WHEDA

WISCONSIN HOUSING AND ECONOMIC DEVELOPMENT AUTHORITY

Affordable Housing Tax Credit Program Compliance Manual

PREFACE

This manual is a training and reference guide for the compliance monitoring of the Low-Income Housing Tax Credit program (LIHTC). In Wisconsin, the program is known as the Affordable Housing Tax Credit Program (AHTC). This manual is designed to answer many questions regarding procedures, rules, and regulations that govern tax credit developments and is a useful resource for owners, developers, management companies, and on-site management personnel. It provides guidance with respect to WHEDA's administration of monitoring for compliance under section 42 of the Internal Revenue Code of 1986 (the Code) and the Treasury regulations.

It is important to note that this manual is to be used only as a supplement to compliance with the Code and all other applicable laws, rules and regulations. **This manual is not considered a complete guide on compliance. The responsibility for compliance with the Code lies with the owner of the building(s) for which the credit is allowable.** Because of the complexity of the Code and the necessity to consider its applicability to specific circumstances, owners are urged to seek competent professional legal and accounting advice regarding compliance issues. WHEDA's obligation to monitor for compliance with the requirements of the Code does not make WHEDA liable for an owner's noncompliance (Treas. Reg. §1.42-5(g)(1994)).

A note for Exchange Credit and TCAP developments:

Exchange and TCAP projects will follow many of the same rules as Section 42 and be monitored accordingly. More detailed information concerning these programs can be found on our website at www.wheda.com.

REVISIONS

MARCH 2013

WHEDA has updated the AHTC Compliance Manual to provide further clarification and examples pertaining to utility allowances. In addition we have updated the annual compliance fees and made two additional minor changes to the manual. To assist you in identifying the changes we have listed section numbers where the changes can be found.

1. 4.4 D: Provided additional utility allowance documentation guidance and examples for new properties.
2. 4.5 D: Provided additional clarification on when an owner can change the method for calculating a utility allowance.
3. 4.5 D: Expanded the list of when a unit is considered out of compliance when gross rent exceeds the maximum gross rent limit by providing additional/expanded examples.
4. 4.10 C : Updated the fees based on the 2013 Qualified Allocation Plan.
5. 5.2 G: Changed two to four pay check stubs to four to six consecutive paystubs to be consistent with the HUD handbook 4350.3 REV-1.
6. 5.2 G vii: Updated the name of AHTC Form 905.

As a reminder according to the 8823 Guide, under no circumstances should the contents of the Guide for Completing Form 8823 Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition be used or cited as authority for setting or sustaining a technical position.

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1. Introduction

1.1 Background

In 1986, Congress enacted the Low-Income Housing Tax Credit, authorized and governed by section 252 of the Tax Reform Act of 1986 and section 42 of the Internal Revenue Code. The credit is a dollar-for-dollar reduction in tax liability to investors in exchange for equity participation in the construction, acquisition, and/or rehabilitation of low-income rental housing. The amount of credit allocated is directly based on the number of qualified low-income units that meet federal rent and income targeting requirements.

Under the provisions of the Code, the Wisconsin Housing and Economic Development Authority (WHEDA) was appointed by the Governor as the housing credit agency for the State of Wisconsin to allocate the tax credit (the "credit") within the State.

In accordance with the Revenue Reconciliation Act of 1990, WHEDA may only allocate the amount of credit necessary to produce an economically feasible project and to assure its viability throughout the compliance period. The 1990 Act also gave housing credit agencies the additional responsibility of monitoring for compliance all projects 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. The compliance-monitoring mandate became effective January 1, 1992 (26 CFR, §1.42-5).

Since January 1, 1995, the Program in Wisconsin has been called the Affordable Housing Tax Credit Program. However, at the federal level the Program is still referred to as the Low-Income Housing Tax Credit Program, and any contractual and/or legal documents will continue to reference the legal program name.

1.2 Compliance Period

A. All Credit Developments

In order to claim the credit, all developments receiving a credit allocation since 1987 must comply with eligibility requirements for a period of 15 taxable years beginning with the first taxable year of a building's credit period (the "compliance period").

B. Credit Allocations after December 31, 1989

Developments receiving a credit allocation after December 31, 1989 will have entered into a Land Use Restriction Agreement (LURA) with WHEDA at the time that a final allocation of credit was issued. These developments must comply with eligibility requirements for an additional 15 years beyond the 15-year compliance period, defined as the extended use period, for a total of 30 years. The LURA is a recorded restrictive covenant.

Earlier termination of the extended use period is provided for under certain circumstances in the Code. However, if a development received ranking points for delaying enactment of such earlier termination, the owner will be bound by this election in the LURA.

C. Credit Allocations for 1987, 1988, and 1989 Only

As stated above, developments receiving a credit allocation prior to January 1, 1990 have only a 15-year compliance period. However, any building in such a development that received an additional allocation of credit after December 31, 1989 must comply with eligibility requirements in effect beginning January 1, 1990 and will also be bound by a LURA.

2. Owner and Agent Responsibilities

2.1 Owner

Each owner has chosen to utilize the Tax Credit Program to take advantage of the available tax benefits. The owner is responsible for ensuring that the property is managed in accordance with all applicable laws, rules, regulations and policies that govern a tax credit property.

A. Allocation Requirements

The owner must provide comprehensive project information with evidence of overall economic feasibility. Prior to issuance of a final credit allocation, the owner must certify to the total project costs. The owner must also certify that all Program requirements have been met. Any violation of the program requirements could result in the loss of credit allocated.

B. Proper Administration and Record Keeping

The owner is responsible for proper administration of the project, including the Code requirement that tenant income and rent records be kept and retained for each building in the project for the appropriate time period. The owner must make certain that the on-site management team knows, understands, and complies with all rules, regulations, and policies governing the project.

C. Ongoing Administration and Notification

The Owner is responsible to keep WHEDA informed of any event that might affect the project's credit throughout all phases of development, rent-up, and operation. This includes the initial phases of construction, the scheduled placed-in-service date and the completion of the project as outlined in the Code.

D. Reporting and Certification

The owner is responsible for submitting required documentation and reports to WHEDA on a timely basis. See AHTC Form 001, "Report Submission Instructions" for information on the required documentation and due dates.

E. Ownership and Management Changes

The owner and agent are concurrently responsible for notifying WHEDA of any changes in the ownership or management of the project. For ownership changes, AHTC Form 990 A & B- Notice of Change in Ownership is required. In the event of an ownership change in which there is a change in General Partnership, AHTC Form 100 – Owner’s Certificate of Continuing Program Compliance from the beginning of the calendar year to the date of sale will be required.

For management changes, a new ACH agreement, Delegated Administrator Agreement and AHTC Form 105 – Tax Credit Contact Information is required.

2.2 Management Agent and On-Site Personnel

A. General

Management agents and on-site personnel are responsible to the owner for implementing program requirements. Anyone authorized to lease apartment units to tenants must be thoroughly familiar with all federal and state laws, rules, and regulations governing certification, fair housing, and leasing procedures. Management agents must provide information requested by WHEDA and submit all required reports and documentation in a timely manner.

B. Noncompliance

If the management agent and/or the owner determines that a building or entire project is not in compliance with program requirements, WHEDA must be notified immediately. The management agent and/or the owner must formulate a plan to bring the project back into compliance, and advise WHEDA in writing of such plan. (See Section 4.9 Noncompliance, for additional information.)

C. Ownership and Management Changes

The owner and agent are concurrently responsible for notifying WHEDA of any changes in the ownership or management of the project. For ownership changes, AHTC Form 990 A& B- Notice of Change in Ownership is required. In the event of an ownership change in which there is a change in General Partnership, AHTC Form 100 – Owner's Certificate of Continuing Program Compliance from the beginning of the calendar year to the date of sale will be required.

For management changes, a new ACH agreement, Delegated Administrator Agreement and AHTC Form 105 – Tax Credit Contact Information is required.

3. Regulations

Program requirements are contained in section 42 of the Code. Program changes and revisions made by the Budget Reconciliation Acts of 1989, 1990 and 1993 are incorporated within the Code. Congress passed additional legislation, including the Housing & Economic Recovery Act (H.R. 3221 aka HERA) published July 30, 2008. Additionally, the IRS publishes periodic revenue notices, rulings, regulations, and procedures that clarify and/or expand on the law.

The following items highlight some of the Code provisions directly affecting project compliance. **The following is not a complete listing of compliance regulations**.

3.1 Project Regulations

A. Minimum Set-Aside Election

The minimum set-aside establishes the income limit and rent limit applicable to low-income units in the project. The owner must make one of the following two minimum set-aside elections on a project basis during the application process for housing tax credits:

i. At least 20% of available rental units must be rented to households with incomes not exceeding 50% of county median income (CMI) adjusted for household size.

ii. At least 40% of available rental units must be rented to households with incomes not exceeding 60% of CMI adjusted for household size.

If the project does not meet the minimum set-aside by the end of the first year of the credit period, the property does not qualify as a low-income housing project and the credit cannot be claimed in any year. Noncompliance also occurs if the project drops below its minimum set-aside anytime during the subsequent compliance period; in which case, the entire credit is lost for that year.

Each building is considered a separate project under IRS 42(g)(3)(D) unless, before the close of the first calendar year in the project period, each building that is, or will be, part of a multiple-building project is identified as such by checking the “yes” box on line 8b of Form 8609 and attaching the statement described in the instructions for line 8b. The minimum set-aside documented on Form 8609 line 10c and the First Year Credit must be the same for all buildings in a multiple-building project.

B. Special Set-Asides

An owner or developer may receive extra points in scoring on WHEDA's tax credit application for setting aside units for lower-income (less than 50% or 60% of CMI) households and restricting rents accordingly. The requirements necessary to obtain the extra points are in addition to the federal regulations.

WHEDA may enforce compliance with these requirements through all or any of the following:

- Cancellation of tax credits if IRS Form 8609 has not yet been issued;
- Notification to the IRS of noncompliance with agency requirements;
- Legal enforcement of the owner's obligations under contract documents and Land Use Restriction Agreement(s) (LURA);
- Consideration of noncompliance in future applications for tax credits by the owner, developer, or related party.

3.2 Building Regulations

The credit amount allocated to each building in a project is partially calculated on the following factors:

A. Eligible Basis

The eligible basis is assigned to a building at the time of final credit allocation (issuance of IRS Form 8609, "Low-Income Housing Credit Allocation Certification"). The eligible basis is composed of allowable cost elements subject to depreciation. (Many special rules apply in determining the eligible basis that are not detailed herein.) Although the owner apportions the amount of eligible basis for each building on Allocation Certification Requests to WHEDA, the total project eligible basis will be limited by the total amount of credit that WHEDA actually allocated to the project. In calculating the credit amount for each building, WHEDA may adjust the owner's eligible basis apportionment per building to not exceed the maximum credit amount allocated to the project.

Note: Manipulation of the maximum qualified basis by artificially raising the eligible basis and lowering the applicable fraction violates section 42 and the contracts between WHEDA and the owner. If WHEDA determines that such manipulation has occurred, it may cancel credits if IRS Form 8609 has not yet been issued. Additionally, WHEDA will report the action to the IRS as noncompliance.

