

**SOUTH CAROLINA STATE
HOUSING FINANCE AND DEVELOPMENT
AUTHORITY**

**Low-Income Housing Tax
Credit Program**

Compliance Monitoring Manual

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Mission

The mission of the South Carolina State Housing Finance and Development Authority (“the Authority”) is to promote and provide safe, decent, and affordable housing for the citizens of South Carolina.

Introduction

In 1986, the Low-Income Housing Tax Credit (“LIHTC”) Program was created by Congress to promote the development of affordable housing for low-income individuals and families. The LIHTC Program replaced other federal tax incentives for the production of affordable rental housing. Rather than a direct federally appropriated subsidy, low-income housing credits encourage investment of private capital by providing a tax credit to reduce an investor’s federal tax liability. These federal income tax credits provide the private housing development community the incentives to develop affordable housing by offsetting development acquisition, new construction, or substantial rehabilitation costs. The amount of tax credit received is based on the costs of the development and the number of qualified low-income units, and can be subtracted on a dollar-for-dollar basis from federal tax liability.

The Internal Revenue Service (the “IRS”) of the Treasury Department (the “Treasury”) is responsible for interpreting the statutes regulating the LIHTC and makes determinations about recapture of tax credits. Regulations for the Low-Income Housing Tax Credit Program can be found under Section 42 of the Internal Revenue Code (IRC). These statutes require each state to designate a "housing credit agency" to allocate the tax credits. The South Carolina State Housing Finance and Development Authority (the "Authority") was designated as the Housing Credit Agency to administer the Low Income Housing Tax Credit program in South Carolina on August 12, 1987 by Executive Order 87-25. A 1990 Amendment to Section 42 of the Internal Revenue Code also required that States begin monitoring LIHTC developments for compliance with program rules.

The Authority's procedures for Compliance Monitoring have been established to conform to all currently applicable federal statutes and regulations. Statutory or regulatory change may require that these procedures be revised from time to time.

Purpose of Manual

This manual is designed to summarize the statutes, regulations, and program rules that govern the management of Low-Income Housing Tax Credit (“LIHTC”) developments. It provides guidelines for property owners and managers about how they can operate their properties in compliance with these rules. The staff of the South Carolina State Housing Finance and Development Authority (“the Authority”) uses the manual as a program guide for administering its compliance monitoring procedures. We hope the manual will be a useful source of information for owners, developers, management companies, and on-site management personnel, but please note that this manual is to be used as a supplement to the actual laws and regulations. Sometimes, questions arise in managing a LIHTC property that can only be answered adequately by referring to the statutes and regulations themselves.

The laws and regulations governing the LIHTC program as well as the interpretation of these laws can and do change. Owners and managers should keep abreast of all changes in the Internal Revenue Code and the Code of Federal Regulations that may affect their properties. This may require consulting qualified legal and tax professionals for advice.

Section 1.42-5(g) states, "Compliance with the requirements of section 42 is the responsibility of the Owner of the building for which the credit is allowable." The Authority's monitoring efforts DO NOT relieve the property owner from his duty to obey all program rules. THE AUTHORITY'S OBLIGATION TO MONITOR FOR COMPLIANCE WITH THE REQUIREMENTS OF SECTION 42 DOES NOT MAKE THE AUTHORITY LIABLE FOR AN OWNER'S NONCOMPLIANCE.

LIHTC Key Concepts

The following, while not intended to cover every concept pertinent to the LIHTC program, will provide an overview of basic terms used in later sections concerning compliance responsibilities:

1. **Annual Income** – As defined in 24 CFR § 5.609, annual income is all amounts, monetary or not, that go to or are received on behalf of the family head, spouse or co-head (even if the family member is temporarily absent), or any other family member; or all amounts anticipated to be received from a source outside the family during the 12-period following admission or annual recertification effective date; including amounts derived (during the 12-month period) from assets to which any member of the family has access. A more detailed discussion of Annual Income can be found in a later section of the program manual titled, “Qualifying the Household”.
2. **Assets** – As defined in 24 CFR § 5.603, net family assets are the net cash value that would be derived, after deducting reasonable costs incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and the equity accounts in HUD homeownership programs. In determining net family assets, owners shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or recertification, as applicable, in excess of the consideration received therefore. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant received important consideration not measurable in dollar terms. A more detailed discussion of Assets can be found in a later section of the program manual titled, “Qualifying the Household”.
3. **Applicable Fraction** – The applicable fraction is the smaller of the unit fraction (the number of low-income units divided by the total number of all residential units) or the floor space fraction (the low-income floor space divided by the total residential floor space).
4. **Building Identification Number (BIN)** – During the allocation process, SCSHFDA assigns a nine digit, alpha-numeric designation to each building that receives an allocation of credits. This number is used to identify a specific low-income building for purposes of internal tracking, monitoring and reporting.
5. **Compliance Period** – The compliance period is a fifteen (15) year period beginning with the first taxable year of the credit period.
6. **Credit Period** – Generally beginning in the year that a building places-in-service, the credit period is the consecutive ten (10) year period of time during which credits can be claimed. The owner may elect to defer claiming credits until the next year after placing a building in service. By the end of that next calendar year after placing-in-service, however, the owner must have satisfied the minimum set-aside and must begin claiming credits.

7. **Deep Rent Skewing** – To earn more ranking points in the competitive process of applying for tax credits, owners may choose to select additional set-asides that are more stringent than the 40/60 or 20/50 set-asides. This set-aside test provides that, in addition to the 40/60 or 20/50 set-aside, the owner will also reserve an additional 15 percent (15%) or more of the residential units to be occupied by individuals whose income is 40 percent (40%) or less of area median gross income (AMGI) with rents that are no more than 30 percent (30%) of the area median gross income limit OR with rents that are no more than one-half (1/2) the average gross rent for comparably -sized non-program units (market units) in the development, whichever is lower.
8. **Educational Institution** – An educational facility that maintains a regular faculty and curriculum and which has a regularly enrolled body of students in attendance at the place where its educational activities are regularly conducted.
9. **Extended Use Period** – Developments that received LIHTC allocations after January 1, 1990 must comply with eligibility requirements for the minimum compliance period of fifteen (15) years plus an extended use period of a minimum of an additional fifteen (15) years, as stipulated by a recorded Agreement As To Restrictive Covenants (Extended Use Agreement).
10. **Full-time Student** – The definition of a full-time student consists of three criteria. If all are met, the individual is considered to be a full-time student. These criteria are that the individual is attending, has attended or will attend an educational institution on a full-time basis for five or more consecutive months; is attending at first grade level or higher; and is considered, by the educational institution, to be a full-time student. The student status of EVERY household member, including minors, must be considered when determining if the household is comprised completely of full-time students. Generally, a household comprised completely of full-time students is not eligible to occupy LIHTC program units. There are four eligibility provisions that will, if properly satisfied, qualify a full-time student household. Please note, however, that the owner must carefully verify and thoroughly document that one of the provisions is continuously satisfied since a household's student status never "grand fathered in". A previously LIHTC eligible household that is comprised completely of full-time students will become immediately ineligible when none of the four eligibility provisions listed can be satisfied:
 - a. **Households comprised of a single individual who is a full-time student may be eligible if the student is:**
 1. **Currently receiving Title IV of the Social Security Act (Aid to Families with Dependent Children, also known as AFDC)** – The Welfare Reform Act of 1996 replaced the AFDC program with Temporary Assistance to Needy Families (TANF). While the code provisions specifically address only AFDC, the Authority has recognized TANF as a substitute until the IRS offers official guidance on this issue.
 2. **Currently enrolled in a job training program under the Job Training Partnership Act (JTPA) or under other similar Federal, State or other local**

program – Congress is gradually transferring the administration of these training programs to the states. In order to determine if a state or local program is considered comparable, the state or local program’s intent and mission must be carefully compared with those of the federal program.

b. Households comprised entirely by full-time students may be eligible if the students are:

- 1. Single parents with children and such parents and children are not dependents (as defined in Section 152 of the Internal Revenue Code) of another individual** – It is important when using this eligibility provision that the owner clearly establishes a pattern in the documentation obtained. There are instances when divorced parents may alternate claiming children as dependents on tax returns. In the case of a full-time student household where such alternation occurs, the household is only LIHTC eligible every other year when the dependents are claimed. It is recommended that a number of consecutive tax returns be obtained to clearly demonstrate that the parent in residence at the LIHTC property is claiming the dependent children EVERY year.
- 2. Married AND filing a joint tax return** – Both conditions must be met in order for the household to be LIHTC eligible. Newly married couples that have not yet filed a joint tax return are not eligible.

