



MISSISSIPPI HOME  
CORPORATION



# [HOUSING CREDIT COMPLIANCE MONITORING PLAN]

This Plan is designed to provide a basic description and explanation of the rules and regulations of the Housing Credit program as it relates to developments receiving an allocation of credits in the state of Mississippi pursuant to Section 42 of the Internal Revenue Code.

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## Table of Content

HTC COMPLIANCE MONITORING STAFF .....	11
GENERAL POLICIES AND PROCEDURES .....	13
INTRODUCTION .....	15
<b>CHAPTER 1 – HOUSING CREDIT PROGRAM FUNDAMENTALS .....</b>	<b>17</b>
1.1 OVERVIEW.....	17
1.2 THE VALUE OF THE HOUSING CREDIT .....	17
A. Applicable Fraction .....	18
B. Eligible Basis .....	18
C. Qualified Basis.....	20
1.3 THE CREDIT ALLOCATION.....	20
A. Annual Credit Authority (ACA) Allocation.....	21
B. Tax-Exempt Bond Allocation.....	22
1.4 BASIC PROGRAM REQUIREMENTS.....	22
A. Low-Income Occupancy .....	22
B. Restricted Rents .....	22
C. Compliance Period .....	22
D. Resale Requirements .....	23
1.5 THE PRINCIPAL PLAYERS & RESPONSIBILITIES .....	23
A. Owners and Managers .....	23
B. Residents.....	23
C. The Corporation .....	23
D. The Internal Revenue Service .....	24
1.6 KEY PROGRAM DOCUMENTS .....	24
A. Section 42 of the IRC, IRS Revenue Notices and Rulings & Procedures.....	24
B. Land Use Restriction Agreement .....	24
C. State of Mississippi Qualified Allocation Plan.....	24
D. State of Mississippi Compliance Monitoring Plan.....	24
<b>CHAPTER 2 - FEDERAL COMPLIANCE REQUIREMENTS.....</b>	<b>25</b>
2.1 OVERVIEW.....	25
2.2 LOW-INCOME OCCUPANCY .....	25

A.	Minimum Low-Income Occupancy Set-Aside .....	25
B.	Additional Low-Income Occupancy Requirements.....	26
2.3	RESTRICTED UNIT RENTS.....	27
2.4	SUITABLE FOR LOW-INCOME OCCUPANCY .....	27
2.5	EXTENDED LOW-INCOME HOUSING COMMITMENT.....	28
2.6	SPECIAL OCCUPANCY RESTRICTIONS .....	28
A.	Full-Time Student Household .....	28
B.	Staff Units.....	29
C.	Housing for the Elderly .....	30
D.	Transitional Housing for the Elderly (Assisted Living Facilities).....	31
E.	Small Owner-Occupied Buildings .....	31
F.	The Next Available Unit Rule .....	31
G.	The Unit Vacancy Rule .....	31
2.7	PROGRAM PROHIBITIONS.....	32
A.	Discrimination against Section 8 Households.....	32
B.	Unlawful Evictions.....	32
C.	General Public Use .....	32
D.	Short-Term Occupancy .....	33
E.	Certain Mandatory Charges .....	33
2.8	Violence Against Women Act (VAWA).....	33
2.9	ADMINISTRATIVE & REPORTING REQUIREMENTS.....	34
A.	Owner Reporting.....	34
B.	Administrative Monitoring Reviews .....	35
C.	Record-Keeping.....	35
<b>CHAPTER 3 - STATE COMPLIANCE REQUIREMENTS .....</b>		<b>37</b>
3.1	OVERVIEW.....	37
3.2	STATE MANDATED COMPLIANCE REQUIREMENTS .....	37
A.	Extended Affordability Period.....	37
B.	Reserve Requirements .....	37
C.	American Recovery and Reinvestment Act Compliance.....	38
3.3	OWNER- ELECTED OBLIGATIONS .....	39

A. Additional Occupancy Restrictions .....	40
B. Assisted Living Facilities .....	44
C. Extended Affordability Period.....	45
D. Tenant Community Services & Significant Amenities .....	45
E. Housing for Persons on Public Housing Waiting List .....	47
F. Owner-Based Rental Assistance.....	47
G. Single-Family Lease Purchase Developments .....	48
H. Non-Profit Participation .....	50
<b>CHAPTER 4 - DETERMINING &amp; DOCUMENTING HOUSEHOLD ELIGIBILITY .....</b>	<b>53</b>
4.1 OVERVIEW.....	53
4.2 THE INITIAL CERTIFICATION .....	53
A. Rental Application.....	53
B. Income Support Documentation .....	57
C. The Tenant Income Certification (TIC) .....	57
D. The Lease Agreement .....	59
4.3 THE RECERTIFICATION .....	60
A. Change in Household Composition.....	60
B. Change in Gross Household Income .....	63
C. Annual Recertification Waiver .....	64
4.4 INTERIM CERTIFICATION .....	66
4.5 UNIT TRANSFER.....	66
<b>CHAPTER 5 - INCOME &amp; ASSET DETERMINATION AND RESPONSIBILITIES.....</b>	<b>69</b>
5.1 OVERVIEW.....	69
5.2 INCOME LIMITS .....	69
A. Determination Schedule .....	69
B. Methodology.....	72
C. Changes/Updates.....	73
5.3 COMPONENTS OF ANNUAL INCOME .....	74
A. Regular Income .....	74
B. Asset Income.....	74
5.4 VERIFICATION OF ANNUAL INCOME .....	75

A.	Verification Requirements .....	75
B.	Methods of Verification .....	75
C.	Income Support Documentation – Special Sources/Circumstances.....	78
D.	Term of Verification .....	80
5.5	CALCULATION OF ANNUAL INCOME.....	81
A.	Regular Income .....	81
B.	Asset Income.....	86
C.	Special Occupants .....	88
5.6	DIFFERENCES IN REPORTED INCOME.....	89
5.7	CHANGES IN INCOME.....	90
A.	Interim.....	90
B.	Recertification.....	90
5.8	INCOME LIMITS FOR DEVELOPMENTS WITH MULTIPLE FUNDING SOURCES .....	90
5.9	MINIMUM INCOME REQUIREMENT FOR PROSPECTIVE SECTION 8 RECIPIENTS .....	92
5.10	AREA MEDIAN GROSS INCOME (AMGI) .....	92
6.1	OVERVIEW.....	95
6.2	RENT LIMITS .....	95
A.	Methodology.....	95
B.	Determination Schedule .....	98
6.3	COMPONENTS OF GROSS RENT .....	98
A.	Utility Allowance .....	98
B.	Fees .....	98
6.4	UTILITY ALLOWANCE.....	100
A.	Source Providers .....	100
B.	Submitting Owner Estimate Requests on Newly Placed-In-Service (PIS) Properties.....	103
C.	Approvals and Denials.....	103
D.	Changes to these Procedures.....	103
E.	Sub-Metering/Ratio Utility Billing Systems.....	104
6.5	CHANGES IN RENT.....	105
A.	Income Limits .....	105
B.	Utility Allowance .....	107
6.6	RENTS FOR UNITS WITH OVER-INCOME HOUSEHOLDS.....	107

A.	Mixed-Income Development .....	107
B.	100% HTC Development .....	107
6.7	RENTS FOR UNITS WITH RENTAL SUBSIDY .....	108
A.	Tenant-Based Rental Assistance .....	108
B.	Development-Based Rental Assistance .....	108
6.8	RENT DETERMINATION - SPECIAL CIRCUMSTANCES .....	111
A.	Staff Units.....	111
B.	Deep Rent Skewing .....	111
C.	Below-Market HOME Loans and NAHASDA.....	111
6.9	RENTAL OVERAGE .....	111
A.	Permissible .....	112
B.	Non-Permissible .....	112
<b>CHAPTER 7 - COMPLIANCE REPORTING AND ADMINISTRATIVE RESPONSIBILITIES .....</b>		<b>115</b>
7.1	OVERVIEW .....	115
7.2	DEVELOPMENT RECORDS .....	115
A.	Tenant Files .....	115
B.	Unit Listing .....	116
C.	Development Files .....	116
D.	Long-Term Storage.....	116
7.3	REPORTING REQUIREMENTS .....	117
A.	Quarterly Occupancy Report .....	117
B.	Annual Owner Certification Report .....	117
C.	Development Financial Analysis Report .....	120
D.	Electronic Report Submission Requirements.....	122
7.4	COMPLIANCE REVIEWS .....	122
A.	Tenant File Review .....	123
B.	Physical Condition Inspection .....	124
7.5	COMPLIANCE TRAINING.....	127
A.	Technical Assistance .....	127
B.	Compliance Briefing/ Trainings.....	128
7.6	MONITORING COSTS.....	128

7.7	LEGAL AND PROFESSIONAL COST .....	129
7.8	LIABILITY .....	129
<b>CHAPTER 8 – POST YEAR 15 COMPLIANCE MONITORING PROCEDURES .....</b>		<b>131</b>
8.1	OVERVIEW .....	131
8.2	EXTENDED USE PERIOD .....	131
8.3	STATE REQUIREMENTS .....	132
8.4	MONITORING PROCEDURES .....	132
8.5	EUP MONITORING COSTS .....	133
8.6	REPORTING REQUIREMENTS .....	133
8.7	ENFORCEMENT .....	134
8.8	DISPOSITION .....	134
<b>CHAPTER 9 - PROPERTY DISPOSITION &amp; TRANSFERS .....</b>		<b>135</b>
9.1	OVERVIEW .....	135
9.2	FEDERAL REQUIREMENTS .....	135
9.3	STATE REQUIREMENTS .....	136
A.	Types of Transfers Needing Agency Approval .....	137
B.	Types of Transfers Not Needing Agency Approval .....	138
C.	Agency Approval of Disposition/Transfers .....	138
9.4	BUILDING DISPOSITION .....	139
A.	Sale .....	139
B.	Foreclosure .....	140
C.	Destruction .....	140
D.	Other .....	140
9.5	DOCUMENTATION OF BUILDING DISPOSITION .....	140
A.	Sale of Development .....	141
B.	Ownership Changes .....	141
C.	Foreclosure .....	143
9.6	DISPOSITION DURING EUP .....	144
A.	Regular Sale .....	145
B.	Qualified Contract .....	145
9.7	DISPOSITION FEE .....	149



<b>CHAPTER 10 - FAIR HOUSING .....</b>	<b>151</b>
10.1 OVERVIEW.....	151
10.2 PURPOSE .....	151
10.3 GENERAL PROVISIONS .....	151
A. Reasonable Accommodations.....	152
B. Reasonable Modifications.....	152
10.4 ACCESSIBILITY GUIDELINES .....	152
10.5 LAWS THAT MANDATE ACCESSIBILITY .....	153
A. Section 504 of the Rehabilitation Act (1973).....	153
B. The Fair Housing Act of 1968, as Amended .....	153
C. The Americans with Disabilities Act (1990) .....	153
D. State and Local Codes .....	153
10.6 FAIR HOUSING ENFORCEMENT.....	154
<b>CHAPTER 11 - NONCOMPLIANCE: PROCEDURES &amp; CONSEQUENCES.....</b>	<b>155</b>
11.1 OVERVIEW.....	155
11.2 CATEGORIES OF NONCOMPLIANCE .....	155
A. Major Noncompliance .....	155
B. Minor Noncompliance .....	156
11.3 CORRECTION OF NONCOMPLIANCE .....	157
A. Notice to Owner.....	157
B. Correction Period.....	157
C. Notice to the IRS .....	157
11.4 COMMON VIOLATIONS.....	158
A. Ineligible Households.....	158
B. Failure to Certify/Recertify Household .....	158
C. Rental Overage.....	158
D. Inadequate Utility Allowance.....	158
E. Transient Housing .....	159
11.5 UNCORRECTABLE VIOLATIONS .....	159
A. Minimum Set-Aside Violations.....	159
B. Out of Program/Out of Compliance.....	159

11.6	CONSEQUENCE OF NONCOMPLIANCE.....	159
A.	Federal .....	159
B.	State .....	160
11.7	FEES & PENALTIES .....	160

## REGULATIONS

Type	Reference:
Section 42 of the Internal Revenue Code	1
IRS Revenue Ruling 2004-82: HTC Questions and Answers	2
IRS Revenue Procedure 2003-82 & 2005-37: Safe Harbor Procedures	3

## APPENDICES

Type	Page No.
Glossary of Terms	A
Sample Utility Allowance Schedules	B

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***The Mission of the  
Mississippi Home  
Corporation is to  
offer the  
opportunity of a  
safe, decent, and  
affordable home  
to every  
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# GENERAL POLICIES AND PROCEDURES

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The Corporation will adhere to the following general policies and procedures (GP&P) when carrying out its compliance monitoring obligations:

1. An applicant should verify prior to submitting an application for tax credits that she/he is in compliance with all programs offered or administered by the Corporation. The Corporation must receive compliance status requests at least 45 working days before a tax credit application cycle. A charge of \$55.00 per hour will be assessed to cover the cost of researching and processing an applicant's compliance status request. Requests received after this time may not be processed by the anticipated deadline date. Each request for a compliance status letter should consist of:
  - Written request from the owner and/or approved registered agent;
  - List of developments owned/managed, organized by the development's project identification number, development name, and location;
  - Deadline date or date request is needed;
  - Brief description of the type of information needed (copies of 8823's, general 'good status' letter, full compliance research, etc.)

In addition, any compliance status request needed for submission to an unrelated third-party source (entity other than the owner) must be requested in writing from the development's owner(s) and/or authorized agent.

2. The Corporation will monitor all HTC developments in accordance with the applicable Qualified Allocation Plan (QAP) and final HTC Application. Any discrepancies and/or problems noted with said documents should be clarified before receipt of IRS form 8609. After issuance of IRS form 8609, the Corporation will monitor for compliance strictly by what is noted therein.

Prior to the Corporation's release of the forms 8609, the owner may make a statement of intent regarding the multiple building election (line 8b of the form 8609). The statement must be made with the development's first quarterly report. Should the final election to the IRS differ from the owner's statement of intent, any resulting noncompliance will be retroactively reported utilizing form 8823.
3. The Corporation will charge \$55.00 per hour and an additional 15 cents per copy to research the compliance status of a development and/or to retrieve and provide copies of agency stored compliance correspondence. All research fees must be received and processed by the Corporation before the requested information will be released.

4. As the Corporation is aware of overpayment of an invoice, refunds will be processed within 14 days. *NOTE: Before a refund for overpayment will be issued, the Corporation will first apply the overpayment to any outstanding fees associated with the development and/or ownership entity, starting with the oldest fee due.*
5. In order for the Corporation to acknowledge a change in the management agent associated with a HTC development, a written request must be obtained inclusive of the following:
  - MHC's Notice of GP/Management Change form;
  - Copy of new Management Agreement;
  - List of developments owned/managed, organized by the development's project identification number, development name, and location to which the request is applicable;
  - Effective date of the change;
  - Signature and date of the owner and/or approved registered agent authorizing the change

*NOTE: Prior to the issuance of IRS form(s) 8609, requests for a change in management agent must be forwarded to the Allocation Department for approval.*

7. In an effort to go "green", the Corporation will issue all compliance correspondence when possible to the owners and the management agent contacts on file via email. It is the owners and manager's responsibility to ensure the Corporation has the most current email address. Should the owner not want letters sent automatically sent to the management agent, written directives must be received by the Corporation.
8. All reports (i.e. AOC, DFAR, desk audits) and review responses to be remitted to the Corporation should be sent to the email address [compliance.htc@mshc.com](mailto:compliance.htc@mshc.com). All files should be a pdf.

# INTRODUCTION

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Section 42 of the Internal Revenue Code (the 'Code') mandates that housing credit agencies adopt a plan to monitor developments for compliance with the requirements of Section 42 of the Code and the representations set forth in the approved tax credit application.

The Mississippi Home Corporation (the 'Corporation'), in an effort to fulfill its monitoring obligation under the Code, implemented a compliance monitoring program that went into effect on January 1, 1992, as amended herein. Under this program, the Corporation seeks to ensure that an owner of a housing tax credit (HTC) development follow the requirements as set forth in the Code and the applicable Qualified Allocation Plan (QAP). *NOTE: The Corporation reserves the right to retain an agent or other private contractor to perform and/or assist with certain compliance monitoring requirements. In this event, the agent or other private contractor may be delegated the functions of the Corporation to monitor compliance, except for the responsibility of filing IRS Form 8823 Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition.*

This Compliance Monitoring Plan (the 'Plan') is provided by the Corporation for use by owners and managers of developments in the state of Mississippi who has received an allocation of HTC's, to assist them in complying with the monitoring requirements of Section 42 of the Code (***see Regulation #1***), associated rules and regulations, amendments, modifications as well as the monitoring requirements of the Corporation. Additional actions or documentation concerning occupancy and rent restrictions may be required by the Code, by the Internal Revenue Service (IRS) or by the Corporation in order to satisfy reporting and low-income use requirements.

***This Plan is designed to convey Mississippi's interpretation of Section 42 of the Code, associated rules and regulations, amendments and modifications. It is not intended to be a legal interpretation of the Code. Any errors contained herein which directly conflicts with the Code and/or associated guidance will not be supported by the Corporation.***

Because laws governing the HTC Program are frequently amended, occasional updates, revisions and/or modifications to this Plan may be necessary. ***Policy and procedures noted in this release of this Plan are effective May 1, 2017, unless noted otherwise herein.***

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# CHAPTER 1 – HOUSING CREDIT PROGRAM FUNDAMENTALS

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## 1.1 OVERVIEW

Congress adopted the low-income housing tax credit program as part of the Tax Reform Act of 1986 (Section 42 of the Internal Revenue Code) to encourage the construction and rehabilitation of rental housing for lower income households.

Tax credits offer a direct dollar-for-dollar federal income tax savings and benefit to owners of affordable rental housing developments (including acquisitions, rehabilitations, and new constructions) who are willing to set-aside a minimum portion of the development's units for households earning 60 percent or less of the gross area median income. The amount of the tax credit available to an owner is calculated based on the cost of the development and the number of low-income units. The amount awarded to any given owner cannot exceed the amount needed to make the development financially feasible. The dollar-for-dollar tax benefit of a development may be applied to an owner's tax liability each year for 10 years.

## 1.2 THE VALUE OF THE HOUSING CREDIT

The value of the housing credit to an owner of a tax credit development is determined by a number of factors, including but not limited to how much cost is involved in the construction of the development, the percentage of units/buildings set-aside for low-income use and an established credit percentage.

The housing tax credit serves as a direct benefit to the owner of the tax credit building/development. Owners who receive an allocation of tax credits often raise capital for their developments by selling 'interest' in the development through a process called syndication to limited partner investors, who are also considered owners of the development from a limited perspective.<sup>1</sup> The developer/owner (i.e., general partner) is the primary player in the day-to-day operation of the development. The tax benefits, including profits and losses, flow to the partners in proportion to their ownership interest in the limited partnership.

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<sup>1</sup> A limited partner investor generally owns 99 to 99.9% of the partnership interest in the development without actually acquiring management control.

## A. Applicable Fraction

The value of the housing credit to a development owner is directly tied to the building's applicable fraction. A building's applicable fraction, or required percentage of qualified units, is generally targeted at the time of an owner's application for tax credits, formally assigned at the time of final credit allocation (the issuance of IRS form 8609 *The Low-Income Housing Allocation Certification*) and validated at the close of the first year of the credit period.<sup>2</sup> This validation of the applicable fraction marks the maximum units/percentage set-aside for low-income use for the building and must be acquired and/or maintained each year upon placing a building in service.<sup>3</sup>

The applicable fraction is calculated based on the lesser of the:

1. The number of low-income units (numerator) divided by the actual number of units in the building (denominator); or
2. The total square footage of low-income units (numerator) divided by the total square footage of the building, less any staff units, if applicable.

*NOTE: When determining which units to include as low-income in the numerator and which to include in the denominator, EMPTY units (i.e., units never qualified) should NOT be included in the numerator; they should only be counted in the denominator. Include in the numerator any units reported as "vacant" at the end of the first year IF these units were occupied for at least 30 days AND were previously occupied by a qualified household.*

## B. Eligible Basis

The value of the credit is also determined by the portion of the development's cost attributed to the construction and/or rehabilitation of the development, the eligible basis. For newly constructed developments, the eligible basis is the approved cost of construction at the end of the first year of the tax credit period (this allows developers to include in the eligible basis costs that are incurred after the building placed in service date). The eligible basis of substantially rehabbed developments is the sum of all rehabilitations cost aggregated over 24 months and approved cost of rehabilitation provided the development meet the minimum amount required by regulations. For developments acquired by acquisition, the eligible basis is the cost of acquiring the building/development. In all instances, the cost of land is excluded from the eligible basis.

### *Commercial Space*

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<sup>2</sup> Credit period is the ten-year period in which an owner of a tax credit development is eligible for the dollar-for-dollar tax benefit.

<sup>3</sup> Placed in Service date is generally the date the building is first ready for occupancy. It is not the date the unit was first leased to a qualifying resident.

The eligible basis of a building(s) cannot include any parts of the development used for commercial purposes. Residential rental property may qualify for the credit even though a portion of the building, in which the residential rental units are located, is used for a commercial use (i.e., commercial office space). No portion of the cost of such nonresidential rental property may be included in eligible basis.

#### *Common Area Space*

In accordance with Section 42 of the IRC, a common area space is defined as an area of a development that is used by all owners or tenants. Examples of common areas are the clubhouse, pool, hallways and stairs of an apartment building, the elevators in an office building, as well as an approved employee residential unit, provided said unit supports and/or is reserved for the benefit of all low-income rental units.

Residential rental property, for low-income housing credit purposes, includes residential rental units, facilities for use by the tenants, and other facilities reasonably required by the development. Under Treas. Reg. §1.103-8(b) (4), facilities that are functionally related and subordinate to residential rental developments are considered residential rental property. Treas. Reg. §1.103-8(b)(4)(iii) provides that facilities functionally related and subordinate to residential rental developments include facilities for use by the tenants, such as swimming pools and similar recreational facilities, parking areas, and other facilities reasonably required for the development (i.e., resident manager, maintenance personnel, or security officer units).<sup>4</sup>

Rev. Rul. 92-61 holds that the adjusted basis of a unit occupied by a full-time resident manager is included in the eligible basis of a qualified low-income building under IRC §42(d) (1), but the unit is excluded from the applicable fraction under IRC §42(c)(1)(B) for purposes of determining the building's Qualified Basis. The unit is considered a facility reasonably required for the benefit of the development and the resident manager and/or maintenance personnel are not required to be income qualified. ***(For more information on this topic, refer to Chapter 6.)***

The eligible basis is directly tied to the housing credits that can be claimed by an owner. To this regard, as defined in IRC §42(d)) any change in the eligible basis of any building in the development (determined at the end of the first credit year), must be reported to the Corporation and the IRS, as deemed applicable. *Note: The eligible basis of a development is considered to have changed/reduced when space that originally qualified as residential rental property changes character or space that was originally designated for use by qualified tenants is no longer available to them. Typical noncompliance may involve converting common areas to commercial property, or charging fees for facilities (such as a swimming pool), the cost of which were included in the eligible basis.*

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<sup>4</sup> IRS 8823 Guide, updated October 2009.

### C. Qualified Basis

The qualified basis of a building contributes to the value of the housing credit in that it is used to calculate the amount of the tax credit. The calculation of a development's qualified basis is obtained by multiplying the applicable fraction by the development's eligible basis. Likewise, it represents the number of units occupied by housing credit qualified households on the last day of the taxable year in which the development placed in service or on the last day of the following taxable year.

#### *First Year Credit Percentage*

A building's qualified basis is initially established at the end of the first year of the credit period, the year in which the owner first begins to claim the HTC. In order to determine the first year credit percentage (i.e., amount of credits allowed), an owner must use a modified percentage to reflect the average portion of units in the building that were occupied by low-income households. To calculate the modified percentage as of the end of each FULL MONTH of a building's in service year, add each monthly percentage together and divide by 12.

**Table 1: Determination of First Year Credit Percentage**

Month	Occupied	Total Units	Occupied by Total	Monthly AF
January	1	10	1/10	10%
February	3	10	3/10	30%
March	3	10	3/10	30%
April	4	10	4/10	40%
May	5	10	5/10	50%
June	7	10	7/10	70%
July	7	10	7/10	70%
August	7	10	7/10	70%
September	8	10	8/10	80%
October	9	10	9/10	90%
November	10	10	10/10	100%
December	10	10	10/10	100%
<b>TOTAL of Monthly Applicable Fraction:</b>				<b>740</b>
<b>TOTAL divided by 12:</b>				<b>61.67%</b>

**NOTE:** The tax credit amount allowed on this building for the first year would be 61.67% based on the lease-up schedule.

## 1.3 THE CREDIT ALLOCATION

Tax credits are allocated annually to each state by the federal government based on a per capita formula.<sup>5</sup> HTC's are then awarded to developments which best meet the state's housing needs. The criterion for development selection is defined within the State's Qualified Allocation Plan

<sup>5</sup> The per capita amount is determined by the latest official estimate of the state's population.

(QAP).<sup>6</sup> Analytical procedures are used to determine the amount of HTC's to be awarded in order to make the development financially feasible.

An allocation of tax credits can occur in one of two ways: annual credit authority allocation or a tax-exempt bond allocation.

### **A. Annual Credit Authority (ACA) Allocation**

Under the QAP, the Corporation allocates tax credits from its per capita annual credit authority (ACA). Each state housing finance agency (HFA) is granted an annual housing credit equivalent of \$2.35 per capita, effective 2016, with a minimum allocation of \$2,690,000. In any given calendar year, the aggregate tax credit amount available for allocation to qualified affordable housing developments in the state of Mississippi includes the state's ACA, plus any unused credit authority carried forward from the previous year and any credits available from the national pool.<sup>7</sup> This does not include credits that are available outside of the state cap for developments financed with tax-exempt revenue bonds subject to the state private activity bond allocation ceiling.

The allocable credit authority reflects the ceiling amount for assignment to all qualified developments in the state. Only the first year allocation amount is counted against the state's tax credit ceiling, although the owner is entitled to take the same annual credit amount nine additional times (assuming program compliance) during the credit period.

In the state of Mississippi, an owner proposing a HTC development meeting certain selection criteria are generally awarded credits, not to exceed twenty-five (25%) of the total credits reserved, or allocated in any one funding round.

Among the selection criterion that the state of Mississippi uses are:

- Development location
- Housing need characteristics
- Development characteristics
- Sponsor characteristics
- Location (Qualified Census Tract, participant in a concerted revitalization plan)
- Tenant populations with special housing needs
- Development utilization of the public housing waiting list in resident selection

An allocation of HTC's by way of an ACA is generally very competitive and contingent upon strict underwriting guidelines.

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<sup>6</sup> The Qualified Allocation Plan (QAP) outlines specific housing priorities for the state of Mississippi that are appropriate for local conditions.

<sup>7</sup> The national pool consist of a collection of unused and returned credits from each state's ACA that the IRS makes available to state housing credit agencies for additional credit allocation/authority, as applicable.

## **B. Tax-Exempt Bond Allocation**

Tax credits are also available non-competitively by way of a tax-exempt bond allocation.<sup>8</sup> Although a development financed with private activity tax-exempt bonds does not receive an allocation from the state's ACA, the development must be consistent with the Corporation's QAP plus other limitations for tax-exempt financing. Tax credits obtained through the use of tax-exempt bonds are not counted against the per capita state limit.

The Corporation monitors developments that received an allocation of credits by way of a tax-exempt bond allocation in accordance with the same procedures for ACA allocations.

## **1.4 BASIC PROGRAM REQUIREMENTS**

Once an allocation of housing credits has been made, recipients of the credit (i.e., owners) must adhere to four basic program requirements: low-income occupancy, restricted rents, minimum compliance period and resale restrictions.

### **A. Low-Income Occupancy**

As a condition to the housing credit, an owner of a tax credit development must agree to make a portion, a minimum set-aside, of units in the development available for occupancy by low-income families with incomes at or below 60% of the area median gross income (AMGI). This portion of units, which is generally selected by the owner at the time of application and as shown on IRS form 8609 *The Low-Income Housing Tax Credit Allocation Certification*, establishes the minimum low-income occupancy required by the development throughout the compliance and extended use periods.

### **B. Restricted Rents**

In addition to the income restrictions mandated by the HTC program, an owner must agree to keep the rents of tax credit units affordable to low-to-moderate income households. The maximum rent allowable under the HTC program is established based on the area median income, the development's minimum set-aside, an allowance for tenant-paid utilities and any mandatory charges.

### **C. Compliance Period**

Once an allocation of tax credits has been made and the development has been placed in service (PIS), an owner must comply with the program's minimum 15-year affordability period. Additionally, an owner receiving an allocation of credits in 1990 or a subsequent year must

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<sup>8</sup> A tax-exempt bond allocation is an allocation of credits to a development whereby more than 50% of the development's eligible basis is financed with private activity tax-exempt bonds.

execute an extended use agreement for the development that establishes, at a minimum, an additional 15 year affordability period.<sup>9</sup>

#### **D. Resale Requirements**

According to IRS regulations, an owner of a tax credit development desiring to sell his/her development may do so provided she/he sale the development to a buyer that agrees to maintain the low-income occupancy requirement of the development.

### **1.5 THE PRINCIPAL PLAYERS & RESPONSIBILITIES**

#### **A. Owners and Managers**

Owners and managers of tax credit developments are required to comply with the following requirements:

- Occupancy and rent restrictions
- Annual Reporting Obligations
- Provide safe, decent and affordable housing
- Pay monitoring & noncompliance fees, where applicable
- Keep abreast of program changes and revenue rulings
- Submit corrective action documentation in the event of noncompliance
- Comply with agency request for monitoring reviews

#### **B. Residents**

Occupants of a tax credit unit are responsible for providing information and documentation needed regarding the household's eligibility (i.e., income, assets, and full-time student status). Residents are expected to update household eligibility information at least once annually unless the development qualifies for an IRS Recertification Waiver.<sup>10</sup>

#### **C. The Corporation**

The Corporation is responsible for enforcing the rules and regulations of the HTC program by:

- Providing guidance and assistance to owners and managers on program requirements
- Monitoring developments for program compliance
- Reporting all applicable compliance violations to the IRS
- Collecting fees, where applicable

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<sup>9</sup> The low-income use affordability period of development's allocated credits post 1989 is generally 30 years. Affordable housing provided beyond this requirement is elected by the owner of the development by way of the development's Land Use Restriction Agreement (LURA). Thus, the actual period in which a development is required to provide affordable housing differs, per development, based on the owner's election and obligation to the HFA.

<sup>10</sup> See the Housing Economic and Recovery Act of 2008.

## **D. The Internal Revenue Service**

The Internal Revenue Service (IRS) performs the following activities:

- Provides the Corporation with guidance of tax credit requirements
- Process owner's tax returns and accompanying documentation claiming tax credits for the development; and
- Recapture the tax credits from owners who do not properly adhere to the requirements of the program.

## **1.6 KEY PROGRAM DOCUMENTS**

### **A. Section 42 of the IRC, IRS Revenue Notices and Rulings & Procedures**

Periodically, the IRS publishes notices and revenue rulings that specify additional requirements under the HTC program. Owners should familiarize themselves with all notices and rulings that relate to the operation of a HTC development.

### **B. Land Use Restriction Agreement**

All participants in the HTC program receiving an allocation of credits post 1989 are required to execute an extended use agreement, a deed restriction, extending the affordability period of the development for an additional 15 years beyond the initial compliance period. In signing the LURA, the owner agrees to the restrictions on the use of the development as set forth in the restrictive covenants.

### **C. State of Mississippi Qualified Allocation Plan**

The state of Mississippi's Qualified Allocation Plan (QAP) specifies how the Corporation will allocate tax credits for any given year based on governing rules and regulations, as well as any housing preferences and priorities. The QAP outlines the state's selection criteria and any other program requirements.

### **D. State of Mississippi Compliance Monitoring Plan**

The Compliance Monitoring Plan was designed to help owners of tax credit developments in the state of Mississippi meet their obligations that are outlined in the provisions of Section 42 of the IRC and of their respective LURAs. The Plan focuses on the responsibilities of owners once they are required to begin leasing tax credit units to low-income families.



# CHAPTER 2 - FEDERAL COMPLIANCE REQUIREMENTS

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## 2.1 OVERVIEW

Federally, in order for an owner to acquire and maintain his/her credit claiming rights, she/he must adhere to a number of program requirements, including low-income occupancy, restricted rents, and the eligibility criterion permitting the occupancy of a full-time student household. Additionally, an owner receiving an award of HTCs must adhere to all applicable IRS notices and rulings, as well as provisions of the development's extended use agreement.

## 2.2 LOW-INCOME OCCUPANCY

As a condition to the HTC award, an owner of a tax credit development must agree to make a portion, a minimum set-aside, of the units in the development available for occupancy by low-income families. This portion of units establishes the minimum low-income occupancy required of the development throughout the compliance and extended use periods. Once the minimum set-aside (MSA) election is made, the decision is irrevocable.

### A. Minimum Low-Income Occupancy Set-Aside

The most fundamental requirement of the HTC program is that pertaining to the MSA. The MSA represents the smallest percentage of restricted units required of a development at all times in order for an owner to claim and continue to claim the housing tax credit. As a participant in the HTC program, an owner must choose from one of the following federal MSA elections:

1. **20/50 Set-Aside** – An owner's election of a 20/50 set-aside indicates that she/he agrees to ensure that a minimum of 20 percent or more of the residential units in the building are both rent restricted and occupied by individuals whose gross household income is 50 percent or less of the area median gross income adjusted for family size;
2. **40/60 Set-Aside** - An owner's election of a 40/60 set-aside indicates that she/he agrees to ensure that a minimum of 40 percent or more of the residential units in the building are both rent restricted and occupied by individuals whose gross household income is 60 percent or less of the area median gross income adjusted for family size; or
3. **25/60 Set-Aside** - An owner's election of a 25/60 set-aside indicates that she/he agrees to ensure that a minimum of 25 percent or more of the residential units in the building are both

rent restricted and occupied by individuals whose gross household income is 60 percent or less of the area median gross income adjusted for family size.<sup>11</sup>

In addition to the noted, an owner, at his/her sole discretion, may elect to serve extremely low-income households by agreeing to reserve 15% of the low-income units in the development to households earning 40% or less of the AMGI.<sup>12</sup>

Once an owner reaches and maintains the required minimum set-aside,<sup>13</sup> she/he is eligible to claim the tax credit amount throughout the development's credit period.

### **Deep Rent Skewing Set-Aside**

Under IRC §142(d)(4)(B)10, an owner can elect to provide housing to households with incomes of 40% or less of the AMGI, referred to as a deep rent skewed development. With this election, an owner is required to restrict occupancy of 15 percent or more of the low-income units in the development to households whose income is 40 percent or less of the AMGI. This special set aside is an elective and must be met in addition to the federal MSA (i.e. 20/50, 40/60 and 25/60) requirement. **(See Chapter 6 of this Plan for more on this topic.)**

*NOTE: Each building is considered a separate development under IRC §42(g)(3)(D) unless, before the close of the first calendar year in the development period, each building part of a multiple-building development is/was identified as such by checking the "yes" box on line 8b of Form 8609 and attaching the statement described in the instructions for line 8b. The MSA documented on Form 8609, line 10c, must be the same for all buildings in a multiple-building development.*

## **B. Additional Low-Income Occupancy Requirements**

In addition to the federal minimum set-aside election required for participation in the HTC program, an owner of a tax credit development (at his/her sole discretion) may elect to provide additional units for occupancy by low-to-moderate income households. This election, which is noted at the time of the final tax credit application, determines the amount of tax credits for

<sup>11</sup> The 25/60 minimum set-aside election is only available to owners with developments located in New York City.