B. Fees

Full Inclusion in Eligible Basis: If the cost of facilities and/or amenities (i.e., pools, parking, and recreational facilities) for use by tenants has not been fully excluded from Eligible Basis there cannot be a separate fee and/or charge. Facilities and/or amenities that cannot be determined to have been excluded from Eligible Basis are considered to have been included in Eligible Basis.

Partial inclusion in Eligible Basis: An owner included the cost of a laundry facility in the eligible basis. The owner installed coin operated washers and dryers that are available to everyone in the building. The owner can include the cost of the laundry facility in eligible basis because all tenants have access to the facility. However, because the tenants must pay an additional fee to use the washers and dryers, the appliances must not be included in eligible basis.

Optional Services: A service is optional when the service is not a condition of occupancy and there is a reasonable alternative. Charges for non-optional services such as a washer and/or dryer hookup fee and built-in/on storage sheds (paid month-to-month or a single payment) would always be included within gross rent.

Assuming they are optional, charges such as pet fees, laundry room fees, garage, and storage fees may be charged in addition to the rent; i.e., they are not included in the rent computation. (See also discussion concerning Costs not excluded from Eligible Basis.)

Fees – Condition of Occupancy: Under Treas. Reg. §1.42-11(a)(3), the cost of services that are required as a condition of occupancy must be included in gross rent even if federal or state law required that the services be offered to tenants by building owners.

1. Refundable fees associated with renting an LIHTC unit are not included in the rent computation. For example, security deposits and fees paid if a lease is prematurely terminated are one-time payments that are not considered in the rent calculation.

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

Fees for preparing a unit for occupancy must not be charged; owners are responsible for physically maintaining LIHTC units in a manner suitable for occupancy. 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. No amount may be charged in excess of the average expected out-of-pocket costs of checking tenant qualifications at the project. It is also acceptable for the applicant to pay the fee directly to the third party actually providing the applicant's rental history.

C. Resident Manager Units

An owner may designate a full-time resident manager unit to be included in the building's eligible basis but excluded from the building's applicable fraction. The unit must be reasonably required by the project and only those employees (positions) that work full-time exclusively for the project are eligible. Examples are units that are designated for resident managers, maintenance personnel, and security officers. (See §1.103-8(b)(4)(iii).) If the owner is charging rent for the unit, the Service may determine that the unit is not reasonably required by the project because the owner is not requiring the manager to occupy the unit as a condition of employment.

A unit for a full-time security officer may occupy a designated manager's unit when reasonably required by the project because of the level of crime in the area. (See Revenue Ruling 2004-82, A-1.)

When designating a full-time resident manager's unit, submit AHTC Form 120, Full-time Resident Manger Unit Designation Certification, to WHEDA.

D. Police Substation (Facility)

A local police department may lease a unit in a building located in a Qualified Census Tract to be used as a police substation or facility. The adjusted basis of the property constituting the facility cannot exceed 10 percent of the eligible basis of the building and a need for the facility must be demonstrated through a comprehensive market study or other method. For example, a study could demonstrate that due to the high rate of crime in the community, a police substation located in the building would be appropriate and helpful to individuals in the area whose income is 60 percent or less of AMGI. If the requirements are met, the substation is includable in the Eligible Basis and is not included in the applicable fraction calculation. (See §42(m)(1)(A)(iii) for more information.)

E. Model Unit

If a unit is never rented or available to a qualified household, it is considered a market-rate unit and not part of the numerator of the Applicable Fraction.

F. Calculating the Applicable Fraction

The applicable fraction represents the percentage of a building intended for qualified low-income units.

The **targeted** applicable fraction is assigned to a building at the time of final credit allocation (issuance of IRS Form 8609) by the owner. However, a final determination of the maximum applicable fraction is made on the last day of a building's initial tax credit year. The maximum credit an owner can claim on a building is based on the lesser of the targeted applicable fraction or the actual applicable fraction on the last day of the initial tax credit year. (See IRS Form 8609 - Schedule A, "Annual Statement" for complete instructions on calculating the building's first year applicable fraction.)

The applicable fraction is calculated (IRC §42(c)(1)(B)(1994)) as the lesser of:

i. Low-income units divided by total units (whether or not occupied) in a building; or

ii. Total square footage of low-income units divided by total square footage of all units (whether or not occupied) in a building, with the exception of the **manager's unit**. The manager's unit may or may not be included, depending on the following circumstances.

a. **Buildings Placed-In-Service Prior to September 9, 1992**

The full-time resident manager's unit may be treated as follows:

1) The manager's unit is considered a qualified low-income unit. The rent is restricted and the resident manager's household income does not exceed the applicable income limit.

   Example: A tax credit building with 25 units (of the same size) is placed-in-service on January 1, 1990. One unit is set aside for a full-time resident manager. The resident manager is income qualified and the rent is restricted. If 21 of the units are qualified low-income units (including the manager's unit) and 4 of the units are market-rate, the applicable fraction for this building is 84.00% (21/25).

2) The manager's unit is considered common space. The unit is excluded from both the numerator and the denominator of the applicable fraction in determining the building's qualified basis.

   Example: A tax credit building with 25 units (of the same size) is placed-in-service on January 1, 2000. One unit is set aside for a full-time resident manager. If 20 of the units are qualified low-income units and 4 of the units are market-rate, the applicable fraction for this building is 83.33% (20/24).

b. **Buildings Placed-In-Service after September 9, 1992**

The full-time resident manager's unit is treated as common space. The unit is excluded from both the numerator and the denominator of the applicable fraction in determining the building's qualified basis.

iii. When determining which units to include as low-income units in the numerator of the fraction and total units in the denominator of the fraction, please note:

a. **Units Never Occupied**

Units that have never been occupied cannot be included in the numerator (low-income units), but must be included in the denominator (total units).

b. **Vacant Units**

Units that are vacant at the end of the initial tax year which previously were qualified as low-income units can be considered to be low-income for determining the amount of credits claimed, only if the units were occupied for a minimum of one month (IRC §42(f)(2)(A)(i)(1994)).

c. Transferring Low-Income Households to Never Occupied Units

Transferring low-income households to never occupied units in order to establish a higher first year's applicable fraction is not allowed. Any household that transfers to a different unit during the initial year of the compliance period will only be counted as qualifying one unit. (IRS Revenue Ruling 2004-82, A-8).

Example: A building with 10 units (of the same size) is placed-in-service on March 1, 2000. The owner has a targeted applicable fraction of 100% and plans to take credit for the first time for 2000. On November 30, 2000, nine of the units were rented to qualified low-income households. Unit #108 has never been occupied. The applicable fraction is 90% for the month.

On December 1, 2000, Unit #101 transferred to Unit #108. The applicable fraction remains at 90% for December.

G. Calculating the First Year Credit Percentage:

To determine the credit percentage for the first year, an average of all monthly applicable fractions must be used. This is done by dividing the sum of each monthly applicable fraction by twelve (per IRS Form 8609, Schedule A).

A unit is treated as a low-income unit eligible for inclusion in the numerator of the monthly applicable fraction if a qualified tenant resides in the rent-restricted unit on the last day of the month. However, the building must have been placed-in-service for a full month. (See IRS Revenue Ruling 2004-82, A-4, §42(f)(2)(A)(i), §42(g)(1) for further information.)

Example: A ten-unit building places in service on January 15. A qualified household moves into a unit on January 20. Since the building was not placed-in-service for the full month of January, the unit is not included in the numerator of the monthly applicable fraction. Another qualified household moves into a unit on February 10. Since the building was in-service for the entire month of February and two units were occupied on the last day of the month, two units are included in the numerator of the monthly applicable fraction for February.

Refer to the chart below to see how the example plays out in calculating the First Year Credit Percentage.

Month	Move-in Date	Low-Income Units	Total Units	Percent Divided by 12	Monthly Percentage
January	January 20	0	10	0% ÷ 12	0.00%
February	February 10	2	10	20% ÷ 12	1.67%
March	March 1 March 10	4	10	40% ÷ 12	3.33%
April	April 1	6	10	60% ÷ 12	5.00%
May	May 1	7	10	70% ÷ 12	5.83%

June		7	10	70% ÷ 12	5.83%
July		7	10	70% ÷ 12	5.83%
August	August 15	8	10	80% ÷ 12	6.67%
September	September 1	9	10	90% ÷ 12	7.50%
October	October 15	10	10	100% ÷ 12	8.33%
November		10	10	100% ÷ 12	8.33%
December		10	10	100% ÷ 12	8.33%
				Total First Year Credit Percentage	**66.65%**

The amount of credit allowed on this building for the first year would be 66.65% based on the lease-up schedule. The applicable fraction at the end of the first year of the credit period is 100%.

H. Qualified Basis

The qualified basis is used to determine the amount of tax credit allowed per building in the project. The qualified basis of a building is determined by multiplying its eligible basis by its applicable fraction. The annual tax credit amount is computed by multiplying a building's qualified basis by the applicable tax credit percentage (approximately 4% or 9%) for that building.

Both the eligible basis and the applicable fraction are determined as of the last day of the initial tax year in which the tax credit is claimed.

Tax credits can be claimed annually by the owner of the project for a period of 10 years. At the option of the owner, the initial year in which the tax credits are claimed is either the year in which the building is placed-in-service or the year following the placed-in-service year.

i. **Increasing the Qualified Basis in Subsequent Years**: If an owner is unable to obtain the desired applicable fraction and qualified basis in the first year of the credit period, the qualified basis of a building may be increased in subsequent years. Two-thirds of the additional credit can be claimed during the remainder of the compliance period, as long as the amount of credit taken does not exceed the amount allocated by the allocating agency.

   WHEDA requires notification from the owner when a building has increased its qualified basis and the owner is claiming the additional credit.

ii. **Decreasing the Qualified Basis in Subsequent Years**: If at the close of a year, the qualified basis of a building has decreased (due to a decreased applicable fraction) from the close of the previous year, the credit for the building may be subject to recapture. (For complete instructions, see IRS Form 8611, "Recapture of Low-Income Housing Credit".)

I. Rehabilitation Projects

For projects that receive only rehabilitation credit, the Placed-In-Service date for a rehabilitation building is artificial. The date is established by the owner at the end of any 24-month period within which the Housing Credit rehabilitation expenditure threshold has been met. Tenants must be certified low-income tenants upon rehabilitation placed-in-service date.

For all rehabilitation projects, the rehabilitation expenditures must exceed the greater of:

1. $6,000 per low-income unit ($3,000 for projects allocated on or prior to July 30, 2008), or

2. 20 percent of the adjusted basis of the building (10 percent for projects allocated on or prior to July 30, 2008).

In addition, properties that received an allocation from the preservation set-aside must meet a rehabilitation expenditure threshold as defined in the Qualified Allocation Plan (QAP).

J. Acquisition Projects

An existing building is normally in service upon its acquisition. However, if the building is not in habitable condition, it will not be in service until restored. **Note:** Even though an occupied building is in service when it is acquired, its **Credit Period** cannot begin until the year in which the building has met the rehabilitation requirement.

Under Rev. Proc. 2003-82, a unit occupied before the beginning of the credit period will be considered a low-income unit at the beginning of the credit period, even if the household's income exceeds the income limit at the beginning of the first year of the credit period, if two conditions related to income qualifications are met, and the unit is rent restricted.

a. The household must be initially certified within 120 days of acquisition using LIHTC income limits and guidelines in effect on the day of acquisition. These households will be considered qualified as of the date of acquisition.

b. Existing households certified more than 120 days following the date of acquisition will be treated as a new move-in. The certification effective date is the date executed by the last adult household member who signed the certification.

