multifamily financing programs

financing the places where people live and work

compliance manual

revised July 2014

Colorado Housing and Finance Authority (CHFA) has instituted a number of multifamily loan programs to assist borrowers in the development of multifamily affordable housing in Colorado.

This CHFA Multifamily Financing Programs Compliance Manual is designed to assist borrowers, management agents and onsite management staff of multifamily affordable housing projects in meeting the compliance obligations under their loan agreements. The compliance obligations are outlined in the CHFA Regulatory Agreement and/or Land Use Restriction Agreement (LURA) attached to the mortgage loan of the project.[1]

Compliance monitoring by CHFA will be administered through the Asset Management Division. Questions or concerns regarding CHFA's administration of the program should be directed to your Program Compliance Officer or the Manager of Multifamily Program Compliance at 303.297.2432 or toll free at 800.877.2432.

[1] Should a conflict occur between the terms of the Regulatory Agreement and/or LURA and the CHFA Multifamily Financing Programs Compliance Manual, the terms of the Regulatory Agreement and/or LURA shall supersede. The requirements set forth in the Multifamily Financing Programs Compliance Manual are subject to change from time to time.

If your development is also a recipient of Low Income Housing Tax Credits (LIHTC) or a participant in the Resolution Trust Corporation Completion Act (RTC) Program, please refer to the LIHTC Compliance Manual or the RTC Compliance Monitoring Program Owner's Manual for additional information.

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The CHFA Regulatory Agreement and/or Land Use Restriction Agreement (LURA) provide the primary basis for CHFA's oversight of management operations. The Agreement is a formal contract between CHFA and the owner whereby the owner, its successors, and assigns, promise to maintain and operate the project in a manner acceptable to CHFA and to be regulated as required in the agreement and the applicable program guidelines.

The owner is to provide for management of the project in such a manner that all applicable requirements are met. Particular attention should be given to compliance with provisions of any federal, state, or local laws prohibiting discrimination in housing on grounds of race, color, religion, sex, disability, national origin, familial status, or marital status.

The Regulatory Agreement and/or LURA state(s) that the owner has entered into a contract and has agreed that, in connection with all phases of operation of the project, the owner and any subsequent purchaser of the project will comply with the rent and income requirements of the loan finance program. CHFA uses a combination of the HUD 4350 Handbook and the IRS 8823 Tax Credit Guide in establishing procedures and guidelines for the loan programs.

It is important to note that when there are multiple programs associated with a particular project, the owner/agent must operate the project in compliance with the most restrictive requirements.

1.1 FHA-insured

The federal Department of Housing and Urban Development (HUD) requires that all owners and management agents that operate HUD-insured and HUD-assisted multifamily projects receive approval by HUD. This approval process is conducted at the time of underwriting or whenever there is a change in the project's principals, as that term is defined by 24 CFR Section 200.215, requiring the approval of HUD under its 2530 clearance regulations. The approval process is conducted through the completion of form HUD 2530 – Previous Participation Certification.[2]

- Risk Share – 542(c) Program

  The federal Risk Sharing Program was created under Section 542 of the Housing and Community Development (HCD) Act of 1992 to provide new forms of credit enhancement for multifamily housing loans. The extent to which HUD directs CHFA regarding underwriting standards and loan terms and conditions is related to the proportion of risk taken by CHFA. Consequently, CHFA is responsible for operating the Risk Sharing Program in accordance with its agreement with HUD, which specifically details CHFA's underwriting and monitoring obligations. It is critical that CHFA's Asset Management Division ensure that owners comply with the terms set forth in the CHFA Regulatory Agreement and with other HUD requirements. The CHFA Multifamily Financing Programs Compliance Manual along with the CHFA Regulatory Agreement will assist borrowers in meeting compliance obligations.

- 221(d)(3)/221(d)(4)

  The 221(d)(3) and 221(d)(4) programs were created to assist private industry in providing comfortable and attractive rental accommodations for low and moderate income families with preference or priority of occupancy to such families who have been displaced from urban renewal.

  Besides being subject to a CHFA Regulatory Agreement, these loans are subject to a HUD Regulatory Agreement and related regulations. Under both programs, CHFA has assumed responsibility for some of the oversight responsibilities of the programs. The CHFA Multifamily Financing Programs Compliance Manual and the HUD and CHFA Regulatory Agreements will assist borrowers in meeting the compliance obligations.

- 223(f)

  Section 223(f) of the National Housing Act was enacted to provide refinancing of existing multifamily projects that do not require substantial rehabilitation. The goal of the Program was the conservation of existing housing resources. Under this program, CHFA has assumed responsibility for some oversight

[2] See HUD Handbook 4381.5 REV 2 for an explanation of the application and approval process of form HUD 2530 – Previous Participation Certification.

responsibilities. The CHFA Multifamily Financing Programs Compliance Manual and the HUD and CHFA Regulatory Agreements will assist borrowers in meeting the compliance obligations.

1.2 Non-FHA-insured (also referred to as "CHFA loans")

- SMART (Small Affordable Rental Transactions Program)

  This program is designed to provide financing for developers of small rental housing projects for loan amounts up to $2 million.

- CHFA/HOF and FAF/HOF (CHFA/Housing Opportunity Fund and Financial Adjustment Factor/Housing Opportunity Fund)

  Although the sources of funds differ for these two programs, both are commonly aimed at funding housing for special populations with loan amounts generally under $500,000.

1.3 Tax Exempt Bond-financed

Some multifamily loans, including both FHA-insured and non-FHA-insured, are financed by the issuance of tax exempt bonds, including private activity bonds and qualified 501(c)(3) bonds for qualified residential rental projects. Due to their tax exempt status, such loans are subject to certain Internal Revenue Service requirements in addition to CHFA loan program requirements.

The IRS requirements concern minimum set-asides, full time student status, and unit transfers. Tax exempt bond-financed projects must meet and maintain their minimum set-aside restrictions to comply with the bond financing requirements.[3] The minimum set-aside (20/50 or 40/60) and any additional restrictions are determined at loan closing and outlined in the occupancy requirements indicated in the project's Regulatory Agreement and/or Land Use Restriction Agreement. The other IRS requirements are addressed later in this manual.

Noncompliance with tax exempt bond requirements may cause the bonds to become taxable and trigger an IRS audit. For loans that are pooled, this risk attaches to the entire bond issue and not just the noncompliance of a single project.

[3] See the Definitions Section for an explanation of minimum set-asides.

chapter 2
owner's responsibilities

2.1 Reporting and Compliance

Throughout the life of the loan, it is the owner's responsibility to report and provide certain information, including:

- changes in ownership or management;
- annual submissions as required (see paragraph 2.3 below); and
- any information requested by CHFA.

All documentation must be submitted within the time frame requested.

2.2 Physical Compliance of the Project

The owner is also responsible for ensuring that the project 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 regulatory agreement, LURA, and CHFA's policies.

2.3 Required Submissions

Owners generally are required to submit documents and fees, as applicable, throughout the life of the loan as outlined below. Be sure to check each loan's regulatory agreement for specific requirements.