<sup>12</sup> See Section 142(d)(4)(B)

<sup>13</sup> If a development fails the first year minimum set-aside requirement at the close of the first taxable year of the credit period, the development is permanently ineligible for the tax credit and prohibited from ever claiming the HTC.

which a development may qualify. An owner has the right to claim tax credits up to the amount allocated by the State Allocating Agency provided she/he has set-aside the additional units for low-income households and the extended use agreement<sup>14</sup> reflects the increased occupancy percentage (i.e., applicable fraction). NOTE: An owner's election to provide additional low-income occupancy is not a federal requirement; however, if an owner makes this election, she/he must adhere to the requirements in order to claim the maximum amount of credits permissible under the allocation and to avoid state noncompliance.

***Below-Market HOME Loans and NAHASDA***

HTC development's with buildings placed in service prior to July 31, 2008 and participating in HUD's HOME Investment Partnership program or the Native American Housing Assistance and Self-Determination Act, NAHASDA, are required to lease 40% of the units in the building/development to households with incomes at or below 50% of AMGI. In support of the same, the Corporation will monitor HTC buildings/developments meeting the above requirements to ensure compliance with the 40/50 HOME occupancy requirement, as well as the federal HTC MSA requirement and additional state occupancy requirements.

***NOTE (1): The HOME occupancy requirement is treated as a separate set-aside from the HTC. Thus, failure to comply with this occupancy provision may result in a reduction of the applicable credit percentage for the development. The development may still qualify as a HTC development.***

***NOTE (2): For buildings placed in service after July 30, 2008, assistance under HOME and NAHASDA are not characterized as below market Federal loans and thus not subject to the 40/50 occupancy requirement for tax credit purposes.***<sup>15</sup>

## 2.3 RESTRICTED UNIT RENTS

According to IRC 42(g)(2)(C), a unit qualifies as tax credit eligible when the gross rent does not exceed 30 percent of the imputed income limitation applicable to such unit. Generally, the rent limit for a particular unit is determined by the number of bedrooms in the unit and the applicable income limit for the development as it relates to an owner's MSA election.

The other factors that may affect the maximum rent of a qualifying household includes tenant-paid utilities, mandatory charges, state specific requirements such as owner-based rental assistance and the deep rent skew restriction, if applicable.

## 2.4 SUITABLE FOR LOW-INCOME OCCUPANCY

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<sup>14</sup> The extended use period represents the additional years beyond the initial 15 compliance period of which a development is required to operate and provide affordable housing to low-to-moderate income families.

<sup>15</sup> Section 3002(b) of the Housing Assistance Tax Act of 2008

For purposes of computing the MSA, all low-income units must be physically maintained in a manner suitable for occupancy under IRC 42(l)(3)(b)(ii). In ensuring compliance with the development's physical condition standards, all low-income units must be deemed safe, decent and in good repair. *(See Chapter 7 of this Plan for a complete discussion of the physical inspections procedures and requirements.)*

## 2.5 EXTENDED LOW-INCOME HOUSING COMMITMENT

Section 42 of the IRC provides that no credit will be allowed with respect to any building for the taxable year unless an extended low-income housing commitment (as defined in Section 42(h)(6)(B)) is in effect as of the end of the taxable year.<sup>16</sup> Additionally, Section 42 provides that the term "extended low-income housing commitment" mean any agreement between the owner and the housing credit agency that requires that the applicable fraction for the building for each taxable year in the extended use period to not be less than the applicable fraction specified in the agreement. Section 42 prohibits certain other actions as described in sub-clauses (1) and (II) of Section 42(h)(6)(E)(ii).

## 2.6 SPECIAL OCCUPANCY RESTRICTIONS

In addition to the above noted basic program requirements, HTC development owners must adhere to various other special occupancy restrictions as it relates to the operation of the development. These restrictions are:

### A. Full-Time Student Household

A household comprised entirely of full-time students generally disqualifies the unit for tax credit purposes. A full-time student is defined by the Code as an individual who during each of five (5) calendar months during the calendar year in which the taxable year of the taxpayer begins, is a full-time student at an education organization.<sup>17</sup> Regulation further provides that the five calendar months need not be consecutive. The term "educational organization" includes elementary schools K-12, junior and senior high schools, colleges, universities, and technical, trade and mechanical schools. It does not include on job training. The only noted exemptions to this rule are students in pre-school and correspondence school.

A full-time student household can occupy a tax credit unit if the household meets and maintain compliance with at least one of the following IRS full-time student exceptions:

- The tenant(s) is(are) married and file (or entitled to file) a joint federal tax return;

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<sup>16</sup> Section 42(h)(6)(A) and Section 42(h)(6)(B)(i)

<sup>17</sup> An education organization is one which 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 out. Five calendar months need not be consecutive.

- The tenant(s) are receiving Title IV of the Social Security Act – Temporary Assistance for Needy Families (TANF);
- The household consist of a single-parent(s) with children of which the single parent is not a dependent of an outside third-party; yet the children are a dependent of at least one of the parents, either the mother or the father, whether or not the absent parent will reside in the unit;
- All adult tenants are enrolled in a job training program under the Job Training Partnership Act (JTPA) or a similar federal, state, or local program; or
- The tenant(s) was previously under the care and placement of the state agency responsible for administering a plan under Part B or E of Title IV (*i.e., a former foster care participant.*)<sup>18</sup> *NOTE: Previous care must have been within the twelve-year period immediately preceding the effective date of the full-time student eligibility determination for the HTC program.*

*Note: Certain full-time student requirements no longer apply commencing the first year of the development's extended use period. For more information on this topic, refer to Chapter 8.4.*

## B. Staff Units

Tax credit regulations allow certain units in a building awarded tax credits to be designated as a common area unit, a residential staff unit. A residential staff unit(s) designation is a unit that has been set-aside, usually in the development's final tax credit application, for occupancy by a full-time resident manager, maintenance person, and/or security officer and considered available for the general public.<sup>19</sup> To the same, a *common area unit is a unit used for residential purposes, and does not include any unit(s) or space used as an office, storage, model apartment or any other non-residential purpose and is considered functionally necessary to the development.*

### **Common Area Staff Unit**

In accordance with Revenue Ruling 92-61 and Revenue Ruling 2004-82, the guiding rules regarding employee units, a residential staff unit is considered a facility reasonably required **for the benefit of the development**. The adjusted basis of a unit occupied by a full-time resident staff is included in the eligible basis of a qualified low-income building under Section 42(d)(1), but the unit is excluded from the applicable fraction under Section 42(c)(1)(B) for purposes of determining the building's qualified basis.

A staff member residing in a residential unit that was identified as a common area staff unit in the development's final tax credit application (or subsequently approved by the Corporation as a common area staff unit) is not required to meet tax credit eligibility requirements in order for the unit to be eligible under the HTC program. However, to ensure compliance with the HTC requirements, a staff member(s) occupying a common area staff unit must at the time of hire,

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<sup>18</sup> *Foster care means substitute care for children placed away from parents or guardians and for whom the state agency has placement and care responsibility, including placement in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care facilities, etc.*

<sup>19</sup> *Full-time is defined as whatever is reasonably required at a particular development. It does not necessarily represent the number of hours worked onsite. Persons who are employed less than FT and persons who are employed at multiple projects at the development are not eligible to reside in a "common area" staff unit.*

status change or duty reassignment complete a *Common Area Staff Unit Status Affidavit* to be maintained in the development file(s) and made available to the Corporation for review upon request.

#### ***Non-Common Area Staff Unit***

A staff member residing in a residential rental unit that was not identified as a common area staff unit in the development's final tax credit application must meet all tax credit eligibility requirements in order for the unit to be eligible under the HTC program.

#### ***Procedures for Agency Approval of Common Area Staff Unit***

Under special circumstances, a residential rental unit may be converted to a common area staff unit after submission of the final tax credit application. In this instance, the development owner must submit to the Corporation for approval a *Staff Unit Request* form (and support documentation) outlining the reason for a common area staff unit. The Corporation will review the unit(s) configuration and determine whether or not approval can be granted.

Requests to change the designation may be made at any time during the year, however, only one change in the common unit(s) designation will be considered during any six (6) month period for any one development. ***(For more information on this topic refer to Chapter 5.4(C)(3) of this Plan.)***

*NOTE: If an owner opts to designate a common area unit as a low-income residential rental unit, a non-refundable processing fee of \$500.00 per request will be assessed. Later conversion of a common area staff unit into a residential rental unit will not change the eligible basis.*

### **C. Housing for the Elderly**

Tax credit regulations also allow for housing specifically designated for elderly residents, individuals 55 years of age and older.<sup>20</sup> In order for a development to qualify as a housing community designed especially for the elderly, the development must adhere to the following:

- 100% of the units are reserved and/or occupied by elderly residents age 55 or older or by persons meeting Rural Housing Service (RHS) or the Department of Housing and Urban Development's (HUDs) definition of elderly;<sup>21</sup>
- Develop policies and procedures which demonstrate intent to provide housing to the fifty-five (55) or older age group, or for persons meeting the RHS or HUD definition of elderly;

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<sup>20</sup>The Fair Housing Act exempts certain types of elderly housing developments from the law of discrimination against families with children. Housing designated specifically for the elderly is considered one of the exemptions.

<sup>21</sup> RHS and HUD's definition of elderly is where the tenant or co-tenant is 62 years of age or older or handicapped/disabled so long as they are members of the elderly household.

- Significant facilities and services specifically designated to meet the physical or social needs of older persons or for persons meeting RHS or HUD definition of elderly. ***(Refer to Section 3.3B of this Plan for more on this topic.)***

#### **D. Transitional Housing for the Elderly (Assisted Living Facilities)**

Assisted living facilities, facilities designated to help individuals who are unable to live safely on their own, are also eligible for a housing tax credit allocation.<sup>22</sup> These facilities are designed to provide assistance with daily living such as bathing, dressing, laundry, housekeeping, meals, and assistance with medication. They are not to be used as an alternative to skilled nursing facilities (i.e., hospitals, nursing homes, sanitariums, life care facilities, intermediate care facilities, etc.) but rather to provide a level of long-term care suitable for many seniors and people with disabilities.

Section 42 of the IRC allows tax credits on assisted living facilities if the facility is a residential rental property available to the general public.<sup>23</sup> Likewise, an assisted living facility may qualify for tax credits if non-housing related services are offered to residents AND the amount of skilled nursing, medical or psychiatric care is limited.

#### **E. Small Owner-Occupied Buildings**

An existing building with four rental units or less and with one additional unit occupied by the owner or a related person can qualify for tax credits if the building is rehabilitated under a development plan sponsored by a qualified nonprofit organization or by a state or local government agency. In this instance, more than 80 percent of the building can be eligible for tax credits.

#### **F. The Next Available Unit Rule**

In accordance with Section 42(g)(2)(D)(i), all households determined to be income eligible at move-in shall continue to be considered income eligible at recertification in the event the gross household income exceeds program limits. In exchange for this protection, the IRS requires an owner of a tax credit development to lease the next available unit of smaller or comparable size to an income eligible household when a previously qualified household's income exceeds current program limits by 140%. ***(For more information on this topic, refer to Section 4.3B of this Plan.)***

#### **G. The Unit Vacancy Rule**

According to Section 1.42-5 of Title 26 CFR Treasury Department Regulation, "if a low-income unit in the development became vacant during the year, reasonable attempts must be made to re-rent the unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any unit in the development were or will be rented to tenants not having a

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<sup>22</sup> IRC Reg. Ruling 98-47 Tax-exempt Ruling on Assisted Living

<sup>23</sup> A building unit or development is considered available for general public use when the development is available for occupancy by the general public in conformance with Treasury Regulation 1.42-9.



qualifying income.” In complying with this rule, an owner must, upon the vacancy of a low-income household, rent the vacated low-income unit or any other unit of “comparable or smaller size” that may come available to an income-qualified household.

## 2.7 PROGRAM PROHIBITIONS

Under the HTC program, certain key occupancy prohibitions occur as it relates to potential and existing residents. In order for an owner to maintain his/her credit claiming abilities, it is essential that she/he adhere to the following prohibitions:

### A. Discrimination against Section 8 Households

Effective August 10, 1993, by way of the Omnibus Budget Reconciliation Act, Congress prohibits an owner of a housing tax credit development from refusing to lease a unit in the development to an applicant solely because the applicant holds a voucher or certificate issued under Section 8 of the United States Housing Act of 1937.<sup>24</sup> In support of the same, an owner must execute a LURA inclusive of this prohibition. ***(For more information on this topic, refer to Chapter 5 of this Plan.)***

### B. Unlawful Evictions

Pursuant to Revenue Ruling 2004-82 ***(See Regulation #2)***, during the compliance and extended use periods, an owner may only evict residents occupying qualifying tax credit units for good cause. Generally, good cause means the serious or repeated violation of material terms of the lease with respect to federal public housing at 24 CFR Section 966.4(1)(2) or the failure or refusal of a household to vacate the premises when there is a defective condition or damage that is so substantial that it is economically infeasible to remedy the defect with the household in possession.

Non-renewal of a lease by the owner without good cause is also prohibited. All termination and non-renewal notices served upon residents must include a list of the specific violations(s) constituting “good cause” so as to allow the Corporation to monitor an owner’s compliance with this requirement.

### C. General Public Use

A HTC residential rental unit must be made available to the general public at all times. A residential unit is considered for use by the general public if the unit is rented in a manner consistent with housing policy governing discrimination and the requirements of Treasury Regulation 1.42-9. The general public use rules are violated any time the general public is denied access to a HTC building/development. If a unit is deemed not available to the general public, the unit is not considered a qualified low-income unit and is thus not eligible for the HTC.

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<sup>24</sup> See Section 42(h)(6)(B)(iv) of the IRC.



Additionally, in order for a unit to be considered available to the general public, reasonable attempts<sup>25</sup> must be made to rent vacant units.

#### D. Short-Term Occupancy

HTC units must be rented or made available for rent on a non-transient basis. Generally, a unit is considered occupied on a non-transient basis if the initial lease term under the HTC program is for six (6) months or longer. The only exception to this rule is for Single-Room Occupancy (SRO) units that may be rented on a month-to-month basis.<sup>26</sup> A lease can be renewed on a month-to-month basis, but only after an initial lease term of a full six (6) months has expired.

#### E. Certain Mandatory Charges

According to the IRS, a tax credit unit is considered residential rental property notwithstanding the fact that certain services (other than housing) are provided. The IRS cautions, however, that any charges to a low-income household for services that are not optional generally must be included in the gross rent calculation of the household.<sup>27</sup>

*NOTE: If tenant facilities (e.g., parking, garages, swimming pools, etc.) were included in the eligible basis, they must be made available to all tenants on a comparable basis and a separate fee must not be charged for use.*

## 2.8 Violence Against Women Act (VAWA)

The Violence Against Women Act of 2013 (VAWA) continues many of the housing protections that had been provided by the Violence Against Women Act of 2005 and further expands these safeguards in several crucial ways.

- VAWA prohibits the denial of housing or rental assistance strictly based on the fact that the applicant is/has been a victim of domestic violence, dating violence, sexual assault, or stalking.
- VAWA continues to bar eviction and lease termination due to a tenant's status as a survivor and requires landlords to maintain survivor-tenant confidentiality.

<sup>25</sup> A reasonable attempt is defined as "such measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent person under the particular circumstances; not measured by any absolute standard, but depending upon the relative facts of the special case." *Black's Law Dictionary*

<sup>26</sup> A single room occupancy unit is a unit with separate living areas and shared bathroom or cooking facilities or contains one facility but not both and generally provided as transitional housing for the homeless as allowed under Section 42(i)(3)(B)(iii) and (iv) of the IRC.

<sup>27</sup> A service is considered OPTIONAL when the service is not a condition of occupancy and there is a reasonable alternative. See IRS 8823 Guide and Treasury Regulation 1.42-11.

- VAWA continues to allow lease bi-furcation so a lessee who engages in criminal acts of physical violence against a co-lessee or others in the household may be evicted or removed from the lease without evicting or removing the victim(s). It also gives a victim a reasonable time period to establish eligibility or find new housing if necessary.
- VAWA requires landlords to establish a transfer plan if the victim reasonably believes that they are threatened with imminent harm if they remain in the same unit.
- VAWA requires that landlords notify every tenant of their rights at time of application, at time of entry to the project and at time of eviction or termination of a lease.
- VAWA requires a victim to complete a certification form that a) states the applicant or tenant is/was a victim of domestic violence, dating violence, sexual assault or stalking and b) states that the incident meets the applicable definition of such incident under subsection 5.2003 and c) must include the name of the perpetrator of the offense.
- VAWA does allow a landlord to evict a victim if that person has engaged in criminal activity other than the domestic violence, dating violence, sexual assault or stalking that has been perpetrated upon them.

Although VAWA applies to HTC properties, specific language was not included in Section 42 of the Internal Revenue Code. Mississippi Home Corporation does not specifically monitor for VAWA. However, owners should keep in mind that domestic violence survivors who are denied housing or evicted based on violence in their homes may have case for discrimination under the Fair Housing Act. Findings of violations of the Fair Housing Act are reportable instance of noncompliance under HTC.

## 2.9 ADMINISTRATIVE & REPORTING REQUIREMENTS

In exchange for the dollar-for-dollar HTC, an owner, throughout the development's compliance and extended use periods, is required to adhere to certain administrative and reporting requirements. An owner's adherence to these requirements affords the IRS the ability to track an owner's compliance with program rules and regulations.

### A. Owner Reporting

In accordance with Section 1.42-5(c)(1), an owner must annually certify to the Corporation as to his/her continuing compliance with all program requirements. At minimum, an owner's certification is to include an update on the following:

- The elected minimum set-aside requirement;
- A household eligibility requirement;
- Rent restrictions;
- General public use provision and tenancy;
- Vacant unit and next available unit provisions;
- Next available unit rule, if applicable;

- Program prohibitions;
- Special occupancy provisions;
- State and local building code inspection requirements; and
- Non-discriminatory practices

## **B. Administrative Monitoring Reviews**

State HFA's are responsible for monitoring HTC developments for compliance with requirements of the Code. In doing so, the Corporation periodically performs certain administrative monitoring reviews (i.e., desk audits, onsite file audits, physical condition inspections, etc.). At minimum, these reviews will include an inspection of at least 20 percent of the low-income units and of the income certifications and documentation at least once every three years.

Additionally, in conjunction with the agency monitoring oversight, the code allows state housing finance agencies (HFAs) to collect monitoring fees to be paid upfront or on an annual basis, as determined by the governing HFA to help cover the cost of monitoring.

## **C. Record-Keeping**

A HTC owner must maintain all development records documenting compliance with program requirements. At a minimum, eligibility documentation must be maintained throughout the compliance period as well as six years after the tax filing dates for the last year of the compliance period (21 years).<sup>28</sup>

It is recommended that an owner establish a long-term method of retaining critical program initial eligibility documentation. Long-term retention of development records may be stored in a method other than paper format (i.e., scanned, microfilm, etc.). The IRS cautions, however, that the files be saved in a method easily retrievable in the future if ever needed.

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<sup>28</sup> First year records are critically important as they prove an owner's compliance with the development's initial MSA requirements (i.e., the development's first year eligible basis, qualified basis and applicable fractions).

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# CHAPTER 3 - STATE COMPLIANCE REQUIREMENTS

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## 3.1 OVERVIEW

State housing credit agencies are charged with the responsibility of monitoring for compliance the rules and regulations of the HTC program. With this responsibility, state credit agencies must ensure all applicable rules and regulations are carried out in accordance with federal guidelines and/or governing documents. Additionally, state monitoring agencies may adopt requirements that address certain state housing needs and priorities. These requirements are outlined in this chapter in accordance with the state's Qualified Allocation Plan (QAP).<sup>29</sup>

## 3.2 STATE MANDATED COMPLIANCE REQUIREMENTS

In the state of Mississippi, some requirements of the HTC program are mandated of all program participants. These state-mandated requirements generally deal with preserving the long-term affordability, the health and safety, and the financial health of the development.

### A. Extended Affordability Period

An extended affordability period of at least 15 years is required of all developments awarded an allocation of credits post 1989. This extended affordability period, which commences after a development's initial 15-year compliance period and as mandated by way of Section 42, serves as an owner's commitment to maintain affordable housing for a specified period of years. Such a commitment also prohibits an owner from terminating the extended affordability period.

Generally, an owner determines the extended affordability period of his/her tax credit development in the final tax credit application and documents it in the development's Land Use Restriction Agreement (LURA).

### B. Reserve Requirements

Additionally, upon the issuance of a tax credit allocation, the Corporation requires an owner to establish certain reserve accounts (i.e., replacement and operating) to which periodic contributions are required. At the end of the first year of the credit period, and on an annual basis

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<sup>29</sup> The QAP, or Qualified Allocation Plan, details the selection criteria and application requirements for housing tax credits and tax-exempt bonds for a particular state. It lists all deadlines, application fees, restrictions, standards, and requirements.

thereafter, an owner must show evidence that an operating reserve account and a replacement reserve account have been established and maintained (i.e., funded) in accordance with the minimum (per unit) contribution requirement as outlined in the governing QAP for the development. An owner's failure to properly fund the reserve account(s) is considered a major state noncompliance event.

#### **Replacement Reserves**

Replacement reserves are monetary contributions used for capital improvements and system replacements. The cost of these capital improvements and system replacements should exceed \$5,000 for developments with 24 units or less and exceed \$10,000 for developments above 24 units. Replacement reserve requirements increase at a rate of four percent (4%) per year.<sup>30</sup> Usage of replacement reserves for expenditures other than capital improvements and/or system replacements is strongly prohibited. Generally, funding of the replacement reserve account commences on the date a building/development places in service (PIS); however, depending on when the permanent financing closed on the development, this date may differ.

#### **Operating Reserves**

Operating Reserves are funds set aside, generally on an annual basis, to be used to offset possible operating losses due to unexpectedly low rent collection or unusually high operating and maintenance costs. Operating reserves must be six months of the development's operating expenses. Calculation of operating reserves includes replacement reserves.

*\*Both the Replacement and Operating reserve accounts must be maintained in a FDIC-insured financial institution.*

### **C. American Recovery and Reinvestment Act Compliance**

On February 17, 2009, the American Recovery and Reinvestment Act (ARRA) became law. This economic and stimulus plan was created to help address the declining tax credit equity in the marketplace. In its final version, ARRA included several appropriations for the HTC program. The new law provides gap funding to help stalled housing tax credit projects (Tax Credit Assistance Program) and allows allocating agencies to exchange a portion of its ACA for credit exchange grants (Section 1602 Exchange Program).

An owner of a HTC development receiving a cash grant or loan under the Section 1602 tax credit exchange program, or the Tax Credit Assistance Program (TCAP) must still meet the eligibility and compliance requirements (i.e., compliance with health and safety standards, income and rent restrictions, full-time student qualifications, etc.) of the HTC program at a minimum of 15 years. An owner's failure to adhere to program requirements constitutes a major noncompliance event subject to recapture, penalties and interest or, in the case of the Section 1602 Exchange Program,

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<sup>30</sup> For the 1999 allocations, the replacement reserves are to increase at a rate of three (3%) per year.

recapture, penalties, and interest in the full amount of the 1602 award minus 6.67 percent of each full year of the building's 15-year compliance period where a Section 1602 recapture event has not occurred.

#### TCAP

The Corporation has been charged with ensuring that developments that have received funds from the TCAP Program (a federal housing grant program administered by the Department of Housing and Urban Development) are in compliance with not only Section 42 rules but Recovery Act guidelines. To the same, below is a list of additional compliance monitoring requirements covered by the Recovery Act:

1. Developments are required to have a current marketing plan and Leasing Procedure Manual to ensure that the development is marketed accordingly and to ensure that any vacancies will be filled with no delays.
2. Documentation evidencing that a preventative maintenance plan or system is in place and utilized, including annually providing information on a yearly basis to ensure that the development has energy efficiency and utility cost controls in place.
3. Inspection report(s) to be maintained on file to ensure compliance with local housing code and any and all other related codes in place.
4. Copies of any audit reports performed by any third-party sources. Said reports should be submitted to the Corporation within 14-days of receipt.
5. The Corporation is required annually to conduct a visual inspection in addition to the 3-year on-site inspection it conducts to fulfill requirements of Section 42 of the Internal Revenue Code.

The visual inspection will address these major areas: the site, building exterior, the building systems, the dwelling units, if necessary, the common areas, and health and safety considerations.

***NOTE: Because of the unique nature of some of the provisions that cross agencies lines (HUD and Treasury), further guidance may be forthcoming on how tax credit developments that receive funding under these programs will be monitored. The Corporation reserves the right to modify this provision of the Plan as any new compliance monitoring requirements arises associated with the same.***

### 3.3 OWNER- ELECTED OBLIGATIONS

For many developments, the owner has further elected to provide certain other housing enhancements (i.e., deeper income targeting, non-profit participation, renting to residents included on public waiting lists, or provide owner rental subsidy, etc.). These housing

enhancements, which generally come by way of state identified selection criteria,<sup>31</sup> must be maintained and well documented in the corresponding development files in accordance with the applicable QAP. The selection criteria associated with a development is based on the year of the QAP and the development's final HTC Application. (See Table 3 for a listing of the Point Selection Criteria for the state of Mississippi.)

## A. Additional Occupancy Restrictions

Although Section 42 requires an owner to elect a minimum occupancy percentage of which affordable rental units will be provided, an owner may also make a commitment to target more households than required or households at lower income levels than required by federal regulations.

### 1. *Additional Low-Income Occupancy*

An owner of a HTC development may also make a commitment to serve more families than required by the IRS. Generally, this higher than required occupancy percentage occurs because of the difficulty found in most markets of mixing affordable income and market rate tenants. Another reason is the increase in the percentage of tax credits eligible to be utilized. The percentage of affordable units to total number of units is equal to the percentage of tax credits available for use in that period.

Once an owner elects to serve more families than generally required, this election becomes the targeted low-income occupancy for the development throughout the compliance period. Compliance monitoring is conducted in accordance with the same.

### 2. *Deeper Income Targeting*

An owner may also elect to serve households with gross annual incomes that are more restrictive than the federal minimum set aside. This restriction, commonly referred to by the Corporation as 'deeper targeting,' may apply to all or part of the affordable housing units.

Deeper income targeted units, which serve a certain percentage of families at 50% (or 30%<sup>32</sup>) or less of the AMGI, are considered 'floating' units whereby an owner is allowed to lease any HTC unit to a household meeting the deeper income targeting requirements.<sup>33</sup>

Due to an owner's obligation to the Corporation to serve a certain number of very low-income families, regular monitoring of a household's gross annual income is essential. As such, the

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<sup>31</sup> Selection criterion identifies state specific housing needs and priorities.

<sup>32</sup> 30% of AMGI is a straight-line calculation of the 50% AMGI and not that of the 30% AMGI published in the MTSP limits by HUD.

<sup>33</sup> At the time of allocation, an owner is required to provide a list of fixed units anticipated to be reserved for households meeting the deeper income targeting requirements. This requirement was only to evidence to the Corporation's Allocation Division an owner's acknowledgement of his/her requirement. An owner is not required to fix deeper income targeted units.



gross annual income of a household designated as meeting the ‘deeper income targeting’ requirement must always comply with the lower AMGI occupancy restriction, with an allowance for a slight income increase before replacement of the unit is required. For units restricted at 50% of AMGI, at recertification, the household’s income may go up to 60% and for units restricted at 30% of AMGI, the income may raise to 40% of AMGI. Additionally, the rent of a deeper income targeted household must always be restricted to 50% (or 30%) of AMGI.

Generally, deeper income targeted occupancy requirements are outlined in a development’s LURA. ***(For more information on this topic, refer to Chapter 4.3(B)(1) of this Plan.)***

### 3. *Mixed- Income Developments*

An owner may elect to serve households with gross annual incomes that are less restrictive. An owner may select to set aside a minimum percentage of its units for tenants with incomes above 60% of the AMGI. A development with such an election is commonly referred to by the Corporation as a “mixed- income development”. Below is a list of record-keeping requirements specific to this election:

1. Depending on the applicable QAP for the development, the development may not have imposed income maximum limits; however, the election does create an income minimum for households designated above 60% of AMGI. As a result, designated households will need to have income certification and support documentation (i.e. income verification) maintained in tenant files.
2. As rents for the household is tied to the appropriate income maximum limit, if applicable, utility allowance should be utilized in determining the appropriate rents for the units.
3. As this election is a state-specific restriction on the income and rents rather than federally regulated low-income units, certain requirements tied to low-income units such as recertification and student status do not apply to households designated in this election.

### 4. *Special Needs Set Aside*

An owner may elect to set aside a minimum number of units for individuals with special needs (i.e. elderly, persons with disabilities, veterans, etc.). For all set asides, an owner must maintain the minimum number of units obliged by the corresponding tax credit application and QAP.

#### a. *Housing for Persons with Disabilities*

Housing for Persons with Disabilities is defined as a household that includes one or more persons that have mental or physical disability or co-occurring disability. Owners must take care not to violate federal rules prohibiting discrimination against persons because

of a disability. Owners must notify all applicants that certain units are set aside for persons with disabilities and ask every applicant whether s/he claims disabled status for the purpose of meeting the set-aside. An owner may satisfy this requirement with the *Demographic Profile Reporting* form.

If the applicant claims disabled status, written documentation in the form of the *Disability Verification form* from a medical professional must be obtained. If the applicant receives Social Security, Supplemental Security Income or other benefit as a result of a disability, s/he may submit the benefit letter as verification of disabled status. The benefit letter must clearly state that the individual is disabled. Written verification must be kept in the resident's file. Please note that staff should never inquire about the nature or severity of the disability.

Upon the vacancy of the original household or of the qualifying disabled person(s), to maintain compliance, owners must follow procedures for the 30-day good faith efforts marketing (see Section 3.3A(4)(e)).

b. Housing for Veterans

Housing for Veterans is defined as a household that includes one or more persons who served in the military and was discharged for any reason other than dishonorable. The discharge status may be documented using the long version of form DD214. Written documentation should be maintained in the resident's file. Upon the vacancy of the original household or of the qualifying veteran(s), to maintain compliance, owners must follow procedures for the 30-day good faith efforts marketing (see Section 3.3A(4)(e)).

c. Housing for the Elderly

An owner of a tax credit development may develop an affordable housing community specifically for the elderly. In doing so, the development must qualify as one of two elderly housing types: 55 and Older Elderly Housing or 62 and Older Elderly Housing.

**55 and Older Elderly Housing**

A 55 and older elderly tax credit housing community is one in which at least 80 percent of the units in the development are occupied by households whereby one resident is at least 55 years of age or older. NOTE: Developments awarded tax credits under the point selection criterion for elderly housing must have at least one resident 55 years of age or older in 100% of the low-income units.

**62 and Older Elderly Housing**

A 62 and older elderly tax credit housing community is one in which all units in the development are occupied by households whereby all residents are at least 62 years of age or older.

*Services/Facilities for the Elderly*

In addition to age requirement, dependent upon the year of allocation, multifamily developments that set-aside 100% of its units for the elderly population must also provide some or all of the following services or facilities listed below:

- Congregate dining facilities
- Social and recreational programs
- Emergency or preventative health care programs
- Information and counseling
- Recreational activities
- Homemaker services
- Outside maintenance and referral services
- Transportation to facilitate access to social services
- An accessible physical environment
- Emergency pull cords/call button in each unit.

d. Housing for Persons Targeted by Mississippi Affirmative Olmstead Initiative (MAOI)

Mississippi Olmstead Initiative's target population is limited to individuals diagnosed with serious mental illness and meeting one or more of the following criteria will be assisted in the order of the following priority:

Priority 1: Individuals being discharged from a State psychiatric hospital after a stay of more than ninety (90) days; or, nursing facility, or intermediate care facility for individuals with intellectual disabilities after a stay of more than ninety (90) days; or

Priority 2: Individuals who have been discharged from a State psychiatric hospital within the last two (2) years and;

- a) Had multiple hospital visits in the last year due to mental illness; or
- b) Are known to the mental health or state housing agency to have been arrested or incarcerated in the last year due to conduct related to mental illness; or
- c) Are known to the mental health or state housing agency to have been homeless for one (1) full year or have had four (4) or more episodes of homelessness in the last three (3) years.

Priority 3: Individuals who lack a fixed, regular, and adequate nighttime residence and includes a subset for an individual who is exiting an institution where he or she resided for ninety (90) days or less and who resides in an emergency shelter or a place not meant for human habitation immediately before entering that institution.

Owner must agree to accept referrals from the Mississippi Olmstead Initiative referral network and execute memorandum of understanding between the owner, property

manager, and the Community Mental Health Center serving the area under the MAOI for the period of the targeting agreement. Targeted households must have income of 30% or less of the area median income.

e. Marketing and Good Faith Efforts

Upon completion of initial lease-up, the development must maintain the minimum number of units to meet each set-aside. Upon vacancy/disqualification of a special-needs household, the development must actively market any vacant unit first to the targeted special-needs population first for 30 days. Upon vacancy of the special-needs unit, owners must notify the applicable public housing authority in the area of the available unit for special needs. Owners must notify the general public via general circulation advertisements (i.e. newspapers, television, radio or internet). Marketing efforts must be documented and ready for review upon request. A waiting list should also be maintained.

The 30-day period begins when the vacant unit is ready for occupancy or upon determination that the qualifying person(s) has vacated the unit. After 30 days of marketing, if a qualified household is not obtained, the development may lease the unit to an otherwise qualified low-income household. Please note that each time a unit becomes vacant, the 30-day marketing applies until the special needs set-aside has been met.

## B. Assisted Living Facilities

In the state of Mississippi, in order to qualify as a tax credit eligible assisted living development, the development must adhere/provide/offer the following:

- Non-transient housing;
- Restricted income and rent;
- Basic Service Package which is typically offered for a fixed monthly fee;
- Optional Service Package<sup>34</sup> whereby the resident(s) is (are) allowed to choose to receive certain services (i.e., assistance with bathing, dressing, grooming, ambulation, eating, laundry, housekeeping, physical therapy, visiting the barber or stylist, shopping, and self-administered medication (including opening packaging, reading labels and checking dosages));
- Tenant selection process/criteria that ensure that residents are healthy enough to live independently; yet, requires minimal assistance with activities of daily living, nursing, medical or psychiatric services; *and*
- Individual sleeping quarter(s)/unit(s) that have a lockable door that is (are) separate and distinct from the other units in the unit/facility.

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<sup>34</sup> For a service to be considered optional, a resident(s) must be allowed to take occupancy under the Basic Care Package ONLY whereby rejecting the Optional Service Package. A resident can be required to prove OPTIONAL services being provided by an alternative service provider.

*NOTE: A resident(s) can be required to prove OPTIONAL services are being provided by an alternative service provider. Forced participation in an Optional Service Package makes the package non-optional as a condition of occupancy thus making the cost of the service 'rent'.*

### C. Extended Affordability Period

At an owner's election, the development may be subject to an additional low-income occupancy affordability period beyond the 30-year requirement of the IRS (i.e., a 15-year compliance period and a minimum 15-year extended use period). In such a case, an owner is expected to comply with all rules and regulations outlined in the development's LURA, final tax credit application and CMP for the entire affordability period. The actual term of the extended affordability period may vary from owner to owner.

