

**LOW INCOME HOUSING TAX CREDIT
MONITORING AND
COMPLIANCE MANUAL**

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PREFACE

The Delaware State Housing Authority (DSHA) is the allocating housing credit agency responsible for the administration and allocation of Low-Income Housing Tax Credits (LIHTC) for the State of Delaware. This LIHTC Compliance Manual is intended to be used as a guide and reference for the LIHTC Compliance Monitoring Procedures and to inform owners and managers of the requirements implemented by this agency to facilitate compliance with the IRS regulations as mandated by Section 42 of the Code. This manual is a resource and procedural tool for the management of housing developments in the LIHTC program. This manual is not a substitute for existing federal and state laws and regulations.

Effective January 2007, the IRS released its Guide for Completing Form 8823, Low-Income Housing Credit Agencies Report for Noncompliance or Building Disposition (8823 Guide). The 8823 Guide was not intended to change any Section 42 rules or policies, but to provide definitions of what IRS considers “in compliance” and for consistency in reporting “out of compliance” and “back in compliance” on IRS Form 8823. IRS did not include an effective date for state agencies to make any needed adjustments to policies and procedures to the extent DSHA existing policy and procedure do not conform to the instructions in the 8823 Guide.

Most of DSHA’s compliance monitoring and reporting policy and procedures are reflective of instructions in the 8823 Guide. Some additional adjustments have been made to DSHA’s compliance monitoring procedures and manual to incorporate some IRS guidance that was not in our manual previously.

Because of the complexity of the LIHTC regulations and the necessity to consider the applicability to specific circumstances, owners are urged to seek competent legal and accounting advice regarding compliance issues. DSHA's obligation to monitor for compliance with the requirements of the Code does not make DSHA liable for an owner's noncompliance.

I. INTRODUCTION TO DSHA

DSHA ORGANIZATIONAL RELATIONSHIPS

DSHA has formed several partnerships with federal agencies, lending institutions and other for-profit and non-profit entities which affect monitoring and regulatory requirements with which these agencies are affiliated. Often there is more than one type of funding or agency involved with the property. The most stringent requirement for each program is used for financial reporting and compliance purposes.

It is important to know all the types of financing and regulatory responsibility the development has in relationship to DSHA any other agency involved in the financing. Some basic information on the various partnerships and DSHA financing programs follow:

Internal Revenue Service - Section 42 Low Income Housing Tax Credit - DSHA is the housing Tax Credit agency for Delaware and allocates Tax Credits under Section 42 of the Internal Revenue Code. After Tax Credits have been allocated to a development, DSHA also monitors the development for compliance. Noncompliance matters are reported directly to the IRS. In many cases, DSHA provides financing for Tax Credit properties through the HDF or HOME Programs and is mostly in a secondary position. DSHA monitors financial performance on these properties as well.

U.S. Department of Housing and Urban Development (HUD) - DSHA has partnered with HUD on HUD-insured programs and several other HUD programs.

DSHA has several HUD-insured loans in its portfolio under the Section 8 New Construction Program. DSHA is the primary mortgagee on Section 8 New Construction loans financed by DSHA's Multifamily Mortgage Revenue Bond Program. DSHA serves as the contract administrator and approves rent, monitors eligibility, and authorizes reserve and residual receipt releases. These developments should follow both the HUD handbook 4350.3 and this guide. DSHA performs management reviews, physical inspections and monitors the financial performance of these developments. The servicing of the loan, in many cases, is also handled by DSHA.

Rural Development (RD) of the United States Department of Agriculture - RD provides construction and permanent financing for the Section 515 Rural Rental Housing Program. Many of the DSHA-allocated Tax Credits have been awarded to Section 515 properties.

Housing Development Fund (HDF) - The HDF is the State of Delaware's primary financing resource to support the development of affordable housing statewide. The HDF is a very flexible revolving fund that allows interest rates and loan repayments to be tailored to each project. The HDF is used for construction and permanent financing for multifamily rental housing; construction financing for single-family housing; deferred mortgages for homeless facilities, transitional shelters, and group homes; second mortgages for first-time homeowners and grants funds for housing programs, security deposits and emergency home repairs. Any financing by the HDF requires financial monitoring and reporting by DSHA.

HOME Program - The HOME Program is a formula-based federal housing block grant program, which provides states and local governments with the flexibility to fund a wide range of affordable housing activities. The HOME Program addresses diverse local housing needs through moderate and substantial rehabilitation, new construction, tenant-based rental assistance and other related activities. In Delaware, DSHA, New Castle County Community Development and Housing, and the City of Wilmington Real Estate and Housing receive funding through the HOME Program. Many of DSHA's Tax Credit properties are funded in part with HOME funds and require compliance and financial monitoring.

HOME ARP – the American Rescue Plan (ARP) provide funds to assist individuals or households who are homeless, at risk of homeless, and other vulnerable populations, by providing housing, rental assistance, supportive services, and non-congregate shelters, to reduce homelessness and increase stability across the country. These grant funds are administered through HUD's HOME investment Partnerships Program. HOME-ARP funds can be used for; production or preservation of affordable housing, tenant-based rental assistance, supportive services, purchase and development of non-congregate shelter.

Housing Trust Fund (HTF) – The HTF is a National affordable housing production program that complements existing Federal, State, and local efforts to increase and preserve the supply of decent, safe, and sanitary affordable

housing for extremely low-income (ELI) and very low-income households (VLI), including homeless families. Funding for the HTF comes from an assessment on loans made by Federal Home Loan Mortgage Corporation (Freddie Mac) and Federal National Mortgage Association (Fannie Mae). Several LIHTC and smaller permanent supportive housing developments have been supported with HTF and require compliance and financial monitoring.

811 PRA DEMO - Program awards funds to state housing agencies who: a) partner with state Medicaid and/or health and human services agencies that have developed methods for the identification, outreach, and referral of extremely low-income people with disabilities who need PRA-funded units; and b) allocate rental assistance to housing units set aside in affordable housing projects whose capital costs are funded through federal Low-Income Housing Tax Credits (LIHTC), federal HOME funds, or other federal, state, and local funding sources for eligible individuals.

Ensures community integration of PRA units, no more than 25 percent of the total units in eligible multifamily properties can: 1) be provided Section 811 PRA funds; 2) be used for supportive housing for persons with disabilities; or 3) have any occupancy preference for persons with disabilities.

For PRA-funded units, tenants must be extremely low-income (at or below 30 percent of Area Median Income (AMI)) and at least one adult member of the household must have a disability. The person with the disability must be eligible for: community-based, long-term services as provided under the state's plan for medical assistance under Title XIX of the Social Security Act (Medicaid), state funded services, or other appropriate services defined in the written partnership agreement.

II. DSHA AS AN ALLOCATING AND MONITORING AGENCY

In 1986 Congress enacted the LIHTC program authorized and governed by section 252 of the Tax Reform Act of 1986 and Section 42 of the Internal Revenue Code. The LIHTC program is a federal program which began in Delaware in 1987. The program was developed to stimulate production and preservation of low-income housing. Each state is given the responsibility of allocating credits to qualified projects in an amount not to exceed that which is needed to obtain financial feasibility up to the maximum amount available to that state (\$2.25 per capita or a minimum of \$2 million for small states). DSHA is the allocating agency for the State of Delaware.

Each allocating agency must have an allocation plan as part of their LIHTC application. Basically, the allocation plan lists all of the requirements needed and categories with which DSHA prioritizes LIHTC applications for funding. Under Section 42, the IRS will not consider an allocation plan qualified unless it contains procedures for monitoring noncompliance with provisions for notifying the IRS of any noncompliance matters.

In 1990, the Revenue Reconciliation Act, gave housing credit agencies the additional responsibility of monitoring for compliance all projects placed in service for which the credit is, or has been allowable at any time since the inception of the program in 1987. This definition includes projects financed through the Rural Housing Service (formerly the Farmers Home Administration) and tax-exempt bonds. The program compliance monitoring mandate was effective January 1, 1992.

In January 1992, DSHA implemented LIHTC Compliance Monitoring Procedures (Appendix B). This handbook explains those procedures in a detailed and easy-to-follow manner.

WHAT IS A TAX CREDIT?

In 1986 Congress enacted the Tax Reform Act, which included the LIHTC program. Basically, the LIHTC is a dollar-for-dollar reduction in federal tax liability to the project owner in exchange for the acquisition, rehabilitation, or new construction of low- to moderate-income rental housing. The owner may take the credits annually for 10 years but must maintain the status of the units as low-income for 15 years or longer, depending on which year the credits were allocated to the project.

The amount of tax credit allocated is based on the number of qualified low-income units that must meet federal rent and income requirements, the cost of development and acquisition, as applicable, the credit percentage rate, and the amount to make the project viable. The cost of development is defined as the depreciable basis of the property.

In August 1993, Congress passed, and the President signed into law the permanent extension of the LIHTC Program.

III. RESPONSIBILITIES

All parties involved in a Tax Credit development share in an integral part of the compliance monitoring.

A. Allocating/Monitoring Agency

DSHA allocates the Tax Credits through the LIHTC program, in accordance with the Allocation Plan, and has specific responsibilities after the final allocation is awarded to a project such as the following:

1. Review Annual Owners Certification for Continuing Compliance report to ensure that project continuously meets low-income use requirements.
2. Perform compliance reviews and physical inspections of each development; review annual tenant certifications, documentation, and tenant files for compliance.
3. Notify the Internal Revenue Service (IRS) of any noncompliance issues, as required.
4. At DSHA discretion, perform training and education to owners through seminars, periodic letters/notices compliance manuals so owners are aware of the proper and most current IRS regulations though the compliance period.
5. As of the HERA law signed July 30, 2008, DSHA is required to report tenant data to HUD annually, including tenant race, ethnicity, family composition, age, income, use of rental assistance or other similar assistance, disability status and monthly rental payments.

NOTE: DSHA's monitoring procedures are designed to test a sampling of tenant records and units for compliance. A successful compliance review and physical inspection does not mean the project has completely satisfied all of the program rules since undetected noncompliance may still exist. Owners and management agents are solely responsible for keeping their properties in compliance with all IRS laws and DSHA is not responsible if they fail to do so.

B. Owner

The owner has the responsibility to ensure that the project is meeting the requirements of the LIHTC program in which DSHA monitors.

1. **LIHTC REQUIREMENTS**

Owners must provide DSHA with comprehensive project information and evidence of overall economic feasibility. Prior to issuance of a final LIHTC allocation, the project's accountant must provide audited certification of the total project costs. The owner must also certify that all requirements of the LIHTC program have been met through the Annual Owners Certification for Continuing Compliance report. **Any violation of the requirements of the LIHTC program could result in the loss of the Tax Credits issued to the owner and other penalties allowed within the Internal Revenue Code.**

2. **PROPER MANAGEMENT**

The owner is responsible and must make certain that the on-site management knows, understands, and complies with all appropriate LIHTC rules, regulations, and policies governing the project.

3. **ADMINISTRATION AND NOTIFICATION**

It is the responsibility of the owner to keep DSHA informed throughout all phases of development, rent up, and operation. This includes the initial phases of construction, the scheduled placed-in-service date, the completion of the project, as well as any major changes that are made at any time. Including any change of the owner's address during the compliance period or any change in management or ownership of the project.

After units are placed in service, a change in the ownership of buildings or partnership interests before the end of the compliance period may be considered a recapture event by the IRS. Recapture of tax credits previously claimed by the original owner may be avoided by posting a bond that is satisfactory to the IRS. See IRS Revenue Ruling 90-60, Revenue Procedure 99-11 and Internal Revenue Code Section 42(j)(6) for additional guidance on bonding requirements. Owners are advised to seek legal counsel regarding this requirement before transferring any building or ownership interest in a building.

4. **RECORDKEEPING AND RECORD RETENTION**

Under the provisions of the LIHTC program, the owner will be required to keep the appropriate records and retain them for each project by building for the proper periods of time. The records for the first year of the credit period must be kept for the entire compliance period, plus 6 years (21 years total) after the filing of the federal income tax return for the first year of the compliance period. The records for each year thereafter must be retained for 6 years after the filing of the federal income tax return for that year. The owner will keep the records for each qualified low-income building at the project and the records must contain the following:

- a) The total number of residential rental units in the building (including the number of bedrooms and the size, in square feet, of each residential rental unit).
- b) The percentage of residential rental units in the building that are low-income units.
- c) The rent charged on each residential rental unit in the building (including the source and amount of any utility allowance calculations).
- d) The low-income unit vacancies in the building(s) and information that shows when and to whom the next available unit(s) was rented.
- e) The number of occupants in each low-income unit.
- f) The annual income certification of each low-income tenant per unit.
- g) Documentation to support each low-income tenant's income certification.
- h) The eligible basis and qualified basis of the building(s) at the end of the first year of credit. IRS Form 8609 and all attachments should be on file.
- i) A list of all tenants of the building(s) at initial rent-up to include the following: name of occupant, number of persons, and annual income of household.
- j) The character and use of the non-residential portion(s) of the building included in the building's eligible basis under Section 42(d) (e.g., tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project).
- k) Documentation that the owner has not refused to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937.
- l) Documentation that the buildings and low-income units in the project were suitable for occupancy, considering local health, safety, and building codes (or other habitability standards), and documentation that the State or local government entity responsible for making conducting inspections did not issue a violation report for any building or low-income unit in the project. If a violation report/notice was issued by the governmental entity, the owner must attach a statement summarizing the violation report or notice to the annual certification submitted to DSHA. In addition, the owner must state whether the violation has been corrected.
- m) No findings of discrimination under the Fair Housing Act, U.S.C. 3601-3619, occurred for the project. A finding of discrimination includes an adverse final decision by the Secretary of Housing and Urban Development, 24 CFR 180.680, or an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C 3616(a)(1), or an adverse judgment from a federal court.
- n) No tenants in low-income units were evicted or had their tenancies terminated **other than for good cause** and no tenants had an increase in the gross rent with respect to a low-income unit not otherwise permitted under Section 42.

The owner is responsible for certifying annually in the form DSHA specifies, the project's compliance with the IRS regulations and the LIHTC program (see DSHA Monitoring Procedures, Annual Owners

Certification for Continuing Compliance Report Appendixes B & C). Additionally, the owner is responsible for submitting to DSHA, upon request, any tenant file and any documentation for those units that DSHA specifies.

Revenue Ruling 2004-82, published August 30, 2004, clarifies that owners may comply with the record retention provisions under IRS Section 1.42-5(b) by using an electronic filing storage system instead of maintaining hard copy (paper) books and records, provided that the electronic storage system satisfies the requirements of Revenue Procedure 97-22.

The **ORIGINAL** tax credit tenant file and the **ORIGINAL** support documentation (including the Tenant Income Certification, verification forms, application, lease, etc.) must be available for DSHA's compliance monitoring review. Failure to provide said documents will result in the issuance of IRS Form 8823.

5. **DSHA ELECTRONIC REPORTING (MITAS)**

DSHA requires all owners to use the MITAS Multifamily Software for reporting purposes. DSHA is required to annually report to The U.S. Department of Housing and Urban Development (HUD) all resident and project data for all tax credit projects that are being monitored by DSHA. MITAS is an integral database system for providing all required tax credit data. The format for annual reporting is established by HUD and must be completed by September of each year. This data is obtained through the property monthly submission of the Tenant Income Certification (**TIC**). HUD's LITCH Tenant Data Collection requires each state credit allocating agency to provide HUD with information on the race, ethnicity, family composition, age, and income, use of federal rental assistance, disability status, and monthly rental payments of households residing in each property receiving tax credits. All developments receiving tax credits must participate in this data collection effort and will be expected to provide the required information through MITAS to DSHA and HUD.

All tax credit properties are required to provide tenant data to DSHA **monthly**. When DSHA schedules a LIHTC compliance review and inspection, the owner and/or their manager will complete additional reports electronically through DSHA's MITAS website.

Internet Property Management Training is available for all owners and managers on DSHA's website either by Video, Adobe Acrobat PDF, or MS Word.

C. **Management Agent and On-Site Personnel**

The management agent and all on-site personnel should be well versed in the LIHTC program requirements. Anyone who is authorized to lease units to tenants should be thoroughly familiar with all federal and State laws, rules, and regulations governing certification and leasing procedures. It is also important that the management agent provide information, as needed, to DSHA and submit all required reports and documentation in a timely manner.

IV. WHAT IS A "QUALIFIED" LOW-INCOME PROJECT?

In order to benefit from the Tax Credit, a development must meet two very important tests at all times:

A. Minimum Low-Income Set-Aside

1. Twenty percent of the residential units in a project shall be both rent-restricted and occupied by individuals whose gross income is fifty percent (50%) or less of the area median income based on family size; or,
2. Forty percent of the residential units in a project shall be both rent-restricted and occupied by individuals whose gross income is sixty (60%) percent or less of the area median income based on family size.
3. Forty percent of the residential units in a project shall be both rent-restricted and occupied by individuals whose gross income is designated between 20% and 80% of the area median income, in 10% increments, and the average of such limitations must not exceed sixty (60%) percent or less of the area median income based on family size.

For properties that receive HOME funds, at least forty percent (40%) of the units in a building must be occupied by households at or below fifty percent (50%) of the median income limit. NOTE: BUILDINGS PLACED IN SERVICE AFTER 7/30/09, ARE NOT SUBJECT TO THIS PROVISION.

NOTE: HUD publishes Rents and Income Limits yearly.

The owner may select either (1) (2) or (3) above as a minimum set-aside or a greater percentage, up to 100%. The selection is made at the time of Tax Credit application and must be maintained throughout the compliance and extended use periods.

Basically, the first minimum low-income set-aside test means that units are being rented to income eligible persons in accordance with the set aside chosen by the owner. Most projects, that DSHA has allocated Tax Credits, have chosen to rent 100% of their units to persons who are at 50% or 60% of median income.

Those units, which meet this income, are "qualified low-income units".

1. Property Placed-In Service

The minimum set-aside test must be met by the end of the first year of the credit period. This date is called the Placed-In Service Date (PISD). This can be the year the building was actually placed in service (i.e., the date the building is ready and available for its specifically assigned function) or the next year, at the election of the owner.

Rehabilitation projects: The PISD is at the close of any 24-month period during which expenditures were aggregated. The owner chooses the PISD.

For New Construction Properties: The PISD is the date on which the first unit in the building is certified as being suitable for occupancy in accordance with state or local law (usually by a certificate of occupancy).

For buildings placed in service on or before July 30, 2008, the increase in the adjusted basis of any building that includes the community service facility cannot exceed 10 percent of the eligible basis of the qualified low-income housing project of which it is a part.

For buildings placed in service after July 30, 2008, the allowable community service facility cannot exceed (1) 25 percent of the eligible basis of the qualified low-income housing project of which it is a part and does not exceed \$15,000,000 plus (2) 10 percent of the eligible basis of the project in excess of (1) above.

2. **Additional and Special Set-Asides**

In addition to the minimum set-aside, buildings and projects may have been awarded points in the scoring of their tax credit applications for setting aside additional units as low-income (at or below 50% of median income) or targeting very low-income (at or below 30% of median income). These units are considered additional low-income units or special set-asides low-income units. Most tax credit properties have additional low-income units that make up 100% of the property. The income requirements for these units must also be met during the entire compliance period.

B. Rent Limitation/Rent Restriction

For projects that were allocated Tax Credits in 1990 and subsequent years, the maximum rent is based on the number of bedrooms, while assuming occupancy of 1.5 persons per bedroom.

For example:

Based on the following chart a family of four in Sussex County with an income not exceeding \$33,120 living in a 3-bedroom unit could not be charged more than \$861, **including utilities.**

| Bedroom Size | 1 | 2 | 3 |
|---------------------|--------------|----------------|----------------|
| New Castle | \$835 | \$1,003 | \$1,158 |
| Kent | \$660 | \$792 | \$915 |
| Sussex | \$621 | \$745 | \$861 |

Those units that meet this test and the minimum low-income set-aside test are then considered to be a "Qualified Low-Income Project". Before instituting any rent, all rents should be pre-approved by DSHA so that we can verify that the rents are following Section 42.

Initial Rental Rates: The rental rates for initial occupancy of the Development shall be as set forth in DSHA's Estimated Income and Expense Pro Forma or as otherwise provided by DSHA.

Housing Development, HOME, and Housing Trust Funds

When underwriting a project, the rents are based on amounts the owner and/or management company said they could achieve. The pro forma is executed by the **owner and management company at construction closing**, locking those rents in place for the duration of construction/rent up and the first year of operations, creating an operating income floor/ceiling to establish the initial year of Debt Service Coverage. Rent increase requests are only permitted after perm closing and the first year of operations and are only permitted on an annual basis with the request due 60 days prior to the start of the new year.

If the household's income increases above 140% of the applicable income limit for the family size and the tenant(s) initially met the qualifying income limit requirements, the unit may continue to be counted as a qualifying unit if the unit continues to be rent-restricted and the next available unit of comparable or smaller size is rented to a qualified low-income tenant. **(In projects where 100% of the units are rented to persons with incomes at 40%, 50%, or 60% of the median income, all vacant units must be rented initially to income qualified tenants. In all cases, no tenant can be displaced as a result of an increase in income only).**

C. Compliance Period

Tax Credit Developments receiving Credit Allocations on or before December 31, 1989

To receive the Tax Credit, all owners who received an allocation between 1987 and 1989, must comply with eligibility and rent restriction requirements for a period of 15 taxable years beginning with the first taxable year of the building's credit period ("the compliance period").

Credit Allocations after December 31, 1989, or for projects making the one-time irrevocable election to determine rents by bedroom size.

Owners receiving credit allocations after December 31, 1989, or for owners making the one-time irrevocable election to determine rents by bedroom size, must enter into a Land Use Restriction Agreement (Declaration of Land Use and Restrictive Covenants) at the time the credits are allocated. These owners must comply with the eligibility and rent restriction requirements for an additional 15-year period or for a total of 30 years. This document is a recorded restrictive covenant.

All owners must agree to a thirty-year low-income use compliance period for the project. However, if the owner of the project wants to transfer the property after the initial 15 year low-income use period and is unable to transfer the property with a continued low-income use, the owner can notify the allocating agency which has one year, from the date of receipt of the owner's written notice, to find an eligible buyer at a specified price not less than the sum of the outstanding indebtedness and adjusted investor equity contribution as defined in Section 42 (h)(6) of the Code, less cash distributions from the project. Adjusted investor equity contribution is defined as the aggregate amount of cash that taxpayers invested into the operation. Cost-of-living adjustments shall not exceed 5% in any calendar year. If a buyer is not located within one year, after the owner notified the allocating agency of his desire to sell, the property may be converted to market rate use with the qualification that existing low-income tenants may not be evicted within three years after the transfer of the property. The owner can notify the allocating agency of his desire to transfer the property any time after the fourteenth year of low-income use. **See Section XXIV, DSHA Post –15 Monitoring Procedures for details on requirements in the extended use period.**

D. The Applicable Fraction

The applicable fraction represents the percentage of a building intended for qualified low-income units. The applicable fraction is assigned to a building at the time of final credit allocation (issuance of the IRS form 8609). However, a final determination of the maximum applicable fraction is made on the last day of a building's initial tax credit year. The maximum credit an owner can claim on a building is based on the lesser of the targeted applicable fraction or the actual applicable fraction on the last day of the initial tax credit year. The applicable fraction is calculated as the lesser of:

- i. Low-income units divided by total units (whether or not occupied) in a building; or
- ii. Total square footage of low-income units divided by total square footage of all units (whether or not occupied) in a building, with the exception of the manager's unit. The manager's unit may or may not be included depending on whether it was part of the common space. If the manager's unit is part of common space, the unit is excluded from both the numerator and the denominator of the applicable fraction in determining the building's qualified basis. If the manager's unit is considered a qualified low-income unit, the unit is counted in the applicable fraction.

When determining which units to include in the numerator (low-income units), and in the denominator (total units) of the applicable fraction, please note:

- Units that have never been occupied cannot be included in the numerator but must be included in the denominator.
- Units that are vacant at the end of the initial tax year which previously were qualified as low-income units can be considered be low income for determining the amount of credits claimed only if the units were occupied for a minimum of one month.
- If a qualified low-income household becomes an ineligible household prior to the end of the initial tax credit year, that unit cannot be counted in the first year toward the minimum set-aside or the determination of the qualified basis.

IRC §42(b)(1)(B) * provides that a new building that is not federally subsidized is eligible for an Applicable Percentage equal to a 70 percent present value credit (the 9% credit) while a new building that is federally subsidized and an existing building are eligible for a 30 percent present value (the 4% credit).

E. Qualified Basis

Qualified basis is the portion of the eligible basis applicable to the Tax Credit units in a building. Qualified basis is the product of a project's Eligible Basis multiplied by the Applicable Fraction. The original qualified basis is determined as of the last day of the first year of the credit period and is reported to the IRS on Part II of Form 8609.