Example: The building was acquired on April 1. The rehabilitation was complete and placed-in-service on December 1. The Credit Period can begin with the date of acquisition on April 1. Households that are certified between April 1 and July 30 are quailed as of April 1. Households certified following this date are qualified as of the date the last adult household member signed the certification.

K. Safe Harbor test under the Available Unit Rule

Tenants in place prior to commencement of the First Credit Year are tested for purposes of the Next Available Unit Rule.

1. The test must be completed within 120 days before the beginning of the first year of the credit period.
2. The "test" consists of confirming with the household amount of anticipated income included on the tenant income certification are still current. If additional sources or amounts of income are identified, the tenant income certification will be updated based on the household's documentation. It is not necessary to complete third party verifications.
3. If the household is over-income based on current income limits, the Next Available Unit Rule is applied.

If the effective date of the initial tenant income certification is 120 days or less before the required "test", it is not necessary to "test" for purposes of the Next Available Unit Rule because of the time period for completing the initial tenant income certification and the time period for the "test" is the same.

L. Household status in Extended Use Period with additional acquisition and/or rehabilitation credit.

Households determined to be income-qualified for purposes of the IRC 42 credit during the 15-year compliance period are concurrently income-qualified households for purposes of the +30-year extended use agreement. As a result, any household determined to be income qualified at the time of move-in for the purpose of the extended use agreement is a qualified low-income household for any subsequent allocation of IRC §42 credit.

M. Vacant unit status in Extended Use Period with additional acquisition and/or rehabilitation credit.

i. **Existing owner receives additional credit for rehabilitation.** Vacant units previously occupied by income-qualified households continue to qualify as low-income units if the units are suitable for occupancy. However, the owner is subject to the Vacant Unit Rule.

ii. **New owner receives credit for acquisition and rehabilitation.** Vacant units previously occupied by income-qualified households are not low-income units on the start of the credit period for the new credits.

3.3 Unit Regulations for Determining Eligibility

A. Maximum Income Limits

In order for a household to qualify for a low-income unit in a section 42 project, their income must first be certified so as not to exceed the county income limit for that project, according to the minimum set-aside the owner elected.

Qualifying tenants in projects operating under the "20/50" election may not have total household incomes that exceed 50% of the appropriate county

median income (CMI) adjusted for household size. Qualifying tenants in projects operating under the "40/60" election may not have total household incomes that exceed 60% of the appropriate CMI adjusted for household size.

The United States Department of Housing and Urban Development (HUD) publishes median income information for each Wisconsin County on a periodic basis. Limits remain in effect until HUD officially publishes new limits. Owners can not anticipate increases in income limits and corresponding rents.

Upon receipt of the updated HUD median income information, WHEDA makes available new annual income limits and corresponding rent limits for projects in Wisconsin counties by publishing the information on WHEDA's Internet site (www.wheda.com). However, it is the owner's responsibility to obtain the limits when they are updated by HUD.

A 1987 Housing and Community Development Act amendment to the U.S. Housing Act of 1937 established a minimum income limit based on the state non-metropolitan median family income level. This provision increases income limits in a number of counties that had lower income limits than the state non-metropolitan median family income level.

When determining if a household's income is at or below the maximum qualifying limit, the income from each household member who will be living in the unit must be included. Imputed income from certain assets must also be included. (See Section 5 of this manual for a more detailed explanation.)

The Housing and Economic Recovery Act of 2008 (H.R. 3221 aka HERA) signed July 30, 2008 created multiple sets of income limits for projects funded with tax credits and/or financed with tax exempt housing bonds (TE Bonds). These limits are now calculated and presented separately from the Section 8 income limits. Beginning with the publication of FY2009 Median Family Income estimates and Income Limits, the Section 8 income limits CAN NO LONGER be used for tax credit or TE Bond projects. Projects may be subject to 3 different income limits.

1. Project is defined on IRS Form 8609, Line 8b and attachment. (See Section 3.1 A) If the project consists of multiple buildings, the placed in service date for purposes of using the correct income limit is the earliest placed in service date for all of the buildings in the defined project. If each building is defined as a separate project, use the placed-in service date for each building separately for determining the correct income limit.

2. Projects that were placed-in-service 1/01/2009 or later are subject to the published Multifamily Tax Subsidy Project (MTSP) income limits.

3. HERA established a second set of income and rent limits due to the hold harmless provision that was determined in 2007 or 2008. If the project was in service as of 12/31/2008 and is in one of the affected counties, the project is subject to the HERA Special income limits. These limits do not apply to HUD, RD or HOME.

4. In the event published income limits decrease in any year, projects are held harmless and may continue to use the highest income limit the property has achieved since it was placed in service.

To avoid noncompliance, be sure you are using the correct limits for projects in these counties.

B. Maximum Rent Limits

Similar to restrictions on tenant income, restrictions also exist on the amount of rent that can be charged for a low-income unit.

i. **Projects Receiving a Credit Allocation from 1987 through 1989**: Gross rent, including utilities paid by tenants, in qualifying units may not exceed 30% of the county median income limit adjusted for household size. (Exception: the Omnibus Budget Reconciliation Act of 1993 allowed owners to make a one-time election to make the change from maximum rents based on household size to maximum rents based on number of bedrooms. See Section 3.3 C. of this manual for more information.)

All rent calculations for pre-1990 rents must be rounded down to an even dollar amount.

Example: To calculate pre-1990 rents based on a household size of four, using the County Median Income Limit for a household of four = $23,350

Maximum Allowable Rent for a low-income unit:

CMI divided by 12 months	Multiplied by 30%	Maximum Gross Rent per Month
$23,350 ÷ 12 = $1,945.83	$1,945.83 × .30 = $583.75	$583.00

ii. **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 persons per bedroom.

All rent calculations must be rounded down to an even dollar amount.

iii. **Any Building Receiving a Pre-1990 Allocation for Credit and an Additional Allocation of Credit after December 31, 1989**: rents must be calculated both ways. Charge the lesser of:

a. Rent based on actual household size, or

b. Rent based on 1.5 persons per bedroom.

iv. **Overcharged Rent:** A unit is out of compliance if the rent exceeds the limit on a tax year basis or on a monthly basis. A unit is also considered

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

v. **Overcharged Rent Impacted Minimum Set-Aside:** The owner leased the rental units in a 100% LIHTC building to eligible tenants by the end of the first year of the credit period. However, the owner overcharged rent for all the units and, as a result, failed to meet the minimum set-aside for the first year of the credit period. The building does not qualify for LIHTC.

vi. **Utility Allowance**: Gross rent must include an allowance for any utilities paid by the tenant. Utility allowances must be determined according to program requirements set forth in 26 CFR §1.42-10[T.D. 8520, 59 FR 10073, Mar. 3, 1994, as amended by T.D. 9420, 73 FR 43867, July 29, 2008]. (See Section 4.5 D. Utility Allowance Documentation in this manual for further information.)

vii. **Third party payment**: Gross rent does not include any third party payment under Section 8 of the United States Housing Act of 1937 or any comparable rental assistance program with respect to such unit or occupants thereof (IRC §42(g)(2)(B)(1994)). In other words, only the rent and utilities (if applicable) paid by the tenant are counted toward the maximum rent of a qualified tax credit unit.

An increase in the rent paid by a Section 8 or Section 515 (Rural Development) tenant to an amount that is greater than the maximum tax credit rent may not disqualify the unit for tax credits if the rent increase is mandated under the provisions of the Section 8 program or the Section 515 Rental Assistance or Interest Credit programs.

Rent increases for Section 8 and Rural Development may not affect tenant rent. The amount of rent paid by the tenant in excess of the tax credit rent limit is known as the "rent overage".

The rent overage is treated as follows:

a. Section 8 Project-Based

The increase in the tenant's rent payment is allowed if the Section 8 subsidy is reduced by the rent overage.

b. Rural Development

1) For properties built before 1991, the rent overage cannot be charged to the tenant, and the owner is responsible to pay the difference.

2) For properties built in 1991 and later, the rent amount exceeding the tax credit rent limit can be collected by the owner, but the owner must pay the overage to Rural Development.

C. Maximum Rent Election

On August 10, 1993 the Omnibus Budget Reconciliation Act of 1993 was signed into law. This allowed owners of projects receiving allocation(s) of credit prior to December 31, 1989 to elect to make the change from maximum rents based on household size to maximum rents based on number of bedrooms. The one-time election had to be completed by February 7, 1994 and filed with the IRS and WHEDA. Once made, the election applies to all low-income units in a tax credit building and is irrevocable. The election to change the rent calculation method applies only to new households moving into a building after the election is made.

D. Gross Rent Floor

IRS Revenue Procedure 94-57 allows the owner to establish the effective date of initial maximum rents that serve as a floor against subsequent reductions in rent that can result from a decrease in county median income.

i. For all projects receiving allocations of credit after October 6, 1994, the Procedure allows the owner/taxpayer to fix the date of the gross rent floor as either the placed-in-service date or the credit allocation (carryover) date, according to the following guidelines.

   a. If the owner designates the building's placed-in-service date as the effective date of the gross rent floor, then the owner must inform WHEDA of the designation no later than the date on which the building is placed-in-service.

   b. If the owner does not make a designation prior to the building's placed-in-service date, the effective date of the gross rent floor will be the allocation (carryover) date.

ii. For projects receiving an initial allocation of credit prior to October 6, 1994, the effective date of the gross rent floor is any date that the owner and WHEDA determine is a reasonable interpretation of the statute. Either the date of allocation of credit or the building's placed-in-service date would be considered reasonable interpretations in establishing the gross rent floor.

iii. For bond-financed projects, the effective date of the gross rent floor is determined in a manner similar to the post October 6, 1994 projects described above. However, the effective date is treated as the date WHEDA initially issues a determination letter to the building, rather than the allocation (carryover) date. Refer to IRS Revenue Ruling 94-57 for further explanation.

E. Student Eligibility

Applicants are required to indicate whether or not they are full-time students on the tenant certification form.

i. WHEDA requires that AHTC Form 800, "Student Certification Form" (or an equivalent form) be completed for all full or part-time students.

ii. A full-time student is any individual who is, has been, or will be attending classes at an educational institution or is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational organization or of a state or political subdivision of a state during at least five months of the year in which the tenant application is submitted. The five calendar months need not be consecutive.

iii. In general, an educational organization (institution) is one that normally maintains a regular faculty and curriculum, and normally has an enrolled body of pupil or students in attendance at the place where its educational activities are regularly carried on. The term “educational organization” includes elementary schools, junior and senior high schools, colleges, universities, and technical, trade, and mechanical schools. The determination of student status full or part-time is based on the criteria used by the educational institution the student is attending.

iv. If a single applicant/occupant or all the applicants/occupants of a unit are full-time students, that unit will not be considered a qualifying tax credit unit unless one of the following criteria is met:

   a. A student is married and *entitled* to file a joint tax return;

   b. A student is receiving assistance under Title IV of the Social Security Act;

   c. A student is enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State or local laws; or

   d. A student is a single parent with children and such parent and children are not dependents (as defined in IRC section 152) of another individual (other than a parent of such children).

   e. A student who was previously under the care and placement responsibility of the State agency responsible for administering a plan under part B or part E of title IV of the Social Security Act.