### D. Tenant Community Services & Significant Amenities

A development owner may elect to offer/provide its residents community services and amenities not often seen in low-to-moderate income housing communities.<sup>35</sup>

#### 1. Community Services

An owner electing to provide tenant community services to low-to-moderate income families must provide community services (which must be designed to serve all residents) in at least two (2) unrelated areas.<sup>36</sup> Additionally, the owner must annually evidence compliance by maintaining/providing, at minimum, a community service log book of all services offered during the year, a roster detailing the name and unit number of all attendee(s) (including the date, time and topic of any class held), development records, and pictures. Advanced community services/classes provided by a third-party must utilize MHC's *Community Service Sign-in Sheet* which includes management and third-party certification.

Upon request, an owner must provide to the Corporation documentation of benchmark measurement tools (i.e., tenant feedback surveys, assessments, etc.) used to assess the overall success and/or benefit of the service(s) provided.

#### *Term of Commitment*

An owner must maintain development records documenting services to be provided as indicated in the final HTC application. Tenant community services must be provided for a minimum of ten (10) years beyond the later of the placed in service date of the last building in the development or the date of the first class/service. Additionally, an owner must

<sup>35</sup> Effective 2011, Community Services are considered a minimum requirement for consideration of a HTC Allocation award. Prior elections will be monitored in accordance with governing QAP and the guidelines herein. Effective 2016, in addition to the minimum community service requirements, owners may elect to conduct advanced community services/classes.

<sup>36</sup> Unrelated service area is defined as services that are un-connected in scope or structure. Additionally, services should be broad based and well designed to adequately address the various needs of the housing population.

maintain a formal executed contractual agreement between the applicant and service provider. The contract must detail the service to be provided and disclose the location and frequency of the services. At a minimum, at least two community service events must occur each quarter and each community service represented in the final HTC documents must be offered at least once per year at a time conducive to maximize tenant participation but may differ depending on obligations as outlined in the development's service contract, or governing QAP. Failure to provide documentation of such is considered a noncompliance event with the Corporation and will be noted as such.

*In the event of a "no show," the owner should mark "NO SHOW" on the roster and maintain a copy for personal records and agency review, if requested. After two consecutive "No Show" occurrences related to a given service, the owner must provide an alternate service more beneficial to the current housing population. Prior approval from the Corporation is required before changing a community service obligation.*

### **Notification**

Owners should notify its residents of all services at least two weeks in advance of the classes/services.

#### **COMMUNITY SERVICES:**

##### **Personal Development**

- I Computer Classes
- II GED Training
- III Job Training
- IV Foreign Language Courses

##### **Child Development**

- I After School Program
- II Child Care Services
- III Parenting Classes

##### **Counseling Programs**

- I Homebuyer Education
- II Credit Counseling
- III Personal Budget
- IV Mental Health Program

##### **Community Awareness Events/Activities**

- I Fire Safety
- II Health Fair/Health/Nutrition
- III Drug and Alcohol Prevention
- IV Crime Watch

## **2. Significant Amenities**

In accordance with the Corporation's QAP, an owner electing to provide significant amenities at his/her housing community must, at minimum, provide at least two (2) unrelated significant amenities not otherwise required by the entity providing financing or typically present in low-income rental housing. An owner electing to provide significant amenities to low-to-moderate income families who occupy a unit at his/her development must maintain/provide the amenities on a continuous basis throughout the compliance and extended use periods.

**SIGNIFICANT AMENITIES:**

- Furnished clubhouse or community building with designated tenant activities and meeting rooms;
- Full perimeter fencing (non-chain link) with controlled access gate (wrought iron or wood security fencing);
- Washer and dryer connections in individual units (must have capability to service side-by-side units or opposite wall units. Stackable units are acceptable for elderly and rehab developments.);
- Ceiling fans in living areas and bedrooms;
- Tenant Security (i.e., electronic locking system, individual alarm system, etc.);
- Fitness Center (minimum 5 pieces of equipment);
- Swimming Pool; Sprinkler water pad;
- Landscaped area including a gazebo with sitting area;
- Basketball, volleyball, or tennis courts;
- A playground area with a minimum of four (4) separate pieces of equipment;<sup>37</sup>
- Walking/ jogging /biking trail;
- Onsite business/ education center must have its own dedicated equipment separate and apart from the equipment used by the development manager's office staff;
- Laundry facilities;
- Washer and dryers provided in individual units;
- Tank less, heat pump, or solar water heaters;
- Two car garages with garage door openers (motorized) for single family units.

**E. Housing for Persons on Public Housing Waiting List**

An owner electing to offer housing to persons on the public housing (i.e., Section 8) waiting list must maintain documentation in the development file evidencing the occasional use of the public housing waiting list. At least annually, documentation from the local Public Housing Authority must be acquired evidencing occasional use.

**F. Owner-Based Rental Assistance**

Owner rental assistance (ORA) is a development-based rental subsidy given to a household by an owner. The intended purpose of the ORA is to serve as a direct rental benefit to the subsidized household's out-of-pocket rental amount thereby offsetting the household's net rent contribution.

In order to ensure the fair and equitable distribution of an owner's rental assistance/subsidy, an owner, when administering ORA payments, is required to adhere to the following criteria:

1. Maintain documentation proving assistance is/was being provided to a minimum of fifty-one percent (51%) of the development's units that are eligible under the tax credit program;

<sup>37</sup> The Corporation will accept commercial grade multi-function single structures that provide a minimum of four (4) separate play activities.

2. Provide rental assistance payments for a period not less than five (5) years commencing on the later of the development's placed in service date or the date of issuance of the first owner subsidy payment;<sup>38</sup>
3. Provide a minimum rental assistance per unit, per month whereby the tenant-paid rent is reduced by the amount of the ORA payment (Minimum assistance amount is defined the by final HTC application and/or applicable QAP.);
4. Establish and maintain throughout the rental assistance period comparable rental amounts for assisted and unassisted units of the same size, square footage and/or amenities. The contract rent for units of the same size, location, square footage and/or amenities must NOT differ between assisted or unassisted units. Failure to provide the required amount of assistance will result in the extension of the ORA term until all obliged assistance has been provided.
5. Establish a plan that identifies how households will be selected for housing assistance payments (including the maintenance of a waiting list) to be reviewed periodically by the Corporation. Additionally, included in this Plan, an owner, in determining eligibility as to who will receive owner's rental assistance, should give preference to first to elderly residents, then to single-parent households and lastly to household with no "tenant-based" assistance whose gross income is at or below 50% of the AMGI.

***(For more information on this topic, refer to Chapter 6.7(B)(2) of this Plan.)***

## **G. Single-Family Lease Purchase Developments**

Some owners elect to construct, certify, lease and manage small planned urban developments containing town homes, patio homes, and/or stand-alone single family units as affordable housing for persons who qualify under the requirements of Section 42, as amended, of the IRC. The goal of the program is to provide the opportunity for participating families to lease the units to be constructed and then purchase for ownership. Please refer to the Housing Tax Credit Single Family Lease Purchase Program summary available on MHC's website regarding the benefits and key components necessary to convert these developments from rental to owner-occupied.

In preparation for home ownership, at minimum, an owner of a single-family lease purchase development must conduct/provide the following:

- Significant amenities and supportive services *(to be carried out in accordance with the requirements as stated in Section 3.3E of this Chapter)*;
- Participant interviews, monitoring and evaluation;
- Periodic assessment of credit worthiness (i.e., annual financial reports);
- Home Maintenance Training;

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<sup>38</sup> An owner receiving an award of HTC's in 2001 and 2002 and electing to provide ORA must provide rental assistance payments for not less than 15 years commencing on the later of the development's PIS or the date of the first subsidy payment.



- Lease-purchase agreement;<sup>39</sup>and
- Lease-Purchase Orientation Manual to be provided to (reviewed with) prospective tenants prior to leasing. At minimum, the lease should address the following:
  - Lease Purchase Requirements, including the Lease-Purchase Agreement
  - Restrictive Covenant
  - Right of First Refusal Option
  - Purchase Provisions

Additionally, an owner is required to offer a community service activity on homebuyer education. In support of the same, at minimum, the homebuyer education community services must begin three (3) years prior to the expiration of the initial compliance period and include the following:

- Budget Counseling
- Credit Repair
- Foreclosure Prevention
- Home Maintenance Training
- Homeownership Readiness
- Computer skills to enhance homeownership readiness

#### *Ownership Transfer Plan*

An owner receiving an award of HTC's under this point selection criterion must have a Tenant Ownership Plan whereby acknowledging that each individual unit will maintain the affordability and compliance requirements contained in the tax credit LURA until the later of (i) the expiration of the initial 15-year compliance period or (ii) until the unit is sold to the tenant of such unit. Additionally, the plan must assure that all unsold units in the development will remain rental units subject to the restrictions set forth in the LURA until the end of the extended use period as defined therein. The plan must also describe how and when the right of first refusal may be exercised by the tenant and provide that a written purchase agreement will be used in each sale. Please refer to the Housing Tax Credit Homeownership Policy Guide available on MHC's website for additional information on the timing and terms of sales to residents and qualified low-income households at the end of the Initial Compliance Period.

Following a sale of a single-family unit to a tenant, the Corporation will provide a partial release of the governing tax credit LURA discharging the restrictions as to the unit that was conveyed. Once a unit is released from the governing LURA as provided in the preceding sentence, the restrictions of the tax credit regulatory agreement will no longer apply to the released unit and the Corporation's oversight and compliance monitoring obligation associated with the same will cease. Any resale, price or other restrictions applicable to a unit that the owner includes in the

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<sup>39</sup> A lease purchase agreement or lease addendum advising tenants of the available purchase option at the end of the fifteen (15) year lease period must be provided to qualifying residents at the time of initial occupancy and reiterated periodically (preferably once annually).

tenant ownership plan relating to the period following the initial sale of a unit to a tenant and release of the LURA will not be monitored or enforced by the Corporation. The Corporation will not release the LURA upon the conveyance of the development or units in the development to parties or entities, including entities eligible to receive right of first refusal pursuant to Section 42(i)(7), other than the tenants of units in the development. *Note: Upon request, an owner must furnish to the Corporation documentation evidencing compliance with this selection criterion.*

## H. Non-Profit Participation

A development owner electing to provide housing in conjunction with a qualified non-profit organization<sup>40</sup> must ensure the non-profit organization materially participates in the development throughout the initial 15-year compliance period.<sup>41</sup>

In order to materially participate, the qualified nonprofit must be engaged in the activities of the development on a regular, continuous, and substantial basis. An example of material participation is if a non-profit Executive Director travels onsite at the time of an agency visit and is instrumental in the correction of any cited noncompliance.

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<sup>40</sup> A qualified non-profit organization may include corporate subsidiaries of nonprofit organizations as long as one or more nonprofits owns 100 percent of the stock of the corporation, but do not include nonprofits that are affiliated with or controlled by a for profit organization.

<sup>41</sup> Material participation of a non-profit must be involved to the intent noted in Section 469(h) of the IRC.

Table 2: State of Mississippi Point Selection Criteria

Criteria	00	01-02	03	04-06	07-08	09	10	11	12	13	15	16	17	18
Rent at least 20% of units @ 50% of AMI for 40 years or more			X	X	X	X	X	X	X					
Extend Use for 40 years or more	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Rent at least 40% of units @ 50% of AMI for 40 years or longer	X	X												
Rent 20 to 39% of units @ 50% of AMI for 40 years or longer	X	X												
Rent 15% of units @ 30% of AMI										X	X	X	X	X
Rent 20% of units @ 61-80% of AMI and 20% @ market-rate					X	X	X	X						
Rent at least 30% of units @ above 60% of AMI									X					
Significant Community Services	X	X	X	X	X	X	X							
Significant Amenities	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Public Housing Waiting List	X	X	X	X	X									
100% LI Use	X	X	X	X	X	X								
Development-Based Rental Assistance	X	X	X	X	X	X	X	X	X	X	X	X		
Tenant-based Rental Assistance	X	X	X	X	X	X	X	X						
Elderly Development Designation	X	X		X	X	X	X	X	X	X	X	X	X	X
Single-family leased purchase developments		X	X	X	X	X	X	X	X	X	X	X	X	X
Quality Enhancements						X	X	X						
Veterans Housing										X	X	X	X	X
Persons with Disabilities										X	X			
Persons Targeted by MS Affirmative Olmstead Initiative												X	X	X

Source: State of Mississippi's Qualified Allocation Plans (years 2000-2018)

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# CHAPTER 4 - DETERMINING & DOCUMENTING HOUSEHOLD ELIGIBILITY

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## 4.1 OVERVIEW

**D**etermining the eligibility of a household for tax credit purposes is perhaps the most important fundamental requirement of the tax credit program. Before a unit can be claimed as a tax credit unit eligible for its intended dollar-for-dollar benefit to an owner, it must first be occupied by a qualifying household.

## 4.2 THE INITIAL CERTIFICATION

The first step in determining whether a household qualifies for occupancy of a low-income unit is to gather and verify some basic information regarding the household's size and composition, gross annual income and assets, as well as full-time student status.

### A. Rental Application

All applicants desiring to lease a tax credit unit must be required to complete a written rental application whereby providing certain household information critical in making an accurate determination of initial occupancy.<sup>42</sup> A good rental application is one that includes at least the following information:

- The legal name (as it will appear on the lease and *Tenant Income Certification* (TIC) form), sex, date of birth and relationship of each person to the head of household who will occupy the unit or is/will be considered a part of the household during the next 12 months.
- The employment history (consisting of the company name, name of individual authorized to provide employment information, address, telephone number and salary) of each adult household member expected to occupy that unit or is/will be considered a household member during the next 12 months. *NOTE: Date of termination is required on any changes in employment status from the time of initial application for residency and/or recertification questionnaire to the time of the most recent certification/recertification.*

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<sup>42</sup> If more applications for a tax credit unit is (are) received than available, a waiting list must be maintained. The Rental Application must be dated and time stamped to ensure proper placement of the waiting list.

- All sources and amounts of current and anticipated annual income expected during the next twelve months, including the current and/or estimated value of assets.
- The student status of each household member expected to occupy the unit or is/will considered a part of the household during the next 12 months. *NOTE: A full-time student household must meet one of the student exceptions provided by the IRS. (See Chapter 2 of this Plan.)*
- The signature of the applicant and the date the application was completed.

### ***Household Composition Determination***

Once a properly completed rental application has been acquired, an owner may then begin the approval process by assessing essential eligibility information provided therein: household composition, full-time student status, and gross annual income.

#### **1. Household Size/Composition**

The actual household size of a prospective family is essential in accurately determining eligibility. The size of the household determines the maximum allowable income the household can make in order to be considered eligible for occupancy. If the gross income of a household (based on the verified household size) exceeds the maximum allowed under tax credit rules and regulations, the household is not eligible to reside in a tax credit unit.

### ***What Constitutes a Household?***

Any group of persons living together, other than ineligible full-time students, can constitute a household. The total gross income for all members of a household should be combined for purposes of determining the required income limits. ***(Refer to Chapter 5.5C for more information on this topic.)***

### ***Who Counts as a Household Member?***

A household or family includes the applicant, co-applicant, and all other persons who will make the dwelling their primary residence for all or part of the next 12-months. Also inclusive are temporary absent family members (e.g., students away at school, an unborn child, members of the armed forces away on temporary duty, children under joint custody that live at least 50 percent of the time with this household and can be documented through third-party written documentation (i.e., guardianship or custody papers, etc.)), and permanently absent family members.

#### ***Non-Custodial Children as Household Members***

A non-custodial child is an individual under the age of 18 who is not emancipated, not residing in a unit with his or her parents or legal guardian, and not in the process of being adopted or for whom legal custody or guardianship is not in the process of being obtained. Such child(ren) are permitted to reside in the unit and may qualify for occupancy of a larger unit. However, such children may not be included in the household size for determining income eligibility.

In order to count a non-custodial child(ren), residency of the child must be established by completion of the Non-Custodial Child Residency form with two of the following support documentation which shows that the applicant and minor child are part of the same household or that the applicant is the child's guardian:

- Recent tax return transcript showing the child as a dependent of a household member;
- Court document granting guardianship
- School record/transcript
- Certification from child's physician's office
- Social Service Agency document
- Insurance document

Example: An applicant has noted a household size of three, which includes the applicant, her daughter and her niece. The niece was only recently placed with the applicant and no documentation is available. The income eligibility of the household will be based on a two, not three, person household size.

It is not necessary for an owner/manager to document custody or guardianship of children who reside in the unit with a parent unless there is reason to believe that the child(ren) is(are) not eligible to be counted as a household member (i.e., child does not reside in unit at least 50% of the time or father's name is not listed on the child's birth certificate and mother is not moving into the household.)

#### *Marital Status*

Spouses not currently residing with the applicant but who may return are counted as household members. Applicants who note they are married but are currently separated or estranged must complete an *Affidavit of Marital Status* form in order to exclude the spouse from the household. The form must be acquired annually and maintained in the household's HTC eligibility file. In the event the spouse becomes part of the household within the initial lease term, the spouse must be added to the initial certification and it must be determined if the household would have qualified with the spouse and all of his/her income.

#### *Divorced Individuals*

Prospective tenants who indicate that they have been divorced should provide a copy of the divorce decree with all applicable attachments (i.e. child support orders, custody arrangements, property settlements, etc.). The copy of the decree must be file-stamped by the chancery clerk and include the case number.

***Who does NOT count as a household member?***

Verified live-in aides, nurses or attendants, do not count as a household member for purposes of determining HTC eligibility.

***Live-In Aide***

A live-in aide is a person who resides with one or more elderly, near elderly, or disabled person(s) (1) for the essential care and well-being of the tenant, (2) not financially obligated to support the tenant, and (3) certify that he/she would not be living in the unit except to provide the necessary supportive services. In conjunction with the same, a live-in aide should not be counted as a household member for income eligibility purposes. While some family members may qualify as a live-in aide, a spouse (ex-spouse) can never qualify as he/she would not meet qualification guidelines.

Due to the potential change in disability status, the need for a live-in aide should be acquired on an annual basis at recertification.

*NOTE: When applicable, the name and relationship of verified live-in aides must be listed on the TIC form with support documentation in the file.*

**2. Full-Time Student Status**

Before making a determination that a household is eligible to reside in a tax credit unit (regardless of income eligibility), an owner must ascertain whether the prospective family is comprised entirely of full-time students. If the household IS comprised entirely of full-time students, the owner must determine if the household is eligible under tax credit student eligibility guidelines. Initially, the best way to make this determination is to ask the household a series of questions pertaining to the overall student status:

- Do all occupants of the household meet the full-time student definition as noted by the IRS?
- Does the applicable educational institution deem the occupant a full-time student?
- Has/will all occupants attend(ed) school at least five (5) months out of the 12-month calendar year (*months need not be consecutive*)?

If the answer to EACH question above is “yes,” the household should be noted as a full-time student household and a determination of the IRS’ qualifying exception must be identified, along with written documentation supporting the exception. ***(For more information on this topic, refer to Chapter 2 of this Plan.)***

On the other hand, if the answer to any of the questions is “no”, the household is not considered a full-time student household. Likewise, support documentation from the



educational institution is NOT needed unless a household member(s) other than the head, co-head or the spouse, is eligible for the maximum \$480.00 full-time students earned income calculation. In this instance, the owner should proceed to determine if the household is income eligible.

*NOTE: Inquiry regarding a household's full-time student status must be documented annually in the tenant file of each qualifying household. Additionally, a household qualifying for occupancy based solely on the occupancy of a part-time student **must** verify the part-time student status of the qualifying household member each semester until the earlier of the expiration of the student's enrollment or change in the household's full-time student status/qualifying exception.*

## B. Income Support Documentation

Income support documentation must be acquired verifying the ANTICIPATED income and eligibility of a qualifying household.<sup>43</sup> In doing so, all income support documentation must be completed in accordance with the income verification guidelines as stated in Chapter 5 of this Plan and HUD's Occupancy Handbook 4350.3, Rev. 1, Change 4.

Using the income verifications acquired from all sources of income (including both actual and anticipated), an owner must calculate the total gross annual income for the household.<sup>44</sup> This amount is then compared to the applicable income limit for the household to determine income eligibility. If the verified total gross household income is at or below the current income limit, the household is considered income eligible and required to certify to the validity and accuracy of the information on the TIC form before occupancy can be granted. **Refer to Chapter 5 for specifics regarding annual income determination.**

## C. The Tenant Income Certification (TIC)

Once the occupancy, income, and student status information of a household has been obtained and verified, an owner and all adult household members, including emancipated minors, must certify to the accuracy of the information provided. According to Section 42 of the IRC, an owner must acquire a properly completed *Tenant Income Certification* (TIC) form at the time of initial move-in (initial tax credit eligibility date for acquisition/rehabilitation developments) and thereafter on an annual basis for each qualifying household, as required.<sup>45</sup> Appropriate parties must execute the TIC form no earlier than five (5) days before the move-in/initial tax credit

<sup>43</sup> Anticipated income is the amount of income a household can reasonably expect to receive over the next 12-months.

<sup>44</sup> It is the burden of the owner to perform adequate due diligence in obtaining verifiable income information.

<sup>45</sup> The TIC form provided by the Corporation must be used to satisfy the certification requirement for all HTC households.

eligibility date. In most cases, the effective date of the TIC should coincide with the move-in/initial eligibility date of the household.

In the event a household member(s) is (are) unable to execute said documents (i.e., physically challenged), an authorized agent (i.e., power of attorney) may do so on his/her behalf. Authorization and/or an explanation describing the reason for the absent signature must be included in the resident file. For household members executing eligibility documents with an "X", said execution (signature) must be witnessed by a third party, generally someone other than management and/or owner and of legal age and sound mind.

*Initial Eligibility for Acquisition/Rehabilitation Developments with Existing Residents*

Qualifying residents for the HTC program at a development that has undergone acquisition/rehabilitation, a simple rehabilitation and/or received a subsequent award of HTCs can be challenging. In many instances, there is the presence of "existing residents" whose qualification must first be determined. As a result, all existing residents (as is the case of any new occupants), must be initially qualified for the tax credit program, excepts existing residents occupying a unit at a HTC development of which credits were previously awarded (i.e., previous allocation).

According to Rev. Procedure 2003-82, a unit occupied before the beginning of the credit period will be considered a low-income unit at the beginning of the credit period, even if the household's income exceeds the income limit at the beginning of the first year of the credit period, if the following two conditions relative to income eligibility are met:

- The household qualified the unit at the time the owner initially acquired the building or the date the household started occupying the unit, whichever is later; *and*
- Written documentation of the initial HTC eligibility is maintained. In order to determine the eligibility of existing residents with HTC regulations, a properly completed TIC form and all support documentation must be acquired in accordance with the following guidelines:

*1. Acquisition/Rehab Developments*

The initial certification for households occupying a unit at the time of acquisition must be completed within 120 days of the development's acquisition placed in service (PIS) date. The move-in date on the TIC should be no earlier than the acquisition PIS date. The effective date of the initial HTC eligibility certification is the date of acquisition since there is no move-in date. The income limits in effect at the time of the acquisition PIS date should be used when determining income eligibility.

If a household moves into a unit after the building is acquired but before the beginning of the first year of the credit period, the tenant certification is completed using the income

limits in effect at the time of the certification and the effective date is the date the household moves into the unit.

2. *Rehabilitated Developments Only*

The initial certification must be completed within 120 days of the development's rehab placed in serviced date. The move-in date on the TIC should be no earlier than the rehab PIS date. The effective date of the initial HTC eligibility certification may be any date the owner chooses on or after the PIS date; however, the date should not exceed the 120-day timeframe and must coincide with the initial eligibility date. NOTE: Verifications must be no older than 120 days from the effective date and all verifications must be completed and received prior to the effective date.

3. *Developments with Subsequent Allocations*

A household determined to be income-qualified for purposes of the IRC §42 credit during the 15-year compliance period is considered concurrently an income-qualified household for purposes of the extended use agreement, regardless of the household's verified income at the time of the subsequent allocation. In this instance, no new initial certification is needed; household should continue to certify in accordance with its recertification cycle.

## D. The Lease Agreement

Once a household has been determined income eligible and student qualified, occupancy may be officially extended through a formal lease agreement. An initial lease agreement with a period of at least six (6) months must be entered into with all tax credit eligible households in order to document and ensure non-transient housing.<sup>46</sup> An exception is granted to housing for the homeless and single-room occupancy (SRO) housing whereby a minimum lease term of at least one month is allowed.

The Corporation considers a lease to be valid if it is properly completed, contains all the necessary signatures, has a term effective from the date of move-in and/or the tax credit initial eligibility date, is at least six (6) months in length, contains the contract rental amount and/or the tenant paid portion, and include the following provisions.

- Residents who intentionally misstate household size or income or otherwise attempt to mislead the owner as to the household's eligibility will be evicted;
- Failure to provide the required certifications, sources of income, and permission to verify income are grounds for eviction;
- Any changes in the household composition within the first six (6) months of occupancy must be reported to the owner. ***(Refer to Section 4.3A of this chapter for the Corporation's policy on additional household members);***

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<sup>46</sup> Non-transient housing is considered housing whereby occupancy is not short and sporadic but for a term of at least six (6) months.

- The owner and/or owner's representative, a representative of the Corporation, and a representative of the IRS reserves the right to enter the unit to inspect the physical conditions of the unit; *and*
- A statement explaining the development is a participant in the HTC program and the tax credit units are under certain program regulations including income eligibility, full-time student status eligibility and annual recertification requirements.

*NOTE: Lease agreements/addendums for an acquisition/rehabilitation and/or rehabilitation-only development must be for a term of six (6) months and commence on the effective date of the initial certification for the HTC program.*

## 4.3 THE RECERTIFICATION

According to Section 42 of the IRC, an owner of a tax credit development must ensure that each household occupying a qualified HTC unit have its eligibility re-examined annually in order to determine whether the income of the household remains within the applicable income limit. This re-examination, commonly referred to as a "recertification," does not determine continued income eligibility; however, it does serve as the foundation necessary to ensure compliance with other program requirements (i.e., NAUR, student status, etc.).

At recertification, the procedures required to determine ongoing compliance is virtually the same as determining a household's initial eligibility – perform a compliance check on the household's size, composition, income, assets, and student status.

A household's recertification must be completed no later than the anniversary date of the household's initial occupancy/eligibility.<sup>47</sup>

Because the process of acquiring recertification eligibility information (i.e., verification of income, assets, student status) is often a time consuming process, it is highly recommended that an owner initiate the recertification process 90-120 days prior to the expiration date of the existing TIC. An owner's failure to recertify a household within the appropriate timeframe may be considered a noncompliance event and reportable to the IRS. ***(See Section 4.4C of this Chapter for information regarding an IRS Recertification Waiver available to qualifying HTC developments.)***

### A. Change in Household Composition

Changes in the household composition of a previously qualified family are of grave importance when assessing a family's ongoing eligibility for the tax credit program as such changes can affect several essential program requirements (i.e., available unit rule, unit vacancy rule, unit transfers,

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<sup>47</sup> The required recertification cycle for developments financed by RHS is no later than the twelve-month anniversary date of the most recent 2002 TIC form on file for RHS whereby a re-examination of a households continued eligibility does not exceed 12 months.

etc.). Thus, to ensure ongoing compliance, changes should be handled in accordance with the following:

**1. Additional Occupants**

If a change in household composition has occurred resulting in the occupancy of an additional resident(s), an owner must determine the effective date of the household change and assess/process the change in accordance with the following:

**a. Less than Six (6) Months of Occupancy**

Generally speaking, a change in the number of persons occupying a tax credit unit does not impact the initial eligibility status of the unit as income eligibility after initial occupancy is no longer a factor; once income qualified, always income qualified. However, household composition changes that occur within the first six months of occupancy may affect the initial eligibility status of the household and thus require the re-examination of the household's income, along with the income of the new member(s), for initial eligibility.

In re-assessing the household's eligibility, the verified income of the new member must be added to that of the existing household to determine if the household remain initially income eligible. If the additional income when added to the household's gross income as listed on the move-in TIC exceeds the households qualifying income limit, the unit disqualifies as an eligible tax credit unit commencing on the effective date of the household composition change. The unit is considered an eligible tax credit unit once a qualifying household occupies the unit or the unit again meets the tax credit income eligibility requirements, provided the household still meet the program full-time student requirement.

*NOTE: Should a previously absent spouse join the household during the initial lease term, regardless of the length of the lease, the entire household will need to be re-evaluated to determine if the household would have qualified at move-in.*

**b. After Six (6) Months of Occupancy**

To the contrary, if the household composition change occurs after the first six (6) months of occupancy and/or is being requested along with the scheduled recertification of the household, it must be handled in accordance with the following:

*100% HTC Development*

Household composition changes after the first six months of occupancy at a 100% HTC development causes no apparent impact on the compliance status of the unit provided **at least** one member of the ORIGINAL household composition continues to reside in the

unit.<sup>48</sup> However, the new member must undergo an income eligibility and student status assessment to determine future compliance of the household in the event all original occupants vacate the unit. *NOTE: If the assessment shows the new member(s) would independently income-qualify, the household would remain compliant should all original members vacate the unit; no future assessment is needed. If the assessment shows the new member(s) would not independently income-qualify, the future eligibility status of the unit is in jeopardy in the event all original household members vacate; future assessment would be required to determine compliance.*

#### *Mixed-Income HTC Development*

At a mixed-income HTC development, if the household composition change occurs after the first six (6) months of occupancy and/or is being requested along with the scheduled recertification of the household, the addition of the new household member to an existing low-income household requires the income certification for the new member of the household, including all applicable third-party verifications. The new member's income is added to the income disclosed on the most recent TIC. The household continues to be considered income qualified; however, if the combined income exceeds 140%, the owner must apply the next available unit rule (*See Section 4.3(B)(1) of this Chapter*).

## **2. Reduction of Occupants**

If any member of an existing, previously "qualified" household vacates, a new income certification is not necessary. Subsequent annual recertifications will be based on the income of the remaining household members. Should the household's income exceed 140 percent of the income limit, the next available unit rule is triggered.

## **3. Vacancy of ORIGINAL Occupants**

In the event ALL ORIGINAL residents vacates a unit thereby leaving the unit to be occupied by a resident(s) that was not a part of the original household, the remaining resident(s) must be IMMEDIATELY initially certified for the unit unless the remaining resident(s) was (were) income qualified at the time she/he first took occupancy of the unit. If the anticipated total gross household income of the remaining person(s) exceeds the current applicable income limits and the resident(s) wasn't individually certified upon initial occupancy, the unit is no longer considered a qualifying tax credit unit. If the anticipated gross household income of the remaining person(s) does NOT exceed the current applicable income limit for the household size, the unit must be certified as a new household whereby all initial eligibility procedures must be followed.

## **4. Full-Time Student Status**

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<sup>48</sup> An original resident is a resident that took possession of the unit at the time the unit was initially qualified for tax credit purposes.

The full-time student status of a household must be examined annually for ongoing eligibility. According to the Code, if the student status of a household member(s) changes whereby all occupants are full-time students, the household must meet at least one of the student eligibility exceptions even though they were eligible at the time of original occupancy. If the household does not meet one of the IRS exceptions (see Chapter 2 of this Plan), the household is not considered program eligible and the unit is no longer considered a tax credit eligible unit. The NAUR does not apply to a full-time student household. ***(Refer to Section 42(i)(3)(D) of the Code for additional information on this prohibition.)***

*NOTE: A certification done in conjunction with the noted requirement does NOT reset the recertification due date. The annual recertification is due in accordance with the standard recertification schedule.*

## B. Change in Gross Household Income

Once a determination has been made as to the household composition for the next 12-months, the next step is to determine the household's anticipated annual income. In doing so, an owner/manager should adhere to the same data collection procedures of an initial certification unless the development is exempt from doing so by way of the IRS' recertification waiver ***(See Section 4.3C of this Chapter for eligibility criteria)***.

### 1. Household Income Determined to be over the Current Income Limit

At recertification, if the total gross household income exceeds the latest available income limits based on the re-verified income, the following determination must be made:

#### Gross household income at or below 140% of current income limit

When a previously qualified household has a gross household income NOT greater than 140% of the current income limit at recertification, there is no apparent negative consequence on the household's continued eligibility or an owner's credit claiming ability. An owner may proceed with the (re)certification process.

#### Gross household income above 140% of current income limit (NAUR)

When a previously qualified household's income exceeds 140% of the applicable income limit, an owner must rent the next available unit, commonly known as next available unit rule (NAUR), of comparable or smaller size in the building to a qualifying household. The NAUR states that subsequent vacant unit(s) of comparable or smaller size in the building must be leased to eligible households until the low-income unit is no longer needed to maintain a building's low-income occupancy requirements. If a comparable vacant unit is not rented to a qualified low-income household, the development owner would be leasing an unrestricted unit and thereby, the previous tax credit unit designation no longer applies for that building.

*Deeper Income Targeted Units*

A development required by state mandates to set-aside a certain percentage of units for households at or below a certain income threshold (i.e. 50% deeper targeted units) must always comply with the established set-aside requirement.

In the event a household occupying a deeper income targeted unit has income that increases above the specified allowable median income, the household should be moved up into the set-aside for which they now qualify. In the event that a comparable unit in the appropriate set-aside is not immediately available, the household may continue to be temporarily treated as qualifying for the set-aside. Once a unit becomes available, the unit must be leased to a household meeting the deeper income targeted designation. *(For more information on this topic, refer to Chapter 3.3(A)(2) of this Plan.)*

NOTE: While a household may conceivably qualify as a deeper income household, no "140% rule" applies with respect to the deeper income targeting requirement.

## 2. Household Determined to be in Noncompliance

An owner must immediately begin corrective action procedures when a household is determined to be in noncompliance with program requirements (i.e., failure to recertify, non-qualified full-time student, etc.) at the time of recertification. If the owner initiates an eviction proceeding in an attempt to adhere to program requirements (and in accordance with applicable local, state and federal laws) and the household vacates the unit, no recertification is necessary. If, however, for some reason, it is determined that the household will not vacate the unit as anticipated, a recertification will be necessary within 120 days of the determination.<sup>49</sup>

## C. Annual Recertification Waiver

Under the Housing Economic and Recovery Act (HERA), HR 3221, effective July 30, 2008, an owner of a 100% HTC development is granted a waiver of the annual recertification obligation as required by the Code provided no residential unit(s) in the development is occupied by a household whose income initially exceeds the applicable income limit.<sup>50</sup>

### 1. Eligibility Criterion

<sup>49</sup> Court documentation evidencing the steps taken to remove the noncompliant household must be maintained in the resident file.

<sup>50</sup> A 100% low-income development is one in which all residential units in the development (excluding common area) is reserved and/or set-aside for families earning at or below 60% of area median income AND recognized by the Corporation as 100% low-income through the issuance of an allocation of credits representative of the same.



A HTC development that set-aside 100% of its units for low-to-moderate income households, all of which are subject to the requirements of the HTC program, is automatically eligible for the annual recertification waiver as permitted by the IRS by way of H.R. 3221.<sup>51</sup>

## 2. Record-Keeping

An owner of a development eligible for the automatic recertification waiver must adhere to the following record-keeping requirements:

- Acquire and maintain a FULL CERTIFICATION for:
  - All households at the time of initial occupancy of a tax credit designated unit;
  - Changes in household composition whereby all ORIGINAL household members have vacated; *and*
  - All households occupying deeper income targeted units on an annual basis
- Acquire and maintain in the household file a *Student and Rent Declaration* form OR the approved *HTC Tenant Income Certification (TIC)* form from all low-income residents, on an annual basis until the household vacates the unit. If applicable, the Live-In Aide documentation and Affidavit of Marital Status must be acquired as well.
- Maintain all paperwork/reports deemed necessary for the Corporation to determine compliance with program and state-imposed requirements (e.g., rents, utility allowance documentation, full-time student eligibility, deeper income targeting, etc.).
- Annually certify 100% low-income use to the Corporation.

