SOUTH CAROLINA STATE
HOUSING FINANCE AND DEVELOPMENT AUTHORITY

Low-Income Housing Tax Credit Program

Compliance Monitoring Manual

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The mission of the South Carolina State Housing Finance and Development Authority ("the Authority") is to create quality affordable housing opportunities for the citizens of South Carolina. We expect to create and maintain a positive work culture that reinforces our mission, encourages innovation, and is based on a spirit of cooperation and teamwork. We will work to improve customer service and enhance employee performance by constantly reviewing processes and using technology. The Authority will strive to develop mutually supportive relationships that expand our ability to provide affordable housing while enhancing the value of investments. We will actively seek new and innovative ideas to improve affordable housing opportunities throughout the State.

Introduction

Established under the Tax Reform Act of 1986 and codified as Section 42 of the Internal Revenue Code, the Low-Income Housing Tax Credit Program ("LIHTC") was created by Congress to promote the development of affordable housing for low-income individuals and families. It 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 with incentive 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 all determinations about the loss or 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. In August 1993, Congress passed the Omnibus Budget Reconciliation Act of 1993 which permanently extended the LIHTC Program.

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 be a reference guide for the administration of LIHTC developments in compliance with the applicable laws, rules, regulations and policies that govern tax credit developments. The staff of the South Carolina State Housing Finance and Development Authority ("the Authority") also uses the manual as a program guide for administering its compliance monitoring procedures. We hope it will be a useful source of information for owners, developers, management companies, and on-site management personnel; however, this manual is to be used only as a supplement to existing laws and regulations. Questions may arise that can only be answered adequately by referring to the 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 relevant federal and state law that may affect their properties. This may require on-going consultation with legal counsel, tax professionals and/or financial advisors regarding the Owner's participation in the LIHTC Program.

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. In addition, the Authority's obligation to monitor for compliance with the requirements of Section 42 does not make the Authority (or its officers and employees) 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 which outline 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-month 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. While the definition in 24 CFR § 5.609 specifically uses the term "family", care must be exercised in applying this term too literally. There is no requirement in the LIHTC Program that occupants of low-income units be related in any manner. The broader term "household", or any individual or group of individuals who choose to occupy a unit, should be applied instead. Income includes amounts received by the household on a recurring, periodic basis. Household income is calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937.

2. **Applicable Fraction** – The applicable fraction is calculated on a building by building basis. Using the most basic definition, the applicable fraction is the smaller of a building's unit fraction (the number of low-income units divided by the total number of all residential units) or the building's floor space fraction (the low-income floor space divided by the total residential floor space), determined as of the close of the taxable year. The first year application fraction is established at the end of the first year of the credit period (the first year credits are claimed). The actual applicable fraction at the end of the taxable year is used in the calculation of the annual credit. The actual annual applicable fraction must always be equal to or greater than the 1st year fraction.

3. **Assets** – As defined in 24 CFR § 5.603(b) and § 5.609(b)(3), 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, the value 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.

4. **Building Identification Number ("BIN")** – The Building Identification Number is the nine-digit, alpha-numeric designation, assigned during the allocation process to each building that receives an allocation of credits. This number is used to identify a specific low-income building for purposes of tracking, monitoring and reporting noncompliance, both internally and to the IRS.

5. **<u>Compliance Period</u>** – The compliance period is the fifteen (15) year period, beginning with the first taxable year of the credit period (i.e. either the year the project placed in service or the year after, if deferred, as declared in Part II of the IRS Form 8609). During the compliance period, the property is required to comply with requirements of both Section 42 and additional state regulatory documents [Section 42(i)(1)].

6. **<u>Credit Period</u>** – Generally beginning in the year that a building is placed-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 the following calendar year after placing-in-service, however, the owner must have satisfied the minimum set-aside and must begin claiming credits.

7. **<u>Due Diligence</u>** -- Due diligence is defined (Black's Law Dictionary [6th ed. 1990]) as: "Such measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent person under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case." Due diligence is demonstrated in many ways, including (but not limited to) establishing strong internal controls. Strong internal controls (policies and procedures), identify, measure and safeguard business operation and avoid material misstatements of LIHTC property compliance or financial information. These strong internal controls are generally evidenced by:

   A. Separation of duties
   B. Adequate supervision of employees
   C. Management oversight and review (internal audits)
   D. Third party verifications of tenant income
   E. Independent audits
   F. Timely recordkeeping

8. **<u>Educational Institution</u>** – 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. **<u>Extended Use Period</u>** – After January 1, 1990, in addition to the federal minimum compliance period of fifteen (15) years, developments that received LIHTC allocations also became subject to an extended use period of a minimum of fifteen (15) years, as stipulated by a recorded Agreement As To Restrictive Covenants ("Extended Use Agreement").

10. **<u>Fees</u>** – Generally, fees for services that are charged to the resident must be included in the gross rent calculation if the fee is non-refundable or the service is not optional. For the purposes of the LIHTC Program, a service is optional when it is not a condition of occupancy and a reasonable alternative exists. Separate fees should not be charged for the use of tenant facilities if the costs of those facilities are included in the eligible basis. Owners are responsible for physically maintaining LIHTC units in a manner suitable for occupancy; therefore, non-refundable fees for preparing a low-income unit for occupancy may not be collected (i.e. refurbishment fees, redecorating fees,

administrative fees, etc.). A standardized fee schedule for damages must be provided to residents during initial lease-up and during any subsequent lease renewal. These fees must be based on actual costs and may only be charged for damages in excess of normal wear and tear. Any charge for damages for durable items (i.e. carpet, stove, refrigerator, etc.) must be pro-rated based on the amount of time the item was in service prior to the damage. The owner may charge an application fee which is limited to the actual out of pocket expenses associated with the management screening and eligibility determination processes. This one-time application fee will not be included in the gross rent computation. In addition, any fee which is refundable (such as the security deposit fee) will not be included in the rent calculation.

11. **File Organization** – Documentation must be contained in the resident file which demonstrates household eligibility for the LIHTC Program. The LIHTC documentation requirements are not removed or subrogated by the existence of other funding sources and their programmatic requirements. In addition, other funding sources may prohibit external review of their documentation by non-program personnel. Due to this, LIHTC compliance files should be maintained separately in the following manner:

Section I	Section II
Leases /Lease Renewals /Lease Addendums/Fee Schedule (in descending order from current to initial) **Section 8 Documentation which provides the assistance payment and the tenant paid portion *** **(* if Section 8 Voucher holder)**	**Certification and Supporting Documentation (in descending order from current to initial, separated by certification years)**
	Current Tenant Income Certification
	Verifications:
	Certification of Zero Income (must include an applicant or resident disclosure outlining how reasonable basic living expenses are currently being paid)
	Earned and Benefit Income (written 3rd party or documentation demonstrating why 3rd party couldn't be obtained; clarification records placed on top of verification being clarified)
	Asset Income:
	Under $5000 Asset Certification (if cash value of all household assets does not exceed $5000) * If unit is HOME-assisted, this certification may not be used -- all assets must be 3rd party verified**
	3rd Party Verification (if cash value of all household assets exceeds $5000)
	Disposal of Assets (written 3rd party, if difference exceeds $1000)
	Student Status (through the educational institution), if an eligibility factor
	Application/Recertification Application
	Next Available Unit Documentation, if applicable

12. **<u>Financial aid</u>** – The inclusion or exclusion of financial aid does not indicate LIHTC eligibility. The student status of the household must be evaluated for eligibility in accordance with the LIHTC Full-Time Student Rule (for more information, see Item 13 below, "Full-time Student"). If the household is comprised completely of Full-Time Students, one of five eligibility exemptions must be satisfied in order for the household to be eligible to occupy a LIHTC unit. This section applies only to determining income for those households, containing a student or students, full or part-time, which have already been determined to be program eligible with regards to student status.

A. For students, in a household that does not receive Section 8 assistance (i.e. Project-based assistance or who are assisted through the Housing Choice Voucher program), financial aid is **excluded** from annual household income.

B. For those students, attending on a full or part-time basis, who are in a household receiving Section 8 assistance:

i. **Exclude** the financial aid if the student is living with their parent(s) and the student is not the Head, or Co-Head

ii. **Exclude** the financial aid if the student is over the age of twenty three (23) and has a dependent

iii. For those students who are Section 8 assisted but who do not meet the exclusions 1 or 2 previously listed:

a. 3rd party verify student status and amount of tuition

b. 3rd party verify financial aid income (other than loans)

c. **Include** in household income the amount of financial aid in excess of tuition

13. **<u>Full-time Student</u>** – 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:

A. Currently attending, has attended or will attend an educational institution on a full-time basis for five or more months (months do not have to be consecutive and the entire month must be included if students attend one day in the month) during the calendar year of certification or recertification

B. Attending, attended or will attend at the first grade level or higher (includes elementary, junior and senior high schools, colleges, universities, technical, trade and mechanical schools)

C. Considered, by the educational institution, to be a full-time student

The student status of every household member, including minors not including unborn children, must be considered when determining whether the household is comprised completely of full-time students. Unborn children cannot be used as a non-student in order to qualify an otherwise ineligible FTS household. Unborn children may be included as household members only to determine household size and the applicable income limit. Generally, a household comprised completely of full-time students is not eligible to occupy LIHTC program units. There are, however, five exemptions to the student rule that will, if properly satisfied, qualify a full-time student household for the LIHTC program. Please note, however, that all exemptions must be carefully verified and thoroughly documented since a household's student status is never "grandfathered" in.

