Indiana Rental Housing Tax Credit Compliance Manual: 2014 Edition

This manual is a reference guide for the compliance monitoring of the Section 42 Rental Housing Tax Credit (RHTC) Program in Indiana. It is designed to answer questions regarding procedures, rules, and regulations that govern RHTC developments. This manual should be a useful resource for owners, developers, management agents, and onsite management personnel. It provides guidance with respect to the Indiana Housing and Community Development Authority's (IHCDA's) administration of monitoring for compliance under Section 42 of the Internal Revenue Code of 1986 and the Treasury Regulations there under (the "Code"). Section 42 of the IRS Code is available in Appendix A.

In order to realize the benefits afforded by the RHTC Program, it is essential that each building remain in compliance. An especially critical time to ensure compliance is at the time of initial lease-up. Errors made in the screening of applicants for eligibility may have serious implications on the future viability of that building.

IHCDA and its compliance monitoring staff are committed to working closely with owners, management agents, and onsite personnel to assist them in meeting their compliance responsibilities.

Please note, however, that this manual is to be used only as a supplement to compliance with the Code and all other applicable laws and rules. This manual should not be considered a complete guide to RHTC compliance. The responsibility for compliance with federal program regulations lies with the owner of the building for which the Rental Housing Tax Credit is allowable. (See disclaimer below).

Because of the complexity of RHTC regulations and the necessity to consider their applicability to specific circumstances, owners are strongly encouraged to seek competent, professional legal and accounting advice regarding compliance issues**. IHCDA's obligation to monitor for compliance with the requirements of the Code does not make IHCDA or its subcontractors liable for an owner's noncompliance.**

****DISCLAIMER****
The publication of this manual is for convenience only. Your use or reliance upon any of the provisions or forms contained herein does not, expressly or impliedly, directly or indirectly, suggest, represent, or warrant that your development will be in compliance with the requirements of the Internal Revenue Code of 1986, as amended. The Indiana Housing and Community Development Authority and contributing authors hereby disclaim any and all responsibility of liability, which may be asserted or claimed arising from reliance upon the procedures and information or utilization of the forms in this manual. You are urged to consult with your own attorneys, accountants, and tax consultants.

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Section 1- Introduction

Part 1.1|Background of the Section 42 RHTC Program

In 1986, Congress enacted the Rental Housing Tax Credit (RHTC) Program, also known as the Low-Income Housing Tax Credit (LIHTC) Program. This program provides incentives for the investment of private equity capital in the development of affordable rental housing. The RHTC reduces the federal tax liability of development owners in exchange for the acquisition, rehabilitation, or construction of affordable rental housing units that will remain income and rent restricted over a long period of time. The amount of RHTC allocated is based on the number of qualified low-income units that meet federal rent and income targeting requirements.

The RHTC is authorized and governed by Section 42 of the Internal Revenue Code of 1986, as amended (the "Code"). The Indiana Housing and Community Development Authority (IHCDA) is the designated "housing credit agency" to allocate and administer the RHTC Program for the entire state of Indiana, pursuant to Section 42 of the Code.

Each state develops a Qualified Allocation Plan ("QAP"), which establishes the guidelines and procedures for the acceptance, scoring, and competitive ranking of applications and for the administration of the RHTC Program. The Indiana QAP is developed to be relevant to state specific housing needs and consistent with state housing priorities.

Part 1.2|Contents and Summary of Manual

Section 42 of the Code requires that each state's Qualified Allocation Plan provide a procedure that the agency will follow in notifying the Internal Revenue Service (IRS) of any noncompliance with the provisions of Section 42 of which it becomes aware. Final regulations developed by the IRS (published on January 14, 2000) outline minimum requirements for owner record keeping and reporting, state credit agency monitoring and inspecting, and reporting to the IRS instances of noncompliance (See IRS guidance in Appendix A).

Indiana's compliance monitoring plan follows final IRS regulations, as well as the recommendations of the National Council of State Housing Agencies (NCSHA), guidance issued by the IRS in the *Guide for Completing Form 8823 Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition: Revised January 2011** (commonly referred to as the "8823 Guide"), and the income rules found in Chapter 5 of HUD Handbook 4350.3. The current edition of the Compliance Manual is applicable to <u>all</u> owners of <u>all</u> buildings which have ever claimed the Rental Housing Tax Credit in Indiana since the inception of the program in 1987.

*NOTE: All references to the "8823 Guide" made throughout this manual refer to the January 2011 Revision. This document is available in Appendix A.

Part 1.3|Tax Exempt Bonds

Except as noted below, all compliance rules and regulations outlined in this manual also apply to projects funded with tax exempt bonds under Internal Revenue Code Section 142.

- Projects funded with tax exempt bonds cannot use self-certification of assets (i.e. the Under $5000 Asset Certification). All assets must be third-party verified for bond projects.
- For projects funded only with tax exempt bonds, the Next Available Unit Rule is a project rule instead of a building rule. However, per the Housing and Economic Recovery Act of 2008 (HERA) for projects that have both tax credit and bond the Next Available Unit Rule is a building rule.
- Pre HERA, projects with tax exempt bonds could only apply one student status exemption (married and entitled to file a joint tax return). However, post HERA all five tax credit student status exemptions now apply to bond projects.

Part 1.4|Housing and Economic Recovery Act of 2008 (HERA)

On July 30, 2008 Congress passed H.R. 3221, also known as the Housing and Economy Recovery Act of 2008 (HERA). This legislation was enacted as a response to the existing market conditions and economic issues. Part of the legislation affected provisions of the Section 42 Program. Changes to Section 42 that came about as a result of HERA include:

- The Recertification Exemption for 100% tax credit projects (see Part 6.7);
- The hold-harmless policy and HERA special rent and income limits (see Part 4.1 and 4.2);
- Alignment of tax credit and tax exempt bond compliance rules (see Part 1.3 above);
- Addition of a fifth student status exemption for individuals formerly in foster care (see Part 5.2 B-2); and
- Changes to the Applicable Credit Percentage rules (see Part 3.1 E).

Part 1.5|American Recovery and Reinvestment Act of 2009 (TCAP and Section 1602)

The American Recovery and Reinvestment Act of 2009 (ARRA) created two new temporary funding programs ("ARRA Programs") to supplement the tax credit program during a time of decreased demand for tax credits.

The Tax Credit Assistance Program (TCAP) provided HOME funding from HUD to be used as gap financing for tax credit awards. To receive a TCAP allocation, a project must also have an award of tax credits. All compliance rules and regulations within this manual apply to the TCAP program. Although TCAP uses HOME funds, the HOME ongoing rental compliance rules do not apply; rather TCAP follows tax credit ongoing compliance as outlined in this manual. **However, in addition TCAP properties must follow Affirmative Fair Housing Marketing Plan requirements as described in Parts 2.2N and 5.3A and lead-based paint requirements as described in Parts 5.4G and 5.5C.**

The Section 1602 Tax Credit Exchange Program (1602) provided an opportunity for unsold tax credits to be exchanged for cash. 1602 funds could be used to fully fund a project or to supplement tax credits; therefore, some projects may be fully 1602 while others may be a combination of traditional Section 42 tax credits and 1602 exchange funding. All compliance rules and regulations within this manual apply to the 1602 program.

Section 2 – Responsibilities

The entities/persons involved in the compliance of the RHTC Program include IHCDA, the development owner, and the management company/agent including onsite management personnel. The various responsibilities for these entities/persons are set forth below.

Part 2.1|Responsibilities of the Indiana Housing and Community Development Authority

The Indiana Housing and Community Development Authority (IHCDA) allocates tax credits and administers the RHTC program for the State of Indiana. The responsibilities of IHCDA are as follows:

A. Issue IRS Form 8609 (Low-Income Housing Certification)

An IRS Form 8609 is prepared by IHCDA for each building in the development. Part I of the Form is completed by IHCDA and then sent to the owner when the development is placed-in-service and all required documentation is received by IHCDA.

The owner must complete Part II of Form 8609 in the first taxable year for which the credit is claimed. After completion of Part II, a copy of the form is sent to the RHTC Compliance Department of IHCDA. The original is sent to the IRS with the owner's personal, partnership, or corporate tax returns in the first taxable year in which the credit is claimed.

Owners are strongly encouraged to consult with their legal and/or tax advisors for advice on completing and filing IRS tax forms. **IHCDA will not give legal or tax advice on the filing or completion of any tax forms.**

A sample copy of IRS Form 8609 is included in Appendix B.

B. Review Extended Use Agreement

IHCDA will review the extended use agreement prior to issuance of the IRS Form 8609 for each development. This document must be recorded before the end of the first year of the credit period. When the original recorded document is returned to IHCDA with the Final Application and all fees have been paid, then IRS Form 8609 will be sent to the owner if everything is appropriate and satisfactory to IHCDA.

Depending on when the document was created, the actual recorded extended use agreement may be titled any of the following. All of these documents serve the same purpose.

-Declaration of Extended Low-Income Housing Commitment (DELHC);
-Declaration of Extended Rental Housing Commitment (DERHC); or
-Lien and Restrictive Covenant Agreement (LRCA)

C. Review Annual Owner Certifications

For information on Annual Owner Certifications, see Part 5.5.

D. Conduct File Monitoring and Physical Unit Inspections

IHCDA will perform a file review for each development within two (2) years of the last building being placed-in-service and at least every three (3) years thereafter. Owners of the selected developments will be required to provide detailed information on tenant income and rent for at least 20% or more of the low-income units in the development. Information to be reviewed will include, but is not limited to, the annual Tenant Income Certifications, the documentation received to support those certifications (i.e. income and asset verifications), and rent and utility allowance records. **Owners must**

provide organized tenant files to IHCDA with documentation in chronological order. For more information on the monitoring process, see Part 7.6

IHCDA also retains the right (either by a third-party inspector contracted by IHCDA or by IHCDA staff) to perform a physical inspection of any low-income building and/or unit at any time during the Compliance and Extended Use Periods, **with or without notice to the owner.**

E. Notify IRS of Noncompliance

IHCDA will notify the IRS of instances of potential noncompliance. For information on noncompliance, see Section 9.

F. Retain Records

IHCDA will retain all Owner Certifications and records for no less than three (3) years from the end of the calendar year in which they are received. IHCDA will retain records of noncompliance or the failure to certify compliance for no less than six (6) years after its filing of an IRS Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance.

G. Conduct Training

IHCDA will conduct or arrange compliance trainings and will disseminate information regarding the dates and locations of such trainings. For more information on IHCDA Compliance Trainings, refer to Part 7.3 and IHCDA's compliance training website (http://in.gov/myihcda/2341.htm).

In addition, IHCDA's RHTC staff can be contacted at:

Real Estate Development- Compliance & Asset Management
Indiana Housing and Community Development Authority
30 South Meridian Street, Suite 1000
Indianapolis, IN 46204

Telephone: (317) 232-7777 Fax: (317) 232-7778

H. Possible Future Subcontracting of Functions

It is currently the intent of IHCDA to perform all file reviews listed above and outlined in the regulations governing this program. However, IHCDA may, in its sole discretion, decide at some future time to retain an agent or private contractor to perform some of the responsibilities listed above. Owners will be notified of the name and contact persons of the private contractor.

Part 2.2|Responsibilities of Development Owner

Each owner has chosen to utilize the Rental Housing Tax Credit Program to take advantage of the available tax benefits. In exchange for these benefits, certain requirements must be met by the owner that will benefit low-income tenants.

Owners must provide IHCDA comprehensive development information with evidence of overall economic feasibility. Prior to issuance of a final credit allocation, the owner must certify to the total development costs in such form, manner, and detail that IHCDA may from time to time prescribe. The owner must also certify that all RHTC program requirements have been met. Any violation of program requirements could result in the loss of credit allocated.

The responsibilities of development owners also include, but are not limited to:

A. Leasing RHTC Units to Section 42 Eligible Tenants in a Non-discriminatory Manner

For more information on leasing requirements see Part 6.8. For more information on fair housing, general public use, and tenant selection criteria see Part 5.3.

B. Charging no more than the Maximum RHTC Rents (including utility allowances and non-optional fees)

For more information on rent limits and maximum allowable rent, see Part 4.2.

C. Maintaining the property in habitable condition

The owner is responsible for ensuring that the development is maintained in a decent, safe, and sanitary condition in accordance with appropriate standards. Failure to do so is a reportable act of noncompliance. For more information on the suitable for occupancy requirements see Part 5.5.

D. Complying with IRS & IHCDA record-keeping requirements

The owner of any building for which credit has been or is intended to be claimed must keep records that include all of the information set forth below, on a building basis, for a minimum of six (6) years after the due date (with extensions) for filing the federal income tax return for that year. <u>However, the records for the first year of the Credit Period (i.e. "initial tenant files") must be kept for six (6) years beyond the filing date of the federal income tax return for the last year of the Compliance Period of the building [a total of twenty-one (21) years].</u>

<u>Per the guidance issued by the IRS in Revenue Procedure 97-22 and Revenue Ruling 2004-83, IHCDA permits the electronic storage of records in lieu of hardcopies. However, hardcopy files should be maintained for all existing current households. The files for households that have vacated the property may be converted into electronic format once a new household moves into the unit. Additionally, original hardcopies should be kept for all initial files.</u>

Per Treasury Regulation 1.42-5(b)(1), the records must include the following:

- The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);
- The percentage of residential rental units in the buildings that are low-income units and the percentage of unit floor space in the building that is occupied by low-income households (The Applicable Fraction) ;
- The rent charged on each residential rental unit in the building and the applicable utility allowance. Utility allowance records should include copies of the annual supporting documentation such as utility allowance charts from the local PHA, copies of letters from USDA, IHCDA, or local utility companies, or the usage data used for consumption estimates along with the IHCDA approval letter;
- The number of occupants in each low-income unit;
- The low-income unit vacancies in the building, documentation of marketing efforts, and information that shows when and to whom the next available units were rented (this information must include the unit number, tenant name, move-in dates, and move-out dates for all tenants, including market rate tenants);
- The Tenant Income Certification for each qualified household;
- Documentation to support each eligible household's income certification;
- The Eligible Basis and Qualified Basis of the building at the end of the first year of the Credit Period; and
- The character and use of the nonresidential portion of any building included in the development's Eligible Basis (for example, any community building, recreational facility, etc. available to all tenants and for which no separate fee is charged).

- The original local health, safety, or building code violation reports or notices issued by the State or local government unit responsible for making local health, safety, or building code inspections.

E. Attending IHCDA's RHTC Compliance Workshop or On-Demand Owner Training

Prior to a request for and issuance of IRS Form 8609, an agent of the property management staff must have attended an IHCDA tax credit compliance workshop or successfully completed the On-Demand Owner Training within the last year. Additionally, an owner who has not been issued an 8609 from IHCDA within the past three (3) years must successfully complete the IHCDA On-Demand Owner Training.

For more information on IHCDA compliance training opportunities, see Part 7.3 and IHCDA's compliance training website (**http://in.gov/myihcda/2341.htm**).

F. Being knowledgeable about:

- The credit year of the development;
- Placed-in-service dates;
- Relocation of existing tenants, if applicable;
- The Minimum Set-Aside elected (20/50 or 40/60);
- The percentage of the units that are RHTC eligible and the percentage of floor space that is RHTC eligible (The Applicable Fraction);
- The year that credit was first claimed;
- The terms under which the RHTC reservation was made; and
- The Building Identification Number (BIN) of each building in the development.

The items listed above can be found in the Final Application, the extended use agreement, and/or the Form 8609(s) for the project. To ensure compliance, it is important that the owner and management agents have copies of these documents and are familiar with the terms defined within.

G. Complying with the terms of the Initial and Final Applications

In addition to meeting rent and income restrictions, this obligation includes providing the agreed upon services, amenities, and special need units to the tenants throughout the extended use period. IHCDA will monitor for compliance with these elections.

H. Remitting monitoring fees in a timely manner

For more information on monitoring fees, see Part 7.8A.

I. Reporting to IHCDA any changes in ownership or management of the property

If a change in ownership occurs, a detailed description of the change must be provided in writing to IHCDA. Changes in ownership must be reported via IHCDA's "Property Ownership Change Form," found in Appendix D.

Failure to notify IHCDA of changes in ownership after the issuance of IRS Form 8609 could result in the allocation being rescinded and/or possible noncompliance issues.

Note: The IHCDA Board of Directors must approve any change in ownership or transfer request if made prior to the issuance of IRS Form 8609 for any development that has received an allocation of Rental Housing Tax Credits and/or Bonds.

If a change in management occurs, a detailed description of the change must be provided in writing to IHCDA. Changes in management must be reported via IHCDA's "Property Management Change Form," found in Appendix D.

In addition, the owner must notify IHCDA immediately in writing of any changes in ownership or management contact information including contact person's name, address, e-mail address, telephone number, and fax number.

J. Reporting tenant events and submitting Annual Owner Certifications

The development owner must annually certify project compliance to IHCDA, under penalty of perjury. The Annual Owner Certification of Compliance is due on or before January 31st of each year and certifies information for the preceding twelve (12) month period.

The first annual owner certification and corresponding fees are due by January 31st of the year following the first year of the credit period. **However, the owner must begin reporting tenant events in the online system as soon as the buildings are placed-in-service.** The report covers the period from January 1- December 31 of each year and is due to IHCDA by the close of business January 31st of the next calendar year. For Section 1602 & TCAP properties, the first annual owner certification is due by January 31st of the year following the year the first building places in service.

The hard copy Annual Owner Certification forms are made available each year on the compliance manuals and forms page of IHCDA's website, http://in.gov/myihcda/2401.htm , by December. **IHCDA will not send the forms to the owner or management or send an announcement that the forms are available. It is the responsibility of the recipient/management to pull the necessary forms off of IHCDA's website annually and to contact IHCDA if there are any questions or concerns.**

The Indiana Housing Online Management website (www.ihcdaonline.com) has been designed as a tool to conduct compliance checks to ensure properties stay in compliance, to follow the monitoring review process, and as a way for IHCDA to communicate with its partners using a message board. The message board immediately notifies owners and property managers when IHCDA sends monitoring letters, releases Real Estate Department Notices (RED Notices), or releases other information affecting its partners.

Effective January 1, 2009, all IHCDA assisted multi-family rental developments are required to enter tenant events using the Indiana Housing Online Management rental reporting system. Tenant events include move-ins, move-outs, annual recertifications, unit transfers, rent and utility allowance changes, household composition updates, and student status updates. Tenant events that must be reported online do not include interim recertification performed for other programs, such as Section 8 or RD. In order to obtain the maximum benefits from the Indiana Housing Online Management system it is **required that all tenant events be entered into the system within thirty (30) days of the event date.**

Therefore, it is **mandatory that all tenant events be submitted electronically** using the Indiana Housing Online Management website for all developments that contain IHCDA assisted units (e.g. HOME, CDBG, CDBG-D, NSP, Tax Credits, Section 1602, TCAP, Bonds, and/or Development Fund/Trust Fund). This online tenant event reporting process eliminates the former process of submitting a hardcopy "Tenant Beneficiary Spreadsheet." However, the owner must still submit hardcopies of the original signed and notarized Owner Certification packet including the Building Information page with updated contact information, the Multi-Family Housing Utilities Form, supporting documentation for the utility allowances, and the applicable exhibit documents A-D. For more information on Annual Owner Certifications see Part 7.5.

To use the rental reporting system or register to become a user, please visit the Indiana Housing Online Management website at **https://ihcdaonline.com/**. Free on-demand training videos that explain how to use the rental reporting system are available online at **https://ihcdaonline.com/Links.htm**. Additionally, in March 2009, IHCDA released detailed guidance on registering for the Online Management website in Multi-Family Department Notice MFD-09-06. This notice (and all other past MFD Notices) is archived online at **http://in.gov/myihcda/2458.htm.**

IHCDA will set up the buildings for a project in the online reporting system and approve one project owner web user. It is then the responsibility of that project owner web user to approve designated management web users and to set up the individual units within the buildings.

K. Training onsite personnel

The owner must make certain that the onsite management knows, understands, and complies with all applicable federal and state rules, regulations, and policies governing the development, including all elections made in the Final Application, 8609(s), and extended use agreement.

As a best practice, IHCDA encourages the owner to make certain that the development's property management and compliance personnel are familiar with the most current edition of the IHCDA Compliance Manual, the compliance forms and information on IHCDA's website (see **http://in.gov/myihcda/2401.htm)**, and the online reporting requirements through the Indiana Housing Online Management website (accessed through **https://ihcdaonline.com/**, for more information see Part 2.2 J above).

For information on IHCDA Compliance Trainings, see Part 7.3 and IHCDA's compliance training website (**http://in.gov/myihcda/2341.htm**).

L. Notifying IHCDA of any noncompliance issues

If the owner and/or management agent determines that a unit, building, or an entire development is out of compliance with RHTC program requirements, IHCDA should be notified immediately. The owner and/or management agent must formulate a plan to bring the development back into compliance and advise IHCDA in writing of such a plan.

Noncompliance issues identified and corrected by the owner prior to notification of an upcoming compliance review or inspection by IHCDA need not be reported to the IRS by IHCDA. The owner and/or management agent must keep documentation outlining: the nature of the noncompliance issue, the date the noncompliance issue was discovered, the date the noncompliance issue was corrected, and a description of the actions taken to correct the noncompliance.

Example:
A household was initially income qualified and moved into a unit on January 1, 2007. The maximum allowable RHTC gross rent is $500. At time of recertification on January 1, 2008 the owner increased the rent to the market rate of $1,000. During an internal audit dated February 1, 2008 the owner and/or management agent noticed that the unit was out of compliance, because the rent charged exceeded the maximum RHTC rent limit. On February 1, 2008, the owner and/or management agent immediately corrected the noncompliance issue, notified IHCDA of the issue, and then documented the file with an explanation of the noncompliance issue, the date that it was corrected, and a summary of the actions taken to correct the noncompliance issue. On June 21, 2008, IHCDA notified the owner and/or management agent of an upcoming compliance review. Because the noncompliance issue was discovered, reported, and corrected by the owner/management agent prior to the notice of IHCDA's upcoming compliance review, IHCDA is not required to report the noncompliance issue to the IRS.

M. Providing all pertinent property information to the management company

In order to ensure compliance, the owner should provide management personnel with a copy of the Final Application for rental housing financing, a copy of the extended use agreement, a copy of the Carryover Agreement, copies of the Form 8609 for each building, the QAP for the year the project was awarded credits, the current edition of the Compliance Manual, etc.

Additionally, if there is a change in management companies, the owner is responsible for providing all information and previous tenant files to the new management company.

N. Affirmative Fair Housing Marketing Plan and Required Fair Housing Documents

For projects that have federal funding in addition to tax credits (e.g. HOME, CDBG, CDBG-D, NSP, and/or TCAP), the owner must follow Affirmative Fair Housing Marketing procedures as described below.

1. Affirmative Fair Housing Marketing Plans

An Affirmative Fair Housing Marketing Plan (Affirmative Marketing Plan) is required for all awards containing TCAP or five (5) or more HOME/CDBG/CDBG-D/NSP units. **The Affirmative Marketing Plan must be created using HUD Form 935.2A to identify the populations least likely to apply for housing and the outreach/marketing efforts that will be utilized to reach that population.** The Affirmative Marketing Plan must be submitted before IHCDA will allow release of funds. The Affirmative Marketing Plan must include the following information:

i. What segment has been determined the least likely to apply for the award's type of housing?

- Families with children;
- Single parents;
- Elderly;
- Disabled;
- Minority; and/or
- Other

ii. Is the market least likely to apply being re-evaluated yearly?

iii. What efforts are being made to reach the market least likely to apply?

- Television advertising;
- Print media – newspapers, magazines, etc.;
- Community outreach;
- Social service referral network; and/or
- Other

iv. Do the tenant forms include the Fair Housing and Equal Opportunity Employment logos? Are the Fair Housing and Equal Opportunity Employment signs displayed at the leasing office and/or the assisted-unit?

Affirmative Fair Housing Marketing Plans must be updated at least once every five (5) years or more frequently when there are significant changes in the demographics of the local housing market area as described in the instructions for Part 9 on the Form 935.2A. All updated Affirmative Fair Housing Marketing Plans must be submitted to IHCDA with the next Annual Owner Certification of Compliance.

2. Required Brochures and Poster

Upon project entry, all households living in federal program units must be given the Fair Housing brochure entitled "You May Be a Victim Of." The household must sign documentation acknowledging the receipt of this brochure at time of move-in, and this receipt must be maintained in the household's file.

Additionally, all recipients are required to post the Fair Housing and Equal Opportunity poster onsite in the leasing office and/or other common areas.

Part 2.3|Responsibilities of the Management Company & Onsite Personnel

The management company/agent and all onsite personnel are responsible to the owner for implementing the RHTC program requirements properly. Anyone who is authorized to lease apartment units to tenants should be thoroughly familiar with all federal and state laws, rules, and regulations governing certification and leasing procedures, including Section 42 regulations and Fair Housing laws. It is also important that the management company provide information, as needed, to IHCDA and submit all required reports and documentation in a timely manner. Effective January 1, 2009, IHCDA requires that all tenant events be reported via the Indiana Housing Online Management rental reporting system within thirty (30) days of the event date. (For more information about the online reporting system requirements, see Part 2.2 J).

Part 2.4|Demonstrating "Due Diligence"

The owner is ultimately responsible for compliance and proper administration of the RHTC Program. IHCDA expects all owners and management companies to demonstrate "due diligence," hereby defined as the appropriate, voluntary efforts to remain in compliance with all applicable Section 42 rules and regulations. Due diligence can be demonstrated through business care and prudent practices and policies.

Page 3-4 of the 8823 Guide indicates that due diligence requires the establishment of internal controls, including but not limited to: separation of duties, adequate supervision of employees, management oversight and review (such as internal audits), third party verifications of tenant income, independent audits, and timely recordkeeping.

IHCDA adds that due diligence also includes keeping up-to-date with IHCDA policies by reading the amended Compliance Manual each year, following IHCDA updates via RED Notices, and attending IHCDA sponsored tax credit trainings. These are all examples of voluntary efforts that owners and management agents can make in order to remain in compliance.

Another way in which management can demonstrate a commitment to due diligence is by establishing and maintaining a consistent file order. Consistent and well-organized files make it easier for management to recognize when documentation is missing and also allow for easier audits.

If noncompliance issues are discovered, IHCDA may ask the owner/management to demonstrate due diligence by showing that the proper internal policies and procedures are in place to prevent noncompliance from occurring/recurring. It is understood that mistakes may occur from time to time, but it is the responsibility of the owner/management to have policies in place to minimize and remedy these errors.

Section 3 – Key Concepts and Terms

The following section discusses key concepts related to Section 42 including: claiming credits, BINS, Eligible Basis, Applicable Fraction, Qualified Basis, Applicable, Minimum Set-Aside Election, the 8609 Line 8b Election, credit and compliance periods, and placed-in-service dates.

Part 3.1|Calculating Credits

A. Buildings and BINs

Tax credits are claimed on a building by building basis. Therefore, each building within a development is assigned a Building Identification Number (BIN) and issued a separate Form 8609. Every tax credit building has a unique BIN. The BIN consists of a two character state designation (IN), followed by a two digit designation representing the year the credit was allocated, followed by a five digit numbering designation. For example, a BIN for a building allocated credit by IHCDA in 2012 would be IN-12-XXXXX.

Each building will have its own Eligible Basis, Applicable Fraction, and Qualified Basis as described below.

B. Eligible Basis

The Eligible Basis of a building includes those costs incurred with respect to the construction, rehabilitation, or acquisition of the property, minus non-depreciable costs such as land and certain other items such as federal grants and some soft costs. Defined in a simpler manner, Eligible Basis is how much the building cost.

C. Applicable Fraction

The Applicable Fraction is the percentage of a building that the owner has designated for low-income households to occupy. The Applicable Fraction is the lesser of (a) the ratio of the number of low-income units to the total number of units in the building or (b) the ratio of the total floor space of the low-income units to the total floor space of all units in the building. For purposes of claiming credits in the initial year, the Applicable Fraction is calculated on a monthly basis. For all other years of the compliance period, the Applicable Fraction is a "snapshot" determined as of the end of the taxable year.

For a building to remain in compliance, the Applicable Fraction must be at or above the fraction assigned to that building in the Final Application. A decrease in Applicable Fraction results in a decrease in Qualified Basis (see Part 3.1 D below), which decreases the amount of credits that can be claimed for the building.

Example: Building A has 6 units. Units 1-3 are 2 bedroom units at 800 ft^2 and units 4-6 are 3 bedroom units at 1200 ft^2. According to the Final Application, the building's Applicable Fraction is 50%. The owner of Building A has rented units 4-6 as market rate units so that he can charge higher market rates for the larger sized units. The owner believes he is in compliance because the unit fraction is 3 out of 6, or 50%. However, the owner must consider the floor space fraction as well as the unit fraction. In this case, the total square footage of the units is 6000 ft^2. The low-income square footage (sum of square footage for units 1-3) is 2400 ft^2. 2400 ft^2/6000 ft^2 gives a fraction of 40%. Since the Applicable Fraction is defined as the lower of the two ratios, the actual Applicable Fraction for this building is 40%. The owner is out of compliance for violating the Applicable Fraction.

Note: The Applicable Fraction and the Minimum Set-Aside are not the same thing. The Applicable Fraction tells the percentage of units and floor space that must be reserved for tax credit households in a specific building. The Minimum Set-Aside tells the minimum percentage of units that must be set-aside as tax credit units in the entire project (as defined on Form 8609), and the federal income restriction at which these units must be set-aside (50% or 60%). To be in

compliance, a project must meet its Minimum Set-Aside, and each building within that project must meet its Applicable Fraction. For more information on Minimum Set-Aside, see Part 3.2.

D. Qualified Basis

The Qualified Basis of a building is the portion of the cost of the building that went into tax credit units. The Qualified Basis is calculated by multiplying the Eligible Basis (cost of the building) by the Applicable Fraction (percent of the building that is tax credit). A decrease in Qualified Basis can be caused by either a decrease in Applicable Fraction or in Eligible Basis and may result in a loss of credits and potential recapture.

For 100% tax credit buildings, the Qualified Basis will equal the Eligible Basis because all units are tax credit.

E. Applicable Credit Percentage

The Qualified Basis is multiplied by the Applicable Credit Percentage to calculate the annual tax credit that can be claimed for a building. There are two categories of tax credits, known as 4% credits and 9% credits.

4% credits are for acquisition credits and projects with tax exempt bonds. Prior to HERA, 4% credits also applied to projects that were federally subsidized (e.g. projects with HOME funding, RD 515, project-based Section 8), etc. 9% credits apply to new construction and rehabilitation credits, including federally subsidized projects post-HERA.

Actual rates change monthly and are published by Treasury. For example, a 4% credit may actually have a rate of 3.4%. The applicable credit percentage for a building is locked in no later than the placed-in-service date. HERA temporarily set the 9% credit rate at a true 9% (unless the current rate is higher). This temporary provision applies to the credit percentage for 9% deals placed-in-service between 7/30/08 and 12/31/13.

F. The Annual Credit Amount

The maximum amount of credit that can be claimed annually is calculated by multiplying the "Eligible Basis" by the "Applicable Fraction" to ascertain the "Qualified Basis" and then multiplying the "Qualified Basis" by the "Applicable Credit Percentage." Each of these items is defined and discussed in further detail above.

QUALIFIED BASIS = Eligible Basis x Applicable Fraction
ANNUAL RHTC = Qualified Basis x Applicable Credit Percentage

The annual credit allocated may not exceed this amount; however, it may be less if IHCDA determines that this maximum amount is not necessary.

In addition, the credit amount allocated to each building in a development is partially calculated on the following criteria;

1. The Eligible Basis is assigned to a building at the time of final credit allocation (issuance of IRS Form 8609). Although the owner apportions the amount of Eligible Basis for each building on its Allocation Certification Request to IHCDA, the total Eligible Basis of the development will be limited by the total amount of credit that IHCDA actually allocated to the development. In calculating the credit amount for each building, IHCDA may adjust the owner's Eligible Basis apportionment per building so as not to exceed the maximum credit amount allocated to the development.
2. The Applicable Fraction is assigned to a building at the time of final credit allocation (issuance of IRS Form 8609). This fraction is defined by the Code as the <u>lesser of</u>:
    a. The "Unit Fraction": the ratio of low-income units to total units (whether occupied or not) in a building; or
    b. The "Floor Space Fraction": the ratio of total floor space of low-income units to total floor space of total units (whether occupied or not) in a building.

Part 3.2|Claiming Credits

A. Claiming RHTC in the Initial Year

The credit is claimed annually for ten (10) years. The credit period begins in the year that the building is placed-in-service, or the following year if the owner elects on Form 8609 to defer the credit period. Credits cannot be claimed until the minimum set-aside has been met (see Part 3.2). Since the credit period must begin in either the year that a building is placed-in-service or the following year, the minimum set-aside must also be met by this deadline. If the minimum set-aside is not met by the deadline, no credits can ever be claimed. This is a non-correctable form of noncompliance.

During the first year of the credit period, the low-income occupancy percentage is calculated on a monthly basis. The calculation begins with the first month in which the development was placed-in-service even though the building may not be occupied during that month. Occupancy for each month is determined on the last day of the month.

An IRS Form 8609 is completed for each building in the development receiving credits and is filed with the taxpayer's return for the first year of the Credit Period. Owners can elect to defer the start of the Credit Period by checking the appropriate box on the IRS Form 8609. A sample copy of Form 8609 and its instructions are located in Appendix B.

B. Initial Year Prorate

A development claiming credit in the initial year of occupancy is subject to a special provision that limits the credit to a proportionate amount based on average occupancy during the year.

For example: If one-half of the low-income units were occupied in November and the remaining one-half were occupied in December, the building would be treated as being in service for 1.5/12 months (12.5% - all of December and half of November) of the year for a calendar year partnership. In the 11th year, the disallowed credit of 10.5/12 (87.5%) could be claimed.

If a qualified low-income household becomes ineligible prior to the end of the initial RHTC year, that unit cannot be counted in the first year toward the Minimum Set-Aside for purposes of determining the Qualified Basis.

C. The Two-Thirds Rule

If an owner decides to claim credits for a development in the initial year when, for example, only 80% of the units are rented to RHTC eligible households, the maximum Qualified Basis for the entire Credit Period would be 80% with the remaining 20% eligible for two-thirds (2/3) credit if later rented to eligible households.

D. Claiming Credit in the Remaining Years of the Compliance Period

Owners must file an IRS Form 8586 (Low-Income Housing Credit) with the Internal Revenue Service every year in the Compliance Period. This form indicates continuing compliance and the Qualified Basis of the development each year of the Compliance Period. A sample copy of IRS Form 8586 is located in Appendix B.

E. Claiming Credits for Acquisition and Rehabilitation Projects

A project awarded tax credits for the acquisition and rehabilitation of an existing building(s) will receive two sets of credits, one for the acquisition and one for the rehabilitation, and will therefore have two Form 8609s for each building. Neither

set of credits can be claimed prior to the date of acquisition, nor prior to the year in which the rehabilitation expenditure requirements are completed. There will be a separate acquisition placed-in-service date and rehab placed-in-service date.

1. If Acquisition and Rehabilitation Occur in the Same Year

The owner has a 240-day window (120 days before and 120 days after date of acquisition) in which to begin certifying in-place households (defined as pre-existing households that are living in units at the time of acquisition). The owner may pre-qualify the households up to 120 days before the date of acquisition using the current income limits, or at any time up to 120 days after the date of acquisition using the limits in effect as of the date of acquisition. In either scenario, the effective date of the certification is the date of acquisition, and the certification is noted as an initial move-in, even though the tenant has already been living in the unit. This allows the credit flow to begin on the date of acquisition, assuming rehabilitation is completed within the same year. If an existing household is not certified within the allowable timeframe, the effective date of the certification cannot pull back to the date of acquisition, but instead becomes the date on which the certification is actually completed. New move-in events are treated the same as in new construction projects with the effective date being the date that the household takes possession of the unit. For more information on certification effective dates in acquisition and rehabilitation projects, see Part 6.5 D.

Example 1-Claiming credits when acquisition and rehabilitation are completed in the same year:
A building is acquired on February 1, 2010 and rehabilitation is completed on October 1, 2010. The owner may begin claiming credits back to February 1 (date of acquisition) for those units that were qualified.

Example 2-The 240-day window:
A building is acquired on July 1, 2010. In-place households may be qualified anytime from March 3, 2010 (120 days prior to the date of acquisition) through October 28, 2010 (120 days after the date of acquisition). Any certifications completed during this time will be dated effective as of July 1, 2010 (the date of acquisition). Any existing households that are not certified until after October 28, 2010 will be initially qualified with an effective date of the actual date that the certification was completed.

2. If Acquisition and Rehabilitation Occur in Different Years / Safe Harbor & "The Test"

The owner has a 240-day window (120 days before and 120 days after date of acquisition) in which to begin certifying in-place households (pre-existing households that are living in units at the time of acquisition). The owner may pre-qualify the households up to 120 days before the date of acquisition, or at any time up to 120 days after the date of acquisition. In either scenario, the effective date of the certification is the date of acquisition, and the certification is noted as an initial move-in, even though the tenant has already been living in the unit. If an existing household is not certified within the allowable timeframe, the effective date of the certification cannot pull back to the date of acquisition, but instead becomes the date on which the certification is actually completed. New move-in events are treated the same as in new construction projects with the effective date being the date that the household takes possession of the unit. For more information on certification effective dates in acquisition and rehabilitation projects, see Part 6.5 D.

However, when rehabilitation is not completed until the year after the date of acquisition, the owner cannot begin claiming credits on the date of acquisition, but instead must wait until the beginning of the year in which the rehab is completed.