- Occupancy and demographic data via Web-based Compliance Management System (WCMS)
    - 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 uses this data to run monthly reports, including vacancy rates.
- Owner Certification of Loan Compliance, due annually by January 15 for the previous year
- Proposed operating budget, due annually no less than 60 days prior to the project's fiscal year start

- Annual audited financial statements, due annually within 90 days following the project's fiscal year end

Tax exempt bond-financed projects only:

- IRS form 8703 due annually by April 30 for the previous year
- Owners must comply with IRS form 990 filing requirements

2.4 Program Compliance Training

Owners, management agents and site managers are encouraged to attend loan compliance training on an annual basis to keep abreast of any changes in laws, regulations, and CHFA policies regarding the program.

2.5 CHFA Program Compliance Officers

Each project 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 project are compliant with the program requirements.

2.6 CHFA-provided Forms

Various CHFA-designed forms are referenced in this manual but are not included in the actual document. With certain exceptions, owners are not required to use CHFA forms provided that the owner's forms contain the same language and questions included in the CHFA forms.

CHFA forms may be updated from time to time. To ensure that owners have the most current forms, please visit the CHFA website periodically at www.chfainfo.com/arh/asset/Pages/forms.aspxl.

The following chapter outlines the overall requirements projects must meet. Projects that do not consistently meet these requirements during the compliance period may risk being placed in regulatory default on project loans.

3.1 Rent Restrictions

Units set aside as low income must be rent restricted as required by the Regulatory Agreement. A unit is considered to be rent restricted if the "gross rent" does not exceed 30 percent of the applicable income limitation. CHFA releases Income and Rent Tables annually based on current median income data from HUD. This information is typically released in December each year and is available on CHFA's website on the Multifamily/Asset Management page. Projects must implement new income and rent limits **within 45 days** of the date they are released by HUD.

- Gross Rent

  Is defined as the resident-paid rent, plus a utility allowance. The allowance is used to cover any utilities a resident is required to pay other than telephone, cable, or internet unless the fee for telephone, cable, or internet charged by the owner is not optional. The gross rent must not exceed the applicable maximum rent as listed on the Income and Rent Table in effect as of the date of certification.

  Gross rent does not include

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

- Section 8 Assisted Units

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

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

If at any time the subsidy is revoked, the owner may not charge a gross rent greater than the rent limit.

3.2 Fees

- Allowed Fees

  The following fees may be charged in addition to gross rent:

  - Pet deposits, rents, and fees
  - Early lease termination fees
  - Refundable fees such as security deposits
  - Application fees as long as the charges do not exceed the average expected out-of-pocket costs for checking tenant qualifications such as income, rental history, credit history, and criminal history.

- Disallowed Fees

  The following fees may **not** be charged. If there is any question about allowability of fees, contact your Program Compliance Officer.

  - Assistance/service animal deposits, rents and fees
  - Month-to-month lease fees
  - Nonrefundable redecoration fees
  - Renters insurance fees
  - Unit transfer fees
  - Utility transfer fees
  - Fees for preparing a unit

3.3 Utility Allowances

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

To determine which utility allowance(s) can be used, the CHFA Loan program follows the federal regulations that apply to the Low Income Housing Tax Credit (LIHTC) program. 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/mfl_lihtc_resources/utility_allowance.pdf.

3.4 Non-Transient Occupancy

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

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

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

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

chapter 4
certification of households

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

4.1 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 live in the unit:

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

4.2 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. People who may be considered temporarily absent are:

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

You must count income of all family members approved as household members even if some are temporarily absent.

4.3 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
- Students (part time or full time) who are head, co-head, or spouse
- Students (part time or full time) who are **not** head, co-head, or spouse (include only the first $480.00 of earned income)
- Active military member(s) who are head, co-head, or spouse

4.4 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 who receive earned income, including foster children
- Nonmembers: live-in aides and guests[4]
- Qualifying students who receive financial assistance[5]
- Family members who receive payment for the care of foster children and foster adults
- Full time students who are **not** head, co-head, or spouse (exclude all but the first $480.00 of earned income)
- Active military member(s) who are **not** head, co-head, or spouse

4.5 Qualification of Households at Move-in

Household income at move-in must not exceed the applicable income limit designated for the unit in accordance with the affordability requirements outlined in the project's Regulatory Agreement or LURA. Households must be qualified for low income units prior to moving in or taking possession of the unit.

[4] HUD 4350.3, Chapter 5
[5] HUD 4350.3, Chapter 5

4.6 Determining Qualifying Household Income

Generally, the CHFA Loan Program uses Chapter 5 of HUD Handbook 4350.3 for guidance in determining income and asset calculations. A copy of the handbook may be found at http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/hsgh/4350.3.

CHFA's policy is to use the highest income/most conservative scenario to determine household income. The maximum potential household income must be considered to ensure the household qualifies for the unit.

Annual household 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 resident takes possession of the unit. In subsequent years, the effective date is the first day of the month of move-in.

4.7 What Is Included in Annual Household Income

- Gross earned income of wages, salaries, overtime, commissions, fees, tips, and bonuses
- Earned income of foster adults[6]
- Interest, dividends, and other net income of any kind from real or personal property
- Unearned income of all household members including children, foster children, foster adults, and students [7]
- Recurring monetary contributions or gifts. This includes contributions (cash or non-cash) from a relative, charitable organization, or other source not living in the unit. These contributions can be for rent, utilities, car payments, insurance, etc.
- Student financial assistance - only when the students meet the criteria specified in section 4.13 below
- Periodic amounts received from annuities, insurance policies, retirement funds, pensions, disability, and death benefits
- The first $480.00 of **earned** income for full time students who are 18 years of age and older and who are **not** the head, co-head, or spouse

[6] HUD 4350.3, Chapter 5
[7] HUD 4350.3, Chapter 5

4.8 Business Income/Self-employed Persons

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

Business income includes:

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

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

- business expenses (salaries, utilities, supplies, rent, insurance);
- interest portion on loans **not** used for business expansion; and
- straight-line depreciation.

You may not deduct:

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

4.9 Alimony

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

If a resident has been awarded alimony, management must:

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

4.10 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, 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.

4.11 Public Assistance and/or Social Security Benefits

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

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

4.12 Unemployment Benefits

Unemployment benefits that are expected to be received for less than 12 months, should be counted as if they would be received for all 12 months, unless the resident has obtained employment and the start date of that employment has been verified.

4.13 Student Financial Aid and Section 8 Program Participants

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

Potential student financial assistance income sources:

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

Student financial assistance received is not counted as income for:

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

4.14 What is Excluded from Annual Household Income

- Food stamps, Meals on Wheels, or other programs providing food for the needy and groceries provided by persons not living in the unit
- Grants or other amounts received for medical assistance
- Student financial assistance, except as outlined in section 4.13 above
- Earned income in excess of $480.00 for full time students 18 years or older (if not the head, co-head, or spouse, for bond-financed projects only)
- Temporary, nonrecurring, or sporadic income (including one-time gifts)
- Recurring monetary contributions that are paid directly to a child care provider by persons not living in the unit
- Lump sum payments from Social Security or other sources
- Personal and student loans

4.15 Calculating Annual Household Income

Income should generally be annualized using the household's current circumstances unless verification forms indicate that a change will occur. Include overtime, bonuses, and raises in the income calculation. When year-to-date figures are provided, this amount is required to be taken into consideration.

