

Low Income Housing Tax Credit Program Compliance Manual



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PREFACE

This manual is a training and reference guide for the administration of the Low Income Housing Tax Credit (Housing Credit) Program. It is intended to answer questions regarding the procedures, rules, and regulations that govern Housing Credit developments. The manual should be used in conjunction with and as a supplement to Section 42 of the Internal Revenue Code. If a determination is made that any provision of this manual is in conflict with Section 42 of the Internal Revenue Code, the Internal Revenue Code will govern. This manual has not been reviewed or approved by the Internal Revenue Service (IRS) and should not be relied upon for interpretation of federal income tax legislation or regulations.

Included in the manual are a number of forms for your use. The use of some of the forms is mandatory while the use of other forms is optional. Please pay particular attention to language within the manual that states which are required forms. **If on-site management uses forms other than those provided, care should be taken to assure that the forms use sufficient information to meet HUD 4350.3 income determination guidelines.**

The Property Management Division will administer compliance monitoring for North Dakota Housing Finance Agency. Questions regarding compliance monitoring should be directed to the Agency's Property Management Division Director Wayne Glaser at wglaser@ndhfa.org or by calling (701) 328-8070. The Agency's toll-free numbers are (800)-292-8621 or (800) 366-6888 (TTY).

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INTRODUCTION

The Tax Reform Act of 1986 established the Low Income Housing Tax Credit Program (Housing Credit) under Section 42 of the Internal Revenue Code (the Code).

The Housing Credit is an incentive for taxpayers to provide housing for lower income tenants in exchange for a credit against federal income taxes. It is a dollar-for-dollar reduction in tax liability to the Owner in exchange for the construction or rehabilitation of rental housing units for lower income households. The amount of credit allocated is directly based on the cost of the development and on the number of qualified Housing Credit units that meet federal rent and income targeting requirements.

The Omnibus Budget Reconciliation Act of 1990 amended the Code to require that state tax credit allocating agencies provide a procedure for monitoring developments for compliance with the occupancy requirements of the tax credit program.

Under Section 42(m)(1)(B)(iii) of the Code, an allocating agency must have a procedure for monitoring compliance with the provisions of the Code and notifying the Internal Revenue Service (IRS) of any noncompliance. The monitoring requirements became effective January 1, 1992, and apply to all buildings that received a tax credit at any time. The North Dakota Housing Finance Agency (the Agency), as the allocating agency, is authorized by the Code to charge a reasonable fee to cover the costs of compliance monitoring.

Staffing

Tania Reiker, tax credit program specialist, is responsible for monitoring compliance for annual desk reviews and on-site reviews, including tenant file reviews and on-site health/safety/building code inspections, sending compliance notifications to owners/managers, monitoring follow up compliance, sending (8823) forms to the IRS and updating the Compliance Manual and compliance forms.

Nicole Faul, administrative assistant, is responsible for sending notification to owners/managers for the annual desk reviews, annual desk review data entry, contacting owners/managers regarding questions referring to the desk review data entry, desk review billings for yearly fees, vacancy reports, compiling and updating spreadsheets, and migrating new projects from development to compliance.

Mike Koshney, housing program administrator, is responsible for on-site building inspection.

Deborah Schaeffer, housing program administrator, is responsible for on-site building inspection.

Wayne Glaser, property management division director.

Compliance Period

Owners of developments that received tax credit allocations during 1987, 1988, and 1989 have a 15-year compliance period. Owners of developments receiving a tax credit allocation after January 1, 1990, must make a commitment to comply with eligibility requirements for a period of at least 15 years beginning with the development's first taxable year and for an additional 15-year extended use period (the compliance period). The Owner and the Agency must enter into an agreement

pursuant to which the development owner and any successors agree to meet the applicable fraction of low-income tenant occupancy for the compliance period. The Code allows for earlier termination of the compliance period under certain circumstances.

RESPONSIBILITIES

The Owner

Each owner has chosen to utilize the Housing Credit Program to take advantage of the tax benefits provided. In exchange for these tax benefits, certain requirements must be met.

Prior to issuance of a final tax credit allocation, the Owner and accountant must certify the total development costs and that all requirements of the Housing Credit Program have been met. Any violation of the requirements of the Housing Credit Program could result in the loss of tax credits to the Owner.

The Owner is responsible for compliance with the Code. The Agency is assigned the responsibility for monitoring compliance. Any and all financial consequences to the Owner as a result of noncompliance, whether identified by the Agency or by the IRS, will be the responsibility of the Owner.

The Owner is responsible for insuring that the development is properly administered. The Owner must make certain that the on-site management team is familiar with and complies with all appropriate rules, regulations, and policies that govern the development. Compliance with the requirements of Section 42 is the responsibility of the owner of the building for which the credit is allowable. The Agency's obligation to monitor for compliance with the requirements of Section 42 does not make the Agency liable for an owner's non-compliance (Reg. 1.42-5(g)).

Prior to issuance of the IRS Form 8609, which certifies an allocation of Credits, the Owner and on-site managers will be required to attend or document that they have recently attended industry recognized training on management and compliance within the last four years. In addition, if significant or repeated noncompliance events are discovered during the on-going compliance monitoring activities, further follow-up training will be required.

The Agency

North Dakota Housing Finance Agency allocates tax credits through the Housing Credit Program within the State of North Dakota. Once a final allocation is awarded to a development, the Code requires the Agency to monitor compliance by reviewing certain records kept by the Owners of Housing Credit housing developments.

