low income housing tax credit progam

chfa

financing the places where people live and work

compliance manual

preface

This manual is a training and reference guide for the Low Income Housing Tax Credit Program (LIHTC or the Program) once the allocation of credits has been approved. It is designed to provide guidance for compliance with the Land Use Restriction Agreement (LURA) and Section 42 of the Internal Revenue Code (the Code) and to help answer questions regarding the procedures, rules, and regulations that govern LIHTC developments. It is a resource for owners/developers, tax credit investors, management companies, and onsite management personnel.

This manual supplements existing laws and rules. However, it is not a comprehensive guide to the LIHTC program and all of its requirements. It is for utilization by LIHTC participants in Colorado and should be used in conjunction with the Code and the LURA. Owners and managers are advised to consider retaining the services of an attorney and/or accountant who specializes in the LIHTC program to counsel them on any complex problems that may arise.

Compliance monitoring by Colorado Housing and Finance Authority (CHFA), will be administered through the Asset Management Division. Questions or concerns regarding CHFA's administration of the Program should be directed to the Manager of Program Compliance at 303.297.7411 or toll free at 800.877.2432.

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Certification of Households

CHFA Provided Forms

A selection of CHFA designed forms are referenced in this manual but are not included in the actual document. With certain exceptions, owners are not required to use CHFA forms provided the owner's forms contain all of the essential elements necessary to obtain and evaluate information. Forms may be updated from time to time. To ensure that owners have the most current forms, please visit the CHFA website periodically: http://www.chfainfo.com/multifam/Multifam_asset_management/forms.icm.

introduction:
history of the low income housing tax credit program

Congress enacted the Low Income Housing Tax Credit Program under the Tax Reform Act of 1986. The Department of Treasury is responsible for the administration of the Program nationwide. The Program is governed by Section 42 of the Internal Revenue Code (the Code) as amended and by related regulations. Under the provisions of the Code, each state is required to designate a "housing credit agency" to allocate the credits. The State of Colorado has designated CHFA to allocate tax credits within the State of Colorado.

The Low Income Housing Tax Credit (LIHTC) is a dollar-for-dollar reduction in tax liability to the owner of a qualified low income housing development for the construction or acquisition/rehabilitation of low income rental housing units. The amount of credit allocated is directly based on the number of qualified low income units that meet federal rent and income targeting requirements.

The Omnibus Budget Reconciliation Act of 1990 amended the Code to require that state tax credit allocating agencies provide a procedure for monitoring developments for non-compliance with the requirements of the Program under Section 42(m)(1)(B) of the Code and for notifying the Internal Revenue Service of such noncompliance. To offset the costs of compliance monitoring, CHFA charges a reasonable monitoring fee as allowed by the Code.

chapter 1
owner responsibilities

The following chapter outlines the owner's responsibilities to maintain each project's eligibility for tax credits.

1.1 Owner Responsibilities

The owner has chosen to utilize the LIHTC Program to take advantage of the tax benefits provided and has provided comprehensive development information with evidence of overall economic feasibility. Prior to issuance of a final tax credit allocation on IRS Form 8609, Low Income Housing Credit Allocation Certification, the owner must certify that the total development costs and all requirements of the LIHTC Program have been met. Violations of the LIHTC Program requirements may result in a loss of tax credits. In exchange for the tax benefits, the owner must meet certain requirements that will benefit low income residents.

1.2 Reporting and Compliance

Throughout all phases of development, lease-up, and operation, it is the owner's responsibility to provide certain information, including:

- placed-in-service date for each building;
- first year of the credit period;
- date the development achieves full occupancy;
- material changes in ownership or management;
- annual submissions as required (see Section 1.4 below); and
- any information requested by CHFA.

All documentation must be submitted within the time frame requested.

1.3 Physical Compliance of the Development

The owner is also responsible for ensuring that the development is:

- suitable for occupancy;
- compliant with local health, safety and building codes;
- compliant with local and federal regulations; and
- compliant with the terms of the LURA and CHFA's policies.

1.4 Required Submissions

Owners are required to submit documents and fees, as applicable, throughout the compliance and extended use periods as follows:

- copies of IRS Form 8609 and Schedule A for each building (completed, signed, and filed with the IRS by the owner) for first year of credit period only. To be submitted to CHFA within 90-days of first filing;
- initial occupancy and demographic data via Web Based Compliance Management System (WCMS) accessed from www.chfainfo.com/LIHTC when property has achieved 50 percent occupancy or by the end of the year that the building places in service. CHFA reviews this data for compliance with the occupancy restrictions of the LURA at least annually (January 15 for December) for all developments and at least semi-annually for mixed income developments (July 15 for June). However, occupancy and demographic data should be updated at least monthly via WCMS;
- Owner Certification of Continuing Program Compliance, Exhibit A, for the LIHTC Program annually by January 15 for the previous year; and
- Annual Monitoring Fees for mid-1995 developments and those developments in the Extended Use Period.

1.5 Compliance Training

Owners are required to attend CHFA-approved compliance training prior to receiving an IRS Form 8609. However, CHFA recommends that owners attend classes on an annual basis to keep abreast of changes in laws, regulations, or CHFA policies regarding the Program. A schedule of training classes may be found at www.chfainfo.com/LIHTC.

1.6 CHFA Asset Management Officers

Each development is assigned an Asset Management Officer (AMO) who is the primary contact for information and questions about compliance. The owner will submit the documentation required for compliance monitoring purposes to the AMO. The AMO will conduct physical inspections, management reviews, and follow-up reviews, as necessary, in order to verify that the owner and the development are compliant with the Program requirements.

chapter 2
program compliance

The following chapter outlines the overall requirements properties must meet in order to maintain eligibility for tax credits. Properties that do not consistently meet these requirements during the compliance period may be subject to a recapture of credits.

2.1 Rent Restrictions; IRC Sec. 42(g)(2)(B)

Units set aside as low income must be rent restricted as required by Section 42(g)(2) of the Code. A unit is considered to be rent restricted if the "gross rent" does not exceed 30 percent of the applicable income limitation. CHFA releases Income and Rent Tables annually based on current median income data from HUD. This information is typically released in the first quarter of each year and provided by CHFA at www.chfainfo.com/LIHTC.

A. Gross Rent

The Code defines “gross rent” as the resident paid rent plus utility allowance. The allowance is used to cover any utilities a resident is required to pay other than telephone, cable, or internet (refer to Utility Allowance section 2.3) unless the fee for telephone, cable, or internet charged by the owner is not optional. The gross rent must not exceed the applicable maximum rent as listed on the Income and Rent Table in effect as of the date of certification.

B. Gross rent does not include

- rental assistance payments under Section 8 of the United States Housing Act of 1937 or any comparable rental assistance program;
- fees for supportive services (any service provided under a planned program of services designed to enable residents of a residential rental property to remain independent) that are paid to the owner of the unit by any governmental program of assistance; or
- rental assistance payments to the owner of a unit to the extent the owner pays an equivalent to Rural Development under Section 515 of the Housing Act of 1949.

C. Gross Rent Floor- Revenue Procedure 1994-57

Revenue procedures 1994-57 allows the owner to establish floor rent amounts that will not be affected by fluctuations in the income limits and maximum rent ceilings. In other words, developments will never have to charge gross rents (rent plus utilities) below their gross rent floor amounts. The owner makes an irrevocable election to establish the gross rent floor at either the placed-in-service date or the allocation date.

D. Section 8 Assisted Units

A Section 8 resident who originally qualified for a set-aside unit may later be required to pay an amount in excess of the tax credit limit due to their increased earnings and decreased subsidy. In this case, the Internal Revenue Code Section 42 does allow an exception as long as the following requirements apply to the resident:

- the resident originally qualified for a set-aside unit;
- the resident is a participant under a housing subsidy program; and
- at least one dollar of subsidy is being received.

If at anytime the subsidy is revoked, the owner may not charge a gross rent greater than the Tax Credit Rent limit. [IRS Code, 42(g)(2)]

2.2 Allowable Fees; Treasury Regulation § 1.42–11 Provision of Services

A. Fees for Facilities

Generally, fees for facilities or services may be charged to residents in addition to gross rent only if all three of the following statements are true:

- the cost of the facilities or services are not included in the projects Eligible Basis;
- the facilities or services are optional; and
- there is a reasonable alternative to using these facilities or services.

For example, if an owner offers washers and dryers in the apartments for an additional fee, the cost of the washers and dryers must not be included in eligible basis and an alternative such as laundry facilities at the building must be provided.

B. Other Allowable Fees

- pet deposits, rents and fees are allowed;
- early lease termination fees;
- refundable fees such as security deposits; and
- application fees as long as the charges do not exceed the average expected out-of-pocket costs for checking tenant qualifications such as income, rental history, credit history and criminal history

C. Disallowed Fees

The following fees may not be charged in addition to gross rent:

- fees for month-to-month leases;
- nonrefundable redecoration fees;
- renters insurance fees;
- unit transfer fees; utility transfer fees;
- fees for preparing a unit; and
- fees not allowed under the terms of the project's Land Use Restriction Agreement (LURA) or the applicable Qualified Allocation Plan (QAP)

2.3 Utility Allowances; 26 CFR 1.42-10; IRC 42(g)(2)(b); § 1.42-10(b)

The gross rent includes resident paid rent plus any utilities other than telephone, cable or internet (unless those charges are not optional) that the resident pays directly either to the owner or to a utility company. The sum of resident-paid rent and resident-paid utilities must not exceed the applicable maximum rent. The type of utility allowance to be used depends upon the type of building.