Example-Claiming credits when acquisition and rehabilitation are completed in different years:
A building is acquired on October 1, 2010 and rehabilitation is completed on April 1, 2011. The owner may begin claiming credits on January 1st, 2011 (the beginning of the year in which rehabilitation was completed) for those units that were qualified.

Rev. Proc. 2003-82 states that a unit occupied before the beginning of the credit period will be considered a low-income unit at the beginning of the credit period, so long as (1) the household was income qualified at the time the owner acquired

the building or the date on which the household started occupying the unit, whichever is later, (2) the income of the household is tested for purposes of the Available Unit Rule at the beginning of the first year of the credit period, and (3) the unit remains rent-restricted. Therefore, (as per requirement #2) at the beginning of the first year of the credit period, the incomes of the households that were initially certified in the previous year must be tested to determine if any units trigger the Available Unit Rule. However, if the effective date of the initial certification is 120 days or less prior to the beginning of the credit year, then the "test" does not have to be performed. In this way, the program provides a "safe harbor" provision so that households that income qualified before the beginning of the first year of the credit period but exceed the income limit at the beginning of the first year of the credit period are still considered qualified tax credit households.

NOTE: IHCDA waives the "test" requirement for 100% tax credit projects. The purpose of the "test" is to identify households that exceed 140% and invoke the Available Unit Rule. Since recertifications are waived for 100% tax credit projects and the Available Unit Rule applies differently (see Part 5.1(c)(3)) the "test" requirements will not be applied.

For those units that must be tested, the "test" consists simply of confirming with the household that the sources and amounts of anticipated income listed on the initial Tenant Income Certification form are still current. If additional sources of income are identified, the TIC must be updated based on the household's self-certification (it is not necessary to complete third-party verifications for purposes of conducting the "test"). Any households that exceed the 140% limit at the time of the "test" will invoke the Available Unit Rule.

Example 1- "Test" needed:
A building is acquired on July 1, 2010 and rehabilitation is completed on March 1, 2011. The owner certified all existing households within the 240-day window, so the effective date of each certification is July 1, 2010 (the date of acquisition). Because rehabilitation is not completed until 2011, the owner cannot claim credits until January 1, 2011. As of January 1, 2011 (the beginning of the first year of the credit period) the owner must "test" the income of all households that were certified with an effective date more than 120 days prior to January 1, 2011 (this includes all of the in-place households that were certified effective as of July 1, 2010).

Example 2- "Test" not needed:
A building is acquired on November 1, 2010 and rehabilitation is completed on June 1, 2011. The owner certified all existing households within the 240-day window, so the effective date of each certification is November 1, 2010 (the date of acquisition). Because rehabilitation is not completed until 2011, the owner cannot claim credits until January 1, 2011. In this scenario, the owner will not have to perform the "test," because all certifications had an effective date within 120 days prior to January 1, 2011 (the beginning of the first year of the credit period).

3. **Relocating Households during Rehabilitation**

An in-place household may have to be relocated from its unit, either temporarily or permanently, in order for the unit to be properly rehabbed. Credits cannot be claimed while a unit is uninhabitable. However, if a household is temporarily moved and then returned to the unit within the same calendar month, credits are not interrupted.

Example 1- Temporarily relocated but back within same calendar month:
Household is temporarily relocated on April 4th. Rehabilitation is completed and the household is returned to the unit on April 26th. The owner is eligible to claim credits for the month of April.

Example 2- Temporarily relocated but back in a different calendar month:
Household is temporarily relocated on August 15th. Rehabilitation is completed and the household is returned to the unit on September 5th. The owner may not claim credits on the unit for the month of August but may claim credits for September.

If a household permanently relocates to an empty (never qualified) unit, the credits stop on the original unit and begin in the new unit. If a household permanently relocates to a unit that has already been initially qualified, then the units swap status.

Example 3- Permanent relocation to an empty unit:
Household permanently relocates from Unit 1 to the empty (never qualified) Unit 12. The credits on Unit 1 stop and the owner cannot continue claiming credits on the unit until a new qualified move-in occurs. The owner may begin claiming credits on Unit 12.

Example 4- Permanent relocation to a previously qualified unit:
Household permanently relocates from Unit 1 to the previously qualified but now vacant Unit 4. The credits continue on both Units 1 and 4 (as per the Vacant Unit Rule). The units swap status, meaning Unit 1 is now treated as a vacant RHTC unit.

4. Removing Unqualified In-place Households

It is possible that some in-place households will not be able to qualify as tax credit households, either due to income or student status ineligibility. In a conventional apartment community, the owner can terminate leases at the end of the lease term. However, if the tax credits are being layered over an existing Section 8 or RD property, the households cannot be terminated due to ineligibility for the tax credit program. Any Section 8 or RD families that are over the tax credit income limits, ineligible under tax credit student status regulations, or are paying over the tax credit rent limit cannot be certified as RHTC households, but cannot be evicted or terminated. The owner may not claim credits on those units until the households become eligible or vacate. Therefore, it may be in the owner's interest to try and negotiate a mutual agreement with the household to encourage them to voluntarily vacate the unit. This could include paying the household's moving expenses, offering other monetary incentives, etc.

If an existing tax credit development receives an additional set of credits for rehabilitation, or if an existing tax credit development is purchased by a new owner who receives a set of acquisition and rehabilitation credits, the in-place tax credit households are grandfathered into the new allocation and considered qualified households. Households exceeding the 140% limit are considered qualified, but the Next Available Unit Rule will be in effect. See Part 5.1 C more information.

Part 3.3|Minimum Set-Aside

A. Minimum Set-Aside Elections: 20/50 or 40/60

By the time credit is allocated, the owner has elected one of the following Minimum Set-Aside elections on a development basis:

1. "20/50" Election: At least 20% of available rental units in the project must be rented to households with incomes not exceeding 50% of Area Median Income adjusted for family size. NOTE: If the 20/50 Election has been made, no units in that project may be set-aside at the 60% rent or income level.
2. "40/60" Election: At least 40% of available rental units in the project must be rented to households with incomes not exceeding 60% of Area Median Income adjusted for family size.

The Minimum Set-Aside must be met on a project basis (project is defined by the election made by the owner on IRS Form 8609 Part II, Line 8b). Therefore, if each building is its own project, then the Minimum Set-Aside must be met at each building (See Part 3.3 below).

Once the election of the Minimum Set-Aside is made on IRS Form 8609, it is irrevocable. Thus, the elected Minimum Set-Aside and the corresponding rent and income restrictions apply for the duration of the Compliance Period and Extended Use Period applicable to the development.

Note: The owner may have also elected to target a percentage of the units to persons at lower income levels (30% or 40%) and/or to target a higher percentage/number of units to low-income persons. The owner must also comply with those additional elections as defined in the development's Final Application and Extended Use Agreement.

B. Minimum Set-Aside Violations in the Initial Year

Credits cannot be claimed until the minimum set-aside has been met. Since the credit period must begin in either the year that a building is placed-in-service or the following year, the minimum set-aside must also be met by this deadline. If the minimum set-aside is not met by the deadline, no credits can ever be claimed. This is a non-correctable form of noncompliance.

C. Minimum Set-Aside Violations in Subsequent Years

If the minimum set-aside is violated for a particular year of the compliance period (not the initial year of the credit period), the project is out of compliance for that year and subject to recapture of previously claimed credits. Furthermore, no additional credits can be claimed until the minimum set-aside has been restored. The project is back in compliance for the taxable year in which the minimum set-aside is restored.

The minimum set-aside is violated if an insufficient number of units are qualified tax credit units. However, per the 8823 Guide (page 10-3), "noncompliance with the minimum set-aside should also be reported if systemic errors affecting all the LIHC units are identified; e.g. using incorrect income or rent limits for all the units."

D. Minimum Set-Aside vs. Applicable Fraction

Note: The Applicable Fraction and the Minimum Set-Aside are not the same thing. The Applicable Fraction tells the percentage of units and floor space that must be reserved for tax credit households in a specific building. The Minimum Set-Aside tells the minimum percentage of units that must be set-aside as tax credit units in the entire project (as defined on Form 8609), and the federal income restriction at which these units must be set-aside (50% or 60%). To be in compliance, a project must meet its Minimum Set-Aside, and each building within that project must meet its Applicable Fraction. For more information on Minimum Set-Aside, see Part 3.1 C.

Part 3.4|8609 Part II Line 8b: Multiple Building Projects

Part II of the Form 8609 is completed by the owner with respect to the first year of the credit period. Under Part II Line 8b, the owner must answer the question "Are you treating this building as part of a multiple building project for purposes of Section 42?" If the owner elects "yes," then the building is part of a multiple building project along with the other buildings in the development. If the owner elects "no," then each building in the development is considered its own project. This election has important compliance implications that affect the project for the duration of the compliance period. All developments that are approved for IHCDA's Extended Use Policy will be treated as multiple building projects for compliance purposes, even if the 8609s reflect that the buildings are not part of a multiple building project.

The Minimum Set-Aside election must be met on a project basis. Therefore, if the owner has elected "yes" on Line 8b, then the building is part of a multiple building project and the Minimum Set-Aside must be met across the entire project. If the owner has elected "no" on Line 8b, then the building is considered its own project and the Minimum Set-Aside must be met within each building.

The Line 8b election also affects unit transfer rules. If the owner has elected "yes" to the multiple building project, then tenants may transfer between buildings without having to recertify for the program, as long as the household is not above the 140% limit. If the owner has elected "no" to the multiple building project, then tenants may not transfer between buildings. If a household wants to move to another building they must be treated as a new move-in and re-qualified for the program based on current circumstances. For more information on unit transfer rules, see Part 3.5D.

The Line 8b election also impacts implementation of rent and income limits, specifically regarding the applicability of HERA special limits. For more information, see Section 4.1 and 4.2. Finally, the Line 8b election impacts the 100% recertification exemption since this applies to a project per the 8609 definition. See Part 6.7 for more information.

Because the election made on Part II Line 8b of the Form 8609 is so important for ongoing compliance, it is crucial that the owner and management agents have copies of the 8609s for each building and understand the elections that have been made.

Part 3.5|Credit and Compliance Period

Once allocated by the housing credit agency, tax credits can be claimed annually over a ten (10) year period (the "credit period") beginning either in the year the building is placed-in-service or the following year, depending on which option is elected by the owner. Developments must, however, remain in compliance for a minimum of fifteen (15) years (the "compliance period"). Additionally, all projects allocated credits in 1990 or after must enter into an Extended Use Agreement requiring at least an additional fifteen (15) years of compliance on top of the initial fifteen (15) year compliance period (see B below for more details).

A. Compliance Period for Credit Allocations After December 31, 1989

Developments receiving a credit allocation after December 31, 1989, will have entered into an Extended Use Agreement (Declaration of Extended Low-Income Housing Commitment or Lien and Restrictive Covenant) with the Indiana Housing and Community Development Authority (IHCDA) at the time the final allocation of credit was issued via IRS Form 8609. These developments must comply with eligibility requirements for an "Extended Use Period." The Extended Use Period is either an additional fifteen (15) years beyond the fifteen (15) year compliance period [a total of thirty (30) years], or the date specified in the Declaration of Extended Low-Income Housing Commitment, whichever is longer.

Earlier termination of the Extended Use Period is provided for under certain circumstances in the Code. However, if a development received ranking points for delaying enactment of such earlier termination, the owner will be bound by this election in the Declaration of Extended Low-Income Housing Commitment. For more information, see Part 8.2

Additional information about the Extended Use Period can be found in Section 8.

B. Compliance Period for Credit Allocations for 1987 through 1989 Only

Developments receiving a credit allocation prior to January 1, 1990 did not enter into an Extended Use Agreement, and therefore only have a fifteen (15) year compliance period. However, any building in such a development that received an additional allocation of credit after December 31, 1989 must comply with eligibility requirements in effect beginning January 1, 1990, and will be bound by a Declaration of Extended Low-Income Housing Commitment (per Revenue Ruling 92-79).

Part 3.6|Placed-in-service Dates

Per IRS Notice 88-116, the placed-in-service date of a building is "the date on which the building is ready and available for its specifically assigned function." A building may be placed-in-service regardless of whether the rental units are currently occupied.

- For new construction, the placed-in-service date is the date the building receives its certificate of occupancy (C of O).
- For acquisition, the placed-in-service date is the date of acquisition.
- For rehabilitation, the placed-in-service date is based on expenditure tests. The building can be considered placed-in-service when the greater of 20% of the adjusted basis or $6100 per unit has been spent. However, the building should not be placed-in-service until the appropriate eligible basis has been met.

For multiple building projects, each building will have its own placed-in-service date. The project will be considered placed-in-service the date that the first building within the project placed-in-service. This is an important concept for determining rent and income limits.

Section 4- Income Limits, Rent Limits and Utility Allowances

In order to remain in compliance, tax credit units must be rent and income restricted. This section discusses how to properly apply income limits, rent limits, and utility allowances. Income and rent limits are provided in Appendix E.

Part 4.1|Income Limits

All tax credit units must be occupied by income qualified households, based on the income limits published annually by HUD. HUD now refers to tax credit rental projects as "Multifamily Tax Subsidy Projects." Beginning in 2009, HUD provides a separate table of income limits specifically calculated for tax credit projects and refers to these as the MTSP Limits. When new MTSP tables are published annually by HUD, IHCDA will post the new income limits and corresponding rent limits on its website. This information is provided by IHCDA only for the owner's convenience as a courtesy. However, it is the responsibility of the owner, not IHCDA, to verify its accuracy. When new income limits are released, the owner has forty-five (45) days from the HUD effective date to implement the new limits and corresponding rents.

Owners may not anticipate increases in income limits and corresponding rents. Limits remain in effect until new annual limits are officially published each year by HUD. The owner must implement the new rent and income limits within forty-five (45) days of the HUD effective date of the limits. <u>During the 45 day implementation period, the owner may rely on either set of limits for all purposes, including the election of gross rent floor and hold harmless limits.</u> For more information on the 45 day period, see 4.1(D).

Household income must be determined in a manner consistent with the Section 8 methodology of calculating annual income as described in Chapter 5 of HUD Handbook 4350.3 and discussed further in Section 6 of this manual. When determining if a household's income is at or below the applicable limit, the earned income from each adult household member eighteen (18) years of age or older and the unearned income of all members of the household (regardless of age) must be included in the total household income calculation (See HUD Handbook 4350.3 in Appendix C for complete rules on calculating income).

If the household income of a qualifying unit increases above the 140% limit and the unit initially met the qualifying income requirements, the unit may continue to be counted as a qualifying unit as long as the unit continues to be rent-restricted and the next available unit of comparable or smaller size is rented to a qualified low-income household. (See Part 5.1 C for further discussion of the 140% Rule/Next Available Unit Rule.)

A. Maximum Income Limits based on Set-Asides

Income limits for qualifying households depend on the Minimum Set-Aside election the owner has chosen. Qualifying households in developments operating under the "20/50" election may not have incomes exceeding 50% of Area Median Income adjusted for family size. Qualifying households in developments operating under the "40/60" election may not have incomes exceeding 60% of Area Median Income adjusted for family size. The owner may have also elected to target a percentage of the units to persons at lower income levels (30% or 40%). The owner must also comply with those additional elections as defined in the development's Final Application and Extended Use Agreement.

Developments funded by IHCDA prior to 2003 are both rent and income restricted at the AMI levels selected in their Final Application submitted to IHCDA, and are required to meet those state set-asides identified and recorded in the Extended Use Agreement.

Developments funded in or after 2003 are rent restricted at the individual AMI levels as selected in the Final Application submitted to IHCDA and recorded in the Extended Use Agreement. Income restrictions for these developments are at the federal Minimum Set-Aside elected by the owner (either the "20/50" or "40/60" set-aside).

Example 1- Property funded prior to 2003: *XYZ Apartments is a 100% tax credit development with 100 units. The federal Minimum Set-Aside is "40/60," but in the Final Application and Extended Use Agreement, the owner elected that 70 units would be at the 60% AMI level and 30 units would be at the 50% AMI level. The 60% units must be charged no more than the applicable 60% rent level and must be occupied by households not exceeding 60% of area median income. The 50% units must be charged no more than the applicable 50% rent level and must be occupied by households not exceeding 50% of area median income. All units are both rent and income restricted at the state set-aside, as chosen in the Final Application and recorded in the Extended Use Agreement.*

Example 2- Property funded in or after 2003: *XYZ Apartments is a 100% tax credit development with 100 units. The federal Minimum Set-Aside is "40/60," but in the Final Application and Extended Use Agreement, the owner elected that 70 units would be at the 60% AMI level and 30 units would be at the 50% AMI level. The 60% units must be charged no more than the applicable 60% rent level and must be occupied by households not exceeding 60% of area median income. The 50% units must be charged no more than the applicable 50% rent level, BUT may be occupied by households earning up to 60% of area median income. The units are rent restricted at the state set-asides, as chosen in the Final Application and recorded in the Extended Use Agreement. However, the units are income restricted at the elected federal Minimum Set-Aside of 60%.*

B. "Hold Harmless" Policy

The Housing and Economic Recovery Act of 2008 (HERA) amended Section 42 to include a "hold-harmless" policy for income and rent limits. According to the hold harmless provision, the income limits and corresponding rent limits for a particular project (as defined by Line 8b of the 8609) will never decrease for any calendar year after 2008, even if there is a decrease in the HUD published limits for the county in which the project is located. However, a project is never eligible to use a set of limits if it was not placed-in-service during the time those limits were in effect. A multiple building project is considered placed-in-service on the date the first building in that project places in service.

Therefore, income and rent limits are no longer based solely on the county in which a development is located. Instead, <u>limits are project-specific based on the placed-in-service date</u>. If buildings within the same development are considered separate "projects" (i.e. if Line 8b of the 8609 is marked 'no'), then each building may potentially have different sets of limits based on their different placed-in-service dates. Even if the multiple building project election is marked "yes," it is important to note that separate phases are always considered different projects and are therefore likely to have different sets of income and rent limits.

A project that places-in-service during the forty-five (45) day implementation period after the release of a new set of income limits may rely on either set of limits (the old or new) for purposes of determining the gross rent floor and/or hold-harmless limits that will apply to the property. See LIHC Newsletters 47, 48, and 50 for more information on "relying" on income limits.

For more information on properly implementing income limits, see Part 4.1 D below.

C. HERA Special Income Limits

In 2009, HUD began publishing "HERA special" income limits for counties impacted by HUD's "hold-harmless" policy. Where applicable, the HERA limits must be used by all tax credit projects that placed-in-service on or before December 31, 2008. However, not all counties in Indiana have HERA special limits. Projects that placed-in-service in 2009 or later are not eligible to use the HERA Special limits. Reminder: project is defined by the election on Line 8b of Form 8609. A multiple building project is considered placed-in-service on the date the first building in that project places in service.

To summarize, a project (as defined by Line 8b of Form 8609) is eligible to use the HERA special limits if:

1. The county in which the project is located has HUD published HERA special limits for the year; AND

2. The project placed-in-service on or before December 31, 2008.

-For more information on properly implementing income limits, see Part 4.1 D below.
-For additional guidance on the applicability of HERA special income limits, see Low Income Housing Credit Newsletter Issue #35, May 2009 and the follow-up article in Issue # 47, December 2011.

D. Which Income Limits Should Be Used?

To determine which set of income limits to use for a particular project, the owner/management must first properly define the project based on election made on Line 8b of Form 8609 and then identify the first placed-in-service date for that project. A multiple building project is considered placed-in-service on the date the first building in that project places in service.

1. A project that placed-in-service on or before 12/31/08 will use the current HERA special limits. if the county in which the project is located does not have HERA special limits published, then the project will use the regular limits for that county.
2. A project that placed-in-service on or after 1/1/09 will compare all sets of limits that were effective since the placed-in-service date and apply the highest set ("hold-harmless"). A project that placed-in-service after 12/31/08 will never be eligible for HERA special limits.

LIMIT YEAR	RELEASE DATE	LAST DAY OF 45 DAY IMPLEMENTATION PERIOD	1st DAY NEW LIMITS MUST BE USED
2009	3/19/09	5/2/09	5/3/09
2010	5/14/10	6/27/10	6/28/10
2011	5/31/11	7/14/11	7/15/11
2012	12/1/11	1/14/12	1/15/12
2013	12/4/12	1/17/13	1/18/13
2014	12/18/13	1/31/14	2/1/14

Note: A project that places-in-service during the forty-five (45) day implementation period after the release of a new set of income limits may rely on either set of limits (the old or new) for purposes of determining the hold-harmless limits that will apply to the property. See LIHC Newsletters 47, 48, and 50 for more information on "relying" on income limits.

Example #1: A project places in service between 3/19/09 and 5/13/10. This project placed-in-service during the effective term of the 2009 limits, so management would compare all limits from 2009 and beyond and use the highest set. The project is not eligible for HERA special limits but will apply the hold-harmless policy.

Example #2: A project places in service between 5/14/10 and 5/30/11. This project placed-in-service during the effective term of the 2010 limits, so management would compare all limits from 2010 and beyond and use the highest set. The project is not eligible for HERA special limits but will apply the hold-harmless policy. The project is not eligible to use 2009 limits because it was not in service during the effective term of those limits UNLESS the project placed-in-service during the 45 day window between 5/14/10 and 6/27/10 (inclusive) in which case it could rely on 2009 limits.

Example #3: A project places in service between 5/31/11 and 11/30/11. This project placed-in-service during the effective term of the 2011 limits, so management would compare all limits from 2011 and beyond and use the highest set. The project is not eligible for HERA special limits but will apply the hold-harmless policy. The project is not eligible to use 2009 or 2010 limits because it was not in service during the effective term of those limits, UNLESS the project

placed-in-service during the 45 day window between 5/31/11 and 7/14/11 (inclusive) in which case it could rely on 2010 limits.

Example #4: A project places in service between 12/1/11 and 12/3/12. This project placed-in-service during the effective term of the 2012 limits, so management would compare all limits from 2012 and beyond and use the highest set. The project is not eligible for HERA special limits but will apply the hold-harmless policy. The project is not eligible to use 2009, 2010, or 2011 limits because it was not in service during the effective term of those limits, UNLESS the project placed-in-service during the 45 day window between 12/1/11 and 1/14/12 (inclusive) in which case it could rely on 2011 limits.

Example #5: A project places in service between 12/4/12 and 12/17/13.. This project placed-in-service during the effective term of the 2013 limits , so management would compare all limits from 2013 and beyond and use the highest set. The project is not eligible for HERA special limits but will apply the hold-harmless policy. The project is not not eligible to use the 2009, 2010, 2011, or 2012 limits because it was not in service during the effective term of those limits, UNLESS the project placed-in-service during the 45 day window between 12/14/12 and 1/17/13 (inclusive) in which case it could rely on 2012 limits.

Example #5: A project places in service on or after 12/18/13 and before the release of the 2015 limits. This project placed-in-service during the effective term of the 2014 limits and additional limits have not yet been published. This project has no choice but to use the 2014 limits until future sets of limits are published. The project is not eligible for HERA special limits and is not eligible to use the 2009, 2010, 2011, 2012, or 2013 limits because it was not in service during the effective term of those limits, UNLESS the project placed-in-service during the 45 day window between 12/18/13 and 1/31/14 (inclusive) in which case it could rely on 2013 limits.

For additional assistance in determining the correct limits for a particular project, refer to the following online resources:
Novogradac & Company, LLP "The Rent and Income Limit Calculator©": http://www.novoco.com/products/rentincome.php
HUD MTSP Income Limits Documentation System: http://www.huduser.org/portal/datasets/mtsp.html

Part 4.2|Rent Limits

All tax credit units must be rent restricted, based on the limits published annually by HUD. HUD now refers to tax credit rental projects as "Multifamily Tax Subsidy Projects." Beginning in 2009, HUD provides a separate table of income limits specifically calculated for tax credit projects and refers to these as the MTSP Limits. When new MTSP tables are published annually by HUD, IHCDA will post the new income limits and corresponding rent limits on its website. This information is provided by IHCDA only for the owner's convenience as a courtesy. However, it is the responsibility of the owner, not IHCDA, to verify its accuracy. When new income limits are released, the owner has forty-five (45) days from the HUD effective date to implement the new limits and corresponding rents.

Owners may not anticipate increases in income limits and corresponding rents. Limits remain in effect until new annual limits are officially published each year by HUD. The owner must implement the new rent and income limits within forty-five (45) days of the HUD effective date of the limits. <u>During the 45 day implementation period, the owner may rely on either set of limits for all purposes, including the election of gross rent floor and hold harmless limits.</u> For more information on the 45 day period, see 4.1(D).

A. Rent Limit Terminology

The **<u>rent limit</u>** is the greatest amount of rent, <u>including a utility allowance for tenant-paid utilities</u> (except telephone, cable television, and internet) and the amount of any non-optional fees, that can be charged for an RHTC unit. Because the rent limit includes the amount of a utility allowance, tenants cannot actually be charged rent in the amount equal to the rent limit unless all utilities are owner-paid and there are no additional non-optional charges. See Part 4.4 for more information on utility allowances.

The **gross rent** for a unit is the sum of tenant portion rent + utility allowance + non-optional charges. The gross rent may never exceed the applicable published rent limit.

The **maximum allowable rent** is the most an owner is permitted to actually charge for rent once tenant-paid utilities (except telephone, cable television, and internet) and other non-optional charges are deducted. The maximum allowable rent can never exceed the applicable published rent limit. Maximum allowable rent may also be referred to as the "maximum chargeable rent" or the "net rent."

The **tenant-paid rent** or **lease rent** is the actual rent charged to the household by the owner, as defined in the lease. The lease rent may never exceed the maximum allowable rent or the applicable published rent limit.

Each project has a **gross rent floor**, defined as the lowest rent limit that the owner will ever be required to implement. For more information on gross rent floors, see Part 4.2 D below.

B. Calculating Rent Limits for Developments Allocated Credit after January 1, 1990

Developments receiving RHTC allocations after January 1, 1990, must be rent-restricted based on an imputed, not actual, family size. Family size is imputed by number of bedrooms in the following manner:

1. An efficiency or a unit which does not have a separate bedroom – 1 individual; and
2. A unit which has 1 or more separate bedrooms – 1.5 individuals for each separate bedroom.

The maximum gross rent is calculated as 30% of the applicable income limit for the imputed household size (notwithstanding that the actual household size may be different).

For Example:
Income Limits (by household size)

One Person	*Two Persons*	*Three Persons*	*Four Persons*
$10,000	*$15,000*	*$20,000*	*$25,000*

The rent for a two-bedroom unit is calculated based on the imputed household size of three persons (1.5 persons for each of the two bedrooms). Annual rent is 30% of the income limit for the imputed household size [($20,000 x 30%) divided by 12 months equals $500 monthly]. The $500 amount would be the maximum allowable monthly gross rent regardless of the number of persons actually occupying the two-bedroom unit.

C. Maximum Rent Limits based on Set-Asides

Rent limits for qualifying households depend on the Minimum Set-Aside election the owner has chosen. Qualifying units in developments operating under the "20/50" election may not have rents exceeding the 50% rent limit. Qualifying households in developments operating under the "40/60" election may not have rents exceeding the 60% rent limit. The owner may have also elected to rent a percentage of the units at lower rent limits (30% or 40%). The owner must also comply with those additional elections as defined in the development's Final Application and Extended Use Agreement.

Developments funded by IHCDA prior to 2003 are both rent and income restricted at the AMI levels selected in their Final Application submitted to IHCDA, and are required to meet those state set-asides identified and recorded in the Extended Use Agreement.

Developments funded in or after 2003 are rent restricted at the individual AMI levels as selected in the Final Application submitted to IHCDA and recorded in the Extended Use Agreement. Income restrictions for these developments are at the

federal Minimum Set-Aside elected by the owner (either the "20/50" or "40/60" set-aside). Check the property's Final Application and Declaration/Lien to ensure that the rent restrictions only option was selected for the state set-asides.

Example 1- Property funded prior to 2003: *XYZ Apartments is a 100% tax credit development with 100 units. The federal Minimum Set-Aside is "40/60," but in the Final Application and Extended Use Agreement, the owner elected that 70 units would be at the 60% AMI level and 30 units would be at the 50% AMI level. The 60% units must be charged no more than the applicable 60% rent level and must be occupied by households not exceeding 60% of area median income. The 50% units must be charged no more than the applicable 50% rent level and must be occupied by households not exceeding 50% of area median income. All units are both rent and income restricted at the state set-aside, as chosen in the Final Application and recorded in the Extended Use Agreement.*

Example 2- Property funded in or after 2003: *XYZ Apartments is a 100% tax credit development with 100 units. The federal Minimum Set-Aside is "40/60," but in the Final Application and Extended Use Agreement, the owner elected that 70 units would be at the 60% AMI level and 30 units would be at the 50% AMI level. The 60% units must be charged no more than the applicable 60% rent level and must be occupied by households not exceeding 60% of area median income. The 50% units must be charged no more than the applicable 50% rent level, BUT may be occupied by households earning up to 60% of area median income. The units are rent restricted at the state set-asides, as chosen in the Final Application and recorded in the Extended Use Agreement. However, the units are income restricted at the elected federal Minimum Set-Aside of 60%.*

D. Gross Rent Floors

Every tax credit development has a "gross rent floor," defined as the lowest rent limits that will ever be in place for that particular development. If the current year's HUD published limits drop below the gross rent floor, a project may continue to use the rent limits established within the gross rent floor. It is important to note that there is no floor for income limits.

For tax credit projects, the gross rent floor is either the rent limit in effect at the placed-in-service date of the first building in the development (if elected by the owner) or on the allocation date (per IRS this is the default gross rent floor lock-in). The allocation date will be defined as the date of the Carryover Agreement. The owner's gross rent floor election can be found in the Carryover Agreement document.

For bond projects, the gross rent floor is either the rent limit in effect at the placed-in-service date for the first building in the development (if elected by the owner) or on the reservation letter date (per the IRS this is the default rent floor lock-in).

A project that places-in-service during the forty-five (45) day implementation period after the release of a new set of income and rent limits may rely on either set of limits (the old or new) for purposes of determining the gross rent floor and/or hold-harmless limits that will apply to the property. See LIHC Newsletters 47, 48, and 50 for more information on "relying" on income limits.

See Revenue Procedure 94-57 for more information.

E. "Hold Harmless" Policy

The Housing and Economic Recovery Act of 2008 (HERA) amended Section 42 to include a "hold-harmless" policy for income and rent limits. According to the hold harmless provision, the income limits and corresponding rent limits for a particular project (as defined by Line 8b of the 8609) will never decrease for any calendar year after 2008, even if there is a decrease in the published limits for the county in which the project is located. However, a project is never eligible to use a set of limits if it was not placed-in-service during the time those limits were in effect. A multiple building project is considered placed-in-service on the date the first building in that project places in service.

Therefore, income and rent limits are no longer based solely on the county in which a development is located. Instead, limits are project-specific based on the placed-in-service date. If buildings within the same development are considered

separate "projects" (i.e. if Line 8b of the 8609 is marked 'no'), then each building may potentially have different sets of limits based on their different placed-in-service dates. Even if the multiple building project election is marked "yes," it is important to note that separate phases are always considered different projects and are therefore likely to have different sets of income and rent limits.

A project that places-in-service during the forty-five (45) day implementation period after the release of a new set of income and rent limits may rely on either set of limits (the old or new) for purposes of determining the gross rent floor and/or hold-harmless limits that will apply to the property. See LIHC Newsletters 47, 48, and 50 for more information on "relying" on income limits.

For more information on properly implementing rent limits, see Part 4.1 G below.

F. HERA Special Rent Limits

In 2009, HUD began publishing "HERA special" limits for counties impacted by HUD's "hold-harmless" policy. Where applicable, the HERA limits must be used by all tax credit projects that placed-in-service on or before December 31, 2008. However, not all counties in Indiana have HERA special limits. Projects that placed-in-service in 2009 or later are not eligible to use the HERA Special limits. Reminder: project is defined by the election on Line 8b of Form 8609. A multiple building project is considered placed-in-service on the date the first building in that project places in service.

To summarize, a project (as defined by Line 8b of Form 8609) is eligible to use the HERA special limits if:

1. The county in which the project is located has HUD published HERA special limits for the year; AND
2. The project placed-in-service on or before December 31, 2008.

-For more information on properly implementing income limits, see Part 4.1 D below.
-For additional guidance on the applicability of HERA special limits, see Low Income Housing Credit Newsletter Issue #35, May 2009.

G. Which Rent Limits Should Be Used?

To determine which set of rent limits to use for a particular project, the owner/management must first properly define the project based on election made on Line 8b of Form 8609 and then identify the first placed-in-service date for that project. A multiple building project is considered placed-in-service on the date the first building in that project places in service.

1. A project that placed-in-service on or before 12/31/08 will use the current HERA special limits. If the county in which the project is located does not have HERA special limits published, then the project will use the regular limits for that county.
2. A project that placed-in-service on or after 1/1/09 will compare all sets of limits that were effective since the placed-in-service date and apply the highest set. A project that placed-in-service after 12/31/08 will never be eligible for HERA special limits. For examples on applying this principle, see Part 4.1 D above.
3. Compare the rent limit from either step #1 or #2 above to the gross rent floor (see 4.2 D above) and use the higher of the two limits.

For additional assistance in determining the correct limits for a particular project, refer to the following online resources:
Novogradac & Company, LLP "The Rent and Income Limit Calculator©": http://www.novoco.com/products/rentincome.php
HUD MTSP Income Limits Documentation System: http://www.huduser.org/portal/datasets/mtsp.html

H. Section 8 Rents & Rental Assistance

Gross rent does not include any rental assistance payments (tenant-based or project-based) made to the owner to subsidize the tenants' rent, including Section 8 or any comparable federal, state, or local government rental assistance program to a unit or its occupants.

Gross rent cannot exceed the applicable tax credit rent limit at initial move-in. However, the gross rent can later increase above the applicable tax credit rent limit if the tenant-paid rent portion increases as a requirement of the rental assistance program (generally rental assistance programs require that the household pays a certain percentage of its income on rent).

Example 1: In 2008, Mr. Jones moves into a one bedroom unit at XYZ Apartments, a tax credit development with 50 units at the 50% set-aside. The rent limit for a one bedroom unit at the 50% restriction in this county is $425. Mr. Jones pays a monthly tenant rent portion of $300 and receives Section 8 rental assistance of $100 per month. The utility allowance for the unit is $100. The gross rent for tax credit purposes is the sum of the tenant-paid rent ($300) and the utility allowance ($100), for a total of $400. Since the total monthly gross rent is below the applicable rent limit ($425), the unit is in compliance. XYZ Apartments may take the $100 in monthly rental assistance from the Section 8 program in addition to the tenant-paid rent.

Example 2: In 2009, Mr. Jones's annual income increases. Since Section 8 requires that the tenant pay 30% of adjusted income in rent, Mr. Jones's monthly tenant-paid rent portion must increase. Mr. Jones now pays a monthly rent of $350 and the Section 8 rental assistance decreases to $50. The utility allowance remains at $100 and the rent limit remains at $425. The gross rent is now the sum of the tenant-paid rent ($350) and the utility allowance ($100), for a total of $450. This unit is in compliance even though the gross monthly rent exceeds the applicable tax credit rent limit of $425. This is because Mr. Jones's tenant-paid rent portion did not exceed the limit at initial move-in and has since increased to comply with the rules of the Section 8 program.

NOTE: For tenants receiving Section 8 vouchers, a copy of the original HAP (Housing Assistance Payment) Contract and the current HAP Amendment from the Section 8 agency must be kept in the household's tax credit file in order to verify the amount of Section 8 rental assistance received. For tenants residing in units with project-based Section 8, the current HUD Form 50059 showing the amount of rental assistance must be included in the file.

I. Rural Development (RD) Rents

Gross rent does not include any rental payment to the owner of the unit to the extent such owner pays an equivalent amount back to USDA Rural Housing Service under Section 515. As long as the owner pays back to Rural Development the rent amount that is above the tax credit limit (referred to as "the overage"), the unit is considered in compliance.

Example: The rent limit is $500 and the gross rent (sum of utility allowance and tenant paid rent) is $650. The owner provides documentation that the $150 that is above the tax credit rent limit has been remitted directly to Rural Development. The unit is in compliance even though the gross rent exceeds the tax credit rent limit.

J. Violations of the Rent Limit

The 8823 Guide states:

"A unit is in compliance when the rent charged does not exceed the gross rent limitations on a monthly basis" (Page 11-8).

"A unit is out of compliance if the rent exceeds the limit on a tax year basis or on a monthly basis. A unit is also considered out of compliance if an owner charges impermissible fees" (Page 11-9).

Once a unit has exceeded the rent limits, that unit is out of compliance for the entire tax year, regardless of how quickly the rent is adjusted or if the tenant is reimbursed for the overcharge. The 8823 Guide states on Page 11-10:

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

Therefore, if IHCDA discovers a violation of the rent limit for a unit, an 8823 will be issued and that unit will be considered out of compliance for the remainder of the year. A corrected 8823 will be issued at the beginning of the next year, as long as the rent has been properly lowered and is now below the applicable limit. While refunding the overcharge does not prevent the noncompliance 8823 from being issued, **IHCDA will still require the owner to reimburse the tenant before a corrected 8823 will be issued for the unit.**

If the owner or management discovers that rent has been overcharged, IHCDA should be notified immediately and the owner should take action to correctly adjust the rent and reimburse the overcharges. Noncompliance issues identified and reported by the owner to IHCDA prior to notification of an audit do not have to be issued 8823s. For more information on the owner's responsibility to report noncompliance, see Part 2.2 L.