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

- Hourly wages - multiply by 2,080 hours (for full time employment, 40 hours per week)
- Weekly wages - multiply by 52 weeks
- Biweekly wages (every other week) - multiply by 26 periods
- Semimonthly amounts – multiply by 24 periods
- Monthly amounts – multiply by 12 months
- Annual salaries require no further calculations

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

The residents occupying income-restricted units must be income-eligible. Therefore, low income, very low income, and moderate income persons or families must have their income and assets certified using a Tenant Income Certification (TIC) form prior to move-in and annually thereafter.[8] Additionally, low income and very low income households must have their incomes and assets verified by third-party prior to move-in and annually thereafter using the appropriate income and asset verification forms. Moderate income households may self-certify their income and assets at move-in and annually thereafter.

Any affordable unit shall retain its character (low income, very low income, or moderate income) designated at move-in until such unit is vacated and reoccupied. Tenant Income Certifications, income and asset verifications, and additional documents necessary to determine eligibility must be present in tenant files for inspection by CHFA Asset Management staff.

The income limits applicable to a household are based on the number of household members.[9] To be eligible for occupancy, the household's annual gross income must not exceed the applicable income limit at move-in as stated in the project's Regulatory Agreement.

5.1 CHFA Income Verification Requirements

The CHFA Loan Program uses HUD Handbook 4350.3 (4350), Chapter 5, 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 08.07.2013, HUD issued Change 4 to the 4350. With Change 4, HUD modified its requirements regarding verification methods and types of third-party written verification.

CHFA has elected not to follow HUD's modified requirements and will continue to **require full-third party documentation as described in this manual**.[10] Therefore, this manual's verification requirements now differ from those in the 4350.

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[8] For HUD project-based Section 8 properties and Rural Development (formerly Farmers Home) Section 515 projects, an alternative form may be used to satisfy this annual certification/re-certification requirement. Instead of the TIC, Section 8 projects may use the HUD 50059. Section 515 projects may use the RD 3560-8.

[9] The rent and income limits are based on figures determined annually by HUD and provided by CHFA for Area Median Income (AMI) limits ranging from 30 – 120% AMI.

[10] Properties with **both** CHFA loans and Section 8 HAP contracts are exempt from CHFA's income verification requirements and may follow the current HUD 4350.3 instead. This exception does not apply to properties with LIHTC.

5.2 Annual Recertification

100% Affordable Projects

For 100% affordable projects, all new move-ins must undergo one complete annual recertification. This recertification includes third-party verification of income and assets and completion of the Tenant Income Certification form. The annual recertification is required to be completed by the first day of the same month as move-in.

Following a household's first annual recertification, third-party verifications are not required at subsequent annual recertifications provided the following criteria are met: [11]

- All units in the project are restricted for occupancy by very low income, low income, and/or moderate income households (i.e., no market rate units); and
- All units are in compliance with the terms of the project's Regulatory Agreement and/or Loan Agreement.

Instead, at annual recertifications following the first annual, the resident will be required to complete an annual self-certification of income and assets. The owner will use the Self-certification Questionnaire (available on CHFA's website at www.chfainfo.com/arh/asset/LIHTCForms/SelfCertificationQ-LIHTC.pdf) to complete the Tenant Income Certification (TIC) form. The owner will need to check the *self-certification* option at the top of the TIC.

CHFA reserves the right to reinstate the annual third-party verification requirement should the project fall out of compliance with the terms of the Regulatory Agreement and/or Loan Agreement or it is determined that the owner leased a unit to a non-income-qualified household.

Mixed Income Projects

For mixed income projects (i.e., projects with market rate units), third-party verification of income and assets is required at move-in and annually thereafter.

There is no waiver of the annual third-party verification requirement for mixed income projects.

5.3 Employment Income

Employment income verification for employed persons 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

[11] Effective July 31, 2008 as a result of the Housing and Economic Reform Act "HERA" of 2008 – Sec 3010 – Subparagraph (A) of 142(d)(3) was amended to allow a waiver of the annual recertification requirement for 100 percent affordable bond developments.

acceptable forms of verification must be documented before the owner may use a lesser form of verification.

- Third-party Written Verification

  This is the method of verifying income required to be attempted first. Third-party verification is written verification that is received directly from the source, such as an employer, public assistance, or any entity from which a resident receives income. To obtain third-party verification:

  - have the resident sign the release on the Verification of Employment (VOE) form authorizing third-party disclosure of the applicant's income;

  - fax or email the form directly to the appropriate third-party contact, as identified by management; and

  - request that the third party fax, email, or mail the form directly back to management.

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

  When available, theWorkNumber.com is an acceptable alternative to sending a written verification to the employer. If a fee is charged, verification through theWorkNumber.com is not required.

- Third-party Verbal Verification

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

- Paycheck Stubs

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

  - all efforts to obtain third-party verification have been documented;

  - the paycheck stubs are consecutive and must represent at least the three most recent pay periods relative to the date of certification; and

  - the paycheck stub copies are complete and unaltered.

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

- Self-certification

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

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

5.4 Self-employment

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
- business plan summary (i.e., explanation of business type, frequency of work, frequency of payment, and typical payment amounts)
- **year-to-date** profit and loss statement (i.e., income and expense statement or similar income statement)
- 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 call the IRS at 800.829.1040 and obtain a printout of the tax return by requesting Letter 1722.
  - The resident may also complete IRS Form 8821, Tax Information Authorization, which allows the owner to verify their federal tax return.

For self-employed persons who have not filed annual tax returns, the following must **also** be obtained:

- most recent **annual** Profit and Loss statement; and
- copies of payments/checks received from customers or ledger cards, when available.

5.5 Social Security, Supplemental Security Income (SSI), Pensions, Disability

Third-party verification of the benefit must be received from the agency providing the benefit. An award or benefit letter or a computer generated print-out detailing benefits, dated within one year of the certification effective date, will be accepted in lieu of the Verification of Benefits form provided that the information is the most current. Bank statements, tax forms, and checks are not acceptable forms of verification.

5.6 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 printout detailing benefits is acceptable in lieu of the Verification of Public Assistance form.

5.7 Unemployed Residents

Unemployed adult residents must complete an Unemployed Resident Affidavit verifying that they are currently not employed, indicating whether or not they anticipate becoming employed within the upcoming 12-month period and, if so, estimating the amount they expect to earn. Anticipated income must be included in qualifying household income.

Residents of Assisted Living or Senior projects who are 62 and older are not required to complete an Unemployed Resident Affidavit.

5.8 Unemployment Benefits

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

5.9 Alimony

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.

