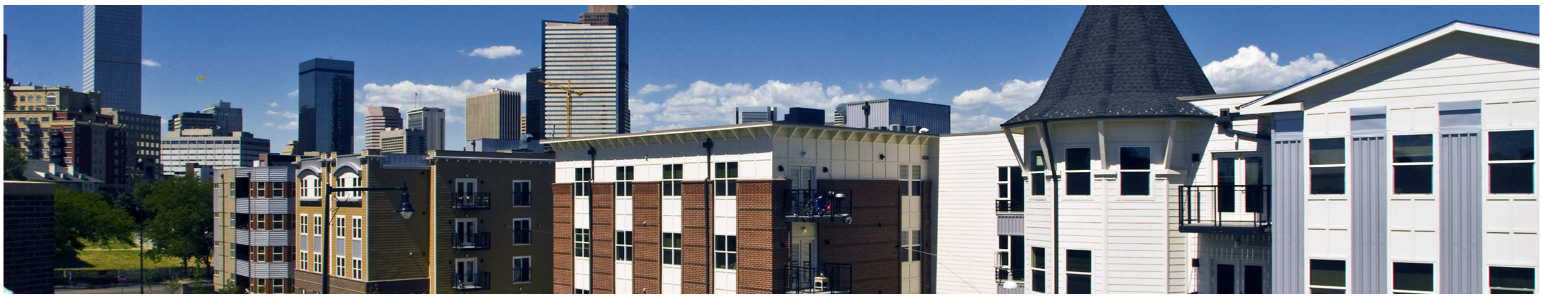
low income housing tax credit program



compliance manual

financing the places where
people live and work

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preface

The Low Income Housing Tax Credit Program Compliance Manual ("manual") is a reference guide for compliance with the Land Use Restriction Agreement (LURA) and Section 42 of the Internal Revenue Code (the Code). It is designed to help answer questions regarding the procedures, rules, and regulations that govern LIHTC developments following allocation of tax credits. The manual serves as a resource to owners/developers, tax credit investors, management companies, and onsite management personnel who handle tax credit properties.

This manual supplements existing laws and rules, but is not a comprehensive guide to the LIHTC program and all of its requirements. It is for use 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) is administered by the Asset Management Division. Questions or concerns regarding CHFA's administration of the Program should be directed to the Manager of Multifamily Program Compliance at 303.297.2432 or toll free at 800.877.2432.

low income housing tax credit program compliance manual

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introduction

History of the Federal and State LIHTC Programs

Federal Program

Congress enacted the Low Income Housing Tax Credit program (the "Program") through the Tax Reform Act of 1986. The United States 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 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 and monitor compliance.

The Low Income Housing Tax Credit is a dollar-for-dollar reduction in tax liability to the owner for the construction or acquisition/rehabilitation of a qualified low-income rental housing development. The amount of credit allocated is based directly on the number and affordability 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 noncompliance 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.

State Program

Colorado's state Low Income Housing Tax Credit (state LIHTC) program is modeled after the federal LIHTC program. The state LIHTC program was originally established in 2001 and later renewed in 2014. The 2014 renewal authorized CHFA to allocate $5 million in state LIHTC in 2015 and 2016; and to award credit above the $5 million annual cap to developments in counties impacted by natural disasters. In 2016, the program was extended through 2019. The 2016 legislation authorized CHFA to allocate $5 million in state LIHTC in 2017, 2018, and 2019. CHFA monitors multifamily projects that receive state LIHTC for compliance according to the rules and policies of the federal LIHTC program.

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

In applying for credits, the owner provides comprehensive development information with evidence of the project's overall economic feasibility and a commitment to meet requirements that will benefit low-income residents as specified in the Qualified Allocation Plan (the "QAP"). 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 LIHTC program requirements may result in a loss of tax credits.

1.2 Reporting and Compliance

Throughout all phases of development, lease-up, and operation, it is the owner's responsibility to provide certain information to CHFA, 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 1.5 below); and
- other information requested by CHFA.

All documentation must be submitted within the requested timeframe.

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 Casualty Losses

Unfortunately, earthquakes, tornados, floods, and fires sometimes damage or destroy Section 42 developments. Should this occur, it is the responsibility of the owner to report casualty losses to CHFA within 10 days of an incident. An owner that experiences a loss of unit(s) due to fire or other circumstances must inform CHFA of the loss in writing within 10 days of the incident. Furthermore, the owner must submit a plan to CHFA within 30 days that sets a timeframe for reconstruction or replacement of lost units.

CHFA must report the loss and replacement of the units to the IRS within 90 days. If the units have not been fully restored, CHFA will attach a copy of the owner's plan and timeframe for replacement to its report. Once all units have been restored and available for occupancy, CHFA will file a closed IRS Form 8823 to show the units are back in compliance.

If an owner fails to report a casualty loss to CHFA within 10 days, CHFA will report the incident as a noncompliance to the IRS using Form 8823.

1.5 Required Submissions

Owners are required to submit documents and fees, as applicable, within the timeframes due throughout the extended use period as follows:

- Copies of IRS Form 8609 and Schedule A for each building (completed, signed, and filed with the IRS by the owner) **for the first year of the credit period only**. To be submitted to CHFA within 90 days of the first filing.
- Occupancy and demographic data via the Web Compliance Management System[1] (WCMS) at www.chfainfo.com/arh/asset/Pages/wcms.aspx. To be entered once the property begins leasing units. WCMS allows owners and managers to submit occupancy and demographic data to CHFA via the internet. The required information can be found on each household's Tenant Income Certification form (TIC) and Annual Demographic Information form.
    - Annual Requirement
      All WCMS records for the previous year must be entered and finalized by January 15.
    - Monthly Requirement
      Move-in, move-outs, transfers, and recertifications must be entered in the system as they occur, or **at least monthly**. CHFA reviews this data for compliance with the occupancy restrictions of the LURA.
    - Exception: Project-based Section 8 properties that enter occupancy and demographic data in TRACS are not required to complete WCMS.
- LIHTC Owner Certification of Continuing Program Compliance for the previous year, due annually by January 15.
- IRS Form 8703 for the previous year for properties with 4 percent tax credits where CHFA is the conduit bond issuer, due annually by April 30.
- Annual monitoring fees for mid-1995 developments and those developments in the Post Year 15 Period, due annually by January 15.

1 WCMS is a web-based data entry system. To enter information into WCMS, agents must register online to obtain a password and data entry instructions. Registration information can be found at www.chfainfo.com/arh/asset/Pages/wcms.aspx.

1.6 Program Compliance Training and Updates

All owner representatives and their management agent representatives are required to attend CHFA-approved compliance training prior to receiving an IRS Form 8609. In addition, CHFA recommends that owners and agents attend classes on an annual basis to keep abreast of changes in laws, regulations, and CHFA policies regarding the Program. A schedule of classes offered by the chfa**reach** training program may be found at www.chfainfo.com/arh/chfareach.

Owners and agents are also encouraged to sign up for CHFA's Multifamily Program Compliance eNews at www.chfainfo.com/arh/asset/Pages/mfpc-enews.aspx to receive important program updates.

1.7 Program Compliance Officer Role

Each development is assigned a Program Compliance Officer (PCO) who is the primary contact for information and questions about compliance. The owner will submit the documentation required for compliance monitoring purposes to the PCO. The PCO will conduct physical inspections, management reviews, and follow-up reviews as necessary to verify that the owner and the development are compliant with the Program requirements. PCOs also follow up with owners and management as needed to respond to inquiries received from applicants and residents.

1.8 CHFA-provided Certification and Verification Forms

CHFA has designed various forms for use by owners and managers. With certain exceptions, owners are not required to use CHFA's forms, provided that the owner's forms contain all of the same questions and content.

For properties using CHFA's Certification Questionnaire, the Resident Statement of Assets and Student Certification questions are included in the Questionnaire. Therefore, separate forms for these two certifications are not required.

The CHFA forms are referenced, but not included in this manual, and can be accessed at www.chfainfo.com/arh/asset/Pages/forms.aspx. To ensure that owners have the most current forms, visit the CHFA website periodically and register for updates shared through CHFA's Multifamily Program Compliance eNews at www.chfainfo.com/arh/asset/Pages/mfpc-enews.aspx.