Part 4.3|Allowable Fees and Charges

A. General Rule

Customary fees that are normally charged to all tenants, such as damage (security) deposits, pet deposits/fees, application fees and/or credit deposits are permissible. However, an eligible tenant cannot be charged a fee for the work involved in completing the additional forms of documentation required by the RHTC Program, such as the Tenant Income Certification and income/asset verification documents.

The 8823 Guide makes it clear that refundable fees associated with renting units (such as security deposits) and one-time penalty fees (such as late payment fees and fees for prematurely breaking a lease, as long as such fees are clearly defined within the lease) are allowable fees that are not included in the gross rent calculation.

B. Condition of Occupancy Rule (Optional Vs. Non-optional Fees)

Any fee that is charged for a service that is a condition of occupancy (i.e. a fee for a service that is non-optional or mandatory) must be included in the gross rent computation when checking rent against the applicable rent limit. This is true even if federal or state law requires that the services be offered to tenants by the owner.

Assuming they are truly optional, fees may be charged for elected services or additional amenities (such as pet fees, fees for extra storage units, etc.) and these fees would not be included in the gross rent calculation. **A service or amenity is considered optional only if (1) a tenant may opt out of the service or amenity without penalty and continue to live at the development, and (2) "reasonable alternatives" exist.**

Additionally, any services the tenant pays for that are provided by the development (whether optional or non-optional) must be listed in the tenant's lease with the cost of each individual service clearly listed. See IRS Notice 89-6 and IRS Revenue Ruling 91-38 in Appendix B.

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Per Treasury Regulation 1.42-11 Provision of services:

(a) General rule. The furnishing to tenants of services other than housing (whether or not the services are significant) does not prevent the units occupied by the tenants from qualifying as a residential rental property eligible for credit under Section 42. However, any charges to low-income tenants for services that are not optional generally must be included in gross rent for purposes of Section 42(g).

(b) Services that are optional.

(1) *General rule.* A service is optional if payment for the service is not required as a condition of occupancy. For example, for a qualified low-income building with a common dining facility, the cost of meals is not included in gross rent for purposes of Section 42(g)(2)(A) if payment for the meals in the facility is not required as a condition of occupancy and a practical alternative exists for tenants to obtain meals other than from the dining facility.

(2) *Continual or frequent services.* IF continual or frequent nursing, medical, or psychiatric services are provided, it is presumed that the services are not optional and the building is ineligible for the credit, as is the case with a hospital, nursing home, sanitarium, lifecare facility, or intermediate care facility for the mentally and physically handicapped. See also 1.42-9(b).

(3) Required services.

(i) General rule. The cost of services that are required as a condition of occupancy must be included in gross rent even if federal or state law requires that the services be offered to tenants by buildings owners.

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Example: Charges for paying with credit/debit card

Some developments may have a credit/debit card machine onsite to allow tenants to pay rent in this method. The monthly fee incurred from having a machine onsite can be passed onto the tenants as long as it is an optional fee. The fee would be considered optional if the tenants have alternative methods of paying rent that do not include a fee (e.g. cash, money order, check, etc.). In this scenario, the credit/debit machine would be an optional service offered for the tenants' convenience. The amount of the fee for paying with credit/debit card, as well as a list of all accepted alternative methods of payment, must be disclosed to all tenants. Furthermore, the fee may not surpass the actual cost incurred from the machine. Management must keep documents showing the actual costs of having the machine onsite and the amount of the fee being charged to tenants.

If credit/debit card is the only means of paying monthly rent, then the fee is not optional, but rather a condition of occupancy (as paying rent is a condition of occupancy). In this case, the credit/debit card machine fees would have to be included as part of the gross monthly rent calculation.

C. Application Processing Fees

Application fees may be charged to cover the actual cost of processing the application and checking criminal history, credit history, landlord references, etc. However, the fee cannot exceed the amount of actual out-of-pocket costs incurred by management. No amount may be charged in excess of the average expected out-of-pocket cost of processing an application.

D. Mandatory Renter's Insurance

If renter's insurance is required as a condition of occupancy, then the amount of renter's insurance must be included in the gross rent calculation.

In this scenario, the owner must either:

1. Obtain proof of renter's insurance for the tenant, locate the annual premium and divide by twelve (12) to obtain a monthly cost of renter's insurance. This monthly cost must then be added to the tenant-paid rent portion, the utility allowance, and any other non-optional fees when calculating gross rent; OR
2. Obtain an estimate similar to creating a utility allowance, in which the average rates are compared for at least three (3) of the primary insurance providers in the area. The annual estimate for renter's insurance should be divided by twelve (12) to reach a monthly estimate. The monthly renter's insurance allowance estimate must be added to the tenant-paid rent portion, the utility allowance, and any other non-optional fees when calculating gross rent. As with utility allowances, an updated estimate must be created annually.

IHCDA strongly recommends that owners do not mandate renter's insurance. Rather, owners should include clear language in the lease explaining that the property is not responsible for damage to the household's belongings and recommending that tenants seek out renter's insurance as they see fit.

E. Month-to-month Tenancy Fees

Although month-to-month fees may seem optional (i.e. the tenant could choose to renew the lease for another year), the 8823 Guide clarifies that month-to-month fees are considered non-optional fees and are included in gross rent computation. Page 11-2 states:

"Required costs or fees, which are not refundable, are included in the rent computation. Examples include fee(s) for month-to-month tenancy and renter's insurance.

F. Prohibited Fees

The following fees may not be charged, regardless of whether or not they are included in the gross rent calculation:

1. Fees for work involved in completing the Tenant Income Certification and other program specific documentation. For example, the owner cannot charge the tenant costs incurred to receive third-party verification forms. If there is a fee associated with obtaining third-party verifications, the owner may instead use source document per Part 6.3(B)(2).

2. Fees for preparing a unit for occupancy. The owner is responsible for maintaining all tax credit units in a manner suitable for occupancy at all times. If a tenant is to be charged decorating, cleaning, or repair fees, the owner must document the file with photos of the damage to prove that the unit is in condition beyond normal expected wear and tear. Charges cannot exceed the amount actually spent on repair. IHCDA will expect to see documentation in the tenant file as to the nature of the damage, including photos and receipts for the repair work.

   This requirement is not only a program requirement, but also a requirement under Indiana Code 32-31-7-6 which states that "at the termination of a tenant's occupancy, the tenant shall deliver the rental premises to the landlord in a clean and proper condition, **excepting ordinary wear and tear expected in the normal course of habitation of a dwelling unit**."

3. Fees for the use of facilities and amenities included in Eligible Basis. For example, an owner may not charge a tenant for the use of a clubhouse, swimming pool, parking areas, etc. if those items are included in Eligible Basis. Additionally, tenants may not be charged a deposit for the use of common areas included in Eligible Basis. However, if the facilities are damaged, the responsible tenant(s) may be charged fees in accordance with Item F-2 above.

4. The owner may not charge pet deposits or fees for service/therapy animals. See Part 5.3 B for additional information.

Part 4.4|Utility Allowances

A. General Information

The maximum gross rent includes an allowance for tenant-paid utilities. Utilities include heating, air conditioning, water heating, cooking, other electricity, water, sewer, oil, gas, and trash, where applicable. Utilities do not include telephone, cable television, or internet.

When utilities are paid directly by the tenant (as opposed to being paid by the owner/ development), a utility allowance must be used to determine maximum allowable rent. To qualify as part of the utility allowance, the cost of any utility (other than telephone, cable television, or internet) must be paid directly by the tenant(s), and not by or through the owner of the building. If the owner or a third-party separately bills the tenant for a utility, the payment designated for the utility must be considered rent and may not be included in the utility allowance (unless the utilities are sub-metered as described in Part 3.4 B below). The utility allowance (for utility costs paid by the tenant) must be subtracted from the rent limit to determine the maximum allowable tenant-paid rent.

For example: If the rent limit on a unit is $350 and the tenant pays utilities with a utility allowance of $66 per month, the maximum allowable rent chargeable to the tenant is $284 ($350 minus $66).

If all utilities are included in the household's gross rent payment, no utility allowance is required.

B. Sub-metering

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

Per IRS Notice 2009-44, utility costs paid by a tenant to the owner/development based on actual consumption in a sub-metered rent-restricted unit are treated as paid directly by the tenant for purposes of the RHTC utility allowance regulations. The notice states:

> For purposes of § 1.42-10(a) of the utility allowance regulations, utility costs paid by a tenant based on actual consumption in a sub-metered rent-restricted unit are treated as paid directly by the tenant, and not by or through the owner of the building. For RHS-assisted buildings under § 1.42-10(b)(1),buildings with RHS tenant assistance under § 1.42-10(b)(2), HUD-regulated buildings under § 1.42-10(b)(3), and rent-restricted units in other buildings occupied by tenants receiving HUD rental assistance under § 1.42-10(b)(4)(i), the applicable RHS or HUD rules apply. For all other tenants in rent-restricted units in other buildings under § 1.42-10(b)(4)(ii):
>
> (1) The utility rates charged to tenants in each sub-metered rent-restricted unit must be limited to the utility company rates incurred by the building owners (or their agents);
>
> (2) If building owners (or their agents) charge tenants a reasonable fee for the administrative costs of sub-metering, then the fee will not be considered gross rent under § 42(g)(2). The fee must not exceed an aggregate amount per unit of 5 dollars per month unless State law provides otherwise; and

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

The utility allowance regulations will be amended to incorporate the guidance set forth in this notice.

EFFECTIVE DATE
This notice is effective for utility allowances subject to the effective date in § 1.42-12(a)(4). Consistent with § 1.42-12(a)(4), building owners (or their agents) may rely on this notice for any utility allowances effective no earlier than the first day of the building owner's taxable year beginning on or after July 29, 2008.

C. Ratio Utility Billing System (RUBS)

While sub-metered utilities may be included in a utility allowance per IRS Notice 2009-44 (see 4.4 B above), utilities paid using a ratio utility billing system (RUBS) cannot be included in utility allowance.

RUBS is a system usually used only for water and sewer, that uses one meter for the entire property or building instead of separate sub-meters for each unit. Management then divides the total utility cost for the property among all tenants using a determined formula. The formula is generally based on factors such as number of occupants, square footage of the unit, number of bathrooms in the unit, etc.

Utilities paid through RUBS are not includable in utility allowances because RUBS bills tenants using an allocation formula instead of actual consumption data.

D. Approved Utility Allowance Sources

The IRS requires that utility allowances be set according to IRS Notice 89-6 and Federal Register Vol. 73, No. 146 "Section 42 Utility Allowance Regulations Update" (both resources available in Appendix A), which list the following different sources of utility allowances for RHTC developments:

1. Rural Development (RD) Financed Developments: Must use the applicable USDA Rural Development approved utility allowances. If a development has both RD and HUD financing, use the RD approved utility allowance.

2. HUD Development Based Subsidy Regulated Buildings (i.e. Project-Based Rental Assistance): Must use the applicable HUD approved utility allowances. However, if a development has both RD and HUD financing, use the RD utility allowance instead.

3. HUD Assisted Units (i.e. Tenant-Based Rental Assistance): For those individual units occupied by residents that receive HUD tenant based rental assistance (e.g. a Section 8 voucher), must use the applicable HUD utility allowance as given by the Public Housing Authority (PHA) administering the assistance. However, if a development has both RD and HUD assistance, use the RD utility allowance.

4. Buildings without Rural Development or HUD assistance (i.e. "Tax Credit only"): Tax credit buildings without HUD or RD funding may use any of the following utility allowance options:

    - Use the applicable local PHA utility allowance; or
    - Use the county specific utility allowance schedule from IHCDA's website (http://in.gov/myihcda/2430.htm); or
    - Utility Company Estimate: An interested party may request the utility company written estimation of actual utility consumption for a unit of similar size and construction in the geographic area in which the building is

located. Such an estimate must be in writing, signed by an appropriate local utility company official, prepared on the utility company's letterhead, and maintained in the development file. Prior to July 29, 2008, use of the actual utility company estimate rates, whether higher or lower, was required once they had been requested. With the IRS revised utility allowance regulations, this is no longer a requirement and the owner is not stuck with this as a permanent election.

- Options 5, 6, or 7 as described below.

5. Energy Consumption Model: Upon request, IHCDA will approve a utility allowance estimate for a development based on actual tenant consumption (utility usage) data. Requests for an Energy Consumption Model Estimate must be made via the letter entitled "Approval Request Letter- Energy Consumption Model" (available in Appendix G). Along with the request letter, the owner must complete and submit the "IHCDA Tenant Usage Data Form" (available in Appendix G). This usage data form must include information for 30% (rounded up) of the units of each unit type (flat or townhome) for each bedroom size. (Note: There are two separate usage data forms for flats and townhomes). The usage data must contain a full twelve (12) months of consumption. The usage data forms may be completed by the owner, management agent, or an approved qualified engineering/professional firm on behalf of the owner (see Option #7 below for more information on using approved engineers).

   To be included in the estimate, a unit must have at least forty-four (44) weeks of continuous consumption data (i.e. the unit cannot have been vacant for more than 8 weeks of the year). The consumption data can be no more than sixty (60) days old. Additionally, the owner must submit verification of the tax rate for the county in which the development is located.

   Example: A development has 48 low income units with 20 one bedroom units and 28 two bedroom units. The sample must include 30% of the one bedroom units (6 units) and 30% of the two bedroom units (9 units rounded up from 8.4).

   For new construction developments or renovated buildings with less than twelve (12) months of consumption data available, IHCDA will allow consumption data for the twelve (12) month period of units of similar size and construction in the geographic area in which the new development is located. The existing development that will be used for the comparison must be located in the state of Indiana and must be in the same climate zone as the development for which the estimate is being done. Please reference the Climate Zone Map in Appendix G. Once the project achieves 90% occupancy for ninety (90) consecutive days, the owner is required to resubmit usage data to IHCDA using the actual units in the development.

   The request must be made sixty (60) days prior to the expiration date of the current effective utility allowance. The fee for IHCDA to review and approve the model is $75 annually per development. Once IHCDA approves the estimate, the utility allowance(s) will be effective for one year from the date stated on the IHCDA Approved Utility Allowance Estimate letter.

   Note: Developments with non-corrected 8823s will not be eligible to use this option until the outstanding issues have been corrected.

6. HUD Utility Schedule Model: The owner may calculate utility allowances using the HUD Utility Model found at http://www.huduser.org/resources/utilmodel.html. Both the model and the supporting documentation used in the model must be submitted to IHCDA for approval prior to implementation, along with the letter entitled "Approval Request Letter- HUD Schedule Model" available in Appendix G. The request must be made sixty (60) days prior to the expiration date of the current effective utility allowance. Once approved, the utility allowance(s) will be good for one year from the date of IHCDA approval. The fee for IHCDA to review and approve the model is $75 annually per development.

Note: Developments with non-corrected 8823s will not be eligible to use this option until the outstanding issues have been corrected.

7. IHCDA/Qualified Engineer Estimate: The owner may use an independent licensed engineer or qualified professional approved by IHCDA to calculate a utility estimate model. A list of approved engineers/professionals will be maintained on IHCDA's website. The qualified professional and the building owner must (1) be approved by IHCDA and (2) not be related to the development owner as defined in Internal Revenue Code Section 267(b) or 707(b). To become IHCDA approved, the engineer/ qualified professional must submit the "Application for Approved Utility Allowance Provider" (available in Appendix G).

   Per IRS requirements, the estimate must take into account local utility rates, property type, climate and degree-day variables by region in the state, taxes and fees on utility charges, building materials, and mechanical systems. Considerations under "property type" should include the types of appliances, building location, building orientation, and unit size. (Alternatively, the qualified engineer may create an allowance using actual consumption data as described in Option #5 above).

   The model and supporting documentation must be submitted to IHCDA for approval prior to implementation, along with the letter entitled "Approval Request Letter- Qualified Engineer Estimate" (available online in Appendix G). The request must be made sixty (60) days prior to the expiration date of the current effective Utility Allowance. Once approved, the utility allowance(s) will be good for one year from the date of IHCDA approval. The fee for IHCDA to review and approve the model is $75 annually per development.

   Note: Developments with non-corrected 8823s will not be eligible to use this option until the outstanding issues have been corrected.

E: Updating Utility Allowances

The owner must use the most current applicable utility allowance and provide documentation annually. Owners may combine utility allowances from different sources to benefit the development. When using multiple utility allowance sources for different utilities, the owner must clearly document which source is being used for each utility type. Furthermore, the owner may elect to change the utility allowance type from year to year. Contact the appropriate agency or department to request current utility allowance information.

To remain in compliance, owners must utilize the correct and most current utility allowance in order to properly determine unit rents. An increase in the utility allowance will increase the gross rent and may cause the gross rent to be greater than the maximum allowable rent, in which case the tenant-paid rent portion must be lowered. When a utility allowance changes, rents must be refigured within ninety (90) days of the effective date of the change to avoid violating the rent limit. Utility allowances need to be reviewed and updated as follows:

- When the rents for a development or building are changed or there is a change in who pays the utilities;
- Within ninety (90) days of an allowance update by IHCDA, HUD, Rural Development, the local PHA, or local utility supplier;
- Within ninety (90) days of a change in the type of applicable allowance (e.g., a tenant begins receiving Section 8 rental assistance and the applicable PHA approved utility allowance must now be used for that unit);
- Annually for developments or buildings with documentation from a local utility supplier. Developments must provide documentation supporting the use and applicability of local utility allowances; and/or
- Within ninety (90) days of the effective date of the IHCDA/Qualified Engineer Estimate, HUD Utility Schedule Model, or Energy Consumption Model. All of these utility allowance types must be updated at least annually.

F: Noncompliance with Utility Allowances

Tax credit units are considered out of compliance when the gross rent exceeds the applicable rent limit. In LIHC Newsletter Issue #44 May 2011 and #45 July 2011, the IRS clarified that utility allowance issues that do not cause rent limits to be exceeded should not be reported via Form 8823. However, if use of an incorrect or outdated utility allowance causes rent limits to be exceeded, an 8823 will be issued and both line items 11G (violation of gross rent limit) and 11M (utility allowance noncompliance) will be checked as out of compliance on the form.

Therefore, determining noncompliance related to utility allowances requires a two-pronged test:

1. Did the owner make an error when applying the correct utility allowance?; AND
2. Did the error cause the rent paid by the tenant(s) to exceed the applicable rent limit?

If the answer to both of the above questions is yes, then an 8823 will be issued to report noncompliance.

Potential utility allowance noncompliance may occur when:

1. Rents are not updated within the ninety (90) day time after a new utility allowance is effective;
2. The owner did not update the utility allowance annually;
3. The wrong utility allowance type was used (for example the HUD allowance was not used for a HUD regulated building or the RD allowance was not used for an RD regulated building);
4. The utility allowance was incorrectly calculated;
5. Utilities are tenant-paid but a utility allowance was not used; or
6. The owner did not maintain proper documentation to show how the utility allowance was computed.

NOTE: For additional information on utility allowance compliance and noncompliance issues, see Chapter 18 of the 8823 Guide. Much of this information was new for the 2011 edition of the guide. The previously mentioned issues of the LIHC Newsletter (issues #44 and #45) are considered supplemental information to the 8823 Guide until the next edition is released and can incorporate these new interpretations.

Section 5- Compliance Regulations

The following section highlights some of the statutory and regulatory provisions directly affecting compliance. **However, this is not meant as an exhaustive listing of compliance regulations (see the Preface and Disclaimer on Page 1).**

Part 5.1|Rules Governing the Eligibility of Particular Residential Units

A. Empty Units

Vacant units that have never been occupied (referred to as "empty units") cannot be counted as "low-income units," but must be included in the "total units" figure for purposes of determining the Applicable Fraction. **The transfer of existing tenants to empty units is not allowed for purposes of meeting the Minimum Set-Aside or Applicable Fraction.**

B. Vacant Unit Rule

Vacant units formerly occupied by low-income individuals may continue to be treated as occupied by a qualified low-income household for purposes of the Minimum Set-Aside and Applicable Fraction requirements (as well as for determining Qualified Basis), provided that reasonable attempts were or are being made to rent the unit (or the next available unit of comparable or smaller size) to an income-qualified household before any units in the development were or will be rented to a nonqualified household. Management must document that reasonable attempts were made to rent vacant tax credit units before renting vacant market-rate units.

The definition of reasonable attempts to rent tax credit units may differ between projects. Per Revenue Ruling 2004-82:

> "What constitutes reasonable attempts to rent a vacant unit is based on facts and circumstances, and may differ from project to project depending on factors such as the size and location of the project, tenant turnover rates, and market conditions. Also, the different advertising methods that are accessible to owners and prospective tenants would affect what is considered reasonable."

Units cannot be left permanently vacant and still satisfy the requirements of the RHTC program. Additionally, vacant units must remain suitable for occupancy and cannot be cannibalized for parts. IHCDA reserves the right to question vacancies that are noted during a physical inspection, file review, or Annual Owner Certification review, especially when there is a high quantity of vacancies or when units have been vacant for longer than ninety (90) days. The owner or manager must be able to document attempts to rent the vacant units to eligible tenants.

Note: The Vacant Unit Rule does not apply for developments that have been approved for the Extended Use Policy. For more information on the Extended Use Policy see Part 8.1, specifically part 8.1 D, Compliance Requirements.

C. 140% Rule/Next Available Unit Rule

1. General Rule

If the income of the occupants of a qualifying unit increases to more than 140% of the federal Minimum Set-Aside (i.e. more than 140% of the 50% limit for 20/50 projects or more than 140% of the 60% limit for 40/60 projects) , due either to an increase in income or a decrease in the Area Median Gross Income subsequent to the initial income qualification, the unit may continue to be counted as a low-income unit as long as the following criteria is met: 1) the unit continues to be rent-restricted at the state set-aside, and 2) the next available unit of comparable or smaller size in the same building is rented to a qualified low-income household.

If the income of the occupants of a qualifying unit increases over the140% limit and if any residential unit of comparable or smaller size in the same building is occupied by a new resident whose income exceeds the limit, then the qualifying unit will no longer qualify as a low-income unit and the building is out of compliance with the Next Available Unit Rule. The

determination of whether the income of the occupants of a qualifying unit qualifies for the purposes of the low-income set-aside is made on a continuing basis, with respect to both the household's income and the qualifying income for the location, rather than only on the date the household initially occupied the unit. In developments containing more than one low-income building, the Next Available Unit Rule applies separately to each building in the development. Additionally, the property must maintain all state and federal set-aside requirements stated in the development's Final Application and recorded in the Deed Restriction.

Under § 1.42-15(a), a low-income unit in which the aggregate income of the occupants of the unit rises above 140% of the applicable income limitation under § 42(g)(1) is referred to as an "over-income unit."

As described above, for tax credit projects the Next Available Unit Rule is a building rule. However, for tax exempt bond projects that do not also have tax credits, the Next Available Unit Rule is a project rule. For projects with both tax credits and tax exempt bonds, the Next Available Unit rule is a building rule.

2. Next Available Unit Rule at Mixed-Use Projects

In mixed-use projects, the Next Available Unit Rule may cause market rate units to be converted into tax credit units. The owner must continue renting the next available unit of comparable or smaller size to a tax credit eligible household until the Applicable Fraction is restored. Therefore, multiple market units may have to be converted into tax credit units until the Applicable Fraction is restored (remember the Applicable Fraction includes both the unit and floor space fraction).

Once the Applicable Fraction is restored (without counting the unit that invoked the Next Available Unit Rule), the over-income unit may be converted from tax credit to market rate and the rent may be raised as allowed by the language in the tenant's lease.

Example 1:
A building contains 10 units of equal size. Units 1-7 are qualified low-income units, Units 8 and 9 are market rate units, and Unit 10 is a currently vacant market rate unit. The Applicable Fraction of the building is 70%. On September 1, the income of the tenants in Unit 4 is determined to exceed the 140% limit. The rent for this unit continues to be rent restricted, and therefore the building continues to be in compliance and the Applicable Fraction decreases to 60%. In order to remain in compliance, Unit 10 (the vacant market rate unit) must be rented to a qualified household to replace Unit 4 as a qualified low-income unit. On November 1, a qualifying household moves into Unit 10, thus the current Applicable Fraction is restored at 70%. When the lease language allows, Unit 4 may converted from tax credit to market rate.

Example 2:
A building contains 10 units of equal size. Units 1-7 are qualified low-income units, Units 8 and 9 are market rate units, and Unit 10 is a currently vacant market rate unit. The Applicable Fraction of the building is 70%. On September 1, the income of the tenants in Unit 4 is determined to exceed the 140% limit. The rent for this unit continues to be rent restricted, and therefore the building continues to be in compliance and the Applicable Fraction decreases to 60%. On November 1, a market rate household moves into Unit 10. At the time of the move in, the current Applicable Fraction was equal to 60%, excluding all over-income units. The market rate unit moving into Unit 10 is a Next Available Unit Rule violation and all over-income units (Unit 4) cease to be treated as low-income units. The date of noncompliance is November 1.

Example 3:
A property contains 6 units. Units 1-3 are 1000ft2. Unit 1 is a tax credit unit and Units 2 and 3 are market rate. Units 4-6 are 800ft2. Units 4 and 5 are tax credit units and Unit 6 is currently vacant market rate unit. The assigned Applicable Fraction is 48%. The current floor space fraction is 2600 ft^2 /5400 ft^2 for a total of 48.15%. The current unit fraction is 3/6 for a total of 50%. The current fraction is 48.15% (the lower of the unit fraction vs. the floor space fraction) which is in compliance with the assigned fraction of 48%.

On September 1, the income of the tenants in Unit 1 is determined to exceed the 140% limit. The rent for this unit continues to be rent-restricted, and therefore the building continues to be in compliance and the Applicable Fraction decreases to 29.63% (unit fraction is 2/6 or 33.33% and the floor space fraction is 1600/5400 or 29.63%).

On November 1, the management moves a qualified tax credit household into Unit 6 (the vacant market rate unit) converting the unit from market rate to tax credit. The unit fraction is now 3/6 (50%) but the floor space fraction is still below the limit at 2400/5400 (44.44%). The next available unit rule is still in effect, even though one market rate unit has already been converted to tax credit. Unit 1 (the over-income unit) will continue to be rent-restricted.

Now on January 1 of the following year, the market rate family in Unit 2 vacates the unit. Management moves in a qualified household. The unit fraction is now 4/6 (66.67%) and the floor space fraction is 3400/5400 (62.96%), for a total Applicable Fraction of 62.96%. Since the fraction has been restored, the over-income unit (Unit 1) can be converted to market rate when lease language allows and no longer has to be rent-restricted.

3. Next Available Unit Rule at 100% Tax Credit Projects

Noncompliance with the Next Available Unit Rule can have significant consequences even in 100% RHTC buildings. If any comparable unit that is available or that subsequently becomes available is rented to a non-qualified resident, <u>all</u> over-income comparably-sized or larger units for which the available unit was a comparable unit within the same building lose their status as low-income units and are out of compliance with Section 42.

Example: A property contains 10 units of equal size. All 10 units are qualified low-income units. The Applicable Fraction of the building is 100%. On September 1, the income of the tenants in Unit 4 is determined to exceed the 140% limit. The rent for this unit continues to be rent-restricted, and therefore the property continues to be in compliance and the Applicable Fraction decreases to 90%. On November 1, a non-qualified household moves into Unit 10, due to an error. At the time of the move-in, the current Applicable Fraction was equal to 90%, excluding all over-income units. The non-qualified household moving into Unit 10 caused a Next Available Unit Rule violation and all over-income units (Units 4 & 10) cease to be treated as low-income units. The Applicable Fraction is now 80% and the date of noncompliance is November 1.

However, per page 14-5 of the 8823 Guide, the Next Available Unit Rule is only violated for 100% tax credit projects if:

1. Management fails to rent a unit to an income-qualified household and cannot exhibit due diligence when completing the initial certification; OR
2. Management deliberately rented the unit as a market-rate unit.

If due diligence can be demonstrated, the violation is reported on Form 8823 only as an over-income move-in event and not as an Available Unit Rule violation.

4. Additional Notes

-Section 1.42-15(c), provides that a unit is not available for purposes of the Next Available Unit Rule when the unit is no longer available for rent due to contractual arrangements that are binding under local law (for example, a unit is not available if it is subject to a preliminary reservation that is binding on the owner under local law prior to the date a lease is signed or the unit is occupied).

-<u>The fact that a household's income exceeds the 140% limit at recertification is not considered good cause for eviction or termination of tenancy.</u>

-The Next Available Unit Rule does not apply for developments that have been approved for the Extended Use Policy. For more information on the Extended Use Policy see Part 8.1.

D. Unit Transfer of Existing Tenants

When a transfer is permitted, the household's lease and Tenant Income Certification are moved over to the new unit. Management does not need to execute a new lease and a new TIC for a transfer, but must report the transfer event in IHCDA's online reporting system. The household's annual recertification effective date will remain on the anniversary date of the initial move-in, not the transfer date.

Management is not permitted to transfer qualifying tenants to non-qualified vacant units (i.e. empty units that have never been occupied by qualified households) in order for the development to meet the Minimum Set-Aside requirements elected at the time of application. One household cannot be used to qualify multiple units. Such action is considered noncompliance with Section 42 of the Internal Revenue Code and will be reported to the Internal Revenue Service (IRS) via IRS Form 8823.

1. Unit Transfers within the Same Building

Effective September 6, 1997, the Next Available Unit Rule was modified to allow residents of RHTC units to transfer to other units ***within the same building*** without having to re-qualify for the program. The vacated unit assumes the status that the newly occupied unit had immediately before the transfer. This provision applies only to households under leases entered into or renewed after September 26, 1997, and is not retroactive. For prior leases, all transfers, including those within the same building, must have been treated as new move-ins.

The main implication for this change in regulation is that households that are over-income at recertification have the ability to move into a different unit within the same building without being disqualified from the program. However, the transfer must be well documented in the tenant file and the household's eligibility must continue to be certified and verified annually as with all RHTC households.

2. Unit Transfers Outside the Same Building

Developments that contain multiple buildings within one project may allow residents of RHTC units to transfer to other RHTC units outside of the same building without having to recertify them for the program, similar to unit transfers within the same building. The household's income may not be above the 140% limit. The vacated unit assumes the status the newly occupied unit had immediately before the current resident occupied it. NOTE: This provision applies only if the owner has selected "Yes" under Part II 8b on the IRS Form 8609 to the question, "Is the building part of a multiple building project?" NOTE: While a household may transfer between buildings within the same project, transfers are not permitted between different phases of a development. A household that wishes to transfer into a different phase is transferring into a different project and must be treated as a new move-in in the manner described below.

If the owner has selected "No" under Part II 8b on the IRS Form 8609 to the question, "Is the building part of a multiple building project?" then a household must be treated as a new move-in if it desires to transfer to an RHTC unit in a different building. All application, certification, and verification procedures must be completed for the transferring of resident(s), including the execution of new income and asset verifications to determine continued eligibility, a new Tenant Income Certification, and a new lease. The vacated unit assumes the status the newly occupied unit had immediately before the current resident occupied it.

Part 5.2|Rules Governing the Eligibility of Particular Tenants and Uses

A. Household Composition

When determining household size for purposes of implementing the correct income limits, the owner/management should never include live-in aides and guests (See part 5.2 F for information on live-in aides).

The household has the right to decide whether or not to include individuals permanently confined to a hospital or nursing home as a household member. If the individual is included as a household member, his/her income must be certified and included.

Military members away on active duty are only counted as household members if they are the head, spouse, or co-head or if they leave behind a spouse or dependent child in the unit.

All other individuals, including temporarily absent family members (e.g. dependents away at school, etc.), foster children and adults, unborn children, and children in joint custody agreements that are in the unit at least 50% of the time, should be included in household size for purposes of determining the applicable income limit.

Household composition may change after the initial tenant(s) moves into a unit. However, at the time of application an applicant should be asked if there are any expected changes in household composition during the next twelve (12) months. If so, the composition change and any subsequent changes in estimated income should be reflected on the initial Tenant Income Certification.

Moreover, if all original members of a household vacate a unit, the remaining members may have to be treated as a new move-in and if so would no longer be treated as a qualified unit if the current household's income is above the Section 42 limits*. To determine if at least one of the original members of the household still resides in the unit, household composition information must include the size of the household and the names of all individuals residing in the unit. This information must be gathered annually at recertification and at any time a change in household composition occurs.

*See Part 6.6 B for more information and examples on documenting changes in household composition and certifying new household members.

B. Student Status

1. General Rule and Definitions

Student status and household composition must be monitored carefully. A unit that becomes occupied entirely by full-time students could become a non-qualified household that is no longer tax credit eligible.

For purposes of the RHTC Program, IRC § 151(c)(4) defines, in part, a "student" as an individual, who during each of 5 calendar months (may or may not be consecutive) during the calendar year in which the taxable year of the taxpayer begins, is a full-time student (based on the criteria used by the educational institution the student is attending) at an educational organization described in IRC §170(b)(1)(A)(ii).

An educational organization, as defined by IRC §170(b)(1)(A)(ii), is one that normally maintains a regular faculty and curriculum, and normally has an enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. This term includes elementary schools (kindergarten inclusive), junior and senior high schools, colleges, universities, and technical, trade and mechanical schools. This does not include on-the-job training courses. **NOTE: The full-**

time student definition applies to students taking courses online if they are considered to be full-time by the educational organization.

Most households in which all of the members are full-time students are not RHTC eligible, and units occupied by these households may not be counted as RHTC units, even if the household has an income that would qualify under the program income limits. The number of credit hours and the definition of full-time are defined by the school the student attends.

2. Student Status Exceptions

There are five (5) exceptions to the full-time student restriction. Full-time student households that are income eligible and that satisfy one or more of the following conditions can be considered an eligible household. A household comprised entirely of full-time students may not be counted as a qualified household under the RHTC program unless it meets one of the following five (5) exceptions:

i. All household members are full-time students, and such students are married and are *entitled* to file a joint tax return.

Note: Revenue Ruling 2013-17 (released August 2013) states that for federal tax purposes, the terms "spouse," "husband and wife," "husband," and "wife" include an individual married to a person of the same sex, if the individuals are lawfully married under state law. This applies to a marriage that was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is living in a state that does not recognize the validity of same-sex marriages. The terms "spouse," "husband and wife," "husband," and "wife" do not include individuals (whether of the opposite sex or the same sex) who have entered into a registered domestic partnership, civil union, or other similar formal relationship under state law that is not denominated as a marriage under the laws of that state. Therefore, the full-time student status exception for students who are married and entitled to file a joint tax return applies to married same sex couple as described above. Furthermore, the exception can be applied retroactively to same-sex couples living in tax credit units: for example if a same-sex couple is in the process of being evicted because they are both full-time students and were determined to be ineligible under the exception, the exception can be applied retroactively and the couple does not violate the full-time student rule.

Required Documentation: Copy of the most recent tax return or the marriage license.

ii. The household consists entirely of single parents and their children, and such parents and children are not tax dependents of another individual, with the exception that the children may be claimed by the absent parent. Single parent means that only one of the parents lives in the unit. Therefore, the exemption is not met if both parents live in the unit but are not married. Consisting "entirely of single parents and their children" means that the only household members are single parents and their children. Therefore, if one member of the household is not a single parent or his/her child, then the exemption is not met. For example, if the household composition is a single mother, her two children, and a family friend, the exemption is not met because the family friend is not a single parent or his/her child. However, if the household was a single mother, her two children, a family friend who is also a single mother and her child, then the household would meet the exemption since all members are single parents and their children.

Required Documentation: Copy of the most recent tax return.

iii. At least one member of the household receives assistance under Title IV of the Social Security Act [Aid to Families with Dependent Children (AFDC) or Temporary Aid to Needy Families (TANF)]. Food stamps, Social Security, and SSI are not considered exemptions under Title IV.

Required Documentation: Third-party verification of the AFDC or TANF award.

iv. At least one member of the household is enrolled in a job training program receiving assistance under the Job Training Partnership Act (replaced by the Workforce Initiative Act) or similar federal, state, or local laws. The mission of the Job Training Partnership Act, as amended by the Job Training Reform Amendments of 1992 and the School-to-Work Opportunities Act of 1994 Sec. 2 is as follows:

It is the purpose of this Act to establish programs to prepare youth and adults facing serious barriers to employment for participation in the labor force by providing job training and other services that will result in increased employment and earnings, increased educational and occupational skills, and decreased welfare dependence, thereby improving the quality of the work force and enhancing the productivity and competitiveness of the nation.

Note: IHCDA considers the Veterans Retraining Assistance Program (VRAP) as an eligible program under this exemption.

Required Documentation: Third-party verification of enrollment and a mission statement from the job training program.

v. At least one member of the household was previously under the care and placement responsibility of the state agency responsible for administering a plan under Part B or Part E of the Title IV of the Social Security Act. The member claiming to have been a foster child must have been placed into foster care through an official state foster agency. NOTE: This exemption only applies to eligibility determinations made on or after 7/30/08.

Required Documentation: Third-party verification from the foster care agency or self-affidavit from the tenant if third-party verification cannot be obtained.

3. Implementing the Student Status Rule

For purposes of qualifying households containing students to live in RHTC developments, IHCDA will:

- Consider a single person household ineligible if he or she is a full-time student at the time of initial occupancy, has been a full-time student for parts of five (5) or more months out of the calendar year (the five months need not be consecutive), or will be a full-time student at any time during the certification period (unless the individual meets one of the student exceptions described above);
- Consider a household of students eligible if it includes at least one part-time student, one non-student, or if the household meets one of the student exemptions described above;
- Consider a household containing full-time students and at least one child (who is not a full-time student) an eligible household;
- Consider TANF an acceptable Title IV program exception.

