New York City Department of Housing Preservation and Development

Low-Income Housing Tax Credit Program

Compliance Manual

September 2020

Department of
Housing Preservation
& Development

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Disclaimer

This manual is intended as a guide to understanding Low-Income Housing Tax Credit (LIHTC) compliance monitoring and was developed for the convenience of project owners, management companies, on-site management personnel and anyone involved with compliance monitoring for tax credit properties. It is not intended to and does not substitute for IRC §42, revenue procedures, revenue rulings, notices, announcements, any Treasury regulations or any applicable federal law. HPD is also not responsible for any errors or omissions contained in this manual. Applicable laws, regulations and Treasury guidance prevail over the content of this manual.

Compliance with the requirements of the IRC §42 is the sole responsibility of the owner of any building for which the credit has been allocated. HPD is neither responsible for nor liable for an owner's noncompliance. An owner should not rely solely on HPD to determine if the project and project records are in compliance.

Use of this manual does not ensure compliance with IRC §42, Treasury regulations, or any other laws or regulations governing LIHTCs or the financial viability of any project. HPD accordingly strongly advises that all tax credit recipients consult their tax accountant, attorney or advisor as to the specific requirements of the tax credit program and IRC §42.

HPD is responsible to the IRS to determine whether owners are compliant with the requirements of IRC §42 and its regulations. This manual describes certain administrative processes and requirements established by HPD in its administration of such responsibilities. However, HPD may change such processes and requirements for monitoring of projects for which the credit has been allocated. Changes may be made without prior notice. To the extent possible, any administrative changes will be incorporated into a revised version of this manual.

Preface

Welcome to the New York City Department of Housing Preservation and Development (HPD) Compliance Manual for the Low-Income Housing Tax Credit Program (LIHTC).

Compliance with the LIHTC program involves four basic principles:
1) Renting only to households who qualify under the appropriate income limit;
2) Renting to households who comply with the full-time student rule;
3) Maintaining the unit in good physical condition; and
4) Never charging too much rent.

Establishing and maintaining compliance involves a complex set of rules based on Section 42 of the tax code, numerous Internal Revenue Service (IRS) rulings, revenue procedures and notices plus regulations borrowed from the U.S. Department of Housing and Urban Development.

This manual combines information from all these sources into one place so the reader can learn:
1) How to establish and maintain compliance at a tax credit property; and
2) How to comply with the HPD compliance monitoring process.

This manual is for participants involved in the tax credit program, including owners, developers, syndicators, asset managers, property managers and compliance managers. However, this manual is of particular importance for property managers, compliance managers or anyone taking responsibility for maintaining compliance at a tax credit property.

If that is who you are, your job is critical. You are the front line of a team of people working to preserve a very limited commodity – affordable housing for some of the neediest citizens of New York City. Keeping affordable housing projects in compliance is vital to the sustainability of that housing and to the lives of those tenants.

In providing this manual, it is HPD's goal to educate you on the LIHTC program and to support the successful operation of LIHTC properties in NYC subject to HPD compliance monitoring. We want you to succeed in your efforts to maintain compliance in your projects. (Please note this manual does not apply to projects overseen by the New York State Division of Housing and Community Renewal, the New York State Housing Finance Agency, or the New York City Housing Development Corporation.)

If you lack the time to read the entire manual, but want to learn:

About **HPD's compliance monitoring process**, read Chapter Two.

How many tax credit units you need at your property, read Chapters Three and Four.

About **income limits**, read Chapter Five.

The **student rule**, read Chapter Five.

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How to calculate and verify an **applicant's annual income**, read Chapters Six and Seven.

The **forms you must use** in your tenant income certifications, read Chapter Seven.

How to calculate the **maximum tax credit rent**, read Chapter Eight.

The **Available Unit Rule**, read Chapter Ten.

The **Vacant Unit and Transfer Rules** read Chapter Eleven.

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Part One

Introduction to the Low-Income Housing Tax Credit (LIHTC) Program in New York City as Administered by HPD

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Chapter One

Introduction to the NYCHPD Compliance Manual

This guide reflects Low-Income Housing Tax Credit regulations and New York City Department of Housing Preservation and Development (HPD) policy at the time of writing. Regulations change and HPD policy may be revised to reflect those changes, administrative issues and new realities in the field.

THE TAX CREDIT PROGRAM IS A COMPLICATED PROGRAM WITH LAYERS OF REQUIREMENTS EVERY OWNER MUST MEET. YOU WILL NEED ADVICE FROM OTHER SOURCES TO ENSURE YOU MEET ALL THE REQUIREMENTS ASSOCIATED WITH YOUR TAX CREDIT PROPERTY. IN ADDITION, REGULATIONS MAY CHANGE. IT IS THE RESPONSIBILITY OF OWNERS, PROJECT SPONSORS AND USERS OF THIS MANUAL TO KEEP INFORMED OF CHANGES.

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Chapter One: Introduction to the NYCHPD Compliance Manual
-or-
What You will Learn from Reading this Compliance Manual

1-1. What You Will Learn from Reading this Compliance Manual

The purpose of this *Compliance Manual* is to assist owners in complying with the Low-Income Housing Tax Credit Program (herein sometimes referred to as the tax credit program) at properties located in New York City (NYC) that are monitored by the New York City Department of Housing Preservation and Development (HPD). In reading this manual, you will learn:

A. The importance of maintaining compliance at a tax credit property;

B. How to manage a property in compliance with the tax credit program;

C. The rules and regulations required to be followed to comply with the tax credit program; and

D. The HPD compliance monitoring process.

1-2. What You Won't Learn from Reading this Compliance Manual

The tax credit program is a complicated program with layers of requirements every owner must meet. You will need advice from other sources to ensure you meet all the requirements associated with your tax credit property. In addition, regulations may change. <u>It is the responsibility of owners, project sponsors and users of this manual to keep informed of changes.</u>

A. You are responsible for conferring with your own accountant(s) on complying with the IRS filing requirements for the tax credit program.

B. You are responsible for conferring with your own attorney(s) on interpreting and complying with the legal requirements of the tax credit program.

C. A syndicator, such as the National Equity Fund (NEF) or Enterprise Community Investment, Inc. (Enterprise) locates the parties who invest in your property in exchange for benefiting from the tax credits. You are responsible for conferring with your syndicator on any additional standards they apply at their tax credit properties.

D. There are tax credit properties in NYC that are monitored by the New York State Division of Housing and Community Renewal (DHCR), New York State Housing Finance Agency (NYHFA) or New York City Housing Development Corporation (HDC).

   1. For DHCR-monitored properties, go to their web site at https://hcr.ny.gov/.
   2. For NYHFA-monitored properties, go to their web site at http://www.nyhomes.org.
   3. For HDC-monitored properties, go to their web site at http://www.nychdc.com.

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E. For guidance on complying with Rent Stabilization or Rent Control, go to the DHCR web site at https://hcr.ny.gov/.

1-3. How this Compliance Manual is Organized

This manual is divided into six (6) parts.

A. Part One is an introduction to the tax credit program as administered by HPD. It will help you to understand how HPD administers the tax credit program. It consists of:

Chapter One: Introduction to the NYCHPD Compliance Manual; and
Chapter Two: Introduction to the Tax Credit Program.

B. Part Two answers the question, "How many tax credit units do I need at my property?" It will teach you how to calculate the number of tax credit units for your property and the correct placement of your tax credit units within each building at your property. It consists of:

Chapter Three: The Minimum Set Aside; and
Chapter Four: Maximizing Your Low-Income Occupancy.

C. Part Three answers the question, "How do I know who qualifies to live in my tax credit units?" It will teach you the questions you must ask and answer to determine if a household qualifies for your tax credit unit. It will also teach you how to verify the information that demonstrates a household's eligibility and how to complete the initial certification of eligibility. It consists of:

Chapter Five: Household Eligibility Factors;
Chapter Six: Calculating Annual Income; and
Chapter Seven: Completing the Initial Certification

D. Part Four answers the question, "How much can I charge my tax credit residents?" It will teach you how much you can charge your residents without jeopardizing your tax credits. It consists of:

Chapter Eight: Maximum Allowable Rent; and
Chapter Nine: Charges in Addition to Rent.

E. Part Five answers the question, "How do I keep my property in compliance throughout a long compliance period?" It consists of:

Chapter Ten: Ongoing Compliance Requirements; and
Chapter Eleven: The Vacant Unit and Transfer Rules.

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F. Part Six answers the question, “How do I comply with the tax credit program when I have so many other requirements to meet at my property? It will help you to understand how to comply with the tax credit program when you must comply with other housing programs at your property. It consists of:

Chapter Twelve: Applying the Requirements of the HOME Program at a Tax Credit Property; and
Chapter Thirteen: Maintaining Compliance at Rent-Stabilized Tax Credit Properties.

1-4. How each Chapter is Organized

Beginning with Chapter Two, each chapter follows the same organization.

A. The first section provides a list of the topics covered within the chapter. It will help you to locate information within each chapter.

B. The second section lists the key terms you should learn from reading the chapter. It will help you to anticipate what you will learn as you begin each chapter.

C. The third section includes the main text of the chapter with plenty of examples and exhibits to help you understand the compliance requirements for the tax credit program.

D. The fourth section provides a list of actions to follow at your tax credit property. It is provided under the heading, ***Do This!***

E. The fifth section gives you a list of actions to not follow at your tax credit property. It is provided under the heading, ***Don’t Do This!***

1-5. Overview of this Searchable Compliance Manual

This manual is a live, searchable document. You can enter frequently used terms into the PDF search window to locate applicable information within the manual. We have hyper-linked specific words within the text, allowing you to click on those words to locate the chapter including their primary discussion. You’ll find an expanded table of contents before the Preface. The table of contents is hyper-linked so you can click on the title of a chapter, or on the heading for a paragraph, and be taken directly to its location within the manual.

In writing this manual, it was inevitable that we would use some acronyms for commonly known actors and terminology in the tax credit program. You will find a list of the acronyms, with an explanation for each, at the end of this chapter.

We have avoided quoting directly from either IRS or HUD regulations, choosing instead to present tax credit requirements in plain language to increase the understanding of the program. If you are interested in reading directly from the regulations, we have provided Internet links for the following resources in the Appendix at the end of this manual:

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A. Section 42 of the federal tax code and the implementing regulations for the tax credit program; and

B. Sections of the HUD Handbook 4350.3, Rev. 1, Change 4 and notices issued by HUD's Office of Housing utilized by the tax credit program.

In the Appendix, we have included a glossary of terms used in the tax credit program, and a quiz to take after reading each chapter to check your knowledge of the tax credit program.

The tax credit program is a complicated program with layers of requirements every owner must meet. You will need advice from other sources to ensure you meet all the requirements associated with your tax credit property. In addition, regulations may change. It is the responsibility of owners, project sponsors and users of this manual to keep informed of changes.

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Acronyms

AMI – Area Median Income
AOC – Annual Owner's Certification
AUR – Available Unit Rule
BIN – Building Identification Number
COLA – Cost of Living Adjustment
C of O – Certificate of Occupancy
DHCR – New York State Department of Housing and Community Renewal
DHS – New York State Department of Human Services
Enterprise – Enterprise Community Investment, Inc.
EUP – Extended Use Period
HAP – Housing Assistance Payment
HCV – Housing Choice Voucher Program
HDC – New York City Housing Development Corporation
HQS – Housing Quality Standards
HFA – New York State Housing Finance Agency
HPD – New York City Department of Housing Preservation and Development
HUD – United States Department of Housing and Urban Development
HUD – 50058 – Family Report (used in the Housing Choice Voucher program)
HUD – 50059 – Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures (used in the project-based Section 8 program)
IRS – United States Internal Revenue Service
IRS – 8609 – Low-Income Housing Credit Allocation and Certification
IRS – 8823 – Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition
LDA – Land Disposition Agreement
LISC – Local Initiatives Support Corporation
LURA – Land Use Regulatory Agreement or Land Use Restrictive Agreement
MTSP - Multifamily Tax Subsidy Project
NEF – National Equity Fund
NYC – New York City
NY – State of New York
NYEF – New York Equity Fund
PA – Public Assistance (welfare)
PIS Date – Placed-in-Service Date
SSA – Social Security Administration
SSI – Social Security Disability Income
TANF – Temporary Assistance for Needy Families (welfare)
TCO – Temporary Certificate of Occupancy
TIC – Tenant Income Certification

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Chapter Two

Introduction to the Tax Credit Program

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Chapter Two: Introduction to the Tax Credit Program
-or-
How the Tax Credit Program Works in NYC

2-1. Topics Covered in this Chapter

In this chapter, you will:

A. Read a description of the tax credit program;

B. Learn about placing your tax credits in service;

C. Learn about an owner's record keeping requirements;

D. Learn how HPD monitors for compliance;

E. Read about the consequences of noncompliance in relation to the HPD monitoring process;

F. Learn the financial consequences of noncompliance for the developer, investors and management company of a tax credit property;

G. Learn the importance of assembling a compliance binder; and

H. Learn the importance of training in the tax credit program.

2-2. Key Terms to Learn from Reading this Chapter

You will learn about the following terms while reading this chapter:

- Building Identification Number (BIN)
- Certificate of Occupancy (C of O)
- Compliance Binder
- Developer
- Investors
- Management
- Noncompliance
- Placed in Service Date (PIS Date)
- Qualified Allocation Plan (QAP)
- Syndicator
- Tenant Income Certification (TIC)
- Form IRS-8609 (8609)
- Form IRS-8823 (8823)

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2-3. *Description of the Tax Credit Program as Administered by HPD*

Tax Credits are awarded by HPD to qualified low-income housing projects in New York City. To be eligible, projects must be substantially rehabilitated or new construction with at least 20% of the apartments reserved for low-income households. During annual funding rounds, developers apply competitively to HPD for allocations of tax credits, which are awarded based on selection criteria specified in the City's Qualified Allocation Plan (QAP). Once tax credits are allocated to a project, the developer typically sells the credits to corporate investors who supply private equity to cover a portion of development costs. The investors often participate through pooled equity funds raised by syndicators, such as the New York Equity Fund, Enterprise Community Investment, Inc. and others. The investors receive credits that reduce their corporate federal income tax bills for ten years.

A. At the end of the development process, the developer places each building in service, activating the tax credits.

B. Management leases the projected low-income units to qualified tax credit residents.

C. When requested by the owner, HPD assigns each building a building identification number (BIN). At some properties, HPD assigns the BIN numbers in the Allocation Agreement.

D. The owner submits to HPD an application for Form IRS-8609, *Low-Income Housing Credit Allocation and Certification* for each building. HPD completes Part 1 of the form and sends the form to the owner. The owner completes Part 2 prior to submitting it with the tax return for the first year of the credit period. You will find a sample 8609 form as Exhibit 2-A at the end of this chapter.

E. Management operates the property in compliance with all program requirements throughout the compliance and extended use periods

F. The owner, or management acting on behalf of the owner, submits the annual owner's certification of compliance.

G. HPD organizes its monitoring activities for a property by BIN.

H. In Exhibit 2-B at the end of this chapter, you will find a calendar for the HPD compliance monitoring cycle.

2-4. *Placing the Credits in Service – Activating the Credits*

At the end of the development process, the developer tells HPD when they are placing the credits in service. This is the placed in service (PIS) date.

A. The tax credits for a unit cannot be placed in service until it is a viable housing opportunity.

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1. The earliest possible PIS date for a building that received tax credits for *new construction* is the date on the certificate of occupancy (C of O) or temporary certificate of occupancy (TCO).

2. The earliest possible PIS date for an allocation of acquisition credits is the date of acquisition.

3. Consult your development team on the PIS date for your rehabilitation credits.

B. Generally, a developer places the tax credits in service by building, so each building has its own PIS date.

1. A unit must be in service for a full calendar month before it can begin to generate a tax credit.

2. If a unit is in service for a full calendar month, it can begin to generate a tax credit if occupied by the end of the month by a qualified resident.

Example

10-unit building
Placed in service on 10/17/16
Owner leases 10 units by 10/31/16.
All units begin to generate a tax credit November 2016

Example

10-unit building
Placed in service on 10/1/16
Owner leases 10 units by 10/31/16
All units begin to generate a tax credit October 2016

C. HPD begins monitoring a building for compliance with the tax credit program as of its PIS date. As a result, an owner's record keeping responsibilities begin on the PIS date.

D. There are properties with more than one credit allocation. That is, a group of buildings looks like one property and is managed as one property but received separate credit allocations from HPD in different years for a variety of reasons. If you manage a property with more than one credit allocation, you must know the answers to the following questions:

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1. When did your property receive each credit allocation and what buildings were covered by each allocation?

2. What is the PIS date for each building for each credit allocation?

3. What was the first year of the credit period for each building for each credit allocation?

2-5. Owner's Record Keeping Requirements

You are responsible for maintaining the records that are necessary for HPD to complete its compliance monitoring activities. You must make the records available at your management office or another location in a manner that will expedite review by HPD representatives.

A. You must maintain the following records for your tax credit units:

   1. Signed tenant income certifications (TICs); (Chapter Seven)

   2. Third party verifications and other documentation supporting income and other information on the TICs;

   3. Documentation showing you charge no more than the maximum allowable rent for the tax credit program;

   4. Documentation showing you use the correct utility allowance for your tax credit units; (Chapter Eight) and

   5. Documentation of your compliance with the Available Unit Rule, Vacant Unit Rule and Transfer Rule.

B. You must be able to document the month and the year you first rent each unit to a qualified resident. (Chapter Seven)

C. You must keep the following records for each building:

   1. For the first year of the credit period, for twenty-one (21) years;

   2. For years two (2) through fifteen (15) of the compliance period, for six (6) years; and

   3. For each year of the Extended Use Period, for six (6) years.

D. Follow these practices to ensure you have the records available for HPD reviews or a potential IRS audit:

   1. Maintain multiple copies of the necessary records.

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2. Maintain copies of the necessary records in more than one location in case of fire, flood, etc.

3. Follow IRS guidance on the electronic storage of records found in IRS Revenue Procedure 97-22.

2-6. Compliance Monitoring of Tax Credit Properties by HPD, as of Release of this Manual

To successfully maintain compliance at your property, you must understand how HPD monitors a property and your responsibilities within the compliance monitoring process.

A. HPD follows these steps in monitoring a tax credit property:

1. HPD sends notification to the owner and the management company of the property for which they have scheduled a site visit.

2. By regulation, HPD must schedule the first site visit no later than the year after they issue the last Form 8609 for a tax credit property.

3. After completing the initial site visit, HPD schedules site visits at least every three (3) years, but may elect to visit a property more frequently.

4. The HPD Division of Code Enforcement schedules and performs the Housing Quality Standards (HQS) inspections for tax credit properties.

5. HPD will review the number of LIHTC units set forth in the LIHTC Minimum Unit Sample Size Reference Chart as shown in Exhibit 2-F. Physical inspections will be performed and tenant files will be reviewed. HPD reserves the right to review more files and to inspect more units (up to 100%).

6. HPD may conduct desk audits (files brought to HPD for in-house review) for properties with 15 or fewer files to review. HPD schedules these appointments with the owner's representative.

7. When conducting a file review, HPD reviews the initial certification of eligibility, the most recent recertification (if not a 100% LIHTC property), the rent the owner charges and the utility allowance used to calculate the rent and any other relevant document.

8. HPD requires evidence of the owner's compliance with the Available Unit Rule, Vacant Unit Rule and Transfer Rule, discussed in Chapters Ten and Eleven of this manual.

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B. Take the following steps to prepare for an HPD site visit:

1. Ensure the following information is readily available to the HPD representative(s) conducting the review:

   a. TICs for initial certifications and recertifications (for the current year and the previous year);

   b. Documentation supporting the TICs including third party verifications, social security award letters, public assistance (PA) benefit statements, bank statements, zero-income statements, student status, etc., as applicable for every tax credit resident;

   c. Documentation that you charge no more than the maximum allowable tax credit rent;

   d. Documentation that you use the correct utility allowance.

   e. Documentation that you comply with the Available Unit Rule, Vacant Unit Rule and Transfer Rule.

2. Ensure the information HPD needs to see is available in an easy-to-read format or HPD may halt the review and issue a notice of noncompliance for failure to cooperate with the monitoring process.

3. Exhibit 2-C at the end of this chapter provides instruction on how to organize your resident files.

C. You must submit the owner's annual certification of compliance in the form and manner required by HPD. HPD mails the required forms to the owner of record on or before January 31st. For HPD to consider a certification of compliance to be on-time and complete, you must do the following by **March 1st** of each calendar year:

1. Ensure the owner has signed the certification of compliance and submit it to HPD. (If your property was also assisted with HOME funds, the certification must confirm compliance with the HOME program, as well as with the tax credit program.).

2. Submit a certified rent roll via HPD's e-Rent Roll application (https://a806-err.nyc.gov/eRentRoll/RentRoll.html) designating the tax credit units (and HOME units, if applicable) for each building at your property. Additional information and instructions for how to use eRent Roll can be found online. Note the following –

   a. Ensure rent rolls include all requested information: an owner's failure to complete all requested rent roll fields may lead to the owner being cited for noncompliance with TC and/or HOME restrictions.

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b. Examples of required information often omitted from submitted rent rolls include: (i) unit designations as "Low Income" or "Very Low Income"; (ii) tenant household income; (iii) date income certified (if for some reason not certified for the compliance year in question, "N/C" or the date of the most recent income certification should be indicated); (iv) full-time student; (v) market unit information on tax credit properties; and (vi) super's unit information (super's name, move-in date, number of bedrooms).

c. Ensure that the "Unit Breakdown" at the top of the rent roll corresponds to the unit details provided.

4. Ensure the certification of compliance includes accurate square footage measurements for the currently designated tax credit units for each building at your property.

5. Pay the annual compliance monitoring fee of $25 (as of release of this manual) for each tax credit unit designated on your certified rent roll postmarked no later than March 1st of each calendar year.

6. Update the contact information for the owner and the management company so HPD sends correspondence to the correct address. Please include the name and contact information for your syndicator if they want to be copied by HPD on correspondence for your property.

2-7 Consequences of Noncompliance – HPD

In accordance with IRS requirements, HPD takes the following actions when they find an incidence of noncompliance at your tax credit property:

A. HPD sends a letter explaining the areas in which they found noncompliance and what you must do to correct it. The letter states:

1. Who you should contact at HPD to correct the noncompliance;

2. How you should contact your HPD representative; and

3. The evidence you must provide HPD to correct the noncompliance.

B. HPD completes the Form IRS-8823, *Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition*. You will find a sample of the 8823 form at the end of this chapter as Exhibit 2D.

C. If the non-compliance has been corrected, HPD sends the Form 8823 to the IRS after noting on the form you corrected the noncompliance.

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D. HPD sends the 8823(s) to the addresses listed for the owner and/or the management company in the most recent owner's certification of compliance; and may send a copy to the syndicator.

E. HPD completes an 8823 for each building at your property in which they find noncompliance. HPD marks under Question 11 in what area they find you to be out of compliance

F. At the end of this chapter you will find Exhibit 2-E, Best Practices for Correcting Noncompliance

2-8. *Consequences of Noncompliance for the Investors, Developer and Management Company*

Under Paragraph 2-7, you read a description of your responsibilities in the compliance monitoring process, but correcting noncompliance is more than an exercise in paperwork. Based on the contractual agreements between the developer, the investors and the management company, an incidence of noncompliance can have a negative financial impact on all parties involved in the operation of a tax credit property.

A. For each year a unit is out of compliance, the investors could lose tax credits.

B. When the developer fails to deliver the tax credits promised to the investors, there are usually negative financial consequences for the developer as well. For example, the investors may put less money into your property and the developer must make up the difference in the development budget.