11. Gross Rent Floor Designation – Since area median incomes typically change from year to year, it is not inconceivable that they could decrease and trigger a reduction in the amount of gross rent a tax credit property could charge. To eliminate the financing and budgetary uncertainties a project might otherwise face due to decreasing area median income, the LIHTC program creates a rent “floor” (minimum rent level) for projects that received an initial allocation of credits after 1989. The “floor” rent amount is the maximum allowable gross rent as of the floor designation’s effective date. The rent “floor” takes effect on the date that an allocation of tax credits is made to the building unless the owner elects to have it take effect on the placed-in-service date. For the gross rent floor to take effect on the building’s placed-in-service date, the building owner must forward an executed Gross Rent Floor Designation (available from the Authority upon request) to the Authority’s offices before the placed-in-service date.

12. Gross Rent Limits & Calculations – Gross rent must include an allowance for utilities if they are paid by the resident. Gross rent does not include utility allowances paid under Section 8 of the U.S. Housing Act of 1937 or any comparable rental assistance program. Gross rent does not include any fees for a supportive service which is paid to the owner of the unit (on the basis of the low-income status of the resident in the unit) by any governmental program of assistance (or by an organization described in Section 501 (c)(3) of the Internal Revenue Code and exempt from tax under Section 501 (a) of the Code) if such program (or organization) provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services. All other fees for supportive services must be included in the gross rent. The method for

calculating Maximum Gross Rents is dependent on the minimum set-aside election and the year of allocation.

- a. **Pre-1990 Allocations (no election)** – For properties allocated between January 1, 1987 and December 31, 1989, whose owner DID NOT elect to use the “number of bedrooms” method of calculating maximum rent, the owner may charge residents a maximum gross rent of no more than 30 percent (30%) of the monthly median income limit adjusted for family size for the county or MSA in which the development is located.

NOTE: The following sample maximum gross rent limits are given to demonstrate formulas ONLY. These hypothetical figures are not intended to represent any actual gross rent limits and should not be used to determine rent-restriction for any specific low-income unit.

# of Persons	1	2	3	4	5
Income Limit	19,380	22,140	24,900	27,660	29,880
Divide by 12	1615	1845	2075	2305	2490
Multiply by 30%	484.50	553.50	622.50	691.50	747
Round down	\$484	\$553	\$622	\$691	\$747

- b. **Pre-1990 Allocations (with election)** – For Properties allocated between January 1, 1987 and December 31, 1989, whose owner DID elect to use the “number of bedrooms” method of calculating maximum rent and filed a Notice of Election form (NOE-1) with the IRS by February 7, 1994, the owner should continue to use the gross rent method outlined in 7(a) for households initially occupying before February 7, 1994. For new households occupying on or after February 7, 1994, the gross rent method outlined in 7(c) should be used.

- c. **Post-89 Allocations** – The maximum gross rents must use the gross rent method based on the number of bedrooms in the unit. Units with no separate bedroom (SRO) are treated as being occupied by 1 person. All other bedroom sizes are treated as being occupied by 1.5 persons per bedroom. The table below converts the income limit associated with each bedroom size.

Unit Size	Use Income for
0 Bedroom	1.0 Person
1 Bedroom	1.5 Persons
2 Bedroom	3.0 Persons
3 Bedroom	4.5 Persons
4 Bedroom	6.0 Persons

NOTE: The following sample maximum gross rent limits are given to demonstrate formulas ONLY. These hypothetical figures are not intended to represent any actual gross rent limits and should not be used to determine rent-restriction for any specific low-income unit.

	Income limit	Formula	0 BR Rent	1 BR Rent	2 BR Rent
1 Per	19,380	(0 BR = 1 Per) USE 1 Per limit $\div 12, \times 30\% =$ (round \downarrow result)	\$484		
2 Per	22,140	(1 BR = 1.5 Per) Use 1 Per + 2 Per, $\div 2, \div 12, \times 30\% =$ (round \downarrow result)		\$519	
3 Per	27,660	(2 BR = 3 Per) Use 3 Per limit $\div 12, \times 30\% =$ (round \downarrow result)			\$691

13. **Income Limits & Calculations** – Every year, the Department of Housing & Urban Development (HUD) publishes median income information for South Carolina by county or metropolitan statistical area (MSA) of the State. An amendment to the 1987 Housing and Community Development Act established a minimum income limit based on the State’s non-metro median family income level. This provision had the effect of increasing income limits in a number of South Carolina counties. HUD may also adjust income limits for a small number of counties with unusually high or low housing costs in relationship to income. The HUD published Low Income Limit is 80 percent (80%) of median income adjusted for household size. **DO NOT USE the Low Income (80%) figures for tax credit purposes.** HUD’s Very Low Income Limits are 50 percent (50%) of the median income adjusted for

household size. These figures may be used, without conversion, for properties that elected the 20/50 minimum set-aside. For properties that elected the 40/60 minimum set-aside, the 50% figures can be converted to 60% figures by multiplying the 50% figures by 1.2. When converting figures from the 50% to 60% limits, always round down to the nearest whole dollar. To obtain annual Income Limits, the owner may visit the HUDUSER web site, www.huduser.org. Income limits may also be found on the SCSHFDA's web-site, www.schousing.com. The owner must begin using the new income limits within 45 days after release or the HUD effective date, whichever is later.

NOTE: The following sample median income limits are given to demonstrate formulas ONLY. These hypothetical figures are not intended to represent any actual income limits or to be used for determining income eligibility.

Income Limit	1 Person	2 Person	3 Person	4 Person	5 Person
HUD VL (50%)	16,150	18,450	20,750	23,050	24,900
Conversion factor (Multiply 50 % limit by)	1.2	1.2	1.2	1.2	1.2
Desired Limit (60%)	19,380	22,140	24,900	27,660	29,880

To obtain preferences in the application process, owners may elect to obligate a percentage of the units in a development at a more restrictive income level than either the 50% or 60% levels. Calculating these income limits may seem difficult; however, the conversion factor to obtain any income limit can be easily obtained by dividing the desired income limit by 50. Some of the more common income limits are listed in the table below with their corresponding conversion factors (multiply the 50% limit by the conversion factor listed):

Limit desired	Conversion factor
60%	1.2
49%	.98
48.8%	.976
48%	.96
45%	.9

14. **Minimum Set-Aside** – When applying for an allocation of tax credits, the developer is required to choose a minimum set-aside. Once the developer chooses one of the Internal Revenue Code set-asides to use, this choice is irrevocable and must be maintained at all times during the compliance period. Set-asides obligate the property owner to commit a certain percentage of the dwelling units in the development for occupancy by households of a specified income level. The minimum set-aside test applies to the entire development and is calculated using the unit fraction only. Vacant-Never Rented units are considered to have no “character” and are not counted toward satisfying the minimum set-aside. When a program-qualified household initially occupies a unit, that is suitable for occupancy and appropriately rent-restricted, the unit assumes “character” and is counted toward satisfying the minimum set-aside. Tax credits cannot be claimed until the minimum set-aside test has been satisfied. For properties allocated 1991 and later, the owner only has until the end of the second calendar year, after placing in service, to meet the minimum set-aside and begin claiming credits. Failure to initially meet the test in the timeframes specified permanently disqualifies the Project from claiming credits. If the set-aside is subsequently violated at any time throughout the compliance period, all credits previously claimed are subject to recapture. The set-aside tests are as follows:
- a. **20/50 Test** – 20 percent (20%) or more of the residential units in the development are both rent-restricted and occupied by individuals whose income is 50 percent (50%) or less of area median gross income (AMGI).
 - b. **40/60 Test** – 40 percent (40%) or more of the residential units in the development are both rent-restricted and occupied by individuals whose income is 60 percent (60%) or less of area median gross income (AMGI).
15. **Next Available Unit Rule** – The Next Available Unit Rule states that if a tenant’s income in a low-income unit increases above 140% of the current applicable income limit, the unit will continue to be treated as a low-income unit if: the unit remains appropriately rent-restricted; and the next available unit of comparable or smaller size within the building is rented to a qualified low-income household.
16. **Sources of Program Requirements (Regulating Documents)** – Section 42 of the Internal Revenue Service, IRS Regulations found in 26 CFR Section 1.42, IRS Revenue Rulings and Revenue Procedures, HUD’s Occupancy Handbook 4350.3 REV-1, additional program rules prescribed by the Authority, representations in a development’s application and provisions included in the Agreement as to Restrictive Covenants all regulate how low-income housing properties are to be operated.
17. **Support Unit (Resident Manager/Maintenance Unit)** – Support units may be included in a LIHTC development in one of the two ways that follow. If neither of these is applicable, prior written approval of the Authority must be obtained before removing a low-income unit.
- a. The manager or maintenance personnel must be income qualified, pay the same amount of rent charged to other qualified residents (or free or reduced rent recognized as in-kind income as required by the Internal Revenue Code) and must meet any other occupancy guidelines adopted by the development.