The Agency will accomplish this monitoring requirement by conducting an on-site inspection of all buildings in the development by the end of the second calendar year following the year the last building in the development is placed in service and at least once every three years thereafter. The on-site inspection will include a review of the Housing Credit certifications, the documentation supporting the certifications, and the rent records for the tenants in at least 20 percent of the units. It will also include a review of any local health, safety, or building code violation reports or notices and an inspection of the property to determine if the buildings are suitable for occupancy taking into account inspection standards as prescribed by the IRS. The Code requires the Agency to conduct the on-site inspection at least through the end of the 15-year compliance period and the extended

Y-15 compliance period.

The Agency must notify the Owner of a Housing Credit housing development in writing as soon as possible if the Agency discovers on audit, inspection, review, or in some other manner that the development is not in compliance with the Code.

The Owner has an opportunity to correct noncompliance within 90 days from the date of the notice. An extension of up to six months may be granted by the Agency for good cause as determined by the Agency.

The Agency is required to notify the IRS of an owner's noncompliance no later than 45 days after the end of the allowed time for correction whether or not the noncompliance is corrected. The Agency will notify the IRS by filing Form 8823, explaining the nature of the noncompliance, and indicating whether the Owner has corrected the noncompliance.

The Agency will charge an annual fee to all developments during the compliance period. The fee is currently set at \$50 per development plus \$35 per set-aside unit. Scattered site developments will pay \$50 per building plus \$35 per set-aside unit. This fee will be reviewed on an annual basis to reassess its reasonableness and will be adjusted accordingly. The fee is used to cover expenses incurred during normal and routine monitoring activities. The following information indicates additional fees that will be assessed if a development is determined to be in substantial noncompliance or more extensive monitoring is required.

- Late payment or late filing of the required annual reports: The greater of \$100 or 10 percent of the total annual fee.
- Issuance of IRS form #8823 due to substantial non-compliance issues: \$150 plus \$25 for each additional 8823.
- Follow-up inspections subsequent to non-compliance: \$150 plus actual costs for travel and per diem.

COMPLIANCE PROCEDURES

Record Keeping and Record Retention

Owners are required to keep records on a monthly basis, unless otherwise noted, for each qualified Housing Credit building in the development 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 unit.
2. The percentage of residential rental units in the building that are dedicated for low-income usage.
3. The rent charged on each residential rental unit in the building, including any utility allowance.
4. The number of occupants in each Housing Credit unit.
5. The Housing Credit unit vacancies in the building and the rentals of the next available units.

6. The certification of each Housing Credit tenant and documentation to support that certification.
7. The eligible basis and qualified basis of the building at the end of the first year of the credit period.
8. The character and use of any nonresidential portions 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 separate fee is charged for use of the facilities, or facilities reasonably required by the development.)

Owners are required to keep all records for each building for six years beyond the due date (with extensions) for filing the federal income tax for that year. Example: records for the 2006 tax year used to prepare the federal tax return which was due April 15, 2007, must be retained until April 15, 2013. However, the records for the first year of the credit period must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period for the building.

Owner Certifications

The monitoring provisions of the Code require the Owner to certify at least annually that the development meets the following:

1. The requirements of the 20-50 test or the 40-60 test, as applicable. (At least 20 percent or more of the residential units in the development are both rent-restricted and occupied by individuals whose income is 50 percent or less of area median income; or at least 40 percent or more of the residential units in the development are both rent-restricted and occupied by individuals whose income is 60 percent or less of area median income.)
2. There was no change in the applicable fraction of any building in the development, or that there was a change and a description of the change. (Applicable fraction is defined as the percentage of qualified low-income units in a development or the percentage of floor space of qualified low-income units, whichever is less.)
3. The Owner has conducted an initial certification for each Housing Credit household and is retaining documentation to support that certification.
4. That each Housing Credit unit is rent-restricted as defined in the Code.
5. No tenants in low-income units were evicted or had their tenancies terminated other than for good cause and no tenants had an increase in the gross rent with respect to a low-income unit not otherwise permitted under Section 42.
6. All low-income units in the project are and have been for use by the general public and used on a non-transient basis (except for transitional housing for the homeless provided under Section 42 (i)(3)(B)(iii) of the Code).
7. No finding of discrimination under the Fair Housing Act (42 U.S.C. 3601-3619) has occurred for this project. A finding of discrimination includes an adverse final decision by the Secretary of the U.S. Department of Housing and Urban Development (HUD), 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing

agency, 42 U.S.C. 3616a(a)(1), or an adverse judgment from a federal court:

8. Each building in the project is and has been suitable for occupancy taking into account local health, safety and building codes (or other habitability standards), and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or low income unit in the project.
9. There has been no change in the eligible basis (as defined in Section 42 (d) of the Code) of any building in the project since last certification.
10. All tenant facilities included in the eligible basis under Section 41 (d) of the Code of any building in the project such as swimming pools, other recreational facilities, parking areas, washer/dryer hookups, and appliances were provided on a comparable basis without charge to all tenants in the buildings where applicable.
11. If a low-income unit in the project has been vacant during the year, reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units were or will be rented to tenants not having a qualifying income:
12. If the income of tenants of a low-income unit in any building increased above the limit allowed in Section 42 (g)(2)(D)(ii) of the Code, the next available unit of comparable or smaller size in that building was or will be rented to residents having a qualifying income:
13. An extended low-income housing commitment as described in section 42 (h)(6) was in effect, including the requirement under section 42 (h)(6)(B)(iv) that an Owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937 (42 U. S. C. 1437's). Owner has not refused to lease a unit to an applicant based solely on their status as a holder of a Section 8 voucher and the project otherwise meets the provision, including any special provision, as outlined in the extended low-income housing commitment (not applicable to buildings with tax credits from years 1987-1989).
14. The Owner received its credit allocation from the portion of the state ceiling set-aside for a project involving "qualified non-profit organizations" under Section 42 (h)(5) of the Code and its non-profit entity materially participated in the operation of the development within the meaning of Section 469 (h) of the Code.
15. There has been no change in the ownership or management of the project.