   An applicant claiming any of the exceptions must be able to provide documentation to prove that status.

v. If a previously qualified low-income household changes due to any tenant becoming a full-time student, the household must meet one of the criteria described above in order to remain eligible under the Program rules. If

none of the criteria are met, the unit will be considered a non-qualifying (market) household.

F. Household Size

Knowing the actual number of persons in the household is necessary for determining the maximum allowable income of a household. It is also necessary for determining maximum rent limits in pre-1990 projects, where maximum rent limits are based on household size, not number of bedrooms.

The following must be noted in determining household size:

i. In the case of a pregnant woman, the unborn child is included in the size of the household and for purposes of determining the maximum allowable income. A household in the process of adopting a child is treated the same as a pregnancy. (See Section 5.10 B. for additional requirements.)

ii. A live-in care attendant is included for the purpose of determining the appropriate size unit for the household, but is not included for the purpose of determining the maximum allowable income. (See Section 5.10 A. for additional requirements.)

iii. Foster children are included for the purpose of determining the appropriate size unit for the household, but are not included for the purpose of determining the maximum allowable income.

3.4 Rules Governing Units after Occupancy of Qualified Low-Income Tenants

A. Annual Recertification of Income

Owners are required to recertify each low-income household at least annually. The recertification process is identical to the initial certification in terms of documenting household composition, income and student status. (See 5.8 of this manual for further information on recertification.)

Failure to recertify a household within 365 days of the last certification date is a reportable violation to the IRS. A late recertification will be corrected when a household vacates the unit, or can be corrected by performing a recertification of the household. There are two options when performing a late recertification.

i. A recertification can be performed using current income and asset sources and current income limits. The unit could be out of compliance on the date the recertification was due and back in compliance on the date the tenant signs the recertification.

ii. A retroactive recertification can be performed which completely and clearly documents the sources of income and assets *that were in place at the time the recertification should have been completed* and applies income limits that were in effect on that date. The unit would be out of compliance on the date the recertification was due, and back in compliance on the

date the tenant signs the recertification. While the recertification has been performed retroactively, the recertification documents should be dated with the current date. All the adult members of the household must sign the recertification using the current date. The recertification documents must not be backdated. The advantage of the retroactive recertification is that the owner may avoid violating the Available Unit Rule.

When reporting recertifications on the Unit Status Reports (RCRS) or on AHTC Form 203, enter the later of the effective date or date all adult members of the household signed the Tenant Income Certification.

With passage of HERA in 2008, annual recertifications are no longer required for projects that were allocated and established themselves as 100% low-income projects. All other program rules remain in effect, including student status and household composition.

B. Available Unit Rule[1]

When the income of a qualified household increases above 140% of the current maximum income amount (over-income unit) and a building is at or below its applicable fraction, the Available Unit Rule (AUR) goes into effect.

When the AUR is in effect, the next available unit of comparable or smaller size in that building must be rented to a qualified low-income household (IRC §42 (g)(2)(D)(ii)(1994). All comparable or smaller sized units must be rented to qualified tax credit households until the percentage of low-income units in the building equals the applicable fraction on which credit is based.

If the AUR is adhered to, the over-income units are still considered qualified units and are included in the calculation of the applicable fraction so long as the units remain rent restricted.

If the AUR is violated, **all comparably sized or larger over-income units to the market-rate move in would lose their status as low-income units** and are counted in the building's fraction as market-rate. All units causing an AUR violation will be reported to the IRS as being out of compliance.

i. Key Concepts of the Available Unit Rule Include:

a. In a project containing more than one low income building, the AUR applies separately to each building.

b. A household whose income rises above 140% of the current income limit may still be considered a low-income household as long as the rent remains restricted and the next available unit(s) is rented to qualified low-income households.

c. All comparable units that are available or that subsequently become available in the same building must be rented to qualified residents in order to continue treating the over 140%-income unit as a low-income unit. Once the percentage of low-income units in a building

[1] The terms Next Available Unit Rule (NAUR) and Available Unit Rule (AUR) are synonymous and can be used interchangeably.

(excluding the over-income units) equals the percentage of low-income units on which the credit is based, failure to maintain the over-income units as low-income units has no immediate significance.

d. If any comparable unit that is available or that subsequently becomes available is rented to a nonqualified resident, all over 140%-income units within the same building for which the available unit is comparable or *smaller than the over-income unit(s)* lose their status as low-income units.

e. Comparable or smaller unit is defined in §1.42-15 as "a residential unit in a low-income building that is comparably sized or smaller than an over-income unit or, for deep rent determining whether a residential unit *is co*mparably sized, a comparable unit must be measured by the same method used to determine qualified basis for the credit year in which the comparable unit became available." Since a comparable unit may need to be identified before the end of the year when the qualified basis is determined, an owner may consider a residential unit with similar square footage and amenities to be a comparable unit.

f. A unit is not available for purposes of the AUR when the unit is not available for rent due to a contractual arrangement or reservation that is binding under local law.

g. When a current resident moves to a different unit within the building, the newly occupied unit adopts the status of the vacated unit.

h. It is the intent of the Available Unit Rule to replace all over 140%-income households with new qualified households as available units are rented.

i. Annual Income Recertifications after July 30, 2008 are no longer required for 100% allocated projects. For purposes of applying the Available Unit Rule *only*, all households documented as initially income-qualified households are treated as initially income-qualified as long as the owner *demonstrates due diligence* when completing the initial income certification. The determination of whether a tenant qualifies for purposes of the low-income set-aside is made on a continuing basis, both with respect to the tenant's income and the qualifying income for the location, rather than only on the date the tenant initially occupies the unit. Failure to rent the next available unit as a rent-restricted unit reduces the low-income building's qualified basis to zero unless the owner can document which units are not over-income units.

j. Once the Available Unit Rule has been triggered, the noncompliance can be corrected by renting any combination of market rate units, over-income units, and out of compliance low-income units as rent restricted units to income-qualified households until the applicable

fraction upon which the credit amount is based is restored. The applicable fraction can also be restored if:

1) The tenant's income decreases to an amount below 140 percent of the income limit in place, or

2) The AMGI increases to an amount, such that 140 percent of the income limit is more than the tenant's income. (Note: a recertification of income may be necessary to determine current income).

ii. Buildings with Special Set-Aside Units

As stated previously in Section 3.1 B., some projects receive additional points in the scoring of the tax credit application for targeting lower-income households. Special set-aside units refer to those units with lower income and rent limits than those in the general set-aside (50% or 60% of CMI). It is necessary for on-site management agents or those responsible for income certifying households to be aware of any special income and rent requirements that exist for the properties they manage.

Regarding the Available Unit Rule, households in special set-aside units whose income increases above 140% of the income limit will no longer count towards the special set-aside. The unit will be counted toward the general set-aside requirement (50% or 60% of CMI). Reasonable attempts must be made to locate an existing household that qualifies for the special set-aside or rent the next available unit to a household that qualifies for the special set-aside. It is not necessary under the special set-aside requirements to consider the size of the unit.

It is in the owner's best interest that the lease agreement contains language allowing rent adjustments due to an increase of household income.

C. Unit Vacancy Rule

The Unit Vacancy Rule is applied on a project basis. A building is considered in compliance when the current applicable fraction is at or above the first year's fraction. It is the intent of the Unit Vacancy Rule for management to actively market the project's low-income units and to rent to low income households prior to renting to market rate. If the owner fails to market vacant low-income units, the owner has violated the General Public Use Rule.

Under the Unit Vacancy Rule (UVR) if a building is at or below its applicable fraction and a tenant vacates a qualified unit, reasonable attempts must be made to rent that unit or the next available unit of comparable or smaller size to a qualified low-income household before any units of comparable or smaller size in the project are rented to non-qualifying (market) tenants.

When a qualified low-income unit becomes vacant and reasonable attempts are being made to rent that unit, the unit will continue to be included as a qualified low-income unit for meeting the minimum set-aside and in calculating the applicable fraction of the building, so long as the requirements of the UVR are adhered to (26 CFR §1.42-5(c)(ix))

Reasonable attempts to rent a vacant unit are based on facts and circumstances, and may differ from property to property depending on factors such as the size and location of the project, tenant turnover rates, and market conditions. (See IRS Revenue Ruling 2004-82, A-9). The IRS has provided limited guidance as to what constitutes "reasonable attempts" in regard to the UVR requirements. Owners and management agents must document all efforts to rent to a qualified low-income household.

If the UVR is violated, all vacant units of comparable or larger size to the new market move-in that were previously occupied by qualified households lose their status as low-income. A unit is not available for purposes of the UVR when the unit is not available for rent due to a contractual arrangement or reservation that is binding under local law. (See IRS Revenue Ruling 2004-82, A-9), §1.42-15(c) for further information.)

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.

The noncompliance is corrected when a sufficient number of vacant units in the project are rented to qualified low-income households to restore the Applicable Fraction.

D. Examples of Minimum Set-Aside, AUR and UVR Violations

Bluff Manor Apartments is a one-building tax credit project consisting of 10 units of equal size. Units 1 through 5 are rented to qualifying low-income tenants; Units 6 through 10 are rented to market-rate tenants. The owner chose the 40/60 set-aside election. At the end of the first year for which credit was claimed, the owner established an applicable fraction of 50% (5 of 10 units).

Example 1: Units 1 and 2 are recertified; the income of the tenants in both of these units has increased above 140% of the county median income limit. At the same time, Unit 6 vacates and a new market-rate tenant moves in. Several violations have taken place.

i. The **Available Unit Rule** went into effect when Units 1 and 2 were recertified and remained in effect when the vacancy in Unit 6 occurred. Since Unit 6 was rented to a market-rate household, the AUR has been violated.

ii. As soon as the market-rate household moved into Unit 6, Units 1 and 2 changed to market-rate status. Therefore, seven units are now market-rate units and cause the applicable fraction to be 30%, thus violating the minimum set-aside rule.

iii. Reportable violations include the Minimum Set-Aside, Qualified Basis, and Available Unit Rule.

Example 2: Qualified low-income Units 1, 4, and 5 vacate. Unit 2 was recertified with income that exceeded 140% of the qualifying income. Unit 4 is rented first, to a market-rate household.

i. The **Unit Vacancy Rule** went into effect when low-income Units 1, 4 and 5 vacated. Since Unit 4 was rented to a market-rate household, the UVR has been violated.

ii. As soon as the market-rate household moved into Unit 4, Units 1, 4, and 5 are changed to market-rate status. Therefore, eight units are now market-rate units and cause the applicable fraction of the building to decrease to 20%. The project has fallen below the minimum set-aside and its established applicable fraction of 50% and has violated the Unit Vacancy Rule requirements.

iii. Reportable violations include the Minimum Set-Aside, Qualified Basis, Available Unit Rule, and Unit Vacancy Rule.

iv. "Reasonable attempts" was not a consideration in this example since a vacant low-income unit was rented to a market-rate household and the building fell below the Applicable Fraction prior to application of the Unit Vacancy Rule.

