To: LIHTC Owners and Management Agents  
From: Heather Pate, Manager  
Program Analysis & Enforcement Section  
Date: 12/01/08  
Re: Program and Section Updates

Due to the many changes within the Housing Credit Industry over the past year or so, the Program Analysis and Enforcement Section has updated and revised the LIHTC Compliance Manual. The manual has been posted to the OHCS website and is available for your viewing as of the date of this notice. Many of the alterations made were minor (grammatical, reformatting, etc.), while several include the implementation of new policies and procedures as a direct result of some of the provisions within the Housing and Economic Recovery Act of 2008 (H.R. 3221), which was signed into law by President Bush on July 30, 2008. All affected areas of the LIHTC Manual have been highlighted (indicating changes made) for your reference and will remain so throughout the first quarter of 2009. Please keep in mind that the LIHTC Compliance Manual is a “working” document and that we do our best to stay current with industry changes.

**LIHTC Form Additions/Revisions**  
Owners/Agents must begin using all revised (or newly created) “Required Forms” forms on or prior to January 1, 2009. In order to maintain fairness and uniformity, the OHCS-mandated forms must not be altered. Owners and Managing Agents electing not to use the “Recommended Forms” forms provided by OHCS must include at the very least all of the information contained within the OHCS-recommended forms within the text of their own documents. Please review the following changes/additions:

**Required Forms:**  
- **Owner’s Certificate of Continuing Program Compliance (CCPC) (OHCS.1)** – added sections to address whether or not a project has a credit allocation for 100% of the units (pg. 1). Clarifies what should be submitted with the CCPC (pg. 2).
- **Owner’s Certificate of Extended Use Compliance (CEUC) (OHCS.1a)** – new form intended to be completed for projects that have entered into the Extended Use compliance period.
- **Tenant Income Certification (OHCS.2)** – top of page one now includes options for certifications completed for first-year annuals (or “Annuals” for non-100% LIHTC projects), at move-in during the Extended Use period, and for certifications completed at acquisition or for transfers. The Foster Care exemption added to Part VII (pg. 2) for full-time student households. The instructions (pg. 3) clarify effective dates for certifications completed for first-year annuals (or annually for non-100% LIHTC projects), for transfers, and for certifications completed at acquisition.
- **Applicant/Tenant Questionnaire (OHCS.3)** – replaced old language at the bottom of the form with “I have assets”. Added “Combined Household Assets” under both “Yes” options.
• Under $5,000 Asset Certification (OHCS.4) – removed statement #4, “I have no assets”.
• Annual Certification of Student Status (OHCS.5) – new form to be completed by each household on an annual basis during the initial (first 15 years) compliance period.
• Student Status/Financial Assistance (OHCS.6) – no changes.
• Employment Verification (OHCS.7) – no changes.
• Unemployed/Zero-Income Certification (OHCS.8) – no changes.
• Unit Transfer Certification (OHCS.9) – new form to document unit transfers within the same building or into different buildings within the same project.

Recommended Forms:
• Affidavit of Pregnancy (R.1) – removed requirement to obtain third-party verification of the pregnancy.
• Annual Reporting Spreadsheet (R.2) – now addresses projects that are (or are not) 100% LIHTC and includes the Foster Care exemption as an option for full-time student households.
• Annual Reporting Spreadsheet – Extended Use (R.2a) – new form to be completed and submitted annually with the CEUC for projects that have entered into the Extended Use period.
• Asset Verification (R.3) – no changes.
• Certification of Child Support and/or Alimony (R.4) – no changes.
• Compliance Checklist (R.5) – no changes.
• Divestiture of Assets Verification (R.6) – new form used to document households that have sold or disposed of assets for less than Fair Market Value during the two-year period prior to the effective date of certification.
• Estrangement/Separation Certification (R.7) – no changes.
• Live-in Caregiver (R.8) – new form to be completed by the care provider.
• Periodic Assistance Verification (R.9) – no changes.
• Project Summary Sheet (R.10) – no changes.
• Public Assistance Verification (R.11) – no changes.
• Public Housing Authority Statement (R.12) – no changes.
• Self-Employment Affidavit (R.13) – new form to be completed by the applicant/tenant for each certification year he/she remains self-employed.
• Self-Employment (No Tax Return) Affidavit (R.14) – new form to be completed by the applicant/tenant for situations where the self-employment is new and Federal tax returns have not yet been filed.
• Signature Authorization Form (R.15) – no changes.
• Social Security Benefits Verification (R.16) – no changes.
• Special Features Unit/Live-in Caregiver Verification (R.17) – new form used to verify an applicant or tenant’s need for a live-in care provider or special features unit. To be completed by a third-party entity (i.e. healthcare professional).
• Termination of Employment Verification (R.18) – no changes.

Supplemental Information
• S.1a - General Public Use Clarification (H.R. 3221) - new legislation provides additional clarification to the existing rule (1.42.-15).
• S.2a - IRS Regulation Update (26 CFR Part 1) – issued by the IRS to update current utility allowance calculations procedures offered (adds three additional options).
• S.7a - Non-Metro Median Income Limits (H.R. 3221) – allows for defined non-metro areas to use the higher of the published (1) Area Median Gross Income Limit or (2) National Non-Metro Median Income Limit (became effective on 07/31/08, not retroactive).
LIHTC Compliance Manual – 2009
Each chapter of the LIHTC Manual has been separated out to form new documents. Within each chapter contains links to direct you to various forms, information, and external websites. Over the course of the last year or so, there have been many changes within the Housing Credit industry, most of which were memorialized by the signing and enactment of the Housing and Economic Recovery Act (H.R. 3221). The following list provides a broad overview of specific changes (or revisions) to the LIHTC Compliance Manual:

Chapter 1 – Introduction:
- Page 1-1 – updated link to the IRC Section 42, replaced “Housing Resources Section” with “Program Analysis and Enforcement Section”, and expanded on explanation of links within the manual.
- Page 1-2 – updated links to Exhibits E.1 and E.2.
- Page 1-3 – added links to Revenue Ruling 92-61 (treatment of staff units) and Section 1.42-15 (Available Unit Rule).
- Page 1-5 – discusses the Housing and Economic Recovery Act of 2008 (H.R. 3221) signed on July 30, 2008. Clarifies the General Public Use Rule and how the Act effects the processing of tenant income certifications (for 100% LIHTC projects).
- Page 1-6 – adds an exemption to full-time student households for individuals who previously received Foster Care assistance under Title V of the Social Security Act (effective on or after 07/31/08).

Chapter 2 – Responsibilities:
- Page 2-1 – updated links to Exhibit E.3 and Required Form OHCS.1.
- Page 2-4 – added policy on electronic file storage.
- Page 2-5 – added a link to the “Management Agent Packet” and updated the links to Exhibits E.3, E.5, E.6, and the Required Form OHCS.1.
- Page 2-6 – reworded item 2 (regarding applicable fraction).
- Page 2-7 – updated link to Supplemental Information S.6.

Chapter 3 – Regulations & Revenue Procedures:
- Page 3-1 – expanded on the definition and allowances of managers units.
- Page 3-2 – added a link to Exhibit E.5 (IRS form 8609).
- Page 3-3 – updated links to Supplemental Information S.7 (“Income Limits” and “Rents”).
- Page 3-4 – updated the link to Supplemental Information S.2 and added S.2a (regarding utility allowance calculations). Now includes brief discussions regarding Federal, State or local rental assistance, supportive services, and handling overcharged rents.
- Page 3-5 – updated the link to Supplemental Information S.4. Introduced a new requirement of addressing student status annually with the completion of an Annual Certification of Student Status, effective no later than 01/01/09 (includes the link to Required Form OHCS.5).
- Page 3-6 – defines “educational institution” and establishes that the educational institution is responsible for defining full-time student status. Clarifies student status exemptions and adds an additional exception for individuals who previously received Foster Care assistance.

S.11b – Student Rule Amendment (H.R. 3221) – students who received assistance through the Foster Care Program would be exempt from the full-time student household rules (the household would be eligible).
• Page 3-7 – expands the definition of “good cause” evictions, introduces the new requirement of completing a Unit Transfer Certification (Required Form OHCS.9) effective on or prior to 01/01/09, and discusses how to treat transfers within the same building.
• Page 3-8 – explains how to treat transfers between buildings and determining income limits based on household size (including absent members in the household).
• Page 3-9 – continues the discussion on household size and occupants that should not be included as family members (i.e. live-in care providers). Discusses proper procedures in adding household members and establishes that additions to households cannot be made until after the initial 6-month lease term has been fulfilled (with exception to births and adoptions). Adds a link to Supplemental Information S.4.

Chapter 4 – Compliance Monitoring Procedures:
• Page 4-2 – added bullet item at the top of the page regarding the IRS 8823 Guide. Updated links to Exhibit E.3 and Required Form OHCS.1.
• Page 4-3 – clarified what attachments are required to be submitted with the annual Owner’s CCPC. Updated the links to the Recommended Form R.2, Supplemental Information S.2 and S.2a, Exhibit E.3 and the Required Form OHCS.1. Added the utility allowance update issued by the IRS on July 29, 2008 (added link to CFR 26 Part 1).
• Page 4-4 – lists updated and new links for Required Forms OHCS.1 through OHCS.6.
• Page 4-5 – lists updated and new links for Required Forms OHCS.7 through OHCS.9 and Recommended Forms R.1 through R.18.
• Page 4-6 – updates links to Exhibit E.8, Supplemental Information S.5, and the link to REAC.
• Page 4-7 – new discussion regarding the treatment of casualty losses, updated links to Required Forms OHCS.1 and OHCS.5, and discusses new tenant income certification and student status verification requirements for LIHTC projects with RD financing or rental subsidies.
• Page 4-8 – discusses new tenant income certification and student status verification requirements for LIHTC projects with Federal HOME funds. Adds a brief explanation of how Bill H.R. 3221 eliminates IRS waivers of annual certifications for 100% LIHTC projects.
• Page 4-9 – introduces the State-mandated requirement of completing first-year annual certifications for 100% LIHTC projects (link to OHCS 10/16/08 memo included) and a policy on requesting a waiver of completing first-year annual tenant income certifications from OHCS. Updated link to Required Form OHCS.1.
• Page 4-10 – updated the link to Exhibit E.4.

Chapter 5 – Qualifying Tenants:
• Page 5-1 – updated links to Required Forms OHCS.2 and OHCS.3, Supplemental Information S.4, and the link to HUD’s website.
• Page 5-2 – updated link to Exhibit E.9.
• Page 5-3 – updated link to Required Form OHCS.4. Also, states that households declaring they have no assets on the Applicant/Tenant Questionnaire form do not have to complete the Under $5,000 Asset Certification form.
• Page 5-4 – updated links to Exhibit E.9 and Recommended Form R.6. Explains that like foreclosures, “short sales” should not be included in the determination of fair market value.
• Page 5-7 – updated links to Required Form OHCS.7 and Recommended Form R.16, and added two new Recommended Forms (R.13 and R.14) to verify self-employment income.
• Page 5-8 – updated the link to the Social Security Administration (to access the 2009 COLA). Discusses how to treat the earned and unearned income of students (previously in Chapter 3).
• Page 5-9 – added new requirement of addressing student status for each household on an annual basis by completing an Annual Certification of Student Status (includes link to Required Form OHCS.5). Updated links to Required Form OHCS.6 and Recommended Form R.4.
• Page 5-10 – clarifies that unborn children can also qualify full-time student households. Revised Recommended Form R.1 to remove the requirement of obtaining third-party verifications of pregnancies.
• Page 5-11 – discussion added on the treatment of temporarily absent children (i.e. away at school, placements into foster homes, etc.). Updated links to Recommended Forms R.7 and R.9.
• Page 5-12 – updated links to Required Form OHCS.8 and Recommended Forms R.11 and R.12. Provides guidance on approving live-in care givers (new links to Recommended Forms R.8 and R.17).
• Page 5-13 – updated link to Recommended Form R.3.
• Page 5-14 – expanded on the treatment of assets owned jointly. Updated links to Required Form OHCS.2. Explains the OHCS-mandated requirement of completing first-year annual tenant income certifications for 100% LIHTC projects. States that mixed-use projects (not 100% LIHTC) are required to continue completing tenant income certifications annually, even beyond the first-year certification.
• Page 5-15 – describes the process of adding a new household member. Clarifies that 100% LIHTC projects with RD or Section 8 assistance are exempt from completing first-year annual tenant income certifications.
• Page 5-16 – adds the new Required Form OHCS.5 (Annual Certification of Student Status). Clarifies provisions that should be included in lease agreements.
• Page 5-17 – defines fees (optional and non-optional) and deposits that owners can and cannot charge beyond the gross rents.

Chapter 6 – Extended Use Period Monitoring:
• Page 6-1 – explains that noncompliance will not be reported on IRS Form 8823, but instead by written documentation submitted by OHCS to the IRS.
• Page 6-2 – adds item #10 under “Owner’s Responsibilities”, updates the link to Required Form OHCS.2 (TIC), removes the requirement of completing annual certifications, and adds a “Note” under item 2(b).
• Page 6-3 – adds item #5, “Projects with RD, HOME, or Section 8” and introduces a new Required Form, OHCS.1a, “Owner’s Certificate of Extended Use Compliance.
• Page 6-4 – introduces a new Recommended Form, R.2a, an annual reporting spreadsheet used for the Extended Use Period, and adds paragraphs regarding record retention and Extended Use Period expiration.
• Page 6-5 – adds items #3 and 4 under “Consequences of Noncompliance”.

Social Security Administration – 2009 COLA Published
On October 16, 2008, the Social Security Administration announced that beginning with the December 2008 benefits (payable in January 2009) the Cost of Living Adjustment will be 5.8%. The monthly Medicare Part B premium for 2009 will remain unchanged from 2008 for most people, in the amount of $96.40.

Minimum Wage Increase
On September 16, 2008, the Bureau of Labor and Industries issued a Press Release announcing that due to “a significant increase in inflation,” Oregon’s minimum hourly wage will be adjusted to $8.40 per hour (an increase of $0.45) and will take effect on January 1, 2009. Owners/Agents will need to consider the increase when completing income calculations to determine household eligibility.

Extension of Unemployment Benefits
On November 21, 2008, President Bush signed into law the Unemployment Compensation Extension Act of 2008 (H.R. 6867). According to Oregon’s Employment Department (http://www.employment.oregon.gov/), unemployment benefits will extend for an additional seven (7)
weeks to most claimants but extended benefits will not be paid out until all regular unemployment benefits have been exhausted. Please visit Oregon’s Employment Department website previously listed for more information.

**Risk Share Funding**

For those projects with Risk-Sharing loans, HUD has posted a link on their website to help owners and managing agents prepare for REAC inspections. Access http://www.hud.gov/offices/reac/products/pass/top20.pdf for a list of the top 20 deficiencies discovered during physical inspections.

Please note that the Risk Share Addendum to the LIHTC Manual has not yet been updated. Once this process has been completed, the revised document will be posted (anticipated date of February 1, 2009) to the OHCS website and tagged as “NEW”.

**Staff changes:**

Several new faces have been added to the Program Analysis and Enforcement Section over the last year. Kimber Deboie, Ken Morrell and Ryan Miller joined our team as Compliance Officers. Kimber and Ken each come to us with a background in the field of Property Management and Ryan has a background of management in the private sector. Each one brings a different perspective and insight to the team and helps to round out a team of great folks.

Heather Pate recently joined the team in August to fill the role as the Manager of the Program Analysis and Enforcement Section. Before accepting her new position, Heather was employed by the Department in the Housing Resource Section as a Housing Development Representative where she became familiar with the development aspect of the affordable housing industry in Oregon. She has several years of experience in private-sector property management as well, specifically related to affordable housing, and brings to us the sincere desire to help enable our Section to provide monitoring and technical guidance in the most efficient and user-friendly way possible.