C. If the credits were lost due to management error, the developer may require the management company to compensate the developer for the lost investment.

2-9. *Assembling a Compliance Binder*

The tax credit program is a complicated program with layers of requirements. HPD will monitor your compliance with all regulatory agreements for your property as they relate to the tax credit program. Assemble the following documents in a compliance binder:

A. Form IRS-8609 for each building after HPD has completed part 1 of the form and the owner has completed part 2;

B. Application submitted by the owner to HPD for Form IRS-8609;

C. Regulatory agreement governing the tax credit allocation;

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D. Land use regulatory agreement (LURA) including the extended use commitments for your property;

E. Land disposition agreement (LDA) for your property;

F. Regulatory agreements for any additional funding sources;

G. C of O for each building if applicable to the PIS date;

H. Any temporary C of O (TCO) for each building if applicable to the PIS date for your tax credits;

I. Current tax credit income limits;

J. Current maximum allowable tax credit rents; and

K. Documentation of utilities paid by the owner and the residents.

Although it is a lengthy document, you may want to include a copy of this manual in your compliance binder. You may consider printing certain chapters for easy reference; e.g., Chapter Six: Calculating Annual Income and Chapter Seven: Completing the Initial Certification.

2-10. Importance of Training in the Tax Credit Program

You must not depend solely on reading this manual for your training in the tax credit program. HPD expects all owners and managers who want to be active in the program to complete formal training. Here is a list of organizations offering training in the compliance requirements of the tax credit program. Note: HPD does not endorse any of these organizations or training programs and there may be others in addition to those listed below.

A. Quadel Consulting Corporation
(202)789-2500
www.quadel.com

B. National Center for Housing Management
(800)368-5625
www.nchm.org

C. Spectrum Seminars
(207)767-8000
www.spectrumseminars.com

D. Theo Pro Compliance and Consulting, Inc.
(877)783-1133
http://www.theopro.com

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2-11. Do This!

A. Have a process for getting all the regulatory agreements, the tax credit application and copies of completed 8609 form(s) from the development team and into your compliance binder.

B. Read all the applicable regulatory agreements for your tax credit property.

C. Establish a system for organizing the records for your tax credit property before the credits are placed in service and you begin to lease your tax credit units.

D. Understand the goals and deadlines for placing the credits in service and leasing the tax credit units for each building at your tax credit property.

E. Respond to every notice of noncompliance by the deadline established by HPD.

F. Utilize the HPD-suggested method for organizing your resident files.

G. Recertify your tenants annually, if required (i.e., unless the project is 100% tax credit).

H. Inspect your units at least annually, finding and fixing small problems before they become big problems and threaten the health and safety of your residents.

2-12. Don't Do This!

A. Fail to ask questions about any of the compliance requirements for your tax credit property you don't understand.

B. Fail to maintain organized resident files from the beginning of the compliance period at your tax credit property.

C. Let your files become disorganized.

D. Fail to annually recertify your tenants by the anniversary date of their initial certification, if required.

E. Allow the physical condition of your tax credit units to deteriorate to the point they jeopardize your owner's tax credits.

F. Ignore a notice of noncompliance you receive from HPD.

G. Forget to pay your annual compliance monitoring fees. Your annual compliance submission will not be complete without the fee.

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Exhibit 2-A
Form IRS-8609

Form **8609** (Rev. May 2018) Department of the Treasury Internal Revenue Service

Low-Income Housing Credit Allocation and Certification

▶ Go to *www.irs.gov/Form8609* for instructions and the latest information.

OMB No. 1545-0988

Part I Allocation of Credit

Check if: ☐ Addition to Qualified Basis ☐ Amended Form

A Address of **building** (do not use P.O. box) (see instructions)

B Name and address of **housing credit agency**

C Name, address, and TIN of **building owner** receiving allocation

TIN ▶

D Employer identification number of agency

E Building identification number (BIN)

1a Date of allocation ▶ **b** Maximum housing credit dollar amount allowable . **1b**

2 Maximum applicable credit percentage allowable (see instructions) . . . . **2** %

3a Maximum qualified basis **3a**

b Check here ▶ ☐ if the eligible basis used in the computation of line 3a was increased under the high-cost area provisions of section 42(d)(5)(B). Enter the percentage to which the eligible basis was increased (see instructions) . . . . **3b** 1 ___ ___%

4 Percentage of the aggregate basis financed by tax-exempt bonds. (If zero, enter -0-.) . . . **4** %

5 Date building placed in service . . . . ▶

6 Check the boxes that describe the allocation for the building (check those that apply):

a ☐ Newly constructed and federally subsidized **b** ☐ Newly constructed and **not** federally subsidized **c** ☐ Existing building

d ☐ Sec. 42(e) rehabilitation expenditures federally subsidized **e** ☐ Sec. 42(e) rehabilitation expenditures **not** federally subsidized

f ☐ Allocation subject to nonprofit set-aside under sec. 42(h)(5)

Signature of Authorized Housing Credit Agency Official—Completed by Housing Credit Agency Only

Under penalties of perjury, I declare that the allocation made is in compliance with the requirements of section 42 of the Internal Revenue Code, and that I have examined this form and to the best of my knowledge and belief, the information is true, correct, and complete.

▶ Signature of authorized official ▶ Name (please type or print) ▶ Date

Part II First-Year Certification—Completed by Building Owners with respect to the First Year of the Credit Period

7 Eligible basis of building (see instructions) **7**

8a Original qualified basis of the building at close of first year of credit period **8a**

b Are you treating this building as part of a multiple building project for purposes of section 42 (see instructions)? . . . . ☐ Yes ☐ No

9a If box 6a or box 6d is checked, do you elect to reduce eligible basis under section 42(i)(2)(B)? ☐ Yes ☐ No

b For market-rate units above the average quality standards of low-income units in the building, do you elect to reduce eligible basis by disproportionate costs of non-low-income units under section 42(d)(3)(B)? . ▶ ☐ Yes ☐ No

10 Check the appropriate box for each election.

Caution: Once made, the following elections are irrevocable.

a Elect to begin credit period the first year after the building is placed in service (section 42(f)(1)) ▶ ☐ Yes ☐ No

b Elect **not** to treat large partnership as taxpayer (section 42(j)(5)) . . . . ▶ ☐ Yes

c Elect minimum set-aside requirement (section 42(g)) (see instructions):

☐ 20-50 ☐ 40-60 ☐ Average income ☐ 25-60 (N.Y.C. only)

d Elect deep rent skewed project (section 142(d)(4)(B)) (see instructions) . . . . ☐ 15-40

Under penalties of perjury, I declare that I have examined this form and accompanying attachments, and to the best of my knowledge and belief, they are true, correct, and complete.

▶ Signature ▶ Taxpayer identification number ▶ Date

▶ Name (please type or print) ▶ First year of the credit period

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 63981U Form **8609** (Rev. 05-2018)

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Exhibit 2-B
CALENDAR TO PREPARE FOR HPD COMPLIANCE MONITORING

MONTH	Suggested Action
January	• Prepare rent roll as of December 31 of previous year
February	• Respond to and correct 8823s (if any)
March	• **Submit annual owner certification, rent roll and compliance monitoring fee by March 1st deadline**
April	• Review physical condition of apartments and correct problems in anticipation of potential HQS inspections • Review tenant files, correct problems and obtain missing information in anticipation of tenant file audits
May	• Review physical condition of apartments and correct problems in anticipation of potential HQS inspections • Review tenant files, correct problems and obtain missing information in anticipation of tenant file audits • Respond to 8823s for Owner Certification issues (if any)
June	• LIHTC file reviews and HQS inspections generally started at this time. • Respond to 8823s for Owner Certification issues (if any)
July	• Respond to and correct 8823s (if any)
August	• Respond to and correct 8823s (if any)
September	• Respond to and correct 8823s (if any)
October	• Respond to and correct 8823s (if any)
November	• Respond to and correct 8823s (if any) • LIHTC file reviews and inspections generally end at this time.
December	• Respond to and correct 8823s (if any)

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Exhibit 2-C
Suggested Resident File Format

- Do not use a simple, manila folder for a resident file.
- Use a multi-part file with 4-6 sections in which you can organize information.
- Attach the initial TIC, supporting documentation (including a worksheet detailing the calculation of income eligibility) and initial lease and lease renewals to the inside of the front cover of the file (all dated and signed by both Landlord and Tenant, and organized in reverse chronological order).
    - **Never remove a resident's initial TIC, lease and supporting documentation from the file.**
- Select another section in which you organize the resident's recertifications, if required.
- If recertifications are required –
    - Organize the recertifications by year, placing the most recent recertification on top.
    - Use a colored sheet of paper to separate the recertifications by year.
    - Organize each recertification with the TIC on top and the supporting documentation, (third party verifications, pay stubs, bank statements, benefit award letters, etc.) behind the TIC.
    - Keep the 3 most-recent recertifications in the resident file and store older recertifications in accessible storage.
- When a resident transfers to another unit, include their initial TIC and supporting documentation in their new file.
- Use the remaining sections of the file to organize information by topic including:
    - Legal activity;
    - Maintenance activity;
    - General correspondence; and
    - Physical inspections
- Never use white-out
- Ensure that all documents are signed and dated as needed.

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Exhibit 2-D
Form IRS-8823

Form **8823**
(Rev. September 2015)
Department of the Treasury
Internal Revenue Service

Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition

Note: *File a separate Form 8823 for each building that is disposed of or goes out of compliance.*

▶ Information about Form 8823 is available at *www.irs.gov/form8823.*

OMB No. 1545-1204

Check here if this is an amended return ▶ ☐

IRS Use Only

1 Building name (if any). Check if item 1 differs from Form 8609 ▶ ☐

Street address

City or town, state, and ZIP code

2 Building identification number (BIN)

3 Owner's name. Check if item 3 differs from Form 8609 ▶ ☐

Street address

City or town, state, and ZIP code

4 **Owner's** taxpayer identification number ☐ EIN ☐ SSN

5 Total credit allocated to this BIN ▶ $

6 If this building is part of a multiple building project, enter the number of buildings in the project ▶

7a Total number of residential units in this building ▶

b Total number of low-income units in this building ▶

c Total number of residential units in this building determined to have noncompliance issues ▶

d Total number of units reviewed by agency (see instructions) ▶

8 Date building ceased to comply with the low-income housing credit provisions (see instructions) (MMDDYYYY)

9 Date noncompliance corrected (if applicable) (see instructions) (MMDDYYYY)

10 Check this box if you are filing only to show correction of a previously reported noncompliance problem ▶ ☐

11	Check the box(es) that apply:	Out of compliance	Noncompliance corrected
a	Household income above income limit upon initial occupancy	☐	☐
b	Owner failed to correctly complete or document tenant's annual income recertification	☐	☐
c	Violation(s) of the UPCS or local inspection standards (see instructions) (attach explanation)	☐	☐
d	Owner failed to provide annual certifications or provided incomplete or inaccurate certifications	☐	☐
e	Changes in Eligible Basis or the Applicable Percentage (see instructions)	☐	☐
f	Project failed to meet minimum set-aside requirement (20/50, 40/60 test) (see instructions)	☐	☐
g	Gross rent(s) exceed tax credit limits	☐	☐
h	Project not available to the general public (see instructions) (attach explanation)	☐	☐
i	Violation(s) of the Available Unit Rule under section 42(g)(2)(D)(ii)	☐	☐
j	Violation(s) of the Vacant Unit Rule under Reg. 1.42-5(c)(1)(ix)	☐	☐
k	Owner failed to execute and record extended-use agreement within time prescribed by section 42(h)(6)(J)	☐	☐
l	Low-income units occupied by nonqualified full-time students	☐	☐
m	Owner did not properly calculate utility allowance	☐	☐
n	Owner has failed to respond to agency requests for monitoring reviews	☐	☐
o	Low-income units used on a transient basis (attach explanation)	☐	☐
p	Building is no longer in compliance nor participating in the section 42 program (attach explanation)	☐	
q	Other noncompliance issues (attach explanation)	☐	☐

12 Additional information for any item above. Attach explanation and check box ▶ ☐

13a Building disposition by ☐ Sale ☐ Foreclosure ☐ Destruction ☐ Other (attach explanation)

b Date of disposition (MMDDYYYY)

c New owner's name

Street address

City or town, state, and ZIP code

d **New owner's** taxpayer identification number ☐ EIN ☐ SSN

14 Name of contact person

15 Telephone number of contact person Ext.

Under penalties of perjury, I declare that I have examined this report, including accompanying statements and schedules, and to the best of my knowledge and belief, it is true, correct, and complete.

▶ Signature of authorizing official ▶ Print name and title ▶ Date (MMDDYYYY)

For Paperwork Reduction Act Notice, see instructions. Cat. No. 12308D Form **8823** (Rev. 9-2015)

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Exhibit 2-E
Best Practices for Correcting Noncompliance

- Establish an effective quality control system. HPD does not report an incidence of noncompliance you correct within the indicated cure period.
- Show your work when completing income calculations.
- NEVER use White-Out to correct information on a TIC. Put a line through the incorrect information on the TIC and ask the resident to initial the change.
- Require all adult household members to sign the relevant forms or document why you were unable to do so.
- Provide HPD clear, *legible* copies of pay stubs, bank statements, etc…
- Require all residents receiving subsidy through the housing choice voucher or similar program to sign the TIC.
- If you fail to complete a TIC prior to a household taking occupancy, to avoid a period of noncompliance, complete a retroactive TIC using the resident's income and income limit in effect on their move-in date. Never back date forms.
- If you fail to complete a resident's recertification on time, to avoid a period of noncompliance, complete a retroactive recertification using the resident's income and income limit in effect on the anniversary of their move-in date. Again, never back date forms.
- ALWAYS REPORT THE TRUTH. If you complete a retroactive income certification, do not ask the resident to back date their signature. In such cases, the current date should be indicated in the "Household Certification & Signatures" and "Signature of Owner/Representative" sections, and the "Effective Date" at the top of the TIC should indicate the compliance year in question.
- When correcting noncompliance following an HPD monitoring review, provide all the information requested for every resident file referenced in the notification of noncompliance.
- NEVER alter or use White-Out on an employment verification form, benefit award statement, bank statements, notarized affidavit, etc.
- Use the HPD-required verification forms to document the information supporting a tenant income certification.
- To correct noncompliance for rent that exceeds the applicable rent limit, you may lower the rent to the correct amount, amend the tenant's lease, refund the overcharge and provide the proof of credit (to the tenant or the rent subsidy program, as applicable) with a revised rent roll to HPD.
- A completed eviction does not correct noncompliance relating to rent overcharges unless the owner establishes that the tenant did not pay any overcharged rent. In addition, only a completed eviction will serve to clear noncompliance; commencement of a hold-over proceeding does not suffice.
- Make *legible* notes to a file, explaining relevant information not obvious to an HPD representative.

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Exhibit 2-F
Minimum Unit Sample Size Reference Chart

The required minimum sample size is the **LOWER** of 20% or the number indicated on the below REAC chart). (See IRS Reg. 123027-19 (July 2020))

Minimum Unit Sample Size Reference Chart	
Number of LIHTC Units in the LIHTC Project	**Minimum Unit Sample Size**
1	1
2	2
3	3
4	4
5-6	5
7	6
8-9	7
10-11	8
12-13	9
14-16	10
17-18	11
19-21	12
22-25	13
26-29	14
30-34	15
25-40	16
41-47	17
48-56	18
57-67	19
68-81	20
82-101	21
102-130	22
131-175	23
176-257	24
258-449	25

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Part Two

How Many Tax Credit Units do I Need at My Property?

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Chapter Three

The Minimum Set Aside

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Chapter Three: The Minimum Set Aside
-or-
The Minimum Number of Tax Credit Units You Need at Your Property, but It's Just the Beginning

3-1. Topics Covered in this Chapter

In this chapter, you will read about:

A. The minimum set aside your owner committed to when receiving a credit allocation;

B. The credit period, or the period of time the investors in your property plan to take a tax credit on their federal income tax return;

C. The compliance period, or the period of time you must comply with all tax credit requirements;

D. The extended use period, or the period of time following the compliance period you must continue to comply with the requirements for your property;

E. The consequences of not meeting and maintaining the minimum set aside at your property; and

F. Your owner's need to rent more units than required by the minimum set aside to meet the obligation entered into in exchange for credits.

3-2. Key Terms to Learn from Reading this Chapter

- Compliance Period
- Credit Period
- Extended Use Period (EUP)
- Minimum Set Aside
- Placed-in-Service Date (PIS Date)
- Land Use Regulatory Agreement (LURA)

3-3. Minimum Set Aside

An owner must comply with their minimum set aside to be part of the tax credit program.

A. In New York City, you may commit to one of the following minimum set asides:

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Minimum Set Aside	% of Units Required	Qualifying Income Limit	Notes
20% @ 50%	20% of the units at the property	50% of AMI	• 50% of AMI, referred to as very low-income
25% @ 60%	25% of the units at the property	60% of AMI	• 60% of AMI, referred to as low-income
Income Averaging	25% of the units at the property	Average of all affordable income limit designations cannot exceed 60% of AMI	• At least 25% of the units in the project for occupancy by Eligible Households. • Eligible Households may have gross annual income as high as 80% of Area Median Income. However, the average of all affordable income limit designations cannot exceed 60% of Area Medium Income. • Every tax credit unit must have a designated income limit and those limits may only be set at 10% increments starting at 20% of AMI. The allowable income limit designations would be 20%, 30%, 40%, 50%, 60%, 70% and 80%.
Deep Rent Skew	15% of the tax credit units	40% of AMI	• Owner commits to one of the two minimum set asides and to deep rent skew • 40% of AMI referred to as extremely low-income.

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Sample Minimum Set Aside Calculations

60-unit property

20% @ 50% minimum set aside
12 units (60 units x 20%) must be rented to residents at 50% of AMI

25% @ 60% minimum set aside
15 units (60 units x 25%) must be rented to residents at 60% of AMI

25% @ Income Averaging set aside
15 units (60 units x 25%) must be rented to residents averaging no more than 60% AMI
(for example, 5 units at 80% AMI; 5 units at 60% AMI; 5 units at 40% AMI;
average of all affordable unit designations is 60% AMI)

25% @ 60% minimum set aside & deep rent skew
15 units (60 units x 25%) must be rented to residents at 60% of AMI
3 units (15 tax credit units x 15%) must be rented to residents at 40% of AMI

B. You must meet the minimum set aside at the property level. That is, you must rent the percentage of units required by the first number in the minimum set aside *at the property* to qualified households to participate in the tax credit program. In other words, in each "20% at 50%" property you must have at least 20% of the units rented to qualified households. In each 25% at 60% property you must have at least 25% of the units rented to qualified households.

1. You need to know how "the property" is defined.

2. As discussed in Chapter 2, an owner receives a Form 8609 for each building from HPD. Before submitting a Form 8609 to the IRS the owner notes on Line 8b if the building represented by the form is part of a property that includes other buildings.

   a. If a building is not part of a multi-building property, you must meet the minimum set aside using the units in the building.

   b. If a building is part of a multi-building property, you must meet the minimum set aside using the units in the buildings that make up the property as defined on line 8b of the 8609 forms.

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Minimum Set Aside Calculations at a Multi-Building Property

60-unit property consisting of four 15-unit buildings
20% @ 50% minimum set aside

If the project consists of four buildings as a property,
12 units (60 units x 20%) amongst the four buildings
must be rented to residents at 50% of AMI

If each building is a property,
3 units (15 units x 20%) in each building
must be rented to residents at 50% of AMI

C. There are properties with more than one credit allocation. That is, a group of buildings looks like one property and is managed as one property but received separate credit allocations in different years for a variety of reasons. If you are not sure, you should ask your development team for assistance. If you manage a property with more than one credit allocation, you must know the answers to the following questions:

1. When did your property receive each credit allocation and what buildings were covered by each allocation?

2. What is the PIS date for each building for each credit allocation?

3. Which minimum set aside did the owner commit to for each credit allocation?

4. What buildings did the owner group together as a property (on line 8b of their 8609 forms) for each credit allocation?

D. An owner may commit to meeting more than one minimum set aside. For example, they may commit to meeting both the 20% @ 50% and the 25% @ 60% set asides If you have more than one minimum set aside, you must know the answers to the following questions:

1. Which minimum set asides did the owner commit to? Ask your development team if you are not sure.

2. What percentage of your units do you need to rent to households qualifying at various income levels for your property to comply with all set asides required by HPD?

3. What buildings did your owner group together (on line 8b of their 8609 forms) as a property?

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Multiple Minimum Set Asides

4 buildings
20 units in each building

Owner defines buildings 1 & 2 as a property on 8609 forms and commits to 20% @ 50% set aside. The owner must rent 8 units (40 units x 20%) to households at 50% of AMI in these two buildings.

Owner defines buildings 3 & 4 as a property on 8609 forms and commits to 25% @ 60% set aside. The owner must rent 10 units (40 units x 25%) to households at 60% of AMI in these two buildings.

E. The election of a minimum set aside for a tax credit property is irrevocable. For your investors to take a tax credit on their income tax return, you must meet the requirements for the minimum set aside(s) by the end of the first year of the credit period and comply with your minimum set aside(s) throughout the compliance period. See Paragraph 3-7 for a discussion of the consequences of not meeting and maintaining your property's minimum set aside. See Paragraph 4-5.C for a discussion of the impact on not renting all your tax credit units during the first year of a building's credit period.

3-4. The Credit Period

The credit period is the period of time the investors in your property plan on taking a tax credit on their federal income tax return.

A. The credit period lasts for ten (10) years.

B. Generally, an owner begins the credit period for each building the year they place its credits in service. The first year of the credit period ends on December 31st of the year of the PIS date.

C. The owner may elect to begin the credit period the year following the PIS date. The first year of the credit period ends on December 31st of the year following the PIS date.

D. If an owner places two buildings in service in the same year, they may choose to begin the credit period for the buildings in two different years.

E. You must know in what year the owner plans to begin the credit period for each building in a multi-building property.

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Beginning the Credit Period

4-building property
Owner places all four buildings in service 10/1/2018

Owner begins the credit period in 2018 for buildings 1 and 2.

Owner begins the credit period in 2019 for buildings 3 and 4.

3-5. *The Compliance Period*

The compliance period is the period of time you must comply with all program requirements for your investors to benefit from the maximum possible tax credit.

A. The first year of the compliance period for a building is the first year of its credit period.

B. The compliance period lasts for 15 years. (Don't forget to read Paragraph 3-6 on the extended use period.)

C. You must comply with all requirements established by the IRS for the 15-year compliance period.

Beginning the Compliance Period

4-building property
Owner places all four buildings in service 10/1/2018

Owner begins the credit and compliance periods
in 2018 for buildings 1 and 2.

Owner begins the credit and compliance periods
in 2019 for buildings 3 and 4.

3-6. *The Extended Use Period*

The extended use period (EUP) is the period of time following the 15-year compliance period you must continue to comply with the requirements for your property.

A. The EUP begins on the January 1st following the end of the 15-year compliance period.

B. The EUP lasts a minimum of 15 years.

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C. Read the Land Use Regulatory Agreement (LURA) your owner signed to determine the length of the EUP for your property. Your owner may have committed to an EUP as long as 99 years.

D. You must meet all the requirements of this *Compliance Manual* (as established by HPD) unless HPD approves different compliance requirements for the EUP for your property in a separate document.

E. Read your Regulatory Agreement to know the requirements for the EUP for your property.

3-7. Consequences of Not Meeting and Maintaining the Minimum Set Aside

The owner must meet the requirements of the minimum set aside by the end of the first year of the credit period and maintain compliance through the compliance and extended use periods.