A previously LIHTC-eligible FTS household becomes immediately ineligible when none of the following five exemptions listed can be satisfied:

A. Households, comprised of a single individual who is a full-time student, may be eligible if the student is:

- **i.** **Currently receiving Title IV of the Social Security Act (Grants to States for Aid and Services to Needy Families with Children and for Child-Welfare Services)** – The Personal Responsibility and Work Opportunity Act of 1996 replaced the Aid to Family with Dependent Children program (AFDC) with the Temporary Assistance to Needy Families Program (TANF). While the code specifically addresses only AFDC, the Authority has recognized TANF as a substitute. Other forms of assistance, other than TANF, will not qualify a FTS household under this exemption. SCSHFDA requires documentation in the resident file to demonstrate that the exemption has been satisfied.
- **ii** **An individual previously under the care and placement responsibility of the State agency responsible for administering a plan under part B or part E of title IV of the Social Security Act**– Applies to eligibility determinations made after 07/30/08 (i.e. the enactment date of the Housing and Economic Recovery Act of 2008). Until the IRS releases additional guidance, SCSHFDA will view previous placement as being placed at any time in the past, regardless of the length of time since placement. SCSHFDA requires documentation in the resident file to demonstrate that this exemption has been satisfied.
- **iii.** **Currently enrolled in a job training program under the Job Training Partnership Act (JTPA) or under other similar Federal, State or other local program** – The Workforce Investment Act of 1998 repealed the federally funded JTPA; however, there are other state and local programs which are considered to be comparable. In order to determine if a state or local program is considered comparable, the state or local program's intent and mission statement must be carefully compared with those of the JTPA program. SCSHFDA requires documentation in the resident file to demonstrate that this exemption has been satisfied (i.e. proof of participation, intent and mission statement, etc.).

B. Households, comprised entirely of full-time students, may be eligible if the students are:

- **i.** **Single parents with children and such parents are not dependents (as defined in Section 152, determined without regard to subsections (b)(1), (b)(2) and (d)(1)(B) of the Internal Revenue Code) of another individual and such children are not dependents (as so defined) of another individual other than a parent of such children** – H.R. 3648, the Mortgage Forgiveness Debt Act of 2007, effective December 20, 2007, amends this exemption by allowing FTS households comprised of a single parent with children to qualify for the LIHTC Program, even if the absent parent claims the children as a dependent for tax purposes. SCSHFDA requires documentation in the resident file to demonstrate that this exemption has been satisfied.
- **ii.** **Married and entitled to file a joint tax return** – Per recent guidance by the Service, a married couple who is entitled to file a joint tax return, but has not filed one, will still satisfy this exemption. SCSHFDA requires documentation to be contained in the resident file demonstrating that this eligibility provision has been satisfied.

14. **Gross Rent Floor Election** – The LIHTC program creates a gross rent "floor" for projects that received an initial allocation of credits after 1989 ensuring that the Maximum Allowable Rent would never decrease below this limit. Pursuant to Revenue Procedure 94-57, the Internal Revenue Service will treat the gross rent floor in Section 42(g)(2)(A) of the Code as taking effect on the date the Authority initially allocated* credits to the property, unless the Owner designates the date the property places in service as the date on which the gross rent floor will take effect for such property. (*If the property is tax-exempt bond financed as defined by Section 42(h)(4)(B), the Service will treat the gross rent floor as taking effect on the date the Authority initially issues a determination letter unless the Owner designates that the placed-in-service date should be used.)

15. **Housing and Economic Recover y Act of 2008 (HERA) –** On July 30, 2008, Congress enacted sweeping legislative changes to the LIHTC and Tax Exempt Bond programs intended to alleviate some of the financial hardships being experienced by investors, developers and owners. The specific impact of the legislation on compliance concepts will be discussed in various sections of this manual.

16. **Household Composition** – As a general rule, a "household" consists of individuals who choose to reside together in a unit, including temporarily absent members. A household may consist of unrelated members.

A. For LIHTC purposes, all occupants are considered in the household size for determining the applicable income limit, except for the following:

i. **Live-in Aides/Attendants** – A live-in attendant lives with persons with disabilities, near-elderly or elderly persons who is determined essential to the care and well-being of the resident in order to allow them to live independently. The live-in aide/attendant: 1) must be deemed necessary by a health care provider; 2) cannot be either obligated for the support of the resident or be financially dependent on the resident; and, 3) must live in the unit only to provide necessary supportive services. The income of a live-in aide is not included in the household's income. Documentation to support the satisfaction of these conditions must be present in the resident file or the income of the live-in aide will be added to household income as of the date of the live-in aide's initial occupancy. While a relative may be considered to be a live-in aide/attendant, the spouse or minor children of the individual requiring care may never be live-in aides/attendants. The live-in aide/attendant must also sign documentation acknowledging that: 1) they do not have rights of survivorship; 2) if the resident vacates the unit for any reason, they must also vacate the unit; and, 3) the owner has the right to evict them if they violate any provisions of the lease.

ii. **Foster Children/Adults** – Foster children are in the legal guardianship or custody of a State, County, or private adoption or foster care agency, yet are cared for by foster parents in their own homes under some kind of foster care arrangement with the custodial agency. A foster adult is usually an adult with a disability who is unrelated to the household and who is unable to live alone.

iii. **Guests** – A guest is a visitor, temporarily staying in the unit with the consent of the household

iv. **Permanently absent household members** – A permanently absent household member is an individual who does not live in the unit or no longer lives in the unit and there is no reasonably expected date of return

B. When determining family size for income limits, the owner must include the following individuals who are not living in the unit:

i. Children temporarily absent due to placement in a foster home

ii. Children in joint custody arrangements who are present in the household more than 50% or more of the time. If disputed, determine which parent claimed the children as dependents for purposes of filing a federal income tax return

iii. Children who are away at school but who live with the family during school recesses

iv. Unborn children of pregnant women (as self-certified by the woman)

v. Children who are in the process of being adopted

vi. Temporarily absent family members who are still considered family members if approved to live in the unit. For example, the owner may consider a family member who is working in another state on assignment to temporarily absent

vii. A family member in the hospital or a rehabilitation facility, for periods of limited or fixed duration is considered to be a temporarily absent household member

viii. For persons permanently confined to a hospital or nursing home, the family decides if such persons are included when determining family size for income limits. If the family chooses to include the permanently confined person as a member of the household, the owner must include income received by the confined person in calculating family income.

C. **<u>Changes to Household Composition</u>** – If additions to or deletions from the household are contemplated, the resident must be required, through the use of appropriate lease provisions, to inform the Owner or Owner's representative of the proposed change.

i. **Additions to the household** – Due diligence must be demonstrated by accurately determining initial household eligibility and by implementing strong policies and procedures to deter manipulation of these requirements. Additions of adult household members during the initial certification period should be avoided. However, clearly-defined procedures must be established and implemented which address the few, valid circumstances when the addition of household members is permissible during this period of time. Failure to demonstrate sufficient due diligence will result in the additional household member's or members' income being included in certified income at the time of move-in.

All income which is not expressly excluded by regulation, that is associated with the new household member, must be verified and added to the existing certification. The effective date of the existing certification does not change. The new total household income must be compared to the applicable income limit at the time of addition, based on the new household size. If household income exceeds 140% of the applicable income limit, the Next Available Unit Rule is triggered [IRC §42(g) (2) (D)].

Additional household members may continue to be added as long as one member of the initially certified household remains in the unit. Through a combination of additions and deletion (discussed below), once no member of the initially certified household remains, the household must be qualified as a completely new move-in. All initial eligibility criteria must be met.

ii. **Deletions from the household** – According to guidance from the IRS, deletions from households do not require adjustment to the existing certification. Instead, this household change may be addressed at the time of annual recertification. If the decrease in household size causes household income to exceed 140% of the income limit in effect at the time of annual recertification, the Next Available Unit will be triggered.

17. <u>Income Limits & Gross Rent Limits</u> – In order for a household to be considered income qualified, total gross household income must be at or below the income limit, adjusted for household size, that is consistent with the elected minimum set-aside (i.e. 20/50 or 40/60). In addition, in order to be considered appropriately rent restricted, the gross rent charged cannot exceed the Maximum Allowable Rent limit that corresponds with the minimum set aside elected and the bedroom size.