NOTE: A development with a 100% Recertification Waiver must adhere to IRS Revenue Procedure 2003-82 Safe Harbor provisions that address the eligibility of residential rental units during or before the first year of the credit period.

## 3. Noncompliance

An owner of a HTC development that is exempt from performing annual recertification requirement as mandated by the Code is still responsible for the preparation and maintenance of certain compliance records and reports throughout the development's compliance and extended use periods. An owner's failure to adhere to said requirements

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<sup>51</sup> A 100% low-income credit development is required to annually recertify all residents until the earlier of written notification from the Corporation acknowledging the development's eligibility for the waiver or the effective date of this automatic eligibility effective March 1, 2010.

may result in the issuance of IRS form 8823 *Report of Noncompliance* and major state noncompliance.<sup>52</sup>

An example of a reportable noncompliance event includes, but is not limited to the following:

- Failure to respond to agency requests for monitoring and/or compliance reports;
- Outstanding major federal/state noncompliance violations;
- Fraud (resident and/or owner/management)<sup>53</sup>
- Failure to adhere to the eligibility and/or record-keeping requirements of the annual recertification waiver; and
- Significant noncompliance and/or blatant disregard to program requirements

The Corporation will notify the IRS of all instances of noncompliance in accordance with current compliance policy.

## 4.4 INTERIM CERTIFICATION

The guidelines for the HTC program do not require qualifying households to report interim changes that occur between certifications. As a result, interim certifications are not subject to the review of the Corporation. However, for ongoing tax credit eligibility purposes, certain interim changes must be monitored and documented, where applicable. Interim changes that affect the monthly gross rent amount or full-time student status of a household must always be reflected in the resident file and all applicable compliance reports. Additionally, notation of the type of change (rental, student status), including the effective date and a description of the change, must be made to the governing TIC form in the “comments” section or the applicable section of the Student and Rent Declaration form. The completion of a new TIC is not needed to document this change.

## 4.5 UNIT TRANSFER

During the duration of a household’s occupancy in a tax credit unit, circumstances may warrant the relocation of a household from one unit to another unit (i.e., unit transfer). In processing the unit transfer, according to tax credit guidelines, caution must be taken as an improper relocation may result in the loss of the housing credit. The IRS considers buildings that are not part of a multiple building development as ‘separate developments’ (See IRS form 8609, line 8b). Prior to the Corporation’s release of the forms 8609, the owner may make a statement of intent regarding the multiple building election (line 8b of the form 8609). The statement must be made with the development’s first quarterly report. Should the final election to the IRS differ from the owner’s

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<sup>52</sup> An owner of a HTC development cited for major noncompliance may be deemed ineligible to participate in any other programs administered by the Corporation.

<sup>53</sup> Resident and/or management fraud is defined as the deliberate intent to provide eligibility information not reflective of the household’s true eligibility status (i.e., misstate gross annual income, full-time student status, etc.). Fraudulent acts will be reported to the IRS in accordance with the requirements stated in the IRS’ 8823 Guide, as amended October 2009.

statement of intent, any resulting noncompliance will be retroactively reported utilizing form 8823.

1. 100% HTC Development

At a 100% HTC development, when a current tax credit eligible household desires to move to a different unit, within the same building or a different building, the newly occupied unit adopts the status of the vacated unit. There is no negative impact of the unit transfer, thus the transfer may be granted. Evidence of the unit transfer must be documented in the resident file on the *Documentation of Unit Transfer* form provided by the Corporation with the effective date of the transfer clearly reflected.

Historically, a unit transfer/relocation that resulted in a household transferring from one unit to another unit in a different building was classified and treated as a move-out, move-in occurrence thus requiring the transferring household to again undergo an initial eligibility test.

***NOTE: Developments operating under the IRS' recertification waiver (HERA, Section 3010) may allow unit transfers between buildings within the same 100% HTC development provided the owner does not know which, if any, of the units is over the current income limits.***

2. Mixed-Income HTC Development

When a tax credit eligible household desires to move to a unit in a different building,<sup>54</sup> an assessment of the household's current gross annual income is required. In completing this assessment, an owner may rely on the most recent income certification provided the most recent certification does not exceed a year in duration. Accordingly, based on the information gathered from the gross household income determination, the unit transfer should be processed in accordance with the following:

**Gross household income at or below 140% of current income limit**

When a previously qualified household desires to move to another unit in the same building or between buildings and the gross household income is NOT greater than 140% of the current income limit, there is no apparent negative consequence of granting the unit transfer. In this instance, the vacated unit would assume the status of the newly occupied unit had immediately before it was occupied by the current resident. **Gross household income above 140% of current income limit**

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<sup>54</sup> *Mixed-income developments are developments whereby occupancy is targeted to both low-to-moderate income households and market households.*

When the income of a previously qualified household exceeds 140% of the current income limit, granting a unit transfer to a unit in a different building would cause the newly occupied unit (i.e., household) to be treated as a non-qualifying unit.

*NOTE: The IRS cautions performing unit transfers during the first year of the credit period as no unit can be counted more than once towards the development's MSA requirement. (See also page Chapter 4.3(B) for more information on this subject).*

# CHAPTER 5 - INCOME & ASSET DETERMINATION AND RESPONSIBILITIES

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## 5.1 OVERVIEW

One of the most essential requirements of the tax credit program is ensuring that the total gross household income of a prospective or existing family does not exceed the program's established income limitations.

Under the HTC program, annual income is defined as the amount of gross household income (before any taxes or deduction) anticipated being received during the 12-month period following the certification and/or recertification of eligibility. The income eligibility guidelines for the HTC program are found in Chapter 5 of HUD's Occupancy Handbook 4350.3, *The Occupancy Requirements for Subsidized Multifamily Housing*.

## 5.2 INCOME LIMITS

The income limits that apply for purposes of determining eligibility as a low-income household depend, in part, upon the developments placed in service (PIS) date, location, minimum set-aside election and the size of the household. The Department of Housing and Urban Development (HUD), which publishes income limit information for each state, by county or metropolitan statistical area, generates the income limits that apply to the HTC program. HUD's income limits reflect the median income level, the low-income (80%) level, the very low-income (50%) and the extremely low-income (30%). The HTC program uses HUD's very low-income median income limit for income determination purposes.

### A. Determination Schedule

#### 1. Prior to 2009

The Corporation, upon receipt of HUD's income and rent limits, issued a single set of revised limits for HTC developments reflecting the 50 and 60 percent figures for the state of Mississippi. The limits remained in effect until a subsequent release was issued by HUD.

#### 2. Subsequent to 2008

In accordance with Section 3009 of the Housing Assistance Tax Act, the Corporation, commencing with FY 2009, began issuing three sets of income limits: Multifamily Tax Subsidy Project (MTSP)

limits, HERA Special 50% and HERA Special 60%, and National Non-Metropolitan Limits reflecting the 50 and 60 percent AMGIs for the state of Mississippi.

- ***Multifamily Tax Subsidy Projects Income Limits***

For IRC §42 and 142(d) housing developments, HUD provides a separate table, Multi-Family Tax Subsidy Projects (MTSPs), which includes 50% and 60% income and rent limits. The MTSPs income limits are the main income limits table for most HTC developments, including developments financed with tax-exempt bonds. However, should a development meet certain requirements, the HERA special limits or the National Non-Metropolitan limits may be utilized instead of the MTSPs.

Section 3009 of HERA modified the determination of the AMGI limits for purposes of tax-exempt bond and tax credit developments. HERA continues HUD's "hold harmless" practice that ensures AMGI will not decline for a development, even if the area median income declines. It also appears to provide for a minimum increase in median incomes in 2009 and beyond and resets the clock for some developments, using 2008 as base year. Any development that PIS prior to May 14, 2010 can use the greater of the 2009 or later income limits, regardless of which chart applies. ***For specifics regarding this modification, refer to the HERA of 2008.***

- ***HERA Special Income Limits***

In counties where the income limits were affected by HUD's Hold Harmless policy, HUD issued a second set of limits known as HERA Special 50% and HERA Special 60%.<sup>55</sup> Any development located in a HUD hold harmless impacted county and was placed in service on or before December 31, 2008 may utilize the HERA Special limits.

*Any development placed in service prior to January 1, 2009 can use the HERA Special limits, if applicable for the county.*

- ***National Non-Metropolitan Income Limits***

1. GO- Zone

A development placed in service in 2006, 2007 or 2008 AND allocated credits by way of the GO (Gulf Opportunity) ZONE legislation must use the Non-Metropolitan Income limits. IRC § 1400N(c)(4), Special Rule for Applying Income Tests, is applicable. ***(See GO Zone legislation of 2005)***

2. Rural Property

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<sup>55</sup> Effective May 14, 2010, HUD no longer holds the income limits of a development harmless from decreases. The IRS (as part of the HERA legislation), however, continues to hold the income limits of developments in affected counties harmless on a project basis.

Effective July 30, 2008, the H.R. 3221 increased the income limits for certain HTC rural developments to the greater of the Area Median Income Limit or the National Non-metropolitan Income Limit.<sup>56</sup> Said limits are applicable to a 'rural development' or 'rural area,'<sup>57</sup> including all future modifications/definitions, of which is considered to have a population consistent with the following:

- A. Not in excess of 2,500 inhabitants, *or*
- B. In excess of 2,500 but not in excess of 10,000 if it is rural in character, *or*
- C. In excess of 10,000 but not in excess of 20,000, *and*
  - 1. *Is not contained within a standard metropolitan statistical area, and*
  - 2. *Has a serious lack of mortgage credit for lower and moderate-income families, as determined by the Secretary and the Secretary of Housing and Urban Development. For purposes of this subchapter, any area classified as 'rural or a 'rural area' prior to October 1, 1990, and determined not to be 'rural' or a 'rural area' as a result of data received from or after the 1990 or 2000 decennial census shall continue to be so classified until the receipt of data from the decennial census in the year 2010, if such area has a population in excess of 10,000 but not in excess of 25,000, is rural in character, and has a serious lack of mortgage credit for lower and moderate-income families.*

An owner desiring to utilize the national non-metropolitan limits for a development located in a non-metropolitan county that includes an ineligible area must acquire written prior approval from the Corporation before the non-metropolitan limits can be implemented.<sup>58</sup>

*NOTE: This provision is not applicable to tax credit developments financed with tax-exempt bonds nor does it apply to certain ineligible area(s) in the state of Mississippi, including counties that are a part of a metropolitan statistical area (MSA).*

**Table 3: HTC Income Determination Chart**

<i>PIS Date</i>	<i>Income Limit Chart*</i>
<i>On or before 12/31/2008</i>	<i>National Non-Metro, if applicable</i>

<sup>56</sup> Section 520 of the Housing Act of 1949

<sup>57</sup> A rural development and/or rural area is considered any open country, or any place, town, village, or city which is not a part of or associated with an urban area.

<sup>58</sup> An ineligible rural area is one in which the census tracts are ineligible or partially ineligible due to the tracts being located in urbanized areas, as designated by the U.S. Census Bureau, or other tracts in cities of more than 40,000 population and adjoining unincorporated areas.

	MTSPs HERA Special, if applicable
<i>Between 1/1/2009 – 5/13/2010</i>	National Non-Metro, if applicable MTSPs
<i>On or after 5/14/2010</i>	National Non-Metro, if applicable MTSPs

*\*When qualifying a household for HTC program eligibility, an owner may use the greatest of all applicable income limits.*

## B. Methodology

There are several steps involved in determining the income eligibility of a household. One of the key steps involves the correct determination of the income limit applicable to an interested household.

To determine the applicable income limit, the following methodology must be utilized:

Step 1 Determine the set of income limits applicable for development (i.e., MTSPs, HERA Special or National Non-Metro)

**\*\*Use the greatest of all applicable limits\*\***

Step 2 Identify the county in which the development is located

Step 3 Select the development's minimum set-aside (MSA) (i.e., 20/50 or 40/60)

Step 4 Select the household size (HHS).

Step 5 Find the point where the two numbers meet. This is the maximum income the household can have in order to be deemed income eligible.

### EXAMPLE

*The manager of CBA Apartments, a tax credit community in Lauderdale County that placed in service on 3/1/2009, has a three-person household with a verified income of \$24,500 wanting to rent a two (2) bedroom tax credit unit. The owner agreed to rent 40 percent of the units at 60 percent (40/60) of the area median income. The owner does not pay the utilities at the development.*



2010 MTSPs Income Limits, effective May 14, 2010

Lauderdale County	Percent of Median	1 Person	1.5 Persons	2 Person	3 Person
MFI	50%	\$16,350.00	\$17,500.00	\$18,650.00	\$21,000.00
\$46,600	60%	\$19,620.00	\$21,000.00	\$22,380.00	\$25,200.00

HERA Special Income Limits, effective May 14, 2010

Lauderdale County	Percent of Median	1 Person	1.5 Persons	2 Person	3 Person
MFI	50%	\$17,450.00	\$18,675.00	\$19,900.00	\$22,400.00
\$38,000	60%	\$20,940.00	\$22,410.00	\$23,880.00	\$26,880.00

Step 1

National Non-Metro Income Limits, effective May 14, 2010

Lauderdale County	Percent of Median	1 Person	1.5 Persons	2 Person	3 Person
MFI	50%	\$18,050.00	\$19,350.00	\$20,650.00	\$23,200.00
\$51,600	60%	\$21,660.00	\$23,220.00	\$24,780.00	<b>\$27,840.00</b>

Step 2

Step 3

Step 4

Step 5

**Question (1):** What is the income limit for this household?

**Answer (1):** **\$27,840.00**

**Methodology:**

Step 1 Determine the set of income limits allowable for development, CBA *applicable income limits are National Non-Metro Limits because they are the highest of all applicable limits.* (Note: HERA Special not applicable in this instance due to the development's PIS.)

Step 2 Identify the county = *Lauderdale County*

Step 3 Select the development's minimum set-aside, CBA's MSA = 40/60

Step 4 Select the household size/number of persons, HHS = 3

Step 5 Find the point where the two numbers meet= **\$27,840.00**

This is the income limits, the maximum income the household can have (based on the household size) in order to reside in the unit.

## C. Changes/Updates

HUD generally updates and publishes income and rent limits on an annual basis. In determining a household's income eligibility, an owner is to use the income limit in effect on the date the household income is certified. Upon HUD's release of new income limits, an owner of a HTC development is required to begin applying the new income limits by the later of the effective date provided by HUD for the new limits or 45 days after the new limits are published by HUD.

## 5.3 COMPONENTS OF ANNUAL INCOME

In calculating the gross annual income of a household, there are two components of annual income of particular interest to an owner: Regular Income and Asset income.

### A. Regular Income

Regular income is the amount of income, monetary or not, that goes to or is received on behalf of the household from a source outside the family, including amounts anticipated to be received during the 12-month period following the (re)certification effective date. Regular income is considered income generated from traditional sources (i.e., gross wages and salaries, tips, bonuses and over-time), social security, retirement, welfare and other forms of public assistance and payments in lieu of earnings (e.g., unemployment compensation, workers' compensation, etc.).

In calculating the annual income of a household, the regular income of all adult household members including adult residents and emancipated minors must be determined and factored into the total gross income of the household.

### B. Asset Income

Income that is normally generated from items of value that may be turned into cash (i.e., savings accounts, real estate, stocks, bonds and other forms of capital investment) is considered asset income. When determining the gross annual income of a household, asset income must also be considered and calculated, where applicable.

The actual amount of income generated from an asset depends on the cash value of the asset.

#### ***Cash Value***

The cash value of an asset is the amount of income the household would receive or have the potential of receiving should the asset be converted to cash. When calculating the cash value, an owner must consider the fair market value of the asset minus any reasonable expense(s) that would be incurred in selling or converting the asset to cash (e.g., penalties for early withdrawal, broker and real estate commissions, legal fees settlement costs, etc.).

In accordance with IRS Revenue Procedure 94-65, effective October 11, 1994, an owner does not need to third-party verify the income from assets of a household as long as the cash value of the

household's combined assets do not exceed \$5,000. *(See also 5.5B of this Chapter for more information on this subject).*

## 5.4 VERIFICATION OF ANNUAL INCOME

One of the key requirements of the HTC program is to ascertain the anticipated income of a household for eligibility determination purposes. In doing so, it is necessary to acquire the verification(s) of a household's gross annual income at the time of initial move-in/eligibility and again at the time of the household's annual recertification, when applicable. Tax credit regulations require the verification of all regular sources of income, including asset income over \$5,000 for all household members age 18 and older, including emancipated minors. This includes any non-employment income (e.g., TANF/AFDC, SSI, etc.), as well as any unearned income for the benefit of a minor (i.e., child support or asset income).

Verifications must include information acceptable to the Corporation and consistent with income determination procedures noted under Section 8 of the U.S. Housing Act of 1937, as amended.

### A. Verification Requirements

When determining annual income, an owner must:

- Verify all regular sources of income and assets for household members age 18 and older, including the income and assets of all adult household members and emancipated minors;
- Obtain written verification of income directly from the source (under NO circumstance should a resident(s) be allowed to deliver income verification documents to verifying officials);
- Retain all verification documentation for at least three years after an applicant is rejected; *and*
- Acquire a thoroughly completed verification inclusive of all relevant information pertaining to the household/resident's eligibility (i.e., blank fields should be completed and/or documented with notes/clarification memo).

Inaccurate information/verification may lead to an incorrect determination of a household's eligibility, which could result in leasing a unit(s) to an ineligible household.

### B. Methods of Verification

HTC regulations require third-party verifications, when applicable, when determining the total "anticipated" gross household income. However, third-party verification may not always be obtainable. The HUD Handbook 4350.3 allows for various types of verification methods. However, there is an order of acceptability which should be followed when applicable. The order of acceptability is 1) upfront-income verification; 2) written third-party verification from the

source; 3) oral third party verification from the source and 4) family certification. All income verifications must be date-stamped as they are received and processed prior to a prospective resident taking occupancy of a HTC unit or any required recertification.

*NOTE: Before attempting to verify income, a Tenant Release and Consent form must be acquired from each household member age 18 and older, including emancipated minors, granting an owner/management agent authorization to verify personal information. A Tenant Release and Consent form must be acquired at the time of application and thereafter on an annual basis as required.*

1. Up-front income verification (UIV)

UIV is verification of income from an independent source that systematically and uniformly maintains income information in a computerized form (i.e. Enterprise Income Verification or The Work Number).

*Enterprise Income Verification (EIV)*

The Enterprise Income Verification (EIV) system is a web-based system that contains tenant benefit and wage-related data for use by HUD's business partners. Specifically, the data is used by owners and management agents to assist them in verifying the employment and income of existing tenants at recertification to ensure that the right benefits are going to the right person(s).

HUD does not currently authorize HTC housing finance agencies to view the EIV's as the data in the EIV system contains personal information covered by the Privacy Act. Therefore, owners/managers authorized by HUD to use the EIV or any other income documentation must be able to provide income support documentation for tax credit auditing purposes. Additionally, where applicable, evidence of the EIV should be removed from HTC files presented to the Corporation for review.

*The Work Number*

The Work Number service is utilized exclusively by major employers such as Walmart and Lowe's. A copy of the prospective resident's actual check stub(s) issued within the last two pay periods should accompany The Work Number Verification. The Work Number does charge a fee for verifications. Due to the fee, owners may proceed to the next method of verification.

2. Third-Party Written

Third-party written verification is defined as documentation of income received from an independent outside source (i.e., an applicant's employer, caregiver, etc.). The verification may come directly from the third-party or may be generated by the third party and is currently in the possession of the applicant (i.e. check stubs, benefit statements, child support court orders, etc.).

*Third-party verifications provided by the source*

Third-party verifications transmitted via mail, fax, internet or hand delivery are acceptable to the Corporation. The owner should make efforts to ensure that the sender is a valid third party source. For example, prior to verifying the information, the owner may call the source to confirm the method of verification and the email/fax number the verification will be originating from. For information received from the internet, the information is considered valid if the owner may view the information from a reputable source on the computer.

For wage earners, third party verification in the form of the Employment Verification must be accompanied by at least one check stub issued within the last two pay periods. The check stub requirement also applies to The Work Number verification.

*NOTE: Absolutely no changes, corrections, and/or clarifications are to be made to any verification documents. Changes/corrections and/or clarifications should be documented on a Documentation of Telephone Verification or Memo. Additionally, the use of whiteout to make corrections is strictly prohibited!*

#### *Third-party written provided by applicant*

If the third-party verification generated by the employer or third-party is in the possession of the applicant, this is acceptable provided it is current, complete and an unaltered original. Upon review of documents, originals should be photocopied and placed in the file. Original documents should be returned to the applicant.

#### **Check Stubs**

Check stubs are the most common form of verification provided by the applicant. When using check stubs to verify a household's annual income, the following information is required:

- Four consecutive check stubs issued within 120 days of the move-in or recertification date, if applicable;
- Pay frequency, number of hours worked and rate of pay;
- The resident's name, social security number and pay period; *and*
- Year-to-date (YTD) earnings

#### **Tax Returns**

An owner, when attempting to verify the anticipated income of a household, may utilize the resident(s) tax return completed for the two year period immediately preceding the certification to make this determination, including copies of all applicable W-2 forms and evidence of filing.

*NOTE: When using tax returns to verify income, all income must be counted, including withholdings.*

### 3. Verbal/Oral Third-party verification from source

When a third-party written verification is not possible, direct contact or oral verification with the source is acceptable to the Corporation. The conversation of the verbal/oral verification must be documented in the resident's file utilizing an agency approved *Documentation of Telephone Verification* form.<sup>59</sup> In addition to the oral verification, at least three consecutive check stubs issued within 120 days of the certification effective date should be obtained to support the information verified by phone. The file of the resident must be well documented detailing the attempts made to obtain the third-party written verification.

In doing so, the following documentation must be included in a resident's file before utilizing an alternative verification method:

- A copy of the date-stamped original request to the third-party entity/person; and
- Written notes-to-file detailing all follow-up attempts, and reason for determination that verification is not viable.

Failure to follow the above noted requirements constitute an invalid verification and will be noted as such.

### 4. Family Certification

Self-Certification of income by the household is a last resort and will be accepted on a case-by-case basis. Certifications will only be accepted once the owner has documented attempts to acquire third-party verification and provided written clarification regarding why third-party verification was not available. Owners should get pre-approval from the Corporation.

## C. Income Support Documentation – Special Sources/Circumstances

Income support documentation from certain sources is subject to the following verification procedures/requirements:

### 1. Social Security Verification

Periodic payments received from Social Security must be included when determining annual income. This includes any payments received by adults on behalf of minor or by minors for their own care and support. Gross benefit amounts should be used to calculate annual income from Social Security benefits.

The following sources are considered sufficient verification of Social Security benefits:

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<sup>59</sup> An acceptable telephone verification form is one in which includes the name and title of the contact person, the name of the onsite management representative accepting the information and the time and date of the information being provided.

- *Copy of Award or Benefit Statements.* This statement is generally issued when benefit commences or when a change in the benefit amount occurs (i.e., cost-of living increase). The Awards Benefit verification must be applicable for the certification period. Once received, it remains valid for one (1) year; or
- *Third-party Benefit Verification.* Third-party benefit verifications are generally acquired from the agency providing the benefits. The third-party benefit verification must be received and issued within 120-days of the certification (or recertification) effective date.

In the event the Social Security benefit statement and/or agency verification is not obtainable, an owner may attempt to acquire the verification by way of the following:

*Telephone Request*

The prospective and/or existing resident may call the regional office of the Social Security Administration at 1.800.772.1213 and request a written copy of the benefit amount. Benefit statements are generally mailed out within one day of receiving the request.

*Written Request via Regular Mail*

Resident/Manager may mail a written request of Social Security benefits to the Social Security Administration (postage paid, self-addressed envelope).

*Written Request via the Internet*

A Benefit Statement may be requested via the Social Security Administration's website at [www.socialsecurity.gov/onlineservices/](http://www.socialsecurity.gov/onlineservices/). Once this page has been accessed, click on the *If you get benefits link*. From this link click on *Request a Proof of Income Letter*.

2. Zero/Very-Low Income Household

Under the HTC program, no minimum amount of income is necessary in qualifying applicants for residency. However, an owner has the authority to set minimum income requirements as long as such requirement does not conflict with the requirements of the HTC program and/or any Fair Housing Laws.

*Note: Some applicants for housing may receive rental assistance from a federal or state agency that allows them to rent a tax credit unit even if they do not earn sufficient income. In this instance, an owner must adhere to the guidelines as stipulated in Section 5.9 of this Chapter.*

3. Support Staff Verification

A verification of income for residential support staff must be acquired in accordance with standard verification procedures unless the staff member occupies a residential unit that was not treated as a low-income rental unit in the final HTC application (or subsequently approved by the Corporation) of which in this instance, no verification of income is required.

*Rent Concessions for Staff Unit*

If a staff member of a residential rental unit receives free rent or a rent discount, the full imputed value of the rent or discount must be counted as income. This applies whether or not living onsite is optional or mandatory for the employee.

In valuing the rent concession and determining how much should be included as income for employees living in a HTC (non-common area) unit(s), the amount should be the amount of rent that an HTC household living in the unit would pay rent plus the applicable utility allowance.

For employees residing in common area units, the value of the rent concession does not have to be counted as income since the employee can reside in the common area unit without regard to income of the household. Note: Any staff paid utility payment is considered rent. The IRS (via its 8823 Guide) states that **if the owner is charging rent for a staff unit, it may be determined that the unit is not reasonably required by the development because the owner is not requiring the manager to occupy the unit as a condition of employment.**

*Note: The amount of any rental concession or the lack thereof must be noted on the employment verification form or Common Area Staff Unit Status Affidavit, whichever is applicable.*

4. Cash Wages

Individuals with no verifiable income may not rely solely on a self-certification. Prospective tenants indicating wages paid in cash will be considered as an independent contractor who must file a tax return and follow the verification and income calculation guidelines provided in Section 5.5(A) (2) Self-Employment Verification.

5. Non-Employment Verification

Adult individual(s) who are not currently employed must 1) certify to such status utilizing the Affidavit of Non-Employment form. If adult individual(s) certifies to receipt of unemployment benefits, benefit printout from the Mississippi Department of Employment Security (MDES) must be obtained from the individual.

Individuals applying to reside in an assisted living facility are exempt from this verification requirement.

## D. Term of Verification

All verifications of income are valid for 120 days prior to a resident's move-in and/or recertification date. If a household's eligibility has not been properly documented/certified within the allotted period (i.e., failure to obtain sufficient documentation verifying all applicable income), a new verification of income may be necessary to document the household's gross annual income. Oral follow-up verifications previously used to extend verification are no longer permissible or accepted.



## 5.5 CALCULATION OF ANNUAL INCOME

**\*\*AN OWNER IS ENCOURAGED TO REFER TO CHAPTER 5 OF THE HUD OCCUPANCY HANDBOOK FOR A COMPLETE LIST OF INCOME & ASSET INCLUSIONS AND EXCLUSIONS AS WELL AS FOR ASSISTANCE IN DETERMINING THE GROSS ANNUAL INCOME OF A HOUSEHOLD.\*\***

### A. Regular Income

An owner must calculate regular income by taking into account the total anticipated gross income of household members generated from the full amount of wages and salaries, before any payroll deductions, including overtime pay, commissions, fees, tips and bonuses and any other compensation for personal services rendered of all residents age 18 and older, including emancipated minors. Additionally, payments in lieu of earnings, such as unemployment, disability compensation, worker's compensation and severance pay should also be included in a household's gross annual income calculation.

#### 1. Methodology

In calculating income, an owner must convert reported income to an annual figure, without adjustments for both a household's actual earnings and year-to-date (YTD) earnings. To convert periodic wages to any annual amount, multiply:

- Hourly wages by 2080 (based on a 40 hour/wk.)
- Weekly wages by 52
- Bi-weekly wages by 26
- Semi-monthly wages by 24
- Monthly wages by 12

The greater of the YTD earnings and the verified actual earnings must be used when calculating a household's gross annual income. To calculate a resident's YTD income, count the number of pay periods from the date the YTD period starts to the end of the YTD period noted on the most current pay stub unless the resident began employment after the start of the beginning pay period. Then take the total YTD wages and divide it by the number of pay periods in the entire period. Take the resulting amount and multiply it by the total number of pay periods in a year in order to project the applicant/resident's income for a full year.

#### ***Range of Hours Worked***

When determining annual income for earnings other than full-time, an owner must multiply hourly wages by the number of hours the individual is expected to work per week x 52. If a range of hours is given, calculate the annual income using the higher end of the range. The lower spectrum of the range should NEVER be used in calculating income.

#### ***Less than Minimum Wage***

Calculate annual income from hourly pay that is less than current minimum wage rate by taking the **higher of** the actual verified income from earnings, including tips, bonuses, raises, etc. and that of the minimum wage rate in effect at the time of the certification/recertification.<sup>60</sup>

NOTE: If tip income is earned but not verifiable, an owner must acquire a *Certification of Tips* form from the prospective or existing household member. Tip income must be calculated in accordance with the amount verified by the member. **(See section 5.5(A) (2) of this chapter for more on tip calculation requirement).**

## 2. Calculation Procedures – Special Income Types

### *Bonus/Over-time/Tips*

When determining the gross income of a household, the calculation of reported bonuses, over-time and/or tips is required, regardless of whether the employer indicates that such income is not guaranteed. All amounts should be converted to annual amounts. When calculating earnings from a range of over-time hours worked, an owner must use the higher end of the range.

Income from tips must also be determined for inclusion in gross income calculation. Individuals working in the food industry, personal service industry (i.e., such as hair stylists, or manicurists), and the gaming industry typically receive tips.

### *Anticipated Raise*

When determining income from earnings, always include verified, anticipated raises/increases. If the employer indicates that a raise is anticipated AND provides the amount of the raise; yet does not indicate the effective date of the increase, calculate the anticipated raise for the entire 12-month/52-week period. If the employer indicates that a raise is anticipated AND provides the effective date as well as the amount of the raise, calculate the anticipated raise for the applicable period only.

### *Self-Employment*

The *net* income from the operation of a business or profession is also included in a household's gross annual income calculation. When determining income from a business, include salaries paid to adult household members, and other cash or assets withdrawn by any family member – except if the withdrawal is the reimbursement of cash or asset the family invested in the business. Business income must be documented in the resident file using the *Self-Employment Affidavit* form provided by the Corporation.

Additionally, a business, which has been in operation for any period of time that would have provided an opportunity for filing a tax return, must provide a copy of the last two years tax transcripts, in addition to a *Self-Employment Affidavit* form. If the business/individual did not file a tax return, verification of non-filing status must be verified utilizing the IRS Form 4506-

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<sup>60</sup> Federal minimum wage rate for covered nonexempt employees \$7.25 per hour, effective July 24, 2009.

T Request for Transcript of Tax Return. Additionally, the individual must provide a copy of Profit and Loss Statement or statements from recurring clients.

A business which has not filed a tax return due to its length of operation must complete a *Self-Employment Affidavit*, attaching support documentation (i.e. accountant's/business's quarterly report, business licenses, bank statements, etc.), where applicable. The prior year's tax return should be obtained to show that the business income was not filed for the previous year and/or official documentation to show that the business began its operations after individual's tax return was filed.

Compute net income in accordance with the requirements outlined in HUD Handbook 4350.3 REV 1., Change 4.

#### *Military*

When calculating income for military personnel, an owner must consider and calculate, where applicable, the following entitlements:

- Base Pay
- BAQ (Basic Allowance Quarters)
- BAS (Basic Allowance for Subsistence)
- VHA (Variable Housing Allowance)
- CA (Clothing Allowance)
- FDP (Foreign Duty Pay)
- Reserve Active Duty Pay
- Separation Pay
- Cost of Living Allowance
- Station Housing Allowance II
- Summer Camp Pay
- Special Duty Pay

The following sources of military income should NOT be included in the gross income calculation:

- One-time payments (i.e., re-enlistment bonus) – This is considered an asset; *and*
- Imminent danger pay (i.e., hostile fire pay)<sup>61</sup>

Additionally, in accordance with Section 3005(a) of the Housing Assistance Act of 2008, military basic housing allowance (BAH) is excluded from the gross income computation of a resident(s) if the development is located in any county or adjacent county in which a qualified military installation is located.<sup>62</sup> The new rule applies to certifications completed between July 30, 2008 and December 31, 2011.

#### *Alimony/Child Support*

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<sup>61</sup> Imminent danger pay is defined as combat in a hostile fire zone.

<sup>62</sup> A qualified military installation is one that has a military installation or facility with 1,000 or more members as of June 1, 2008. See the requirements of IRC 142(d)(2)(B)(iii)(1) for more information on this requirement.

*Alimony and/or* child support payments that is court ordered or otherwise supported by written agreement and reasonably anticipated by a prospective and/or existing resident must be included when determining income unless the recipient certifies:

1. Scheduled payments are not being received and
2. Reasonable efforts have been made to collect on the all monies due, including filing with courts or agencies responsible for enforcing payments.

The owner may accept printouts from the court or agency responsible for enforcing payments or other evidence indicating the frequency and amount of support payments actually received.

#### Alimony

*Acceptable verification of alimony payments include:*

- *Separation/settlement agreement or a divorce decree stating the amount and type of support and payment schedule;*
- *A letter from the person paying support;*
- *Printouts from the court or agency responsible for enforcing the payments; or*
- *A statement of affidavit from the resident stating the frequency and value of the support (as a last resort only)*

#### Child Support

All households with minor children, regardless of the household's certification of receipt, are required to request a verification of child support from Mississippi Department of Human Service's central verification office (i.e. YoungWilliams or their successor).

Child support payments should be calculated in accordance with the following:

##### 1. *Court-Ordered Child Support - Obligated*

Calculate the full obligated child support amount unless it can be evidenced that payment has not been received and legal enforcement steps have been taken to acquire support. If evidence of legal steps is provided, calculate child support income by taking an average of the amount of child support received over the last 12 months.

*MDHS clients:* Calculate average amount of child support received over the last 12 months or since the inception of child support payments(s) commencement date if less than 12 months.

*\*Verification is required from MS Division of Child Support Enforcement (MDHS) or an attorney showing at least a 12-month history of non-payment.*

2. *Non-Court Ordered Child Support - Not Obligated*

When no documentation of child support, divorce, or separation is available, either because there was no marriage or for another reason, the owner may require the family to sign a certification stating the amount of child support received.

3. *Child Support Arrearage Payments*

If arrearage payments are included in the last 12 months historical figures (i.e. receipts total) and are expected to continue, calculate the annual child support income by taking the arrears portion in addition to the court ordered monthly amount.

If arrears payments are sporadic, use the average payments based on amounts received in the prior twelve months. However, if it is verified the arrearage payment will terminate or continue for a limited period (i.e. the arrear balance has been satisfied), calculate the annual child support income by taking the arrears payments for the period (months) in which the household is expected to receive the remaining arrearage payment only and the full-obliged child support amount.

*Social Security*

Periodic payments received from Social Security must be included when determining annual income. This includes any payments received by adults on behalf of minor or by minors for their own care and support. Gross benefit amounts should be used to calculate annual income from Social Security benefits.

*Cash Contributions and Gifts*

Income received on a regular basis as a contribution and/or gift from persons not residing in the unit are also included in a household's gross income calculation. This includes monies received for rent and utility payments paid on behalf of a family and other cash or noncash contributions, excluding groceries.