Example- "5 months out of the calendar year"
An applicant applies to live in a tax credit unit on June 2, 2009. She graduated college on May 16, 2009 and will be living in the unit by herself. Since the applicant was a full-time student for parts of five months of the calendar year (January-May), she is ineligible for the tax credit unit, even though she is no longer a student. The applicant could apply again in January 2010, if she certified that she would not be returning to school full-time during that calendar and certification year.

REMINDER: If at least one member of the household is not a student or is a part-time student, then the household is not considered a full-time student household and is an RHTC eligible household (if income qualified).

Note: The Full-Time Student Rule does not apply for developments that have been approved for the Extended Use Policy. For more information on the Extended Use Policy see Part 5.11, specifically Part 5.11 C, Compliance Requirements.

4. Student Status Documentation

IHCDA requires that all tax credit developments use the student status self-certification form released by the IRS in the Revised 8823 Guide as "Exhibit 17-1: Student Status Verification on page 17-5 of the Guide. A PDF version of the form, entitled "IRS Student Status Self-Certification," is available in Appendix D. This form must be included in all tax credit tenant files, and a separate form must be completed by each adult household member. This policy applies to all move-in and recertification files (including recertification files for 100% tax credit projects) with an effective date on or after 5/1/10. If an applicant or tenant indicates part-time status or claims an exemption on the certification form, IHCDA will expect to see third-party documentation verifying the information provided.

In addition, IHCDA requires owners to utilize a lease provision in all RHTC units requiring tenants to notify management of any change in student status during the lease term. If student status changes at any time, the household's tax credit eligibility must be reevaluated.

5. Student Financial Assistance

Per Chapter 5 of the HUD Handbook 4350.3, student financial assistance must be counted as part of total household income for households receiving Section 8 rental assistance. However, financial assistance is not included as part of annual household income for tax credit households that do not receive Section 8 rental assistance. For Section 8 recipients, all forms of financial assistance in excess of the cost of tuition (not including cost of books, room and board, and other class fees) are included as income. This includes grants, scholarships, private assistance, educational entitlements, etc. but does not include loans.

There are two exceptions to this rule:

i. The student is over the age of 23 with dependent children; or
ii. The student is living with his or her parents who are receiving Section 8 assistance.

If the Section 8 recipient meets one of the previous exceptions, then financial assistance is not included as part of total household income.

6. Earned Income of Dependent Students

When full-time students who are 18 years of age or older are dependents of the household, only a maximum of $480 of their total annual earned income is counted in the total household income calculation. Continue to count the full amount of unearned and asset income.

When full-time students who are 18 years of age or older are the head-of-household, co-head, or spouse, the full amount of earned, unearned, and asset income is counted in the total household income calculation.

7. Important Distinctions between Student and Income Eligibility Rules

Student status is treated differently than income eligibility in a number of important ways:

-While income eligibility is based on anticipated income for the next twelve (12) months, student status eligibility must consider not only if the applicant/tenant is or anticipates becoming a student within the next year, but also whether or not that applicant/tenant was a student parts of any five (5) months of the current calendar year. In this way, while income eligibility is only looking forward, student status eligibility is looking forward and backward at student history.

-Income verifications are not required at recertification for 100% tax credit projects. However, those projects must continue to certify student status on an annual basis. HERA eliminated the annual income verification requirement, but not the student status requirement for recertifications.

-A change in student status at any time, even during the middle of a lease term, can immediately affect eligibility. Once a household income qualifies, they are considered income eligible regardless of future changes in income (although the Next Available Unit Rule may go into effect). However, a household that was eligible at move-in can later become ineligible based on student status, either at annual recertification or in the middle of a lease term.

C. Unborn Children and Child Custody

An owner can count an unborn child (or children) when determining household size and applicable income limits. The owner must obtain a self-certification from the household certifying the pregnancy and such statements must exist in the tenant file. If the unborn child has been self-certified by the household, then it must be included in household size.

Additionally, when determining household size, owners should include children subject to a joint custody agreement if such children live in the unit at least fifty (50%) percent of the time. However, a child may not be counted in more than one tax credit unit for household size.

D. Managers/Employees as Tenants

Resident manager or employee units may be considered in one of the following ways:

1. The manager/employee unit could be considered as an "exempt unit" (sometimes referred to as common area) or other special facility within the development that supports and/or is reserved for the benefit of all the rental units, provided the employee works full-time for the development in which he/she lives. Under this interpretation, the unit would be excluded from the low-income occupancy calculation and the unit could be used by the manager without concern as to the income level of the manager. However, **if the staff unit is being considered as an "exempt unit", no rent can be charged for the unit**, since charging rent would suggest the manager is not necessary for the project and could also be interpreted as the owner charging rent for a facility included in Eligible Basis.

   In Revenue Ruling 92-61, the Internal Revenue Service ruled to include the unit occupied by the resident manager in the building's Eligible Basis, but exclude the unit from the Applicable Fraction for purposes of determining the building's Qualified Basis.

   NOTE: IHCDA will not allow staff units to be considered "exempt units" in developments that have market rate units.

OR

2. The manager/employee unit could be treated as a tax credit rental unit and the unit could be included in the low-income occupancy percentage calculation for the RHTC building. Under this interpretation, the income level of the manager and the effective rent charged would affect the low-income occupancy percentage calculation for the building (i.e. the employee must be income qualified and the unit rent restricted).

IHCDA must approve the use of all manager/employee units. The consideration of the resident manager's unit must be specified in the development's Initial & Final Multifamily Housing Finance Application and must be approved by IHCDA.

Additionally, IHCDA will consider requests for additional manager/employee units during the Compliance Period for good cause. To request a manager/employee unit, the owner must submit the request in writing with documentation supporting the need for the manager/employee unit. Requests should be submitted to IHCDA using the "Staff Unit Request Form" in Appendix D. All

staff unit requests submitted during the Compliance Period will be charged a $500 modification fee, regardless of whether or not the request is approved by IHCDA.

E. Model Units

IHCDA recognizes that it may be standard industry practice to utilize a model unit(s), during a project's lease-up period to show prospective tenants the desirability of the project's units. The use of a model unit can be a good marketing tool, in respect to the immediate ability to show the unit without disturbing current tenants in occupied units.

Under IRC §42, a model unit is considered a rental unit and therefore the model unit's cost can be included in the building's Eligible Basis and in the denominator of the Applicable Fraction when determining a building's Qualified Basis. There are several different ways a project can utilize a model unit:

1. Model unit is utilized during the lease-up period and is later used as a qualified rental unit and rented to a qualified household. The cost of the unit should be included in the building's Eligible Basis. In the years that the unit was utilized as a model unit, it should be included in the denominator of the Applicable Fraction when determining a building's Qualified Basis; however it should not be included in the numerator of the Applicable Fraction. Once the unit is rented to a qualified household, the owner should follow the rules outlined in IRC §42(f)(3) for increases in Qualified Basis; i.e., the "2/3 Credit Rule" (for more information on the 2/3 Rule, see Section 3, Part 3.1).

2. Model is utilized during the lease-up period, as well as the entire Compliance Period. If a model unit is never rented as an RHTC unit, then it should not be included in the numerator of the Applicable Fraction when determining a building's Qualified Basis. However, the costs of the unit should be included in the building's Eligible Basis and in the denominator of the Applicable Fraction when determining a building's Qualified Basis.

3. A qualified unit that becomes vacant is utilized as a model unit on a temporary basis. Provided that the unit remains available for rent and is treated like all other qualified units, it may be included in both the numerator and denominator of the Applicable Fraction when determining a building's Qualified Basis. The unit should be listed as "Vacant" on the Annual Owner Certification of Compliance and the Rent Roll, and not listed as a "Model Unit." Furthermore, the development must continue to make reasonable attempts to rent out the vacant units used as model units and must be able to document these efforts. IHCDA recommends that the owner place an "available for rent" sign in the model unit so that applicants, tenants, and management understand that the model unit is an available rental unit, not a permanent model.

F. Live-in Care Attendants (Live-in Aides)

A live-in care attendant (a.k.a. a live-in aide) is a person who resides with one or more elderly, near-elderly, or persons with disabilities. To qualify as a live-in care attendant, the individual (a) must be determined to be essential to the care and well-being of the tenant, (b) must not be financially obligated to support the tenant, and (c) must certify that he/she would not be living in the unit except to provide the necessary supportive services. While some family members may qualify, spouses can never be considered a live-in care attendant since they would not meet qualifications (b) or (c). Additionally, the live-in aide cannot move a spouse, child, or other member into the unit, as doing so would indicate that the aide is living in the unit for reasons other than the care of the tenant.

A live-in care attendant for an RHTC tenant should not be counted as a household member for purposes of determining the applicable income limits, and the income of the attendant is not counted as part of the total household income. The need for a live-in care attendant must be certified with documentation from a medical professional (e.g. a letter from the tenant's doctor) and included in the tenant file. The owner may verify whether the live-in care attendant is necessary only to the

extent to document that the applicant/tenants has a need for the requested accommodation. The owner may not require applicants/tenants to provide access to confidential medical records or to submit to physical examination.

If the qualified tenant vacates the unit, the attendant must vacate as well. If an attendant would like to be certified as a qualified tenant and remain in the unit, normal certification procedures must be performed and the individual must meet the applicable eligibility requirements of the program.

While the live-in care attendant is not considered a household member, he/she is still subject to criminal background checks (as per the tenant selection criteria effective at the property) and must comply with tenant house rules. An owner may deny a live-in care attendant that does not pass criminal background checks or evict an attendant who exhibits behavior that is disruptive, illegal, or endangering to other tenants, as defined in the tenant selection criteria and lease.

Sample forms to verify and document a live-in care attendant are available in Appendix D (see Forms 11 and 12).

G. Non-Transient Occupancy

Under program requirements, a unit cannot be RHTC eligible if it is used on a transient basis. A unit is deemed to be in transient use and therefore out of compliance if the initial lease term is less than six (6) months. In order to avoid noncompliance for transient occupancy, there must be an initial lease term of at least six (6) months on all RHTC units. The six (6) month requirement may include free rental periods. Succeeding leases are not subject to a minimum lease period.

The 8823 Guide provides the following clarification in Footnote 2 on Page 11-2:

> "Leases commonly include fees for early termination of the rental agreement. The fact that the lease contains terms for this contingency is not indicative of transient use."

Therefore, a unit is in compliance so long as the initial lease is signed for a term of at least six (6) months, regardless of whether or not the household actually remains in the unit for that length of time.

Federal regulations do allow shorter leases for certain types of transitional housing for homeless individuals and for SRO units.. The following types of housing are exempt from the six (6) month minimum lease period:

1. Certain transitional housing for the homeless may be considered used other than on a transient basis provided that th rental unit contains sleeping accommodations and kitchen and bathroom facilities and is located in a building
   - -which is used exclusively to facilitate the transition of homeless individuals (as defined in the McKinney Homeless Act 42 USC 11302) to independent living within twelve months; AND
   - -in which a government entity or qualified nonprofit organization provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing
2. SRO units which permit the sharing of kitchen, bathroom, and dining facilities are not treated as used on a transient basis merely because they are rented on a month-by-month basis.

*Note: If a development has special needs units set aside for homeless households and/or transitional housing units, those tenants must have leases with at least six (6) month terms, unless the building's primary use is described in Exemption #1 above. Tax credit units may never be used as emergency shelters.

H. Community Service Facilities

In Revenue Ruling 2003-77, the Internal Revenue Service ruled that Community Service Facilities can be included in a building's Eligible Basis if certain criteria are met, including the requirement that the development must be located within a qualified

census tract. The services provided at the facilities can include, but are not limited to: day care, career counseling, literacy training, education, recreation and outpatient clinical health care.

Community service facilities must be designed to primarily serve individuals with incomes at or below 60% of AMI. In order to demonstrate that this requirement is met, the following conditions should be demonstrated:

1. The facility must provide services that will improve the quality of life for community residents;
2. The services must be appropriate and helpful for individuals with incomes at or below 60% AMI living in the area;
3. The facility must be located on the same tract of land as one of the buildings in the low-income housing project; and
4. Services must be provided either free of charge or at a fee that is affordable for individuals at or below 60% AMI.

Further information on community service facilities is available on page 8-7 of the 8823 Guide and in Revenue Ruling 2003-77.

I. Home-Based Business / Office in a Unit

A tenant may use an RHTC unit to conduct a home-based business, as long as they are income qualified for the unit and the unit is their primary place of residence. The 8823 Guide states on page 4-13:

"A low-income tenant may use a portion of a low-income unit exclusively and on a regular basis as a principle place of business, and claim the associated expenses as tax deductions, as long as the unit is the tenant's primary residence. If the tenant is providing daycare services, the tenant must have applied for (and not have been rejected), be granted (and still have in effect), or be exempt from having a license, certification, registration, or approval as a daycare facility or home under state law."

J. Foster Children/Adults

Per HUD Handbook 4350.3 Change 4 (released in 2013), foster children and adults living in a tax credit unit are now considered household members for purposes of determining income limits. Furthermore, the full amount of income a household receives for the care of foster children and adults is excluded from the calculation of total household income.

Since the release of HUD Handbook 4350.3 Change 3 it has been required that the earned and unearned income received by foster adults, and the unearned income received by foster children, must be included in the calculation of total household income. Thus, foster adults and children are treated in the same manner as other household adults and children.

K. Special Needs Populations

Per the set-asides and scoring criteria defined in the Qualified Allocation Plan (QAP), a tax credit development may have committed in writing to set aside a percentage of total units to qualified tenants who meet the State's definition of "special needs population" (as provided in IC 5-20-1-.45) and must equip each unit to meet a particular person's need at no cost to the tenant. Special needs populations include:

1. Persons with physical or development disabilities
2. Persons with mental impairments
3. Single parent households
4. Victims of domestic violence
5. Abused children
6. Persons with chemical addictions
7. Homeless persons
8. The elderly

Required Documentation:

1). The development and a qualified organization that provides and has the capacity to carry out services for the special needs population must enter into an agreement (signed by all parties) acceptable to the Authority in its sole discretion whereby the owner agrees to: (a) set aside a number of units for the special needs population and (b) notify the qualified organization when vacancies of the set-aside units occur at the development. The qualified organization must agree to: (a) refer qualified households to the development and (b) notify households of the vacancies of the set-aside units at the development. This is called the "referral agreement."

The development may enter into multiple referral agreements throughout the Compliance Period. Furthermore, referral agreements may expire or terminate, as long as at least one active referral agreement with a qualified service provider is in place at all times. IHCDA encourages developments to annually evaluate the affordability and demographic demands of the special needs population in their market area in order to identify potential qualified entities that may provide additional referrals. IHCDA will request to see a copy of current referral agreements when conducting file audits.

2). The resume of the organization providing services for the special needs population (resume must demonstrate ability to provide services).

3). The files of the those tenants who qualify as a special needs population must include documentation to show that the unit is meeting the special needs set-aside. For those tenants referred to the development by the qualified service organization, a copy of the referral should be placed in the file. For special needs tenants who were not referred to the development by the qualified organization, the tenant should self-certify that he/she meets the definition of special needs population. However, for persons with disabilities management may not inquire into the specific nature of the special need (for example, management cannot ask the tenant details about their disability- see Part 5.3B for more guidance).

4). When reporting tenant events through the Indiana Housing Online Management website, the owner/management must designate which units meet the special needs population set-aside.

5). For information on marketing accessible units or units designated for special needs populations, see Part 5.3 F.

L. Housing for Older Persons

The Fair Housing Act (FHA) and The Housing for Older Persons Act of 1995 (HOPA) exempt certain types of "housing for older persons" from the Act's prohibitions against discrimination because of familial status.

Therefore, tax credit projects may be designated as housing for the elderly (as defined in the project's Final Application and Declaration of Extended Rental Housing Commitment) in one of the following ways and not be in violation of Fair Housing:

1. 100% of the units are restricted for households in which all members are age 62 or older (see 24 CFR Part 100.303); or

2. At least 80% of the units are restricted for households in which at least one member is age 55 or older. The remaining 20% of the units may also be restricted for households in which at least one member is 55 or older, may have a lower age restriction, or may be left open without any age restrictions. This determination is left up to the owner. The policy elected by the owner in regards to the remaining 20% of the units must be instituted equally for all applicants and must be placed in writing as part of the development's Tenant Selection Criteria Policy.

   HUD has noted that phrases such as "adult living," "adult community," or similar statements should not be used to market developments that fall under the 80% at 55 requirements. Rather, the property should be more specifically advertised as senior housing for households in which at least one household member is 55 years of age or older. Moreover, the

development may not evict or terminate the leases of families with children or other individuals under the age of 55 in order to achieve the elderly occupancy requirements on the 80% of the units.

For more information on the 80% at 55 restrictions, see 24 CFR Part 100.304 through 100.308. "Implementation of the Housing for Older Persons Act of 1995; Final Rule" located in the Federal Register, Vol. 64 No. 63 from April 2, 1999. This document is included in Appendix K.

A tax credit project's elderly restrictions should be clearly defined in the Final Application and Declaration of Extended Rental Housing Commitment/Lien and Restrictive Covenant, and the owner should follow the restrictions defined therein. If a project receives federal funding from HUD or USDA, management should check those regulations for other potential elderly housing guidelines. Units in HUD and RD elderly housing generally can be occupied by households that meet the age requirements or that are disabled. For tax credit only projects, disabled households do not qualify for the elderly restricted units unless they also meet the age restrictions. When tax credits are mixed with HUD or RD for elderly housing, the HUD or RD definitions should be followed.

Part 5.3|Non-Discrimination

A. Fair Housing: Protected Classes and Affirmative Marketing Requirements

1. Protected Classes and Prohibited Activities

The owner or agents of the owner shall not discriminate in the provision of housing on the basis of race, color, sex, national origin, religion, familial status, or disability [the seven (7) protected classes under the Fair Housing Act]. Nondiscrimination means that owners cannot refuse to rent a unit, provide different selection criteria, fail to allow reasonable accommodations or modifications, evict, or otherwise treat a tenant or applicant in a discriminatory way based solely on that person's inclusion in a protected class. Owners may not engage in steering, segregation, false denial of availability, denial of access to services or amenities, discriminatory advertising, or retaliation against individuals that make fair housing complaints.

2. Required Actions

All RHTC properties with TCAP funding or with five (5) or more HOME/CDBG/CDBG-D/NSP program units must have an Affirmative Fair Housing Marketing Plan (AFHMP) using HUD Form 935.2a and a copy of the approved plan must be submitted to IHCDA within one year of the first building being placed-in-service. In addition, Affirmative Fair Housing Marketing Plans must be evaluated at least once every five (5) years and updated according to the policies of the Fair Housing and Equal Opportunity Office of the Department of Housing and Urban Development (HUD). All updated Affirmative Fair Housing Marketing Plans must also be submitted to IHCDA. See Part 2.2 N for more information.

All owners, managers, and staff members should be familiar with both state and federal civil rights and fair housing laws. IHCDA strongly encourages owners and management companies to provide Fair Housing and Equal Opportunity training for all staff, including maintenance staff, associated with any property. Staff should attend a Fair Housing and Equal Opportunity training at least once every calendar year.

IHCDA has established procedures for processing Fair Housing complaints made to IHCDA regarding RHTC properties. The procedures are as follows: 1) IHCDA will forward all written Fair Housing complaints to the Fair Housing and Equal Opportunity Office at HUD and also to the Indiana Civil Rights Commission; 2) IHCDA will notify the owner and management company of such complaint; and 3) if at any time during the Compliance Period it is found that a violation of the Fair Housing Act has occurred at any RHTC development, the property is out of compliance with Section 42 of the Code and IHCDA will report such noncompliance to the IRS via IRS Form 8823.

B. Fair Housing: Reasonable Accommodations and Modifications

The Fair Housing Act requires owners to make reasonable accommodations and modifications when necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling. For purposes of the Fair Housing Act, disability is defined as a person who has/is:

- A physical or mental impairment which substantially limits one or more of such person's major life activities; or
- A record of having such an impairment; or
- Being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act).

The owner may verify the disability only to the extent necessary to document that the applicant/tenants has a need for the requested accommodation. The owner may not require applicants/tenants to provide access to confidential medical records or to submit to physical examination. The owner may not specifically ask for or verify the nature and extent of the disability. The verification form used must be signed by the applicant/tenant to authorize release of such information and should request that the source identify (1) whether the applicant meets the definition of disabled as provided above and (2) whether the requested accommodation or modification relates to the person's specific needs. Receipt of social security disability payments is adequate verification of an individual's disability status, but the correlation between the disability and the requested accommodation or modification may still need verified.

1. Reasonable Accommodations and Service Animals

A reasonable accommodation is a change, exception, or adjustment in rules, policies, practices, or services when such a change is necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling, including public and common spaces. Per the Fair Housing Act, an owner must allow a reasonable accommodation unless doing so will be an undue financial burden or fundamentally alter the nature of the provider's operations. When a reasonable accommodation will result in an undue financial burden, the owner must provide all other accommodations up to the point at which further accommodations will result in the undue financial burden. For more information on reasonable accommodation, refer to the HUD and Department of Justice (DOJ) Joint Statement "Reasonable Accommodations Under the Fair Housing Act" released May 17, 2004 (available in Appendix K).

A common type of reasonable accommodation involves service animals. IHCDA uses the term service animals in this manual to broadly describe a category that also includes therapy animals, companion animals, emotional support animals, and assistance animals. These types of animals are not pets and therefore must be permitted even in "no-pet" housing, assuming that the individual has requested an accommodation to the "no-pet" rule and that the need for the service animal can be verified. In addition, the owner cannot charge an upfront security deposit or a fee (one-time or recurring) for the service animal. However, the owner can charge the tenant the cost of repairing any damage caused by the service animal.

Another common example of reasonable accommodation is a live-in care attendant / live-in aide. For more information on this topic, see Part 5.3F.

2. Reasonable Modifications

A reasonable modification is a change to the physical structure of the premises when such a change is necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling, including public and common spaces. Per the Fair Housing Act, an owner must allow a reasonable modification at the expense of the tenant. However, if the changes needed by the tenant are ones that should have already been included in the unit or common space in order to comply with design and construction accessibility standards, then the owner will be responsible for paying for the modifications. For more information on reasonable modification, refer to the HUD and Department of Justice (DOJ) Joint Statement "Reasonable Modifications Under the Fair Housing Act" released March 5, 2008 (available in Appendix K).

3. Internal Procedures and Documentation

IHCDA strongly advises all recipients to have a written policy describing how they will handle requests for reasonable accommodations and modifications. The main steps are outlined below.

i. Resident or a family member or someone else acting on the resident's behalf makes a request for an accommodation or modification. A request can be made either orally or in writing. If this request is made orally, the recipient should document the nature of the request and the date and time received.

ii. Recipient verifies the need only if (1) the disability is not obvious, (2) if unsure if the disability is permanent or temporary, and/or (3) if unsure how the request relates to the need (i.e. does not understand correlation between the person's needs and the request made). The form used to request verification cannot ask specific information about the nature of a person's disability. The purpose of verification is to verify only that the person does meet the Fair Housing Act definition of disability and that the requested accommodation or modification is necessary for that person's equal opportunity to enjoy and use the housing.

iii. If verification supports the need, then the recipient must take the necessary steps to provide the accommodation or modification. An undue delay is noncompliance behavior and is treated in the same manner as a denial.

iv. If verification does not support the need, then the recipient should schedule an interactive meeting with the resident to request clarifications and attempt to achieve a mutually acceptable resolution of the issue. The recipient should carefully explain the concerns or questions related to the request and, if applicable, why the request is being denied

v. Document the tenant file with all related information.

C. General Public Use

Under program requirements, RHTC units must be available for use by the general public. Owners are allowed to establish preferences for certain special need population groups (e.g. homeless individuals, persons with disabilities, the elderly, etc.). These preferences, however, must not violate HUD's anti-discrimination policies, must be documented in the written tenant selection criteria, and must be approved by IHCDA. Per the changes under HERA, artist housing is a permissible exception under general public use.

Any residential unit that is part of a hospital, nursing home, sanitarium, life care facility, retirement home providing significant services other than housing, dormitory, trailer park, or intermediate care facility for the mentally and physically disabled is not considered for use by the general public and is therefore not an eligible RHTC unit.

In addition, if a residential rental unit is provided only for a member of a social organization or provided by an employer for its employees, the unit is not for use by the general public and is not eligible for credit under Section 42. (See Section 1.42-9).

Furthermore, owners cannot refuse to accept a prospective tenant based solely on the fact that the applicant holds a Section 8 rental voucher or certificate.

Violations of General Public Use and/or Fair Housing are reportable to the IRS via Form 8823. Depending on the nature of the violation, the noncompliance may be determined at the unit, building, or project level. Any unit found in violation of General Public Use and/or Fair Housing will fail to be considered a qualified low-income unit for purposes of determining the Applicable Fraction.

D. General Occupancy Guidelines/ Household Size

There are no current RHTC requirements governing minimum or maximum household size for a particular unit. However, owners must comply with all applicable local laws, regulations, and/or financing requirements (e.g. if Rural Development, use RD regulations). IHCDA advises all owners or agents to be consistent when accepting or rejecting applications. Occupancy guidelines or requirements should be incorporated into the development's management plan. Management should be aware

of occupancy standards set by federal, state, HUD, PHA, civil rights laws, tenant/landlord laws, and municipal code that may establish a maximum or minimum number of persons per unit.

Note: State and/or local code may dictate when children/siblings are no longer able to share a bedroom.

For guidance on determining household size, see Part 5.2A.

E. Tenant Selection Criteria

There are no federal or state tax credit regulations regarding criminal or credit background checks, landlord references, or a minimum income necessary for occupancy. Implementation of these criteria is entirely up to owner/management discretion, so long as the screening criteria are applied equally to all applicants.

Additionally, there are no current regulations governing citizenship requirements for tax credit tenants. Since the Fair Housing Act does not prohibit discrimination based solely on citizenship status, owners may ask applicants to provide documentation of citizenship or immigration status as part of the screening process. If the owner chooses to implement such a policy, the screening criteria must be established in writing and applied in a uniform, nondiscriminatory fashion. Owners should be aware that other housing programs (such as HUD programs) may have stricter citizenship requirements that must be followed if the project has additional funding along with tax credits.

Because many of these tenant selection criteria are left up to the discretion of the owner, it is important for each development to have an established Tenant Selection Criteria Policy in writing. This document should be made available to all applicants and tenants.

At a minimum, a good Tenant Selection Criteria Policy should include the following:

- Occupancy standards in effect (how many tenants can live in a unit based on size of the unit);
- Tax credit program eligibility factors, including income limits and student status eligibility;
- Any minimum income requirements imposed by management;
- Any citizenship requirements imposed by management;
- Specifics on the information that is analyzed when performing credit checks, criminal background checks, and previous landlord references. Management should clearly spell out what findings constitute a rejection of application (e.g. do certain criminal charges or a certain credit score automatically disqualify the household?);
- Explanation of the application and waiting list process, including a process through which an applicant is notified in writing of rejection and can then choose to appeal the rejection decision;
- Explanation of the transfer policies in effect;
- Breakdown of any special preferences set aside at the project (e.g. units reserved for special needs populations or an elderly restriction on the project); and
- List of any other relevant items used in considering the household's eligibility for occupancy

When creating a development's Tenant Selection Criteria Policy, the owner must be careful to follow all applicable tax credit eligibility regulations, Fair Housing regulations, and local occupancy standards.

With the exception of accessible or special needs units (see Part F below), all units should be leased on a first-come first-served basis with tenants selected in chronological order from the waiting list.

F. Marketing Accessible Units/Special Needs Units

At initial lease-up, accessible units and units designated as special need units should be marketed to persons requiring the unit due to their special need. For ongoing leasing, the following order should be followed for marketing these units as they become vacant:

i. First offer accessible units to existing occupants that require the accessibility features but are currently occupying a unit that does not offer such features.
ii. Next offer accessible units to qualified applicants on the waiting list that require accessibility features or that qualify under the special need category for which the unit is set-aside.
iii. Market the unit to attract new qualified applicants that require the accessibility features or that meet that special need category assigned to the unit.
iv. Finally, offer the unit to a non-disabled / non-special need household on the waiting list. If this is done, the household should understand and have an agreement in writing that it may later be asked to transfer to another comparable but non-accessible unit if the accessible unit is needed by a person with a disability. While the household may have to transfer if there is a vacant unit, it will not be evicted or otherwise terminated to make room for a special need household. This agreement should be incorporated into the lease.

Note: Projects with units designated for special needs populations must enter into a referral agreement with at least one local agency that serves that population. Additional information on special needs units and referral agreements can be found in Part 5.2 K.

G. Violence Against Women Reauthorization Act of 2013 (VAWA 2013)

The 2013 reauthorization of the Violence Against Women Act (VAWA) expanded the act's coverage to include RHTC projects.

1. Prohibited Denial/Termination

No applicant for or tenant of RHTC housing may be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.

2. Construction of Lease Terms

The owner/manager shall ensure that an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as:

- A serious or repeated violation of a lease by the victim or threatened victim of such incident; or
- Good cause for terminating the assistance, tenancy or occupancy rights to housing of the victim of such incident.

3. Termination on The Basis of Criminal Activity

No person may deny assistance, tenancy, or occupancy rights to an applicant or tenant solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking that is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, if the tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking. Notwithstanding the foregoing, the owner and/or manager may bifurcate a lease for the housing in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant of the housing and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual, without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant of the housing. The owner and or manager must provide any remaining tenants with an opportunity to establish eligibility and a reasonable time to find new housing or to establish eligibility.

4. Confidentially of Tenant Information Related to Domestic Violence, Dating Violence, Sexual Assault, or Stalking

The recipient shall ensure that any information submitted to the staff, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking shall be maintained in confidence and may not be entered into any shared database or disclosed to any other entity or individual, except to the extent that the disclosure is:

- Requested or consented to by the individual in writing;
- Required for use in an eviction proceeding against any individual who is a tenant or lawful occupant of the housing and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking; or
- Otherwise required by applicable law.

5.Required Notices

The HUD and/or the IRS may develop a notice of the rights of individuals under ("VAWA") including the right to confidentiality and the limits thereof. The owner agrees to ensure that this notice is utilized and disseminated at the project as directed by the IRS, HUD and/or IHCDA when information is available..

6. Emergency Transfer

HUD and/or the IRS shall provide guidance regarding a model emergency transfer plan that allows tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to transfer to another available and safe dwelling unit. Owner agrees to ensure that any guidance developed will be utilized as directed by the IRS, HUD and/or IHCDA.

Part 5.4|Tax Credits Developments with HOME/CDBG/NSP-Assisted Units

A tax credit development may also receive HOME/CDBG/CDBG-D/NSP funds, resulting in a certain number of units reserved as both tax credit and HOME/CDBG/CDBG/NSP program-assisted units. Units that are under multiple funding programs must follow the compliance rules of both programs. As a general rule of thumb, when program compliance regulations differ, the owner should follow the stricter of the two.

The following is a sampling of common issues management may face when combining tax credits with federal funding. This is not meant as an exhaustive listing. For more information on IHCDA's HOME/CDBG/CDBG-D/NSP compliance regulations, please refer to the *Federal Program Ongoing Rental Compliance Manual*. However, if the HOME funds on a project were awarded by another participating jurisdiction (i.e. the project received city HOME funds instead of IHCDA HOME funds), check with that PJ for compliance guidelines and expectations.

NOTE: All items discussed below are based on HOME requirements since IHCDA generally applies the HOME rental regulations to CDBG, CDBG-D, and NSP rental projects. Exceptions are noted as "HOME only."

A. Mixed Funding: Rent and Income Limits

1. HOME/CDBG/CDBG-D/NSP and RHTC rent and income limits may be different within the same county for the same year. IHCDA releases a separate set of limits for each program. For a unit under both programs, the stricter of the two sets of limits should be used (generally the HOME limits are lower than the Section 42 limits and are thus the stricter).

2. Section 42 does not include rental assistance in the gross rent calculation. For HOME/CDBG/CDBG-D/NSP assisted units, tenant-based rental assistance is included in the gross rent calculation. For purposes of determining whether a program assisted unit is in compliance with the rent limits, the sum of the tenant-paid rent portion + tenant-based rental assistance + utility allowance + non-optional fees must be at or below the applicable HOME/CDBG/CDBG-D/NSP rent limit.

B. Mixed Funding: Certifications and Verifications

1. 100% tax credit projects do not have to perform annual income recertifications. However, those units that are also HOME--assisted must have a full annual recertification to comply with IHCDA's program requirements. Annual income recertifications do not apply to CDBG/CDBG-D/NSP assisted units.

2. The tax credit program allows household self-certification for assets if the total combined value of assets is less than or equal to $5000. HOME requires that all assets be third-party verified, so the "Under $5000 Assets Affidavit" cannot be used to satisfy the verification requirements on HOME/CDBG/CDBG-D/NSP assisted units.

3. In HOME/CDBG/CDBG-D/NSP, verifications are valid for six (6) months. For Section 42, verifications are only valid for 120 days. Therefore, for units subject to both programs, use the stricter tax credit rule and make sure that all verification documents are no older than 120 days as of the effective date of the certification.

4. HOME/CDBG/CDBG-D/NSP has different income verification requirements when second-party verification is used. If paystubs are used instead of third-party employment verification, the amount of paystubs obtained must amount to a full two (2) consecutive months of pay. If tax returns are used instead of third-party verification, the tax return must be a certified copy obtained by completing IRS Form 4506 "Request for Copy of Tax Return." For units subject to both programs, apply the stricter verification requirements.

C. Mixed Funding: Household Size and Eligibility including Student Status

1. Section 42 includes unborn children when determining household size for purposes of determining the applicable income limits. However, HOME does not allow unborn children to be included as household members. If a household with an unborn child applies for a unit that is both tax credit and HOME/CDBG/CDBG-D/NSP assisted, management must demonstrate that the household is income eligible under both programs.

2. The CDBG, CDBG-D, and NSP programs do not limit occupancy by full-time students. However, for CDBG/CDBG-D/NSP assisted RHTC units, the tax credit full-time student rules apply. The 2013 revision to the HOME final rule added a student status requirement for all HOME-assisted units that are committed HOME funds after August 23, 2013. Information about the HOME student rule can b e found in the *Federal Programs Ongoing Rental Compliance Manual.* Households applying/ residing in units that are both RHTC and HOME-assisted (subject to the new final rule) must meet both program definitions of student status eligibility.

D. Mixed Funding: Fair Housing and Related Nondiscrimination Requirements

1. Upon project entry, households living in all HOME/CDBG/CDBG-D/NSP assisted units must be given the Fair Housing brochure entitled "You May Be a Victim Of." The household must sign documentation acknowledging the receipt of this brochure at time of move-in. Although this is not a requirement of Section 42, all HOME/CDBG/CDBG-D/NSP assisted units in a tax credit development must have a signed copy of the acknowledgement located in the tenant file.

2. Any tax credit development with five (5) or more HOME/CDBG/CDBG-D/NSP assisted units must follow Affirmative Fair Housing Marketing procedures. The owner must study the local market to determine the populations that are least likely to apply for housing, and then develop a plan to make sure that marketing efforts are reaching out to these groups. The owner should evaluate the development's Affirmative Marketing plan at least once every five (5) years and update the plan if necessary. See Part 5.3 A for more information. Note: This requirement also applies to TCAP.

3. Any tax credit development with CDBG funding must follow the CDBG requirement to fulfill actions to affirmatively further fair housing. This is an upfront requirement that must be completed prior to CDBG award closeout. See Part 2.2 M of the *Federal Programs Ongoing Rental Compliance Manual* for more information.

4. Effective March 5, 2012, all HUD funded properties (including HOME/CDBG/CDBG-D/NSP funding) are subject to the rule entitled "Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity." According to this rule, HUD-assisted properties must make housing available without regard to actual or perceived sexual orientation, gender identity, or marital status. Additionally, HUD-assisted housing providers are prohibited from inquiring about the sexual orientation or gender identity of applicants and occupants for the purpose of determining eligibility for housing.

E. Mixed Funding: IHCDA Audits

A development with tax credits and IHCDA HOME/CDBG/CDBG-D/NSP funds will be audited by IHCDA for each program. The tax credit file monitoring will occur once every three (3) years (see Part 5.6 for an explanation of the tax credit monitoring cycle).

Additionally, the HOME/CDBG/CDBG-D/NSP assisted units will be audited according to the following schedule:

-If 1-4 HOME/CDBG/CDBG-D/NSP assisted units in the development: once every three (3) years
-If 5-25 HOME/CDBG/CDBG-D/NSP assisted units in the development: once every two (2) years
-If more than 25 HOME/CDBG/CDBG-D/NSP assisted units in the development: annually

F. Mixed Funding: Over-income Units (HOME Only)

For tax credit purposes, a unit is not considered to be an over-income unit until the household income exceeds 140% of the federal minimum set-aside election. When this occurs, the 140% Rule or Next Available Unit Rule goes into effect. See Part 3.5 C for more information on the Next Available Unit Rule.

For HOME purposes, a unit is considered to be over-income (and therefore a temporarily noncompliant unit) when household income exceeds 80% of AMI. Under the HOME program, households that exceed 80% of AMI are charged 30% of adjusted income as rent and special rules go into effect to replace the over-income unit.

For units that are under both programs, <u>the tax credit over-income rule overrides the HOME over-income rule. An over-income HOME household (over 80% HOME AMI) living in a tax credit unit is not subject to increased rent under the HOME over-income rules. Rather, the unit remains rent-restricted at the applicable tax credit rent limit.</u>

Note: Neither program permits eviction or termination of tenancy due to income increases, even if the household exceeds the 140% or 80% levels.