The Owner is required to submit a certification to the Agency each year of the compliance period as defined in the Land Use Restrictive Covenant. The Owner must submit to the Agency the **Annual Owner Certification or the Annual Owner Certification of Compliance during the Extended Use Period** and the **Certification of Tax Credit Summary Report**. The Agency may request annual operating statements, documentation that the property taxes and mortgage are current and that the replacement reserve account is being properly funded, a current utility schedule and any other additional information as needed. The annual fees for compliance monitoring are due at this time and must accompany the annual reports.

REGULATIONS

Rent Requirements

For developments that received an allocation of tax credits during the years 1987-1989, the tenant's gross rent may not exceed 30 percent of median income (not 30 percent of the particular family's income, but 30 percent of the applicable median income adjusted for family size for the area in which the development is located.) The gross rent must include an allowance for any tenant-paid utilities.

The amount of rent allowed to be collected by a development that received an allocation after January 1, 1990, is based on the number of bedrooms in the unit as opposed to the actual family size. Example, the maximum rent for an efficiency apartment with no separate bedroom would be based on the income limit for a one-person household regardless of the actual number of persons occupying the unit. Maximum rent is otherwise based on the qualifying income limits for 1.5 persons for each bedroom in the unit.

For one-bedroom units, the maximum rent is determined by using the average of the one- and two-person income limits. The maximum gross rent for a three-bedroom unit is determined by using the average of the four- and five-person income limits.

The cost of any utility paid directly by the tenant to the utility company for a residential rental unit must be calculated as part of the utility allowance. The utility allowance is subtracted from the gross rent of the unit and reduces the amount that the family can be required to pay as rent for such unit. In addition to the already excluded telephone cost, cable television and internet costs are now excluded from the calculation of utility allowances per the IRS.

Summarizing Options for Utility Allowances

The **first** option is the use of a state agency estimate. Under this option, a building owner may obtain a utility estimate for each unit in the building from the state agency that has jurisdiction over the building as long as the state agency is willing to provide it. The data must factor in, at minimum, local utility rates, property type, climate variables by region in the state, mechanical systems, building materials, and taxes and fees on utility charges. The data is limited to no more than the 12-month period ending no earlier than 60 days prior to the 90-day period (defined later in this article). The state agency has options of how to obtain the estimate and the building owner will bear any costs associated in obtaining this estimate if this option is chosen. At this time, the Agency is not providing this option.

The **second** option is the use of the **HUD Utility Schedule Model**. The HUD Utility Schedule Model may be obtained by going to the Low Income Housing Tax Credits page on the HUD User website, www.huduser.org/datasets/lihtc.html. The utility data used in this model may be no older than the utility rates in place for 60 days prior to the beginning of the 90-day period. The building owner will bear any and all costs associated in using this method.

The **third** option is the use of an **energy consumption model**. This model may be used by a building owner to calculate utility allowance estimates based on an analysis of energy, water, and sewage consumption. At minimum, this consumption and analysis model must take into account the unit size, building orientation, design, materials, mechanical systems, building location, and appliances. In order to use this method, the building owner must have the calculations performed by a certified/licensed engineer or other state agency approved qualified

professional. One of the requirements of using such an engineer/licensed professional is that the engineer is unrelated to the building owner. The data in this option is also limited to no more than the 12-month period ending no earlier than 60 days prior to the 90-day period (defined later in this article). The building owner will bear all costs if this option is chosen.

With all the options, other than using the PHA utility allowances, the final rule also has expanded the requirement of the 90-day period. The 90-day period is now also the period of time prior to the implementation of the new utility allowances during which the building owner must submit copies of the utility rate estimates to the state agency that has jurisdiction over the building. The estimates must also be made available to all tenants of the building. During this period, the state agency may also require additional data or information if they deem it to be necessary.

Annual Updates

These utility allowance options must be reviewed at least once each calendar year by the building owner and updated if necessary based on current utility rates. These reviews must also take into consideration any changes to the building that affect energy consumption and utility allowances such as building updates and energy conservation measures. Building owners are required to maintain records of all utility data received, estimates used, and notifications made to tenants and state agencies throughout the extended use period. On another meaningful note, under the Summary of Comments and Explanation of Changes, it appears that the final rule does not prohibit a building owner from choosing a different method for each different utility type. Nor does it appear to prohibit a building owner from changing methods from year to year.

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

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

1. The utility rates charged to tenants in each sub-metered rent-restricted unit must be limited to the utility company rates incurred by the building owners (or their agents).
2. If building owners (or their agents) charge tenants a reasonable fee for the administrative costs of sub-metering, then the fee will not be considered gross rent under IRC §42(g)(2). The fee must not exceed an aggregate amount per unit of 5 dollars per month unless State law provides otherwise.

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

Notice 2009-44 is effective for utility allowances subject to the effective date in Treas. Reg. §1.42(a)(4). Consistent with Treas. Reg. §1.42-12(a)(4), building owners (or their agents) may rely on Notice 2009-44 for any utility allowances effective no earlier than the first day of the building owner's taxable year beginning on or after July 29, 2008.

