/tenants with regular unearned income from any source, such as Social Security, pension, TANF, child support, alimony, recurring gifts, etc., must be verified as described previously depending on the specific unearned income received. **Additionally, the applicant/tenant must complete an “Income Status Certification”.**
2. Tenants who have no income (earned or unearned) must be asked to document how they pay for rent and necessities and must complete the OHCS “Income Status Certification” form.
3. If the applicant/tenant is unemployed but has secured new employment with a start date determined, verification of new employment must take place. Verified income from new employment must be counted on the TIC.

### Educational Scholarships or Grants

“All forms of student financial assistance (grants, scholarships, educational entitlements, work study programs and financial aid packages) are excluded from annual income except for students receiving Section 8 assistance. This is true whether the assistance is paid to the student or directly to the educational institution.

For students receiving Section 8 assistance, all financial assistance a student receives (1) under the Higher Education Act of 1965, (2) from private sources, or (3) from an institute of higher education that is in excess of amounts received for tuition is included in annual income except if the student is over the age of 23 with dependent children or the student is living with his or her parents who are receiving Section 8 assistance.” (HUD Handbook 4350.3).

### Student Income

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

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

### PHA – Verified Income

For households receiving assistance from a Public Housing Authority (PHA), third-party verifications of income and assets are required for all LIHTC move-in or initial certifications. In some cases the PHA Statement can be used as proof of income for any other recertification completed after move-in. Income and assets must continue to be verified within 120 days of the effective date of the tax credit certification. Prior approval must be received from OHCS before an Owner/Agent implements the use of the PHA verification method.

### **Acceptable Forms of Asset Verification**

The Owner/Agent must verify all asset income received/earned by household members occupying a LIHTC unit when the combined assets are \$5,000 or more. Use the OHCS required third-party verification form: 'Asset Verification'. If attempting third-party verification of assets is unsuccessful (proof must be kept in the tenant file showing the attempted verification), tenants can provide statements or other documentation (such as a current printout from the internet). The documentation collected must verify both the market value and cash value of the asset/s as applicable. For LIHTC only households, it is acceptable to use the 'Under \$5,000 Asset Certification form to document household assets and income from assets when the combined household assets are less than \$5,000.

### **Assets Disposed of for Less Than Fair Market Value**

A certification must be completed and signed by the owner who disposed of the asset that verifies:

- 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 recommends that form "Divestiture of Assets Certification" be used for this purpose.

### **Current Family Assets-from all sources**

Written third-party verification of assets:

1. OHCS "Asset Verification" form must be used first to verify all assets for all household members.
2. Benefit letters or statements received from:
  - a. Financial Institutions
  - b. Stock Brokers
  - c. Employers

These documents must show the current value of the asset/s and document the penalties or reasonable costs incurred in order to convert the asset/s into cash.

3. Current copies of:
  - a. Checking account statements (six months)
  - b. Savings account statements
  - c. Statements for CDs, Money Markets, Stocks, Bonds, IRAs, Keoghs and annuities, etc.
  - d. Other financial statements completed by financial institutions
  - e. Copies of trust documents
4. Real Estate Verification
  - a. First choice, obtain third-party verification form filled out by a real estate professional that provides all of the required information.
  - b. Second choices:
    1. Tax Returns with all schedules (for rental property)
    2. Sellers Agreement (when a property is on the market)
    3. Tax assessment statements (when a property is not on the market)
    4. Mortgage statements
    5. Zillow (or other website) print outs should be used only as a last resort to show property value

### **Verification Tips:**

- Use current balance in savings accounts and average monthly balance in checking accounts for last six months.
- Use cash value of all assets (the net amount the applicant would receive if the asset were converted to cash).

## **Reverse Mortgages**

Reverse mortgages are loans that are paid to the homeowner and secured with the equity in a home.

- These loans are typically paid in installments to the homeowner or may be received in lump sums.
- In either case, these loans are NOT considered income as they are actually the proceeds of a loan.

This type of loan does not require monthly payments to be made by the homeowner to pay the loan back. However, before the homeowner can permanently sell, move out of the property, or at their death, the loan must be paid off in full (normally out of the proceeds collected when the home is sold).

Since reverse mortgages are actually loans against the property and decrease the cash value, they should be treated the same as other mortgages. The home will continue to be considered an asset to the owner.

## **Estrangement or Separation**

If an applicant states that he/she is married but is separated from their spouse or partner or in the process of separating, a Separation Certification must be completed. In some cases a verification of the former spouse's or partner's current residence may be required.