1.9 Multilayered Programs

When there are multiple programs associated with a particular project, such as CHFA loan, FHA loan, Section 8, HOME, Rural Development, and/or LIHTC, the owner must operate the project in compliance with the most restrictive requirements.

1.10 Changes in Management

CHFA must be notified within 30 days whenever the owner makes a change in management agent. The notification form, at www.chfainfo.com/arh/asset/LIHTCForms/Notification_Change_Contact_Information.pdf, should be sent to the Program Compliance Officer who monitors the property. The form can also be used to convey changes in contact information for the ownership entity, agent, and property manager.

In the event of an ownership or management change, an LIHTC management review may occur within that year to ensure the new entity is complying with the requirements of the LURA.

chapter 2

Program Compliance

This chapter outlines the overall requirements properties must meet to maintain eligibility for tax credits. Properties that do not consistently meet these requirements during the compliance period may be subject to a denial or recapture of tax credits by the IRS.

2.1 Rent Restrictions; IRC Section 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 limit.

CHFA publishes income and rent limit tables annually based on the Multifamily Tax Subsidy Projects (MTSP) income limits issued by HUD. This information is released each year, typically in the first quarter, and available at www.chfainfo.com/arh/asset/Pages/rent-income-limits.aspx.

Properties must implement new income and rent limits within 45 days of the date they are released by HUD.

A. Gross Rent

The Code defines “gross rent” as resident-paid rent plus a utility allowance and any non-optional fees. The allowance is used to cover any utilities a resident is required to pay other than telephone, cable, or internet, unless the fee charged by the owner for telephone, cable, or internet is not optional. For CHFA’s utility allowance policy, refer to Section 2.3, Utility Allowances. Gross rent must not exceed the applicable maximum rent as listed on the income and rent table in effect for the property as of the date of certification.

B. Gross rent does not include

- housing assistance payments to the owner by HUD under Section 8 of the United States Housing Act of 1937 or any comparable rental assistance program;
- rental assistance payments to the owner by Rural Development associated with loans made under Section 515 of the Housing Act of 1949; or
- 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).

C. Gross Rent Floor - Revenue Procedure 1994-57

Revenue Procedure 1994-57 allows the owner to establish minimum rent amounts that will not be affected by fluctuations in income and rent limits. In other words, developments will never have to charge gross rents (rent plus utilities and nonoptional fees) that fall below their established gross rent floor amounts. To establish the gross rent floor, the owner makes an irrevocable election at either the placed-in-service date or the allocation date. If no election is made, the default will be based on the placed-in-service date.

D. Section 8 Assisted Units; IRC Section 42(g)(2)

A household with Section 8 assistance that originally qualified for a set-aside unit may later be required to pay an amount of gross rent in excess of the tax credit rent limit due to increased earnings and decreased Section 8 subsidy. In this case, the Internal Revenue Code allows an exception to the rent limit as long as all of the following requirements apply:

- the household originally qualified for a tax credit unit,
- the household is a participant in a housing subsidy program, and
- the household still receives at least one dollar of subsidy.

If at any time the subsidy is revoked, the owner must lower the tenant rent to ensure that gross rent does not exceed the tax credit rent limit.

2.2 Allowable Fees; 26 CFR 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 project’s 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 units 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
- Early lease termination fees (only when moving out of the community)
- Refundable fees such as security deposits
- Month-to-month lease fees (must be included in the gross rent as a mandatory fee)
- Renters insurance premium, if required (must be included in the gross rent as a mandatory fee)
    - When the owner requires residents to maintain renters insurance and a household obtains their own policy, the owner is required to obtain a copy of the policy or monthly insurance statement at move-in and at all annual recertifications.
    - The actual monthly premium must then be included as a mandatory fee in the gross rent calculation on the Tenant Income Certification (TIC).

    - Failure to include the actual premium could result in a unit paying over the maximum gross rent and impact the unit's eligibility for tax credits.

- Application fees – as long as the charges do not exceed the actual expected out-of-pocket costs for checking tenant qualifications such as income, rental history, credit history, and criminal history.

Any fees charged to the resident must be reasonable and in line with those charged by similar properties.

C. Disallowed Fees

The following fees may **not** be charged. If there is any question about whether a specific fee is allowed, contact your Program Compliance Officer.

- Waiting list fees
- Nonrefundable redecoration fees
- Unit transfer fees/utility transfer fees
- Fees for preparing a unit for occupancy
- Deposits or monthly pet rent fees for **service** animals
- 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 Section 42(g)(2)(b)

The gross rent includes resident-paid rent plus an allowance for 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, resident-paid utilities, and any nonoptional fees must not exceed the applicable maximum rent limit.

The source of the utility allowance to be used at each project depends upon the project's type. For a detailed explanation of which utility allowance sources are allowed for different project types, as well as annual update and resident notification requirements, etc., see CHFA's Utility Allowance Schedule Requirements memorandum at
www.chfainfo.com/arh/asset/Documents/Utility_Allowance_Policy.pdf.

2.4 Overcharged Gross Rent

Gross rent (resident-paid rent, as stated in the lease prior to concessions, plus the applicable utility allowance and any non-optional fees) may not exceed the maximum rent limit. In addition, charge-backs of concessions may not raise the gross rent above the maximum rent limit for any given month. In the event an owner overcharges gross rents, all affected units in the building are out of compliance.

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 to the IRS when the noncompliance is corrected. Noncompliance is corrected when the resident-paid rent plus utility allowance is adjusted and is less than or equal to the applicable maximum rent limit. Further, CHFA requires owners to refund excess charges to the resident.

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

2.5 Applicable Fraction; IRC Section 42(c)(1)(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 project. An annual credit amount is determined for each building based on the low-income percentage or "applicable fraction" for each building. The required applicable fraction is established in the first year of the project and remains the same for the life of the project. That actual applicable fraction at any given time 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 below the required fraction for any reason, the building may be subject to a loss or recapture of credits. The owner's property manager and onsite staff must be aware of the applicable fraction prior to initial lease-up and must continue to monitor the actual fraction for each building.

2.6 Next Available Unit Rule – Mixed-income Projects; 26 CFR 1.42-15

The Next Available Unit Rule amends the regulations under Section 42(g)(2)(D) of the Code. This rule is relevant primarily for mixed-income projects.

A low-income unit occupied by a household whose income increases **up to** 140 percent of the current income limit continues to be treated as a low-income unit if the household's income initially met the income limit 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 limit is considered to be an "over-income unit." The unit is considered out of compliance and ceases to be treated as a low-income unit **if** the next 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 required applicable fraction of the building is restored. Once the required 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 or smaller than the unit that invoked the NAU. For additional guidance, CHFA recommends consulting a tax attorney or accountant.

B. Available Unit

The Next 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.

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 required applicable fraction is restored, all over-income units lose their status as low-income units and are therefore out of compliance.

2.7 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 that the household simply transfers and is not required to be certified as a new move-in. However, a Unit Transfer TIC is required to document the changes regarding the rent, utility allowance, and set-aside.

B. Transfers to Another Building

When a current qualifying household transfers to a unit in another building **within the same 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's income does not exceed 140 percent of the current income limit upon transfer. A Unit Transfer TIC is required.

Exception for properties financed with both Private Activity Bonds and LIHTC: A transfer from one building to another within the same project must always be treated as a new move-in. The household must qualify for the new unit based on the current applicable income limit.

* To determine whether your buildings are treated as individual projects or as one multiple building project, refer to the property's first-year IRS Form 8609 (Part II).

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

A unit is considered non-transient when the initial lease term is six months or longer. A unit used on a transient basis will not be considered low-income, unless it meets one of two exceptions.
Units may be considered low-income and 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 less than six months. Otherwise, all initial leases must be for a term of at least six months. After the initial six-month term, renewal lease terms may be month-to-month.

2.9 General Public Use; 26 CFR 1.42-9

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 residents:

- with special needs; or
- 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.

This rule affects any building placed in service at any time.

2.10 Vacant Unit Rule; 26 CFR 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 do not income-qualify. Owners must also attempt to make the unit ready for occupancy within a reasonable time.

Attempts to lease the tax credit units must be documented and the documentation kept on file in accordance with the LIHTC Record Retention Requirements outlined in Chapter Five of this manual.