A. Income Limits -- The Department of Housing & Urban Development (HUD) annually publishes median income information for South Carolina by county or metropolitan statistical area (MSA). In 2006, HUD changed the source data used in their methodology for determining area median gross incomes (AMGIs) – a change which would have resulted in decreased 2007 median gross income limits in certain areas. Since these decreases were due to the change in methodology and not necessarily reflective of genuine decreases in median family income levels in these areas, HUD implemented a "Hold Harmless" policy that froze the limits at the previous level in these impacted areas. HUD Hold Harmless Impacted Projects are those developments which are located within these affected areas and placed in service prior to 01/01/09. Enacted 07/30/08, the Housing and Economic Recovery Act of 2008 (HERA) sought to ease some of the impact of the frozen limits for LIHTC and Multi-Family Tax Exempt Bond (TEB) developments. The Act created one new higher income limit set (HERA "Special") for use at impacted LIHTC and Multi-Family Tax Exempt Bond developments and made another, existing but previously unavailable, income limit set available for use at eligible LIHTC projects (National Non-Metropolitan Median Gross Income or "NNMGI"). In addition, HERA created its own hold harmless policy for all LIHTC and TEB projects by legislating that Area Median Gross Incomes for the LIHTC and Tax Exempt Bond projects would not decrease from the previous year's limits. In 2009, HUD released a separate income limit data set, specifically for use in the LIHTC and TEB Programs. The income/rent limit data set, referred to as Multi-Family Tax Subsidy Projects (MTSPs), incorporates the changes legislated by HERA. Included within the MTSPs Data Set are two sub-sets: 1) Impacted MTSPs for LIHTC and TEB projects which were placed in service prior to 01/01/09 and which are located in areas impacted by the HUD Hold Harmless Policy, and; 2) Non-Impacted MTSPs, for LIHTC and TEB projects which placed in service on or after 01/01/09 or located in an area not impacted by HUD's policy. In 2010, although HUD discontinued its policy of holding income limits frozen, the HERA Hold Harmless Policy remained. As a result, it has become increasingly difficult to determine which income and gross rent limit should be used at any given project. Using a process of elimination, the Owner must determine which income/gross rent limits the project is eligible to use. The project may then use the highest of all income/gross limit sets for which it is eligible.

** NOTE: Although the Forms Section of this manual contains checklists which may aid in this determination process, it is strongly recommended that the Owner consult with their own legal counsel or tax credit professionals prior to implementing any changes.

When making determinations about income/gross rent limits, the following must be considered:

i. Elections made on IRS Forms 8609, Part II, Line 8b (Multi-Building Election)

a. "No" Election by the Owner -- Each building becomes a separate "project" and appropriate income/gross rent limits will have to be determined for each building using the building's placed in service date and physical location.

b. "Yes" Election by the Owner – The date the 1st building placed in service becomes the placed in service date for all buildings designated as being within the multi-building project and is the date used to determine the applicable Income/Gross Rent Limits for all included buildings. If there is a leasing office at the project, it becomes the physical location for all included buildings. If not, the physical location of the 1st building to place in service will be used.

ii. Placed In Service Date

a. Projects, placed in service prior to 01/01/09, in impacted areas, are eligible to use the Impacted MTSPs income/gross rent limits (HERA "Special") and the HERA Hold Harmless Rule applies (i.e. AMGIs can't decrease from the previous year's AMGI).

b. Projects placed in service on or after 01/01/09 but before 05/14/10, are not eligible to use the Impacted MTSPs income/gross rent limits (HERA "Special") but must use the Non-Impacted MTSPs income/gross rent limits. The HERA Hold Harmless Rule applies

c. Projects, placed in service on or after 5/14/10, are not eligible to use the Impacted MTSPs income/gross rent limits (HERA "Special") but must use the Non-Impacted MTSP income limits. The HERA Hold Harmless Rule applies.

In addition, the Gross Rent Limits may be severed from the Income Limits. They will be the greater of the gross rent limits for which the project was eligible in the income limit year in which the Rent Floor Election was made or the current gross rent limits. Please see below for the income limit years:

- **2008 Income Limit Year** – Rent Floor Election (RFE) on or after 02/13/08 but before 03/19/09
  ** NOTE: Only 2008 Standard Area Median Gross Rent Limits may be used for the year of the rent floor election. The National Non-Metropolitan Gross Median Rents could not be used prior to 03/19/09.)
- **2009 Income Limit Year** – RFE on or after 03/19/09 but before 05/14/10

- **2010 Income Limit Year** – RFE on or after 05/14/10

iii. **"Rural" Designation of the Project** – A LIHTC project located in a rural area, as defined by Section 520 of the Housing Act of 1949, may be eligible to use the National Non-Metropolitan Gross Income Limit Set that HERA made available for income determinations after 07/30/08. Applies only to developments that meet all of the following criteria:

- 9% LIHTC deals only (i.e. no Tax Exempt Bond funding, no HOME assisted units where basis was not reduced or the 40/50 rule was not applied, etc.)
- Documentation of "rural" designation for the project address must be obtained from the USDA website below and maintained for review: http://eligibility.sc.egov.usda.gov/eligibility/welcomeAction.do

  ** NOTE: The USDA designation as rural may change with or without notice. Must be re-visited at least annually prior to the implementation of any new income limits.

B. Gross Rent Limits – 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. In addition, gross rent does not include any fees for a supportive service which are 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.

For Post-89 LIHTC developments, all calculations of maximum gross rents begin with the number of bedrooms in the unit. Units with no separate bedroom (Single Room Occupancy or "SRO"s) 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 indicates the income limit associated with each bedroom size (br size x 1.5):

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

All low-income units must be appropriately rent-restricted. Rent restriction is demonstrated when the gross rent received for a unit does not exceed 30 percent (30%) of the income limit. Per guidance released by the IRS, rent restriction must be evaluated on both a monthly and an annual basis.

To calculate annual gross rents, use the income limit applicable to the bedroom size and multiply by 30%. The formula below for calculating gross monthly rents uses the income limit applicable to the bedroom size divided by 12, multiplied by 30%. **

** NOTE: ALWAYS ROUND DOWN RESULTS.

	Income limit	Formula	0 BR Rent	1 BR Rent	2 BR Rent
1 Per	19,380	(0 BR = 1 Per) USE 1 Person limit ÷ 12, × 30% = (round ↓ result)	**$484**		
2 Per	22,140	(1 BR= 1.5 Per) Use 1 Person + 2 Per, ÷ 2, ÷ 12, × 30% = (round ↓ result)		**$519**	
3 Per	27,660	(2 BR= 3 Per) Use 3 Person limit ÷ 12, × 30% = (round ↓ result)			**$691**

18. **<u>Minimum Set-Aside</u>** – When applying for an allocation of tax credits, the developer is required to choose a minimum set-aside. Once the developer chooses a set-aside, 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. Depending on the Multi-Building Election made on IRS Forms 8609, Line 8b, the minimum set-aside is tested either across all buildings within the development ("Yes" to Multi-Building Election) or within one building ("No" to Multi-Building Election). It 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 (one that is suitable for occupancy, available to the general public, used on a non-transient basis 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 LIHTC set-asides are as follows:

A. **20/50 Test** – 20 percent (20%) or more of the residential units in the development are both: rent-restricted at or below the applicable 50 percent (50%) Gross Rents Limits and occupied by individuals whose income is at or below the applicable 50 percent (50%) Income Limits

B. 40/60 Test – 40 percent (40%) or more of the residential units in the development are both: rent-restricted at or below the applicable 60 percent (60%) Gross Rents Limits and occupied by individuals whose income is at or below the applicable 60 percent (60%) Income Limits

19. **<u>Next Available Unit Rule</u> --** The Next Available Unit Rule states that if the income of the occupants of 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:

A. The occupants initially met the income limitation

B. The unit remains appropriately rent-restricted

C. All available units of comparable or smaller size within the building which become vacant subsequent to this determination are leased to households with qualifying incomes until the building's applicable fraction has been restored, not including the over-income unit..

The Next Available Unit is no longer triggered if, at subsequent re-certifications, the household's income decreases below 140% of the applicable income limit or the income limits increase so that the household's income no longer exceeds 140% of the applicable income limit

20. **<u>Sources of Program Requirements (Regulating Documents)</u>** – Low Income Housing Tax Credit properties are to be operated in compliance with 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, additional program rules prescribed by the Authority, representations in a development's application and provisions included in the Agreement as to Restrictive Covenants.

21. **<u>Standardized Forms</u>** – Per guidance issued by the IRS, State agencies may determine how documents are maintained and may mandate the use of standardized forms to document an owner's compliance with the requirements under Treas. Reg. Section 1.42-5. The standardized forms cited in this manual can be found at www.schousing.com under the Low Income Housing Tax Credit Program Compliance Monitoring page..