## **File Clarifications**

When a change or clarification is needed for an incomplete or unclear verification, it is important to remember that verifications must never be altered and should instead be clarified or re-verified as applicable. White-out should never be used to change, alter or conceal original information. When there is information in the tenant file that requires further clarification, the management agent should include written statements to provide such clarification. When the clarification statements are provided by the tenant or contain information clarified by the tenant, the tenant should always sign and date each clarification. Any clarification that is demonstrating eligibility (if the first verification received indicates that the tenant may not be eligible) should be re-verified by the source (employer, etc.) and not Management or the tenant.

## **EIV (Enterprise Income Verification)**

OHCS Compliance Officers are not authorized by HUD to view any documentation obtained through EIV. Therefore, any tenant files that may contain EIV verifications will need to be re-organized; the EIV documentation will either need to be removed from the tenant files prior to an auditing visit or kept in separate files for ease of tenant file maintenance.

## **VAWA-Violence Against Women Act**

Since 2005 the Violence Against Women Act (VAWA) has provided protections to families applying for and receiving rental assistance payments from the HUD Project Based Section 8 program. On March 7, 2013, President Obama signed the Violence Against Women Act Reauthorization, which expanded the housing protections to include most all affordable housing programs including LIHTC, HOME and RD (a complete list of all housing programs can be found in the act itself).

VAWA protects victims of domestic violence, dating violence, sexual assault, or stalking, as well as affiliated individual(s), generally, from being denied housing assistance or being evicted as a result of an incident of domestic violence, dating violence, sexual assault, or stalking that is reported and confirmed. The VAWA 2013 reauthorization enhances judicial and law enforcement tools to combat violence against women, improves services for victims, and strengthens the health care system's response to violence against women. It should be noted that the protections for VAWA covered violence include sexual assault, women, men, and people in same-sex relationships.

## **Tenant Protections:**

Tenants cannot be denied tenancy based upon a previous incident of violence. Victims have a right to privacy. All information provided by the tenant must be kept confidential. Incidents of threats of domestic violence, dating violence, sexual assault, or stalking will not be considered a "serious or repeated lease violation" by the victim, or "good cause" to terminate the tenancy rights of the victim. The tenant can also request a transfer if they believe that they are threatened with imminent harm from further violence if they remain in the same unit. If a household member engages in a criminal act(s) of violence against another household member, VAWA allows for lease bifurcation. This means that the owner/manager may evict or remove the person responsible for the violent act(s) without evicting or removing the victim(s) from the lease agreement. If the victim participates in a housing program and cannot establish eligibility for the

housing program, the owner/manager must give a reasonable amount of time for the victim to find new housing or establish eligibility under another covered housing program.

**Owner Protections:**

The VAWA protections are not meant to limit the owner/manager from honoring court orders issued to either protect the victim or address the distribution of property in case a household breaks up. Nor, do the protections limit the owner/manager from terminating the victim’s lease for lease violations that are not related to domestic violence, dating violence, sexual assault, or stalking. If the owner/manager can show that the victim’s presence poses an actual and imminent threat to other tenants or employees, the owner/manager may choose to end the lease term. The owner/manager must show reasonable actions to reduce or eliminate the threat prior to seeking eviction. Tenants who are victims of domestic violence, dating violence, sexual assault, and/or stalking must contact their owner/manager as soon as possible to report any issue(s). The owner/manager may request that the tenant provide documentation of the abuse. Failure to report and document an occurrence of domestic violence, dating violence, sexual assault, or stalking within the required (14-days) or agreed upon deadline can be considered a lease violation if the tenant was properly notified of the VAWA protections.

**VAWA Lease Addendum:**

The owner/manager must implement a VAWA lease addendum for all tenants. Although HUD provides a VAWA lease addendum (HUD Form 91067), this is not a mandatory form. The owner/manager can incorporate the VAWA protections in the lease and forms, or create a lease addendum with the required language.

**VAWA Lease Document Requirements:**

1. VAWA Protections (Required Language):

- a. VAWA confidentiality required language must notify the resident that their statement(s) will be retained in confidence and will not be entered into a shared database, or provided to another entity without prior written consent or if required by law. All documentation must also be kept in a secure location separate from the tenant files.
- b. The Landlord may not consider incidents of domestic violence, dating violence, sexual assault, or stalking as serious or repeated violations of the lease or other “good cause” for termination of assistance, tenancy or occupancy rights of the victim of abuse.
- c. The Landlord may not consider criminal activity directly relating to abuse, engaged in by a member of a tenant’s household or any guest or other person under the tenant’s control, cause for termination of assistance, tenancy, or occupancy rights if the tenant or affiliated individual(s) of the tenant’s family is the victim or threatened victim of that abuse.
- d. The Landlord may request in writing that the victim, or a family member, or affiliated individual, on the victim’s behalf, certify that the individual is a victim of abuse and that the Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, Form HUD-91066, or other documentation as noted on the certification form, be completed and submitted within 14 business days, or an agreed upon extension date, to receive protection under VAWA. Failure to provide the certification or other supporting documentation within the specified timeframe may result in eviction.