G. Mixed Funding: Lead-Based Paint Requirements (*also applies to TCAP)

1. Households living in assisted units built prior to 1978 must be given the Lead-Based Paint brochure entitled "Protect Your Family from Lead in Your Home." The household must sign documentation acknowledging the receipt of this brochure at time of move-in. Although this is not a requirement of Section 42, households residing in HOME/CDBG/CDBG-D/NSP/TCAP assisted units in a tax credit development must have a signed copy of the acknowledgement located in the tenant file.

2. Federally funded projects built prior to 1978 are subject to ongoing compliance with lead-based paint regulations, as described in Part 5.5 C below. Tax credit properties with HOME/CDBG/CDBG-D/NSP/TCAP funding must comply with these regulations.

H. Mixed Funding: Lease Prohibitions

For units assisted under CDBG/CDBG-D/HOME/NSP, the following lease language is prohibited:

- Agreement to be sued. Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease;
- Treatment of property. Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with State law;
- Excusing owner from responsibility. Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent;
- Waiver of notice. Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant;
- Waiver of legal proceedings. Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;
- Waiver of a jury trial. Agreement by the tenant to waive any right to a trial by jury;
- Waiver of right to appeal court decision. Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and
- Tenant chargeable with cost of legal actions regardless of outcome. Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses;
- Agreement by the tenant (other than a tenant in transitional housing) to accept supportive services that are offered.
- The lease cannot permit a rent increase without at least thirty (30) days written notice or termination without at least thirty (30) days written notice.

Part 5.5|Suitable for Occupancy

A. General Requirements and Recordkeeping

In addition to being rent restricted and occupied by qualified households, all tax credit units and buildings must be suitable for occupancy. Owners must annually certify that all units and buildings in the tax credit development are decent, safe, and sanitary considering all applicable health, safety, and building codes. If any health, safety, or building code inspections result in a notice of violation, this must be reported. Original reports/notices of violations must be maintained as part of the owner's recordkeeping and copies must be submitted to IHCDA along with the Annual Owner Certification of Compliance.

Vacant units must also be suitable for occupancy and cannot be cannibalized for parts. Because the owner is responsible for maintaining all tax credit units in a manner that is suitable for occupancy at all times, the cost of preparing vacant units for occupancy cannot be passed on to tenants or applicants. During the inspection process, the IHCDA inspector or contracted inspector may ask to inspect a mix of both occupied and vacant units.

Tax credit units that are not suitable for occupancy at the end of the taxable year are not considered qualified units and cause a deduction in Applicable Fraction.

Properties must meet both HUD's Uniform Physical Conditions Standards (UPCS) and local health, safety, and building codes. UPCS requires an inspection of the following inspectable areas: site, building exterior, building systems, dwelling units, common areas, and health/safety concerns.

For information on IHCDA's inspection process, see Parts 7.6 C and 7.6 D, as well as the *Physical Inspection Compliance Guide* available in Appendix I.

In addition to program specific compliance, Indiana Code 32-31-8-5 "Landlord Obligations" states:

"A landlord shall do the following:
(1) Deliver the rental premises to a tenant in compliance with the rental agreement, and in a safe, clean, and habitable condition.
(2) Comply with all health and housing codes applicable to the rental premises.
(3) Make all reasonable efforts to keep common areas of a rental premises in a clean and proper condition.
(4) Provide and maintain the following items in a rental premises in good and safe working condition, if provided on the premises at the time the rental agreement is entered into:
(A) Electrical systems.
(B) Plumbing systems sufficient to accommodate a reasonable supply of hot and cold running water at all times.
(C) Sanitary systems.
(D) Heating, ventilating, and air conditioning systems. A heating system must be sufficient to adequately supply heat at all times.
(E) Elevators, if provided.
(F) Appliances supplied as an inducement to the rental agreement."

B. Casualty Loss

An owner that experiences a loss of unit due to fire, natural disaster, or other circumstance must:

1. Inform IHCDA of the loss in writing within ten (10) days of the incident;
2. Submit a plan to IHCDA within thirty (30) days that sets a timeframe for reconstruction or replacement of lost units;
3. IHCDA must report the loss and replacement of the units to the Internal Revenue Service (IRS) after ninety (90) days. If the units have not been fully replaced, IHCDA will attach a copy of the owner's plan and timeframe for replacement to its report. Once all units have been replaced, IHCDA will then report the replacement of the lost units.

Generally, the amount of credit that can be claimed is determined as of the close of each taxable year. Credits are only determined on a monthly basis during the first year of the credit period. Therefore, if a building is damaged by a casualty loss event and fully restored within the same taxable year, the IRS has stated that there will be no recapture or loss of credits, as long as the following criteria are met:

1. The restored units are occupied by the end of the taxable year; or
2. The owner has initiated what the IRS refers to as "continual and certifiable measures" to rent the restored vacant units.

Although recapture will not occur as long as the units are restored to suitable condition within a reasonable period, credits cannot be claimed during the time the units are not suitable for occupancy. In Chief Council Advice Memorandum CCA200134006, the IRS clarified that a period of up to two (2) years following the end of the tax year in which the casualty loss occurred is consistent with general replacement principles involving casualties and thus considered a reasonable period. In order to avoid recapture and continue claiming credits as soon as possible, the owner of a building damaged by casualty should act quickly to remedy the issue.

Example 1:
A fire occurs on 6/30/13 and two units are no longer suitable for occupancy. The units are restored (suitable for occupancy) and either occupied or properly marketed before 12/31/13. Because the units were restored before the end of the taxable year, there is no loss of credits or recapture.

Example 2:
A fire occurs on 11/30/13 and two units are no longer suitable for occupancy. The units are not restored until 3/15/14. Because the units were not restored before the end of the taxable year (in this example 12/31/13), the affected units are not eligible for 2013 credits. However, since the units were restored within the "reasonable period", recapture does not apply.

If an owner fails to report a casualty loss to IHCDA within ten (10) days, IHCDA will report the incident as noncompliance to the IRS immediately via IRS Form 8823.

Casualty loss information must be reported via "Casualty Loss Form K" (see Appendix I). The form should be mailed to:

Indiana Housing & Community Development Authority
ATTN: Multi-Family Inspector
30 S. Meridian St., Suite 1000
Indianapolis, IN 46204

For additional IRS guidance on casualty loss, refer to CCA200134006, Low Income Housing Credit Newsletter Issue #35 May 2009, and Low Income Housing Credit Newsletter Issue #43 February 2011.

C. Ongoing Lead Based Paint Compliance (*applies to federal funding including TCAP)

Projects with federal funding (e.g. HOME/CDBG/CDBG-D/NSP & TCAP) built before 1978 are subject to ongoing compliance with lead based paint regulations. Tax credit properties with these funding sources must comply with the regulations.

1. Owners must inform current and new occupants of the lead hazard reduction methods that took place and where lead-based paint exists in their units. The brochure entitled "Protect Your Family from Lead in Your Home" must be provided to all new occupants upon move-in. Signed documentation of the receipt of this brochure by the household must be maintained in each tenant file.
2. Owners should request, in writing, that the residents monitor lead-based paint surfaces and inform the owner of potential hazards.
3. Regular maintenance and evaluation of the lead hazard reduction must be performed. The owner is responsible for:
   i. A visual inspection of lead-based paint at unit turnover or at least annually on occupied units;
   ii. Repair of all unstable paint;
   iii. Repair of encapsulated or enclosed areas that are damaged; and
   iv. Owners must continue to comply with the notification requirements when additional lead hazard evaluation and hazard reduction activities are performed.

Part 5.6|Procedures for the Transfer of RHTC and Developments

A. Transfer of Credits Prior to Issuance of Form 8609

As a condition of the Authority's consideration of a proposed transfer of credits prior to the issuance of Form 8609, the following criteria must be met by the owner:

1. The proposed transferee must submit a new Rental Housing Tax Credit Application setting forth any and all information contemplated therein as if the proposed transferee were the original applicant, sponsor, or owner (the "new application"). The new application must be filed and marked to show any and all changes in information from that which is set forth in the original application for RHTC.
2. The proposed transferee must also submit a schedule identifying all differences between the original application for RHTC and the new application with cross references to page numbers and sections which differ.
3. All applicable filing fees for the new application must be paid at the time of the filing of the new applications (See QAP in Schedule N for application fees). The Authority may, in its sole discretion, refund a portion of the fees to the applicant.
4. The proposed transferor and transferee of the credits must certify that the information set forth in the new application or otherwise filed with the Authority is true, complete, and not misleading in any respect. The proposed transferee shall agree therein to complete the development in the manner and within the time schedule set forth in the new application and assume all obligations of the transferor to the Authority.
5. The proposed transferor and transferee must submit such further documents, assurances, certificates, and other information and materials in support of the new application as the Authority shall require in its sole and absolute discretion.

Based on the Authority's review of the new application and other filings referred to herein, the Authority may approve or disapprove the proposed transfer in its sole and absolute discretion. No consent or approval of the Authority with respect to the proposed transfer shall be effective without the written consent of the Authority and any attempt to effect a transfer without such prior consent shall be void from inception. Such approval may be conditioned upon receipt by the Authority of any and all documents or instruments to be executed by the proposed transferor and transferee in order to effectuate the transfer contemplated hereby and such future conditions as the Authority may impose from time to time. Consent to a transfer shall not be deemed to be the consent to any subsequent transfer or waiver of the Authority's right to require the Authority's consent to any future transfers. Any consent, action, review, recommendation, approval, or other activity taken by or on behalf of the Authority shall not, expressly or impliedly, directly or indirectly, suggest, represent, or warrant that the sponsor, owner, and/or development qualify for the credit, or that the development complies with applicable statutes and regulations or that the development is or will be economically feasible.

B. Transfer of Development After Issuance of Form 8609

Sale of a building(s) or an interest therein

After the issuance of Form 8609, upon the sale, transfer or disposition of a qualified low-income building or an interest therein, the transferee shall immediately submit a "Property Ownership Change Form" to IHCDA, along with the following supplemental documentation:

1. A copy of completed Form 8693 (if applicable, see 5.6 C below);
2. A copy of all sale documents;
3. The newly amended and stated partnership agreement;
4. Any other additional information the Authority may request.

Receivership Information and Foreclosure

If a building(s) is in the foreclosure process, the receivership documents must be submitted to IHCDA immediately. Additionally, once final foreclosure occurs, the foreclosure documents must be submitted to IHCDA immediately, so that proper reporting to the IRS may occur.

C. Bond for Dispositions of Qualified Low-Income Buildings

Under the Code, a taxpayer that disposes of a qualified low-income building or an interest therein, can defer or avoid recapture by furnishing a bond to the Secretary in an amount satisfactory to and for the period prescribed by the Secretary. The bond posting only pertains to situations where it is reasonably expected that the building will continue to be operated as a qualified low-income building for the remainder of the building's compliance period.

The taxpayer's obligation under the bond must be secured by a surety holding a Certificate of Authority from the Department of the Treasury, Financial Management Service, and that surety must be listed in Treasury Department Circular 570. Taxpayers having problems obtaining a surety through the Circular 570 should call the Internal Revenue Service.

For specific guidance on the bond process, see Revenue Ruling 90-60 (see Appendix B). In the absence of a valid bond, owners likely will recapture the accelerated portion of the credit using Form 8611 (see Appendix B).

The minimum required bond amount is generally the product of the total credits of the taxpayer times the appropriate bond factor amount. Bond factor tables to calculate the above were initially published in Revenue Ruling 90-60, and subsequent updates have been provided via additional Revenue Rulings: 90-88, 91-67, 92-101, 93-83, 94-71, 95-83, 96-16, 96-33, 96-45, and 96-59.

Form 8693 (see Appendix B) is the correct form to file to post a Rental Housing Tax Credit disposition bond under Section 42 (o)(6). This form includes applicable information regarding the building, the owner, and the surety. This form is signed by both the owner and the surety, and should be sent to the IRS.

Alternatively, Revenue Procedure 99-11 establishes a collateral program as an alternative to providing a surety bond to avoid or defer recapture of low-income housing tax credits under Section 42(j)(6) of the Internal Revenue Code. Under this program, taxpayers may establish a Treasury Direct Account and pledge certain United States Treasury securities to the Internal Revenue Service as security. Procedures for establishing the Treasury Direct Account are provided in Section 3 of Revenue Procedure 99-11.

Section 6 – Qualifying Tenants for RHTC Units

Potential tenants of low-income, rent-restricted units should be advised early in the application process that there are maximum income limits that apply to these units. Management should explain to potential tenants that the anticipated income of all adult persons (and the unearned income of minors) expecting to occupy the unit must be verified prior to occupancy and then annually recertified for continued eligibility.

The Code states that determination of annual income of individuals and Area Median Gross Income adjusted for family size must be made in a manner consistent with HUD's Section 8 income definitions and guidelines per 24 CFR 5.609. HUD Handbook 4350.3, *Occupancy Requirements of Subsidized Multifamily Housing Programs* should be used as a reference guide. Chapter 5 of HUD Handbook 4350.3 CHG-3 is included as Appendix C.

Part 6.1|Tenant Qualification & Certification Process

A. Necessary Documentation for a Tenant File

RHTC units are eligible for the RHTC program if proper documentation verifying the household's eligibility is placed in the tenant file. **At a minimum, the following items must be located in the file and must be organized in chronological order for easy review:**

1. Initial Tenant Application for residency (Sample entitled "Rental Application" is available in Appendix D);
2. Tenant Income Certification Questionnaires (see Part 6.2 below) completed for every year the household resides at the property, including certification of assets and disposal of assets, if applicable. A separate Tenant Income Certification Questionnaire should be completed by each adult household member annually, except for recertifications at 100% tax credit projects;
3. Tenant Income Certification (see 6.1 B below) signed by each adult member of the household for every year the household resides at the property. The TIC must have proper signature and effective dates clearly stated (effective date of TIC must be date of move-in or recertification, see Part 6.6 B for more information on effective dates);
4. Verifications of all sources of earned and unearned income and of all asset sources noted on the Tenant Income Certification Questionnaires for all years;
5. A separate "IRS Student Status Self-Certification" document completed by each adult member of the household each year, along with any additional student status verifications needed (e.g. verification of part-time status, verification of a student exemption, etc.);
6. Any other documentation verifying the household's eligibility (e.g. unborn child self-certification, joint custody of a child documentation, all management clarification documents, etc.);
7. Initial and subsequent leases and all lease addenda executed by the tenant and owner; and
8. For tenants receiving tenant-based Section 8 vouchers, a copy of the Housing Assistance Payment (HAP) Contract and the current HAP Amendment from the Section 8 agency showing the amount of rental assistance. For tenants in project-based Section 8 units, a copy of the current HUD Form 50059 showing the amount of rental assistance.

NOTE: A recertification file for 100% tax credit projects will only include the following documentation: a new Tenant Income Certification Form, new student status certifications for each adult member of the household, and the new lease and all addenda. Verification of income and assets is not necessary at recertification for 100% tax credit projects. It is also unnecessary to complete a Questionnaire at recertification for 100% tax credit projects.

All documents included in the tenant file must be fully completed, signed, and dated. IHCDA will not accept documents that are incomplete, that have been marked with correction fluids (e.g. whiteout), or where information has been obliterated with pen or marker. See 4.1 C below for information on how to properly correct documents in a tenant file.

B. Tenant Income Certification (TIC) Form

Every tenant file must contain a tax credit Tenant Income Certification (TIC) form, regardless of whether or not that unit/tenant also has an income certification from another program in the file (e.g. HUD Form 50058/50059 or RD Form 3560-8). The Tenant Income Certification form used for the tax credit program includes information that is not found on these other forms, such as the BIN number, the tax credit income and rent limits, household student status, the tax credit set-aside for the unit, the tax credit certification effective dates, etc. Therefore, properties that have multiple funding sources will need to have multiple signed tenant income certification forms in their files to demonstrate compliance with each separate program. **Beginning in 2011, IHCDA's sample TIC (Form #22 in Appendix D) is a mandatory form that must be used in all tenant files. IHCDA will no longer accept any other TIC document, unless the TIC is submitted to IHCDA and specifically approved.**

The TIC must list the IHCDA rent and income set-aside for the unit/household. Therefore, the rent and income restrictions should be listed as 30%, 40%, 50%, or 60%, not the actual AMI % of the household. For example, at time of move-in, a household may actually have income at 47% of AMI. IHCDA does not need to know this, but rather only needs to know the tax credit set-aside the household qualifies under, in this case, either the 50% or 60% limit.

C. Correcting Documents

IHCDA will not accept documents that are incomplete, that have been marked with correction fluids (e.g. whiteout), or where information has been obliterated with pen or marker. To correct a document, management should draw one line through the erroneous information and write the corrected information to the side. All corrections should be dated and initialed. Corrections on forms filled out by the management should be initialed by the management agent. Corrections on forms filled out by the tenant should be initialed by the tenant. Corrections to the lease should be initialed by both parties.

If management fails to obtain the necessary paperwork at time of certification, verifications can be retroactively created to document the income and assets that were in place at the time of certification. All retroactive documents should be signed with the current date, but noted as being "true and effective" as of the actual certification effective date. The "true and effective" statement must be written on each form that is created or signed after the effective date. Neither tenants nor management are ever permitted to backdate documents. The recertification effective date continues to be the anniversary date of the move-in, not the date the documents were completed retroactively.

Example: Mrs. Smith is due for her annual recertification on December 20th. However, the property manager was distracted putting up holiday decorations and forgot to send out a recertification notice. Therefore, Mrs. Smith does not come in to the office to complete her paperwork until January 2nd. Mrs. Smith should sign all paperwork with the current date (January 2nd) but should make a note at the bottom of each form stating "information true and effective as of December 20th."

D. One Form per Household or One Form per Member?

Form	1 form per household signed by all adults	1 separate form per each adult member
Tenant Income Questionnaire	-	YES
Tenant Income Certification	YES	-
Student Status Certification	-	YES
Under $5000 Asset Certification	YES	-
All other verification documents	-	YES

Part 6.2|Tenant Application & Tenant Income Certification Questionnaire

A fully completed Application and Tenant Income Certification Questionnaire is critical to an accurate determination of tenant eligibility. An Application must be completed by the household at initial move-in. A Tenant Income Certification Questionnaire must be completed annually (at initial move-in and at annual recertification) by each adult member of the household (a separate questionnaire for each adult member). However, it is not necessary to create questionnaires for recertification files at 100% tax credit projects.

Beginning in 2011, IHCDA's sample Tenant Income Certification Questionnaire form (Form # 23 in Appendix D) is a mandatory form that must be used in all tenant files. IHCDA will no longer accept any other questionnaire, unless the questionnaire is submitted to IHCDA and specifically approved.

At the time of application, it is the management agent's responsibility to obtain sufficient information on all prospective tenants to completely process the application, determine household eligibility, and complete the Tenant Income Certification (TIC) form. IHCDA requires that each adult household member complete a separate Tenant Income Certification Questionnaire at time of application and at each annual certification (except at 100% tax credit projects). The Tenant Application and Tenant Income Certification Questionnaire is the first step in the tenant certification process. The information furnished on the Application and Tenant Income Certification Questionnaire should be used as a tool to determine all sources of income (including total cash value of assets and income from assets), household composition, and student status.

HUD Handbook 4350.3 lists guidelines which the owner may want to adopt for the application process. The Application should include:

1. The name, age, relationship, disability (if units are set-aside for such tenants and are part of the Development's Extended Use Agreement), and sex of each person that will occupy the unit (legal name should be given just as it will appear on the Lease and Tenant Income Certification form);
2. All sources and amounts of current and anticipated annual income expected to be derived during the twelve (12) month certification period. Include assets now owned and indicate whether or not household members disposed of assets for less than Fair Market Value during the previous two (2) years;
3. The current and anticipated student status of each applicant during the twelve (12) month certification period and current calendar year;
4. A screening process (i.e. previous landlord's rental history, credit information, etc.). Owners should ask applicants whether the family's assistance or tenancy in a subsidized housing program has ever been terminated for fraud, nonpayment of rent, or failure to cooperate with recertification procedures;
5. The signature of the applicant and the date the application was completed. It may be necessary to explain to the applicant that all information provided is considered confidential and will be handled accordingly; and
6. Collection of demographic data: The Housing and Economic Recovery Act (H.R.3221) passed by Congress on July 31, 2008 requires HUD to collect and report the following information for <u>all</u> LIHTC tenants:
    - -Race
    - -Ethnicity
    - -Sex
    - -Family composition
    - -Age (Date of birth)
    - -Income
    - -Use of Section 8 (or similar) Rental Assistance Program
    - -Disability Status; and
    - -Monthly Rental Payment

This policy requires that RHTC developments annually report this demographic data for all household members (each member, not just the head of household). IHCDA is being proactive in anticipation of these data collection requirements and is requesting the necessary information in the online reporting system. **Beginning in 2010, the owner of an RHTC development must report the demographic data for each household member when reporting tenant events online.**

In order to reduce administrative burden, it is IHCDA's intent to capture all demographic information for HUD through the online reporting system.

As an additional requirement of the review process, each owner will be required to annually submit a compilation of this information through the Indiana Housing Online Management website as part of the Annual Owner Certification process. Failure to submit this information will be considered an act of noncompliance and will be reported accordingly on IRS Form 8823. For more information on Annual Owner Certifications see Part 7.5.

Part 6.3|Tenant Income Verification

The income of every prospective occupant of the unit must be verified. All regular sources of income, including income from assets, must be verified. Verifications must be received by the management agent prior to move-in. Verifications must contain complete and detailed information and include, at a minimum, direct written verification of all sources of regular income and income from assets.

A. Effective Term of Verification

Verifications of income are valid for 120 days prior to move-in or recertification effective date. After this time, if the tenant has not yet moved in or recertified, a new verification must be obtained.

B. Methods of Verification

Three (3) methods of verification are permitted, but management must attempt to receive third-party verification before using the other methods:

1. Third-Party Written or Verbal Verification

Reasonable effort to obtain written third-party verification is required. IHCDA does not require that the owner/management agent use particular forms for third-party verifications; however, sample third-party verification forms are included in Appendix D. All requests for income verification must:

a) State the reason for the request;
b) Include a release statement signed and dated by the prospective tenant; and
c) Provide a section for the employer or other third-party source to state the applicant/tenant's current anticipated gross annual income or rate of pay, number of hours worked, and frequency of pay. Over-time hours, bonuses, tips, and commissions must be included, as well as the probability and effective date of any increase during the next twelve (12) months. Spaces should also be available for a signature, job title, phone number, and date. If forms are returned with any information incomplete, management MUST contact the source and complete a clarification form to document incomplete information.

Note: Owners must send and receive verification forms directly to/from the third-party, not through the applicant or tenant.

When written verification is not possible prior to move-in, direct contact with the source will be acceptable to IHCDA only as a last resort and should be followed by written verification. The conversation should be documented in the tenant file to include all information that would be contained in a written verification. The information must include the name, title, and phone number of the contact, the name of the onsite management representative accepting the information, and the date the information was obtained.

In addition, if the owner receives third-party verifications that are not clear or are not complete, a documented verbal clarification may be accepted if it includes the name and title of the contact, the name and signature of the onsite management representative accepting the information, and the date.

Furthermore, if after requesting third-party verification, the third-party indicates that the information must be obtained from an automated telephone system, the owner may document the information provided from the telephone system. The documentation must state the date the information is received, all of the information provided, and the name, signature, and title of the person receiving the information.

2. Second-Party Verification & Electronic Verification

Owners may use documents submitted by the applicant or tenant only if:

a) Information does not require third-party verification (such as birth certificates or adoption papers verifying household membership, divorce decrees, etc.); or
b) Third-party verification is impossible or delayed beyond two (2) weeks of the initial request. Owners must show efforts (i.e. phone logs, fax receipts, certified mail receipts, etc.) to obtain the third-party verifications before the use of second-party verifications will be permitted; or
c) There is a fee associated with receiving the third-party verification. For example, if a bank will charge a fee for providing bank account information on a checking account, the owner may verify the account by obtaining the most recent six (6) months of bank statements from the tenant. If the owner chooses to pay the fee to obtain the third-party verification, this cost cannot be passed on to the tenant or applicant.

The following requirements apply to second party verification:

a. **Using Paystubs for Employment Verification**: If utilizing paystubs for employment verification, the owner must obtain the six most recent paystubs from the tenant/applicant if the job provides steady employment. However, if the unit is also HOME/CDBG/CDBG-D/NSP assisted, then the amount of paystubs obtained must also cover at least a full three (3) months of payments. If employment is sporadic or seasonal, the owner should obtain information that covers the entire previous twelve (12) month period.
b. **Using Bank Statements:** If utilizing bank statements in lieu of third-party asset verification, the owner must obtain the six (6) most recent statements to verify a checking account and the most recent statement to verify a savings account.

The owner must be able to reasonably project expected income for the next twelve (12) months from the second-party verification. For example, if third-party verification of employment income is impossible and efforts to obtain the third-party verification have been made and delayed two (2) weeks, the owner may obtain the six (6) most current consecutive pay stubs from the tenant. The owner must place copies of the second-party verifications and the efforts to obtain third-party verification in the tenant file.

If second-party verification must be used, the owner is required to document the tenant file explaining the reason third-party verification could not be obtained and showing all efforts that were made to obtain third-party verification. Page 5-61 of the HUD Handbook 4350.3 states that the following documents should be placed in the tenant file:

a) A written note to the file explaining why third-party verification is not possible; and/or
b) A copy of the date-stamped original request that was sent to the third-party; and/or
c) Written notes or documentation indicating follow-up efforts to reach the third-party to obtain verification; and/or
d) A written note to the file indicating that the request has been outstanding without a response from the third-party.

Additionally, if third-party verification is impossible to get from the third-party or is delayed, the owner may use information obtained electronically from e-mail or the internet. For example, an owner may receive the Fair Market Value of a house from an internet site that provides that information from the comparable real estate in the area.

3. Tenant Self-Certification

As a last resort, the owner may accept a tenant's signed affidavit if third-party and second-party verifications cannot be obtained. The owner should try to refrain from using self-affidavits except where absolutely necessary.

If a self-affidavit must be used to verify income or asset sources, the owner is required to document the tenant file by explaining the reason third-party or second-party verification could not be obtained and showing all efforts that were made to obtain verification. Per Chapter 5 of the HUD Handbook 4350.3, the following documents should be placed in the tenant file:

a) A written note to the file explaining why third-party verification is not possible; and/or
b) A copy of the date-stamped original request that was sent to the third-party; and/or
c) Written notes or documentation indicating follow-up efforts to reach the third-party to obtain verification; and/or
d) A written note to the file indicating that the request has been outstanding without a response from the third-party; and/or
e) A written note to the file explaining why second-party verification is not possible.

4. Public Housing Authority Verification & Income for Section 8 Recipients

In the case of a tenant receiving housing assistance payments under the Section 8 Program, the third-party income verification requirement is satisfied if the Public Housing Authority (PHA) provides a statement to the building owner certifying that the household's income does not exceed the applicable income limit under Section 42(g) of the Internal Revenue Code.

The only documents that will be acceptable from the Public Housing Authority are HUD Form 50058 or the IHCDA approved Public Housing Authority Verification form in Appendix D (if provided by the local PHA). The form must be completed in its entirety by a qualified representative of the PHA and list the members of the household and the gross income of the household before any deductions that the household may be eligible for under the Section 8 Program. These forms will not be considered valid verifications if they are dated more than 120 days prior to the household's move-in date or recertification effective date.

Once the owner receives the HUD Form 50058 or IHCDA approved PHA form, no other verifications of income are required. However, verifications for other Section 42 eligibility requirements such as student status, the Tenant Eligibility Questionnaire, and the tax credit Tenant Income Certification (TIC) form must still be completed and placed in the household's file. **The 50058 or PHA Form replaces the third-party income verifications but does not replace the tax credit TIC. A tax credit TIC must be included in the file, regardless of whether or not there is a 50058 (see Part 4.1 for more information).** The owner may not rely on the HUD Form 50058 or PHA form if a reasonable person in the owner's position would conclude that the tenant's actual annual income is higher than the tenant's represented annual income. Additionally, the HUD/PHA form must be signed by both the tenant and the PHA Representative when used as the income verification.

Because the HUD Form 50059 used for project-based Section 8 is not signed by a PHA representative, the Form 50059 cannot be used as income verification. However, the 50059 should be maintained in the file to verify the amount of rental assistance on the unit.

Furthermore, the tax credit program cannot accept the Enterprise Income Verification (EIV) system used by Section 8 to verify income. Therefore, the income of Section 8 recipients living in RHTC units must continue to be third-party verified. EIV documentation should be kept in a separate file from the tax credit verifications so that it is completely inaccessible to the tax credit auditor.

C. Verification Transmittal

Income verification requests must be sent directly to the source by the owner or management agent and returned by the source to the owner or management agent. Under no circumstances should the applicant or resident be allowed to send or deliver the verification form to the third-party source or back to the management. It is suggested that a self-addressed, stamped envelope be included with the request for verification to ensure a timely response. In addition, faxed copies of verifications are acceptable.

All income verifications should be date stamped as they are received.

D. Acceptable Forms of Income Verification

The following section provides brief guidance on some common and/or complicated sources of income to verify.

For complete information concerning acceptable forms of income verification for Employment Income, Self-employment Income, Social Security/Pensions/Supplemental Security Income (SSI)/Disability Income, Unemployment Compensations, Alimony or Child Support Payments, Recurring Contributions and Gifts, Scholarships, Grants, Veteran's Administration Benefits, Income from Assets, etc., see HUD Handbook 4350.3 CHG-3, specifically Chapter 5 and "Appendix 3: Acceptable Forms of Verification." Chapter 5 of HUD Handbook 4350.3 is included as Appendix C.

1. Social Security and Supplemental Security Income

IHCDA will accept the Annual Benefit Award Letter provided from the Social Security office to verify Social Security benefits. However, all Supplemental Security Income is required to be verified and dated within one hundred and twenty (120) days prior to the certification date. When interpreting Social Security benefit letters, remember to use the gross amount before deductions, unless the deduction is for a prior overpayment of benefits.

Beginning February 2014, the Social Security Administration (SSA) will no longer issue Social Security Number printouts and the SSA field offices will stop providing benefit verification letters. Clients can obtain an instant verification letter online by creating a personal mySocialSecurity account or by calling the national toll free number 1-800-772-1213 and using the automated application to have a letter sent via mail.

Benefits received through direct deposit or a Direct Express Debit Card are treated as income. In addition, the balance on a Direct Express Debit Card is also considered as an asset and must be verified consistent with the verification procedures for a savings account. A current balance (no more than 120 days old) must be provided and included as an asset in addition to the benefit income. This balance can be obtained through an online account service, a paper statement, or an ATM balance.

Delayed SS and SSI payments received as a lump sum are not counted as income, but are included as a lump sum asset (see the second income exclusion example on page 5-21 of HUD Handbook 4350.3). Delayed SS and SSI payments received as periodic payments are excluded from income (see item #13 in Exhibit 5-1 of HUD Handbook 4350.3)

When a Social Security cost of living adjustment (COLA) increase is announced, the increase must be factored into all income determinations with effective dates after the date the increase was announced. Recent COLA increases include:

- On October 19, 2011 the SSA announced a 3.6% COLA increase for 2012.
- On October 16, 2012 the SSA announced a 1.7% COLA increase for 2013.
- On October 30, 2013 the SSA announced a 1.5% COLA increase for 2014.

2. Child Support Verification

As guidance to the owner regarding child support verification, IHCDA requires the following documentation to verify income from child support:

- The tenant must be asked on the application for tenancy and annually on the Tenant Eligibility Questionnaire if anyone in the household is **entitled** to receive child support.
- If the tenant is entitled and is currently receiving child support, a copy of the court order, divorce decree, or verification from the agency administering the child support payments must be received.
- If the tenant is receiving child support but there is no court order (i.e. the tenant has made an alternative arrangement with the child support payer), then the owner should attempt to obtain third-party verification from the source making the payments
- If the tenant is entitled to receive child support, but has not received a payment within the previous year, verification from the agency administering the child support payments must be received by the owner. In addition, an affidavit from the tenant to the owner certifying that a) the tenant is not receiving child support payments; b) the reason the tenant is not receiving the payments; and c) the efforts made by the tenant to receive the payments must be obtained. If there is a court order but the tenant has not made efforts to receive the child support, then the owner must count the full amount of court ordered child support as income.
- If the tenant is entitled to receive child support, but payments over the previous year have been sporadic (i.e. more than one third (1/3) of the payments have not been paid), then the owner may average the payments received over the previous year to project anticipated income for the next twelve (12) months. Management should document the file with the previous twelve (12) month history.

3. Unemployment and Welfare Benefits

The owner must attempt to receive third-party verification of unemployment benefits. When anticipating income from unemployment, the owner must annualize the weekly benefit amount regardless of whether or not the benefit end date suggests that benefits won't last for the full year. The owner may not use the total maximum benefit amount, the remaining benefit amount, or an average of the benefits received.

The only exception is if the tenant knows a date on which he or she will return to work or begin a new job. In this case, the owner would calculate unemployment benefits up until the hire date and then calculate employment income for the rest of the year. IHCDA will expect to see third-party verification of the unemployment benefits and a third-party verification (employment verification) showing the start date for the job, including all other information applicable to employment.

Welfare payments in the form of Temporary Assistance to Needy Families (TANF) are included as household income. Food stamps are not included as household income.

Settlement payments from claim disputes over unemployment or welfare are treated as lump sum assets. However, lump sum payments caused by delays in processing periodic payments in unemployment or welfare are included as income (see page 5-18 and Figure 5-3 on page 5-19 of HUD Handbook 4350.3).

4. Employment Income

For purposes of verifying and calculating employment income, it is imperative to consider year-to-date earnings. IHCDA requires the owner to calculate employment income in one of the following manners:

-If third-party employment verification is received, calculate the total anticipated income for the year and compare to the anticipated income based off of the year-to-date (YTD) figure provided on the verification form (all employment verification forms must ask for YTD earnings). Use the higher of the two figures when calculating total household income.

-If the six (6) most recent paystubs are received, calculate the total anticipated income based off of the average of the six paystubs and compare to the total anticipated income based off of the year-to-date (YTD) figure found on the most recent paystub. Use the higher of the two figures when calculating household income.

IHCDA provides sample income calculation worksheets for the convenience of the owner/ management. Form #41 provides a calculation method for using third-party employment verifications and Form #40 provides a calculation method for using paystubs. Both forms are available in Appendix D.

5. Recurring Gifts / Regular Contributions to Household

Any regular contributions and gifts to the household from persons not living in the unit must be included in annual income. This includes payments paid on behalf of the family and other cash or noncash contributions provided on a regular basis. Temporary, nonrecurring, or sporadic contributions or gifts are not counted.

Groceries provided directly to the household (not money given to buy groceries) are excluded. Additionally, childcare payments paid directly to the childcare provider on behalf of the tenant are excluded.

Recurring gifts/contributions should be third-party verified when possible by having the contributor sign a self-certification stating the amount and frequency of the gift/contribution as well as any anticipated changes in the gift.

6. Income of Students and Student Financial Assistance

For information on when to count income of students and when to include student financial assistance as income, see Part 5.2 B5 and 5.2 B6.

E. Differences in Reported Income

The management agent should give the applicant/tenant the opportunity to explain any significant differences between the amounts reported on the Application/Questionnaire and amounts reported on third-party verifications in order to determine actual income. The explanation of the difference should be documented in the tenant file on a clarification form or self-affidavit.

F. Zero Income Households

It is possible that a household living in a tax credit unit will have total annual income of $0. This is possible if the household is receiving rental assistance, food stamps, and other forms of assistance that are not counted as income. However, it is often the case the households claiming to be zero income are in fact receiving some type of recurring gift from friends or family members (see Part 6.3 D5 above).

If an individual applicant/tenant within the household has zero income, IHCDA advises having that individual fill out a form similar to IHCDA Form #15 "Non-employed Status Certification." This form asks the household member to certify that he or she has no employment, allows them to answer questions about other forms of income, and provides an option to claim zero income but explain that another household member pays for all expenses.

If the entire household is claiming zero income, IHCDA advises having the household complete a form similar to IHCDA Form #27 "Zero Income Certification and Basic Needs Questionnaire." This form asks the household to identify how various expenses will be paid and often serves as a way of catching recurring gifts and contributions to the household.

While zero income households do exist, it is the responsibility of management to prove due diligence when reporting households as zero income. Zero income households can raise a red flag for auditors, especially if the household that is claiming zero income is responsible for a portion of rent.

Part 6.4|Annual Income

A. Whose Income and Assets are Counted?

Member	Earned Income	Unearned/Asset Income
Head of household	Yes	Yes
Spouse/ Co-head	Yes	Yes
Other adult	Yes	Yes
Foster adult	Yes	Yes
Dependent Child Under 18	No	Yes
Full-time student over 18 **	See Note Below	Yes
Foster child under 18	No	Yes
Non-members (live-in aides, guests, etc.)	No	No

**If a full-time student over 18 is a dependent of the household, only a maximum of $480 of earned income is included in annual household income.

B. Income

Annual income is defined as the gross amount of anticipated earned and unearned income to be received by all adult members of the household (18 years of age and older, including full-time and part-time students) and the unearned income of minors during the twelve (12) months following the date of certification or recertification.

Per HUD Handbook 4350.3, the owner must generally use current circumstances to anticipate income. However, if information is available on changes expected to occur during the year, the owner must use that information to determine the total anticipated income. Two common obstacles include:

1. **Unsecured income**: IHCDA does not require owners to include unsecured income sources when calculating household income. For example, if an applicant or tenant is unemployed IHCDA does not require that individual to anticipate income he or she may earn if a job is secured, unless it is verifiable that a job has been secured for a future start date.