The Agency publishes income and rent limits, based on area median income for developments receiving a Housing Credit allocation. The Agency will provide updated limits as made available by HUD. Beginning with the release of AMGI tables for 2009, HUD is providing a separate table for IRC §§ 42 and 142(d) projects, which HUD now collectively refers to as "Multifamily Tax Subsidy Projects" (MTSP). The Owner is ultimately responsible for using the correct income and rent limits.

QUALIFICATION OF APPLICANTS

Applicants for Housing Credit units should be advised early in their initial visit to the development that there are maximum income limits that apply to these units. Management should explain to the tenants that the anticipated income of all persons expecting to occupy the unit must be verified and included on an Application and Income Certification form prior to occupancy.

The Application

A fully completed application is critical to an accurate determination of eligibility. The information furnished on the application should be used as a tool to determine all sources of income and assets. The Agency encourages the use of the **Application for Housing and Tenant Income Certification**. If management chooses to use their own application, it must solicit sufficient information to make an accurate determination of the household's total income and assets using HUD 4350.3 standards. It is recommended that roommates complete separate applications.

After the household completes the application, the Owner must verify all income and assets. After all income and assets have been verified, the owner or manager must then complete the **Housing Credit Tenant Income Certification (TIC)**. The TIC must be signed and dated by both the tenant(s) and Owner/manager and a copy retained in the tenant file. The TIC must be used for all move-ins. The TIC, along with the lease, is to be executed prior to move-in. All occupants in a Housing Credit unit must be certified and under lease.

Due to the passing of the Housing and Economic Recovery Act of 2008, HR 3221, there have been several changes made to the tax credit compliance program as far as annual certifications.

100 Percent Housing Tax Credit Properties:

- All initial (move-in) tenant files must contain **third-party documentation**. Annual self-certifications are not required by the IRS for 100 percent tax credit properties. The Agency has taken the position of not requiring the self-certifications effective January 1, 2012. However, the IRS advises that LIHTC property owners should demonstrate due diligence during the initial move-in. It is the Owner's responsibility to select and rent to qualified tenants. The Agency will not qualify or approve eligible tenants. Check with

your investors to see if they still require annual recertifications.

Mixed-Unit Tax Credit Properties (Market-rate and tax credit units in one property):

- All initial (move-in) tenant files must contain third-party documentation.
- Subsequent years will continue to be certified with third-party certifications on the anniversary date of the tenant's move-in. The Tenant Income Certification continues to be required annually.

A unit does not lose its status as Housing Credit unit solely because of an increase in the household's income. Once a unit qualifies as a Housing Credit unit, the unit continues to qualify as such until the tenant's income exceeds 140 percent of the applicable income limit. Once the 140 percent is exceeded, the household is referred to as an "over-income" household. Even then, the unit remains a Housing Credit unit as long as the Owner continues to fill vacancies using comparable or smaller units within the same building with tenants who qualify as Housing Credit tenants and restricts the rent to the allowable tax credit rent. The unit ceases to qualify as a Housing Credit unit if any vacancy in a comparable or smaller unit within the same building is filled with an over income tenant. The Owner is then also subject to recapture of the accelerated portion of the Tax Credits previously taken with respect to these units. If a tenant wishes to move to a different unit within the same building, the units simply change status and a new certification is not required. If the tenant wishes to transfer to a different building within the same development, a new certification is required if the building is not part of a multi-building project stated on the 8609. Remember any tenant household that is over the 140 percent income limit will carry the over income designation to the new unit which could affect the available unit rule. In this case, you may not be able to transfer an over income unit to another building. Check the 8823 guide.

Leasing to Students

If an income eligible household is composed entirely of full-time students, the household will not be treated as a Housing Credit unit unless it falls within certain exceptions. The five exceptions are as follows:

1. At least one member of the household receives assistance under Title IV of the Social Security Act (i.e. TANF).
2. At least one member of the household is currently enrolled in a job training program assisted under the Job Training Partnership Act (JTPA) or a similar federal, state, or local program.
3. The household consists of a single parent(s) with child(ren) and both the parent and child(ren) are not dependents of a third party. Owners or managers should obtain a copy of any divorce decree showing custody and dependent status and a signed copy of the current tax return verifying the dependent status. A child(ren) could be a dependent of either parent, even if they are not living together, and still qualify to occupy a tax credit unit.
4. All members of the household are married and file a joint tax return. (Members of the household do not need to be married to each other.) Owners or managers should obtain copies of the actual marriage certificate or license and a signed copy of the current joint tax return for their files.

5. A unit shall not fail to be treated as a low-income unit merely because it is occupied by an individual who is a student that was previously under the care (Foster Care) and placement responsibility of the State Agency responsible for administering a plan under part B or part E of the Title IV or the Social Security Act. In order for a unit to qualify under this exception, third party documentation must be procured from the Foster Care Agency. The Foster Care Verification Form can be found on the Agency's website.

A full-time student is defined as any individual who has been or will be a full-time student (as determined by the education institution) at an educational institution with regular facilities at least five months of the calendar year. First Grade through twelfth grade students are considered full-time students.

A unit occupied solely by a low-income tenant who becomes a full-time student after move-in would not qualify as a Housing Credit unit. Owners may wish to protect themselves by including language in their tenant leases indicating that full-time student status will be a violation of the lease unless the property is in the extended 15-year compliance period.

If the applicant indicates that he or she is a student, have the applicant sign the **Student Certification Form**. If the applicant is a student and receiving Section 8 Assistance also have the applicant sign the **Student Status and Financial Aid Verification Form** and send it to the educational institution to verify full- or part-time student status and financial aid for income purposes.

The student status of all households must be annually verified as per IRS ruling. The Agency has provided the Student Certification Form on its website.