2. The lease addendum must be signed by all tenants required to sign the lease agreement according to management policy.

3. The lease addendum must also be signed with the same frequency as other lease addendums. It is a good practice to review this policy with Tenants annually during the lease renewal process.

4. Each site must provide the VAWA notice of rights to tenants at the time a person applies for housing, when a person is denied residency, when a person is admitted as a tenant of a housing unit, and when a tenant is threatened with eviction or termination.

The VAWA Certification form (HUD Form 91066) may be used to document occurrences of violence at the site and certify that the individual/tenant is a victim of domestic violence. This form is not mandatory. However, if the owner/manager chooses to create their own form, the form must notify the tenant who has experienced the violent occurrence of the VAWA confidentiality requirements. The form must also include the date, time, and location of the incident, as well as a description of the incident that must be signed under penalty of perjury. The tenant selection policy should describe the marketing and outreach activities, waiting list management, and tenant selection during the application period for your community. Under VAWA, potential tenants cannot be denied tenancy based upon a previous incident(s) of violence. The VAWA language must be included in the tenant selection policy with details on how the owner/manager

will process applications with documented occurrence(s) of domestic violence, dating violence, sexual assault, or stalking. The owner/manager must adopt a policy to address requests for emergency unit transfers as a result of a documented occurrence of domestic violence, dating violence, sexual assault, or stalking. When notifying tenants of VAWA protections, the required language must be used and a process must be created for collecting supporting documentation if a tenant experiences a violent occurrence. If a housing provider refuses to rent, evicts, or otherwise treats someone differently because of that person's status as a victim of domestic violence, HUD or the courts may find a violation under **the Fair Housing Act due to direct discrimination, unequal treatment, or disparate impact.**

**More information can be located on the following websites:**

Federal Register VAWA Notice: <http://www.gpo.gov/fdsys/pkg/FR-2013-08-06/pdf/2013-18920.pdf>.

One CPD: <https://www.onecpd.info/news/reauthorization-of-the-violence-against-women-act-vawa/>.

National Housing Law Project Comments on VAWA (Example Notice to Tenants included):

<http://povertylaw.org/sites/default/files/files/housing-justice/13-10-7-NHLP-Shriver-HUD-VAWAcomments.pdf>.

National Housing Law Project compendium of State and local laws that affect domestic violence:

<http://nhlp.org/files/Domestic%20violence%20housing%20compendium%20FINAL7.pdf>.

# **Chapter 6 – Fair Housing & Marketing**

## **Finding and Keeping Tenants**

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. Affirmative Fair Housing Marketing Plans (**AFHMP**) for LIHTC properties must be established. Owners/Agents 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.

Owners/Agents of LIHTC properties must treat applicants and tenants 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
- Maintaining wait lists that meet HUD standards

## **General Occupancy Guidelines/Family 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.

## **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.
- 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 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.
- The tenant selection procedures should describe the LIHTC requirements that affect tenants and tenant selection in terms that are clear and easy to understand. Examples of procedures that should be included are:

- How vacant units will be filled
- LIHTC unit occupancy requirements
- Nondiscrimination policies and the affirmative marketing procedures, including accessibility requirements
- Marketing strategy for accessible units
- Waiting List procedures
- Tenant selection records that must be maintained
- Procedure for assigning lower set-aside rents

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.

Voucher Holders:

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 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 or three 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, sell or lend 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.

### **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: <http://www.justice.gov/crt/about/hce/title8.php>

#### **"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.

## Lead-Based Paint Regulations

### Exempt Housing

- 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.
- Properties where occupancy by a child is unlikely, typically:
  - Elderly and disabled housing or SRO units.

### Basic Requirements

Owners are required to take actions to reduce lead-based paint hazards in their units. Owners must comply, with the Lead-Based Paint Poisoning Prevention Act along with requirements for dealing with lead-based paint found in the Uniform Physical Condition Standards (UPCS).

### 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 Consolidated Funding Cycle (CFC) 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 Asset Management & Compliance section 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 home built prior to 1978. The Brochure can be found on-line at: <http://epa.gov/lead/pubs/renovaterightbrochure.pdf>.