- HUD Regulated Buildings: If the rents and utility allowances of the building are reviewed by HUD on an annual basis, use the applicable HUD utility allowance;

- Tenants receiving HUD Rental Assistance: The applicable utility allowance for any rent-restricted units occupied by tenants receiving HUD rental assistance payments (HUD tenant assistance) is the applicable Public Housing Authority (PHA) utility allowance established for the existing Section 8 Housing Program;

- Section 515 Assisted Buildings: If a development or any resident in a development receives assistance under Section 515, use the applicable Rural Development utility allowance; or

- HUD and Section 515 Assisted Buildings: If a development receives assistance from both HUD and Section 515, use the applicable Rural Development utility allowance.

- Other Buildings:

    - Local Public Housing Authority (PHA) Allowance: Use the applicable Public Housing Authority utility allowance schedule or utility company estimates. If both utility company estimates and the PHA utility allowance schedule are obtained, the project must use the local utility company estimates;

    - Energy Consumption Model: Estimates from utility consumption must be calculated by a properly licensed electrical or mechanical engineer, not related to the building owner. Owners may submit a written request to CHFA requesting to use this option. Utility consumption models must include specific criteria, but is not limited to, building orientation, design characteristics, location, materials, unit size, mechanical systems, appliances and other applicable “green” initiatives. Newly constructed or renovated buildings with less than 12 months of data may use units of similar size and construction characteristics within the same geographical area of the subject property. Submissions must include all supporting documentation including the engineer’s calculations and a copy of the engineer’s current license; or

    - HUD Utility Schedule Model: The HUD Utility Schedule Model is a tool that provides location and heating degree data and requires input to the model in order to generate utility estimates. Owners may submit a written request to CHFA requesting to use this option. Based on data from the Residential Energy Consumption Survey (RECS), conducted by the Department of Energy, the data provides energy consumption by structure for heating, air conditioning, cooking, water heating, and other electric (lighting and refrigeration). The HUD Utility Schedule Model incorporates building location and climate. The model is located at: http://www.huduser.org/datasets/lihtc.html.

    - Utility Company Model: This model is discussed in Section 2.4.

Properties using either PHA, HUD or Rural Development utility allowances must implement changes to those allowances within 90 days whenever changes are made by the source. Written documentation must be obtained from the source for each year of the compliance and extended use periods whether or not there has been a change in the utility allowance. The documentation must be kept on file for inspection and maintained in accordance with the Record Retention Requirements of the Code. See chapter five, Record Retention Requirements, for additional information.

2.4 Utility Company Model; Treasury Regulation § 1.42-10

Owners are provided as much flexibility as possible to accurately determine equitable utility allowances for their properties. However, the flexibility increases CHFA's monitoring responsibilities. The following guidelines apply:

- owners calculating utility allowances estimates must use information from the local utility company including any utilities the residents paid for the preceding 12 month period. The information must include average utility usage and cost for each unit type. Owners of developments with one to 50 total units must collect information for each unit. Owners of developments with over 50 total units must collect information for a minimum of 50 percent of each unit type. The utility costs are averaged for each unit type and divided by 12 to determine the monthly utility allowance;

- owners must submit utility allowance calculations on an annual basis and are responsible for the accuracy of all data submitted and for ensuring that their LIHTC properties remain compliant with all Section 42 requirements. Allowances must be updated annually regardless of any change in utility rates;

- utility allowances increasing or decreasing by $5.00 or more from the previous year calculation must be accompanied by an explanation when the information is submitted to CHFA for approval;

- a processing fee of $2.00 per low-income unit, with a minimum of $50.00, will apply to all owner estimate submissions. The owner is responsible for all costs incurred in obtaining utility allowance estimates and providing them to CHFA and building residents; and

- owners must provide a signed Owner Certification of Utility Estimate Accuracy to CHFA and must retain any utility consumption estimates and supporting data as part of the taxpayer's record. See chapter five, Record Retention Requirements, for additional information.

2.5 Ratio Utility Billing Systems (RUBS); IRC 42(g)(2)(b)

The use of RUBS is not permissible and is a reportable Tax Credit non-compliance violation.[1] RUBS are used by owners for the re-imbursement of utility expenses incurred on the part of the owner. RUBS bases charges on an average use rather than billing a household for its actual usage. Residents are billed monthly for the average utility costs by the owner or a third party. Owners must pay the utilities but may charge full gross rents to the tenants based on the current rent and income limits provided by CHFA.

IRS Treasury Regulation 1.42-10 outlines the sources of utility allowance estimates that may be used by owners. Notice 2009-44, effective May 5, 2009, amended the regulation to include alternate forms of utility allowance estimates. RUBS were not included as an alternative for utility allowance estimates as outlined in the Notice.

2.6 Sub-metering; Notice 2009-44

Utility costs paid by residents that are based on actual consumption in a sub-metered, rent-restricted unit are treated as paid directly by the resident for the purposes of Section 42(g)(2)(b)(ii) of the Internal Revenue Code. For RHS or HUD assisted properties, RHS and HUD regulations continue to apply.

Owners may charge residents a reasonable fee for the administrative costs of sub-metering. The fee must not exceed an aggregate amount per unit of five dollars per month unless State law provides otherwise. The fee is not considered gross rent under § 42(g)(2).

2.7 Overcharged Gross Rent

In the event an owner overcharges gross rents, all affected units in the building are out of compliance. Rent amounts as stated on the lease prior to concessions may not exceed the gross rent minus utility allowance. Charge-backs of concessions may not raise the rent above the gross rent for any given month.

If Section 8 subsidy is received, the lease must include language that, in the event of a termination of assistance, the owner will not charge a gross rent amount in excess of the maximum allowable tax credit gross rent

CHFA is required to report overcharges of Gross Rent to the IRS using IRS Form 8823, see chapter four of this manual. CHFA will also report when the non-compliance is corrected. Non-compliance is corrected when the resident-paid rent plus utility allowance is adjusted and is less than or equal to the applicable rent limit. Further, CHFA requires owners to refund excess charges to the resident.

[1] 26 CFR Part 1, Section 42-10 Utility Allowances, July 29, 2008, 73 FR43863; Notice 2009-44

2.8 Applicable Fraction; IRC Section 42(c)(B), (C) and (D)

Under the LIHTC program the amount of tax credits an owner may claim each year is directly related to the number of qualified low income units at the property. An annual credit amount is determined for each building based on the low income percentage or "applicable fraction" for each building. The applicable fraction is established in the first year of the project and remains the same for the life of the project. It is defined as the lesser of:

- the Unit Fraction (percentage of low income units); or
- the Floor Space Fraction (percentage of low income square footage).

If the actual fraction decreases for any reason, the building may be subject to a loss or recapture of credits. The owner's property manager and on-site staff must be aware of the applicable fraction prior to initial lease-up and must continue to monitor the fraction for each building.

2.9 Next Available Unit (NAU) Rule; Treasury Regulation § 1.42-15

The Available Unit Rule amends the regulations under Section 42(g)(2)(D) of the Code. It applies to all leases entered into or renewed on and after September 26, 1997. This rule covers four major issues that are discussed below.

A low income unit occupied by a household whose income increases up to 140 percent of the applicable income limitation (or 170 percent of the applicable income limitation for deep rent skewed projects) continues to be treated as a low income unit if the household income initially met the income limitation at move-in and the unit continues to be rent restricted

Any unit occupied by a household whose income increases beyond 140 percent of the applicable income limitation (or 170 percent for deep rent skewed projects) is considered to be an "over income unit" is considered out of compliance and ceases to be treated as a low income unit if the next available comparable unit that is available or subsequently becomes available within the building is rented to a non-qualifying household. All available units must be rented to qualifying households until the original applicable fraction of the building is restored. Once the original applicable fraction of the building has been restored, the over income unit may remain rent restricted or, if the building is a mixed income building, may become a market rate unit upon lease renewal.

A. Comparable Unit

The NAU Rule defines a "comparable unit" as a unit that is comparably sized or smaller than the over income unit (or, for deep rent skewed projects, any low income unit).

CHFA defines a comparable unit as any unit up to 100 square feet larger than the unit that invoked the NAU. For additional guidance, CHFA recommends consulting a tax attorney or accountant.

B. Available Unit

The Available Unit Rule is applied on a building-by-building basis, not by project. A comparable unit is not deemed to be available for purposes of the Rule if it is subject to a preliminary reservation (pre-leased) that is binding on the owner under local law prior to the date a lease is signed or the unit is occupied. Such units are still considered “available” and must be rented to low income households to satisfy the Available Unit Rule unless there is a previous binding contract that compels the owner to reserve the unit for an applicant.

2.10 Unit Transfers

A. Transfers Within the Same Building

When a current qualifying household in a tax credit unit transfers to another unit within the same building, the newly occupied unit adopts the status of the vacated unit and the vacated unit adopts the former status of the newly occupied unit. In other words, the two units swap their status with one another. The result is the household simply transfers and is not required to be certified as a new move-in.