2. **Sporadic or seasonal income**: Per IRS guidance in the 8823 Guide, the owner must use reasonable judgment to determine the most reliable method of calculating income in scenarios where income fluctuates. If income cannot

be determined using current information, the owner may anticipate income based on the income that was earned within the last twelve (12) months prior to the income determination.

Any income or asset source not specifically excluded must be included. For information regarding annual income inclusions and exclusions and how to calculate annual income, see HUD Handbook 4350.3 CHG-3 in Appendix C. Exhibit 5-1 lists income inclusions and exclusions and Exhibit 5-2 lists asset inclusions and exclusions.

Note that RHTC income limits are based on gross annual income, not adjusted annual income. Allowances commonly used in some government programs, such as child care allowance, elderly household allowance, dependent allowance, handicapped assistance allowance, medical deductions, etc., are not permitted to be subtracted from the household's gross annual income to determine income eligibility for RHTC units.

C. Assets

Assets are items of value, other than necessary personal items. In general terms, an asset is a cash or noncash item that can be converted to cash. Income from assets must be taken into consideration when determining the eligibility of a household. Asset information (asset value and income from assets) must be obtained at the time of application and annually at recertification. Assets must be verified as described under items 6.4 C 1-3 below.

The market value of an asset is its dollar value on the open market. The cash value of an asset is the market value minus reasonable expenses incurred to convert the asset to cash.

Actual Income from Assets is the income generated by an asset, such as interest or a dividend. This is counted as income even if the income is not received by the household, for example if the interest or dividend is automatically reinvested into the asset. When net family assets (cash value of all assets) are up to $5000, the actual income from assets is always the income used. When net family assets exceed $5000 then the actual income must be compared to the imputed income from assets (see below) and the higher amount is used for income determination.

Any income or asset source not specifically excluded must be included. For more information regarding household asset inclusions and exclusions, and how to determine the cash value and income from assets, see HUD Handbook 4350.3 in Appendix C, specifically Section 5-7 and Exhibit 5-2.

*NOTE: More income sources (including benefits such as Social Security) are being paid onto special debit cards instead of through direct deposited into a checking or savings account. These debit cards are included as assets and are verified in the same way as a savings account. A current balance (no more than 120 days old) must be provided and included as an asset in addition to the benefit income being counted as income. This balance can be obtained through an online account service, a paper statement, or an ATM balance.

1. Net Family Assets Greater than $5,000

Third-party verification of the value of assets and income from assets is required when the combined cash value of the assets held by all members of the household exceeds $5,000. Third-party verification must be obtained for the initial certification of the household and for each recertification (unless the 100% Recertification Exemption applies).

If net family assets (cash value) exceed $5,000, asset income (which must be included as part of total gross household income) will be the greater of: a) actual asset income; or b) net family assets times the HUD approved passbook rate (the Imputed Income from Assets). Local HUD offices periodically publish the HUD approved passbook savings rate. The current rate is two percent (2%).

2. Net Family Assets Less than or Equal to $5,000

Per Revenue Procedure 94-65, owners of RHTC developments do not have to obtain third-party verification(s) of the value of assets if the household submits to the owner a signed, sworn statement that the combined value of the assets of the household is less than or equal to $5,000 ("Under $5000 Asset Certification"). The sworn statement must include a listing of the household's assets, the cash value of each asset, and the actual annual income from each asset (e.g. annual interest rate). This form must be completed by the household for the initial Tenant Income Certification and for each subsequent recertification (unless the 100% Recertification Exemption applies)**. Only one form should be completed per household, not one form per member, since the rule applies if the total household assets are less than or equal to $5000.** The owner may not rely on the low-income household's signed, sworn statement of annual income from assets if a reasonable person in the owner's position would conclude that the household's annual income from assets is higher than the amount represented on the self-certification.

If net family assets are less than or equal to $5,000, asset income will equal actual annual income from assets. The annual income from assets must be included as part of total annual household income. Asset income is not imputed using the HUD passbook rate when assets do not exceed $5000.

Note: The rule allowing self-certification of assets when total cash value of household assets is less than or equal to $5000 is a tax credit specific rule. Households that are under other programs (including HOME, tax exempt bonds, etc.) must third-party verify all assets in order to comply with those programs.

3. Disposed of Assets

Assets disposed of for less than fair market value are included as assets for a period of two (2) years from the date of disposal. The amount to be included as an asset is the difference between the cash value of the asset and the amount that was actually received (if any) in the disposition of the asset. This rule only applies if the difference between the cash value and the amount received is greater than $1000.

Assets disposed of for less than fair market value as a result of foreclosure or bankruptcy or those lost through a separation or divorce settlement are not included in this calculation.

D. Computing the Total Annual Household Income

After all income and asset information has been verified and computed for a household, all qualified sources of income are added together to derive the total household income. In order for the household to qualify for a RHTC unit, the total household income must be at or below the maximum allowable qualifying income in effect at the time of tenant certification. If the total household income is greater than the maximum allowable qualifying income, then the household cannot be certified for a RHTC unit. Income and assets must be verified and calculated in accordance with the Section 8 methodology as described in Chapter 5 of HUD Handbook 4350.3. Any income and asset source not specifically excluded must be included.

Remember, RHTC income limits are based on gross annual income, not adjusted annual income. Allowances commonly used in some government programs, such as child care allowance, elderly household allowance, dependent allowance, handicapped assistance allowance, medical deductions, etc., are not permitted to be subtracted from the household's gross annual income to determine income eligibility for RHTC units.

Part 6.5|Move-In Dates

A. RHTC Developments Involving the Acquisition and Rehabilitation of a Building(s)

If a building is occupied at the time it is acquired and remains occupied throughout the period in which it is being rehabilitated, all existing households (those who occupied the building when it was acquired) must be documented as having been income-eligible no earlier than 120 days prior to the date of acquisition using the current income limits or no later than 120 days after the date of acquisition using the income limits in effect on the day of acquisition, providing a 240 day window during which the certification can be performed. The effective date of the Tenant Income Certification is the date of acquisition and the initial TIC is considered a move-in event, even though the tenant has already lived in the unit prior to the effective date.

If an existing household is not certified within 120 days before or after the date of acquisition, the effective date of the TIC will be the actual date the household is income certified and all documentation is completed. The initial TIC will be considered a move-in event, even though the tenant has already lived in the unit prior to the effective date.

Households that move into the unit after the date of acquisition must be documented as RHTC eligible at the time of actual move-in to the unit. If the building is not occupied during rehabilitation, a household must be RHTC eligible at the time of actual move-in to the unit, using the income limits that are in effect at time of move-in.

For purposes of Rev. Proc. 2003-82, the incomes of the individuals occupying a unit occupied before the beginning of the first credit year must be tested for the Next Available Unit Rule under IRC §42(g)(2)(D)(ii) and Treas. Reg. 1.42-15 at the beginning of the first year of the building's credit period using the following requirements:

1. The "test" must be completed within 120 days prior to the beginning of the first year of the credit period.
2. The "test" consists of confirming with the household that sources and amounts of anticipated income included on the TIC are still current. If additional sources or amounts of income are identified, all additional sources must be self-certified and added to the current TIC. Regardless of whether or not the household notes a change in income sources, the "test" does not require third-party verifications.
3. If the household is over-income based on current income limits, the household remains eligible but the Next Available Unit Rule must be applied.

The test will be necessary if acquisition and rehabilitation are not completed within the same year, because the credit period cannot begin until the year in which rehabilitation is completed. If acquisition and rehabilitation are completed within the same year, the "test" will not need to be completed. **Note: IHCDA does not require the "test" to be completed for 100% tax credit projects.**

If the household is eligible and proper documentation has been obtained for each tenant, the standard annual certification requirement will then be implemented annually, beginning with the initial certification date.

See Section 3, Part 3.1 F for more information on acquisition/rehabilitation projects, the 240 day certification window, and the "test."

B. RHTC Developments Involving Rehabilitation Only

If a building is occupied during rehabilitation, all existing households(those who occupied the building while it was being rehabilitated) must be documented as having been RHTC-eligible by no later than 120 days after the rehabilitation placed-in-service date. Households that move into the unit after the rehabilitation placed-in-service date must be documented as RHTC

eligible at the time of actual move-in to the unit. If the building is not occupied during rehabilitation, a household must be RHTC eligible at the time of actual move-in to the unit.

C. Rehabilitation of an Existing Tax Credit Development

It is possible for the owner of an existing tax credit development to be issued another set of credits for rehabilitation after the initial fifteen (15) year compliance period has ended. This is often referred to as a "subsequent allocation." Tax credit households that qualified for the original credits are grandfathered into the new allocation without being recertified as a new move-in. Therefore, the move-in date for the household remains the original move-in date and the recertification cycle does not change. Any households that were over the 140% limit at their last recertification are treated as qualified units but continue to invoke the Next Available Unit Rule.

Additionally, vacant units previously occupied by income-qualified households continue to qualify as RHTC units as long as the owner properly follows the Vacant Unit Rule.

Note: In order to be grandfathered into a subsequent credit allocation, units/households must have been in "continuous compliance" which includes compliance with the full-time student rule. Therefore, owners should not stop verifying student status in extended use even if approved for IHCDA's Extended Use Policy" (see Part 8.1) if they are considering applying for a subsequent credit allocation.

D. Acquisition and Rehabilitation of an Existing Tax Credit Development

It is possible for an existing tax credit development to be sold to a new owner and then issued a new allocation of acquisition/rehabilitation credits. From the time the project is sold until the time a new declaration is recorded, the new owner is subject to the original extended use agreement between IHCDA and the former owner.

Tax credit households that qualified for the original credits are grandfathered into the new allocation without being recertified as a new move-in. Therefore, the move-in date for the household remains the original move-in date and the recertification cycle does not change. However, when the new credits are allocated and the credit period begins, the new owner must conduct the "test" as described in Part 4.5 A above, and any households exceeding the 140% limit are subject to the Next Available Unit Rule.

Once the new credit period begins, any vacant units that were previously occupied by income-qualified households cease to be treated as qualified RHTC units. Instead these units are treated as empty (never-occupied) units until a qualified household is moved-in.

E. RHTC Developments Involving New Construction

In newly constructed buildings, all households must be documented as being RHTC eligible at the time of actual move-in to the unit.

F. Mixed Income Developments- Converting a Market Rate Household to a Qualified Household

In developments that have an Applicable Fraction of less than 100%, a household that is designated as market rate at the time of actual move-in to the unit may later be re-designated as a RHTC household. When this happens, the household must be certified as a RHTC household at the time of re-designation. In this scenario, the household would be treated as a new move-in event. The move-in date and effective date of the initial TIC would both be the date the household was designated as a tax credit eligible household, not the date the household moved in as market rate.

Part 6.6|Annual and Interim Income Recertification Requirements

The owner must perform, at least on an annual basis, an income certification for each low-income household and receive documentation to support that certification. IHCDA monitors recertification 365 days from the latter of: the move-in date or the one-year anniversary of the effective date of the previous certification. Upon receipt of all verifications, owners or managers should determine if the unit still qualifies for participation in the RHTC program.

A. Effective Dates of Certifications

Owners may utilize effective dates when performing Tenant Income Certifications. Therefore, the tenant may sign the Tenant Income Certification (TIC form) before the date the certification takes effect. However, **all income and eligibility verifications must be valid (not older than 120 days) on both the signature date and effective date of the Tenant Income Certification.** In addition, if the owner chooses to utilize effective dates on Tenant Income Certifications, the owner should have language in the Tenant Certification indicating that the tenant must inform management of any changes of income, student status, or household composition that may occur between the date the tenant signs the TIC and the effective date of the TIC.

Please note the following excerpt and example from the 8823 Guide, pages 4-22 and 4-23:

> **Tenant Income Certification Effective Date**
> Once all sources of income and assets have been properly verified, owners or managers perform an income calculation using the applicant's tenant income certification to determine whether the applicant qualifies for IRC §42 housing.
>
> **The effective date of the tenant's income certification is the date the tenant actually moves into the unit.** All adult members of the household should sign the certification. HUD Handbook 4350.3, 5-17B. If the certification is more than 120 days old, the tenant must provide a new certification.. **The income recertifications, if required, must be completed annually based on the anniversary of the effective date.**
>
> Example 1: Determining the Tenant Income Certification Effective Date
> A potential household consisting of John and Jane Doe and their two children completed a rental application and income certification on April 12, 2004. The property manager completed the third party verifications and determined that the household was income eligible on April 21, 2004. John and Jane signed the rental lease on April 25th, and took possession of the unit on May1, 2004. **The effective date of the tenant income certification is May 1, 2004. All subsequent tenant income recertifications must be performed within 120 days before May 1st of each subsequent year of the 15-year compliance period.**
>
> When additional adult individuals join the household, the effective day will remain the same until the unit is completely vacated.

Therefore, the RHTC recertification date for a household may not change to align with the recertification date for other programs, even if this means that a household must be certified multiple times annually for multiple programs. The effective date of recertification is the anniversary date of the move-in. Recertifications must be completed within 120 days of the anniversary date.

> *Example 1: A household moves into a tax credit unit on January 1, 2008. On March 1, 2008 the household begins receiving Section 8 rental assistance and its income is verified and certified for this program. The effective date for the household's annual tax credit recertification is January 1, 2009, NOT March 1, 2009.*
>
> *Example 2: A household moves into a tax credit unit on July 15, 2009. The first annual recertification is due with an effective date of July 15, 2010. The effective date of the recertification TIC does not move up to the first of the month (July 1, 2010) or get pushed back to the first of the next month (August 1, 2010) as may be the case with other low-income housing programs.*

NOTE: **While the effective date of the annual Tenant Income Certification will never change, the effective date of the lease may change**. For example, when a tenant receives a Section 8 voucher, a new lease will be executed to coincide with the voucher. As long as the initial lease was signed for at least a six (6) month term (regardless of whether the term is completed prior to the new lease being executed) there is no tax credit violation. Therefore, **the effective date of the lease and the effective date of the Tenant Income Certification may not always be concurrent**. The effective date regulations discussed in this section are only referring to the effective dates of the tax credit Tenant Income Certification, not the lease.

B. Changes in Household Composition

1: Adding a New Household Member to an Existing Qualified Household

Composition changes include a birth, a death, a new tenant moving into the household, or an existing tenant vacating the household. In the event that a new adult household member is added to a qualified household, the following steps must be taken:

1. The new household member should complete an Application and Tenant Eligibility Questionnaire. An independent Tenant Income Certification form (TIC) and verification of income and assets must be completed for the new member.
2. The new household member's income must be included as part of the household's certified income. For 100% RHTC projects, the new tenant's income is added to the original household income at move-in. For mixed-use projects (projects with both RHTC and market rate units), the new tenant's income is added to the household income as of the most recent annual recertification. A new household TIC does not have to be created, but management should notate the file to show that a new total household income has been computed. A management clarification form will suffice. Additionally, a household update event must be input into the online reporting system detailing the new total household member count, new total household income, and the demographic data for the new member.
3. The combined household income must be compared to the maximum allowable income limit in effect at the time and based on actual household size. If the combined household's income is greater than the 140% limit, the Next Available Unit Rule will go into effect.

   Example: 1 person Household income limit = $15,000
   2 person Household income limit = $17,000
   140% of 2 person income limit = $23,800

   <u>Example 1: Mixed-use Project</u>
   Tenant A is a qualified tenant living alone in a one-bedroom unit. Her income at initial certification (March 14, 2008) was $9,000. The tenant recertifies on March 14, 2009 with an income of $10, 500. Eight months later, she informs management that she is getting married and that her new husband, Tenant B, will be moving into the unit on December 1, 2009. Tenant B completes an Application and Questionnaire, his income and assets are verified through third-party sources, and an independent TIC is completed showing only the income and assets of Tenant B. Tenant B is certified as having an annual income of $12,900. The household's combined income will be $23,400 (the sum of Tenant A's income at the last recertification and the newly certified income for the new household member Tenant B). The household still qualifies, since it is below the 140% limit of $23,800. If the combined income of Tenants A and B would exceed 140% of the current income limit, the Next Available Unit Rule would go into effect. The independent TIC for the new tenant is dated December 1, 2009, but the annual household recertification is still due March 14, 2010 (the anniversary of Tenant A's initial move-in).

   <u>Example 2: 100% Tax Credit Project</u>
   Tenant A is a qualified tenant living alone in a one-bedroom unit. Her income at initial certification (March 14, 2008) was $9,000. The tenant recertifies on March 14, 2009, but since this is a 100% Tax Credit Project management does not verify her income at this time. Eight months later, she informs management that she is getting married and that her new husband, Tenant B, will be moving into the unit on December 1, 2009. Tenant B completes an Application and

Questionnaire, his income and assets are verified through third-party sources, and an independent TIC is completed showing only the income and assets of Tenant B. Tenant B is certified as having an annual income of $12,900. The household's combined income will be $21,900 (the sum of Tenant A's income at move-in and the newly certified income for the new household member Tenant B). The household still qualifies, since it is below the 140% limit of $23,800. If the combined income of Tenants A and B would exceed 140% of the current income limit, the Next Available Unit Rule would go into effect. The independent TIC for the new tenant is dated December 1, 2009, but the annual household recertification is still due March 14, 2010 (the anniversary of Tenant A's initial move-in).

NOTE: Only the income and eligibility of the new resident is required to be verified when adding a member to a household before the Annual Tenant Income Certification is due (i.e. the existing members do not need to be recertified if it is not time for their annual recertification). Owners must verify the new resident's income and complete an independent TIC for that resident. This income must then be added to the existing household's certified income to determine if the household's income has exceeded the 140% income limit. The household's annual recertification will remain on the anniversary of the original move-in date, not the date that the new member was added.

The new resident should sign an independent Tenant Income Certification form and complete all verification documents. The independent TIC should not include information about the other household members or their income. The TIC will be noted as a "household update" rather than a move-in or recertification. The importance of an independent TIC will be discussed in the section below. The new total household income (combined from the new member and existing members) will not show on the independent TIC, but can simply be listed on a management clarification sheet to prove whether or not the household invokes the Next Available Unit Rule.

2: Qualifying Units When All Original Household Members Vacate the Unit

The Revised 8823 Guide includes a section on "Changes in Family Size" (pages 4-4 through 4-7 of the Guide). The following excerpt (from page 4-5) is of particular importance:

> "A household may continue to add members as long as at least one member of the original low-income household continues to live in the unit. Once all the original tenants have moved out of the unit, the remaining tenants must be certified as new income-qualified households unless:
>
> 1. For mixed-use projects, the newly created household was income qualified, or the remaining tenants were independently income qualified at the time they moved into the unit.
>
> 2. For 100% LIHC buildings, the remaining tenants were independently income qualified at the time they moved into the unit."

So, even if all of the original household members vacate a unit, tenants who moved in at a later date may be eligible to remain in the unit without being treated as a new move-in if they meet one of the two exceptions above.

Example 1: Mixed-use Project

Jerry moves into a two bedroom RHTC unit (in a mixed-use project) on May 1, 2007 and is recertified on May 1, 2008. His friend Thomas decides to move into the unit on October 1, 2008. Thomas completes all of the necessary paperwork and his income is added to Jerry's income as of the most recent certification (the May 2008 recertification). The combined household income from both members is below the applicable income limit for a 2 person household. On January 1, 2009, Jerry (the original member) moves out to live with his new fiancée. Thomas does not have to be certified as a new tenant, because the newly created household was below the income limits when he moved in on October 1, 2008.

Example 2: 100% Tax Credit Project

Jerry moves into a two bedroom RHTC unit (in a 100% tax credit project) on May 1, 2007 and is recertified on May 1, 2008. His friend Thomas decides to move into the unit on October 1, 2008. Thomas completes all of the necessary paperwork and his income is added to Jerry's income at move-in (the May 2007certification). On January 1, 2009 Jerry (the original member) moves out to live with his new fiancée. Management must determine if Thomas independently qualified as a one person household at the time he moved into the unit. If so, he may remain as a qualified tax credit household. If not, Thomas must be immediately certified and treated as a new household. If his current conditions allow him to qualify as a new move-in, he may stay. If not, he will have to vacate the unit. Management's need to determine if the tenant independently qualified illustrates the necessity to complete an independent TIC when a new member is added to an existing household.

C. Additional Comments on Tenant Certifications

Also, note the following recertification requirements:

1. If tenants in a previously qualified household become full-time students at any time, the household can only be considered as a qualified RHTC household if at least one of the exceptions under the Full-Time Student Rule is met as described in Part 5.2B. This eligibility determination must be made immediately upon the tenant becoming a full-time student and cannot be delayed until a recertification of the household is due.

2. In the event that a tenant moves into a building prior to the placed-in-service date of the building (as shown on the building's IRS Form 8609), and the verification of the tenant's income was performed more than 120 days prior to the placed-in-service date, the tenant must be recertified on the placed-in-service date. **All income verifications must be valid (no older than 120 days) on the placed-in-service date**.

3. In the event household composition changes in any way (e.g. birth, death, marriage, divorce, a family member or roommate vacates or moves into the unit, etc.), the household should notify management of the changes (See Part 4.6 B above for guidance on adding household members).

4. See Part 5.1D for information regarding unit transfers.

Part 6.7|100% Recertification Exemption

Effective July 31, 2008 with the passing of the Housing and Economic Recovery Act (a.k.a. HERA or H.R.3221), IHCDA will exempt the annual income recertification requirement for 100% tax credit projects. This policy applies only to recertifications due after the effective date of July 31, 2008 and is not retroactive.

Projects that choose to use the 100% Recertification Exemption Policy only have to obtain verifications of household income and assets at move-in. However, **the household must continue to annually complete a TIC to verify household composition and each adult member must continue to complete a separate student status certification on an annual basis.** This must be done on the annual recertification date for the household. IHCDA recommends using the "100% Tenant Recertification Exemption Tenant Recertification" TIC Form in Appendix D. This form is only valid for recertifications, not for move-in events at 100% tax credit projects.

The recertification exemption automatically applies to all projects with 100% RHTC units (i.e. those projects that have no market rate units). Projects do not need to apply for or ask for IHCDA permission to stop performing annual income recertifications. This policy replaces IHCDA's former waiver request policy and procedures.

If a project is not 100% RHTC, then annual income recertification is still required. If there is one market unit in the project, or if a staff unit is treated as a market unit, then all units in the project must be recertified annually. It is important to correctly define

"Project" for each tax credit development. If "No" was checked on Part II 8b of IRS Form 8609, then the building is considered its own project. If "Yes" was checked on Part II 8b of IRS Form 8609, then the building is considered part of a "multi-building project." The recertification exemption applies on a project basis.

100% tax credit projects with Section 8, HUD, RD, HOME, Development Fund (formerly known as Trust Fund), CDBG/CDBG-D, NSP, and other funding sources are still required to annually obtain third-party income verifications (as required for those programs) for all units receiving the additional sources of funding.

Example 1: XYZ Apartments is a 100% tax credit project with 50 units. 10 of these units are HOME assisted units. The 10 HOME assisted units must continue to recertify income on an annual basis, since IHCDA's HOME program rules have not changed in regards to recertification requirements. The 40 tax credit only units may follow the 100% Recertification Exemption Policy.

Example 2: XYZ Apartments is 100% tax credit with RD funding. For tax credit compliance purposes, XYZ Apartments may institute the 100% Recertification Exemption policy. However, management will need to continue following all applicable RD regulations in order to comply with RD funding.

IHCDA may allow the recertification exemption for buildings financed with tax-exempt bonds (50% or more of the aggregate basis of the building and land). The owner must demonstrate to IHCDA that the local bond issuer has granted the project permission to stop performing annual income recertifications.

When monitoring files at projects that are using the 100% Recertification Exemption, IHCDA will look at the current certification to ensure that the rent limits are not exceeded and to check that there is still a TIC, lease/lease renewal, and verification of student status on file. The IHCDA auditor will then go back and look at the initial move-in file for the household to verify income eligibility. Thus, the 100% Recertification Exemption puts extra importance on correctly performing move-in certifications.

Note: IHCDA encourages the owner/management to check with their investor before initiating the 100% Recertification Exemption Policy.

Part 6.8|Lease and Rent Requirements

All residents occupying RHTC units must be certified and under a lease no later than the time a tenant/household moves into the unit.

A signed lease must be in effect for each household/unit. Once executed, the lease terms cannot be modified without at least thirty (30) day written notice to the tenant in accordance with Indiana Code 32-31-5-4.

Leasing guidelines are listed below.

A. Lease Requirements

A signed lease must be in effect for each year that a household resides in a unit. A new lease and/or a lease renewal addendum must be completed annually. Leases must reflect the correct date that the household moves into or otherwise takes possession of the unit.

A unit must be leased directly to the household, not to an organization that is providing services to the household.

The household may have a cosigner if necessary, but the cosigner should sign a self-affidavit stating that (1) he or she will not reside in the unit and (2) disclosing whether or not he or she will providing income to the household in the form of rent or utility payments or other recurring gifts. If income is provided, this must be treated as recurring gift income as discussed in Part 6.3 (D)(5).

At a minimum, the lease language should include (but is not limited to):

1. The legal name of all parties to the agreement and all other occupants;
2. A description of the unit to be rented including unit/bedroom size, set-aside percentage, and unit address (if unit /bedroom size and set-aside percentage can be located on the TIC, it is not mandatory to be on the lease as well);
3. The date the lease becomes effective;
4. The term of the lease (initial leases must be for at least six (6) months to comply with non-transient occupancy);
5. The rental amount;
6. Language addressing security deposits;
7. The utility allowance requirements, including a clear breakdown of which utilities are owner-paid and which are tenant-paid;
8. The use of the premises including language addressing that only members listed on the lease/TIC may dwell in the unit, that the unit must be the household's primary residence, and that the unit may not be sublet;
9. The rights and obligations of the parties, including the obligation of the tenant to certify annually (or more frequently as required) to income as defined herein;
10. Language addressing income decreases and increases (i.e. the 140% Rule), utility allowance increases/decreases, basic rent changes (in Rural Development or 236 Developments), household composition changes, student status changes, or any other change and its impact on the tenant's rent and eligibility;
11. Language addressing the right of the development representatives and/or other funding providers to enter the units for physical inspections;
12. Description of the lease renewal and lease termination process;
13. Signature of tenants;
14. Signature of owner/management representative; and
15. Date of execution.

There are specific lease language prohibitions that apply to lease for any units that are also CDBG, CDBG-D, HOME, or NSP assisted. A list of these prohibitions is available in Part 5.4 H.

As a convenience to its partners, IHCDA provides the following sample lease addendum documents in Appendix D and strongly encourages use of these forms:

- Lease Addendum for Units Participating in Section 42 (See Form 9A);
- Lease Addendum for Units Participating in HOME/CDBG/NSP (See Form 9B);
- Lease Renewal Addendum (See Form 10);
- Lease Addendum- Unit Transfer (See Form 44); and
- Lease Addendum- Rent Decrease due to Utility Allowance Increase (See Form 45).

B. Rents and Security Deposits

Rents on RHTC units may not exceed the amounts allowed by Section 42. Any violation of overcharging rents is considered noncompliance and an IRS Form 8823 will be issued. For more information on rent limits, see Part 4.2.

Security deposits must be treated in accordance with Indiana code 32-31-3. Landlords cannot ask tenants to waive the security deposit regulations/rights under Indiana code. Upon termination of a rental agreement, the full amount of security deposit must be returned to the tenant, minus any amount applied for (1) the payment of accrued unpaid rent, (2) the amount of damages (not including normal wear and tear) caused by the tenant, and (3) unpaid utility charges that the tenant is obligated to pay.

Within forty-five (45) days of the termination of the rental agreement, the landlord must send to the tenant (1) a written notice including an itemized list of all charges to be deducted from the security deposit including the estimated cost of repair for each damaged item and (2) payment for the difference between the security deposit held and the amount of damages claimed.

The landlord's liability (i.e. the forty-five day timeframe) does not begin until the tenant has supplied in writing a new address to deliver the notice and refund. If the landlord fails to comply with these requirements, then the tenant is entitled to recover the full amount of the security deposit and reasonable attorney's fees. Failure to provide notice of damages constitutes agreement that no damages are due and return of the full security deposit.

C. Initial Minimum Term of Lease (Non-transient Use)

Under program requirements, a unit cannot be RHTC eligible if it is used on a transient basis. A unit is deemed to be in transient use and therefore out of compliance if the initial lease term is less than six (6) months. In order to avoid noncompliance for transient occupancy, there must be an initial lease term of at least six (6) months on all RHTC units. The six (6) month requirement may include free rental periods. Succeeding leases are not subject to a minimum lease period.

The 8823 Guide provides the following clarification in Footnote 2 on Page 11-2:

> "Leases commonly include fees for early termination of the rental agreement. The fact that the lease contains terms for this contingency is not indicative of transient use."

Therefore, a unit is in compliance so long as the initial lease is signed for a term of at least six (6) months, regardless of whether or not the household actually remains in the unit for that length of time.

Federal regulations do allow shorter leases for certain types of transitional housing for homeless individuals and for SRO units.. The following types of housing are exempt from the six (6) month minimum lease period:

1. Certain transitional housing for the homeless may be considered used other than on a transient basis provided that th rental unit contains sleeping accommodations and kitchen and bathroom facilities and is located in a building
   - -which is used exclusively to facilitate the transition of homeless individuals (as defined in the McKinney Homeless Act 42 USC 11302) to independent living within twelve months; AND
   - -in which a government entity or qualified nonprofit organization provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing
2. SRO units which permit the sharing of kitchen, bathroom, and dining facilities are not treated as used on a transient basis merely because they are rented on a month-by-month basis.

*Note: If a development has special needs units set aside for homeless households and/or transitional housing units, those tenants must have leases with at least six (6) month terms, unless the building's primary use is described in Exemption #1 above. Tax credit units may never be used as emergency shelters.

D. Lease-to-Own Program / Lease Purchase Program

The goal of the Lease-to-Own Program (referred to as "the Program" for the rest of this section) is to enable low-income families to purchase a home – something that often would not be possible without the Program. The development owner also benefits from the Program because the residents who opt for the Program agree to assist in maintaining the unit. Below are several of the minimum requirements for a Lease-to-Own Program to obtain IHCDA approval:

- "Eligible tenant" shall mean the current tenant of the unit, so long as that tenant is eligible to occupy the unit under the requirements of Section 42 of the Internal Revenue Code. This expressly includes a tenant whose income would not currently qualify under Section 42, but who was qualified at the time of the tenant's original occupancy of the unit.
- The development owner must partner with a non-profit organization dedicated to assisting low to moderate income families in obtaining clean, safe and affordable housing.
- The development owner and the non-profit organization must enter into a written Right of First Refusal whereby the owner agrees not to sell the low-income housing unit to anyone else at the end of the fifteen (15) year Compliance Period before offering it to the non-profit organization for a price equal to (i) the sum of all outstanding indebtedness secured by the development (including capital improvement debt) plus any accrued interest and (ii) all federal, state, and local taxes attributable to the sale.
- The non-profit organization must enter into an agreement with IHCDA regarding the release of the Declaration of Extended Rental Housing Commitment upon sale to an eligible tenant.
- The non-profit organization must enter into an option agreement (approved by IHCDA) with the resident for the purchase of the unit.
- The Program must be structured so that the tenant's total monthly payments for principle, interest, insurance, taxes, utilities, and maintenance after purchase are equivalent to the tenant's monthly rent and utilities before purchase (the Equivalency Principle).
- The unit must be less than thirty (30) years old.
- The unit must meet I.R.C. §42 standards regarding the condition of the unit and habitability.
- The Program must provide for sale at the end of the fifteen (15) year Compliance Period to an "eligible tenant" for a minimum purchase price (as defined in I.R.C. §42(i)(7)(B)).
- The Program must include a system whereby a resident is rewarded for long-term residency by obtaining a credit against the purchase price of the unit.
- After one year of responsible tenancy, the development owner must waive its right to not renew the lease of a resident without cause.
- The Program should include periodic workshops for residents enrolled in the Program on issues of property maintenance and financial counseling.
- The Program must address common tenant misconceptions including:
  - The misconception that the tenant will acquire the property free and clear after the Compliance Period;
  - The misconception that the tenant is an equity owner in the property rather than simply a tenant;
  - The misconception that the tenant will be compensated for any capital improvements made to the property by the tenant; and
  - The misconception that the tenant's rent will never increase.

The Program must conform to and comply with any future Internal Revenue Service statutes, regulations and rulings regarding lease to own programs.

E. Eviction or Termination of Tenancy

If after occupying a unit, an eligible household cannot pay the rent or otherwise commits material violation of the lease, the owner has the same rights in dealing with the income-eligible tenant as with any other tenant, including, if necessary, eviction.

1. Program Requirements and Guidance

IRS Section 42 regulations state that there must be just cause for eviction or other form of termination of tenancy (e.g. non-renewal of lease). This provision is often referred to as "good cause eviction." Language outlining actions that constitute just cause for eviction or termination of tenancy must be included in writing at the time of initial occupancy, preferably in the lease, as well as in a property's Tenant Selection Criteria and/or tenant rules and regulations document. Examples of good cause evictions may include nonpayment of rent, violations of the lease agreement, destruction or damage of the property, interference with other tenants, tenant fraud, or use of the property for an unlawful purpose. When dealing with tenant conduct issues, the owner is strongly

encouraged to provide a written warning notice to the tenant prior to beginning eviction. This notice should include a statement that continued poor conduct could constitute a basis for future termination.

All leases should address changes in student status. If a household becomes an unqualified student household at recertification or at any time during the lease term, it is no longer qualified under Section 42 and the lease can be non-renewed or terminated as allowed in the lease language.

For more information on prohibitions against eviction or termination of tenancy other than for good cause, see Rev. Proc. 2005-37 – Safe Harbor in Appendix A.

For more information on tenant fraud issues, see Part 9.10.

2. Items Not to be Construed as Good Cause for Eviction

- Exceeding the unit set-aside or the 140% limit at recertification is not considered good cause for eviction or termination of tenancy.
- Per the Violence Against Women Reauthorization Act of 2013 (see Part 5.3 G) the owner/manager shall ensure that an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as either:
    - A serious or repeated violation of a lease by the victim or threatened victim of such incident; or
    - Good cause for terminating the assistance, tenancy or occupancy rights to housing of the victim of such incident.

3. Indiana Code Requirements

Indiana Code 32-31-1-6 states that the landlord may terminate the lease with not less than ten (10) days notice to the tenant if a tenant refuses or neglects to pay rent when due, unless (1) the parties otherwise agreed or (2) the tenant pays the rent in full before the notice period expires.

4. Documenting the File

When a tenant is evicted or a lease is terminated, IHCDA will expect to see documentation outlining the specific cause for non-renewal. It is the owner's responsibility to document and defend the good cause for eviction if challenged in state court. Per the 8823 Guide, for purposes of Section 42 good cause is determined by state and local law and therefore the determination of the state court.

Section 7 – Compliance Monitoring Procedures

This section of the manual outlines IHCDA's procedures for monitoring all developments receiving credit. Monitoring is designed to assist the owners with federal and state regulations regarding IHCDA's compliance monitoring requirements and procedures in accordance with the IRS guidelines in Section 42 of the Internal Revenue Code. However, compliance is solely the responsibility of the owner and is necessary to retain and use the credit.

Monitoring each development is an ongoing activity that extends throughout the Compliance Period. IHCDA is required by law to conduct this compliance monitoring and is required to inform the IRS of noncompliance, or the failure of an owner to certify to compliance, no later than forty-five (45) days after the period of time allowed for correction. Notification to the IRS by IHCDA is required whether or not the noncompliance has been corrected.

Part 7.1|Owner and Management Agent Contacts

Correspondence from IHCDA to the owner will be sent to the owner contact person provided in the development's Final Application for RHTC. IHCDA will copy the management agent contact person, with owner approval, on any correspondence from IHCDA to the owner regarding file monitoring reviews and physical inspections. All other correspondence will be sent directly to the owner contact person. IHCDA will annually update its contact list based on the information provided in the development's Annual Owner Certification of Compliance. As part of the Owner Certification documentation, the owner is able to elect one designated primary owner contact and one designated primary management contact per development.

IHCDA will allow no more than one owner contact name and address and one management contact name and address per development. If at any time the contact person of the owner or management agent changes, it is the sole responsibility of the owner to inform IHCDA in writing of such change with supporting documentation. Changes in ownership must be reported to IHCDA via the "Property Ownership Change Form" in Appendix D. Changes in management must be reported to IHCDA via the "Property Management Change Form" in Appendix D.

Failure to notify IHCDA of changes in ownership after the issuance of IRS Form 8609 could result in the allocation being rescinded and/or possible noncompliance issues.

Note: The IHCDA Board of Directors must approve any change in ownership or transfer request if made prior to the issuance of IRS Form 8609 for any development that has received an allocation of Rental Housing Financing and/or Bonds.

If the designated owner contact person requests extra copies of documentation (e.g. copies of Form 8823), the cost of such copies will be $0.10 per single sided page.

Part 7.2|The Compliance Manual

IHCDA provides this Compliance Manual as a resource to owners and management agents of RHTC developments. The manual describes the compliance monitoring procedures that the owner and management agents must follow. **An amended Compliance Manual is released annually and the newest edition overrides all previous editions. Except where otherwise noted, all amendments to the Compliance Manual apply to all developments, regardless of year of allocation**. All appendices to the Compliance Manual are available online at **http://in.gov/myihcda/2401.htm**.