Example 3: Qualified low-income Units 1, 4, and 5 vacate. Market-rate Unit 8 also vacates. The management firm has been actively marketing the low-income units by placing advertisements in local newspapers and rental publications, placing a for-rent sign on their property, and other activities which are documented. Unit 8 is rented first to a market-rate household.

i. No reportable violation occurred. Units 1, 4, and 5 were not cited in an 8823 because the management company had documentation to support they were employing reasonable attempts to rent the units to a qualified household.

Example 4: Market rate Unit 10 vacates on June 1. On June 28, the owner enters into a contractual arrangement or binding reservation with a market rate household for Unit 10. On July 1, qualified low-income Unit 2 becomes vacant. The market rate household moves into Unit 10 on July 15.

i. No reportable violation occurred due to the contractual arrangement or binding reservation that was in place prior to the low-income unit being vacated.

E. Transfers of Existing Tenants to another Unit

i. Transfer within the Same Building

Effective September 26, 1997, a qualified household may transfer to a different unit in the same building of the project. When a current resident moves to a different unit within the building, the newly occupied unit adopts the status of the vacated unit. (See 26 CFR §1.42-15)

ii. Transfer to A Different Building

Should an existing qualified household wish to transfer to another unit in a different building of the project, **the household must be treated as a new household**. All application, verification, and certification procedures must be completed for the transferring household and the household must be income qualified using the current maximum allowable income limit for a new household.

4. Compliance Monitoring Procedures

4.1 General

This section of the manual outlines WHEDA's procedures for monitoring all projects receiving credit. Monitoring is designed to determine if the owner is in compliance with federal and state regulations and with WHEDA policies. However, compliance is solely the responsibility of the owner and is necessary to retain and use the credit.

Monitoring each project is an ongoing activity that extends throughout the credit compliance period (15 years). WHEDA is required by law to conduct this compliance monitoring and is required to inform the IRS of noncompliance, or the failure of the owner to certify to compliance, no later than 45 days after the period of time allowed for correction. WHEDA is required to notify the IRS whether the noncompliance has or has not been corrected (26 CFR §1.42-5 (1994)). (See Section 4.9 Noncompliance, for detailed procedures.)

The compliance monitoring process is made up of the following components:

- The Compliance Manual
- Compliance Training Workshops
- Initial Information
- The Unit Status Report (USR)
- Annual Owner's Certification of Continuing Program Compliance
- Utility Allowance Documentation
- Compliance Forms
- WHEDA Tenant File Reviews and On-Site Physical Property Inspections
- Tenant File Review Exemptions and Special Circumstances
- Record Keeping and Record Retention
- Noncompliance
- Monitoring Fees

4.2 The Compliance Manual

WHEDA will provide this compliance manual on WHEDA's Internet site (www.wheda.com). The manual may be printed or viewed on-line. The manual describes WHEDA's compliance monitoring procedures that the owner and management agent must follow. Updates to the manual will be made as changes to the law and/or WHEDA's procedures occur.

The required reporting and certification forms that must be used and submitted to WHEDA, as well as sample tenant eligibility forms are also available on WHEDA's Internet site.

4.3 Compliance Training Workshops

Although attendance is not mandatory, we recommend that personnel who are directly involved in the ownership or management of the project attend a workshop, preferably before a building is placed-in-service. Training is available through a number of outside companies who specialize in training on affordable housing programs. WHEDA may also offer a limited number of workshops.

The purpose of the training is to provide instruction on:

- A sampling of the basic IRS Code Compliance requirements
- IRS final regulations for compliance monitoring
- WHEDA policy and procedures for compliance reporting
- WHEDA policy and procedures for Tenant File Reviews and On-Site Physical Property Inspections
- Equal housing opportunity and fair housing regulations and policies
- Specific information on the following low-income tenant eligibility requirements:
  - Income and Rent Limits
  - Definitions of Income and Assets
  - Certification of Tenant Income and Assets
  - Verification of Tenant Income and Assets
  - Leases
  - Student Eligibility
- Reporting Violations of the Tax Credit Program
- Other owner responsibilities, including notifying WHEDA of any change in management or ownership of the project.

4.4 Initial Information

When a final allocation (IRS Form 8609) is issued, the owner is required to begin submitting required documentation, as listed below, to WHEDA by no later than the specified date in the monitoring welcome letter. The one exception is the copy of the IRS Form 8609, as listed below. (See AHTC Form 001, "Report Submission Instructions" for the reporting schedule.)

A late fee of $50.00 will be assessed for each document that is not received by the due date. Failure to supply the required documentation by the due date will be

considered noncompliance. The owner will have 30 days from the date of notification in which to submit the required information and pay the assessed late fee. WHEDA may grant an extension to this time period if it is determined that there is good cause based on a written request with appropriate documentation sent by the owner and/or management agent by the date the report is due.

The following are due following the issuance of the final allocation, according to the schedule listed on AHTC Form 001:

A. IRS Form 8609

A copy of the first year IRS Form 8609 filed for each building in the project must be submitted no later than May 15 of the year following the placed-in-service date. Please note that the form must be a copy of the form filed with the IRS; the "First-Year Certification" portion (Part II) must be completed and the owner's signature included.

i. If the owner has elected to defer the credit until the year following the placed-in-service date, WHEDA must be notified in writing by May 15 of the year following the placed-in-service date. Additionally, the owner must submit a copy of the filed 8609 the following May.

ii. If the applicable fraction/qualified basis is increased (and additional credit taken) in any year following the first year of the tax credit period, WHEDA requires a copy of the IRS Form 8609-A to be submitted by May 15 of the year following the year for which the additional credit was taken.

B. Building and Unit Information – AHTC Form 202 & Rent Compliance Reporting System (RCRS)

The following information is required on Form 202:

i. Project Number

ii. Building address and Building Identification Number (BIN);

iii. Assigned Unit numbers for each building including:

- Square footage for each unit;
- Number of bedrooms for each unit;
- Handicap accessibility for each unit; and

iv. The designated manager's unit, office, model unit or police substation.

AHTC Form 202 **must be submitted in writing** as well as entered into the Rental Compliance Reporting System (RCRS) at the time the first Unit Status Reports are due. Refer to the RCRS User's Guide for instructions on setting up a new project located on www.wheda.com.

C. AHTC Form 110

Owners are required to submit AHTC Form 110, "Compliance Monitoring Initial Information". The owner must indicate the date(s) that each building met its minimum set-aside requirement. The contact information for the management agent and owner must also be included. This information is due with the initial reports requested on the welcome letter.

D. Utility Allowance Documentation

Initial Compliance Documentation: For new projects, as of March 1, 2004, WHEDA requires that documentation be submitted from placed-in-service date. The AHTC Form 205 Parts A & B must be submitted along with any contemporary backup documentation from the appropriate utility allowance source to support the calculation as of the placed-in-service date. Building owners are not required to review or implement new utility allowances until the building has achieved 90 percent occupancy for a period of 90 consecutive days, OR the end of the first year of the credit period, *whichever is earlier.*

Following this initial period, a new utility allowance must be reviewed according to procedures identified in §1.42-10 and Chapter 4 of this compliance manual. Allowances based on HUD, RD or the PHA must be in effect within 90 days. Allowances based on Utility Provider Models must be in effect within 150 days.

> Example 1: HUD, RD or PHA Allowance
>
> If the review is completed at the end of the first credit year, the HUD, RD or PHA rates in effect on December 31st of the first year of the credit period are used. Consequently, the new allowance must be in effect by April 1.
>
> Example 2: Utility Provider Model
>
> If the review is completed at the end of the first credit year, the consumption rates as of December 31st of the first year of the credit period are used. Consequently, the 90-day period will begin no later [than] March 1 of the year subsequent to the first year of the credit period. The new allowance must be in effect no later than June 1 following a 60 day documentation period and 90 day notification period according to the procedures outlined in Chapter 4.5 D of this manual..

AHTC Form 205 is also required to identify the effective month for future utility allowances based on utility provider documentation. Owners or agents may determine the effective month. However, Utility Allowances based on documentation obtained from the PHA must be effective at the building within 90 days of the published or PHA effective date. Therefore the PHA schedule will determine the effective month. Note: a building using both a utility provider schedule and PHA allowance may have different effective months based on the source of the allowance.

See Section 4.5 D. of this manual for further information on utility allowances.

E. Owner's Certificate of Continuing Program Compliance

As required by the IRS, an Owner's Certificate of Continuing Program Compliance (AHTC Form 100) must be submitted annually to WHEDA. The

Certification covering the period from the Placed-in-Service date through the preceding year is due with the first report due date for the project. See Section 4.5 A. of this manual for further information on the Owner's Certification.

F. Unit Status Reports (USR)

An initial Unit Status Report must be submitted for each building in the project. The USR must be submitted to WHEDA on the next due date for USR submission. (See AHTC Form 001 for the reporting schedule.)

All events for the project that occur on or after the placed-in-service date are reportable. The initial report must include all events for all units within the project. This includes move-in or move-out information for all low-income and all market households, as well as recertifications or adjustments for low-income households.

The Housing & Economic Recovery Act of 2008 (H.R. 3221 aka HERA) published July 30, 2008 now requires Housing Finance Agencies (HFAs) to collect specific data on residents of Housing Credit properties and submit reports to HUD. Owners/Agents are required to collect data for all household members, including name, relationship to household, date of birth, race, ethnicity, last four digits of social security number and disability status for tax credit properties in the initial 15-year compliance period or in the extended use period. Owners/Agents will be required to submit this information with the Unit Status Reports (USRs). Household members have the right to decline to provide information on race, ethnicity, or disability status.

The Unit Status Reports may be submitted on paper using AHTC Form 200 or similar format. The USR may also be submitted electronically in WHEDA's XML format developed by the National Affordable Housing Association working group or on-line through RCRS.

See AHTC Form 200, "Unit Status Report" and AHTC Form 201, "Unit Status Report Instructions", for further information.

G. Compliance Monitoring Fees

As Wisconsin's housing credit agency, WHEDA is required by law to conduct compliance monitoring on all projects 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. Fees are charged to cover staff, technology, and other associated costs necessary to conduct compliance monitoring.

Fees are charged annually on a per unit basis for **all** units within each project. Fees are charged on all units (including manager's units) because it is necessary for WHEDA to monitor the minimum set-aside requirement on a project basis, the applicable fraction of low-income units to total units, and rental of the next available unit to a qualifying household.

The initial compliance-monitoring fee includes each year from the placed-in-service date through the current year. The first year fee may be prorated depending on the month that the project placed-in-service.

4.5 Ongoing Reporting Requirements

A late fee of $50.00 will be assessed for each document that is not received on the due date. Failure to supply the required documentation by the due date will be considered noncompliance. The owner will have 30 days from the date of notification in which to submit the required information and pay the assessed late fee. WHEDA may grant an extension to this time period if it is determined that there is good cause based on a written request sent by the owner and/or management agent by the date the report is due.

A. Annual Owner Certification of Continuing Program Compliance

As required by the IRS, an Owner's Certificate of Continuing Program Compliance (AHTC Form 100) must be submitted annually to WHEDA. The Certification is due no earlier than January 1 and no later than January 31 of each year. The report is also due if there is a change in the General Partnership. The period will cover from the first of the year to the date of sale.