2.11 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. The owner of a project with an employee unit may choose to require the employee to pay rent and utilities.

2.12 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. The IRS allows an exception to this rule for acquisition/rehabilitation projects that follows a development plan of action sponsored by a qualified nonprofit organization [as described in Section 42(h)(5)(c) of the Code] or by a state or local government. For such projects, the applicable fraction of the building cannot exceed 80 percent of the unit fraction.

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

The IRS determined that during the entire extended use period, owners of LIHTC properties are prohibited from the following actions.

- Evicting a household from a LIHTC unit or terminating their tenancy within the lease term 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 a household from a LIHTC unit or terminating their tenancy within the lease term other than for "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 in low-income units had an increase in the gross rent not otherwise permitted under Section 42.

2.14 HUD Section 8 Vouchers; IRC Section 42(h)(6)(B)(iv)

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

2.15 Income Limits and Maximum Rents

To qualify for a LIHTC unit, a household's rent and income must fall within the Multifamily Tax Subsidy Projects (MTSP) Income Limits issued by HUD. When HUD posts income limits each year, typically in the first quarter, CHFA publishes updated Colorado tables showing rent and income limits from 30 percent to 120 percent of Area Median Income (AMI). CHFA's tables are located at www.chfainfo.com/arh/asset/Pages/rent-income-limits.aspx. IRS Revenue Ruling 94-57 allows LIHTC project owners to rely on the previous year's income limits and maximum rents until 45 days after HUD releases new income limits. After 45 days, the new limits must be implemented unless one of two exceptions applies, as explained below.

Hold Harmless

The IRS protects owners of all LIHTC projects from decreases in rent and income limits. This is referred to as "Hold Harmless" protection. In other words, once a LIHTC project is placed in service, if the limits for the county in which it is located go down from one year to the next, the project is **not** required to implement the new limits and may continue to use the higher limits already in place. To be "held harmless," a LIHTC project must have placed in service prior to the implementation cutoff date of the new limits.

HERA

For some counties, HUD publishes a second set of limits called HERA Special Income Limits. To apply HERA Special limits, a LIHTC project must have placed in service as of December 31, 2008.

HERA Special limits do not apply to LIHTC projects that placed in service after December 31, 2008, or to other projects that were not financed with LIHTC.

2.16 Tax-exempt Bond Financing Requirements

For projects with both LIHTC and CHFA loans that were financed with tax-exempt bonds, certain additional IRS requirements must be met in addition to the LIHTC requirements in this manual. If your development has a loan with CHFA, there will be a Regulatory Agreement or LURA that addresses the additional requirements. The requirements are also referenced in CHFA's Multifamily Financing Programs Compliance Manual at www.chfainfo.com/arh/asset/Documents/mf_compliancemanual.pdf.

2.17 CHFA Monitoring Fee

To offset the cost of monitoring a development during the extended use period, 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.

A. Pre-1995 Projects

For developments that received final tax credit allocations in 1994 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. See the LURA of each property for specific fee requirements.

B. Post-1994 Projects

For developments receiving final tax credit allocations in 1995 and after, the fee is collected up front to cover the first fifteen 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 CHFA issues the IRS Form 8609 to the owner.

C. Post Year 15 Projects

LIHTC projects entering their Post Year 15 period, which begins in the sixteenth year of the extended use period, are required to pay annual monitoring fees as specified in Chapter 6 of this manual.

2.18 Violence Against Women Act (VAWA)

The Violence Against Women Act (VAWA), enacted in 1994, is legislation designed to improve criminal justice and community-based responses to domestic violence, dating violence, sexual assault and stalking in the United States. The 2013 reauthorization of VAWA expanded the housing protections from VAWA 2005 to include Low Income Housing Tax Credit developments.
At this time, CHFA does not have specific VAWA-related documentation requirements for LITHC properties. CHFA recommends that LIHTC owners implement HUD's VAWA lease addendum, but the addendum is not required for LIHTC compliance.

chapter 3

Certification of Households

Low-income units must be occupied by qualified households. This chapter outlines the process for 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 all adults and children who will live in the unit as household members. Household members also include the following persons who do **not** reside in the unit.

- Children absent due to temporary 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 household members

3.2 Temporarily Absent Family Members

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

- family members employed a great distance away, and
- individuals in a hospital or rehabilitation facility for periods of limited or fixed duration

For persons permanently confined to a hospital or nursing home, the family decides if they will be included as a household member. If such a person is included as a household member, he or she may not be designated as head, co-head, or spouse.

You must count income of all family members approved as household members even if some 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 who receive unearned income
- Temporarily absent family members
- Full-time students who are head, co-head, or spouse (include all income)
- Full-time students who are age 18 and older, and **not** head, co-head, or spouse (include all unearned income and only the first $480 of earned income)
- Fill-time students under age 18 (include only unearned income)
- Active military members who are head, co-head, or spouse

3.4 Whose Income is Excluded

Income, as described below, for the following household members must be excluded from household income calculations.

- Family members under the age of 18, including foster children, who receive earned income
- Qualifying students who receive financial assistance[2]
- Full-time students who are age 18 and older, and **not** head, co-head, or spouse (exclude all but the first $480 of earned income)
- Active military members who are **not** head, co-head, or spouse
- Family members who receive payments for the care of foster children and foster adults
- Nonmembers: live-in aides, guests[3], and co-signors

3.5 Qualification of Households at Move-in

Household income at move-in must not exceed the applicable income limit designated for the household's family size 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.

2 HUD 4350.3, Chapter 5
3 HUD 4350.3, Chapter 5

3.6 Determining Qualifying Household Income

Generally, the LIHTC program uses HUD Handbook 4350.3, Chapter 5, for guidance in determining how to count and calculate income and assets.

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 at move-in is the date the household takes possession of the unit. CHFA requires that, in subsequent years, the effective date is the first day of the move-in anniversary month.

For qualifying residents, CHFA's policy is to use the highest income (i.e., most conservative) scenario to determine household income. The maximum potential household income must be considered first to ensure the household qualifies for the unit. When maximum potential household income would put an applicant over the income limit, **and** there is credible documentation to confirm that the maximum estimate is unrealistic, a realistic amount that is less than the maximum potential may be used to qualify a household.

3.7 What is Included in Annual Household Income

- Gross earned income of adults (including foster adults), such as wages, salaries, overtime, shift differential, commissions, fees, tips, and bonuses
- Gross unearned income of all household members, including children, foster children, foster adults, and students
- Regular payments or distributions received from annuities, insurance policies, retirement funds, pensions, disability benefits, and death benefits
- Net income of any kind from personal property
- Net income from real estate rentals
- Recurring monetary contributions or gifts. This includes contributions (cash or non-cash) from relatives, charitable organizations, or another 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 3.16 below
- The first $480 of earned income for full-time students who are age 18 years and older and who are not the head, co-head, or spouse

3.8 Calculating Annual Employment Income

Employment income should be annualized using the household's current circumstances, unless verification forms indicate that a change will occur in the next 12 months. Include overtime, shift differential, bonuses, and anticipated raises in the income calculation.

When annualizing employment income, the amount must be calculated in two ways.

1) According to the person's wage or salary, and
2) Based on year-to-date (YTD) earnings

Whichever amount is higher must be included on the TIC.

To annualize income based on wage and hours, multiply the income (hourly or salaried amount) by the maximum number of periods (hours, months, etc.) the employer anticipates the resident will work in the next 12 months.

Below are the methodologies to use when determining annual income according to the person's wage and hours.

- 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 pay periods
- Semimonthly amounts – multiply by 24 periods
- Monthly amounts – multiply by 12 months
- Annual salaries require no further calculations

To annualize income based on YTD earnings, determine the exact number of weeks or pay periods covered by the YTD earnings. Then calculate the average earnings received per week/pay period and multiply by the number of weeks/pay periods per year. Remember to account for any anticipated raises in your calculation.

To calculate income based on YTD earnings correctly, ensure that the Verification of Employment (VOE) includes both the start and end dates of the period covered by the YTD earnings. When annual income based on YTD earnings is either significantly different than income based on the wage or would put an applicant over the income limit, clarification with the employer is required.

3.9 Business Income: Business Owners and Self-employed Persons

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

Business income includes:

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

To arrive at net business income, you may deduct the following expenses.