F. Eligible Basis

In general, the eligible basis of a building is equal to the building's cost for acquisition, rehabilitation, or construction costs for the entire building, subject to certain conditions and modifications set forth in Section 42 (d). Some of the special provisions for determining eligible basis under Section 42 (d) are:

- a. The eligible basis is increased for new buildings and substantial rehabilitation to existing buildings, which are in designated qualified census tracts and difficult development areas.
- b. If non-tax credit units or market rate units are of a quality standard greater than that of rent-restricted tax credit units in the building, the costs of the non-tax credit or market rate units generally are not included in eligible basis.
- c. The cost of depreciable property used in common areas or provided as comparable amenities to all residential units (e.g., carpeting and appliances) is included in determining eligible basis. The cost of tenant facilities (e.g., parking, garages, swimming pools) may be included in eligible basis if there is no separate charge for use of the facilities and they are made available on a comparable basis to all tenants in the project.
- d. Eligible basis is reduced by federal grants, non-tax credit units with higher standards and amenities, land costs, historic rehabilitation credits and non-residential rental property.

The eligible basis, as of the end of the first year of the credit period, is reported to the IRS on Part II of the IRS form 8609 and does not change from year to year.

G. Claiming Credits

The credits may be taken annually for 10 years and are based on a percentage of the qualified costs of the building. For 1987 projects, the applicable rates were 9 percent for new construction and substantial rehabilitation and 4 percent for buildings with federal subsidies and for acquisition and rehabilitation of existing buildings. (In order for an existing building to qualify for the credit in connection with substantial rehabilitation, there must be a period of at least 10 years between the date of acquisition and the date the building was placed in service. In addition, DSHA's QAP requires the property to have completed its initial compliance period).

After 1987, the credit percentage is based on the Applicable Federal Rate (AFR) for the month the project is placed in service, or at the owner's election, the month in which a carryover/commitment is entered into by the owner and DSHA.

Owners of qualified residential rental projects must satisfy the minimum set aside and gross rent requirements for a minimum 15-year period and in many cases a 30-year period, depending on the Declaration of Land Use Restrictive Covenants or Extended Use Agreements. Developments with allocation in 1990 and each year thereafter are required to comply with these requirements for a minimum of 30 years.

V. IRS Reporting Requirements

The IRS and DSHA require owners to file specific forms for compliance and reporting purposes. Failure to submit required forms to either the IRS or DSHA as appropriate will result in non-compliance and may make the owner subject to recapture or ineligible for credit.

A. Low Income Housing Allocation Certification (IRS Form 8609)

The IRS Form 8609, Low Income Housing Allocation Certification (“8609”) is issued by DSHA for each building within a project. If the property received acquisition and rehabilitation credits, a separate 8609 is issued for the acquisition and rehabilitation for each building (there will then be two Form 8609’s for each building).

Part I of the 8609 is completed by DSHA and will be sent to the owner when the project is placed in service and all documentation (cost certification, certificates of occupancy, etc.) required by DSHA is reviewed and approved. DSHA files the original with the IRS for their records to compare with the taxpayer’s tax return. Part I of the 8609’s is to be prepared by DSHA only. If DSHA becomes aware that an owner or management agent has filed a self-prepared 8609 with the IRS, DSHA reserves the right to determine that all parties involved will not be eligible for future participation in DSHA’s Tax Credit program for a period of 10 years. DSHA will also file an immediate notice with the IRS as a fraud issue.

Part II must be completed by the owner in the first Taxable Year for which the credit is claimed.

DSHA recommends that the owner make fifteen (15) or thirty (30) copies (whichever is needed) of Form 8609 – one for each of the tax credit compliance years for audit purposes.

The owner files a copy of the IRS Form 8609, with an original signature in Part II, with his/her personal or partnership tax returns for the first Taxable Year in which the credit was taken and each year thereafter in the Compliance Period. **A copy of the 8609 Part I & II and Schedule A for each building for the first taxable year in which the credit was taken must be filed with DSHA. DSHA will request that this information be received prior to the first tax credit monitoring review. If the applicable fraction/qualified basis is increased in any year following the first year of the tax credit period, DSHA requires a copy of IRS Form 8609A to be submitted by May 31 of the year following the year for which the additional credit was taken.**

If the credit claimed on IRS Form 8586 is a flow-through credit from a partnership, S corporation, estate or trust, the entity will complete the forms and attach it to the return. See the instructions on IRS Form 8609 and Schedule A for details.

Owners should consult with their legal and/or tax advisors for advice on completing and filing tax returns and all IRS forms. DSHA cannot give legal or tax advice on the filing or completion of tax forms.

B. Low Income Housing Credit (IRS Form 8586)

Low Income Housing Credit (IRS Form 8586) must be completed to claim credits for the first taxable year in which credit is taken and every year thereafter in the compliance period. If the owner is claiming credits on IRS Form 8586 from a flow-through entity, (such as a partnership, S corporation, estate, or trust) the individual investor must complete only Part I of Form 8586. Attach this to the entity’s income tax return along with Form 8609 and Schedule A when filing.

C. Declaration of Land Use Restrictive Covenants

Prior to claiming the tax credits, the building owner must record an approved DSHA Declaration of Land Use Restrictive Covenants (extended use agreement) which must be in effect as of the end of the first taxable year credits are claimed. This agreement is typically recorded at the construction closing. Failure to timely and properly record this instrument is an event of noncompliance and must be reported to the IRS.

Owners receiving tax credits in 1990 or later years are required to continue to maintain the low-income units for an additional 15 years beyond the initial compliance period. The Declaration of Land Use Restrictive Covenants is a recorded document that commits the owner to all the IRS requirements stated in Section 42 as well as their commitment to maintain the units as low income for the extended use period. The Declaration also commits the owner to any additional use or income requirements of the project that the owner agreed to at allocation and award of the tax credits. DSHA recommends that a copy of this agreement is kept on file with the project records and is reviewed by the management agent.

D. Recapture of Low-Income Housing Credit Form 8611

IRS Form 8611 is used by taxpayers who must recapture tax credits claimed in previous years. A copy of Form 8611 must be filed with the IRS upon completion by the owner.

VI. UTILITY ALLOWANCES

Both HUD and the Internal Revenue Service are cognizant of the stresses that utility allowances have placed on affordable housing. The Internal Revenue Service published a final rule on July 29, 2009, that gives state housing finance agencies more discretion in determining utility allowances for tax credit properties.

The Maximum Allowable Gross Rent that can be charged a resident includes both rent for the unit and tenant paid utilities.

To remain in compliance, owners must utilize a correct utility allowance in order to properly determine unit rents. Annual utility allowance approval from DSHA must be received before adjusting rents either up or down. Therefore:

$$\begin{aligned} \text{Gross Rent} &= \text{Maximum LIHTC rent plus utility allowance and non-optional fees} \\ &\text{or} \\ \text{Gross Rent} &= \text{Maximum LIHTC rent (with all utilities and non-optional fees paid by owner)} \end{aligned}$$

In government sponsored properties such as RD or HUD Project-Based Section 8 projects, the utility allowance that must be used is determined and approved by the appropriate governmental agency.

For all other non-government sponsored properties, if the utilities are not included in the gross rent the owner must subtract from the rent the appropriate utility allowance calculation.

The Internal Revenue Service (IRS) published final regulations regarding utility allowances for low-income housing tax credit (LIHTC) properties. There are five (5) possible methods for obtaining and documenting a utility allowance.

- 1. PHA Allowance** - The utility allowance established by the applicable Public Housing Authority. If the applicable PHA allowances list flat fees for any utility, those flat fees must be included in the calculation of the utility allowance if the resident is responsible for that utility. **Must be the most recent PHA allowance.**

If the local PHA Utility Allowance is used at the property, documentation of the PHA Utility Allowance table should be kept with the project's records.

Of course, the lower the utility allowance, the higher the amount of gross rent the project will be able to receive thus increasing the project's feasibility. However, it is important for owners to keep **track of the** local PHA Utility Allowances when Section 8 Certificate or Voucher holders are occupying rent-restricted units.

If you are using the local PHA Utility Allowance, you should also be aware when a PHA issues new utility allowances and the utility allowance increases. You will need to analyze the rents charged to tenants to see if the increase in the utility allowance will cause the rent to be more than the Maximum LIHTC Rent. To complete this, use the following calculation:

| | | |
|-----|---------------------------|----|
| | Tenant Rent | \$ |
| Add | New PHA Utility Allowance | \$ |
| | New Gross Rent | \$ |

If the Gross Rent you are currently charging is higher than the Maximum LIHTC Rent, you must reduce your tenant's rent immediately. In addition, you must rebate, or credit rent that was paid for the period of noncompliance and you will be in violation of the Rent Limitation/Rent Restriction test and your project will be in noncompliance with the IRS.

However, this rule does not apply to those LIHTC rent restricted units that include any subsidy received from programs such as Section 8, RD, or 811 PRA DEMO Rental Assistance. A tenant may pay higher than the Maximum Allowable Rent in two instances: (1) In HUD Project-Based Section 8 RAD projects or units that house Section 8 Certificate/Voucher holders, if the income increases so that the tenant portion of the rent is higher than the Maximum Allowable Rent, the Section 8 subsidy is reduced. (According to the IRS, this reduces the subsidy burden to the Federal government. However, the tenant cannot pay more than the HUD contract rent); (2) In RD 515 projects allocated credits in 1991 and later years, the extent of the overage is passed along to RD, therefore, the tenant may be charged more than the Maximum Allowable Rent. (See Section 42 (g)(2)(B)(iv) and (g)(2)(E)).

However, there are instances where the Gross Rent is less than the RD Basic Rent. In this case, the overage is the difference between the adjusted tenant rent and the Gross LIHTC Rent. (See example below:)

| | | | |
|-----------------------|-------|-------------------|-------|
| Gross Rent: | \$300 | RD Basic Rent: | \$320 |
| Tenant Adjusted Rent: | \$350 | How much overage? | \$ 30 |

Tenant would pay \$330 (The difference between the RD Basic Rent and the Tenant Adjusted Rent = \$30 plus the LIHTC Gross Rent of \$300).

For projects receiving credits prior to 1991, the overage must be paid by the owner to RD. For projects receiving credits in 1991 and later years, the overage is paid by the tenant.

2. **Estimate from Utility Provider** - A written estimate from a local utility provider; the utility provider's estimate must be in writing and any costs incurred to receive this estimate are borne by the owner. The owner must retain the original utility provider estimate and must furnish a copy to DSHA and must make copies available to all tenants. This utility analysis or survey must also be pre-approved by DSHA.
3. **HUD Actual Consumption Method** – the Internal Revenue Service (IRS) and the Department of Housing and Urban Development (HUD) have published the final regulation regarding utility allowances for low-income housing tax credit (LIHTC) properties and projects that receive federal funds.

This method is required by all LIHTC projects that receive HUD federal funding (see chart below). The Actual Consumption method is based on actual consumption by the residents in the existing project. The calculations and results must be submitted to DSHA for approval and must be completed in accordance with HUD Notice H-2015-04, Methodology for Completing a Multifamily Housing Utility Analysis, effective June 22, 2015. The utility calculation is the only method that is updated every 3 years.

List below is the utility allowance method that should be used in LIHTC projects depending on the type of program that is part of the LIHTC project.

| LIHTC Unit Type – Program Type | Utility Allowance Method to Use | Review Requirement |
|--|--|----------------------------------|
| Rural Development (RD) Section 515/RA | RD Utility Method/Schedule | As required by RD |
| RD Section 515/with Section 8 | HUD Actual Consumption Method | Every 3 years |
| Section 8, project-based /units | HUD Actual Consumption Method | Every 3 years |
| Section 202 projects – PRAC or SPAC | HUD Actual Consumption Method | Every 3 years |
| HOME project or units | HUD Actual Consumption Method | Every 3 years |
| Section 811 PRAC and PAC | HUD Actual Consumption Method | Every 3 years |
| Section 811 PRA DEMO | HUD Actual Consumption for unit sizes listed in the Rental Assistance Contract (RAC) | Every 3 years |
| Section 8, Housing Choice Vouchers or HOPWA Vouchers | PHA Utility allowance schedule | Annually |
| State Rental Assistance Vouchers (SRAP) | PHA utility allowance schedule | Annually |
| Straight LIHTC (no subsidy) | May choose from Utility Options | May choose from Utility Options. |
| Housing Development Fund | May choose from Utility Options | May choose from Utility Options |

4. **HUD Utility Schedule Model** – Owner may use the HUD Utility Schedule Model that can be found on the Low- Income Housing Tax Credits page at <http://www.huduser.org/datasets/lihtc.html>. The HUD Utility Schedule Model is based on data from the Residential Energy Consumption Surveys (RECS) conducted by the Department of Energy. This data provides energy consumption by structure for heating, air conditioning, cooking, and water heating and other electric (lighting and refrigeration). The Model incorporates building location and climate.
5. **Energy Consumption Model** (Estimate from an Engineering Firm) – All Engineering firms must be properly licensed and approved by DSHA. This method uses engineering calculations and technical data (including actual data) to estimate a utility allowance. First, owners develop categories of dwelling units based on the factors that affect utility consumption. Next owners determine the consumption requirements for each type of end-use to be covered by the allowance. Depending on the end-use, the consumption requirement may be estimated based on engineering formulas, standardized consumption tables, actual data, in-house information on equipment used or the physical condition of the developments. The engineering firm must not be a related party of the building owner.

In addition, the estimate from the engineering firm for existing properties, should consider actual data, when estimating a utility allowance. The following data should be included in the engineering firm’s estimate:

- a. The actual use of similarly constructed and sized units in the building using actual utility data and rates.
- b. Provide a minimum sample size of usage data for at least 5 continuously occupied units of each Unit Type or 20% Unit Type whichever is greater.
- c. A copy of the request to the utility provider or billing entity to provide usage data. If utility data is used directly from residents, a release from the resident is required.
- d. An Excel spreadsheet listing every unit on the property, number of bedrooms, bathrooms and square footages for each unit, and the billing history by month for each unit for which data was obtained (the sample).
- e. The rent roll of the property showing occupancy as of the end of the month for the month in which the data was requested from the utility provider.

Changes in Utility Allowances. An owner may choose to change the utility allowance calculation after the credits have been reserved. If, at any time during the building’s extended use period, the applicable utility allowance for the

units changes, the new utility allowance must be used to compute gross rents of the units due 90 days after the change (the 90-day period). For example, if rent must be lowered because a local utility company estimate is obtained that shows a higher utility cost than the otherwise applicable PHA utility allowance, the lower rent must be in effect for rent due at the end of the 90-day period.

However, special care should be taken when changing the method of the utility calculation. If later, during the compliance period, the utility allowance calculation causes the project to be in noncompliance as the units are no longer rent-restricted, the owner will be required to reduce rents. For example, when the utility provider's utility allowance increases, the Gross Rent will increase. If the new Gross Rent charged to tenants is more than the Maximum LIHTC Rent allowed under the code, the project will no longer be considered rent restricted. The owner will have 90 days to reduce the rent amount charged to households and notify DSHA of the change.

Notice - A building owner using a Utility Company estimate, the HUD Utility Schedule Model, or an Energy Consumption Model must submit copies of the utility estimates to DSHA and **make the estimates available to all tenants** in the building at the beginning of the 90- day period before the utility allowances can be used in determining the gross rent of rent-restricted units.

Use of the Energy Consumption Model is limited to the building's consumption data for the twelve-month period ending no earlier than 60 days prior to the beginning of the 90-day period.

For owners using the HUD Actual Consumption Method, HUD Notice H-2015-04, Methodology for Completing a Multifamily Housing Utility Analysis, effective June 22, 2015, contains a lease addendum for the resident to sign which give release of the information.

Utility rates - For the Energy Consumption Model, rates must be no older than the rates in place 60 days prior to the beginning of the 90-day period. In the case of newly constructed or renovated buildings with less than 12 months of consumption data, the qualified professional may use consumption data for the 12-month period of units of similar size and construction in the geographic area in which the building containing the units is located.

Here is an IRS example:

On September 1, 2008, an owner decided it will implement new utility allowances 90 days later for rents due on December 1st.

1. For CONSUMPTION DATA, the 12-month period can end no earlier June 30, 2008. So the 12-month period can be July 1, 2007, to June 30, 2008, or any subsequent 12-month period up to September 1, 2007 through August 31, 2008.

2. The UTILITY RATE used must not be older than the rate in place 60 days before September 1, or July 1, 2008.

If the average electrical use is 45 kilowatts per month and the utility rate on July 1, 2008, is \$1.00 per kilowatt, then the utility allowance would \$45 each month.

3. Notice to the residents must be given by September 1.

Utility Allowance Estimate Costs. The building owner must pay for all costs incurred in obtaining the estimates and providing the estimates to DSHA and the residents. Operation funds of the project cannot be used to pay for the costs in obtaining utility estimates. The building owner is not required to review the utility allowances, or implement new utility allowances, until the building has achieved 90 percent occupancy for a period of 90 consecutive days or the end of the first year of the credit period, whichever is earlier.

Annual review. Unless using the HUD Actual Consumption Method, the building owner must review at least once during each calendar year the basis on which utility allowances have been established and must update the applicable utility allowance. The review must consider any changes to the building such as any energy conservation measures that affect energy consumption and changes in utility rates.

DSHA Approval. For properties financed by DSHA, with Housing Development, HOME, or Housing Trust funds, DSHA must approve all rent increase requests and utility allowances prior to implementation (beginning of the 90-day period).

Record retention. The building owner must retain any utility consumption estimates and supporting data as part of the taxpayer's records for the compliance period.

Low-income housing projects are considered out of compliance when:

1. The appropriate utility allowance is not used.
2. The utility allowance is not properly calculated.
3. Rents are not reduced for a utility allowance when utilities are paid directly by the tenant to the utility provider.
4. The owner did not review the basis on which the utility allowance is established at least once during the calendar year.
5. The owner failed to update rents for a revised utility allowance after the 90-day period. (if necessary)
6. The owner failed to maintain adequate documentation regarding the computation of utility allowances; without proof of the amount of the allowance and how it was estimated, there is no way to correctly compute the rent.

VII. **GENERAL MANAGEMENT POLICIES AND GUIDELINES**

The following guidelines are suggested management procedures you may use or adapt. However, you or your management company may have policies and procedures that are as equally effective in meeting the requirements of Section 42.

DSHA recommends that a management plan be developed for the property if the project has more than 6 units. The management plan should establish guidelines and practices for the property that will ensure implementation of effective and consistent policies. The management plan should include, as a minimum, the following:

1. Marketing, including a description of the development, Fair Housing, and Advertising
2. Organization chart, staffing requirements, hiring procedures, job descriptions
3. Rent Structure
4. Qualifying Tenants, Application, and Eligibility procedures
5. Waiting list procedures
6. Verification and documentation procedures
7. Certification and Re-certification procedures
8. Occupancy and lease requirements (including rent collection procedures)
9. Transfers
10. Eviction procedures
11. Maintenance and Preventative Maintenance
12. Inspections
13. Accounting Procedures, including tenant accounting (i.e., tenant ledger cards, rent rolls)

A. **MARKETING AND ADVERTISING**

Note: HUD handbook 4350.3, Chapter 4, Section 2

A description of the property should start off your management plan noting the name of the project, location, number of units, bedroom sizes, construction type and amenities. The plan should also describe the relationship between the owner and management entity (i.e., an organizational chart, delegation of authority, and key contact person).

Properties are required to have an Affirmative Fair Housing Marketing Plan. The marketing effort should attract a broad cross-section of the eligible population without regard to race, color, religion, sex, disability, familial status, of national origin. Owners must post and maintain the required Equal Housing Opportunity poster.

DSHA recognizes that marketing is a critical tool to be used for a successful project. We require that all Fair Housing and American Disability Act (ADA) regulations be consistently applied and followed. For those properties that have been allocated credits beginning in 2002 and forward, or receive HUD and/or RD assistance, Affirmative Action Policies must be followed in addition to, Fair Housing, and ADA regulations.

B. RENT STRUCTURE

The initial unit rental amounts are set during the underwriting stage and are reflected in the property pro forma. A copy of the pro forma should be placed in the management office for future reference. In accordance with Section 42, the Maximum Allowable Rent is the **maximum** amount of rent, including the utility allowance amount, that can be charged for the unit. The market area and average market rents should be used to determine what rents would make the project most feasible and marketable.

VIII. QUALIFYING TENANTS

Potential tenants for low-income, rent-restricted units should be advised during the application process that there are maximum income limits that apply to these units. Management should explain that the applicant's anticipated household income of all adult persons (over the age of 18) expecting to occupy the unit must be verified and included on an Annual Tenant Income Certification (Appendix E) prior to occupancy and annually thereafter. After initial certification, both the tenant and the unit will retain low-income status for IRS compliance if, (1) the tenant's income exceeds the allowable income but the tenant remains in the same unit and the project is designated 100% low-income; or (2) the tenant's income increases up to 140% of the income limit (based on household size) and the tenant remains in the same unit in a project that is less than 100% low-income set-aside.

At the present time, IRS Revenue Notice 88-80 (Appendix G-1) provides the only official guidance for Section 42 tenant income compliance. The notice states that determination of annual income of individuals and county median gross income adjusted for household size must be made in a manner consistent with HUD Section 8 income definitions and guidelines. HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs is a good reference guide if specific questions arise when calculating applicant and tenant income.

A. WAITING LISTS / PROCESSING LISTS

If a project has sufficient qualified applicants but the project has no vacancies, we suggest that a waiting list be maintained.

The waiting list may be kept in a separate bound folder, or electronically. It should contain at least the following information (per bedroom size):

1. Applicant's name
2. Family Size
3. Address
4. Phone Number
5. Ethnicity/Race
6. Program Type (i.e., RD Rental Assistance, Project-Based Section 8, LIHTC only)
7. Date of Application
8. Bedroom Size Requested
9. Handicap/Disability

The waiting list or processing list should be maintained to show the history of applicants and status of each application (approved, denied, withdrawn, etc.) and should include original application dates and all other respective dates. In addition, waiting lists should be maintained so that it is evident which application is next for processing.

All applicants should be informed, at the time of completing their application, their name will remain on the waiting list for an established period of time. Further, all applicants should be informed that they will either be contacted for an application update or will need to contact the management office if they are interested in remaining on the waiting list.

We recommend that at least the top 5 applications on the waiting list be kept current. All applicants in the top five should be notified that they may be potential tenants and requested to come to an interview to verify all information contained on the application form. The top five applications on the waiting list should be updated every 90-120 days. This can easily be done by having the applicant sign original verification forms. The owner can then make copies of the verification form and send out the forms to the appropriate parties. Documented telephone conversations may also be used to update the application if written verification cannot be obtained.

The top five applicants for the waiting list (per bedroom size) should be interviewed. A management checklist

(Appendix D-1) can be used during this interview to certify that the information received from the applicant is true and correct. Verification of income and assets should be completed. After the applicant has successfully passed all screening criteria, the applicant may move into the next available and correct size unit. A letter should be forwarded to the applicant explaining the new address, date of move-in, amount of rent, and security deposit.

B. THE APPLICATION

A completed application is critical to an accurate determination of eligibility. The information on the application should be used as a tool to determine all sources of income, assets, and credit information.

We suggest that the applicant complete the application at the management office or in the presence of the owner. The application can be checked at that time for completeness and the applicant can be asked questions pertaining to the application.

Extracting as much information as possible from applicants during the applicant interview is very important. For RD and HUD properties, race, ethnicity, and income type should always be included on every application. The application should also include at least the following:

The name, age, and sex of each person that will occupy the unit (legal name should be given just as it will appear on the Lease and Tenant Income Certifications);

1. All sources and amounts of income that will be received during the next twelve-month certification period, listing the address, phone numbers, and contact person for all income sources; **NOTE:** We recommend that applications include a question on child support awards and whether or not the applicant receives the payment.
2. Full-time student status.
3. Section 8 Certificate or Voucher participation.
4. The signature of the applicant(s) and the date the application was completed. The application should be time and date stamped especially if a waiting list is being maintained.
5. Violence Against Woman Act 2013 (VAWA) addendums and attachments (See Chapter on VAWA)

All applications should be reviewed by the owner or management to determine eligibility. If the applicant is determined **ineligible**, the applicant should be notified in writing of the ineligible status. A copy of the rejection letter should be attached to the application. We recommend that rejected applications be retained for at least three years.

C. ELIGIBILITY CRITERIA

1. Minimum Occupancy Standards

Owners must develop and follow occupancy standards that consider the size and number of bedrooms needed based on the number of people in the family.

Occupancy standards serve to prevent the over or underutilization of units. Occupancy standards also ensure that tenants are treated fairly and consistently and receive adequate housing space. By following the standards described in this paragraph, owners can ensure that applicants and tenants are housed in appropriately sized units in a fair and consistent manner as prescribed by law. Occupancy standards should be part of an owner's tenant selection procedures.

Owners should have written standards describing the project eligibility criteria. Owners have discretion in developing specific occupancy standards for a property, as long as the standards do not violate fair housing requirements, Federal, State, and local fair housing and civil rights laws, Tenant-landlord laws, Zoning and Program restrictions, and HUD's Equal Opportunity and nondiscrimination requirements

under HUD's administrative procedures.

Owners apply their occupancy standards before assigning the family to a unit. Owners should review family size and occupancy standards prior to completing all of the required verifications so that if the property cannot accommodate the family, the owner may immediately inform the family of its ineligibility.

Occupancy Standards are Prohibited from Excluding Children

The Fair Housing Act prohibits housing providers from discriminating on the basis of familial status, making it illegal to discriminate against families because of the presence of children. Owners may neither exclude families with children from their properties (unless required by program restrictions). Nor may they develop policies or procedures that have the purpose or effect of prohibiting children (e.g., policies in tenant selection plan, occupancy standards and house rules).