Should you have questions or concerns regarding information contained within this mailing, please feel free to contact your assigned Compliance Officer or Heather Pate, Manager of PAES, at 503-986-0975 or by e-mail at Heather.Pate@hcs.state.or.us.
OREGON HOUSING AND COMMUNITY SERVICES
LIHTC COMPLIANCE MANUAL

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REQUIRED FORMS

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OHCS.2  TENANT INCOME CERTIFICATION (TIC)
OHCS.3  APPLICANT / TENANT QUESTIONNAIRE
OHCS.4  UNDER $5,000 ASSET CERTIFICATION
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OHCS.6  STUDENT STATUS / FINANCIAL ASSISTANCE VERIFICATION
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#### S.3 PROVISION OF SERVICES (IRS 1.42-11)

#### S.4 AVAILABLE UNIT RULE (IRS 1.42-15)

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[Link](http://www.ohcs.oregon.gov/OHCS/HD/HRS/CFC/LIHTCRents.xls)

#### S.7a NON-METRO MEDIAN INCOME LIMITS (H.R. 3221)  (*NEW*)

#### S.8 MONITORING COMPLIANCE WITH LIHTC REQUIREMENTS (1.42-5)

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#### S.10 SAFE HARBOR (IRS Rev. Procedure 2003-82)

#### S.10a SAFE HARBOR (IRS Rev. Procedure 2005-37)

#### S.11 STUDENTS (IRC Sec. 42(i)(3)(D))

#### S.11a STUDENT RULE CLARIFICATION (H.R. 3648)

#### S.11b STUDENT RULE AMENDMENT (H.R. 3221)  (*NEW*)
CHAPTER 1 - INTRODUCTION

The Low-Income Housing Tax Credit (LIHTC) Program was created by Congress as part of the Tax Reform Act of 1986. Governed by Section 42 of the Internal Revenue Code of 1986 (IRC Section 42 or “Code”), as amended, the US Treasury Department, through the Internal Revenue Service (IRS) administers the program nationwide in conjunction with state housing agencies.

Under the provisions of the Code, the Governor of the State of Oregon appointed Oregon Housing and Community Services (OHCS) as the “housing finance agency” to allocate the tax credits (the “Credit”) within the State.

The Omnibus Budget Reconciliation Act of 1990 amended the Code to require that designated state tax credit agencies provide a procedure for monitoring adherence to compliance with the low-income occupancy requirements of the LIHTC Program. Guidelines and rules outlined in this manual are reflective of that amendment and as enforceable as the regulations themselves.

The Omnibus Budget Reconciliation Act of 1990 also gave housing credit agencies the additional responsibility of monitoring all projects for compliance that have been placed in service for which the Credit is, or has been, allowable at any time since the inception of the program in 1987. This definition includes projects financed with tax-exempt bonds that have received credit outside the State’s annual LIHTC cap. The Program compliance monitoring became effective January 1, 1992.

The Program Analysis and Enforcement Section has created this Tax Credit Manual for your reference, which can be downloaded from our website at http://www.ohcs.oregon.gov/. The manual describes OHCS compliance monitoring procedures that the Owner and Managing Agent must follow. Periodically, as changes to the law and/or procedures occur, updates will be provided and made available for your review on our website.

Links within the manual will lead you to required and recommended forms provided by OHCS, Section 42 of the Internal Revenue Code and final compliance monitoring regulations as published in the Federal Register. Also, a variety of other links will allow you to enter internet sites of outside agencies (such as the Social Security Administration, HUD, etc.) that may assist you in maintaining compliance with the Housing Credit program.
**Purpose of the Manual**

This manual is a guide to understanding compliance monitoring, as practiced in Oregon, under Section 42 of the Internal Revenue Code ("Code") which governs the use of the Low Income Housing Tax Credit. It was developed, pursuant to Section 42 of the Code and the IRS Procedure for Monitoring Compliance, for use by Owners, Managing Agents, on-site management personnel and others involved with OHCS procedures for monitoring compliance of tax credit projects. It is intended to be used as a **supplement** to the Code, revenue procedures, revenue rulings, letter rulings, notices, announcements, any applicable Treasury regulations and federal law.

The Internal Revenue Service (IRS) has made it clear that compliance with the requirements of the Code is the sole responsibility of the Owner of any building for which the Credit has been allocated. OHCS’s responsibility to monitor for compliance will not cause OHCS to be liable for an Owner’s noncompliance. Therefore, an Owner should not rely solely on OHCS to determine if the project and its records are in compliance. In addition, the Owner should not rely solely on any outside service, organization or agency in their dealings with the Owner’s tax credit buildings. Any error that is made will be the responsibility of the Owner.

Use of this manual does not ensure compliance with the Code, Treasury regulations, or any other laws or regulations governing Low Income Housing Tax Credits. In addition, it does not guarantee the financial viability of any project. As a result, OHCS recommends all tax credit recipients consult with their tax accountant, attorney, or advisors as to the specific requirements of the tax credit program and Section 42 of the Code.

**Compliance Period**

Projects that received tax credit allocations **prior to** January 1, 1990 were only subject to a 15-year compliance period. However, any **building** in such a project that received an additional allocation of credit after December 31, 1989 must comply with eligibility requirements in effect beginning January 1, 1990.

**Credit Allocations After December 31, 1989**

Projects receiving a Credit allocation after December 31, 1989 must commit to an extended-use period in the Reservation and Extended Use Agreement (see Exhibit E.1). When the project is placed in service, a final allocation of Credit is issued when such commitments are recorded in the Declaration of Land Use Restrictive Covenants (see “Declaration”, Exhibit E.2). These projects must comply with eligibility requirements for at least an additional 15 years (the “Extended Use Period”) **beyond** the initial 15-year compliance period for a total of at least 30 years.
Earlier termination of the extended use period is provided under certain circumstances in the Code. However, if a project offered to defer this right, the term of deferment will be recorded in the Declaration specifically or by reference.

<table>
<thead>
<tr>
<th>Rent Computations</th>
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<tbody>
<tr>
<td>Maximum rent levels are based on the imputed rate of 1.5 persons per bedroom, with the exception of efficiency (studio) apartments. Please see Chapter 2, Maximum Rent Limits, for more detail.</td>
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</tbody>
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<table>
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<tr>
<th>Other Allocation Year Considerations</th>
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<tbody>
<tr>
<td>IRS regulations differ for the various tax credit periods. In some cases the change in regulations brought forth by technical correction is minor; in others, substantial. Management must not only be aware of the differences in regulations but must also be very clear on what tax credit period is involved with the particular building and/or project. The following is an outline of some of the changes that have created the most impact on compliance issues:</td>
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1990:
1. Rent computation now based on the number of bedrooms
2. Gross Rent Floor was adopted (but not retroactively)
3. Extended Use Agreement requirement

1991:
1. All projects: extension of deadline to meet set-aside (not retroactive)
2. FmHA (RD) only: overage rule (not retroactive)
3. AFDC Student Rule exception (retroactive)

September 9, 1992:
IRS Revenue Ruling (Rev. Rul. 92-61) regarding treatment of staff units as part of eligible basis (not retroactive)

August 10, 1993:
Three new rules that remain applicable:
1. Single parent student (not retroactive)
2. Married student rule (retroactive to 1987)
3. Section 8 requirement (projects cannot refuse to lease to Section 8 applicants – retroactive to 1987)

September 26, 1997:
Available Unit Rule (Reg § 1.42-15) was adopted as an amendment to the regulations (not retroactive).
### Safe Harbor Rule

**November 24, 2003:**

Safe Harbor Rule ([Rev. Proc. 2003-82](#)) applies to tax credit units where household incomes were at or below the applicable income limits prior to the first taxable year of the credit period, but then later exceed the limits at the beginning of the credit period, when the household incomes are tested or recertified (effective for taxable years ending on or after 11/24/03). The units would continue to be considered low income if:

1. The household income is tested for purposes of the Available Unit Rule at the beginning of the first credit year, and
2. The unit has been rent-restricted since the initial qualification date of the household.

### Student Clarification

**June 21, 2005:**

Safe Harbor Rule ([Rev. Proc. 2005-37](#)) established that housing credit agencies and project owners may meet certain requirements of the Internal Revenue Code concerning extended low-income housing commitments (effective on or after 06/21/05).

### Utility Allowance Update

**December 20, 2007:**

Student Households - clarification was made ([H.R. 3648](#)) to the full-time student household exception regarding single parents with children. The household will still qualify for a Housing Credit unit even if the children are listed as dependents on the absent parent’s tax return (effective for past, present and future determinations).

**July 29, 2008:**

Utility Allowance Regulations Update ([IRS 26 CFR Part 1](#))—added the following utility allowance calculation options (not retroactive):

1. Estimate from the Agency that has jurisdiction over the building (if available),
2. HUD Utility Schedule Model (see [https://www.huduser.org/resources/utilmodel.html](https://www.huduser.org/resources/utilmodel.html)), and
3. Energy Consumption Model – must be calculated by a licensed engineer or a qualified professional approved by OHCS.

**Note:** The Final Regulations state that cable television, telephone, and internet costs are to be excluded from the utility allowance calculations.
July 30, 2008:

With the signing of the Housing Economic and Recovery Act of 2008 (H.R. 3221), signed by the President, the following clarifications, amendments, or changes have been made or introduced:

1. **General Public Use Rule** – effective for buildings placed-in-service before, on or after 07/30/08, clarification was made with H.R. 3221 (Sec. 3004(g)(9)) to allow occupancy preferences for residents who:
   
   a. have special needs, 
   b. are involved in literary and/or artistic activities, or 
   c. are members of specified groups under State or Federal housing programs.

2. **Tenant Income Certifications** – the Bill allows owners with 100% tax credit (and tax-exempt bond-financed) properties an annual recertification waiver. The waiver does not apply for mixed-projects with market rate units.

However, OHCS has chosen to exercise their right as the state agency responsible for monitoring Oregon’s LIHTC properties, by establishing the policy that all 100% LIHTC projects will be required to complete a formal certification at move-in, as well as a first-year annual certification (see OHCS Letter 10/16/06). Third-party verifications must be obtained to support the information reported for both the move-in and first-year annual certification. This policy is effective immediately (no later than 01/01/09).

Projects that are considered 100% LIHTC may discontinue recertifying the incomes of existing households who have already completed the first-year annual recertification, so long as the project remains in compliance and the rents and incomes remain restricted for low-income occupancy.

**Note:** Also included within Bill H.R. 3221 is a provision mandated by Congress that requires state Housing Finance Agencies to annually submit to HUD tenant data which includes race, ethnicity, family composition, age, use of rental assistance, monthly rents, disability status and household income.

Guidance has not yet been provided to the HFA’s with respect to how the information should be collected and reported, and how to ensure that compliance with State and Federal Fair
3. **Student Households** – H.R. 3221 (Sec. 3004(e)(II)(i)(4)) has amended the list of full-time student household exceptions, to include full-time students who previously received Foster Care assistance under Title IV of the Social Security Act (under parts B or E) (effective after the date of enactment).
CHAPTER 2– RESPONSIBILITIES

For the purposes of clarification, the responsibilities of the various parties and monitoring process are outlined below.

Once tax credits are allocated to a project, the Code requires the State to monitor program compliance on an ongoing basis. However, compliance is the responsibility of the project Owner, and OHCS will not assume liability for tax consequences as a result of noncompliance and/or Internal Revenue Service audits.

OHCS’s monitoring duties include:

- Providing an LIHTC Compliance Manual and related materials;

- Offering continuing education on compliance to the Owner, Managing Agent, and on-site personnel, primarily through periodic compliance training workshops, as scheduling permits, and updates to the Compliance Manual;

- Reviewing annual Owner Certifications of Continuing Project Compliance (CCPC) (see Exhibit E.3 or Required Form OHCS.1);

- Reviewing each low-income housing project a minimum of once every three years. The review consists of an on-site audit of a minimum of 20% of the low-income tenant certifications, supporting documentation, low-income tenant records, and move-out files. The review also includes a physical inspection of a minimum of 20% of the units (occupied and vacant) and all of the property grounds and common areas. Files and units are randomly chosen;

- Notifying the Owner when the project is found to be out of compliance with the Code requirements, including reports, fees or certifications not received by OHCS when due;

- Establishing schedules with the project Owner for correcting any noncompliance (Typically, 30 days are given to correct noncompliance issues. However, extensions will be granted under certain circumstances. The Owner or Managing Agent must request the extension in writing and submit the request to OHCS prior to the deadline originally given.);

- Performing follow-up reviews of any building or entire project, if deemed necessary; a follow-up review may include a physical
The Owner or Developer

inspection of the building(s) and/or a review of project tenant records;

- Notifying the IRS of an Owner’s noncompliance or failure to certify to compliance within 30 days after the period of time allowed for the correction whether or not the noncompliance has been corrected. OHCS will notify the IRS by filing Form 8823 noting the circumstances of the noncompliance and indicating whether or not the Owner has corrected or has submitted an acceptable plan for correction to OHCS; and

- Retaining records of noncompliance or failure to certify for a minimum of six (6) years beyond OHCS’s filing of the IRS Form 8823. In all other cases, OHCS must retain the certifications and records submitted by the Owner for three (3) years from the end of the calendar year in which they were received by OHCS.

The following schedule outlines time frames for certain monitoring events:

<table>
<thead>
<tr>
<th>Event</th>
<th>Timeline</th>
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<tbody>
<tr>
<td>A project is chosen for inspection</td>
<td>OHCS gives a minimum of 14 days notice</td>
</tr>
<tr>
<td>OHCS notifies an Owner/Agent project is or is not in compliance</td>
<td>OHCS notifies an Owner/Agent of any noncompliance within 30 days of the determination</td>
</tr>
<tr>
<td>OHCS gives the Owner/Agent time to correct any noncompliance</td>
<td>OHCS allows a minimum of 30 days to correct noncompliance</td>
</tr>
<tr>
<td>OHCS must report noncompliance, corrected or not, to the IRS via Form 8823</td>
<td>OHCS notifies the IRS within 30 days of the correction period (with extensions) allowed the Owner and identify whether or not the findings have been corrected</td>
</tr>
</tbody>
</table>

Each Owner has chosen to participate in the Low-Income Housing Tax Credit Program to take advantage of the available tax benefits. In exchange for these benefits, certain requirements must be met by the Owner that will benefit qualified low-income tenants. The requirements listed in the Code include Owners meeting the elected minimum set-aside requirement, charging appropriate rental rates for each qualified unit and maintaining accessible documentation and verification of qualified low-income tenants.
The Owner must also meet all requirements agreed to in the Reservation and Extended Use Agreement (Reservation) in regard to additional restrictions on rent levels and income. The Owner must certify annually that all Program requirements have been met. Any violation of the Program or Reservation requirements could result in the loss of Credits allocated, or possible denial of applications received by OHCS for future funding.

Although an Owner may have a Managing Agent act on his or her behalf, the Owner is ultimately responsible for ensuring compliance with all applicable low income housing tax credit regulation and rules. In selecting a Managing Agent, the Owner should ensure that the Agent and all on-site personnel are knowledgeable of the provisions and requirements of the tax credit program and are experienced with managing a tax credit project.