A. If an owner elects to begin the credit period the year they place the credits in service but fails to meet the minimum set aside during that year, they can begin the credit period the following year. However, the credits will be less valuable to the investors because they must delay taking their tax credits.

Year 1 of the Credit Period

PIS date is 7/1/18
Owner begins the credit period in 2018 and
takes their first tax credit on their 2018 tax return.

If the owner delays starting the credit period until 2019,
they cannot take their first tax credit until filing their 2019 tax return.

B. If the owner elects to begin the credit period the year following the PIS date but fails to meet the minimum set aside that year, they lose the tax credits for the building.

C. If the owner meets the minimum set aside during the first year of the credit period, but fails to maintain it for the 15-year compliance period, they may take no tax credits during the period of noncompliance.

D. If the owner fails to maintain the minimum set aside during the EUP, HPD may take the following actions, among others:

1. Refuse to allocate tax credits for any property the owner wants to develop in the future.

2. Award negative points for applications the owner submits requesting future credit allocations.

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3. Refuse to allocate funding from other sources (HOME, CDBG, etc.) requested by the owner.

4. File suit against the owner for failing to meet their contractual obligations.

3-8. You Need More Tax Credit Units than Required by Your Minimum Set Aside

Your investors cannot take a tax credit if you do not meet and maintain your minimum set aside. However, they want more than just the minimum tax credit. They want to earn the maximum possible tax credit. Read Chapter Four to learn how many units at your property you must rent to qualified residents for your owners to meet their obligation and get the most from their tax credits.

3-9. Do This!

A. Read all the regulatory agreements for your property.

B. Know the first year of the credit period for every building.

C. Know the units you need to rent to qualified residents to meet your minimum set aside(s).

D. Target your initial leasing activity to rent the correct number of low-income units in each building during the first year of its credit period.

E. Remember that you may have occupancy requirements for the other funding sources at your property. (e.g., HOME, CDBG).

F. Remember you may need to rent a percentage of your units to homeless persons or to residents of specific neighborhoods. You may need to offer special consideration to former residents who moved out of your building during its rehabilitation.

3-10. Don't Do This!

A. Throw out your records at the end of the 10-year credit period.

B. Throw out your records at the end of the 15-year compliance period.

C. Think it's unnecessary to comply with all program requirements after the 10-year credit period.

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D. Think it’s unnecessary to comply with all program requirements after the 15-year compliance period.

E. Throw out your regulatory agreements.

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Chapter Four

Maximizing Your Low-Income Occupancy

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Chapter Four: Maximizing Your Low-Income Occupancy
-or-
The Number of Tax Credit Units Your Owner Expects and Where Your Tax Credit Units Should be Located on Your Property

4-1. Topics Covered in this Chapter

In this chapter, you will learn:

A. That the credit allocation most owners receive allows them to earn a tax credit from more units than required by the minimum set aside you read about in Chapter 3;

B. That you must know the number of tax credit units allocated to your property and each building at your property;

C. How to calculate the applicable fraction for a tax credit building;

D. The advantage of managing a 100% tax credit property;

E. How to successfully manage a mixed-income property; and

F. About 80/20 properties.

4-2. Key Terms to Learn from Reading this Chapter

- Applicable fraction
- Credit allocation
- Deep rent skew
- Floor space applicable fraction
- Mixed-income property
- Unit applicable fraction
- 100% tax credit property
- 80/20 property

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4-3. The Credit Allocation – HPD Awards Most Owners More Tax Credit Units than Required by the Minimum Set Aside

HPD awards a credit allocation covering a specific number of units at each property. HPD determines (based on availability of credits, project costs, sources and uses, and other factors) how many units can generate a tax credit so long as those units are occupied by qualified residents.

A. An owner can earn a tax credit only from the number of units allocated by HPD, and only if those units are occupied by qualified residents.

B. For most properties, HPD allocates more tax credit units than required by the minimum set aside.

C. For your owner to benefit from the maximum possible tax credit, rent the number of units covered by the credit allocation to qualified residents.

D. Your owner expects you to manage your property so they benefit from the maximum possible tax credit.

E. HPD monitors your property expecting you to rent the number of tax credit units they allocated to qualified residents.

4-4. You Must Know How Many Tax Credit Units HPD Allocated to each Building at Your Property

A. Generally, HPD allocates tax credits by building. HPD determines (as reflected in the LURA) how many units in a building can generate a tax credit if they are occupied by qualified residents.

B. You must know how many tax credit units HPD allocated to each building at your property.

C. For your owner to earn the maximum possible tax credit, rent the number of units HPD allocated to each building to qualified residents.

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Sample Tax Credit Property

2-building property
Each building has 10 units

Credit allocation covers 6 units in building one
and 7 units in building two.

Owner can earn the maximum tax credit only if there are
at least 6 units in building one and 7 units in
building two occupied by qualified residents.

4-5. The Applicable Fraction: Measuring How Much of a Building is Occupied by Tax Credit Qualified Residents

The applicable fraction is that percentage of a building's physical space (as measured by units and by square feet) covered by its credit allocation and occupied by tax credit qualified residents.

A. The applicable fraction is always the *lesser of*:

   1. The unit applicable fraction – The percentage of units in a building occupied by qualified residents; or

   2. The floor space applicable fraction – The percentage of floor space in a building occupied by qualified residents.

B. To earn the maximum possible tax credit, your owner needs the applicable fraction for a building to be at least equal to the percentage of units covered by its credit allocation by the end of the first year of its credit period.

   1. The unit applicable fraction must be at least equal to the percentage of units covered by the credit allocation; and

   2. The floor space applicable fraction must be at least equal to the percentage of units covered by the credit allocation.

Sample Applicable Fraction Calculations

15-unit building with 13,100 square feet
Credit allocation covers 60% of the units

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At end of year one, 9 units and 7,900 square feet
are rented to qualified residents

9/15 = 60% = unit applicable fraction
7,900/13,100 = 60.31% = floor space applicable fraction
1st year applicable fraction = 60%

The owner can earn the maximum tax credit because
the 1st year applicable fraction is at least equal to
the 60% credit allocation.

C. Any unit you don't rent to a qualified resident by the end of the first year of the credit period generates a tax credit equal to 2/3 the credit it would have generated if you had rented it in year 1.

Impact of the Two-Thirds Rule

Building allocated 9 tax credit units.
Each unit will generate a $6,000 credit if rented during year 1.
9 units x $6,000 = $54,000 = projected annual tax credit

You rent 6 units during year 1 but don't rent 3 units until year 2.

6 units x $6,000 = $36,000 = tax credit for year 1

(6 units x $6,000) + (3 units x $4,000) =
$36,000 + $12,000 = $48,000 = tax credit for year 2

4-6. Properties With More than One Credit Allocation

There are properties with more than one credit allocation. That is, a group of buildings looks like one property and is managed as one property but received separate credit allocations in different years for a variety of reasons. At a property with multiple credit allocations, you must know the answers to the following questions:

A. In what years did your property receive a credit allocation?

B. What buildings were allocated credits in what year(s)?

C. What is your owner's goal for the applicable fraction for each building under each credit allocation?

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Sample Property with Two Credit Allocations
5-building property Each building has 10 units
1st credit allocation in 2016 covers 60% of buildings 1-4
2nd credit allocation in 2018 covers 30% of buildings 4 and 5

4-7. Be Grateful if You Manage a 100% Tax Credit Property

Take the following steps to generate the maximum tax credit at a 100% tax credit property.

A. Rent all the units in each building to qualified residents by the end of the first year of its credit period.

B. Know if your owner committed to more than one minimum set aside; that is, do you need to rent some units to residents at 60% of AMI, and other units to residents at 50% of AMI?

C. Always rent a vacant tax credit unit to a qualified resident.

D. Never rent a unit to a household that doesn't qualify under the full- time student rule. (See Chapter Five)

E. Relocate a resident who falls out of compliance with the full-time student rule. (See Chapter Five)

F. Never charge a resident more rent than the maximum allowed by the tax credit program. (See Chapter Eight)

G. Make sure that you correctly document on every initial TIC that the resident qualifies for the tax credit program at your property.

4-8. Compliance Requirements in a Mixed-Income Property

It is more complicated to manage a mixed-income property. You must know how many units and what combination of units in each building you must rent to qualified residents for your owner to benefit from the maximum possible tax credit.

A. Before leasing a mixed-income property, map each building by designating which units you will rent to qualified residents.

B. For acquisition/rehab buildings, map in which units in each building you need the existing residents to qualify for the tax credit program.

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C. Map each building so that both the unit and the square footage applicable fractions are at least equal to the percentage of units covered by its credit allocation.

Sample Mixed-Income Building
15 units 13,100 square feet Credit allocation covers 60% of the units
15 x 60% = 9 tax credit units
13,100 x 60% = 7,860 tax credit square feet
Rent 9 units, comprised of at least 7,860 square feet, to qualified residents.

D. Know if your regulatory agreement designates the tax credit units for the first year of a building's credit period.

E. Within a mixed-income property, you may have both 100% tax credit and mixed-income buildings.

4-9. 80/20 Properties in NYC

At an 80/20 property:

A. The owner commits to the 20% @ 50% minimum set aside and to deep rent skew.

B. HPD awards an allocation covering 20% of the units.

C. The number of tax credit units required by the minimum set aside is equal to the number of units covered by the credit allocation.

D. You must rent 85% of the tax credit units to households qualifying at 50% of AMI.

E. Because the owner commits to deep rent skew, you must rent 15% of the tax credit units to households qualifying at 40% of AMI.

F. Because the owner commits to deep rent skew, the tax credit units are fixed, unlike most mixed-income buildings where the tax credit units float. (See Chapter 10 for a discussion of the Available Unit Rule.)

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Sample 80/20 Property

100 Units
20% @ 50% Minimum Set Aside
Deep Rent Skew
Credit Allocation for 20% of the Units

100 units x 20% = 20 Units
Minimum & Maximum Number of Tax Credit Units is 20

20 Units x 15% = 3 units

3 Units must be rented to Residents at 40% of AMI
17 Units must be rented to Residents at 50% of AMI

4-10. Do This!

A. Read the regulatory agreement(s) for the property so you know how many tax credit units were allocated within each building.

B. Map each of your buildings by designating which units you must rent to qualified residents to generate the maximum tax credit.

4-11. Don't Do This!

A. Lease to anyone until you know which units in each building must be rented to qualified LIHTC residents to generate the maximum tax credit.

B. Do not sign leases and move tenants in unless you have established that they are qualified.

C. Think your owner will be satisfied if you rent just enough units to qualified residents to comply with the minimum set aside, unless you manage an 80/20 property.

D. Fail to rent the maximum number of units possible in a building to qualified residents.

E. Forget that the applicable fraction is always the *lesser* of the unit applicable fraction or the floor space applicable fraction you calculate for a building.

F. Forget your owner has an obligation to rent the number of units HPD allocated to each building to qualified residents and will only receive the maximum credits they are expecting when that is true.

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Part Three

How Do I Know Who Qualifies to Live in My Tax Credit Units?

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Chapter Five

Household Eligibility Factors

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Chapter Five: Household Eligibility Factors
-or-
The Questions You Must Ask & Answer Before Approving a Household to Occupy Your Tax Credit Unit

5-1. Topics Covered in this Chapter

In this chapter, you will learn:

A. There are two (2) factors that determine a household's eligibility for the tax credit program: The income limit established in the minimum set aside and the full-time student rule;

B. How to use the income limit in the minimum set aside to qualify a household for your tax credit unit;

C. How to count the number of people living in a household to select the applicable income limit;

D. How to determine if a household complies with the full-time student rule before allowing them to occupy your tax credit unit;

E. About the Super Unit(s) at your property;

F. That you must qualify a household receiving any kind of rental subsidy for the tax credit program before allowing them to occupy your tax credit unit;

G. About the importance of establishing the criteria, in writing, you use to screen applicants; and

H. About the importance of complying with all fair housing laws.

5-2. Key Terms to Learn from Reading this Chapter

- Fair housing
- Full-time student
- Household size
- Income limit
- Minimum set aside
- Housing choice voucher program (HCV)
- Project-based Section 8
- Screening

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5-3. *The Two Eligibility Factors for the Tax Credit Program*

There are two (2) eligibility factors for the tax credit program.

A. The Income Limit – A household's gross annual income cannot be greater than the income limit established in the minimum set aside.

1. You will learn how to determine the applicable income limit in this chapter.

2. You will learn how to calculate a household's gross annual income in Chapter Six.

B. Full-Time Student Rule – A household must qualify under the full-time student rule. You will learn about this rule later in this chapter.

5-4. *The Income Limit*

In order to be income eligible, an applicant's household gross annual income must be equal to or less than the income limit applicable to the project. The income limit for a particular project is based on the minimum set-aside specified and is calculated as a percentage of the area median income (AMI).

A. For example, if the owner has agreed to the 20% @ 50% set-aside, the income limit for applicant eligibility is 50% of AMI. If the owner has committed to the 25% at 60% set-aside, the income limit for applicant eligibility is 60% of AMI.

B. In 2009, HUD began issuing income limits they calculate specifically for LIHTC projects. HUD refers to a LIHTC project as a Multifamily Tax Subsidy Project (MTSP.) Currently, the HUD-published MTSP income limits include 50% and 60% limits for applicable areas.

C. The Average Income Minimum Set-Aside election includes expanded income limitations permitted for qualified low-income housing projects at 20%, 30%, 40%, 70%, and 80% AMI. In the absence of IRS guidance on the MTSP income limits applicable for 20%, 30%, 40%, 70%, and 80%, the calculation factors used in determining the income limits for Tax Credit properties is applied to the published MTSP 50% AMI.

The calculation factors used in determining the Tax Credit MTSP income limits are:

1. 50% limits x .4 = 20%
2. 50% limits x .6 = 30%
3. 50% limits x .8 = 40%
4. 50% limits x 1.2 = 60%
5. 50% limits x 1.4 = 70%
6. 50% limits x 1.6 = 80%

D. As a courtesy, HPD posts these income limits at their web site.

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E. However, it is the owner’s responsibility to use the correct income limit to determine a household eligible for their tax credit unit.

Example

HUD’s MTSP 50% limit for 4 persons is $53,350.

Income limit at 40% of AMI for 4 persons is $42,680 ($53,350 x .8.)

Income limit at 30% AMI for 4 persons is $32,010 ($53,350 x .6)

Note: These are sample income limits. Make sure to use the correct income limits for NYC for the household size you are trying to qualify for your tax credit unit.

F. Your owner may have committed to more than one set aside. That is, you may need to qualify some residents at 60% of AMI, other residents at 50% of AMI and others at 40% of AMI. To qualify a household, you must compare their gross annual income to the income limit that applies to the unit they will occupy. Note: The owner may have committed to a higher percentage of units and/or other income limits in their LURA. Please check your regulatory agreement to be sure.

Sample Property

100-Unit Properties
20% @ 50% minimum set aside
Owner commits to deep rent skew
100 units x 20% = 20 units in the minimum set aside
20 units x 15% = 3 units; owner must rent at 40% of AMI
Owner must rent 17 units at 50% of AMI (20 units – 3 units = 17 units)

G. When HUD issues new income limits, they are effective on the release date, but owners have up to 45 days after the effective date to begin using them at their LIHTC property.

5-5. Household Size and the Income Limit

To qualify a household for a tax credit unit, you must compare their annual income to the income limit for their household size. Follow the rules HUD sets for the project-based Section 8 program to determine household size. Those rules are found in Chapter Three of the HUD Handbook 4350.3, Rev 1, Change 4.

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A. When counting the number of household members to select their income limit, do not include the following people even if they plan to live in the unit:

1. Live-in aid (live-in care attendant); and

2. Children who will not be living in the unit at least 50% of the time.

Sample Household

Head of Household
Son
Foster Son
Mother of the Head of Household
Live-in Aid

Use the 4-person income limit to qualify this household because the live-in aid is not included in the household size
when selecting their income limit.

B. Do include the following people when determining household size to select the income limit:

1. Children subject to joint custody who will be living in the unit at least 50% of the time;
2. Children temporarily absent from the household due to placement in a foster home;
3. Children living away at school who will join the household during school recesses, unless they've established residency at the other location as evidenced by a lease;
4. Unborn children of pregnant women living in the unit;
5. Children in the process of being adopted;
6. Foster children and foster adults living in the unit;
7. Temporarily absent family members who plan to join the household; and
8. Family members in the hospital or rehabilitation facility for periods of limited or fixed duration.

Sample Household

Head of Household
Spouse – Pregnant
Son who lives in unit more than 50% of the time
Daughter who lives in unit less than 50% of the time
Grandmother temporarily in a nursing home

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Use the 5-person income limit to qualify this household. Include the spouse's unborn child in the household size, but do not include the daughter because she lives in the unit less than 50% of the time.

7. A household may elect to include an individual who is permanently confined to a medical facility in their household under the following conditions:

   a. The person in the medical facility may not be the head of the household or co-head of the household;

   b. Their income must be included in your calculation of the household's annual income; and

   c. The household cooperates in providing all the information and signatures you need to include the permanently confined person on the TIC.

Sample Household

Head of Household
Spouse – Permanently confined to a nursing home

Head of household may elect to include the spouse in the household and qualify at the 2-person income limit.

C. Establish the following policies for determining household size to select the income limit for an applicant for a tax credit unit.

   1. Include a head of the household, co-head of the household or spouse who is away on active military duty.

   2. Exclude adult children on active military duty.

D. Establish in your resident selection criteria policies governing the inclusion or exclusion of household members with a criminal background.

   1. If you run criminal background checks on your applicants, state in writing what you would find in someone's criminal background that would cause you to reject their application.

   2. Assuming an individual passes the standard you apply when researching a person's criminal background, establish how long a person can be projected to be in prison and be included in the household size.

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3. Use your standard for assessing someone's criminal background when screening new applicants and when a current resident wants to add a new household member.

5-6. Full-Time Student Rule

The second eligibility factor you must apply to determine an applicant eligible for a tax credit unit is the full-time student rule. A household is not eligible unless they qualify under the full-time student rule.

A. A full-time student is someone who attends (or plans to attend) school on a full-time basis for at least five (5) months out of the current calendar year. The 5 months need not be consecutive for a person to be considered a full-time student.

1. Verify the status of a student as either full-time or part-time with the educational institution they attend.

a. If the school classifies the student as full-time, and they attend (or plan to attend) school for at least 5 months out of the current calendar year, they are a full-time student.

b. If the school classifies the student as full-time, and they attend (or plan to attend) school for less than 5 months out of the current calendar year, they are not a full-time student.

c. If the school classifies the student as part-time, they are not a full-time student.

2. A child in grades K-12 is considered to be a full-time student.

a. For a minor who attends grades K-12, you do not need to document their full-time status with their school.

b. For a minor who claims not to be a full-time student, you must document they do not attend school to not consider them a full-time student.

3. Because an unborn child of a woman living in the unit is counted as a household member when you select their income limit, include an unborn child as a household member when applying the full-time student rule.

B. A household comprised entirely of full-time students is not eligible for a tax credit unit unless you document, in writing, they qualify in one of the following five (5) categories:

1. Every person in the household is married and files a joint tax return (or is eligible to file a joint tax return) with their spouse;

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2. The household consists of a single parent with at least one child and the children are not listed as dependents on another person's federal income tax return except one of the parents;

3. The student was previously under the care and placement of a foster care program;

4. At least one household member receives TANF or PA; or

5. At least one household member participates in a job training program funded through the Workforce Investment Act.

C. At the end of this chapter you will find Exhibit 5-A. Exhibit 5-A is a series of households with different compositions that either do or don't qualify under the full-time student rule.

5-7. Super Units

HPD may approve a unit (or in some cases, units) to be occupied by an employee of a tax credit property. The unit may be occupied by a manager, maintenance person or security guard. The unit is usually occupied by the property's superintendent and referred to as the Super Unit.

A building's eligible basis includes those costs which are eligible to generate a tax credit for the owner. Although not included in a building's applicable fraction, a Super Unit is included in its eligible basis and your owner expects your Super Unit to generate a tax credit. Follow these rules in the management of your Super Unit(s).

A. An employee who works full-time at a tax credit property and lives in the Super Unit does not need to qualify for the tax credit program. That is, you do not need to qualify their household under the income limit or the full-time student rule.

B. Your owner will not lose any tax credits if the super doesn't qualify for the tax credit program under the following conditions:

1. The super works full-time at the property. HPD may review whether the super is full-time but it is up to the owner to determine a full-time schedule for each employee.

2. You do not have more units occupied by a super (or other employees working at the property) than allowed by HPD and/or your regulatory agreement.

3. If the owner has designated a specific unit as your Super Unit, you do not allow a super to live in any other unit unless they qualify for the tax credit program.

4. You do not charge rent from an employee living in a Super Unit. If you charge the employee rent, they must qualify for the tax credit program.

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5. Generally, HPD does not designate which unit in a building is the Super Unit. However, changing your Super Unit can impact the building's applicable fraction. Ask approval from your syndicator before switching your Super Unit.

5-8. Housing Choice Voucher Program Participants

Through the housing choice voucher (HCV) program, HUD provides rental assistance for households that meet the eligibility requirements for that program. You may know the HCV program as the Section 8 voucher program or simply as the voucher program. Through the HCV program, a resident pays a portion of their income towards their rent and utilities and HUD pays the remaining amount due.

Owners in the tax credit program may not discriminate against participants in the HCV program. That is, owners may not use the fact that a household receives rental subsidy through the HCV program as a reason to reject them for a tax credit unit. Still, participants in these programs are not automatically eligible for the tax credit program.

A. You must verify a household receiving rental subsidy qualifies under the tax credit full-time student rule. (See Paragraph 5-6.)

B You must verify a household receiving rental subsidy qualifies under the tax credit income limit. You have two (2) options for how to income-qualify a household receiving rental subsidy.

1. You may document the household is eligible with the entity administering their subsidy.

a. In NYC, most vouchers are administered by either HPD or the New York City Housing Authority (NYCHA). However, applicants may have vouchers issued by other housing authorities.

b. You should use the HPD recommended form to verify a household's eligibility with the entity administering their voucher. (See Chapter 7)

2. If you are unable to verify a household's eligibility with the housing authority (HA) administering their voucher, you must verify their eligibility using the methods you follow for all other applicants for your tax credit units. (See Chapter 7)

B. Participants in the HCV program must sign the HPD recommended TIC before occupying a tax credit unit and at every recertification.

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5-9. *Households on Project-Based Section 8 or Comparable Assistance*

Some properties that receive an allocation of tax credits also receive subsidy through a project-based assistance program. How an owner administers these project-based programs is governed by the HUD Handbook, 4350.3, Rev. 1, Change 4.

A. Residents may receive rental subsidy through the project-based Section 8 or similar program.

B. Owners of properties may receive a HUD-sponsored mortgage subsidy.

C. You must qualify an applicant for both the tax credit program, and the applicable HUD program before you allow them to occupy your unit.

D. HPD monitors your property only for compliance with the tax credit program as described in this manual. For tax credit residents receiving project-based assistance through HUD, you:

   1. May use the HUD-50059 form the household signs as the tax credit TIC.

   2. Must document you compared the household's income to 140% of their current income limit at a recertification (See Chapter 10) if you elect to use a household's HUD-50059 form as their tax credit TIC.

   3. Must require all households to sign a full-time student form where there is any doubt as to whether there are full-time students in the unit.

E. This manual does not cover qualifying tenants for any program other than the tax credit program. You should refer to the appropriate program rules and seek advice from the agencies that administer the other programs at your property.