General Occupancy Standards

Owners have discretion in developing occupancy policies that meet the needs of the specific property and programs. DSHA does not prescribe specific policies owners must implement but provides guidelines owners should follow when developing written occupancy standards.

DSHA does not have minimum occupancy standards. However, we recommend using the following chart when determining unit size for a family:

| BEDROOM SIZE | NUMBER OF PERSONS |
|--------------|-------------------|
| Efficiency | 1 |
| 1 | 1 |
| 2 | 2 |
| 3 | 3 |
| 4 | 6 |

DSHA does not have maximum occupancy standards. Those standards should be set by each owner in accordance with applicable local housing codes. We recommend, however, that any maximum occupancy standards established be disclosed in writing to applicants/tenants and be a part of the owner's management plan.

2. Determining Household Size

Note: The HUD Handbook 4350.3, Chapter 3, Section 1

When determining family size for income limits, the owner should include the following individuals;

- A. Must count all full-time members of the family.
- B. Must also count all anticipated family members. Anticipated family members include the following:
 1. Children temporarily absent due to placement in a foster home.
 2. Children in joint custody arrangements who are present in the household 50% or more of the time.
 3. Children who are away at school but who live with the family during school recesses.
 4. Unborn children of pregnant women.
 5. Children who are in the process of being adopted.
 6. Temporarily absent family members who are still considered family members. For example, the owner may consider a family member who is working in another state on assignment to be temporarily absent.
 7. Family members in the hospital or rehabilitation facility for periods of limited or fixed duration. These persons are temporarily absent as defined in subparagraph f above; and
 8. Persons permanently confined to a hospital or nursing home. The family decides if such persons are included when determining family size for income limits. If the

family chooses to include the permanently confined person as a member of the household, the owner must include income received by these persons in calculating family income.

3. Live-in aides and Foster Children and Adults

The owner must count live-in aides, foster adults, and foster children for purposes of determining appropriate **unit size** only.

1. The owner must verify the need for the live-in aide. Verification that the live-in aide is needed to provide supportive services to the resident must be obtained from the person's physician, psychiatrist, or other medical practitioner or health care provider. The owner must approve and verify whether the live-in aide is necessary and to document that applicants or tenants, who have requested a live-in aide have a disability related need for the requested reasonable accommodation. The owner may not require applicants or tenants to provide access to confidential medical records or to submit to a physical examination. A spouse may not be considered a live-in aide. Live-in is only there to provide supportive services. Not financial dependent on each other.
2. Foster children and foster adults. Foster children are in the legal guardianship or custody of a State, county, or foster care agency currently under a foster care arrangement. A foster adult is usually an adult with a disability who is unrelated to the tenant family and who is unable to live alone.

Foster adults/children are not considered **family members** and must not be included in calculations of income for eligibility or rent determination purposes. **However, foster adults/children are considered household members and must be included when determining unit size or subsidy standards.**

The definition of "dependent" has been revised to explicitly **exclude** foster adults/children. No dependent deduction is permitted for foster adults/children. **Also, income earned by foster household members, payments received for the care of foster members, and expenses incurred related to foster members are not considered to be family income** or expenses used in the determination of annual income. However, unreimbursed childcare expenses for foster children under 13 years of age may be deducted from annual income if those expenses are needed to enable a member of the family to work, look for work, or further their education.

NOTE: The owner must not count permanently institutionalized family members (see 2, B.8 above), adult children on active military duty (see below),

4. Deployment of Military Personnel to Active Duty

Owners are encouraged to accommodate the unique circumstances of household where a member is called to active duty in the Armed Forces. Specific actions that owner can take and remain in compliance include, but are not limited to:

1. Allow a guardian to move into the low-income unit on a temporary basis to provide care for any dependents, of the military person, that remain in the unit. The guardian's income is not included in the household's income.
2. Allow a tenant living in a low-income unit to provide care for any dependents of person called to active duty in the Armed Forces on a temporary basis as long as the head and /or co-head of the household continues to service in active duty. Income of the dependent (e.g., SSI benefits, military benefits) is not included in the household's income.
3. Allow leases to remain in effect for a reasonable period of time without recertification (if required) depending on the length of deployment beyond that required by the Soldiers'

and Sailors' Civil Relief Act of 1940, 50 U.S.C. §§501-591, even though the adult members of the military family are temporarily absent from the assisted unit.

5. Maximum Income Limits and Rents

The U. S. Department of Housing and Urban Development (HUD) annually reviews and publishes the median income information for each county. These income limits are then used to determine the LIHTC rents for Delaware. Limits will remain in effect until new annual limits are published by HUD. DSHA will update the charts annually as new income information is received.

There are maximum income limits that households cannot exceed in order to be eligible to reside at a LIHTC property. The maximum income limit is based on the number of persons in the household.

Each year, when HUD publishes the income limits, the Delaware State Housing Authority will provide a link to their website, via email notice, to assist owners in determining the maximum income limit amounts for household size and the Maximum LIHTC rents they can charge for their rent-restricted units.

The chart shows the maximum income, by family size, of tenants residing in LIHTC projects as well as the respective rent that can be charged. Rents must include all utilities other than telephone or be reduced by an appropriate utility allowance. For 1987, 1988, and 1989 LIHTC projects, the rents are based on 30% of the tenant's maximum gross monthly income, based on household size (noted "by size" on the chart). For 1990 through 2005 projects or projects that were pre-1990 but made the allowed one-time election to change the method of determining rents, rents are 30% of an imputed income limit based on the number of bedrooms (noted "by bedroom" on the chart).

Due to the Housing and Economic Recovery Act of 2008 (HERA), income limits for projects funded with tax credits and/or financed with tax exempt housing bonds are now calculated and presented separately from the Section 8 income limits. **Beginning with the publication of FY2009 Median Family Income estimates and income Limits, the Section 8 income limits can no longer be used for tax credit or tax-exempt bond properties.**

To avoid noncompliance, be sure you are using the correct income limits. There are now two sets of income and rent limits and according to HERA, the Placed in Service (PIS) date for a project determines which set of limits to use. HERA Income Limits is for properties placed in service before 1/1/2009 (see below) and HUD Income Limits is for properties placed in service after 1/1/2009. The earliest PIS date for a building governs the property.

- **Tax Credit Only – Use HERA Limits**
- **Tax Credit/HDF – Use HERA Limits**
- **Tax Credit/HOME – Use HUD Limits**
- **HOME/HDF – Use HUD Limits**
- **Tax Credit/RD – Use HERA Limits**
- **Tax Credit/Sec 8 – Use HUD Limits**
(Kent and Sussex Counties ONLY)

D. SCREENING CRITERIA

DSHA also recommends that the owner include in its management plan established screening criteria other than income eligibility. Examples include, but are not limited to, the following:

1. Landlord history
2. Home visits, when applicable
3. Credit checks
4. Criminal background check
5. Sex Offender Registry

Some of the above screening criteria may not be financially feasible for the project; however, basic screening such as previous landlord history and credit checks should be considered.

All policies must comply with Section 504 of the Rehabilitation Act of 1973, The Fair Housing Act Amendments of 1988 and Title VI of the Civil Rights Act of 1964.

1. Conditions under Which Owners May Reject Applicants

An owner may reject an applicant if the applicant:

- a. Is ineligible for occupancy in a particular unit or property.
- b. Is unable to disclose and provide verification of SSNs for all household members, except for those household members who do not contend eligible immigration status or tenants who were 62 or older on January 31, 2010, whose initial determination of eligibility was begun before January 31, 2010. *
- c. Does not sign and submit verification consent forms or the Authorization for Release of Information.
- d. Has household characteristics that are not appropriate for the specific type of unit available at the time or has a family of a size not appropriate for the unit sizes that are available; **NOTE:** In such cases, the owner may deny the applicant admission to a specific unit, but the applicant may continue to wait for another unit.
- e. Includes family members who did not declare citizenship or non-citizenship status or sign a statement electing not to contend noncitizen status. However, an owner should permit families to revise their application to exclude proposed family members who do not declare citizenship or eligible noncitizen status (applies to LIHTC w/Section 8 housing assistance payment); or
- f. Does not meet the owner's tenant screening criteria.

2. Notification of Denied Application

Owners should notify the applicant in writing if the application is being denied. The written rejection notice must include:

- a. The specifically stated reason(s) for the rejection.
- b. The applicant's right to respond to the owner in writing or request a meeting within 14 days to dispute the rejection. And
- c. That persons with disabilities have the right to request reasonable accommodations to participate in the informal hearing.

3. Meetings with Applicants to Discuss Denial Notices

- a. Any meeting with the applicant to discuss the application being rejected should be conducted by a member of the owner's staff who was not involved in the initial decision to deny admission or assistance.
- b. Within 5 business days of the owner response or meeting, the owner should advise the applicant in writing of the final decision on eligibility.

IX. GENERAL VERIFICATION PROCEDURES AND REQUIREMENTS

Owner accepting Vouchers are responsible for completing and maintaining the initial Certification and a copy of the Annual certification, from the voucher provider, in the resident file for review.

A. Certifications Forms

Owners must verify the income of low-income tenants occupying set-aside units at move-in. Tenants may report changes in income and household composition that occur between annual re-certifications and/or self-certifications. The following forms are required by DSHA for the initial move-in (for all properties):

1. DSHA's Tenant Income Certification form.
2. Asset Certification form.
3. 3rd Party Income Verifications.
4. Student Certification form.
5. Income/Asset Checklist

No other forms for the above can be substituted or are acceptable for initial move-in (for all properties, including Section 8 and RD).

Applicants and adult family members must sign consent forms to authorize the owner to collect information to verify eligibility, income, assets, and student status.

The following certification/verification procedures should be completed:

1. Contact applicant/tenant for an appointment and request them to bring in information on income, assets, family size, etc. For example, wage stubs, tax returns, bank statements, birth certificates can be used for qualifying the applicant/tenant. Make copies of any information brought by the applicant/tenant at the appointment. We recommend that a copy of some form of identification be received for all adult members of the household (i.e., social security card, driver's license, legal alien card, etc.) and placed in the applicant/tenant file.
2. At the appointment, use the checklist as a guide (Spectrum link) and ask the applicant(s)/tenant(s) questions on income, assets etc. The checklist is valid for 120 days and should include a statement that the applicant certifies that the information given on the application is true and correct. Have each adult applicant/tenant sign income/asset checklist and all applicable verification forms.
3. Obtain verification forms (Spectrum link) to all applicable income and asset sources.
4. Upon receipt of the verification forms, calculate anticipated annual income and asset income received by all adults in the household for the 12 months following anticipated move-in. If third party verification forms cannot be obtained in a timely manner, (i.e. paystubs, bank statements) income and asset information submitted by the applicant/tenant at the interview can be used as documentation with a self-certification statement.
5. Complete an Annual TIC Form (Spectrum link). Place all back-up verification/documentation with the Tenant Income Certification form. The Annual TIC and Student Certification must be completed along with the lease agreement and move-in inspection. It is preferred that all certification forms, lease agreement and move-in inspection be signed on the day of move-in (but not more than 5 days before move-in). Each adult household must fully execute the TIC, Asset Certification form and Student Certification form. Place all information in an individual tenant file.

Acceptable Certification Forms after initial move-in:

HUD Section 8 Properties - HUD 50059 form – see special instructions below.

RD Section 515/514/516 - FmHA 1944 form – see special instructions below.

All others must use - DSHA TIC form (Appendix E)

For properties with HUD or RD subsidy, a DSHA TIC must be completed and signed at move –in along with HUD's 50059 for and RD 1944 form. The effective date of the initial Tax Credit TIC should be the move-in date. Thereafter, the HUD 50059 or RD 1944 form may be used for recertification, self-

certification and interim purposes. All new move-ins must have a DSHA TIC completed, signed and dated by ALL adult household members for eligibility purposes during the compliance period. If DSHA TIC is not completed at move-in, the owner will be in violation and the project will be in noncompliance with the IRS.

We recommend that a certification stating there have been no changes in income and/or family composition be signed by the applicant/tenant on the day the tenant moves into property. (This certification may be used for tenant fraud and keeps the burden of proof on the tenant.)

B. Tenant Income Verification

Term of Verification

Verification of income is valid for 120 days prior to move-in or re-certification date.

An oral verification should be used when information is missing or is incomplete on 3rd party verifications. When verifying by phone, the owner must record, and include in the tenant's file, the following information: third-party's name, position, and contact information; information reported by the third party; name of the person who conducted the telephone interview and date and time of the telephone call. An oral verification should not be used in lieu of a 3rd party verification, nor should it contradict information provided by a 3rd party. Oral testimony alone cannot be substituted for necessary written documentation.

Confidentiality of Applicant and Tenant Information

Federal law limits the information owners can collect about an applicant or tenant to only information that is necessary to determine eligibility and level of assistance. Federal privacy requirements also establish the responsibility of owners and their employees to use information provided by applicants and tenants only for specified program purposes and to prevent the use or disclosure of this information for other purposes. Owners must comply with Delaware privacy laws concerning the information they receive from third-party sources about applicants and tenants. These laws generally require confidentiality and restrict the uses of this information.

C. Methods of Verification

Any request for income must state the reason for the request, include a release statement signed and dated by applicant or tenant, and provide a section for the employer or another third-party source to state the applicant's current anticipated gross annual income or rate of pay, number of hours worked, and frequency of pay. Bonuses, tips and commissions must be included. Spaces should also be available for a signature, job title, telephone number and date.

Do not use a blanket release authorization as this entitles the owner or manager to obtain information to which it is not entitled or needed for eligibility determination. The HUD Data Practices Act Disclosure Statement is not a verification release for tax credit purposes.

- Applicants should be asked to sign of each verification form.
- Verification requests should be sent directly to and from the source, not through the applicant.
- Verifications may be hand-delivered by the applicant/tenant only if it is provided on the letterhead. Such as social security verification letter, pay stubs.
- **All income verifications should be date-stamped as they are received.**

The owner may obtain accurate third-party written verification by facsimile, e-mail, or Internet, if adequate effort is made to ensure that the sender is a valid third-party source.

Facsimile. Information sent by fax is most reliable if the owner and the verification source agree to use this method in advance during a telephone conversation. The fax should include the company name and fax number of the verification source.

E-mail. Similar to faxed information, information verified by e-mail is more reliable when preceded by a telephone conversation and/or when the e-mail address includes the name of an appropriate individual and firm.

Internet. Information verified on the Internet is considered third party verification if the owner is able to view web-based information from a reputable source on the computer screen. Use of a printout from the Internet may also be adequate verification in many instances.

D. Acceptable Forms of Income Verification

IMPORTANT NOTE:

For tenants who receive Section 8 Certificates/Vouchers, receipt of the Public Housing Authority Verification form is acceptable as verification of income. The Public Housing Authority Verification Form may be attached to the Certification form and placed in the tenant folder. If the Public Housing Authority is not cooperative, other proper income verification and certification methods must be followed.

Specific information must be obtained on income verifications. Owners or management agents may develop their own forms; however, the following acceptable forms of verification for specific types of income situations, in the order of prioritized acceptability, must be included:

1. Employment Income
 - a. If an employment verification is obtained, verification must specify current amount of pay, frequency of pay, year-to-date earnings including start and ending dates and the effective date of any anticipated increase during the next 12 months. If information is available on changes expected to occur during the year, use that information to determine the total anticipated income from all sources during the year.
 - b. Check stubs or earnings statements (minimum of two recent consecutive pay stubs) showing the employee's gross pay per pay period and frequency of pay.
 - c. Statements or affidavits along with the most recent income tax returns signed by the applicant or W-2 forms providing the income including income from tips and other gratuities, when available.

NOTE: We recommend that you request a copy of all adult household members' tax returns or W-2 forms as an additional source of previous or current employment history prior to certification or re-certification. If necessary, the owner can ask the potential applicant or resident to provide a signed Form 8821, which will allow the owner to verify the information with the IRS.

2. Self-Employment Income
 - a. Accountant or bookkeeper's statement of net income.
 - b. Audited or unaudited financial statement(s) of the business along with a notarized statement from the applicant giving the anticipated income for the 12 months following certification; or
 - c. An affidavit and, if available, the prior year's federal income tax return (personal **and** corporate/business tax returns, if household is sole proprietor). The tax return received as documentation should always be complete, signed and have all attachments required including the following: Schedule C (Small Business), Schedule E (Rental Property Income), Schedule F (Farm Income).
3. Social Security, Pensions, Supplemental Security Income (SSI), Disability Income, Veteran's Administration Benefits
 - a. A benefit verification form completed by the agency providing benefit information; or
 - c. An award or benefit notification letter prepared and signed by the authorizing agency. NOTE: Since checks or bank deposit slips show only the net amount remaining after deducting SSI or

Medicare, they may be used only when award letters cannot be obtained. Any withholdings must be verified and included in annual income. If using a bank statement, always add the Medicare payment or SSI payment back into the gross amount.

4. Unemployment Compensation

- a. A verification form completed by the unemployment compensation agency; or
- b. Records from the unemployment office stating payment dates and amounts. (Unemployment income should be annualized unless an ending date has been specified on the verification).

5. Alimony and Child Support Payments

- a. Child support verifications forms or printout provided by the Division of Child Support Enforcement specifying the amount and frequency of support and whether or not the award is received by the applicant/tenant/household; or
- b. A copy of the latest check and documentation of how often the check is received or;

In many cases, child support has been court ordered but the full amount is not being received. If this is the case, a printout from the child support enforcement agency showing zero or sporadic payments received will be sufficient. Or, a statement from the tenant attesting to the fact that no support payments are being received and the likelihood of support payments will not be reactivated within the next 12 months.

6. Recurring Contributions and Gifts

- a. Statement or affidavit signed by the person providing the assistance which gives the purpose, dates, and value of the gifts; or
- b. A letter from a bank, attorney, or a trustee providing required verification; or
- c. Only when the above is not possible, the applicant's notarized statement giving the same information.

7. Zero Income Applicants/Tenants

- a. If an applicant/tenant is currently unemployed and claiming zero (0) income, they must provide evidence of current anticipated income for the certification year by executing a Zero Income Affidavit **and** providing a signed copy of the prior year's federal income tax return. If the applicant/tenant state they do not file a return, owners and managers may request that the applicant/tenant complete IRS form 4506(T) Request for Transcript of Tax Return for documentation that a return was not filed.

E. Annual Income

Income is now defined broadly with an expanded and clarified list of income exclusions. Annual income includes all amounts received from all sources by each adult family member 18 years or older or the head of household or their spouse, plus unearned income by or on behalf of each dependent under 18 years, plus income from assets.

1. Whose Income is Counted - Income of Adults and Dependents

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

Dependents - A dependent is a household member who is under 18 years of age, is disabled, or is a full-time student.

The head of the household, spouse, co-head, foster child, or live-in aide are never dependents. Some income received on behalf of household dependents is counted and some is not. Earned income of minors (household members under 18) is not counted. Benefits or other unearned income of minors is counted. NOTE: If an emancipated minor is residing with a household as a member other than the head, spouse, or co-head, the individual would be considered a dependent and his or her income handled as a dependent. **All income of and for foster adults and foster child is not counted.**

When more than one household member shares custody of a child and both families live in a LIHTC property, only one household at a time can claim the dependent. The household that counts the dependent also counts the unearned income of the child. The other household cannot claim the dependent or unearned income of the child.

Although full-time students who are 18 years of age or older are considered as dependents, a small amount of their earned income will be counted. Count only earned income up to the HUD annual adjusted deduction for full-time students, age 18 or older, who are not the head of the household or spouse or co-head. If the income is less than HUD deduction annually, count all the income. If the annual income exceeds HUD deduction, count HUD deduction and exclude the amount that exceeds HUD deduction.

The income of full-time students 18 years of age or older who are members of the household but away at school is counted the same as the income for other full-time students. The income of minors who are members of the household but away at school is counted as the income for other minors.

All income of a full-time student, 18 years of age or older, is counted if that person is the head of the household, spouse, or co-head.

Income of Temporarily Absent Household Members

Owners must count all income of household members approved to reside in the unit, even if some members are temporarily absent. If the owner determines that an absent person is no longer a household member, the individual must be removed from the lease and the Certification. A temporarily absent individual on active military duty must be removed from the household, and his or her income must not be counted unless that person is the head of the household, spouse, or co-head. However, if the spouse or a dependent of the person on active military duty resides in the unit, that person's income must be counted in full, even if the military member is not the head, or spouse of the head of the household. The income of the head, spouse, or co-head will be counted even if that person is temporarily absent for active military duty.

Income of Permanently Confined Household Members

An individual permanently confined to a nursing home or hospital may not be named as household head, spouse, or co-head but may continue as a household member at the household's discretion. The household has a choice regarding how the permanently confined individual's income will be counted. The household may elect *either* of the following:

Include the individual's income and receive allowable deductions related to the medical care of the permanently confined individual; or exclude the individual's income and not receive allowances based on the medical care of the permanently confined individual. The permanently confined member is listed on the Certification as an adult who is not the head, spouse, or co-head, even when the permanently confined household member is married to the person who is or will become the head of the household. The owner should consider extenuating circumstances that may prevent the confined member from being able to sign the TIC. If the owner determines the confined member is unable to sign the TIC, the owner must document the file why the signature was not obtained.

Annual income is defined as follows:

Income is now defined broadly with an expanded and clarified list of income exclusions. Annual income includes all amounts received from all sources by each adult family member 18 years or older or the head of household or their spouse, plus unearned income by or on behalf of each dependent under 18 years, plus income from assets.

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

Exclusions, provides the complete list of income inclusions and exclusions published in the regulations and Federal Register notices.

Annual income includes amounts derived (during the 12-month period) from assets to which any member of the household has access.

2. What is considered Annual Income

Annual income includes, but is not limited to the following:

- Gross amount (before any payroll deductions) of wages, salaries, overtime pay, commissions, fees, tips, bonuses, allowances (documented by an IRS 1099), and any other compensation for personal services received by every adult member of the household.
- Net income, salaries, and other amounts distributed from a business.

When calculating annual income, owners must include the net income from operation of a business or profession including self-employment income. Net income is gross income less business expenses, interest on loans, and depreciation computed on a straight-line basis. In addition to net income, owners must count any salaries or other amounts distributed to family members from the business, and cash or assets withdrawn by family members, except when the withdrawal is a reimbursement of cash or assets invested in the business.

When calculating net income, owners must not deduct principal payments on loans, interest on loans for business expansion or capital improvements, other expenses for business expansion, or outlays for capital improvements. If the net income from a business is negative, it must be counted as zero income. A negative amount must not be used to offset other family income.

- Gross amounts, before deductions for Medicare, of social security payments. This includes payments received by adults on behalf of minors for their support.
- Military employment may include (but is not limited to) base and longevity pay, all regular pay, special pay, proficiency pay, sea and foreign duty pay, hazardous duty pay, subsistence and clothing allowances of a member of the Armed Forces, except hostile fire pay.
- Note: Until January 1, 2012, Basic Pay Allowance for housing is disregarded for properties located in a county that contains a qualified military installation to which the number of members assigned to units based out of the military installation as of June 1, 2008, has increased by 20% or more from December 31, 2005. This applies to the county that contains the military installation and to adjacent counties. A qualified military installation is a military installation or facility with 1,000 or more members as of June 1, 2008. **(This does not apply to Dover Air Force Base, Dover, Delaware or New Castle County Reserve Base, New Castle, Delaware)**
- Periodic Payments from Long-Term Care Insurance, Pensions, Annuities, and Disability or Death Benefits.

The full amount of periodic payments from annuities, insurance policies, retirement funds, pensions, and disability or death benefits is included in annual income. Payments such as Black Lung Sick Benefits, Veterans Disability, and Dependent Indemnity Compensation for the Widow of a Killed in Action Serviceman are examples of such periodic payments. Withdrawals from retirement savings accounts such as Individual Retirement Accounts and 401K accounts that are not periodic payments do not fall in this category and are not counted in annual income.

Example - Withdrawals from IRAs or 401K Accounts

Isaac Freeman retired recently. He has an IRA account but is not receiving periodic payments from it because his pension is adequate for his routine expenses. However, he has withdrawn \$2,000 for a trip with his children. The withdrawal is not a periodic

payment and is not counted as income.

If the tenant is receiving long-term care insurance payments, any payments in excess of \$180 per day must be counted toward the gross annual income.

Federal government, any state, local government, social security, or private pension funds paid directly to an applicant's/tenant's former spouse pursuant to the terms of a court decree of divorce, annulment, or legal separation are not counted as annual income.

If an agency is reducing a family's benefits to adjust for a prior overpayment (e.g., social security, SSI, TANF or unemployment benefits), **count the amount that is actually provided AFTER the adjustment for the period of adjustment.**

- Lump sum payments received because of delays in processing unemployment, welfare, or other benefits.
- Payments in lieu of earnings, such as unemployment and disability compensation, and severance pay. Any payments that will begin during the next twelve months must be included.
- Income includes, but is not limited to, earned and unearned income from all household members age 18 and older (adults, including foster adults), unearned income of minor children and foster children under the age of 18, and income from assets. Emancipated minors, persons under the age of 18 who have entered into a lease under state law, are treated as adults.
- Alimony and child support; Alimony or child support paid by a member of the household is also counted as income, even if it is garnished from wages.

The owner may accept printouts from the court or agency responsible for enforcing support payments, or other evidence indicating the frequency and amount of support payments received. If sporadic payments were received over the past 12 months, DSHA will allow support payments received to be averaged when calculating child support income. If the applicant/tenant states there is a child support order in place and it has been verified with the Division of Child Support Enforcement Agency that the support payments are clearly not being received, no amount of child support should be included in the annual income calculation and an affidavit should be completed by applicant/tenant.