- b. The owner may designate a support unit in the application process, which is then treated as a common area of the property (non-income producing). This unit is not considered when calculating the applicable fraction. The manager or maintenance personnel do not have to be income qualified but does have to be considered a full-time employee of the development.
- 18. **Tenant Income Certification** – When properly executed, the Tenant Income Certification is the document which summarizes both initial and continuing household eligibility. Certifications are required for all LIHTC units.
- 19. **Utility Allowance** – A utility allowance is an estimate of the monthly cost of a resident’s utilities, other than telephone and cable, which are not included in the rent and are paid directly to the service provider by the resident. To calculate the maximum amount of rent that can be charged for a low-income unit, the utility allowance is subtracted from the Gross Rent Limit applicable to the particular household size (# of persons) or unit type (BR size) depending on the year the development was allocated. Average utility allowances must be obtained at least annually to ensure that the resident’s gross rent does not exceed the LIHTC gross rent limits. The owner may choose to verify more frequently.

 - a. **Rural Development Properties** – Rural Development (formerly Farmers Home Administration) approved utility allowances must be used to calculate maximum net rent for any building which is RD-assisted or occupied by any resident receiving RD Assistance (even if the building is occupied by one or more residents who receive HUD assistance).
 - b. **HUD Properties** – HUD approved utility allowances must be used for any building whose rents and utility allowances are reviewed annually by HUD.
 - c. **Units occupied by a Section 8 Housing Choice Voucher Holder** – For units occupied by households receiving HUD rental assistance payments (generally Section 8 Housing Choice Vouchers), the owner must use the applicable Public Housing Authority’s utility allowances established for the Section 8 Existing Housing Assistance Program. This Section 8 allowance DOES NOT apply to all units in the building unless all units are occupied by Section 8 assisted residents.
 - d. **Non-assisted Properties** – For developments not regulated by RHS or HUD, the applicable PHA utility allowance must be used. However, if a local utility company estimate is obtained for any unit in the building, that estimate becomes the appropriate utility allowance for all rent-restricted units of similar size and construction in the building. This local utility company estimate procedure is not available for and does not apply to units which are mentioned in the preceding paragraphs 7(a), (b) or (c). An interested party may obtain a utility cost estimate for similar units in the area from the local utility provider. The estimate is obtained when the interested party received, in writing, information from a local utility company providing the estimated cost of that utility for a unit of similar size and construction for the geographical area in which the building containing the unit is located. The obtainer of such an estimate must retain the original document and send copies to the building owner (where the initiating party

is not the owner) and the Authority (where the initiating party is not the Authority). Copies of the utility estimate must be available for inspection on-site at the development. The owner of the building must make copies of the utility company's estimate available to the residents of the building as well. New utility allowances must be used to compute rent on low-income units within 90 days after the date of the estimate.

Owner Responsibilities

Each property owner or developer has chosen to participate in the LIHTC program to take advantage of the tax benefits it provides. In exchange for these tax benefits, the owner must meet requirements that are designed to ensure that the housing development will benefit a chosen class of low-income tenants. While it is recognized that an owner will usually assign most or all of his compliance related tasks to a property manager or property management company, the owner still remains ultimately responsible for the development's compliance. The owner must ensure that the on-site management team also understands and complies with all rules, regulations and policies that govern LIHTC developments.

1. **Progress Reports and Notice of Project Changes** – It is the responsibility of the owner or developer to keep the Authority informed throughout all phases of development, rent-up and operation. This includes the construction phase during which owners are responsible for sending the Authority progress reports, notice of the scheduled placed-in-service date, and notices of any major change in the development's costs, financing, syndication, unit types, and completion schedule. The Low-Income Housing Program Manual and the Qualified Allocation Plan (provided to developers who are interested in applying for tax credits) describes the required progress reports. Until all buildings in a development have placed-in-service, all progress reports, with the exception of Quarterly Recordkeeping Reports, should be directed to the Authority's Tax Credit Allocation staff. Quarterly Recordkeeping Reports should be directed to the Compliance Monitoring staff.
2. **Payment of Compliance Monitoring Fees** – Property owners must pay the Authority annual compliance monitoring fees, currently \$25.00 for each LIHTC unit in the development. The Authority reserves the right to make adjustments in the amount of the annual monitoring fee as it deems necessary to defray the cost of compliance monitoring. Initial compliance monitoring fees must be paid to the Authority within 30 days of the date on which the building is placed-in-service. In each of the following years throughout the remainder of the 15-year compliance period and the extended use period, fees are due on or before the first day of February. A fee will be assessed for any checks that are returned to the Authority for any reason. **Owners and developers should take note that participation in Authority programs requires a certification of good standing with the Authority. Failing to pay fees will bar any further participation in the programs administered by the Authority.**

The Authority will mail property owners billing statements for these monitoring fees. If payment is for more than one development or year, list all applicable information on the method of payment including the five (5) digit Authority Project Identification Number. Checks should be made payable to the S.C. State Housing Finance and Development Authority and should be mailed to: Compliance Monitoring Division, S.C. State Housing Finance and Development Authority, 300-C Outlet Pointe Blvd, Columbia, SC 29210.

3. **Annual Owner Certification of Compliance (AOC-1)** – It is the responsibility of the owner to certify to the Authority at least annually that, for the preceding 12-month period, the development met the requirements of Section 42 of the Internal Revenue Code. This requirement is satisfied by the completion of an Annual Owner's Certification (Appendix – LIHTC Forms, AOC-1). The

owner or an authorized owner’s representative must sign the AOC-1 under penalty of perjury. Due to this requirement, only the notarized original of the AOC-1 will be accepted. Copies or faxed forms will not be accepted.

An AOC-1 must cover the preceding calendar year, or any portion of the preceding year, for which tax credits were claimed. If a transfer of ownership occurred, the entire calendar year must be covered. The previous owner must submit an AOC-1 for the portion of the calendar year prior to the transfer and the new owner must submit an AOC-1 for the balance of the year after the transfer. Annual Owner’s Certifications are due on or before February 1st of each year, following the first year of the credit period. In the following example, please note that while both properties placed-in-service at the same time, the initial AOC-1 for Development B is not due at the same time because of the owner’s decision to defer the first year of the credit period.

	PIS Date	1st Year of Credit Period	Period Covered	Due Date
Development A	06/01/2002	2002	01/01/02 – 12/31/02	02/01/03
Development B	06/01/2002	2003	01/01/03 – 12/31/03	02/01/04

4. **Notification to the Authority of Transfer of Ownership** – It is the owner’s responsibility to notify the Authority of any transfer of ownership. If the ownership of any building (or any interest therein) which has received an allocation of tax credits is transferred by the owner, a bond must be posted in accordance with Internal Revenue Code Section 42(j)(6). Owners are advised to seek legal counsel regarding this requirement prior to transferring ownership (or any interest therein). Upon notification, the Authority will request the prompt completion and return of a Low-Income Tax Credit Program – Transfer of Ownership Notification form. The Authority is required to notify the Internal Revenue Service of any transfer of ownership of any building (or any interest therein), which has received an allocation of tax credits.