Owners are required to keep records for each qualified low-income building in the project showing the following information:

1. The total number of residential rental units in the building, including the number of bedrooms and the size, in square feet, of each residential rental unit;
2. The percentage of residential units in the building that are low-income units meeting the election of 20/50 or 40/60 minimum set-aside test;
3. The rent charged on each residential unit in the building, including the basis for determining the utility allowance;
4. The low-income unit vacancies in the building by date and the rentals of the next available unit(s) by date;
5. The low-income initial certification and annual certification of each low-income tenant/household and documentation to support those certifications, including Section 8 and Rural Development (RD) projects, and must be available during any reviews;
6. The eligible basis and qualified basis of the building at the end of the first year of the credit period;
7. The character and use of the nonresidential portion of the building included in the building’s eligible basis under the Code (e.g. tenant facilities that are available on a comparable basis to all tenants and for which no use fee is charged, except for laundry facilities which may be coin operated as demonstrated in the operating projections made at the time of application); and
8. Evidence that tenant services are being provided as per the LIHTC application materials, or have been amended with Department approval.
<table>
<thead>
<tr>
<th>On-site Records (Administrative Notebook)</th>
<th>An Administrative Notebook is required to be kept on-site, and accessible to staff responsible for placing and tracking eligible households. The notebook should contain the following documents:</th>
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<tbody>
<tr>
<td>1.</td>
<td>Any restrictive documents associated with the project (such as the Declaration of Land Use and Restrictive Covenants);</td>
</tr>
<tr>
<td>2.</td>
<td>Documentation reflecting the current utility allowance and its source;</td>
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<tr>
<td>3.</td>
<td>Current income limits;</td>
</tr>
<tr>
<td>4.</td>
<td>Current rent limits;</td>
</tr>
<tr>
<td>5.</td>
<td>Resident Services Plan;</td>
</tr>
<tr>
<td>6.</td>
<td>Copy of the 8609 forms (where the lower portion, Part II, has been completed by the owner)</td>
</tr>
</tbody>
</table>

| Record Retention | The Internal Revenue Code requires Owners/Agents to retain the records described above for at least six (6) years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period, however, must be retained for the entire compliance period plus six (6) years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building. |

<table>
<thead>
<tr>
<th>Electronic File Storage</th>
<th>Owners have the option to maintain copies of the records described above on electronic storage systems provided they comply with the requirements listed in IRS Revenue Procedure 97-22. Further clarification to these requirements was provided in IRS Revenue Procedure 2004-82 Q&amp;A. In addition, OHCS has established more restrictive retention rules specific to tenant files and are as follows:</th>
</tr>
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<tbody>
<tr>
<td>•</td>
<td>All initial qualifying tenant files must be maintained in hard-copy form for the duration of the initial compliance period, plus six (6) years beyond, for a total of no less than twenty-one (21) years.</td>
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<tr>
<td>•</td>
<td>The owner must maintain resident files (current and move-out), in original hard-copy form, for the most current three (3) years.</td>
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<td>•</td>
<td>Resident files older than three (3) years can be electronically archived, with exception to the files for households currently residing at the project. For current households that have occupied units for more than three (3) years, all original move-in and first-year annual certifications, as well as the corresponding backup documentation, must be available upon request during an audit.</td>
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</table>

Note: The average “shelf life” for a scanned disc is approximately 10 years. Re-saving to a “fresh” disk for proper continued archival may be needed.
The Owner is responsible for keeping OHCS informed of any event that might affect the project’s compliance with Internal Revenue Code 42 (IRC 42 or Code), for certifying annually the project’s continued compliance and responding to OHCS’s inquiries. This includes written notification of changes in ownership, management, Managing Agent, address, email address and telephone changes.

Should the Owner desire to change Managing Agents, the Owner must notify OHCS and submit a Management Agent Plan and Qualifications (see “Management Agent Packet”) for the proposed Managing Agent at least 60 days prior to the effective date of change. OHCS will evaluate the proposed change and approve, conditionally approve, or deny the change and notify the owner of the decision within 30 days. The Owner can then give the Managing Agent in place a 30-day notice to terminate services.

The Owner is required to submit to OHCS a copy of IRS Form 8609 (see Exhibit E.5 and Exhibit E.6), with Part II completed and signed by an authorized representative of the ownership entity, once the Owner has filed with the IRS for the first year of the credit period. Copies of subsequent filings may be requested by the agency.

The Owner is responsible for reporting to OHCS by submitting the Owner’s Certification of Continuing Project Compliance Form (see Exhibit E.3 or Required Form OHCS.1). The Owner is also required to submit annually, with the Certificate of Continuing Compliance, tenant information in a spreadsheet that will eventually be utilized for online reporting via the OHCS website. Additionally, the Owner is responsible for submitting to OHCS, upon request, tenant file documentation for those units OHCS specifies.

The monitoring provisions of the Code require the Owner of a low-income housing project to certify at least annually that the project meets the following:

1. The requirements of the **20/50 test or the 40/60 test**, as applicable:

   A. At least 20% of the available rental units must be rented to households with incomes not exceeding 50% of area median income adjusted for family size; or

   B. At least 40% of the available rental units must be rented to households with incomes not exceeding 60% of area median income adjusted for family size.
2. There was or was not a change to the applicable fraction of any building in the project. If a change occurred, it must be described. (The applicable fraction is the percentage of qualified low-income units within a project or the percentage of floor space of qualified low-income units, whichever is less. The original application specifies the set-aside amount for the project.);

3. The Owner has received an annual low-income certification from each low-income tenant and documentation to support that certification following the guidelines of the HUD 4350.3, REV-1 Handbook, “Tenant Qualifications, Income and Assets”;

4. That each low-income unit is rent-restricted as defined in the Code.

Note: Some Owners may have agreed through the Reservation and Extended Use Agreement and Declaration to reduce rents lower than the Code requirements. If so, the lower rents must be followed;

5. That all units in the project are for use by the general public and are used on a non-transient basis;

6. That each building in the project is suitable for occupancy taking into account local health, safety, and building codes;

7. That all tenant facilities included in the eligible basis of any building in the project are provided on a comparable basis without a separate fee to all tenants in the project (except for laundry facilities);

8. That if a low-income unit in the project becomes vacant during the year, every attempt is made to rent that unit to tenants having a qualifying income and while the unit is vacant, no units of comparable or smaller size are rented to tenants not having qualifying income, unless the Owner elects to withdraw a unit from the program which does not violate the minimum set-aside requirement as stated above and reduces the amount of credit eligible for the tax period including recapture of credit for prior years claimed;

9. That if the income of tenants of low-income units increases above the limit allowed in the Code, the next available unit of comparable or smaller size will be rented to tenants having qualifying income;
10. The extended use agreement as described in the Code is in effect for projects receiving allocations on or after January 1, 1990;

11. That other restrictive programs included in the financing evaluation of the credit are in compliance. If other programs are funded through OHCS, such as Oregon Affordable Housing Tax Credit (OAHTC), HOME, HELP, Tax-Exempt bond financing or Trust Fund, a review of all requirements may be conducted along with an LIHTC review; and

12. That all tenant services proposed at the time of application are the services that are currently being provided, unless changes in services were in writing and forwarded to and approved by OHCS.

The Owner is responsible to correct any incidents of noncompliance within the required time frame. OHCS must report to the IRS any violation of the requirements of the low-income housing tax credit program. Failure to correct within the time specified by OHCS may result in the loss of tax credits.

If the Managing Agent and/or the Owner determines that a procedure, a tenant, a change in rent, a building or entire project is not in compliance with the LIHTC Program requirements, OHCS must be notified immediately. The Managing Agent and the Owner must formulate a plan to bring the project back into compliance, and advise OHCS in writing of such plan. (See LIHTC Common File Findings, Supplemental Information S.6, for more detail.)

The Managing Agent and on-site personnel are responsible to the Owner for implementing the LIHTC Program requirements and the provisions of the project Management Plan. Anyone who is authorized to lease apartment units to tenants must have a thorough understanding of, and follow, all federal and state laws, rules, and regulations governing certification and leasing procedures.

The Managing Agent must provide information requested by OHCS and submit, on behalf of the Owner, all required reports and documentation in a timely manner. Annual certification documents may be signed on behalf of the Owner by the Managing Agent with signature authority.

Managing Agent/staff should ensure that tenant occupancy information remains confidential, but is accessible to authorized representatives of OHCS and/or the IRS.
CHAPTER 3 – RULES, REVENUE PROCEDURES, AND OTHER GUIDANCE

Section 42 of the Internal Revenue Code ("Code") contains LIHTC Program requirements. The Code incorporates Program changes and revisions made by the Budget Reconciliation Acts of 1989 and 1990. Additionally, the IRS publishes, on an ongoing basis, revenue notices, rulings, and regulations that clarify and/or expand on the law. (See Exhibits and Supplemental Information Sections)

The following discussion highlights some of the Code provisions directly affecting project compliance. It is not a complete listing of compliance regulations.

**Applicable Fraction**

The “applicable fraction” is the lesser of the following: the actual percentage of low income units in the project or the actual percentage of residential square feet occupied by low income tenants which the Owner has reserved for low income tenants. The applicable fraction must be met throughout the compliance period. The applicable fraction is memorialized within the Declaration of Land Use Restrictive Covenants.

**Manager Units**

For buildings placed in service after September 9, 1992, a unit occupied by a full-time manager, who is not income-qualified, should be treated as having the same status as a “common area” if the project requires the manager to live on-site. To qualify as a common area the unit must support the benefit of all rental units in the project. IRS regulations define common areas, in part, as areas “reasonably required” by the project. OHCS may determine, based on the individual project, and all facts and circumstances, that a manager’s unit is not reasonably required.

Per IRS Revenue Ruling 92-61, “the adjusted basis of the manager’s unit is included in the eligible basis of the qualified low-income building under IRC §42(d)(1), but excluded from the applicable fraction under IRC §42(c)(1)(B) for purposes of determining the building’s qualified basis.”

**Example**:

If a building contains 100 units with 99 occupied by low-income tenants and 1 occupied by a resident manager, the applicable fraction would be 99/99 or 100% (not 99/100 or 99%). The manager’s unit is then treated as a “common area”.
Minimum LIHTC Set-Aside Election

OHCS will not monitor the use of approved common area manager units, except to confirm that the unit is occupied by staff whose activities and functions fulfill the project’s management needs and that rent is not being charged to the staff person(s) occupying the unit. **OHCS reserves the right to approve or disapprove the use of any unit for staff members.**

OHCS currently designates in new Reservation and Declaration documents any units intended for managers that will not be part of the low-income set-aside. Older projects that do not have this documentation must obtain approval from OHCS for this use.

At the time of application for the tax credit, the Owner of the project must choose one of two minimum set-aside requirements. This election, once memorialized within the Declaration of Land Use Restrictive Covenants and once elected on the IRS Form 8609 (see Exhibit E.5), is irrevocable. If the Managing Agent is unaware of which set-aside requirement must be met, he/she should contact the Owner.

The set-aside is the minimum number of units that must be rent restricted and reserved for low-income tenants in order for a building to be considered a qualified low income building. Pursuant to the Code, the set-aside options are:

- At least 20% of the available rental units must be rent restricted and occupied by households whose income is 50% or less of the area median gross income as adjusted for family size; or

- At least 40% of the available rental units must be rent restricted and occupied by households whose income is 60% or less of the area median gross income as adjusted for family size.

These elections are the minimum required by the Code. **Actual compliance monitoring will be based upon the more restrictive representations made by the Owner in the application for credits.** Projects will be subject to comply with the more restrictive requirements.

Minimum Set-Aside Deadlines

For projects receiving credits in 1991 and later, the minimum set-aside must be met by December 31 of the year the project is placed in service, if credits are to be claimed for that year. If the start of the credit period is deferred until the second year, the minimum set-aside must be met by December 31 of the second year. Once the minimum set-aside is met, it must be maintained for the entire compliance period.
Maximum Income Limits

Maximum income limits for qualifying tenants depend on the minimum low-income set-aside election the Owner has chosen. Qualifying tenants in projects operating under the “20/50” election may not have incomes exceeding 50% of area median income adjusted for family size. Tenants who qualify to live in projects that operate under the “40/60” election may not have incomes exceeding 60% of area median income adjusted for family size. Special elections made by the Owner in the application for tax credits will be required to be maintained.

MTSP Income Limits

The U.S. Department of Housing and Urban Development (HUD) publishes median income information for each Oregon county or metropolitan statistical area (MSA) of the state on an annual basis for the Multifamily Tax Subsidy Program (MTSP) (see 2009 MTSP Limit Letter to Owner-Agent).

This publication includes amounts for family sizes ranging from one to eight household members, under two sets of limits: (1) the HERA Special Income Limits and (2) the Actual Income Limits. All tax credit and tax exempt bond projects are eligible to use the Actual Income Limits posted each year.

⇒ HERA Special Income Limits

The Housing and Economic Recovery Act of 2008 (or HERA) defines projects eligible to use the HERA Specials as those that were in service in 2007 or 2008 and located in a HUD Hold Harmless Impacted area. OHCS has added further interpretation of the HERA legislation that defines “in service” to mean any project that was placed in service on or prior to December 31, 2008. Projects placed in service on or after January 1, 2009 will defer to the current year’s Actual Income limits published, though once placed in service will be held harmless to any future decline in the Actual Income Limits.

National Non-Metro Limits

In addition to the HUD Hold-Harmless Income limits, HERA provides certain LIHTC projects with rural or non-metro designations the option to use the National Non-Metro Median Income Limit versus the areas Actual Income Limit should it be higher. The USDA determines whether or not your project is located in an area designated as rural (see Rural Housing Eligibility). This rule went into effect on 07/31/08, is not retroactive, and only applies to rural or non-metro LIHTC properties with 9% credit allocations. Housing Credit projects with tax-exempt bond financing or HOME funding are not eligible to use the National Non-Metro Income Limits.

If your project was placed in service on or prior to 12/31/2008, is in a HUD Hold Harmless Impacted area, and has an address designated as...
Upon receipt of the information from HUD, OHCS calculates additional income levels with corresponding rent limits, and makes them available to Owners and Agent for projects subject to utility allowance adjustments and other restricting agreements made in order to justify Credit need.

**Note:** It is the Owner’s responsibility to obtain the new limits each year. Owners are **not permitted to anticipate** increases in income and rent limits. Income limits become effective when published by HUD, and will remain so until HUD officially replaces those with new limits.

The Supplemental Information section of the OHCS website provides the most current Income and Rent limits available (see [S.7 Income & Rent Limits](#)), and is updated annually within a few days of HUD’s posting.

When determining if a tenant’s income is at or below the applicable limit the income from each adult household member 18 years of age or older that will be living in the unit must be included (refer to Chapter 5, “Qualifying Tenants”, for more detail).

If the household income of a qualifying unit increases above 140% of the applicable income limit and the household initially met the qualifying income requirements, the unit may continue to be counted as a qualifying unit as long as the unit continues to be rent restricted as set forth in **Maximum Rent Limits** below and the next available unit of comparable or smaller size is rented to a qualified low-income tenant(s).

**Maximum Rent Limits**

For projects receiving a Credit allocation after December 31, 1989, gross rent, **including utilities**, paid by tenants in qualifying units may not exceed 30% of maximum qualifying income based on an assumed 1.5 person per bedroom calculation.

**Note:** Efficiency (studio) units are based on one person occupancy. Gross rent must include an allowance for any utilities paid by the tenant. Utility allowances must be determined according to Program requirements (see [Supplemental Information, S.2](#) and [Supplemental Information S.2a](#)). Please refer to Chapter 4, “Compliance Monitoring Procedures” (Utility Allowance Documentation), for more details.

**Federal, State or Local Assistance**

Gross rent does not include any payment under Section 8 of the United States Housing Act of 1937 or any comparable Federal rental assistance program with respect to such unit or occupants thereof. With the Tax Reform Act of 1986, Congress further clarified that any
comparable state or local governmental rental assistance would not be included in gross rent (IRC §42(g)(2)(B)(i)).

Per guidance by HUD (in 2005 and 2007) and the IRS (in 2007), tax credit residents with Housing Choice or Project-Based vouchers can be charged gross rents that exceed the LIHTC maximum allowable rents as long as the owner receives a Section 8 assistance payment on behalf of the resident. If at some point the resident is no longer eligible to receive the voucher, the owner of the LIHTC property must lower the tenant’s portion of rent to at or below the maximum applicable program rent allowed.

All fees for supportive services the tenant pays to the Owner must be included in the gross rent. These services are intended to help residents become more independent and to post-pone the need to be placed in a nursing home or other intermediate mental or physical health care facility. Providing transportation or housekeeping, or sponsoring social events are examples of supportive services.

The Housing Credit Program mandates that gross rents remain restricted on an annual basis (under IRC §42(g)(2)(A)), as well as on a monthly basis (under IRC §42(g)(2)(B)). If it is discovered that an owner has overcharged rent to a LIHTC resident at any point during a calendar year, the following results will occur:

1. The owner will be required to refund the excess rent amount to the tenant for all months affected, and
2. The IRS will recapture tax credits on the affected unit for the remainder of the calendar year, beginning with the first month the rent was overcharged.