5-10. *Owner Screening Policies*

You must establish the rules, in writing, you follow when screening applicants for your tax credit units. In your Resident Selection Plan you must establish:

A. Standards for screening applicants that do not violate federal, state or local fair housing law, NYC landlord and tenant law or any other applicable laws or ordinances;

B. Practices that do not violate NY Rent Stabilization requirements if your property is rent stabilized;

C. Practices that do not violate NY Rent Control if your property is rent controlled;

D. Occupancy standards saying how many people you will allow to live in each unit size available at your property;

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E. A policy that does not allow a tax credit resident to sublet their unit to another household; and

F. Any other policies you follow when deciding to allow a household to occupy a tax credit unit. You may decide to research and establish standards regarding an applicant's:

1. Credit history to determine they are likely to pay their rent on time;

2. Landlord history to determine they are likely to comply with your lease and house rules;

3. Past criminal behavior to determine they are not likely to disturb the quality of life at your property; and

4. Background as allowed by law.

G. You may choose to establish a minimum income policy requiring an applicant to demonstrate their income is sufficient to afford the rent. You may not apply your minimum income policy to a household receiving subsidy through a program such as the HCV or a successor program.

H. Review the regulatory agreements for your property for any applicable HPD-established marketing and leasing requirements.

5-11. Fair Housing and the Tax Credit Program

Tax credit units must be open for rental to the general public. Owners and managers must comply with all federal, state and local fair housing laws. A violation of fair housing law is a violation of the tax credit program and requires HPD to issue Form 8823 for noncompliance for submission to the IRS. To help ensure compliance with all fair housing requirements:

A. Establish occupancy standards that are not more restrictive than allowed by NYC landlord and tenant law;

B. Establish policies that do not discriminate against HCV program participants;

C. Establish screening policies and procedures that meet all federal, state and local requirements;

D. Date and time stamp all applications as you receive them in your office to ensure proper placement on your waiting list;

E. Maintain a waiting list documenting the receipt of all applications received for your tax credit units;

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F. Place all applications on your waiting list in chronological order of the date received in your office;

G. Read Chapter 2 of the HUD Handbook 4350.3, Rev. 1, Change 4 for a review of federal fair housing requirements; and,

H. Participate in regular training on federal, state and local fair housing law.

5-12. Marketing Plans

Do not apply any preferences in the selection of applicants from your waiting list that are inconsistent with your HPD marketing plan (if applicable) unless approved, in writing, by HPD's marketing unit/program or other applicable regulatory agencies. (e.g., homeless persons, community board district resident, etc.) Note: Some provisions of your marketing plan may be limited to initial rent-up. Others may run for the length or the regulatory agreement. Always check your regulatory agreement to be sure.

5-13. The Violence Against Women Act (VAWA)

The Violence Against Women Act (VAWA) is a federal law that protects LIHTC program applicants, tenants and participants from being evicted or denied housing assistance based on an act of domestic violence, dating violence, sexual assault or stalking against them (see 24 Code of Federal Regulations (CFR), Part 5, subpart L). To help ensure compliance with all VAWA requirements, you should:

A. Notify all LIHTC tenants and applicants of their VAWA protections, including providing the Tenant Notice & Tenant Self-Certification Form to all tenants of LIHTC-assisted units. Also provide the Emergency Transfer Plan (Form HUD-5381) upon tenant request.

B. Attach the VAWA Lease Rider to all new leases (and renewals of existing leases) for LIHTC units at the property.

C. Ensure that owners' and managers' staff are apprised of their VAWA obligations by reading, using and providing, as applicable~~:~~
   a. Owner Notification of Rights and Responsibilities Under VAWA (Form HUD-5380)
   b. Emergency Transfer Plan (Form HUD-5381)
   c. Emergency Transfer Request for Certain Victims of Domestic Violence, Sexual Assault or Stalking (Form HUD-5383).
   d. Owner's Written Request for Certification Documentation template.
   e. HUD's guidance on VAWA for Multifamily Owners and Management Owners.

D. The above-referenced forms are provided by HPD upon commencement of compliance monitoring and are available on request.

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E. Any questions about VAWA requirements should be directed to the agency that monitors the property.

5-14. Do This!

A. Complete a thorough interview with all applicants to obtain all the information necessary to determine their eligibility for your tax credit unit.

B. Protect your owner's tax credits by ensuring applicants and residents completely fill-out all forms required to process their certifications.

C. Protect your owner's tax credits by ensuring applicants and residents SIGN AND DATE all forms required to process their certifications.

D. Use the income limit in effect on the date you complete the initial certification of eligibility to determine a household is eligible for your tax credit unit.

E. Comply with all VAWA requirements, including attaching the VAWA Lease Rider on all new leases (and renewals of existing leases.)

5-15. Don't Do This!

A. Forget to certify a household eligible under the full-time student rule.

B. Allow a household to occupy your tax credit unit until you have certified them eligible.

C. Forget to use the income limit that applies to the unit a household will occupy to certify them eligible before you allow them to occupy the unit.

D. Forget to apply whatever preferences HPD requires in your regulatory agreement when selecting applicants from your waiting list (e.g., homeless persons, community board district residents, etc.).

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Exhibit 5-A
Sample Full-Time Student Households

Eligible Households

- Head of household, full-time student
- Son, full-time student
- Daughter, full-time student
- ➢ Eligible because nobody in the household is a dependent on another person's tax return or the children are dependents on one of the parent's tax return.

- Head of household, full-time student, receives PA
- Son, full-time student
- Daughter, full-time student
- ➢ Eligible because someone in the household receives PA.

- Head of household, full-time student, participates in job-training program
- Son, full-time student
- Daughter, full-time student
- ➢ Eligible because someone in the household is in a job training program.

- Head of household, full-time student
- Spouse, full-time student
- ➢ Eligible because the couple is married and files a joint income tax return.

Ineligible Households

- Head of household, full-time student, lives off income from an uncle
- Son, full-time student
- Daughter, full-time student
- Ineligible because the children are claimed as dependents on the tax return of another individual other than one of the parents.

- Head of household, full-time student
- Head of household's girlfriend, full-time student
- ➢ Ineligible because the couple is ineligible to file a joint income tax return and does not meet any of the other exceptions

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Chapter Six

Calculating Annual Income

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Chapter Six: Calculating Annual Income
-or-
How You Know a Household's Income is Low Enough to Qualify for Your Tax Credit Unit

6-1. Topics Covered in this Chapter

In this chapter, you will learn:

A. That you must know the applicable income limit to determine a household eligible for your tax credit unit;

B. How to calculate a household's annual income; and

C. How to calculate income from assets and include it in a household's annual income.

6-2. Key Terms to Learn from Reading this Chapter

- Annual income
- Cash value of an asset
- HUD Handbook 4350.3, Rev. 1, Change 4
- Imputed income from assets
- Income from assets
- Income Limit
- Passbook rate
- $5,000 Rule

6-3. Know the Income Limit(s) for Your Property

To certify a household eligible for your tax credit unit, compare their gross annual income to the income limit for your property.

A. The income limit for your property is established in the minimum set aside.

B. Your owner may have committed to more than one set aside. Compare an applicant's gross annual income to the income limit that applies to the unit they will occupy.

C. Review Paragraphs 5-4 and 5-5 of this manual for instruction on how to select the correct income limit.

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D. As a courtesy HPD posts the current income limits on its website. However, it is the owner's responsibility to use the correct income limit to determine a household eligible for their tax credit unit.

E. Use the income limits in effect as of the effective date of the TIC.

6-4. How to Calculate Gross Annual Income

To calculate a household's gross annual income, follow the rules for the project-based Section 8 program found in Chapter Five of the HUD Handbook 4350.3, Rev. 1, Change 4. You can find an Internet link to Chapter 5 of the handbook in the Appendix to this manual.

Note – As in the Section 8 program, you compare an applicant's gross annual income to the applicable income limit to determine their eligibility for your tax credit unit. In the Section 8 program, an owner also calculates a resident's adjusted income to determine the amount of rent they must pay while receiving Section 8 assistance. You do not calculate a resident's adjusted income for the tax credit program.

This document contains information on how to calculate gross annual income. However, it is the reader's responsibility to consult the HUD Handbook and stay abreast of any changes. Also, HUD cannot guarantee it has incorporated all possible income sources in the handbook. A manager of a tax credit property should follow the policy that any income source not specifically listed as excluded should be included as income.

A. Annualize a household's projected **gross** income before comparing it to the income limit. To arrive at an annual amount:

1. Use a verified annual salary as annual income.

2. Multiply a verified quarterly income by 4 quarters.

3. Multiply a verified monthly income by 12 months.

4. Multiply a verified bi-weekly income by 26 pay periods.

5. Multiply a verified semi-monthly income by 24 pay periods.

6. Multiply a verified weekly income by 52 weeks.

7. Ask the employer to project how many hours per day, how many days per week and how many weeks per year a part-time employee is projected to work in the 12 months following the effective date of their income certification and what that employee's projected income would then be.

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Sample Income Calculations

The New York school system reports a teacher receives a gross annual salary of $60,000. Include $60,000 as annual income.

A resident's award letter says they receive $900 per month gross disability benefits. Include $10,800 ($900 x 12 months) as annual income.

A resident earns $1,500 every two weeks. Include $39,000 ($1,500 x 26 pay periods) as annual income.

An employer verifies an applicant earns $1,700 on the 1st & 15th of every month. Include $40,800 ($1,700 x 24 pay periods) as annual income.

A resident earns $300 per week for baby-sitting for her neighbor's son. Include $15,600 ($300 x 52 weeks) as annual income.

An employer verifies that a resident works 40 weeks per year and earns $800 per week. Include $32,000 ($800 x 40 weeks) as annual income.

8. For a seasonal worker, project how much they will work in the year following the effective date of their income certification. Their income may vary during the 12-month period.

   For a person with an irregular schedule (e.g., someone working for a temporary employment agency or some home health aides), whose income varies week to week, multiply their highest weekly amount by 52 weeks.

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Sample Income Calculations

A construction laborer earns $2,000 per month for 8 months of the year and $1,000 during each of the other 4 months.
Include $20,000 (($2,000 x 8 months) + ($1,000 x 4 months)) as annual income.

An administrative assistant earns between $18 and $20 per hour and works between 14 and 16 hours per week through an employment agency. Include $16,640 ($20 x 16 hours x 52 weeks) as annual income.

A nurse's assistant is receiving $250 per week in temporary disability benefits. In 6 weeks, she will return to work and earn $600 per week. Include $29,100 (($250 x 6 weeks) + ($600 x 46 weeks)) as annual income.

B. You must anticipate the income changes a household will experience during the 12 months following an income certification. For example, when an employer certifies that an applicant's income will increase $1 per hour in four months, calculate their annual income by projecting their current salary for 4 months, and factor in the $1 per hour increase for the other 8 months.

C. Use the following rules to calculate the gross income earned by adults.

1. Include the earned income of the head of household, co-head of household, spouse and all household members who are 18 years old or older.

2. An emancipated minor is a person under 18 years old but considered an adult under NY law. If an emancipated minor is the head of household, co-head of household or spouse, include their earned income.

Earned Income of Adults

The 20-year-old son of the head of household earns $24,000 per year. He does not go to school. Include $24,000 as annual income.

Include the $18,000 a 17-year-old spouse earns as annual income.

Do not include the $18,000 the 17-year-old nephew of the head of household earns, even though he is an emancipated minor.

D. A dependent is a person who is under 18 years old or is disabled or is a full-time student. The head of household, spouse, foster child or live-in aide are never dependents. Use the following rules to calculate the income of dependents.

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1. Include the earned income of household members who are 18 years old and older, including foster adults.

2. Exclude the earned income of a minor unless they are the head of household, co-head of household or spouse.

3. Include the unearned income of minors. For example:

    a. Include the social security benefits received by or for a minor.

    b. Include the SSI benefits received by or for a minor.

    c. Include the interest generated by a minor's savings account.

    d. Include the income from a trust received by or for a minor.

    e. Include the PA received by or for a minor, but exclude foster care payments received for foster children or foster adults and anything in excess of $480 received for adoption assistance payments

4. Regarding the earned income of a full-time student:

    a. For a minor, do not include their earned income unless they are the head of household, co-head of household or spouse.

    b. For an adult who is not the head of household, co-head of household or spouse, include only the first $480 they earn per year.

    c. For an adult who is the head of household, co-head of household or spouse, include all of their earned income.

5. Exclude the monthly stipend (foster care payments) a household receives for the care of a foster child or foster adult.

6. Include the first $480 a household receives as assistance for an adopted child.

Sample Income of Dependents

Exclude the income a 16-year old daughter earns working at a fast-food restaurant.

Include the first $480 a 20-year old full-time student earns working at a grocery store.

Include the entire salary a spouse earns teaching while attending school full-time.

Include the SSI disability benefits a resident receives for a disabled son.

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Include the interest generated from a 12-year old daughter's savings account.

Include the income a 21-year old foster adult earns working at a restaurant.

E. Include the following sources when calculating a household's annual income.

1. **Earned Income:** The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses and other compensation for personal services.

Third Party Verification: Send to employer or employment agency.

Review of Documents: Make copies of pay stubs or W-2s.

2. **Other Income:** Annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of income.

Third Party Verification: Send to financial institutions, insurance companies, and pension benefit administrators.

Review of Documents: Make copies of earnings statements, bank records or award letters.

3. **Payments In Lieu of Earnings:** Unemployment, Social Security, SSI disability compensation, worker's compensation and severance pay.

See Paragraph 7-4 for how to document Social Security income.

Third Party Verification: Send to agency disbursing the benefits.

Review of Documents: Make copies of benefit award letters or pay stubs.

4. **Periodic Support Payments:** Alimony and child support payments, regular contributions received from organizations or from persons outside the household.

Third Party Verification: Send to organizations providing payments.

Review of Documents: Make copies of divorce decrees, child support

Self-Affidavit: Statement from a parent not receiving child support stating that payments are not being made and that all reasonable actions have been taken to collect payment or a person receiving alimony or child support not ordered by a court of law if the estranged spouse/partner will not verify the support payments.

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5. **Armed Forces Pay:** All regular pay, special pay and allowances received by a member of the armed forces.

Third Party Verification: Send to area office of the applicable branch of the armed forces. Review of Documents: Make copies of pay stubs or bank records.

F. Include the income generated by an asset owned by a household member. You will learn how to calculate the income from assets in Paragraph 6-5 below.

G. Include the welfare assistance a household member receives under Temporary Assistance for Needy Families (TANF). TANF, or Safety Net (SN) for single adults or families that have reached the end of the five-year period for TANF, is often referred to as public assistance (PA). Include:

1. The amount a household receives for basic needs other than shelter costs; plus,

2. The maximum amount a household may receive for shelter, even if they currently receive less than the maximum allowed because they are paying less for rent.

See Paragraph 7-4 for how to document PA.

H. For self-employed persons, include as income the net amount they generate from their business.

1. Net income equals the gross revenue generated by the business minus the business expenses except expenses for business expansion or depreciation.

2. In Exhibit 7-A, you will find *Best Practices for Documenting Income for the Self-Employed.*

I. All forms of student financial assistance, no matter how it is used, are excluded from annual income for a LIHTC resident who is NOT receiving Section 8 rental assistance. Financial assistance includes grants, scholarships, educational entitlements, work study programs and financial aid packages. It does not matter whether the assistance is paid to the student or directly to the educational institution.

For LIHTC residents who receive Section 8 assistance, include all financial aid received, in excess of tuition, in the annual income except if the tenant -

1. Is over 23 years old and has a dependent child; or

2. Lives in or is applying for the LIHTC unit with their parent or guardian; or

3. Is disabled and was receiving Section 8 assistance on November 30, 2005.

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Only for a LIHTC resident receiving Section 8 and not meeting any of the exceptions:

Third Party Verification: Send to college or scholarship program.

Review of Documents: Make copies of award letters

Remember: If a LIHTC resident does not receive Section 8 assistance, then none of the financial assistance received is included as income.

J. Include the income of a temporarily absent person if the resident elects to include them in their household. Examples of a temporarily absent person include someone in a medical facility or working away from home on a temporary basis.

K. Include the income of a person permanently confined to a medical facility if the resident elects to include them in their household. Examples include a frail spouse confined to a nursing home or a disabled child confined to an institution.

L. For a person on active military duty,

1. Exclude an adult child on active military duty (and their income) from the household and your calculations.

2. Include the head of household, co-head of household or spouse in the household and your calculations.

3. Exclude the special pay a person receives for being exposed to hostile fire.

M. Include the full amount of court-ordered alimony or child support unless the applicant certifies they are not receiving it, and they have taken reasonable legal steps to collect the amount due.

1. Reasonable legal steps including filing with appropriate courts or agencies that are responsible for enforcing payment.

2. Include the alimony or child support a person receives that is not court ordered. Ask for written verification from the individual providing alimony and/or child support (or, if that person refuses to verify, ask the applicant to sign an affidavit declaring the amount received).

3. Ask a person with children who claims not to receive child support, nor to have been awarded any by a court of law, to sign an affidavit to that effect.

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N. For a complete list of all items to exclude from income see Exhibit 5-1 in the HUD Handbook 4350.3 Rev. 1, Change 4. This is a long list of items and staff completing income certifications should be familiar with the list and keep the current list on-hand for reference.

6-5. *How to Calculate Income from Assets*

A person can own assets and still qualify for the tax credit program. However, you need to calculate the value of a household's assets to implement the ***$5,000 Rule***. You will learn about this rule later in this chapter.

A. The cash value of an asset is the amount of cash the household would receive *if* they liquidated or sold the asset for cash.

1. To calculate the cash value of an asset, subtract from the asset's market value the costs the household would pay if they elected to liquidate the asset.

Cash Value of an Asset Calculation
Resident has $4,000 in a certificate of deposit that has a 5% premature withdrawal fee. The cash value of the CD is $3,800 ($4,000 – 5%).
Applicant has stock worth $6,000. They would pay a broker 4% of the market value if they sold the stock. The cash value of the stock is $5,760 ($6,000 – 4%).

2. To calculate the cash value of a piece of real estate, subtract from its market value the principal balance of any mortgage(s) secured by the property, and the estimated closing costs the household would pay if they sold it.

a. Use the market value on the most recent property tax bill as the asset's market value.

b. Verify the principal balance due on a mortgage by making a copy of the current mortgage statement or coupon book that documents the current balance.

c. Calculate the other closing costs the household would pay as 10% of its market value.

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Cash Value of Real Estate
Resident owns a house with a market value of $300,000 They owe $200,000 on its mortgage. The cash value of the house is $70,000 ($300,000 - $200,000 - $30,000).

B. Include the following items as assets:

1. Cash held at home, a safety deposit box, or any other place accessible to a household member;

Third Party Verification: N/A Review of Documents: N/A Self-Affidavit: Statement from resident on amount of cash held.

2. Current balance in a savings account;

Third Party Verification: Send request for information to the bank. Review of Documents: Make a copy of recent bank statement.

3. Average 6-month balance for a checking account;

Third Party Verification: Send request to the bank. Review of Documents: Make copies of 6 most recent statements.

4. Cash value of a revocable trust;

Third Party Verification: Send request to trustee. Review of Documents: Make copies of trust documents.

5. Equity in real property and other capital investment;

Third Party Verification: Send request to financial institution. Review of Documents: Make a copy of the most recent real estate tax bill and the mortgage documents.

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6. Cash value of a certificate of deposit;

Third Party Verification: Sent request to bank. Review of Documents: Make copy of CD agreement.

7. Cash value of a money market fund;

Third Party Verification: Send request to the bank. Review of Documents: Make copy of fund agreement.

8. Cash value of stocks, bonds and Treasury Bills;

Third Party Verification: Send request to institution. Review of Documents: Make copies of statements.

9. Cash value of personal retirement accounts including IRA, Keogh Plans;

Third Party Verification: Send request to financial institution. Review of Documents: Make copies of recent statements.

10. Cash value of company sponsored retirement funds including pension funds, 401(k) and 403(b) plans;

Third Party Verification: Send request to employer or fund. Review of Documents: Make copies of recent statements.

11. Surrender value of whole life or universal insurance policies;

Third Party Verification: Send request to insurance company. Review of Documents: Make copies of insurance documents.

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12. Personal property held as an investment;

Third Party Verification: Send request to appraiser of the asset.
Review of Documents: Make copies of appraisals of personal investments.
Self-Affidavit: Statement from resident of estimated value.

13. Inheritances, lottery winnings, capital gains, insurance settlements, and other lump sum amounts if the person puts the lump sum into an asset;

Third Party Verification: Send request to insurance company.
Review of Documents: Make copies of award letters.

14. Assets disposed of for less than market value during the two (2) years preceding the income certification;

Third Party Verification: Send request to party receiving the asset.
Review of Documents: Make copies of statements and agreement.

15. Current principal balance due on a mortgage held by a household member; and

Third Party Verification: Send request to purchaser.
Review of Documents: Make copies of mortgage agreement.

16. The portion of a jointly-owned asset owned by a household member.

Third Party Verification: Send request to financial institution.
Review of Documents: Make copies of recent statements.

C. Do not include the following items as assets:

1. Personal property such as family jewelry, automobiles and furniture;

2. Interest in Indian trust lands;

3. Assets that are part of an active business or farming operation, including real estate held as part of a business at which a household member makes an active career;

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4. Assets legally owned by a household member that are not accessible to them, including assets owned but abandoned by an abused spouse;

5. An asset for which a household member is a signatory but not an owner;

6. Equity in a cooperative unit in which the family lives; and

7. Term life insurance policies.

D. Calculate the income each asset will generate for the household in the 12 months following the effective date of the income certification. See Exhibit 6-A for detailed guidance on how to calculate income from assets. In addition, below is a summary of various calculations to be included. For example, calculate the following:

1. The interest from a savings or checking account.

2. The interest from a certificate of deposit or money market fund.

Interest Income Calculations
$2,000 savings account carries 3.5% interest rate. $2,000 x 3.5% = $70 is the actual income from the account
$770 non-interest-bearing checking account Actual income from the account is $0
Certificate of deposit with $6,500 carries 4.5% interest rate $6,500 x 4.5% = $292.50 is the actual income from the CD

3. Payments received from a trust.

Payments from a Trust
A disabled person receives $400 per month from a special needs trust. Include $4,800 ($400 x 12 months) as annual income. The trust is not counted as an asset if the disabled person has no access to the principal in the fund.

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4. Earnings from renting real estate or land.

Income from Real Estate
Resident owns a house and receives $1,000 per month in rent. They pay $800 per month in operating expenses for the house
Include $2,400 (($1,000 - $800) x 12 months) as income from the house.

5. Interest generated by personal retirement accounts or company sponsored pension funds.

6. Dividends from whole life or universal insurance funds.

7. Dividends from stock, bonds or T-bills

Income from Assets Calculations
Applicant has a universal insurance policy with annual dividends of $650. Include $650 as income from the insurance fund.
Resident has $100 shares of stock. Each share generated a dividend of $1.50 on the most recent quarterly statement. Include $600 (100 x $1.50 x 4) as income from the stock.

8. Interest payments received on a mortgage held by a household member.

Interest from a Mortgage
Resident receives mortgage payments from the person who bought their house of $1,000 per month. $600 of the $1,000 is interest on the mortgage. Include $7,200 ($600 x 12 months) as income from the mortgage.

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9. Regular, periodic payments received from an annuity.

Annuities

A resident receives $100 per month from her annuity. Include $1,200 ($100 x 12 months) as regular annual income. Do not count an annuity as an asset once a resident begins to receive regular periodic payments from the annuity.