B. Transfers to Another Building

When a current household transfers to a unit in another building within the project, the newly occupied unit adopts that status of the vacated unit and the vacated unit adopts the former status of the newly occupied unit provided the household income does not exceed 140 percent of the applicable income limit upon transfer.

C. Noncompliance with the Next Available Unit Rule

If any comparable unit that is available or that subsequently becomes available is rented to a non-qualified household before the original fraction is restored, all over income units lose their status as low income units and are therefore out of compliance.

2.11 Non-Transient Occupancy; IRC Section 42(i)(3)(B)(i) and (iii)

A unit is considered to be non-transient when the initial lease term for a household is for a term of six-months or longer. A unit will not be considered low income if it is used on a transient basis, unless it meets one of two exceptions.

Units may be considered low income and not offered on a transient basis if:

- the units are in a building that is used exclusively to facilitate the transition of formerly homeless individuals (within the meaning of Section 103 of the Stewart B. McKinney Homeless Assistance Act); or

- a property is designated as Single-Room-Occupancy (SRO).

If a unit meets one of the exceptions, the initial lease term may be month-to-month. Otherwise, all initial leases must be for a term of at least six months. However, renewal lease terms may be month-to-month.

2.12 General Public Use; Treasury Regulation § 1.42-9

In order to be eligible for tax credits, low income units must be offered for use by the general public. Low income units are not offered to the general public if they are provided solely for a member of a social organization or provided by an employer for its employees.

Effective July 30, 2008, the Housing and Economic Recovery Act of 2008 (HERA), HR 3221, amends the general public use requirement to allow for occupancy restrictions or preferences that favor tenants:

- with special needs;

- who are involved in artistic or literary activities; or

- who are members of a specified group under a federal program, a state program, or a policy that supports housing for such a specified group.

The amendment impacts any building placed in service at any time.

2.13 Vacant Unit Rule; Treasury Regulation § 1.42-5(c)(1)(ix), Revenue Ruling 2004-82, Q9

If a low income unit in the project becomes vacant during the year, the owner must make reasonable attempts to rent that low income unit, or the next available unit of comparable or smaller size, to income-qualifying tenants before any other units in the project are rented to tenants that did not income-qualify. Owners must also make attempts to make the unit ready for occupancy within a reasonable time.

Attempts to lease the tax credit units must be documented and the documentation should be kept on file in accordance with the LIHTC Record Retention Requirements outlined in chapter five of this Guide.

2.14 Employee Units; Revenue Ruling 1992-61

Units occupied by full time resident managers or other full time onsite employees that are necessary for the operation of the project are treated as part of the residential rental property and included in a building's eligible basis, but are not considered residential rental units. These units are not included in the applicable fraction of the building. However, this rule only applies to onsite employees who are working full time for the project.

If an owner is charging rent for an employee unit, the IRS may determine that it is not necessary for an employee to live onsite. In this instance, the unit will be treated as a non-employee unit and require the unit be income qualified and included in the applicable fraction, which could impact the tax credits for the building.

2.15 Owner-occupied Buildings with Four or Fewer Units; IRC Section 42(i)(3)(C) and (E)

Buildings with four or fewer units occupied by the owner of the building, or any person related to an owner of the building, are ineligible for tax credits except those buildings that are a part of an acquisition/rehabilitation project at the time of allocation and the projects follow development plans sponsored by qualified nonprofit organizations [as described in Section 42(h)(5)(c) of the Code] or by a state or local government. However, the applicable fraction of the building cannot exceed 80 percent.

2.16 Good Cause Eviction and Rent Increase Protection; Revenue Ruling 2004-82, Q5

The IRS determined that during the entire compliance and extended use periods, owners of LIHTC properties are prohibited from the following actions:

- evicting or terminating the tenancy of a household from a LIHTC unit other than for "good cause"; or
- increasing the gross rent of a LIHTC unit in a manner not permitted by section 42.

The owner determines what "good cause" is in the lease. CHFA recommends consulting legal counsel for further advice.

In the event that the extended use period is terminated due to foreclosure or deed in lieu of foreclosure, the following actions are prohibited for three years following the termination of the extended use period:

- evicting or terminating the tenancy of an existing household from a LIHTC unit for reasons other than good cause; or
- increasing the gross rent of an existing household in a LIHTC unit in a manner not permitted by Section 42.

Pursuant to Section 1.42-5(c)(1)(xi), owners must certify annually that for the preceding 12 month period, no tenants in low income units were evicted or had their tenancies terminated other than for good cause and that no tenants had an increase in the gross rent with respect to a low income unit not otherwise permitted under Section 42.

2.17 HUD Section 8 Voucher IRS, Sec. 42(h)(6)(B)(iv)

Applicants who are Section 8 Voucher holders may not be rejected from admission to tax credit developments simply because they are holders of certificates or vouchers.

2.18 Bond Financing Requirements

There may be special bond financing requirements in addition to tax credit requirements for developments financed by CHFA. If your development has a loan with CHFA, there will be a Regulatory Agreement as well as a LURA, which will list the additional requirements.

2.19 CHFA Monitoring Fee

In order to offset the cost of monitoring a development during the compliance and extended use periods, a monitoring fee is charged. The fee will be reviewed on an annual basis to reassess its reasonableness and whether it covers CHFA's costs of monitoring. The fee is subject to change.

- **Pre-1995 Projects**

  For developments that received final tax credit allocations in 1995 and prior, fees are paid annually and are assessed in arrears. The annual fee is due and payable on January 15 each year to cover CHFA’s monitoring costs for the prior year. Owners and agents will be notified each year of the fee amount. Please see the LURA for the specific property for information regarding fee requirements.

- **Post-1994 Projects**

  For developments receiving final tax credit allocations in 1995 and thereafter, the fee is collected up front to cover the first 15 years of the compliance period. The up-front fee is due and payable at the time the application for final allocation of credits is submitted and must be received before the owner receives the IRS Form 8609 from CHFA.

- **Post Year-15 Projects**

  LIHTC projects entering their extended use period, which begins in the 16 year of the project, will be required to pay annual monitoring fees as specified in Chapter 6 of this manual.

chapter 3
certification of households

Low income units must be occupied by qualified households. This chapter outlines the process of determining household members and qualifying households, including certification and verification of household income and assets.

3.1 Determining Household Members:

When determining family size for income limits include the following as household members who are not living in the unit:

- children temporarily absent due to placement in a foster home;
- children in joint custody arrangements who are present in the household 50 percent or more of the time;
- children who are away at school but who live with family during school recesses;
- unborn children of pregnant women;
- children being adopted;
- military member on active duty who is head, co-head, or spouse;
- temporarily absent family members who are still considered family members; and
- family members in the hospital or rehabilitation facility for periods of limited or fixed duration. The family decides if persons permanently confined to a hospital or nursing home will be included in the family size for determining the income limit. The family member permanently confined to a hospital or rehab facility cannot be head, co-head, or spouse.

3.2 Temporarily Absent Family Members

It is up to the owner and the family to determine what is "temporary." If it's determined that the family member is only temporarily absent from the home, their entire income must be counted as if they were living in the unit. People who may be considered temporarily absent are:

- family members employed a great distance away; and
- individuals in a hospital or nursing home.

You must count income of family members approved to reside in the unit even if some members are temporarily absent.

3.3 Whose Income is Included

Income for the following household members must be included:

- all adult members 18 years and older;
- emancipated minors (either married or emancipated from the family);
- household members, children, and students that receive **unearned** income;
- income of temporarily absent family members;
- students (part time or full time) that are head, co-head or spouse; and
- active military member(s) that are head, co-head or spouse.

3.4 Whose Income is Excluded

The following types of income are excluded from household income calculations:

- income of family members under the age of 18 who receive earned income;
- financial assistance income of qualifying students;[2]
- earned income of nonmembers: Live-in aids, guests and foster-children[3], and
- Payments received by the family for the care of foster-children and -adults.

3.5 Qualification of Households at Move-in

Household income at move-in must not exceed the applicable income limit designated for the unit in accordance with the affordability requirements outlined in the project's Land Use Restriction Agreement (LURA). Households must be qualified for low income units prior to moving in or taking possession of the unit. Certification of residents after move-in may impact the owner's ability to claim tax credits for the unit.

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[2] HUD 4350.3, Chapter 5, Change 3, Effective August 1, 2009

[3] HUD 4350.3, Chapter 5, Change 3, Effective August 1, 2009

3.6 Determining Qualifying Household Income

Generally, the LIHTC Program uses HUD Handbook 4350.3, Chapter 5, for guidance in determining income and asset calculations. CHFA's policy is to use the "worst case" scenario to determine household income. The maximum potential household income must be considered in order to ensure the resident qualifies for the unit.

Annual Income is the gross income a family anticipates it will receive in the 12-month period following the effective date of the certification of income.

The effective date is the date of the initial lease or the first day of the same month in subsequent years.