In some cases, rents become overcharged when owners assess fees not permitted under Section 42, such as fees for the use of resident facilities (i.e. swimming pools, parking areas, recreational facilities) that were included in the project’s eligible basis. Other cases involve owners charging fees to residents as a condition of their occupancy, where the fees are in addition to gross rents (i.e. mandatory renters insurance, fees for month-to-month tenancy, one-time washer/dryer hookup fee).

**Example 1:**

<table>
<thead>
<tr>
<th>Maximum LIHTC Rent = $550</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tenant Rent = $525</td>
</tr>
<tr>
<td>Late Fee Assessed = $75</td>
</tr>
<tr>
<td>Total Paid by Tenant = $600</td>
</tr>
</tbody>
</table>
Rent is due on or before the 5th day of each month. A tenant doesn’t pay until the 8th day. The owner has the right to assess a late fee because of the lease violation committed by the tenant. Gross rent has not been overcharged.

Example 2:  Maximum LIHTC Rent = $550

Tenant moves in on March 1, 2009 and receives a rent concession. Owner wants to recoup the concession during the remaining months.

| Tenant Rent (March) | $0 |
| Tenant Rent (April – December) | $575 |

Gross rent was overcharged from April through December. Not only will the owner have to refund the amount overcharged for each month, he/she will lose credits on the unit from April through December. If the unit is rent-restricted as of January 1, 2010, and the tenant has received a refund for the overcharged rent, the unit can be placed back into compliance.

The earliest date an overcharged LIHTC unit can regain compliance is the first day (January 1st) of the following tax year, provided the unit is rent-restricted under the applicable program rent requirements.

If the income of household in a low-income unit increases above the maximum allowable income limit, the unit will still qualify as a low-income unit as long as the household initially qualified and the unit remains rent-restricted as set forth in Maximum Rent Limits above.

If the household income in a low-income unit increases above 140% of the current maximum allowable income limit, the next available unit of comparable or smaller size in the building must be rented to a household having a qualifying income in order to remain as a qualified set-aside unit (see Supplemental Information S.4).

This rule should have no impact on 100% LIHTC projects since every unit must be rented to eligible LIHTC households. In mixed-income projects, market rate units may have to be rented to LIHTC qualified households in order to remain compliant because the unit exceeding 140% can no longer be counted in the LIHTC set-aside.

Owners are required to make newly vacated units suitable for occupancy in a reasonable amount of time (defined by OHCS to be 30 days or less).
The IRS states that, “All vacant LIHC units that are not suitable for occupancy are out of compliance. The out of compliance date is determined for each unit based on the date that particular unit was vacated.” The units will not be considered back in compliance until they have been occupied by income-eligible households.

**Example:**

OHCS conducts a physical inspection of a property and discovers that 20 units are currently vacant and have been for more than 30 days. During the inspection, only 5 of the units were found to be in “rent-ready” condition. The owner tries to reason with the auditor by saying his maintenance person quit and he did not have enough staff to prepare the units. The 15 vacant units that have not been prepared for occupancy are out of compliance.

Treasury Regulation §1.42-5(c)(1)(ix) requires state HFAs to mandate that owners certify annually that reasonable attempts are made to rent a vacant tax credit unit, or the next available unit of comparable or smaller size, to a household who is income-qualified before any units of comparable or smaller size in the project are rented to a non-qualifying household (i.e. in a mixed-use building).

**Note:** If the project is a 100% set-aside LIHTC project, non-qualifying tenants are never allowed to move in without jeopardizing the Credit.

**Form OHCS.5 was revised on 03-16-10**

The LIHTC program prohibits the rental of set-aside units to entirely full-time student households not qualifying for a specific exception. Per the IRC, Section 42, student status must be addressed annually for each household applying for (or currently resides in) a Housing Credit unit during the initial compliance period. Effective January 1, 2009, owners/managing agents are required to have each household complete an Annual Certification of Student Status (Required Form OHCS.5).

As suggested by the IRS, a unit will be out of compliance “if the owner fails to verify the household’s student status at the time of move in, or the annual student status verification was performed late and after notification of a state agency review.”

**Student Defined**

Internal Revenue Code Section 151(c)(4) defines the term “student” as “an individual who during each of five calendar months during the calendar year is a full-time student” at an “educational institution” described in Code Section 170(b)(1)(A)(ii). Treas. Reg. Section 1.151-3(b) provides that a full-time student is one who is enrolled for some part of five
calendar months for the number of hours or courses, which is considered to be a full-time attendance. The five calendar months need not be consecutive.

Example:
An applicant moves in by herself on June 1, 2009. She reported being a full-time student from January 4th through March 19th of the same year. Shortly after moving in she became a full-time student again on September 6th and continued on through December.

The unit would be out of compliance beginning October 1, 2009 because this represents the first day of the fifth month in which she was considered to be a full-time student during a calendar year (2009).

The unit will not be compliant until the current tenant falls under one of the student exemptions (as listed below) or the household is not occupied entirely by full-time students.

Per IRS Guidance, “The determination of student status as full or part-time should be based on the criteria used by the educational institution the student is attending.”

Full-time attendance at an educational institution may include some attendance at night in connection to a full-time course of study. In addition, individuals pursuing a full-time course of study through an institution providing on-farm training under the supervision of an accredited agent of such educational institution, of a state or political subdivision of the state, may also be deemed as full-time students.

Note: Individuals attending on-the-job training courses are not considered to be students.

“Educational institutions” include colleges, universities, trade, technical and mechanical schools, as well as public and private elementary, junior and senior high schools.

As a general rule, the household may not be occupied, in its entirety, by full-time students. Thus, if any one single individual in the household is not a full-time student, the application will still qualify under the student status requirements.

If all tenants are full-time students, the applicants may still be eligible to reside in a Housing Credit unit if one of the following
exemptions, under IRC §42(i)(3)(D), apply:

- Students are married and entitled to file a joint federal income tax return. (A married couple who has not filed a joint tax return but is eligible to do so will still qualify, but will need to submit a copy of their marriage certificate); or

- The household consists of an independent single parent and his/her children, all of whom are not dependents of a third party other than the absent parent; or

- At least one household member receives welfare assistance under Title IV of the Social Security Act (AFDC/TANF); or

- At least one household member is enrolled in and receiving assistance under the Workforce Investment Act (WIA – formerly the Job Training Partnership Act) or other similar programs operating under Federal, State or local laws; or

- At least one household member previously received Foster Care Assistance under part B or E of Title IV of the Social Security Act (H.R. 3221, effective 07/30/08 forward).

Note that student status is not subject to any “grandfather” clauses as are income limits. At no time during the lease, or any extension thereof, may the unit be occupied entirely by full-time students who are not otherwise exempt. If a household qualified at move-in but later became comprised entirely of full-time students (not meeting one of the exemptions), the household would no longer be considered qualified to occupy the unit.

Owners and/or managing agents are required to complete a Unit Transfer Certification Form (Required Form OHCS.9) with each unit transfer processed. This form will assist in tracking the unit transfers within your project to ensure that compliance is maintained with respect to the project’s set-asides and the Available Unit Rule (more specific to mixed-income properties).

If a qualified household transfers from one unit to another within the same building, the two units would exchange (or “swap”) status. If both units were tax credit eligible prior to the transfer, their status would remain the same.

**A unit transfer taking place within the same building does not require income recertification of the household.** The current household’s file, which contains the tenant income certification (TIC) and lease for the original unit, will transfer with them. The
two units swap status but do not need to be comparable in size. In addition, the rent on the newly occupied unit will remain rent-restricted even if the current household income (based on the most recent TIC completed) exceeds the current applicable income limitations.

**Example** (from the 8823 Guide):
An initially income-qualified household occupying a low-income unit in a mixed-use project was determined to have income in excess of 140% of the current AMGI at the time of the last annual income recertification. The household subsequently moved from Unit A, a 2-bedroom (now over-income) unit to Unit B, a vacant 3-bedroom low-income unit.

Even though the units are not comparably sized, Unit A is now a low-income unit and Unit B is an over-income unit.

A transfer from one building to another building within the same project is allowed, provided the household’s current income (based on the most recent TIC completed) does not exceed 140% of the current applicable income limit. The vacated unit will assume the status the newly occupied unit had just prior to the transfer. The newly occupied unit will remain rent-restricted and the household’s tenant file will transfer with them.

**Both buildings involved must be considered to be part of a multiple building project**, as elected by the owner on line 8b of the “Low-Income Housing Credit Allocation & Certification” (E.5 - IRS Form 8609). If the owner checked “Yes” on line 8b of both forms, he/she has opted to treat the buildings as part of a multiple building project.

If the owner checked “No” on line 8b of the 8609 forms, he/she is choosing to treat each building as separate projects. Therefore transfers between the two buildings cannot take place.

If an existing household requests to move from one building to another and both buildings are being treated as separate projects, the existing household must initially qualify under the Section 42 income limits currently in effect (within 120 days prior to the effective date of the move-in TIC). The owner/agent will need to complete a new TIC, obtain third-party verification of household income and assets, and initiate a new lease for the new unit.
In order to determine the appropriate income limit for a specific household, the owner/managing agent must consider all individuals who will reside in the unit. There will be times when **absent family members will be included** as part of household composition for purposes of determining the applicable income limit. Such absent family members include:

- Children temporarily placed in a Foster Care home,
- Children present **at least 50% of the time**, as mandated by joint custody arrangements (if disputed, determine which parent claimed the children on his/her tax return),
- Children who are away at school but return to the household during school recesses,
- Unborn children (as self-certified by the pregnant mother),
- Children in the process of being adopted,
- Temporarily absent members still considered part of the family (i.e. due to out-of-state job assignment),
- Family members in rehabilitation facilities or hospitals for a limited time period (or longer), and
- Family members who are permanently confined to nursing homes or hospital. The family makes the decision as to whether or not to include the permanently confined family member as part of the household’s composition.

Conversely, there will be other scenarios where an occupant of the unit will **NOT** be considered as part of the household for **purposes of determining the applicable income limit. Do NOT count the following individuals to determine the income limit based on family size:**

- **Live-in Caregivers**
  - Do NOT count their income. Caregivers only reside in tax credit units to provide necessary supportive services to income-qualified tenants. Because the live-in caregiver is not included in the household’s composition, the caregiver’s income and assets would not be considered.
- **Guests**
  - Do NOT count their income. Defined as visitors “temporarily staying in the unit with the consent of the tenant or another member of the household who has expressed or implied authority to consent on behalf of the tenant.”
• Foster Children
  - Do **COUNT** unearned income and any income earned from assets.
  - Defined as being “in the legal guardianship or custody of a State, county, or private adoption or foster care agency, yet are cared for by foster parents in their own homes under some kind of foster care arrangement with the custodial agency.

• Foster Adults
  - Do **COUNT** earned and unearned income and any income earned from assets.
  - A foster adult is someone who cannot live alone due to a disability, and is typically not related to any of the tenant members.

• Foster Children/Adults
  - Do **NOT** count state foster payments made for the care of the foster child or adult

**Note:** Clarifications made regarding the treatment of earned and unearned income of foster children and foster adults were recently supplied by the IRS with guidance from the HUD Handbook 4350.3.

**Adding a New Household Member**

**OHCS disallows the addition of new household members within the first six months of occupancy.** Owners/Managing Agents should include language in the lease prohibiting the addition of new household members prior to the expiration of the initial six-month lease, with exception to children born to or adopted by a member of the original household.

After the initial six-month lease has been fulfilled, the addition of a new household member would require management obtaining third-party verification of the income and assets for the new individual. Upon receipt of the third-party documentation, management would add the new member’s information to the existing household’s most recent certification. The new member will then sign and date the certification, using the date the form was actually signed.

If the combination of the income and assets of the existing household and new member exceeds 140% of the income limit, the Available Unit Rule would apply (see Supplemental Information S.4). As long as the unit remains rent-restricted and the next placement is granted to an income-qualified household into a unit of comparable size or smaller, the building will remain in compliance.
| **No Original Qualifying Tenant Left in the Household** | If all of the original qualifying household members are no longer residing in the unit, **the remaining members must be certified as a new LIHTC-qualified household**. Owners are highly encouraged to include language within the lease explaining this requirement.  

The only time remaining members in a unit would not be required to certify as a new household would be if one of the following situations had occurred:

1. **For a 100% LIHTC building:**
   - The owner/agent independently certified the remaining members at the time they were added to the unit, or

2. **For a mixed-use building:**
   a. The owner/agent independently certified the remaining members at the time they were added to the unit, or
   b. The owner/agent certified the newly created household at the time the additions to the unit were made

| **Evictions for Good Cause** | IRC, Section 42(h)(6)(E)(ii) and Revenue Ruling 2004-82 Q & A prohibit “no cause” evictions during the entire term of affordability. Owners must comply with eviction laws established by the applicable state and local laws for which the property exists. In addition, an owner must be able to demonstrate that there was “good cause” for terminating a lease agreement.

Examples of situations that have resulted in good cause terminations include the failure to pay rent, lease violations, engaging in illegal activities on the property, and disturbing the peace of neighboring residents.

| **Tenant Fraud or Misrepresentation** | If an owner discovers that a resident purposefully provided false income and/or household status information in order to qualify for a housing credit unit, the owner should report the fraudulent event to the “Whistleblower Office” of the IRS by completing Form 211, “Application for Award for Original Information” (see IRS Form 211).

Form 211 instructs an owner to include the name and social security number (if possible) of the tenant, furnish an explanation of how the tenant misrepresented his/her income, include the amount of income the tenant reported to earn versus the amount verified, and to provide the monetary difference between the restricted rent (the amount the tenant had been paying) and the current market rent for the affected unit. |
When an owner discovers that a tenant has manipulated their income and/or household status in order to appear to qualify for housing under the Section 42 Program, **the fraud will not be reported as a noncompliant event as long as the owner:**

1. discovered (and addressed) the fraud prior to receiving notification of a state agency or IRS review of the project,
2. provides adequate proof to the state agency that the tenant provided false information,
3. performed due diligence at move-in or recertification to obtain the most accurate information possible from the tenant and applicable third party sources,
4. has implemented additional safeguards since the event in order to prevent the same situation from occurring again,
5. has legally terminated tenancy resulting with the resident vacating the unit (if possible), and
6. does not display a pattern of accepting fraudulent tenants.

If, however, tenant misrepresentation or fraud is **discovered during an audit conducted by the IRS or state agency**, which results in noncompliance with the Section 42 Program, **the noncompliance will be reported on Form 8823, regardless of the cause.**
CHAPTER 4– COMPLIANCE MONITORING PROCEDURES

General

OHCS is responsible for establishing compliance monitoring procedures and will report incidences of noncompliance to the Internal Revenue Service (IRS). However, OHCS’s inspections are not the same as IRS audits. Compliance with tax credit regulations is ultimately the responsibility of the Owner. The Owner will be liable for consequences of noncompliance regardless of Owner reporting or OHCS inspection procedures. Owners are urged to seek legal counsel and/or tax advice when establishing management and accounting practices for their tax credit projects.

Monitoring each project is an ongoing activity that extends throughout the Credit compliance period (a minimum of 30 years). OHCS is required to conduct this compliance monitoring and inform the IRS of noncompliance, or the failure of an Owner to certify to compliance, no later than 30 days after the period of time allowed for correction (including extensions). The IRS requires notification from OHCS whether or not the noncompliance has been corrected.