*Work Number Verification*

When calculating income from earnings derived from the Work Number,<sup>63</sup> an owner must maintain all pages of the verification. Additionally, an owner must calculate income based on the greater of the year-to-date earnings, commencing no earlier than the first day of the first pay period of the certification year and the average income of the most current four pay checks listed.

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<sup>63</sup> The Work Number is an agency that contracts with employers to provide employee information to housing providers and other benefit-providing entities.

### Partial Year Income

In accordance with HUD Handbook 4350.3 Rev.1, “income that may not last for a full 12 months (e.g., unemployment compensation) should be calculated assuming circumstances will last a full 12 months,” unless documentation can be provided evidencing the actual period of time the income will be received. In the event the resident cannot provide documentation that verifies income is for a limited and determinable period of time, the associated income should be considered to be available for an indefinite time period and annualized.

## B. Asset Income

In calculating the total anticipated income for a household, an owner must also consider the cash value of the income received from all assets and the amount of income generated or potentially generated from the asset(s).

### 1. Assets Under \$5,000

If the total cash value of all assets is \$5,000 or less, an owner is to include the actual income received from the asset (i.e. monthly, quarterly or annual from interest checks, dividend checks, etc.) in its total gross household income calculation. Additionally, the household must complete a sworn self-affidavit certifying to the same, including a statement attesting no assets were disposed of (i.e., given away) for less than fair market value within the two year period immediately preceding the certification.

#### EXAMPLE

*The Jones family has a certificate of deposit (CD) in the amount of \$2,000 earning interest at a rate of 3%. The penalty for early withdrawal is \$25.00.*

**Question (1):** What is the amount of income includable from this household’s assets?

**Answer (1):** \$60.00

#### Methodology (A) – Actual Income:

**Step 1:** Determine the market value (MV) of the asset from all sources  
\$2,000.00

**Step 2:** Multiply the MV of all assets by the verified interest rate  
 $\$2,000.00 * .03 = \$60.00$  (This is the **actual income** generated from the assets)

**Step 3:** Since the MV of the asset is less than \$5,000, add the ACTUAL INCOME generated from the asset to the annual income from regular sources. The product yields the household’s anticipated gross annual income.

### 2. Assets Greater than \$5,000

If the cash value of all assets is greater than \$5,000, an owner is required to include the greater of either: 1) the actual annual income received from these assets or 2) the imputed income.<sup>64</sup>

#### EXAMPLE

*The Jones family has a certificate of deposit (CD) in the amount of \$12,000 earning interest at a rate of 3%. The penalty for early withdrawal is \$125.00.*

**Question (2):** What is the amount of income includable from this household's assets?

**Answer (2):** **\$360.00**

#### Methodology (A) – Actual Income:

**Step 1:** Determine the market value (MV) of the asset from all sources

*\$12,000.00*

**Step 2:** Multiply the MV of all assets by the verified interest rate

*\$12,000 \* .03 = \$360.00 (This is the **actual income** generated from the assets)*

**Step 3:** Add the GREATER of the actual income (methodology A, step 2) or the imputed income (methodology B, step 3) from the asset to annual income from regular sources. The product yields the household's anticipated gross annual income.

*Actual income = \$360.00; Imputed Income = \$?*

*NOTE: Calculation of the imputed income is needed before a determination can be made as to which income amount is includable in the household's total gross income. (See methodology B below)*

#### Methodology (B) –Imputed Income:

**Step 1:** Determine the market value of the asset from all sources

*\$12,000.00*

**Step 2:** Subtract any expenses that would be incurred to convert the asset to cash (penalties, fees, and settlement costs)

*\$12,000.00 - \$125.00 = \$11,875.00 (This is the **cash value (CV)** of the assets)*

**Step 3:** Multiply the CV of all assets by HUD's imputed passbook rate

*\$11,875.00 \* .02 = \$237.50 (This is the **actual income** generated from the assets)*

**Step 4:** Add the GREATER of the actual income (methodology A) or the imputed income (methodology B) from the asset to annual income from regular sources. The product yields the household's anticipated gross annual income.

*Actual income = \$360.00; Imputed Income = \$237.50*

*The higher of the two amounts is the actual income. Add the actual income to the verified regular income from all sources to get the total gross anticipated income for the household.*

<sup>64</sup> Imputed income is the percentage of value of the asset based upon the passbook savings rate as established by HUD, currently 0.06%.

### C. Special Occupants

An owner, when attempting to calculate the gross annual income of a household, must consider the relationship/status of certain occupants in order to determine the manner in which any associated income is to be calculated.

These special occupants are:

1. Permanently Absent Family Member

When a family member is permanently absent from the household (e.g., spouse who is in a nursing home), the head of household can treat the permanent absent member(s) as a member of the household and count any associated income OR NOT consider the permanently absent family member as a part of the household and disregard any associated income.<sup>65</sup> The decision to count the income of a permanently absent family member is solely the decision of the head of household.

2. Temporarily Absent Family Member

Generally, the income of a temporarily absent family member (i.e., spouse or head/co-head of household away working in another city) must be included in the annual income calculation of the household regardless of the monetary amount the absent member is actually contributing to the household. However, a temporary absent family member, excluding the head, co-head, or spouse, on active military duty must be removed as a household member (and any associated income) unless said person(s) leaves a spouse or dependent in the unit, which in this case, the person is considered a household member and a calculation of his/her income is required. ***(For more information on this topic, refer to Chapter 4 of this Plan.)***

3. Students

The treatment of a student's income is dependent on the age of the student, the type of income and the status of the student within the household. It does not matter whether the student is living within the unit or is away at school.

- If the full-time student is 18 years of age or older and is the head of household, spouse or co-head, all income is included.
- If the full-time student is 18 years of age or older and a dependent of the head or co-head of the household (or student's tax filing shows that he/she is a dependent on the head or co-head of household's tax return), only the lesser of the actual

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<sup>65</sup> A permanently absent family member may not be named as the head of household, spouse or co-head of household.



earned income or \$480 is included, along with unearned income and income from assets.

- If the full-time student is a minor (under the age of 18), then only unearned income and income from assets is included.

All forms of student financial assistance (i.e. grants, scholarships, educational entitlements, work-study programs, and financial aid packages) are excluded from income except for students receiving Section 8 assistance. For student's receiving Section 8, this requires the inclusion of all financial assistance in excess of tuition and any other required fees and charges (except for student loans) of a student enrolled at an institution of higher learning regardless of the full-time or part-time student status. Required fees are all fixed sum charges that are required of a large portion of all students. Examples included writing and science lab fees and fees specific to the student's major or program. Expenses related to attending the institution **must not be included**. Example of these expenses include, but are not limited to, room and board, books, supplies, meals, transportation and parking, student health insurance plans, and other non-fixed sum charges. The only two exceptions to this requirement are:

- Students over the age of 23 with dependent children or
- Students living with his/her parents who are receiving Section 8 assistance.

## 5.6 DIFFERENCES IN REPORTED INCOME

The income reported on third-party verification and/or received by a resident is not always accurate. In knowing this, an owner should give prospective and/or existing residents the opportunity to explain any significant differences between the amount reported on the application/recertification questionnaire and amounts reported on the third-party verification in order to determine the most accurate anticipated income of the household. The file should be documented to explain any differences.

An owner is expected to make reasonable judgment regarding the most reliable method for anticipating the income a household will receive over the next 12 months. In the event a household's income cannot be adequately determined using current information, the owner may include actual income received or earned within the 12-month period before the determination of annual income to determine program eligibility. NOTE: The prior year's income should not be used to estimate future income if sufficient documentation can be obtained documenting earning capabilities and/or income stream change.

An owner must keep accurate records/notes of the clarification received, including calculation methodology used to determine household eligibility. There is no need to submit such information to the Corporation at that time. However, the Corporation reserves the right to inspect the tenant files and/or interview a prospective/existing resident(s) to ensure that the proper verification procedures are (were) followed.

## 5.7 CHANGES IN INCOME

Once an initial income determination has been made for a HTC household, changes in income that occurs over the duration of the household's occupancy should be handled in accordance to the following:

### A. Interim

The guidelines for the HTC program do not require qualifying households to report interim household income changes after a household has been initially qualified. However, in the event the gross annual income of a household changes as a result of an addition and/or reduction of household members, the household's income must be reassessed in accordance with policy as stated in Chapter 4.3A of this Plan.

### B. Recertification

In accordance with Section 42 of the Code, an owner of a tax credit development must ensure that each resident of a qualified HTC unit have their total gross household income re-examined annually in order to monitor the household's income in relation to the current income limits, except developments eligible for the IRS Recertification Waiver. ***(For more information on recertification requirements refer to Chapter 4 of this Plan.)***

## 5.8 INCOME LIMITS FOR DEVELOPMENTS WITH MULTIPLE FUNDING SOURCES

Due to the complexity involved in putting together a tax credit development, it is not uncommon for an owner to obtain funding from various sources in order to make the deal work. In obtaining funding from multiple sources, an owner must also be aware of other income requirements and special restrictions that may affect the overall eligibility status of a household/HTC unit.<sup>66</sup>

When a development receives financing from another program or lender (i.e., HOME, RHS, Tax-exempt bonds, etc.) that imposes different eligibility requirements (i.e., stricter tenant income

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<sup>66</sup> A tax credit development may be layered with other affordable housing programs such as HOME, RHS 515 which also have minimum income and rent requirements. When this happens, compliance with the rules and regulations of the HTC program is still required in order for the owner of the development to claim the housing credit.

requirements, longer restrictions), the development must also comply with the rules and regulations of the HTC program. In doing so, an owner must be aware of the following significant program differences:

1. HOME

The HOME program requires the participation of a percentage of units based on the number of units that are HOME Assisted units rather than the total number of units. The ratio is calculated based on the HOME funds received by the development and the total eligible development cost. Additionally, the HOME program requires 20% or less of the remaining units be leased to households with a gross income up to 80% of the AMGI. Tax credit developments on the other hand must qualify households in accordance with the MSA for the development which must be at or below 60% of the AMGI.

The HOME program may require certain units to be designated possibly by a certain floor or a certain building; whereas the tax credit program requires a minimum percentage of units based on a building/development.

NOTE: If the HOME program maximum income requirement is at 50% of the AMGI and the MSA requirement for the tax credit program is 60%, you cannot have 60% units in a 50% deal. Alternatively, you can have 40% or 50% units in a 60% deal.

2. RHS 515

Under the RHS program,<sup>67</sup> a household's *adjusted income* must be at or below 80% of AMGI.<sup>68</sup> This RHS fundamental requirement could cause of an ineligible tax credit household since the tax credit program utilizes the anticipated gross annual income rather than the adjusted income used by the RHS program.

3. Tax-Exempt Bonds

Tax-exempt bond financed developments are generally income restricted only. However, when paired with tax credits, the development becomes income and rent restricted as the tax credit program requires a restriction of both. In light of such, the maximum income levels must be adhered to whereby the gross annual income and rent of all tax credit households is at or below the applicable limits.

NOTE: When complying with the program requirements of multiple sources, the Corporation strongly suggests that the income limit for the HTC program be determined first, to ensure the household meets the tax credit household eligibility requirements.

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<sup>67</sup> RHS provides below market loans to developments meeting certain rural area definitions. In exchange, the development must adhere to RHS program requirements.

<sup>68</sup> Adjusted income is the income amount less certain allowable cost such as medical expenses and child care. The HTC program utilizes anticipated annual income without any adjustments.

## 5.9 MINIMUM INCOME REQUIREMENT FOR PROSPECTIVE SECTION 8 RECIPIENTS

IRS Section 42(h)(6)(B)(iv) prohibits refusing to lease to a Section 8 voucher or certificate holder due solely to this association. To the same, leasing policies that discriminate or have the effect of excluding a large portion of Section 8 tenants are prohibited.

The Section 8 certification and voucher program provide for the monthly payment of a portion or all of the rent for its recipients. The incomes of a voucher and certificate holder must meet the HUD Section 8 guidelines in order to be eligible to participate in the Section 8 program. Likewise, an owners/manager of a HTC development may not establish minimum income occupancy requirements for Section 8 applicants as a condition for occupancy.<sup>69</sup> It is permissible, however, to require that a Section 8 holder show adequate income to pay the out-of-pocket portion of rent, such as three times (or other reasonable multiplier common in the rental housing industry) the amount of tenant-paid rent, not including the subsidy amount paid by Section 8.

*NOTE: Residency may be denied of a Section 8 resident if he/she fails to meet any other consistently applied screening criteria (i.e., criminal background, eviction history, credit rating).*

## 5.10 AREA MEDIAN GROSS INCOME (AMGI)

IRS Revenue Ruling 94-57 ***Changes in Area Median Gross Income (AMGI)*** provides guidance to development owners on the effect of changes in AMGI on initial tenant qualification and the next available unit rule. An owner must apply this revenue ruling regardless of when a development received a tax credit allocation. The ruling explains that the income limit used to initially qualify tenants in a tax credit unit fluctuates with changes in AMGI, which must be in effect at the time of initial occupancy as the qualifying income limit. Lowering of the applicable AMGI does not retroactively disqualify a tenant who initially qualified under a higher AMGI.

A reduction in AMGI decreases the income limit used to determine whether a development owner must rent any available unit to a new low-income tenant, and an increase in AMGI likewise increases the income limit used to determine whether a development owner must rent any available unit to a new low-income tenant. A building does not have one AMGI level.

*Note: In accordance with HR 3221, once the AMGI is determined for a development that PIS prior to May 14, 2010, it cannot be decreased in future years, and is thus, held harmless (HUD's Hold Harmless provision). For more information on this provision, refer to section 5.2A of this Chapter.*

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<sup>69</sup> Applicable to Section 8 recipients only and does not prohibit such restrictions for non-Section 8 tenants.



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# CHAPTER 6 - GROSS RENT DETERMINATION

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## 6.1 OVERVIEW

According to Section 42 of the Code, the rent of a tax credit unit must also be restricted for an owner to be eligible to claim the tax credit. A unit is considered to be rent restricted when the gross rent for the household is restricted whereby it is deemed affordable to low-to-moderate income households. In doing so, participants of the HTC program must establish a gross rent, which is the tenant's rent contribution plus utility allowance and any mandatory charges, that does not exceed the program's maximum rent limits, which is 30 percent of the imputed income limitation.<sup>70</sup>

## 6.2 RENT LIMITS

In accordance with the Omnibus Budget Reconciliation Act of 1989, since 1990, the rent limits for a low-income unit is based on an imputed household size, which is determined by the number of bedrooms in the unit. In order to calculate the rent limit utilizing this method, the IRS established a basis for the number of people to occupy a unit. This basis established an "imputed occupancy" assumption for each unit size of 1.5 persons, 1.0 person for efficiency units.<sup>71</sup>

### A. Methodology

Calculation of the rent limit for a particular household/unit is determined primarily by the number of bedrooms in the unit with an adjustment for the location of the development and the elected minimum set aside. Generally, to determine the rent limit for a prospective or recertifying household, an owner must utilize the following methodology:

Step 1: Determine the set of rent limits applicable for development (i.e., MTSPs, HERA Special or National Non-Metro)

**\*\*Use the greatest of all applicable limits\*\***

Step 2: Select the county in the state of Mississippi in which the development is located

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<sup>70</sup> Developments allocated tax credits prior to 1990 determined the rent limit based on the size of the household occupying the unit with an adjustment for tenant-paid utilities and mandatory charges.

<sup>71</sup> The imputed occupancy assumption allows a development receiving tax credits post 1989 to identify the number of bedrooms a prospective household desires when determining rents and multiply it by an imputed occupancy of 1.5 persons to get the tax credit rent limit for the unit before adjustments for any tenant-paid utilities and/or mandatory charges.

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Step 3: Select the development's minimum set aside

**For 1990- 2016 FY Limits:**

Step 4: Find the imputed household size by multiplying the unit size by an imputed occupancy assumption of 1.5 persons, with the exception of an efficiency unit which is 1.0.

Step 5: Take the sum of the product found in step 3 and the corresponding minimum set aside to determine the applicable rent limit for the household. (The point in which the imputed household size and the minimum set-aside meet is considered the **tax credit rent limit** for the unit/household.)

**EXAMPLE**

*The manager of CBA Apartments, a tax credit community located in Lauderdale County placed in service 3/1/2009, has a three-person household with a verified income of \$24,500 wanting to rent a two (2) bedroom tax credit unit. The owner agreed to rent 40 percent of the units at 60 percent (40/60) of the area median income. The owner does not pay the utilities at the development.*

**2010 MTSPs Rent Limits, effective May 14, 2010**

Lauderdale County	Percent of Median	1 Person	1.5 Persons	2 Person	3 Person
MFI	50%	\$408.00	\$437.00	\$466.00	\$525.00
\$46,600	60%	\$490.00	\$525.00	\$559.00	\$630.00

**HERA Special Rent Limits, effective May 14, 2010**

Lauderdale County	Percent of Median	1 Person	1.5 Persons	2 Person	3 Person
MFI	50%	\$436.00	\$466.00	\$497.00	\$560.00
\$46,600.00	60%	\$523.00	\$560.00	\$597.00	\$672.00

Step 1

Step 4



Lauderdale County	Percent of Median	1 Person	1.5 Persons	2 Person	3 Person
MFI	50%	\$451.00	\$483.00	\$516.00	\$580.00
\$51,600	60%	\$541.00	\$580.00	\$619.00	<b>\$696.00</b>

### Step 5

2017 MTSPs Rent Limits, effective 4/14/2017

Adams County	Percent of Median	0 Bdrm	1 Bdrm	2 Bdrms	3 Bdrms
	50%	\$400	\$428	\$513	\$593
	60%	\$480	\$513	\$516	\$711

Step 1

2017 National Non-Metro Rent Limits, effective 4/14/2017

NNM	Percent of Median	0 Bdrm	1 Bdrm	2 Bdrms	3 Bdrms
	50%	\$482	\$517	\$621	\$717
	60%	\$579	\$621	\$745	\$861

Step 2

Step 3

## B. Determination Schedule

### 1. Prior to 2009

The Corporation, upon receipt of HUD's updated income and rent limits, issued a single set of revised limits for HTC developments reflecting the 50 and 60 percent figures for the state of Mississippi.

### 2. Subsequent to 2008

With the release of HUD's FY 2009 income and rent limits, the Corporation issues three sets of income and rent limits: Multifamily Tax Subsidy Projects (MTSP), HERA Special, and National Non-Metropolitan Limits. **(Refer to Chapter 5 more information on these limits.)**

## 6.3 COMPONENTS OF GROSS RENT

In the HTC program, the gross rent of a unit includes components not generally included at a conventional market-rate development - the tenant's portion of the rent plus utility allowance, mandatory charges, fees and services.

### A. Utility Allowance

According to Section 42(g)(2)(B), the maximum allowable gross rent must include the cost of utilities paid directly by the tenant, except for telephone, cable and internet services. When applicable, the rent limit must be adjusted according to an utility allowance schedule whereby granting qualified residents a utility allowance estimate for qualified tenant-paid utilities. **(Refer to Section 6.4 of this Chapter for more information on this topic.)**

### B. Fees

#### 1. Provision of Services

HTC residential rental property may offer services other than housing. However, under Treas. Reg. 1.42-11(a)(3), the cost of services that are required, non-optional, as a condition of occupancy must be included in gross rent even if federal or state law required that services be offered to tenants by building owners.

Examples of non-optional services include the mandatory implementation of:

- Residential meal plan;
- Renter's insurance;
- Laundry facility;
- Month-to-month lease fees
- Garage/storage space

Refundable/optional fees associated with renting a low-income unit (i.e., pet fees, laundry room fees, garage, storage fees, etc.) are not included in gross rent.<sup>72</sup> Fees such as security deposits and lease termination fees are one-time payments that are not considered in gross rent.

## 2. Development Facilities

Additionally, no separate fees may be charged for facilities (i.e., pools, parking, fitness centers, staff units) if the costs of the facilities are included in eligible basis.

## 3. Governmental Assistance

The gross rent should not include fees paid to the owner of a development by a governmental assistance program or by a 501(c)(3) nonprofit organization for supportive services which also provides rental assistance if the amount of assistance provided for rent cannot be separated from the amount provided for supportive services [Section 42(B)].<sup>73</sup>

In the case of a SRO unit or transitional housing for the homeless, supportive services include any service provided to assist tenants in locating and retaining permanent housing [Section 42(g)(2)(B)(iii)].

## 4. Application/Misc. Fees

An owner may charge an application fee. However, the fee should reimburse the owner/development for costs associated with processing the tenant's application (i.e., cost of credit/background checks). The fee may not exceed processing costs.

Fees for preparing a unit for occupancy (i.e. decorating fees) must not be charged. It is the responsibility of the owner to make units suitable for occupancy.

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<sup>72</sup> A service is optional when it is not a condition of occupancy and there is a reasonable alternative.

<sup>73</sup> A supportive service includes any service provided under a planned program of services designated to enable residents of a residential rental development to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped.

Additionally, an eligible household cannot be charged a fee for the work involved in completing additional forms or documentation, such as the Tenant Income Certification, required to prove eligibility for the HTC program.

*NOTE: The gross rent for a unit may be at or below the unit's rent limit. A gross rent amount that exceeds the rent limit is considered a noncompliance event reportable to the IRS.*

## 6.4 UTILITY ALLOWANCE

According to Treasury Regulation 1.42-10, documentation of a development's utility allowance estimate must be acquired from an authorized utility provider (i.e., PHA, HUD, RHS, local Utility Company, licensed Engineer or Qualified Professional), by utilizing an approved utility estimate determination model (HUD or Energy Consumption), and/or based on actual consumption. An owner must update (or attempt to update) all utility allowance estimates on an annual basis. If at any time during the development's compliance period the update results in a change in the utility estimate currently in use, the new utility allowance estimate must be used to compute the gross rent of qualifying household's within 90 days of the change.

### A. Source Providers

#### 1. Public Housing Authority (PHA)

The Public Housing Authority (PHA) generates a utility allowance estimate based on average usage consumption data for a particular area. Unless a development is subject to the utility allowance guidelines as stated in IRS Reg. 1.42-10, the PHA is the appropriate utility allowance estimate source provider. The documentation obtained from the PHA should have all applicable figures provided and completed by the agency. Documentation whereby figures are completed by the owner/manager (i.e. typed in or handwritten figures) are deemed unacceptable.

A PHA must review its schedule of utility allowances each year and must revise its allowance for a utility category if there has been a change of 10 percent or more since the last time the utility allowance was revised. The 90-day implementation period begins when the PHA makes the revised utility allowances available to the public.

#### 2. Department of Housing and Urban Development (HUD)

A HUD-regulated building is one in which the rents and utility allowances of the buildings are regulated by HUD. When there is a below-market HUD loan on a building, the applicable utility allowance for all rent restricted units in the building is the HUD utility allowance. On the other hand, the applicable allowance for any rent restricted unit occupied by residents receiving HUD Section 8 assistance (i.e., Housing Choice Voucher holder) is the PHA allowance. The utility allowance only applies to the unit in which a resident receives Section

8 assistance, and not to any other units in the building. In this instance, the appropriate documentation of the utility allowance would be the official Notification of Section 8 Gross Rent that includes the approved utility allowance from HUD.

### 3. Rural Housing Services (RHS)

A Rural Housing Service (RHS) approved utility allowance must be used at a development that is RHS assisted, including any units occupied by households receiving Section 8 rental assistance payments. Additionally, if a unit receives RHS rental assistance, then the entire building becomes subject to RHS approved utility allowance. If the building has RHS assistance and is monitored by HUD, then an RHS approved utility allowance should be used. Appropriate documentation of a RHS utility allowance estimate is the official Notice of Approved Rent and/or Utility Allowance Change from RHS.

### 4. Local Utility Company\*

Alternatively, an owner (or tenant) may obtain utility cost estimates from the appropriate local utility company in the area the development is located. The owner must furnish the Corporation with a copy of the utility company's estimated utility costs for units of similar size, construction and geographic area to the low-income development. If the utility service is deregulated, the estimate may be obtained from just one of the multiple utility companies offering the same utility service to the building. The estimate must be on the utility provider's letter head. The local utility estimate is not available to buildings/tenants subject to RHS or HUD jurisdiction.

The utility allowance is considered "obtained" when the building owner receives, in writing, information from the utility company providing the estimated per unit cost of the utility. Receipt of the information from the utility company begins the 90-day period after which the new utility allowance must be used to compute gross rents.

### 5. HUD Utility Schedule Model\*

A building owner may calculate a utility estimate using the HUD Utility Schedule Model. Utility rates used for the HUD Utility Schedule Model must be no older than the rates in place 60 days prior to the beginning of the 90-day period before new rates have to become effective. HUD's Utility Schedule Model can be found at <http://www.huduser.gov/portal/resources/utilallowances.html> or successor URL. Owners who use this model will need to document the source and content of all factors entered into the model. This estimate may be produced by the owner or a licensed, professional third party.

***The date entered as the "Form Date" on the "Location" spreadsheet of the Utility Schedule Model and reflected on the Form 52667, Allowances for Tenant-Furnished Utilities and Other Services, begins the 90-day period after which the new utility allowance must be used to compute gross rents.***

The HUD Utility Model must be renewed at least once every 12 months and completed so that the approval date is within 12 months of the previous year's utility allowance.

#### **6. Energy Consumption Model\***

A building owner may calculate a utility allowance estimate using an energy and water and sewage consumption and analysis model, referred to as the Energy Consumption Model. At a minimum, the energy consumption model must take in account specific factors including but not limited to unit size, building orientation, design and materials, mechanical systems, appliances, characteristics of the building location and available historical data. The utility consumption estimates must be calculated by an approved properly licensed engineer or a qualified professional that has jurisdiction over the building. The building owner and qualified professional must not be related parties. The owner must certify to this in writing as well as send the credentials (licensed engineer documentation, years of experience conducting utility estimates, etc.) of the qualified professional. The 90-day period begins 60 days after the end of the last month of the 12-month period for which data was used to compute the estimate.

The energy consumption model must be renewed at least once every 12 months and completed so that the approval date is within 12 months of the previous year's utility allowance.

#### **7. Actual Use Method\***

The Corporation will review actual utility company usage data and rates of the building for which the utility allowance is requested. An owner may propose utility allowances for each building in a development to the Corporation based on average actual usage data and rates for the building(s). In the case of newly constructed or renovated buildings with less than twelve months of consumption data, the owner may use twelve-month consumption data from buildings of similar size and construction in the geographic area of the building(s).

*\*An owner must acquire written approval from the Corporation before the utility allowance from this source may be implemented at a development site. In addition to the submission requirements cited above, the Owner Certification of Utility Estimate located in Appendix B must be included. Lastly, the Corporation will assess a \$150.00 fee per development, per request to review and approve utility allowance request.*

*NOTE (2): At the beginning of building's operation, an owner is exempt from reviewing the utility allowances or implementing a new utility allowance estimate(s) until the building has achieved 90% occupancy for a period of 90 consecutive days or the end of the first year of the credit period, whichever is earlier.*

*NOTE (1): Copies of the new estimates acquired from a local utility company or an approved determination model must be provided to the Corporation and made available to all tenants in the building at the beginning of the 90-day period before they can be used for determining the gross rent of a rent restricted unit.*

## **B. Submitting Owner Estimate Requests on Newly Placed-In-Service (PIS) Properties**

Owners may use Sources 1, 2 and 3 (as applicable) until the Corporation has approved the use of an alternate method.

## **C. Approvals and Denials**

Owners who submit complete and accurate information will receive a notice approving the owner's utility allowance within 30 days of receipt. Questions or requests for additional information will be emailed by the Corporation within 30 days of request submission. Owners who do not receive an approval letter or email request within 30 days should contact the Corporation. Non-receipts of an approval letter or email request are not considered evidence of approval.

Residents have the right to question approved utility estimates. Residents who do not believe the estimate represents appropriate utility usage must submit copies of their bills to their on-site manager for review.

If the Corporation denies the owner's request, the owner will receive an email describing the reason for denial. The owner must then submit the most current local Public Housing Authority estimates for the project within 30 days of denial and implement any changes based on those allowances within 90 days.

The Corporation may deny a request to use a specific utility allowance for the following reasons:

1. Uncorrected noncompliance issues as determined by the Corporation.
2. The Corporation determines that information submitted is incomplete or insufficient to accurately determine allowances.

Failure to use the Corporation approved or mandated utility estimate at a property may result in material noncompliance reportable to the IRS. In the case of either federal or state noncompliance, the Corporation may impose additional requirements or restrictions on the Owner prior to approving any new housing tax credit allocations or bond issuances."

## **D. Changes to these Procedures**

These procedures are subject to change at any time by the Corporation based on staff experience. These procedures may also be suspended or amended based on additional IRS clarification, guidance or changes to regulations.

## E. Sub-Metering/Ratio Utility Billing Systems

On May 5, 2009, the Treasury Department and the IRS released Notice 2009-44 to provide guidance on how the utility allowance regulations apply to buildings with a sub-metering system. On August 7, 2012, the Treasury Department and the IRS published a Federal Register notice of proposed rulemaking that provided that utility costs paid by a tenant based on actual consumption in a sub-metered rent-restricted unit are treated as paid by the tenant directly to the utility company and thus do not count against the maximum rent that the building owner can charge. In these cases, the owner may establish a utility allowance in accordance with the IRS utility allowance regulation 1.42-10 for sub-metered utilities.

The final regulation adopts the 2012 proposed regulation and extends those rules to the provision of energy that the building owner acquires directly from renewable sources and provides to low-income residents (e.g., solar energy sources).

### Sub-metering

1. Actual-Consumption Sub-metering Arrangements and Ratio Utility Billing Systems (RUBS)
  - a. The final regulations define an actual consumption sub-metering arrangement for utility allowance purposes as one that does not include a ratio utility billing system (RUBS). The regulations precluded an arrangement such as RUBS from qualifying as an actual consumption sub-metering arrangement. The regulation does not prohibit the use of RUBS for low-income housing tax credit projects but any amount paid by a tenant for utilities using RUBS must be included in gross rent and may not be part of the utility allowance.
2. Administrative Cost of Sub-metering
  - a. There is no requirement to determine actual monthly cost of administering the sub-metering program. Owners can charge tenants an administrative fee in accordance with a state or local law that specifically prescribes a dollar amount. Administrative fees in excess of five dollars per month are allowed in the absence of state or local law. There is an upper limit on administrative fees even if state or local law allows higher fees.
  - b. If a building owner or its agent charges a unit's tenants a fee for administering an actual consumption sub-metering arrangement, the gross rent includes any amount by which the aggregate amount of monthly fees for all of the unit's utilities under one or more actual consumption sub-metering arrangements exceed the greater of (i) five dollars per month; (ii) an amount (if any) designated by publication in the Internal Revenue Bulletin; or (iii) the lesser of a dollar amount (if any) specifically prescribed under a state or local law or a maximum amount (if any) designated by publication in the Internal Revenue Bulletin.



If owners charge more for administrative fees than permitted under this regulation, any charges in excess of those permitted must be included in gross rent.

3. Energy Acquired Directly from a Renewable Source
  - a. This regulation contains temporary regulations that apply those principles to energy that the building owner provides to tenants after having acquired it directly from renewable sources.
    - i. However, in such cases, charges to the tenants for this energy must be comparable to local utility rates. Charges by the building owner must not exceed the rates that the local utility company would have charged the tenants if they had instead acquired the energy from that company. [e.g., if an owner charges residents for electricity generated by solar power, the amount charged may not exceed the amount the residents would pay for electricity provided by the local utility company].

#### **Summary**

1. Owners may sub-meter units for utilities that owners obtain directly from renewable sources instead of from utility providers.
2. The maximum administrative fee that may be charged for sub-metering is changed from the lesser of (1) five dollars per month, or (2) the owner's actual monthly costs paid or incurred for administering the arrangement, to the greater of (1) five dollars per month; (2) an amount designated by the IRS; or (3) the lesser of a dollar amount specifically prescribed under State or local law or a maximum amount designated by the IRS. If a fee in excess of the permitted amount is charged, it must be included in gross rent.

#### **On-Site Documentation**

1. Copy of master bill (4 months' worth).
2. Copies of tenant billing statements (4 months' worth) which details all charges, including any administrative fees.
3. Language in lease must identify units as sub-metered for certain utility costs."

## **6.5 CHANGES IN RENT**

The gross rent of a household occupying a HTC unit may fluctuate up and down as the county median income limit and/or utility allowance fluctuates year to year. When this happens, special care must be taken to ensure the proper rental amount is being charged.

### **A. Income Limits**

The rent and income limits for the HTC program are directly tied to each other. Generally, HUD releases income limits each year based on the updated calculation of area median incomes. Due to the correlation of the rent limits to the income limits, any update/change to the income limits directly impacts the applicable rent limit for a unit. As a result of these changes, the maximum allowable rents for a low-income unit may need adjusting. Rental adjustments must be handled in accordance with the following:

#### **1. Decrease in AMGI**

A decrease in the AMGI to which a development is located yields a reduction in the maximum allowable rent that may be charged. If this reduction of AMGI yields a rental rate that exceeds the new HTC rent limit, the owner must reduce the gross rent of all affected units to conform to the new schedule, regardless of the rent change date stated in the lease, no later than the effective date of the limits as provided by HUD or within 45 days of HUD's publication date.

Through the Omnibus Budget Reconciliation Act of 1989, Congress established a "rent floor" by providing that the maximum permissible rent for any unit may not fall below the initial rent when the unit was first occupied. Thus, if the median income in the area falls, the rents do not need to be reduced below original levels.

Under IRS Revenue Procedure 94-57 *Maximum Rent and Maximum Rent Floor*, effective for developments receiving initial allocations or determination letters after September 23, 1994, the rent floor is established on the date of allocation.<sup>74</sup> However, an owner may establish the rent floor for a development at the PIS date provided the owner has informed the Corporation of the designation prior to placing a building/development in service.

If the owner does not make the election by a building's PIS date, the IRS will treat the rent floor as taking effect on the date of allocation. For those developments receiving an initial allocation or determination letter prior to September 23, 1994, an owner had the option of establishing the rent floor for a building using either the allocation date or the PIS date. Additionally, these development owners were not required to notify the IRS of this election.

New rental rate limit must always be applied to HTC units occupied after the effective date of the revision. In this instance, the old limits become obsolete.

#### **2. Increase in AMGI**

To the same, annual changes in the area median income may allow an owner to increase the maximum allowable rent that may be charged for the occupancy of a low-income unit. An owner, when processing a rental increase must only implement a rental increase at the time

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<sup>74</sup> For a development with a rent floor established at the issuance of the carryover allocation and where the income limits are lower at placed in service than at the establishment of the rent floor, the initial maximum rents for the development will be the rent floor. However, the initial income limits used to determine resident eligibility will be those in effect at placed in service. This situation will continue until such time as the income limits for the current year are at least equal to those used to calculate the rent floor.

of lease renewal or when the tenant is recertified, unless the lease agreement denotes otherwise. *Refer to Section 6.9 of this Chapter for more information on this topic.*

### 3. Over-Income

The rent for a unit occupied by a household determined over the income limits at recertification is still subject to the rent restrictions of the HTC program if the unit is to remain in compliance, *except where permitted (refer to Section 6.6A of this Chapter for information on this topic).*

## B. Utility Allowance

Just as changes in the income limit directly affects the maximum rental rate that can be charged of a HTC unit, so does fluctuations in the utility allowance applicable to a unit. If a decrease in the income limit for a unit results in a lower maximum rent, an owner must review the rental rates charged of all applicable units and adjust accordingly, if applicable, to ensure compliance with the new rent limit.