5.10 Child Support

If a household has children who do not have both parents/guardians in the home, the resident 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
- if the amount received is less than what was ordered or no support is received at all, obtain a payment history report from Family Support Registry to determine the amount actually received in the 12 months prior to certification.

If a resident does not have a court order for child support but is receiving it informally, the owner must:

- obtain a signed and dated statement from the child support provider as to the amount and frequency of the payments.

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.

5.11 Recurring Contributions and Gifts

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

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

5.12 Effective Term of Verification

- 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 reliable and new verifications must be obtained.

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

chapter 6

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, retirement accounts, real estate, and pension funds. Each adult member of a low income household is required to complete an individual Resident Statement of Assets form, even if the household claims to have no assets. A married couple may complete one form.

If households claim assets with a total value of over $5,000.00, third-party verification of all assets must be obtained using a Verification of Assets form. If a 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 the asset.

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

Bank accounts must be verified directly with financial institutions. If the financial institution charges a fee for such service, then bank statements can be used. For savings accounts, the current statement must be obtained. For checking accounts, six months of statements must be obtained.

6.1 CHFA Asset Verification Requirements

The CHFA Loan Program uses HUD Handbook 4350.3, Chapter 5, 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 08.07.2013, 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.

CHFA has elected not to follow HUD’s modified requirements and will continue to require **full-third party documentation as described in this manual**. Therefore, this manual’s verification requirements now differ from those in the 4350.3.

6.2 What Is Included in Assets

- Cash on hand
- Cash held in savings and checking accounts and/or a safe deposit box
- Revocable trusts
- Stocks, bonds, certificates of deposit, and money market accounts

- Retirement and pension funds
- 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 (for two years from the date on which the assets were disposed)

6.3 What is Excluded from Assets

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

6.4 Asset Valuation Guidelines

Checking Account:	Use the past six months average balance
Savings Account:	Use the current balance
Equity in Real Estate:	Convert to and use the cash value
IRA or Keogh Accounts:	If not withdrawing, use cash value if withdrawing, use six-month average balance
Retirement Accounts:	While employed, use the amount that can be withdrawn without retiring or terminating employment. At retirement, add lump sum amounts to net family assets or add periodic amounts to annual income.
Jointly-owned Assets:	Prorate according to the percentage of ownership. If no percentage is specified or provided by state or local law, prorate the assets evenly among all owners.

6.5 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, you may deduct:

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

6.6 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.

When the total value of all assets is more than $5,000.00:

- third-party verification must be obtained for **each** asset, and
- imputed income from assets must be calculated and compared with actual income from assets.
    - On the TIC, use the greater amount.
    - Imputed income is calculated using the passbook interest rate, currently 2 percent.

6.7 Income from Rental Property

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

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

The principal portion of mortgage payment may not be deducted.

6.8 Assets Disposed of for less than Fair Market Value

Assets disposed of for less than fair market value (FMV) are counted for two years from the disposal date of each asset. These include cash gifts as well as real estate, etc., and apply to both family and business assets. At move-in and annual recertification, residents must declare whether and when assets have been disposed of for less than FMV. The amount counted as a disposed of asset is the difference between the cash value and the amount actually received.

Assets are considered to be disposed of for less than FMV if the cash value of the disposed of asset exceeds the gross amount received by more than $1,000.00. If the difference is less than $1,000.00, the asset may be disregarded.

7.1 Student Rule – Tax Exempt Bond-financed Projects

Residents who are full time students may disqualify a unit under the project's financing.[12] For the CHFA loan program, **this rule applies only to tax exempt bond-financed projects.**

All households at tax exempt bond-financed projects must certify their student status at move-in and annually thereafter.

Under this type of financing, a unit occupied entirely by full time students will qualify **only** if the household satisfies one of five exemptions:[13]

- Student receives assistance under Title IV of the Social Security Act (TANF)
- Student is enrolled in a job training program receiving assistance under the Job Training Partnership Act or under similar federal, state, or local laws
- Student is a single parent with children **and** the parent is not a dependent of another individual **and** the children are not dependents of another individual other than a parent or legal guardian
- Students are a married couple and are eligible to file a joint tax return
- Student was at one time a ward of the state (foster child)

7.2 Next Available Unit Rule – Applicable only to Mixed Income Projects

A low income unit occupied by a household whose income increases up to 140 percent of the applicable income limit continues to be treated as a low income unit if the household initially met the applicable income limit at the time of move-in and the unit continues to be rent-restricted.

However, any unit occupied by a household whose income increases above 140 percent of the applicable income limit at the time of recertification is considered "over income" and ceases to be treated as a low income unit **if** any other residential unit of comparable or smaller size within the same building becomes available within the building **and** is rented to a non-qualifying household.[14]

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[12] See IRC § 142(d).

[13] Effective July 31, 2008, as a result of the Housing and Economic Reform Act of 2008 "HERA" – Sec 3008 (b), the student exemptions were amended to correspond with the Low Income Housing Tax Credit Program. In addition, HERA Sec 3004(c) added a fifth exemption allowing a student who was *previously* under the care and placement of the state agency (Foster Care) to be exempt under the full time student rule.

[14] Effective July 31, 2008, as a result of the Housing and Economic Reform Act of 2008 – Sec 3008 (a), Paragraph (3) of Section 142(d) relating to current income determinations was amended to change the NAUR for tax exempt bond-financed projects from a "project" rule to a "building" rule.

7.3 Live-in Aides

A live-in aide is not considered a household member provided he or she does not have a financial obligation to the household. A live-in aide is not qualified for the unit and is not a party to the lease. Live-in aides may be listed as persons approved to be in the unit. Owners must obtain verification of the need for a live-in aide directly from a resident's physician, psychiatrist, or other knowledgeable health care provider.[15]

7.4 Completion of the Tenant Income Certification (TIC)

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

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

For HUD Section 8 projects or Rural Development Section 515 projects, the HUD 50059 and the RD 3560-8 income certification forms are acceptable alternatives the TIC.

However, the HUD 50058 certification form used for Mod Rehab projects may **not** be used in lieu of the TIC.

7.5 Self-certification TICs

At 100 percent affordable projects, the resident may self-certify income and asset information after the first annual recertification. Thereafter, third-party verification is no longer required. If the project is tax exempt bond-financed, owners must continue to ensure compliance with the student rule, and residents must certify student status annually.

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

[15] HUD 4350.3, Chapter 3

7.6 Annual Recertification

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

Note: For the loan program, interim certifications are required *only* when a household increases in size, as described below.

7.7 Changes in Household Composition – Interim Certifications

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

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

7.8 Affordable Housing Lease Addendum

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. Regardless of the lease term, however, residents must agree to recertify annually.

The CHFA-provided Affordable Housing Lease Addendum (see 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 verbiage in the lease, either of which must contain similar language to the CHFA-provided addendum.

7.9 Unit Transfers – Tax Exempt Bond-financed Projects

For tax exempt bond-financed projects, transfers between buildings require full certification and should be treated as a move-out/move-in. The household must qualify to occupy the unit in the new building based on their circumstances as of the transfer effective date.