Change in Household Composition

All household members must be certified and named on the lease. In the event the tenant in a Housing Credit unit wishes to have an additional person move into the unit during the first six months of tenancy, the following steps must be taken:

1. The prospective tenant must complete an Application for Housing and allow for verification of income and assets as required of the initial tenant.
2. For Mixed-Use Projects, the new tenant's income is added to the income disclosed on the existing household's most recent tenant income certification. The household continues to be income-qualified, and the income of the new member is taken into consideration with the income of the existing household for purposes of the Available Unit Rule under IRC § 42(g)(2)(D).
3. If the project is a 100 percent LIHTC Project, then the new tenant's income is added to the income disclosed on the existing household's original income certification. The combined income can be over the 140 percent limit as long as the next available unit is rented to a qualified household. Available Unit Rule under IRC § 42 (g)(2)(D).
4. The lease should include the legal name(s) of the parties to the agreement and all other occupants age 18 and older, a description of the unit to be rented, the term of the lease, the rental amount, the use of the premises, and the rights and obligations of the parties. The lease should refer to the tax credit rules and regulations, or an addendum can be

added to the lease stating the tax credit information. The lease should contain the language that a tenant cannot be evicted except for good cause.

In the event a household member vacates the unit, the unit will remain in the category as originally certified. Any changes in household composition should be documented in the tenant file.

General Income Verification Requirements

All regular income sources, including asset income must be verified. Written verification of income directly from the source (third-party verification) must always be attempted.

- Applicants should be asked to sign two copies of each verification form. The second copy may be used if the first request has not been returned in a timely manner.
- Income verification requests must be sent directly to and from the source, **not** through the tenant. It is suggested that a self-addressed, stamped envelope be included with the request for verification.
- When written verification is not possible prior to move-in, direct contact with the source will be acceptable to the Agency but **must be followed up by written verification**. The conversation should be documented in the applicant's file to include all the information that would be included in a written verification. The name and title of the contact, the name of the management representative accepting the information and the date must be included. **Document Viewed or Telephone Information Received** may be used for documentation of a direct contact. By using this approach, the ultimate risk of admitting an ineligible tenant is borne solely by the Owner and management.
- Management should give the applicant the opportunity to explain any significant differences between the amounts reported on the application and amounts reported on third-party verification in order to determine actual income. The explanation should be documented in the tenant file.

Effective Term of Verification

Written verifications are valid for 120 days. Missing or incomplete information on the verification may be followed up by a phone call. After the 120 day time period, a new written verification must be obtained.

Acceptable Forms of Verification

1. Employment Income

- | | |
|------------|--|
| 1st choice | Employment Verification completed by the employer or statement from employer on company letterhead. |
| 2nd choice | Check stubs or earning statements showing the employee's gross income per pay period and frequency of income. Minimum of four pay stubs. |

2. Self Employment Income

1st choice Complete the **Self Employment Certification** and include the federal tax return (Schedule C or F) or an accountant's statement of net income.

3. Social Security

1st choice **Social Security Verification** completed by the agency providing the benefits.

2nd choice Award or benefit notification letter prepared and signed by the authorizing agency.

3rd choice **Social Security Check Verification** completed by the housing manager and tenant.

4. Railroad Retirement

1st choice **Railroad Retirement Verification** completed by the firm providing the benefits.

2nd choice Award or benefit notification letter prepared and signed by the authorizing firm.

5. Unemployment Compensation

1st choice **Unemployment Benefits Verification** completed by the unemployment compensation agency.

2nd choice Records from the unemployment office stating payment dates and amounts.

6. Workers Compensation or other Pension

1st choice **Pension Verification or Workers Compensation Verification** completed by the agency providing the benefits.

2nd choice Award or benefit notification letter prepared and signed by the authorizing agency.

7. Veterans Benefits

1st choice **Veterans Benefits Verification** completed by the agency providing the benefits.

2nd choice Award or benefit notification letter prepared and signed by the authorizing agency.

8. Military Pay

1st choice **Military Pay Verification** completed by the military branch of service.

9. Child Support and/or Alimony/Spousal Support

1st choice Copy of separation or divorce decree stating the amount and type of support payment schedule and a **State Disbursement Unit Child Support and/or Alimony Verification**.

2nd choice **Former Spouse Child Support and/or Alimony Verification** completed by spouse.

Note: If the applicant is reporting the receipt of less child support and/or alimony/spousal support than is shown in the divorce decree, you must obtain a certification from the applicant stating that the full amount is not being received and that the applicant has made reasonable efforts to enforce payment.

10. Public Assistance (i.e.TANF)

1st choice **Public Assistance Verification** completed by the agency providing the benefits.

2nd choice Copy of TANF or other budget signed and dated by caseworker.

11. Recurring Contributions and Gifts

1st choice **Verification of Regular Contributions** completed and signed by the person providing the assistance stating the purpose, dates and value of the gifts, or a verification letter from the bank, attorney, or a trustee administering the contribution.

2nd choice Certification from the applicant stating the purpose, dates and value of the gifts.

12. Verification of Tribal Trust Land Ownership/Income

1st choice Completed by an official representative of the BIA, Tribal Lands Office, or other Tribal Designated Official.

13. Verification of Tribal Per Capita and/or Gaming Income

1st choice Completed by an official representative of the tribal enrollment office or other tribal designated official.

14. Section 8 Eligibility Verification

1st choice Completed by the PHA staff.

15. Real Estate Verification

- 1st choice Completed by Real Estate, Mortgagee or Closing Company.
- 2nd choice Copies of the Settlement and Closing Statements.

16. Investment, Pension or Annuity Verification

- 1st choice Completed by Insurance Agent/Administrator.