Any change in the applicable utility allowance for a unit must be reflected within 90 days after the date of the change. Utility allowance adjustments which lower the allowance and thus have the effect of increasing the maximum net rents are effective for all move-ins and may be used for existing tenants subject to lease provisions.

## 6.6 RENTS FOR UNITS WITH OVER-INCOME HOUSEHOLDS

Once a household has been determined initially income eligible, future changes in the household's gross income resulting in an annual income amount over the current income limit applicable to the household do not automatically disqualify the HTC unit. However, to preserve the low-income status of the unit, an owner must handle the over-income situation in accordance with the following development types:

### A. Mixed-Income Development

At a mixed income development, once a household has been determined over-income, that is, the gross annual income exceeds the applicable income limit by 140%, 170% for deep rent skewed development's, the gross rent for the household/unit(s) must remain rent restricted until a tax credit unit of comparable or smaller size is rented. Upon renting of the next available unit, an owner may then remove the unit from its HTC unit calculation and set the rent at any desired 'unrestricted' market rate amount.

### B. 100% HTC Development

At a 100% low-income development, if the gross annual income of a low-income unit exceeds the limit by 140%, the gross rent of the household/unit can never exceed the maximum allowable tax

credit rent. Although the gross annual income exceeds the tax credit limit, the tax credit program allows the over-income household to remain in the unit and the unit would still be eligible for tax credit purposes. *(For more information on this topic, refer to Chapter 2 of this Plan.)*

## 6.7 RENTS FOR UNITS WITH RENTAL SUBSIDY

Generally, the gross rent for a tax credit unit does not include any payments made to the owner by another government agency or nonprofit organizations, such as Section 8 rental assistance, RHS 515 rental assistance, or any other comparable rental assistance program. **(See Section 2(O)(2)(B)(i) of the IRC).** Thus, an owner, when establishing the gross rent for a rental assisted unit, should generally disregard any rental assistance payment(s). However, in doing so, an owner must also ensure compliance with other rules/restrictions that may apply per rental assistance/subsidy type.

### A. Tenant-Based Rental Assistance

Tenant-based rental assistance (TBRA) is financial assistance offered to help individual households in an effort to better afford housing costs (i.e., rent, utilities, etc.) associated with market-rate units. Although TBRA provides rental assistance to qualifying households, under the HTC program said assistance does not affect the gross rent for the unit, only the payments made directly by the tenant. In this instance, rental payments made by Section 8 voucher holder may exceed the HTC rent limit as long as the owner receives a Section 8 assistance payment on behalf of the resident. If no subsidy is provided, the tenant may not pay more than the HTC rent limit.

#### *Section 8 Rental Assistance Payments*

For tenants receiving Section 8 rental assistance, a copy of the Housing Assistance Payment (HAP) Contract and the current HAP Amendment from the Section 8 agency must be maintained in the household's tax credit eligibility file in order to verify the amount of the Section 8 rental assistance.

### B. Development-Based Rental Assistance

The gross rent of a household residing at a tax credit development receiving and/or providing development-based rental assistance (i.e., rental assistance payments made on the behalf of needy families directly to the development owner through a federal or owner-generated subsidy) is generally not affected by the rental assistance "subsidy" payment. However, the manner in which the subsidy payment is to be applied depends on the type of assistance provided: Project-based Section 8, RHS or Owner-subsidized.

#### 1. Section 8/RHS

Under most development-based rental assistance programs, a household generally pays 30% of their monthly adjusted income in rent. In turn, the development owner has a contract under which the applicable federal agency pays the owner the difference between the contract rent and the household's portion of the rent. Although HUD/RHS makes rental payments to the owner on the behalf of the household, in this instance, it is not treated as a part of the household's gross rent calculation.

Additionally, a portion of the rent paid by a Section 8 tenant can exceed the tax credit rent limit as long as the owner receives a Section 8 assistance payment on behalf of the resident. If no subsidy is provided, the tenant may not pay more than the maximum rent allowable by the tax credit program.

*NOTE: According to HUD Final Rule 24 CFR Part 983, a development with project-based (PBV) rental assistance may have a maximum gross rent amount in excess of HTC rent limits. HUD urges, however, PHAs to subsidize a reasonable market rent for a unit assisted through a PBV contract.<sup>75</sup>*

## 2. Owner Rental Assistance

Owner rental assistance (ORA) is a development based rental subsidy provided by an owner, if elected, to assist a certain percentage of low-income households.<sup>76</sup> The intended purpose of the ORA is to serve as a direct rental benefit to the subsidized household's out of pocket rental amount thereby offsetting the household's net tenant contribution.

### *Eligibility Criterion*

When assigning/reassigning ORA, preference must first be given to an elderly, a single-parent or a household(s) without tenant-based rental assistance. Once ORA has been applied/assigned in accordance with the aforementioned preferences, any deficit ORA assignments may be satisfied in accordance with an owner's written plan pertaining to the same.<sup>77</sup>

*Note: A household's whose net rent contribution (before application of the ORA) is less than the required minimum ORA should not be assigned ORA.*

### *How to Apply the ORA*

To apply ORA, an owner must first establish the contract rent for the unit, which should be comparable to rents charged to similar units of the same size, location, square footage and amenities. Once the contract rent has been determined, the owner should apply all rental credits (i.e., Section 8, Housing Choice Voucher) with the exception of the ORA. This will generate the household's obligated contributions. From the household's obligated contribution, the ORA should be subtracted.

### *ORA Reassignment*

At the time of recertification, a subsidized household's income needs to be re-examined for continued eligibility. Effective March 1, 2007, in order to remove/reassign ORA for a subsidized household, the household's gross income must be at or above 60% of AMGI. When

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<sup>75</sup> On December 19, 2007, this rule was revoked by HUD thereby again allowing the rents to be established following standard procedures for the tenant-based voucher program.

<sup>76</sup> Owner provided rental assistance is considered a floating subsidy transferable unit to unit.

<sup>77</sup> The ending term of an owner's ORA requirement may be extended should the Corporation determine ORA was not applied and/or maintained in accordance with underwriting guidelines.

this happens, the ORA must be pulled and reassigned to the next qualifying household on the waiting list.

#### *ORA Revocation*

ORA may be discontinued and/or revoked for an assisted household/unit under two (2) conditions:

- The ORA contract period has expired. An owner must provide assistance through the end of the subsidized families certification period unless a lease addendum exists specifying the ORA expiration date; or
- Household is deemed in noncompliance for failure to comply with request for certification in a timely manner (i.e., failure to comply with requests for certification in a timely manner, failure to respond to 90, 60, 30-day recertification renewal notices). ORA can be removed from a subsidized household if the household fail to provide the necessary paperwork within 10 business days of the recertification or Rent and Student Declaration due date. ***NOTE: A household must not be required to return the ORA as a penalty for nonconformance to governing rules/regulations. If the household returns the ORA, the unit will not be considered a unit assisted with ORA, commencing on the date of the earliest returned payment.***

*(For more information on this topic, refer to Chapter 3.3G.)*

*NOTE: Documentation evidencing compliance with this obligation must be maintained throughout the obligatory period. Satisfactory documentation is considered a bank statement that evidences the establishment, funding and activity of an owner rental subsidy reserve account and/or rental records clearly depicting the owner rental credit given in accordance with governing QAP. An owner's failure to provide and/or maintain the required number of ORA units could result in an extended ORA commitment period.*

### 3. Private Owner Deeper Targeting Rental Assistance (PODTRA)

Beginning with the 2016 allocation cycle, owners had the option to elect to provide rental assistance to at least 10% of the total development units for persons targeted in the Mississippi Affirmative Olmstead Initiative for a minimum of ten years. Rental Assistance was to be provided based on the following criteria:

- The rental subsidy to be provided must be no less than what is necessary to bring the tenant paid rent (TPR) down to no more than \$235.00 per month.
- The tenant households receiving the rental assistance must have an annual income of 30% or less of the area median income.
- Upon vacancy of a household receiving (PODTRA), owners must adhere to the 30--day good faith marketing efforts
- Additionally, owners must request a letter from a representative of the applicable Community Mental Health Center stating that there were no referrals within the 30 days period or if there were referrals that the individuals had decided not to lease.

*(For more information on this topic, refer to Chapter 3.3(A)(d).)*

## 6.8 RENT DETERMINATION - SPECIAL CIRCUMSTANCES

### A. Staff Units

The rental value of the housing provided to a full-time resident manager required to live onsite as a condition of employment is considered to be wages. In this situation, however, these wages are not taxable income and are not subject to employment taxes.<sup>78</sup>

If rent is charged for a residential staff unit, the unit may disqualify as a common area unit. Additionally, any reduction in rent in exchange for services must be considered as income to the household. *(For more information on this topic, refer to Chapter 5.4(C)(3).)*

### B. Deep Rent Skewing

Additionally, if the development qualifies as a deep rent skewed development, the gross rent with respect to each low-income unit in the development must not exceed 30 percent of the applicable income limit that applies to the individuals occupying the unit. Likewise, the gross rent with respect to each low-income unit in the development must not exceed half of the average gross rent with respect to units of comparable size that are not occupied by individuals who meet the applicable income limit.

### C. Below-Market HOME Loans and NAHASDA

A building placed in service before July 31, 2008, receiving assistance under the HOME or NAHASDA programs and subject to the 40-50 rule (i.e., 40% of the units in the building/development are leased to households with incomes at or below 50% of AMGI) is not required to restrict the rents at or below the 50% AMGI level, unless the development has a 20/50 federal MSA obligation.

**NOTE (2):** *For buildings placed in service after July 30, 2008, assistance under HOME and NAHASDA are not characterized as below market Federal loans and IRC §42(i)(2)(E) was removed from the Code under section 3002(b) of the Housing Assistance Tax Act of 2008.*

## 6.9 RENTAL OVERAGE

Generally, a unit qualifies as a HTC unit when the gross rent does not exceed 30 percent of the imputed income limitation applicable to such unit under IRC §42(g)(2)(C).<sup>79</sup> Thus, when the gross rent exceeds the HTC rent limit, a rental overage occurs. In accordance with Section 42 of the

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<sup>78</sup>IRC §§ 119(a)(2) and 3121(a)(19)

<sup>79</sup> IRC §42(g)(2)(A)

Code, a rental overage is considered a noncompliance event thus disqualifying the unit for tax credit purposes. However, in some instances (i.e., unit with project-based assistance) the rental overage does not negatively affect the low-income status of the unit.

## A. Permissible

Customarily, HTC units are occupied by households receiving rental assistance from a governmental agency such as Section 8 or RHS Section 515 whereby the maximum rental rate charged exceeds the amount permissible under the HTC program. In this instance, according to Section 42(g)(2)(E) of the Code, such an overage is allowable upon recertification of a household provided the rent increase is mandated under the provisions of the Section 8 or RHS 515 rental assistance programs.<sup>80</sup> Additionally, the rental overage must be handled in accordance with the following, where applicable:

### *Section 8 Project-Based Developments:*

The increase is allowable if the mandatory payment for tenants in Section 8 housing exceeds the rent limit of the HTC program, and if the Section 8 payment decreases as the tenant payment increases.

### *RHS Section 515 Developments:*

Developments allocated credits before 1991, the rental overage is not allowed to be paid by the household. The owner must pay the difference in the rental overage amount. Developments allocated credits after 1991, rental overage can be collected in so long as the overage is repaid to RHS.

## B. Non-Permissible

When the gross rent exceeds 30 percent of the imputed income limitation applicable to such unit and the overage is not permissible under See IRC §42(g)(2)(B)(i) or the General Explanation of the Tax Reform Act of 1986, a non-permissible rental overage has occurred. Thus, the unit is deemed out of compliance. If a unit is deemed out of compliance with the applicable rent limit, the unit ceases to be a low-income unit commencing on the date of the first overage payment and continuing to the remainder of owner's tax year in which the correction occurs.

To cure a rental overage violation, the rent charged must no longer exceed program limitations. Additionally, applicable to HTC developments in the State of Mississippi, an owner of a development with rental overage must reimburse the household in the amount of the rental overage by either:

1. Refunding the household the amount of the overage in the form of check, money order or cashier's check; or

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<sup>80</sup> Typically, an increase occurs if a household's income increases significantly, more than 30 percent, of the household's adjusted monthly income. In order for a household to have a rent amount in excess of HTC rent amount, the household must be previously qualified as tax credit eligible.



2. Refunding the tenant the amount of the overage by decreasing subsequent rental amounts to equal to the amount of the overage. NOTE: The correction date of the noncompliance will be no earlier than the first day of the year immediately following the year of the noncompliance.

Should an owner choose to provide a rental credit, the noncompliance will not be considered corrected until the credit has been fully utilized by the tenant or the end of the calendar year, whichever is later. Should reimbursement not be feasible due to the unknown whereabouts of the former tenant, the development should submit the total of the rental overage to the Corporation for disbursements to the assistance of low-income families. ***Refer to Section 6.5(A)(2) of this Chapter for information on this topic.***

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# CHAPTER 7 - COMPLIANCE REPORTING AND ADMINISTRATIVE RESPONSIBILITIES

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## 7.1 OVERVIEW

**A**n owner of a tax credit building is required to keep records for each qualifying low-income household in the development as well as make these records available for monitoring to the Corporation upon request. Thus, proper record keeping is crucial to the success in maintaining compliance. According to Section 42 of the Code, an owner, in support of the same, has certain administrative responsibilities to prove and preserve his/her credit claiming ability. Among these responsibilities is an owner's adherence to any and all reporting requirements, monitoring reviews, fees, etc.

## 7.2 DEVELOPMENT RECORDS

During the 15-year compliance and extended use periods, it is the responsibility of an owner to maintain (by building) certain types of records evidencing compliance with program record-keeping requirements. In accordance with Treas. Reg. 1.42-5(b), the records associated with a household's eligibility must be retained for at least six years after the due date (with extensions) for filing the owner's federal income tax return for that year.

### A. Tenant Files

The tenant files of qualifying households are perhaps the most critical piece of documentation evidencing an owner's compliance with program rules and regulations. The purpose of the tenant file documentation is for state monitoring agencies and the IRS to assess the compliance level of all occupants of HTC units.

Thus, in support of the same, an owner, at minimum, is required to obtain and maintain the following tenant file documentation:

- Rental Application/Recertification Questionnaire
- Tenant Release and Consent Form
- Income/Asset Verifications, or applicable verification of non-employment or zero-income
- Child Support Affidavit

- Tenant Income Certification (TIC) or Student Income and Rent Declaration, where applicable
- Inquiry/Verification of full-time student status
- Initial dwelling Lease/HTC Lease Addendum
- Utility allowance documentation (to support all UA figures listed in file), *if applicable*
- Social Security Card/Picture I.D. Card/Driver's License (all residents)
- Birth Certificates/Social Security Card (all minor residents)
- Notes to file, *if applicable*

*See MHC's website for a complete list of mandatory certification forms.*

## B. Unit Listing

- Listing of each unit number
- Listing of number of bedrooms
- Listing of tenant names
- Floor space of units
- Move-in date for occupied units
- Move-out date for vacant units
- Number of household members in each unit
- Household income for each unit
- Rent paid by household
- Utility Allowance
- Unit Status (low-income or unrestricted)

## C. Development Files

An owner of a HTC development must maintain all program administrative records documenting an owner's compliance with the eligible basis and qualified basis of each building as well as all applicable point selection criteria<sup>81</sup> for the first year of the credit period, as well as six years after the tax filing date for the last year of the compliance period or extended use period, if applicable. Additionally, an HTC development owner is required to maintain documentation in support of any applicable financial and/or underwriting requirements. An owner's development files must also include the following, which must be maintained and made available to the Corporation upon request: Resident Selection Plan, Affirmative Fair Housing Plans, Lead-Based paint Certifications, Common Unit/Staff unit Status Affidavit.

## D. Long-Term Storage

The IRS requires the records for the first year of the credit period to be retained for at least six years beyond the due date (with extensions) of an owner's filing of his/her federal income tax return for the last year of the compliance period of the building, at minimum 21 years. To ensure long-term retention of compliance records, an owner may use a storage method other than paper format (i.e., scanned, microfilm, etc.). The IRS notes, however, that storage methods other than hardcopy (paper) must satisfy the requirements as outlined in Rev. Proc. 97-22.

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<sup>81</sup> A point references the numerical value given to certain criterion based on state identified needs as generally stipulated in the state's QAP.

## 7.3 REPORTING REQUIREMENTS

Once a development has placed at least one building in service, the owner must start submitting certain compliance reports to the Corporation. At a minimal, these reports document a development's low-income occupancy by providing specifics as it relates to a qualifying household's eligibility (i.e., income, rents and full-time student status). The Corporation performs a review of compliance report(s) to assess an owner's compliance with tax credit requirements.

### A. Quarterly Occupancy Report

#### 1. Reporting Requirements

During lease-up, an owner of a development/building(s) receiving an allocation of HTCs is required to submit to the Corporation for review a **Quarterly Occupancy Report (QOR)** detailing lease-up activity of the development. The QOR commences on the 15th day of the month after the quarter in which the first building places in service and continues quarterly thereafter *until the fifteenth day of the month immediately following the quarter in which the development met its initial targeted applicable fraction* (provided the development is in compliance and has resolved all compliance matters during this period).

Upon meeting these requirements, the Corporation will convert the development to annual reporting. NOTE: Quarterly reporting is to continue until the Corporation releases written correspondence detailing the status of the development based on the last required QOR.

#### 2. Report Components

At a minimum, the QOR consists of the following:

- Quarterly Compliance Status Report;
- Quarterly Occupancy (Rent Roll) Report (per building); and
- Utility allowance support documentation (to support all UA figures listed in file), *if applicable*.

Reporting Period	Due Date
January – March	April 15 <sup>th</sup>
April – June	July 15 <sup>th</sup>
July – September	October 15 <sup>th</sup>
October – Dec.	January 31 <sup>st</sup>

### B. Annual Owner Certification Report

#### 1. Reporting Requirements

According to Treasury Regulation 1.42-5, during the compliance period, an owner of HTC development is required to submit, on an annual basis, information pertaining to the development's compliance status. This information, which is gathered via an owner's Annual Owner Certification (AOC) Report, includes data relating to the status of each tax credit building in the development, including the eligibility information of each qualifying tax credit unit. The AOC Report is due to the Corporation *on or before* April 30th of each calendar year for the preceding calendar year.

An AOC Report is required of an owner of a development that received an award of HTCs, excluding those development(s) that have not *met its initial targeted applicable fraction* as of 12/31 of the reporting year.

## 2. Report Components

The AOC Report consists of four components:

- PART A: Owner's Certification of Continuing Program Compliance (OCCPC) Report;
- PART B: Supplemental Certification of HTC Compliance Report;
- PART C: HTC Annual Occupancy (Rent Roll) Report
- PART D: Tax Forms (for developments receiving 8609s in certification year only)

### **Part A: Owner's Certification of Continuing Program Compliance Report**

An owner of a HTC development must certify, under a penalty of perjury that the development/building/low-income unit adhere to all applicable federally mandated program requirements.

Among these requirements are:

- meets the minimum set-aside election test (the 20/50 test, the 40/60 test or the 25/60 Test, under sections 42(g)(4) and the 15/40 test);
- received an annual low income certification and documentation for each low income tenant;
- rent restricted;
- available for use by the general public on a non-transient basis (an original lease term of a full six months or longer) and each building is suitable for occupancy;
- reasonable attempts will be made to rent any vacant low income units and no comparably sized or smaller units will be rented to non-low income households while the vacancy exists;
- utilize the next available comparable or smaller unit to low-income households if the income of a previously qualified low-income increases sufficiently above the applicable income limit;
- allowed no change in eligible basis and ensure all tenant facilities included in eligible basis are available to all tenants without charge;
- the state or local unit responsible for making building code inspection did not issue a report of a violation for the development. If the governmental unit issued a report of a

violation, the owner is required to attach a copy of the report of the violation to the annual certification submitted to the Corporation. An owner must state on the certification whether the violation has been corrected. Retention of the original violation report is not required once the Corporation reviews the violation and completes its inspection, unless the violation remains uncorrected;

- not refused to lease a unit in the development to a Section 8 applicant because the applicant holds a Section 8 voucher or certificate;
- not evict or otherwise have a resident's lease terminated for other than good cause; and
- no finding of discrimination under the Fair Housing Act has occurred for the development (a finding of discrimination includes an adverse final decision by HUD, an adverse final decision by a substantially equivalent state or local fair housing agency, or an adverse judgment from a federal court).

#### **Part B: Supplemental Certification of HTC Compliance Report**

Effective January 1, 2007, the Corporation began requiring all program participants to certify to compliance with certain state specific (as outlined in the development's final HTC application) requirements. This certification is acquired by the *Supplemental Certification of HTC Compliance* (SHTCC) Report. Where applicable, support documentation (i.e. Notice of Physical Damage), must be maintained and submitted to the Corporation for review along with the SHTCC Report.

#### **Part C: HTC Annual Occupancy (Rent Roll) Report**

Under the record keeping and record retention provisions of 26 CFR Section 1.42-5, an owner of a HTC development is required to retain certain information for each qualified tax credit building. This includes specific data on each low-income unit (occupied or unoccupied) in the development. The HTC Annual Occupancy (Rent Roll) Report grants an owner the ability to identify, at a minimum, unit specific eligibility information (such as household composition, move-in/move-out date, rental amount, utility allowance estimate, and total gross household income). It also grants the Corporation the opportunity to monitor the minimum set-aside and applicable fraction of each building in the development from initial rent-up through the end of the compliance period.

HTC development owners are required to electronically submit the HTC Occupancy Report for each tax credit building in its development utilizing the Corporation's Certification Online (COL) system or, with approval, in hard-copy format utilizing the HTC Annual Occupancy (Rent Roll) Report.

#### **Part D: Tax Forms**

Owners of a tax credit development which received its IRS Forms 8609 *Low Income Housing Tax Credit Allocation Certification* during the certification year must submit copies of certain program required tax forms as required by federal regulations: 8609 *Low Income Housing Tax Credit Allocation Certification*, 8609A *Annual Statement of HTC*, and *Multiple Building Project*

*Listing, if applicable.* Generally, the 8609 form(s), with part II completed by the owner, must be submitted at the time of an owner's AOC Report.<sup>82</sup>

## C. Development Financial Analysis Report

### 1. Reporting Requirements

Effective January 1, 2007, an owner of a tax credit development is required to annually provide to the Corporation a *Development Financial Analysis Report (DFAR)* detailing the financial health of the development, as well as an owner's compliance with certain underwriting requirements (i.e., replacement and/or operating reserve). The DFAR provides the Corporation with a way to monitor the ongoing financial feasibility of a HTC development through the assessment of the development's fifteen (15) year average net cash flow (i.e., debt service coverage ratio).<sup>83</sup> The DFAR is due to the Corporation annually for the preceding calendar year.

A DFAR is a financial report required of all owners that received an award of HTCs and the permanent loan has closed or the existing loan has been converted to a permanent loan. The first DFAR is due to the Corporation the year immediately following the permanent loan closing/ conversion and continues annually thereafter until the *later of* the expiration of the end of the term of all DFAR review components.<sup>84</sup>

Owners of developments in the extended use period without an active replacement and/or operating reserve requirement in accordance with the applicable QAP are excluded from this reporting requirement.

### 2. Report Components

The annual DFAR consists of the following four parts:

#### **Part A: Operating Statement Summary Report**

The Operating Summary Report collects data relative to the income and expenses of the development. It is intended to capture operational activity related to the development's performance, as well as monitor the development's fifteen (15) year net cash flow.

#### **Part B: Report of Replacement Reserves**

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<sup>82</sup> An owner submitting an Application for Extension with the IRS for the ownership entity must provide a copy of the filed extension request along with the first AOC Report.

<sup>83</sup> The debt service coverage ratio (DSCR) is the ratio of cash available for debt servicing to interest, principal and mortgage payments. The acceptable range for the DSCR for HTC developments in the state of Mississippi is 1:1.15 to 1:1.30.

<sup>84</sup> Upon satisfaction of the DFAR reporting obligation, one additional DFAR covering the last reporting period is due to the Corporation. This report must be submitted on the date prescribed and in accordance with the reporting requirements applicable at said time.



Since 1999, the establishment and maintenance of a replacement reserve account has been a requirement of all HTC developments in the state of Mississippi. The Report of Replacement Reserves grants the Corporation an opportunity to assess an owner's compliance with this program requirement, including all applicable use restrictions (i.e., capital improvements and system replacements). In support of the same, an owner of a HTC allocation from the state of Mississippi is required to make annual contributions to a replacement reserve account for the term of the loan to the senior lender.<sup>85</sup>

Initial funding must be satisfied in accordance with the applicable minimum contribution requirements, per development type, increasing at rate required in the development's governing QAP. **(See Table 4 below for a listing of the Replacement Reserve Funding requirement)**

**Table 4: Replacement Reserves Chart of Minimum Contributions**

Criteria	1999	2000-2004	2005	2006-2016
Rehabilitation	\$300.00	\$250.00	\$300.00	\$300.00
New Construction	\$200.00	\$200.00		
New Construction – Elderly			\$250.00	\$250.00
New Construction – Family			\$250.00	\$300.00

### Part C: Report of Operating Reserves

The Report of Operating Reserves grants the Corporation an opportunity to assess an owner's compliance with the operating reserve requirement.

Effective 2009, all HTC developments are required to establish an operating reserve account in the equivalent of six months of the development's first year operating expenses and maintain the required funding throughout the development's initial 15-year compliance period.<sup>86</sup> The initial funding amount of the operating reserve account, six months of the first year operating expenses, must be maintained, at a minimum, until the third year of the credit period following issuance of IRS Form(s) 8609. Thereafter, funds may be drawn down and replaced with a Letter of Credit, agreed to by the syndicator in writing, to be maintained and kept valid.

An owner must annually evidence to the Corporation compliance with this funding requirement.

### Part D: Statement of Certification

An owner of a HTC development must certify, under penalty of perjury, that the information provided accurately reflects the financial status of the development throughout the reporting period.

<sup>85</sup> Term of the loan to the senior lender is generally the actual length of time for which the money is loaned from the senior lender (i.e., 15, 30, 50 years).

<sup>86</sup> HTC allocations made prior to 2009 are required to initially establish an operating reserve account; however, are considered exempt from the long-term account funding obligation.

## D. Electronic Report Submission Requirements

An owner's submission of his/her AOC Report, QOR and DFAR must be transmitted electronically, where applicable, to the Corporation using the applicable online system (i.e., Applied Oriented Design/Certification On-Line or Development Financial Analysis Report system).

### AOD/COL:

The AOD/COL system is an electronic reporting program that interfaces with the Corporation's internal multifamily compliance tracking system, AOD/MF, thereby allowing an owner/manager the ability to log onto the Corporation's secured internet site and enter specific development and unit occupancy information, as well as generate, print and submit certain owner reports. All other components of the Report must be prepared and remitted to the Corporation in hard-copy format on or before the prescribed deadline date.

Owners/managers must request, in writing, access to the COL system 45 days prior to the date in which the report is due. Requests received less than 45 days prior may not be granted. In this instance, an owner is required to submit the reports manually and pay a manual processing fee of \$40 per unit.

### DFAR:

The DFAR is a web-based report database used to track the financial activity of a HTC development. The DFAR database may be accessed through the Corporation's website at [www.mshomecorp.com](http://www.mshomecorp.com).

*NOTE: Depending on extenuating circumstances, the Corporation may approve an owner submission of the OCCPC and Occupancy Reports in hard-copy format. Minimal fees may apply.*

## 7.4 COMPLIANCE REVIEWS

Beyond requiring periodic owner certifications, the Corporation will conduct an on-site inspection of all buildings in each low-income housing development at least once every three (3) years. This inspection will be performed on the minimum unit sample size in the minimum unit sample size reference chart based on the low-income units in the project<sup>87</sup>. The inspection will include the review of the low-income certification of each qualifying household, the documentation supporting such certification, and the rent record for these units. In addition, the Corporation will conduct on-site inspections for all buildings in a development. Physical inspection of the units may not be of the same low-income units as that selected for tenant file reviews. For

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<sup>87</sup> The IRS considers buildings that are not part of a multiple building development as 'separate projects.' (See IRS form 8609, line 8b). The Corporation will treat each building associated with the development as a single project until a formal declaration is made with the IRS.

developments PIS after January 1, 2001, an inspection will be performed by the end of the second calendar year following the year the last building in the development is PIS.

**Table 5: Minimum Unit Sample Size Reference Chart**

Number of LI Units in a Project	Number of LI Units Selected for Inspection	Number of LI Units in a Project	Number of LI Units Selected for Inspection
1	1	30-34	15
2	2	35-40	16
3	3	41-47	17
4	4	48-56	18
5-6	5	57-67	19
7	6	68-81	20
8-9	7	82-101	21
10-11	8	102-130	22
12-13	9	131-175	23
14-16	10	176-257	24
17-18	11	258-449	25
19-21	12	450-1,461	26
22-25	13	1,462- 9,999	27
26-29	14		

## A. Tenant File Review

In order to meet its monitoring obligations to the IRS, the Corporation is required to inspect each HTC development at least once every three years. These periodic inspections may include a tenant file review to be conducted either externally (on-site audit), internally (desk audit

), or both.

### 1. Desk Audit Procedures (24 Units or less)

The Corporation, at its discretion, may inspect developments with 24 units or less utilizing the desk audit (internal) procedure. Developments audited utilizing this method will be given a specified period of time to prepare and submit to the Corporation a *legible photo copy* of all inspection items requested. Ample notification will be given to owners to grant time to prepare the requested documents.

### 2. On-site Audit Procedures

Developments audited utilizing this method will be notified in writing, no more than 15 days prior to the scheduled onsite inspection, of the date and time of the onsite inspection. Along with this notification will be an *On-site Audit Acknowledgment Form* that must be returned to the Corporation confirming receipt of the inspection. An *On-site Audit Acknowledgment* form not returned to the Corporation by the noted deadline date will result in an inspection of the development as outlined in the original correspondence.

In the event staff proceed with the noted inspection and/or is unable to perform an inspection as scheduled (no show, no records, etc.), the owner will be responsible for reimbursing the Corporation for any cost associated with the inspection (***See Chapter 11 of this Plan***).

The ORIGINAL HTC tenant file and the ORIGINAL support documentation must be available for review upon request. Failure to provide said documents will result in the issuance of IRS form 8823.

The Corporation will issue a preliminary audit review letter, in writing, within 45 days of the date of the initial inspection. Subsequent review notices will be issued within 4-6 weeks of the Corporation's receipt of corrective action documentation provided said documentation is remitted to the Corporation within three years of the end of the original noncompliance correction period.

The Corporation, at its discretion, may allow "same day correction of minor discrepancies" at the time of an onsite audit inspection. Corrections made in accordance with the same will NOT be deemed a noncompliance event and therefore no IRS form 8823 will be issued.

## **B. Physical Condition Inspection**

The Corporation has the right to perform an on-site physical inspection of any tax credit housing development at least through the end of the development's compliance and extended use periods. This inspection provision exists in addition to any review of low-income certifications, supporting documents, and rent records. Generally, the inspection allows the Corporation to determine if a tax credit unit is suitable for occupancy. Inspection standards to be used are intended to ensure that the housing is decent, safe, sanitary, and in good repair. Irrespective of the physical inspection standards selected by the Corporation, a low-income housing development under Section 42 must continue to satisfy local health, safety and building codes.

The Corporation will consider a building exempt from the physical inspection requirement if the development is financed by RHS and RHS has entered into a Memorandum of Understanding (MOU) or other similar arrangement with the Corporation under which RHS agrees to notify the

Corporation of the inspection results.<sup>88</sup> **NOTE: THE CORPORATION RESERVES THE RIGHT TO CONDUCT PHYSICAL INSPECTIONS REGARDLESS OF ITS MOU WITH THE RHS.**

1. Physical Inspection Standards

An owner of HTC development must maintain housing in accordance with HUD's Uniform Physical Condition Standards (UPCS) as set forth below:

<b>Site:</b>	The Site components such as fencing, retaining walls, grounds, lighting, mailboxes, development signs, parking lots, driveways, play areas and equipment, refuse disposal, roads, storm drainage and walkways must be free of health and safety hazards and be in good repair. The site must not be subject to material adverse conditions, such as abandoned vehicles, dangerous walkways or steps, poor drainage, septic tank back-ups, sewer hazards, excess accumulation of trash, vermin or rodent infestation or fire hazards.
<b>Building Exterior:</b>	Each building on the site must be structurally sound, secure, habitable and in good repair. Each building's doors, fire escapes, foundations, lighting, roofs, walls and windows, where applicable, must be free of health and safety hazards, operable and in good repair.
<b>Building Systems:</b>	Each building's domestic water, electrical system, elevators, emergency power, fire protection, HVAC, and sanitary system must be free of health and safety hazards, functionally adequate, operable and in good repair.
<b>Dwelling Units:</b>	Each dwelling unit within a building must be structurally sound, habitable and in good repair. All areas and aspects of the dwelling unit (for example, the unit's bathroom call-for-aid (if applicable), ceiling doors, electrical systems, floors, hot water heater, HVAC systems, kitchen, lighting outlets/switches, patios/porch/balcony, smoke detectors, stairs, walls and windows) must be free of health and safety hazards, functionally adequate, operable and in good repair. Where applicable, the dwelling unit must have hot and cold running water including an adequate source of potable water (for example, Single-Room Occupancy (SRO) units need not contain water facilities). If the dwelling unit includes its own sanitary facility, it must be in proper operating condition, usable in privacy and adequate for personal hygiene and the disposal of human waste. The dwelling unit must include, at a minimum, two hard wired smoke detectors with a battery backup in proper working condition on each level of the unit and/ or adjacent to all bedrooms and a multi-chemical, rechargeable fire extinguisher that must be inspected & tagged yearly by a certified individual or company.
<b>Common Areas:</b>	The common areas must be structurally sound, secure and functions adequately for the purpose intended. The basement/garage/carport, restrooms, closets utility/mechanical/community rooms, day care, halls/corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony and trash collection areas, if applicable, must be free of health and safety hazards, operable and in good repair. All common area ceilings, doors, floors, HVAC, lighting outlets, switches, smoke detectors, stairs, walls and windows to the extent applicable, must be free of health and safety hazards,

<sup>88</sup> Development is financed by RHS under the Section 515 program and RHS inspects the building/development in accordance with CFR, Part 1930 (c).

	operable and in good repair. These standards for common areas apply in particular to congregate housing, independent group homes, residences and single room occupancy units in which the individual dwelling units (sleeping areas) do not contain kitchen and/or bathroom facilities. Common areas such as the office or laundry room must include hard wired smoke detector(s) with a battery backup in proper working condition on each level of the structure and/ a multi-chemical, rechargeable fire extinguisher that must be inspected & tagged yearly by a certified individual or company. All emergency lights in hallways should function as intended. Exit signs should be visible and illuminated. These two items should be tested regularly.
<b>Health and Safety:</b>	All areas and components of the housing must be free of health and safety hazards. These areas include but are not limited to air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation and lead based paint. For example, the buildings must have fire exits that are not blocked and have handrails that are undamaged and have no other observable deficiencies. The housing must have no evidence of infestation by rats, mice, or other vermin or of garbage and debris. The housing must have no evidence of electrical hazards, natural hazards or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold and odor(s) (e.g. propane, natural gas, methane gas) or other observable deficiencies. The housing must comply with all requirements related to the evaluation and reduction of lead-based paint hazards and have available proper certification of such.
<b>Compliance with State and Local Codes:</b>	The physical condition standards in this section do not supersede or preempt State and local codes for building and maintenance with which housing tax credit developments must comply. Tax credit developments must continue to adhere to these codes.