22. **<u>Support Unit (Resident Manager/Maintenance /Courtesy Officer Unit)</u>** – Support units may only be included in a LIHTC development in one of the ways indicated below:

A. A program unit is occupied by a qualified household -- The manager or maintenance personnel is income qualified, pays 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 meets any other occupancy guidelines adopted by the development.

B. Support Unit is designated during application process -- The owner designates 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 or courtesy officer does not have to be income qualified but they do have to be considered a full-time employee of the development. Charging rent or reduced rent for the support unit may lead the IRS to determine that the unit is not reasonably required by the development.

C. **Support Unit is approved by the Authority subsequent to the application process** -- If neither A or B apply, the Director of Compliance Monitoring must formally approve the support unit before the Owner may remove a program unit. When submitting the request for approval, documentation must also be included which demonstrates the need for a support unit (i.e. incident reports, crime trend reports, etc.) Once designated either in the application process or through approval, Support Units cannot change in size and may not be moved between BINs.

23. **<u>Tenant Income Certification</u>** – When properly executed, the Tenant Income Certification is the document which summarizes household eligibility, both initially and on an ongoing basis. Certifications are required for all LIHTC units (For the required Certification form see Forms Section – Tenant Income Certification).

24. **<u>Transfers</u> –** Household moves can be considered either a move-out/move-in or a unit swap.

A. **Moves within a building –** Household moves within a building will be treated in the same way for single building projects and multi-building projects.

i. **100% LIHTC Project** – Units swap statuses. If a household moves from a qualified tax credit unit into a vacant never rented unit, the vacant never rented unit becomes a qualified tax credit unit and the formerly qualified tax credit unit becomes a vacant never rented unit. If the LIHTC household's income exceeds 140%, the OI status moves with the household into new unit. The Next Available Unit Rule, previously invoked, must continue to be satisfied using the new unit as the basis for comparison of comparable or smaller size. Recertification is not necessary and the effective and move in dates remain unchanged. The certification should be appropriately revised (single strike-through any changed info, new information added and the resident/owner representative must initial all changes) to reflect the new unit information. Documentation in the file must also indicate the date of the transfer. To avoid potential confusion, it is recommended that a copy of all original household eligibility documentation be made and retained as a move-out file under the original unit number. Any change to household composition during a certification year should be handled as outlined in Item 15.C above, titled, "Changes to Household Composition".

ii. **Mixed Use Project (LIHTC w/Market Units)** – Units swap statuses. If a household moves from a qualified tax credit unit into a vacant never rented unit, the vacant never rented unit becomes a qualified tax credit unit and the formerly qualified tax credit unit becomes a vacant never rented unit. If a household moves from a qualified tax credit unit into a market unit, the market unit becomes a qualified tax credit unit and the formerly qualified tax credit unit becomes a market unit. The potential impact of unit swaps on the building's applicable fraction (due to possible decreases in LIHTC floor space/square footage) must be closely monitored to prevent any decreases below the building's 1^{st} year Applicable Fraction. If the LIHTC household's income exceeds 140%, the OI status moves with the household into new unit. The Next Available Unit Rule, previously invoked, must continue to be satisfied using the new unit as the basis for comparison of comparable or smaller size. Recertification is not necessary and the effective and move in dates remain unchanged. The certification should be appropriately revised (single strike-through any changed info, new information added and the resident/owner representative must initial all changes) to reflect the new unit information. Documentation in the file must also indicate the date of the transfer. To avoid potential confusion, it is recommended that a copy of all original household eligibility documentation be made and retained as a move-out file under the original unit number. Any change to household composition during a certification year should be handled as outlined in Item 15.C above, titled, "Changes to Household Composition".

A. **Move between buildings**

i. **"No" on IRS Forms 8609, Part II, Line 8b, Multi-Building Election (each building is a separate project)** – Any move from one building (project) to another building (project) is always a move-out and a move-in, even on 100% LIHTC developments. The household must meet all initial eligibility requirements. A new full certification with all supporting documentation and new lease agreement are required. The certification will reference a new move-in date and effective date.

ii. **"Yes" on IRS Forms 8609, Part II, Line 8b, Multi-Building Election (multiple designated buildings comprise one project):**

a. **100% LIHTC Developments** – Move is considered to be a transfer. May transfer if the household exceeds the current income limit but may not transfer if household income exceeds 140%. The OI status moves with household into new unit. Recertification is not necessary and the effective and move-in dates remain unchanged. The certification should be appropriately revised (single strike-through any changed info, new information added and the resident/owner representative must initial all changes) to reflect the new unit information. Documentation in the file must also indicate the date of the transfer. To avoid potential confusion, it is recommended that a copy of all original household eligibility documentation be made and retained as a move-out file under the original unit number.

b. **Mixed Use Developments (LIHTC w/Market Units)** – Since IRS guidance Any move from one building to another building will be considered to be a move-out and a move-in. The household must meet all initial eligibility requirements. A new full certification with all supporting documentation and new lease agreement are required. The certification will reference a new move-in date and effective date. The exception is if a qualified household were to move from a qualified tax credit unit into a vacant never rented unit. In this instance, the vacant never rented unit becomes a qualified tax credit unit and the formerly qualified tax credit unit becomes a vacant never rented unit.

** NOTE: Once the 1st year applicable fraction has been established, market units may not be moved from one BIN to another.

25. **Utility Allowance** – The following text is taken directly from the IRS "Guide for Completing Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition", revised January 2011:

A utility allowance is an estimate of the monthly cost of a resident's utilities, other than telephone, cable and internet, which are not included in the rent. 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 unit type (BR size). Documentation of to support Utility Allowances from the placed in service date must be retained at the site and be available for review when requested. The appropriate Utility Allowances are based on the development's funding sources or assistance received by the household. Utility Allowance requirements are outlined in Treasury Regulation §1.42-10, revised 07/29/08.

A. If a building receives assistances from the Rural Housing Services (RHS-assisted building) then the utility allowance is determined using the method prescribed by the Rural Housing Service (RHS) for the building, regardless of whether the building or its tenants also receive other state or federal assistance.

B. If any tenant in the building receives RHS rental assistance (RHS tenant assistance), the applicable utility allowance for all rent-restricted units is the applicable RHS allowance, including any units occupied by tenants receiving rental assistance payments from the Department of Housing and Urban Development (HUD).

C. If neither a building nor any tenant in the building receives RHS housing assistance, and the building's rents and utility allowances are reviewed by HUD on an annual basis (HUD-regulated building), then the applicable HUD utility allowance is the utility allowance for all rent-restricted units in the building.

D. If a building is neither RHS-assisted nor HUD-regulated, and no tenant receives RHS assistance, the applicable utility allowance, for any rent-restricted unit occupied by households receiving HUD rental assistance payment (HUD tenant assistance), is the applicable Public Housing Authority (PHA) utility allowance established for the Section 8 Existing Housing Program. PHA allowances must be obtained annually. If unchanged, documentation must be received from the PHA which states that there was no change. If allowances change, the new utility allowances must be used to compute gross rents within 90 days from the effective date.

E. Explicit written approval must be obtained from the Director of Compliance Monitoring with South Carolina State Housing Finance and Development Authority (SCSHFDA) prior to the implementation of any method indicated below:

- **i. Taxable years beginning before July 29, 2008 (before 01/01/09)** – If neither the building nor tenants are subject to A-C above, then the local public housing authority (PHA) allowance is used. However, if an estimate is obtained for any unit from a utility company, that estimate is used as the utility allowance for all similar units in the building.
  - **a.** The utility allowance estimate may be obtained by any interested party to include tenants, an owner, a manager or SCSHFDA. If an estimate is obtained, the utility company must be located in the same geographic location for a unit which is of similar size and construction. If utilities are deregulated, the interested party is required to obtain an estimate from only one utility company even if multiple utility companies can provide the same utility service. However, the utility company must offer utility services to the building in order for that utility company's rates to be used in calculating the utility allowance. The estimate should include all component deregulating charges for providing the utility service. Utility allowance estimates must be obtained annually and any changed utility allowance estimate must be used to compute gross rents within 90 days from the date of the utility company's correspondence.
- **ii. Taxable years beginning after July 29, 2008 (on or after 01/01/09)** -- If neither the building nor tenants are subject to A-C above, then the local public housing authority

(PHA) allowance is used. However, if an estimate is obtained for any unit from a utility company, that estimate is used as the utility allowance for all similar units in the building. Estimates may be obtained from a local utility company or calculated using HUD's Utility Schedule Model or an energy consumption model.