- Business expenses (e.g., salaries, utilities, supplies, rent, insurance)
- Interest portion on loans that were **not** used for business expansion
- 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.

3.10 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
- document the alimony amount that is actually being received by the household.

3.11 Child Support

Owners must count both child support awarded by the court and child support received outside the formal court process.

In the case of court-ordered support, the owner must obtain a copy of the court order. If a resident certifies he or she has been awarded support but either is not receiving any support or is receiving less than the ordered amount, the owner must obtain third-party verification and count only the average income actually received.

3.12 Public Assistance and Social Security Benefits

When counting public assistance, such as Temporary Aid to Needy Families (TANF) and Supplemental Security Income (SSI), always use the amount specified as the maximum grant or benefit the person or family could receive. Deductions for Medicare premiums 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.

3.13 Unemployment

Unemployment benefits should be counted as if they will be received for 26 weeks (the current maximum state allowance) even if the resident expects to receive them for less than 26 weeks, unless the resident has obtained employment and management has verified the start date of that employment.

For residents who are unemployed, an Unemployed Resident Affidavit must be completed. Residents of assisted living or senior projects who are 62 and older are not required to complete an Unemployed Resident Affidavit.

3.14 Seasonal Employment

For residents who are employed seasonally, such as teachers, school bus drivers, farm workers, ski instructors, landscapers, etc., anticipated off-season income must be documented and included in annual household income. Off-season income includes employment, self-employment, unemployment benefits, and financial assistance from non-household members. For explanations of how to count and verify different types of income, including self-employment income, see Section 3.18.

At a minimum, documentation of anticipated off-season income should include a statement by the resident regarding the income type, the number of months expected, and the amount expected per month. A sample Seasonal Worker Affidavit is at www.chfainfo.com/arh/asset/LIHTCForms/SeasonalWorkerAffidavit.pdf.

3.15 Retirement Account Income

The full amount of periodic payments from annuities, insurance policies, retirement funds, pensions, and disability or death benefits are included in annual income. Periodic payments received due to the withdrawal of cash or assets from an investment are also counted as income.

When benefits are received through periodic payments, any remaining amount in the account is not counted as an asset, because the balance is the source of the income.

Distributions from retirement accounts that are not periodic are not counted as income.

3.16 Student Financial Aid and Section 8 Program Participants

Financial aid income for full- or part time students enrolled in a higher education institution 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 received (from private sources, government, and the educational institution) **in excess of** the tuition charged must be counted as income. It does not matter if the financial assistance is paid directly to the student or to the educational institution.

Potential student financial assistance sources:

- Scholarships (athletic and/or academic)
- Grants and fellowships
- Tuition-related employment (including work study)
- Private sources
- Any other type of financial assistance (**excluding** student loan proceeds)

Exception
Student financial assistance is not counted as income for:

- students over the age of 23 with dependent children, or
- student(s) who reside with a parent(s) or guardian(s) who receives Section 8 assistance.[4]

4 Guide for Completing Form 8823 Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition (Revised 2011)

3.17 What is Excluded from Annual Income

- Food stamps, Meals on Wheels, and other programs providing food for those in need
- Groceries provided by persons not living in the unit
- Grants or other reimbursement received for medical expenses
- Student financial assistance, including all GI Bill benefits, except as outlined in Section 3.16 above
- Earned income in excess of $480 for full-time students 18 years or older who are not the head, co-head, or spouse
- Temporary, nonrecurring, or sporadic income (including one-time gifts)
- Recurring monetary contributions that are paid by persons not living in the unit directly to a child care provider
- Lump sum payments from Social Security or other sources
- Personal and student loans
- Military hostile fire pay

3.18 Verifying and Certifying Income

The LIHTC program uses HUD Handbook 4350.3, Chapter 5 ("the 4350"), for guidance in identifying and calculating income and assets. Prior to August 2013, the program also followed Chapter 5 in establishing standards for verification of income and assets. On August 7, 2013, HUD issued Change 4 to the 4350. With Change 4, HUD modified its requirements regarding verification methods and types of third-party written verification.

The IRS has not adopted HUD's modified verification requirements in Change 4 for the LIHTC program. Therefore, **CHFA will continue to require full third-party documentation as described in this manual until guidance is received from the IRS.** As a result, this manual's verification requirements now differ from those in the current 4350.

All attempts to obtain verification must be documented. Acceptable forms of verification for specific types of income include are as follows.

A. Employment Income

Employment income verification must be received from the employer. Methods of verification have a hierarchy of acceptability from the most 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 almost all sources of income and must be attempted first. Third-party verification is written verification that is received by the owner/agent directly from the employer. For employment, the verification form must request YTD earnings, the start and end dates of the YTD period, as well as other basic income information. A sample Verification of Employment form is at
www.chfainfo.com/arh/asset/LIHTCForms/Verification_of_Employment.pdf.

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;
- email or fax the form directly to the appropriate third-party contact, as identified by management (not the resident); and
- request that the third party mail, email or fax the form directly back to you.

Forms must not be hand carried by the resident to or from the employer.

Any blanks or discrepancies in the verification must be clarified with the employer by the owner prior to certifying the resident.

Exceptions

- The Work Number
  When available, this service is an acceptable alternative to sending a written verification to the employer. However, paystubs may also be needed to verify any required information not included in The Work Number's printout. **Using The Work Number is not required if it charges a fee.**
- Residents with Housing Choice Vouchers (HCV)
  When a resident has a HCV, you may obtain third-party written verification from the local public housing authority that verifies their income and assets instead of from the employer, bank, etc. The verification must be completed using the Public Housing Authority Statement of Income and Assistance at www.chfainfo.com/arh/asset/LIHTCForms/PHA_Certification_of_Assistance_Income.pdf.

Third-party Verbal Verification

Owners may obtain a verbal verification from an employer if attempts to obtain third-party written verification are unsuccessful, and are well-documented. To complete a verbal verification, the person verifying the information must obtain all of the same information on the VOE form and document the name of the person providing the information, including the person's title and phone number, along with the date of the conversation.

Paycheck Stubs

If written or verbal third-party income verification cannot be obtained, the resident's paycheck stubs may be used to document income as long as:

- the paycheck stubs are consecutive and represent at least the three most recent pay periods relative to the date of certification,
- the paycheck stubs are complete and unaltered, and
- all efforts to obtain third-party verification are well-documented.

Upon receipt of the paycheck stubs, average the three (or more) pay periods and annualize the averaged gross amount to arrive at annual income. The year-to-date gross income listed on the most recent paystub must also be annualized and compared with the annual amount based on the recent paystub average.

B. Self-employment Income

The following documentation is required for **all** self-employed persons, including those who receive an IRS Form 1099 tax statement.

- Certification of Income for Self-employed Persons; and
- Business plan summary (i.e., explanation of business type, frequency of work, frequency of payment, and typical payment amounts); and
- **Year-to-date** profit and loss statement (i.e., income and expense statement or similar income statement); and
- Most recent federal tax return, if the person files annual tax returns.
  - The tax return must include IRS Form 1040 and Schedule C.
  - If the taxpayer (applicant/resident) filed, but does not have a copy of the return, he or she may request a tax return transcript from the IRS at www.irs.gov/individuals/get-transcript. The resident may also complete IRS Form 8821, Tax Information Authorization, which allows the owner to verify their federal tax return.
- Most recent **annual** Profit and Loss statement, if the person does not file annual tax returns.

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 printout detailing benefits, dated within one year of the certification effective date, will be accepted in lieu of a Verification of Benefits form, provided that the information is the most current.

Because they do not always reflect gross benefits, bank statements, tax forms, and checks are not acceptable forms of verification.

D. Retirement Accounts

Third-party verification of the amount and frequency of distributions with the agency that issues periodic payments from annuities, insurance policies, retirement funds, pensions, and disability or death benefits is required. If direct verification is not possible, an annual benefit notification letter, dated within one year of the certification effective date, or a current statement prepared by the agency is acceptable.

E. 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 CBMS (Colorado Benefits Management System) printout detailing benefits, dated within 120 days of the certification effective date, is acceptable in lieu of a Verification of Public Assistance form.

F. Unemployed Residents

Unemployed adult residents must complete an Unemployed Resident Affidavit certifying that they are currently not employed, indicating whether 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 when qualifying household income.