Another resident has $10,000 in an annuity. They would pay a 5% penalty to liquidate the annuity. The insurance company is committed to paying interest on the annuity at 4% per year. The current cash value of the annuity is $9,500 ($10,000 – 5%.) The income from annuity is $400 ($10,000 x 4%)

E. You must follow the ***$5,000 Rule*** to know the income from assets you include in a household's annual income.

1. When the total cash value of a household's assets is $5,000 or less, include the actual income the assets will generate in the year following the effective date of the income certification.

2. When the total cash value of a household's assets is more than $5,000, include *the greater of:*

   a. The total actual income the assets will generate in the 12-month period; or

   b. The imputed income from their assets calculated by multiplying the total cash value of their assets by the current passbook savings rate as established by HUD. At the time of publication of this manual, the current passbook savings rate is .06%. It is your responsibility to use the correct HUD passbook rate as it changes over time.

Total Income from Assets Calculations

Total cash value of assets = $4,500
Actual income from assets = $120
Include $120 as income from assets

Total cash value of assets = $5,500
Actual income from assets = $120
$5,500 x .06% = $3.30
Include $120 as income from assets

Total cash value of assets = $6,800

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Actual income from assets = $2
$6,800 x .06% = $4.08
Include $4.08 as income from assets

6-6. Verifying Income, Assets and other Household Characteristics

Read Chapter 7 to learn how to verify income, assets and other household characteristics to support a tenant income certification.

6-7. Do This!

A. Use the electronic link in the Appendix of this manual to download Chapter 5 of the HUD Handbook 4350.3, Rev. 1, Change 4.

B. Watch for changes in the rules for how to calculate annual income. In addition to watching for updates from HUD, the IRS and HPD, there are various industry and training groups that have listservs to keep you updated on changes. You are responsible for remaining current as the rules change.

C. Include a source of income in your calculations unless HUD tells you to exclude it.

D. When the total cash value of a household's assets is more than $5,000, include as income the greater of the imputed income or actual income generated by a resident's assets.

E. Exclude all forms of student financial assistance for an LIHTC resident who is NOT receiving Section 8 rental assistance.

F. When calculating annual income, either calculate the numbers to the penny or round up to the nearest whole dollar. For example, if a household's annual income is $23,495.42, put either $23,495.42 or $23,496 on their tenant income certification.

6-8. Don't Do This!

A. Allow a household to occupy your tax credit unit until you know their gross annual income is not more than the applicable income limit.

B. Include the value of a resident's food stamps in their annual income.

C. Include more than $480 a full-time student earns unless they are the head of household, co-head of household or spouse.

D. Include the income earned by a live-in aide.

E. Include the cash value of a resident's assets in their annual income.

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Exhibit 6- A
Guidance on Determining Income from Assets

This document provides summary guidance on how to determine income from various assets to supplement the guidance provided in Chapter 6 of this manual. For specific instruction and guidance on determining income from assets, refer to Chapter 5 of the HUD 4350.3, Rev 1, Change 4 handbook.

1. Checking Account

Count as Asset	Count as Income
Use the 6-month average balance	Any actual interest earned

2. Savings & Certificates of Deposit (CD's) Accounts

Count as Asset	Count as Income
Use the current balance	Any actual interest earned

3. Savings Bonds

Count as Asset	Count as Income
Value of the bonds	Value of the bonds x the interest rate for the individual bonds

Note: Obtain & keep in the tenant file a complete list of the tenants' individual savings bonds for verification to accurately determine income from assets.

4. Insurance Policies

Count as Asset	Count as Income
The cash value of life insurance policies available to the individual before death (known as the "surrender value" of Whole or Universal Life policies. Do not include term life insurance policies (there is no cash value.)	The full amount of periodic payments received from insurance policies Exception: Long-term care (or nursing home insurance) insurance payments in excess of $180/day must be counted toward the gross annual income

5. Retirement Accounts

Count as Asset	Count as Income
Balances held in retirement accounts are counted as assets if the money is accessible to the family. For individuals still employed, accessible amounts are counted even if withdrawal would result in a penalty. However, amounts that would be accessible only if the person retired are not counted. (Do not count withdrawals as income.) IRA, Keogh, and similar retirement savings accounts are counted as assets, even though withdrawal would result in a penalty. Include contributions to company retirement/pension funds: 1. While an individual is employed, count only the amounts the family can withdraw without retiring or terminating employment. 2. After retiring or terminating employment, count as an asset any amount the employee elects to receive as a lump sum.	Any retirement benefits received through periodic payments. Count the higher of the Required Minimum Distribution (RMD) or the periodic payments as other income. Do <u>not</u> count the remaining balance as an asset.

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Exhibit 6- A
Guidance on Determining Income from Assets

6. Annuities

Count as Asset	Count as Income
All benefits received as periodic payments. Do not count the remaining balance as an asset. (Usually when the holder has begun receiving annuity payments, the holder can no longer convert it to a lump sum of cash.)	When an applicant or tenant has the option of withdrawing the balance in an annuity, the annuity will be treated like any other asset. The cash value of an annuity must be calculated regardless of the total net assets. Deduct any penalties, surrender fees and tax penalties to determine the "Cash Value" of the asset for imputing purposes. Do not deduct penalties from the asset amount when calculating "Actual Anticipated Asset Income." A lump sum receipt is counted as an asset.

7. Trust Accounts if the Household Member is the Grantor

7A. Revocable Trusts

Count as Asset	Count as Income
Cash value of the trust (the amount the family member would receive if they withdrew all that could be withdrawn)	Actual income received

Note: In a revocable trust, the grantor of the trust has the right to withdraw the funds and could amend the terms or revoke the trust account.

7B. Nonrevocable (Irrevocable) Trusts

Note: In a nonrevocable trust, the grantor of the trust cannot withdraw the funds and gives up any right to amend the terms or revoke the trust account. If no household member has access to either the principal or income of the trust, the trust is not included. If only the interest from the trust is available to a household member, the interest in included in annual income, but the balance in the trust account is not included as an asset. ***If a tenant sets up a nonrevocable trust for the benefit of another person while residing in assisted housing, the trust is considered an asset disposed of for less than fair market value.***

8. Trust Accounts if the Household Member is the Beneficiary

Count as Asset	Count as Income
If the beneficiary receives the full value of a trust at one time, the funds would be considered a lump sum receipt and are treated as an asset.	If the beneficiary receives interest and/or principle from the trust on a periodic basis, the payment are treated as annual income.

9. Income from Real Estate

Count as Asset	Count as Income
Market Value (True & Full Value on Tax Statement) less Amount Owed (Loan Balance), less Selling Costs (10%) = Cash Value	Rental Income less Expenses (taxes, water, etc. paid by the owner)

General Reminders:

1. Deduct penalties from the asset amount to determine the "Cash Value" of the asset for imputing purposes.
2. Do not deduct penalties from the asset amount when calculating the "Actual Asset Income."
3. Funeral or Burial Accounts are included as assets if the tenant has the ability to withdraw the principal.
4. Savings Bond Calculator can be found at http://www.treasurydirect.gov/BC/SBCPrice.

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Chapter Seven

Completing the Initial Certification

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Chapter Seven: Completing the Initial Certification
-or-
How To Verify a Household's Income, What Forms To Use and What Are Your Leasing Requirements

7-1. Topics Covered in this Chapter

In this chapter, you will learn:

A. How to verify a person's income and other relevant characteristics;

B. How to document a resident's Social Security or PA benefits;

C. How to complete a tenant income certification;

D. The forms you must use to complete a tenant income certification; and

E. The leasing requirements for your tax credit units.

7-2. Key Terms to Learn from Reading this Chapter

- Review of documents
- Tenant certification
- Tenant income certification (TIC)
- Third party verification

7-3. How to Verify Income and Other Characteristics

A. You must verify income and other household characteristics using information from a third party. Document in the file if:

1. A third party will not respond to your requests for information; or

2. There is no third party available to document the information you need to complete the certification.

B. Owners of HUD-assisted properties now use the Enterprise Income Verification (EIV) system to verify income for their residents. The EIV information is used to support the resident's HUD 50059 form. However, owners are prohibited from using data obtained through EIV when verifying a resident's annual income for the LIHTC program. Instead, an owner of a HUD-assisted LIHTC project must complete a third-party verification to document

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a resident’s income, even when they have EIV information documenting a resident’s income.

C. Keep copies of information requests you send to third parties.

D. Do not get information from a third party by sending the request through an applicant or resident. You may obtain information from a third party:

1. Through the U.S. mail;

2. By fax;

3. By email; or

4. Through the Internet.

E. For information you receive through email or the Internet, maintain documentation to confirm it came from a valid source.

F. If the third party does not respond to a written request to verify information, HUD Handbook 4350.3, Rev. 1, Change 4 allows for a manager to attempt to verify the information over the phone.

1. Some third parties will not respond to verbal requests because they are fearful of legal ramifications.

2. If the third party answers the relevant questions over the phone, the manager should take down the information on the copy of the verification form they mailed, making note of the date and the name and title of the person providing the information.

F. You are not required to request information from a third party if they charge for the service.

G. When you are unable to obtain information from a third party, make a copy and review documentation provided by the household.

1. Appendix 3 of the HUD Handbook 4350.3, Rev. 1, Change 4 provides instruction on how to document income and other household characteristics. You can find an Internet link to Appendix 3 in the Appendix of this manual.

2. Examples of acceptable documentation include:

a. The most recent 4 to 6 current, consecutive pay stubs, regardless of the length of the pay period;

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Note: When using pay stubs to calculate annual income, you may either average the gross earnings on the pay stubs or use the pay stub with the highest gross earnings to project annual income.

b. Using the year-to-date earnings on the most recent pay stub to project an annual amount;

c. 6 most recent checking account statements;

d. Most recent savings account statement;

e. Most recent federal tax return for a self-employed person (see Exhibit 7-A for "*Best Practices for Documenting Income for the Self-Employed")*;

f. Copy of Social Security or PA award letter;

g. IRS Schedule E to document income from rental property;

h. Bank agreement for a certificate of deposit; and

i. Quarterly earnings statements for investments.

H. You may accept a notarized affidavit or sworn affidavit from a household only when you are unable to get information from a third party and there is no acceptable documentation the household can provide.

1. A notary that is a member of the management staff may notarize an affidavit. Do not charge for the notary service.

2. Examples of when a household member may sign a self-affidavit include when:

   a. They have no income;

   b. They receive child support or alimony not ordered by a court of law;

   c. They are not entitled to or expecting to receive child support; and

   d. They document they have not disposed of an asset for less than market value during the previous 24 months.

3. Households with assets totaling no more than $5,000 may self-certify the income from their assets.

   a. You do not need to request information through a third party.

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b. You do not need to make copies of their bank statements or other asset documentation.

c. Require they sign a form certifying that their assets total less than $5,000 (see Paragraph 7-5).

7-4 Documenting Social Security and Public Assistance

You do not need to request information from the Social Security Administration (SSA) or the New York Department of Human Services.

A. For Social Security and SSI disability benefits

1. Make a copy of the benefit award letter from the previous December, even if it is more than 120 days old.

2. In October, the SSA announces the cost of living allowance (COLA) by which they will increase benefits on January 1. Apply the COLA to the benefit amount on the award letter from the previous December when completing an income certification before the beneficiary receives their new award letter.

Sample Social Security Calculations

Gross monthly benefit on award letter = $800
SSA announces a COLA of 3%
$800 x 1.03% = $824

Gross monthly benefit as of January 1 = $824

B. For PA, make a copy of the most recent benefit award letter. In Exhibit 7-B you will find a sample PA benefit award statement. Use the figure for Total Needs minus the Recoupment Amount to calculate annual income. On this statement, Total Needs is $571.00 and the Recoupment is $39.45. $571.00 - $39.45 = $531.55 x 24 pay periods = $12,757.20.

7-5. Completing a Tenant Income Certification (TIC)

Follow these rules when completing a tenant income certification.

A. The effective date of the TIC for a new resident is the day they occupy their unit. So this will be the same as the date listed as the move-in date on the TIC.

B. All adult household members must sign the certification on or before its effective date.

C. For a resident in place at the time of acquisition, the effective date for their TIC:

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1. Is the date of acquisition if you complete it within 120 days using the resident's income and income limit as of acquisition; or

2. Is the date the last adult household member signs the TIC if you complete it more than 120 days after acquisition.

Note: There can be important implications as to when the TIC is completed. Check with your syndicator when completing a TIC for a resident in place at the time of acquisition.

D. On its effective date, information supporting a TIC may not be more than 120 days old. Documentation you get to support a TIC includes:

1. Information you receive through a third party;

2. Pay stubs;

3. Bank statements;

4. Asset documentation; and/or

5. A self-affidavit.

E. You do not need to consider the date on the following documents because it is irrelevant to completing the certification: Social security cards; birth certificates; and state identification cards.

F. You should use the Tenant Income Certification (TIC) form provided on HPD's "Tax Credit and HOME Compliance" page.

The below-listed forms are also available as a courtesy on the Tax Credit and HOME Compliance webpage under "Other Income Verification Forms." HPD recommends the use of these forms, but alternative forms may be used if they collect the same information.

- Employment Verification;
- Unemployment Compensation Verification;
- Section 8 Verification;
- Alimony and Child Support Verification;
- Student Status & Financial Aid Verification;
- Zero Income Certification;
- Bank Verification;
- 401K Verification;
- IRA, Keogh, SEP, INDK Verification;
- Stocks and Bonds Verification;
- Investment, Pension or Annuity Verification;
- Under $5,000 in Assets Verification; and

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- Application for Rental Housing

7-6. Leasing Requirements

There is no model lease for the tax credit program.

A. Your initial lease with a tax credit resident must last at least 6 months. Lease renewals must be signed annually and included in the resident's file.

B. For residents in place when the tax credits are placed in service:

  1. If they occupied their unit under a lease lasting at least 6 months, you are not required to sign another 6-month lease.

  2. If they occupied their unit under a lease that did not last 6 months, sign a new lease lasting at least 6 months.

  3. Comply with your Rent Stabilization leasing requirements.

C. All household members must be listed on the lease because the household size is important for determining eligibility in the tax credit program.

D. The lease must list the utilities that will be the responsibility of the owner, and those that are the responsibility of the resident.

E. The lease must include a strong prohibition against the resident subletting the unit to persons not approved by management, as tax credit regulations require that only individuals approved for the program occupy a subsidized unit.

F. The lease must state that if in the future all family members are full-time students and the family does not qualify for an exception, the household will be ineligible for the program and will have to vacate the tax credit unit.

G. Sometimes a resident begins to receive rental subsidy months or even years after moving into a tax credit unit. To comply with the requirements of the subsidy program, you may need to sign a lease that begins the month the resident starts to receive rental assistance. Even if the resident has lived in your tax credit unit for less than 6 months, you may void the old lease and sign a new lease with the resident, if necessary, to comply with the rental subsidy program and still be in compliance with the tax credit program.

H. Note that for owners of blended Section 8/LIHTC projects, HUD issued a memo in early 2015 stating that HUD-assisted residents may not be forced from their units just because they do not qualify for the LIHTC program. They have announced these same protections

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for residents of public housing projects converting to project-based Section 8 through the Rental Assistance Demonstration (RAD) program.

I. Owners should confer with legal counsel on their lease requirements and regarding any legal ramifications associated with modifying or voiding a lease.

7-7 Do This!

A. Require all household members to sign and date the relevant verification forms before you process their application and allow them to occupy your unit.

B. Use the HPD required TIC and recommended verification forms for all tax credit properties monitored by HPD.

7-8 Don't Do This!

A. Let a household move in until all adult household members have signed and dated the TIC.

B. Assume someone is eligible for your tax credit unit without verifying their income and student status.

C. Sign a lease that does not meet your tax credit requirements, any Rent Stabilization or Rent Control requirements or any other regulatory requirements that apply to your property.

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Exhibit 7- A
Best Practices for Documenting Income for Self-Employed Persons

An owner may use any of the following practices to document the income of a self-employed person.

- Accept a copy of the person's most recent federal income tax return.
    - Do not accept a tax return for a year earlier than the latest year for which tax returns were required by the federal government.
    - Make a copy of their IRS Form 1040 plus their Schedule C
    - Their income earned through self-employment is on Line 12 on their Form 1040, Line 31 on their Schedule C or on Line 3 on their Schedule C-EZ.
    - If their tax return shows they generated a loss from their business, list their income from self-employment as $0.
- Accept a copy of the person's most recent state income tax return.
    - Do not accept a tax return for a year earlier than the latest year for which tax returns were required by the state government.
    - Use information from a state tax return comparable to the information used from a federal tax return.
- Allow the person to annualize their income for the current year based on the income they have generated year-to-date.
    - Ask a self-employed person to complete an IRS Schedule C based on their current year activities.
    - You may ask a self-employed person to provide documentation of the information they provided on the Schedule C.
    - Supporting documentation for a Schedule C include contracts, leases, bank statements, receipts, credit card statements and certifications provided by clients of the self-employed person.
- Ask the person to sign IRS Form 8821, authorizing the receipt and inspection of the tenant's income tax forms, allowing the owner to verify their reported income with the IRS.

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Exhibit 7- B
Sample Public Assistance Benefit Award Statement

SEMI-MONTHLY PUBLIC ASSISTANCE BUDGET CALCULATION — REPORT DATE: //

LOCAL OFFICE: 070 WORKER: 00010 CASE NAME: — PAGE: 1

SUFFIX: 01 NUMBER IN PA HOUSEHOLD: 3 NUMBER IN PA SUFFIX: 3

NEEDS STR		185% TEST & POVERTY LEVEL TEST AMOUNT
PRE ADDED ALLOWANCE		168.00
SHELTER		200.00
ENERGY		15.00
ENERGY SUPPLEMENT		11.50
WATER		.00
FUEL		.00
PREGNANCY ALLOWANCE		.00
HOME DELIVERED MEALS		.00
RESTAURANT ALLOWANCE		.00
OTHER NEEDS		.00
TOTAL NEEDS FOR 185% TEST		394.50
185% X TOTAL NEEDS	729.83	
TOTAL EARNED + UNEARNED FOR 185% TEST	.00	
POVERTY LEVEL TEST	865.84	
TOTAL INCOME FOR POVERTY LEVEL TEST	.00	
NEEDS REDUCTION DUE TO IVD SANCTION		.00
TOTAL NEEDS FOR NET INCOME TEST		394.50
NEEDS REDUCTION DUE TO PRORATA SANCTION		.00
TOTAL NEEDS FOR BUDGET DEFICIT CALCULATION		571.00
OTHER ALLOWANCES		
REFRIGERATOR RENTAL ALLOWANCE		.00

EARNED INCOME

	ACTUAL	ALLOWED
D. GROSS	.00	
STANDARD DEDUCTION	.00	.00
52% DEDUCTION	.00	.00
CHILD CARE	.00	.00
$15 EXEMPTION	.00	.00
1/3 EXEMPTION	.00	.0[illegible]
OTHER DEDUCTIONS (INCLUDES PRORATA REDUCTION AMT)	.00	.00
E. TOTAL DEDUCTIONS		.00
F. NET EARNED INCOME		.00

UNEARNED INCOME

SOURCE	AMOUNT
	.00
	.00
	.00
G. TOTAL UNEARNED INCOME	.00
UNEARNED INCOME DEDUCTION (INCLUDES PRORATA REDUCTION AMT)	.0[illegible]
H. NET UNEARNED INCOME	.00
I. TOTAL INCOME (F + H)	.00

PA GRANT CALCULATION

C. TOTAL NEEDS	571.00
I. TOTAL INCOME	.00
J. BUDGET DEFICIT	571.00
: RECOUPMENT AMOUNT	39.45
: SEMI-MONTHLY PA GRANT	531.55

STE REPORTE SERA TAMBIEN DISPONIBLE EN ESPANOL
JDGET NUMBER: (BASIS)

NOTE: AMOUNTS SHOWN IN ITEMS (A) AND (J) ABOVE HAVE BEEN ROUNDED DOWN.

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Part Four

How Much May I Charge My Tax Credit Residents?

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Chapter Eight

Maximum Allowable Rent

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Chapter Eight: Maximum Allowable Rent
-or-
How Much Rent You May Charge a Tax Credit Resident

8-1. Topics Covered in this Chapter

In this chapter, you will learn:

A. How to use the income limit in your minimum set aside to calculate the maximum rent you may charge a tax credit resident;

B. How to calculate the maximum rent you may charge for a tax credit unit when your owner commits to using more than one income limit at your property;

C. About the additional rent limitations applicable to a tax credit property when the owner agrees to deep rent skew;

D. How to determine the correct utility allowance for a tax credit unit;

E. When you may charge rent from an employee who lives at your tax credit property;

F. When a unit must comply with the requirements for other programs, you may not be able to charge the full tax credit rent.

G. If an owner agrees to use a tax credit unit to house homeless persons or other targeted populations, they may commit to charging less than the tax credit rent. Always check your regulatory agreement(s) with HPD and other funding sources for your property.

H. That you may be able to collect more than the tax credit rent when you receive rental subsidy on behalf of a resident.

8-2. Key Terms to Learn from Reading this Chapter

- Deep rent skew
- Gross rent
- Housing Assistance Payment (HAP)
- Income limit
- Maximum allowable rent
- Minimum set aside
- PRAC
- RAP
- Rent Supplement
- Super unit

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- Tenant rent
- Utility allowance

8-3. How to Calculate Maximum Allowable Rent

In the tax credit program, the maximum allowable rent is based on the unit size and the income limit the owner commits to in the minimum set aside. The owner uses the income limit to calculate the maximum allowable rent, called the gross rent. The owner subtracts a utility allowance from the gross rent to determine the tenant rent, the amount they may charge a resident to live in a tax credit unit.

Sample Unit
Gross Rent = $1,000 Utility Allowance = $100 Tenant Rent = $900

A. When calculating the gross rent, assume a household size of 1 person for a studio/efficiency and 1.5 persons per bedroom for other unit sizes.

B. The gross rent for a tax credit unit is 30% of the income limit for the assumed household size.

Unit Size	**Gross Rent is 30% of the Income Limit for**
Efficiency/Studio	1 Person
1 Bedroom	1.5 Persons (Average the 1 & 2 person income limits)
2 Bedroom	3 Persons
3 Bedroom	4.5 Persons (Average the 4 & 5 person income limits)
4 Bedroom	6 Persons

C. As a courtesy, HPD posts the rents for the tax credit program on its website. However, it is the owner's responsibility to use the correct income limit and to not charge more than the maximum allowed by the tax credit program.

D. Remember to subtract your utility allowance from the gross rent to determine the tenant rent for your tax credit unit.

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E. An owner is responsible for not charging more rent than allowed by the tax credit program. However, you may be able to collect more than the tax credit rent when you receive rental subsidy on behalf of a resident.

Sample Rent Calculations

1-person Income Limit = $44,820
2-person Income Limit = $51,240

Maximum Rent for a Studio Apartment

($44,820 x 30%)/12 months
$13,446/12 months
*$1,120.5 = monthly gross rent

Maximum Rent for a 1-Bedroom Apartment

($44,820 + $51,240)/2
$48,030/2
$48,030 = Income Limit for 1.5 Persons

($48,030 x 30%)/12 months
$14,409 /12 months
*$1200.75 = monthly gross rent

*Never round up to the nearest whole dollar when dividing the maximum annual rent to determine the monthly gross rent.

E. When a unit must comply with the requirements for other programs, you may not be able to charge the full tax credit rent.

1. If a tax credit unit is rent stabilized, charge the lesser of the rent allowed by the tax credit program or Rent Stabilization.