17. Stocks/Bonds Verification

- 1st choice Completed by Broker or Authorized Official.

18. Student Status and Financial Aid Verification

- 1st choice Completed by Financial Aid Provider and/or Educational Institution.

Unemployed Zero Income Applicants

If a household member is currently unemployed and claims no income from such sources as Social Security, pensions, income from assets, etc., the tenant must complete the **Certification of Zero Income and the Non-employed Affidavit**.

The income of unemployed household members, with regular income from any source such as Social Security, pension, recurring gifts, income from assets, etc., must be verified.

Annual Income

Annual income includes all of the types of income listed below in the amount anticipated to be received by the head of household, spouse and co-head (regardless of age) and by all other adult members (18 years of age and older) of the household in the 12 months following certification.

1. The gross amount (before payroll deductions) of wages and salaries, overtime pay, commissions, fees, tips, bonuses, and other compensation for personal services of all members of the household, ages 18 and over.

Note: Only the first \$480 of earnings for full-time students, 18 years of age and older, is counted provided the student is not the head of household, co-head, or spouse. If the student is the head, co-head, or spouse, all income is counted.

2. Net income, salaries, and other amounts distributed from a business.
3. The gross amount (before deductions for Medicare, etc.) of periodic Social Security payments. (Includes payments received by adults on behalf of minors or by minors for their own support.)
4. Annuities, insurance policies, retirement funds, pensions, disability including VA disability or death benefits, and other similar types of periodic receipts. Payments from long-term care insurance (in excess of \$180 a day) are included in income.

5. Lump-sum payments received because of delays in processing unemployment, welfare, or other benefits (not to include Social Security or Supplemental Security Income (SSI) benefits).
6. Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay. Any payments that are anticipated during the next 12 months must be included.
7. Welfare assistance.
8. Alimony/spousal support and child support. Include the amount specified in a divorce settlement or separation agreement unless the applicant:
 - a. Certifies the income is not being provided.
 - b. Has made reasonable effort to collect the amounts due, including filing with courts or agencies responsible for enforcing payments.
9. Interest, dividends, and other income from assets (including income distributed from trust funds). (On deeds of trust or mortgages, only the interest portion of the monthly or annual payments received by the applicant is included.)
10. Recurring monetary contributions or gifts regularly received from persons not living in the unit. (Excludes rent or utility payments regularly paid on behalf of the family by a government agency.)
11. Student Income – Education assistance in excess of tuition is only counted as income for purposes of the tax credit program if the household is receiving Section 8 assistance and does not meet the Section 8 exception applicable to heads of household over age 23 with dependent children. Additionally, the excess assistance is not counted as income if the recipient of the financial aid is living in the unit with his or her parents. Follow recommendation as outlined in the 4350.3.
12. Foster adults and foster children - Earned and unearned income from foster adults and the unearned income of foster children are included in the income calculation, even though foster adults and foster children are not included in the household size for purposes of determining the appropriate income limit.
13. Military Employment may include base and longevity pay, proficiency pay, sea and foreign duty pay, hazardous duty pay, subsistence and clothing allowances. All of these are included in income.

Military basic housing allowances are also included in income unless the base is located in a qualified military installation.

Annual Income Excludes

1. Employment income of children, (including foster children) under the age of 18, unless the minor is the head of household, spouse, or co-head. (All non-employment income of household members under age 18 must be included as income.)
2. Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household, co-head, and spouse).

3. Meals on wheels or other programs that provide food for the needy.
4. Income associated with persons that are living in the unit but are not regular household members, such as payments received for care of foster children or income of live-in attendants.

Note: Do not count income received by or on behalf of foster children except for unearned income and do not count these individuals in determining household size for income or rent restriction purposes. Do not count the income received by or on behalf of a live-in aid or in determining household size for income or rent restriction purposes.

(A live-in attendant is defined as a person who lives with an elderly, disabled, or handicapped individual and is essential to that individual's care and well being, is not obligated for the individual's support and would not be living in the unit except to provide the support services.)

5. The principal portion of payments received on mortgages or deeds of trust.
6. Lump-sum additions to family assets, such as inheritances; capital gains, one-time lottery winnings; insurance settlements under health and accident insurance and worker's compensation; or settlement for personal or property losses.
7. Non-recurring or sporadic gifts.
8. Annual rent credits or rebates paid to senior citizens by government agencies.
9. Hazardous duty pay to a family member in the military. Exclude military employees' basic allowance for housing from the definition of income if they are housed in a building located in a county with a military base that had its population grow by 20 percent or more between December 31, 2005 and June 1, 2008 or any county adjacent to such a county. Minot AFB and Grand Forks AFB do not qualify for this allowance at this time.
10. Amounts paid to a family to offset the costs of services or equipment needed to keep a developmentally disabled family member at home are excluded. By Federal Statute, the value of food stamps is not included in income.
11. Payments received under Domestic Volunteer Service Act of 1973 (employment through VISTA, Retired Senior Volunteer Program, and Foster Grandparents Program).
12. The value of the allotment made under Food Stamp Act of 1977.
13. Payments, rebates or credits received under Federal Low-Income Home Energy Assistance programs. (LIHEAP).
14. Payments received under programs funded in whole or in part under the Job Training Partnership Act (employment and training programs for Native Americans and migrant and seasonal farm workers, Job Corps, veterans employment programs, State job training programs, career intern programs).
15. Financial assistance a student receives while residing with a parent or guardian.