Following is a partial list of items that the owner is required to certify has been in compliance **for the preceding year**:

- Low-income rent levels;
- Qualified low-income tenant incomes;
- 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 which are included in eligible basis are and have been available to all tenants, without fees, on a comparable basis;
- No change in eligible basis and/or the applicable fraction;
- No finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, has occurred for this project;
- 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 provisions, including any special provisions, as outlined in the extended low-income housing commitment (not applicable to buildings with tax credits from years 1987-1989); and
- All other applicable federal and state laws and WHEDA regulations, policies, and procedures.

An owner's original signature and date of signature is required on the AHTC Form 100.

Failure to supply a legible and complete annual certification is considered by IRS regulations to be noncompliance. If the owner's certification discloses noncompliance with the requirements under IRC §42, the noncompliance must be reported to the IRS using Form 8823 and identifying the appropriate category of noncompliance. The noncompliance date is the first day of the reporting year for which the information was due. Example: Owner/agent

does not submit AHTC Form 100 for the calendar year 2009. The noncompliance date is January 1, 2009. .

B. Unit Status Reports

After the initial Unit Status Reports have been sent to WHEDA, subsequent reports are to include **only the units where changes have occurred during the current reporting period**. This includes move-in or move-out information for all low-income and all market households, as well as recertifications or adjustments for low-income households.

See AHTC Form 200, "Unit Status Report" and AHTC Form 201, "Unit Status Report Instructions", for further information.

i. Unit Status Reports

Annual Unit Status Reports must be submitted for existing tax credit projects. At WHEDA's discretion, some properties will be required to submit more frequent reports. WHEDA will notify these properties if required.

Annual reports are due by January 31 of the compliance period. If this date falls on a week-end the due date will be on the next business day.

The Unit Status Reports may be submitted on paper using AHTC Form 200 or similar format. The USR may also be submitted electronically in WHEDA's XML format developed by the National Affordable Housing Association working group or on-line through RCRS. (Several companies offer software programs with the ability to create electronic reports meeting WHEDA's requirements. WHEDA offers a reduced fee schedule to those projects submitting electronic reports in the XML format or on-line through RCRS.)

The Housing & Economic Recovery Act of 2008 (H.R. 3221 aka HERA) published July 30, 2008 now requires Housing Finance Agencies (HFAs) to collect specific data on residents of Housing Credit properties and submit reports to HUD. Owners/Agents are required to collect data for all household members, including name, relationship to household, date of birth, race, ethnicity, last four digits of social security number and disability status for tax credit properties in the initial 15-year compliance period or in the extended use period. Owners/Agents will be required to submit this information with the Unit Status Reports (USRs). Household members have the right to decline to provide information on race, ethnicity, or disability status.

ii. Submitting Corrections for Past Reporting Periods

When submitting corrected information from past reporting periods, the information must be submitted on AHTC Form 203, "Correction or Amendment to Prior Period Report". WHEDA will accept Form 203 via fax, mail, or e-mail at your discretion. Please note that email may not be a secure method of reporting confidential or sensitive information.

C. Occupancy Report

The Online Form 900Q, Quarterly Occupancy report is reported over the internet to WHEDA on a quarterly basis. The purpose of the report is to report occupancy status at the last day of each quarter. The report requests the following information: calendar year, quarter, project number and name, number of onsite managers unit, number of vacant units at quarter end date, number of units vacant more than 30 days, number of units on notice to vacate for next quarter, number of households on waiting list, and number of units pre-leased for next quarter. This report is located at: http://www2.wheda.com/apps/.

D. Utility Allowance Documentation

Effective May 2, 1994, the IRS requires that utility allowances be set according to 26 CFR §1.42-10, as amended by T.D. 9420, 73 FR 43867, July 29, 2008. Please read this final ruling carefully for specific information regarding the appropriate documentation required.

When utilities are paid directly by the tenant, a utility allowance must be used to determine maximum eligible unit rents. If all utilities are paid by the owner, no utility allowance is required.

All utility allowance information must be updated at least annually, or when rates change, and kept as part of the development's records. These records will be reviewed by WHEDA in conjunction with the file reviews.

The review must take into account any changes to the building such as any energy conservation measures [that] affect energy consumption and changes in utility rates.

Owners may use different methods for computing the allowances for different utilities.

Owners are not prohibited from changing methods used for calculating a utility allowance in order to most accurately estimate the utility allowance.

However, once an owner chooses a method for determining the utility allowance for a particular period, that method cannot retroactively be changed to another method in order to avoid gross rent overcharges that may be discovered. Changes in methods can only occur during the procedures outlined for calculating the utility allowance

Rural Development (RD) projects must use RD utility allowances and HUD projects must use HUD utility allowances.

If any tenant/unit in the building receives a HUD Housing Assistance Voucher, use the applicable PHA utility allowance established for the Section 8 Program for those tenants/units.

If a building is not regulated by either HUD or RD, owners/agents have the choice of using the PHA utility allowance or an allowance based upon utility provider information; as listed below.

HUD/RD: Current projects that are utilizing HUD or RD utility schedules are no longer required to send a copy of AHTC Form 205 Utilities Information and/or any of the backup documentation to WHEDA. This information must continue to be updated at least annually, or when rates change, and kept as part of the development's records. These records will be reviewed by WHEDA in conjunction with the file reviews.

PHA: Current projects that are utilizing the Local PHA Utility Allowances are required to submit AHTC Form 205 Part A once a year and maintain Part B and the PHA documentation. These records will be reviewed by WHEDA in conjunction with the file reviews. In addition, all PHA documentation must be received by the owner/agent and be effective within 90 days of the PHA effective date. If there has been no change in the PHA's utility allowance, this must be documented by the PHA.

Utility Provider Models: Current projects that are utilizing the Utility Company Estimate Model, HUD Utility Schedule Model or Energy Consumption Model must submit AHTC Form 205 Parts A & B, documents provided by the local utility company supporting the calculations, documents generated from the HUD Utility Schedule Model or documents provided by an engineer to support the calculations. A copy of the 90-day notice to residents is required as well as a photocopy of the engineer's current license, if applicable.

Projects using any of the Utility Provider Models must notify WHEDA and all building residents in writing 90 calendar days prior to the utility allowance effective date. All supporting documentation for the utility allowance must be dated within 60 days of the submission to WHEDA..

Owner must pay for all costs incurred in obtaining these estimates and providing them to both WHEDA and building residents. WHEDA may require additional information from the owner during the 90-day period.

1. Utility Company Estimate Model: The estimate obtained from the local utility provider must provide the **estimated** cost of the utilities paid by the tenant. The estimated cost is based on units of similar size and construction for the geographic area in which the building containing the unit is located. Actual utility company usage data and rates may be used provided:
    a. The data used to compute the estimate is limited to the building's consumption data for a 12-month period ending no earlier than 60 days prior to the date the utility allowance will change. For newly constructed or renovated buildings with less than 12 months of consumption data, consumption data for the 12-month period for similarly sized and constructed units in the geographical area in which the building is located will be used.

b. The utility rates used to compute the estimates must be the rates in place 60 days prior to the date the utility allowance will change.

Owners submit to WHEDA: AHTC Form 205 Parts A & B, documents provided by the local utility company supporting the calculations, and the notification sent to building residents. Documentation is due to WHEDA 90 days prior to utility allowance effective date.

All utility documents are due to WHEDA 90 days prior to effective date.

Example of acceptable documentation from a utility provider:

Your Local Utility Company

500 Public Avenue

Any City, WI 53701

December 12, 2004

Dear Agent/Owner:

The estimated monthly utility usage for one and two -bedroom apartments in Any City, WI are as follows:

1-Bedroom	Gas Heat	$34.00
	Electric	$15.00
		$49.00
2-Bedroom	Gas Heat	$42.00
	Electric	$18.00
		$60.00

This is a normal estimate for units of similar size and construction for Any City's geographic area as serviced by Your Local Utility Company.

Sincerely,

Benjamin E. Franklin

Account Representative, Your Local Utility Co.

2. <u>HUD Utility Schedule Model:</u> Calculate utility estimates using the "HUD Utility Schedule Model" found on the Low-Income Housing Tax Credits page at http://www.huduser.org/portal/resources/utilmodel.html (or successor URL).

   Owners submit to WHEDA: AHTC Form 205 Part A & B, HUD Form 52667 "Allowances for Tenant-Furnished Utilities and Other Services", "Location" and "Tariffs" generated from the HUD Utility Schedule Model (with supporting documentation), and the notification sent to building residents. In the event the new utility allowance is a $5.00 or more change from the previous year's calculation an explanation must be provided with the submission.

3. Energy Consumption Model: Utility consumption estimates must be calculated by a properly licensed engineer using an energy consumption model which must, at a minimum, take into account specific factors including, but not limited to, unit size, building orientation, design and materials, mechanical systems, appliances, and characteristics of the building location. <u>The engineer and building owner must not be related (within the meaning of section 267(b) or 707(b)).</u>

   <u>For newly-constructed or renovated buildings with less than 12 months of consumption data, the engineer may use consumption data for the 12-month period of units of similar size and construction within the geographic area in which the building containing the units is located.</u>

   *Owners submit to WHEDA:*_AHTC Form 205 Part A & B along with the utility calculation documentation, a copy of the engineer's current license, and the notification sent to building residents. In the event the new utility allowance is a $5.00 or more change from the previous year's calculation an explanation must be provided with the submission.

<u>Example of a timeline for Utility Allowance with an effective date of August 1, 2011:</u>

- March 4, 2011 – May 2, 2011 (60 calendar days): Obtain utility data for the previous 12 months and calculate the utility allowance.
- No later than May 3, 2011 (90 calendar days): Owner notifies WHEDA and all building residents of utility allowance.
- May 3, 2011 – July 31, 2011: WHEDA reviews and approves utility allowances.

Updated utility allowances must be reported accurately on RCRS or AHTC Form 200 (Unit Status Report) when any of the following events take place:

- When the gross rents in a building or project change due to a change in the utility allowance;
- When there is a change in who pays the utilities;
- When utility allowances have been updated by HUD, RD, the local Public Housing Authority (PHA), or the utility provider.

Changes in utility allowances are recorded as Adjustments on the Unit Status Report, as discussed in Section 5.9 of this manual.

Cable Television and Internet Cost: Are specifically excluded (in addition to telephone) from utility allowance calculations.

Understated Utility Allowances: If WHEDA determines an owner has understated the utility allowance for a building, and as a result the building's units are not rent-restricted units (under section 42(g)(2)), WHEDA is required to report the noncompliance to the IRS using IRS Form 8823.

Record Retention: The building owner must retain any utility consumption estimates and supporting data as part of the taxpayer's records.

Low-income housing *units* are considered out of compliance when gross rent exceeds the maximum gross rent limit. The following examples are errors that may result in noncompliance.*

1. The appropriate utility allowance is not used. *For example, an owner uses a local utility company's estimate for a HUD-regulated building.*
2. The utility allowance is not properly calculated. *For example, an owner used a PHA schedule to determine the utility allowance for all-electric units, but failed to include the cost of electric heating. When the cost of electric heating is added to the utility allowance, gross rent exceeds the limit.
    1. The owner failed to update rents for a revised utility allowance after the 90-day period.

Example 1: Increased Utility Allowance Causes Gross Rent to Exceed Limit

The maximum gross rent limit is $500, but the owner charged $445 rent and a $50 utility allowance for a total of $495. The utility allowance increased to $60 on April 1, 2010, but the owner did not adjust the rent. The owner is charging $445 rent and a $60 utility allowance for a total of $505, which exceeds the gross rent limit of $500. The owner is out of compliance beginning July 1, 2010; i.e., an owner has 90 days to implement new utility allowances.