Residents of assisted living or senior projects who are age 62 and older are not required to complete an Unemployed Resident Affidavit.

G. Unemployment Benefits

Third-party verification of unemployment compensation should be received from the unemployment compensation agency or from the records of a local unemployment office stating payment dates and amounts.

Unemployment benefits should be counted as if they will be received for 26 weeks (the current maximum state allowance) even if the resident expects to receive them for less than 26 weeks, unless the resident has obtained employment and management has verified the start date of that employment.

For the purposes of completing the TIC, the owner must use the greater of the actual amount received through unemployment compensation, or the amount shown as anticipated income on the Unemployed Resident Affidavit.

H. 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.

I. Child Support

If a household has children who do not have both parents/guardians in the home, the resident who is their parent or guardian must complete a separate Child Support Affidavit for each child.

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

- obtain a copy of the court order, divorce decree, or separation agreement that grants child support; and
- include the full amount as income on the TIC.

If the amount actually received is less than the amount ordered or no support is received at all, the owner should also obtain a payment history report from Family Support Registry to determine the amount actually received in the 12 months prior to certification. The average amount actually received should then be included on the TIC.

If a resident does not have a court order for child support, but is receiving it informally on a regular basis, the owner must obtain a signed and dated statement from the child support provider as to the amount and frequency of the payments and include the amount as income on the TIC.

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

J. Recurring Contributions and Gifts

Residents claiming zero or extremely–low-income may receive gifts or contributions on a regular basis from friends, family members, or charitable organizations. Such recurring gifts are considered income by the LIHTC program and must be included in household income. Verifications of gift income are required and may include:

- a Verification of Household Assistance 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; and
- as a last resort, a statement from the receiver of the gift stating the frequency and value of the gift along with copies of checks, when possible.

K. Effective Term of Verifications

Verifications of income and assets that are subject to change are valid for 120 days from the date the document was signed by the person verifying the information. Once the 120-day period has expired, the documentation is no longer considered reliable and new verifications must be obtained.

Information that is not subject to frequent change, such as Social Security benefits, Social Security Disability Income, Supplemental Security Income, pensions, annuities, and other lifetime benefits, may be dated up to one year (365 days) prior to the certification effective date.

3.19 Military Pay Differences (Basic Allowance for Housing); Section 3005 of the American Housing and Economic Recovery Act of 2008 (HERA); Protecting Americans from Tax Hikes Act of 2015

The military Basic Allowance for Housing (BAH) must be included as income for all properties that are not located in a Qualified Military Installation (QMI) area.

Effective in 2016, per the Protecting Americans from Tax Hikes Act of 2015, all LIHTC properties that are within a QMI may exclude BAH from income. In Colorado, this exception applies only to properties in the following counties: El Paso, Douglas, Elbert, Lincoln, Pueblo, Fremont, and Teller.

3.20 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, CDs, money market accounts, IRAs, other retirement accounts, real estate, and pension funds. Each adult member of a low-income household is required to complete a separate CHFA Resident Statement of Assets form even if the person claims to have no assets. A married couple may complete one combined form.

The LIHTC program uses HUD Handbook 4350.3, Chapter 5, for guidance in identifying and calculating the value of assets and their income. Prior to August 2013, the program also followed Chapter 5 in establishing standards for verification of asset value and income. On August 7, 2013, HUD issued Change 4 to the 4350.3. With Change 4, HUD modified its requirements regarding verification methods and types of third-party written verification. The IRS has not adopted HUD's modified verification requirements in Change 4 for the LIHTC program. Therefore, CHFA will continue to **require full-third party documentation as described in this manua**l. As a result, this manual's verification requirements now differ from those in the current 4350.3.

If households claim assets with a total value that exceeds $5,000, third-party verification of all assets must be obtained using a Verification of Assets form. If third-party verification cannot be obtained and attempts are documented in the file, then documents such as bank statements, brokerage statements, etc., may be used to verify an 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 (if unknown, use 10 percent), and the principal balance of a loan on an asset. As with income documentation, asset documentation may not be older than 120 days from the date it was signed, with the exception of real estate appraisals. Appraisals may be used up to six months after the appraisal was performed.

Bank accounts must be verified directly with financial institutions. If the financial institution does not respond or charges a fee for such service, then bank statements may be used instead of an Asset Verification form. If using bank statements, the current statement must be obtained for savings accounts. For checking accounts, six current consecutive statements must be obtained.

3.21 What is Included in Assets

- Cash held in savings accounts, checking accounts, and safe deposit boxes
- Cash on-hand
- Revocable trusts
- Stocks, bonds, certificates of deposit (CDs), and money market accounts
- Retirement and pension fund balances, except as noted below
- Real estate (including mobile homes for which there is a Deed of Trust)
- Lump sum payments (as long as the family continues to possess it)
- Life insurance policies that have cash value
- Assets disposed of for less than fair market value (included for two years from the date when the assets were disposed of)

3.22 What is Excluded from Assets

- Necessary personal property (cars, televisions, computers, etc.)
- Term life insurance policies (i.e., no cash value)
- Mobile homes that are considered vehicles and do not have a Deed of Trust
- Assets that are not effectively owned by the applicant/resident
- Assets that are not accessible to the applicant/resident and provide no income
- Assets that are disposed of for less than fair market value due to bankruptcy, divorce/separation, or foreclosure

3.23 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.
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 distributions 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.

3.24 Determining the Value of Assets

When determining the total value of assets, always use the current cash value. To determine the cash value of certain assets, such as retirement accounts and real estate, you must first determine the current market value. From an asset's market value, you may deduct the following to arrive at the current cash value:

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

3.25 Real Estate Assets

A. Cash Value of Real Estate

To determine the cash value of real estate, you must first obtain third-party verification of the asset's market value. In order of preference, accepted forms of third-party verification for real estate market value are:

1. Appraisal (current within six months)
2. Real estate agent's market/valuation report
3. Real estate website report, such as Zillow.com
4. Market value from the County Assessor's office (least preferred because this usually reflects an outdated market value)

Once the market value is verified and documented, closing costs of 10 percent and any outstanding mortgage on the asset must be deducted to obtain the cash value.

B. Net Income from Rental Property

When an applicant or resident owns real estate, management must document whether the property is or will be rented. If so, the monthly rental income, less reasonable expenses, must be annualized to determine actual income from the 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.

3.26 Pension Plans and Retirement Account Assets

Prior to retirement, the amount that a resident can withdraw from a pension plan or retirement account (IRA, Keogh, etc.) without retiring or terminating employment (i.e., the cash value) is considered an asset. If a household member states that they do not have access to their benefits or 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 as a loan), then the cash value is to be included in household assets.

After retirement, when retirement benefits are received through periodic payments, any remaining amount in the account is no longer counted as an asset, because the balance is the source of the periodic payments counted as income.

Individual lump sum payments from pension and retirement funds are counted as assets as long as they are not periodic.

3.27 Calculating Income from Assets

The actual income from assets must always be documented on the Tenant Income Certification (TIC) form. When determining the actual 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, imputed income must also be calculated using the HUD passbook rate and compared with actual income. On the TIC, use the greater of:

- the actual income from assets, or
- the imputed income (current HUD passbook rate=0.06 percent)

In addition, when the total value of all assets is greater than $5000, third-party verification must be obtained for **each** asset.

3.28 Assets Disposed of for Less than Fair Market Value

The term "asset disposed of for less than fair market value" refers to an asset that is sold, donated, or given away to another person or entity without receiving an equal amount of money, goods, services, etc., in return. At move-in and annual recertification, residents must declare whether and when they have disposed of any assets for less than their fair market value.

For the LIHTC program, an asset disposed of for less than fair market value is included in household assets **only** if the cash value of the asset exceeded the gross amount the applicant/resident actually received for it by **more than $1,000**. If the difference was $1,000 or less, the asset is not included.

An asset disposed of for less than fair market value is included in all certifications effective during the two years after the asset was sold, donated, or given away. After two years, the asset is no longer included. The value included on the TIC for this kind of asset is the difference between the cash value of the asset when it was disposed of and the amount the applicant/resident actually received for it.

Assets disposed of for less than fair market value can be personal, family, or business assets. Examples include:

- cash gifts;
- real estate;
- irrevocable trusts; and
- stocks, bonds, and other investments.