The Compliance Monitoring Process is based upon the following components:

- IRC Section 42 and promulgated regulations including the Oregon Administrative Rules for LIHTC Programs and the Qualified Allocation Plan for projects with Building Identification Numbers (BIN) beginning with OR90
- The Compliance Manual
- Compliance Training Workshops
- Owner’s Certification of Continuing Program Compliance and Project Fees
- Utility Allowance Documentation
- Use of Correct Income and Rent Limits
- LIHTC Compliance Forms
- Lease and Tenant Selection Criteria Review and Approval
- Tenant File Review and Project Site Inspections
- Exemptions and Special Circumstances
- Record Keeping and Record Retention
- Noncompliance/Plans to Correct Noncompliance
- Form 8823
- Monitoring Fees
- Services Proposed in Application
Compliance Monitoring Procedures

Compliance Training Workshops

- Technical advice offered within the Guide for Completing Form 8823 (published by the IRS in January of 2007)
- IRS Technical Advice Memos, Private Letter rulings and other credit related information released by the IRS from time to time.

OHCS will conduct periodic Compliance Training Workshops, as scheduling permits. OHCS strongly recommends that all persons directly involved in the ownership and/or management of the project, including site staff, attend the workshops. The purpose of the workshops is to provide:

- A sampling of the basic Code compliance requirements;
- IRS Final Regulations for compliance monitoring or updates;
- OHCS policies and procedures for compliance monitoring;
- Specific information on the following low-income tenant eligibility requirements:
  - Income and Rent Limits
  - Definitions of Income and Assets
  - Tenant Income and Asset Certification
  - Leases and/or Addendums to the Lease
  - Student Eligibility

Compliance training workshops are not intended to substitute for income and asset certification or other technical recordkeeping training. The Owner is responsible to ensure project management is capable of these tasks.

Owner Certification of Continuing Program Compliance

The Owner’s Certificate of Continuing Program Compliance is due annually (see Exhibit E.3 or Required Form OHCS.1). The due date is the first business day after April 15th. The Owner will be required to certify that the project is currently and has been in compliance during the preceding calendar year with regard to:

- Low-income rent levels and tenant qualifications;
- Units being suitable for occupancy and in compliance with local health, safety and building codes;
- Units being available for the general public on a non-transient basis;
- All tenant facilities that are included in the eligible basis are and have been available to all tenants, without fees, on a comparable basis;
- Units of comparable or smaller sizes are and have been rented only to income qualified persons when a unit formerly rented by a low-income tenant is vacated, or as a low-income tenant’s income
increases beyond the limit allowed in IRC Section 42(g)(2)(D)(ii);
• Resident services;
• No changes in the eligible basis and/or applicable fraction;
• All other applicable federal and state laws, OHCS regulations, policies, and procedures.

Section 42 regulations consider failure to supply a completed annual Certification of Continuing Program Compliance to be reportable noncompliance. The Certificate is to be signed by the Owner or a Managing Agent with signature authority. If it is not submitted, with all requested attachments, by the specified due date, OHCS will submit a Form 8823 to the IRS reflecting the project, in its entirety, as out of compliance. An amended Form 8823 will be submitted once the Certificate and all requested attachments are received and reviewed.

Attachments to the Certification of Continuing Program Compliance (CCPC) include:

• An Annual Reporting Spreadsheet (see Recommended Form R.2)
• The most recent utility allowance information
• Copies of IRS 8609 forms (“LIHC Allocation and Certification”) issued for each building where the owner has completed, signed and dated, Part II “First-Year Certification” of each form. The owner should have submitted these forms on or prior to April 15th of the year after the first year of the credit period. Once OHCS has confirmed receipt of these forms, there should be no need to resubmit in subsequent years.

If utilities are paid directly by the tenant, use the required utility allowance when determining eligible unit rents. If utilities are included in gross rent, the utility allowance is zero. The IRS requires that utility allowances be set according to the Code (Supplemental Information S.2 and Supplemental Information S.2a).

To remain in compliance, Owners must utilize the correct utility allowance in order to properly determine unit rents. Annual documentation, in accordance with IRC Notice 89-6, must be submitted to OHCS each year with the Owner’s Certificate of Continuing Program Compliance (see Exhibit E.3 and Required Form OHCS.1). If utility allowances change, Owners may need to adjust rents accordingly to remain in compliance with the Code’s rent restriction requirement.

On July 29, 2008, the IRS issued a Utility Allowance Regulations Update (IRS 26 CFR Part 1), adding the following utility allowance
Calculation options (not retroactive):

- Estimate from the Agency that has jurisdiction over the building (if available),
- HUD Utility Schedule Model (see [http://www.huduser.org/resources/utilmodel.html](http://www.huduser.org/resources/utilmodel.html)), and
- Energy Consumption Model – must be calculated by a licensed engineer or a qualified professional approved by OHCS.

Owners also have the option of continuing to choose from one of the original utility allowance calculations which are:

- Allowances provided by the applicable Public Housing Authority (PHA) or
- Data obtained from the local utility company, in accordance with HUD guidelines.

**Note:** The Final Regulations state that cable television, telephone, and internet costs are to be **excluded** from the utility allowance calculations.

The Owner and/or Managing Agent are responsible to obtain (and make available on-site) updated utility allowance data on an annual basis. Once obtained, the new utility allowances should be implemented within 90 days.

Projects regulated by Rural Development (RD) and HUD (Section 8 and HOME) must continue to use the RD and HUD-approved utility allowance procedures, respectively.

**Projects with RD, Section 8 and HOME**

**LIHTC Compliance Forms**

**Required Forms**

- Owner’s Certificate of Continuing Program Compliance (CCPC) (**OHCS.1**)
- Owner’s Certificate of Extended Use Compliance (CEUC) (**OHCS.1a**)(*NEW*)
- Tenant Income Certification (TIC) (**OHCS.2**)
- Applicant/Tenant Questionnaire (**OHCS.3**)
- Under $5,000 Asset Certification (**OHCS.4**)
- Annual Certification of Student Status (**OHCS.5**)(*NEW*)
- Student Status / Financial Assistance Verification (**OHCS.6**)

OHCS has created several verification forms that must be used in the format presented within this manual and on the website. **Deviations from the exact format of these forms will not be permitted.** The OHCS-mandated forms are as follows:
Recommended Forms

In addition to the required forms, the following recommended forms are available for your use to assist in obtaining information required in order to adequately verify income, assets, etc. Any format the Owner or Managing Agent chooses that provides, at a minimum, the information requested on the following forms is acceptable to OHCS:

- Affidavit of Pregnancy (R.1)
- Annual Reporting Spreadsheet (R.2)
- Annual Spreadsheet – Extended Use (R.2a) (*NEW*)
- Asset Verification (R.3)
- Certification of Child Support and/or Alimony (R.4)
- Compliance Checklist (R.5)
- Divestiture of Assets Verification (R.6) (*NEW*)
- Estrangement / Separation Certification (R.7)
- Live-In Caregiver Affidavit (R.8) (*NEW*)
- Periodic Monetary Assistance Verification (R.9)
- Project Summary Sheet (R.10)
- Public Assistance Verification (R.11)
- Public Housing Authority Statement (R.12)
- Self-Employment Affidavit (R.13) (*NEW*)
- Self-Employment Affidavit (No Tax Return) (R.14) (*NEW*)
- Signature Authorization Form (R.15)
- Social Security Benefits Verification (R.16)
- Special Features Unit / Live-in Caregiver Verification (R.17) (*NEW*)
- Termination of Employment Verification (R.18)

Note: Any of the forms listed above can be used immediately upon availability. Owners/managing agents must implement the use of the OHCS-mandated forms no later than January 1, 2009.

The following documents are required to be included in each tenant file:
- Application
- Applicant/Tenant Questionnaire (Required Form OHCS.3)
- Tenant Certification (Required Form OHCS.2)
- All Related Verification Forms
- Certification of Assets
- Lease
As provided in the IRS compliance monitoring regulations, OHCS has the right to review tenant files on-site and/or to perform physical inspections of LIHTC Projects as deemed necessary throughout the applicable compliance period for each project. (See Exhibit E.8, “File Review Checklist”. This form is used by OHCS Compliance Officers for conducting file reviews.)

Monitoring frequency is a minimum of once every three years. OHCS selects random samples of both units (occupied and vacant) and files (current and move-out) for each review and inspection conducted. When a project is scheduled for inspection, OHCS will:

- Notify the Owner and Managing Agent in writing of the date and approximate time of inspection;
- Perform the on-site file, property, and unit inspections;
- Inform the Owner and Managing Agent of any findings of noncompliance with regard to the review.

State Housing Finance Agencies are mandated to conduct physical inspections at least once every three years to ensure that LIHTC properties are providing buildings and units that are suitable for occupancy (Treas. Reg. §1.42-5). OHCS conducts inspections of selected units using the Uniform Physical Conditions Standards (see Supplemental Information S.5) established by HUD. The following is an excerpt from the General Instructions for completing Form 8823 that provides explanation of what the inspectable areas of a project are and how they should be reported to the IRS:

“Housing credit agencies must use either (a) local health, safety, and building codes (or other habitability standards) or the (b) Uniform Physical Conditions Standards (UPCS) (24 C.F.R. section 5.703) to inspect the project, but not in combination. The UPCS does not supersede or preempt local codes. Thus, if a housing credit agency using the UPCS becomes aware of any violation of local codes, the agency must report the violation. Attach a statement describing either (a) the deficiency and its severity under the UPCS, i.e., minor (level 1), major (level 2), and severe (level 3) or (b) the health, safety, or building violation under the local codes. The Department of Housing and Urban Development’s Real Estate Assessment Center has developed a comprehensive description of the types and severities of deficiencies entitled “Dictionary of Deficiency Definitions” found at http://www.hud.gov/offices/reac/offices/reac/ under Library Section, Physical Inspections, Training Materials. Under Regulations section 1.42-5(e)(3), report all deficiencies to the IRS whether or not the
noncompliance or failure to certify is corrected at the time of inspection. In using the UPCS inspection standards, report all deficiencies in the five major inspectable areas (defined below) of the project: (1) Site; (2) Building exterior; (3) Building systems; (4) Dwelling units; and (5) Common areas.”

**Casualty Losses**

Per the IRS 8823 Guide, “A casualty loss is defined as the damage, destruction, or loss of property resulting from an identifiable event that is sudden, unexpected, or unusual.”

The Guide states further that, “Physical damage to LIHC properties caused by casualty events and which render LIHC residential rental units or buildings, or common areas associated with the property, unsuitable for occupancy is reported as noncompliance with the UPCS or local standards.”

Owners and/or managing agents are required to notify OHCS immediately upon discovering that a LIHTC project has experienced a casualty loss.

**Tenant Income Certification Review Exemptions**

The Code requires all project owners to submit annually a Certificate of Continuing Program Compliance (CCPC) (see Required Form OHCS.1). Owners are also required to inform OHCS in the event such reports and certifications are unable to be made. Projects will be considered out of compliance if these requirements are not met.

IRS regulations allow OHCS to exempt RD 515 projects from the Tenant Income Certifications, supporting documentation, and rent records review process unless questions or discrepancies arise. As of January 1, 2009, all 100% LIHTC projects with RD funding will be exempt from having to complete annual LIHTC tenant income certification. The owner is still subject to comply with the program restrictions established by Rural Development with respect to the tenant recertification process. In addition, student status for each household will need to be addressed on an annual basis throughout the Initial compliance period. Households will need to complete an Annual Certification of Student Status every twelve months beginning with the move-in certification (see Required Form OHCS.5).

For 100% LIHTC projects receiving housing subsidies under Section 8 of the U.S. Housing Act of 1937, completion of the LIHTC Tenant Income Certification (TIC) is required at move-in only. Third-party documentation will need to be obtained to support the income and asset figures reported on the TIC.

**Projects Financed By Rural Development (RD)**

**Projects with Rental Subsidy**
However, the owner is still required to maintain compliance with the Section 8 program rules, as well as addressing Student Status on an annual basis for each household, with the completion of an Annual Certification of Student Status (see Required Form OHCS.5) during the Initial 15-year compliance period.

Prior to July 30, 2008, 100% LIHTC projects that had units with federal HOME funds attached were required to complete formal tenant income certifications (including obtaining third-party verifications) on an annual basis as required by Section 42 of the Internal Revenue Code of 1986.

Effective January 1, 2009, households occupying LIHTC/HOME units (for 100% tax credit properties) will no longer need to process formal tenant income certifications annually. Instead, owners are required to complete the LIHTC/HOME TIC (Required Form OHCS.2) and obtain third-party verifications of income and assets, at the time of move-in, upon the first-year anniversary (OHCS-mandated), and for every sixth year of the HOME affordability period (per 24 CFR 92.203(a)(1)(i)). Households will be required to self-certify their income and assets for all other years, which may be done by using the LIHTC/HOME TIC.

Example: HOME Affordability Period – Began in 2001

- 2003 – Move-in (complete TIC, 3rd party verify)
- 2004 – 1st Year Annual (complete TIC, 3rd party verify)
- 2005 – Self-certification
- 2006 – 6th Year of HOME Affordability (TIC, 3rd party verify)
- 2007 – Self-certification
- 2008 – Self-certification

Owners will need to continue to address student status for each household annually by use of the Annual Certification of Student Status (see Required Form OHCS.5).

Note: Please refer to Chapter 1 (page 1-5), regarding the passage of new legislation and the requirement of owners to submit tenant data on an annual basis (to be submitted to HUD).

An amendment of the Omnibus Budget Reconciliation Act of 1993 allows for an Owner of a 100% LIHTC project to request the IRS to waive the annual tenant income recertification requirement. However, one of the provisions within the Housing and Economic Recovery Act of 2008 (H.R. 3221) grants an automatic tenant income recertification waiver to owners of 100% LIHTC projects (can be
coupled with tax-exempt bond financing). The provision does not waive recertification requirements for other programs that require additional monitoring, such as with the Section 8, HOME or Rural Development programs.

As of October 16, 2008, OHCS has opted to exercise their right as the state’s Housing Finance Agency responsible for monitoring Oregon’s LIHTC properties, by establishing a policy requiring all owners of 100% LIHTC projects to continue to complete a formal certification at move-in, as well as a first-year annual certification (see OHCS Letter 10/16/08). Third-party verifications must be obtained to support the information reported for both the move-in and first-year annual certification. This policy is effective immediately (no later than 01/01/09).

Note: Just prior to the signing of H.R. 3221, OHCS submitted Oregon’s revised Qualified Allocation Plan (QAP) for 2009 to the Governor. Within the QAP included a new policy implementing a process to allow owners of 100% LIHTC properties in Oregon to request formal waivers of the tenant income recertification process from the IRS. Shortly after the 2009 QAP was submitted, H.R. 3221 was signed and enacted into law. As such, there will no longer be a formal waiver request process offered by the IRS.

Instead, OHCS will consider, on a case-by-case basis, requests from owners to waive the State-mandated process of completing first-year annual certifications for 100% LIHTC properties. A written request for the waiver should be submitted to the OHCS Compliance Officer assigned to the project. In order to determine whether the waiver of the first-year certifications should be granted, OHCS will follow a similar process as outlined within the 2009 Qualified Allocation Plan, which may include the requirement of a third-party review of 100% of the current LIHTC tenant files (at the owner’s expense).

The IRS requires OHCS to provide written notice of noncompliance to the Owner if:

- An annual Owner’s Certification of Continuing Program Compliance (CCPC) (Required Form OHCS.1) is not received by the due date;
- Tenant Income Certifications, supporting documentation, and rent records are not submitted when requested by OHCS;
- The project is found to be out of compliance through inspection, review, or other means with the provisions of IRC Section 42 or representations made in the project application and noted in
Correction Periods

Owners will have advance notice of the intent to file Form(s) 8823 for noncompliance resulting from failure to submit required documentation including the annual status report and the annual Owner’s Certification of Continuing Program Compliance.

Notification to IRS

Owners will have a minimum of 30 days from the date of notification by OHCS to correct findings of noncompliance with any other Code provisions. In some circumstances, extensions will be granted upon receipt of a written request for extension from the Owner or Agent.

OHCS is required to file IRS Form 8823 “Low-Income Housing Credit Agencies Report of Noncompliance” (see Exhibit E.4 Link) with the Internal Revenue Service no later than 30 days after the end of the correction period, including any extensions.