16. Financial assistance for a disabled student (full or part-time) living in an affordable unit prior to November 5, 2005.
17. Payments received under Title V of the Older American Act (Green Thumb, Senior Aides, Older American Community Service Employment Program).
18. Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era are not included in income.
19. Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of crime against the applicant under the Victims of Crime Act (42 U. S. C. 10602) is not included in income.
20. Interests of individual Native Americans in trust or restricted lands, and the first \$2,000 per year of income received by individual Native American that is derived from a trust or restricted lands are not included in income.
21. Payments received after January 1, 1989 from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the Agent Orange product liability litigation are not included in income.
22. Any earned Income Tax Credit to the extent it exceeds the tenant's income tax liability is not included in income.
23. The value of any childcare provided or arranged for under the Child Care and Development Block Grant Act of 1990 (CCDBG) (42 U. S. C. 9858q) is not included in income.
24. Resident Services Stipend received by a resident for performing a service for the Owner, on a part-time basis, that enhances the quality of life in the LIHTC housing. Cannot exceed \$200.00 a month. Month by month decision.
25. Personal loans, since they must be repaid, are not included in income.
26. Amounts received by the household that are specifically for, or in reimbursement of, the cost of medical expenses for any member of the household are not included in income.
27. Adoption assistance payments in excess of \$480 per adopted child are not included in income.
28. Payments received for the care of foster children or foster adults are not included in income.

Calculating Annual Income – Use the Wage Calculation Worksheet

Owners must convert all verified incomes to annual amounts. To annualize full-time employment, multiply:

1. Hourly wages by 2080.
2. Weekly wages by 52.
3. Bi-weekly amounts by 26.
4. Semi-monthly amounts by 24.
5. Monthly amounts by 12.

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

1. Hourly wages by the number of hours the family expects to work annually.
2. Average weekly amounts by the number of weeks the family expects to work.
3. Other periodic amounts (monthly, bi-weekly, etc.) by the number of periods the family expects to work.

Use an annual wage without additional calculations. Example: if a teacher is paid \$24,000 a year, use \$24,000 whether the payment is made in 12 monthly installments, 9 installments or some other payment schedule.

Assets

Assets, other than necessary personal items, are considered along with verified income in determining the eligibility of a household.

Valuing Assets

In computing assets, owners must use the cash value of the asset (the amount the family would receive if the asset was converted to cash). Cash value is the market value of the asset less reasonable costs that were or would be incurred in selling or converting the asset to cash. The Agency considers 10 percent as a reasonable basis for the costs of conversion.

Example: An applicant owns a home with a market value of \$30,000 and a loan against the home of \$18,000. The cash value of the asset would be shown as \$9000 (\$30,000 less 10 percent less \$18,000).

If assets are owned by more than one person, prorate the assets according to their percentage of ownership. If no percentage is specified, prorate the assets evenly among all owners.

Assets - Do Include

1. Cash held in savings and checking accounts, safety deposit boxes, homes, etc.
2. Trusts: include the principal value of any trust available to the household. (Do not include irrevocable trusts, i.e. ones that no household or family member can control.)
3. Equity in rental property or other capital investments. Include the current market value less:
 - a. Any unpaid balance on any loans secured by the property.
 - b. Reasonable costs that would be incurred in selling the asset - penalties, broker fees, etc.
4. Stocks, bonds, treasury bills, certificates of deposits, money market funds, etc.
5. Individual Retirement and Keogh Accounts.
6. Retirement and pension funds.
 - a. While the person is employed, include only amounts the family can withdraw without retiring or terminating employment.
 - b. At retirement or termination of employment, if benefits will be received in a lump sum, include the benefits in Net Family Assets. If benefits will be received through periodic payments, include the benefits in annual income.
7. Lump sum receipts: include inheritances, capital gains, one-time lottery winnings, and settlements on insurance and other claims. (Do not count lump sum receipts that must be counted as income.)
8. Personal property held as an investment. Include gems, jewelry, coin collections, or antique cars held as an investment. (An applicant's wedding ring and other personal jewelry are not counted as an asset.)
9. Cash value of life insurance policies available to the individual before death.
10. Assets disposed of within two years before effective date of certification/recertification.
 - a. If the cash value of the disposed assets exceeds the actual amount the family received by more than \$1000, include the whole difference between the cash value and the amounts received. Do not include if the difference is less than \$1000.

Example: On 6-1-99 a couple gave \$2000 to each of their three grandchildren and deeded a home to their son. The home had a cash value of \$40,000 and the son paid his parents \$12,000 for the home. \$34,000 (\$40,000 less \$12,000 plus \$2000 x 3) is counted as an asset until such time as the household can certify on an Income Certification that they did not dispose of any assets during the two years preceding the certification date. (The \$12,000 paid by the son may also be counted as an asset, depending on what was done with the payment.)

- b. **Do not** consider assets disposed of for less than fair market value as a result of a foreclosure, bankruptcy, or a divorce or separation agreement.

- c. **Do** consider:
 - i. Assets put into trusts.
 - ii. Business assets disposed of for less than fair market value, (Business assets are excluded from net family assets only while they are part of an active business.)

Assets - Do Not Include

1. Necessary personal property (clothing, furniture, cars, etc.).
2. Life insurance policies that do not have any cash value.
3. Assets that are part of an active business. (A business does not include rental of properties that are held as an investment and not a main occupation.)
4. Assets that are not effectively owned by the applicant, i.e., when assets are held in an individual's name but the assets and any income they earn accrue to the benefit of someone else or another person is responsible for income taxes incurred on income generated by the assets.

Example: Assets held pursuant to a power of attorney because one party is not competent to manage the assets or assets held in a joint account solely to facilitate access to assets in the event of an emergency.

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

Example: A battered spouse owns a house jointly but because of the domestic situation receives no income from the asset and cannot convert the asset to cash.