Source: 24 CFR 5.703.

**NOTE:** MHC requires the use of a multipurpose fire extinguisher labeled ABC that is rechargeable and approved by an independent testing laboratory such as the Underwriters Laboratory (UL) and provides a tag for all fire extinguishers with the latest inspection date and year. The Class A label is a triangle symbol on the extinguisher. The Class B is a square symbol on the extinguisher. A Class C label is in a circle symbol on the extinguisher.

*A minimum of two (2) hard-wired smoke detectors with battery back-up is required per unit.*

## 2. Physical Inspection Procedures

The Corporation will notify an owner of a tax credit development in advance of an upcoming on-site physical inspection through official written correspondence. Along with this notification will be a *Building Physical Inspection Audit Acknowledgment Form* that must be

returned to the Corporation confirming receipt of the inspection. Failure to return the *Building Inspection Audit Acknowledgment* form to the Corporation as required by the noted deadline date will result in an inspection of the development as outlined in the original correspondence.

All buildings and residential units within the development should be readily accessible. Additionally, an owner is required to notify all resident's in writing of the scheduled inspection. Maintenance personnel and a management representative should be present during the inspection.

Noncompliance fees will be assessed against the development for reimbursement of expenses incurred to conduct all follow-up inspections, if applicable. In the event the staff proceeds with the noted inspection and is unable to perform the inspection as scheduled (no show, no records, etc.), the owner will be responsible for reimbursing the Corporation for any cost associated with the inspection (*See Chapter 11 of this Plan*).

#### **Critical Health & Safety Violations**

All buildings and residential units within the development identified by the Corporation as having a critical health and/or safety violation must be corrected within 72 hours of the *Notice of Critical Health & Safety Violations* letter. Critical violations that are not corrected within seventy-two (72) hours will be fined \$100 per day, commencing on the first day after the first 24-hour period expires. Note: An owner is required to notify the Corporation upon completion of any critical and/or safety violation.

## **7.5 COMPLIANCE TRAINING**

### **A. Technical Assistance**

The Corporation offers technical assistance on an as needed basis to participants of the HTC program. Technical assistance is available via one-on-one trainings, group trainings, and/or conferences. Generally, most technical assistance trainings are available free of charge to program participants, twice a month, by appointment and availability. The Corporation reserves the right to limit the number of technical assistance sessions provided/conducted per year.

*NOTE: No group and/or conference technical assistance will be granted during the months of January, February, November and December.*

## B. Compliance Briefing/ Trainings

In addition to the above noted technical assistance training, occasionally, the Corporation host compliance monitoring briefings. The goal of the briefings is to provide program participants with up-to-date information/training of HTC program requirements; as well as allow any party interested in developing or managing a HTC development to obtain a broader knowledge of the HTC program. At minimum, briefings provide information pertaining to the following:

- Federal regulations as it relates to determining household eligibility;
- Specific program rules implemented by the Corporation;
- Developing an effective household eligibility process to acquire the information needed to properly qualify an HTC household;
- Income and rent limits;
- Annual income and asset verifications;
- The Corporation's mandatory reporting forms/requirements;
- Other topics as deemed necessary by the Corporation

Briefings are open to the public. Seating is generally limited and available on a first come, first serve basis.

An owner/management agent of a "NEW" tax credit development is required to obtain training on the fundamentals of the HTC program within 45 days of the placed in service (PIS) date of the **first** building or no later than the date of the next scheduled MHC compliance monitoring training. In support of the same, an owner must submit to the Corporation a written request for training in satisfaction of this requirement OR provide documentation evidencing compliance with this requirement has been conducted by an approved organization (owners/management internal trainings and MHC's or other agency housing conferences are not acceptable).

Additionally, every three (3) years after, all owners and on-site managers must show documentation of tax credit training conducted by an approved organization or MHC (owner/management internal trainings and MHC's or other agency housing conferences are not acceptable). In the event of a change in on-site management/managing partner, the individual must acquire training within 120 days of the initial change.

## 7.6 MONITORING COSTS

Under current monitoring regulations and guidance, the Corporation will charge monitoring fees to all HTC developments. The Corporation may require additional monitoring fees if subsequent guidance or regulations warrant changes to the Corporation's monitoring procedures. An upfront monitoring fee of 0.5% of the total credit amount over the ten-year credit period based on the first year's credit amount allocated is generally assessed at the time of application. ***(See Chapter 8.5 for more information on this topic.)***



## 7.7 LEGAL AND PROFESSIONAL COST

If the Corporation incurs legal fees or other expenses in enforcing its rights and/or remedies of an owner's obligation under Section 42 of the IRC and/or the associated LURA for the HTC program, the owner shall reimburse the Corporation for those fees and other expenses within ten (10) days of receipt of written demand thereof.

## 7.8 LIABILITY

Compliance with requirements of Section 42 is the responsibility of the owner of the development for which the tax credit is allowable. The Corporation's obligation to monitor for compliance with the requirements of Section 42 does not make the Corporation or the State of Mississippi liable for an owner's noncompliance. Neither the Corporation nor the State of Mississippi shall be held liable for any expenses or losses incurred by the owner for failure to adhere to the LURA, the requirements of Section 42 or the monitoring procedures established by the Corporation for Mississippi's Tax Credit Program.

***Information provided in this Plan is designed to convey Mississippi's interpretation of Section 42 of the Internal Revenue Code (IRC), associated rules and regulations, amendments and modifications. It is not intended to be a legal interpretation of the IRC. Any errors contained herein which directly conflicts with Section 42 of the IRC and/or associated guidance will not be supported by the Corporation.***

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# CHAPTER 8 – POST YEAR 15 COMPLIANCE MONITORING PROCEDURES

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## 8.1 OVERVIEW

According to Section 42 of the Internal Revenue Code, buildings are eligible for the credit only if there is a minimum long-term commitment to low-income housing.<sup>89</sup> This commitment, commonly referred to as the Declaration of Land Use Restriction Agreement (LURA), is required of developments receiving an allocation of tax credits in 1990 and later. Specific requirements mandated in the LURA include an owner's adherence to the development's applicable fraction, income limitations, building disposition requirements, and prohibitions against certain discriminatory practices.

Section 1.42-5 contains the regulations for agencies' compliance monitoring during the compliance period. There is no language in the Code that specifies whether or not agencies are subject to these regulations after the compliance period. The tax benefit to the owner is exhausted and the IRS can no longer recapture or disallow credits. Because of this fact, the Corporation has established policy regarding how HTC developments will be monitored during the extended affordability period and the consequences of noncompliance.

## 8.2 EXTENDED USE PERIOD

The extended use period (EUP) is defined as the beginning of the first day in the compliance period immediately following the last day of the year of the development's initial 15-year compliance period. The EUP ends on the later of the date specified by the Corporation in the development's extended low-income housing commitment, or the date which is 15 years after the close of the compliance period.<sup>90</sup>

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<sup>89</sup> IRC 42(h)(6)

<sup>90</sup> Section 42(h)(6)(D)

## 8.3 STATE REQUIREMENTS

The Corporation, by way of a development's LURA, requires an owner of a tax credit development situated in the state of Mississippi to adhere to the following requirements during the development's EUP:

1. Maintain the applicable fraction by leasing units to individuals or families whose income is 50% or 60% or less of the area median gross income (including adjustments for family size) as determined in accordance with Section 42 of the IRC;
2. Maintain the Section 42 rent and income restrictions for the period of time prescribed in the LURA and final HTC application;
3. Lease, rent or make available to members of the general public (or otherwise qualify for occupancy of the units under the applicable election specified in Section 42(g)) all units subject to the credit;
4. Not refuse to lease to a holder of a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder;
5. Ensure each low-income unit is suitable for occupancy and will be used other than on a transient basis;
6. Reassess whether a household meets the requirement(s) of the program at least annually, if applicable; *and*
7. Adhere to other restrictions as required under the specific year's QAP and final HTC application to which any selection criteria points were awarded.

## 8.4 MONITORING PROCEDURES

During a development's EUP, the Corporation has the right to audit a development(s) tenant records and physical condition for compliance in accordance with certain Section 42 requirements, as well as the applicable LURA for the development. In doing so, the Corporation will monitor a development consistent with its standard compliance monitoring procedures, subject to the following modifications:

- The definition of a "project" will be amended to be defined by a single allocation of credits instead of being defined by the owner's IRS form 8609 election;
- Unit transfers from building to building are allowed regardless of the multiple-building election.
- A review of at least 10% of the low-income units not to exceed 12 units, rather than the minimum unit sample size from the minimum unit sample size reference chart,, during tenant file reviews and physical inspections once every five years. MHC reserves the right to inspect more frequently, if necessary. The units selected for file review may differ from

those receiving a physical inspection. Desk audits will be performed on developments with 100 units or less;

- A review of only the number of tax credit units as a percentage of residential units will be examined to determine a building's applicable fraction;
- The automatic waiver of the recertification requirement for 100% low-income projects will continue through the extended use period;
- Revise NAUR to provide that if a household's income goes over 140% of the applicable AMI, a currently vacant unit or the next unit in the building must be rented to a qualifying household (the 'comparable or smaller' requirement will be removed). This would essentially be a one-to-one unit replacement; and
- Revise full-time student rule to no longer require minor children in grades K-12 be treated as full-time students or tax return support documentation for households occupied by parent/child(ren) and/or guardian/child(ren).

## 8.5 EUP MONITORING COSTS

Beginning with the first year of the EUP, an owner of a tax credit development will be assessed a \$20.00 per low-income unit fee to cover staff costs to monitor the development during the EUP, excluding developments financed by RHS. RHS financed developments will pay an annual administrative fee of \$10.00 per low-income unit. This reduced administrative fee will remain in effect in so long as a valid Memorandum of Understanding (MOU) exists between the Corporation and RHS AND RHS provides the Corporation with the latest Supervisory Visit for the development. Owners are still subject to all other fees as outlined in Chapter 11 of this Plan.

*NOTE: Developments in the EUP that have been awarded a new allocation of credits are required to pay the administrative fees until the issuance of IRS form(s) 8609.*

## 8.6 REPORTING REQUIREMENTS

At least once annually, an owner of a tax credit development is required to submit certain reports to the Corporation documenting compliance with program rules and regulations, including a development's LURA. All reports and forms are to be completed in accordance with report obligations as outlined in Chapter 7 of this Plan.

## **8.7 ENFORCEMENT**

The Corporation and any interested party have the right to enforce specific requirements expressed in an owner's final tax credit Application, LURA, Compliance Monitoring Plan through the appropriate legal apparatus.

## **8.8 DISPOSITION**

During the extended use period, an owner desiring to dispose of his/her interest in a HTC development must adhere to the requirements as outlined in Chapter 9 of this Plan.

# CHAPTER 9 - PROPERTY DISPOSITION & TRANSFERS

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## 9.1 OVERVIEW

**R**ecapture of the accelerated portion of the HTC<sup>91</sup> is not only caused by noncompliance with program rules and regulations, but may also be caused by either the sale or disposition of a HTC building/development or the sale of an ownership interest in such a building.

IRC Section 42(h)(6)(D) requires a development owner to commit to the low-income housing program for a minimum of 30 years. The commitment is documented as a restrictive covenant against the development and is recorded as a deed restriction governed by state law. When a building or development is removed from the HTC program before the end of the extended use period, state agencies have discretionary authority to release the extended use agreement and remove the deed restrictions or to enforce compliance. Because of the intended long-term affordability of the development, it is critically important that an owner wishing to dispose of his/her interest in a tax credit development do so in accordance with applicable federal and state requirements.

## 9.2 FEDERAL REQUIREMENTS

A building disposition is defined as the outright sale or disposal of ownership interest in a building/development that has been awarded an allocation of tax credits of which IRS form 8609 *Low-Income Housing Credit & Certification* has been issued. According to Section 708 (b)(1)(B) of the IRC, a partnership is considered 'terminated' if there is a sale or exchange of 50 percent or more of the partnership's interest within a 12-month period. To the same, the disposition of a tax credit building is a recapture event.<sup>92</sup>

According to the IRS, the disposition of a HTC building (or interest therein) can result in the recapture of the housing tax credit equal to 1/3 of the allowable credit for each year, plus interest, if the building is disposed of through year 11 of the compliance period. The amount of recapture reduces if the disposition occurs after year 11 of the development's compliance period.

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<sup>91</sup> The accelerated portion of the HTC is the amount of credit an owner receives during the 10-year credit period that would normally be generated in years 11-15 of the compliance period. The accelerated portion of the credit serves as a benefit to an owner whereby allowing the credit over a shorter period of time.

<sup>92</sup> A recapture is the reduction of the allowable credit as penalties for noncompliance.

According to legislative history, an owner of a HTC development of which she/he disposed of could avoid recapture of the accelerated portion of the credit by posting a surety bond<sup>93</sup> (or U.S. Treasury Direct Account (TDA)) equal to the amount specified on Form 8693 *Low-Income Housing Credit Disposition Bond*. Once filed, the bond was to remain in effect until 58 months after the end of the 15-year compliance period.

Effective July 30, 2008, under Revenue Procedure 2008-60, Congress eliminated the requirement mandating that a HTC development owner post a surety bond selling his/her interests in the development.<sup>94</sup> In the place of the recapture bonds is an extended period for the statute of limitations, three years following a recapture event. The recapture bond repeal is effective if the affected owner<sup>95</sup> elects implementation of the new provisions and it can be reasonably expected that the building will continue to operate as a qualified low-income building.

#### *IRS Form 8693 Low-Income Housing Credit Bond*

An owner must use IRS Form 8693 in posting a surety bond and to establish a TDA. The IRS must approve Form 8693 before it will take effect. Revenue Procedure 2008-60 does not apply to any owner who opted to satisfy the bond posting exception to recapture by setting up a TDA, and who received a Form 8693 that was approved by the IRS before January 1, 2008, but who did not fund the TDA within the period for funding the TDA prescribed by Revenue Procedure 99-11.

Additionally, the IRS requires an owner who seeks to make the election to no longer maintain a surety bond to submit a letter to the IRS containing the following information:

1. The owner's name, address, and taxpayer identification number
2. A statement affirming that the owner reasonably expects that the building will continue to operate as a qualified low-income building (within the meaning of Section 42) for the remainder of the building's compliance period;
3. A declaration stating: "Under penalties of perjury, I declare that I have examined this letter and the representations made therein, and to the best of my knowledge and belief, they are true, correct, and complete"; *and*
4. Attach to the letter a copy of the form 8693 that was approved by the IRS for the building, signature page only, and mail the letter to: Internal Revenue Service; Box 331; Attn.: HTC Unit DP 607 South; Philadelphia Campus; Bensalem, PA 19020.

## 9.3 STATE REQUIREMENTS

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<sup>93</sup> A surety bond is a bond posted with the Treasury Department to avoid recapture of previously claimed credits after a change of ownership in a HTC development.

<sup>94</sup> The new law is effective for new dispositions after July 30, 2008 and applies retroactively to past dispositions.

<sup>95</sup> Those who were maintaining a surety bond or TDA in satisfaction of the low-income housing tax credit recapture disposition requirement prior to July 30, 2008.



Since a building disposition generally triggers a recapture of HTC's, the Corporation requires that changes of any ownership entity, including the general partner, partner(s) and/or the managing member of a limited liability company, be approved in advance of desired disposition/transfer. Thus, an owner electing to sell his/her interest in a HTC development must submit a written request to the Corporation at least forty-five (45) days before the proposed effective date of the disposition. Said notification will grant the Corporation the opportunity to ensure the validity of the new owner as it relates to the development's LURA and the proper conveyance of obligations/commitments regarding the affordable use of the development.

In addition to any federal requirements, an owner must adhere to the following state requirements:

- As a condition precedent to a sale, transfer or exchange, obtain and deliver to the Corporation the written agreement of any buyer or other party acquiring the development or any interest therein that such acquisition is subject to this agreement, Section 42, and applicable regulations. NOTE: This provision shall not act to waive any other restriction on sale, transfer or exchange of the development of any low-income portion of the development. Even if such buyer or other person acquiring the development or any interest therein fails or refuses to provide such written agreement, such acquisition (and all subsequent acquisitions that occur during the term of this Agreement) shall be subject to this Agreement, Section 42 and the applicable regulations;
- Notify the Corporation in writing at least forty-five (45) days in advance of any sale, transfer or exchange of the entire development or any low-income portion of the development. Within thirty (30) days of the closing of such sale, transfer or exchange, the owner shall provide to the Corporation a complete copy of all the closing documents (with evidence of recording satisfactory to the Corporation on all recorded documents); *and*
- In accordance with Section 42(h)(6)(b)(iii) of the IRC, an owner shall not dispose to any person any portion of the building to which such Agreement<sup>96</sup> applied unless all of the building to which such Agreement applies is disposed of to such person. Likewise, the owner shall not demolish any part of the development or substantially subtract from any real or personal property of the development or permit the use of any residential rental unit for any purpose other than rental housing during the term of this Agreement unless required by law. If the development, or any part thereof, is damaged or destroyed or shall be condemned or acquired for public use, the owner must use its best efforts to repair and restore the development to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the development in accordance with the terms of this Agreement.

## A. Types of Transfers Needing Agency Approval

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<sup>96</sup> Refers to the Land Use Restriction Agreement or Extended Use Agreement of which is recorded against the development.

The specific type of dispositions/transfers of which warrants the Corporation's approval is:

- A change in the ownership interest of the land, development, or building; *and*
- Partial changes in certain ownership interest

These two categories are not intended to describe all Property Transfers or Assignments that require the prior written consent of the Corporation.

The typical types of changes in Ownership interests in these entities are related to the addition, removal or withdrawal of persons having a Restricted Ownership Interest in the Development. These include:

- Change in the structure of Limited Partnerships, Limited Liability Companies, Joint Ventures, or General Partnerships related to the actions of individuals.
- Collaterally, changes in Closely Held Corporations pertaining to the issuance, redemption or transfer of stock or shares

## **B. Types of Transfers Not Needing Agency Approval**

- For a sale or transfer of, or change in, the interest of a Limited Partner (including the addition, removal, or withdrawal of a Limited Partner;
- In the case of a Limited Liability Company that has a Managing Member; for sale or transfer of, or change in, the interest of Company Manager who is not a Company Member or Company Member who is not a Managing Member (including the addition, removal, or withdrawal of such Company Manager or Company Member); or
- For the issuance, redemption, or transfer of stock or shares of a corporation that is not a Closely Held Corporation

## **C. Agency Approval of Disposition/Transfers**

The Corporation will consent to a proposed development disposition or transfer only if it is determined that:

- The Transferee and/or any Related Party are not in arrears on the payment of any fees due to the Corporation or in default under the LURA for any development;
- The Transferee and/or any Related Party has not engaged in or allowed instances of noncompliance with the provisions of any LURA, the Tax Credit Program, or Section 42 of the Code;
- The development is in compliance with all programs offer by the Corporation;
- The Transferee *and* the Transferee's property management representative have attended, within the past year or will attend within the next 90 days, a tax credit Compliance Training/Quarterly Briefing hosted by the Corporation; *and*

- The Owner has satisfied all other reasonable requirements communicated to the Owner by the Corporation.

*If removal and replacement of Partner/Member do not occur simultaneously*, the Corporation will accept, at its sole discretion, written notice of the removal of a General Partner in a Partnership, Managing and Administrative Members in a Limited Liability Company or Partners in a Partnership and the payment of the \$1,000.00 transfer fee, in lieu of the requirements stated herein.

If the removal and replacement of such entity do not occur simultaneously, the replacement of the entity and the submission of the documentation listed elsewhere in this chapter must occur within six months of the removal or an additional \$1,000.00 transfer fee will be assessed.

Any Development Transfer or Assignment made without the Corporation's prior written consent or otherwise in violation of the requirements or provisions of the LURA, or the tax credit program will be:

1. Ineffective to relieve or release the Transferor, the Land, the Property, and/or any Building from the obligations and provisions of Section 42, the Regulatory Agreement, and/or the tax credit Program;
2. Considered an event of default under the final HTC Application, the Regulatory Agreement, and the tax credit Program, allowing the Corporation to exercise any or all available remedies; and
3. Considered an event of noncompliance that may result in the cancellation or invalidation of the Reservation and/or Allocation of Credit for the development and/or any building. The indemnity and hold-harmless provisions of the LURA or any other Tax Credit Program agreement by the Owner and/or a successor in interest will survive the ending of such parties' interest in the development and will continue to be a personal obligation of such party.

## 9.4 BUILDING DISPOSITION

According to the IRS, there are four categories of which a building disposition can occur: Sale, Foreclosure, Destruction or Other.<sup>97</sup>

### A. Sale

The disposition of a tax credit building by way of a sale is considered to have taken place in the event of the following:

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<sup>97</sup> See IRS 8823 Guide

- Fee title sale of building;<sup>98</sup> or
- Termination of partnership

## B. Foreclosure

A HTC building disposed of by way of foreclosure is one whereby a lender has sought legal remedy to terminate the borrower's interest in a development after the loan which was used to finance the development was defaulted upon.

According to Section 42(E)(i)(I), "the extended use period for a building shall terminate on the date the building is acquired by foreclosure (or instrument in lieu of foreclosure)<sup>99</sup> unless the secretary determines that such acquisition is part of an arrangement with the taxpayer for a purpose of which is to terminate such period." If the Corporation has cause to believe that an owner or related entity attempted to avoid the low-income requirements of the LURA through foreclosure and again holds an interest in the development, appropriate steps may be taken to re-activate and/or enforce the development's LURA requirements.

The re-activation provision is intended to prevent an owner from escaping the LURA's occupancy requirement while retaining effective control and use of the development. This provision does not apply when a bona fide foreclosure has occurred and an owner later reacquires an interest on a reasonable commercial basis. *(See Section 9.5.C of this chapter for specifics regarding an owner's reporting and record-keeping obligations).*

## C. Destruction

Destruction of a HTC development occurs when a building's physical structure is affected in its entirety. When destruction occurs, it is considered permanent and the building(s) is not expected to operate as a tax credit development again.

## D. Other

A building disposed under the 'other category' is one in which the building is disposed of by way of a method not specifically noted above.

# 9.5 DOCUMENTATION OF BUILDING DISPOSITION

In order for the Corporation to begin consideration of an owner's request for consent of a building disposition or transfer, an owner must submit certain documentation for review. The specific documentation need in order to process the transfer vary by disposition type.

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<sup>98</sup> A Fee Title Sale is a sale whereby the fee title passes from the seller to a new buyer.

<sup>99</sup> A Deed in Lieu of foreclosure occurs when a development owner voluntarily conveys the development to the mortgage holder to avoid foreclosure proceeding, this is also considered a form of foreclosure.

## A. Sale of Development

Upon the sale of a HTC development, an owner must promptly forward to the Corporation the following documents:

DOCUMENT NAME	DESCRIPTION
Cover Letter	Includes name of property; the names of the current owner(s), the proposed transferor and transferee, and all other relevant parties; a complete description of the proposed property transfer or assignment including the purpose of transfer, the proposed effective date and special circumstances related to the proposed property transfer or assignment
Schematic	Shows ownership before and after proposed transfer
Proposed Management Contract	Management's resume' to include all developments currently listed in its portfolio (a signed copy of management contract will be due at closing)
Purchase and Sale Agreement (FINAL COPY)	A written contract signed by the buyer and seller stating the terms and conditions under which the development will be sold.
Proposed Ownership Entity documentation	Ownership information related to the entity proposing to buy the development, including tax identification number, organization structure, IRS letter or IRS Form SS-4 assigning taxpayer identification number, documentation of financial solvency, proposed ownership entity documentation as described in 9.5B, Ownership Changes.
Notice of Property Transfer	A form detailing the seller and buyer information, including tax identification numbers and contact information

## B. Ownership Changes

In the event of a change in the ownership structure, an owner must promptly forward to the Corporation the following documents as it relates to the type of change made:

### 1. Limited Partnerships

- Partnership Agreement
- Certificate of Limited Partnership with Secretary of State filing stamp from jurisdiction of formation
- Partnership Resolution pertaining to purchase, assumption of Regulatory Agreement, and signature authority
- Names of partners with their percentage of interest Entity documents for the general partner as required hereby depending on the entity type. (For example, if the general partner is a corporation, provide Articles and Bylaws of Corporation.)
- Certificate of Existence/Authorization from the jurisdiction of formation (must be current; issued within 30 days)
- Processing/Transfer fee

### 2. Corporations

- Articles of Incorporation (with Secretary of State filing stamp from jurisdiction of formation)
- Bylaws
- Corporate Resolution pertaining to purchase, assumption of Regulatory Agreement, and signature authority
- Certificate of Existence/Authorization from the jurisdiction of formation (must be current; issued within 30 days)

### **3. Limited Liability Company**

- Operating Agreement (or Limited Liability Agreement)
- Certificate of Formation with Secretary of State filing stamp from jurisdiction of formation
- Certificate of Existence/Authorization from the jurisdiction of formation (must be current; issued within 30 days)
- Names of members with percentage of interest
- Resolution pertaining to purchase, assumption of Regulatory Agreement, and signature authority
- Processing/Transfer fee

### **4. Non-Profit Entity**

If the development received tax credits from the Qualified Nonprofit Set-Aside category, the transferee (new Owner) must provide documentation demonstrating she/he are a bona fide 501(c)(3) qualified nonprofit and that one of their principal purposes is to provide low-income housing.

### **5. General Partner or Managing Member**

- Written cover letter explaining the transfer as noted above.
- Schematic showing Ownership before and after proposed transfer.
- Complete GP/Managing Member Change form.
- Processing/Transfer fee
- Documentation of Financial Solvency for new partner(s)
- IRS Form SS-4 (or IRS letter with the same information)
- Certificate of Existence/Authorization from Mississippi Secretary of State (must be current within 30 days) for incoming partners
- Resolution pertaining to change/assumption of responsibilities and signature authority
- For any out of state General Partner, Managing Member or Partners, a certification (in the form of a letter) from the Owner that agent is licensed to conduct business in Mississippi and that it will always maintain an agent (or management company) which is licensed to conduct business in the state
- Provide any other documentation upon request

**6. Out-of-state Purchasers** (for partnerships, corporations and limited liability companies located outside the state of Mississippi the following additional documentation is required):

- A current Certificate of Existence/Authorization from the foreign state of formation is required (If issued in the state of formation)
- If the new Owner (individual(s), limited or general partnerships, corporations, or limited liability company) is a non-resident or not licensed to conduct business in Mississippi, the Owner must have an agent who will act as property manager and said agent must be licensed to conduct business in Mississippi.

The following additional documentation is required for out-of-state purchasers, not licensed to conduct business in Mississippi who will be using management agents:

- A Certificate of Existence/Authorization (must be current; issued within 30 days) for agent
- A certification (in the form of a letter) from new Owner that they will always maintain an agent (or management company) which is licensed to conduct business in the state of Mississippi or become qualified to do business in the state of Mississippi.

## C. Foreclosure

When a building/development is no longer in compliance or participating in the HTC program as a result of foreclosure, the new ownership entity must IMMEDIATELY provide the Corporation a statement of certification attesting to the future HTC plans for the development (i.e., opt-out under the foreclosure provision or continue to maintain the development in accordance with HTC guidelines).

An owner electing to exit the program under the IRS' foreclosure provision must provide the Corporation with a copy of the following documents:

- Evidence of the foreclosure sale and/or anticipated date of sale;
- Occupancy Report as of the date of sale listing all residents and the current rental rate;  
*and*
- A complete *Notice of Property Transfer* Form identifying the name, address and telephone number of owner and/ or owner contact.

Additionally, in an effort to ensure certain tenant rights are not violated as a result of the foreclosure, the new owner must ensure compliance with the following federal prohibitions/requirements before the Corporation will consider the formal termination of the development's LURA:<sup>100</sup>

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<sup>100</sup> See IRC Section 42(h)(6)(D)

- No eviction or termination of tenancy of an existing tenant of any low-income unit before the close of the three (3) year period following the termination of the extended use agreement for reasons other than Good Cause; *and*
- No increase in the gross rent of any unit occupied by an existing tenant before the close of the three (3) year period following the termination of the extended use agreement, not otherwise permitted under Section 42.

Upon the successful fulfillment of the above noted requirements, the Corporation will release the development from the extended use requirements.

#### *Future Use of Available Tax Credits*

Upon the foreclosure of a tax credit development, the rights to the annual low-income housing tax credit ceases should it be determined the development will no longer participate in the HTC program.

#### *Administrative Requirement(s)*

An owner of a HTC development that has undergone foreclosure and has(is) opted(ing) to no longer participate in the HTC program is required to submit, for the three (3) year period immediately following the date of the foreclosure sale, information pertaining to the occupants and the applicable rental rate charged. This information, which must be reported to the Corporation via an annual Affordability Transition Report, is due to the Corporation on or before April 30th of each calendar year (or on another date prescribed by the Corporation) for the preceding year. Additionally, an administrative fee of \$10.00 per unit will be charged until the development has successfully complied with all reporting requirements to show compliance with the three year protection period.

*NOTE (1): The first Occupancy Report is due to the Corporation within 30 days of the foreclosure sale identifying households occupying qualified low-to-moderate income units as of the date of the foreclosure sale, including the rental rate charged.*

*NOTE (2): An owner opting to continue participation in the HTC program must continue business as usual thus complying with all program rules and regulations.*

## 9.6 DISPOSITION DURING EUP

During the extended use period, an owner of a HTC development desiring to relinquish his/her ownership right in the HTC program may do so in either one or two ways: Disposition via Regular



Sale or Disposition via Qualified Contract. In either case, the owner must notify the Corporation (utilizing the *Notice of Property Transfer* form within 60 days of the scheduled disposition).

### A. Regular Sale

A development owner who wishes to terminate his/her participation in the HTC program post year-15 (and before expiration of the EUP), yet retain the low-income use of the development, can only do so by finding a buyer that agrees to abide by the terms of the development's LURA.

### B. Qualified Contract

An owner of a HTC development who wishes to terminate the low-income use provision of the development after 15 years (and before expiration of the EUP), and convert the development to market rate housing or other uses can only do so after first making the development available for purchase by parties who agree to maintain the development's low-income use.

Development owners must first provide the Corporation with a one year period to find a buyer willing to purchase the development for continued low-income use at a specified formula price as set forth in Section 42(h)(6)(E)(i)(II). This request can be submitted any time after the end of the 14<sup>th</sup> year of the compliance period unless the owner agreed to extend the affordability period as specified in the development's LURA.<sup>101</sup> **(See MHC website for Preliminary Application)**

The Corporation will require an advance notice of intent to file in the form of a Preliminary Application (see MHC website) before an owner may submit a qualified contract request. This notice will not bind owners to submit a qualified contract request and does not start the one-year period for response from the Corporation. After receiving the Preliminary Application, the Corporation will determine the eligibility of the owner to submit a qualified contract request by confirming it has met the eligibility requirements and the owner did not waive its right in the Land Use Restrictive Agreement to request a qualified contract.

Upon review of the Preliminary Application and eligibility of the development, the Corporation will notify the owner in writing of its eligibility to submit a qualified contract request. The Corporation will send specific instructions for a Qualified Contract Request (outlined below).

#### 1. Qualified Contract Price

The Qualified Contract Price (QCP) or the pre-determined selling price of the development is derived at using a formula price that is equal to:

- The remaining debt on the development- Debt from refinancing's or additional mortgages in excess of qualifying building costs does not qualify as outstanding debt. Qualifying building costs are generally costs that go into eligible basis of the building plus these types of costs that may be incurred after the end of the first year of the credit period. Outstanding debt includes only those amounts secured

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<sup>101</sup> In most LURA's executed in the state of Mississippi, an owner waives his/her right to the qualified contract provision.

by the building(s) that do not exceed qualifying building costs, are true debt under federal income tax law, and upon the sale of the building(s), are actually paid to the lender or are assumed by the buyer as part of the sale.

- The amount of initial investor equity increased by cost-of-living increases of up to 5 percent a year;
- Additional capital contributions; *less*
- Cash distributions to the owners. If the low-income portion or applicable fraction is less than 100 percent, then the formula price is multiplied by the applicable fraction. Cash distributions only include reserve funds not legally required by mortgage restrictions, regulatory agreements, or any third-party contractual agreements that remain with the building(s) following the sale of the building(s).
- Adjusted investor equity is the amount of cash invested in the development, adjusted by the percentage change in the cost-of-living or Consumer Price Index (CPI) up to a maximum of five (5) percent per year. There must have been an obligation to invest the amount at the beginning of the credit period. The cash that is invested in the development is counted to the extent that it is reflected in the basis of the development.

Fair market value of the land underlying the entire building(s) is included in the value of the non-low-income portion of the building(s)

Each year the total amount invested as of the end of the year increases by the appropriate CPI increase factor. Increases in the CPI in excess of five (5) percent a year is never reflected in the adjusted investor equity amount. The CPI for any year is the average of 12 monthly indexes ending in August of each calendar year. The CPI adjustment is measured from the first year that tax credits are taken. The calculations must not use seasonally adjusted values of the Consumer Price Index for all urban consumers (the data series that the Bureau of Labor Statistics refers to as “CPI-U”).

In a mixed-income building with some market rate units, the extended low-income use provision and the right to purchase at a formula price applies only to the low-income portion of the development. A buyer cannot offer to purchase a portion of a building with tax credits. Additionally, the purchase price would have to reflect the fair market value of the non-low-income housing units.

The Corporation may adjust the fair market value of the non-low-income portion of the building(s) after the Corporation’s offer of sale of the building(s) to the general public and before the close of the one-year offer of sale period only with the consent of the owner. If no agreement between the Corporation and the owner is reached, the fair market value of the non-low-income portion of the building(s) determined at the time of the Corporation’s offer of sale of the building(s) to the general public remains unchanged.

If a buyer for the development is found, the requirements of the extended use agreement apply for the remainder of the extended use period.

These provisions apply to developments receiving an allocation of credits after 1989 or automatically receiving credits as a result of tax-exempt financing issued after 1989.

## 2. Supporting Documentation

An owner desiring to terminate the low-income use requirements of the development must forward to the Corporation certain support documentation necessary to determine the qualified contract price as required under IRS Code Section 42(h)(6)(F). These documents include:

- A cover letter indicating the intentions of the owner along with proposed qualified contract price; (see MHC website for sample letter)
- Qualified contract worksheets; (see MHC website for worksheets)
- All fees for processing the request;
- Certification that no IRS audit, investigation or inquiry is pending or underway and copies of the findings of any final audits, investigations or reports of the IRS which have been received;
- Certification that the property is in compliance with all Section 42 requirements;
- An opinion from an independent certified public accountant setting forth the calculation of the qualified contract price requested by the owner and certifying that the owner is entitled to the qualified contract price requested;
- All 8609s related to the project, showing Part II completed;
- Annual audited financial statements for each year of project operation;
- Annual partnership or ownership entity tax returns for each year of project operation;
- Loan documents for all secured debt during the compliance period (and evidence that the Owner is in good standing, is not in default; and is not aware of any event, which but for the passage of time, would constitute default under the outstanding mortgages, liens or indentures securing the real property);
- Appraisal from appraiser currently not on any list for active suspension or revocation for performing appraisals in any state or listed on the Excluded Parties List System (EPLS) maintained by the General Services Administration for the United States Government. All appraisers must be state-certified general appraisers.
- Partnership agreement, with all amendments;
- Evidence of consent of all partners and lenders to seek a qualified contract;
- Any third-party bona fide offers to purchase the property received within one year of the date of request; and
- Title report showing all outstanding liens and encumbrances on title.