Exception
Assets that were disposed of for less than fair market value due to bankruptcy, divorce/separation, or foreclosure are not included in assets.

3.29 Full-time Student Rule: IRC Section 42(i)(3)(D), IRC Section 141(c)(4), IRC Section 170(b)(1)(A)(ii), 26 CFR 1.151-3(b)

A. Full-time Student Definition

The LIHTC program defines a "student" as an individual who is enrolled in an educational organization during at least five months in the calendar year. An educational organization includes: kindergarten, elementary, junior and senior high schools, colleges, universities, technical, trade and mechanical schools. Regarding the time period of enrollment, the five months need not be consecutive. Moreover, enrollment at any point in a month (e.g., just one day) counts as enrollment during that month. For example, a student enrolled between January 21 and May 2 has been enrolled for five months per IRS guidance.

Whether a student is full-time or part-time is determined by the educational organization in which they are enrolled.

B. Full-time Student Rule (with Five Exceptions)

In the LIHTC program, as long as at least one member (including an unborn child) of a household is not a full-time student, the household complies with the Full-time Student Rule. On the other hand, a household comprised entirely of full-time students is ineligible to occupy a tax credit unit **unless** one or more of the following criteria is met. When one or more of these exceptions is used to qualify the household, management must obtain verification.

For Individual Residents

1. The student receives assistance under Title IV of the Social Security Act, also known as Temporary Assistance to Needy Families (TANF).
2. The student is enrolled in a job training program receiving assistance under the Workforce Innovation and Opportunity Act (WIOA) of 2014 (which superseded the Workforce Investment Act of 1998, which superseded the Job Training Partnership Act of 1982), or under a similar federal, state, or local program.
3. The 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 (i.e., Foster Care).[5]

For Households Comprised Entirely of Full-time Students

1. The students are a single parent with children, and the parent 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 for tax purposes, regardless of whether or not the parent claiming the dependents resides in the unit;[6] and/or
2. The students are married and eligible to file a joint tax return.

5 The Housing and Economic Recovery Act of 2008 (HERA)
6 Mortgage Forgiveness Debt Relief Act of 2007 (HR3648)

C. Change in Status to Non-qualifying Student Household

The following households do not qualify to occupy a tax credit unit:

- a full-time student household that previously met one of the above exceptions but now ceases to meet an exception; or
- a previously non–full-time student household becomes comprised of all full-time students and does not meet one of the above exceptions.

The change in status results in noncompliance.

D. Full-time Student Certification and Verification

A Certification of Student Status must be completed by all household members age 18 years and older at move-in and annually thereafter. For households comprised entirely of students, at least one of whom states they are part-time, management must obtain a Verification of Student Status directly from the educational organization to confirm whether the student is full-time or part-time. A student's status is always determined by the educational organization, not by the owner or the resident.

3.30 Section 8 Voucher Holders; IRC Section 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 their status as voucher holders. If minimum income standards are used as part of the applicant screening criteria for a development (for example, an applicant is required to have income that is three times the rent), then for voucher applicants the total tenant payment, rather than the contract rent, must be compared to the income standard.

3.31 Live-in Aides

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

- is determined to be essential to the care and well-being of the person(s),
- is not obligated for the support of the person(s), and
- would not be living in the unit except to provide the necessary supportive services.

Owners must obtain verification of the need for a live-in aide directly from a resident's physician, psychiatrist, or other knowledgeable health care provider.[7]

A live-in aide does not need to be qualified or certified for a LIHTC unit, is not a party to the lease, and should not be included on the Tenant Income Certification (TIC). Live-in aides may be listed elsewhere in the file as persons approved to be in the unit.

3.32 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. Recertifications are due on the first day of the anniversary month that the resident moved in. 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; and
- all household income, assets, and income from assets as well as student status must be listed on the TIC.

A new TIC must be completed for each move-in, annual recertification, interim certification, and unit transfer.

3.33 Alternatives to the TIC

A. Acceptable Alternatives to the TIC

- For developments with Rural Development Section 515 financing
  - The RD 3560-8 Certification form may be used in lieu of a separate TIC.
- For project-based Section 8 properties in Years 1-15 of the extended use period
  - At move-in, a TIC must be completed.
  - Beginning with the first annual recertification, the HUD Form 50059 certification form may be used in lieu of a TIC.
- For project-based Section 8 properties that are Post Year 15 (i.e., Years 16+ of the extended use period)
  - At move-in and annual recertification, the HUD Form 50059 may be used in lieu of the TIC.
- For project-based Section 8 properties with new allocations of LIHTC for acquisition/rehab
  - A TIC is required to document all first year Initial Certifications.
  - Thereafter, during Years one to 15,
    - At move-in, a TIC must be completed.
    - For annual recertification, the HUD Form 50059 may be used in lieu of a TIC.
- Note: If using the RD 3560-8 or the HUD Form 50059, the owner must still ensure that households meet LIHTC qualifications, including student status, at move-in and annual recertification.

B. Unacceptable Alternative to the TIC

The HUD Form 50058, used by some project-based Section 8 properties, is not approved for use with the tax credit program.

3.34 Annual Recertification of Household Income and Rent; IRC Section 142(d)(3)(A)

Management must recertify the income, assets, and gross rent of households in all tax credit units each year using the Tenant Income Certification (TIC) form. The annual recertification process may be started up to 120 days prior to the due date. Recertifications must be completed annually based on the date the household moved into the project, regardless of the lease term. Therefore, the effective date of annual recertifications may not always correspond with lease renewals.

In addition, annual recertifications must be completed even if the household plans on vacating their unit at the end of their lease or within a couple of months following the expiration of a 12-month certification period.

The supporting documentation required at annual recertification depends on both the project type and the household's length of tenancy, as described below.

A. 100-percent Low-income Projects

Effective July 30, 2008, the Housing and Economic Recovery Act of 2008 (HERA), modified LIHTC regulations to eliminate the IRS requirement for annual recertification of household income for projects with 100-percent tax credit or 100-percent tax exempt bond units financed under 142(d) of the Tax-exempt Bond Code.

CHFA's policy for 100-percent low-income projects is to require one full recertification, including third-party verifications of income and assets (if necessary), at each household's first anniversary.

After the first anniversary recertification, the owner may elect at subsequent recertifications to allow the household to self-certify income, assets, student status, and demographic information using a recertification questionnaire. Or, the owner may elect to continue to require full third-party verifications at every recertification.

CHFA reserves the right to reinstate the third-party verification requirement for all annual recertifications should the project fall out of compliance with the terms of the LURA, or if it is determined that the owner leased a unit to a non-income-qualified household.

Self-certification

For self-certification, owners must use a questionnaire to obtain basic income and asset information from residents. Student Status must also be certified. A sample questionnaire is available at www.chfainfo.com/arh/asset/LIHTCForms/SelfCertificationQ-LIHTC.pdf.

The owner will prepare the TIC based on the information provided by the resident and obtain residents' signatures on the TIC on or before the effective date of the certification. The TIC should indicate the household is self-certifying the information.

B. Mixed-income Projects

Full third-party verifications are required at every annual recertification. Self-certification of income and assets is not permitted.

C. Recertification Process

The annual recertification process should be started at least 90 to 120 days prior to the effective date. Recertifications are due on the first day of the anniversary month that the resident moved in. Whether or not residents self-certify, the owner is required to complete a TIC at each annual recertification to document:

- Area Median Income (AMI) designation;
- tenant-paid rent, utility allowance, and mandatory fees;
- student status, and
- any change in household status.

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.

3.35 Changes in Household Composition – Interim Certifications

Interim Certifications are required for the LIHTC program only when an additional person moves into a unit. Interim Certifications are **not** required for changes in existing household members' income, changes in rent or utility allowances, or when a household member leaves the household (although the owner must document the file when any household member vacates the unit).

A. New Household Members

CHFA recommends that owners have a written policy regarding new household members. To prevent manipulation of household income limits, the policy should include a restriction that new adult members may not join a household until at least six months after move-in, except under special circumstances.

When a new member joins the household, that new member must be fully certified and an interim TIC completed. At mixed-income projects, if the additional household member's income raises total household income above 140 percent of the current household income limit, the Next Available Unit Rule applies.