Low-income buildings are also considered out of compliance if the owner cannot establish that the rent charged tenants does not exceed the gross rent limit. For the three fact patterns below, there is a presumption that the rent charged the tenant plus the utility allowance will exceed the gross rent limit until otherwise established.

1. Rents are not reduced for a utility allowance when utilities are paid directly by the tenant to the utility provider, even if the rent charged to the tenant is less than the maximum gross rent limit. For example, the gross rent limit is

$700. The tenant's rent is $575 and pays the utilities directly to the provider, but the owner cannot provide documentation of the utility allowance computation. The noncompliance date should be determined based on the facts and circumstances; i.e., when the owner ceased using a utility allowance.

2. The owner did not review the basis on which the utility allowance is established at least once during both the prior and current calendar year; i.e., the utility allowances are not current.

   Example 2: Owner Failed to Review Utility Allowance Annually

   An owner reviewed the utility allowance and determined that the allowance was $100 effective May 1, 2009. The owner was still relying on the $100 utility allowance when the state agency reviewed the owner's compliance in April of 2011.

   The building is out of compliance because the owner failed to review the utility allowance at least once during calendar year 2010. The noncompliance date is December 31, 2010.

3. The owner failed to maintain adequate documentation regarding the computation of utility allowances; without sufficient proof of the amount of the allowance and how it was estimated, there is no way to correctly compute the rent.

   Example 3: Insufficient Documentation of Computation

   An owner reviewed the utility allowance and determines that the utility allowance was $65 for 2009. The allowance was computed by a licensed professional approved by the state agency using an energy consumption model. Upon review by the state agency during a compliance review, the owner presented a one-page letter from the professional. While the utility allowance amount was disclosed in the letter, the letter was not signed or dated. Further, the letter did not describe the factors considered or the data used.

   The state agency could not reasonably determine that the utility allowance was correct. The noncompliance date is December 31, 2009.

A unit is considered back in compliance when the appropriate utility allowance is used and/or the rent charged is reduced and correctly reflects the utility allowance. The date of correction is the date that the rents correctly reflect the utility allowance.

Example 1: Noncompliance Corrected

The maximum gross rent is $500. Beginning on March 1, 2003, the owner charged $450 rent and a $75 utility allowance; the total rent is $525. The rent is $25 over the ceiling. The error was discovered during a state agency's review on April 13, 2004.

The owner immediately reduces the rent charged to $425 for rents due beginning on May 1, 2004. The effective date of the new rent, or May 1, 2004, is the date the units are back in compliance.

No Utility Allowance

When an owner does not apply a utility allowance to reduce rent and account for utility costs paid directly by the tenant, the noncompliance can only be corrected by performing an annual review to determine a utility allowance using current information.

1. If the rent paid plus the new utility allowance does not exceed the current maximum gross rent, then the owner is in compliance with the utility allowance requirements and no further action is required.
2. If the rent paid plus the new utility allowance exceeds the current maximum gross rent, the back in compliance date is the date the rents are reduced to reflect the new utility allowances.

No Annual Review

If the owner has applied a utility allowance, but failed to conduct an annual review, then the noncompliance can be corrected in one of three ways.

1. A retroactive annual review can be performed using information applicable to the last date the annual review should have been performed. Assuming the owner can document compliance with the utility allowance that would have been in place and that the rents were restricted, no further action is required. The owner has clarified the noncompliance and, therefore, Form 8823 should not be filed.
2. A new annual review can be performed using current information. Assuming the owner is in compliance with the new utility allowance requirement and the rents are restricted, the owner is currently in compliance. No further action is required. The owner has clarified the noncompliance and, therefore, Form 8823 should not be filed.
3. In the event that either the retroactive annual review under (1) above or the new annual review under (2) above indicates that the utility allowance needs to be increased, the back in compliance date is the date the rents are reduced to reflect the new utility allowances.

Insufficient Documentation

When the owner reviewed the utility allowance, but the computation of the utility allowance was not sufficiently documented, the owner should be provided an opportunity to perfect the documentation to the state agency's satisfaction.

1. If the additional documentation is satisfactory and establishes that the owner is in compliance with the utility allowance requirements, then no further action is required since the owner has clarified the noncompliance; i.e., Form 8823 need not be filed.
2. If the owner cannot provide sufficient documentation, then the owner may repeat the annual review for the year in question using the same method and facts as used for the original annual review. If the results indicate that the owner is in compliance with the utility allowance requirement, then no further action is required since the owner has clarified the noncompliance; i.e., Form 8823 need not be filed.

Reporting Noncompliance

Noncompliance will be reported whenever the rent paid by the tenant plus the correct utility allowance exceeds the maximum gross rent limit.

Example 1: Increased Utility Allowance Causes Rent to Exceed Limit

> The maximum gross rent limit is $500, but the owner charged $415 rent and a $50 utility allowance for a total of $465. The utility allowance increases to $95 the next year. The owner should reduce the rent at least $10; i.e., $405 + $95 = $500.
>
> However, the owner does not make the adjustment to the rent and is out of compliance; i.e., the low-income units are not rent restricted. The owner is charging $415 rent and a $95 utility allowance for a total of $510, which is more than gross rent limit of $500.

Noncompliance will not be reported if;

1. Regardless of the error, correcting the utility allowance does not cause the rent to exceed the gross rent limit, or
2. Noncompliance is corrected before the owner is notified of the state agency's review.

The utility allowance requirement is a building-based rule. If the owner is noncompliant, the noncompliance will likely affect all the low-income units in the building. In which case, consideration should be given to whether the owner met the minimum set-aside under IRC §42(g)(1). See Chapter 3.1A.

E. Annual Compliance Monitoring Fees

As described in Sections 4.4 G. and 4.10 of this manual, fees are charged to cover staff, technology, and other associated costs necessary to conduct compliance monitoring. Compliance Monitoring Fees are due by March 15 of each year during the project's compliance period and extended use period.

4.6 Compliance Forms

The following WHEDA forms must be used. No other forms will be considered acceptable.

- AHTC Form 100, "Annual Owner's Certificate of Continuing Compliance" (the NCSHA form is equivalent to AHTC Form 100)
- AHTC Form 202, “Unit Information”
- AHTC Form 203, “Correction or Amendment to Prior Period Report”
- AHTC Form 205 Parts A and B, "Utilities Information"
- AHTC Form 205 E, “Utility Allowance Period Election”

These forms may be generated by computer so long as the computer-generated reports duplicate the AHTC Forms.

- Unit Status Reports submitted electronically must be in WHEDA's prescribed XML format.

Forms used for determining tenant eligibility and in meeting certain record keeping requirements listed in Section 4.8 of this manual may be in any format the owner and/or management agent decides to use as long as they incorporate all required information outlined in Section 5 of this manual and other information described in Section 4.8.

Sample forms, including the following, are provided on WHEDA's Internet site for optional use by owners and management agents:

- Tenant Income Certification (AHTC Form 300)
- Tenant Income Questionnaire (AHTC Form 305)
- Clarification Record (AHTC Form 310)
- Employment Verification (AHTC Forms 400)
- Social Security Verification (AHTC Form 410)
- Self Employed Income Statement (AHTC Form 500)
- Child Support Verification (AHTC Form 510)
- Public Housing Authority Income Certification (AHTC Form 520)
- Under $5,000/Zero Asset Certification (AHTC Form 600)

- Divestiture of Asset Verification (AHTC Form 605)
- Asset Verification (AHTC Form 700)
- Home/Real Estate Affidavit (AHTC Form 705)
- Student Certification Form (AHTC Form 800)
- Verification of Unemployment Benefits (AHTC Form 900)
- Certification of Zero Income (AHTC Form 905)

4.7 File Reviews and On-Site Physical Inspections

IRS regulations mandate that WHEDA conduct on-site property inspections and perform file reviews for each tax credit project. Additionally, at the time of inspection WHEDA must review any building code violation notices received since WHEDA's last inspection.

As provided in IRS compliance monitoring regulations, WHEDA has the right to review a project's tenant files in-house (at WHEDA), on-site at the project, and/or to perform physical inspections of tax credit projects as deemed necessary throughout the compliance period.

A. Inspection Schedule

The regulations mandate that at least once every 3 years, WHEDA must conduct on-site inspections of all buildings in the project and review at least 20 percent of the project's low-income units. We must inspect the units and review the certifications, supporting documentation and rent records for those units. For **new projects** placed-in-service after January 1, 2001, we must conduct the on-site physical inspection and unit reviews by the end of the second calendar year following the year the last building in the project placed-in-service. As provided in the Code, WHEDA and Rural Development have entered into a "Memorandum of Understanding" whereby developments financed by RD will be inspected by Rural Development. WHEDA will be provided with the results of the RD reviews.

i. WHEDA reserves the right to conduct physical reviews at any time based on information received about the property through a phone call, letter, mail, etc.

B. Notification of Review

During the year a project is scheduled for review:

i. WHEDA will schedule the inspection date with the owner or management agent.

   a. The owner and agent will be sent a letter confirming the date and time of the inspection.

b. Residents will need to be provided with ample notice that WHEDA will be conducting unit inspections and that their unit may be selected for review.

ii. When performing an in-house (at WHEDA) tenant file review, WHEDA will:

a. Notify the owner in writing which unit files have been selected for review.

b. Request that the owner mail copies of the selected files and documentation to WHEDA and give the date by which the files must be submitted.

iii. WHEDA requires that records be available in hard copy form for state monitoring purposes during reviews and other monitoring activities; if requested.

C. Preparation for the On-Site Physical Inspection

On the day of the inspection, management or site staff will need to be available to accompany WHEDA during the physical inspection portion of the review.

i. Appropriate keys must be available to access individual apartments, boiler rooms, janitorial rooms, storage areas, etc.

ii. Copies of any and all building code violation letters/notices received since WHEDA's last inspection, as well as records regarding those repairs, must be on-site and available at the time of the review.

D. Physical Inspection Results

At the end of the review, WHEDA will leave a copy of the Notice of Critical Violations with the management agent if applicable. The management agent will be responsible to forward a copy to the owner.

WHEDA will send a copy of the Physical Inspection Report to the owner.

i. For any item cited as a Critical Violation, you will be asked to repair the item within 72 hours and provide WHEDA with written documentation that it has been corrected.

ii. For any item cited as a Major Violation or Pattern of Minor Violations, you will have 30 days to respond to the potential non-compliance item(s) found. You can choose one of the following ways in which to respond:

a. The item was repaired and indicates the date completed.

b. The item is not a violation of local code. If documented to WHEDA's satisfaction, then the item will not be considered a violation.

c. The item was built to local code when the property was initially constructed and current code allows it under a "grandfather" clause.

If documented to WHEDA's satisfaction, then the item will not be considered a violation.

d. Extenuating Circumstance: The issue cited was very temporary and was in the process of being fixed at the time of inspection or other reasonable argument. WHEDA may choose to cite the violation as minor or to accept the documentation as satisfactory evidence that no violation occurred.

e. The owner agrees that the violation existed but requests that it be considered a minor violation. This might be based on an argument that the item originally should have been classified as minor or it might be based on the owner's ability to cure the item rapidly.

iii. This letter will serve as the official notice of non-compliance and will begin the 30-day non-compliance cure period. If an item cannot be corrected within the 30-day cure period, the owner must request an extension in writing to WHEDA with an explanation and timeframe for items not cured, repaired or replaced.