Part 7.3|Compliance Training Workshops

An On-Demand Owner Training is available from IHCDA on a flash drive. The drive contains a training presentation (in PowerPoint format with audio voice annotation), a post-quiz that must be taken by the owner, and a folder containing numerous tax credit reference materials. Cost of the training is $150.

IHCDA will periodically conduct or sponsor live Compliance Training Workshops. Trainings will be held throughout the year and information regarding the times and dates of the trainings will be distributed by IHCDA and posted on the IHCDA website at http://in.gov/myihcda/2341.htm. Registration and additional information is available on the webpage.

For 2014, IHCDA has again contracted with Zeffert and Associates (formerly known as Compliance Solutions) to offer multiple training opportunities throughout the year. The cost will be $175 per participant per two-day session ("Compliance for Property Managers" course) or $90 per participant per one-day session ("Advanced Tax Credit Compliance" or "Preparing for a Physical Inspection"). Cost includes registration fees, a workshop manual, a 2014 IHCDA Compliance Manual, and a CD with various tax credit resources. The training dates are listed below:

TRAINING TYPE	DATE	LOCATION
Compliance for Property Managers (Two-Day Course)	March 4 & 5, 2014	Indianapolis, IN
Compliance for Property Managers (Two-Day Course)	June 17 & 18, 2014	Paoli, IN
Advanced Tax Credit Compliance	August 19, 2014	TBD
Preparing for a Physical Inspection	August 20, 2014	TBD
Compliance for Property Managers (Two-Day Course)	November 11 & 12, 2014	TBD

Demand for previous trainings has been high and most sessions sell out. Please register early for a guaranteed spot at the 2014 trainings.

***Note: While participation is usually voluntary, IHCDA compliance staff may at their own discretion mandate training attendance for those management personnel/companies that:**

1. **Exhibit trends in noncompliance;**
2. **Are issued non-corrected 8823's; or**
3. **Otherwise demonstrate a need for compliance training.**

Part 7.4|Initial Information

If the owner chooses to defer claiming credit until the year following the year in which the development is placed-in-service, the owner shall notify IHCDA prior to the end of the year the building is placed-in-service. Failure to notify IHCDA of a deferment will be considered noncompliance.

The first year credits are claimed, the owner must submit to IHCDA:

1. The Annual Owner Certification. See Appendix F;
2. A copy of the completed IRS Form 8609 and Schedule A (Form 8609);
3. Utility allowance documentation;
4. Authorized Signatory Form. See Appendix F;
5. Property Directional Form. See Appendix F;
6. If the development has five (5) or more HOME units, a copy of the Affirmative Fair Housing Marketing Plan.

Part 7.5 Annual Owner Certification of Continuing Compliance

A. The Annual Owner Certification

The development owner must annually certify project compliance to IHCDA under penalty of perjury. The Annual Owner Certification of Compliance is due on or before January 31st of each year and certifies information for the preceding twelve (12) month period.

The first annual owner certification and corresponding fees are due by January 31st of the year following the first year of the credit period. **However, the owner must begin reporting tenant events in the online system as soon as the buildings are placed-in-service.** The report covers the period from January 1-December 31 of each year and is due to IHCDA by the close of business January 31st of the next calendar year. For Section 1602 and TCAP properties, the first annual owner certification is due by January 31st of the year following the year the first building places in service.

Per Treasury Regulation 1.42-5(c)(1) and IHCDA requirements, the owner must annually certify that:

1. The development meets the requirements of the 20/50 test or the 40/60 test (whichever was selected on Form 8609) under Section 42 of the Code.
2. There was no change in the Applicable Fraction as defined in the Code of any building in the development; or there was a change in the Applicable Fraction, and a description of that change is attached to this certification.
3. The owner has received a Tenant Income Certification form for each low-income tenant in the development and sufficient documentation to support that certification.
4. Each low-income unit in the development was rent-restricted as provided under the Code.
5. The development is in continuing compliance with all promises, covenants, set-asides, and agreed upon restrictions as set forth in the application for credits and the extended use agreement.
6. The unit types, gross rents, utility allowance, and actual rents charged for each unit.
7. All units in the development are for use by the general public and no finding of discrimination under the Fair Housing Act occurred for the development. All units are used on a non-transient basis (except for transitional housing units allowed for in the Code). NOTE: If such findings have occurred, documentation of such findings must be attached to the certification.
8. All units in the development are suitable for occupancy, taking into account all federal, state, and local health, safety, and building codes and the state or local government unit responsible for making health, safety, or building code inspections did not issue a violation report for any building or low-income unit in the development. If a violation report or notice was issued by the governmental unit, the owner must attach a statement summarizing the violation report or notice to the certification.
9. There has been no change in the Eligible Basis of any building in the development (as defined in the Code); or there has been a change in the Eligible Basis (as defined in the Code) and documentation setting forth the nature and amount of such a change (e.g. a common area has become commercial space or a fee is now charged for a tenant facility formerly provided without charge) must be attached to the certification.
10. All tenant facilities included in the Eligible Basis of the development under the Code, such as swimming pools, recreational facilities, and parking areas, are provided on a comparable basis without charge to all tenants of the development.
11. No low-income units in the building became vacant during the applicable year; or one or more low-income units in the building became vacant during the applicable year and reasonable efforts were or are being made to rent such units or the next available unit or units of comparable size in the building to tenants having a qualifying income.
12. No tenant of any low-income units in the development experienced an increase in income above the limit allowed in the Code; or income of tenants of a low-income unit in the development increased above the limit allowed in the Code, and the next available unit of comparable or smaller size in the same building was or will be rented to tenants having a qualifying income. (The Next Available Unit Rule does not apply to developments approved for the Extended Use Policy. For more information, see Part 5.11).
13. The development has at least one smoke detector on each level of the rental dwelling unit.

14. There have been no changes in entity ownership or if there have been, IHCDA has been provided with all details and all necessary documentation.
15. A recorded extended use agreement is in effect and the development is in continuing compliance with the extended use agreement (i.e. Declaration of Extended Low-Income Housing Commitment or Lien and Restrictive Covenant) applicable to the development and filed in the office of the Recorder of the Indiana County in which the property is located, including certification that the owner cannot refuse to lease a unit in the project to an applicant because that applicant holds a Section 8 voucher.
16. All units were used on a non-transient basis (except for transitional housing for the homeless provided under section 42(i)(3)(B)(iii) or single-room-occupancy units rented on a month-by-month basis under section 42(i)(3)(B)(iv)).
17. The development is otherwise in compliance with the Code, including any Treasury Regulations pursuant thereto, and applicable laws, rules, regulations, and ordinances.

A copy of the Annual Certification of Compliance that must be used by all owners is located in Appendix F. **IHCDA will not accept any Owner Certification that is not in the same format as provided in Appendix F or any Owner Certification that is handwritten.**

Tax credit developments with no additional funding sources from IHCDA must also submit a copy of Exhibit A. Tax credit developments with IHCDA HOME, CDBG, CDBG-D, NSP, and/or Development Fund (formerly known as Trust Fund) awards must submit a copy of Exhibit B along with the Owner Certification. All projects must submit a copy of Exhibit D: Asset Management.

B. Reporting Tenant Events Online

The Indiana Housing Online Management website (www.ihcdaonline.com) has been designed as a tool to conduct compliance checks to ensure properties stay in compliance, to follow the monitoring review process, and as a way for IHCDA to communicate with its partners using a message board. The message board immediately notifies owners and property managers when IHCDA sends monitoring letters, releases Real Estate Department Notices (RED Notices), or releases other information affecting its partners.

Effective January 1, 2009, all IHCDA assisted multi-family rental developments are required to enter tenant events using the Indiana Housing Online Management rental reporting system. Tenant events include move-ins, move-outs, annual recertifications, unit transfers, rent and utility allowance changes, household composition updates, and student status updates. Tenant events that must be reported online do not include interim recertifications performed for other programs, such as Section 8 or RD. In order to obtain the maximum benefits from the Indiana Housing Online Management system it is **required that all tenant events be entered into the system within thirty (30) days of the event date.**

Therefore, it is **mandatory that all tenant events be submitted electronically** using the Indiana Housing Online Management website for all developments that contain IHCDA assisted units (e.g. HOME, CDBG, CDBG-D, NSP, Tax Credits, Section 1602, TCAP, Bonds, and/or Development Fund/Trust Fund). This online tenant event reporting process eliminates the former process of submitting a hardcopy "Beneficiary Report Spreadsheet." However, the owner must still submit hardcopies of the original signed and notarized Owner Certification packet including the Building Information page with updated contact information, the Multi-Family Housing Utilities Form, supporting documentation for utility allowances, and the applicable exhibit documents A-D.

To use the rental reporting system or register to become a user, please visit the Indiana Housing Online Management website at **https://ihcdaonline.com/**. Free on-demand training videos that explain how to use the rental reporting system are available online at **https://ihcdaonline.com/Links.htm**. Additionally, in March 2009, IHCDA released detailed guidance on registering for the Online Management website in Multi-Family Department Notice MFD-09-06. This notice (and all other past MFD Notices) is archived online at **http://in.gov/myihcda/2458.htm**).

After reviewing the Owner Certification and the online Beneficiary Report tenant events, IHCDA will notify the owner in writing of any errors or incompleteness and will allow an appropriate Correction Period. All correspondence to the owner will be sent electronically.

Part 7.6|IHCDA Tenant/Unit File Review and Onsite Development Inspections

As provided in IRS compliance monitoring regulations, IHCDA has the right to review a development's tenant/unit files and related records either in-house (at IHCDA offices) or onsite at the development and/or to perform physical inspections of RHTC developments as deemed necessary throughout the Compliance Period.

IHCDA is required to monitor and physically inspect each Section 42 property within two (2) years of the placed-in-service date and every three (3) years thereafter. However, IHCDA reserves the right to inspect the files and/or physical units of a Section 42 property at any time at its discretion.

Example of regular monitoring/physical inspection schedule:
A development consists of three buildings. The last building was placed-in-service in 2009. IHCDA's first monitoring and physical inspection will occur in 2011 (two years after the year of the placed-in-service date of the last building). After this initial monitoring/inspection, a regularly scheduled monitoring will occur once every three years (2014, 2017, etc). However, IHCDA has the right to perform additional monitorings/inspections at any time, with or without notice to the owner/management.

IHCDA will release a tentative monitoring list at the beginning of the year. This list will include all of the developments that IHCDA intends to monitor and inspect for the calendar year (including onsite file reviews, desktop file reviews, and physical inspections). The list will not tell the date of the monitoring/inspection or identify the files/units that will be reviewed. This list will be released as a courtesy to development owners. However, IHCDA reserves the right to add or remove developments from the list throughout the year as necessary.

Per IRS requirements, a file monitoring or physical inspection will include a review of at least a 20% sample of the units. However, the IHCDA Auditor or Inspector may at his/her discretion choose to expand the sample size. Per the 8823 Guide (page 3-3), circumstances warranting an expansion of the sample size could include, but are not limited to:

- Poor internal controls (significant risk of error);
- Multiple problems;
- Significant number of nonqualified units;
- Significant number of households that are not income-qualified; or
- Credible information from a reliable source suggesting problems exist.

A. Onsite Reviews

Onsite reviews will generally be performed for all initial reviews and for any review where the sample size is greater than sixteen (16) units.

1. When performing an onsite (at the development or management office) review, IHCDA will:As a courtesy, IHCDA will notify the owner and/or management agent two (2) weeks in advance of the intended site visit. However, **IHCDA reserves the right to inspect any RHTC unit/tenant file at any time at its discretion without prior notification.**
2. IRS guidance in the 8823 Guide (page 3-2), states: "A random selection of tenant files or LIHC units is required. The method of choosing the sample of files or units to be inspected must not give the owner advance notice of which units and tenants records are to be inspected and reviewed." Therefore, IHCDA will no longer provide advance notice of which tenant files will be reviewed during an onsite audit. Management must have all tenant files accessible (including initial

and move-out files) when the IHCDA Compliance Auditor arrives onsite. The auditor will randomly choose a selection of 20% of the files for review.

3. Provide an exit interview summary to management representative.
4. Inform the owner of any findings of noncompliance with regard to such review.
5. Allow the owner ninety (90) days to notify IHCDA of correction of noncompliance.
6. Report all instances of noncompliance to the IRS whether or not the noncompliance has been corrected.

NOTE: If files are not available or are in such an unorganized condition that an IHCDA Auditor cannot effectively review the files, the ninety (90) day correction period will begin immediately.

B. Desktop Reviews

Desktop reviews will generally be conducted for any review where the sample size is less than or equal to sixteen (16) units.

When performing an in-house/desktop (at IHCDA offices) review, IHCDA will:

1. Notify the owner in writing which unit files have been selected for review.
2. Respectfully request that either (1) electronic copies of selected files and documentation be submitted through IHCDA's FTP Site (instructions included in desktop letter) or (2) hardcopies of the selected files and documentation be shipped to IHCDA or hand delivered by the owner or a representative of the owner.
3. Ask for a current rent roll and utility allowance information.
4. Shred all files and confidential information after the review is completed.
5. Give a time frame in which the tenant file documentation must be submitted.
6. Inform the owner of any findings of noncompliance with regard to such review.
7. Allow the owner ninety (90) days to notify IHCDA of correction of noncompliance.
8. Report all instances of noncompliance to the IRS whether or not the noncompliance has been corrected.

NOTE: The desktop notification/file request letter will include a checklist of the items that must be included in each tenant file submitted. When reviewing copies of the files, IHCDA will expect to see all of the applicable documents listed on the checklist, in the approximate order that they are listed (leasing information, tenant information, income verifications, asset verifications, other clarifications). Auditors will not review files that are submitted in a disorderly or incomplete fashion.

C. Physical Inspections

Prior to performing an onsite development inspection, IHCDA will:

1. Notify the owner and/or the management company, one week prior to the inspection, of the date and approximate time the inspection will take place.
2. Request that the owner and/or management company representative be present and accompany the inspector throughout the entire inspection process.

NOTE: It is imperative that **all** units be available for interior inspections as well as exterior (vacant units, occupied units, and common areas inclusive). Physical inspection is not limited to vacant units. Staff will ask to inspect specific units whether or not the unit is occupied.

After performing an onsite development inspection, IHCDA will:

1. Provide to the property representative, if needed, a copy of a Critical Violations Letter identifying all exigent health, safety, and/or fire hazards observed at the time of the inspection that require immediate corrections. **All exigent health and safety issues identified in the Critical Violations Letter must be corrected within twenty-four (24) hours and IHCDA must be notified of the completed corrections within seventy-two (72) hours. Critical violations that are not corrected within twenty-four (24) hours will be fined $250 per day, starting the first hour after the twenty-four (24) hour correction period expires.**
2. Forward a copy of the inspection report to the owner and management company indicating a correction time frame.
3. Request that all noncompliance issues be corrected within the time frame specified in the inspection report.
4. Request that legible copies of the proof of the corrections, in the form of work orders, receipts, and/or invoices, along with an owner-signed affidavit (in the correct mandatory format) be forwarded to IHCDA within the allotted time frame indicated in the inspection report.
5. Review the correction documents for completeness and forward applicable correspondence indicating that an in depth review of the documents will be completed as soon as possible.
6. Schedule a second inspection if necessary. **NOTE: IHCDA will charge additional monitoring fees if IHCDA staff must return to a site for an additional physical inspection or file review. These fees will equal the greater of (a) $250 or (b) $35 per unit.** For more information on these additional fees, see 5.8 C.
7. Review the supporting documents of correction for correlation with the inspection report.
8. Forward correspondence indicating that no further corrective actions regarding the physical condition of the property are needed at this time, or contact the owner by phone detailing what deficiencies, in the corrective correspondence, still exist.

For more information on physical inspections, see the Inspection Process Flow Chart (Appendix J), as well as IHCDA's Physical Inspection Compliance Guide (Appendix I).

Part 7.7|Noncompliance

Noncompliance is defined as a period of time a development, specific building, or unit is ineligible for credit because of failure to satisfy program requirements. For more information on noncompliance, see Section 9.

Part 7.8|Compliance Fees

A. Annual Monitoring Fees

Beginning in the calendar year following the first year credits are claimed, development owners shall be required to pay annual monitoring fees for the immediately preceding calendar year, which will be due with each Annual Owner Certification of Compliance on or before January 31st. Beginning with the 2012 Annual Owner Certification (due January 31, 2013), every development owner shall be required to pay $23 per RHTC unit with a minimum fee of $180 per development and a maximum fee of $6000 per development.

If IHCDA does not receive a **complete** Annual Owner Certification of Compliance, subsequent forms and documentation, and monitoring fees by January 31, a fee equal to double the property's annual monitoring fee will be due to IHCDA by April 30. After April 30, failure to pay fees due to the Authority and submit the required documents shall constitute a violation by the development owner of the Authority's requirements and IHCDA will report the violation to the IRS.

Additionally, if significant errors are found when the Owner Certification of Compliance and subsequent forms are reviewed by IHCDA, the owner may be charged double monitoring fees. Significant errors include, but are not limited to: 1) an unauthorized signatory signing the Owner Certification; 2) the owner's signature not being notarized; 3) all required forms and documentation not being submitted by the owner; 4) incorrect tenants/units reported in the online reporting system; 5) incorrect or no monitoring fees submitted with the Owner Certification, etc.

Table 1: Annual Monitoring Fees for Submissions On or Before January 31st

Annual Fee Per Unit	Minimum Annual Fee Per Development	Maximum Annual Fee Per Development
$23	$180	$6000
$10 (if approved for Extended Use Policy)	$110 (if approved for Extended Use Policy)	$2730 (if approved for Extended Use Policy)

Table 2: Annual Monitoring Fees for Submissions After January 31st (Fees are doubled)

Annual Fee Per Unit	Minimum Annual Fee Per Development	Maximum Annual Fee Per Development
$46	$360	$12,000
$20 (if approved for Extended Use Policy)	$220 (if approved for Extended Use Policy)	$5460 (if approved for Extended Use Policy)

B. 8823 Correction Fees

A charge of one hundred dollars ($100.00) per unit and a maximum fee of $15,000 per development will be imposed for any unit where documentation must be re-inspected after the issuance of IRS Form 8823 because of a finding of noncompliance as a result of a tenant file review.

A charge of two hundred dollars ($200.00) per unit/common area and a maximum fee of $15,000 per development will be imposed for any physical unit/common area re-inspections required after the issuance of IRS Form 8823 because of a finding of noncompliance.

A flat fee of one hundred and fifty dollars ($150.00) will be imposed for any Annual Owner Certification that must be re-inspected after the issuance of IRS Form 8823 because of a finding of noncompliance.

However, an owner may request a waiver of the correction fee for good cause. To obtain such a waiver, the owner must submit the request in writing detailing and documenting the reason for the request. Waiver of the correction fee is in IHCDA's sole discretion.

Table 3: 8823 Correction Fees

Type of Correction	Per Unit Fee	Maximum Fee Per Development
File re-inspection	$100	$15,000
Physical re-inspection	$200	$15,000
Owner Certification re-inspection	$150 flat fee	$150

C. Re-inspection or Re-monitoring Fees

IHCDA will charge additional monitoring fees if IHCDA staff must return to a site for an additional physical inspection or file review. These fees will equal the greater of (a) $250 or (b) $35 per unit reviewed, with a maximum fee of $15,000 per development. These fees will be applied in the following situations:

1. If staff must return to check on deficiencies or errors noted during the initial inspection/monitoring; or
2. If staff could not complete the initial inspection/monitoring because an owner or management representative was not available onsite at the designated time and location.

Table 4: Re-inspection / Re-monitoring Fees

Per Unit Fee	Minimum Fee Per Development	Maximum Fee Per Development
$35	$250	$15,000

D. Miscellaneous Penalty Fees

IHCDA will impose a **$150 fee for the advance request of an extension for any compliance deadline**.

IHCDA will impose a **$250 fee for desktop files or correction documents submitted late**. Therefore, if a deadline will not be met it is better to instead notify IHCDA in advance and request an extension for $150 as outlined above.

IHCDA will impose a **$150 resubmission fee if requested tenant files are not submitted in a complete and orderly fashion**.

IHCDA will impose a **$150 fee if an owner or management agent requests to reschedule an onsite audit/inspection**.

E. Modification Fees

IHCDA will impose a $500 fee for a request for changes to the characteristics of the development, such as unit types, distribution, or targeting (e.g. set-asides).

In addition, IHCDA will impose a $1500 to modify any legal documents such as the recorded declaration / lien.

For example, if an owner requested a modification to change the number of 30% set-aside units at the property, the owner would submit a $500 modification request fee and then if approved a $1500 fee to have IHCDA modify the recorded declaration / lien on the property to reflect the new unit mix.

Approval of modification requests is at the sole discretion of IHCDA. IHCDA must evaluate each request to see how the change would have affected original scoring and underwriting of the project, as well as to ensure the proposed change will not cause noncompliance.

Part 7.9|Amendments to Compliance Monitoring Procedures

The compliance monitoring procedures and requirements set forth herein are issued by IHCDA pursuant to Treasury Regulations, Section 42 of the Internal Revenue Code, and published IRS guidance. These provisions may be amended by the Authority for purposes of conforming with the regulations and guidance and/or as may otherwise be appropriate, as determined by the Authority. In the event of any inconsistency or conflict between the terms of these procedures and the monitoring procedures set forth in such Regulations, the provisions set forth in the Regulations shall control.

In addition, IHCDA periodically releases Real Estate Department (RED Notices) containing updates on policies, forms, and other issues relevant to the Section 42 Program. These notices are available online at **http://in.gov/myihcda/2458.htm.** RED Notices are also announced via IHCDA INFO, a monthly electronic newsletter.

Section 8 – Extended Use

Developments receiving a credit allocation after December 31, 1989, will have entered into an Extended Use Agreement (Declaration of Extended Low-Income Housing Commitment or Lien and Restrictive Covenant) with the Indiana Housing and Community Development Authority (IHCDA) at the time the final allocation of credit was issued via IRS Form 8609. These developments must comply with eligibility requirements for an "Extended Use Period." The Extended Use Period is either an additional fifteen (15) years beyond the fifteen (15) year compliance period [a total of thirty (30) years], or the date specified in the Declaration of Extended Low-Income Housing Commitment, whichever is longer.

Earlier termination of the Extended Use Period is provided for under certain circumstances in the Code. However, if a development received ranking points for delaying or waiving enactment of such earlier termination, the owner will be bound by this election as made in the Final Application /Declaration of Extended Low-Income Housing Commitment. See Part 8.2 for more information.

Developments that have completed their initial fifteen (15) year compliance period may apply for IHCDA's Extended Use Policy to have less restrictive compliance requirements. A description of this policy as well as the criteria to qualify for the policy is found below in Part 8.1. The owner may not request approval for the Extended Use Policy until such time that all buildings (BINs) in the development have completed their initial fifteen (15) year compliance period, regardless of the 8609 Line 8b definition of project that applies to the buildings.

Part 8.1|Extended Use Policy

The purpose of the Extended Use Policy is to outline the inspection and monitoring requirements for each LIHTC development once the initial fifteen (15) year Compliance Period has ended. The **Compliance Period** is the time period for which a building must comply with the requirements set forth in Section 42 of the Internal Revenue Code and credits can be recaptured for noncompliance (i.e. the development's first 15 taxable years). The **Extended Use Period** is the time frame which begins the first day of the initial fifteen (15) year compliance period, on which such building is part of a qualified low-income housing development and ends fifteen (15) years after the close of the Initial Compliance Period, or the date specified by IHCDA in the Declaration of Extended Low-Income Housing Commitment.

A. Qualifying for the Extended Use Policy

In order to qualify for the Extended Use Policy, the following criteria must be met:

1) The owner of the development must request use of the Extended Use Policy via the "IHCDA Extended Use Policy Request Form" (available in Appendix D).
2) The development's Annual Owner Certifications, onsite inspections, and tenant file monitoring reviews must be free of noncompliance for the three (3) consecutive years leading up to Year 16 (Years 13-15) **or** any three (3) consecutive years thereafter (Years 14-16, 15-17, 16-18, etc.). Free of noncompliance means that IHCDA did not issue IRS Form 8823 during this time period.

   NOTE: The only exception to this rule is if Form 8823 is filed to show the correction of a previously reported noncompliance problem and only if that previous noncompliance was reported prior to the three year Qualifying Period.

   Example 1:
   Noncompliance discovered and corrected during same year of the Qualifying Period
   A development is issued an 8823 in Year 13. Later that year, a corrected Form 8823 is issued to show that the noncompliance has been resolved. Although the issue has been resolved, Year 13 is not free of noncompliance and thus the Qualifying Period cannot begin this year.

Example 2:
<u>Noncompliance discovered and corrected during a later year of the Qualifying Period</u>
A development is issued an 8823 in Year 13. The issue requires a significant amount of time to correct and the noncompliance continues for part of Year 14. Later in Year 14, a corrected Form 8823 is issued to show that the noncompliance has been resolved. Years 13 and 14 are both considered to have noncompliance and the Qualifying Period cannot begin until Year 15 at the earliest.

Example 3:
<u>Previously reported noncompliance is reported as corrected during Qualifying Period</u>
A development is issued an 8823 in Year 12 and the issue is resolved by the owner within that same year. In Year 13, IHCDA reviews the correction documentation and a corrected Form 8823 is issued. Since the noncompliance was found and cured in Year 12, Year 13 is considered to be "free of noncompliance" as the Form 8823 filed in this year was only to report the correction of noncompliance that occurred prior to the beginning of the Qualifying Period.

Example 4:
<u>Previously reported noncompliance continues into the Qualifying Period</u>
A development is issued an 8823 in Year 12. The issue requires a significant amount of time to correct and the noncompliance continues for part of Year 13. Later in Year 13, a corrected Form 8823 is issued to show that the noncompliance has been resolved. Years 12 and 13 are both considered to have noncompliance and the Qualifying Period cannot begin until Year 14 at the earliest.

3) Upon approval of the request, the owner must have the development's Declaration of Extended Low-Income Housing Commitment amended to include the Extended Use Policy provisions. This is referred to as the "Amendment to Declaration of Extended Low-Income/Rental Housing Commitment." The cost of recording the amendment will be incurred by the owner. After the amendment is sent to the owner by IHCDA, the owner must have the document recorded and returned to IHCDA within 120 days.

B. Reporting Requirements

The reporting requirements for developments approved for the Extended Use Policy are as follows:

1) The owner will continue to submit the Annual Owner Certification for every year of the Extended Use Period annually by January 31.
2) The annual monitoring fee will be $10 per unit, with a minimum fee of $110 and a maximum fee of $2730. However, IHCDA will not charge a fee for units that have Rural Development or Project Based Section 8 funding. Documentation must be provided to prove that the project receives such funding.
3) The owner must continue to enter all tenant events in the IHCDA Online Reporting System within thirty (30) days of the event date. For more information on online reporting requirement see Part 2.2 J.
4) The utility allowances must continue to be updated annually. For more information on utility allowances, see Part 4.4.

C. Record Retention Requirements

Tenant files for move-ins will be retained for a minimum of six (6) years from the date of move-in.

D. Compliance Requirements

The compliance requirements for developments approved for the Extended Use Policy are as follows:

1) All tax credit units must remain rent-restricted at the state set-asides and income restricted at the federal set-aside. However, HOME/CDBG/CDBG-D/NSP/Development Fund assisted units must remain both rent and income restricted at the required set asides.
2) Move-in files must contain third-party verification of income. Additionally, if new member(s) are added to the household after initial move-in, third-party verification of income for the new member(s) only is required.
3) Annual recertifications require only the completion of the IHCDA "Extended Use Annual Household and Rent Update Form" (available in Appendix D). This means that income verifications will only be required at initial move-in during the Extended Use Period.
4) The 140%/ Next Available Unit Rule will not apply during the Extended Use Period.
5) The Vacant Unit Rule will not apply during the Extended Use Period. However, if there are high vacancy rates in the development, IHCDA reserves the right to request proof of marketing efforts and an explanation of the high vacancy rate
6) The Full-time Student Rule will not apply during the Extended Use Period. **WARNING: If the property wants to be considered for a subsequent credit allocation (i.e. receive another allocation of tax credits for rehabilitation), the student rule should continue to be followed even after the property is approved for the Extended Use Policy. In order to be grandfathered into a subsequent credit allocation, units/households must be in "continuous compliance" which includes the full-time student rule.**
7) File monitoring will occur once every five (5) years. However, IHCDA reserves the right to monitor more frequently if deemed necessary. During a monitoring, 10% of the units will be monitored. If 10% of the units equals ten (10) units or less, then a desktop monitoring will occur. If 10% of the units equals eleven (11) units or more, an onsite monitoring will be performed. If issues are identified during the monitoring, a correction period of ninety (90) days will be allowed. IHCDA may, at its discretion, allow extensions up to six (6) months.
8) Physical inspections will continue once every three (3) years. However, IHCDA reserves the right to inspect more frequently if deemed necessary. Rural Development Inspections or Project Based Section 8 Inspections will be accepted in lieu of the IHCDA's Physical Inspection where applicable. The Rural Development or Project Based Section 8 Inspection should be submitted to IHCDA within thirty (30) days of receipt.
9) Projects that did not elect to be treated as "Multiple Building Projects" on form 8609 during the first fifteen (15) years will automatically be treated as multiple building projects during the Extended Use Period. Therefore, households may transfer between buildings in the development without being treated as new-move-ins and will not trigger an initial move-in certification. (See Part 5.1D for information on unit transfers).
10) Rental housing developments must participate in the Affordable Housing Database, **www.indianahousingnow.org.**

E. Commitment Changes

The following changes may be allowed during the Extended Use Period with IHCDA approval.

1) If the development can justify the need for a staff unit, the employee does not have to be full-time. For more information on requesting a staff unit, see Part 5.2 D.
2) The owner can change transitional units or homeless units to permanent supportive housing with IHCDA approval.

F. Noncompliance with Extended Use Policy

Issues of noncompliance identified during the Extended Use Period may be addressed by IHCDA in one or more of the following manners:

1) If a development does not show "due diligence" in using the Extended Use Policy, IHCDA will issue IRS Form 8823 to the Internal Revenue Service. IHCDA may also enforce the Extended Use Period compliance regulations through all applicable legal remedies.
2) The owners, general partners, and/or management agents will be considered "Not in Good Standing with IHCDA", and will not be allowed to participate in future tax credit applications or other IHCDA programs.
3) IHCDA reserves the right to reinstate all prior declaration requirements.

G. Reinstatement of Extended Use Policy

A development that was removed from the Extended Use Policy due to issues of noncompliance in the Extended Use Period may be reinstated in the following manner:

1) To bring a development back into compliance, the development will reenter the three (3) year "Qualifying Period" and must be free of noncompliance during this time in order to regain Extended Use Policy privileges. During this time, the development must follow all Section 42 guidelines that were in effect during the initial fifteen (15) year Compliance Period.
2) Once the Qualifying Period has been completed, the owner may request reinstatement of the Extended Use Policy.

Part 8.2|Release from Extended Use Agreement

A. Qualified Contract

Once the fourteenth (14th) year of the compliance period has ended, the owner of a tax credit development may contact IHCDA and request that the agency attempt to find a buyer for the property at a specified price (the price is calculated using a precise formula required by Section 42). If IHCDA cannot locate a buyer and has tried unsuccessfully for a period of up to one year, the extended use agreement recorded on the development (i.e. the Declaration of Extended Rental Housing Commitment or Lien and Restrictive Covenant Agreement) will be terminated. Termination of the extended use agreement results in the development being converted to market rate after the initial fifteen (15) year compliance period has expired. However, certain protections continue to apply for a three (3) year period following termination as described in 8.2D below.

For complete information on requesting a Qualified Contract, see Appendix H of this manual.

B. Exemption Request to Serve Qualified Tenants for the Longest Period

Owners that have waived their right to apply for a Qualified Contract at the end of the fifteen (15) year compliance period and committed to "Serve Qualified Tenants for the Longest Period" may request an exemption from that commitment. Owners that received points for that commitment in their original tax credit application may be eligible to request a Qualified Contract if granted an exemption from the original commitment.

In order to be considered for an exemption, properties must be in good standing with IHCDA. A property with outstanding noncompliance issues or unpaid fees is not eligible to request an exemption. In addition, the owner must submit documentation to IHCDA to demonstrate at least one of the following criteria:

1. The economic viability of the property is poor and cannot be maintained throughout the extended use period through its current rental structure; or
2. Current rents are approximately the same as local Fair Market Rents for units of similar size and structure and will remain similar for the foreseeable future; or
3. There is a low measurable impact to the affordable housing market in the area by removing the property from the program.

Any owner that received points for an extended commitment in the original tax credit application and wishes to be considered for a Qualified Contract will be required to pay an exemption fee equal to the remaining amount of Owner Certification fees in the Extended Use Period. For example, if there are ten (10) years remaining in the Extended use Period on a project that contains forty

(40) units and the compliance fee for each unit is twenty-three (23) dollars per year, the fee to request an exemption would be $9200 (10 years x 40 units x $23 per unit).

If the exemption is approved, the owner may then follow the policy to request a Qualified Contract as described in Appendix H of this manual. **If the exemption is denied, IHCDA will retain $1500 of the exemption fee and resubmit the remaining amount back to the owner. The owner must wait at least one (1) year prior to resubmitting a request for exemption.**

C. Foreclosure

Per Section 42(h)(6)(E)(i)(I), the extended use period for any building shall terminate on the date such building is acquired by foreclosure or instrument in lieu of foreclosure. However, certain protections continue to apply for a three (3) year period following termination as described in 8.2D below. The owner must provide proof of the foreclosure to IHCDA as soon as possible.

D. Protection of Tenant Rights/ "Decontrol Period"

The Code {IRC 42 (h)(6)(E)(ii)} provides a specific "Protection of Tenant Rights" for those tenants living in projects that are released from their Extended Use Agreement through Qualified Contract or foreclosure. Two requirements must be met when an Extended Use Agreement is terminated.

1. The owner may not evict or terminate the tenancy (other than for "good-cause") of any existing tenant of a former tax credit unit before the close of the three (3) year period following the termination of the Extended Use Agreement; and

2. The owner may not increase the gross rent of any unit occupied by a formerly qualified tax credit household (except as permitted under Section 42) before the close of the three (3) year period following the termination of the Extended Use Agreement. Therefore, all existing tax credit households remain rent restricted for three years.

All existing tax credit households are protected by items #1 and #2 above for the three (3) year period following the termination of the Extended Use Agreement. This period is often referred to as the "decontrol period." However, new households moving into the project do not have to be rent or income restricted effective the date the Extended Use Agreement is terminated.

Section 9 - Noncompliance

Noncompliance is defined as a period of time a development, specific building, or unit is ineligible for credit because of failure to satisfy program requirements.

Part 9.1|Types of Noncompliance

Generally, during the Compliance Period, a development is out of compliance and recapture may apply if:

1. There has been a change in the Applicable Fraction or Eligible Basis that results in a decrease in the Qualified Basis of the building from one year to the next; or
2. The building no longer meets the Minimum Set-Aside requirements of Section 42, the gross rent requirements of Section 42, or the other requirements for the units which are set-aside; or
3. There is failure to submit the annual utility allowance documentation, Owner Certification, tenant events, or compliance monitoring fees, along with any applicable supporting documentation in a timely manner; or
4. An ineligible household resides in a RHTC unit; or
5. A unit or building is no longer suitable for occupancy or otherwise in violation of physical inspection criteria: or
6. The owner does not comply with requests to conduct a physical inspection or file audit.

Part 9.2|Consequences

If noncompliance is discovered, a penalty could apply to some or all units in the development. Noncompliance may be determined at the unit, building, or project level. Penalties include:

1. Additional fees paid to IHCDA;
2. Recapture of the accelerated portion of the credit for prior years;
3. Disallowance/loss of the credit for the entire year in which the noncompliance occurs;
4. Assessment of interest for the recapture year and previous years;
5. Notification to the IRS via Form 8823;
6. Negative points on any subsequent RHTC reservation applications;
7. Rejection of future applications;
8. Repayment of rent overages;
9. Mandatory attendance at an IHCDA sponsored compliance training; and/or
10. An increase in the frequency of IHCDA audits/inspections.

Part 9.3|Notification of Noncompliance to Owner by IHCDA

IHCDA is required to provide written notice of noncompliance to the owner if:

- Any required submissions are not received by the due dates;
- Tenant files including Tenant Income Certifications, Tenant Income Questionnaires, supporting verification documentation, and rent records are not made available during an audit or not submitted when requested by IHCDA; and/or
- The development is found to be out of compliance with the provisions of Section 42 of the Internal Revenue Code through physical unit inspection, annual review, file audit and/or other means.

IHCDA will not provide documentation (e.g. copies of Form 8823, Form 8609, etc.) for specific developments to more than one contact person in an ownership entity (usually the general partner). If other individuals within an ownership entity wish to receive such documentation, they must obtain it from the contact person named in the development's Multi-Family Housing Finance Application.

Part 9.4|Notification of Noncompliance to IHCDA by Owner

If the owner and/or management agent determines that a unit, building, or an entire development is not in compliance with RHTC program requirements, IHCDA should be notified immediately. The owner and/or management agent must formulate a plan to bring the development back into compliance and advise IHCDA in writing of such a plan.

Noncompliance issues identified and corrected by the owner prior to notification of an upcoming compliance review or inspection by the IHCDA need not be reported to the IRS by IHCDA. The owner and/or management agent must keep documentation outlining: the noncompliance issue, date the noncompliance issue was discovered, date that noncompliance issue was corrected, and actions taken to correct noncompliance.