The IRS must be notified whether or not the noncompliance or failure to certify is corrected. OHCS must explain the nature of the noncompliance or failure to certify and state whether the noncompliance has been corrected. Any change in either the eligible basis or applicable fraction that results in a decrease in the qualified basis of the project must be reported to the IRS. If a building is entirely out of compliance and will not be in compliance at any time in the future, OHCS must be informed in writing. In this case, OHCS will notify the IRS one time only.

Monitoring Fees

OHCS assesses an annual charge to all projects during the entire term of affordability. The monitoring fee is currently $35 per unit per year for the initial compliance period (first 15 years) and is then reduced to $25 per unit per year during the extended affordability period.

Example: The annual fee for a 60 unit project is $35 x 60 = $2,100 each year throughout the Initial compliance period. Then, $25 x 60 = $1,500 for each year during the entire Extended Use period.

OHCS mails the invoices for all properties each year in November, to which the payments are due the first business day after January 1st.
CHAPTER 5 – QUALIFYING TENANTS

OHCS recommends advising applicants for low-income, rent-restricted units early in their initial visit to the project that there are maximum income limits that apply to the units. Management should explain to potential tenants that the anticipated income of all adult persons expecting to occupy the unit must be verified and included on the Tenant Application, Applicant/Tenant Questionnaire (see Required Form OHCS.3) and Tenant Income Certification (see Required Form OHCS.2) prior to occupancy and annual recertification for continued eligibility. After initial certification, household income may increase up to 140% of the maximum income limit and both the tenant and the unit will retain low-income status for program compliance. See Available Unit Rule (Supplemental Information S.4) for more information regarding income increases above 140%.

Section 42 states that determination of annual income of individuals must be made in a manner consistent with HUD Section 8 income definitions and guidelines. Refer to the HUD Handbook 4350.3 REV-1 Occupancy Requirements of Subsidized Multifamily Housing Program guide. A hard copy of the Handbook may be obtained from HUD by calling 1-800-767-7468, faxing a request to 1-202-708-2313, or accessing HUD’s website: [http://www.huduser.org](http://www.huduser.org).

It is critical to obtain complete and accurate tenant information in order to determine eligibility and retain low-income status for program compliance. A fully completed application is critical to an accurate determination of tenant eligibility. The Managing Agent’s application should request information regarding income, assets, and income derived from the assets.

At the time of application it is the Managing Agent’s responsibility to obtain sufficient information on all prospective tenants to completely process the application to determine tenant eligibility. OHCS strongly recommends that roommates complete separate applications.

The Managing Agent/staff should handle all disclosed information in a confidential manner. Additionally, the applicant may need to be assured that the provided information is considered sensitive and will be handled accordingly.

The application should include:
- The name and birth date of each proposed occupant. Legal names
should be given and used on all documents;

- **All sources and amounts of current and anticipated annual income** expected to be received during the twelve month certification period (this includes income values calculated from non-income generating assets and other asset income);
- The signature of the applicant and the date the application was completed; and
- The signature of the management staff person who accepted the application and the date it was received.

**Income Inclusions and Exclusions**

Annual income is defined as the gross amount of income **anticipated to be received** by all members of the household, with some exceptions, during the twelve (12) months following the date of the certification or recertification.

Please refer to Exhibit 5-1, “Income Inclusions and Exclusions”, of the HUD Handbook 4350.3, REV-1 (see Exhibit E.9).

**Calculating Annual Income**

Convert verified income to an annual figure by using the following calculation:

To annualize full-time employment, multiply:

1. hourly wages by the number of hours worked per year;
   Example:  $5.00 per hour x 2080 hours per year = $10,400 annual wages or
   $5.00 per hour x 40 hours per week x 52 weeks = $10,400 annual wages

2. weekly wages by 52;
   Example:  $190 per week x 52 weeks = $9,880 annual wages

3. bi-weekly wages by 26;
   Example:  $500 biweekly x 26 pay periods per year = $13,000 annual wages

4. semi-monthly wages by 24; or
   Example:  $400 paid twice a month x 24 pay periods = $9,600 annual wages

5. monthly amounts by 12.
   Example:  $1,000 paid monthly x 12 months = $12,000
Note: For those individuals with an annual salary, the annual amount should be used to cover the full 12-month period regardless of the pay schedule.

To annualize income from other than full-time employment, multiply:

1. hourly wages by the anticipated number of hours to be worked;

2. average weekly amounts by the anticipated number of weeks to be worked; or

3. other periodic amounts by the anticipated number of periods to be worked.

When analyzing income, year-to-date income must be considered and compared to the wage/salary calculation. When annualizing year-to-date income, owners/managing agents may either round the number of weeks down to a whole week or use fractional weeks carried out one decimal place (i.e. 13.47 would round to 13.5 weeks).

Income that cannot be anticipated for a full 12 months (such as unemployment compensation) should be calculated assuming current circumstances will last a full 12 months unless there is an foreseeable change in the future that would cause the income calculation to be greater.

For example, if the applicant/tenant is currently unemployed but will be starting work soon, owners/managing agents should use the person’s unemployment compensation to the point of the start date of employment and then calculate the employment income from that point forward to the end of the certification period.

Assets are items of value, other than necessary personal items. Income from assets is added to regular income to determine the eligibility of a household. Asset information (total value and any income) must be obtained from the applicant/tenant.

If an applicant/tenant declares a combined total asset value of less than $5,000, obtaining third-party verification will not be necessary; however, they must complete an Under $5,000 Asset Certification (see Required Form OHCS.4). Any actual income the applicant/tenant receives from the asset must be added to regular income.

Note: Households declaring that they have NO assets are no longer required to complete the Under $5,000 Asset Certification.
If an applicant declares a combined total asset value of $5,000 or more, third-party verification of each asset must be obtained, and the greater of the actual income from assets or the imputed income of the total value of the assets must be added to regular income.

Please refer to Exhibit 5-2, “Asset Inclusions and Exclusions”, of the HUD Handbook 4350.3, REV-1 (see Exhibit E.9).

At the time of application or annual certification, all adult members of the household must declare any assets sold for less than fair market value in the past two years before the effective date of the Certification (see Recommended Form R.6). If there is more than $1,000 difference between the amount received for the asset and the fair market value, then include in asset value the entire difference. Do not count it if the difference is less than $1,000.

Example: Six months before move-in, an applicant sold his house to his nephew for $5,000. The house could have been sold on the open market for $60,000. The difference between the value and the sale price is more than $1,000. Include $55,000 as the asset value.

Note: Assets disposed of for less than fair market value as a result of foreclosure, “short sales” in lieu of foreclosures, bankruptcy, or divorce or separation settlement are not to be included in the fair market value determination. However, if an individual is still the Owner of record of property, include as an asset the value of the individual’s share of the property.

When computing asset value, use the cash value of the assets. The cash value is the amount an individual would receive if the asset(s) were converted to cash. Expenses that may be deducted from the value include:

- Penalties for withdrawing funds before maturity;
- Broker and/or legal fees assessed to sell or convert the asset to cash; and
- Settlement costs for real estate transactions.

When the value of net family assets is less than $5,000, add to the total verified income the amount of actual income from the asset(s). When assets are $5,000 or more, add to the total verified income the greater of:

1. The actual income from assets; or
2. The imputed income from assets based on the passbook rate established by HUD (currently 2%).

Example: An applicant has $6,400 in assets. Actual income from assets has been verified at $168. Imputed income from assets is calculated at $128 ($6,400 x .02 = $128). Use the greater amount, or in this case $168, to include in the gross annual income calculation.

Rounding Calculations

When calculating income, figures should be carried out to two decimal places. If rounding to the whole dollar is preferred, rounding is only acceptable after the entire calculation has been performed and income must always be rounded up.

For example, an applicant’s only source of income is from Social Security benefits. The verification indicates that the monthly gross benefit amount is $570.60. Multiply $570.60 by twelve months for an annual gross income figure of $6,847.20. If rounded, income should be reflected on the Tenant Income Certification as $6,848.00.

Tenant Income and Asset Verifications

All regular sources of income, including asset income, must be verified. Verification must be received by the Managing Agent prior to the execution of the Tenant Income Certification and the actual move-in date. Verifications must contain complete and detailed information, and include, at a minimum, direct written information from all sources of regular income. Faxed verifications will be accepted as long as the verifiable source receives and re-submits the fax.

Effective Term of Verification

Third-party verifications of income are valid for 120 days. After this time, a new verification must be obtained if the move-in or annual certification occurs after the effective verification term.

Methods of Verification

At a minimum, an attempt to obtain written third-party verification is required. Any request for income verification must:

1. State the reason for the request;

2. Include a release statement signed and dated by the applicant (refer to the Forms Section for an example); and

3. Provide a section for the third-party source to disclose the requested information. The signature of the third party source, their job title (if applicable), phone number and date must be included.
| **Verification Transmittal** | Suggestions for *verification transmittals*:

1. OHCS strongly recommends that applicants sign two (2) copies of each verification form. The second copy may be used if the first request has not been returned in a timely manner.

2. Income verification requests must be sent directly to and returned by the source, **not through the applicant**. OHCS suggests including a self-addressed, stamped envelope with the request for verification.

3. Income verifications may be sent directly to and returned from the source via facsimile. **Facsimiles should clearly show a header or footer indicating from where it originated** (management) and from where it was returned (verifier).

4. The Managing Agent should review and check verifications for accuracy and completeness. Verifications should be date stamped as they are received.

| **Verbal Verification** | Verbal verifications are only acceptable to clarify information already provided on written documentation. Any other use of verbal verification is not acceptable. If written verification cannot be obtained, the Managing Agent should consider the household ineligible until eligibility can be established through appropriate documentation.

| **Difference in Reported Income** | The Managing Agent must give the applicant the opportunity to explain any significant differences between the amount reported on the application and amounts reported on third-party verifications. The file should be documented to explain the disparity and support the actual income figure used.

| **Altering Documents** | Verifications must never be altered but can be clarified if the information on the documentation needs to be changed. **White-out must never be used** as the original information is concealed and this can raise audit concerns. If there is a need to clarify information, **attach a clarification memo**. All clarifications must have the name and signature of the party completing the clarification and the source of the revised information with appropriate contact information. |
Acceptable Forms of Income Verification

Specific information must be obtained on income verifications. With the exception of the required forms, Agents may develop their own forms or use the forms provided in the Exhibit Section of this manual.

Listed below are the types of income and their corresponding acceptable sources of verification in order of verification preference.

Employment Income

Employment income can be verified by obtaining:

1. Employment Verification Form (see Required Form OHCS.7) completed by the employer or a statement from the employer on company letterhead (which must include the anticipated income for the following 12 months);
2. Several current check stubs from the employer showing gross income per pay period and frequency of pay; or
3. A copy of the most recent income tax return signed by the applicant/tenant or copies of Form W-2 providing the amount of income, including income from tips and other gratuities, supported by current check stubs from the employer.

Self Employment Income

Self Employment can be verified by obtaining (see Recommended Form R.13 and Recommended Form R.14):

1. Accountant’s or bookkeeper’s statement of net income (if the accountant or bookkeeper is not the business Owner) and a statement from the business Owner regarding anticipated income;
2. Financial statement(s) of the business along with an affidavit or notarized statement from the applicant forecasting the anticipated income for the 12 months following certification; or
3. The prior year’s income tax return (Schedule C and 1069 and 1040 or K-1) along with a statement from the applicant/tenant forecasting the anticipated income for the 12 months following certification.

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

For Social Security, pensions, etc., obtain one of the following:

1. A benefit verification form completed by the agency providing the benefits (see Recommended Form R.16);
2. An award or benefit notification letter prepared by the authorizing agency. Copies of checks, bank statements reflecting automatic deposits, or deposit slips are not acceptable forms of verification.
Note: Because income calculations are to be based upon what is expected to be received during the future 12 months, if the Social Security Administration or other plan provider has published a Cost of Living Adjustment (COLA), include the increase as appropriate. COLAs are published every November and can be found on-line at [http://www.ssa.gov/cola/](http://www.ssa.gov/cola/).

Verify unemployment benefits by obtaining:
1. A verification form completed by the unemployment compensation agency; or
2. Records from the unemployment agency stating payment dates and amounts.

Note: The weekly benefit amount should be multiplied by 52 weeks regardless of how many weeks the applicant/tenant is entitled to collect unless there is an imminent change (see example on page 5-3, under “Calculating Annual Income”).

All educational assistance of part-time or full-time adult students is considered income for the purpose of determining eligibility, with exception to the following:

- Part-time or full-time students 24 years of age or older with a dependent child (count NO portion of educational assistance);
- Student loans are excluded from income;
- Exclude the cost of tuition. The cost of tuition is determined by the school (books are not included as a cost of tuition).

Unearned income being received by full-time students (such as TANF, Social Security, Unemployment benefits, etc.) is included with household income in its entirety.

Earned income of full-time students 18 years of age or older who are not the head, co-head, or spouse is excluded to the extent that it exceeds $480 annually.

Example:
A household consists of a married couple, one of which is a full-time student. The student has a school grant in the amount of $10,000, a student loan in the amount of $5,000 and a part-time job grossing $6,000 annually. Tuition is verified at $9,000. The balance of the school expenses are for books and other expenses. Determine annual income for the student as follows:
<table>
<thead>
<tr>
<th>Grant</th>
<th>Loan</th>
<th>Employment</th>
<th>Tuition</th>
<th>Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>$10,000</td>
<td>$5,000 loan</td>
<td>$6,000</td>
<td>$9,000 tuition</td>
<td>$7,000</td>
</tr>
<tr>
<td>$21,000</td>
<td>- $5,000</td>
<td>- $9,000</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Student loans and tuition are excluded. Earned income is included in its entirety as the student is either the head or spouse.

Student status for each household must be addressed on an annual basis during the Initial compliance period for each Housing Credit project. Effective January 1, 2009, all households regardless of student status will be required to complete an Annual Certification of Student Status for each year in occupancy during the Initial compliance period (see Required Form OHCS.5).

Student status and financial assistance (or lack of) must continue to be verified by use of the Student Status/Financial Assistance Verification (see Required Form OHCS.6).

Alimony or child support that is court ordered or otherwise supported by written agreement must be included as income unless:

1. The recipient of the child support or alimony certifies the funds are not being received and are not expected to be received during the certification period (see Recommended Form R.4); and
2. reasonable efforts have been made to collect the amount due, including filing with courts or agencies responsible for enforcing payments.

Child support and/or alimony can be verified through the following documentation:

1. A copy of a separation or settlement agreement, a divorce decree or verification from a clerk of the court stating the amount and type of support payment schedule;
2. A printout or statement from the Support Enforcement agency (for child support verification) addressing support for all children in the household;
3. A notarized affidavit from the person paying support;
4. A copy of the most recent check and documentation regarding the frequency of payments;
5. As a last alternative, the applicant’s/tenant’s statement or affidavit of the amount being received. The file should
include a detailed explanation of why none of the alternatives listed above could be provided.

Examples of appropriate documentation:

Example #1: A man moves in with his minor son. He divorced the son’s mother two years ago. The divorce decree gives him the greater percentage of custody (establishing this as a two-person household) and provides for a child support monthly payment of $275 from the mother. The man claims she has never made a payment. He also claims he has filed with Support Enforcement but has received nothing.

The owner/managing agent should obtain a copy of the divorce decree and a printout from Support Enforcement.

Example #2: A father moves in with minor son. He reports he and the boy’s mother were never married and he is not eligible for child support because there is no court order for it.

The owner/manager should obtain a self-affidavit from the father indicating he is not eligible for child support and a printout from Support Enforcement.

Example #3: A mother moves in with her three minor children. Two of the children are from her first marriage. The third is from her second marriage. She reports neither father is paying child support. Her application shows she was living in Washington before her most recent address.

The owner/manager should obtain a copy of both divorce decrees. The divorce decrees should indicate what court had jurisdiction for each divorce. The owner/managing agent should then obtain a Support Enforcement printout from any state that had jurisdiction in the divorces as typically support comes from the state where the divorce was executed.

When an unborn child will be included with the household composition in order to qualify the unit, the household must certify their claims of eligibility by signing an Affidavit of Pregnancy (see Recommended Form R.1), or a similar form.