5. **Low-income Occupancy** – During the application process, the Owner/Developer submitted a representation of the proposed development. The Owner is considered for an allocation of credits based on this representation of low-income housing units that meet federal rent and income-targeting requirements. If the development is awarded credits, the development delivered is expected to be as represented in the application process. The criteria outlined in a given year’s Qualified Allocation Plan plus any additional restrictions, elected by the Owner/Developer during the application process, become part of the monitoring process. Monitoring activities will include review and verification of the following:
 - a. **Building/Unit Breakdown**
 - i. Number of buildings (residential, nonresidential, commercial)
 - ii. Number of total units (by br size)

- iii. Number of LIHTC units (by br size)
 - iv. Number of market units (by br size & BIN), if applicable
 - v. Number of support units (by br size & BIN), if applicable
 - vi. Number of special targeting units (SRO/Transitional, Handicapped Equipped, Large Family, Older Persons, etc)
- b. **Minimum Set Aside Test** – The minimum set-aside test is applied on a project basis. If the low-income occupancy of the project falls below the applicable minimum set-aside elected, the owner cannot claim any of the credits for that year and any previously claimed credits become subject to recapture at the discretion of the IRS.
- i. Two general set aside tests:
 - 1. **20/50** – 20% or more of the residential units in the development are both rent-restricted and occupied by individuals whose income is 50% or less of area median gross income
 - 2. **40/60** – 40% or more of the residential units in the development are both rent-restricted and occupied by individuals whose income is 60% or less of area median gross income
 - ii. In order to be included in the LIHTC minimum set-aside, a unit must:
 - 1. Be suitable for occupancy
 - 2. Be occupied or vacated by a qualified low income household
 - 3. Be appropriately rent-restricted
- c. **Targeted Applicable Fraction/1st Year Applicable Fraction** – The targeted applicable fraction elected in the application process is applied on a project basis. The 1st year applicable fraction, however, is applied on a building basis and is “locked” in at the end of the first year of the credit period. Noncompliance results if the applicable fraction falls below the fraction established at the end of the 1st year of the credit period.
- d. **Additional, deeper income restrictions elected by the owner**
6. **Appropriately Restricted Gross Rents (including appropriate utility allowances) for low-income units** -- In order to demonstrate that a program unit is rent-restricted, the net tenant contribution plus the utility allowance cannot exceed the applicable Gross Rent Limit. Gross Rents must include an allowance for utilities, if they are paid by the resident. The method of calculating Maximum Gross Rents is dependent on the year the property was allocated.

7. **Determining, verifying and certifying household eligibility**
8. **Following program rules concerning over-income units & vacant units**
9. **Providing defined supportive services on an ongoing basis (allocation yrs 2001 and later)**
 - a. Family Supportive Services/Tenant Ownership
 - b. Older Persons Supportive Services
 - c. Homeless/At Risk Tenant Supportive Services
10. **Ensuring that the units are available for use by the general public (on a non-transient basis, except for transitional housing)**
11. **Quarterly Recordkeeping Reports** – From the time of initial occupancy until the end of the first year of the credit period (the first year that credits are claimed) or until one hundred percent (100%) occupancy has been achieved (whichever is later), the owner is required to prepare and submit Quarterly Recordkeeping Reports to the Authority. After this time, the owner is still required to complete, maintain and make Quarterly Recordkeeping Reports available for Authority review but submission is not required. The following table indicates the months contained within each quarter and the general due dates for submission to the Authority:

Reporting Periods	Due Dates
Jan-Feb-Mar	April 30
Apr-May-June	July 30
Jul-Aug-Sept	October 30
Oct-Nov-Dec	January 30

As stated previously, submission of Quarterly Recordkeeping Reports to the Authority is required from the time of initial occupancy through the end of the first year of the credit period or until one hundred percent (100%) occupancy has been achieved (whichever date is later). To eliminate confusion about when the submissions should begin and end, two examples have been provided below. As you will note, both developments placed-in-service on the same date, therefore, both will begin submitting Quarterly Recordkeeping Reports at the same time. Both will continue to submit for the balance of 2003. Assuming 100% occupancy has already occurred, Development A will no longer be required to submit reports to the Authority after the fourth (4th) Quarter of 2003 (the first year of the credit period). Development B, however, will be required to continue to submit reports through fourth (4th) Quarter of 2004 (the first year of the credit period). Please note that the owner is

still required to complete and maintain these reports following the end of the first year of the credit period, only the requirement to submit the reports to the Authority has been waived.

Development A places in service on June 1, 2003 and elects to claim credits in 2003 (the first year of the credit period)		
Submission #	Dates Covered	Due Date
1	06/01/03 – 06/30/03	07/30/03
2	07/01/03 – 09/30/03	10/30/03
3	10/01/03 – 12/31/03	01/30/04

Development B places in service on June 1, 2003 and defers claiming credits until 2004 (the first year of the credit period)		
Submission #	Dates Covered	Due Date
1	06/01/03 – 06/30/03	07/30/03
2	07/01/03 – 09/30/03	10/30/03
3	10/01/03 – 12/31/03	01/30/04
4	01/01/04 – 03/30/04	04/30/04
5	04/01/04 – 06/30/04	07/30/04
6	07/01/04 – 09/30/04	10/30/04
7	10/01/04 – 12/31/04	01/30/05

- 12. Recordkeeping and Record Retention** – Federal statutes and regulations require that property owners keep records for each building within a development. The Authority stipulates how records are to be prepared and maintained. Records must be retained by the owner for at least 6 years after the due date (with extensions) for filing the federal income tax return for that year. **The records for the first year of the credit period, however, 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. If a building (or development) is sold or otherwise transferred, the new owner should obtain from the previous owner all information related to the first year of the credit period so that he will be able to substantiate all tax credits claimed.**

These records must include, but are not limited to, the following:

- a. Applications for residency of all low-income households from the first year of credit period to present;
 - b. Annual Household Income Certification (HIC-1) for each affordable unit;
 - c. Third-party income verifications (TIV-1) and other supporting documentation for each Certification;
 - d. Documentation showing that full-time students are eligible to live in a LIHTC development;
 - e. Properly executed leases indicating the rent charged for each LIHTC unit;
 - f. Documentation of applicable utility allowances, initial through current;
 - g. Quarterly Recordkeeping Reports;
 - h. Documentation to demonstrate that supportive services are of a regular, ongoing nature, are for the benefit of the resident and are provided free of charge (Allocation years 2001 forward);
 - i. Records which show the character and use of any nonresidential portion of the development included in the development's eligible basis under Section 42(d):
 - i. Tenant facilities that are available on a comparable basis to all tenants
 - ii. Facilities reasonably required by the development
 - j. Copies of executed IRS Forms 8609, Schedule A and Forms 8586 or other documentation filed with the IRS for the purpose of claiming the credit;
 - k. Copies of all Annual Owner Certifications.
13. **Reporting Noncompliance to the Compliance Monitoring Staff** – The Compliance Monitoring Staff should be notified immediately upon the Owner's discovery of any noncompliance with LIHTC requirements. Most noncompliance issues are correctable and the Authority will work with owners to remedy noncompliance within a reasonable amount of time.
14. **Maintenance of the development** – On January 14, 2000 the IRS included in its final rules, concerning compliance monitoring, the requirement that units in the development be suitable for occupancy at all times. It was required that the Authority's compliance monitoring procedures include physical inspections of the development, buildings and a random sample of at least 20% of the program units. The Authority may use local codes, HUD's Uniform Physical Condition Standards or any other habitability standards when performing the physical inspections. Major violations of health, safety and building codes (which can include, but are not limited to, items such as impaired structural integrity, exposed wiring, inoperable plumbing, inoperable smoke detectors etc.) are reportable to the Service on the IRS Form 8823. However, patterns of minor health and safety

issues, those that require correction but do not impair essential services and safeguards for tenants, are also reportable to the IRS. It is the owner's responsibility to ensure that the site, common areas, buildings and units are regularly inspected and that routine and preventative maintenance is performed. On-site staff performing the periodic inspections of occupied units should also identify and address with the resident those behaviors that will place a unit in noncompliance (disconnection or disabling of smoke detectors, unsanitary conditions, blocked ingress/egress, extension cords, telephone cords or cable cords running across a hallway, etc.). After being vacated, vacant units must be returned, within a reasonable period of time, to a condition suitable for occupancy. Should any vacant unit require additional time, over and above the normal "turn" time, documentation should be kept at the site explaining the reason for the delay.

Qualifying the Household

As is evident in the previous overview, Recordkeeping and record retention is one of the primary areas of responsibility for the owner. Within this area, many of the compliance requirements involve the qualification of households for program units. To ensure that the requirements are satisfied, it is essential that the owner implement a systematic and consistently applied procedure for qualifying households. This procedure must include the following processes, to be completed in the order given: the interview, the application, the verification, and calculation of anticipated annual income. Once these steps have been completed, a determination of household eligibility can be made. Only after this determination is made, may the owner certify the household as program eligible and grant legal occupancy.