2. If a tax credit unit is rent controlled, charge the lesser of the rent allowed by the tax credit program or Rent Control.

3. If a tax credit unit is also a HOME unit, charge the lesser of the rent allowed by the tax credit program or the HOME program. See Chapter Twelve for more information about the HOME program.

4. If an owner agrees to use a tax credit unit to house homeless persons or other targeted populations, they may commit to charging less than the tax credit rent.

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Always check your regulatory agreement(s) with HPD and other funding sources for your property.

Sample Rents

If the tax credit rent is $1,000 and the HOME rent is $800,
charge no more than $800.

If the tax credit rent is $1,000 and rent stabilized rent is $1,200,
charge no more than $1,000.

If the tax credit rent is $1,000, and the unit is part of a set aside for formerly homeless persons not paying more than 30% of their income for rent, charge the lesser of $1,000 or 30% of the resident's income.

8-4. Calculating Maximum Allowable Rent in Properties with Multiple Set Asides

The maximum allowable rent for each tax credit unit is based on its income limit. If your owner commits to more than one set aside, use the income limit that applies to each unit to calculate its maximum rent.

A. If a resident must qualify at 60% of AMI, calculate the maximum rent using 60% of AMI for the assumed household size.

B. If a resident must qualify at 50% of AMI, calculate the maximum rent using 50% of AMI for the assumed household size.

C. If a resident must qualify at 40% of AMI, calculate the maximum rent using 40% of AMI for the assumed household size.

8-5. Rent Limitations for a Property if the Owner Agrees to Deep Rent Skew

When an owner agrees to deep rent skew, they commit to renting 15% of their tax credit units to households who qualify with an annual income of no more than 40% of AMI.

A. Since a household must qualify at 40% of the AMI to live in a deep rent skew unit, calculate its maximum rent using 40% of AMI for its assumed household size.

B. For the remaining tax credit units, calculate the maximum rent using the applicable income limit. For example -

1. If a resident must qualify at 60% of AMI, calculate the maximum rent using 60% of AMI for the assumed household size.

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2. If a resident must qualify at 50% of AMI, calculate the maximum rent using 50% of AMI for the assumed household size.

C. Many deep rent skew properties include both tax credit and market rent units. The average rent charged for the market rent units must be at least double the average rent charged for the tax credit units of the same unit size (including both deep rent skewed units and all other tax credit units).

Sample Property 100 Two-Bedroom Units 20% @ 50% Minimum Set Aside Owner Commits to Deep Rent Skew 20 Tax Credit Units and 80 Market Units Of the 20 Tax Credit Units, 3 must be Deep Rent Skew 2-Bedroom Tax Credit Rent at 50% AMI (17 units) = $1,200 2-Bedroom Tax Credit Rent at 40% AMI (3 units) = $960 (Average maximum rent for all Tax Credit Units = $1,164) Owner must charge at least $2,328 ($1,164 x 2) for the market units to collect the maximum Tax Credit rents.

8-6. How to determine the Correct Utility Allowance for your Tax Credit Unit

The applicable utility allowance for a unit depends on the other housing programs providing assistance to the resident or the property.

A. For a property that is regulated by HUD, use the HUD approved utility allowance to calculate the tax credit tenant rent. The types of HUD-regulated properties include:

1. Section 236;

2. Section 202;

3. Section 221(d)(3) BMIR;

4. Rent Supplement;

5. Section 202 PRAC;

6. Section 811 PRAC; and

7. Project-based Section 8.

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B. For a public housing unit, use the utility allowance approved by the PHA administering the occupancy subsidy to calculate the tax credit tenant rent.

C. For a resident receiving rental subsidy through the HCV or Work Advantage programs, use the utility allowance approved by the housing authority (usually HPD or NYCHA) administering the subsidy.

D. For a property that is not regulated by HUD, calculate the utility allowance for your tax credit units as HPD would if your residents were receiving rental subsidy through the HCV program.

8-7. Charging an Employee Rent to live in a Tax Credit Unit

An owner may allow an employee to live in a unit at a tax credit property under the conditions discussed below. Whether or not the employee must qualify for the tax credit program and how much rent they may pay depends on the unit in which they live.

A. For any unit, comply with all fair housing requirements when you allow an employee to live at your property. For example, do not let an employee jump ahead of other applicants on your waiting list for your tax credit or market units.

B. For a market unit:

1. An employee does not need to qualify for the tax credit program because the owner does not expect the unit to generate a tax credit; and

2. You may charge the employee any rent allowed by law.

C. For a tax credit unit:

1. Generally, a tax credit unit MAY NOT be leased to an employee, as tax credit units are required to be made available to the general public. A limited exception applies where it can be shown that an employee was a tenant in a tax credit unit PRIOR to being hired by the property owner or manager and qualified for the tax credit program under the applicable income limit and the full-time student rule; and

2. You may not charge them more than the tax credit rent.

D. For a Super Unit:

1. An employee does not need to qualify for the tax credit program; and

2. You must not charge the employee rent to live in the unit.

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3. Although a Super Unit is not included in a building's applicable fraction, it is usually included in the eligible basis and your owner expects it to generate a tax credit. Your Super Unit will not be included in eligible basis, and will not generate a tax credit, if you charge rent for its use.

8-8. Maximum Revenue when a Resident Receives Rental Subsidy

When a resident receives help paying their rent through a government program, you may collect more revenue for their unit than generally allowed by the tax credit program.

A. When a resident receives a housing assistance payment (HAP) through the HCV or Work Advantage programs, or through the project-based Section 8, RAP, Rent Supplement or PRAC programs, you may collect total revenue exceeding the tax credit rent.

B. The rent you collect on a unit may exceed the maximum tax credit rent as long as you receive at least $1 in rental subsidy on their behalf.

C. You may not charge the resident more than the maximum tax credit rent if you stop receiving rental subsidy for them for any reason.

D. HPD or NYCHA may create a project-based voucher (PBV) by attaching some of their funding for the voucher program to specific units in a specific building. HPD or NYCHA must approve an applicant for the PBV program for these units.

   1. If a PBV unit is also a tax credit unit, you must qualify an applicant for the tax credit program before they may occupy the unit.

   2. HPD or NYCHA approves the rent they will subsidize for a unit through a PBV. They may approve a rent that is more than the tax credit rent for a tax credit unit covered by a PBV.

E. The HOME program generally does not allow an owner to collect more than the HOME rent, even when they receive rental subsidy for a resident. For a HOME/tax credit unit, the maximum rent the owner may collect from the resident and the subsidy program is the HOME rent. A limited exception applies where a HOME unit occupied by a very-low income household receives PBV rental assistance (and the tenant's contribution to rent does not exceed 30% of gross income); where that's the case, the maximum rent is the rent allowable under the PBV program.

   Read Chapter 12 of this *Compliance Manual* for guidance on applying the HOME program at your property.

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8-9. Do This!

A. Remember to subtract the correct utility allowance from the gross rent to calculate the maximum tenant rent for a tax credit unit.

B. Remember that the amount of rent you may charge depends on the income limit you use to qualify a household to live in a unit.

8-10. Don't Do This!

A. Collect revenue exceeding the tax credit rent if the resident does not receive rental subsidy.

B. Assume a household that receives rental subsidy is automatically eligible for your tax credit unit.

C. Forget that you need documentation showing a person on rental subsidy is qualified before you allow them to occupy a unit.

D. Charge rent to an employee who lives in a Super Unit if the unit has been included in the building's eligible basis.

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Chapter Nine

Charges in Addition to Rent

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Chapter Nine: Charges in Addition to Rent

9-1. *Topics Covered in this Chapter*

In this chapter, you will learn when you may charge:

A. A refundable deposit from an applicant or resident of a tax credit unit;

B. A one-time fee from an applicant for a tax credit unit; and

C. Rent for the use of the common areas at your tax credit property.

9-2. *Key Terms to Learn from Reading this Chapter*

- Application fee
- Common areas
- Eligible basis
- One-time fees
- Refundable deposit
- Rent

9-3. *Refundable Deposits*

So long as they are not more than the deposits required from a market resident, an owner may charge a tax credit applicant or resident:

A. A refundable security deposit;

B. A refundable pet deposit; and

C. Other refundable deposits as allowed by the funding sources for the property, NY and NYC law.

9-4. *One-Time Fees*

So long as they are not more than the fees required from a market applicant, an owner may charge an applicant for a tax credit unit:

A. An application fee;

B. A fee to process a credit report; and

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C. Other fees as allowed by the funding sources for the property, NY and NYC law.

9-5. Charging Residents for Using Common Areas

An owner includes in eligible basis those development costs for a building that are eligible to generate a tax credit.

A. You may not charge a fee (rent) for the use of any part of a building's common area that is in its eligible basis including:

1. A parking space;

2. A storage unit; or

3. A community room.

4. If your super is living in a Super Unit, you may not charge them rent. A Super Unit is considered part of a building's common area included in eligible basis.

B. If a resident elects to use a part of a building's common area not included in its eligible basis, you may charge a fee (rent) for using:

1. A parking space;

2. A storage unit; or

3. A community room.

C. If you allow pets at your property, you may charge a tax credit resident pet rent if it is not more than you charge a market resident. Ensure your pet policies comply with NY state and NYC law.

9-6. Do This!

A. Ask your owner for a list of what they included in the eligible basis.

B. Charge an application fee unless the rules for other funding sources at your property forbid it.

C. Charge a refundable cleaning deposit for the use of your community room if it is included in eligible basis.

D. Establish a program to organize the parking in your parking lot, without charging parking rent, if it was included in the eligible basis.

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E. Establish a program to organize the use of your storage units, without charging storage rent, if they were included in the eligible basis.

9-7. Don't Do This!

A. Charge parking rent if your parking lot or parking garage was included in the eligible basis.

B. Charge storage rent if your storage units were included in the eligible basis.

C. Charge the super rent if they are living in a Super Unit.

D. Charge ANYONE rent for the use of your community room if it was included in the eligible basis.

E. Charge any fee, rent or deposit not allowed by NYC or NY state law.

F. Charge any fee, rent or deposit not allowed by another funding source for your property.

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Part Five

How Do I Keep My Property in Compliance throughout a Long Compliance Period?

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Chapter Ten

Ongoing Compliance Requirements

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Chapter Ten: Ongoing Compliance Requirements
-or-
What You Must Do Every Year to Avoid an 8823 Form for Your Property

10-1. Topics Covered in this Chapter

In this chapter, you will learn:

A. You must recertify your tax credit residents every year unless your property is 100% tax credit;

B. How to implement the 140% rule when you recertify your tax credit residents;

C. How to implement the 170% rule when you complete recertifications at a deep rent skew property;

D. How to implement the Available Unit Rule; and

E. How to implement the Available Unit Rule at a deep rent skew property.

10-2. Key Terms

- Annual owner certification
- Annual tenant income certification
- Available unit rule
- Deep rent skew
- Over-income resident
- Recertification waiver
- 140% rule
- 170% rule

10-3. Annual Owner Certification

You are required to report annually that your tax credit project was in compliance with IRC §42 for the preceding 12-month period. The annual owner certification (AOC) must be in the form and substance required by HPD and should be submitted by HPD's designated deadline (currently March 1st). The AOC forms are available on HPD's Tax Credit and HOME Compliance webpage.

AOC submissions must include:

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A. A certified rent roll for each building in the project, reflecting conditions as of December 31st of the compliance year in question. Rent rolls should be submitted via HPD's e-Rent Roll application (https://a806-err.nyc.gov/eRentRoll/RentRoll.html) or by such other method indicated by HPD from time to time. Additional information and instructions on eRent Roll can be found online.

B. A tenant income certification and back-up income documentation for each new tenant who moved into the project during the compliance year in question.

C. The applicable tax credit monitoring fee, as set by HPD from time to time (currently $25 per tax credit unit).

10-4. Annual Tenant Income Certifications at Mixed-Income Projects

You must recertify your tax credit residents every year. Through a recertification, you re-assess a resident's eligibility for the program by comparing their annual income to an income limit and documenting their compliance with the full-time student rule. The same rules and procedures used at the initial certification of income are used at the recertification.

A. You must recertify a tax credit resident every year within 120 days prior to the effective date of their original TIC.

B. The effective date of a resident's initial TIC is the day they occupied their unit.

C. If a resident was in-place when the owner acquired the building, the effective date of their original TIC is,

   1. The date of acquisition, if you complete the TIC within 120 days of acquisition. You must use the resident's income and income limit in effect when your owner acquired the building.

   2. The day the last adult household member signs the TIC if you complete it more than 120 days after acquisition.

Sample Recertification Effective Date

Initial TIC Effective Date of July 15, 2018.

The owner must recertify the resident every year between March 15th and July 15th.

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D. If a resident receives a form of subsidy (such as a housing choice voucher) that requires them to report for an annual recertification, you may match your tax credit recertification schedule to their recertification schedule for the subsidy program as long as no more than 12 months pass between recertifications.

Examples

If a resident receives rental subsidy through the HCV or Work Advantage programs, you may recertify them effective the same date HPD or NYCHA completes their recertification for the voucher program.

If a resident receives project-based Section 8 rental subsidy, you may complete their tax credit recertification effective the same date you complete their Section 8 recertification.

If a resident lives in a Section 236 property, you may complete their tax credit recertification effective the same date you complete their Section 236 recertification.

10-5 Annual Recertifications at 100% LIHTC Properties

Under the Housing and Economic Recovery Act (HERA) of 2008, owners of 100% tax credit projects are no longer required to complete annual recertifications on their residents. Note the following –

A. A project is defined on Line 8b of each building's IRS Form 8609. All buildings included in the same project on Line 8b of a building's 8609 form must have reached 100 percent low-income occupancy for the owner to stop doing annual recertifications.

B. The full-time student rule is still in effect. Even though an owner may stop completing income recertifications, they must continue to certify status under the full-time student rule as explained in Paragraph 10-9 below.

10-6. The 140% Rule

When you recertify a tax credit resident, you must implement the 140% rule.

A. At a recertification, you must compare a household's annual income to 140% of the current income limit for their current household size.

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Sample 140% Rule
1-person Applicant Income Limit = $45,000 $45,000 x 140% = $63,000 1-person Recertification Income Limit = $63,000

B. If you find that a resident's income is not more than 140% of their current income limit, they remain eligible for the tax credit program.

C. If you find a resident's income is more than 140% of their current income limit, they are over-income for the tax credit program. They do not need to move from their unit.

D. When you find a resident is over-income, you must implement the Available Unit Rule. You will learn how to implement this rule later in this chapter.

10-7. The 140% Rule at Income Average Properties

When applying the 140% rule on projects that elected the Income Averaging set-aside, there are special rules for implementing the 140% rule.

A. If the unit is designated at an income limit of 60% or less, use the 60% of AMI income limit for all units. For example, if a unit was originally designated as a 20% unit, use the 60% income limit and multiply by 140%. As long as the gross annual income of the tenant living in this 20% unit does not exceed 140% of the 60% income limit, the tenant will still be considered tax credit income eligible.

B. If the unit is designated as a 70% or 80% unit, multiply that income limit by 140%. For example, if the unit was designated as an 80% unit, multiple the current 80% income limit by 140%. As long as the current resident's gross income does not exceed 140% of the 80% income limit, the tenant will still be considered tax credit income eligible.

C. Another way to say this is that the Available Unit Rule is implemented at Income Average properties if a household's income increases above 140% of the greater of –
- 60% of AMI; or
- the applicable income limit (i.e. 20%, 30%, 40%, 50%, 70% or 80% of AMI)

D. For additional explanation on implementing the Next Available Unit Rule at Income Average properties, see Paragraph 10-14B.

10-8 The 170% Rule for Deep Rent Skew Properties

When you recertify any tax credit resident at a deep rent skew property, you must implement the 170% rule.

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A. At a deep rent skew property, you must compare a household's annual income to 170% of the current income limit for their current household size.

Sample 170% Rule
1-person Applicant Income Limit = $45,000
$45,000 x 170% = $76,500
1-person Recertification Income Limit = $76,500

B. If you find that a resident's income is not more than 170% of their current income limit, they remain eligible for the tax credit program.

C. If you find a resident's income is more than 170% of their current income limit, they are over-income for the tax credit program. They do not need to move from their unit.

D. When you find a resident is over-income, you must implement the Available Unit Rule. You will learn how to implement this rule at a deep rent skew property later in this chapter.

10-9 Implementing the Full-Time Student Rule Annually

At a recertification (or the time a recertification would be performed as described in Paragraph 10-4 above), you must verify a household continues to comply with the full-time student rule.

A. If a household no longer complies with the full-time student rule, their unit stops generating a tax credit.

1. In a 100% tax credit building, your owner expects every unit to generate a tax credit. You must take appropriate action to relocate any resident who no longer complies with the full-time student rule.

2. In a mixed-income building, you may rent another unit to a resident you qualify for the tax credit program. Their unit can take the place in the applicable fraction of the unit out of compliance with the full-time student rule.

B. Use the HPD required form to verify a household's compliance with the full-time student rule.

C. Your lease should include a provision, either within the lease or as an addendum that allows you to ask a household to move from their unit, and seek an eviction if necessary, if they no longer comply with the full-time student rule.

10-10 Changes in Household Composition

At a recertification or at any time, you may discover a change in a household's composition.

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A. If at least one of the original household members remains in the unit, you may approve new members. Certify the income of the new resident and add their income to that on the household's most recent TIC. If the household's income is more than 140% of their income limit, implement the Available Unit Rule, as discussed below.

B. If none of the original household members remain in the unit, you must complete an initial certification of eligibility for the current residents.

C. There is no need to complete an initial income certification when a household size decreases as long as at least one of the original household members remain in the unit.

10-11 The Available Unit Rule

When you find a that a household's income has risen above 140% of their current income limit, you must implement the Available Unit Rule (also known as the Next Available Unit Rule).

A. The Available Unit Rule is a building rule. It is designed to enable the owner to maintain the first-year applicable fraction for each building.

B. When you find that a household's income has risen above 140% of their current income limit, the Available Unit Rule requires you to:

1. Rent the next (or currently) available unit of comparable or smaller size *in the same building* to a tax credit eligible family at a restricted rent; and

2. Continue to rent all units of comparable or smaller size that become vacant *in the same building* to qualified residents until the floor space applicable fraction is at least equal to the first-year applicable fraction.

C. Remember that both the unit and the floor space applicable fractions for a building must be sufficient to support the tax credit expected by the owner. For example, if the owner expects 80% of a building to generate a tax credit, maintain both the unit and floor space fractions at no less than 80%.

D. As long as you need a unit occupied by an over-income resident to generate a tax credit, do not raise their rent above the maximum allowed by the tax credit program. Note: Regardless of whether the unit is needed to generate a tax credit or not, you must still follow rent stabilization.

E. In a 100% tax credit building, your owner expects every unit to generate a tax credit. Regardless of what you discover about a resident's income, do not raise their rent above the maximum allowed by the tax credit program.

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F. If mixed-income properties, you may have to rent previously market rate units to tax credit eligible families at a restricted rent in order to maintain the first-year applicable fraction.

G. If you fail to rent the next available unit to an eligible family after discovering an existing family's income exceeds the applicable limit, all low-income units in the building of comparable or larger size occupied by over-income families lose their status as low-income units. Those units occupied by over-income families cannot be included in the minimum set aside or applicable fraction until the owner corrects the noncompliance.

10-12 The Available Unit Rule for 100% LIHTC Properties

Owners of 100 percent LIHTC projects are no longer required to complete annual recertifications and no longer implement the Available Unit Rule. For purposes of the Available Unit Rule only, a household is considered to be income-qualified if the owner demonstrates due diligence in how they complete their initial income certifications.

A. At a 100% LIHTC project, the Available Unit Rule is violated when you fail to rent a unit to an income-qualified household at the restricted rent.

B. The date of noncompliance is the effective date of the earliest unsatisfactory initial income certification found by HPD.

10-13 The Available Unit Rule for Deep Rent Skew Properties

When an owner commits to deep rent skew, they agree to rent 15% of their tax credit units to residents who qualify at 40% of AMI.

A. When you find that a household's income has risen above 170% of their current income limit, you must implement the Available Unit Rule.

1. Rent the next (or currently) available *tax credit unit* at your property to a resident you qualify at 40% of AMI; and

2. Maintain the same units as your tax credit units throughout the compliance period.

Note: In Paragraph 10-11 you read about implementing the Available Unit Rule in properties when the owner did not agree to deep rent skew. In most mixed-income buildings, the tax credit units <u>must float</u>. When finding a resident's income has increased above 140% of their current income limit, you must rent the next (or currently) available unit of comparable or smaller size in the same building to a tax credit resident. A unit may have previously been a market unit but if it is the next available unit, you must rent it to a resident you qualify for the tax credit program. When an owner commits to deep rent skew, the tax credit units <u>may not float</u>. When finding a resident's income has increased above 170% of their current income limit, you must rent the next (or currently) available tax credit unit to a

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household with income no more than 40% of AMI. The tax credit units remain fixed throughout the compliance period.

B. Some properties in NYC are referred to as "80/20" properties. At these properties

1. 80% of the units are market units;

2. 20% of the units are tax credit units; and

3. The owner commits to deep rent skew, so the tax credit units remain the same throughout the compliance period.

10-14. The Available Unit Rule at Mixed-Income Properties

If an owner commits to using more than one income limit, they need to rent units to households at different income limits.

A. Mixed-Income Properties (not Income Average)

1. If a household qualified for their unit at 50% of AMI, compare their income to 140% of the current 50% of AMI limit.

2. If a household qualified for their unit at 60% of AMI, compare their income to 140% of the current 60% of AMI limit.

3. If you find the income of a household who originally qualified at 50% of AMI has increased above 50% of AMI, you may count them as a 60% of AMI household after you rent another unit to a new 50% of AMI household. You may increase the original household's rent to that charged for 60% of AMI units when legal to do so.

B. Income Average Properties

The Available Unit Rule has separate requirements for Income Average properties. HPD is applying its interpretation of the Act but it is the IRS that makes the final compliance determination. HPD recommends that project owners consult with their legal counsel and investor counsel to ensure they correctly implement the Available Unit Rule at Income Average properties.

1. IRC Section 42(g)(2)(D)(iii) contains a distinct Available Unit Rule for Income Averaging. (*Owners should consult with compliance experts on how it will work with market rate units and with the Available Unit Rule under IRC Section 142(d) for 4% projects.)*

2. The Available Unit Rule is implemented if a household's income increases above 140% of the greater of:
    1. 60% of AMI; or

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    2. the applicable income limit (i.e. 20%, 30%, 40%, 50%, 70% or 80% of AMI)

3. For Income Average Properties that are 100% LIHTC
   i. At a 100% LIHTC property that selects the Income Average set-aside, the Available Unit Rule is fairly simple to implement. You simply continue renting available units to households that meet the Income Average income designation of the vacant unit.
   ii. See Paragraph 10-12 above for more information on the Available Unit Rule at 100% LIHTC properties.

4. For Income Average Properties that are Mixed Income
   i. For Income Average Properties that include market-rate units, you must carefully track Available Unit Rule compliance.
   ii. Remember that the Available Unit Rule is triggered only if a household's income exceeds 140% of the greater of:
      1. 60% of AMI; or
      2. the applicable income limit (i.e. 20%, 30%, 40%, 50%, 70% or 80% of AMI).
   iii. If the household's income does exceed the 140% limit, then rent the available unit to a tenant that meets the income limitation the vacant unit had immediately prior to being vacated.

5. These policies are subject to change if the IRS issues future guidance on Income Averaging.

10-15. Do This!