Child support paid to the custodial parent through state child support enforcement or welfare agency may be included in the household's monthly welfare check and may be designated in different ways. In some states these payments are not identified as separate from the welfare grant. The payment may be listed as child support or as pass-through payments. These amounts must be counted as annual income.

- Welfare assistance.
- Interest, dividends, and other income from net family assets (including income distributed from trust funds). On deeds of trusts or mortgages, only the interest portion of the monthly payments received by the applicant is included.
- Lottery winnings paid in periodic payments. (Winnings paid in a lump sum are included in family assets, not in annual income).
- Recurring monetary contributions or gifts regularly received from persons not living in the unit, including rent or utility payments paid on behalf of the household.

Owners must count as income any regular contributions and gifts from persons not living in the unit. These sources may include rent and utility payments paid on behalf of the family, and other cash or noncash contributions provided on a regular basis.

Examples Regular Cash Contributions

The father of a young single parent pays her monthly utility bills. On average he provides \$100 each month. The \$100 per month must be included in the family's annual income or
The daughter of an elderly tenant pays her mother's \$175 share of the rent each month. The \$175 value must be included in the tenant's annual income.

Groceries and/or contributions paid directly to the childcare provider by persons not living in the unit are excluded from annual income.

Groceries provided by persons not living in the household are excluded from annual income.

- Nonrecurring income is **not counted**.
- Workman's Compensation is not counted for the first 12 months. (**See Section 3 on Annual Income exclusions.**)
- Resident services stipends are generally modest amounts of money received by residents for performing services such as hall monitoring, fire patrol, lawn maintenance, and resident management. If the resident stipend exceeds \$200 per month, owners must include the entire amount in annual income. If the resident stipend is \$200 or less per month, owners must exclude the resident services stipend from annual income.
- Withdrawal of Cash or Assets from an Investment; the withdrawal of cash or assets from an investment received, as periodic payments should be counted as income. Lump sums receipts from pension and retirement funds are counted as assets. **Disbursements expected to reoccur are income.**

3. **Annual Income Exclusions:**

- Employment income of members of the household that are under 18, including foster children. (Unearned income such as social security payments received on behalf of all minors, **NOT** including foster children must be included as income). Income is not included for foster child or foster adults.
- Earnings more than HUD designated deduction for each **full-time student 18 years old or older** (excluding the head of household, co-head, or spouse).
- Deferred periodic payments supplemental security income and social security benefits that are received in a lump sum payment.
- Payments received for the care of foster children and foster adults.
- Adoption assistance payments in excess of \$480 per adopted child
- Income associated with persons who reside in the unit but are not household members, for example, temporary live-in aide, foster adult, and foster child.
- Nonmonetary in-kind donations such as food, clothing, toiletries, received from a food bank or similar organization.
- Income that is received on behalf of someone who does not reside with the family, as long as the amounts are: (1) not intermingled with the family's funds; and (2) used solely to benefit the person who does not reside with the family.
- Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member.

- **The treatment of educational scholarships or grants for households receiving Section 8 assistance.** The full amount of student financial assistance either paid directly to the student or to the educational institution. This amount includes education grants, scholarships, or Veterans Administration benefits that are intended as a subsistence allowance to cover tuition, fees, books, rent, equipment, utility costs, and board of a student living away from home.

For Tax Credit properties, all forms of student financial assistance, no matter how it is used, are excluded from annual income unless the student receives Section 8 assistance.

NOTE: In accordance with the Federal Register dated 12/30/05 Volume 70, Number 250, HUD further defines eligibility of student income as, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph, “financial assistance” does not include loan proceeds for the purpose of determining income.

The treatment of educational scholarships or grants for households NOT receiving Section 8 assistance. Obtain verification of actual covered costs to attend school (include tuition, room & board and all fees) Verify all financial assistance from the Higher Education Act and all financial assistance from other sources. Subtract the two amounts from the total cost to attend school. If there is excess money left over from other financial sources, this excess amount is income.

- The value of state or local employment training programs and training of resident management staff. In addition, amounts received under training programs funded by HUD (Comprehensive Improvement Assistance Program, Section 3 or Family Self-Sufficiency Programs) are not included as income. Amounts received by a person with a disability that are disregarded for a limited time for purposes of supplemental security income eligibility and benefits because they are set-aside for use under a Plan to Attain Self-Sufficiency (PASS). Amounts received by a participant in other publicly assisted programs that are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, childcare, etc.) and which are made solely to allow participation in a specific program.

Incremental earnings and benefits resulting to any family member from participation in qualifying state or local employment training programs (including training programs not affiliated with a local government) and training of a family member as a resident management staff person. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives and are excluded only for the period during which the family member participates in the employment-training program.

- Principal portion of the payments received on mortgages or deeds of trust held as assets.
- Hostile Fire pay to a family member in the military. The special pay to a family member serving in the Armed Forces who is exposed to hostile fire (e.g., in the past, special pay included Operation Desert Storm).
- Lump sum additions to family assets such as inheritances, cash from sale of assets, one-time lottery winnings, insurance and workman's compensation, or settlement for personal or property losses.
- Nonrecurring income (including gifts).
- Deferred periodic amounts from Department of Veterans Affairs disability benefits that are received in a lump-sum amount.

- Food Stamps, Meals on Wheels or other programs that provide for the needy; groceries provided by persons not living in the household; and amounts received under the School Lunch Act and the Child Nutrition Act of 1966 (including reduced lunches and food under Special Supplemental Food Program for Women, Infants and Children (WIC)).
- Amounts paid by a State agency to a family with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home.
- Payments, rebates, or credits received under Federal Low-Income Home Energy Assistance Programs.
- Annual rent credits or rebates paid by government agencies. This includes any earned income tax credit up to and equal to the tenant income tax liability. This amount is excluded from income.
- Resident Service Stipends (not to exceed \$200 per month). A tenant service stipend is a payment received by a tenant from the owner for performing a project community service on a part-time basis. Common examples include, nightly patrols, day care assistance, door-to-door delivery assistance, lawn maintenance and tenant initiatives coordination. No tenant may receive more than one such stipend during the same period of time.
- Amounts earned by temporary census employees (terms may not exceed 180 days for the purpose of this exclusion).
- Insurance settlements are excluded from income. Worker's Compensation is excluded for the 1st 12 month. Then it is counted as income.
- Retirement accounts recognized by the IRS are no longer assets. This will include 401ks, IRA, Keoghs, etc. You do not need to include as an asset; however, periodic payments are still income. So, you will need to verify if they are taking periodic payments from these accounts.
- Trust accounts not under the control of any household members are excluded from assets. Distributions of income from the trust when they are used to pay the cost of health and medical expenses for a minor are excluded.
- Other forms of income excluded by federal statutes are:

Amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the *Federal Register* and distributed to housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary. The following is a list of income sources that qualify for that exclusion:

The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 [b]);

Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058) (employment through AmeriCorps, Volunteers in Service to America [VISTA], Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions).

Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626[c])

Income derived from certain sub marginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);

Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624[f]);

Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552[b]); (effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 [29 U.S.C. 2931], e.g., employment and training programs for Native Americans and migrant and seasonal farm workers, Job Corps, veterans employment programs, state job training programs, career intern programs, AmeriCorps);

Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Stat. 2503-04).

The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court and the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408).

Amounts of scholarships funded under title IV of the Higher Education Act of 1965, including awards under federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);

Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056[f]), e.g., Green Thumb, Senior Aides, Older American Community Service Employment Program.

Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in *In Re Agent-product liability litigation*, M.D.L. No. 381 (E.D.N.Y.).

Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721).

The value of any childcare provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q).

Earned income tax credit (EITC) refund payments received on or after January 1, 1991, including advanced earned income credit payments (26 U.S.C. 32[j]).

Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433).

Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637[d]).

Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran (38 U.S.C. 1805).

Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602); and Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931).

Relocation payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies act of 1970.

Payment under the Job Training Partnership Act (employment and training programs for native Americans and migrant and seasonal farm workers, Job Corps, veterans' employment programs, State job training programs, career intern programs);

Payment received under Domestic Volunteer Service Act of 1973 (employment through VISTA, Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions).

Payments received under Alaskan Native Claims Settlement Act, and the first \$2,000 of per capita shares received from judgments awarded by the Indian Claims Commission or the Court of Claims or from funds the Secretary of Interior holds in trust for an Indian Tribe.

Payments received under Title V of the Older Americans Acts (Green Thumb, Senior Aides, and Older American Community Service Employment Program).

Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era. Examples include payments by the German and Japanese governments for atrocities committed during the Nazi era.

F. **Calculating Annual Income**

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

- For employment:

Hourly wages by number of hours expected to work per week.
Year-to-date calculations*.
Weekly by 52.
Bi-Weekly by 26.
Semi-Monthly by 24.
Monthly amounts by 12.

If a range of hours is stated on the verification form, use the highest number of hours noted.

- For other income types, periodic payments should be calculated on the actual payments received over a period of 12 months. Generally, the owner must use current circumstances to anticipate income. The owner calculates projected annual income by annualizing current income. Income that may not last for a full 12 months (e.g., unemployment compensation) should be calculated assuming current circumstances will last a full 12 months.
- If the household's income cannot be determined based on current information because the household reports little to zero income, or income fluctuates, income may be determined based on actual income received or earned within the last twelve months.
- Annual wages should always reflect a full 12-month period, regardless of the pay schedule. For example, if a schoolteacher earns a gross annual salary of \$17,000, the \$17,000 should be used as annual salary whether the teacher is paid over a nine-month period or throughout the year.
- If the verification form or wage stub, indicates a year-to-date amount, this amount should be annualized. We recommend that both types of calculations be completed, when applicable, and the higher income calculation be used for income eligibility purposes.
- For subsidized properties (Section 8 and RD), DSHA will accept the income calculation methodology used by the Section 8 and RD programs. The initial Tax Income Certification and the Section 8 or RD Income Certification income calculation should match on both forms.
- Income includes, but is not limited to, earned and unearned income from all adult household member age 18 and older (adults, including foster adults), unearned income of minor children and foster children under the age of 18, and income from assets.

G. Assets

Income from Assets 24 CFR 5.609(a)

In general, income from assets is considered income. If it is possible to calculate actual returns from an asset, the PHA should use that amount.

If it is not possible to calculate an actual return on an asset, and:

- The net family assets are \$50,000* or less, the imputed income from that asset is excluded
- The net family assets are over \$50,000,* the PHA must impute income for the asset based on the current passbook savings rate, as determined by HUD

| Net Family Assets Scenario | Actual Income | Imputed Returns | Amount Included in Income |
|--|--|--|---|
| Assets of \$50,000 or less | Included | Not calculated | Actual income only |
| Exceeds \$50,000 and actual income can be computed for ALL assets | Included | Not calculated | Actual income only |
| Exceeds \$50,000 and NO actual income can be computed | N/A | Calculated using HUD passbook rate for all assets | Imputed returns for all assets |
| Exceeds \$50,000, but actual income can only be computed for some assets | Included for assets that can be computed | Calculated for any remaining assets where actual income cannot be computed | Actual income that can be computed AND imputed returns for all remaining assets that cannot be computed |

1. What is considered an Asset:

- Cash held in savings and checking accounts, safety deposit boxes, homes, etc. For checking and savings accounts, use the most current balance.
- Trust accounts not under the control of any household members are excluded from assets. Distributions of income from the trust when they are used to pay the cost of health and medical expenses for a minor are excluded.
- Equity in real estate or other capital investments. Include current market value less any unpaid balance on any loans secured by the property and any reasonable costs that would be incurred in selling the asset such as prepayment penalties or broker fees.
- Stocks, Bonds, Treasury Bills, Certificates of Deposits, Money Market Funds.
- Annuities: Discussion and possible verifications are needed to determine whether the account is currently a retirement account on investment account. In both situations, if withdrawals are taken, the amount counts as income.
 - a. Annuity facts and terms.
 - (1) An annuity is a contract sold by an insurance company designed to provide payments, usually to a retired person, at specified intervals. Fixed annuities guarantee a certain payment amount, while variable annuities do not, but have the potential for greater returns.
 - (2) A hybrid annuity (also called a combination annuity) combines the features of a fixed annuity and a variable annuity.
 - (3) A deferred annuity is an annuity that delays income payments until the holder chooses to receive them. An immediate annuity is one that begins payments immediately upon purchase.

- (4) A life annuity continues to pay out as long as the owner is alive. A single-life annuity provides income benefits for only one person. A joint life annuity is issued on two individuals, and payments continue in whole or in part as long as either individual is alive.
- (5) Generally, a person who holds an annuity from which he or she is not yet receiving payments will also be earning income. In most instances, a fixed annuity will be earning interest at a specified fixed rate similar to interest earned by a CD. A variable annuity will earn (or lose) based on market fluctuations, as in a mutual fund.
- (6) Most annuities charge surrender or withdrawal fees. In addition, early withdrawal usually results in tax penalties.
- (7) Depending on the type of annuity and the current status of the annuity, the owner will need to ask different questions of the verification source, which will normally be the applicant or tenant's insurance broker.

For more information on annuities, please refer to HOTMA Regulation effective 1/1/2024.

- Lump sum receipts counted as assets.
 1. Commonly, when a family receives a large amount of money, a lump sum payment, the family will put the money in a checking or savings account or will purchase stocks or bonds or a CD. Owners must count lump sum payments received by a tenant as assets. Examples of lump sum payments include the following:
 - a. Inheritances.
 - b. Capital gains.
 - c. Lottery winnings paid in one payment.
 - d. Cash from the sale of assets.
 - e. Insurance settlements (including health and accident insurance, workers compensation, and personal and property losses); and
 - f. Any other amounts that are received in one-time lump sum payments.
- Lump sum receipts should include inheritances, capital gains, one-time lottery winnings, settlement on insurance and other claims.
- Personal property held as an investment such as gems, jewelry, coin collections, antique cars, paintings, etc.
- Assets owned by more than one person should be prorated according to the percentage of ownership.
- Cash value of life insurance policies available to the individual before death (e.g., surrender value of a whole life policy).

A mortgage or deed of trust held by household. Payments are usually received as one combined figure of principle and interest. Separate the principle and interest portions (by using an amortization schedule) and **include only the interest for the future 12 months** as income. Determine the amount of the loan outstanding at the end of the 12-month period following the certification and include that amount as the asset value.

In the case of real estate that is in the process of being foreclosed, satisfactory documentation would be 1) a copy of the most recent property tax statement showing the current market value of the home, and 2) a copy of the most recent mortgage statement or foreclosure notice showing the balance owed.

2. Asset Exclusions:

Excluded assets 25 CFR 5.603(b) "Net Family Assets" Para. (3) and (4)

The following assets are excluded under HOTMA. If the family owns an excluded asset, its value does not count toward the restriction due to net family assets. Most of these exclusions are new.

| Category | Excluded Asset | Example(s) | Notes |
|-------------------|---|---|--|
| Personal property | Necessary items of personal property | Medical devices, vehicle for commute | Determining what is a "necessary item" for personal property is a highly fact-specific determination. Additional guidance is forthcoming from HUD. |
| Personal property | Non-necessary items of personal property if the combined total value does not exceed \$50,000* | Vintage baseball cards, recreational boat, coin collection, art so long as the total value is under the limit | This matches the value of assets that can be self-certified by the family. |
| Savings account | Retirement account recognized by IRS | IRA, 401(k), 401(b) and retirement plans for self-employed individuals | |
| Real property | Real property that the family does not have the effective legal authority to sell in the jurisdiction in which the property is located | Property subject to a lawsuit may be legally restricted from sale. | Such property does not count against the dollar amount limit or the real property limitation |
| Cash | Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member, for an incident resulting in a disability | A drunk driver injures a family member, who then has a disability. The family sues, and the driver's insurance pays the family. | |
| Savings account | The value of certain education or disability support savings accounts | Under Internal Revenue Code sections 529, 529A, 530, "baby bond" accounts | Coverdell accounts, tuition programs, any "baby bond" account created, authorized, or funded by Federal, state, or local government |
| Real property | Interest in Indian trust land | Family has interest in land held in trust by Bureau of Indian Affairs | Existing exclusion |
| Real property | Equity in a manufactured home where the family receives assistance under 24 CFR 982 | HCV Manufactured Home Space Rental participants | |
| Real property | Equity in property where the family receives assistance under 24 CFR 982 | HCV homeownership participant | For real property other than manufactured homes |
| Savings account | Family Self-Sufficiency (FSS) accounts | | The family does not have access to FSS funds during their participation in the program. Also excluded from income. |
| Cash | Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family | Earned Income Tax Credits (EITC) | |
| Trust Funds | Trust that is not revocable by, or under the control of, any member of the family or household | Non-revocable trust fund; trust fund revocable once minor child reaches age 21 | As long as a trust meets this definition, it is not an asset of the family |

3. Sale or Disposition of Assets

At the time of certification, it must be determined if the applicant has disposed of any assets for less than fair market value at any time within two years prior to the effective date of the application.

Applicants and tenants must declare whether an asset has been disposed of for less than fair market value at each certification and recertification. Owners must count assets disposed of for less than fair market value during the two years preceding certification or recertification. The amount counted as an asset is the difference between the cash value and the amount actually received.

Any asset that is disposed of for less than its full value is counted, including cash gifts as well as property. To determine the amount that has been given away, owners must compare the cash value of the asset to any amount received in compensation.

However, the rule applies only when the fair market value of all assets given away during the past two years exceeds the gross amount received by more than \$1,000.

When the two-year period expires, the income assigned to the disposed asset also expires. If the two-year period ends in the middle of a recertification year, then the tenant may request an interim recertification to remove the disposed asset(s).

If the fair market value of the disposed assets exceeds the gross amount that the family has received from the liquidation of the assets by more than \$1,000 then include as assets the whole difference between the cash value and the amount received. If the difference is less than \$1,000, do not count it.

Example: Mr. Jones sold his home to his niece for \$5,000. The home could have been sold to another buyer for \$60,000. $\$60,000 - \$5,000 = \$55,000$. This difference between the value and the price received is greater than \$1,000. You would need to include \$55,000 in total household asset value (and would impute the income received from this asset).

DO NOT consider assets disposed of for less than fair market value because of a foreclosure, bankruptcy, or a divorce or separation settlement.

DO consider assets put into trust and business assets disposed of for less than fair market value. (Business assets are excluded from net family assets only while they are part of an active business.)

4. Assets Owned Jointly

If more than one person owns assets, prorate the assets according to their percentage of ownership. If no percentage is specified or provided by state or local law, prorate the assets evenly among all owners.

5. Sources of Asset Verification

- A. Checking and Savings Accounts or other types of accounts held by a bank:
 - 1. Third party verification with bank/lender.
 - 2. Copies of account statement: for checking - for savings - most current statement.

- B. Trust Funds
 - 1. Copy of the most current fund statement.
 - 2. Letter from the trust administrator or representative of trustee.

- C. Copy of most current tax assessment or statement from real estate broker.
 - 1. If under contract of sale, a copy of the contract.
 - 2. For the outstanding loan balance, a payoff statement from the mortgage holder or amortization schedule.

- D. Stocks, Bonds, Treasury Bills, Money Market Accounts
 - 1. Copy of the most current account statement from a brokerage firm.
 - 2. A statement from a brokerage account representative.

- E. Retirement and Pension Funds
 - 1. Copy of the most current account statement showing the ownership percentage.
 - 2. Copy of the most current benefit statement.

- F. Whole Life or Universal Life Insurance Policy
 - 1. Copy of the most current statement of cash value.
 - 2. Statement from the insurance company as to value of policy.

- G. Personal Property Held as an Investment (i.e., paintings, jewelry, coin or stamp collection)
 - 1. Copy of 90-day current appraisal.
- H. Mortgage or Deed of Trust Held by an Individual
 - 1. Copy of an amortization schedule relating the specific term and interest rate of the mortgage.

X. TENANT INCOME CERTIFICATION/RE-CERTIFICATION PROCEDURES

Owner accepting Vouchers are responsible for completing and maintaining the initial Certification and a copy of the Annual certification, from the voucher provider, in the resident file for review. (i.e., Housing Choice Vouchers, 811 and SRAP Vouchers, or VASH Vouchers)

INITIAL TENANT CERTIFICATION

After all the income and asset information has been obtained and computed, a DSHA Annual Tenant Income Certification (TIC) form should be completed. (See Appendix E). The Certification must be signed and dated by all household members over age 18 and by the owner or owner's agent at initial move-in and upon annual recertification, if applicable. The effective date of the initial certification should be the move-in date (except for acquisition/rehab. properties). The Certification form is a legal document which, when fully executed along with the lease, qualifies the applicants to live in the tax credit units in the project. Attach all verification and documentation to the Certification form. The Certification form should be signed on the date of move-in or no earlier than 5 days before the move-in date.

Special instructions for newly placed in service properties with existing residents:

Acquisition/Rehab properties: For households occupying a unit at the time of acquisition, an initial TIC may be completed with 120 days after the date of acquisition using the income limits in effect on the day of acquisition. The effective date and move-in date on the TIC is the acquisition placed in service date. In the event that a household occupies a unit at the time of acquisition, but the income certification is completed more than 120 days after the date of acquisition, the household is treated as a new move-in. The effective date will be the date the first adult member of the household signs the certification. Note that all verifications must be no older than 120 days from the effective date and all verifications must be complete prior to the effective date.

For Rehab. only properties, the initial TIC may be completed any time on or after the rehab. placed in service date. The move-in date on the TIC must be no earlier than the rehab. placed in service date. The effective date may be any date the owner chooses on or after the placed in-service date. Note, all verifications must be no older than 120 days from the effective date.

In many cases, the effective date and the move-in date will be the same. **The TIC and all support documentation must be completed within 120 days of the placed in-service date.** Therefore, it is very important to communicate with the contractors and/or owners to receive the placed in-service date.

NOTE: In each case above, the verifications must be not older than 120 days from the effective date and all verifications must be completed prior to the effective date.

For properties with HUD or RD subsidy, for tax credit placed in service purposes, a DSHA TIC must be used for the effective date of the initial tax credit TIC. Thereafter, the HUD 50059 or RD 1944 form may be used for recertification and interim purposes. **All new move-ins must have a DSHA TIC completed for eligibility purposes during the compliance period.**

It is important to note that even if a unit is occupied by a household that appears to be qualified, until the TIC is properly completed in full, signed and dated, the unit is treated as non-qualifying and tax credits are not available.

Previously Income-Qualified Households:

Beginning with allocations of credit after 1989, owners of LIHTC buildings are required to enter into extended use agreements with the state agency allocating the credit. Owners make a long-term commitment to maintain the buildings as low-income housing for at least 30 years beginning with the first day of the 15-year compliance period. The owner must maintain the specified number of low-income units (Applicable Fraction) based on the income limit elected under IRC §42(g)(1).

Households determined to be income-qualified for purposes of the IRC §42 credit during the 15-year compliance period are concurrently income-qualified households for purposes of the +30-year extended use agreement. As a result, any household determined to be income qualified at the time of move-in for purpose of the extended use agreement is a qualified low-income household for any subsequent allocation of IRC §42 credit. This does not apply to current vacant units previously occupied.

RECERTIFICATIONS

Mixed Income Properties: Owners of mixed income properties are required to recertify annually as to the gross annual income of tax credit households. Income recertification should be performed in accordance with the verification requirements for an initial certification. **NOTE: If the property has only one unit that is not a Tax Credit unit, the property is considered Mixed Income.**

The recertification process should begin 120 days prior to the anniversary date of the previous certification. The residents must complete a recertification application/questionnaire to disclose income, assets, family composition, and student status and also complete the top portion of relevant verification forms for release of information. In addition, the Annual Student Certification must be completed at the time of recertification. Third party verification should then take place. Any incomplete, inconsistent or missing information on the verifications must be followed up with the verification source and a notation made to the resident file. Finally, calculate income and income from assets based on information provided on the verification forms, and complete a TIC. The TIC is to be signed after all verifications are received and management has completed the form, but it must be effective on or before the anniversary date of the previous certification.

The income recertifications must be completed on or prior to the anniversary of the effective date of the initial TIC. All recertifications must be completed within 120 days of the effective date of the initial TIC. For example: Move-in date: 5/15/08, must be recertified by 5/15/09. It is acceptable to do a recertification before the anniversary date (to conform to the annual recertification date for a Section 8 or RD household).

Recertifications that are done after the anniversary date can cause a noncompliance issue. However, if an owner sends timely notice informing a tenant that annual recertification is due, but the household vacates the unit, the unit will not be considered out of compliance. Owners must document attempts to timely obtain the recertification and the date the tenant actually moves out of the unit. In addition, if an owner takes action to remove a noncompliant household by initiating an eviction action, the unit will not be considered out of compliance. If the owner loses in court and does not win possession and resident remains in the unit, a recertification will be required within 120 days of the court determination.

100% Housing Tax-Credit Properties: Effective 1/1/2009, annual income recertifications are not required for 100% low-income properties. A property is 100% low-income when the allocation was based on all units in the property and all units (common space units are not part of the equation) are complying. It is essential that each initial certification in a 100% low-income property be done very carefully and thoroughly. DSHA will now be conducting 100% file reviews to make certain all units are complying.