1. **The Interview Process** – During the prospective residents' initial visit to the development, management should explain the LIHTC Program, its benefits and program requirements, both initially and annually, to determine household eligibility. Management should explain the requirement for disclosure of all anticipated income for all household members (including temporarily absent members) and verification of disclosed information PRIOR to move-in. When educated and properly prepared at move-in, most residents will not object to the requirement to disclose again during the recertification process. It is helpful to explain that all information provided is confidential and will be handled accordingly.
2. **The Application Process** – As stated in the Recordkeeping and record retention responsibilities, an application for residency is required for each program unit. After the interview has been conducted, the prospective resident(s) should complete the application. The application form should be simple but thorough, capturing enough information to proceed with the verification process. Questions on the application that typically cause confusion (assets, temporarily absent household members, etc.) should be explained. Whenever possible, management should review the submitted application with all prospective resident(s), eighteen (18) years of age and older, at the time submitted. Any information that is missing should be obtained and any unclear information clarified. Please note that any change or alteration to the application must be made by and initialed by the applicant, not management. Contact information for verification sources and releases of information should be obtained. The application for residency should include:
 - a. The legal name, age, relationship to head of household and if any changes to household composition are anticipated within the next 12 months (If the applicant voluntarily discloses a pregnancy, the unborn child may be counted as a resident for income-qualification purposes. Only after disclosure by the applicant may management request that the applicant obtain a letter from her physician stating that she is under their care for the duration of her pregnancy);
 - b. Student status of all household members and if any changes are anticipated within the next 12 months;
 - c. All sources and amounts of current income and if any changes to annual income are anticipated during the next 12 months;

- d. All currently held assets and amounts of income generated by assets and if any changes are anticipated during the next 12 months;
 - e. All assets disposed of for less than fair market value during the preceding twenty-four (24) months;
 - f. Signature and signature dates of all household members 18 and older.
3. **The Verification Process** – Owners are required to verify information collected in the application process in order to make a determination of household eligibility.
- a. **Requirements for Verifications** – In order to be valid, verifications must be properly completed, legible and unaltered. Too often, however, requests for verification are sent without prefacing, explanatory material that communicates these requirements to the verifying source. This often results in an invalid verification. To avoid this, it is helpful to include a brief cover letter with the request explaining the proper completion of the form and acceptable correction methods. The verification form itself must state the reason for the request; contain a release statement that is signed and dated by the applicant or resident; provide a section for the information being verified; and provide space for full mailing address, the verifying person's signature, signature date, printed name, title and phone number. Once returned, verifications should not be altered by management. Calculator tape may be attached to show income calculations taking care not to obscure pertinent information on the verification. Unclear information should be clarified with the verifying party by management and documented on a separate record in the resident's file. Verifications are valid for ninety (90) days from the date of the verifying party's signature. In the case of computer printouts, the ninety day period begins on the date that the report is printed, not the effective date listed on the printout.
 - b. **Information to be Third-Party Verified** – The owner is required to verify all regular sources of income; income derived from household assets with a combined cash value equal to or greater than \$5000; disposal of assets for less than fair market value; student status, through the educational facility; and foster status for adults and children, through the state or local agency. Additional information that impacts program eligibility, while not specifically listed above, may also require verification.
 - c. **Methods of Verification** – HUD's Occupancy Handbook 4350.3 REV-1 outlines three methods of verification. They are, in descending order of acceptability, third-party verification, review of documents, and family certification.
 - 1. **Third-Party Verification** – Third-party verifications are sent directly to and from the verifying source. The applicant or resident does not handle the verification other than to sign the appropriate release of information. The following describes methods for obtaining third-party verification:
 - a. **Written** – The owner must obtain written third-party verification whenever possible. The owner may use the Tenant Income

Verification form, provided in Forms Section of this manual, or an alternative form approved by the Authority. For units receiving Section 8 rental assistance, the verification requirement is satisfied if the Public Housing Authority (“PHA”) provides the building owner with a statement that declares, “The gross annual income of the tenants in the unit does not exceed the applicable income limit under Section 42(g) of the Internal Revenue Code.” The IVS8-1 Form, found in the Forms Section of this manual may be used to satisfy this requirement. The income of Section 8 assistance recipients may also be verified in the usual way, using TIV-1 forms. If the household has no income, the IVS8-1 will be the only verification possible.

- b. **Verbal** – A verbal verification is acceptable to the Authority only as a last resort when written verification is not possible prior to move-in. To document the file, a record of the conversation must be completed and placed in the applicant’s file by management. The record must contain all information that would ordinarily be found on a written verification, including: the third-party’s name, position and contact information; information reported by the third party; name of the person who conducted the telephone interview; and the date and time of the phone call. A written third-party verification, confirming the verbal verification, must be obtained within ten (10) working days.
- c. **Electronic** – Per HUD’s Occupancy Handbook 4350.3 REV-1, the owner may now obtain third-party verification by facsimile, e-mail, or Internet, if adequate effort is made to ensure that the sender is a valid third-party source.
 - i. **Facsimile** – In order to be considered acceptable verifications, faxes must be completely legible, date-stamped and must include the signature, signature date, name, job title, fax and phone numbers of the person making the verification. Due to record retention requirements, faxes received on thermal paper should immediately be copied to plain white bond.
 - ii. **E-mail** – Electronic mail must contain the name of an appropriate individual and firm to be considered reliable.
 - iii. **Internet** – Computer generated internet site printouts are considered third-party verifications if the owner is able to view web-based information on the computer screen. A printout should contain pertinent information including information that identifies the transmission source.

2. **Review of Documents (Second Party Verifications)** – If third-party verification is not available, owners must document the applicant or resident’s file to explain why third-party verification is not available. The documentation must include: either (a) a written record in the file explaining why third-party verification was not possible or a copy of the date-stamped original request that was sent to the third-party; or (b) written notes or documentation indicating follow-up efforts to reach the third-party to obtain verification AND a written record to the file indicating that the request has been outstanding for two weeks or more without a response from the third party. The owner may then use a review of documents submitted by the applicant or resident as a verification method. Copies of the reviewed documentation must be placed in the applicant or resident’s file. In order for the documentation to be considered acceptable and valid, the documents must be unaltered originals, be current (dated within 90 days prior to the effective date of the certification) and contain sufficient information or cover a sufficient period of time to verify with accuracy. For example, owners should not accept less than four to six weeks of current, consecutive pay stubs to document employment income. Actual paychecks would not be considered acceptable and valid verifications since only net income, after deductions, is shown.
 3. **Family Certification (First Party Verifications)** – As a last resort, when all other methods of verification prove unsuccessful a notarized resident self-affidavit may be used as a verification. Notarized resident self-affidavits may also be used to supplement another method of verification. An example of this would be to confirm an amount indicated in a court-ordered child support decree that is not dated within 90 days prior to the certification.
- d. **Application of Verification Methods for Specific Income Types** – Since few household income scenarios are “textbook”, questions may arise about acceptable alternatives when management encounters roadblocks in the verification process. The purpose of the verification methods outlined above is to give management the ability to move beyond obstacles, without compromising the validity of the determination of household eligibility. The following specific income types will illustrate practical applications of the procedure outlined. Keep in mind that the methods are given in descending order of preference and the applicant or resident’s file must be documented as outlined in Section 3.c.2 titled “Review of Documents” prior to moving to the next method of verification.

1. **Employment**

- a. Tenant Income Verification form (TIV-1) completed by the employer or a statement from the employer on company letterhead;
- b. Four to six, consecutive weeks of the resident’s most current paystubs; or a copy of the most recent income tax returns signed by the applicant which provides the amount of income, including income

from tips and gratuities; copies of the resident's most recent W-2 forms.

- c. A notarized resident affidavit that projects annual income for the 12-month period following certification.

2. Self-employment

- a. An accountant's or bookkeeper's statement of net income and salaries distributed to household members;
- b. Financial statement(s) of the business plus a notarized affidavit from the resident forecasting the anticipated net income for the 12-month period following certification;
- c. The resident's most recent income tax return, with the appropriate IRS schedules plus a notarized affidavit from the resident forecasting the anticipated net income for the 12-month period following certification.