a. The utility allowance estimate may be obtained by any interested party to include tenants, owners, managers or SCSHFDA. If an estimate is obtained, the utility company must be located in the same geographic location for a unit which is of similar size and construction. If utilities are deregulated, the interested party is required to obtain an estimate from only one utility company even if multiple utility companies can provide the same utility service. However, the utility company must offer utility services to the building in order for that utility company's rates to be used in calculating the utility allowance. The estimate should include all component deregulating charges for providing the utility service. Utility Allowance estimates must be obtained at least annually and any changed utility allowance estimate must be used to compute gross rents within 90 days from the date of Authority approval. Utility Allowance estimates must be provided to the residents at the beginning of the 90 day period.

b. Under Treasury Regulation § 1.42-10(b)(4)(i)(D), a building owner may calculate a utility allowance using the "HUD Utility Schedule Model" that can be found on HUD's website. Utility rates used for the HUD Utility Schedule Model must be no older than the rates in place 60 days prior to the date the utility allowance will change. The Authority approval date begins the 90 day period after which the new utility allowance must be used to compute gross rents. The building owner must review the basis on which utility allowances have been established at least once per year. Utility Allowances must be provided to the residents at the beginning of the 90 day period.

c. A building owner may retain the services of a contractor to calculate a utility allowance using an energy and water and sewage consumption analysis model (energy consumption model). The contractor must be a properly licensed engineer or a qualified professional. A qualified professional must be approved by the state housing credit agency having jurisdiction over the building and must not be related to the building owner within the meaning of IRC §§ 267(b) or 707(b).The energy consumption model must take into account specific factors including, but not limited to: the unit size; building orientation; design and materials; mechanical systems; appliances and characteristics of the building location. The data used to compute the estimate is limited to the building's consumption data for a 12-month period ending no earlier than 60 days prior to the date the utility allowance will change. For newly constructed or renovated buildings with less than 12 months of consumption data, consumption data for the 12-month period for similarly sized and constructed units in the geographical location in which the building is located will be used. The building owner must submit to SCSHFDA new utility allowance estimates using an energy consumption model within 60 days after the anniversary of the previous year's approval date If the applicable utility allowance for a unit changes, the new utility allowance must be used to compute gross rents within 90 days from Authority approval. Utility Allowances must be provided to the residents at the beginning of the 90 day period.

F. Sub-metering – Some buildings in qualified low-income housing projects are sub-metered. Sub-metering measures tenants' actual utility consumption and tenants pay for the utilities they use. A sub-metering system typically includes a master meter, which is owned or controlled by the utility supplying the electrical, gas, or water with overall consumption billed to the building owner. In a sub-metered system, building owners (or their agents) use unit-based meters to measure utility consumption and prepare a bill for each residential unit based on consumption. The building owners (or their agents) retain records of resident utility consumption, and tenants receive documentation of utility costs as specified in the lease.

Notice 2009-44 clarifies that, effective on or after 01/01/09, for purposes of Treasury Regulation § 1.42-10(a), utility costs paid by a tenant based on actual consumption in a sub-metered rent restricted unit are treated as paid directly by the tenant and not by or through the owner of the building. For RHS buildings, buildings with RHS tenant assistance, HUD-regulated buildings and rent-restricted units in other buildings occupied by tenants receiving HUD rental assistance, the applicable RHS or HUD rules apply. For all other rent-restricted units in other buildings:

i. The utility rates charged to tenants in each sub-metered rent restricted unit must be limited to the utility company rates incurred by the building owners (or their agents)

ii. If building owners charge tenants a reasonable fee for the administrative costs of sub-metering, then the fee will not be considered gross rent. The fee must not exceed an aggregate amount per unit of $5.00 per month.

iii. If the costs for sewerage are based on the tenants actual water consumption determined with a sub-metering system and the sewerage costs are on a combined water and sewerage bill, then the tenants' sewerage costs are treated as paid directly by the tenants for the purposes of the utility allowance regulations. (end quote)

G. Ratio Utility Billing System ("RUBS") – Unlike a sub-metering system in which there are unit sub-meters which measure actual tenant consumption, ratio utility billing systems use a formula to divide the total utility costs for the development among the individual units. The formula uses criteria such as number of occupants, square footage, bedroom size, etc. to assign a portion of the utility costs to each unit. Although IRS Notice 2009-44 allowed the inclusion of sub-metered utility costs since they are based on actual tenant usage in the Utility Allowance, the utility costs based on the ratio utility billing system may not be included in the Utility Allowance. Instead, these are considered to be recurring, non-refundable fees that are a condition of occupancy and are included in the calculation of Gross Rent. These fees must be reflected on the Tenant Income Certification. If they fluctuate, documentation must be kept in the resident's file reflecting the actual amounts paid in order to determine that the appropriate rent restriction is in place at all times.

26. <u>**Vacant Unit Rule**</u> – Tax Credits may still be claimed on units vacated by qualified low-income households as long as the unit is suitable for occupancy and reasonable marketing attempts are continuing to re-occupy the vacant tax credit units with households having a qualifying income before any units of comparable size or smaller (in comparison to the vacant LIHTC unit) in the project are rented to non-qualifying households.

27. **Zero Income Applicants/Tenants** – All contributions to the household, monetary or not, from a source outside of the household are considered to be income, with the exceptions of food and child care paid directly to the childcare provider. Program regulations require that all income from all income sources be disclosed, verified and included on the Tenant Income Certification. Even if receiving rental assistance, households with zero income or with income insufficient to cover reasonable basic living expenses are required to provide a statement outlining how these basic living expenses are currently being paid. If gift or recurring contributions are disclosed, verifications must be obtained for these contributions and this income must be included in certified income.

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 $35.00 for each LIHTC unit in the development. 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. The Authority will assess a ten percent (10%) late fee of the total outstanding balance for payments received after thirty (30) days from the date due. The minimum late fee assessed will be $50. A fee will be assessed for any checks that are returned to the Authority for any reason. 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. **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.**

   SCSHFDA no longer generates invoices or billing statements. A courtesy letter will be mailed to the Owner by year-end as a reminder of the due date for submission of compliance monitoring fees. If payment is for more than one development or year, all applicable information must be listed 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. The owner or an authorized owner's representative must sign the AOC-1 under penalty of perjury. Only signed, notarized originals of the AOC-1, and not faxed copies, will 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	06/01/2009	2009	01/01/09 — 12/31/09	02/01/10
Development B	06/01/2009	2010	01/01/10 --- 12/31/10	02/01/11

4. **Notification to the Authority of Building Disposition** – It is the owner's responsibility to notify the Authority of any sale or other disposition of a LIHTC building or sale of ownership interest in any such building. The Authority is required to notify the Internal Revenue Service of any dispositions involving LIHTC buildings IRS Form(s) 8823. The form identifies four categories of building dispositions, listed below:
   - **A.** **Sale** – Types of activities that would constitute a "sale" (which does not necessarily involve the seller receiving money) include:
     - **i.** Fee Title Sale of Building – Fee title passes from the seller to a whole new entity (buyer)
     - **ii.** Termination of Partnership
   - **B.** **Foreclosure** – Foreclosure is the legal process reserved by a lender to terminate the borrower's interest in a property after a loan has been defaulted. On foreclosure, the owner is deemed to have made a sale of the property for the outstanding amount of the mortgage debt.
     - **i.** Deed of Property in Lieu of Foreclosure – The owner voluntarily conveys the property to the mortgage holder to avoid foreclosure proceedings
   - **C.** **Destruction** – Destruction is related to a building's physical structure, and not to the ownership interest in the building. The destruction affects the building in its entirety, i.e. the eligible basis is reduced to $0. The destruction is permanent and the building is not expected to operate as a tax credit project. Violations of the physical inspection standards, or casualty loss that are temporary in nature should not be reported as destruction, which is permanent.
   - **D.** **Other** – Any event, not listed above, which results in the disposition of a low-income housing credit unit, building, or property.

5. **<u>Notification to the Authority of Change in Management</u>** – If any changes occur in the management entity or management contact information, the owner must notify SCSHFDA, utilizing the Current Owner and Management Information Form.

6. **<u>Low-income Occupancy</u>** – 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 (identified by br size & BIN), if applicable
      - **v.** Number of support units (identified by br size & BIN), if applicable
      - **vi.** Number of special targeting units (SRO/Transitional, Handicapped Equipped, Large Family, Older Persons, Deeper Income/Rent Restricted, etc.)

   B. **Minimum Set Aside Test (Also see "Key Concepts")** – In order to be included in the LIHTC minimum set-aside, a unit must:
      - **i.** Be suitable for occupancy based on the Uniform Physical Condition Standards
      - **ii.** Be occupied by a qualified low-income household or last occupied by a qualified household and be currently available for rental
      - **iii.** Be appropriate rent-restricted both on a monthly and annual basis
      - **iv.** Be used on a non-transient basis (except for SRO/transitional housing)
      - **v.** Be available to the General Public

   C. **Targeted Applicable Fraction/1st Year Applicable Fraction (Also see "Key Concepts")** – The targeted applicable fraction elected in the application process is applied on a project basis. The 1st year applicable fraction, however, is calculated on a building basis and is "locked" in at the end of the first year of the credit period. The applicable fraction in subsequent years must not fall below the applicable fraction established at the end of the first year of the credit period.