7.10 Building Disposition (Changes in Ownership)

CHFA is responsible for underwriting requests for any transfer of ownership, including a voluntary or involuntary change in borrower, owner or taxpayer, to determine whether a project and the proposed new entity meet program requirements and CHFA guidelines, and whether the proposed entity has the qualifications to operate the project. For instance, if 501(c)(3) bonds were used to finance a project, the proposed new owner must be a 501(c)(3) entity that is current with all of its Internal Revenue Service filings (see Section 8.11 below) **CHFA's written consent is required prior to any transfer of ownership.**

If an owner is considering disposing of a building or an interest in a building, a tax accountant or attorney should be consulted. *Owners may contact CHFA's Asset Quality Manager for further guidance and to request a transfer of ownership application.*

7.11 Hazard Insurance Claims

All property owners with a loan from CHFA are required to maintain hazard insurance. CHFA's approval is required before hazard insurance claim payments may be deposited. When an owner files a hazard insurance claim, he or she must notify the CHFA Program Compliance Officer (PCO) and provide a description of the reason for the claim — i.e., hail damage, water penetration, fire damage, etc. The Asset Management Division then reviews and processes claim requests according to CHFA's Hazard Insurance Claim policy at www.chfainfo.com/arh/asset/mfl_lihtc_resources/Hazard_Insurance.pdf.

Once CHFA receives notice of a claim, the PCO and CHFA's Construction Services team will work with the owner to coordinate an inspection, process the insurance adjustment check, and disburse payments to the owner and/or contractor(s) according to the policy noted above. Please note that even if an insurance claim is not filed, the owner should notify the PCO of any significant damage to a property.

7.12 Compliance Period

All projects must comply with program requirements for the life of the loan and, in many cases, for a longer period as outlined in the Regulatory Agreement. Please read the section of the Regulatory Agreement related to the Term or the Qualified Project Period.

The Regulatory Agreement and/or Loan Agreement may require that the owner submit several types of reports to CHFA, either on a monthly, quarterly or annual basis. Please refer to the project's specific governing documents to determine those requirements particular to the project in question. Below is an explanation of the reporting requirements.

8.1 Monthly Financials

Owners shall submit financial statements, including balance sheet, income statement, and cash flow, on a monthly basis specific to the project for the first full year of operation or until the project reaches 93 percent occupancy and sustains this status for three consecutive months, whichever is longer. These financial statements are due to CHFA no later than the 20th of the month for the previous month.

At any time during the Qualified Project Period for the loan, following initial sustaining occupancy CHFA reserves the right to request the submission of monthly financials. The financial statements will be due to CHFA no later than the 20th of the month for the previous month.

8.2 Lease-up Occupancy Reports

Owners are required to enter occupancy and demographic information during lease up directly into the Web-based Compliance Management System (WCMS).[16] CHFA will monitor the lease up process until such time the project obtains 93 percent occupancy and sustains this status for three consecutive months, whichever is longer.

WCMS is a system created to allow owners and managers of CHFA-monitored projects to submit occupancy reports to CHFA over the Internet. WCMS provides time-saving and efficiency benefits to CHFA's customers and internal monitoring staff as well. Once the information is entered the first year, the system retains this data under your account for future reporting, thereafter only requiring updates to the information.

8.3 Monthly Bank Statements

Borrowers are expected to comply with reserve requirements noted in the Regulatory Agreement and/or Loan Agreement and maintain all reserve funds (e.g., Replacement Reserve, Operating Deficit Reserve, Lease-up Reserve, and/or Residual Receipts) in an account that is under the control of CHFA.

CHFA has entered into a contractual relationship with Wells Fargo Bank to manage these accounts. This relationship provides for effective oversight of these accounts by CHFA as required. Wells Fargo automatically provides the owner and CHFA with a copy of the monthly bank statement for each account.

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[16] WCMS is a web based on-line data entry system. To enter information into WCMS, the owner/management must register online to obtain a password and data entry instructions. Registration information can be found at https://chfaac.chfainfo.com/Login/Register.

8.4 Operating Budget

Owners are required to submit a proposed operating budget to CHFA no less than 60 days prior to the beginning of each fiscal year of the project. The proposed operating budget should include anticipated income of the project and detailed expenses. The operating budget should take the following into consideration: administrative expenses, administrative fees, management fees, operating expenses, maintenance, services (if applicable), utilities, hazard insurance, taxes and assessments, loan principal and interest, other costs payable pursuant to the financing documents, deposits to a replacement reserve fund, and deposits to any other reserves required by CHFA pursuant to the Regulatory Agreement, Loan Agreement, or other financing documents.

8.5 Owner Certification of Continuing Loan Compliance

The Owner Certification of Continuing Loan Compliance is submitted to CHFA by January 15 each year. It certifies that the project was in compliance with the Regulatory Agreement and/or Loan Agreement during the previous year.

8.6 Monthly Vacancy Data

Previously, each project's vacancy number as of month-end was submitted to CHFA each month. As of 2014, manual vacancy data submission is no longer required. Vacancy data is now monitored through a monthly review of WCMS. Thus it is critical that data is entered into WCMS in a timely manner (see WMCS monthly requirement described below).

8.7 Occupancy and Demographic Data (WCMS)

WCMS is a system that allows owners and managers of CHFA-monitored projects to submit occupancy and demographic data to CHFA over the Internet. The required information is collected on each household's Tenant Income Certification form and Annual Demographic Information form. CHFA utilizes the data (including move-in, move-out, annual recertification and unit transfer records) to understand the characteristics of populations served and to ensure that the appropriate populations are benefiting from CHFA's programs.

WCMS provides time-saving and efficiency benefits to CHFA's customers and internal monitoring staff. Once a new household's information is entered, the system retains this data under each property's account for future reporting, thereafter only requiring updates to the information. *Project-based Section 8 projects that enter occupancy and demographic data in TRACS are not required to complete WCMS*.

Annual Report
All WCMS records for the previous year are to be entered and finalized by January 15 each year. CHFA will then prepare an annual report from the system.

Monthly Requirement
Throughout the year, move-in, move-outs, transfers and recertifications must be entered in the system as they occur, or at least monthly. *Failure to update WCMS on*

a monthly basis may result in a finding at the next CHFA program compliance review.

8.8 Audited Financial Statements

The project shall submit one copy of the audited financial statements to CHFA within 90 days following the project's fiscal year end.[17]

For FHA-insured projects, including Risk Share 542(c) projects, the audit is to be completed in accordance with the HUD requirements as stated in IG 2000.04 – Rev.2, CHG 7, Chapter 3, and HUD Handbooks 4370.1 and 4370.2. In addition, for 221(d)(3), 221(d)(4), and 223(f) FHA-insured projects, the audit must be submitted to HUD via electronic submission.

For non-FHA-insured projects, the audit is to be completed in accordance with Generally Accepted Accounting Principles (GAAP).