A. Remember that in most mixed-income buildings, the tax credit units float. They must float for you to correctly implement the Available Unit Rule.

B. Remember that at an Income Average property, if a unit designation is 70% AMI, then the Available Unit Rule is not triggered until the household's income goes over 140% of the 70% income limit.

C. Use a tickler system to track the effective dates for your residents' annual recertifications.

10-16. Don't Do This!

A. Forget to track the impact on a building's applicable fraction when you rent a smaller unit to a tax credit resident when implementing the Available Unit Rule.

B. Forget that when you deep rent skew, your tax credit units are fixed and remain the same throughout the compliance period.

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Chapter Eleven

The Vacant Unit and Transfer Rules

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Chapter Eleven: The Vacant Unit and Transfer Rules
-or-
How a Vacant Unit Can Generate a Tax Credit and When You May Move a Resident at a Tax Credit Property

11-1. Topics Covered in this Chapter

In this chapter, you will learn:

A. That units you have never rented to either a tax credit resident or a market resident are considered “empty” units;

B. How to keep a vacant unit generating a tax credit while you prepare it for a new resident;

C. The impact of transferring a resident to another unit in the same building; and

D. The impact of transferring a resident to another building at the same property.

11-2. Key Terms to Learn from Reading this Chapter

- BIN Number
- Building
- Empty unit
- Transfer
- Vacant unit

11-3. Empty Units

A unit you have never rented to either a tax credit resident or a market resident is considered an empty unit.

A. A unit never occupied by a qualified resident cannot generate a tax credit.

B. A unit begins to generate a tax credit the first time it is occupied by a qualified resident.

C. If a unit has been in service an entire calendar month, it can generate a tax credit if occupied by a qualified resident by the end of the month.

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11-4. The Vacant Unit Rule

A unit last occupied by a qualified resident can generate a tax credit if you follow the Vacant Unit Rule.

A. A vacant unit will continue to generate a tax credit if:

1. You prepare it for occupancy as quickly as possible; and

2. You implement reasonable marketing activities to rent it to a new tax credit resident.

B. An owner cannot ignore a vacant unit and claim a tax credit for it.

C. You should maintain documentation to show that:

1. You follow policies that support the rapid turnover of your vacant tax credit units; and

2. You implement marketing activities that are reasonable for your property.

D. When you have both vacant tax credit and market units, you may lease your market units only if you can show compliance with the Vacant Unit Rule.

E. Establish a file that shows your compliance with the Vacant Unit Rule, including:

1. Maintaining a waiting list of interested applicants;

2. Maintaining a pool of qualified applicants;

3. Maintaining a log tracking preparation of your vacant units;

4. Prioritizing your vacant units in the maintenance program for your property; and

5. Maintaining strong contacts with the HCV programs at both HPD and NYCHA.

11-5. The Transfer Rule

When a resident at a tax credit property transfers, the two units involved in the transfer exchange their status as either a market or tax credit unit. A tax credit resident:

A. May transfer to another unit in the same building without re-qualifying for the tax credit program;

B. May transfer to another building at the same property if their income is not more than 140% (170% in a deep rent skew property) of their income limit;

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C. Takes their tax credit status, lease and income certification (including its effective date) to their new unit.

Note: You need to know how the "property" is defined. An owner receives a Form 8609 for each building from HPD. Before submitting a Form 8609 to the IRS, the owner notes on Line 8b if the building represented by the form is part of a property that includes other buildings.

a. If a building is not part of a multi-building property, you may not transfer a resident to any other building. If a resident wants to move into another building, you must qualify them again for the tax credit program by completing a new initial certification of eligibility.

b. If a building is part of a multi-building property, so long as their income is not more than 140% of their current income limit, a resident may transfer to any other building listed as part of the same property on its 8609 form. The manager should be sure to verify the impact on the applicable fraction for both buildings before approving the transfer.

An owner is responsible for providing management with the 8609 forms for the buildings at their property. HPD will not be responsible for telling managers which buildings comprise a property.

D. During the initial credit period, existing tenants may not be relocated for purposes of qualifying more than one LIHTC unit to count toward the minimum set-aside or applicable fraction. Under no circumstances may one household be used to initially qualify more than one tax credit unit in the project.

11-6. Do This!

A. Establish a file to maintain the documentation of your compliance with the Vacant Unit Rule.

B. Verify a resident's income is not more than 140% of their current income limit (170% in a deep rent skew property) before you allow them to transfer to another building at your property. (Note that this is not required at a property that is 100% LIHTC.)

C. Know that a building a resident wants to transfer to is part of the same property before approving the transfer.

11-7. Don't Do This!

A. Allow a household to move into another building at your property if their income is more than 140% of their current income limit.

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B. Ignore a vacant unit if you want it to generate a tax credit.

C. Forget that no unit can generate a tax credit until it is occupied the first time by a resident you certify eligible for the tax credit program.

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Part Six

How Do I Comply with the Tax Credit Program when I have So Many Other Requirements to Meet at My Property?

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Chapter Twelve

Applying the Requirements of the HOME Program at a Tax Credit Property

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Chapter Twelve: Applying the Requirements of the HOME Program at a Tax Credit Property

STOP: This chapter applies only to tax credit properties with HOME funds. If you do not have HOME funds, you can move to the next chapter, but know it is here for you if you manage a property with HOME funds in the future.

12-1 Topics Covered in this Chapter

In this chapter, you will learn:

A. The importance of the HOME Written Agreement;

B. The difference between your low HOME and high HOME units;

C. About the rents you may charge for your HOME units and how to charge the correct rent when you have HOME funds at a tax credit property;

D. The rules to follow when certifying an applicant eligible for a HOME/tax credit unit;

E. The recertification requirements for your HOME/tax credit residents;

F. How to implement the Available Unit Rule when you have HOME funds at a tax credit property; and

G. About HPD's compliance monitoring activities for a HOME/tax credit property.

H. To provide all notices required by NYC law, and Rent Stabilization when applicable, before increasing a resident's rent.

12-2 Key Terms to Learn from Reading this Chapter

- High HOME unit
- High HOME rent
- HOME Written Agreement
- Low HOME unit
- Low HOME rent
- Period of affordability
- Utility allowance

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12-3 *The HOME Written Agreement*

The owner of a property with HOME funds signs a HOME Written Agreement (HWA) with HPD and agrees to the following terms:

A. The number of HOME units;

B. The number of HOME units by unit size;

C. The number of low HOME units;

D. The number of high HOME units;

E. The initial rents to be charged for the HOME units; and

F. The period of affordability during which the owner must comply with the requirements of the HOME program.

This chapter focuses on how to meet both the HOME requirements *and* tax credit requirements when a unit has both sources of funding. This chapter *does not* cover all the requirements for maintaining HOME compliance. For the complete requirements of the HOME program as administered by HPD, see the HOME Program Owner's Guide on HPD's website.

12-4 *HOME Unit Designation*

The owner of a property with HOME funds submits a HOME Project Completion Report within 120 days of requesting their final drawdown of HOME funds. At that time, the owner must provide the following information to the appropriate HPD Loan Program Officer:

A. A certified rent roll designating which units are low HOME units and which units are high HOME units. (HOME unit designations remain fixed throughout the affordability period.)

B. Tenant income certifications for the residents living in the HOME units.

C. The income limit and rent that applies to each HOME unit.

12-5 *Low HOME Units and High HOME Units*

Every property with five (5) or more HOME units has both low HOME and high HOME units.

A. For a unit to qualify as a low HOME unit, the resident must:

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1. Qualify with income not exceeding 50% of AMI; and

2. Pay no more than the low HOME rent.

3. For a unit to qualify as both a low HOME and a tax credit unit, the resident must

    a. Qualify at the *lesser of* the low HOME or tax credit income limit; and

    b. Pay the *lesser of* the low HOME rent or tax credit rent.

Sample LOW HOME / Tax Credit Unit

HOME income limit is $37,000
Tax credit income limit is $44,000
HOME maximum rent is $1,000
Tax credit maximum rent is $1,200

A resident may qualify with income of no more than
$37,000 and pay no more than $1,000 for rent.

B. For a unit to qualify as a high HOME unit, the resident must

1. Qualify at the high HOME income limit as required in the property's HOME Written Agreement, generally, 60% of AMI and

2. Pay no more than the high HOME rent.

3. For a unit to qualify as both a high HOME and a tax credit unit, the resident must

    a. Qualify at the *lesser of* the high HOME or tax credit income limit; and

    b. Pay the *lesser of* the high HOME rent or tax credit rent.

Sample HIGH HOME / Tax Credit Unit

HOME income limit is $51,000
Tax credit income limit is $51,000
HOME maximum rent is $1,280
Tax credit maximum rent is $1,200

A resident may qualify with income of no more than
$51,000 and pay no more than $1,200 for rent.

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C. An owner planning to benefit from 9% credits who received a HOME loan at a below-market interest rate must agree to:

1. Rent twenty-five percent (25%) *of all the units (including market rate units) in every HOME-assisted building* to residents who qualify at 50% of AMI and pay no more than the low HOME rent; and

2. Rent the remaining HOME units to residents who qualify at 60% of AMI and pay no more than the high HOME rent.

. **Sample HOME / Tax Credit Property** **25% @ 50% Set Aside** 2 buildings with 12 total units in each 6 fixed HOME units in each 3 (12 x 25%) units per building must be rented to residents who qualify at 50% of AMI 3 remaining HOME units per building may be rented to residents who qualify at 60% of AMI

12-6 Rent and Income Limits

Rent and income limits for units at projects receiving both HOME funds and tax credits may sometimes conflict.

A. In any instance where the rent and income requirements conflict, the more restrictive requirement must be used.

B. Unlike the tax credit program, the HOME program does not allow you to collect more than the HOME rent for a resident on the HCV program. The rent paid by the resident plus their subsidy payment may not exceed the HOME rent. (For HOME-funded projects with project-based voucher (PBV) contracts, owners may collect the rent allowable under the subsidy program on low HOME units only (even if it exceeds the low HOME rent); for high HOME units, the high HOME rent limit applies regardless of the PBV contract.)

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Sample HOME / Tax Credit Unit with Voucher Resident

HOME rent is $1,000
Tax credit rent is $1,200
Maximum rent voucher will subsidize is $1,000

Resident pays $700 for rent
HAP from voucher program is $300

Maximum revenue owner collects is $1,000

12-7 Initial Certifications

Use the following rules to complete an initial certification for an applicant for a unit designated as both HOME and tax credit.

A. Calculate the household's annual income using the rules discussed in Chapter Six for both the HOME and tax credit programs.

B. Compare the applicant's annual income to the *lesser of* the HOME or tax credit income limit for their household size.

C. Certify the household eligible under the tax credit full-time student rule discussed in Chapter Six.

D. Use the required verification forms noted in Chapter Seven (available on the tax Credit and HOME Compliance webpage) to verify a household's eligibility for the HOME and tax credit programs.

   1. Because the HOME program *does not allow* a household with assets of $5,000 or less to self-certify the income from their assets, you must do a review of documents to verify their asset income.

   2. You must verify the income from assets through a third party for any resident with assets totaling more than $5,000.

E. Sign a lease that lasts at least twelve (12) months. If the unit is rent- stabilized, meet all the leasing requirements for Rent Stabilization.

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12-8 Annual Recertifications

The annual recertification requirements differ between the LIHTC and HOME programs. Owners must ensure they are meeting the most restrictive requirement for each unit that is assisted by both HOME and LIHTC funds.

A. Annually, the owner of every HOME project must collect at least a written certification from each household indicating the household's size and gross annual income.

B. If the HOME project's affordability period is 10 years or more, documentation of the households' income must be collected in the first year of the affordability period and every sixth year thereafter (unless there is evidence that a household's written certification failed to accurately and completely disclose information about the household's size or income). For example, for a HOME-assisted project with a 20-year affordability period, income source documents must be collected from HOME tenants in year 1, year 7, year 13 and year 19. (Note: If a project has a long lease-up period, an owner may need to collect income source documents in consecutive years from tenants who were qualified and moved in prior to year 1 of the affordability period.)

C. If the HOME project's affordability period is less than 10 years, income documentation must be collected annually to support the written certification.

D. If a LIHTC recertification needs to be completed (see Chapter 10), the LIHTC recertification can meet the HOME recertification requirement. In such cases, remember that assets must always be verified for HOME unit recertifications – the HOME program does not allow for self-certification of assets under $5,000.

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12-9 The Available Unit Rule

Based on what you discover about a HOME/tax credit resident’s income at a recertification, you must implement the Available Unit Rule.

Available Unit Rule for a <u>LOW</u> HOME & Tax Credit Resident

If their Income is Now	Do This
< 50% of AMI & < 140% of LIHTC Limit	• Nothing • You do not need to implement the Available Unit Rule
> 50% of AMI but < 80% of AMI & < 140% of LIHTC Limit	• Rent next available HOME unit to a low HOME Resident • Change from low HOME to high HOME resident • Increase to the lesser of the high HOME or tax credit rent when legal to do so • If next available HOME unit is a tax credit unit, qualify the new resident as a tax credit resident and charge the lesser of the low HOME or the tax credit rent
> 50% of AMI but < 80% of AMI & > 140% of LIHTC Limit	• Rent next available HOME unit to a low HOME resident and qualify as a tax credit resident if also a tax credit unit • Change from low HOME to high HOME resident • Increase to the lesser of the high HOME or tax credit rent when legal to do so • Rent next available comparable or smaller unit in the same building to a tax credit resident and HOME qualify the resident if also a HOME unit
> 80% of AMI & > 140% of LIHTC Limit	• Don’t charge more than the tax credit rent if the unit is expected generate a tax credit • Rent next available HOME unit to a low HOME resident and qualify as a tax credit resident if also

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	a tax credit unit • Rent next available comparable or smaller unit in the same building to a tax credit resident and HOME qualify the resident if also a HOME unit

Available Unit Rule for a HIGH HOME & Tax Credit Resident

If their Income is Now	Do This
< 80% of AMI & < 140% of LIHTC Limit	• Nothing • You do not need to implement the Available Unit Rule
> 80% of AMI & < 140% of LIHTC Limit	• Charge no more than the tax credit rent • Rent next available HOME unit to low or high HOME resident as necessary to comply with HOME Written Agreement • Qualify new HOME resident as a tax credit resident if also a tax credit unit • Charge the lesser of the HOME or tax credit rent for a HOME/tax credit unit
> 80% of AMI & > 140% of LIHTC Limit	• Charge no more than the tax credit rent if the unit is expected to generate a tax credit • Rent next available comparable or smaller unit in the same building to a tax credit resident and HOME qualify the resident if also a HOME unit • Rent next available HOME unit to a low or high HOME resident as necessary to comply with HOME Written Agreement and tax credit qualify the resident if also a tax credit unit • Charge the lesser of the HOME or tax credit rent for a HOME/tax credit unit
< 50% of AMI	• May become a low HOME resident only if initially qualified as low-income.

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12-10 Do This!

A. Read HPD's HOME Program Owner's Guide to understand all the requirements of owning and managing a property with HOME units.

B. Qualify an applicant using the *lesser of* the HOME income limit or the tax credit income limit that applies to the household size.

C. Use the verification forms noted in Chapter Seven to certify a household eligible for both the HOME and tax credit programs.

D. Use the rules discussed in Chapter Six to calculate an applicant's annual income for both the HOME and tax credit programs.

12-11 Don't Do This!

A. Forget to understand your HOME recertification requirements and complete them correctly.

B. Charge more than the tax credit rent for any tax credit unit. (You may collect revenue exceeding the maximum tax credit rent when you receive some of that revenue as rental subsidy paid on behalf of the resident. However, if the project also has HOME funding the rent generally may not exceed the HOME rent.)

C. Forget to certify a household eligible under the tax credit full-time student rule before allowing them to occupy a HOME and tax credit unit.

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Chapter Thirteen

Maintaining Compliance at Rent-Stabilized Tax Credit Properties

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Chapter Thirteen: Maintaining Compliance at Rent-Stabilized Tax Credit Properties
-or-
How to Keep all Your Tax Credits and Keep the Folks Governing Rent Stabilization Happy Too

13-1 Topics Covered in this Chapter

In this chapter, you will learn:

A. That HPD does not have jurisdiction over Rent Stabilization;

B. That DHCR administers the requirements for Rent Stabilization;

C. How to set the initial rents for your rent-stabilized tax credit units;

D. How to implement annual rent increases for your rent-stabilized tax credit units; and

E. How to meet your leasing requirements at a rent-stabilized tax credit property.

13-2 Key Terms to Learn from Reading this Chapter

- Annual rent increases
- Higher legal rent
- Initial rents
- Lower legal rent
- Maximum tax credit rent
- Registered rent
- Rent stabilization
- Utility allowance
- Vacancy increase

13-3 Where to Find Instruction on Complying with Rent Stabilization

Rent Stabilization is administered by the New York State Division of Housing and Community Renewal's (DHCR) Office of Rent Administration. For instruction on complying with Rent Stabilization, go to the DHCR web site.

13-4 Initial Rents at Rent-Stabilized Tax Credit Properties

Use the following rules when establishing the initial rents at your rent-stabilized tax credit property.

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A. Never charge more than allowed by the tax credit program. (You may collect revenue exceeding the maximum tax credit rent when you receive some of that revenue as rental subsidy paid on behalf of the resident. However, if the project also has HOME funding the rent generally may not exceed the HOME rent.)

B. The regulatory agreement for your property may establish:

   1. An initial lower legal rent; and

   2. An initial higher legal rent.

C. Register the initial legal rents under Rent Stabilization.

D. Under the terms of your regulatory agreement, know for which units you are limited to the lower legal rent and for which units you may charge the higher legal rent.

E. Charge no more than *the lesser of* the tax credit rent or the legal rent that applies to a tax credit unit.

F. If your building was rent-stabilized before HPD allocated its tax credits, check your regulatory agreement(s) for how to set your initial rents.

Sample Rents

Tax credit rent is $1,000
Rent allowed by Rent Stabilization is $1,250
Charge no more than $1,000

13-5 Annual Rent Increases at Rent-Stabilized Tax Credit Properties

Use the following rules when implementing annual rent increases allowed by Rent Stabilization.

A. Never charge more rent than allowed by the tax credit program.

B. Every year, the Rent Guidelines Board announces the percentage by which owners of rent-stabilized units may increase their rents. Apply the percentage announced by the Rent Guidelines Board to increase your legal rents, if applicable. https://www1.nyc.gov/site/rentguidelinesboard/index.page

C. Register your new legal rents under Rent Stabilization.

D. For a tax credit unit, charge no more than *the lesser of* the tax credit rent or the legal rent that applies to the unit.

E. Never increase a resident's rent without providing the notice required by law.

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Sample Rents

Tax credit rent is $1,000
Rent increased under Rent Stabilization to $1,325
Charge no more than $1,000

Tax credit rent increased to $1,280
Rent allowed by Rent Stabilization is $1,250
Charge no more than $1,250

13-6 Rent Levels in the Extended Use Period (EUP) at Rent-Stabilized Tax Credit Properties

Apply the following rules to determine the rent you may charge at a rent-stabilized tax credit property during the tax credit extended use period.

A. Check your regulatory agreement(s) for the amount you may charge for your tax credit units during the EUP.

B. If your regulatory agreement(s) are silent on the rent you may charge during the EUP, charge no more than the maximum tax credit rent as described in Chapter Eight.

C. Your regulatory agreement(s) may establish limits on the rent you may charge during the EUP. The limitations may vary based on:

   1. The income level of the resident living in the unit;

   2. The requirements of the other funding sources (e.g., HOME) for your property.

   3. Whether the resident lived in the unit during the initial 15-year compliance period for the property;

   4. Whether the resident was homeless prior to occupying the unit; and,

   5. Whether the resident receives public assistance.

D. During the EUP, charge no more than *the lesser of* the rent allowed by the tax credit program, the rent allowed by Rent Stabilization, or the rent allowed by the regulatory agreement(s) for the other funding sources for your property.

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13-7 Leasing Requirements at Rent-Stabilized Tax Credit Properties

A. Under Rent Stabilization, a resident may choose to sign a one-year or two-year lease.

B. Under the tax credit program, you must sign an initial lease with a new resident lasting at least six months.

C. Signing a lease that meets the requirements for Rent Stabilization satisfies the tax credit requirement that a resident sign a lease for at least 6 months.

D. Sign the lease rider required by Rent Stabilization.

E. When it is time to renew a resident's lease, provide all notices required by Rent Stabilization.

13-8 Do This!

A. Know the maximum rent allowed by the tax credit program. (You may collect revenue exceeding the maximum tax credit rent when you receive some of that revenue as rental subsidy paid on behalf of the resident. However, if the project also has HOME funding the rent generally may not exceed the HOME rent.)

B. Know the maximum rent you may charge under Rent Stabilization.

C. At a rent-stabilized tax credit property, charge no more rent than *the lesser allowed* by the tax credit program or Rent Stabilization.

D. Sign the lease rider required by Rent Stabilization.

E. If you decide not to renew a resident's lease, demonstrate good cause as required by the tax credit program and provide all notices to the resident required by Rent Stabilization.

13-9 Don't Do This!

A. Forget to subtract the utility allowance from the gross tax credit rent to calculate the tenant rent.

B. Charge the rent calculated using the vacancy increase allowed by Rent Stabilization if it is more than the maximum tax credit rent.

C. Forget that the regulatory agreements for the various funding sources for your property may establish different limits on how much rent you may charge. Never charge more rent than allowed by any of the funding sources for your property.

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Chapter Quizzes

Chapter Two Quiz

Question One: True or False? So long as HPD has allocated the credits for a building, the owner may claim a tax credit for a unit in the building even though it has never been rented to a qualified resident.

Question Two: True or False? Because the first year of the credit period is critical for a tax credit property, you must keep the records for each building at least 21 years.

Question Three: True or False? If HPD issues an 8823 because they find you out of compliance at your tax credit property, you need to worry about your owner losing tax credits.

Question Four: True or False? HPD issues an 8823 if you fail to submit the owner's annual certification of compliance, forget to pay your annual compliance monitoring fee or refuse to cooperate with a compliance monitoring review.

Question Five: True or False? HPD takes responsibility for providing all the necessary training for owners and managers active in the tax credit program.

Answer One: False. An owner may not claim a tax credit for a unit before leasing it the first time to a tax credit-qualified resident.

Answer Two: True. You must keep the records for the first year of the credit period for each building at your property at least 21 years.

Answer Three: True. Any time HPD issues an 8823, there is a possibility your owner could lose tax credits.

Answer Four: True. HPD will issue an 8823 if you fail to submit the owner's annual certification of compliance, forget to pay your annual compliance monitoring fee or refuse to cooperate with a compliance monitoring review.

Answer Five: False. All owners and managers are responsible for receiving training in the requirements of the tax credit program.

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Chapter Three Quiz

Question One: True or False? The first number in the minimum set aside establishes the percentage of units at your property you must rent to tax credit-qualified residents for your property to be part of the tax credit program.

Question Two: True or False? The second number in the minimum set aside establishes the income limit at which households must qualify for your tax credit units.

Question Three: True or False? Your investors will get all their tax credits if you rent the number of units required by your minimum set aside to tax credit qualified residents.

Question Four: True or False? HPD stops monitoring your property after the 10-year credit period.

Question Five: True or False? There are no financial consequences for your investors if you stop meeting the requirements of the minimum set aside in year 9 of the credit period.

Answer One: True. The first number in the minimum set aside tells you the number of units you must rent to qualified residents for your property to be part of the tax credit program.

Answer Two: True. The second number in the minimum set aside tells you the income limit at which households must qualify for your tax credit units.