7. **<u>Appropriately Restricted Gross Rents (including appropriate utility allowances) for low-income units</u>** -- In order to demonstrate that a program unit is rent-restricted, the net tenant contribution, plus any fees which are non-optional and non-refundable, plus the utility allowance cannot exceed the applicable Gross Rent Limit.

8. **<u>Determining, verifying and certifying household eligibility</u>** – This compliance responsibility is covered in greater detail in the later section of this manual titled, "Qualifying the Household".

9. **<u>Following program rules concerning over-income units & vacant units (Also see "Key Concepts")</u>**

10. **<u>Providing defined supportive services on an ongoing basis (if applicable)</u>** – Developments receiving preference during the allocation process for providing Tenant Supportive Services will be examined during each Compliance Monitoring Review to verify that services have been implemented and are being delivered at regularly established intervals as described in the Owner's Supportive Services Plan and/or accompanying exhibits. The Owner shall be responsible for providing information pertaining to Supportive Service(s) upon request or notification of a Compliance Monitoring Review.

    A. Current categories of supportive services include:
        - **i.** Family Supportive Services/Tenant Ownership
        - **ii.** Older Persons Supportive Services
        - **iii.** Homeless / At Risk Supportive Services

    B. Supportive Services may be modified to better serve the tenant population. In order for a substitute to be approved, the Owner must provide the following:
        - **i.** Description of the substitute service(s)
        - **ii.** Frequency of delivery of service(s)
        - **iii.** Justification for modification of supportive service(s)

11. **<u>Ensuring that the units are available for use by the general public (on a non-transient basis, except for SRO/transitional housing)</u>**

12. **<u>Quarterly Recordkeeping Reports</u>** – Beginning on the placed-in-service date, as designated on the IRS Form 8609, until the end of the second calendar year after placing in service, the owner is required to prepare Quarterly Recordkeeping Reports and submit them to the Authority. At the end of the second calendar year after placing in service, the owner is still required to complete and maintain Quarterly Recordkeeping Reports and make them 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**

Development A places in service on June 1, 2009		
Submission #	**Dates Covered**	**Due Date**
1	**06/01/09 – 06/30/09**	**07/30/09**
2	**07/01/09 – 09/30/09**	**10/30/09**
3	**10/01/09 – 12/31/09**	**01/30/10**
4	**01/01/10 – 03/30/10**	**04/30/10**
5	**04/01/10 – 06/30/10**	**07/30/10**
6	**07/01/10 – 09/30/10**	**10/30/10**
7	**10/01/10 – 12/31/10**	**01/30/11**

13. **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 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 (a minimum of 21 years). 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/Recertification applications
B Tenant Income Certifications (TIC) for each affordable unit
C. Third-party income verifications (Employment Verification) and/or 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 and any supporting data, from Placed In Service Date to current
G. Quarterly Recordkeeping Reports with Next Available Unit / Vacant Unit Table
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, if applicable
I. Records which show the character and use of any nonresidential portion of the development included the development's eligible basis under Section 42(d)
  i. Tenant facilities that are available on a comparable basis to all tenants
  ii. Facilities are 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

L. Documentation to demonstrate marketing efforts, waiting lists, tenant selection criteria

M. Collecting and submitting resident demographic information

14. **<u>Reporting Noncompliance to the Compliance Monitoring Staff</u>** – 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.

15. **<u>Maintenance of the development</u>** – On January 14, 2000, the IRS included, in its final compliance monitoring rules, the requirement that site, buildings, common areas and units in the development be suitable for occupancy and free from threats to health and safety 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 the programmatic requirement to determine household eligibility, both initially and annually. Management should explain the requirement for disclosure of all anticipated income for all household members (including temporarily absent members) and verification of disclosed information. 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. Ideally, after the interview has been conducted, the prospective resident(s) should complete the application. The application form should be simple but thorough, capturing sufficient information to proceed with the verification process. Questions on the application that typically cause confusion should be explained (i.e. assets, temporarily absent household members, etc.). Whenever possible, management should review the application, at the time submitted, with all prospective resident(s), aged eighteen (18) or older. Any information that is missing should be obtained and any unclear information clarified. Please note that any change to the application must be made and initialed by the applicant, not management. One of the "checks and balances" built into the LIHTC Program is the process of the applicant(s) independently disclosing their household eligibility information and management independently verifying the information disclosed. This process discourages fraud and manipulation of the determination of eligibility. Due to this, the applicant(s) should complete their own application. In rare instances, when they are unable to do so, the applicant(s) may choose another individual, independent of management, to complete the application on their behalf. The application should be documented to this effect and the applicant(s) must signify their agreement that the disclosed information is true and correct. Contact information for verification sources and releases of information should be obtained. The applicant should be asked to voluntarily disclose household demographic information. Housing may not be denied should the household decline to disclose demographic information.

At a minimum, the application for residency should include:

A. The legal name, age, relationship to head of household for each household member and if any changes to household composition are anticipated within the next 12 month period following certification (If the applicant voluntarily discloses a pregnancy, the unborn child may be counted as a household member for income-qualification purposes.)

B. The student status of all household members and if any changes are anticipated within the 12 month period following certification

C. Disclosure as to whether the household is assisted through a Project-based Section 8 or a Section 8 Housing Choice Voucher

D. All sources and amounts of current income (including financial aid, if applicable) and if any changes to household composition are anticipated within the next 12 month period following certification

E. All currently held household assets and amounts of income generated by assets and if any changes to household composition are anticipated within the next 12 month period following certification

F. All assets disposed of for less than fair market value during the preceding twenty-four (24) months

G. Signature and signature dates of all household members 18 and older.

3. **<u>The Verification Process</u>** – 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 appropriately dated, properly completed by the verifying source, 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 signed and dated consent for release of information statement; 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. Please note that even if verifications are faxed, they must still contain full contact information (i.e. name of employer, mailing address and phone number). Once returned by the verifying source, no alterations may be made to the verification. Missing or unclear information must be clarified with the verifying party and the conversation documented on a separate record in the resident's file. It is strongly recommended that an income summary worksheet be included in the resident file which shows detailed calculations for each income source. Calculator tape may also be attached to verifications showing calculations, taking care not to obscure pertinent information. This greatly expedites the monitoring process by allowing Authority staff to quickly identify the source of any income variances. Verifications are valid for one hundred twenty (120) days from the date of the verifying party's signature. In the case of computer printouts, the 120-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 greater than $5000; disposal of assets for less than fair market value; student status, through the educational facility; foster status for adults and children, through the state or local agency; the need for a live-in attendant, through the healthcare practitioner. 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.

i. <u>Third-Party Verification</u> – Third-party verifications are sent directly to and from the verifying source. After signing the appropriate release of information, the applicant or resident has no further participation in the completion of the verification. The applicant or resident must not transport the verification to the employer. The following describes the methods for obtaining third-party verifications:

a. Written – The owner must obtain written third-party verification whenever possible. The owner must use the Tenant Income Verification form. 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 may be used to satisfy this requirement. The income of Section 8 assistance recipients may also be verified in the usual way, using the appropriate verification forms, including the Employment Verification Form, if employed. If the household has no income, the Zero Income Affidavit 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.

- **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.
- **E-mail** – Electronic mail must contain the name of an appropriate individual and firm to be considered reliable.
- **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.

ii. **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 120 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.

iii. **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 120 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 previously outlined in "Review of Documents", prior to moving to the next method of verification.

1. **Employment**
   a. 3rd Party -- Employment Verification Form is to be completed by the employer or the same information contained in a statement from the employer on company letterhead. Please note that, due to confidentiality concerns, HUD has restricted the review of the EIV to only HUD-authorized staff persons. Since SCSHFDA LIHTC Compliance Monitoring staff persons are not authorized by HUD, we will not review any resident file which contains the EIV Form.

- **b.** 2nd Party – The use of printouts from the Work Number is not recommended because of the questionable accuracy of the information provided. Instead, the preferred 2nd party verification is four to six consecutive weeks of the resident's most current check stubs (if pay frequency is monthly, at least two check stubs are required); 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.** 1st Party -- A notarized resident affidavit – As a last resort when all other methods prove unsuccessful, a self-certification that projects annual income for the 12-month period following certification.