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

- a. An award or benefit notification letter, prepared and signed by the authorizing agency, dated within 90 days of the effective date of certification;
- b. If (a) is not dated within 90 days prior to the effective date of certification, the award or benefit notification letter should still be obtained and a notarized resident affidavit that confirms the amount in the award or benefit letter also obtained;
- c. A notarized resident affidavit that projects income for the 12-month period following certification.

4. Unemployment Compensation

- a. A verification form completed by the unemployment compensation agency;
- b. Printout from the unemployment office stating payment dates and amounts;
- c. A notarized resident affidavit that projects income for the 12-month period following certification.

5. Alimony or Child Support

- a. A copy of the complete separation or maintenance agreement, divorce decree, or support order stating the amount and frequency of payment;
- b. If (a) is not dated within 90 days prior to the effective date of the certification, copies the complete court documentation should still be obtained and a notarized resident affidavit confirming the amount and frequency of payment in the decree should also be obtained.
- c. If a copy of the separation or maintenance agreement or divorce decree is not available or if the support is voluntary (not court-ordered), a notarized affidavit should be obtained from the person providing the support that states the amount, frequency of pay that indicates if the support will continue during the 12-month period following certification;
- d. A notarized resident affidavit stating the amount and frequency of support being received.

6. Recurring Gifts and Contributions

- a. A notarized affidavit, from the person providing the recurring gift or contribution, that states the purpose, amount, frequency and that indicates if the assistance will continue during the 12-month period following certification;
- b. A letter from a bank, attorney or trustee providing required verification;
- c. A notarized resident affidavit giving the same information.

4. **Calculation of Anticipated Annual Income** – As defined in 24 CFR § 5.609, annual income is all amounts, monetary or not, which go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and which are not specifically excluded. Owners must project or estimate the annual income that the household expects to receive in the 12-month period following certification. Generally the owner must use current circumstances to anticipate income. If information is available about changes that are expected to occur during the 12-month period, this information should be factored into anticipated 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.

a. Annualization Factors:

If income is given:	Multiply by the following to annualize:
Hourly (Full-time)	2080 hours
Weekly	52 weeks
Bi-Weekly	26 weeks
Semi-Monthly	24 periods
Monthly	12 months
Bi-Monthly	6 periods
Quarterly	4 periods

b. Example of Annualizing Income:

On the Employment Verification, the employer indicates that the resident/applicant earns \$10.00 per hour, works 35-40 per week, 52 weeks per year. A raise of \$.50 per hour will occur on 11/15/05 which is 6 weeks from the effective date of the certification, 10/01/05. No overtime, bonuses, commissions, no loss of pay, etc are anticipated. Annualize the income:

	Rate	Freq	Number	Number of Periods	Subtotal
Base	\$ 10.00	Hourly	40	52	20,800
Raise	\$.50	Hourly	40	46	920
OT	\$				
Other	\$				
Loss of Pay (-)	\$				
Total					\$ 21,720

c. Income Includes:

1. The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;
2. The net income from operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight-line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;
3. Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (2) above. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net assets in excess of \$5000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;
4. The full amount of periodic amounts received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of period receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount, except as provided in paragraph (13) under Income Exclusions (e.g., Black Lung Sick benefits, Veterans Disability, Dependent Indemnity Compensation, payments to the widow of a serviceman killed in action);
5. Payments in lieu of earnings, such as unemployment, disability compensation, worker's compensation, and severance pay, except as provided in paragraph (3) under Income Exclusions;
6. Welfare Assistance.
 - a. Welfare assistance received by the family.
 - b. If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

- i. The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus
 - ii. The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage;
7. Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling; and
8. All regular pay, special pay, and allowances of a member of the Armed Forces, except as provided in paragraph (7) under Income Exclusions.

d. Income Excludes:

1. Income from employment of children (including foster children) under the age of 18 years;
2. Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);
3. Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains, and settlement for personal or property losses, except as provided in paragraph (5) under Income Inclusions;
4. Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
5. Income of a live-in aide, as defined in 24 CFR 5.403;
6. The full amount of student financial assistance paid directly to the student or to the educational institution;
7. 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);
8. The following:
 - a. Amounts received under training programs funded by HUD (e.g. training received under Section 3);

- b. 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);
 - c. 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, child care, etc.) and which are made solely to allow participation in a specific program;
 - d. Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the owner, on a part-time basis, that enhances the quality of life in the project. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, and resident-initiative coordination. No resident may receive more than one such stipend during the same period of time; or
 - e. 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.
9. Temporary, nonrecurring, or sporadic income (including gifts);
 10. 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);
 11. Earnings in excess of \$480 for each full-time student 18 years or older (excluding the head of household and spouse);
 12. Adoption assistance payments in excess of \$480 per adopted child;
 13. Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump-sum amount or in prospective monthly amounts;

14. Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling;
15. Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or
16. 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:
 - a. The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 [b]);
 - 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);
 - c. Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626[c]);
 - d. Income derived from certain submarginal land in the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);
 - e. Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624[f]);
 - 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);
 - g. Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub.L-94-540, 90 Stat. 2503-04);

- h.** 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);
- i.** Amounts of scholarship 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);
- j.** 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;
- k.** 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.);
- l.** Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721);
- m.** The value of any child care 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);
- n.** 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]);
- o.** 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);
- p.** Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637[d]);
- q.** 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);

- r. 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
 - s. Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931).
- e. **Whose Income is Counted** – Just as there are certain types of income, listed above, that are included and excluded, the incomes associated with certain household members are either included, partially included or excluded, as follows:
- 1. **Adults** -- Count the annual income of the head, spouse or co-head, and all other adult members of the family with the exception of foster adults and live-in aides. They are not considered household members for program purposes; therefore, their incomes are excluded. Persons under the age of 18, who have entered into a lease under state law, are treated as adults (emancipated minors). Their annual income must be counted if they are the head of household, spouse, or co-head. If they are residing with a family as a member other than the head, spouse or co-head, they would be considered a dependent and his or her income handled as described in paragraph 2.
 - 2. **Dependents** – A dependent is a family member who is under 18 years of age, or over 18 and a full-time student. The head of household, spouse, and co-head can never be dependents. Some income of dependents is counted and some is not.
 - a. Earned income of minors (family members under 18) IS NOT counted.
 - b. Up to a maximum of \$480 per year of the earned income of full-time students, aged 18 and older, who are not the head, spouse or co-head, is included in annual income.
 - c. The total amount of unearned income or other benefit amounts of minors and full-time students 18 and older (who are not the head, spouse or cohead) IS counted in annual income.
 - d. All forms of student financial assistance (grants, scholarships, educational entitlements, work study programs, and financial aid packages) are excluded from annual income whether the assistance is paid to the student or directly to the educational institution.

- e. Payments received by the family for the care of foster children or foster adults are NOT counted. This rule applies only to payments made through the official foster care relationships with local welfare agencies.
 - f. Adoption assistance payments in excess of \$480 are NOT counted.
3. **Temporarily Absent Family Members** – If the temporarily absent person is the head of household, spouse or co-head and there is a reasonable date of return, the person should be included, as part of the household and income associated should be counted. In the case of active military, the person should be included as a part of the household and income counted if: they are the head of household, spouse, co-head; or if the person on active military duty has a spouse or dependent living in the unit.
4. **Permanently Confined Family Members** – An individual permanently confined to a nursing home or hospital may not be named as head of household, spouse or co-head but may continue to be a family member at the family's discretion. If included as a family member, all associated income must also be included.
- f. **Alimony or Child Support** – Owners must count alimony or child support amounts awarded by the court unless the applicant certifies that payments are not being made AND that he or she has taken all reasonable legal actions to collect amounts due, including filing with the appropriate courts or agencies responsible for enforcing payment
 - g. **Regular Cash Contributions and Gifts** – Owners must count as income any regular contributions and gifts from persons not living in the unit. This does not include groceries and/or contributions paid directly to the childcare provider. Temporary, nonrecurring, or sporadic income is not included in annual income.
 - h. **Income 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. 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.
 - i. **Adjustments for Prior Overpayment of Benefits** – If an agency is reducing a family's benefits to adjust for a prior overpayment, count only the amount that is actually being provided after the adjustment.
 - j. **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. 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. If the tenant is receiving long-term care insurance payments, any payments in excess of \$180 per day must be counted toward annual income.