Answer Three: False. Meeting the minimum set aside gets your property into the program. For most properties, the developer promises the investors they will benefit from tax credits for more than the number of units required by the minimum set aside. Read Chapter Four to find out how many units your owner wants you to rent to qualified residents.

Answer Four: False. HPD will monitor your property throughout the 15-year compliance period AND the EUP.

Answer Five: False. If you stop meeting the requirements of the minimum set aside, your investors are in jeopardy of the IRS recapturing tax credits taken back to the first year of credit period. The IRS may also bill your investors for penalties and interest.

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Chapter Four Quiz

Question One: True or False? Your owner will earn the maximum possible tax credit from your property if you comply with your minimum set aside.

Question Two: True or False? Generally, HPD allocates tax credits by building.

Question Three: True or False? You are managing a 10-unit building with 5 one-bedroom units and 5 three-bedroom units. Your owner needs a 60% applicable fraction to earn the maximum possible tax credit from the building. If you rent the 5 one-bedroom units plus 1 three-bedroom unit to tax credit qualified residents, you're assured of a 60% applicable fraction.

Question Four: True or False? It is easier to maintain compliance in a 100% tax credit building.

Question Five: True or False? The size of the units you rent to qualified residents impacts the size of the tax credit your owner can take on their federal income tax return.

Answer One: False. Your owner will only earn the maximum possible tax credit if you rent the number of units covered by the credit allocation from HPD to qualified residents.

Answer Two: True. In most cases, HPD allocates tax credits by building in a multi-building property.

Answer Three: False. For the applicable fraction of a building to be 60%, you must rent 60% of the units and 60% of the floor space to qualified residents.

Answer Four: True. It is easier to maintain compliance in a 100% tax credit building than in a mixed-income building.

Answer Five: True. When managing a mixed-income property, you must map out each building to ensure you rent the right number of units and the right combination of units in each building to qualified residents to generate the maximum possible tax credit for your owner.

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Chapter Five Quiz

Question One: True or False? There are only two factors that determine a household eligible for the tax credit program: Their income must not be greater than the income limit established in the minimum set aside, and they must qualify under the full-time student rule.

Question Two: True or False? A household that qualifies at 60% of the AMI qualifies for all tax credit units in NYC.

Question Three: True or False? When determining the household size for selecting the correct income limit, you include an unborn child of a woman who will be living in the unit.

Question Four: True or False? A household that receives rental assistance through the HCV or Work Advantage program is automatically eligible for your tax credit unit.

Question Five: True or False? HPD tells owners the standards they must apply when screening households to occupy tax credit units.

Answer One: True. There are only two factors you apply to determine if a household is eligible for your tax credit unit: The income limit established in the minimum set aside and the fulltime student rule.

Answer Two: False. The income limit for each property is established in the minimum set aside. If your owner committed to the 20% @ 50% minimum set aside, applicants for the tax credit units must qualify at 50% of AMI. If your owner committed to the 25% @ 60% minimum set aside, applicants for the tax credit units must qualify at 60% of AMI. If your owner agreed to deep rent skew, the applicants for 15% of your tax credit units must qualify at 40% of the AMI. If your owner committed to the Income Average minimum set aside or there are various income limits at your property, applicants must qualify at the income limit set for the specific unit.

Answer Three: True. You include an unborn child in the household size to select the correct income limit to determine their eligibility for your tax credit unit.

Answer Four: False. You must document that a household receiving assistance through the HCV program is tax credit qualified before you allow them to move into your tax credit unit. You may document their eligibility through the organization that is administering their subsidy, or you must do the verification work yourself.   In addition, remember to confirm that the household continues to qualify under the full-time student rule.

Answer Five: False. HPD requires that you qualify a household using the correct income limit and under the tax credit full-time student rule. You establish your own screening criteria in a Resident Selection Plan.

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Chapter Six Quiz

Question One: True or False? To certify an applicant eligible for a tax credit unit, an owner calculates their gross annual income by following the rules HUD requires for the project-based Section 8 program.

Question Two: True or False? When calculating social security income, you include the net monthly benefit the SSA deposits into your resident's bank account.

Question Three: True or False? There is a limit to the value of the assets owned by a household for them to qualify for the tax credit program.

Question Four: True or False? An applicant has $3,000 in a savings account. You should include the $3,000 in the household's annual income calculation to determine if they are eligible for your tax credit unit.

Question Five: True or False? You don't risk any of your tax credits by allowing a household to move in before you certify they are eligible for the tax credit program at your property.

Answer One: True. To certify a household eligible for your tax credit unit, calculate their annual income using the rules HUD requires for the project-based Section 8 program. You can find those rules in Chapter 5 of the HUD 4350.3, Rev 1, Change 4 handbook.

Answer Two: False. When calculating social security income, include the gross monthly benefit awarded the resident. This is the amount before the SSA subtracts the resident's Medicare premium and makes a deposit into your resident's bank account.

Answer Three: False. There is no asset limit for a resident in the tax credit program. You include the income generated by a household's assets in their gross annual income to determine their eligibility for your tax credit unit. To arrive at this number, remember to compare imputed asset income to actual asset income if the total value of the assets is more than $5,000.

Answer Four: False. The cash value of an asset is never included in a household's gross annual income.

Answer Five: False. When you allow a household to move into your unit before you certify them eligible, you run the risk they are not eligible and you will lose the tax credits so long as they live in the unit.

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Chapter Seven Quiz

Question One: True or False? An owner must verify social security and SSI disability income by sending a request for information to the Social Security Administration.

Question Two: True or False? Information you receive from a third party is good for use in an income certification for 120 days.

Question Three: True or False? HPD allows an applicant to self-certify the income from their assets if their assets do not exceed $5,000.

Question Four: True or False? You may verify a person's income by making a copy of their most recent pay check.

Question Five: True or False? HPD has forms you may use to verify information necessary to complete an income certification.

Answer One: False. You do not need to send a request for information to the Social Security Administration. You may make a copy of the benefit award letter the applicant received from the SSA the previous December.

Answer Two: True. Information you verify through a third party is good for 120 days from the date put on the document by the third party.

Answer Three: True. An applicant with assets of no more than $5,000 may certify the income from their assets.

Answer Four: False. A copy of one paycheck is never sufficient to verify a person's income. If you are unable to verify a person's income through their employer, make a copy of their most recent 4 to 6 pay stubs to complete their income certification.

Answer Five: True. You may use the HPD-recommended forms when documenting information to complete an income certification.

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Chapter Eight Quiz

Question One: True or False? The maximum rent an owner may charge a resident to live in a tax credit unit is the same regardless of the income limit at which the resident qualified for their unit.

Question Two: True or False? You calculate the maximum rent for a two-bedroom unit using the income limit for 3 people.

Question Three: True or False? For a property where the owner agrees to deep rent skew, the average rent for the market units must be at least double the rent the owner charges residents living in tax credit units of the same size.

Question Four: True or False? For most tax credit properties, the owner calculates the utility allowance the same way HPD would if the resident was receiving rental subsidy through the HCV program.

Question Five: True or False? The total revenue you may collect for a unit when the resident receives rental subsidy through the HCV program is limited to the maximum tax credit rent.

Answer One: False. The amount of rent an owner may charge a resident is based on the income limit at which they qualified for the unit. For example, if a resident qualified at 60% of AMI, calculate their rent using the 60% of AMI income limit for the assumed household size for the unit. Or if they qualified at 50% of AMI, calculate their rent using the 50% of AMI for the assumed household size for the unit.

Answer Two: True. Assume a household size of 1.5 persons per bedroom when calculating the maximum allowable rent. 2 bedrooms x 1.5 persons = 3 people. The maximum allowable rent for a 2-bedroom apartment is 30% of the income limit for 3 people.

Answer Three: True. The average rent an owner charges residents living in market units in a deep rent skew property must be double the rent they charge residents living in tax credit units of the same size.

Answer Four: True. Unless a property is regulated by HUD, the owner calculates the utility allowance as HPD would if a person receiving rental subsidy through the HCV program lived in the unit.

Answer Five: False. You may collect revenue exceeding the maximum tax credit rent when you receive some of that revenue as rental subsidy paid on behalf of the resident.

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Chapter Nine Quiz

Question One: True or False? An owner may charge an application fee from a household applying to live in a tax credit unit.

Question Two: True or False? Because it takes longer to process an application for a tax credit unit, an owner may charge a household applying for a tax credit unit a higher application fee than paid by a household applying for a market unit.

Question Three: True or False? An owner may charge rent for the use of a storage unit so long as the storage unit is not included in the eligible basis.

Question Four: True or False? An owner may charge rent to an outside organization for the use of a community room, even if the community room is included in the eligible basis.

Question Five: True or False? An owner may not charge rent to a super who is living in a Super Unit.

Answer One: True. An owner may require a household to pay a one-time fee when applying to live in a tax credit unit.

Answer Two: False. An owner may not charge an applicant for a tax credit unit a higher application fee than required from an applicant for a market unit.

Answer Three: True. An owner may charge for use of part of the common areas at a property so long as those common areas are not included in the eligible basis. If a storage unit is not included in the eligible basis, the owner may charge rent for its use.

Answer Four: False. If the community room is included in the eligible basis, the owner may not charge any person or organization rent for the use of the room. The owner may require that the person or organization pay a refundable cleaning deposit before using the room.

Answer Five: True. The super's household does not need to qualify for the tax credit program to live in the unit. The owner includes the Super Unit as part of the common area included in the eligible basis. The owner may not charge the super rent for living in the unit if they want to claim a tax credit for the unit.

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Chapter Ten Quiz

Question One: True or False? You must recertify your residents at least annually in the tax credit program, unless it is a 100% tax credit property

Question Two: True or False? You never need to confirm or update your residents' student status at a 100% tax credit property.

Question Three: True or False? When recertifying a tax credit resident, you compare their annual income to 140% of the current income limit for their current household size.

Question Four: True or False? When you recertify a tax credit resident at a deep rent skew property, you implement the 170% rule in place of the 140% rule only for those residents who originally qualified for their units with income no greater than 40% of the AMI.

Question Five: True or False? When you find a tax credit resident's income has increased above 140% of the current income limit, you must evict them from your property.

Answer One: True. You must recertify your tax credit residents at least every twelve months unless your residents reside at a 100% tax credit property.

Answer Two: False. You must continue to confirm and enforce the full-time student rule at a 100% tax credit property.

Answer Three: True. When you recertify a resident in the tax credit program, you must compare their annual income to 140% of their current income limit.

Answer Four: False. At a recertification for all tax credit residents at a deep rent skew property, you compare their income to 170% of their current income limit.

Answer Five: False. You do not need to evict a resident if their income rises above 140% of the current income limit.

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Chapter Eleven Quiz

Question One: True or False? Even if a unit has never been occupied by a resident you qualify for the tax credit program, it can generate a tax credit so long as it is in service.

Question Two: True or False? The vacant unit rule says a vacant tax credit unit can continue to generate a tax credit while you prepare it for a new resident so long as you lease the unit as quickly as possible to a qualified resident.

Question Three: True or False? You may never rent a market unit if you have a vacant tax credit unit at the same property.

Question Four: True or False? You may transfer a tax credit resident between two units located in the same building without qualifying them again for the tax credit program.

Question Five: True or False? You may transfer a resident from one building to another building without qualifying them again for the tax credit program.

Answer One: False. A unit cannot generate a tax credit until it is occupied the first time by a resident you certify eligible for the tax credit program.

Answer Two: True. A vacant unit can continue to generate a tax credit as long as you prepare the unit as soon as possible and take reasonable steps to market the unit to a qualified resident.

Answer Three: False. You may rent a market unit as long as you can demonstrate compliance with the vacant unit rule for your vacant tax credit units.

Answer Four: True. A resident who transfers to a unit within the same building remains eligible based on their original certification of eligibility.

Answer Five: True. So long as a resident's income is not more than 140% of the current income limit, they may transfer to unit in another building based on their original certification of eligibility.

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Chapter Twelve Quiz

Question One: True or False? When approving a resident to live in a unit that has both HOME and tax credit funding (HOME/tax credit), you must compare their annual income to the lesser of the tax credit income limit or the HOME income limit that applies to the unit.

Question Two: True or False? When you have HOME funds in a tax credit property, you must rent 25% of the units in every HOME assisted building to residents qualifying with income not exceeding 50% of AMI.

Question Three: True or False? For a HOME/tax credit unit, you may charge the greater of the tax credit rent or HOME rent that applies to the unit.

Question Four: True or False? A HOME/tax credit resident receives subsidy through a housing choice voucher. The maximum HOME rent for the unit is $880. The maximum tax credit rent for the unit is $950. The housing authority administering the voucher will not approve a rent for the unit higher than $880.

Question Five: True or False? You recertify a low HOME/tax credit resident and discover their income has risen above 50% of AMI but remains below 80% of AMI. The resident becomes a high HOME resident so you may charge the high HOME rent even if it more than the tax credit rent.

Answer One: True. To live in a HOME/tax credit unit, the resident must qualify at the lesser of the HOME or tax credit income limit.

Answer Two: True. For a property to qualify for 9% tax credits with HOME funds as administered by HPD, 25% of the units in every HOME-assisted building must be occupied by residents who qualified with income of no more than 50% of AMI.

Answer Three: False. For a HOME/tax credit unit, you may charge *the lesser of* the tax credit rent or the HOME rent. Remember, if the unit is rent stabilized, you may not charge more rent than allowed under Rent Stabilization.

Answer Four: True. The HOME program does not allow you to collect more than the HOME rent, even when you rent to a person in the HCV program. The revenue you receive for the unit may not exceed $880. (A limited exception to the HOME rent restriction applies for HOME-funded projects with project-based voucher (PBV) contracts. At such projects, owners may collect the rent allowable under the subsidy program on low HOME units only (even if it exceeds the low HOME rent); for high HOME units, the high HOME rent limit applies regardless of the PBV contract.)

Answer Five: False. You want this unit to continue to generate a tax credit, so you may not charge the resident more than the maximum tax credit rent.

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Chapter Thirteen Quiz

Question One: True or False? The initial rent you may charge at your rent-stabilized tax credit property may be established in the regulatory agreement your owner signed for your property.

Question Two: True or False? At a rent-stabilized, tax credit property, you may always charge the maximum possible tax credit rent.

Question Three: True or False? When applying an annual rent increase, the owner of a rent-stabilized tax credit property may charge the lesser of the rent allowed by the tax credit program and the amount allowed by Rent Stabilization.

Question Four: True or False? Because the tax credit program says you must sign an initial lease lasting a minimum of six months, at rent-stabilized tax credit properties you are not required to allow a resident to elect to sign a one-year or two-year lease.

Answer One: True. HPD may establish the initial lower legal rent and higher legal rent in a regulatory agreement. For a tax credit unit, the initial rent you may charge is the lesser of the tax credit rent or the initial legal rent.

Answer Two: False. You may charge the lesser of the amount allowed by the tax credit program and the amount allowed by Rent Stabilization.

Answer Three: True. You may not charge more rent than the amount permitted by either the tax credit program or the amount allowed by Rent Stabilization.

Answer Four: False. A tax credit resident at a rent-stabilized property may elect to sign a one-year or two-year least as allowed under Rent Stabilization.

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Glossary of Terms

Annual Recertification – An owner performs an annual certification of a resident's income and student status as related to their eligibility for the tax credit program. At a recertification, an owner generally compares a resident's income to 140% of their current income limit.

Applicable Fraction – That portion of a building occupied by tax credit-qualified residents. It is *the lesser* of the percentage of units or the percentage of floor space occupied by qualified residents.

Available Unit Rule – A rule that allows an owner to maintain compliance after finding a resident's income has increased to more than 140% of their income limit. The owner must rent the next (or currently) available unit of comparable or smaller size in the same building to a tax credit-qualified resident. To fully protect the tax credits, an owner must rent available units of comparable or smaller size in the same building until the over-income household is no longer needed to generate a tax credit.

Building Identification Number – (BIN) – An identification number HPD assigns each tax credit building. A building's BIN may be found on its Form 8609.

Compliance Period – The 15-year period during which an owner must comply with the tax credit program to benefit from their maximum tax credit.

Credit Allocation – An award of tax credits from HPD. HPD issues a credit allocation for each building within a tax credit property.

Credit Period – The 10-year period during which an owner plans to take a tax credit generated by a building with a low-income housing tax credit allocation.

Deep Rent Skew – An owner commits to renting 15% of their tax credit units to households qualifying at 40% of the area median income. The tax credit units are fixed and remain the same for the length of the compliance period.

Eighty-Twenty Property – An owner commits to the 20% @ 50% minimum set aside and receives a credit allocation for 20% of their units. The owner rents 20% of the units to tax credit qualified residents and rents the remaining units to market renters. The owner commits to deep rent skew, so the tax credit units are fixed for the length of the compliance period.

Extended Use Period – The period of time following the initial 15-year compliance period an owner must continue to follow the rules of the tax credit program as required by HPD. An owner may have a regulatory agreement that establishes a property's compliance requirements during the extended use period.

Form 8609 – *Low-Income Housing Credit Allocation and Certification* – HPD issues a Form 8609 for each tax credit building after the owner has submitted its cost certification documenting its development costs and its placed-in-service date. HPD completes Part 1 of the form, filling in the building's placed-in-service

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date and assigning its BIN. The owner completes Part 2 of the form before submitting it for the tax return for the first year of the credit period.

Form 8823 – *Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition* – HPD issues a noncompliance notice when they find an owner out of compliance with the requirements of the tax credit program and provides the owner a period of time to correct the noncompliance. At the end of the correction period, if the noncompliance has not been cleared, HPD sends a Form 8823 to the IRS.

Full-Time Student – A person who attends school on a full-time basis for at least five (5) months out of a calendar year. A person's status as either a full-time or part-time student is established with the educational institution they attend.

Full-Time Student Rule – A household comprised entirely of full-time students is not eligible for the tax credit program unless it qualifies in one of the following categories: (i) everyone in the household is married and files (or qualifies to file) a joint tax return with their spouse; (ii) the household consists of a single parent with at least one child and nobody in the household is claimed as a dependent on another person's federal tax return other than one of the parent's tax returns; (iii) the student previously was under the care and placement of a foster care program; (iv) at least one household member receives TANF or PA; or (v) at least one household member participates in a job training program.

Gross Annual Income – The gross income, before any deductions, a household is anticipated to receive during the twelve months following an income certification or recertification.

Gross Rent – The maximum allowable rent in the tax credit program. It includes a utility allowance, which the owner subtracts from a unit's gross rent to determine how much they may charge the resident.

HOME Program – A block grant program through which HUD provides funds to NYC to support the creation and preservation of affordable housing. HPD allocates HOME funds to owners developing affordable housing in NYC. Owners sign a HOME Written Agreement committing to the HOME compliance requirements for their property.

Housing Choice Voucher (HCV) Program – A program through which HUD provides rental assistance to low-income households. An owner of a tax credit property may not discriminate against participants in the HCV program.

HUD Form 50058 – *Family Report* - The tenant income certification a housing authority completes for a household certifying their eligibility for the HCV program.

HUD Form 50059 – *Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures* - The tenant income certification an owner completes for a household certifying their eligibility for one of HUD's multifamily programs. (e.g., project-based Section 8, Section 236, Section 202)

Income from Assets – The income generated by a household's assets. If a household's assets do not exceed $5,000, it is the actual income generated by the assets. If a household's assets are more than $5,000, it is the greater of the actual income generated by the assets or the imputed income from the

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assets calculated using a .06% passbook rate. (Note that the passbook rate changed from 2% to .06% for all certifications with an effective date after 2/1/2015.)

Income Limit – The maximum income a household may receive in a year and qualify for a tax credit unit. The income limit for a tax credit property is established in its minimum set aside. If an owner commits to the 20% @ 50% set aside, a household must qualify at 50% of the AMI. If an owner commits to the 25% @ 60% set aside, a household must qualify at 60% of the AMI. If an owner commits to the Income Average set aside, a household must qualify at that unit's selected limit.

Initial Certification of Eligibility – The original income certification an owner completes for a household certifying their eligibility to occupy a tax credit unit.

Maximum Allowable Rent – The maximum possible rent an owner may charge for a tax credit unit. The maximum allowable rent is a gross rent. An owner subtracts the utility allowance approved for the unit to determine the actual rent they may charge a resident.

Minimum Set Aside – An owner must commit to meeting a minimum set aside in exchange for an allocation of tax credits. An owner may commit to renting at least 20% of the units at a property to residents qualifying at 50% of AMI, or to renting at least 25% of the units at a property to residents qualifying at 60% of AMI, or to renting at least 40% of the units to eligible households that may have gross annual income as high as 80% of Area Median Income but where all affordable income limit designations cannot exceed 60% of Area Median Income.

Placed in Service Date – (PIS date) - The date an owner activates the tax credits for a building. The PIS date for a building with tax credits for new construction is the date on the certificate of occupancy or temporary certificate of occupancy. It is the date of acquisition for acquisition credits.

Resident Selection Plan – An owner's policies for selecting residents for a tax credit property. A resident selection plan includes the eligibility criteria a household must meet to qualify for the tax credit program plus the screening criteria the owner applies when deciding to rent a unit to a qualified household.

Tenant Income Certification – (TIC) – A certification signed by a resident certifying their eligibility for the tax credit program. By signing the TIC, the resident attests to the truthfulness of the information about their household on the TIC. Owners should use the TIC form required by HPD. All adult household members must sign the household's TIC.

Tenant Rent – The maximum rent an owner may directly charge a tax credit resident. It is calculated by subtracting the utility allowance from the maximum allowable (gross) rent.

Transfer Rule – A tax credit resident may transfer within the same building without requalifying for the program. They may transfer to another building at the same property if their income is not more than 140% of their income limit. The two units involved in the transfer swap their status as a tax credit or market unit and the resident takes their lease, TIC and its effective date to their new unit.

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Two-Thirds Rule – A unit first rented to a qualified resident after the first year of the credit period generates 2/3 the tax credit it would have generated if rented during the first year of the credit period.

Utility Allowance - That portion of the maximum allowable (gross) rent a resident keeps to pay their utility bills.

Vacant Unit Rule – The rule that allows a unit vacated by a qualified resident to continue to generate a tax credit while the owner prepares it for occupancy by a new tax credit resident. The owner must prepare the unit for a new resident and make reasonable marketing steps to rent the unit to a new low-income resident.

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Appendix

The following links will connect you to valuable information for the tax credit program. The addresses were correct as of December 2007. HPD does not attest to the information or security provided by these web sites.

Section 42 of the US Tax Code

Section 42 governs the low-income housing tax credit program.

https://www.irs.gov/pub/irs-utl/IRC_42.pdf

Treasury Regulations for the Low-Income Housing Tax Credit Program

The treasury regulations provide guidance from the IRS on how to implement Section 42 of the US tax code.

https://www.novoco.com/lihtc-irs-guidance

Chapter Three of the HUD Handbook 4350.3, Rev. 1, Change 4

This chapter provides instruction on how to determine an applicant's household size for selecting the correct income limit.

https://www.hud.gov/sites/documents/43503C3HSGH.PDF

Chapter Five of the HUD Handbook 4350.3, Rev. 1, Change 4

This chapter provides instruction on how to calculate a household's annual income and on how to verify annual income and other household characteristics.

https://www.hud.gov/sites/documents/43503C5HSGH.PDF

Appendix Three of the HUD Handbook 4350.3, Rev. 1, Change 4

This appendix from the HUD handbook provides instruction on the acceptable methods to document annual income and other household characteristics.

https://www.hud.gov/sites/documents/43503A3HSGH.PDF

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