2. <u>Self-employment</u>

- **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. <u>Social Security, Pensions, Supplemental Security Income (SSI), Disability</u>

- **a.** An award or benefit notification letter, prepared and signed by the authorizing agency, dated within 120 days prior to the effective date of certification
- **b.** If document in item (a) above is not dated within 120 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. <u>Alimony or Child Support</u>

- **a.** A copy of the complete separation or maintenance agreement, divorce decree, or support order and any subsequent modifications, stating the amount and frequency of payment should be obtained. Please note that the family court printout of child support payments, without the documentation ordering the support, is not sufficient to verify court-ordered child support.

b. If the document in item (a) above is not dated within 120 days prior to the effective date of the certification, copies of the complete court documentation should still be obtained. In addition, it is necessary to obtain one other document, such as the family court printout or a notarized resident affidavit, which confirms the amount and frequency of payment in the decree.

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 provides: the amount; frequency of pay; and which indicates if the support will continue during the 12-month period following certification

d. As a last resort, when all other efforts to obtain documentation are unsuccessful, a notarized resident affidavit may be obtained which provides the amount and frequency of support being received

6. <u>Recurring Gifts and Contributions</u>

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 the same information outlined in Item a. above.

c. A notarized resident self-affidavit providing the same information outlined in Item a. above.

E. <u>Calculation of Anticipated Annual Income</u> – 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 reasonably anticipated 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. Note that if the calculation of annual income using the year to date information disagrees with the anticipated income calculated based on rate of pay given, management should use the higher of the two.

1. **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

2. **Example of annualizing income:**
   a. 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 11/15/10 which is 6 weeks from the effective date of the certification, 10/01/10. No additional raises, overtime, bonuses, commissions, no loss of pay, etc are anticipated.

	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

F. Income Includes:

3. The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

4. 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 in reimbursement of cash or assets invested in the operation by the family;

5. 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 (currently 2%), as determined by HUD;

6. 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); See paragraph (13) under Income Exclusions for an exception to this paragraph.

7. 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;

8. 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;

9. 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

10. All regular pay, special pay, and allowances of a member of the Armed Forces, except as provided in paragraph (7) under Income Exclusions.

11. For Section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.),* from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph "financial assistance" does not include loan proceeds for the purpose of determining income.

G. 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 for households not receiving Section 8 project-based assistance or not assisted through the Housing Choice Voucher Program (see income inclusions (9), above, for students receiving Section 8 assistance);;

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 disregard 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 underemployment 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, co-head 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 5.609I 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:

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

    g) 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);

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

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

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

    k) 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);

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

m) 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);

n) 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;

o) 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.);

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

q) 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);

r) 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]);

s) 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);

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

u) 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);

v) 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

w) Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931).

H. 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 all the income (earned income, benefit income, income from held or disposed of household assets, financial aid if applicable) 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 their 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 benefit income of minors and full-time students 18 and older (who are not the head, spouse or cohead) IS counted in annual income.

   d. See Section, "Key Concepts – Financial Aid", to determine instances where student financial assistance (grants, scholarships, educational entitlements, work study programs, and financial aid packages) is included in annual income.

   ** For students receiving Section 8 assistance, all financial assistance a student receives (1) under the Higher Education Act of 1965, (2) from private sources, or (3) from an institution of higher education that is in excess of amounts received for tuition is included in annual ***except*** if the student is over the age of 23 with dependent children or the student is living with his or her parents who are receiving Section 8 assistance.

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.

I. **Alimony or Child Support** – Owners must count alimony or child support amounts awarded by the court (do not include court fees) unless the applicant can provide documentation to demonstrate 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.

J. **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.

K. **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.

L. **Periodic Social Security Payments** – Count the gross amount, before any deduction of periodic Social Security payments, including payments received by adults on behalf of individuals under the age of 18 or by individuals under the age of 18 for their own support.

M. **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.

N. **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.

- **i.** If the tenant is receiving long-term care insurance payments, any payments in excess of $180 per day must be counted toward annual income
- **ii.** If a Federal government pension fund, or any portion thereof, is paid directly to a former spouse pursuant to the terms of a court decree of divorce, annulment or legal separation, it is not counted as annual income. The pension funds paid to the former spouse are counted as income for the applicant or tenant receiving such funds.

O. **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.

P. **Withdrawal of Cash or Assets from an Investment** – The withdrawal of cash or assets from an investment received as periodic payments should be counted as income. Lump sum receipts from pension and retirement funds are counted as assets. If benefits are received through periodic payments, do not count any remaining amounts in the account as an asset.

Q. **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. The applicant(s) or resident(s) must disclose the cash value of assets and all associated income generated by the assets held by all household members. If the combined cash value of household assets is $5000 or less, third-party verification of income derived from assets is not required. In these instances, the ACTUAL income derived from assets, as disclosed by the household, will be transferred to the household certification. Owners need to verify the applicant/resident disclosure only if the information does not appear to agree with other information reported by the applicant/resident. However, when the combined cash value of household assets exceeds $5000, third-party verification is required. 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 set and remains at 2 percent). The higher of these two calculations, ACTUAL or IMPUTED income, will be transferred to the household certification as income derived from assets.

R. **<u>Cash Value of an Asset</u>** – 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 assets to cash. This conversion to cash is done as a calculation only in order to determine income from assets

S. **<u>Ownership of Assets</u>** – 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.

T. **<u>Assets Include:</u>**

1. <u>Cash held in savings and checking accounts, safe deposit boxes, homes, etc.</u> 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.

2. <u>Trusts</u>. 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. Trusts can be revocable or nonrevocable, depending on whether the principal of the trust is accessible. The beneficiary frequently will be unable to touch any of the trust funds until a specified date or event (i.e., the beneficiary's 21^{st} birthday or the grantor's death). In some instances, the beneficiary may receive the investment income but not be able to withdraw the principal. The basis for determining how to treat a trust relies on access to the principal and/or the income from the account.

a. A <u>revocable trust</u> is a trust that can be accessed and may be amended or ended (revoked). If any member of the household has the right to withdraw the funds in the account (has access), the trust is a considered to be a household asset. Include the cash value (the amount, after conversion costs, that the household would receive if they withdrew all that could be withdrawn) of any revocable trust available to the family in total household net assets. In addition, include, in actual income derived from assets, the interest accrued on the trust, even if it is reinvested in the trust.

b. A <u>nonrevocable trust</u> is a trust that, during the certification period, cannot be accessed. If no household member has access to either the principal or the income generated by the trust, it is not considered to be a currently held asset. If only the income is available to a household member, include the income but do not include the cash value of the trust in total household net assets until the principal is accessible.

c. A special needs trust is trust that is created under state laws, often by family members for disabled persons who are not able to make financial decisions for themselves. Generally, the beneficiary does not have access to the principal of the trust. In those instances where the beneficiary does not have access to the principal or the income, the trust is not considered to be a currently held asset. If the interest is paid to the beneficiary regularly, the payments are included in actual income derived from assets but do not include the cash value of the trust in total household net assets until the principal is accessible.

3. 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.

4. 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.

5. Annuities. An annuity is a contract sold by an insurance company designed to provide payments, usually to a retired person, at specified intervals. Annuities can be fixed (interest is accrued at a fixed rate), variable (earnings/losses are based on market fluctuation) or hybrid (combination of fixed and variable features) annuities. The basis for determining how to treat an annuity relies on access to the balance of the annuity and whether periodic payments are being received. If the holder does not have the right to withdraw the balance, the annuity is not considered to be a currently held asset. Once payments are being made to the holder regularly, the payments are included in income but the cash value of the annuity should not be included in total household net assets. If the holder has the right to withdraw the balance, even if penalties would be assessed, the cash value of the annuity is included with household net assets and the interest earned is included in actual income derived from assets, even though they are reinvested.

6. Individual retirement, 401K, and Keogh accounts. These are included when the holder has access to the funds, even though a penalty may be assessed. If the individual is 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.)

7. Retirement and pension funds.

a. 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**.**

b. At retirement, termination of employment, count periodic receipts as income. Do not include the cash value of any remaining amounts in the account in household net assets. Lump-sum receipts should be included in total household net 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.

8. 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.

9. 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.

10. 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.

11. 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.

a. 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.

b. This combined figure needs to be separated into the principal and interest portions of the payment (refer to the amortization schedule).

c. 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.

d. 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.

U Assets do not include the following:

1. Personal property (clothing, furniture, cars, wedding ring, other jewelry that is not held as an investment, vehicles specially equipped for person with disabilities);

2. Interests in Indian trust land.

3. Term life insurance policies (i.e., where there is no cash value).

4. Equity in the cooperative in which the family lives.

5. 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.

6. 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.