All of these changes are 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 Asset Management & Compliance Section Compliance Officer will monitor to ensure that the owner has conducted all necessary activities and maintained appropriate documentation in their files.

### Affirmative Fair Housing Marketing Requirements

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.

### Basic Requirements

- Affirmative marketing procedures and requirements must be adopted for rental properties - Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status or disability.
- All LIHTC should have an approved Affirmative Fair Housing Marketing Plan (AFHMP) before the property is transferred to the Asset Management & Compliance 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.

- Owners of properties 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.
- Owners of properties 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.
- The HUD Fair Housing poster should be displayed in offices where rental activity takes place for all properties with five or more units.

A copy of the AFHMP and Management Plan, with all attachments, should be retained on site for reference and provided to OHCS, HUD, or Fair Housing upon request.

### **Advertising – Marketing Efforts**

It is unlawful to make, print or publish any notice, statement or advertisement with respect to the sale or rental of a dwelling which indicates a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin. All written or oral notices or statements by a person engaged in the sale or rental of a dwelling are subject to this provision.

A file must be maintained with all marketing efforts related to the property including newspaper ads, social service contacts, photos of signs, etc. Records will be reviewed during the monitoring of the property to ensure that all efforts are in compliance with federal requirements and are being adequately documented. Marketing efforts should be reviewed by Owners/Agents on a continual basis and the AFHMP must be updated at least once every five years. Marketing efforts should be sent to various sources. Limiting efforts to one source is not acceptable. Using the internet must not be relied upon as the only source of marketing as some people do not have access to the internet. Further, if a vacancy problem exists at a property, Owner/Agent should update the plan to extent outreach areas or re-evaluate and expand the target populations.

For more information regarding **AFHMP advertising guidelines**, go to:

<http://www.hud.gov/offices/fheo/library/part109.pdf>

### **Fair Housing & Equal Opportunity (FHEO)**

Title VIII of the Civil Rights Act of 1968 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, gender, religion, or national origin***, (protected classes). The Fair Housing Amendments Act of 1988 expanded coverage of Title VIII to prohibit discriminatory housing practices based on ***disability and familial status*** (protected classes). 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: 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 (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.

As a new program regulation, 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. HUD and its fair housing partners are preparing additional guidance and plan to conduct trainings to assist HUD grantees in understanding the new rule. As these procedures become available, you will be able to access them at: [www.hud.gov/lgbthousingdiscrimination](http://www.hud.gov/lgbthousingdiscrimination).

\*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.

#### **State of Oregon Protected Classes (list subject to change)**

- Marital Status: Actions/decisions based on whether or not someone is married, single, divorced, etc.
- Source of Income: Any legal source of income is counted, including alimony, welfare, etc.
- Sexual Orientation
- Gender Identity
- Domestic Violence Victims
- Voucher Holders (rental assistance)

#### **Local Jurisdictions: Counties-Cities in Oregon Protected Classes**

In addition to Federal and State protected classes, some counties and cities in Oregon have designated additional protected classes. These can be viewed at:

[www.FHCO.org/pdfs/matrix\\_ore.pdf](http://www.FHCO.org/pdfs/matrix_ore.pdf).

#### ***More Information:***

Oregon’s fair housing laws can be found in the **Oregon Revised Statutes (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>.

## **ADA, 504 and Fair Housing Accessibility**

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.
- The Fair Housing Amendments Act of 1998 (Amendments Act - FHAA) added disability and familial status.
- 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.
- Persons with disabilities have their rights protected under three main laws (ADA, FHAA, and 504).

**TCAP and the Exchange Program provide direct funding. Properties that receive funds through these programs must fully comply with the requirements of Section 504.** 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, in the form of: (a) Funds "Since TCAP grants actual funds, the program qualifies as financial assistance, requiring full compliance with Section 504. 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 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 requirements.

Section 504 prohibits discrimination based on disability in any program, service or activity, and requires certain levels of accessibility. Section 504 applies to 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 new building or substantial rehabilitation be accessible to those with mobility impairments, and that an additional 2% be accessible to person with hearing or vision impairments. Further, law required not only accessibility, but also targeting, through affirmative outreach to the public.

## **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.

## **Disability Rights in Private and Public Housing**

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.

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/disabilities/sect504](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/disabilities/sect504).

**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.

For information on how to comply with the physical accessibility requirements of the Fair Housing Act, visit the Fair Housing Accessibility FIRST Web site: <http://www.fairhousingfirst.org/>.

These requirements apply to most public and private housing. However, there are limited exemptions for Owner-occupied buildings with no more than four units, single-family housing sold or rented without the use of a broker, and housing operated by organizations and private clubs that limit occupancy to members.