Annual Self-Certification: The IRS requires the Student Status of the Household as well as the Change in Household Status be certified annually. In addition, there are other housing programs (HOME, HDF, FHLB, etc.) that still require an annual certification of the household (not verification) of household income, rent and utilities. DSHA is therefore requiring an Annual Self-Certification for all households in 100% Tax Credit Properties (See Appendix E). The Annual Self-Certification will be sufficient to the IRS's requirements for Change in Household Status and update DSHA's electronic tenant database on income and rents. The Self-Certification will also suffice for all HOME funded properties. **No written verification of information is required.**

The Household should be requested to complete the form once a year on or before the anniversary of the household's

move-in date. The effective date of each self-certification will be the anniversary date of move-in.

Under IRC §142(d)(3)(A) and IRC §42 (per IRC §42(g)(4)), owners of 100 percent low-income *projects* are no longer required to complete annual income recertifications. DSHA, however, has the authority to impose additional requirements upon IRC §42 projects and may require income recertifications after completing the initial income certification at the time the household moves into the low-income unit.

During any period during the household's occupancy, if an owner or manager suspects or finds Tenant Fraud, the owner manager should report any suspected or known deliberate misrepresentation of income to the Internal Revenue wither by filing IRS Form 211 Application for Award for Original Information or by calling the Service's Suspected Tax Fraud Hotline at 1-800-829-0433. When calling the Hotline, the following information should be provided:

1. Tenant's name,
2. Tenant's social security number, if possible,
3. Explain association with LIHC program,
4. What the tenant did that misrepresented their income or documentation (the owner may be asked to provide evidence of the tenant's fraudulent acts),
5. Amount of tenant income as reported by the tenant and the amount verified, and
6. The difference between the market rate and restricted rent for the unit, and how long the tenant was in the unit. This is the amount of economic benefit the tenant may be deemed to have received as taxable income.

NOTE: If tenant income certifications have insufficient documentation of gross annual household income or it is determined for any reason that one or more households do not qualify, the property may be subject to resuming annual recertification until 100% of the units are back in compliance at DSHA's discretion.

The DSHA Annual Tenant Income Certification must be executed, along with the lease, prior to move-in. The following guidelines also apply:

1. The owner/management agent should instruct the applicants/tenants to sign the Annual Tenant Income Certification form as the name appears on the form.
2. No one may live in a low-income set-aside unit unless tenants are certified and under a lease.
3. In the event the tenant wishes to have an additional person move into the unit, the following steps should be taken:
 - The additional persons should complete an application for residency and provide verification of income and asset information as required above; and
 - A determination must be made as to whether the income requirement is jeopardized by adding an additional occupant (140% rule) – See Changes in Household size below.
 - We recommend that no adult members of the household be added to the lease or move into a unit until the first full year of occupancy.
 - The tenant file should be documented when any household member vacates the unit.
4. The applicant/tenant's month of move-in should be placed on a tracking system to be tracked for the next recertification. We recommend initiating re-certification procedures approximately 90-120 days prior to the anniversary month of their original move-in date in order to give proper notice.

Changes in Household Size

Residents who reasonably believe they will be adding members to their household are required to disclose this information at initial certification so that all relevant income sources can be considered. The addition of a new member(s) to an existing low-income household requires an income certification for the new member of the household, including third party verification. The treatment will depend on whether the building is a mixed-use or 100% LIHC building:

For 100% Tax Credit properties, if there is a change in household composition at any time during the original household's occupancy, a new certification should be created to include the new member's total annual income and the total annual income stated on the household's original certification (TIC). The new member's income must be verified by third party documentation. The effective date and signature date on the new certification should be the same. The move-in date will not change. The only signature required is the new household member. (Please note, the new household member should also sign a Student Certification)

For Mixed-Income properties, the addition of a household member to an existing low-income household requires the income certification for the new member of the household, including third party verification. The new tenant's income is added to the income disclosed on the household's current tenant income certification (TIC). The household continues to be considered income-qualified; however, if the combined income exceeds 140%, owners must apply the available unit rule. Note: A certification done in conjunction with adding a household member does not change the due date for the annual recertification. The annual recertification will be due on its regular anniversary date.

DSHA strongly recommends owners and managers screen subsequent household members in the same manner as any new household (i.e., credit check, landlord reference, etc.) prior to allowing them to occupy a unit and to add them to the lease at the time they move-in.

Decreases in family size do not trigger an immediate income certification.

For all properties, a household may continue to add and remove members as long as at least one member of the original low-income household continues to live in the unit. Once all the original tenants have moved out of the unit, the remaining tenants must be certified as a new income-qualified household unless the remaining tenants were income qualified at the time they moved into the unit. For this reason, managers must document all decreases in household composition even where an annual recertification is not required.

If an owner takes action to remove a noncompliant household by initiating an eviction action due to no response to recertification requirements, the unit will not be considered out of compliance. If the household does not vacate the unit (i.e., court does not grant possession), a recertification will be required within 120 days of the determination.

- **We recommend that no new adult members be added to the lease or move into a unit until after the first full year of occupancy.**
- The tenant file should be documented when any household member vacates the unit.

Original Household No Longer Occupies Unit

A household may continue to add members as long as at least one member of the original low-income household continues to live in the unit. Once all the original tenants have moved out of the unit, the remaining tenants must be certified as a new income-qualified household unless:

1. For mixed-used projects, the newly created household was income qualified, or the remaining tenants were independently income qualified at the time they moved into the unit.
2. For 100% LIHC buildings, the remaining tenants were independently income qualified at the time they moved into the unit.

If DSHA determines that the tenant manipulated the income limitation requirement, then the unit will not be treated as a low-income unit as of the date the household initially occupied the unit.

SAFE HARBOR RULE - NOTE: All owners and management agents are advised to read IRS Revenue Procedure 2003-82, effective November 24, 2003, which provides safe harbors under which the Internal Revenue Service will treat a residential unit in a building as low income if the household income has been certified as eligible in the year before the first credit year but their incomes exceed the income limit at the beginning of the first taxable year of the credit period. The Revenue Procedure was issued because of questions from taxpayers regarding when individuals must satisfy the applicable income limit when they move into an existing building (or are existing residents) on or after the date a taxpayer acquires a building to be rehabilitated, but before the beginning of the first credit year.

Because of those questions, some taxpayers required that the household income not exceed the applicable income limit at the beginning of the first credit year, even though the household income was below the income limit when the household moved into the unit (or was initially certified). This has resulted in some households being evicted, where permissible under local law, from tax credit properties.

Note: The purpose of this Revenue Procedure is to provide taxpayers protection from challenge by the Internal Revenue Service on this issue. DSHA is not required to monitor for compliance with Revenue Procedure 2003-82.

XI. 140% NEXT AVAILABLE UNIT RULE OR OVER INCOME TENANTS

If a tenant qualifies as being low-income when initially occupying a unit in the project (or on any subsequent determination date), an increase in the low-income tenant's income of up to one hundred forty percent (140%) of the current applicable income limit (adjusted for family size) will not result in noncompliance. At annual re-certification, if a low-income tenant's income increases to a level more than 140% of the applicable limit, the next available unit of comparable or smaller size in the same building must be rented to a qualified low-income tenant. The unit which exceeded the 140% income limit must continue to be rent restricted. This rule is applied on a per building basis.

Multiply 1.4 times the current applicable income limit adjusted to family size. If the current tenant's income does not exceed this figure, the unit may be counted as low-income at re-certification.

This ruling does apply to projects with 100% low-income set-aside units. However, the 140% income unit must remain rent-restricted to continue to count as tax credit eligible. (In projects where 100% of the units are rented to persons with incomes at 50% or 60% of the median income, all vacant units must be rented initially to income-qualified tenants. In all cases, no tenant can be displaced because of an increase in income only.)

In 100% low-income projects, Under IRC §142(d)(3)(A), as amended by the Housing Assistance Tax Act of 2008, owners are not required to complete annual income recertifications if the building is part of a 100% low-income project. For purposes of applying the Available Unit Rule *only*, all households documented as initially income-qualified households are treated as initially income-qualified as long as the owner demonstrates due diligence when completing the initial income certification.

If an over-income unit is vacated, it will be treated as an over-income unit subject to the Available Unit Rule until the effective date of the tenant income certification for the new income-qualified household that moves into the unit.

In mixed-use projects (those that have tax credit units and market rate units), after the next available unit of comparable or smaller size is rented or legally committed to be rented to a qualified low-income household, the rent of the over-income unit may then be increased to market rate in accordance with any lease restrictions. At that time, the newly rented comparable size unit then becomes the tax credit qualified unit in place of the original unit that went over income. Comparable size is measured by the same method used to determine qualified basis for the credit year in which the comparable unit became available (i.e., either number of bedrooms or square footage in the units). If the household's income is above 140% and the next unit is not rented to a qualified household, all the units in the building having income above 140%, as well as the unit rented that did not qualify, will be out of compliance. This rule is called "1 for all rule". Meaning if you make one mistake, all of the over-income units in the building are in noncompliance.

In Tax-Exempt Bond mixed-use properties, the Next Available Unit Rule is applied on a *project* basis rather than a building basis. This means that if one unit in the project goes over 140%, the next available unit **in the project** must be rented to a qualified household.

XII. STUDENT TENANTS

A housing unit is generally not eligible for the Tax Credits if tenants occupying the unit are full-time students who are not married individuals filing joint returns. Exceptions to this ruling are as follows:

1. A student receiving assistance under Title IV of the Social Security Act (AFDC); or

Note: In Delaware, TANF (Temporary Assistance for Needy Families) is considered the same as AFDC.

2. A student enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws or;
3. The household consists of single parents(s) with children and such parents and children are not dependents (as defined in Section 152) of another individual*; or
4. Students married and filing a joint return or who are eligible to file jointly.
5. At least one member of the household was previously in foster care or received foster care*.

*** “Previously” means within five (5) years of the effective date of the initial income tenant certification. “Foster care” means substitute care for children placed away from parents or guardians and for whom the state agency has placement and care responsibility. This includes, but is not limited to, placement in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, childcare institutions, and pre-adoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the state or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is a Federal matching of any payments that are made.

Generally, if all of the household members are full-time students and are not considered an exception above, the household does not qualify as eligible. **This rule must be applied during the entire occupancy period for each household.** We recommend that owners utilize a lease provision requiring tenants to notify management of any change in student status. Unlike changes in income, it appears that a unit occupied by a student household that does not meet or no longer meets one of the above exceptions ceases to count as a tax credit unit immediately.

For purposes of clarification and qualifying, households containing students that live in or are applying to Tax Credit properties, the following applies:

- an applicant is ineligible if he or she is a full-time student at the time of initial occupancy or will be at any time during the certification period;
- a household of students is eligible if it includes at least one part-time student or one household member who meets one of the student exceptions;
- a household containing full-time students and at least one child (who is not a full-time student) is an eligible household;
- children in Tax Credit properties are to be considered full-time students when they enter first grade, **unless kindergarten is mandatory under state law.**

**A full-time student is defined as an individual who attends an educational organization during each of five (5) calendar months during the calendar year in which the taxable year begins. The five (5) calendar months need not be consecutive. An educational organization includes elementary schools, junior and senior high schools, colleges, universities and technical trade and mechanical schools. It does not include on the job training courses. The determination of student status as full or part-time should be based on the criteria used by the educational institution the student is attending.*

*On December 20, 2007, as part of the Mortgage Forgiveness Debt Relief Act of 2007, this included a change and clarification of the LIHTC student eligibility rules. As long as the single parent isn't a dependent of someone else

and no one other than a parent claims the children, the unit is eligible.

Divorce decrees, custody agreements, student's and/or other parent's tax returns are acceptable forms for verification to prove the tax benefit is taken by one of the parents. If you cannot obtain this type of verification, and tax returns are not available, a signed certification statement from the other parent, that he/she claims the children, would be acceptable. Documents must be in the file that explain/demonstrate the attempts made to verify and explain the reason the documentation is not available (i.e., resident and/or other parent does not file a tax return, no divorce decree/custody agreement, no established paternity, domestic situation, etc.).

When there are multiple sets of parents, documentation must be provided for every family member.

XIII. TRANSFERS

A household may move to another unit within the low-income property. If there is a larger or smaller unit within the property, that would accommodate the household, a transfer may occur.

Same Building: When a household moves to a different unit within the same building, the newly occupied unit swaps the status of the vacated unit (see Treas. Reg. 1.42-15(d)). Thus, if a current household whose income exceeds the applicable income limitation, moves from an over-income unit to a vacant unit in the same building, the newly occupied unit is treated as an over-income unit. The vacated unit assumes the status the newly occupied unit had immediately before it was occupied by the current resident.

Different Building: As noted in Rev. Rul. 2004-82, a similar rule applies when a household whose income is no greater than 140% of the income limit moves to a low-income unit in a different building, within the property, during any year of the initial compliance period (see IRC§42(g)(1) and IRC §142(d)(4)(B)). The vacated unit assumes the status the newly occupied unit immediately before it was occupied by the current resident. Mixed income properties can rely on the most recent income certification. Properties that are exempt from income recertification requirements must perform an income recertification prior to the unit transfer to assess whether household income exceeds 140% of the income limit.

Note: the IRS considers buildings that are not part of a multiple building project as separate projects. Therefore, transfers between buildings that are not part of a multiple building project will be considered a move-out and in order to treat the newly occupied unit as a qualified tax credit unit the household must meet initial eligibility requirements. Owners make the election for multiple building projects on Part II, line 8b of IRS form 8609. Until DSHA becomes aware of an owner's election, for purposes of unit transfers, DSHA will treat the property as if all buildings are part of a multiple building project.

Households that have incomes exceeding 140% of the income limit are not allowed to transfer to a different building unless the request is connected to a reasonable accommodation under Fair Housing.

An Annual Tenant Income Certification with supporting verification of income (if older than 120 days), a new lease and move-in inspection should always be completed regardless if the transfer was within the building or to a different building.

The effective date and signature date on the new certification should be the date of the transfer and the household's annual recertification or self-certification date will remain the anniversary date of move-in.

There may be conflicts regarding transfers for HUD or RD projects. Both Federal agencies require transfers in certain cases, which may conflict with current LIHTC regulations. We recommend consulting DSHA and the applicable Federal agency before implementing any transfers that result in conflicts with either agency's regulations.

IV. VACANT UNITS AND SPECIAL OCCUPANCY RULES

A. VACANT UNITS

DSHA will be monitoring vacant units and will be inspecting all vacant units at the time of DSHA's Monitoring Review and Inspection. Until we receive further guidance from the IRS, the following applies to vacant units:

If a low-income unit in the project became vacant during the year, reasonable attempts should be made to re-rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income. Only units that have been previously occupied by an eligible household may be included as a qualifying low-income unit for compliance and credit purposes. If a unit has never been occupied by an eligible household or has been vacated by a market rate household, that unit is not counted as a qualifying low-income unit.

Basically this means when a unit becomes vacant, the credit is still available so long as reasonable attempts are made to market the unit, and the next available unit in the project of the same size or smaller size, is rented to a Tax Credit eligible household. Documentation of marketing attempts should be on file with the project's records.

B. MARKETING

Owners must make reasonable attempts to make vacant low-income units available to the public for rent. Owners should advertise the availability of vacant units using advertising methods designed to be accessible to all prospective tenants.

"Reasonable attempts" will vary depending on factors such as size and location of the project, tenant turnover rates, and market conditions. Advertising can include printed and electronic media, banners and classified ads in local newspapers.

This becomes particularly important to mixed-use properties that do not have 100% tax credit qualified units. If a tax credit unit becomes vacant and a market unit is also vacant, the tax credit unit must be rented before the market unit or the vacant unit rule is violated regardless of whether the units are in the same or different buildings.

The Vacant Unit Rule is the subject of Revenue Ruling 2004-82, Answering 12 Questions about the Low-Income Housing Credit under I.R.C. Section 42 (see questions #8, #9, and #10), published August 30, 2004. The Revenue Ruling clarifies that an owner may not move a household from building to building to qualify more than one unit in a property; (question #8) "that reasonable attempts" are customary methods of advertising vacancies in the area of the property for identifying prospective tenants may include, but are not limited to: displaying a banner and for-rent signs at the entrance to the property, placing classified advertisements in local newspapers, and contacting prospective low-income tenants on a waiting list for the property and on a Section 8 public housing waiting list with the local public housing authority; (question #9); and that a unit is not an available vacant unit if the unit is no longer available for rent due to contractual arrangements that are binding under local law such as a reservation entered into between the owner and a prospective tenant (question #10).

C. CASUALTY LOSS UNITS OR BUILDINGS

When a unit or building has been placed out of service due to a fire, flood or other types of casualty loss, **the incident must be reported to DSHA immediately**. DSHA must report these losses to the IRS after the correction period has expired. Credits should not be taken on units that are not in service for a casualty loss.

A casualty loss form must be submitted to DSHA when a casualty loss occurs at a tax credit property.

D. EMPLOYEE UNITS

If the unit is part of the common space, an employee for that property may occupy the unit. The employee does not need to be income eligible. In addition, no rent is usually charged for the unit, there is no need for certification and an employee should sign an employment agreement that terminates occupancy when employment is terminated.

If an employee resides in a rent-restricted rental unit that is part of the applicable fraction, the employee's household

income must be eligible for the Tax Credit program; the household income must be verified and certified. (Please note, that income verification of employees should be completed by an accountant from the management agent and should not be completed by an employee in a supervisory role). If the employee household receives a rent-free unit, this compensation (the dollar amount that is normally considered rent) must be included as part of their income.

In mixed-use properties, (where there is market rate units) the management, maintenance or security unit may not be counted as a tax credit unit unless the employee occupying the unit is qualified exactly as any other tax credit household. This includes units occupied by a part-time manager, caretaker, or maintenance person. These units must either be treated as a qualified low-income rent restricted unit or as a market rate unit.

A full time manager or maintenance person must occupy an employee unit. Full-time is considered to be whatever is reasonably required to make operations run smoothly at the development. According to revenue ruling 2004-82 dated August 30, 2004, a unit may also be occupied by a full-time security officer and be treated as common space, if reasonably required.

DSHA requires notification of a change in the designation of an employee unit. While moving an employee unit from one building to another may be permitted, if a change would result in a reduction in the applicable fraction of the building, the change will not be permitted.

E. MODEL UNITS

A model unit is a residential rental unit, the unit is included in the number of units used to determine the applicable fraction when calculating the amount of the credit, and as such must be rented to a qualified household once it is available for occupancy (this should be within 24 months after the placed-in-service date). At the time a household moves out, a property may temporarily convert a vacant unit to a model. Because of the vacant unit rule, if tax credits are claimed on the model unit, continuing efforts must be made to market that unit to qualified households and the next available vacant unit in the property must be rented to a tax credit qualified household.

F. COMMERCIAL SPACE

In accordance with Section 42, residential rental property may qualify for the credit even though a portion of a building in which the residential rental units are located is used for commercial use. However, commercial space is not Tax Credit basis eligible and could be cause for a recapture event. Owners cannot designate a portion of the development that was allocated tax credits or included in eligible basis and convert it to commercial space. Therefore, careful thought should be given when having commercial space within your Tax Credit property. Make sure the following guidelines are taken into consideration:

1. Do not take common areas and turn them into commercial space after claiming Tax Credits. (For example, renting your community building to local community groups).
2. Any commercial activity on your property should have all proper licenses, approvals and zoning. This includes satellite dishes, cable television.
3. Tax credit units must be residential in nature.
4. Make sure you have proper liability coverage for any services provided for in either common or commercial space.
5. A permanent model may be considered commercial space.

G. OFFICE IN THE HOME

A low-income tenant may use a portion of a low-income unit exclusively and on a regular basis as a principle place of business, and claim the associated expenses as tax deductions, as long as the unit is the tenant's primary residence. If the tenant is providing daycare services, the tenant must have a current valid license, or be exempt from having a license, certification, registration, or approval as a daycare facility or homecare, under state law.

A tax return must be filed for all self-employed individuals who operate sole proprietorship business or otherwise report income on Schedule C, regardless of whether the taxpayer is reporting a profit or a loss.

H. COMMON AREA/SPACE

Eligible basis may include the cost of facilities for tenant use and other amenities that are considered common areas. Tenant facilities, such as swimming pools, parking areas, and other recreational facilities may be included in basis. Common areas can only be counted for tax credits if they are available to all residents on a nondiscriminatory basis. Therefore, no separate fees can be charged (to any tenant whether tax credit or market rate) for these amenities if they were included in basis. Changes in common area uses may be a violation of the Declaration of Land Use Restrictive Covenants.

I. SUPPORTIVE SERVICES

Mandatory fees for supportive services (transportation, housekeeping, etc.) must be included in the gross rent calculation. However, if the fee is optional or paid by an outside agency, it should not be included in gross rent. Owners cannot prevent a household from contracting privately for services including medical nor can an owner require a “capacity for independent living”. This is a violation of Fair Housing.

J. ALLOWABLE FEES AND CHARGES

Application fees may be charged to cover the actual cost of checking a prospective tenant’s income, credit history, and landlord references. The fee is limited to recovery of the actual out-of-pocket costs of checking applicant’s qualifications of the property. Customary fees, normally charged, such as damage deposits and pet deposits are permissible. However, an eligible applicant or tenant cannot be charged a fee for the work involved in completing the additional forms or documentation required, such as the TIC.

Note: As stated above, resident facilities (i.e. parking, garages, swimming pools, etc.), where included in eligible basis, they must be made available to all residents on a comparable basis and a separate fee cannot be charged for their use.

Charges for non-optional services such as a washer and/or dryer hookup and built in storage sheds or lockers (paid month to month or in a single payment) must always be included within the gross rent. In addition, IRS clarified that month-to-month lease fees and mandatory renter’s insurance are considered rent. The fees are allowable, but the gross rent must include these amounts and must be below the applicable tax credit limit. When completing the TIC, this amount must be included with tenant paid rent.

Decorating fees or fees for preparing for occupancy must not be charged; owners are responsible for physically maintaining units in a manner suitable for occupancy.

K. PHYSICAL REQUIREMENT FOR LIHTC UNITS

Qualified LIHTC units must have substantially the same equipment and amenities as other units in the project. Units must be substantially the same size as other units in the project and cannot be geographically segregated from other units in project. Units intended for eligible tenants must be comparable in size, location, and quality to those rented to other tenants. If units are rented to non-qualifying households are above the average quality standards of the units rented to LIHTC households, then the basis in the project, which is used to determine the amount of tax credits must be reduced by the portion, which is attributable to the excess costs of the above-standard units. This reduction in eligible basis need not occur if an election is made to exclude such excess costs pursuant to Section 42 (d) (3) of the Code.

LIHTC units must be suitable for occupancy under local health, safety and building codes and the National Standards for the Physical Inspection of Real Estate (NSPIRE). Units that are not suitable for occupancy, including previously qualified low-income units that are being routinely renovated, are considered “out of compliance” if they are not “ready for occupancy” within or after a thirty-day (30) day period of being vacated. The NSPIRE does not supersede or preempt local health, safety and building codes. An LIHTC property/ unit must also satisfy the local standards.

To ensure consistent evaluation of the property’s physical condition, the definitions of physical deficiencies used for the REAC system, by the Department of Housing and Urban Development (HUD) will be used to determine whether noncompliance has occurred. There are three (3) sections:

1. Outside Area
2. Inside Area
3. Units

Each section identifies specific components. All levels of deficiencies must be reported. DSHA will use the National Standards for the Physical Inspection of Real Estate (NSPIRE) to report all deficiencies.

Note: DSHA will be monitoring vacant units and will inspect a sample of vacant units at the time of DSHA's Monitoring Review and Inspection.

Note: IRS Chief Counsel Advisory released October 22, 2010, indicates that a low-income housing tax credit building can be deemed unsuitable for occupancy without an inspection of every unit. It is stated that the exterior of a building can be in such poor condition that all units could be considered unfit for occupancy.

XV. FAIR HOUSING AND SECTION 8 VOUCHER PARTICIPANTS

In January 2000, the IRS revised compliance monitoring regulations and owner certification requirements. The new regulations require owners to certify that they have not discriminated in selecting applicants or in the ownership and management of the Tax Credit property. Effective January 1, 2001, owners must certify to two new provisions:

4. The owner has not refused to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937.

Owners may not have policies that refuse to admit applicants that hold a Section 8 Housing Choice Voucher. Owners must allow applicants with Housing Choice Vouchers to apply to their LIHTC property. However, the applicant must still meet all of the property's screening and eligibility criteria.

2. **No findings of discrimination under the Fair Housing Act, U.S.C. 3601-3619, occurred for the project.**

A finding of discrimination includes an adverse final decision by the Secretary of HUD, 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C 3616(a)(1), or an adverse judgment from a federal court. Any finding of discrimination, adverse final decision by HUD, adverse final decision by the State of Delaware Division of Human Relations, or an adverse judgment from a federal court is a violation that DSHA must report to the IRS.

Tax Credit properties are subject to Title VII of the Civil Rights Act of 1968, also known as the Fair Housing Act. The Fair Housing Act prohibits discrimination in the sale, rental and financing of dwellings based on race, color, religion, sex, national origin, familial status, and disability. The Fair Housing Act mandates specific design and construction requirements for multifamily housing built for first occupancy after March 13, 1991, in order to provide accessible housing for individuals with disabilities. The failure of housing tax credit properties to comply with the requirements of the Fair Housing Act will result in the denial of housing tax credit on a per unit basis. In addition, Delaware tax credit properties must also meet the requirements of the American Disabilities Act (ADA) and all tax credit design plans must be approved by the Delaware Accessibility Board.