> *Example: A household was initially income qualified and moved into a unit on January 1, 2007. The maximum allowable RHTC gross rent is $500. At time of recertification on January 1, 2008 the owner increased the rent to the market rate of $1,000. During an internal audit dated February 1, 2008 the owner and/or management agent noticed that the unit was out of compliance, because the rent charged exceeded the maximum RHTC rent limit. On February 1, 2008, the owner and/or management agent immediately corrected the noncompliance issue, notified IHCDA of the issue, and then documented the file with an explanation of the noncompliance issue, the date that it was corrected, and a summary of the actions taken to correct the noncompliance issue. On June 21, 2008, IHCDA notified the owner and/or management agent of an upcoming compliance review. Because the noncompliance issue was discovered, reported, and corrected by the owner/management agent prior to the notice of IHCDA's upcoming compliance review, IHCDA is not required to report the noncompliance issue to the IRS.*

Part 9.5|Correction Period

Should IHCDA discover (as a result of an inspection or review or in any other manner) that the development is not in compliance with Section 42 or that credit has been claimed or will be claimed for units that are ineligible, IHCDA shall notify the owner. The owner is to commence appropriate action to cure such noncompliance.

The owner shall have a **maximum of ninety (90) days from the date of notice to cure the noncompliance.** However, if IHCDA determines that there is good cause, an extension of up to six (6) months to complete the cure for noncompliance may be granted.

Part 9.6| Reporting Noncompliance to the Internal Revenue Service

Noncompliance will occur if noncompliance issues are not corrected within a "reasonable" time period. Potential noncompliance of which the owner or management agent becomes aware must be reported to IHCDA (see Part 9.4 above). Potential noncompliance discovered by IHCDA during a file audit, physical inspection, Owner Certification review, etc. must be reported to the IRS. The IRS ultimately determines whether or not there is noncompliance.

IHCDA is required to file IRS Form 8823 "Low-Income Housing Credit Agencies Report of Non-Compliance" (see Appendix B) with the IRS no later than forty-five (45) days after the end of the correction period (as described above, including extensions) and no earlier than the end of the Correction Period, regardless of whether or not the noncompliance or failure to certify is corrected.

IHCDA must identify on IRS Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify.

If a building is entirely out of compliance and will not be in compliance at any time in the future, IHCDA will report it on an IRS Form 8823 one time and need not file IRS Form 8823 in subsequent years to report that building's noncompliance.

Part 9.7| Loss of Credits and Recapture

Loss of credits is a reduction in the amount of credits that can be claimed for a particular year due to a decrease in Qualified Basis. Qualified Basis can decrease either due to decrease in Applicable Fraction or a decrease in Eligible Basis (Qualified Basis = Eligible Basis x Applicable Fraction). Depending on the circumstance, decrease in Qualified Basis may also result in recapture.

Recapture is defined as an increase in the owner's tax liability because of a loss in tax credit due to noncompliance with program requirements. Recapture is the return of the accelerated portion of the credits that was claimed during the ten (10) year credit period.

The IRS will make the determination as to whether or not the owner faces loss of credits and/or recapture of credits as a result of noncompliance.

IRS Form 8611 (see Appendix B) is used by taxpayers who must recapture previously claimed tax credits. A copy of IRS Form 8611 must be sent to the IRS and IHCDA upon completion by the owner.

Part 9.8|Retention of Noncompliance Records by IHCDA

IHCDA will retain records of noncompliance or failure to certify for six (6) years beyond IHCDA's filing of the respective IRS Form 8823. In all other cases, IHCDA will retain the certifications and records for three (3) years from the end of the calendar year in which IHCDA received the certifications and records.

Part 9.9|Noncompliance during the Extended Use Period

For information on noncompliance during the Extended Use Period, see Parts 8.1 F & 8.1 G.

Part 9.10|Tenant Fraud

If fraud/misrepresentation of information is discovered while processing an application for residency, the applicant should be denied. Handling tenant fraud becomes more problematic when the fraud is discovered at recertification. In this scenario it may be determined that the household was never initially qualified and has been inappropriately occupying the unit. Fraud is considered material noncompliance with the lease and program requirements and is therefore grounds for termination of tenancy. For more information on termination of tenancy, see Part 6.8(E).

The footnote on Page 25-2 of the 8823 Guide makes the IRS's position on tenant fraud very clear, stating that "the IRS wants to provide an incentive for owners to identify, and remove (if possible) fraudulent tenants." In this spirit, the IRS provides leniency for owners/management agents that discover tenant fraud as long as they can exhibit due diligence. Page 25-2 of the 8823 Guide states:

> "As a general rule, the Internal Revenue service does not want to disturb the credit when the owner has demonstrated due diligence to avoid fraudulent tenants, timely removes fraudulent tenants when identified, and timely notifies the state agency of their actions."

Therefore, if tenant fraud is discovered the following three steps should be followed immediately.

1. Notify IHCDA that an incident of tenant fraud has been identified and provide a written explanation of what happened. As long as the incident was identified prior to an IHCDA audit, the incident will not be considered reportable noncompliance (i.e. an 8823 will not be issued).
2. If the fraud is believed to have been intentional, the owner can choose to report the suspected fraud to the Internal Revenue Service's Whistleblower's Office via Form 211. For more information on how to report the event to the IRS, read Chapter 25 of the 8823 Guide.

3. Begin the process of removing the fraudulent unqualified household and replacing it with a qualified household. Every tax credit lease should include language stating that providing inaccurate information regarding program eligibility is cause for termination of tenancy. Thus, the fraud becomes not only a violation of program rules but also a lease violation and grounds for eviction.

In order to try and reduce the number of instances of tenant fraud, management should ensure that the forms used in tenant files address the seriousness of providing fraudulent information. As mentioned above, all tax credit leases should include language that fraud is grounds for eviction or non-renewal of a lease. Additionally, it is a best practice to include language on other forms signed by the tenant/applicant stating that the forms are signed under penalty of perjury. By including such language, the owner/ management is showing a zero tolerance policy for tenant fraud.

The following documentation may help the owner establish that tenant fraud occurred:

- Documentation proving the tenant was made aware of program requirements and prohibitions and did not follow those requirements such as signed lease documents and program agreements.
- Documentation showing that the tenant intentionally misstated or withheld information including but not limited to:
    - Evidence that false names or Social Security Numbers were used;
    - Copies of falsified, forged, or altered documents;
    - Proof that tenant omitted material facts that were known to the tenant such as proof of income and assets sources that were not disclosed by the tenant; and
    - Admission by the tenant that information was falsified or omitted.

Part 9.11|Owner Fraud

If IHCDA becomes aware of an apparent act of fraud by the owner, management company, or other entity involved with the management and compliance of a project, the project will be considered out of compliance and the following steps will be taken:

1. A noncompliance 8823 will be issued to the IRS;
2. Per the 8823 Guide, Form 3949-A “Information Report Referral” may be submitted to the IRS along with the applicable supporting documentation to demonstrate the fraudulent actions of the owner; and
3. Other noncompliance penalties such as increased auditing, rejection of future applications, etc. as outlined in Part 9.2 may also apply.

Section 10 - Glossary

100% Tax Credit Project: A project in which all units are RHTC qualified units (i.e. there are no market rate units).

140% Rule: If upon recertification, a low-income household's income is greater than 140% of the income limit adjusted for family size, the unit will continue to be counted toward satisfaction of the required set-aside, providing that the unit continues to be rent-restricted and the next available unit of comparable or smaller size in the same building is rented to a qualified low-income household.

240-day Window: For acquisition/rehabilitation projects, the owner may certify households as RTHC eligible up to 120 days prior to the date of acquisition (using the current income limits) or up to 120 days after the date of acquisition (using the income limits in effect as of the date of acquisition). In either scenario, the effective date of the certification is the date of acquisition.

20%/50% Test: 20% or more of the residential units must be rented to households with gross annual income of 50% or less of the Area Median Income adjusted for family size.

40%/60% Test: 40% or more of the residential units must be rented to households with gross annual income of 60% or less of the Area Median Income adjusted for family size.

8609: The IRS Form entitled "Low-Income Housing Credit Allocation and Certification." Part I of the Form 8609 is completed by IHCDA and issued to the owner so that credits may be claimed. Part II of the Form 8609 is completed by the owner and the elections made in Part II are important for ongoing compliance. The owner files Form 8609 with the IRS each year of the Credit Period.

8823: The IRS Form entitled "Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition." Form 8823 is filed by IHCDA to the IRS in order to report instances of noncompliance or building disposition.

8823 Guide: Common name for the IRS guide book entitled *Guide for Completing Form 8823 Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition: Revised January 2011*. While the guide is not considered legal authority, it does provide valuable information regarding the state agency's responsibilities in determining noncompliance and reporting that noncompliance to the IRS.

Actual Income from Assets: The income generated by an asset, such as interest or a dividend. This is counted as income even if the income is not received by the household, for example if the interest or dividend is automatically reinvested into the asset. When net family assets (cash value of all assets) are up to $5000, the actual income from assets is always the income used. When net family assets exceed $5000 then the actual income must be compared to the imputed income from assets and the higher amount is used for income determination.

Adjusted Basis: The cost basis of a building adjusted for capital improvements minus depreciation allowable.

Affirmative Fair Housing Marketing Plan: Also referred to as the AFHMP or Affirmative Marketing Plan. A plan in which the owner/management of a property confirms that they are following Fair Housing regulations and are making efforts to market the property to those groups determined to be least likely to otherwise apply for residency. All projects with five (5) or more HOME-assisted units must have an AFHMP in place.

Allowable Fee: A fee that may be charged to tax credit tenants. An allowable fee may or may not have to be included in the gross rent calculation, depending on whether the fee is for a service that is optional or mandatory.

AMI: Area Median Income

Annual Household Income: The combined anticipated, gross annual income of all persons who intend to reside in a unit.

Annual Income: Total anticipated income to be received by a tenant from all sources including assets for the next twelve (12) months.

Annual Income Recertification: Document by which the tenant recertifies his/her income for the purpose of determining whether the tenant will be considered low-income according to the provisions of the RHTC Program.

Applicable Credit Percentage: Although the credits are commonly described as 9% and 4% credits, these percentages are approximate figures. The U.S. Department of the Treasury publishes the exact credit percentages each month. 4% credits are for acquisition and tax exempt bond financed projects. 9% credits are for new construction and rehabilitation credits not involving tax exempt bonds.

Applicable Fraction: The portion of a building that is occupied by low-income households. The Applicable Fraction is the lesser of a) the unit fraction, defined as the ratio of the number of low-income units to the total number of units in the building or b) the floor space fraction, defined as the ratio of the total floor space of the low-income units to the total floor space of all units in the building.

Applicant: A prospective tenant who has applied for residency at a development.

Application: Form completed by a person or family seeking rental of a unit in a development. An application should solicit sufficient information to determine the applicant's eligibility and compliance with federal and IHCDA guidelines.

Area Median Income: The median income for a specific county, as published by HUD.

ARRA: The American Recovery and Reinvestment Act of 2009, which created the Section 1602 and TCAP programs.

ARRA Programs: Section 1602 & TCAP

Assets: Items of value, other than necessary and personal items, that are considered in determining the income eligibility of a household.

Asset Income: The amount of money received by a household from items of value as defined in HUD Handbook 4350.3.

Authority: The Indiana Housing and Community Development Authority (IHCDA)

Available Unit: A vacant unit that is not under any contractual agreement between the owner and a prospective resident. A unit is not available if an applicant has already signed a lease but has not yet moved into the unit.

Cash Value of Asset: The market value of the asset minus the reasonable expenses incurred to convert the asset to cash.

Casualty Loss: A loss of a unit due to fire, natural disaster, or other similar circumstance.

Certification Year: The twelve (12) month time period beginning on the date the unit is first occupied and each twelve (12) month period commencing on the same date thereafter.

COLA: Cost of living adjustment increase for Social Security as announced by the Social Security Administration.

Comparable Unit: A unit of the same size and number of bedrooms with similar amenities and features as another unit.

Compliance: The act of meeting the requirements and conditions specified under the law and the RHTC program requirements.

Compliance Period: The time period for which a building must comply with the requirements set forth in Section 42 of the Internal Revenue Code and credits can be recaptured for noncompliance. The development's first fifteen (15) taxable years.

Correction Period: A reasonable time as determined by the Authority for an owner to correct any violation as a result of noncompliance.

Credit: Rental Housing Tax Credit as authorized by Section 42 of the Internal Revenue Code.

Credit Period: The period of ten (10) taxable years during which credit may be claimed, beginning with:

1. the taxable year the building is placed-in-service; or
2. at the election of the taxpayer (per Form 8609 Line 10a) the following year, but only if the building is a Qualified Low-Income Building as of the close of the first year of such building and remains qualified throughout succeeding years.

Current Anticipated Income: Gross anticipated income for the next twelve (12) months as of the date of occupancy or recertification, including asset income.

Date of Acquisition: The date on which a building is acquired through purchase.

Declaration of Extended Rental Housing Commitment: The extended use agreement between IHCDA and the owner restricting the use of the development during the term of the RHTC Extended Use Period. This document is now called the Lien and Restrictive Covenant Agreement.

Decontrol Period: The three-year period following the termination of an extended use agreement (either through qualified contract release or foreclosure) during which tenant protections apply to all existing low-income households. The protections include a prohibition against eviction except for good cause and against increases in gross rent except as allowable under Section 42.

Developer: Any individual and/or entity that develops or prepares a real estate site for residential use as an RHTC development.

Development: Rental housing development receiving a RHTC allocation.

Disabled (for Fair Housing purposes): For purposes of the Fair Housing Act, disability is defined as a person who has/is:

- A physical or mental impairment which substantially limits one or more of such person's major life activities; or
- A record of having such an impairment; or
- Being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act).

Disposed of Asset: An asset disposed of for less than fair market value must be counted as a household asset when determining income if the difference between the fair market value and the amount received is greater than $1000.

Due Diligence: The appropriate, voluntary efforts to remain in compliance with all applicable Section 42 rules and regulations. Due diligence can be demonstrated through business care and prudent practices and policies. The 8823 Guide (page 3-4) indicates that part of due diligence is the establishment of internal controls, including but not limited to: separation of duties, adequate supervision of employees, management oversight and review (internal audits), third party verifications of tenant income, independent audits, and timely recordkeeping. IHCDA expects all RHTC developments to demonstrate due diligence.

Earned Income: Income from employment, including wages, salaries, tips, commission, bonuses, overtime pay, anticipated raises, and any other compensation. The earned income of all adult household members is included in the Annual Household Income calculation. The earned income of minors (members under age 18) is not included.

Educational Organization: An institution that normally maintains a regular faculty and curriculum, and normally has an enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. This term includes elementary schools, junior and senior high schools, colleges, universities, and technical, trade and mechanical schools. This does not include on-the-job trainings courses, but does include online educational institutions.

Effective Date of Tenant Certification: The date the Tenant Income Certification becomes applicable. For initial certifications, this date must be the move-in date of the household. For annual recertifications, this date must be the anniversary date of the move-in.

Effective Term of Verification: A period of time not to exceed one hundred twenty (120) days. After this time, if the tenant has not yet moved in or been recertified, a new written third-party verification must be obtained. A verification document must be dated within the effective term at time of Tenant's Income Certification.

Eligible Basis: The Eligible Basis of a building includes those costs incurred with respect to the construction, rehabilitation, or acquisition of the property, minus non-depreciable costs such as land and certain other items such as federal grants and some soft costs. Defined in a simpler manner, Eligible Basis is how much the building cost.

Eligible Tenant: The current tenant(s) of the unit, so long as that tenant(s) is eligible to occupy the unit under the requirements of Section 42 of the Internal Revenue Code. This expressly includes a tenant whose income would not currently qualify under Section 42, but who was qualified at the time of tenant's original occupancy of the unit.

Employment Income: Wages, salaries, tips, commission, bonuses, overtime pay, anticipated raises, and any other compensation for personal services from a job.

Empty Unit: A unit that is designated as a tax credit unit, but has never been occupied by a qualified RHTC household.

Exempt Manager's Unit: See "manager's unit"

Extended Use Agreement: The written and recorded agreement between IHCDA and the owner restricting the use of the development during the term of the Extended Use Period. The official document from IHCDA is now called the Lien and Restrictive Covenant Agreement.

Extended Use Period: The time frame which begins the first day of the initial fifteen (15) year Compliance Period, on which such building is part of a qualified low-income housing development and ends fifteen (15) years after the close of the initial Compliance Period, or the date specified by IHCDA in the extended use agreement, whichever is longer.

Extended Use Policy: The set of compliance rules and monitoring procedures for developments that have entered their Extended Use Period. For more information see Section 5, Part 5.11.

Fair Market Value: An amount which represents the true value at which property could be sold on the open market.

First Year of the Credit Period: Either the year a building is placed-in-service, or, at the owner's option, the following year.

Floor Space Fraction: The fraction, the numerator of which is the total floor space of the low-income units in the building, and the denominator of which is the total floor space of the residential rental units (whether occupied or not) in the building. The floor

space fraction is compared to the unit fraction when computing the Applicable Fraction. The Applicable Fraction for a building is the lesser of either the unit fraction or the floor space fraction.

Foster Adult: An adult, usually with a disability that makes him/her unable to live alone, who is unrelated to the tenant family but has been placed in their care. Foster adults are not counted as household members when determining household size and the applicable income limit.

Foster Children: Foster children are in the legal guardianship or custody of the State or foster care agency, but are cared for by foster parents in their home under a foster care arrangement with the custodial agency. Foster children are not counted as household members when determining household size and the applicable income limit.

Full-time Student: Any tenant or applicant who is, was, or will be a full-time student at an educational organization for parts of five (5) calendar months (may or may not be consecutive) during the calendar year. Full-time status is defined by the educational organization at which the student is enrolled.

Full-time Student Household: A household in which all tenants/applicants are full-time students.

Good-cause Eviction: Tax credit households cannot be evicted or have their tenancy terminated without "good-cause," generally considered material violation of the lease. The actions that constitute good-cause for eviction or termination of tenancy must be given to the tenant in writing at the time of occupancy, preferably in the lease, as well in the property's Tenant Selection Criteria. Exceeding the 140% limit is not considered good-cause for eviction.

Gross Income: See Annual Household Income.

Gross Rent: The sum of tenant-paid rent portion + utility allowance + any non-optional fees. The total gross rent must be at or below the applicable rent limit for the unit to be in compliance

Gross Rent Floor: The lowest rent limit that an owner will ever have to implement for a unit. For tax credit projects, the gross rent floor is either the rent limit in effect at the placed-in-service date of the first building in the development or on the allocation date. For bond projects, the gross rent floor is either the rent limit in effect at the placed-in-service date for the first building in the development or on the reservation letter date. If the HUD published rent limits decrease from year to year, the rent limit for a particular project never has to fall below its gross rent floor.

Gross Rent Floor Election Date: For tax credit projects, the gross rent floor is either the rent limit in effect at the placed-in-service date of the first building in the development or on the allocation date. For bond projects, the gross rent floor is either the rent limit in effect at the placed-in-service date for the first building in the development or on the reservation letter date.

Guest: A visitor temporarily staying in a tax credit unit with the consent of the household. Guests are not treated as household members when determining household size and the applicable income limit, and their income is not included in Annual Household Income calculations.

HERA: The Housing and Economic Recovery Act passed by Congress on July 30, 2008. Among other things, this legislation added the HERA special income and rent limits, the recertification exemption for 100% tax credit properties, and the foster care student status exemption.

Household: The individual, family, or group of individuals living in a unit.

IHCDA: The Indiana Housing and Community Development Authority.

Imputed Income from Assets: The estimated earnings of assets held by a household using the potential earning rate (passbook rate) established by HUD. The current passbook rate is 2%.

Income Limits: The maximum incomes as published by HUD, used for determining household eligibility for low-income units. Income limits are based on family size and will vary depending on the applicable AMI set-aside restriction (30%, 40%, 50%, or 60%).

Initial Compliance: The twelve (12) month period commencing with the date the building is placed-in-service. Note: Developments consisting of multiple buildings with phased completion must meet the set-aside requirements on a building-by-building basis with the twelve (12) months commencing with the individual date each building is placed-in-service.

Initial Tenant File: The file for the first household to occupy a unit. Initial tenant files, also called first-year files, contain the records for the first year of the credit period and are important for demonstrating that the project was eligible to begin claiming credits. Initial tenant files must be kept for twenty-one (21) years.

Initial Compliance Period: A fifteen (15) year period, beginning with the first taxable year in which credit is claimed, during which the appropriate number of units must be marketed and rented to RHTC eligible households, at restricted rents.

In-place Household: A household that is already occupying a unit at the time of acquisition.

Inspection: A review of a development made by IHCDA or its agent, including an examination of records, a review of operating procedures, and a physical inspection of units.

Joint Venture: A combination of one or more independent entities that combine to form a new legal entity for the purpose of a development.

Lease: The legal agreement between the tenant and the owner which delineates the terms and conditions of the rental of a unit.

Lease Rent: The actual rent charged to the household by the owner, as defined in the lease. The tenant-paid rent may never exceed the maximum allowable rent or the applicable HUD published rent limit. Also referred to as "tenant-paid rent."

Lien and Restrictive Covenant Agreement: The extended use agreement between IHCDA and the owner restricting the use of the development during the term of the RHTC Extended Use Period. Formerly called the Declaration of Extended Rental Housing Commitment.

LIHTC: Low Income Housing Tax Credit, also known as Rental Housing Tax Credit (RHTC). Tax Credit as authorized by Section 42 of the Internal Revenue Code.

Live-in Care Attendant / Live-in Aide: A person who resides with one or more elderly, near-elderly, or disabled persons. To qualify as a live-in care attendant, the individual (a) must be determined to be essential to the care and well being of the tenant, (b) must not be financially obligated to support the tenant, and (c) must certify that he/she would not be living in the unit except to provide the necessary supportive services. While some family members may qualify, spouses can never be considered a live-in care attendant since they would not meet qualifications (b) & (c).

A live-in care attendant for an RHTC tenant should not be counted as a household member for purposes of determining the applicable income limits, and the income of the attendant is not counted as part of the total household income.

Low-Income Household/Tenant: Households whose incomes are not more than either 50% or 60% of the median family income for the local area adjusted for family size.

Low-Income Unit: Any unit in a building if:

1. Such unit is rent-restricted (as defined in subsection (g)(2) of IRS Section 42 of the Code);
2. The individuals occupying such unit meet the income and student status eligibility limitations applicable under Section 42; and
3. The unit is suitable for occupancy, available to the general public, and used other than on a transient basis.

Management Company: A firm authorized by the owner to oversee the operation and management of the development and who accepts compliance responsibility.

Manager's Unit: Unit occupied by the full-time resident manager considered a facility reasonably required for the benefit of the project. If the unit is considered an "exempt" area, the manager does not have to be income qualified, but no rent can be charged. If the unit is considered a tax credit rental unit, the resident manager must be income qualified and rent can be charged for the unit. The same rule applies for units reserved for maintenance or security staff.

Market Value of Asset: The dollar value of an asset on the open market.

Maximum Allowable Rent: The maximum amount that an owner is permitted to actually charge for rent. Maximum allowable rent is determined by taking the applicable rent limit and subtracting the utility allowance for tenant-paid utilities and fees for any other non-optional charges. May also be referred to as the maximum chargeable rent or net rent.

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

Minimum Set-Aside: The minimum number of units that the owner has elected and set forth in the Declaration of Low-Income Housing Commitment to be income and rent-restricted.

Mixed-use Project: A project with both RHTC and market-rate units.

Model Unit: A rental unit set aside to show prospective tenants the desirability of the project's units without disturbing current tenants in occupied units. The model unit's cost can be included in the building's Eligible Basis and in the denominator of the Applicable Fraction when determining a building's Qualified Basis.

MTSP Limits: The income limits published by HUD specifically for the tax credit program. MTSP stands for Multifamily Tax Subsidy Program.

Multi-Family Department (MFD) Notices: Notices published by IHCDA's Multi-Family Department to announce changes, updates, or clarifications on policies and issues affecting the Section 42 RHTC Program. These notices are made available online at **http://www.in.gov/ihcda/2520.htm** , through the electronic newsletter IHCDA INFO, and are also posted on the message board on the Indiana Housing Online Management rental reporting system (**https://ihcdaonline.com/**). MFD Notices have been replaced by Real Estate Department (RED) Notices beginning in 2011.

Multiple-building Project: A project in which multiple buildings are all considered to be part of one project. A project is a multi-building project only if the owner elected so by choosing "yes" on Line 8b of Part II of the Form 8609.

Narrative Summary: A description written by a tax credit developer/applicant describing the need for the development within the community and the characteristics of the development itself. This narrative should give an accurate depiction of how this development will benefit the particular community. Generally, the summary should include the following points:

-Development and unit description
-Amenities in and around the development
-Area needs that the development will help meet
-Community support and/or opposition for development
-The constituency to be served by the development
-Development quality
-Development location
-Effective use of resources
-Unique features
-Services to be offered
-Address Qualified Allocation Plan points (Must include pages 3-9 of the Application Form-A)

Next Available Unit Rule: (See definition under 140% Rule)

Noncompliance: The period of time that a development, specific building, or unit is ineligible for RHTC because of failure to satisfy program requirements.

Non-optional fee: A fee charged for services/amenities that are mandatory (i.e. services that are required as a condition of occupancy). A fee may be charged for non-optional services, but the fee must be included in the gross rent calculation. NOTE: Owners may never charge fees for amenities that are included in Eligible Basis, regardless of whether or not the fee is included in gross rent calculation.

Optional fee: A fee charged for an extra service or amenity that is elected by a tenant. If the service or amenity is truly optional (i.e. it is not a condition of occupancy that the tenant accept the service), then a fee may be charged without being included in the gross rent calculation. NOTE: Owners may never charge fees for amenities that are included in Eligible Basis, regardless of whether or not the fee is included in gross rent calculation.

Over-income Unit: Under § 1.42-15(a), a low-income unit in which the aggregate income of the occupants of the unit rises above 140% of the applicable income limitation under § 42(g)(1) is referred to as an "over-income unit."

Owner: Any individual, association, corporation, joint venture, or partnership that owns a RHTC development.

Passbook Rate: The HUD approved rate for imputing assets. The current passbook rate is 2%.

Placed-in-service Date: For buildings, this is the date on which the building is ready and available for its specifically assigned function, as set forth on IRS Form 8609. For new construction, the placed-in-service date is generally the date a building receives its Certificate of Occupancy. For acquisition, the placed-in-service date is the date of acquisition.

PHA: Public Housing Authority.

Project: A project may be all of the buildings in a development, or one particular building within a development, depending on the election made by the owner on Line 8b on Part II of Form 8609. If Line 8b is marked yes, then the building is part of a multi-building project. If Line 8b is marked no, then the building is considered its own project.

Protected Class: One of the seven groups specifically protected by the Fair Housing Act. The seven protected classes are race, color, national origin, religion, sex, disability, and familial status.

Qualified Allocation Plan: The plan developed and promulgated from time to time by IHCDA, to set out the guidelines and selection criteria by which IHCDA allocates tax credits.

Qualified Basis: The portion of the Eligible Basis attributable to low-income rental units, equal to the Eligible Basis multiplied by the Applicable Fraction. The amount of Qualified Basis is determined annually on the last day of each taxable year.

Qualified Contract: Any time after the completion of Year 14, the owner of a tax credit property may request that IHCDA find a qualified buyer to purchase the property at a specific calculated price and keep the property in the Section 42 program. If IHCDA cannot present a qualified contract for purchase within a one year period, then the property can be released from the Section 42 program at the completion of Year 15.

Qualified Low-Income Building: Any building that is part of a qualified low-income housing development at all times during the period beginning on the first day in the compliance period on which such building is part of such a development and ending on the last day of the compliance period with respect to such building (Section 42(c)(2)(A) of the Code).

Qualified Unit: A unit in a qualified low-income building occupied by qualified persons at a qualified rent.

Qualifying Period: To qualify for the compliance rules outlined in IHCDA's Extended Use Policy, a development must have Annual Owner Certifications, onsite inspections, and tenant file monitorings free of noncompliance for three consecutive years. This three-year, noncompliance-free period is called the Qualifying Period.

Note: The Qualifying Period begins in years 13-15. If noncompliance is found in year 13, the Qualifying Period restarts for years 14-16, so on and so forth, until there have been three consecutive years with no issues of noncompliance. Once the Qualifying Period has been met, the development qualifies for the Extended Use Policy.

Ratio Utility Billing System (RUBS): A utility billing system in which all units are on one utility meter instead of separate sub-metering. Utilities paid through a RUBS system are not eligible to be included in a utility allowance because the tenants are billed based on a distribution formula instead of actual consumption.

Real Estate Department (RED) Notices: Notices published by IHCDA's Real Estate Department to announce changes, updates, or clarifications on policies and issues affecting the Section 42 RHTC Program and other low-income housing programs. These notices are made available online at **http://www.in.gov/ihcda/2520.htm** , through the electronic newsletter IHCDA INFO, and are also posted on the message board on the Indiana Housing Online Management rental reporting system (**https://ihcdaonline.com/**). Prior to 2011, RE Notices were called Multi-Family Department (MFD) Notices.

Reasonable Accommodation: A change, exception, or adjustment in rules, policies, practices, or services when such a change is necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling, including public and common spaces. Under the Fair Housing Act, an owner must allow a reasonable accommodation unless doing so will be an undue financial burden or fundamentally alter the nature of the provider's operations.

Reasonable Modification: A change to the physical structure of the premises when such a change is necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling, including public and common spaces. Under the Fair Housing Act, an owner must allow a reasonable modification at the expense of the tenant, unless the change is one that should have already been included in order to comply with design and construction accessibility standards, in which case the owner will responsible for paying for the modifications.

Recapture: An increase in the owner's tax liability because of a loss in tax credit due to noncompliance with program requirements. Recapture is the return of the accelerated portion of the credits that was claimed during the ten (10) year credit period.

Referral Agreement: A development that includes units set-aside for special needs populations must enter into a Referral Agreement with a qualified organization that will provide services to the special needs population. The owner must agree to: (a) set aside a number of units for the special needs population and (b) notify the qualified organization when vacancies of the set-aside units occur at the development. The qualified organization must agree to: (a) refer qualified households to the development and (b) notify households of the vacancies of the set-aside units at the development.

Rent Limit: The HUD published maximum amount that can be charged for a tax credit unit, including a utility allowance and any non-optional fees.

RHTC: Rental Housing Tax Credit, also known as Low Income Housing Tax Credit (LIHTC). Tax Credit as authorized by Section 42 of the Internal Revenue Code.

Second-party Verification: Source documentation submitted to management by a tenant or applicant in order to disclose information about income or asset sources or other eligibility factors. Second-party verifications may only be used when third-party verifications cannot be received or are not necessary (see Part 4.3 for more info). An example of second-party verification is a paystub or bank statement provided to management by the tenant/applicant.

Section 1602: The Tax Credit Exchange program created by the American Recovery and Reinvestment Act of 2009 (ARRA). 1602 allowed unsold tax credits to be exchanged for cash.

Section 8: Section 8 of the United States Housing Act of 1937, as Amended.

Section 42: Section 42 of the Internal Revenue Code of 1986, as Amended, which establishes the Rental Housing Tax Credit Program.

Self-certification: A signed affidavit from a tenant or applicant used to clarify information or to provide information that cannot be verified through third-party or second-party documents.

Service Animal: An animal that assists an individual with a disability. This term includes service animals, therapy animals, companion animals, emotional support animals, and assistance animals. These animals are not treated as pets but rather as reasonable accommodations under Fair Housing.

Set-aside: Shall mean and require that units designated as "set-aside" for a specific population may be used only for the identified population and for no other. If qualified tenants in the designated population are not available, the unit(s) must remain vacant. Tax credit units will all be set-aside at the 30%, 40%, 50%, or 60% rent and income limit and may additionally be set-aside for special needs populations.

Special Needs Populations: Per the set-asides and scoring criteria defined in the Qualified Allocation Plan (QAP), a tax credit development may have committed in writing to set aside a percentage of total units in the development to qualified tenants who meet the state definition of "special needs population," as provided in IC 5-20-1-.45 and must equip each unit to meet a particular person's need at no cost to the tenant. Special needs populations include:

1. Persons with physical or development disabilities
2. Persons with mental impairments
3. Single parent households
4. Victims of domestic violence
5. Abused children
6. Persons with chemical addictions
7. Homeless persons
8. The elderly

Staff Unit: See "manager's unit"

Student: Any tenant or applicant who is, was, or will be a full-time student at an educational organization for parts of five (5) calendar months (may or may not be consecutive) during the calendar year. Full-time status is defined by the educational organization at which the student is enrolled.

Sub-metering: A system for measuring tenants' actual utility consumption. Some buildings in qualified low-income housing developments may be sub-metered. A sub-metering system typically includes a master meter, which is owned or controlled by the utility company supplying the electricity, gas, or water, with overall utility consumption billed to the building owner. In a sub-metered system, building owners use unit-based meters to measure utility consumption and prepare a bill for each residential unit based on consumption. The building owners retain records of resident utility consumption, and tenants receive documentation of utility costs as specified in the lease.

For more information see part 3.4 B

Subsequent Credit Allocation: A set of rehabilitation credits allocated to a project that has already completed an original credit period and fifteen (15) year compliance period. A project receiving a subsequent credit allocation begins a new ten (10) year credit period and fifteen (15) year compliance period. Existing tenants are grandfathered into the new allocation without being recertified as new move-in events.

Tax Credit: A tax credit is a dollar-for-dollar reduction in the federal income tax liability of the owner.

The tax credit amount is calculated by multiplying the Qualified Basis by the Applicable Credit Percentage. The credit percentage, determined monthly, changes so as to yield over a ten (10) year period, a credit equal to either 30% or 70% of the present value of the Qualified Basis of the building. An owner may elect to lock in the Applicable Credit Percentage either at the time a Commitment is made by IHCDA, or at the time the allocation is made.

TCAP: The Tax Credit Assistance Program created by the American Recovery and Reinvestment Act of 2009 (ARRA). TCAP provided special HOME funding to supplement tax credit projects.

Tenant: Any person occupying the unit.

Tenant-paid rent: The actual rent charged to the household by the owner, as defined in the lease. The tenant-paid rent may never exceed the maximum allowable rent or the applicable HUD published rent limit. Also referred to as the "lease rent."

Tenant/ Unit File: Complete and accurate records pertaining to each dwelling unit, containing the application for each tenant, verification of income and assets of each tenant, the annual Tenant Income Certification for the household, utility schedules, rent records, all leases and lease addenda, etc.. Any authorized representative of IHCDA or the Department of Treasury shall be permitted access to these files.

Third-party Verification: A verification document submitted to management by a third-party entity in order to disclose information about the income or asset sources or other eligibility factors of an applicant or tenant. Third-party verifications must be sent to and received directly from the third-party source, not through the tenant or applicant. An example of third-party verification is an employment verification form completed by the employer.

Transient Use: An RHTC unit is considered to be in transient use and is therefore out of compliance if the initial lease term is less than six (6) months. The exceptions to the transient occupancy rule for SRO housing can be found in Section 3, part 3.6 G.

Unearned Income: Income from assets and benefit sources such as Social Security. The unearned income of all household members (regardless of age) is included in the calculation of Annual Household Income.

Unit Fraction: The fraction, the numerator of which is the number of low-income units in the building, and the denominator of which is the number of residential rental units (whether or not occupied) in the building. The unit fraction is compared to the floor space fraction when computing the Applicable Fraction. The Applicable Fraction for a building is the lesser of either the unit fraction or the floor space fraction.

Utility Allowance: An allowance representing the average monthly cost of tenant-paid utilities for a particular unit size and type. Utility allowances include costs of heat, unit electricity, gas, oil, water, sewer, and trash service as applicable. Utility allowances do not include costs of telephone, cable television, or internet services. The utility allowance is added to tenant-paid rent and any other non-optional charges when determining the gross rent for a unit. The total gross rent for a unit (utility allowance inclusive) must be at or below the applicable published rent limit.

Acceptable utility allowance methods include a utility schedule published by HUD, Rural Development, or the PHA, or established by a letter from the utility company which states the rates, an IHCDA estimate, the HUD Utility Schedule Model, or an Energy Consumption Model as calculated by an approved engineer or licensed professional.

The IRS requires that Utility Allowances be set according to IRS Notice 89-6 and Federal Register Vol. 73, No. 146 "Section 42 Utility Allowance Regulations Update" (both resources are available in Appendix A at **http://www.in.gov/ihcda/2519.htm**)

For more information on Utility Allowances see Section 3, Part 3.4.

Vacant Unit: A unit that is currently unoccupied, but was formerly occupied by a qualified RHTC household.

Vacant Unit Rule: Vacant units formerly occupied by low-income individuals may continue to be treated as occupied by a qualified low-income household for purposes of the Minimum Set-Aside requirement (as well as for determining qualified basis) provided reasonable attempts were or are being made to rent the unit (or the next available unit of comparable or smaller size) to an income qualified tenant before any units in the development were or will be rented to a nonqualified tenant. Management must document that reasonable attempts were made to rent vacant tax credit units before renting vacant market-rate units.

Verification: Information from a third-party or second-party source that is collected in order to corroborate the accuracy of information about the income and/or assets or other eligibility factors of an applicant or tenant.

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9. Rev Proc 94-57: Gross Rent Floor
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2. Compliance in HOME Rental Projects: A Guide for Property Owners
3. Federal Register Volume 64, Number 63: Implementation of the Housing for Older Person's Act of 1995
4. Reasonable Accommodations Under the Fair Housing Act
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6. HOME and the Low-income Housing Tax Credit Guidebook

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