Loans closing in the last quarter of their fiscal year will not be required to complete an annual audit for that year. Rather, CHFA will require that the last three months of the fiscal year be audited with the following fiscal year. A project that has a fiscal year end of December 31, and the loan closes after October 1, or a project that has a fiscal year end of June 30, and the loan closes after April 1, are two examples. CHFA does require end-of-the-year statements or a financial compilation generated by the owner for the partial year within 90 days following the fiscal year end.

The audit must reflect the financial standing of the CHFA-financed project independently from the partnership and/or owner entity. In addition, the audit must state specifically how much surplus cash remained at the end of the fiscal year. Failure to submit this information will result in the denial of the borrowers request for owner distributions.

Exception: HUD Notice H 2013-23
In 2013, HUD revised financial reporting requirements for small multifamily housing projects. Specifically, a project for which the owner receives less than $500,000 in combined federal financial assistance[18] is now permitted to submit an Owner Certified financial statement instead of audited financial statements. Owners may contact their Program Compliance Officer to determine if a project is eligible for this waiver.

8.9 Affirmative Fair Housing Marketing Plan

All FHA-insured projects must have an Affirmative Fair Housing Marketing Plan (AFHMP) current within five years and approved by HUD. For projects with 542(c) Risk Share loans, documentation confirming this requirement is met must be submitted to the CHFA. The AFHMP template is located on HUD's website.

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[17] Although most regulatory agreements and/or Loan Agreements may indicate a required submission date of 60 days after the end of the fiscal year, 24 CFR [Code of Federal Regulations] 5.801, Uniform Financial Reporting Standards (UFRS), supersedes this requirement by giving all developments 90 days to submit their FYE Audited Financial Statements.

[18] Combined federal financial assistance means assistance that non-Federal entities receive or administer in the form of grants, loans, loan guarantees, property (including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, and other assistance.

8.10 IRS Form 8703 - Tax Exempt Bond-financed projects

Borrowers receiving tax exempt Private Activity Bond (PAB) financing are required to file Form 8703 annually by April 15 after the calendar year for which the certification is made. Failure to file Form 8703 each year subjects the project owner to an IRS penalty of $100 per failure to file.

A ***copy*** of the IRS Form 8703 must be submitted to CHFA by April 30, allowing the borrower 15 days to comply with this CHFA requirement. **IRS Form 8703 is available online at** www.irs.gov.

8.11 IRS Form 990 - Tax Exempt Bond-financed projects

Most tax exempt organizations are required to file an annual Form 990 “Return of Organization Exempt from Income Tax” with the IRS. For CHFA borrowers receiving tax exempt Private Activity Bond (PAB) financing, the IRS Form 990 must be filed annually in accordance with IRS requirements.

If an organization fails to file an annual or submit a notice as required for three consecutive years, it will automatically lose its tax exempt status and will be in default on its tax exempt loan with CHFA.

The IRS Form 990 and its instructions are available online at www.irs.gov.

chapter 9
management reviews and physical inspections

9.1 Review and Inspection Requirements

CHFA's Asset Management staff will be responsible for completing a management review and physical inspection of the project to ensure it is being operated to provide safe, decent, and sanitary housing. A review of tenant files and management practices will be completed during the management review, and may include an evaluation of the Fair Housing & Equal Opportunity (FHEO) practices of the owners and management agents. Owners and agents will receive a copy of the CHFA management review report within thirty days of the review.

- A management review and inspection of all FHA-insured projects will be conducted annually.
- Management reviews for all non-FHA-insured projects will be conducted every third year, or more frequently if necessary.
- For all loan projects, the management review will include the review of at least 15 percent of the tenant files (or minimum of 10).
- For FHA-insured projects a minimum of two units of each bedroom size, common areas, and interior and exterior grounds will be conducted. Additional units may be inspected as necessary.
- For all other loan programs, the physical inspection will include an inspection of 20 percent (or minimum of 10) units, common areas and interior and exterior grounds.

9.2 Real Estate Assessment Center (REAC)

In addition, all FHA-insured projects are subject to the Uniform Physical Condition Standards (UPCS) and physical inspection requirements through the Real Estate Assessment Center (REAC). Each project inspected under REAC will be assigned one of three designations: standard 1 performing, standard 2 performing, or standard 3 performing. The point cutoff (based on a 100-point system) and inspection cycle for projects within these designations are as follows:

Standard 1 performing projects, the highest performing, score 90 points or higher and are inspected every three years;

Standard 2 performing projects score 80 to 90 points. Those projects are inspected every two years; and,

Standard 3 performing projects score 79 or less and are inspected annually.

The physical inspection reports will include information concerning the level of severity for each deficiency observed during the inspection. One of three levels of severity will be assigned to each deficiency: level 1 (minor), level 2 (major), and level 3 (severe).

Exigent Health and Safety Hazards

In addition, some projects receive a "Notification of Exigent Health and Safety Hazards (EH&S) Observed" citation by the REAC inspector on the day of the inspection. The owner must correct or mitigate EH&S violations immediately if possible, but no later than three business days after citation.

For all Risk Share 542(c) projects, notice of correction must be submitted to the CHFA Program Compliance Officer (PCO) using the **Project Owner Certification that All Exigent Health and Safety Items Have Been Corrected** at www.chfainfo.com/arh/asset/LIHTCForms/EHS_Owner_Certifications.pdf. This form must be completed and submitted to the CHFA PCO on the letterhead of the project or owner. The form also must be signed by the owner. The agent representative cannot sign the form. CHFA will be responsible for forwarding this information to the applicable HUD Program Manager assigned to the project.

Follow-up on REAC Scores

- Projects Scoring 60 Points or Above

  The owner must make required repairs as indicated by the inspection results as part of ongoing maintenance. In general, no other follow-up will be required.

- Projects Scoring 31 to 59 Points

  For all Risk Share 542(c) projects, CHFA will notify the owner/manager in writing that a plan of correction is required. HUD will also coordinate a discussion with the owner and CHFA to discuss the process. The owner should pay particular attention to the items classified as Exigent Health and Safety (EH&S), L3 (severe), and L2 (major), and then conduct his/her own survey of the project based on HUD's findings. This survey must be a thorough review of the project including all units and all buildings.

  All findings must be resolved within 60 days of the discussion coordinated by HUD. However, if the owner wishes to appeal any findings, the appeal must be submitted in writing to REAC within 30 days of the REAC report release date.

  Within 30 days of the HUD contact, the owner is expected to submit a proposed plan of corrections to the CHFA Program Compliance Officer, which outlines:

  - corrections made to repair deficiencies noted in the inspection, particularly EH&S, L2 and L3 items;

- results of the owner’s property survey;
- owner’s plan to correct all deficiencies on the REAC Report and found by the owner’s survey. (If an owner can complete all repairs within 60 days from the submission of the Proposed Plan for Correction, the Plan will suffice); and
- the resources to be utilized by the owner.