3.7 What is Included in Annual Household Income

- gross earned income of wages, salaries, overtime, commissions, fees, tips and bonuses;
- earned income of foster-adults;[4]
- interest, dividends and other net income of any kind from real or personal property;
- unearned income of all household members including children, foster-children, foster-adults, and students; [5]
- recurring monetary contributions or gifts. This includes contributions (cash or non-cash) from parents or an outside source not living in the unit. These contributions can be for rent, utilities, car payments, insurance, etc.;
- student financial assistance when the students meet the criteria specified in Section 3.13 below;
- periodic amounts received from annuities, insurance policies, retirement funds, pensions, disability and death benefits; and
- the first $480 of earned income for Full Time Students 18 years of age and older that are not the head, co-head, or spouse.

[4] HUD 4350.3, Chapter 5, Change 3, Effective August 1, 2009

[5] HUD 4350.3, Chapter 5, Change 3, Effective August 1, 2009

3.8 Business Income: Self-Employed Persons

When calculating annual income owners must include the net income from the operation of a business or profession including self-employment income by the applicant/resident. Net income is gross income less business expenses, interest on loans and depreciation computed on a straight-line basis.

Business income includes:

- salaries paid from the business to any adult family members;
- cash or assets withdrawn by any family member (unless the withdrawal is reimbursement for an investment); and
- net income from the business.

To arrive at "net income from the business" you may deduct the following expenses:

- business expenses (salaries, utilities, supplies, rent, insurance);
- interest portion on loans; and
- straight-line depreciation.

You may not deduct:

- principal payments on loans;
- interest on loans or other expenses for business expansion; and
- expenses for capital improvements.

3.9 Alimony

Owners must count alimony amounts awarded by the court unless the resident certifies that payments are not being made and that he or she has taken all reasonable legal actions to collect amounts due, including filing with the appropriate courts or agencies responsible for enforcing payment.

If a resident has been awarded alimony, management must attempt to:

- obtain a copy of the divorce decree or separation agreement which grants alimony; and
- clarify the alimony amount that is actually being received by the household.

3.10 Child Support

Owners must count child support amounts awarded by the court unless the resident certifies that payments are not being made and that he or she has taken all reasonable legal actions to collect amounts due, including filing with the appropriate courts or agencies responsible for enforcing payment.

The owner may accept printouts from the court or agency responsible for enforcing support payments or other evidence indicating the frequency and amount of support payments actually received.

If a resident has been awarded child support, the owner must attempt to:

- obtain a copy of the divorce decree or separation agreement which grants child support; and
- clarify the child support amount that is actually being received by the household.

If a resident has been awarded child support, but is not receiving the income:

- the owner must obtain all supporting documentation outlining the applicant's attempt to obtain the support; and
- the resident must provide an explanation as to why the support is not being received. The explanation must be in the form of a signed, sworn self certification.

The owner does not have to count the income if the resident is able to certify the following:

- the income is not being provided; and
- a reasonable effort has been made to collect the income.

In addition to specifying that a resident is not receiving any child support payments, the signed, sworn self certification should include:

- whether the resident will be seeking or expects to be receiving child support within the next 12 months; and
- a statement that the resident will notify the owner of any changes to the status of the child support.

CHFA does not permit an owner to rely on a sworn statement indicating the resident is not receiving child support payments if a reasonable person in the owner's position would conclude that the resident's income is higher than the resident's represented annual income.

3.11 Public Assistance and/or Social Security Benefits

When counting public assistance, such as Temporary Aid to Needy Families (TANF), Supplemental Security Income (SSI), etc. always use the amount specified as the maximum grant or benefit the person or family could receive. Deductions for Medicare or other items (including penalties deducted from TANF payments) must be included in the gross amount counted as income.

If the amount of the Social Security benefit is adjusted due to a previous overpayment or underpayment, use the benefit amount after the adjustment.

3.12 Unemployment

Income such as unemployment that is expected to be received for less than 12 months should be counted as if it would be received for all 12 months, unless the resident has obtained employment and the start date of that employment has been verified.

3.13 Student Financial Aid and Section 8 Program Participants

Financial aid income for full or part time students enrolled in an institution of higher education is counted only when the student is also a participant in a Section 8 program, whether it is through a project based contract or through the Section 8 Housing Choice Voucher program. In those instances, any financial assistance in excess of amounts received for tuition that an individual receives from private sources or from an institution of higher education must be counted. It does not matter if the aid is paid directly to the student or to the educational institution.

Potential Student Financial Assistance Income Sources

- tuition-related employment (including work study);
- scholarships (athletic and/or academic);
- grants and/or fellowships;
- private sources; and
- any other type of financial assistance (excluding student loan proceeds).

Student Financial assistance received is not counted as income for:

- students over the age of 23 with dependent children; or
- student(s) while residing with a parent(s) or guardian(s). [6]

[6] Guide for Completing Form 8823 Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition (Revised October 2009);

3.14 What is Excluded from Annual Income

- food stamps, Meals on Wheels or other programs providing food for the needy and groceries provided by persons not living in the unit;
- grants or other amounts received for medical assistance;
- student financial assistance, except as outlined in Section 3.13 above;
- earned income in excess of $480 for full time students 18 years or older (if not the head, co-head or spouse);
- temporary, nonrecurring, or sporadic income (including one time gifts);
- recurring monetary contributions that are paid directly to a child care provider by persons not living in the unit;
- lump sum payments from Social Security or other sources;
- personal and student loans; and
- military – hostile fire pay.

3.15 Calculating Annual Income

Income should generally be annualized using the household's current circumstances unless verification forms indicate that a change will occur. Include overtime, bonuses, and raises in the income calculation.

The following are the methodologies to use when determining annual income.

- hourly wages - multiply by 2,080 hours (for full-time employment, 40 hours per week);
- weekly wages - multiply by 52 weeks;
- biweekly wages (every other week) - multiply by 26 periods;
- semimonthly amounts – multiply by 24 periods;
- monthly amounts – multiply by 12 months; and
- annual salaries require no further calculations.

To annualize part time income, multiply the income (hourly or salaried amount) by the number of periods (hours, months, etc.) the employer anticipates he or she will work.

3.16 Acceptable Forms of Income Verification

All attempts of obtaining verification must be documented. Acceptable forms of verification for specific types of income situations include:

A. Employment Income

Income Verification for employed persons must be received from the employer. Methods of verification have a hierarchy of acceptability from the best to the least acceptable method. Attempts to obtain the most acceptable forms of verification must be documented before the owner may use a lesser form of verification.

- **Third party Written Verification** – This is the preferred method of verifying income. Third party verification is written verification that is received directly from the source, such as an employer, public assistance, or anyone from which a resident receives income. To obtain the third party verification:

    - have the resident sign the release on the verification form authorizing third party disclosure of the applicant's income; and
    - request that the third party mail or fax the form directly back to you.

Forms must not be hand carried by the resident to or from the employer. Omissions or discrepancies must be clarified with the employer by the owner prior to certifying the resident.

When available, theWorkNumber.com is an acceptable alternative to sending a written verification to the employer. Affordable housing providers may register to use this service free of charge.

- **Verbal Verifications –** Owners may obtain a verbal verification from an employer if attempts to obtain third party written verification are unsuccessful, and are well documented. When using a VOE form, the person verifying the information must obtain the relevant information and document the name of the person providing the information including the person's title, phone number, along with the date and time of the conversation. A third party such as Directory Assistance, Dex Online, or other similar resources should be used to obtain the employer's phone number and should be documented accordingly.

- **Paycheck Stubs –** If third party income verification cannot be obtained, the resident's paycheck stubs may be used to document income, provided that:

    - the paycheck stubs are consecutive and must represent at least the three most recent pay periods relative to the date of certification;
    - the paycheck stub copies are complete and unaltered; and
    - all efforts to obtain third party verification have been documented.

Upon receipt of the paycheck stubs, average the three (or more) pay periods and annualize the averaged amount to arrive at annual income.

- **Self-certification –** This is the least acceptable method of verifying employment income. However, if efforts to verify information have been exhausted and no other resource is available, then it is acceptable to take a written certification of employment income from the resident. Whenever possible, self-certifications should be accompanied by Federal Income Tax returns from the prior year. Self certifications should contain information regarding:

    - amount of income being received;
    - source of the income;
    - how often the income is received; and
    - signature of the person completing the affidavit.

B. Self-Employment Income

Certification of income by self-employed persons should be completed by the resident and accompanied by copies of the prior year's Federal Income Tax return. The taxpayer (resident) may call the IRS at 800.829.1040 and obtain a printout of the tax return by requesting Letter 1722. The resident may also complete Form 8821, Tax Information Authorization from the IRS, which will allow the owner to verify the resident's Federal Tax Return.

The following documentation is required:

- A year-to-date Profit and Loss Statement (AKA; Income and Expense statements) or similar income statement and a self certification.

Tax Returns should include:

- a copy of Form 1040; and
- Schedule C for verification of income.

For self employed persons who have not filed annual tax returns you need to obtain, but are not limited to:

- Profit and Loss statements;
- business plans; and
- copies of checks from clients (when services are being provided) or ledger cards, when available.

C. Social Security, Supplemental Security Income (SSI), Pensions, Disability Income

Third party verification of the benefit must be received from the agency providing the benefit. An award or benefit letter or a computer generated print-out detailing benefits will be accepted in lieu of a verification of benefits form provided the information is the most current. Bank statements or checks are not acceptable forms of verification.