Asset Verification Guidelines

Checking accounts, savings accounts, certificates of deposit and money market accounts must be verified by a third party using the **Asset Verification Form**. Other assets such as bonds, stocks, IRA's and retirement funds may be verified by documentation provided by the tenant, such as copies of statements.

After arriving at a total value of the assets, if the asset value is \$5000 or less, add the actual amount of income to be derived from the assets to the other verified household income. When assets exceed \$5000, add the greater of 1) the actual annual income to be derived from these assets, or 2) the imputed income using the passbook interest rate (currently set at 2 percent) to the total verified household income. The household's combined total income cannot exceed the applicable low-income limits at move-in.

THE ANNUAL OWNER CERTIFICATION REPORT

The **Annual Owner Certification** or the **Annual Owner Certification of Compliance during the Extended Use Period** must be completed and submitted to the Agency on an annual basis based on the anniversary date of when the development was placed in service. The report must be received by the Agency within 15 days of the due date. Non-receipt of the report within the 15-day grace period will automatically trigger the filing of a notice of noncompliance to the IRS, as required

by the Code. All owners, including owners of developments financed under the RHS 515 program and developments where 50 percent or more of the aggregate basis is financed with proceeds of tax-exempt bonds are required to submit the Annual Owner Certification and the Tax Credit Summary Reports.

THE ANNUAL OWNER COMPLIANCE REPORTING PROCEDURE

Each project is assigned a compliance reporting period when the project is placed in service. All reports must be sent in by the pre-determined date. This annual date remains the same throughout the time the project is participating in the Housing Tax Credit Program.

The Agency requires the following documentation be sent to our office at the end of your compliance reporting period. **The Agency will send out reminder notices.**

- Annual Owner Certification
- Certification of Tax Credit Summary Report for each building.
- Annual Operating Statements showing Project Income & Expenses for the year reported.
- Third party verification of Mortgage Balances, showing that payments are current.
- Third party verification showing the Property Taxes are Current.
- Third party verification showing the Replacement Reserve Account is being funded in accordance with the Allocation Plan
- Compliance Monitoring Fees
- Documentation to show the correct utility allowance is being used.
- Desk Review Questionnaire.

NOTE: You will no longer be required to email **data summaries** to the Agency unless you or your management company is not on the Agency's compliance system. The files on our system are downloaded by the Agency on the date of the required submittal deadline. Compliance with this date is critical.

If you need assistance, please call (701) 328-8080 and ask for anyone in the Tax Credit Compliance Division.

NONCOMPLIANCE

If the Agency does not receive the required certifications within 15 days of the due date or if the Agency discovers on inspection, review, or in some other manner that the development is not in compliance with the Code, the Agency will notify the Owner as soon as possible.

The Owner will have an opportunity to supply missing certifications or to correct noncompliance within a specified correction period, not to exceed 90 days from the date of the notice to the Owner. At the sole discretion of the Agency, the correction period may be extended for a period of up to six months if there is good cause for granting an extension.

Note: The Agency is required to notify the IRS of an Owner's failure to file the Annual Owner Certification on a timely basis, or any noncompliance, no later than 45 days after the end of the allowed time for correction, whether or not the noncompliance or failure to certify has been corrected.

TAX CREDIT ASSISTANCE PROGRAM (TCAP) AND SECTION 1602 (TAX CREDIT EXCHANGE) PROGRAM.

A. Compliance and Asset Management

Properties funded with TCAP and/or Section 1602 Program funds must comply with NDHFA's Housing Loan documents and with IRC Section 42 for the full term of the compliance and extended use periods, as evidenced by a Declaration of Land Use Restrictive Covenants.

B. Monitoring and Reporting

NDHFA will monitor compliance with TCAP and Section 1602 Programs in the same manner as the Housing Tax Credit Program as described in this manual.

LIABILITY

Compliance with Section 42 of the Code is the sole responsibility of the Owner of the development for which the Housing Credit is allowed. The Agency's obligation to monitor for compliance with the requirements of the Code does not make the Agency liable for an owner's noncompliance.

SAMPLE AND MANDATORY FORMS

Mandatory Forms:

Annual Owner Certification

Annual Owner Certification of Compliance during the Extended Use Period

Annual Household Tenant Certification Update

Certification of Tax Credit Summary Report

Designation of Authorized Representative

Desk Review Questionnaire

Housing Credit Tenant Income Certification

Notice to Transfer Ownership

Treatment of a Common Space Unit

Non-Mandatory (Sample) Forms:

Application for Housing and Tenant Income Certification

Asset Verification

Certification of Zero Income

Document Viewed or Telephone Information Received

Employment Verification

Former Spouse Child Support and/or Alimony Verification

Foster Care Verification
Household Demographics Form
Investment Annuity or Pension Verification
Live-In Aide Attendant Verification
Live-In Aide Housing Agreement
Marital Separation Agreement
Military Pay Verification
Non-Employment Affidavit
Public Assistance Verification
Railroad Retirement Verification
Real Estate Verification
Section 8 Eligibility Verification
Self Certification of Unborn Child
Self Employment Certification
Social Security Check Verification
Social Security Verification
State Disbursement Unit Child Support and/or Alimony Verification
Stocks/Bonds Verification
Student Certification
Student Status and Financial Aid Verification
Under \$5,000 in Assets Certification
Unemployment Benefits Verification
Verification of Regular Contributions
Verification of Tribal Per Capita and/or Gaming Income
Verification of Tribal Trust Land Ownership
Veterans Benefits Verification
Wage Calculation Worksheet
Workers Compensation Verification