Total household income must be certified on the interim TIC, and is based on the existing household's income at the most recent certification combined with the new household member's income. It is not necessary to recertify the entire household unless a recertification is currently due for the existing household members.

B. Original Household Members Vacate the Unit

After a new member joins a tax credit household, management must monitor any future move-outs from that unit to ensure it remains qualified. If an original household member vacates the unit, the unit will remain a qualified unit as long as at least one other original 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 dependents who were members of the household at move-in are considered original household members.

Although an interim TIC is not required, the owner must document the file when any household member vacates the unit, including a minor child or other dependent. If all original household members vacate the unit, leaving only members who joined after the original move-in, the owner must determine whether the remaining members are a qualified tax credit household. See the IRS 8823 Guide, pp.4-5, for a detailed explanation of how to determine if a household is qualified to remain in the unit.

3.36 Acquisition Rehabilitation Tax Credits: Certifying Existing Residents

When an owner receives tax credits for the acquisition and rehabilitation of an existing building that does not already have LIHTC, additional rules apply when first certifying and qualifying units for tax credits. In the first year, Initial Certifications must be completed for households as follows.

- Existing households can be certified within 120 days before or after the acquisition date of the building using the income and rent limits in effect as of the acquisition date. In this case, the effective date of the initial LIHTC certification is the acquisition date.
- If existing households are certified more than 120 days after the acquisition date of the building, they must be treated as a new move-in using the income and rent limits in effect as of the date the last adult member signs the TIC. The effective date of the initial LIHTC certification is the date the last adult member signs the TIC.

See the IRS 8823 Guide, Chapter 4, or contact your Program Compliance Officer for additional guidance on certifying residents during the first credit year of acquisition rehab LIHTC projects.

3.37 Resyndication Tax Credits: Certifying Existing Residents

Resyndication occurs when an owner receives a new allocation of tax credits for the acquisition (purchase) and rehabilitation of an existing LIHTC project. Following are several key points for management to keep in mind at resyndication.

A. "Income Grandfathering"

If an existing household is over the income limit applicable under the new allocation, it will remain eligible for a tax credit unit under the new allocation as long as:

- the household was income-qualified for the LIHTC program under the previous tax credit allocation,
- the file contains sufficient documentation to confirm the previous income qualification,
- the unit remains rent-restricted, and
- the household meets all other current LIHTC rules (including the Full-time Student Rule).

B. First-year Income Certifications for Existing Households

As long as the file contains sufficient documentation of program eligibility under the previous tax credit allocation, CHFA does not require new full certifications for existing households during the first credit year of a resyndication project. Recertifications should be completed as previously scheduled.

C. Income and Rent Limits - Resyndication

Once a LIHTC project receives a subsequent allocation of tax credits, it is no longer eligible to use HERA special limits. Likewise, the owner may no longer rely on the previous allocation's highest set of Hold Harmless limits. Under the new allocation, the Hold Harmless protection will be reset to the limits used in the first year of the new allocation.

See the IRS 8823 Guide or contact your Program Compliance Officer for specific guidance on certifying residents at resyndication projects.

3.38 Leases and 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.

CHFA's Affordable Housing Lease Addendum (www.chfainfo.com/arh/asset/LIHTCForms/Affordable_Housing_Lease_Addendum.pdf) or an 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 language within the lease, either of which must contain similar language to the CHFA-provided addendum. If leases are automatically renewed, a new lease addendum is not required, because the original lease addendum is tied to the original lease that remains in effect.

3.39 Electronic Signatures

Other than the lease and the initial application, CHFA does not permit resident certification forms to be signed electronically by the resident or management. To be valid for the LIHTC program in Colorado, forms must contain original dated signatures by all adult household members and management. In the future, if the IRS issues guidance permitting use of electronic signatures, CHFA will review this policy.

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 noncompliance may be handled.

4.1 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. Asset Management staff will photograph the property, discuss the CHFA LIHTC Compliance Manual, and answer any questions that the owner or agent may have about the LIHTC program. An informal file review and physical inspection may also be conducted.

4.2 Management Reviews

A management review will be performed by the end of the second calendar year following the year that the last building places in service. Thereafter, management reviews will be conducted at least every three years throughout the 15-year compliance period. In addition, in the event of an ownership or management change, a review may occur within that year to ensure the new entity is complying with the requirements of the LURA.

During a management review, CHFA will audit the lesser of 20 percent or the number set forth in the IRS' Low Income Housing Credit Minimum Unit Sample Size Reference Chart of the property's low-income resident files, and inspect the same number of low-income units. Common areas, the grounds, and building interiors and exteriors will also be inspected. Additionally, a questionnaire will be administered to evaluate management practices. A report to the owner and agent will be completed within 30 days.

4.3 Physical Inspections

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 Report of Noncompliance or Building Disposition (referred to as an 8823). Reportable deficiencies include, but are not limited to:

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

Health and safety hazards noted at the time of inspection must be corrected within 24 hours of the inspection. Work orders showing the item(s) have been corrected are to be sent to the CHFA inspector within 72 hours.

4.4 Reporting Noncompliance

CHFA is required to report instances 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 already been corrected. In those instances, the 8823 will be filed with the cure date 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 thereunder;
- 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.
- 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 (8823 Guide). 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 and reporting noncompliance. The 8823 Guide may be found at www.irs.gov/pub/irs-utl/lihc-form8823guide.pdf.

It is both the IRS' and CHFA's policy to encourage owners to self-monitor their files and developments for potential noncompliance issues. As such, CHFA is not required to report most noncompliance 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 IRS Form 211, Application for Award for Original Information[8]. When completing the form, owners must provide the following information:

- resident's name;
- resident's Social Security number, if available;
- an explanation of 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;
- an explanation of the difference between the market-rate rent and the restricted rent for the unit; and
- how long the tenant was in the unit.

The IRS may consider the difference between the market-rate rent and the restricted rent 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 noncompliance 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 Owner/Taxpayer Fraud

CHFA's policy is to report suspected fraudulent acts by owners, management companies, or other parties associated with a development by filing IRS Form 3949-A, Information Referral. Complaints of fraud received by CHFA will be investigated to the fullest extent possible. Evidence that substantiates the complaint will be reported to the IRS.

4.8 IRS Form 8821, Tax Information Authorization

Owners may have tenants complete IRS Form 8821, Tax Information Authorization, to confirm the accuracy of tenant 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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8 Guide for Completing Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition (Revised January 2011)

4.9 Building Disposition (Changes in Ownership); IRC Section 42(j)(6), 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. 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. 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.

CHFA's written consent is required prior to any transfer of ownership.

Upon notification, the current owner, as well as the prospective owner, will receive a "Transfer of Ownership" request packet to be completed in full and returned to CHFA. A letter signed by the new owner acknowledging receipt of the package and copies of the LURA and/or Regulatory Agreement, including all compliance restrictions and annual compliance monitoring, must be received before CHFA will approve the transfer. CHFA will provide guidance, including a list of requirements and fees needed to complete the transfer.

Throughout the extended use period, 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. Although a building disposition is not necessarily a noncompliance event, during the compliance period CHFA is required to file a Form 8823 for all building dispositions to advise the IRS of a change in ownership.

In the event of an ownership change, a LIHTC management review may occur within that year to ensure the new entity is complying with the requirements of the LURA.

4.10 Compliance Period

Developments must comply with LIHTC program requirements throughout a period of 15 taxable years to avoid the recapture of tax credits. This 15-year compliance period begins with the first year of the credit period. The credit period begins the year the building is placed in service or, at the election of the taxpayer, the year after the building is placed in service. The owner must designate which year they elect to begin the credit period on each building's IRS Form 8609.

4.11 Extended Use Period

Developments receiving tax credit allocations on or after January 1, 1990, must comply with LIHTC program requirements throughout the extended use period (typically a minimum of 30 years). The extended use period begins on the first day in the compliance period on which a building is part of a qualified low-income housing project and ends on the later of the date specified in the LURA, or, 15 years after the compliance period ends.

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 Submission Requirements

A. Lease-up & Year One of the Credit Period

- Occupancy data must be submitted to CHFA utilizing the WCMS (Web Compliance Management System) via CHFA's website, www.chfainfo.com/arh/asset/Pages/wcms.aspx, as soon as the property begins leasing up.