D. Public Assistance

Third party verification of the benefit must be received from the agency providing the benefit. An award or benefit letter or a computer generated print out detailing benefits is acceptable in lieu of a verification of public assistance form.

E. Unemployed Residents

Unemployed adult residents, must complete an Unemployed Resident Affidavit verifying that they are currently not employed and indicate whether or not they anticipate becoming employed within the upcoming 12 month period and, if so, estimating the amount they expect to earn. Anticipated income must be included in qualifying household income. Residents of Assisted Living or Senior projects are not required to complete an Unemployed Resident Affidavit if the resident is currently receiving some form of government assistance.

F. Unemployment Compensation

Third party verification of unemployment compensation must be received from the unemployment compensation agency or from the records of a local unemployment office stating payment dates and amounts. The amount must be annualized on a 12 month period or combined with anticipated household income to arrive at the annual income.

G. Alimony Payments

Verification of alimony payments must be obtained from:

- the separation/settlement agreement or a divorce decree stating the amount and type of support and payment schedule;
- a letter from the person paying support;
- printouts from the court or agency responsible for enforcing the payments; or
- as a last resort, a statement or affidavit from the resident stating the frequency and value of the support.

Court ordered alimony must be counted as income unless the resident certifies that payments are not being received and that reasonable attempts have been made to collect amounts due including filing with the courts or agencies responsible for enforcing the payment.

H. Child Support

A Child Support Affidavit must be completed by the resident. The resident should also provide supporting documentation. The owner must attempt to obtain third-party verification of support payments when payments are being collected by an enforcing agency such as Family Support Registry. Other forms of supporting documentation may include:

- a copy of a court order;
- a child support agreement;
- printouts from the court or agency responsible for enforcing the payments; or
- a signed statement from provider or copies of child support checks

If any of the above documentation can not be obtained, as a last resort, a statement or affidavit from the resident stating the frequency and value of the child support, will be acceptable along with an explanation as to why the above documentation could not be obtained.

As previously stated, Court ordered child support must be counted as income unless the resident certifies that payments are not being received and that reasonable attempts have been made to collect amounts due including filing with the courts or agencies responsible for enforcing the payment.

I. Recurring Contributions and Gifts

Residents claiming zero income may receive gifts or contributions on a regular basis from friends, family members or charitable organizations. Such gifts are income and must be included in household income. Verifications of gift income are required and may include:

- a statement or affidavit signed by the person or organization providing the gift, stating the frequency and value of the gift;
- a verification letter from a bank, attorney or a trustee administering the gift; or
- as a last resort, statement from the receiver of the gift stating the frequency and value of the gift along with copies of checks, when possible.

J. Effective Term of verifications

- information that is not subject to change, such as Social Security Disability Income or Supplement Security Income, need only to be verified once;
- verifications of income that are subject to change are valid for 120 days, once the 120 day period has expired, the documentation is no longer reliable and new verifications must be obtained.

3.17 Retirement Accounts; IRS 8823 Guide

The amount that a resident can withdraw from a pension plan without retiring or terminating employment, less any early withdrawal penalties, is considered an asset. Amounts accessible if the household member is retired, would be considered income and not assets.

If a household member states that they do not have access to a particular retirement account, the owner must verify that the household member does not have access to the funds. If the funds can be accessed (other than by way of a loan), then the amount is to be included in household assets.

Distributions from an IRA, or Keogh that are not periodic payments are not counted as income provided the individual can document that the distribution(s) are a return of capital.

The full amount of periodic payments from annuities, insurance policies, retirement funds, pensions, and disability or death benefits are included in annual income. The withdrawal of cash or assets from an investment received as periodic payment are also counted as income. When benefits are received through periodic payments, any remaining amounts in the account are not counted as an asset because the amounts are the source of the income. However, lump sum receipts from pension and retirement funds are counted as assets as long as they are not periodic.

3.18 Military Pay Differences; Section 3005 of the American Housing and Economic Recovery Act of 2008 (HERA)

Beginning July 31, 2008, and expiring January 1, 2012, Basic Allowance for Housing (BAH) is to be excluded from the income calculation for members of households in the following counties: El Paso, Douglas, Elbert, Lincoln, Pueblo, Fremont and Teller. The exclusion applies to all tax credit properties and tax exempt bond financed properties.

3.19 Annual Recertification of Household Income; IRC 142(d)(3)(A)

Effective July 30, 2008, the Housing and Economic Recovery Act of 2008 (HERA), Section 3010, modified existing regulation to eliminate the requirement for annual recertification of household income for projects with 100 percent Low Income Housing Tax Credits and Tax Exempt bond financed developments under 142(d) of the Tax Exempt Bond Code. CHFA's policy is to continue requiring first anniversary recertifications. Thereafter, each household is required to annually self certify income, assets, student status, and demographic information.

3.20 Noncompliance and Self Certifications

There are potential risks for not completing annual recertifications. If an over income household initially occupied a unit at the time of move-in, the project would:

- fail to qualify for the recertification exemption;
- be required to go back and complete all past re-certifications for any year which an over income tenant moved in; and
- if income was over 140 percent of the limit the property, would be in violation of the NAUR and subject to tax credit loss/recapture.

Owners would still be required to complete a recertification to determine:

- change in household status; and
- student status.

Annual re-certifications and third party verification of income and assets are required for mixed income properties.

3.21 Verifying and Certifying Assets

Assets are items of value other than necessary personal property that can be turned into cash. Examples include savings and checking accounts, revocable trusts, stocks, bonds, CD's, money market accounts, IRA's, retirement, real estate and pension funds. All low income households are required to complete the CHFA form Resident Statement of Assets even if the household claims to have no assets.

If households claim assets with a total value of $5,000 or more, third party verification of all assets must be obtained using a verification of assets form. If a third party verification cannot be obtained, then documents such as bank statements, brokerage statements, etc. may be used to verify the asset.

When determining the total value of assets, use the current cash value of each asset. When determining the cash value, deduct penalties for withdrawal before maturity, broker and/or legal fees, real estate transaction settlement costs and the principal balance of a loan on an asset. As with income documentation, information may not be older than 120 days with the exception of real estate appraisals. Appraisals may be used up to six months after the appraisal was performed.

3.22 What Is Included in Assets

- cash held in savings and checking accounts and/or a safe deposit box;
- revocable trusts;
- stocks, Bonds, Certificates of Deposit, and/or Money Market Accounts;
- retirement and Pension Funds;
- lump sum payments (as long as the family continues to possess it); and
- assets disposed of for less than fair market value, for two years from the date assets were disposed.

3.23 What is Excluded from Assets

- necessary personal property (cars, televisions, computers, etc.)
- term life insurance policies when there is no cash value;
- assets that are not effectively owned by the applicant;
- assets that are not accessible to the applicant and provide no income to the applicant; and/or
- assets that are disposed of for less than fair market value due to:
    - bankruptcy;
    - divorce/separation; or
    - foreclosure.

3.24 Asset Valuation Guidelines

Checking account:	use the past six months average balance
Savings account:	use the current balance
Equity in Real Estate:	convert to and use the cash value
IRA or Keogh Accounts:	if not withdrawing, use cash value if withdrawing, use six-month avg. balance
Retirement Accounts:	While employed: use the amount that can be withdrawn without retiring or terminating employment. At retirement: add lump sum amounts to net family assets or add periodic amounts to annual income.
Jointly owned assets:	Prorate 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.

3.25 Determining the Value of Assets

When determining the total value of assets, always use the current cash value. In order to determine the cash value of certain assets you may deduct:

- penalties for withdrawal before maturity;
- broker and/or legal fees;
- real estate transaction settlement costs (deduct 10 percent from the full value of the asset for selling/closing costs); and/or
- principal balance of a loan on an asset(s).

3.26 Calculating Income from Assets

When determining the income from an asset, always calculate by using the full value of the asset. If the total cash value of all assets is more than $5,000, use the greater of:

- the actual income from assets; or
- the imputed income using the passbook interest rate, currently 2 percent.

A third party verification must be obtained for each asset when the total value of all assets is $5000 or more.

3.27 Income from Rental Property

Owners must annualize monthly rental payments less reasonable expenses in order to determine actual income from rental property. Reasonable expenses may include:

- owner-paid utilities;
- maintenance/repairs;
- advertising;
- interest portion of mortgage payments; and
- taxes and insurance.

The principal portion of mortgage payment may not be deducted.

3.28 Assets disposed of for less than fair market value

Assets disposed of for less than fair market value are counted for two years from the disposal date of each asset. At move in and annual recertification, residents must declare whether and when assets have been disposed of for less than fair market value. The amount counted as a disposed asset is the difference between the cash value and the amount actually received. Assets are considered to be disposed of for less than fair market value if the cash value of the disposed asset exceeds the gross amount received by more than $1,000. If the difference is less than $1,000, it may be disregarded.

- includes cash gifts as well as property; and
- applies to family and business assets.