- k. **Resident Service Stipends** – Resident service 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 stipend exceeds \$200 per month, the entire amount of the stipend must be included. If the stipend does not exceed \$200 per month, none of the stipend is included in annual income.
- l. **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 unless the family can document that the amounts withdrawn are reimbursement of amounts invested. Only once the amount invested has been totally paid out will withdrawals count as income, if paid on a regular basis.
- m. **Income from Assets** -- Assets are items of value that can be converted into cash. Household assets include the assets of ALL household members, including minors. Assets may or may not earn actual income (e.g., interest, dividends, etc.), depending on how, or if, the assets are invested. If the combined cash value of household assets is less than \$5000, third-party verification of income derived from assets is not required. In these instances, the applicant(s) or resident(s) must both disclose the value of assets and income associated generated by assets held by all household members. Asset Addendum to the Household Income Certification. The ACTUAL income derived from assets, as disclosed by the household, will be transferred to the household certification. However, when the combined cash value of household assets is \$5000 or greater, it is required that the actual income derived from the assets be third-party verified. Management must also impute income on the combined cash value of household assets (multiply the cash value of assets by .02 [NOTE: As of 01/01/04, the HUD Passbook Savings Rate was currently set at 2 percent]). The higher of the ACTUAL or IMPUTED is the figure transferred to the household certification as income derived from assets.
1. **Cash Value of an Asset** – Cash value of an asset is the market value minus reasonable expenses (e.g., penalties for premature withdrawal, broker fees, legal fees and settlement costs for real estate transactions) that would be incurred in selling or converting the asset to cash. Note that the family is NOT required to convert the asset to cash. This conversion to cash is done as a calculation only in order to determine income from assets.
 2. **Ownership of Assets** – It is possible for multiple individuals to own an asset. Determine the percentage of ownership by household members and prorate the asset accordingly. Assume equal ownership if no percentage is specified or provided by state or local law. If an asset is not effectively owned by an individual, do not count it as an asset. An asset is not effectively owned when the asset is held in an individual's name but (a) the asset and any income it earns accrue to the benefit of

someone else who is not a member of the household, and (b) that other person is responsible for income taxes incurred on income generated by assets.

3. Assets include:

- a. Cash held in savings and checking accounts, safe deposit boxes, homes, etc. For savings accounts, the cash value is the current balance. Income is calculated by multiplying the current balance by the Annual Percentage Rate. For checking accounts, the cash value is the average balance for the last six months. Income is calculated by multiplying the average balance by the Annual Percentage Rate. Note that assets held in foreign countries are considered assets.
- b. Revocable Trusts. Trusts are legal arrangements in which one party (the creator or grantor) transfers property to a second party (the trustee) who holds the property for the benefit of one or more third parties (the beneficiaries). A trust can contain cash or other liquid assets or real or personal property that could be turned into cash. Trust can be revocable or nonrevocable. A revocable trust is a trust that the creator of the trust may amend or end (revoke). When there is a revocable trust, the creator has access to the funds in the trust. The beneficiary frequently will be unable to touch any of the trust funds until a specified date or event (i.g., the beneficiaries 21st birthday or the grantor's death). In some instances, the beneficiary may receive the investment income but not be able to withdraw the principal. Include the cash value of any revocable trust available to the family. Include in total household assets the amount that the household would receive if they withdrew all that could be withdrawn. Include the actual income is the interest accrued on the trust even if reinvested.
- c. Equity in rental property or other capital investments. Include the current fair market value minus (a) any unpaid balance on any loans secured by the property and (b) reasonable costs that would be incurred in selling the asset.
- d. Stocks, bonds, Treasury bills, certificates of deposit, mutual funds, and money market accounts. Interest or dividends earned are counted as income from assets even when they are reinvested. Although the value of these assets is variable, the value is fixed on the date of assessment by management.
- e. Individual retirement, 401K, and Keogh accounts. These are included when the holder has access to the funds, even though a penalty may be assessed. At a specified age, the individual may begin making occasional withdrawals from the account. Determine the amount of

the asset by using the average balance for the previous six months.
(Do not count withdrawals as income.)

- f. Retirement and pension funds.
 - i. While the person is employed, include only amounts the family can withdraw without retiring or terminating employment. Count the whole amount minus any penalties or transaction costs.
 - ii. At retirement, termination of employment, or withdrawal, count periodic receipts as income. Do not count any remaining amounts in the account as an asset. Lump-sum receipts should be counted in total household assets. If the individual initially receives a lump-sum benefit followed by periodic payments, count the lump-sum receipt as an asset and the periodic payments as income. In subsequent years, count only the periodic payments as income. Do not count the remaining balance as an asset.
- g. Cash value of life insurance policies available to the individual before death (e.g., the surrender value of a whole life policy or a universal life policy). It would not include a value for term life insurance, which has no cash value to the individual before death.
- h. Personal property held as an investment. Include gems, jewelry, coin collections, or antique cars held as an investment. Personal jewelry is NOT considered an asset.
- i. Lump –sum receipts or one-time receipts. These include inheritances, capital gains one-time lottery winnings, victim’s restitution, settlements on insurance claims (including health and accident insurance, worker’s compensation, and personal or property losses), and any other amounts that are not intended as periodic payments.
- j. A mortgage or deed of trust held by applicant. Occasionally, when an individual sells a piece of real estate, the seller may loan money to the purchaser through a mortgage of sale or deed of trust.
 - 1. Payments on this type of asset are often received as one combined payment of principal and interest with the interest portion counted as income from the asset.

2. This combined figure needs to be separated into the principal and interest portions of the payment (refer to the amortization schedule).
3. To count the actual income for this asset, use the interest portion due, based on the amortization schedule, for the 12-month period following the certification.
4. To count the imputed income for this asset, determine the asset value at the end of the 12-month period following the certification. Since this amount will continually be reduced by the principal portion paid during the previous year, the owner will have to determine this amount at each annual recertification.

4. Assets do not include the following:

- a. Personal property (clothing, furniture, cars, wedding ring, other jewelry that is not held as an investment, vehicles specially equipped for person with disabilities);
 - b. Interests in Indian trust land.
 - c. Term life insurance policies (i.e., where there is no cash value).
 - d. Equity in the cooperative in which the family lives.
 - e. Assets that are part of an active business. “Business” does not include rental of properties that are held as investments unless such properties are the applicant’s or resident’s main occupation.
 - f. Assets that are not effectively owned by the applicant. Assets that are effectively owned when they are held in an individual’s name, but (a) the assets and any income they earn accrue to the benefit of someone else who is not a member of the household, and (b) that other person is responsible for income taxes incurred on income generated by the assets.
 - g. Assets that are not accessible to the applicant and provide no income to the applicant.
- 5. Assets disposed of for less than fair market value.** Applicants and residents 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 twenty four (24) months preceding certification

and recertification. The amount counted as an asset is the difference between the cash value and the amount actually received. This amount should be added to the cash value of all other household assets for a period of 24 months following the disposal. The rule applies only when the fair market value of all assets disposed of exceeds the gross amount received by more than \$1000. Assets disposed of as a result of foreclosure, bankruptcy, divorce or separation are not counted as disposed of for less than fair market value. Assets placed in nonrevocable trusts are considered to be assets disposed of for less than fair market value unless the assets were placed in trust were received through settlements or judgments.

5. **Certification and Lease** – After all of the income and asset information has been obtained and computed, a final determination of household eligibility must be made. At that time, if eligible, the household must be certified and a lease agreement executed. Management must prepare a Tenant Income Certification, found in the forms section of this manual. This form is a legal document which, when properly executed, satisfies the income certification of the Code. The complete certification form must be executed by all household members 18 and older prior to move-in.

- a. **Certifying household income:**

1. All adult household members must sign the Household Income Certification exactly as their name appears on the form.
2. The Household Income Certification must be executed on or before the date of move-in.
3. No one may live in a LIHTC program unit unless he/she is certified. **THERE ARE NO PERMISSIBLE EXCEPTIONS TO THIS RULE.**
4. The Household Income Certification must also be executed (signed and dated) by the owner or owner's representative.

- b. **Annual recertification** – Owners must verify the income of residents occupying set-aside units at least annually. If certification is not completed within 12 months of the last certification date, the Authority may report this to the IRS as noncompliance. The annual recertification process is identical to the initial certification.