If it can be determined that the problems at the project are not severe and can be readily fixed, the owner, based on their compliance history, may be permitted to self-certify that the deficiencies are corrected. If the problems are severe or the owner’s capacity is uncertain, a detailed plan may be required instead of a self-certification. Other forms of documentation, such as pictures, bids, third-party inspections, etc., may also be required. Should HUD or the owner, at the 30-day mark, believe the necessary repairs cannot be completed within 60 days, a plan including a timeline for completing work will be required. **The owner must submit monthly updates to CHFA until confirmation of all repairs is confirmed in writing.**

If the owner does not complete or attempt to complete and certify corrections within 60 days, the PCO will notify the HUD PM of the non-compliance and work with the HUD PM directly to determine what course of action should be taken. HUD will flag the owner and management agent in iREMS and schedule a re-inspection.

- Projects Scoring 30 Points or Below

  The inspection report will be sent to HUD’s Departmental Enforcement Center (DEC). REAC will send a letter advising the owner of the referral. The project will be assigned to a DEC Satellite Office for further evaluation. In the meantime, the DEC Program Office will seek to resolve all EH&S hazards included in the inspection report.

CHFA has entered into a contractual relationship with Wells Fargo Bank to manage Reserve for Replacement, Residual Receipt, and Operating Deficit Reserve accounts required by the CHFA Regulatory Agreement. Once the account(s) have been established at Wells Fargo Bank, both the borrower and CHFA will receive copies of the monthly statements.

10.1 Reserve for Replacement

The owner shall establish and maintain a Reserve for Replacement as a separate account held in the name of the project with Wells Fargo Bank. These funds shall at all times be under the control of CHFA. Owners are required to make monthly replacement reserve deposits in accordance with the terms of the Regulatory Agreement. The exact amount of the monthly deposit is set forth in the Regulatory Agreement and/or Loan Agreement.

The Replacement Reserve Fund may be used to reimburse the project's operating account or pay directly for any required repair or replacement costs that may be capitalized by the owner in accordance with general accepted accounting principles consistently applied. The account is to be utilized to help defray the costs of replacing a project's capital items.

HUD outlines the items that may be included and excluded from eligibility for reimbursement from the project's Replacement Reserve Account online at http://portal.hud.gov/hudportal/HUD?src=/states/shared/working/r8/mf/reserveguidelines.

Replacement Reserve Withdrawal Requests

Withdrawals can be taken from the Replacement Reserve Fund. For Risk Share 542(c) and non-FHA-insured projects, CHFA requires that at least twelve months of contributions remain in the account at all times. For 221(d)(3), 221(d)(4), and 223(f) projects, HUD requires the project to maintain a minimum 24-month balance. **CHFA reserves the right to hold requests made by projects with unresolved compliance issues or outstanding annual submissions.**

Listed below is the process for withdrawals for Risk Share – 542(c) and CHFA non-FHA-insured projects.

1. The Owner must provide CHFA with a written request, using both the **Replacement Reserve Request and Replacement Reserve Request Itemized forms**, along with supporting documentation (i.e., invoices, receipts, bids) when seeking reimbursement from the Replacement Reserve Fund. Documentation may not be more than one year old.

2. CHFA will then process the request, provide notification to the owner, and approve or decline the release of funds from the Replacement Reserve Fund.

3. At the time of the annual inspection, the assigned CHFA Officer will verify that the work has been completed satisfactorily.

If a single item requested is $5,000.00 or more, three written bids must be submitted along with specifications, contracts, and other pertinent information. If three bids are impossible to obtain, i.e., in rural areas, then the request must include a thorough explanation.

If the repair or replacement item is a major expense, CHFA may request an inspection from our Real Estate Services staff prior to processing the Replacement Reserve request.

For Mark-to-Market, 221(d)(3), 221(d)(4), and 223(f) projects, all Replacement Reserve requests must be submitted to HUD (with a copy to CHFA) prior to the release of funds. HUD will send approvals to release funds to the owner and CHFA using form HUD 9250.

10.2 Operating Deficit Reserve Fund

If required by the Regulatory Agreement and/or the Loan Agreement, the owner shall establish and maintain an Operating Deficit Reserve Fund as either an irrevocable Letter of Credit or a separate account held in the name of the project at Wells Fargo Bank. The amount of this fund is established at the time of closing and is set forth in the Regulatory Agreement and/or Loan Agreement. The Operating Deficit Reserve Fund shall at all times be under the control of CHFA.

Operating Deficit Reserve Withdrawal Requests

For Risk Share – 542(c) and all CHFA non-FHA-insured projects, withdrawals can be taken from the Fund as outlined in the project's Regulatory Agreement and/or Loan Agreement. The process for withdrawal is as follows:

1. The owner must provide CHFA with a written request along with supporting documentation, such as financials, seeking reimbursement from the Operating Deficit Reserve Fund.

2. CHFA will then process the request, provide notification to the owner, and approve or decline the release of funds from the Operating Deficit Reserve Fund.

For Risk Share – 542(c) and all CHFA non-FHA-insured projects, funds from the Operating Deficit Reserve Account may be distributed if the terms outlined in the project's Regulatory Agreement and/or Loan Agreement have been met.

10.3 Lease-up Reserve Fund

For New Construction and Substantial Rehabilitation projects, the owner shall establish and maintain a Lease-up Reserve Account if required by the Regulatory Agreement and/or Loan Agreement. The purpose of the account is to provide the project with a funding source to carry the project from below sustaining occupancy to sustaining occupancy. The amount of this fund is established at the time of closing and is set forth in the Regulatory Agreement and/or Loan Agreement. The funds in the account shall be used to cover operating expenses including debt service until sustaining occupancy is achieved. These funds shall at all times be under the control of CHFA.

Lease-up Reserve Withdrawal Requests

Withdrawals can be taken from the Fund as outlined in the project's Regulatory Agreement and/or Loan Agreement. The process for withdrawal is as follows:

1. The owner must provide CHFA with a written request along with supporting documentation, such as financials, seeking reimbursement from the Lease-up Reserve Fund.

2. CHFA will then process the request, provide notification to the owner, and approve or decline the release of funds from the Lease-up Reserve Fund.

10.4 Residual Receipts

If required by the Regulatory Agreement and/or Loan Agreement, the owner shall establish and maintain a Residual Receipts Fund as a separate account held in the name of the project with Wells Fargo Bank. These funds shall at all times be under the control of CHFA. All owners are required to make deposits to this account at the end of every annual fiscal period in the amount of the project's Surplus Cash, after deducting from Surplus Cash the amount of Distributions. Verification of the deposit of any Surplus Cash to this account is due to CHFA within 60 days after the annual audit has been completed.

Residual Receipts Withdrawal Requests

Withdrawals from the Residual Receipts account may be completed in accordance with the Regulatory Agreement and/or Loan Agreement. Withdrawals are to be completed as outlined in the Surplus Cash section of the Agreement. Borrowers must submit a **Residual Receipts Request form**, and all requests must be approved in advance by CHFA.

Owners seeking CHFA approval to release surplus cash are required to submit the **Computation of Surplus Cash, Distributions, and Residual Receipts form** and, **if applicable, evidence that residual receipts have been deposited in the project's residual receipts account**. Owners must be in compliance with CHFA loan program requirements before CHFA will process a request to release surplus cash.