3.29 Full Time Student Rules; IRC Sec. 42(i)(3)(D), IRC §141(c)(4), IRC §170(b)(1)(A)(ii), Treasury Regulation §1.151-3(b)

Whether or not a student is full time is determined by the educational organization, not by the owner. A verification of student status completed by the educational organization must be obtained to verify whether a student is full time or part time. The full time student rule must be considered if a student who is head, co-head or spouse is enrolled in an educational organization for at least five months during the calendar year. The five months need not be consecutive. Enrollment during any point in a month counts as a full month. For example, a student enrolled from January 21 through May 12 has been enrolled for five months per IRS guidance. Qualification under any of the full time student exceptions listed below must be verified (e.g., tax returns or TANF award statements).

A. Full Time Student Exceptions

A household comprised of full time students will qualify only if one or more of the following criteria are met:

- a student receives assistance under Title IV of the Social Security Act, also known as Temporary Assistance to Needy Families (TANF);
- a student is enrolled in a job training program receiving assistance under the Workforce Investment Act (formerly known as the Job Training Partnership Act) or under a similar Federal, State, or local program;
- a student was previously under the care and placement responsibility of the State agency responsible for administering a plan under title IV of the Social Security Act (Foster Care);[7]

[7] the Housing and Economic Recovery Act of 2008 (HERA)

- a student is a single parent with children and is not a dependent of another individual and the children are not dependents of anyone other than a parent. The household qualifies if either parent claims the children as dependents regardless of whether or not the parent claiming the dependents resides in the unit;[8] and/or
- students are married and file a joint tax return.

B. Non-Qualifying Student Households

A full time student household does not qualify to occupy a low income unit if:

- at any time during occupancy, the household ceases to meet one of the above exceptions; or
- a previously non-student household becomes comprised of full time students and the residents do not meet one of the above exceptions.

The change in status results in noncompliance.

3.30 Verification of Housing Assistance Payments

Third party verification of housing assistance payments under the Section 8 Housing Choice Voucher Program may be obtained from the local Public Housing Authority.

3.31 Section 8 Voucher Holders; IRC §42(h)(6)(B)(iv)

Applicants who are holders of Section 8 Housing Choice Vouchers may not be rejected from admission to tax credit projects solely for this reason. If minimum income standards are used as part of the applicant screening criteria for a development (for example, requiring an applicant to make three times the rent), the total tenant payment must be considered for voucher applicants rather than the contract rent.

3.32 Live-in Aides

A live-in aide is not considered a household member provided he or she does not have a financial obligation to the household. A live-in aide is not qualified for the unit and is not a party to the lease. Live-in aides may be listed as persons approved to be in the unit. Owners must obtain verification of the need for a live-in aide directly from a resident's physician, psychiatrist or other knowledge health care provider.[9]

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[8] Mortgage Forgiveness Debt Relief Act of 2007 (HR3648)

[9] HUD 4350.3, Chapter 5, Change 3, Effective August 1, 2009

3.33 Completion of the Tenant Income Certification (TIC)

After the income and asset information has been obtained, verified and computed, the owner must prepare a TIC. The form certifies that the resident is eligible to live in a low income unit. The TIC must be executed prior to move-in and at each annual recertification. When completing the TIC:

- all adult members of the household must sign the TIC;
- all dependents that reside in the unit 50 percent or more of the time must be listed on the TIC;
- all household income and assets as well as student status must be listed on the TIC; and
- a new TIC must be completed for each recertification.

For developments with Rural Development Section 515 developments, the Rural Development Section 515 certification form is an acceptable alternative to completing a separate TIC. However, the owner must certify that residents meet the qualifications for tax credit units at move-in. In addition, the resident's student status must be documented on a separate form.

Unacceptable alternatives:

- HUD Section 8 50058 and 50059 – With the required use of HUD's Enterprise Income Verification (EIV) system as of January 31, 2010, properties must maintain separate tax credit files. EIV is not approved for use with tax credit and CHFA loan programs at this time.

3.34 Self Certification TICs

With the elimination of the annual recertification requirement for 100 percent LIHTC developments after the first anniversary, the resident may self-certify income and asset information because third party verification is not required. The TIC must indicate that the resident is self-certifying the information. However, owners must continue to ensure compliance with the student rule.

Owners must use a questionnaire to obtain income and asset information from residents at recertification similar to the application used to obtain information from prospective residents at move-in. The owner will prepare the TIC based on the information provided by the resident and obtain the resident's signature on the TIC on or before the effective date of the certification.

3.35 Annual Recertifications

When required, the annual recertification process should be started at least 120 days prior to the due date. Certifications must be completed annually regardless of the lease term. Lease terms may not correspond with annual certification dates. Regardless of the lease term, annual recertifications must be completed even if the resident plans on moving at the end of their lease or within a couple of months following the expiration of a 12 month certification period.

Late annual recertifications are a violation of the LIHTC program. Owners who are habitually late completing annual recertifications will be reported to the Internal Revenue Service using IRS form 8823.

3.36 Changes in Household Composition

If an additional person moves into a unit, that new member must be fully certified. If the additional household member's income raises the overall household income above 140 percent of the applicable Area Median Income (AMI), the Next Available Unit Rule will apply. The household income is based on the existing resident's income at the most recent certification combined with that of the new household member. It is not necessary to recertify the entire household unless a recertification is currently due for the existing household members.

If a household member vacates the unit and a new household member moves in, the unit will remain a qualified unit as long as at least one original qualified household member remains in the unit and the Full Time Student Rule and/or the Next Available Unit Rule are not violated. Minor children and other dependants who were members of the household at move in are considered original household members. The owner must document the file when any household member vacates the unit including a minor child or other dependant.

3.37 Certifying Existing Residents of Acquired and/or Rehabilitated Buildings

If an owner has acquired and/or rehabilitated an existing building occupied by residents who moved in prior to the acquisition/rehabilitation date, existing residents must be certified as follows:

- existing households should be qualified within 120 days after the acquisition date of the building and the income and rent limits in effect as of the acquisition date must be used. The effective date of the initial LIHTC certification is the acquisition date.
- existing households qualified more than 120 days after the acquisition date of the building are to be treated as a new move-in and the income and rent limits in effect as of the date the last adult member signs the TIC are to be used. The effective date of the TIC is the date the last adult member signs.

3.38 The Affordable Housing Lease Addendum

As stated in chapter two, LIHTC units may not be rented on a transient basis. Initial leases must have at least a minimum term of six months. Renewal leases are not required and residents may continue occupancy on a month to month basis after the initial lease expires. However, regardless of the lease term, residents must agree to recertify annually.

The CHFA provided Affordable Housing Lease Addendum or acceptable substitute is required as part of the initial lease packet and, if renewal leases are used, at renewal. Acceptable substitutes include an owner-prepared form or verbiage in the lease, either of which must contain similar language to the CHFA provided addendum.

chapter 4
ensuring compliance

It is CHFA's responsibility to ensure that developments are compliant with the rules governing the tax credit program. This chapter outlines how CHFA ensures that developments comply with the program and how issues of non-compliance may be handled.

4.1 Management Reviews

An initial management review will be performed within the first year of when the last building places in service. Thereafter, management reviews will be conducted at least every three years throughout the compliance and extended use periods.

CHFA will audit 20 percent or a minimum of 10 resident files which ever is greater and inspect the corresponding units. Common areas and grounds, as well as the interior and exterior of buildings will also be inspected. Additionally, a questionnaire will be administered to evaluate management practices. A report will be provided to the owner and management company within 30 days.

4.2 Initial Site Inspection

An initial site inspection is performed prior to the issuance of the IRS Form 8609. CHFA will contact the project to schedule an appointment. We will take photographs of the property, provide a LIHTC Compliance Manual and answer any questions that the owner may have about the LIHTC program.

4.3 Physical Inspections

CHFA will exercise its discretion in determining physical deficiencies that are reportable to the IRS. Any outstanding physical issues noted in a management review that are not cured within CHFA's established deadline will be reported to the Internal Revenue Service using IRS Form 8823 (8823), Report of Noncompliance or Building Disposition. Reportable deficiencies include, but are not limited to:

- units not suitable for occupancy;
- patterns of deferred maintenance; and
- health and safety hazards.

4.4 Reporting Noncompliance

CHFA is required to report any instance or evidence of noncompliance to the IRS. An 8823 describing the nature of noncompliance, will be filed with the IRS and a copy of the completed form will be sent to the owner.

If an 8823 is filed with the IRS and the noncompliance is later corrected, a subsequent 8823 will be issued indicating that the noncompliance has been cured. In some instances, CHFA may be required to file an 8823 even though the noncompliance has been corrected. In those instances, the 8823 will be filed with the cure date already noted on the form.

Issues of noncompliance that will be reported to the IRS include, but are not limited to:

- any violation of the Code as amended or Treasury Regulations there under;
- any violation of the LURA that is reportable under IRS guidelines; and/or
- any violation of Federal or local building health and safety codes.

Reports of noncompliance will be addressed as follows:

- within 30 days of discovering an instance of noncompliance, CHFA will notify the owner in writing;
- a cure date will be established to resolve the noncompliance;
- if the issue is not resolved as required or a resolution is not possible within a specified timeframe, CHFA is required to file an 8823 with the IRS disclosing the noncompliance;
- after an 8823 has been filed for a noncompliance and upon receipt of evidence that the issue has been cured, CHFA will file a corrected 8823 notifying the IRS that the project is back in compliance.