The Department of Housing and Urban Development (HUD) enforces the Fair Housing Act. DSHA will refer complaints to either HUD or the State of Delaware Division of Human Relations for follow-up or investigation.

IRS also requires LIHTC properties be otherwise available to the general public. Under Treasury Reg. 1.42-9(b) if a residential unit is provided only for a member of a social organization (for example, artists) or provided by an employer for its employees, the unit is not for use by the general public and is not eligible for credit under Section 42. Residential rental units either designated for a single occupational group, or through a preference for an occupational group also violate the general public use requirement.

Note: General Public Use Rule was clarified on July 30, 2008, to allow occupancy restrictions or preferences that favor tenants 1) with special needs, 2) who are members of a specified group under a federal or state program or policy that supports housing for such specified group, or 3) who are involved in artistic or literary activities.

XVI. LEASES

DSHA requires all tenants in rent-restricted units to be annually certified and be under a lease in order to occupy a unit. All leases should be pre-approved by DSHA. Any amendments or changes to the lease during the compliance period should be submitted to DSHA for approval.

The lease should include at least the following information:

- Legal name of parties to the agreement and all other occupants.
- A description of the unit to be rented.
- Term of the lease and date of move-in or possession.
- The rental amount.
- Use of the premises.
- Rights and obligations of each party.
- Full -time student clause.
- Subletting/Assignment is prohibited.
- Optional charges (i.e., washer/dryer rentals) should be listed separately on an addendum or separate agreement. *

Attachments should include, but are not limited to:

- Annual Certification and qualification information on the LIHTC program.
- Copy of Summary of Delaware Landlord Tenant Code
- Rules and Regulations
- Move-in inspection form (completed by landlord and signed by tenant)

For properties newly rehabilitated, a new lease should be executed along with the Annual Tenant Income Certification prior to the placed-in-service date.

If after occupying a unit, an eligible tenant cannot pay the rent or is otherwise in violation of the lease provisions, the owner has the same legal rights in dealing with the eligible tenant as with any other tenant. Note, however, that during the compliance period, extended use period and for three years after the expiration of the Declaration of Land Use Restrictive Covenants, households in qualified tax credit units may not be evicted or tenancy terminated for other than for good cause.

In general, occupancy must be provided on a non-transient basis to the general public. This means that in Delaware, tax credit residents must sign leases for an initial term of one year. After the initial term, the lease may convert to a month-to-month lease at the owner's option.

There are, however, provisions for housing for the homeless and Single Room Occupancy (SRO) properties contained in Section 42 (i)(3)(B)(iii) & (iv). For SRO properties, a thirty (30) day lease will be required. Residents may share bathrooms, cooking facilities, and dining areas.

*** Optional charges should not be a requirement to live in the unit. If the charge or fee is a requirement to live at the property, the charge or fee must be included as part of the rent. However, these charges or fees may not be allowed under the Delaware Landlord Tenant Code.**

Customary fees that are normally charged, such as damage deposits, cleaning deposits, pet deposits and/or application fees are permissible. However, an eligible tenant cannot be charged a fee for the work involved in completing the additional forms or documentation required, such as the Tenant Income Certification.

As described in Question and Answer #5 of [Revenue Ruling 2004-82](#), Section 42(h)(6)(B)(I) requires that eviction and rent increase restrictions apply throughout the extended use period and not simply for the three years after that period. Additionally, the ruling prevents the eviction or termination of tenancy other than for good cause of an existing tenant of any low-income unit (no-cause eviction protection) and any increase in the gross rent with respect

to the unit not otherwise permitted under Section 42.

The requirements of Revenue Ruling 2004-82, 2005-37 and Section 42(h)(6)(B)(I) must be complied with at your tax credit property. In addition, the project owner must also certify annually on the Owners Certification of Continual Compliance that in the prior 12 months no tenants in low-income units were evicted or had their tenancies terminated other than for good cause and that no tenants had an increase in the gross rent with respect to a low-income unit not otherwise permitted under Section 42.

We recommend that a “good cause” provision be included in your lease. DSHA defines “good cause” as follows:

“Good Cause” means (1) serious or repeated violation of material terms of the lease or (2) the failure or refusal to vacate the premises when there is an effective condition or damage that is so substantial that it is economically infeasible to remedy the defect with the tenant in possession.

XVII. INSPECTIONS

We suggest that units always be inspected by the owner for all new tenants on the date of initial occupancy. A move-in inspection report should be completed documenting any problems noted in the unit at the time of move-in.

Bi-annual or quarterly inspections should also be completed by the owner on each unit. Please be aware, in accordance with the Delaware Landlord Tenant Code, tenants need to be given at least 2-days written notice of the inspection, unless it is an emergency or scheduled maintenance repair.

Annual and bi-annual inspections enable the owner to find unreported maintenance and housekeeping problems.

In January 2000, the IRS revised compliance monitoring regulations and owner certification requirements. Owners must certify that:

The buildings and low-income units in the project were suitable for occupancy, considering local health, safety, and building codes (or other habitability standards), and the State or local government unit responsible for making local health, safety, or building code inspections did not issue a violation report for any building or low-income unit in the project. If a violation report or notice was issued by the governmental unit, the owner must attach a statement summarizing the violation report or notice to the annual certification submitted to DSHA. In addition, the owner must state whether the violation has been corrected.

DSHA is required to inspect a minimum of 20% of the affordable units or HUD sample size chart, which includes any and all buildings, common areas and vacant units in the project.

The IRS revised compliance monitoring regulations also included a requirement for housing credit agencies to conduct physical inspections consistent with the standards governed by NSPIRE. These standards require properties to be in “decent, safe, and sanitary condition and in good repair” and require agencies to inspect the following three major areas:

NSPIRE establishes the three inspectable areas of a REAC inspection into three easily identified locations: Unit, Inside, and Outside. This increases the usability of the standards and streamlines the inspection process. To ensure that all residents live in safe, habitable homes, the items and components located inside the building, outside the building, and within the units of HUD housing must be functionally adequate, operable, and free of health and safety hazards. This streamlined approach allows inspectors to cite deficiencies based on where they are standing and eliminates potential subjectivity or ambiguity about a deficiency’s location.

UNIT: A “Unit” of HUD housing refers to the interior components of an individual dwelling, where the resident lives.

INSIDE: “Inside” refers to the common areas and building systems within the building interior and are not inside a unit. This could include interior laundry facilities, workout rooms, and so on.

OUTSIDE: “Outside” refers to the building site, building exterior components, and any building systems located outside of the building or unit. This includes things like playgrounds, sidewalks, and air-conditioning units.

The front matter of each standard lists the areas or items within each inspectable location that the standard applies to. For example, the Handrail Standard lists stairs, hallways, and ramps as inspectable items in the Unit.

All areas and components of the housing must be free of health and safety hazards. These areas include, but are not limited to: air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation, and lead based paint. For example, the buildings must have fire exits that are not blocked and have handrails that are undamaged and have no other observable deficiencies. The housing must have no evidence of infestation by rats, mice, or other vermin, or garbage and debris. The housing must have no evidence of electrical hazards, natural hazards, or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold, odor (e.g., propane, natural gas, methane gas) or other observable deficiencies. The housing must comply with all regulations and requirements related to the ownership of pets, and the evaluation and reduction of lead-based paint hazards and have available proper certifications of such.

Notwithstanding the above inspection requirements, a LIHTC project, under Section 42, must continue to satisfy local health, safety, and building codes. DSHA may rely on local code inspections for reporting non-compliance.

XVIII SALE, TRANSFER OR DISPOSITION OF THE PROJECT AFTER THE PLACED-IN SERVICE DATE

DSHA is required to notify the IRS via Form 8823 in the event of sale (including change in ownership or ownership interest – general and limited partners), foreclosure, abandonment, casualty loss, and/or destruction; owners must notify DSHA of such events.

Generally, any change in the ownership of a building or a partnership interest is considered a recapture event. Recapture can be avoided if the owner selling the building or the partnership interest posts a bond satisfactory to the IRS, and IRS determines that the project is expected to remain in compliance for the balance of the compliance period. Recapture amounts are reported using the IRS form 8823.

When a sale or transfer occurs after the placed-in-service date, the owner must notify DSHA by letter advising DSHA of the transfer of ownership. The letter should include the following: current name of owner (to whom the credits were allocated), address, taxpayer I.D.#, contact person and phone number, the new or updated owner information of name of owner, address, contact person and phone number, taxpayer I.D. #, name of all partners and percentage of ownership and their taxpayer I.D. #'s or Social Security numbers. The new owner must also include the following documents: a copy of the recorded deed indicating the change of ownership or a copy of the title policy indicating the owner as the vested owner of the property, copy of the amended or new partnership agreement or copy of the articles of incorporation and By-Laws, copy of the organizational documents, copy of the good standing certificate, attorney's opinion, copy of the purchase agreement, and copy of the low income housing tax credit disposition bond.

DSHA will recognize a new owner or ownership only after all the required documentation has been submitted. Until such time, all compliance requirements will be the responsibility of the owner of record and any compliance violations will be reported to the IRS under the name of the owner on record.

The IRS has suggested in Reg. 1.42-5 that if a building is sold or otherwise transferred by the owner, the transferee should obtain from the transferor all information related to the first year of the credit period so the transferee can substantiate credits claimed.

Under 42(j)(6), revised 7/30/2008, there is no recapture on dispositions as long as a) it is reasonably expected the building will continue to be operated as a qualified low-income building; and b) the taxpayer elects to be subject to the new longer statute of limitations. Owners are no longer required to post a Credit Disposition Bond or pledge Treasury Securities to avoid recapture.

XIX. GENERAL AND PREVENTATIVE MAINTENANCE

Part of the owner's compliance with IRS regulations is to annually certify that the project is in compliance by signing an Annual Owners Certification for Continuing Compliance Report Form (Appendix C). However, there is one section that the owner should pay close attention to regarding compliance of maintenance and turnover of their rent-restricted units.

- Section (f):

Each building in the project is suitable for occupancy, considering local health, safety, and building codes. Generally, we recommend that routine and preventative maintenance plan be part of the general management plan for the project.

The standards of maintenance should be consistent with the objective of providing satisfactory, decent, safe and sanitary housing at an economical cost and of having the buildings and grounds present an attractive and well-groomed appearance. All maintenance services and preventive maintenance programs should be performed on a regular and scheduled basis. Systematic and thorough maintenance keeps the housing in a good state of repair, appreciably extends the useful life, and results in lower overall cost. It also makes for tenant satisfaction and, by example, elicits their cooperation.

XX. DSHA MONITORING AND COMPLIANCE

DSHA will perform an annual on-site compliance review or electronic compliance review of lessor of the HUD Sample Size Chart or 20% of all LIHTC projects, including RD 515 projects, and tax-exempt bond financed properties. The following items are examples of items that will be completed on the annual compliance review:

- Review of the Annual Tenant Income Certification – may include 100% of all initial households.
- Documentation to support income that the owner has received for each low-income unit.
- Review of the rent records for each low-income unit.
- Review that the minimum set-aside is being maintained.
- Review of correct income, utility allowances and rent limitations.
- Vacant unit review and inspection, move-out files and waiting list.
- Review of the qualified basis per building and any decrease in basis that the owner has claimed on IRS Form 8609 was accurate.
- Review that all extended use provisions are being met (i.e., compliance period, income targeting, social services, amenities, etc.).
- Review of Annual Owners Certification for Continuing Compliance report.

DSHA is required to inspect a minimum of the 20% of all affordable units or HUD sample size or of in each project and all buildings and common areas.

DSHA recommends that owners keep a general compliance file at the property for monitoring visits by investors, lenders, asset management staff and DSHA. The following should be kept at the property:

General Property Compliance File

- IRS Form 8609, page 1 & 2 for the first year of the credit period
- Copies of all Certificates of Occupancy, if applicable, for all Buildings
- Partnership Agreement
- Annual Utility allowance survey or letters from utility providers
- Copy of each initial tenant certification, verification, and lease (tenant file)
- Copy of all support services and social service contracts
- Affirmative Marketing Plan with copies of advertisement and community outreach letters

NOTE: Corrections to Documents

Sometimes it is necessary to make corrections or changes to documents. A document with correction fluid or “white-out” will not be accepted by DSHA. It is recommended that when a change is needed on a document for the LIHTC program, the person making the correction should draw a line through the incorrect information, write or type the correct wording or number, and have the person making the change sign their initials.

XXI. NONCOMPLIANCE

A. Notification to Owner

DSHA will notify each owner in writing if a building and/or the project is in noncompliance with Section 42 of the Code when:

1. Annual Owners Certification for Continuing Compliance report and/or Monitoring Fees have not been received by January 15 (only a one-time notice will be issued);
2. DSHA has attempted to contact owner for a compliance review and/or inspection and the owner did not respond or could not be located.
3. After a compliance review has been performed and DSHA finds that Annual Tenant Income Certifications, supporting documentation, or rent records are missing or are incorrect or DSHA Annual Monitoring Report has not been completed.
4. The project is found to be out of compliance with the requirements of Section 42 of the Internal Revenue Code through physical inspection, review, or other discrepancies.

B. Correction Period

Should DSHA find a building and/or the project to be in noncompliance with Section 42 of the Code, the owner must supply any missing certifications, correct any findings, and bring the project into compliance with provisions of Section 42. The correction period is not to exceed 45 days from the date of DSHA notification to correct the violation. This correction period can be extended up to a total of 6 months with DSHA’s approval.

Noncompliance that is identified and corrected by the owner prior to notification of an upcoming compliance review or inspection need not be reported to the IRS.

C. Notice to Internal Revenue Service

DSHA is required to file Form 8823 "Low-Income Housing Credit Agencies Report of Noncompliance" with IRS no later than 45 days after the correction period has expired whether or not the noncompliance or failure to certify is corrected.

Any change in the applicable fraction or eligible basis that results in a decrease in the qualified basis of the project is noncompliance and must also be reported to the IRS.

D. Monitoring Fees

DSHA will charge a monitoring fee on Tax Credit eligible units for performing the service of monitoring the LIHTC project. For new projects, DSHA will charge a one-time fee of \$500 per unit. This fee must be paid prior to receiving an allocation of Tax Credits; at the issuance of IRS form 8609 or the Carryover Agreement, whichever is issued first. For all projects allocated credits after January 1, 1990 through December 31, 1996, the fee will be \$15 per unit and will be due January 15 each year for the remaining years of the compliance period or for as long as DSHA has LIHTC monitoring responsibilities for the project.

E. Examples of Noncompliance and Corrective Actions

EXAMPLES ARE BASED ON PROJECT HAVING 100% OF ITS UNITS AT THE LOW-INCOME SET-ASIDE (RENT RESTRICTED).

Please note, that many noncompliance problems can be corrected, however, DSHA has the responsibility to report all noncompliance findings to the IRS regardless of whether or not the findings have been corrected. However, when DSHA completes IRS form 8823, "Low-Income Housing Credit Agencies Report of Noncompliance," corrected findings by the owner will also be reported to the IRS.

1. PROBLEM:

The unit was rented to a household whose income was over the Maximum Income Limit at the time of move-in.

CORRECTION:

There may not be very much an owner can do to correct this problem and the unit will stay in noncompliance until the household moves out of the unit and a new qualified household moves into the unit or until the household's income is at or below the current Maximum Income Limit. However, the following step may be taken to attempt to correct the problem:

- Re-verify and document income at the time of move-in. Tax returns or W-2's may be obtained from the tenant as documentation and can document that the tenant may have been within the income limit.

2. PROBLEM:

An incorrect utility allowance was used to calculate the maximum allowable rent. Tenants were not charged the correct rent for one year of the compliance period. The rent charged the tenants was more than the maximum allowable rent.

CORRECTION:

Once a unit is determined to be out of compliance with the rent limits, the unit ceases to be a low-income unit for the remainder of the owner's tax year. A unit is back in compliance on the first day of the owner's next tax year if the rent charged on a monthly basis does not exceed the limit. An owner cannot avoid the disallowance of credit by rebating excess rent or fees to the affected tenants.

3. PROBLEM:

Documentation of income was missing in the tenant's folder and the Annual Tenant Income Certification was not completed during the initial year of occupancy.

CORRECTION:

Contact tenant for tax returns or W-2's. If unavailable, have tenant sign third party income verification forms for the initial year of occupancy. Upon receipt of documentation, complete an Annual Tenant Income Certification form and attach to verification.

4. PROBLEM:

DSHA does not receive the Annual Owners Certification for Continuing Compliance report due January 15 each year.

CORRECTION:

A one-time only warning notice will be sent to each owner giving an additional 30 days to submit the Annual Owners Certification for Continuing Compliance report. If DSHA does not receive the Annual Project Certification by the extension date, DSHA will file IRS form 8823 for Noncompliance.

5. PROBLEM:

DSHA cannot locate owner to inform them of compliance review and inspection date or to inform the owner of new IRS regulations.

CORRECTION:

Owners should always keep DSHA informed of any changes in address, owners or any other LIHTC issues. If DSHA cannot locate or contact owners, DSHA must file IRS form 8823 for Noncompliance.

6. PROBLEM:

During a DSHA physical inspection, a smoke detector was found to be inoperable or a fire extinguisher was not properly tagged, not charged properly or missing. Under Section 42, this is a major violation of health, safety and building codes, UPCS violation and IRS form 8823 "Low-Income Housing Credit Agencies Report of Noncompliance," should be filed.

CORRECTION:

DSHA **must** receive written notification that the smoke detector was repaired/replaced by the end of the working day the violation was discovered. If written notification is not received, DSHA will file IRS Form 8823 for noncompliance immediately.

F. Recapture of Credit

Generally, during the Compliance Period a project is out of compliance and recapture applies if:

- You dispose of a building or an ownership interest in it; or
- There is a decrease in the qualified basis of the building from one year to the next; or
- The building no longer meets the minimum set-aside requirements of Section 42(g)(1), the gross rent requirements of Section 42(g)(2), or the other requirements for the units which are set-aside.

Note: The Compliance Period applies to all projects. The Extended Use Period applies to projects issued tax credits in 1990 or later.

Vacant units that were previously occupied by qualified tax credit residents can continue to be counted for minimum eligibility as long as the owner has made reasonable attempts to rent the unit to an eligible resident and no other unit of comparable or smaller size is rented to a non-qualified resident.

If the project is out of compliance, a penalty will apply to all units in the Project (IRS Form 8611). Penalties may include:

- Recapture of the accelerated portion of the tax credits for prior years;
- Disallowance of the credit for the entire year in which the non-compliance occurs; and
- Assessment of interest for the recapture year and previous years.

If the non-compliance is due to a reduction the qualified basis and the minimum eligibility requirements of twenty (20%) or forty percent (40%) are still met, recapture and disallowance of credit will apply only to units in compliance.

If there is a minimal reduction in the floor space fraction or number of qualified units, no recapture will occur, provided the building remains a qualified tax credit building.

Recapture will not occur if, within a reasonable time after the non-compliance was discovered, the situation is corrected.

In the event of a casualty loss, recapture will not occur if the property is restored or replaced within a reasonable period.

The Internal Revenue Service is responsible for determining whether a building owner has claimed the correct amount of credit each year and whether a building owner is subject to recapture. DSHA is only responsible for determining whether or not a specific event of non-compliance and reporting it to the IRS.

XXII. COMBINING THE HOME PROGRAM WITH THE LIHTC

A. What is the "HOME" Program?

On November 28, 1990, the Cranston-Gonzalez National Affordable Housing Act enacted into law the HOME Investment Partnerships (HOME) program.

The HOME program is a formula-based housing block grant program, which provides states and local governments the flexibility to fund a wide range of affordable housing activities. HOME addresses diverse local housing needs through moderate and substantial rehabilitation, new construction, tenant-based rental assistance and other related activities. In Delaware, DSHA, New Castle County Community Development and Housing, and the City of Wilmington Real Estate and Housing receive funding through the HOME program.

All HOME funds must benefit persons below 80 percent of area median income. In the case of rental projects, at least 90 percent of HOME funds must serve households with incomes below 60 percent of the median income limit.

To use HOME funds, states and local governments are required to match federal HOME amounts using state and local resources. There is a 25 percent local match for all projects. HOME also attempts to promote and expand nonprofit housing activities by setting aside, at a minimum, 15 percent of each community's HOME allocation for investment in housing that is owned, sponsored, or developed by nonprofit entities called Community Housing Development Organizations or what are referred to as CHDO's. In many cases for LIHTC properties, HOME is now being used for GAP financing, part of an already complicated layering of funding sources.

B. HOME AND LIHTC REQUIREMENTS

Basically, the HOME program and the LIHTC program work hand in hand. As with the LIHTC program, the determination of income should be consistent with Section 8 of the United States Housing Act of 1937. This includes the definition of income, verification and documentation procedures, and certification requirements. However, there is two important requirements when mixing LIHTC and HOME funds that must be considered: (1) income and (2) rent.

1. Income Requirements

HOME rules are very specific about who can occupy HOME-assisted units. Two constraints restrict occupancy:

The **program fund rule** requires that not less than 90 percent of the HOME funds invested in rental projects in a fiscal year must be invested in units occupied by families whose income does not exceed 60 percent of the area median income limit at the time of occupancy. The remaining portion must benefit families below 80 percent of median. When LIHTC projects are 100 percent low-income, the program fund rule is automatically met. However, for mixed-income projects, when HOME funds are invested in the property, would require at least 90 percent of the units rented to households at 60 percent of median or below.

The **project rule** requires that for rental housing, upon initial occupancy: **at least 40% of the units must be occupied by households at or below 50% of the median income limit per building.** **NOTE: BUILDINGS PLACED IN SERVICE AFTER 07/30/09, ARE NOT SUBJECT TO THIS PROVISION.**

The HOME income requirements only apply at the time of initial occupancy. However, **tenant incomes must be re-verified every six (6) years from the tenant's move-in date.** This rule would apply for 100 percent low-income LIHTC projects that have received HOME funds.

2. Rent Requirements

Generally, HOME rents cannot be greater than the lesser of:

1. The Section 8 Fair Market Rent or;
2. 30 percent of 65 percent of the area median income. If a low-income household income increases beyond 80 percent of median, the tenant must pay no less than 30 percent of the families adjusted monthly income.

However, when combining Tax Credits with HOME funds, in 100 percent low-income projects, rents are set by the income set-aside chosen by the owner (40 percent at 50 percent of median income with the remaining balance of the units at 60 percent of median income). In addition, the LIHTC's rent provision overrides the rent re-certification requirement. Therefore, the household's income may rise to 140 percent of the median income before the tenant no longer qualifies as low-income. If the project is 100 percent low-income the unit remains qualified as long as the unit stays rent restricted. In mixed-income projects, the tenant may be required to pay the higher rent.

HOME CERTIFICATIONS

The income of each resident in a HOME unit must be determined initially in accordance with § 92.203(a)(1)(i) and DSHA's LIHTC Compliance and Monitoring manual. DSHA is allowing an owner of LIHTC multifamily project with HOME funds with an affordability period of 10 years or more to re-examines tenant's annual income through a statement and certification in accordance with § 92.203(a)(1)(ii). The one-page Annual Self-Certification and an Asset Certification will suffice the annual HOME certification requirement. However, the owner must third party verify the income of each tenant, in accordance with § 92.203(a)(1)(i), every sixth (6) year of the affordability period (on the date of the resident's move-in anniversary date).

NOTE: In accordance with 92.504(c)(2) of the HOME regulations, when HOME-assisted units do not meet the affordability requirements (i.e.; rent restrictions, income requirements, and other HOME requirements) of the HOME regulations, the owner is required to repay the HOME funds.

Therefore, it is very important to comply with the HOME program as well as the LIHTC program.

3. Other HOME requirements:

- An Environmental Review Record must be completed by the State or local government funding source, notices published and obtain a release of funds from HUD prior to the commencement of the project. HOME funds, however, may not be used to reimburse land costs incurred prior to the release of funds.
- Projects with 12 or more HOME-assisted units must pay federal Davis-Bacon wage rates for construction labor.
- Section 504 Rehabilitation Act standards apply to HOME projects with 15 or more units regardless of the number of HOME-Assisted units. Five percent of the units must be physically accessible, and two percent of the units must be made accessible to persons with hearing or vision impairments.
- The period of affordability for new construction properties is 20 years. This will be enforced by the Declaration of Land Use Restrictive Use Agreement used with the LIHTC program. For rehabilitation and acquisition properties, the LIHTC use period applies.
- Properties must meet HUD's NSPIRE protocol for the period of affordability. New Construction properties must meet local building codes and the Model Energy Code.
- Fair Housing, equal opportunity, affirmative marketing, non-discrimination on basis of race, handicap or familial status must be followed. DSHA or the local government will review these policies to assure

compliance with the regulations. All advertisements, brochures, posters, etc., must contain the Equal Housing Opportunity logo or slogan. Copies of all advertisements and such should be maintained at the property.