7. Assets that are not accessible to the applicant and provide no income to the applicant.

V. 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 considered 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

(A) Type of Asset	(B) Market Value	(C) Costs to Convert	(D) Cash Value	(E) Interest/ Dividend	(F) Actual Income
Checking	Avg. 6 mo bal	____	Avg. 6 mo bal	Interest Rate	(B) X (E)

(A) Type of Asset	(B) Market Value	(C) Costs to Convert	(D) Cash Value	(E) Interest/ Dividend	(F) Actual Income
Savings	Current Balance	____	Current Balance	Interest Rate	(B) X (E)
CD/Money Market	Current Balance	# of months of interest penalty (B) X (E)/12 X # mos penalty	(B) – (C)	Interest Rate	(B) X (E)
Stocks/ Mutual Funds	# Shares X the Price per Share	% Commission	(B) – (C)	Dividend per Share	# Shares X Dividend per Share
Bonds	# of bonds X Face Value	_____	# of bonds X Redeemable Value	Interest Rate	The greater of (B) X (E) or (D) X (E)
Rental Property	Market Value	Broker fees, closing costs, unpaid mortgage, etc.	(B) – (C)	------	Rental Income minus operating costs
Total Cash Value of all household assets:			Total of all Column (D)		Actual Income - Total of all Column (F)

If the total of Column (D) is = or < than $5000, use the total of Column (F) on the TIC.			
If the total of Column (D) is > than $5000, 3rd party verify all assets then, in addition to calculating actual income, also calculate imputed income.	**Total of all Column (D)**	**HUD Passbook Savings Rate (2%)**	**Imputed Income (D) X (E)**
Use the GREATER of actual or imputed income on the TIC.			

4 **<u>The Certification and Leasing Processes</u>** -- 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. Initially certifying household eligibility:

- **i.** All adult household members (including FTS, over the age 18 and who are not the Head, Co-Head nor Spouse) must sign the Tenant Income Certification (TIC) with their legal names.
- **ii.** Generally, the actual date of move-in will be the effective date of the TIC
- **ii.** The Tenant Income Certification must be executed (signed by all parties) on or before the date of move-in
- **iii.** No one may live in a LIHTC program unit unless he/she is certified. There are no permissible exceptions to this rule.
- **iv.** The Tenant Income Certification must also be executed (signed and dated) by the owner or owner's representative

B. Annual recertification – Generally, Owners must verify the income of residents occupying low-income units at least annually and complete a certification for continuing household eligibility. 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.

- **i. <u>100% LIHTC Developments</u>** – The Housing and Economic Recovery Act of 2008 (HERA), enacted on July 30, 2008, made provision for 100% LIHTC developments to discontinue performing full annual recertifications. In order to be eligible to utilize this exemption, SCSHFDA requires that:
    - **i.** The development not have any other funding source(s) that require annual certification;

- **ii.** All buildings be 100% LIHTC, even if the Owner elected not to make buildings part of a multi-building project on IRS Forms 8609, Line 8b;
- **iii.** Prior to discontinuing the recertification process, the Owner must notify the Authority in writing of his/her intention to do so. Failure to provide this notification will result in findings of noncompliance;
- **iv.** The household must annually disclose composition, total household income, and student statuses;
- **v.** Student status will continue to be an eligibility factor and may have to be 3rd party verified.
- **vi.** Disclosed household eligibility information must be summarized on a Tenant Income Certification annually;
- **vii.** If disclosed household income exceeds 140% of the current applicable income limit, the Next Available Unit Rule is triggered and must be continually satisfied.

ii. **<u>Over-income Residents</u>** – If the income of a household qualified when such resident(s) initially occupied a program unit in the development, an increase in the household income of up to one hundred forty percent (140%) of the current 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 greater than 140% of the applicable limit, all units of comparable or smaller size which become vacant in the building must be leased to a qualified low-income household until the applicable fraction for the building has been restored. 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 current income limit, for the household size, applicable at the time of income determination by 1.4.

C. **Lease** – All LIHTC units must be under lease, however, legal occupancy (execution of the Lease) cannot take place prior to the execution of the Tenant Income Certification (summary of eligibility). To demonstrate non-transient use, leases must be properly executed with an initial minimum term of at least six months (except for SRO's and transitional housing). The lease agreement should contain the following:

- **i.** Beginning and ending date of the agreement;
- **ii.** Legal Names of all household members; all household members, aged 18 and older, must be listed as leaseholders and must sign the agreement, except for FTS who are dependents of the household (not the Head, Co-Head or Spouse)
- **iii.** To demonstrate appropriate rent-restriction, the lease must reflect the rental rate and all other applicable recurring, non-optional fees
- **iv.** Signatures of all Leaseholders and an authorized Owner's Representative

In addition, Owners should include the following provisions to provide the basis for termination of Lease in the event of LIHTC ineligible or fraudulent households :

- **i.** Provisions stating that intentional misrepresentation of household size or income or any other attempt to mislead the owner as to the tenant's qualifications to occupy a low-income unit will result in the termination of lease;
- **ii.** Provisions stating that failure to recertify will result in the termination of lease;
- **iii.** Provisions stating that any change in the household composition and student status

must be immediately reported to the owner;

iv. Provisions addressing termination of lease for ineligible student households

v. Provisions that prohibit subletting or assignment of lease

vi. 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

vii. If the unit will be occupied by more than one adult (18 years or older, unless a FTS who is not the Head, Co-head or Spouse), 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. **<u>Compliance Monitoring Briefings</u>** -- 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
   - **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, common areas, building exteriors/systems 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 24 hours before the scheduled review that their units may receive an inspection. An 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 formal report of their findings. The general monitoring review process involves the following:

A. **<u>Notification of Review</u>** -- Notification to the Owner or owner's representative occurs approximately 15 days prior to the review date. As part of this notification, the owner is provided with a detailed list of required documentation which must be submitted in advance to enable the performance of the review. Failure to provide this information in the timeframe given is considered noncompliance.
(NOTE: Due to the annually increasing monitoring portfolio, monitoring officers are required to prepare their annual review schedule at the beginning of each year. Due to this, they have little ability to offer flexibility in the scheduling or re-scheduling of reviews.)

B. **<u>Work Area</u>** -- On the day of the review, the monitoring officer will arrive at the property. A work area should be selected and prepared in advance for the officer, preferably in a quiet location, ideally removed from front door traffic and interruptions. If no such area is available at the development, arrangements should be made in advance with the monitoring officer to arrange for an alternate work area.

C. **<u>Entrance Conference</u>** -- Once the monitoring officer has organized their review documentation and set-up any equipment, they will conduct an entrance conference with staff. Included in this entrance conference will be an overview of the review processes and the order in which they will be performed. Since the Authority is prohibited from communicating the review sample to the Owner prior to the day of the review, this information will be communicated to staff. This will allow staff to pull the keys and resident files for the selected units

D. **<u>Physical Inspection</u>** -- The physical inspection is performed. It is requested that maintenance personnel be present during the entrance conference since guidance about the physical inspection guidance will be given.

- **i.** Monitoring officers must be accompanied at all times while performing the physical inspection. The review may be terminated if the monitoring officer is repeatedly left unaccompanied. The site and common areas will be inspected as the physical inspection of the unit interiors progresses. Building exteriors and systems are inspected prior to the units selected within the building. Deficiencies will be identified during the inspection process.
- **ii.** Site staff will gain access, enter the unit and all interior rooms first. Units will not be entered, no alternative unit selected, if the following conditions are found:
  - **a.** There is access to the unit or the resident refuses entry
  - **b.** There are unrestrained pets in the unit
  - **c.** There are unsupervised minor children (under 18) in the unit
  - **d.** There is an obvious threat to the monitoring officer's safety or there is obvious criminal activity
  - **e.** There are no essential utilities in or to the unit

E. **<u>File Review</u>** – Once the physical inspection is completed, the resident files and any other relevant documentation will be reviewed. Since concentration and focus is required to perform this task, it is requested that the monitoring officer be interrupted as infrequently as possible. If the monitoring officer needs additional assistance or information from staff, they will request it.

F. **<u>Exit Conference</u>** -- At the conclusion of the file review, an exit conference will be performed. During this conference, physical and file deficiencies will be identified. Recommended corrective action will be discussed and time frames, for the submission of corrective action, will be established. Staff will be asked to sign an Acknowledgment of Exit Conference Form indicating that an exit conference was performed. The Authority reserves the right to modify the preliminary findings, solely at their discretion, if deemed necessary.

3. **Authority Discrepancy Reports (Findings Letters and IRS Forms 8823)** -- The Authority will provide final written report via E-mail or Certified Mail to the owner or its designated representative of any noncompliance discovered. Without prior written permission to release, the Authority will not release the Findings Letters to any individual or group other than the Owner Contact on record. 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 site, common areas, building exteriors, building systems and/or dwelling units. Physical deficiencies, 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.

All reportable noncompliance must be submitted to the IRS within 45 days of the end of the correction period, whether corrected or not. Noncompliance is reported on the IRS Form 8823 generated as corrected or not corrected, based on the status at the end of the cure period. For a period of three years after the generation and filing of an uncorrected 8823, if documentation is submitted evidencing correction, 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.