4.5 IRS 8823 Guide

The IRS has provided the Guide for Completing Form 8823. The 8823 Guide is not intended to be cited or used as authority for a technical position. However, it provides general guidance to State Agencies for determining noncompliance. A copy of the 8823 Guide can be found on CHFA's website at www.chfainfo.com/LIHTC.

It is both the IRS and CHFA's policy to encourage owners to self-monitor properties and files for potential non-compliance issues. As such, CHFA is not required to report non-compliance that has been detected and corrected by the owner prior to receiving a notice from CHFA scheduling a management review. Issues detected and corrected by the owner after receiving a notice that a management review has been scheduled may be reported to the IRS.

4.6 Tenant Fraud

Owners must report suspected or known misrepresentation of income to the IRS using the Form 211, *Application for Award for Original Information*,[10] and submit the form to the address identified on the form. When completing the form, owners must provide the following information:

- resident's name;
- resident's social security number if available;
- explain the association with the LIHTC program;
- an explanation of how the resident misrepresented income or documentation;
- the amount of income reported by the resident and the amount actually verified;
- explain the difference between the market rate rent and the restricted rent for the unit; and
- indicate how long the tenant was in the unit.

The IRS may consider the difference between the market rate rent for a unit and the restricted rent amount may be considered to be taxable income for a resident found to have committed fraud.

Owners are expected to deal with known or suspected resident fraud before receiving notification that a management review has been scheduled. CHFA will not report non-compliance to the IRS if all three of the following conditions are met:

- the owner demonstrated due diligence to avoid resident fraud;
- the resident vacated the unit; and
- the property does not show a pattern of accepting fraudulent tenants.

4.7 IRS Form 8821, Tax Information Authorization

Owners are encouraged to have tenants complete Form 8821, Tax Information Authorization, to confirm the accuracy of the tenant's income information with the IRS. Owners may request the form at application and routinely as a part of the annual recertification process. The form is effective for 60 days after being signed and dated by the resident.

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10 Guide for Completing Form 8823 Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition (Revised October 2009);

4.8 Owner / Taxpayer Fraud

It is CHFA's policy to report suspected fraudulent acts by owners, management companies or other parties associated by filing Form 211, *Application for Award for Original Information*. Complaints of fraud received by CHFA will be investigated to the extent possible. Evidence that substantiate the complaint will be reported to the IRS.

4.9 Building Disposition (Changes in Ownership); IRC, Section 42(j)(6) and Revenue Ruling 90-60 and Revenue Procedure 99-11

If an owner is considering disposing of a building or an interest in a building, a tax accountant or attorney should be consulted. In order to avoid loss or recapture of tax credits, the seller must find a buyer that may be reasonably expected to continue to operate the property as a qualified low income building for the remainder of the compliance and extended use period.

CHFA's written consent is required prior to any transfer of ownership. Owners must be in compliance with the LIHTC program requirements at the time of the proposed transfer and transfer fees may be required. Owners are advised to review the LURA specific to each property for additional requirements.

Although a building disposition is not necessarily a noncompliance event, CHFA is required to issue an 8823 for all building dispositions in order to advise the IRS of a change in ownership. Owners must advise CHFA in writing of a building disposition and provide a written explanation of the nature of the transfer of ownership. In addition, the owner must provide a copy of the sales contract along with the name, tax identification number, address and phone number of the new owner as soon as possible.

4.10 Compliance Period

All developments must comply with program requirements for a period of 15 taxable years, which is known as the compliance period, beginning with the taxable year in which the development was placed in service or, at the election of the taxpayer, the following taxable year. This election, if made, must be noted on the IRS Form 8609.

4.11 Extended Use Period

Developments receiving tax credit allocations on or after January 1, 1990, must also comply with program requirements during the extended use period. The Extended Use Period is the additional period of time to which the owner has committed the development for use as low income housing. Specified in the LURA, the Extended Use Period is typically a minimum of an additional 15 years. However, Section 42 of the Code provides for earlier termination of the Extended Use Period under certain circumstances and subject to the provisions of the LURA and CHFA's Qualified Allocation Plan (QAP).

4.12 Reporting and Auditing Requirements

A. Submission Requirements: Lease-up

An Occupancy Report must be submitted to CHFA utilizing WCMS (Web Compliance Management System) via CHFA's website **www.chfainfo.com**.

- after the first six months of lease-up; or
- when the project obtains 50 percent occupancy.

WCMS must be maintained monthly thereafter or as changes occur.

B. Submission Requirements: Annual Submissions

Annual Submissions are due to CHFA annually by January 15 for all LIHTC Projects and consist of the following:

- the Tax Credit Owner Certificate of Continuing Program Compliance, for the period January 1 – December 31 of the previous year;
- the Occupancy and Demographic information in WCMS for the period ending December 31; and
- an Annual Monitoring Fee (if applicable) - $23/ per unit

C. Submission Requirement: Semi-Annual Submission for Mixed Income properties

A semi-annual occupancy report submitted through WCMS is due for all Tax Credit mixed income projects by July 15 for the period ending June 30.

chapter 5
record retention requirements

Pursuant to 26 CFR 1.42-5(b), the record retention requirements for the LIHTC program are outlined below.

5.1 Information to be Retained

Owners are required to retain records for each qualified low income building in the development showing the:

- total number of residential rental units;
- number of bedrooms per unit;
- square footage of each unit;
- percentage of low income units;
- rent charged for each unit;
- amount of the utility allowance for each unit;
- method of determination of utility allowance;
- number of occupants in each low income unit;
- low income unit vacancies and information that shows when and to whom, the next available units were rented;
- documentation to support eligibility of low income residents;
- eligible basis and qualified basis of the building at the end of the first year of the credit period; and
- character and use of the nonresidential portion of the building included in the building's eligible basis under Section 42(d) of the Code, (e.g., resident facilities that are available on a comparable basis to all residents and for which no separate fee is charged for the use of the facilities, or facilities reasonably required by the development).

5.2 Minimum Record Retention Period

Records for the first year of the credit period must be retained for a minimum of 21 years, which is equivalent to six years after the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.

Owners are required to retain all other records, including resident files, for each building for a minimum of six years after the due date (with extensions) for filing the federal income tax return each year. Resident file retention is based on the year the resident moved out of the unit.

5.3 Retention Method; Revenue Ruling 2004-82

The IRS allows records to be kept electronically provided they remain retrievable throughout the required record retention period.

5.4 LIHTC Program Resources

- IRS Code, Section 42, and subsequent Revenue Rulings;
- HUD Handbook 4350.3, REV 1, Change 2 Occupancy Requirements (http://www.hudclips.org/sub_nonhud/cgi/pdfforms/43503c5.doc);
- income and rent limits from HUD and distributed by CHFA annually;
- 8609 tax forms;
- 8823 guide;
- the owner's tax consultant or attorney;
- the LURA – Land Use Restriction Agreement;
- CHFA LIHTC Compliance Manual;
- CHFA Low Income Housing Tax Credit Trainings; and
- CHFA Asset Management Officers.

Post Year 15 compliance monitoring ensures that properties comply with the requirements of the Extended Use Period specified in the Land Use Restriction Agreement (LURA). Pursuant to its Post Year 15 policy, CHFA provides owners a waiver of some compliance and monitoring restrictions beginning year 16. Owners are be reminded that properties may continue to be required to be compliance with more restrictive rules associated with programs such as Section 8 Project Based Assistance, outstanding CHFA Loans and Tax-exempt Financing.

6.1 Extended Use Period Effective Date and Term

The Extended Use Period for each property is specified by the LURA. It may be a minimum of five years or may extend in perpetuity. The Extended Use Period begins the first day after the end of the project's 15 year compliance period.

6.2 Determining the End of the Compliance Period

The owner must provide CHFA with a copy of the signed first-year IRS 8609 for each building in order to determine the end of the 15 year compliance period. Should the owner not provide the signed form as required, CHFA will determine the end of the compliance period as 15 years after the last building was placed in service.

6.3 Prohibited Actions

For the term of the Extended Use Period plus an additional three years, the owner is prohibited from the following[11]:

- Evicting or Terminating the tenancy of an existing resident for any reason other than good cause; and
- Increasing the gross rent of an existing resident above the applicable maximum rent.

[11] IRC Section 42(h)(6)(E)(ii)

6.4 Post Year 15 Tenant Eligibility and Record Retention Requirements

A. Certifications

Initial certifications and verifications of household income are required prior to move-in for all units of 100 percent LIHTC developments and for mixed income LIHTC developments.

B. Student Rule

Certification of Student Status is waived during the Extended Use Period. Since student status is not a defined requirement of the LURA, the rule no longer applies.

C. Unit Transfers

Unit transfers from building to building for 100 percent and mixed income properties are allowed without triggering noncompliance. Certifications are not required upon transfer of a household to another unit within the same building or another building in the project.

D. Next Available Unit Rule

Once the Extended Use Period begins, the LIHTC Next Available Unit Rule no longer applies. A LIHTC unit occupied by a household that qualified at move-in retains its designation until it is reoccupied as long as the unit remains rent restricted.