- An owner may not refuse to rent a HOME-assisted unit to a tenant with a Section 8 Certificate or voucher solely due to that assistance.
- Written Tenant Selection policies and screening criteria is a requirement and must be approved by DSHA or the local government agency.
- There are prohibited lease terms and limitations on lease termination for the HOME-assisted units.
- A waiting list must be maintained at the property. The waiting list should be in conformance with the HUD 4350.3 Handbook requirements.
- A fiscal review of the property is required by DSHA or the local government. Proper insurance (i.e., flood insurance, general liability) adequate fidelity bond coverage, payment of taxes, approved operating budget, adequate reserve requirement, security deposits, NSPIRE requirements, and lead base paint certificates (if rehabilitation) will be reviewed for compliance with the HOME Program requirements.

XXIII. COMBINING THE PRA 811 DEMONSTRATION PROGRAM WITH THE LIHTC

A. What is the 811 PRA DEMONSTRATION Program?

In 2012 DSHA was awarded 5.1 million in funds for the 811 PRA Demonstration Program. The program provides project-based assistance for eligible participants and is designed to serve extremely low-income, non-elderly individuals with disabilities.

Eligible applicants must be referred by DHSS or DHSS-approved service providers. The target population for this program; clients exiting institutions, individuals at-risk of requiring services from an institution, non-elderly persons between the ages of (18-61) with extremely low income (below 30% AMI). All eligible applicants are identified and referred to the program by DHSS representatives.

This is a project-based subsidy with funds attached to a set number of units in the low- income tax credit property.

B. Property Eligibility

1. Owner must agree to sign a Rental Assistance Contract (RAC).
2. The contract is for a period of 20 years and has a 30-year extended use agreement.
3. The program follows the Section 8 811 PRA program rules and uses the Handbook HUD 4350.3 as the program guide.
4. Owners must have TRACS access with TRAC ID and have the capacity to submit monthly vouchers to HUD
5. Owners must have a Tenant Selection Plan (TSP) that follows Chapter 4 of the Handbook HUD 4350-3.
6. Owner must agree to give 1st preference to 811 applicants for all vacant units until the set number of units in the contract are filled. This means hold vacant unit for a period of 60 to allow unit to be filled through the referral list process.
7. All 811 units at the property must be scattered through-out the property. Units cannot be concentrated in one building or one area of the property.

8. Property must accept referrals through DSHA referral system and be registered in the PAIR System with SocialServe.

C. Referral System

1. PAIR is a secure, online referral system for the Section 811 PRA DEMO Program. This system operated through Emphasys-software.com.
 - PAIR: Prescreening, Assessment, Intake Referral
 - Interfaces with www.DelawareHousingSearch.org
2. Applicants placed on centralized Referral List that is managed by DSHA according to prioritization (Prioritized by Case Managers).
3. When Section 811 applicants rise to the top of the Referral List, they are referred to the properties with listed vacant units. A maximum of 10 applicants will be referred to the same unit at a time.
4. Applicants are screened according to the property Tenant Selection Plan. (No need to verify applicant's disability. Applicant must be disabled to be in program.)
 - If applicant has (3) rejections by properties/managers, then the applicant is removed from the waiting list.
 - If applicant rejects (3) properties, they are removed from the list.
Applicants always welcome to reapply.
5. If there are no applicants to be referred the units are released to be filled using the in-house waiting list
 - DSHA Referral List Manager will release the unit to the property with written correspondence.
 - Management must maintain a copy of the correspondence to confirm compliance with the program.

D. Lease

1. Must use the HUD prescribe 811 Project Rental Assistance Demonstration Lease Supportive Housing for Persons with Disabilities.

E. Rent Requirements

1. Must use contract rent set by rental assistance contract initial rents set at 50% Allowable Gross Rent.
2. May only charge the resident 30% of adjusted income in accordance with the Handbook HUD 4350.3
3. Must complete annual recertification, interim certifications.
4. Must complete move-in, annual, and move-out inspections.

F. Software Requirements

1. Integrated Multifamily Access eXchange (IMAX)
 - HUD communication system that provides a means to transmit Monthly Activity Transmission (MAT) files to the Tenant Rental Assistance Certification System (TRACS)
 - Two components – TRACS compliant software and Web-based.
 - Users will need a WASS ID and a TRACS ID in order to gain web access.

2. Monthly Transmissions

- Owner/agent generates property voucher based on current certifications in system and transmits data to contract administrator (CA) through IMAX
- CA screens and generates their own voucher and compare it to O/A voucher. CA can/will make necessary adjustments, then submits to TRACs.
- TRACs processes the voucher and sends to eLOCCs to generate payment.

3. DSHA E-voucher

- Secure storage system with DSHA
- Once the CA has processed the voucher for payment, a PDF of the final voucher is uploaded to the E-voucher mailbox. The site will access mailbox through password issued to Owner. Management staff must obtain password from the owner and access the mailbox monthly to download voucher and retain in their records.

4. Active Partners Performance System (APPS) Owner Must register with HUD before the HUD system can process monthly vouchers.

XXIV. TAX CREDIT PROPERTIES WITH TAX EXEMPT BONDS

A residential property financed with tax-exempt bonds may also receive tax credits. The property must then maintain compliance with both the tax-exempt bond rules and the tax credit program. While certain rules overlap, such as the property meeting either the 40/60 or 20/50 minimum set-aside test, the rules do not exactly match and the Owner is responsible for being aware of and complying with both sets of requirements. Usually there will be two separate regulatory documents for the property, one for the bond requirements and one for the tax credit requirements.

Properties financed with tax-exempt bonds may obtain an allocation of tax credits without going through the competitive tax credit allocation process. Owners must still submit a tax credit application to DSHA and meet threshold criteria and score the minimum points prior to an allocation of credits. The property owner will also be required to record the Declaration of Land Use Restrictive Covenants or extended use agreement on the property.

The rules for determining income are the same for both programs. The primary difference is that compliance with tax-exempt bond requirements is determined on a property-wide basis, while federal low-income tax credit requirements are determined on a building-by-building basis. Owners must comply with both sets of requirements, which may result in maintaining more affordable units than originally planned in order to maintain compliance with both programs.

Many bond-financed properties are mixed income and many of the more complicated tax credit rules will apply to these properties. The Available Unit Rule is applied property-wide whereas it is applied on a building-by-building basis for tax credit compliance.

It is strongly recommended the management plan, including detailed strategies for lease-up, filling vacancies and addressing over-income units on recertification be developed with the advice of qualified tax credit advisors.

Properties with tax-exempt bond financing have additional requirements that must be met. Some of the minimum requirements are listed below:

- Meet the selected federal set-aside (20/50, 40/60, AIT) at bond closing on acquisition/rehabilitation properties.
- For new construction, report monthly beginning at 10% occupancy. Continue to report monthly during lease-up to the bond holder until the later of all buildings placed in service or the property is 90% leased/rented.
- At 90% rent-up, annual reporting to the bond issuer or trustee.

- Follow same tax credit reporting requirements after buildings are placed in service.
- Property must meet all selected bond set-asides. Bond set-asides are income restricted only, tax credit set-asides are income and rent restricted.
- The most restricted set-aside (either federal or state) should always be used.
- Issues of non-compliance for bond requirements are reported to the bond trustee rather than the IRS.
- Bond documents and bond regulatory agreements should be obtained for the management agent for all requirements.

Owners will provide reporting requirements to the bond issuer and/or bond trustee.

XXV. VIOLENCE AGAINST WOMAN ACT 2013 (VAWA)

**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT WASHINGTON, DC 20410–8000
OFFICE OF HOUSING www.hud.gov espanol.hud.gov**

MEMORANDUM FOR: Owners/Owner Agents of Multifamily Properties Multifamily Regional Directors Multifamily Asset Management Division Directors

FROM: Ethan Handelman, Deputy Assistant Secretary, Office of Multifamily Housing

SUBJECT: Housing Provisions of the Violence Against Women Act Reauthorization Act of 2022

On March 15, 2022, President Biden signed into law the Consolidated Appropriations Act of 2022,¹ which included the Violence Against Women Act Reauthorization Act of 2022 (VAWA 2022). VAWA is a federal law originally enacted in 1994 that today protects individuals who are survivors of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, sexual orientation, or gender identity. It includes protections for survivors who are applying for or residing in covered housing programs.²

VAWA 2022 reauthorizes, amends, and strengthens VAWA. It added to, and did not replace, the existing VAWA housing protections for survivors. As a covered housing provider, you must continue to provide VAWA protections as required by law.³

Many of the amendments enacted as part of VAWA 2022 took effect on October 1, 2022. On January 4, 2023, the U.S. Department of Housing and Urban Development (HUD) published a notice in the *Federal Register* (VAWA 2022 Notice⁴) in which HUD: (1) describes how the VAWA 2022 amendments affect HUD’s programs; and (2) seeks comment on certain provisions. On Monday, February 6, Multifamily emailed stakeholders encouraging them to review and provide comments on the VAWA 2022 Notice by the deadline of March 6, 2023. HUD will consider such comments as it revises its VAWA regulations and develops program guidance.

This memorandum summarizes the key changes to the law that are relevant to covered housing providers, identifying provisions that are effective immediately and those that are yet to be implemented.⁵ It also includes a description of a VAWA study (forthcoming), VAWA forms, and whom to contact for additional information. ²

¹ Public Law 117-103, <https://www.congress.gov/117/plaws/publ103/PLAW-117publ103.pdf>

² See the Violence Against Women Act of 1994, as amended (34 U.S.C. 12291 *et seq.*). A list of HUD programs that are covered under VAWA can be found at 34 U.S.C. § 12491(a)(3).

³ See 34 U.S.C. 12491 *et seq.*; Implementing regulations for Multifamily Housing programs can be found at Code of Federal Regulations (CFR) Part 5, Subpart L, Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, as well as various subparts of 24 CFR parts 200, 247, 880, 882, 883, 884, 886, and 891. To review HUD’s existing guidance on these requirements, please see Office of Housing Notice H 2017–05, Violence Against Women Act (VAWA) Reauthorization Act of 2013—Additional Guidance for Multifamily Owners and Management Agents, June 30, 2017, <https://www.hud.gov/sites/documents/17-05HSGN.PDF>.

⁴ <https://www.federalregister.gov/documents/2023/01/04/2022-28073/the-violence-against-women-act-reauthorization-act-of-2022-overview-of-applicability-to-hud-programs>

⁵ See the VAWA 2022 Notice for more information about VAWA amendments and HUD’s programs.

I. PROVISIONS EFFECTIVE AS OF OCTOBER 1, 2022

Definitions

For purposes of VAWA grants, VAWA 2022 revises the definition of “domestic violence” and adds the definitions of “economic abuse” and “technological abuse.” HUD interprets its current regulatory definitions of “domestic violence” and “stalking” to include what is covered in these revised and new statutory definitions. As a covered housing provider, you are advised to apply HUD’s VAWA requirements in a manner consistent with the following statutory definitions:⁶

“DOMESTIC VIOLENCE. — The term ‘domestic violence’ includes felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction receiving grant funding and, in the case of victim services, includes the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who—

(A) is a current or former spouse or intimate partner of the victim, or person similarly situated to a spouse of the victim.

(B) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner.

(C) shares a child in common with the victim; or

(D) commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.”⁷

“ECONOMIC ABUSE.—The term ‘economic abuse’, in the context of domestic violence, dating violence, and abuse in later life, means behavior that is coercive, deceptive, or unreasonably controls or restrains a person’s ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, or manipulation to—(A) restrict a person’s access to money, assets, credit, or financial information; (B) unfairly use a person’s personal economic resources, including money, assets, and credit, for one’s own advantage; or (C) exert undue influence over a person’s financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or failing or neglecting to act in the best interests of a person to whom one has a fiduciary duty.”⁸

“TECHNOLOGICAL ABUSE.—The term ‘technological abuse’ means an act or pattern of behavior that occurs within domestic violence, sexual assault, dating violence or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor, except as otherwise permitted by 3 law, another person, that occurs using any form of technology, including but not limited to: internet enabled devices, online spaces and platforms, computers, mobile devices, cameras and imaging programs, apps, location tracking devices, or communication technologies, or any other emerging technologies.”⁹

6. This definitions section does not provide an exhaustive list of all of the definitions either amended or added by VAWA 2022. To see a complete list of VAWA definitions, visit 34 U.S.C. § 12291.

7. 34 U.S.C. 12291(a)(12)

8. 34 U.S.C. 12291(a)(13)

9. 34 U.S.C. 12291(a)(40)

10. VAWA 2022 also added the Housing Trust Fund to the list of covered housing programs.

11. This memorandum lists only the Multifamily Housing programs that are covered under VAWA. The complete list of HUD programs that are covered under VAWA can be found at 34 U.S.C. 12491(a)(3).

12. See 34 U.S.C. 12491(a)(3)(P).

13. 34 U.S.C. 12492.

14. The six items for compliance review are:

1. compliance with requirements prohibiting the denial of assistance, tenancy, or occupancy rights on the basis of domestic violence, dating violence, sexual assault, or stalking; 2. compliance with confidentiality provisions set forth in 34 U.S.C. 12491(c)(4); 3. compliance with the notification requirements set forth in 34 U.S.C. 12491(d)(2);

4. compliance with the provisions for accepting documentation set forth in 34 U.S.C. 12491(c); 5. compliance with emergency transfer requirements set forth in 34 U.S.C. 12491(e); and 6. compliance with the prohibition on retaliation set forth in 34 U.S.C. 12494. 34 U.S.C. 12492(a)(1)(B).

Covered Housing Programs

VAWA 2022 adds HUD's Section 202 Direct Loan program to the list of covered housing programs, which means that VAWA now applies to the following housing programs administered by Multifamily Housing:¹¹

- Project-Based Rental Assistance under Section 8 of the U.S. Housing Act of 1937, as amended.
- Section 202 Supportive Housing for the Elderly program.
- Section 202 Direct Loan program.
- Section 811 Supportive Housing for Persons with Disabilities.
- Multifamily rental housing under Section 221(d)(3) of the National Housing Act with a below- market interest rate (BMIR) pursuant to Section 221(d)(5); and
- Multifamily rental housing under Section 236 of the National Housing Act.

VAWA 2022¹² also provides that HUD may identify additional programs that are “covered housing programs” through the issuance of regulations, notices, and/or other means.

II. PROVISIONS THAT HAVE BEEN ENACTED BUT NOT YET IMPLEMENTED BY HUD

Compliance Review Processes

VAWA 2022 requires HUD and other covered agencies to establish a compliance review process, incorporating this process into its existing compliance review processes where possible.¹³ VAWA 2022 enumerates six items for compliance review,¹⁴ requires HUD to conduct the review on a regular basis, and requires HUD to publicly disclose its assessment of the information collected during the compliance review process.

VAWA 2022 also requires HUD to develop and issue regulations in consultation with “appropriate stakeholders”¹⁵ to implement changes related to compliance reviews no later than March 15, 2024. These regulations must define standards of compliance under HUD's covered housing programs and include detailed reporting requirements, including reporting on emergency transfers, as well as standards for corrective action plans where compliance standards have not been met.

Furthermore, to the extent possible, HUD must identify existing compliance review procedures that could be used for such reviews, including those currently administered by the Office of Fair Housing and Equal Opportunity. *See* Notice to Public Regarding FHEO Enforcement Authority and Procedures: Violence Against Women Act 2022 (VAWA) (Jan. 20, 2023), available at <https://www.hud.gov/sites/dfiles/FHEO/documents/FHEO-2023-01-%20FHEO%20VAWA%20Notice.pdf>.

15. “Appropriate stakeholders” include, but are not limited to, “(A) individuals and organizations with expertise in the housing needs and experiences of victims of domestic violence, dating violence, sexual assault and stalking; and (B) individuals and organizations with expertise in the administration or management of covered housing programs, including industry stakeholders and public housing agencies.” 34 U.S.C. 12492(b)(2).

16. 34 U.S.C. 12494

17. Multifamily owners are considered to be Federal financial assistance recipients

18. 34 U.S.C. 12495. Furthermore, in 2016, HUD issued guidance on applying the Fair Housing Act to local nuisance or crime-free ordinances that discriminate because of a protected characteristic. The guidance outlines how a local government may violate the Fair Housing Act by enforcing nuisance or crime-free ordinances in a manner that is intentionally discriminatory or results in an unjustified discriminatory effect. HUD will continue enforcement under the Fair Housing Act and other applicable civil rights authorities, including Title VI and Section 504, for any violation committed by a local government for enforcing nuisance or crime-free ordinances, which may additionally violate VAWA's Right to Report Crime and Emergencies provision. *See Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing*

Prohibition on Retaliation

VAWA 2022 adds a section to VAWA prohibiting retaliation in covered housing.¹⁶ Under the new section, it is illegal for a public housing agency (PHA) or Multifamily Owner or manager of covered housing to discriminate against any person because that person has opposed any act or practice made unlawful by VAWA's housing provisions, or because that person testified, assisted, or participated in any related matter. The new section also provides that it is illegal for a PHA or Multifamily Owner or manager of covered housing to coerce, intimidate, threaten, interfere with, or retaliate against any person who exercises or assists or encourages a person to exercise any rights or protections under VAWA's housing provisions.

HUD will implement this section through rulemaking and will issue guidance for Federal financial assistance recipients¹⁷ and grantees. In the meantime, grantees, PHAs, and Multifamily Owners and managers of covered housing should ensure as a best practice that their policies and practices include the statutory non-retaliation requirement and prohibition on coercion.
Right to Report Crime and Emergencies

Right to Report Crime and Emergencies

VAWA 2022 adds a section to VAWA that protects the right to report crime and emergencies from one's home.¹⁸ The new section provides that landlords, homeowners, tenants, residents, occupants, and guests of, and applicants for, housing shall have the right to seek law enforcement or emergency assistance on their own behalf or on behalf of another person in need of assistance. This section also prohibits penalizing or threatening to penalize persons because they request assistance or report criminal activity of which they are a victim or otherwise not at fault under the laws or policies adopted or enforced by "covered governmental entities."²⁰

19. Penalties prohibited include (1) actual or threatened assessment of monetary or criminal penalties, fines, or fees; (2) actual or threatened eviction; (3) actual or threatened refusal to rent or renew tenancy; (4) actual or threatened refusal to issue an occupancy permit or landlord permit; and (5) actual or threatened closure of the property, or designation of the property as a nuisance or a similarly negative designation. 34 U.S.C. 12495(b)(2).

20. This means any municipal, county, or State government that receives funding under section 106 of the Housing and Community Development Act of 1974.¹ 34 U.S.C. 12495(c)
<https://www.hud.gov/sites/documents/FINALNUISANCEORDGDNCE.PDF>.

This provision further requires that covered governmental entities report on their laws or policies, or their subgrantees' laws or policies, that penalize protected persons based on requests for law enforcement or emergency assistance or based on criminal activity that occurred at a property.²¹ These entities must also certify compliance with these protections or explain how they will come into compliance or ensure compliance among subgrantees within 180 days of submitting the report to HUD.

HUD will issue guidance for grantees and Federal financial assistance recipients on this process. HUD also anticipates issuing implementing regulations or guidance, to include any costs of conforming to the requirements that may be allowable under HUD programs affected by this provision, including the CDBG program. HUD will issue guidance regarding the timing and process of this reporting. The law, however, became effective on October 1, 2022, so covered governmental entities are advised not to engage in any practices that violate the right to report provided for in Section 603 of VAWA 2022. Furthermore, covered governmental entities should update applicable policies and practices to include the statutory right to report to avoid potential liability under the law.

New Enforcement Authority

VAWA 2022 provides that HUD and the Department of Justice shall implement and enforce VAWA consistent with, and in a manner that provides, the same rights and remedies as those provided for under the Fair Housing Act. HUD's Offices of Fair Housing and Equal Opportunity (FHEO) and General Counsel (OGC) will enforce VAWA

2022 using the existing Fair Housing Act complaint process. A Notice describing this process is available at <https://www.hud.gov/sites/dfiles/FHEO/documents/FHEO-2023-01-%20FHEO%20VAWA%20Notice.pdf>.

Gender-Based Violence Prevention Office and VAWA Director

VAWA 2022 requires HUD’s Secretary to establish a Gender-based Violence Prevention Office with a VAWA Director.²² The VAWA Director will support implementation of VAWA’s housing provisions; coordinate with other federal agencies and with state and local governments; ensure the provision of technical assistance and support for agencies and housing providers; implement internal systems to track, monitor, and address compliance failures; and address the housing needs and barriers faced by persons who are survivors of sexual assault, sexual coercion or sexual harassment by a PHA, or Multifamily Owner or Multifamily Owner or manager of housing assisted under a covered housing program.

VAWA Training and Technical Assistance

Multifamily is exploring how it can provide training and technical assistance for Multifamily Owners using existing contract vehicles. In addition, VAWA 2022 authorizes funding for HUD from FY 2023–27 for training and technical assistance to support VAWA implementation, including technical assistance agreements with entities whose primary purpose and expertise are assisting survivors of sexual assault and domestic violence or providing culturally specific services to survivors of domestic violence, dating violence, sexual assault, and stalking.²³ HUD expects to select a technical assistance provider or providers through a competitive process in the spring/summer of 2023 and anticipates being in a position to provide technical assistance and training shortly thereafter.

III. ADDITIONAL INFORMATION

Study on Housing and Service Needs of Survivors of Trafficking

As required by VAWA 2022, HUD has begun a study of the availability and accessibility of housing and services for survivors of trafficking or those at risk of being trafficked, who are experiencing homelessness or housing instability. VAWA 2022 outlines the key requirements for the study, a definition for the terms “survivor of a severe form of trafficking” and “survivor of trafficking,” the requirements for coordination and consultation while conducting the study, and the contents of the study. HUD has embarked on this study, which is due to Congress by September 2023.

VAWA Forms

The following VAWA forms are currently undergoing revision and renewal:²⁴

- Form HUD–5380, Notice of Occupancy Rights under VAWA
- Form HUD–5381, Model Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault or Stalking
- Form HUD–5382, Certification of Domestic Violence, Dating Violence, Sexual Assault or Stalking, and Alternate Documentation
- Form HUD–5383, Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

Whom to contact for additional information.

For more information, please visit www.hud.gov/vawa. If you have questions, please contact FHEO or your property’s Account Executive. Persons with hearing or speech impairments may access these offices via TRS or TTY by calling the Federal Information Relay Service at (800) 877–8339.

²³ 34 U.S.C. 12496

²⁴ HUD published a Notice of Proposed Information Collection on November 4, 2022, to update these forms. The comment period closed on January 3, 2023. The Notice and submitted comments are available at <https://www.govinfo.gov/content/pkg/FR-2022-11-04/pdf/2022-24070.pdf>. The existing forms are available at https://www.hud.gov/program_offices/administration/hudclips/forms/hud5a#4.

XXVI. DSHA POST-15 MONITORING PROCEDURES

Background

Tax Credit properties allocated credits in 1990 and after, were required to record a commitment (Declaration of Land Use Restrictive Covenants) for an affordable housing period of a minimum of thirty years. The first fifteen years is called the compliance period. During the compliance period, DSHA is responsible for monitoring tax credit properties and reporting noncompliance to the IRS. The remaining 15 years (after the compliance period has expired) are referred to by the IRS as the extended use period. During the extended use period DSHA must continue to monitor tax credit properties for the low-income housing commitment but is no longer required to report noncompliance matters to the IRS. IRS officials and other tax credit experts have indicated verbally that state agencies may not report noncompliance to the IRS after the compliance period is over. The tax benefit to the owner is exhausted and the IRS can no longer recapture or disallow credits. Therefore, DSHA has established a policy on how tax credit properties will be monitored during the extended use period.

The purpose of these procedures is to ensure compliance with the Declaration of Land Use Restricted Covenants while allowing for the waiving of certain requirements during the extended use period. DSHA believes these changes will prove to be beneficial to owners and managers of tax credit properties by streamlining reporting requirements and other tax credit eligibility criteria during the extended use period.

To qualify, owners must be in good standing (continue to comply with the monitoring requirements and/or terms of the Declaration of Land Use Restrictive Covenants) within three years of the end of the compliance period. DSHA's goal is to preserve all tax credit properties for the benefit of the residents while maintaining a reasonable level of monitoring requirements.

Compliance Period – means with respect to any building the period of 15 taxable years, beginning with the first taxable year of the credit period. The first year of the Compliance Period is the first year in which the owner claimed credits. The first year must either be the year the building(s) are placed in service, or at the owner's election the year following placed in service.

Extended Use Period – means the beginning of the last day in the compliance period on which such building is part of a qualified low-income housing project and ending on the later date specified by DSHA in the Declaration of Restrictive Covenants or the date which is 15 years after the close of the compliance period.

Continued Resident Eligibility and Criteria

1. Tenant Income Certification (TIC) – the initial Tenant Income Certification (TIC), Asset Certification and third-party verifications will still be required (consistent with all requirements of DSHA's Tax Credit Compliance Monitoring Manual). The properties must continue to meet the income set-asides and all additional income restrictions as defined in the Declaration of Land Use Restrictive Covenants. Any change in set-aside restrictions must be approved by DSHA. (Properties with Rural Development (RD) or HUD Section 8 subsidy must continue to meet the requirements of those programs.)
2. The unit must continue to be rent restricted so that the tenant paid portion of rent plus the utility allowance does not exceed the tax credit applicable rent.
3. All DSHA financed developments, must continue to seek DSHA's approval on all rent increases. All of the rent limits elected in the Declaration of Land Use Restrictive Covenants will continue to apply.
4. Annual Recertification and Student Certifications will no longer be required. A Self-Certification of income will be necessary for reporting purposes only. RD, HUD Section 8 or tax-exempt bond properties must continue to follow all of the applicable requirements of each program.
5. Households who add adult members during occupancy must continue to add the household member to the initial certification using the current income limit. (Consistent with all requirements of DSHA's Tax Credit Compliance Monitoring Manual).