Federally assisted multifamily housing consisting of 5 or more units, 5 percent of these units (or at least one unit, whichever is greater) must meet more stringent physical accessibility requirements. Additionally, 2 percent of units (or at least one unit, whichever is greater) must be accessible for persons with visual or hearing disabilities. For more information, visit Section 504 Questions and Answers:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/disabilities/sect504faq](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/disabilities/sect504faq).

People with Disabilities in Federally Assisted Housing: Federal law makes it illegal for an otherwise qualified individual with a disability to be excluded, solely because of his or her disability, from programs receiving federal financial assistance. For more information on the rights of persons with disabilities in federally assisted housing as well as the responsibilities of housing providers who receive federal financial assistance, visit our Section 504:

Disability Rights in HUD Programs site:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/disabilities/sect504](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/disabilities/sect504).

**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, see the Joint Statement of DOJ and HUD on Group Homes, Local Land Use, and the Fair Housing Act:

[http://searchjustice.usdoj.gov/search?q=crt%20housing%20final8\\_1&q=site%3Awww.justice.gov%2Fcr&sort=date%3AD%3AL%3Ad1&output=xml\\_no\\_dtd&client=default\\_frontend&proxystylesheet=default\\_frontend&site=default\\_collection](http://searchjustice.usdoj.gov/search?q=crt%20housing%20final8_1&q=site%3Awww.justice.gov%2Fcr&sort=date%3AD%3AL%3Ad1&output=xml_no_dtd&client=default_frontend&proxystylesheet=default_frontend&site=default_collection).

**State and Local Laws:** Many states and localities have fair housing laws that are substantially equivalent to the Federal Fair Housing Act. Some of these laws prohibit discrimination on additional bases, such as source of income or marital status. Some of these laws may impose more stringent design and construction standards for new multifamily housing.

**The Americans with Disabilities Act:** In most cases, the 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.

**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:** [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/FHLaws/yourrights](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FHLaws/yourrights).

**US Department of Housing & Urban Development Office of Fair Housing & Equal Opportunity UFAS Accessibility Checklist:** [http://portal.hud.gov/hudportal/documents/huddoc?id=UFASAC\\_PHAs5708.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=UFASAC_PHAs5708.pdf).

## **Chapter 7 – Extended Use Period Monitoring (Beyond Year Fifteen)**

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) 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 2015, the owner may begin its credit period during 2015 or 2016.

**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.

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 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.

## Revised Tenant Eligibility Issues

### 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, **the completion of annual tenant income certifications will no longer be required.** If the property is found to be in non-compliance the agency may implement the requirement of annual certifications.
  - a) Mixed-Use Property: Properties that are not 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 the agency. Student status must be checked for each household member annually. The Annual Certification of Student Status form is required.**

### 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 8609 form.**

### 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, 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.

### 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;

- REAC scores;
- 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. Properties with no asset management or compliance concerns may be inspected and audited once every five years. 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.

### **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 Data Spreadsheet or submit the information to WCMS as applicable.

### **Monitoring Fees**

Monitoring charges will be reduced from \$35 per unit per year to \$25 per unit per year. 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. Properties that have additional funding sources may have additional monitoring fees apply.

### **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 LIHC 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**

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

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

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

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

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

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

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

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

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

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

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

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

**Credit Period:** The period of ten (10) taxable years during which credit may be claimed, beginning with:

1. The taxable year the building is placed in service, or
2. At the election of the taxpayer, the succeeding year, but only if the building is a qualified low-income building as of the close of the first year of such building, and remains qualified throughout succeeding years.

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

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

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

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

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

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

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

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

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

**Gross Income:** See Annual Household Income

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

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

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

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

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

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

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

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

**LIHTC:** Low-Income Housing Tax Credit

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

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

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

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

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

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

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

**OHCS:** Oregon Housing and Community Services

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

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

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

**Project:** Property/Rental housing development receiving an LIHTC allocation.

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

**Qualified Basis:** The portion of the eligible basis attributable to low-income rental units; it is equal to the eligible basis multiplied by the applicable fraction. The amount of qualified basis is determined annually on the last day of each taxable year. NOTE: this is the lesser of the Applicable Fraction/Occupancy Percentage:

1. The proportion of low-income units to all residential units, or
2. The proportion of floor space of the low-income units to the floor space of all residential units.

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

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

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

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

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

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

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

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

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

**Utility Allowance (U/A):** The amount of utilities, for a particular unit, set by a utility allowance schedule which is published by HUD, FmHA, or PHA. See the manual for details regarding utility allowances.

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

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

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

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