E. Utility Allowances

Owners must update Utility Allowances annually during the Extended Use Period. Revised utility allowances must be implemented within 90 days of their published effective date.

F. Record Retention

Owners are required to retain all records, including resident files, for each building after the 15 year compliance period for six years after the due date (with extensions) for filing the federal income tax return each year. Resident file retention is based on the year the resident moved out of the unit.

6.5 Monitoring Requirements

CHFA reserves the right to conduct a review of any building after servicing appropriate notice and to examine all records pertaining to the rental of LIHTC units.

A. Annual Submissions

Annual submissions are due on January 15th each year and include:

- Post Year 15 Owner Certification of Continuing Program Compliance

- Annual Monitoring Fees

B. Occupancy and Demographic Information

- Occupancy and Demographic reporting should continue to be submitted via CHFA's Web Compliance Management System (WCMS) on a monthly basis.

C. Management Reviews and Physical Inspections

Management reviews and physical inspections will be performed every three years. Ten percent or 10 units and files, whichever is greater, will be inspected during the review. The units are not required to be the same for the file review and the physical inspection. CHFA reserves the right to inspect additional units, files and records pertaining to the rental of tax credit units if it is deemed necessary by CHFA staff.

D. Transfers of Ownership

CHFA's prior written consent is required for transfers of ownership or ownership interest. Owners contemplating transfers of ownership or ownership interests must provide a notice to the new owner or partner that the property will remain subject to the terms of the LURA and/or Regulatory Agreement including all compliance restrictions and annual compliance monitoring. A copy of the notice acknowledged by the new owner or partner along with the new owner or partner information is required in order to obtain CHFA's consent. CHFA will provide guidance including a list of requirements needed to complete the transfer.

All other requirements under the LURA and Section 42 of the Internal Revenue Code of 1986 as amended, and the Treasury Regulations thereunder (the "Code") as applicable remain in effect.

6.6 Monitoring Fees

Annual monitoring fees are due for all LIHTC projects beginning the 16th year of a project's Extended Use Period. Effective June 1, 2009, the fees are $15.00 per tax credit unit, including employee units, not to exceed $1,500.00. All fees are due on January 15th of each year. The fee is subject to change upon an annual written notice from CHFA.

6.7 Noncompliance

Noncompliance includes but is not limited to:

- Any violation of the provisions of the LURA or Code not revised by this notice;
- Owner or the Owners Agent repeatedly delaying or refusing CHFA requests to schedule management reviews: or
- Failure to submit annual submissions or compliance monitoring fees.

If a noncompliance event occurs, written notice of the noncompliance will be issue to the owner along with a correction period not to exceed 90 days. An extension of up to 90 additional days or longer may be granted under the following conditions:

- CHFA determines the noncompliance cannot be reasonably corrected within 90 days; and
- The Owner submits a Correction Plan detailing the timeline for the corrections which is approved by CHFA.

If the noncompliance is not corrected within the correction period, including extensions, CHFA shall reserve the right to apply the following remedies:

- The property, Owner, Partner and Owner's Agent, if applicable, shall be considered to be "Not in Good Standing" with CHFA until the noncompliance is corrected to the satisfaction of CHFA;
- Applications for Tax Credit Allocations or CHFA Loans, will not be accepted while the Owner, Partner or Owners Agent associated with the application is "Not in Good Standing" with CHFA; and
- CHFA may declare a default under the LURA and may apply to any court, State or Federal, for specific performance of the LURA or an injunction against any violation of the LURA; secure the appointment of a receiver to operate the project in compliance with the LURA; or exercise any other remedies at law or in equity or any such other action as shall be necessary or desirable to correct the noncompliance with the LURA.

4 Percent Annual Credit

The approximate applicable percentage used to calculate the annual amount of tax credits given for the cost of constructing a new building or substantially rehabilitating an existing building with a federal subsidy or the cost of buying an existing building for which substantial rehabilitation expenditures also are incurred. The actual applicable percentage is determined each month by the Department of Treasury based on current interest rates. This percentage is then multiplied by the qualified basis to determine the actual annual tax credits. In this case, the aggregate amount of tax credits would have a present value of 30 percent of the qualified basis.

9 Percent Annual Credit

The applicable percentage (fixed through Dec. 31, 2012) used to calculate the annual amount of tax credits given for the cost of constructing a new building or substantially rehabilitating an existing building. This percentage is then multiplied by the qualified basis to determine the actual annual tax credits. In this case, the aggregate amount of tax credits would have a present value of 70 percent of the qualified basis.

20/50 Test

Minimum set-aside requirement in which at least 20 percent of a development's units must be set aside for households whose incomes do not exceed 50 percent of applicable area median income.

40/60 Test

Minimum set-aside requirement in which at least 40 percent of a development's units must be set aside for households whose incomes do not exceed 60 percent of applicable area median income.

Anticipated Annual Income

The gross income a family anticipates it will receive in the 12 month period following the effective date of the certification of income.

Applicable Fraction

Determined by the number of units or square footage occupied by qualifying low income residents, this is one factor used in calculating the amount of tax credit an owner can claim for a building.

Applicable Percentage

The type of annual credit (4 percent or 9 percent) that was allocated.

Assets

Items of value that can be turned into cash.

Compliance Period

The credit period plus five additional years in which the owner must comply with the LIHTC Program requirements.

Credit Period

The consecutive 10 taxable years in which the credits are received, beginning with the placed in service date or, at the election of the tax payer, the following year.

Deep Skewed Rent Projects (IRC 142(d)(4)(B))

If an owner elects to have a project treated as a deep rent skewed project the following requirements must be met:

15 percent of the low income units in the project must be rent restricted and occupied by households whose income does not exceed 40 percent of the area median income.

The gross rent of each low income unit in the project must not exceed 1/2 of the average gross rent of the comparable unrestricted units if there are any.

The Available Unit Rule defines an over-income unit in a Deep Rent Skewed project as a low income unit in which the aggregate income of the occupants of the unit increases above 170 percent of the applicable income limitation.

Educational Organization

An educational organization is one that maintains a regular faculty and curriculum, and has an enrolled body of pupils or students in attendance at the place where its educational activities are regularly convened. An educational institution includes kindergarten, elementary schools, middle schools, junior and senior high schools, colleges, universities, and technical, trade and mechanical schools. It does not include on-the–job training courses or correspondence courses.

Eligible Basis

A new project’s adjusted basis. Generally, the eligible basis is composed of the eligible development costs minus the cost of land. Eligible basis for acquisition credit is the eligible costs of acquiring a building. Eligible basis for rehab credit is the eligible rehab expenditures aggregated over 24 months, which are chargeable to the development’s capital account.

Extended Use Period

Owners of developments receiving an allocation of credits on or after January 1, 1990 are subject to a Land Use Restriction Agreement (LURA) between the owner and CHFA that requires the development to comply with the Program requirements for an extended period of a specified number of years beyond the initial 15 year Compliance Period.

Floor Space Fraction

The total square footage of the residential low income units divided by the total square footage of all the residential rental units in the building.

Full Time Student

A full time student is an individual whose enrollment status is determined to be full time by the educational organization he or she attends. Students who are enrolled full time for at least five months during a calendar year may not be eligible to occupy a tax credit unit unless certain exceptions are met. The five calendar months need not be consecutive. Enrollment during any point in a month counts as a full month. For example, a student enrolled from January 21st through May 12th has been enrolled for 5 calendar months per IRS guidance.

Gross Rent Floor (Revenue Procedure 1994-57)

This ruling allows the owner to establish floor rent amounts that will not be affected by fluctuations in the income limits and maximum rent ceilings. Developments with established Gross Rent Floors will not be required to charge gross rents (rent plus utilities) below their floor amounts. Owner of developments that received an allocation of credits or determination letters on or after October 6, 1994, may elect to establish the gross rent floor as the maximum rents in effect either on the date the development was placed in service or on the date the development received an allocation. This election is irrevocable and must be made by the owner and submitted in writing to CHFA no later than the developments placed in service date. For developments that received an allocation of credits prior to October 6, 1994, the Owner and CHFA may use a date based on a reasonable interpretation of the Code.

HUD

United States Department of Housing and Urban Development

Low income Unit

A unit that is eligible for tax credits is designated at or below 60 percent of the area median income.

Mixed Income Development

A development that has set aside less than 100 percent of the units for low income households. As a result, mixed income developments have low income units and unrestricted or market-rate units.

Owner

The General Partner or Developer of a project. For the purposes of this manual, the term is used to encompass the owner's legal and business representatives as well, including his/her accountant, Property Manager, Property Management Company and/or On-site Leasing staff.

Placed in Service Date

The date a building is considered for tax purposes to be ready for occupancy, usually when a building receives its Certificate of Occupancy (CO) or TCO.

Qualified Basis

An amount related to the costs of a building that is used in calculating the amount of tax credits for that building. A building's qualified basis is determined by multiplying the building's eligible basis by its applicable fraction. The qualified basis is determined each year as fluctuations may occur with the applicable fraction.

RHS

Rural Housing Service, a Division of Rural Development.

Section 42

The section of the Internal Revenue Code that applies to the LIHTC Program.

Unit Fraction

The number of residential low income units divided by the total number of all residential rental units in the building.