6. Households may now be comprised entirely of income eligible full-time students with no exception necessary. However, if Section 8 property, the HUD student rules will now apply.
7. All management/owner screening and application process will continue. In addition, a waiting list must also be continued to be maintained.
8. Each low-income unit will remain suitable for occupancy under the Uniform Physical Condition Standards (UPCS).
9. Owners must continue to comply fully with the requirements of the Fair Housing Act as it may from time to time be amended.
10. Unit transfers from building to building are allowed without having to re-determine whether the household's income is over the 140% of median income at the time of transfer.
11. Next Available Unit Rule no longer applies.
12. Vacant Unit Rule no longer applies.
13. Utility allowances will be updated annually. Revised utility allowances must continue to be implemented within 90 days of their published effective date. It is no longer necessary to obtain DSHA's approval on revised utility allowances.
14. All minimum occupancy requirements will be waived.
15. Social Services will continue to be required if an Extended Use Declaration of Restrictive Covenants for Social Service commitments were made. All Social Service contracts will continue to be updated and provided to the residents at no cost.
16. Properties with the HOME project rule of at least 40% of the units must be occupied by households at or below 50% of the median income limit per building are no longer subject to this provision. (with DSHA approval)
17. All other requirements of the Declaration of Restrictive Covenants will continue to apply.
18. Transfer of Ownership – a transfer agreement is required in the event of a transfer of ownership or ownership interest. Such transfer agreement will put the new owner or partner on notice that it is subject to the terms of the Declaration of Land Use Restrictive Covenants including all compliance restrictions and annual compliance monitoring. Documentation of signatory authorization for the new owner may be requested. Owners contemplating transfers of ownership or ownership interest should notify DSHA.
19. Expiration of Termination of Extended Use Period – During the three-year period after the extended use period expires or is terminated pursuant to IRSC Section 42(h)(6)(E)(ii), owners are required to annually submit to DSHA that no low-income residents have been evicted or displaced for other than good cause. This certification will be due January 15 each year for three years after the extended use period has expired.

Reporting and Monitoring

1. Owners Annual Certification for Continuing Compliance – Owners will continue to submit a certification of compliance due January 15 each year. This includes all RD, HUD Section 8 and tax-exempt properties.
2. Annual Reporting – Owners/management agents must continue to submit monthly or annual financial reports (if required) as well as submitting monthly tenant data to the MITAS database. This includes all RD, HUD Section 8 and tax-exempt properties.
3. DSHA will perform a physical inspection and monitoring review for LIHTC purposes every 5 years from the last inspection date. A minimum of 5 units or 10% will be chosen for the physical inspection. DSHA

will reduce the file review to 10%. DSHA reserves the right to review additional files or inspect additional units to ensure compliance. Inspection frequency may be increased if necessary, or if DSHA has financing in the property.

4. Annual monitoring fees – DSHA will charge \$15 per unit during the extended use period. DSHA reserves the right to adjust the fee due to changing circumstances, rules or regulations. Fees are due January 15 with the Owners Annual Certification. This includes RD or HUD Section 8 properties.
5. Record Retention – owners will need to maintain the original documents of initial move-in certifications, verifications, applications and leases for three years from the date of move-in.
6. Properties monitored and found to have noncompliance matters must follow the same correction period requirements and procedures as outlined in DSHA Tax Credit Compliance Monitoring manual.

Noncompliance

DSHA will use remedies allowed by local and federal law and the Declaration of Land Use Restrictive Covenants to enforce compliance. Owners and/or management agents that have material noncompliance with the Declaration of Land Use Restrictive Covenants may no longer be eligible to participate in the Post-Year 15 Monitoring Procedures and will be deemed no longer in good standing with DSHA. Owners and/or management agents that are deemed not in good standing will not be allowed to participate in future tax credit applications.

Reservations

DSHA reserves the right to modify the Post 15 Year Procedures as needed.

XXVII. APPENDIXES

APPENDIX A – Glossary

APPENDIX B – Compliance Monitoring Procedures

APPENDIX C – Spectrum Link to Forms and Manuals and Training

APPENDIX A

GLOSSARY

ANNUAL COMPLIANCE REVIEW - A review of the project made annually by DSHA which includes an examination of the records, review of operating procedures and a physical inspection of the property.

ANNUAL GROSS HOUSEHOLD INCOME - Gross income of all persons who intend to permanently reside in a unit. The annual income is defined as income as of date of occupancy for the next 12 months.

ANNUAL INCOME - Total income anticipated to be received by a tenant from all sources, including assets for the coming year.

ANNUAL OWNERS' CERTIFICATION FOR CONTINUING COMPLIANCE REPORT - The document by which the owner certifies that the project meets all LIHTC requirements in accordance with the provisions of Section 42 of the IRS Code.

ANNUAL TENANT INCOME CERTIFICATION - The document by which the household's income is calculated and for which the family certifies their annual income for the purpose of determining whether the household will be qualified as low-income in accordance with the provisions of the LIHTC program.

ANTICIPATED INCOME - Gross income as of the occupancy date that is expected to be received by the tenant or tenants for the upcoming 12 months.

APPLICATION - A form completed by a person or family seeking a rental unit in the project. An application should be in a format approved by DSHA and should solicit sufficient information to determine the applicant's eligibility and compliance with Federal and State guidelines.

ASSETS - Items of value, other than necessary personal items which are considered in determining the eligibility of a household.

ASSET INCOME - The amount of money received by a household from items of value as defined. (See Section IX -F for more detail on the calculation of asset income).

AWARD OR BENEFIT LETTER - A notification of income which is completed by a third-party providing benefits to tenants. Examples include, Social Security SSI or Disability Income, and Veterans Benefits.

CERTIFICATION YEAR - The 12-month time period beginning on the date the unit is first occupied and each 12-month period commencing on the same date thereafter.

COMPLIANCE - The act of meeting the requirements and conditions specified under the law and LIHTC program requirements.

COMPLIANCE MONITORING - The allocating agency's responsibility for assuring the IRS that properties allocated Tax Credits are meeting all Federal and State requirements pertaining to the LIHTC program. The monitoring is completed through annual reviews and physical inspections.

COMPLIANCE PERIOD - A total of 15 taxable years, beginning with the first taxable year of the credit period, in which the appropriate number of units must be marketed and rented to Tax Credit eligible households. For projects receiving 1990 Tax Credits or later, or for pre-1990 projects where the owner makes the one-time irrevocable election to change the method of determining rents, each building must have an extended low-income housing commitment which is for an additional 15 years (if the owner chooses additional occupancy restrictions in the extended use agreement).

CORRECTION PERIOD - The amount of time determined by DSHA for an owner to correct any violations found after the annual review or physical inspection.

CREDIT PERIOD - The period of 10 taxable years beginning with:

(1) the taxable year the building is placed in service, or

(2) at the election of the taxpayer, the succeeding year, but only if the building is a qualified low-income building as of the close of the first year of such building.

DSHA - Delaware State Housing Authority

EFFECTIVE TERM OF VERIFICATION - A verification is valid for up to 120 days. A verification must be within the validity term at time of tenant's Income Certification.

ELIGIBLE BASIS - For new construction, the eligible basis is the cost of construction determined at the first year of the credit period. For substantial rehabilitation, the eligible basis is the sum of all rehabilitation costs aggregated over 24 months. For an existing building, the eligible basis is the acquisition cost of the building.

ELIGIBLE PERSON OR HOUSEHOLD - One or more persons that are determined to be qualified as low-income.

EMPLOYMENT INCOME - Wages, salaries, tips bonuses, overtime pay or other compensation for personal services from a job.

EXTENDED USE AGREEMENT (DECLARATION OF RESTRICTIVE COVENANTS) - A recorded agreement that the owner covenants to restrict the use of the project during the term of the LIHTC Compliance.

RD - Rural Development (formerly Farmers Home Administration)

FAIR HOUSING LAWS - As mandated by the Fair Housing Amendments of 1988.

FAIR MARKET VALUE - An amount which represents the true value at which property would be sold on the open market.

FIRST YEAR OF THE CREDIT PERIOD - This is either the year a building is placed in service, or, at the owner's option, the following year.

GROSS INCOME - See Annual Gross Household Income

GROSS RENT - The actual rent the household pays to the owner plus utilities plus non-optional charges or the actual rent the household pays (which includes utilities and non-optional charges).

HOUSEHOLD - The individual, family, or group of individuals living together as a unit.

HUD - U.S. Department of Housing and Urban Development.

HOME Program - The HOME program is a formula-based housing block grant program, which provides states and local governments the flexibility to fund a wide range of affordable housing activities.

IMPUTED INCOME (from assets) - The estimated earning potential of assets held by a tenant using the potential earning rate established by HUD. The current rate is provided by DSHA or HUD in its instructions on the Annual Tenant Income Certification.

INCOME LIMITS - Maximum incomes as defined by DSHA for project owners/management agents to use to determine if households are qualified for low income or rent restricted units (50% or 60% of median). These limits will be adjusted periodically by DSHA based on median income figures provided by HUD.

INELIGIBLE HOUSEHOLD - One or more persons or a family who applies for residency in a rent-restricted or set-aside unit and whose combined income exceeds the maximum income limitation (i.e., 50% or 60% of median);

someone living in a set-aside unit who is not certified or under lease; and households who have failed the screening criteria of the owner.

LEASE - The legal agreement between the tenant and the owner which includes the terms and conditions of the rental unit.

LIHTC RENT - The maximum amount of rent the owner can charge for rent, including utilities.

LIVE-IN AIDE - 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 wellbeing of their person(s).

LOW-INCOME HOUSEHOLD - An individual or household whose income adjusted for family size does not exceed either 50% or 60% of the median income for the local area.

LOW-INCOME SET-ASIDE UNIT - Any unit in a building which is:

- (1) Rent-Restricted (as defined in subsection (g)(2) of the IRS Section 42)
- (2) Occupied by individuals who meet the income limitations applicable under subsection 42 (g)(1) to the project of which such building is a part.
- (3) Is suitable for occupancy and used other than on a transient basis.

MANAGEMENT AGENT/ COMPANY - A firm selected by the owner to oversee the operation and management of the project and who performs compliance responsibility for the owner.

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

MAXIMUM TAX CREDIT RENT – Maximum LIHTC rent as calculated by the U.S. Department of Housing and Urban Development for bedroom size.

MINIMUM SET-ASIDE - A minimum portion of units in a project to be "set-aside" as rent restricted units for tenants in targeted income groups (50% or 60% of area median income).

NONCOMPLIANCE - when the requirements and conditions of the LIHTC program are not being met.

OWNER - Any individual, association, corporation, joint venture, or partnership which is a sponsor of a LIHTC project.

PLACED IN SERVICE DATE - For buildings, this is the date on which the building is ready and available for its specifically assigned function, i.e., the date on which the first unit in the building is certified as being suitable for occupancy in accordance with state or local law. NOTE: Rehabilitation expenditures that are treated as a separate new building are placed-in-service at the close of any 24-month period during which such expenditures were aggregated.

PUBLIC HOUSING AUTHORITY (PHA) - Any state, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of housing for low-income families.

PROJECT - Rental housing developments receiving a LIHTC allocation.

QUALIFIED ALLOCATION PLAN - The plan developed and promulgated by DSHA.

QUALIFIED BASIS - The portion of the eligible basis attributable to low-income rental units. The amount of the qualified basis is determined annually on the last day of each taxable year. NOTE: This is the lesser of the applicable fraction is defined as the lesser of the unit fraction or the floor space fraction.

Unit fraction = The number of low-income units in the building ÷ total number of all units

Floor space fraction = The total floor space of low-income units ÷ total floor space of all units

The qualified basis at the end of the first year in which the credit is claimed determines the basis for the remainder of the credit period.

SECTION 8 of the HOUSING ACT of 1937, as AMENDED - Regulations used in defining and determining income as required under Section 103(b)(4)(A) of the Internal Revenue Code.

STUDENT - Any individual who has been, or will be, a full-time student at an educational institution with regular facilities and students, other than correspondence school, during five months of the year.

TENANT - Occupant or resident of a rent-restricted unit to whom the unit is leased.

TENANT FILES - Complete and accurate records pertaining to each dwelling unit, containing at least the following: The application for each tenant, verification of income and assets of each tenant, Tenant Annual Income Certification, utility schedules, rent records, lease, and lease addendum. Any authorized representative of DSHA or the IRS must be permitted access to these files upon receipt by the project owner or management company of written notice from either agency.

THIRD PARTY VERIFICATION FORMS - The form used by the owner or management company to request verification of income and assets. The form must state the purpose of the request; include a release statement by the applicant/tenant; and request the frequency and amount of pay or interest.

UTILITY ALLOWANCE - The amount of utilities, for a particular unit or project, set by a utility schedule which is published by HUD, RD or PHA or an analysis from the utility provider which states the rates.

VERIFICATION - Information from a third party which is collected to corroborate the accuracy of information about income provided by applicants to a project.

APPENDIX B

COMPLIANCE MONITORING PROCEDURES

DSHA has implemented monitoring regulations for the LIHTC program as required by the IRS. DSHA will monitor all LIHTC projects for compliance with 1) minimum low-income set aside requirements, 2) rent limitations, 3) tenant income requirements, 4) record keeping requirements, and 5) annual project certification requirements.

DSHA will perform annual on-site inspections of at least twenty percent (20%) of all LIHTC developments, including RHS Section 515 and tax-exempt bond financed properties.

DSHA will conduct on-site inspections of all the buildings in the development by the end of the second calendar year following the year the last building in the development is placed in service and, for a minimum of 20% or the HUD sample chart of the development's low-income housing units, inspect the low-income certification, the documentation the owner has received to support that certification, and the rent record for the tenants in those units.

In addition, at least once every three years, DSHA will conduct on-site inspections of all the buildings in each low-income housing developments and, for a minimum of 20% or the HUD sample chart of the development's low-income units, inspect the units, the low-income certifications, the documentation the owner has received to support the certifications, and the rent record for the tenants in those units. DSHA will determine which low-income housing developments will be reviewed in a particular year and which tenants' records are to be inspected.

DSHA will request an owner of a low-income housing development not selected for the review procedure in a particular year to submit to DSHA for compliance review and annual compliance report, which will include but is not limited to, copies of the annual income certifications, the documentation such owner has received to support those certifications and the rent record for each low-income tenant of the low-income units in their development.

All low-income housing developments may be subject to review at any time during the compliance period.

DSHA has the right to perform an on-site inspection of any low-income housing development through the end of the compliance period of the development. Each owner of a development receiving credits must permit the performance of DSHA inspections. The owner of a low-income housing development should notify DSHA when the development is placed in service. DSHA reserves the right to inspect the property prior to issuing IRS Form 8609 to verify that the development conforms to the representations made in the Application.

These regulations are effective as of January 1, 1992, however, if DSHA becomes aware of noncompliance that occurred before that date, DSHA is required to notify the IRS of noncompliance. These regulations are subject to change at any time to comply with Federal regulations.

Minimum Low Income Set Aside

The minimum criteria for low-income set-asides are as follows:

- A) Twenty percent (20%) of the residential units in a project shall be both rent-restricted and occupied by individuals whose income is fifty percent (50%) or less of the area median gross income, or
- B) Forty percent (40%) of the residential units in a project shall be both rent-restricted and occupied by individuals whose income is sixty percent (60%) or less of the area median gross income.
- C) Forty percent of the residential units in a project shall be both rent-restricted and occupied by individuals whose gross income is designated between 20% and 80% of the area median income, in 10% increments, and the average of such limitations must not exceed sixty (60%) percent or less of the area median income based on family size.

The owner may select either (1) (2) or (3) as a minimum set-aside or a greater percentage, up to one hundred percent. The election is made at the time of application and must be maintained throughout the compliance and extended use periods.

For properties that receive HOME funds, at least forty percent (40%) of the units in a building must be occupied by households at or below fifty percent (50%) of the median income limit. NOTE: BUILDINGS PLACED IN SERVICE AFTER 7/30/09, ARE NOT SUBJECT TO THIS PROVISION.

Rent Limitations

LIHTC units are rent-restricted. The maximum rent that can be charged for a low-income unit cannot exceed thirty percent (30%) of the imputed income limitation applicable to such unit (See - Rent Limits by Number of Bedrooms chart).

Income Requirement

The maximum income requirement is fifty percent (50%) or less of the county gross median income based on family size or sixty percent (60%) or less of the county gross median income based on family size. The owner elects the income limit percentage to be used at the time of application. The allowable incomes based on family size can be found in the Income Limits chart. The owner must keep on file verification of the tenant's income.

The owner must retain on file DSHA's Annual Tenant Income Certification Form, documentation/ verification to support all income sources, and a copy of the lease for each unit of the project. The form includes the following information:

- a) Tenant name, social security identification numbers
- b) Family dependents and ages
- c) Gross income and asset information
- d) Sources of income
- e) Full-time student status

The form must be signed by the tenant and accepted by the owner. By signing this document, the tenant is certifying that the information is true and correct. DSHA reserves the right to request this information at any time throughout the compliance or extended use period, whichever is longer. Please see DSHA's Compliance Monitoring Manual for proper documentation and certification procedures.

Record keeping Requirements.

As required by the IRS, all LIHTC projects must maintain and have available for inspection the following information on each building in the project for each year in the compliance period:

- a) The total number of residential rental units in the building (including the number of bedrooms and the size, in square feet, of each residential rental unit).
- b) The percentage of residential rental units in the building that are low-income units.
- c) The rent charged on each residential rental unit in the building (including the source and amount of any utility allowance calculations).
- d) The low-income unit vacancies in the building(s) and information that shows when and to whom the next available unit(s) was rented.
- e) The number of occupants in each low-income unit.
- f) The annual income certification of each low-income tenant per unit.
- g) Documentation to support each low-income tenant's income certification.
- h) The eligible basis and qualified basis of the building(s) at the end of the first year of the Credit period, IRS Form #8609, and all attachments.
- i) A list of all tenants of the building(s) at initial rent-up which includes the following: name of occupant, number of persons, and annual income.
- j) The character and use of the non-residential portion(s) of the building included in the building's eligible basis under Section 42(d) (e.g., tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project).
- k) Documentation that the owner has not refused to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937.
- l) Documentation that the buildings and low-income units in the project were suitable for occupancy, considering local health, safety, and building codes (or other habitability standards), and the State or local government unit responsible for making local health, safety, or building code inspections did not issue a violation report for any building or low-income unit in the project. If a violation report or notice was issued by the governmental unit, the owner must attach a statement summarizing the violation report or notice to the annual certification submitted to DSHA. In addition, the owner must state whether the violation has been corrected.
- m) No findings of discrimination under the Fair Housing Act, U.S.C. 3601-3619, occurred for the project. A finding of discrimination includes an adverse final decision by the Secretary of Housing

and Urban Development, 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C 3616(a)(1), or an adverse judgment from a federal court.

The records (listed above) for the first year of the Credit period must be retained for at least 6 years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance Period of the building. The records for each year thereafter must be retained for at least 6 years after the due date (with extensions) for filing of the federal income tax return for that year.

Annual Project Certification and Review

The owner must annually certify to DSHA that, for the preceding 12-month period, the project has achieved the following requirements:

- a) The project met the required minimum set-aside, or any higher set aside elected by the owner.
- b) There was no change in the applicable fraction (as defined in Section 42(c)(1)(B)) of any building in the project or that there was a change, and a description of the change.
- c) The owner has received an annual income certification from each low-income tenant and documentation to support that certification.
- d) Each low-income unit in the project was rent restricted under Section 42(g)(2).
- e) All units in the project were for use by the general public and used on a non-transient basis (except for transitional housing for the homeless, provided under Section 42(i)(3)(B)(iii));
- f) Each building in the project was suitable for occupancy, considering local health, safety, and building codes (or other habitability standards), and the state or local government unit responsible for making building code inspections did not issue a report of violation for any building or low-income unit in the project.
- g) There was no change in the eligible basis (as defined in Section 42(d)) of any building in the project, or that there was a change, and the nature of the change (e.g., a common area has become commercial space, or a fee is now charged for a tenant facility formerly provided without charge).
- h) All tenant facilities included in the eligible basis under Section 42(d) of any building in the project, such as swimming pools, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the building.
- i) If a low-income unit in the project became vacant during the year, reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income.
- j) If the income of tenants of a low-income unit in the project increases above the limit allowed in Section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the project was or will be rented to tenants having a qualifying income.
- k) If a household consists of ALL full-time students, such households met one of the exceptions outlined in Section 42 (i)(3)(D) which prohibits households occupied entirely by full-time students in a low-income tax credit unit.
- l) The owner has not refused to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937.

- m) No findings of discrimination under the Fair Housing Act, U.S.C. 3601-3619, occurred for the project. A finding of discrimination includes an adverse final decision by the Secretary of Housing and Urban Development, 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C 3616(a)(1), or an adverse judgment from a federal court; and
- n) An Extended Low-Income Housing Commitment, as described in Section 42(h)(6) was in effect (for buildings subject to Section 7108(c)(1) of the Revenue Reconciliation Act of 1989) (e.g., Declaration of Land Use Restrictive Covenants relating to Low-Income Housing Tax Credits is in effect and was recorded with the Recorder of Deeds in the applicable county).

The owner must certify the above under penalty of perjury. In addition, it is a state crime punishable by fine of up to \$2,300 or up to 1 year in prison or both, to knowingly make any false statements concerning any of the above facts as applicable under the provisions of Title 11, Delaware Code, Section 1233.

The Annual Project Certification form needs to be completed by the owner annually and forwarded to DSHA at 18 The Green, P.O. Box 1401, Dover, Delaware 19901 to the Attention of Alice M. Davis, by January 15 of each year.

DSHA shall review the Annual Project Certifications submitted as required above for compliance with the requirements of Section 42. In addition, as set forth on page 1 hereof, DSHA shall inspect at the lessor of 20% or HUD Chart of low-income housing projects annually and shall inspect the low-income certification, the documentation the owner has received to support that certification, and the rent record for each low-income tenant in the lessor of 20% or HUD Chart of the low-income units in those projects.

DSHA shall determine which tenants' records are to be inspected or submitted by the owners for review. Furthermore, in connection with the inspection described in the preceding paragraph, the records to be inspected shall be chosen in a manner that will not give owners of low-income housing projects advance notice that their records for a particular year will or will not be inspected. However, DSHA may give an owner reasonable notice that an inspection will occur so that the owner may assemble records (for example, 30-day notice of inspection).

The certifications and reviews described in this section shall be made at least annually covering each year of the applicable 15-year compliance period.

Annual Site Inspection

DSHA shall have the right to perform an on-site inspection of any low-income housing project through the end of the compliance period or the extended use period, whichever is longer, of the buildings in the project. Through an on-site visit, DSHA will annually perform an inspection of the owner's record-keeping for compliance with 1) minimum low-income set aside requirements, 2) rent limitations, 3) tenant income requirements, 4) record keeping requirements, 5) annual project certification 6) physical inspection of the lessor of 20% or HUD Chart of the units reviewed, and 7) all extended use restrictions/agreements. DSHA also reserves the right to perform a general physical inspection of the building(s), if it is deemed necessary. The owner must make available all the information

required by DSHA to perform its inspection during normal business hours for the entire compliance period or until the end of the extended use period, whichever is longer.

Notice to Owner

DSHA shall provide prompt written notice to the owner of a low-income housing project if DSHA does not receive the Annual Project Certification or does not receive or is not permitted to inspect the tenant income certifications, supporting documentation, and rent records described above, or discovers by inspection, review, or in some other manner, that the project is not in compliance with the provisions of Section 42.

Notice to Internal Revenue Service

DSHA is required to file Form 8823 "Low-Income Housing Credit Agencies Report of Noncompliance" with the IRS no later than 45 days after the end of the correction period specified in the written notice to the owner and no earlier than the end of the correction period (whether or not the noncompliance or failure to certify is corrected.) DSHA must explain the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the situation. Any change in either the applicable fraction or eligible basis that results in a decrease in the qualifying basis is an event of noncompliance.

Correction Period

Should DSHA find a project to be in noncompliance with Section 42 of the Code, the owner must supply any missing certifications, correct any findings, and bring the project into compliance with the provisions of Section 42 within 45 days of the date of DSHA notification to correct the violation, unless extended by DSHA in writing.

Compliance Monitoring Fee

DSHA will charge a monitoring fee on Tax Credit eligible units for performing the service of monitoring the LIHTC project. For new projects, DSHA will charge \$500 per unit. This fee must be paid prior to receiving an allocation of Tax Credits; at the issuance of IRS form 8609 or the Carryover Agreement, whichever is issued first. For all projects allocated credits after January 1, 1990 through December 31, 1996, the annual fee will be \$15 per unit and will be due January 15 each year for the remaining years of the compliance period or for as long as DSHA has LIHTC monitoring responsibility for the project.

Compliance Monitoring Manual

DSHA has developed a "Compliance Monitoring Manual" to be used as a guide and reference for LIHTC Compliance Monitoring Procedures. Upon reservation of Tax Credits, a copy will be forwarded.

APPENDIX C

**Spectrum/Delaware
Form, Manuals, and Training**

<https://spectrumlihtc.com/state-monitoring/delaware/>