Owners should review the project's Regulatory Agreement and/or Loan Agreement to determine limitations on distributions. In the case of a project subject to distribution limitations imposed by the U.S. Department of Housing and Urban Development (HUD), distributions will be approved only as permitted under applicable HUD regulations.

Nonprofit owners and housing authority sponsors, including those who own or sponsor Risk Share 542(c) projects, should refer to CHFA Resolution 94-148 concerning **Distributions for Nonprofit and Housing Authority Sponsors** at www.chfainfo.com/arh/asset/LIHTCForms/CHFAResolution_94-148.pdf. Owners are required to submit certification that the distribution will be used to further the owner's charitable or public purpose and to have a minimum Replacement Reserve balance of 36 months of deposits.

For-profit owners should refer to CHFA Resolution 80-110, **Establishing Maximum Rate of Return on Equity for Partially Assisted Multifamily Housing Facilities** at www.chfainfo.com/arh/asset/LIHTCForms/CHFAResolution_80-110.pdf.

The Regulatory Agreement and/or Loan Agreement state that the owner has entered into a contract and has agreed that, in connection with all phases of operation of the project, the owner and any subsequent purchaser of the project will comply with the following:

- Rent-restricted units should be representative of each type of unit found in the project and must be intermingled with all other units in the project. All residents in such units shall enjoy access to all common facilities of said project.

- All resident lists, files, applications, and waiting lists relating to the project shall be kept separate and identifiable from any other business unrelated to the project. This information shall be maintained in reasonable condition for audit and examination during business hours by representatives of CHFA or HUD, as applicable.

- All resident leases shall be expressly subordinate to the mortgage and shall contain clauses, among others, wherein the resident:

    - certifies the accuracy of the statements made in the application and TIC; and

    - agrees that the family income, family composition and other eligibility requirements at the time the lease is executed shall be deemed substantial and material obligations of tenancy. The resident also agrees to comply promptly with all requests for information with respect thereto from the owner. The failure or refusal to comply with this request for information shall be deemed a violation of a substantial obligation of tenancy; and

    - agrees that his or her lease may be terminated upon 30 days' notice if any noncompliance by such tenant would adversely affect the federal tax-exempt status of interest bonds issued to provide funds to make the loan (if applicable).

The Affordable Housing Lease Addendum available on CHFA's website satisfies this requirement.

The following words or terms as used in this manual shall have the following meaning:

Act
The Colorado Housing and Finance Authority Act, part 7 of article 4 title 29 of Colorado Revised Statutes, as amended and supplemented from time to time

Bonds
The obligations of CHFA issued to provide funds to make a loan, including any refunding obligations

Project
The real property, the improvements from time to time constructed thereon, and all other assets used in connection with the operation of the real property and such improvements and owned by the mortgagor of whatsoever nature or wheresoever situated

Distribution
Any withdrawal or taking of cash or any assets of the project excluding payments of debt service on the loan (and the second mortgage loan) and the payment of reasonable expenses incident to the operation and maintenance of the project

Financing Documents
All documents and instruments executed by the mortgagor or borrower or CHFA in connection with financing of the project

Initial Owner Equity
The difference between the principal amount of the note and the total cost of acquisition, project, and construction of the project including financing charges paid during construction

Lease-up Reserve Fund
A separate account for New-Construction or Substantial Rehabilitation projects held in the name of the project established for the purpose of paying for or reimbursing the owner for operating expenses, including debt service during the period of lease-up.

Minimum set-aside
Minimum compliance qualification designation for a tax exempt bond-financed project. The designation is either 20-50 or 40-60. Projects with a 20-50 minimum set-aside designation require that a minimum of 20 percent of the units be designated at 50 percent or less of the Area Median Income (AMI), and the units must be in compliance with all requirements of the Regulatory Agreement or Loan Agreement. Projects with a 40-60 minimum set-aside designation require that a minimum of 40 percent of the units be designated at 60 percent or less of the AMI, and the units must be in compliance with all requirements of the Regulatory Agreement or Loan Agreement.

Mortgage
The deed of trust, mortgage or other instrument securing the promissory note

Mortgaged Property
All property, real, personal, or mixed, covered by the mortgage

Note
The promissory note of the mortgagor or borrower, secured by the mortgage, evidencing the mortgagor's obligation to repay the loan

Operating Deficit Reserve Fund
A separate account or irrevocable letter of credit established for the purpose of paying or reimbursing the owner for reasonable expenses incident to the operation and maintenance of the project. This may include mortgage payments.

Owner / Borrower / Mortgagor
The entity named in the first paragraph of the Regulatory Agreement and/or Loan Agreement (LURA)

Private Activity Bond
Tax exempt bonds issued by or on behalf of local or state government for the purpose of providing special financing benefits for qualified projects that have some public benefit (e.g., residential rental projects). The financing is most often for projects of a private user, and the government generally does not pledge its credit.

Qualified Project Period
The period of time that the project is subject to the rent and occupancy restrictions of the Regulatory Agreement; refer to the Regulatory Agreement for definition

Rent
Tenant-paid rent (excluding any Section 8 or other rent subsidy) plus the tenant-paid utility allowance

Replacement Reserve Fund
A separate account held in the name of the project established for the purpose of paying for or reimbursing the owner for the payment of any required repair or replacement costs that can be capitalized by the owner in accordance with generally accepted accounting principles

Residual Receipts
Any cash remaining at the end of an annual fiscal period after deducting from Surplus Cash the amount of Distributions, as determined by the annual audit

Resolution
The resolution of CHFA or the indenture of trust pursuant to which the bonds are issued and secured

Second Mortgage Loan
The loan made to the mortgagor by CHFA from monies other than proceeds of the bonds, evidenced by a promissory note and secured by a deed of trust for the benefit of CHFA creating a second lien against the real property and the project and the revenues therefrom

Surplus Cash
Any cash remaining at the end of each annual fiscal period

Tax Exempt Bonds
The obligations of CHFA issued to provide funds to make a tax exempt loan, including any refunding obligations. The interest payments from tax exempt bonds are not subject to

federal income tax. Therefore, loans made with tax exempt bond funds have special rules for project management.

Trustee
The corporate fiduciary designated as Trustee under the Resolution

Verification of Employment
Form authorizing third-party disclosure of an applicant's income

References – FHA-insured Projects

For FHA-insured projects, in addition to the CHFA Multifamily Financing Programs Compliance Manual, the following HUD Handbooks will serve as references and provide guidance:

IG 2000.4 REV-2 – CHG 7 - Consolidated Audit Guide for Audits of HUD Programs – Chapter 3 – HUD Multifamily Housing Program

HUD Handbook 4350.1 REV-1 – Multifamily Asset Management and Project Servicing

HUD Handbook 4370.1 - Reviewing Annual and Monthly Financial Reports

HUD Handbook 4370.2 – Financial Operations and Accounting Procedures for Insured Multifamily Projects

HUD Handbook 4590.01 REV-1 - Housing Finance Agency Risk Sharing Program

HUD Handbook 4381.5 – Management Agent Handbook