Note: Per IRS guidance, it has been determined that unborn children can be included as part of the family to qualify the household under the current income limits, as well as to qualify a full-time student household.
For example, if a pregnant, single mother of one child (in elementary school) is a full-time student, her unborn child could qualify the household because the unborn child is not a full-time student, provided the mother cannot be claimed as a dependent on someone else’s tax return.

There are other scenarios where management should include children currently absent from the household but will be living in the unit within the upcoming twelve (12) months. These include:

- Children temporarily absent due to placement in a foster home,
- Children who are in the process of being adopted,
- Children who will reside in the household for at least 50% of the certification year (as established by joint custody agreements), and
- Children who are currently away at school but live with the household while school is not in session.

Per the HUD Handbook 4350.3, include all unearned income of any minors (household members under the age of 18) considered to be part of the household. Third-party verifications must be obtained to substantiate the income being received. Earned income of minors is NOT included within the determination of household income.

Note: Children cannot be included in the household composition of more than one tax credit unit.

If an applicant states that he/she is married but is estranged from or in the process of a separation from his/her spouse, a verification must be obtained in order to prove that the spouse will not be residing in the unit (see Recommended Form R.7).

Verify Recurring Contributions to the household by obtaining:

1. A signed affidavit by the person providing the assistance. The statement should include the purpose, dates, and value of the contributions or gifts (see Periodic Monetary Assistance Verification, Recommended Form R.9);
2. A letter from the bank, attorney, or trustee providing the necessary information; or
3. A statement from the applicant/tenant providing the necessary information. The statement must include an explanation detailing why neither of the alternatives listed above could be obtained.
| **Unemployed / Zero-Income** | Management must obtain additional documentation from unemployed and/or zero-income applicants/tenants. The unearned income of unemployed applicants/tenants receiving regular income from any source, such as Social Security, pensions, recurring gifts, etc., must be verified as described previously. Additionally, if the applicant/tenant indicates that they have no earned income, or is currently unemployed and claiming zero income, or is unemployed but anticipates beginning work within the next 12 months, the project must have the applicant/tenant complete an Unemployed Affidavit / Zero-Income Certification (see Required Form OHCS.8). |
| **PHA-Verified Income** | For households receiving assistance from a Public Housing Authority (PHA), third-party verifications of income from the PHA are required for all LIHTC certifications completed at move-in (see Recommended Form R.11). The PHA Statement can be used as proof of income for any other certification completed after the initial certification (see Recommended Form R.12). Income and assets must continue to be verified within 120 days of the effective date of the tax credit certification. |
| **Live-in Aide** | In order to determine a household member’s need for a live-in aide, the owner or managing agent must obtain third-party verification (see Recommended Form R.17) from a healthcare professional that confirms the live-in aide to be: |
| | 1. essential to the care and well being of the resident, |
| | 2. in no way obligated to support the household member, and |
| | 3. only in the unit to provide supportive services to the tenant. |
| | Once third-party verification has been received establishing the need for a live-in care provider, the owner should: |
| | • conduct a background screening for the individual intending to be the live-in care provider to ensure there is no criminal history. and |
| | • have the live-in care provider sign a self-affidavit (see Recommended Form R.8) declaring that he/she understands they have no rights to the unit, that they must follow the rules established within the lease signed by the resident, and that the caregiver will vacate the unit if the tenant no longer requires supportive services or moves out of the unit. If the caregiver wants to remain in the unit, he/she would need to establish eligibility under the Section 42 program. |
Owners should NOT do the following:

- Consider the caregiver’s income with that of the household’s annual income;
- Have the caregiver sign a lease agreement, or
- Include the live-in aide on the Tenant Income Certification.

**Note:** The children or other family members of a live-in care aide are not allowed to reside in the unit because they do not meet the definition or requirements to be considered live-in care providers (per the HUD Handbook 4350.3 FAQs, released in July of 2005).

Households with combined assets of $5,000 or more must have their assets verified by a third-party, and may be documented by using an Asset Verification (see Recommended Form R.3).

### Acceptable Forms of Asset Verification

#### Account held by a bank

1. Verification of assets completed by the bank where held;
2. Copies of bank statements. For checking accounts, obtain the most recent six months worth of statements to get the average six-month balance. For savings accounts, obtain the most recent statement for the current account balance.

#### Trust Funds

1. A letter from the trust administrator or representative;
2. A copy of the most current fund statement.

#### Personal Property Held as an Investment

A copy of a current appraisal of value.

#### Real Estate

1. Copy of the most current tax assessment or statement from a real estate broker;
2. If under a contract of sale, a copy of the contract;
3. For the outstanding loan balance, a payoff statement from the mortgage holder.

#### Stocks, bonds, etc.

1. Copy of the most current account statement from a brokerage firm;
2. A statement from a brokerage account representative.

#### Retirement and Pension Funds

1. Copy of the most current account statement showing the ownership (vesting) percentage;
### Whole Life or Universal Life Insurance Policy

1. Copy of the most current statement of cash value;
2. Statement from the insurance company as to the value of the policy.

### Mortgage or Deed of Trust Held by an Individual

A copy of an amortization schedule relating to the specific term and interest rate of the mortgage.

### Assets Owned Jointly

If an asset is owned jointly by a resident and someone who resides elsewhere, the asset must be prorated according to the percentage of ownership. This may be difficult to prove, but management must do their best to show that due diligence in determining ownership of the asset has been performed. Please refer to the HUD Handbook 4350.3, REV-1 (paragraph 5-7 D) for further guidance.

### Tenant Income Certification

#### Initial Certification

After obtaining and computing all income and asset information, management personnel must prepare a tax credit Tenant Income Certification (see Required Form OHCS.2) for each household placed in a set-aside unit. After reviewing the document with the household, management should have all adult household members sign the Tenant Income Certification (TIC) before signing the Lease, but in no case more than ten (10) days prior to move-in. The tax credit TIC must be completed at initial move-in.

#### First-Year Annual Certification (100% LIHTC Projects)

Effective January 1, 2009, all units within 100% LIHTC properties must be recertified upon the first-year anniversary of the move-in date only. After that, there will be no subsequent recertification requirements. The first-year annual certification may be signed any time after all verifications are collected but before the effective date, (in no case more than 120 days prior to the effective date). The first-year annual certification must be effective no later than one year from the date of move-in.

For example, if a household moved in to a unit on May 21, 2008, the effective date of the first-year annual certification could be May 1, 2009 but no later than May 21, 2009.

### Annual Certifications (Mixed-use Projects)

For Housing Credit projects that are not considered to be 100% LIHTC (market rate units exist), all LIHTC households are required to complete the LIHTC Tenant Income Certification at move-in and annually during the entire time the household remains in occupancy.
and throughout the Initial compliance period of the project.

LIHTC interim recertifications are not required.

For projects with subsidy under Rural Development 515, when recertifications are completed prior to the anniversary of the move-in, the recertification becomes the new annual date under the RD program. If management chooses to complete a tax credit Tenant Income Certification (TIC) concurrently, the new RD annual date can also be used as the annual date for the purposes of recertification under the tax credit program.

In the event a tenant in a set-aside unit wishes to add an additional person to the household, the following steps must be taken:

- The prospective tenant must complete an application and provide verification of income and assets as required of the initial tenant;
- Once accepted as a qualified tenant, the new household member must sign a lease;
- The new tenant’s income and assets should be added to the most recent LIHTC TIC completed. The new tenant would then sign and date the certification (use the actual date the form was signed). Management can choose to execute a new Tenant Income Certification immediately to reflect the new composition and income of the household; however, it is not required.

**Note:** As mentioned in Chapter 3, new members cannot be added to a LIHTC household until the members who originally qualified to occupy the unit have fulfilled the initial six month lease term (exceptions include unborn children and children in the process of being adopted).

For projects that are considered to be 100% tax credit, the Tenant Income Certification (TIC) must be completed at initial move-in and upon the first-year anniversary of the move-in certification. The following exceptions for completing the LIHTC TIC apply:

- Properties that were financed through the RHS Section 515 Program and complete the RD Tenant Income Certification Form 1944-8 for each household (with all adult household member signatures), must complete a tax credit TIC for households **at move-in only**.

- Properties that receive project-based Section 8 rental assistance and complete the Form HUD-50059 (which includes all adult
household member signatures) must complete a tax credit TIC for households at move-in only.

Remember, the LIHTC TIC must show annual gross income at move-in (prior to considering allowances and deductions for the RD or Section 8 programs).

Owners/management agents must continue to address student status for each household annually throughout the Initial compliance period by having the adult household members complete an Annual Certification of Student Status (see Required Form OHCS.5).

The Tax Credit Program does not mandate the use of a specific lease agreement. Owners must therefore develop and adopt their own. OHCS does require that all tenants occupying set-aside units be income certified and under a lease agreement. The owner/managing agent and the tenant(s) must sign and date, at the signature line, every lease. Lease provisions should include:

- The legal name of the parties to the agreement and all other occupants;
- A description of the unit to be rented;
- The term of the lease (a six-month minimum term is required except as noted below) and the renewal date or automatic renewal;
- The rent amount (including non-optional fees);
- The permitted and restricted use of the premises (i.e. prohibition of subletting the unit not approved by management);
- The rights and responsibilities of the parties, including the obligation of the tenant to certify annually income as defined herein;
- A statement (or attached addendum) regarding certain LIHTC program requirements, such as income and student eligibility;
- The right to release information to OHCS and/or the IRS for inspection;
- Fees being charged for optional services

Rents may not exceed the maximum rents as allowed by the Code, or as otherwise agreed per representations made in the owner’s application.

Initial lease terms must be for at least six months with exception to:
1. Single Room Occupancy (SRO) units in projects receiving McKinney Act and Section 8 Moderate Rehabilitation assistance; or
2. SRO units intended as transitional housing and operated by a governmental or nonprofit entity that provide certain supportive services.
Fees and Deposits

In general, owners cannot assess additional fees for the use of any part of the project for which the cost was included in the eligible basis (i.e., pool, parking, dining room).

⇒ Non-Optional Fees

Any non-optional fees charged to tenants as a condition of their occupancy must be included in the gross rent (Treas. Reg. 1.42-11). For example, an owner may require residents to have renter’s insurance. In this scenario, the cost to carry the insurance must be included with the resident’s gross rent.

The IRS has determined that charging application/screening fees are acceptable as long as the fees charged are reasonable and compliant with state and local laws. These fees are assessed to reimburse owners for the actual costs associated with processing the applications and screening reports, not to make a profit.

⇒ Optional Fees

Optional fees can be charged to tax credit households for optional services, as long as the service is not a condition of occupancy and reasonable alternatives for the service is provided free of charge.

The IRS does not view one-time refundable security deposits or pet deposits as being included with gross rent. As such, owners are allowed to charge these deposits provided they are reasonable and compliant with state and local laws.

Because it is the owner’s responsibility for physically maintaining tax credit units that are suitable for occupancy, standard preparation or decorating fees cannot be charged.
CHAPTER 6 – EXTENDED USE PERIOD MONITORING

Properties that were awarded Housing Credits on or after January 1, 1990 must comply with restrictions as embodied in the recorded Reservation and Extended Use Agreement (EUA) and the Declaration of Land Use and Restrictive Covenants (Declaration).

After the initial 15-year Low-Income Housing Tax Credit (LIHTC) Compliance Period has expired for these allocations, the Internal Revenue Service (IRS) will no longer receive notification of noncompliance by the States’ issuance of 8823 forms. Instead, the onus for dealing with noncompliance during the remainder of the affordability period rests with the state allocating agency.

OHCS has made the determination that during the Extended Use Period the administrative burden to owners can be reduced by relaxing some of the inspection, audit, reporting, and eligibility criteria, providing a more palatable way to operate tax credit properties and maintain compliance when the tax benefits have been exhausted. Monitoring for compliance during the Extended Use Period will ensure the spirit of the program is preserved, that the housing will continue to serve the people for whom it was intended, and the OHCS mission continues to be met.

**Definitions**

**Compliance Period** - with respect to any building, the period of 15 taxable years, beginning with the first taxable year of the credit period. The first year of the Compliance Period is the first year in which the owner claimed credits. The first year must be either the year the building is placed in service or, at the owner’s election, the year following the placed in service year. All requirements of the Internal Revenue Code, Section 42, including the 1.42-5 monitoring regulations, are in effect during the initial 15-year Compliance Period.

**Extended Use (“Post-15 Year”) Period** - the period beginning on the last day in the Compliance Period in which such building is part of a qualified low-income housing project and ending on the date specified by OHCS in the Extended Use Agreement.

**Owner Responsibilities**

The Extended Use Period compliance rules will be greatly simplified. The owner will agree to:

1. Maintain the applicable fraction by leasing units to households whose income at placement is 50% or 60% or less of the area median gross income, as adjusted for family size;
2. Maintain the rent and income limit restrictions in accordance with the current Reservation and Extended Use Agreement;
3. Lease, rent, or make available to the general public (who qualify under the applicable election) all units subject to the credit;
4. Comply fully with the requirements of the Fair Housing Act;
5. Not refuse to lease a unit to a Section 8 voucher holder solely because of the prospective tenant’s status as a voucher holder;
6. Maintain all units as suitable for occupancy;
7. Certify tenants initially at move-in (for units subject to income qualification requirements stated within the Reservation and Extended Use Agreement);
8. Continue to update utility allowances annually. Revised utility allowances must be implemented within 90 days of their published effective date;
9. Comply with other restrictions as required under the specific year’s Qualified Allocation Plan (QAP) or representations made during the application process; and
10. Make their best effort to provide tenant services as stated in the initial application.

Revised tenant eligibility issues:

1. Tenant Income Certifications
   a) Move-in certification
      - The initial income certification is still required (see Required Form OHCS.2). Income will be verified by third-party sources and calculated in a manner consistent with the determination of income as defined under Section 8 requirements. Owners/Agents will check the box labeled “Extended Use Period - Initial” at the top of the first page of the certification.
   b) Annual certifications
      - The completion of annual tenant income certifications will no longer be required.

      Note: Please refer to the bottom of page 1-5, of Chapter 1, regarding the passage of new legislation and the requirement of households to complete self-certifications of tenant data on an annual basis (to be submitted to HUD).

c) Changes in household composition
   - Any additions to household composition (not including births or adoptions) will not be permitted during the first six months of occupancy.
# Extended Use Period Monitoring

| Student Status | 2. **Student Status**  
|               | Student status rules will no longer apply, and therefore will not be monitored during the Extended Use period. |
| Transfers     | 3. **Unit Transfers**  
|               | Unit transfers anywhere within a project (even building to building) are allowed regardless of the household’s income at the point of transfer, provided the household initially qualified at move-in. |
| Next Available Unit Rule | 4. **Next Available Unit Rule**  
|               | Projects will no longer be subject to the Next Available Unit Rule but will be required to maintain the unit set-aside agreed upon in the Extended Use Agreement. |
| Projects with RD, HOME or Section 8 | 5. **Projects with RD, HOME or Section 8**  
|               | Housing Credit projects with RD, HOME or Section 8 funding will continue to be subject to comply with the applicable rules as established by the corresponding Program. |
| **Extended Use Period Monitoring Inspections** | The following explains the monitoring procedure OHCS will adopt once projects have entered into their Extended Use affordability periods:  
|               | Projects will be inspected and audited a minimum of every five years. It is at the discretion of the assigned Compliance Officer (CO) to determine if a project will need more frequent reviews. Depending on the size of the project and other factors, the number of units and files inspected will range from 5 – 10% of the unit total for each project, or a minimum of 5 units and files. More units and files (over the 10%) may be reviewed should the CO deem it necessary. |
| Annual Reporting | Once projects have entered the extended use affordability period, owners will be required to complete a Certificate of Extended Use Compliance (CEUC) (see Required Form OHCS.1a) on an annual basis, throughout the term of the Extended Use period. This form was created to reflect the end of the initial compliance period and the shift in focus to compliance under the provisions within the Reservation and Extended Use Agreement.  
|               | The owner will also be required to complete an annual summary spreadsheet and submit it with the Owner’s CEUC (see Recommended Form R.2a). |
### Monitoring Charges

Monitoring charges will be reduced from $35 per unit per year to $25 per unit per year. Invoices will continue to be sent to the Owner (or agent) of record annually in November, with a due date in January of the following year.