  WCMS must be maintained monthly thereafter. Failure to update WCMS on a monthly basis may result in a finding at the next CHFA LIHTC program compliance review.

- A completed IRS Form 8609 must also be submitted to CHFA identifying the first year of the credit period.

B. Annual Submissions

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

- LIHTC Program Owner Certification of Continuing Program Compliance, for the period January 1–December 31 of the previous year;
- Occupancy and demographic information in WCMS for the period ending December 31; and
- Annual monitoring fee (project-dependent, see Section 2.17)
- In addition, IRS Form 8703 for the previous year for 4 percent tax credit properties where CHFA is the conduit bond issuer is due to CHFA annually by April 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 that show:

- 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 15-year 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

- My Account Tools - CHFA online resources and tools, including frequently requested forms and file requirement checklists
  www.chfainfo.com/arh/asset/Pages/MyAccount.aspx
- Section 42 of the Internal Revenue Code (26 U.S.C. § 42 or IRC Section 42), and subsequent Revenue Rulings
- IRS 8823 Guide
  www.irs.gov/pub/irs-utl/lihc-form8823guide.pdf
- HUD Handbook 4350.3, Chapter 5, Determining Income and Rent
  http://portal.hud.gov/hudportal/documents/huddoc?id=43503HSGH.pdf
- Income and rent limits set by HUD and published by CHFA annually
- Owner's IRS Forms 8609
- LURA – Land Use Restriction Agreement
- Owner's tax consultant or attorney
- CHFA LIHTC Compliance Manual
- CHFA Multifamily Program Compliance eNews
  www.chfainfo.com/arh/asset/Pages/mfpc-enews.aspx
- CHFA Program Compliance officers
- chfa**reach** training classes (www.chfainfo.com/chfareach)
- Studentclearinghouse.org

chapter 6

Post Year 15 Compliance and Monitoring

Post Year 15 compliance monitoring ensures that properties comply with LIHTC requirements during the extended use period specified in the Land Use Restriction Agreement (LURA). Pursuant to its Post Year 15 Compliance and Monitoring plan, CHFA has elected to revise several of its compliance monitoring practices beginning Year 16 of the extended use period, since the IRS no longer oversees compliance with Section 42 at that point.

Owners are reminded that properties may continue to be required to be in compliance with more restrictive rules associated with programs such as Section 8 Project-based Assistance, Rural Development, HOME, FHA and CHFA loans, and tax-exempt financing.

The LURA will remain in effect for the entire extended use period unless the property is acquired by foreclosure or deed-in-lieu of foreclosure (unless it is determined that such an acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate the extended use period).

6.1 Extended Use Period Effective Date and Term

The extended use period lasts a minimum of 30 years. Each property's extended use period term is specified in the LURA.

6.2 Determining the Start and End of the Compliance Period

As stated in the LURA, the owner must provide CHFA with a copy of the signed IRS Form 8609 for each building for the first year of the credit period. The first-year 8609 is used to determine the start of the 15-year compliance period. Should the owner not provide an 8609 as required, CHFA will determine the start of the compliance period as the year after the date the last building was placed in service and the end of the compliance period as 15 years after that.

6.3 Prohibited Actions

For the term of the extended use period plus an additional three years, the owner is prohibited from the following.[9]

- Evicting or terminating the tenancy during the lease term of an existing resident for any reason other than good cause
- Increasing the gross rent of an existing resident above the applicable maximum rent limit

9 IRC Section 42(h)(6)(E)(ii)

6.4 Post Year 15 Tenant Eligibility and Record Retention Requirements

A. Certifications

Initial Move-In Certifications

- Verifications of household income and assets (if necessary) are required prior to move-in for all units of both 100-percent LIHTC developments and mixed-income LIHTC developments.

Annual Recertification (including first annual recertification)

- All tax credit households at both 100-percent and mixed-income LIHTC developments may self-certify income and assets beginning with the first annual recertification. **Third-party verification of income and assets at the first recertification is not required.** However, households are required to complete a self-certification questionnaire, and management must prepare a TIC form. The self-certification option at the top of the TIC should be checked.
- If other programs, such as the CHFA loan program, apply to the project, third-party verifications should be conducted as needed to maintain compliance with those programs.

B. Student Rule

Since student status is not one of the defined requirements of the LURA, compliance with the student rule under IRC Section 42 is no longer monitored.

Note: For developments financed with tax-exempt bonds, the student rule continues to apply after Year 15 as long as the regulatory agreement remains in effect.

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 same project.

D. Next Available Unit Rule

Compliance with the Next Available Unit Rule is no longer monitored. A unit occupied by a household that qualified at move-in may retain its designation until it is reoccupied as long as the unit remains rent-restricted.

E. Utility Allowances

Owners must continue to update utility allowances annually during the Post Year 15 Period. For a detailed explanation of which utility allowance sources are allowed for different project types, as well as annual update and resident notification requirements, etc., see CHFA's Utility Allowance Schedule Requirements memorandum at www.chfainfo.com/arh/asset/Documents/Utility_Allowance_Policy.pdf.

F. Record Retention

Owners are required to retain all 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.

6.5 Monitoring Requirements

CHFA reserves the right to conduct a review of any building to examine all records pertaining to the rental of LIHTC units.

A. Annual Submissions

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

- Post Year 15 LIHTC Owner Certification of Continuing Program Compliance, for the period of January 1-December 31 of the previous year;
- Occupancy and demographic information in WCMS for the period ending December 31; and
- Annual monitoring fees.

In addition, IRS Form 8703 for the previous year for 4 percent tax credit properties where CHFA was the conduit bond issuer is due to CHFA annually by April 30 until the end of the qualified project period.

B. Occupancy and Demographic Information

Occupancy and demographic reporting must also 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 five 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.

In addition, in the event of an ownership or management change, a LIHTC management review may occur within that year to ensure the new entity is complying with the requirements of the LURA.

D. Transfer of Ownership

CHFA's prior written consent is required for transfers of ownership or ownership interest. Owners contemplating transfers of ownership must notify CHFA and will receive a "Transfer of Ownership" request packet that is to be completed and returned to CHFA. CHFA will provide guidance including a list of requirements and fees 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 sixteenth year of a project's. Effective November 1, 2015, the fees are $25 per tax credit unit, including employee units, not to exceed $2,500. All fees are due on January 15 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 owner's agent repeatedly delaying or refusing CHFA requests to schedule management reviews
- Failure to submit annual submissions or compliance monitoring fees

If a noncompliance event occurs, written notice of the noncompliance will be issued 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 that details the timeline for the corrections and 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 owner will be subject to fines as determined appropriate by CHFA in its sole discretion.
- 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 owner's agent associated with the application is "not in good standing" with CHFA.
- 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 permanently at 9 percent) 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 maximum amount of 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

The proportion of units or square footage occupied by qualifying low-income households; 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 15-year period, beginning the first year of the credit period, in which the project must meet LIHTC program requirements to avoid the recapture of tax credits

Credit Period

The 10-year period during which tax credits are claimed; the credit period begins the year the project is placed in service or, at the election of the taxpayer, the year after the project is placed in service.

Deep Rent Skewed Projects [IRC Section 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:

- Fifteen 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 50 percent 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 and 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 the entire extended use period. The extended use period is the period beginning on the first day of the 15-year compliance period on which such building is part of a qualified low-income housing project and ending on the later of: (1) 15 years after the close of the 15-year compliance period, or (2) the date specified by the agency in the LURA.

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 21 through May 2 has been enrolled for five 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 annual income limits and rent ceilings. Developments with established gross rent floors will not be required to charge gross rents (rent plus utilities) below their floor amounts. Owners 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 development's 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

The United States Department of Housing and Urban Development

Low-income Unit

A unit that is rent-restricted and occupied by a household who qualifies under the applicable set-aside restriction of 50 percent or 60 percent of the area median income

Mixed-income Development

A development for which the owner has set aside fewer than 100 percent of the units for low-income households. As a result, mixed-income developments have both 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 onsite 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 Temporary Certificate of Occupancy (TCO)

Qualified Basis

An amount related to the cost of a building that is used in calculating the amount of tax credits awarded 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.

Section 42

The section of the Internal Revenue Code that applies to the LIHTC program (also referred to as 26 U.S.C § 42 or IRC Section 42)

Unit Fraction

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