The one-year period for response from the Corporation will not begin until the Corporation determines that the owner has met all of the submission requirements.

An owner expected to take advantage of the qualified contract option have a corresponding duty to maintain the records necessary to allow computation of the qualified contract price.

The Corporation will deem the development ineligible for consideration if this responsibility is not fulfilled. Likewise, no review will be considered and/or processed until receipt of all supporting documentation.

3. Presentation of Qualified Contract

The Corporation will have a one-year period to find a buyer for the development. Upon determination by the Corporation, that all submission requirements have been met, the Corporation will forward a letter to the owner notifying the owner that the one-year period has commenced. The Corporation may require a form of notification to be provided to the residents alerting them to the possible disposition of the development. Owners are advised that the property will remain subject to all requisite IRS restrictions, including resident protections stated in Revenue Procedure 2004-82 throughout the processing period and may continue to be subject to such requirements throughout the development's extended use period.

If at any time during the Corporation processing of a qualified contract request, the partnership receives notification of audit or investigation by the IRS regarding the tax credit development, the one-year period will be suspended and processing will stop until the investigation or audit is complete. In addition, any event of default or material noncompliance with Section 42 will result in suspension of the processing of a qualified contract and will disqualify the owner from seeking a qualified contract or extend the one-year period the Corporation has to respond.

4. Marketing Procedures

Upon receipt of an owner's written request to "opt-out" the HTC program, the Corporation will review the owner's request (as well as the development's overall compliance status) and establish (along with the owner) an appropriate QCP. Once the QCP and all other information have been received, the Corporation will employ various marketing efforts to assist in the disposal of the development. Such marketing efforts may include, but is not limited to, preparing and distributing public notification (i.e., agency website, newspaper, flyer, etc.), and/or sending notification to the Federal Home Loan Bank (FHLB) and any other affiliates.

In order to facilitate the selling process, an owner must agree to:

- List the development for sale with a broker/realtor that works with affordable multifamily housing developments;
- Provide the Corporation, its agents and/or prospective buyers access to the development;  
*and*
- Provide and/or release information regarding the development to the Corporation and/or assigned mortgagee that will assist in the disposal of the development.

If the Corporation fails to find a buyer before the expiration of the one-year period (or such longer period as the owner may agree to in writing), the development will remain subject to the

requirements set forth in Section 42(h)(6)(E)(ii); that is, for a three-year period commencing on the termination of the extended use period. The owner may not evict or terminate the residency (other than for good cause) of an existing tenant of any low-income unit or increase the gross rent with respect to any low-income unit except as permitted under Section 42 of the Code, as well as the requirements of the regulatory agreement. This information, which must be reported to the Corporation via an annual Affordability Transition Report, is due to the Corporation on or before April 30th of each calendar year (or on another date prescribed by the Corporation) for the preceding year. Additionally, an administrative fee of \$10.00 per occupied low-income unit based on the last submitted occupancy report will be charged until the development has successfully complied with all reporting requirements to show compliance with the three year protection period.

## 9.7 DISPOSITION FEE

The fee for the Corporation to process a building disposition will be as assessed as follows:

FEE AMOUNT	TRANSFER TYPE	DESCRIPTION
\$5,000.00	Qualified Contract Sale	For complete ownership changes and/or sale of development of owner's requesting to exit program through qualified contract provision of the respective LURA. (Fee amount to include research time, copy fees, staff time, etc.)
\$2,000.00	Regular Sale	For complete ownership changes and/or sale of development to a new individual, partnership, or limited liability company
\$1,000.00	Partnership Changes	For changes in General Partner(s) in a limited Partnership, Members or Managing members in a Limited Liability Company or changes in the partners of a partnership

**NOTE: An owner should consult their legal counsel and/or tax advisor about the effect of a Building/Development Transfer or Assignment.**

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# CHAPTER 10 - FAIR HOUSING

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## 10.1 OVERVIEW

**S**tate Housing Finance Agencies who administer the HTC program have been advised to include language as part of their QAP that addresses Fair Housing requirements. All tax credit developments, as well as other housing in the United States, is covered by the U.S. Department of Housing and Urban Development's (HUD) Fair Housing legislation.

This chapter will provide an overview of fair housing policies and procedures thereby outlining some basic requirements of an owner concerning reasonable modification/accommodations, accessibility, as well as fair housing laws.

## 10.2 PURPOSE

In 1988, Congress passed the Fair Housing Amendments Act as a supplement to Title VIII of the Civil Rights Act of 1968, commonly known as The Federal Fair Housing Act. The Amendments expand coverage of Title VIII to prohibit discriminatory housing practices based on disability and familial status. The Fair Housing Act establishes design and construction requirements for multifamily housing built for first occupancy after March 13, 1991. The law provides that failure to design and construct certain multifamily dwellings to include certain features of accessible design will be regressed as unlawful discrimination.

Under the Fair Housing Act, it is illegal to discriminate in the sale, rental, financing, advertising or operation of housing. It is also illegal to discriminate in residential lending decisions and to make discriminatory statements in advertising. The law covers both private providers and housing providers who receive financial assistance from HUD.

## 10.3 GENERAL PROVISIONS

The Fair Housing Act covers most types of housing. The broad objective of the Fair Housing Act is to prohibit discrimination in housing because of a person's race, color, national origin, religion, sex, familial status, or disability.

The Fair Housing Act includes two important provisions: (1) a provision making it unlawful to refuse to make reasonable accommodations in rules, policies, practices, and services when necessary to allow the resident with a disability equal opportunity to use the development and its amenities; and (2) a provision making it unlawful to refuse to permit residents with disabilities

to make reasonable modifications to their dwelling unit or the public common use area, at the resident's cost.

In some circumstances it exempts owner-occupied buildings with no more than four units, single-family housing sold or rented without the use of a broker and housing operated by organizations and private clubs that limit occupancy to members.

#### **A. Reasonable Accommodations**

In buildings with a 'no pets' rule, the rule must be waived for a person with a visual impairment who uses a service dog, or for other persons who uses a service dog or service animals.

In buildings that provide parking spaces for residents on a "first come, first served" basis, reserved parking space must be provided, if requested, by a resident with a disability who may need it.

#### **B. Reasonable Modifications**

When a resident wishes to modify a dwelling unit under the reasonable modification provisions of the Fair Housing Act, the resident may do so. The landlords or manager may require that the modifications be completed in a professional manner under the applicable building codes, and may also require that the resident agree to restore the interior of the dwelling to the condition that existed before the modification, with reasonable wear and tear excepted.

A development owner may not require that modifications be restored that would be unreasonable (i.e., modifications that no way affect the next resident's enjoyment of the premises). For example, if a resident who uses a wheelchair finds that the bathroom door in the dwelling unit is too narrow to allow his or her wheelchair to pass, the development owner must give permission for the door to be widened, at the resident's expense. The development owner may not require the doorway be narrowed at the end of the resident's tenancy because the wider doorway will not interfere with the next resident's use of the dwelling.

Residents may also make modifications to the public and common use spaces. For instance, in an existing development it would be considered reasonable for a resident who uses a wheelchair to have a ramp built to gain access to an onsite laundry facility. If a resident cannot afford such a modification, the resident may ask a friend to do his or her laundry in the laundry room, and the development owner must waive any rule that prohibits nonresidents from gaining access to the laundry room.

### **10.4 ACCESSIBILITY GUIDELINES**

The seven technical accessibility requirements for covered buildings based on the Fair Housing Act of 1968, as amended, are:

- Accessible entrance on an accessible route
- Accessible Public and Common Areas



- Usable Doors
- Accessible Routes into and through the Dwelling Unit
- Accessible Light Switches, Electrical Outlets, and Environmental Controls
- Usable Kitchens and Bathrooms

## 10.5 LAWS THAT MANDATE ACCESSIBILITY

Certain dwellings, as well as certain public and common use areas, may be covered by several of the laws listed below to ensure nondiscrimination against people with disabilities. The law covers both the design of the building environment and in the manner that programs are conducted.

### A. Section 504 of the Rehabilitation Act (1973)

Under Section 504 of the Rehabilitation Act of 1973, as amended, no otherwise qualified individual with a disability may be discriminated against in any program or activity receiving federal financial assistance. The purpose of Section 504 is to eliminate discriminatory behavior towards people with disabilities and to provide physical accessibility, thus ensuring that people with disabilities will have the same opportunities in federally funded programs as do people without disabilities.

Program accessibility may be achieved by modifying an existing facility or by moving the program to an accessible location, or by making other accommodations, including construction of new buildings. HUD's final regulation for Section 504 may be found at 24 CFR, Part 8. Generally, the Uniform Federal Accessibility Standards (UFAS) is the design standards for providing physical accessibility, although other standards that provide equivalent or greater accessibility may be used.

### B. The Fair Housing Act of 1968, as Amended

The Fair Housing Act provides equal opportunities for people in the housing market regardless of disability, race, color, sex, religion, familial status or national origin, regardless of whether the housing is publicly funded or not. This includes the sale, rental, and financing of housing, as well as the physical design of newly constructed multifamily housing.

### C. The Americans with Disabilities Act (1990)

The Americans with Disabilities Act (ADA) is a broad civil rights law that guarantees equal opportunity for individuals with disabilities in employment, public accommodations, transportation, state and local government services, and telecommunications. Title II of the ADA applies to all programs, services, and activities provided or made available by public entities. With respect to housing, this includes, for example, public housing provided for state colleges and universities.

### D. State and Local Codes

All states and many cities and counties have developed their own building codes for accessibility, usually based in whole or in part on the specifications contained in the major national standards such as ANSI (American National Standards for Buildings and Facilities) and UFAS. Many states also have nondiscrimination and fair housing laws similar to the Fair Housing Act and the Americans and Disabilities Act.

When local codes differ from the national standards, either in scope or in technical specification, the general rule is that the more stringent requirement should be followed.

## 10.6 FAIR HOUSING ENFORCEMENT

HUD is the federal enforcement agency for compliance with the Fair Housing Act. Designers and builders were guided by the requirements of the ANSI A117.1-1986, American National Standards for Buildings and Facilities-Providing Accessibility and Usability for Physically Handicapped People, until March 6, 1991. The Fair Housing Accessibility Guidelines were published on March 6, 1991 (56 Federal Register 9472-9515, 24 CFR Chapter I, Subchapter A, Appendix II and III). The Guidelines are not mandatory, but are intended to provide a safe harbor for compliance with the accessibility requirements of the Fair Housing Act.

The Guidelines published on March 6, 1991, remain unchanged. However, on June 28, 1994, HUD published a supplemental notice to the Guidelines, "Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers about the Guidelines." This supplemental notice reproduces questions that have been most frequently asked by members of the public and HUD's answers to those questions.

Under the Fair Housing Act, HUD is not required to review or approve building plans in order to issue a certification of compliance with the Fair Housing Act. The burden of compliance rests with the person(s) who design and construct covered multifamily dwellings. HUD or an individual who thinks he or she may have been discriminated against may file a complaint against the building owner, the Architect, the contractor, and any other person(s) involved in the design and construction of the building.

*Source: Some of the information contained herein was acknowledged from the Fair Housing Act Design Manual, April, 1998, as amended.*

# CHAPTER 11 - NONCOMPLIANCE: PROCEDURES & CONSEQUENCES

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## 11.1 OVERVIEW

**N**oncompliance is defined as an owner's failure to meet and maintain the requirements provided in Section 42 of the IRC, including related Regulations and IRS guidance, the Corporation's Compliance Monitoring Plan, the development's Qualified Allocation Plan (QAP) and Declaration of Land Use Restriction Agreement (LURA). Under Treasury Regulation 1.42-5(a), state housing finance agencies are required to report any noncompliance of which it is aware. Agencies are to report noncompliance without regard to whether the identified outstanding noncompliance is subsequently corrected.

## 11.2 CATEGORIES OF NONCOMPLIANCE

### A. Major Noncompliance

Major noncompliance can be defined as any compliance violations that have a significant impact on the minimum set-aside, eligible basis, applicable fraction, habitability, and affordability of the development. There are two main categories of major noncompliance - federal and state. The severity of the noncompliance varies by noncompliance category.

#### 1. Federal

Major noncompliance items represent a violation of the requirements of Section 42 and/or related Regulations and the IRS guidance for any year during the development's compliance period. Occurrences of noncompliance under this category may negatively affect an owner's credit claiming ability and the ability of the development to generate tax credits.

Examples of major federal noncompliance include, but are not limited to:

- Leasing to tenants whose initial gross household income exceeds the applicable maximum HTC income limit;
- Rents charged to tenants that exceed the maximum limit;
- Failure to follow the Next Available Unit Rule (NAUR);
- Severe health and safety violation generally affecting more than one (1) unit (i.e., structural problems, severe water damage, blockage of fire exits, fire hazards, pest infestations, elevators functioning improperly, smoke detectors or sprinklers not functioning, inoperable fire extinguishers, etc.);

- Down units (not suitable for occupancy for an extended period of time - generally more than 90- days): and
- Improper disposition and/or sale of development

## 2. State

Major state noncompliance occurs when there is a violation of the development's allocation documents and/or the extended use agreement. These violations are generally specific to state –imposed requirements, but can stem from provisions of the IRC.<sup>102</sup>

Examples of major STATE noncompliance include, but are not limited to the following:

- Numerous instances of administrative noncompliance (i.e., failing to execute the procedures and policies stated in the state of Mississippi's Compliance Manual);
- Improper disposition and/or sale of development; and
- Violation of any provision of the development's final HTC Application/LURA/QAP (i.e., deeper targeting, subsidy, replacement reserves, etc.); and
- Delinquent on loan payments (i.e. Mississippi Affordable Housing Development fund, Allocation and/or Compliance fees)

*NOTE: Open issues of any major noncompliance findings related to an owner, developer, general partner, or management entity participating in the HTC program may disqualify all related parties from participating in any other programs offered by the Corporation until such instances of noncompliance have been resolved. An owner cited for a major instance of noncompliance must be free of the noncompliance event prior to the last full calendar quarter plus thirty (30) days prior to the close of the application cycle.*

## B. Minor Noncompliance

Minor instances of noncompliance can be defined as non-major, less severe program violations. Examples of minor noncompliance include, but are not limited to the following:

- Isolated instances of administrative noncompliance (i.e., failing to execute the policies and procedures stated in the state of Mississippi's Compliance Manual); and
- Violations that require correction but do not impair essential services and safeguards for tenants.

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<sup>102</sup>Although state enforced through the development's LURA, certain provisions of the IRC, such as the prohibition against Section 8 discrimination and the LURA requirement, are direct requirements of the IRS.

## 11.3 CORRECTION OF NONCOMPLIANCE

### A. Notice to Owner

State agencies gather information to determine an owner's compliance with the requirements of Section 42 of the IRC. In doing so, a determination of noncompliance may occur. Most instances of noncompliance are correctable with the IRS upon the satisfactory receipt of documentation evidencing compliance with program rules and regulations. In accordance with the same, the Corporation is required to advise an owner of all instances of noncompliance found with program requirements and issue a correction period of up to 90 days.

### B. Correction Period

The correction period begins on the date the Corporation provides written notification to the owner and/or owner's authorized agent of any noted deficiencies. The Corporation generally provides a correction period of 30 days; however depending on the severity of the noncompliance issue(s), if deemed necessary, the Corporation may grant an extension of up to six months to correct instances of noncompliance. An owner may request an extension of the correction period. All requests must be in writing and received by the Corporation no later than the last day of the correction period identified in the Corporation's notification of deficiencies. Additionally, a request for an extension must include the reason for the extension and corrective action efforts taken as of the date of the request.

### C. Notice to the IRS

In accordance with Treasury Regulation 1.42-5(a), the Corporation is required to notify the IRS of an owner's noncompliance with program rules and regulations by way of Form 8823 *Low Income Housing Credit Agencies Report of Noncompliance or Building Disposition* no later than 45 days after the end of the correction period, including all agency-approved extensions. **(See Appendix C)**

The Corporation will notify the IRS of an owner's noncompliance no later than 45 days after the end of the time allowed for correction by filing Form 8823.<sup>103</sup> Corrections of noncompliance made by an owner prior to the Corporation's notification of an upcoming monitoring review and/or inspection may not be reported to the IRS as an instance of noncompliance.

The Corporation will review all corrective action documents submitted by an owner up to three years beyond the end of the correction period. However, the Corporation will not review nor submit to the IRS a "corrected 8823" for instances of noncompliance submitted for correction beyond three years of the allotted correction period.

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<sup>103</sup>As a standard practice, the Corporation issues notices of noncompliance to the IRS indicating the status of the development at the end of the initial correction period. A subsequent review of corrective action documentation may be warranted to bring development back into compliance. These reviews will have no bearing on the initial 8823 filing

Compliance with the requirements of the HTC program is on a building by building basis. Likewise, any instances of noncompliance will be reported and corrected in accordance with the same.

*NOTE: The Corporation will report all instances of noncompliance (corrected or not) identified prior to the Corporation's issuance of IRS form 8609 directly to the IRS' Washington, D.C. office.*

## 11.4 COMMON VIOLATIONS

Some of the most common compliance violations made by owners participating in the HTC program are:

### A. Ineligible Households

Household Income above Income Limit upon Initial Occupancy, *IRS 8823 line 11a*. For a unit to be qualified as a low-income unit, documentation of the household's initial eligibility must be on file with the owner. An owner who fails to acquire an initial tenant income certification and/or leases a low-income unit to a household whose income initially exceeds the applicable tax credit limit should not claim credits on that unit. The unit remains an ineligible unit as long as the household continues to have income that exceeds the applicable income limits and/or lacks the documentation needed to support a household's eligibility for purposes of claiming the low-income housing credit under Section 42 of the IRC.

### B. Failure to Certify/Recertify Household

Owner Failed to Correctly Complete or Document Tenant's Annual Income Recertification, *IRS 8823 line 11b*. An owner was required to recertify each low-income household at least once annually in accordance with program requirements. Failure to obtain updated household information, including full-time student status, by the anniversary date of the effective date of the original tenant certification is deemed a noncompliance event.<sup>104</sup>

### C. Rental Overage

Gross Rent(s) Exceed Tax Credit Limits, *IRS 8823 line 11g*. A unit qualifies as an HTC unit when the gross rent does not exceed 30 percent of the imputed limitation applicable to such unit under the guidelines of the IRC. When an owner and/or management agent leases a unit with a gross rent exceeding the applicable tax credit rent, the rent charge is classified as a "rental overage" and a direct violation of program guidance.<sup>105</sup>

### D. Inadequate Utility Allowance

<sup>104</sup> Effective July 30, 2008 by way of the Housing Economic & Recovery Act of 2008, some developments are exempt from the recertification requirement.

<sup>105</sup> Excluding units receiving rental assistance payments through certain other affordable housing programs (i.e., RHS/Section8) whereby certain exceptions apply.

Owner did not Properly Calculate Utility Allowance, *IRS 8823 line 11m*. A violation under this type generally occurs when an allowance for the cost of any applicable tenant-paid utilities is/was not given and/or properly calculated. A low-income housing development is deemed in compliance when the appropriate utility allowance is used, the utility allowance is properly calculated, and rents are reduced for a utility allowance when utilities are paid directly by the tenant.

### **E. Transient Housing**

Low-Income Units used on a Transient Basis, *IRS 8823, line 11o*. Under the tax credit program, an original lease term must be for a full six months or longer. Violations of this type signifies units whereby the initial lease agreement had a term less than required or the owner failed to obtain an initial lease agreement with the family.

## **11.5 UNCORRECTABLE VIOLATIONS**

### **A. Minimum Set-Aside Violations**

Project Failed to Meet Minimum Set-Side Requirement, *IRS 8823, line 11f*. An Owner's failure to satisfy the minimum set-aside requirement (20/50, 40/60) by the deadline date for the first year of the credit period results in the permanent loss of the entire credit.<sup>106</sup>

### **B. Out of Program/Out of Compliance**

Project is no longer in compliance or participating in the Section 42 program, *IRS 8823, line 11f*. Any owner/developer who fails to respond to the Corporation's request for a monitoring review (i.e., onsite audit, desk audit, or physical inspection, AOC Report or special request for certain information) for three consecutive years will be deemed out of program and out of compliance for egregious noncompliance.

## **11.6 CONSEQUENCE OF NONCOMPLIANCE**

According to federal regulations, an owner of a tax credit development must correct any instance of noncompliance which occurs with the set-aside requirement of the development or with a reduction in qualified basis within a reasonable period of time after the noncompliance has been noted. An owner's failure to correct an instance of noncompliance may result in consequences that range in scope from severe to minor and technical in nature. The consequence of noncompliance varies depending on the source of the noncompliance: federal or state.

### **A. Federal**

Consequences of federal noncompliance may include:

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<sup>106</sup> A violation of key program or allocation requirements before or after the issuance of IRS form 8609 that occurs within 180 days after the end of the first taxable year of the building's credit period may also result in the cancellation of a development's allocation of credits.

- The Issuance of IRS **form 8823** *Report of Noncompliance or Building Disposition* by the Corporation;
- **Recapture** – An instance of noncompliance whereby the IRS “takes back” the accelerated portion of the tax credit for prior years when the building(s) was in compliance;
- **Loss of Housing Credit** – Noncompliance whereby the IRS determines that an owner’s tax credit ability is suspended (i.e., lost) for a certain taxable year(s) in which the building was/were not in compliance; and
- **Interest** – Noncompliance whereby the IRS assess interest for the recapture year and/or previous years

If noncompliance is due to a reduction in qualified basis and the minimum eligibility requirements is met, then recapture and disallowance of credit will apply only to units not in compliance.

## B. State

Consequences of state noncompliance may include:

- **Cancellation of Credit Allocation** – An instance of noncompliance whereby the Corporation cancels a development’s allocation of credits due to major program violations;<sup>107</sup>
- **Development Not in Good Standing Designation** – Noncompliance whereby the Corporation determines an owner has no intention on fulfilling his/her obligation(s) under the terms of the final HTC Application or LURA by way of repeated delays or ignoring the Corporation’s request for monitoring reviews, reports, fees, etc.;
- **Judicial Enforcement** – The Corporation takes legal action to enforce provisions of the LURA;
- **Financial Penalties** – Additional compliance fees are assessed against a development owner (which are separate and apart from monitoring fees) as a reimbursement for all expenses incurred as a result of the noncompliance event. **(See Section 11.7 of this Chapter for specifics regarding noncompliance fees & penalties); and/or**
- **Collection Action** – Collection action is a consequence of noncompliance whereby the Corporation (in an effort to collect on monies/fees due to the Corporation) turns an owner of a development over to an agency responsible for collecting on financial obligations. Collection activity to commence on all accounts 120+ days delinquent.

## 11.7 FEES & PENALTIES

The owner of a development found in noncompliance will be responsible for reimbursing the Corporation for all expenses incurred. Reimbursement will be assessed in accordance with the following schedule:

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<sup>107</sup> A cancellation of credits by the Corporation issued within 180 days after the end of the first taxable year of the building’s credit period permanently removes the development’s allocation and future participation in the HTC program.



Fee Type	Fee Amount
Status Determination Fee:	\$110.00
Subsequent Review Fee:	\$110.00 per hour*
Missed Deadline (Review/Report deadline and physical inspection critical violation correction deadline):	\$100 per day*
Re-inspection Fee:	\$110.00 per hour*
	Standard Mileage & Overnight Accommodations, <i>if applicable</i>
	Meal allowance in accordance w/applicable federal regulations
Copy (hard copies):	\$.15 per copy
Research Fee:	\$55.00 per hour
Missed Inspection Fee (without 48 hours' notice):	\$250.00 per day*
Report Manual Submission Fee:	\$40.00 per unit (AOC & QOR); \$100.00 flat fee (DFAR)
Building Disposition/Transfer Fee:	\$5,000 (QCT sale); \$2,000 (Regular Sale); and \$1,000 (Transfer)
Extended Use Monitoring Fee:	\$20 per LI units; \$10 per LI (RD properties only)
Affordability Transition Administrative Fee:	\$10 per LI unit
Utility Allowance Request Fee:	\$150.00 per development, per request
Staff Unit Request Fee:	\$500.00 per request (Common Area > Residential Rental only)
Insufficient Fund Fee:	\$40.00
Other Professional and Legal Costs	Amount to be determined on a case-by-case basis

\*Reimbursement amount to be assessed at this rate up to 30 days.

The Corporation must receive all fees assessed in association with an instance of noncompliance before the noncompliance event will be corrected with IRS. Likewise, the Corporation will only review corrective action documents, reports, etc., upon satisfactory payment of all fees assessed/due. Please include invoice number on check or attach copy of original invoice with payment of fees.

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# INDEX

## 1

100 Percent HTC, 107

## 2

**20/50 Set-Aside**, 25

**25/60 Set-Aside**, 25

## 4

**40/60 Set-Aside**, 25

## 8

8693 *Low-Income Housing Credit Disposition Bond*, 136

8823, 13, 14, 15, 33, 124, 139, 157, 158, 159, 160

## A

Acquisition, **1, 16, 24, 134**

Alimony, 84

Allocation, 15, 17, 18, 21, 22, 24, 31, 37, 40, 64, 93, 106,  
117, 131, 135, 147, 156, 159, 160

Amenities, 45, 46, 51

Annual Certifications, **122**

Annual Credit Authority (ACA), 21

Annual Owner Certification, 118

Applicable Fraction, 18, 20, 26, 28, 29, 119, 131, 132, 133,  
146, 155

Application

HTC

Rental, 13, 15, 18, 22, 26, 29, 30, 37, 45, 53, 54, 90, 116,  
119, 120, 128, 132, 146

Applied Oriented Design/ Certification On-Line (AOD/COL),  
**122**

Asset Income, 74

## B

BAQ, 83

BAS, 83

Basic Allowance for Subsistence. *See also* BAS

Basic Allowance Quarters. *See also* BAQ

Bond Posting, 136

Building Disposition, **140**

**Building Systems**, **125, 139, 149, 157, 160, 161**

## C

cash value, 74

Cash Value, 74, 86, 87

**Check Stub**, 77

Check stubs, 77

Child support, 84

Child Support Affidavit, **115**

Common Area, 29, 64, 125

Common Violations, 157, 158

Community Services, 45, 46, 51

Compliance Period, 22

Compliance Reviews, **122**

Construction, 17, 18, 101, 102, 151, 153, 154

Correction Period, 157

credit period, 18, 20, 26, 37, 58, 102, 116, 146, 159, 160

## D

Decorating Fees, 34

Deeper Income Targeting, 39, 40, 65

Department of Housing and Urban

Development"SeealsoHUD, 30, 100, 151

Desk Audit, 123, 159

Development Files, 116

Development Financial Analysis Report (DFAR), **122**

Development Records, **115**

Development Transfer, **139, 143, 149**

disabled, 30, 41, 42, 56

Discrimination, 32

DISPOSITION, 134, 135, 139, 144, 149

*Divorced Individuals*, 55

*Documentation of Telephone Verification*, 78

**Dwelling Units**, **125**

## E

Educational Organization, 28

Elderly

Assisted Living Facilities

Transitional Housing, 30, 31, 42, 43, 51

*Elderly Housing**55 and Older**62 and Older*, 30, 42*55 and Older Elderly**62 and Older Elderly*, 42

Eligible Basis, 18

**Enforcement**, 85, 160

Enterprise Income Verification (EIV), 76

Extended Use Period, 22, 25, 32, 34, 65, 115, 124

Extended Use Period (EUP), **131****F***Fair Housing*, 30, 79, 119, 151, 152, 153, 154

Fair Housing Act, 151, 154

Fees, 13, 23, 34, 35, 37, 74, 99, 127, 128, 129, 133, 138,  
149, 160, 161

Financial Assistance, 89, 108, 151, 153

Foreclosure, **139, 140**, 143, 144

Foreign Duty Pay, 83

Foster Adults, 56

Fraud, 66

Full-time Student, 25, 28, 54, 56, 62

**G***General Partner*, **139, 142, 149**

General Public Use, 32

Gross Rent, 27, 33, 66, 98, 99, 102, 105, 107, 108, 144,  
149, 158**GROSS RENT**, 95**H**

Health and Safety, 125, 126

HERA, 70

HFA, 21, 23

HOME, 91

Hourly Pay, 82

**Household Composition**, 54, 60housing credit agencies, **15, 21, 37**

Housing Economic and Recovery Act (HERA), 64

Housing tax credits, 17

HUD, 30, 57, 69, 70, 73, 76, 81, 83, 86, 87, 90, 100, 101,  
108, 109, 119, 125, 151, 153, 154

HUD Handbook 4350.3, 83, 86, 90

**I***Imputed Occupancy Assumption*, 95, 96Income, 15, 17, 18, 20, 22, 23, 24, 25, 26, 27, 28, 29, 31,  
32, 33, 34, 35, 39, 40, 41, 42, 44, 45, 46, 48, 53, 54, 57,  
58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 69, 70, 71, 72, 73,  
74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88,  
89, 90, 91, 92, 93, 95, 101, 105, 106, 107, 108, 109, 112,  
115, 117, 118, 119, 122, 124, 128, 131, 132, 133, 135,  
136, 137, 140, 142, 144, 145, 146, 147, 149, 158, 159

Ineligible Households, 75

**Inspections**

Physical

Tenant file, 27, 35, 122, 123, 127, 132

INTERIM CERTIFICATIONS, 66

Intermediate Care Facilities, 31

Internal Revenue Code, **10, 15, 17, 48, 63, 131****J**

JTPA, 28

**L**Land Use Restriction Agreement. See also LURA, *See also*  
*LURA*, See also LURA

Lease Agreement, 59

**LIABILITY**, **129**Limited Liability Company, **139, 142, 149**

Limited Partner, 17

Live-in Aides, 56

**Local Utility Company**, 101*Low-Income Housing Credit & Certification*, **135**

low-income housing tax credit program, 17

Low-Income Occupancy, **22, 23, 25, 117***LURA*, **23, 24, 32, 41, 45, 128, 129, 131, 132, 133, 134, 137,**  
**138, 139, 140, 143, 145, 149, 155, 156, 157, 160****M**

Major noncompliance, 155

Mandatory Charges, 33

Memorandum of Understanding (MOU) ), **124, 133**

Military, 83, 84, 88

Minimum Set-Aside, 22, 25, 26, 34, 69, 72, 73, 96, 97, 118,  
119, 155, 159Minimum Wage. *See also Earnings*, See also Earnings, See  
also Earnings

Minor Noncompliance, 156

Mississippi Affirmative Olmstead Initiative, 43, 110  
 Mixed- Income Developments, 41  
 Monitoring Reviews. See also Inspections, See also  
 Inspections, See also Inspections  
 MSA, 27, 71, 72, 73  
 See also Minimum Set-Aside, 27

## N

National Pool, 21  
 Next Available Unit Rule, 31  
**Noncompliance**, 64, 127, 155, 156, 157, 160, 161  
 Consequence of, 155, 157, 159  
 Nonprofit Organization, 31, 99  
 Non-profit participation, 39  
 Non-transient, 33, 59, 118

## O

Omnibus Budget Reconciliation Act, **32, 105**  
 On-site Audit, **124, 127**  
**Operating Reserves**, 38, 121  
 Owner Certification of Continued Program Compliance,  
 118  
 Owner Rental Assistance, 47, 109  
 Owner Reporting, 34

## P

Part-time Student, 89  
 Physical Condition, 27, 35, 125, 126, 132  
 Physical Inspection, 124, 126, 159  
 Placed in Service, 18, 20, 22, 45, 48, 58, 117  
**Public Housing Authority**, 100

## Q

Qualified Allocation Plan (QAP)., 21  
 Qualified Basis, 20  
 Qualified Contract, 145, 149  
 Quarterly Briefing, 128

## R

Reasonable Accommodations, 152  
 Reasonable Modifications, 152  
 Recapture, **65, 135**  
 RECERTIFICATION, 60, 64

Recertification Questionnaire, **115**  
 Recertification Waiver, 23, 60  
 Record-Keeping, **65, 66, 115**  
 Regular Income, 74  
 Regular Sale, 145, 149, 161  
 Rehabilitation, 17, 18, 57, 58  
 Relocation. *See also Transfer*, See also Transfer  
 Rent  
 Maximum allowable;mandatory charges;staff  
 units;over-income;mixed-income;EUP, 32  
 Rent Roll. See also Occupancy Report, See also Occupancy  
 Report, See also Occupancy Report, See also Occupancy  
 Report, See also Occupancy Report  
 Rental Application, **53, 115**  
 Rental Assistance  
 Owner-based  
 Tenant-based  
 Project based, 47, 51, 79, 100, 107, 108, 109, 111, 112  
 Rental Overage, 112, 158  
 Renters Insurance, 34  
 Replacement Reserves, 38  
 Resident Selection, 21  
 Residential Rental Property, 33  
 Restricted Rents, 22  
 Restrictive Covenants, 24  
 Revenue Ruling 2004-82, 10, 29, 32  
 Revenue Ruling 92-61, 29  
 RHS, **30, 60, 91, 100, 107, 108, 112, 133, 158**  
 Rural Housing Service. *See also* RHS, *See also* RHS

## S

Section 504 of the Rehabilitation Act, 153  
 Section 8, 32, 75, 79, 100, 107, 108, 109, 112, 119, 132,  
 156, 157  
 Selection Criterion, **51, 116**  
 Self-Employment, 80, 82, 83  
 Single-Parent, 28, 109  
 Single-Room Occupancy (SRO), 33, 125  
 Social Security Verification, 78  
 Special Duty Pay, 83  
 Special Needs, 41  
 Staff Unit, 29, 30  
 Staff Units  
 rent, 29  
 State and Local Codes, 126, 154  
 State Requirements, 135, 137  
*Student and Rent Declaration*, 65  
 Students. *See also* Full-time Students

Subsidy, 39, 47, 48, 108, *See also Owner Rental Assistance, RHS, Section 8*

Suitable for Occupancy, 27, 34, 118, 124, 132

Supplemental Certification, 118, 119

Support Staff Verification, 79

## T

TANF, 28, 75

**Tax Return, 77**

Tax-Exempt Bond, 22

Tax-Exempt Revenue Bonds, 21

TDA. *See also Treasury Direct Account, See also Treasury Direct Account, See also Treasury Direct Account, See also Treasury Direct Account, See also Treasury Direct Account*

Temporarily Absent Family Member, 88

Temporary Assistance for Needy Families (TANF), 28

Tenant Files, **115**

Tenant Income Certification (TIC), **57**

Tenant Release and Consent, **115**

Termination of Tenancy, **144**

The Americans with Disabilities Act, 153

*The Low-Income Housing Tax Credit Allocation Certification, 22, 25*

*The Work Number, 86*

training, 28, 127, 128

Transfers

Types of

Unit:, 138, 139

Treasury Direct Account. *See*

## U

U.S. Housing Act of 1937, 75

Uncorrectable Violations, 159

Unemployment, 74, 86

**Unit Transfers**

***Building-to-Building;Intra-building;100%, 31, 32***

Unit Vacancy Rule, 60

Unlawful Evictions, 32

Utility Allowance, **116, 117**

Increase

Decrease, 22, 65, 98, 99, 100, 101, 119, 159

Utility Sub-metering/Ratio Utility Billing, 122

## V

Value of the Credit, **18**

veteran, 41

Veteran, 42

## W

Work Number Verification, 86

## Z

Zero/Very-Low Income, 79