**Note:** OHCS reserves the right to adjust the monitoring charges due to changing circumstances.

### Project-Based Subsidy Programs

Tax credit physical inspections and monitoring charges will be waived for projects with project-based subsidy programs in effect. The owner must notify OHCS of the type and duration of the subsidy program(s) attached to the project to obtain a written waiver of these requirements. Inspections and charges will resume if the subsidy program expires prior to the expiration of the terms of the Extended Use Agreement.

### Transfers of Ownership or Ownership Interest

A transfer agreement is required in the event of a transfer of ownership or ownership interest. Such agreement will put the new owner or partner on notice that it is subject to the terms of the Reservation and Extended Use Agreement, including all compliance restrictions and annual compliance monitoring.

### Record Retention

Once the project has entered into the extended use affordability period, the owner is subject to any and all record retention rules (if such rules exist) as stated within all documents prepared to enforce compliance throughout the Post-15 Year compliance period. If no such reference is made within the extended affordability documents, the owner must maintain the original move-in documentation for each household **on-site** for at least three (3) years. At the point a household’s occupancy exceeds three years, the owner may choose to keep the file off-site or stored electronically on disc.

If a household moves out prior to the three year timeframe, the owner must maintain the file on-site until the full three (3) year timeframe has been exhausted.

### Extended Use Period Expiration

Once the Extended Use Period has expired (or has been terminated), the owner may not evict or displace any households (other than for “good cause”), and must maintain restricted rents for the following three years, as stated within IRC Section 42(h)(6)(E)(ii).

### Consequences of Noncompliance (Extended Use)

Owners will be given the same timeline for correction of noncompliance as during the initial compliance period (30 days from the date of the inspection and audit report). Extensions are available by request but, in no case, can exceed a total of six months (including the initial 30 day...
correction period). Uncorrected noncompliance may result in the following progressive actions:

1. The status of owners, managing agents, and/or general partners will be designated as “Not-in-Good Standing” with the agency.

   Note: OHCS reserves the right to publish a list of “Not-in-Good Standing” entities on our website for future reference if deemed necessary.

2. OHCS may choose to enforce compliance with the Reservation and Extended Use Agreement through the courts.

3. Future applications for housing credits may be subject to automatic denial.
To: LIHTC Owners and Management Agents

From: Tonya Evans, LIHTC Lead Compliance Officer

Program Analysis & Enforcement Section

Date: 10/19/09

Re: Program Updates

As you may already be aware, on September 25, 2009 the Internal Revenue Service (IRS) released the highly anticipated revision of the Guide for Completing Form 8823: Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition. The Guide is intended to provide state housing finance agencies (HFAs) a reference on how to interpret definitions of the findings categories listed on Form 8823. The Guide is available for viewing on Novogradac & Company LLC LIHTC website. The goal is to enable HFAs to provide consistent application of Internal Revenue Code §42 requirements and to consistently report noncompliance findings to the IRS.

Oregon Housing and Community Services echoes what the IRS stresses in that the 8823 Guide has no legal authority. It does, however, reference and cite formal IRS guidance and the Internal Revenue Code that can be relied upon, as well as provide additional examples that may be used by state HFAs to determine whether or not noncompliance exists.

Any changes, clarifications or additions made to the 8823 Guide are marked throughout with surrounding asterisks (there were no changes made to Chapters 3, 7, 13, 19, 20 and 22), and takes into account the following items:

- Legislative mandates stated within the Housing and Economic Recovery Act (HERA) of 2008 (or H.R. 3221). This act is also commonly referred to as the Housing Assistance Tax Act of 2008 (HATA). OHCS has already addressed these changes with the mailing that was sent to Owners/Agents on December 1, 2008, as well as incorporated them into the OHCS LIHTC Manual,
- Revisions made to Treasury Regulation 1.42-10, Section 42 Utility Allowance Update, which became effective July 29, 2008 (also included with the mailing listed above),
- HUD revisions made to the 4350.3 Handbook since the 2007 8823 Guide release, including the June 23, 2009 issuance of HUD Change 3 (implementation took effect 08/01/09), and
- The introduction of the Multifamily Tax Subsidy Program (MTSP) income and rent limits, as well as when to apply the National Non-metro income limit, as explained in the April 7, 2009 OHCS mailing to owners/agents (2009 MTSP Limits Letter to Owner-Agent).

Although many of the 8823 Guide revisions involve grammatical corrections or the expansion of existing guidance, several changes involve new guidance that **OHCS has adopted (effective 10/01/09)** and include, but are not limited to, the following:
Chapter 4 – Category 11a

- **Increases in Family Size** (pg. 4-4)
  For clarification purposes, OHCS does NOT allow new additions to a household within the initial 6 month lease term. The only exception to this rule would be the birth or adoption of a child by an original household member. Should an existing household want to add a new family member to the household prior to fulfilling the initial 6 month lease term, a brand new move-in certification will need to be completed, which would include obtaining source documentation to verify the income and assets of all household members to ensure the newly formed household qualifies under the current Section 42 income limits per household size.

  In Oregon, once a household has fulfilled the initial 6 month lease term, the new member’s income and asset information should be added to the most recent certification completed. The member would then sign and date (actual signature date) the certification.

  Should no original member exist, the remaining members must be income-certified as a new LIHTC household unless (1) for a mixed-use property, the remaining household members were income qualified at the time they moved in (independently or as a newly formed household) or (2) for a 100% LIHTC property, at the time they moved in, the remaining members were independently income-qualified.

- **Determining Annual Income** (pg. 4-7)
  Typically, annual income is determined for the 12-month period following the effective date of the certification. However, in the event that the owner/agent cannot adequately determine a household’s upcoming 12-month annual income based on current circumstances (due to a lack of income or income is sporadic), the household’s annual income can be based upon actual income earned or received from the previous 12-month period.

- **Income from Business** (pg. 4-12)
  Include as income any cash or assets withdrawn from the business by household members unless the withdrawal is to reimburse for an investment made (into the business).

  **In-Home Office** (pg. 4-13) - the IRS now clarifies that a LIHTC household can “use a portion of a low-income unit exclusively and on a regular basis as a principle place of business, and claim the associated expenses as tax deductions, as long as the unit is the tenant’s primary residence.” The owner/agent should obtain a copy of the Schedule C, along with IRS Form 8829, “Expenses for Business Use of Your Home”, for any household claiming in-home business office expenses (including daycare businesses).

  Furthermore, “if the tenant is providing daycare services, the tenant must have applied for (and not have been rejected), be granted (and still have in effect), or be exempt from having a license, certification, registration, or approval as a daycare facility or home under state law.” A copy of the current state license/certification must be placed in the tenant file.

- **Income from Investments** (pg. 4-15)
  Clarification added to direct owners/agents to include as income from assets any interest or dividends earned from assets (stocks, bonds, T-bills, CDs, mutual funds and money market accounts) even if the earnings are reinvested.

- **Educational Scholarships or Grants** (pg. 4-19)
  With new interpretation and guidance, “The treatment of educational scholarships or grants is dependent on whether the student is receiving Section 8 assistance.”
For LIHTC units that **DO NOT receive Section 8 assistance**, "all forms of student financial assistance, no matter how it is used, are **EXCLUDED** from annual income. Financial assistance includes grants, scholarships, educational entitlements, work study programs, and financial aid packages. It doesn't matter whether the assistance is paid to the student or directly to the educational institution."

For LIHTC units that **receive Section 8 assistance**, **include all financial assistance received in excess of tuition** as income unless:

"1. The student is over the age of 23 with dependent children, or
2. The student is living with his or her parents who are *applying for or* receiving Section 8 assistance."*

For purposes of complying with existing Section 42 rules, owners/agents must still verify student status for each household on an annual basis (as well as at the time of move-in). OHCS will be revising the current mandated forms (OHCS.5 and OHCS.6) used to verify student status and financial assistance at a later date and posted to the OHCS website. Student loans continue not to be included as income.

- **Resident Services Stipend** (pg. 4-21)
  Resident stipends are now acknowledged by the IRS as an exclusion from household income, provided the monthly amount of the stipend does not exceed $200.00. If the monthly stipend does exceed $200.00 per month, the entire amount must then be included as income.

Chapter 6 – Category 11c

- **Vacant Units** (pg. 6-5)
  Vacant units must be made suitable for occupancy and ready to rent in a reasonable amount of time. OHCS has defined “reasonable amount of time” to be within 30 days from the move-out date. Vacant units will be considered noncompliant should it be discovered they were not made suitable for occupancy within 30 days from the date the last household moved out. The effective date of the noncompliance finding will be retroactive back to the move-out date (not the date of the audit).

Chapter 8 – Category 11e

- **Federal Grants** (pg. 8-2)
  Projects that were placed in service prior to July 31, 2008 could not receive federal grants to fund building costs (or operations) without being required to reduce the eligible basis by the amount of the federally funded grant.

  With the passage of the Housing Assistance Tax Act of 2008 (HATA), projects placing in service on or after July 31, 2008 will be allowed to apply these grants to be used in the operation of the building(s) without needing to reduce the eligible basis.

  Please refer to pages 8-4 and 8-5 of the 8823 Guide to view a list of funds that are NOT considered to be federal grants.
Chapter 11 – Category 11g

- **Fees – Application Processing** (pg. 11-3)
  Although not a new issue presented within the 8823 Guide, there is growing concern that owner/agents are charging application fees in excess of the actual processing costs. Per the Guide,

  “Application fees may be charged to cover the actual cost of checking a prospective tenant’s income, credit history, and landlord references. The fee is limited to recovery of the actual out-of-pocket costs.”

- **Assistance Provided Under the HOME Investment Partnership Act of NAHASDA**
  Per the 8823 Guide (pg. 11-7),

  “*For buildings placed in service on or before July 30, 2008,* IRC §42(i)(2)(E)(i) generally provides that assistance provided under the HOME Investment Partnerships Act (HOME) *or the Native American Housing and Assistance and Self-Determination Act (NAHASDA) of 1996* with respect to any building will not be treated as a below market Federal loan if 40 percent or more of the residential units *in the building* are occupied by individuals whose income is 50 percent or less of the Average Median Gross Income (AMGI). *The rule is applicable for the entire extended use period under IRC §42(h)(6)(D).*”

  “*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.*”

Chapter 12 – Category 11h

- **Marketing** (pg. 12-2)
  Please remember that owners/agents should make reasonable attempts to market vacant LIHTC units to the general public with some form of advertising (signs, banners, electronic pamphlets, newspapers, etc.) that is accessible to all potential residents.

Chapter 15 – Category 11j

- **Comparable Units** (pg.15-1)
  The definition of a comparable unit has now been expanded to “a residential unit with *the same number of bedrooms (or fewer)* and *comparable* amenities...”

- **Out of Compliance** (pg.15-3)
  Under this category, the following two issues are revisited:

  “*Note 1: Vacant units that are not available for rent because the units are not prepared for immediate occupancy are reported as unsuitable for occupancy under Category 11c. See Chapter 6.*”

  “*Note 2: If the owner fails to market vacant low-income units, the owner has violated the General Public Use Rule, which should be reported as noncompliance under Category 11h. See Chapter 12.*”
Chapter 17 – Category 11l

- **Verification and Documenting Student Status** (pg.17-2)
  This section emphasizes that owners/agents must address the issue of student status for each household at move-in and annually, regardless of whether or not a formal certification process is conducted. Student status of each household must be verified within 120 days prior to move-in, and within 120 days prior to each anniversary of the move-in date. OHCS requires owners/agents to verify household student status by using the Certification of Student Status form (OHCS.5).

As previously discussed, LIHTC units that **DO NOT receive Section 8 assistance**, "all forms of student financial assistance, no matter how it is used, are **EXCLUDED** from annual income.”

OHCS will still require owner/agents to use the Verification of Student Status/Financial Assistance form (OHCS.6), but for those households not receiving Section 8 assistance, owners/agents can simply cross out or insert “N/A” for the areas requesting financial assistance information. Should there be future modifications to either of these two forms, the newest revision(s) would be posted on our website, under the “Required Forms” section of our LIHTC Compliance Manual web page.

Additionally, “*A unit is also considered out of compliance if the owner fails to verify the household’s student status at the time of move in, or an annual student status verification was performed late and after notification of a state agency review.*”

Chapter 23 – Category 11lq

- **100% Low-Income Projects: Failure to Complete Annual Recertifications** (pg.23-2)
  As stated within the OHCS LIHTC Compliance Manual, in Chapter 4 (pg. 4-9), although legislation passed in 2008 (HATA, or HERA) waives the requirement for 100% LIHTC properties to complete annual certifications, OHCS continues to exercise their right to mandate the completion of move-in and first-year annual certifications. The 8823 Guide now provides the following language on page 23-2:

  “*Under IRC §142(d)(3)(A) and IRC §42 (per IRC §42(g)(4)), owners of 100 percent low-income projects are no longer required to complete annual income recertifications. State agencies, however, have authority to impose additional requirements upon IRC §42 projects and may required income recertifications after completing the initial income certification at the time the household moves into the low-income unit. For example, a state agency may require a one-time income recertification after the first year of occupancy.”

Chapter 26 – Tenant Good Cause Eviction and Rent Increase Protection

- **Eviction or “Termination of Tenancy”** (pg.26-3)
  “The owner of an IRC §42 property must be able to demonstrate if challenged in state court that **good cause** existed to support the eviction or termination of a tenant from a low-income unit. For purposes of IRC §42(h)(6)(E)(ii)(I), **good cause is determined by the state and local law** applicable to the location in which the IRC §42 property is located.”
Owner Fails to Renew Lease (pg.26-4)
*A lease to rent low-income housing is a contract. A lease contract expires at the end of the time period specified in the lease. At that time, the tenant surrenders the low-income housing unit to the owner and the owner accepts it back. The owner and tenant may renew the contract (or enter into a new contract), thereby allowing the tenant to continue occupying the low-income unit, but the owner is not obligated to renew a lease or enter into a new one, and failure to do so does not, per se, constitute an eviction without good cause. However, the owner must be prepared to demonstrate if challenged in state court that the nonrenewal of a lease is not a “termination of tenancy” for other than good cause under IRC §42.

The owner must provide the tenant with timely notice that the lease will not be renewed as required under state law.*

OHCS strongly urges all owners/agents to consult with their legal counsel to ensure that compliance with state and local laws with respect to tenant-landlord relations is met.

Miscellaneous Issues

Claiming Credits Prior to Issuance of Form 8609
As reported by the IRS, one of the most common noncompliant events discovered from year to year is when an owner tries to claim credits before the Housing Finance Agency (HFA) has issued Form 8609, “Low-Income Housing Credit Allocation Certification”, for the LIHTC building. If you are nearing the point of claiming credits for the first year of the credit period and you have not yet received Form 8609 for you tax credit building, please contact your assigned Compliance Officer (CO).

Social Security - Cost of Living Adjustments
On October 15, 2009, the Social Security Administration issued a news release announcing that for the first time since cost-of-living adjustments went into effect (in 1975) there will be no increase adjustments available for 2010. For more information please visit Social Security Online at http://www.ssa.gov/cola/.

Again, the information contained within this mailing does not include all clarifications, changes and additions that were made to the 8823 Guide. OHCS will be revising the LIHTC Compliance Manual at a later date to reflect the changes detailed above, as well as any others that are considered to be relevant to the compliance manual. Should you have questions or concerns regarding this mailing, or other questions are raised as a result of reviewing the remainder of the 8823 Guide, feel free to contact your assigned Compliance Officer, myself, or Heather Pate, PCS Manager (Heather.Pate@hcs.state.or.us).

Sincerely,

Tonya Evans
LIHTC Lead Compliance Officer
Program Compliance Section (PCS)
Tonya.Evans@hcs.state.or.us