1. **Changes in household Composition** – LIHTC program rules do not require that households report changes to the owner. Properly prepared lease agreements impose this obligation on the residents, so any reporting procedures described in the lease agreement should be followed and the resident file documented accordingly. If an additional prospective resident is planning to move into an existing household, the prospective resident, not the whole household, must apply for residency. Management must verify his or her income, add it to the existing verified, certified income of the household and determine if the new household still meets the LIHTC income requirements. If so, the prospective resident may move-in.

2. **Overincome Residents** – If the income of a household qualifies when such resident(s) initially occupy a program unit in the development, an increase in the household income of up to one hundred forty percent (140%) of the applicable limit (adjusted for household size) will not result in disqualification. At annual recertification, in the event that the household's income increases to a level more than 140% of the applicable limit, the next available unit of comparable or smaller size in the building must be rented to a qualified low-income household before any market rate unit of comparable or smaller size is rented. The over-income unit may still be counted as a program unit as long as it remains rent-restricted and the next available unit rule is followed. To calculate 140% of the income limit, multiply the income limit for the household size by 1.4.
 3. **Transferring Residents** – If existing households wish to transfer to a new low-income unit within the same building where they currently live, they do not need to be recertified. If they wish to move to a low-income unit in another building, the household must be treated as a new move-in and must meet the same initial eligibility requirements as a new move-in.
- c. **Interim recertifications** – Except when adding a new resident to an existing household, LIHTC program regulations do not require management to recertify a household due to a change in household composition or income prior to the annual recertification date. However, some LIHTC developments that also participate in other low-income housing programs will have to recertify in order to comply with the other program's requirements. In the case of a unit, which receives rental assistance from a Federal agency, a change in household composition or income may trigger an interim recertification by the agency that is providing the assistance. Owners should perform LIHTC recertifications simultaneously with the annual recertification completed by the provider of the rental assistance payments even when doing so requires a premature initial LIHTC recertification.
- d. **Lease** – All LIHTC units must be under a written lease with an initial minimum term of six months. The owner or manager of a LIHTC development may make their own choices on whether or not to renew expiring leases. Lease agreements often contain provisions addressing lease renewals. Unless the lease obligates an owner or manager to continue renewing an existing resident's lease, the resident has no entitlement to continue living in a specific development or dwelling unit just because of his status as income-qualified under the LIHTC program. Owners should protect themselves from resident fraud in their leases. The lease agreement should contain the following:
1. Provisions stating that tenants who intentionally misstate household size or income or otherwise attempt to mislead the owner as to the tenant's qualifications to occupy a low-income unit will be evicted;
 2. Provisions stating that failure to provide required certifications, sources of income, and permission for income to be verified are grounds for eviction;

3. Provisions stating that any change in the household composition and student status must be immediately reported to the owner;
4. Provision stating that the owner, the owner's representative, staff of the Authority and representatives of the Service reserve the right to enter the unit to inspect the physical condition of such unit;
5. If the unit will be occupied by more than one adult (18 years or older) tenant, the lease should be in the name of all the adult tenants, and should be signed by each adult tenant.

Compliance Monitoring Activities

This section briefly describes the Authority's Compliance Monitoring program. These monitoring procedures may be modified as the Authority deems necessary, or as required by the Internal Revenue Service, IRS regulations, Revenue Rulings, and Revenue Procedures.

1. **Compliance Monitoring Briefings** -- Owners, managers and any other personnel who are directly involved in the management of a housing development and do not have previous experience with the LIHTC program may be required to attend a basic, educational Monitoring Briefing before the Authority releases Forms 8609s allocating the place-in-service tax credits. The Authority also reserves the right to require management personnel to attend briefings at any time during the compliance period if the development's compliance efforts are deemed deficient or if staff changes occur. The Authority will also

conduct briefings upon request and will periodically hold briefings/training sessions at various locations throughout the State. The purpose of the briefings is to provide instruction on the following:

- a. Federal regulations for determining eligibility of low-income residents;
 - b. Authority procedures for determining eligibility of low-income residents;
 - c. Specific information which must be obtained from a prospective resident through the rental application;
 - d. Income and Rent Limits;
 - e. Income Verifications;
 - f. Asset and Income from asset Verifications;
 - g. Annual recertifications;
 - h. Authority Required Forms and/or Documentation; and
 - i. Such other topics, which the Authority or the representatives of the development may deem necessary to ensure the proper management of the development as a successful LIHTC participant.
2. **Management Reviews and On-Site Building Inspections** – In order to meet its monitoring obligations to the IRS, the Authority inspects a percentage of the State’s LIHTC developments each year. These periodic inspections include a management review and inspections of the site, buildings and a sample of occupied and vacant units. Resident’s chosen for a record review will be selected at random by the Authority’s monitoring officer at the time of review. On-site physical inspections include physically inspecting the site, buildings and dwelling units for compliance with applicable Uniform Physical Condition Standards. The Authority also reserves the right, under the provisions of Section 42 of the Internal Revenue Code and Regulation 1.42-5 to perform management reviews and/or unit inspections of LIHTC developments at any time during the compliance period.

Property owners will be notified in writing prior to the arrival of the monitoring officer. On-site management staff must notify residents, in writing, at least 72 hours before the scheduled review that their units may receive an inspection. The owner (or owner’s representative) must be present to ensure access to records and units selected for inspection. After completing the review, the monitoring officer will prepare a report of their findings.

3. **Authority Discrepancy Reports (Findings Letters and IRS Forms 8823)** -- The Authority will provide written notice via Certified Mail to the owner or its designated representative of any noncompliance discovered. If the review reveals no deficiencies, the Authority will notify the owner that no evidence of noncompliance was discovered.

If the review indicates that a LIHTC development is not in compliance with program rules, the Authority will issue the owner a detailed discrepancy report. Some noncompliance situations are correctable. Others are not. If the noncompliance issues are correctable, the Authority will grant the owner a period of time in which to correct the discrepancies. Curing deficiencies usually involves obtaining missing documentation or making repairs to the dwelling units. Problems, which threaten the health and safety of residents, must be corrected in 24 to 48 hours, as indicated by the monitoring officer at the time of review. Other problems must be corrected within a reasonable period of time, which cannot exceed 90 days. The owner must respond to the Authority's findings and address all discrepancies individually and indicate the manner in which the corrections were made.

The Authority may grant an extension beyond the 90-day correction period only for judicially caused delays in the eviction of non-qualified residents. Such an extension may not exceed six months.

The Authority must report all noncompliance, whether corrected or not, to the IRS within 45 days of the end of the correction period. Noncompliance is reported on the original IRS Form 8823 generated at this time as corrected or not corrected based on the status at the end of the cure period. If document evidencing correction is submitted after the end of the cure period, for a limited period of time, the Authority will submit an IRS Form 8823 showing correction of previously reported noncompliance.

Any change in the applicable fraction or the eligible basis which results in a decrease in the qualified basis of the development under Section 42(c)(1)(A) is noncompliance and must be reported to the Service. LIHTC buildings (or any interest therein), which are sold or otherwise transferred by the owner, must also be reported to the Service.

All decisions concerning whether audits will be performed and whether previously claimed tax credits will be recaptured due to noncompliance are made solely by the IRS. The Authority does not make recommendations to the IRS and does not otherwise participate in making decisions about audits and recapture of tax credits.

The Authority is required to retain its inspection reports, Annual Owner's Certifications and other monitoring records for a period of 3 years from the end of the calendar year in which the Authority received the certifications or generated the reports. Records of noncompliance are retained for a period of 6 years beyond the date when the Authority files a Form 8823 with the Service.

Though the Authority currently performs all of its own monitoring duties, it may subcontract monitoring work to outside agents. If, in the future, the Authority does subcontract its monitoring duties, it will notify a development's owner that a contracted compliance monitoring agent is assigned to monitor his property.

- 4. Reporting Permanent Noncompliance** – Owners who intend to remove buildings from the LIHTC Program should notify the Authority immediately. Permanent noncompliance must be reported to the IRS as described above. All decisions as to whether or not previously claimed tax credits are subject to recapture as a result of permanent noncompliance would be made by the Service and not the Authority.

NOTE: The Authority's monitoring procedures are designed to test a sampling of resident records and dwelling units for compliance. A successful management review and inspection does not mean that the development has completely satisfied all of the program rules since undetected noncompliance may still exist. Property owners are completely and solely responsible for keeping their developments in compliance with the law and the Authority is not responsible if they fail to do so.

SCSHFDA LOW-INCOME HOUSING TAX CREDIT
COMPLIANCE MONITORING MANUAL