E. Tenant File Review Results

An exit interview will be performed and items of concern will be addressed with the site representative. Results from the tenant file review will be sent to the owner within 3 weeks of the review. When there are findings of potential non-compliance, this letter will serve as the official notice of non-compliance and will begin the 30-day non-compliance cure period.

4.8 Record Keeping and Record Retention

Owners are required to keep records for each qualified low-income building in the project.

The owner is required to retain the records for each building in the project for at least six years after the due date (with extensions) for filing their federal income tax return for that year. Records for the first year of the credit period must be retained for a minimum of six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of each building.

Rev. Proc. 97-22, 1997-1 C.B. 652, provides guidance on maintaining books and records by using an electronic storage systems. However, records must be made available in hard copy form for state monitoring purposes during reviews and other monitoring activities. (IRS Revenue Ruling 2004-82, A-11); if requested.

A partial listing of the record keeping requirements is provided below. (See §1.42-5 for the complete requirements.)

- Total number of residential units in each building including the number of bedrooms and the size in square feet of each residential unit;
- percentage of residential low-income units in each building;
- the rent charged on each residential rental unit in the building, including any utility allowance;

- the low-income vacancies in each building and information showing when, and to whom, the next available units were rented;
- the annual certification of each low-income tenant per unit;
- documentation to support each low-income tenant's income certification;
- character and use of any non-residential portion of the building included in the building's eligible basis under IRS §42(d)(1994); and
- the eligible basis and qualified basis of each building at the close of the first year of the credit period.

4.9 Noncompliance

WHEDA is required by law to provide written notice of noncompliance to the owner. Additionally, WHEDA is required to use IRS Form 8823 "Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition" to notify the IRS of noncompliance with the low-income housing tax credit provisions or any building disposition. The Code requires Form 8823 to be filed regardless of whether the noncompliance has or has not been corrected.

If an owner discovers that a tenant has deliberately misrepresented their income level, student status, household size, or any other item used to determine eligibility, the owner must consult state or local landlord-tenant laws to determine whether the tenant can be asked to vacate the LIHTC unit or the rent is raised to the market rate. The owner is not expected to complete the annual recertification if a tenant is asked to leave or an eviction proceeding is in process.

Report any suspected or known deliberate misrepresentation of income to the Internal Revenue Service's Whistleblower Office.

The Low-Income Housing Program will not consider there to have been reportable noncompliance if tenant fraud is discovered and addressed by the owner prior to notification of a WHEDA review or an IRS audit, and the owner satisfies to WHEDA that: (1) the tenant provided false information; (2) the owner did everything a prudent person would do to avoid fraudulent tenants (due diligence) and has implemented any needed changes to avoid future problems; (3) the tenant has vacated the unit (if possible); and (4) there is no pattern of accepting fraudulent tenants. In such cases, the owner need not reduce the applicable fraction for determining the credit amount and WHEDA need not report the noncompliance arising because of the tenant's fraud on Form 8823. (See also Chapter 4.9 H.)

A. Notification to Owner

WHEDA is required by law to provide written notice of noncompliance to the owner if:

i. Any required submissions are not received by the due date.

ii. Tenant Income Certifications, supporting documentation, and rent records are not available or submitted when requested by WHEDA.

iii. The project is found to be out of compliance with the provisions of section 42 of the Code through inspection, review, or other means.

B. Correction Periods

i. Required Submissions

The owner will have no more have **30 days** from the date of written notification by WHEDA in which to submit any missing report(s), information, or documentation. This includes, but is not limited to: Unit Status Report, annual Owner's Certificate of Continuing Compliance, utility allowance documentation, initial information, and fees.

ii. Other Noncompliance

The owner will have no more than **90 days** from the date of written notification by WHEDA to bring the project back into compliance with any Code provisions which have been violated.

The law allows WHEDA to set correction periods up to 90 days and to extend a correction period for up to six months. Requests for extensions must be submitted to WHEDA in writing and will only be granted for good cause as determined by WHEDA.

C. Correction Information

It is in the owner's best interest to respond in writing within the allowed time period to all violation letters sent by WHEDA.

When the owner receives a notification of noncompliance (violation letter) from WHEDA, the owner has an opportunity to respond in writing to the letter within the prescribed correction period. Because of the complexity of the tax credit regulations and the necessity to consider their applicability to specific circumstances, owners are urged to seek competent professional legal and accounting advice regarding compliance issues.

Note: The owner's response to a violation letter may be forwarded to the IRS should a notice of noncompliance be required. Therefore, the owner must send data or a response to correct the noncompliance that the IRS would deem a reasonable cure. WHEDA makes no assumptions from the data and does not interpret the information for the IRS.

The IRS has provided limited guidance or rulings at this time regarding what constitutes a cure of noncompliance. Therefore, WHEDA may not indicate to the IRS if the violation was cured. Consequently, any cure information submitted may not clear the indicated violations with the IRS. It is the sole province of the IRS to determine what constitutes a cure and whether recapture of full or partial credit will occur.

i. Correction of Noncompliance

Since there is limited published information or IRS rulings on cures for specific violations, WHEDA's advice or suggestions regarding actions that may correct violations is not binding on the IRS and should not be relied on by owners. WHEDA may share examples of actions other owners have

taken under similar circumstances. In addition, WHEDA may treat past period violations as corrected for the purpose of analyzing future periods.

Compliance violations incurred by a project in the Tax Credit Program may be taken into consideration if an owner, developer, agent, or any related individual or entity applies for tax credit allocations in future years. This is true whether or not WHEDA determines the violation to be corrected.

ii. Reporting Error

When responding to a violation letter that involved a reporting error on the part of the owner or agent, the response must include all of the information that would be reported if the information was originally submitted correctly.

For example, if a recertification violation was indicated for a specific household, an owner may respond by indicating that the recertification had taken place, but the entry was missed on the Unit Status Report. In that case, the owner must submit AHTC Form 203, including all recertification information. The tenant income certification (TIC) supporting the recertification must also be sent.

If an owner simply responds by indicating that the recertification took place but neglects to forward the updated household information on AHTC Form 203 (recertification date, household name, income, household size, rent & utility amount, etc.) and a copy of the executed Tenant Income Certification, WHEDA will not consider the violation corrected.

D. Notification to the IRS

WHEDA is required to file IRS Form 8823 "Low-Income Housing Credit Agencies Report of Noncompliance" with the Service no later than 45 days after the end of the correction period (including any extensions).

When WHEDA receives documentation to support a cure for violation(s), the information will be attached and submitted to the Service with the Form 8823. The Owner is responsible for maintaining a copy of all items sent as cure documentation.

As of January 2001, WHEDA will send the owner a copy of the filed Form 8823 and WHEDA's attachment page(s) if any. Such copy will not include the supporting documentation, if any, submitted by the owner to WHEDA.

Following is a list of noncompliance types included on IRS Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition:

- Household income above income limit upon initial occupancy;
- Owner failed to maintain or provide tenant income certification and documentation;
- Major violations of health, safety, and building codes;
- Pattern of minor violations of health, safety, and building codes;
- Owner failed to submit annual certification (AHTC Form 100) ;

- Changes in eligible basis;
- Project failed to meet minimum set-aside requirement (20/50, 40/60);
- Gross rent(s) exceed tax credit limits;
- Project not available to the general public;
- Household income increased above income limit and an available unit was rented to market rate tenant;
- Owner failed to execute and record extended-use agreement within time prescribed by section 42(h)(6)(J) ;
- Low-income units occupied by nonqualified full-time students;
- Owner did not properly calculate utility allowance;
- Owner has failed to respond to agency requests for monitoring reviews;
- Low-income units used on a transient basis;
- Project is no longer in compliance and is no longer participating in the low-income housing tax credit program; and
- Other noncompliance issues

  This category includes, but is not limited to:

  - Unit Vacancy Rule violation;
  - Vacant units not ready for occupancy
  - Nonperformance of non-profit participation agreement; and
  - Violations occurring prior to issuance of 8609.

All instances of noncompliance for a specific category must be remedied before the building is considered back in compliance for that category. All categories of noncompliance must be resolved before filing a back in compliance Form 8823.

An amended 8823 will be filed with the IRS if it is necessary to correct an error on a Form 8823.

E. De Minimis Errors

On August 10, 1993 Congress passed the Omnibus Reconciliation Act of 1993 which included a provision for de minimis errors. Owners can request the IRS to waive any recapture penalty due to the IRS because of de minimis (small) errors in maintaining the applicable fraction or qualified basis from the end of one year to the end of the subsequent year.

F. Chronic Noncompliance

Chronic noncompliance may result in the owner or related entities being denied participation in the Tax Credit Program in the future. Examples of chronic noncompliance include, but are not limited to:

i. Nonpayment of annual compliance monitoring fees;

ii. Chronic non-submission of required monitoring reports; and

iii. Repeated material violations of section 42 of the Code.

G. Corrections to Documents

At times it is necessary to make corrections or changes to documents. A document with correction fluid ("white-out") will not be accepted by WHEDA. WHEDA recommends that when a change is needed on a document used for the Tax Credit Program, draw a line through the incorrect verbiage, write or type the correct verbiage, and have the person making the change sign their initials.

Examples of Program documents include, but are not limited to:

- Owner's Certificate of Continuing Compliance
- Unit Status Reports
- Utility Allowance Documentation
- Tenant Leases
- Tenant Certifications
- Third-Party Verifications
- Any required forms for the AHTC Program

H. Correction of Noncompliance Issues Prior to Notification by WHEDA

The 8823 guide in several locations has introduced the concept of a "bright line". Noncompliance issues identified and corrected by the owner/agent prior to notification of the upcoming compliance review or inspection by WHEDA may not be reported to the IRS on form 8823, provided the owner/agent has notified WHEDA of the noncompliance and correction, is in compliance at the time of WHEDA's compliance review or tenant file inspection and has not established a pattern of noncompliance. In the case of management reviews, the date of the review confirmation letter is the date of notification. In all other cases, the date of notification is the date of the noncompliance letter.

4.10 Monitoring Fees

As Wisconsin's housing credit agency, WHEDA is required by law to conduct compliance monitoring on all projects 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. Fees are charged to cover staff, technology, and other associated costs necessary to conduct compliance monitoring.

A. Method of Payment

Compliance fees will be drawn via Automated Clearing House (ACH) Transfer agreement. Payment via ACH is required for all projects receiving an allocation of credit in 2004 or beyond. For all other existing projects that do not implement an ACH agreement with WHEDA, an additional $50 per project annual compliance fee is due. The $50 check-fee is payable with the annual compliance fee on March 15 of each year during the compliance period and extended use period.

B. Initial Compliance Fee

An initial compliance fee will be charged for all buildings placed-in-service after January 1, 2001. The initial compliance fee for developments of 15 units or fewer is $800. For developments of 16 or more units, the fee is $55 per unit with a maximum of $5,000. This fee is payable according to the schedule set in the Initial Monitoring Welcome letter.

C. Annual Monitoring Fee

Fees are charged annually on a per unit basis for all units within each project. Fees are charged on all units (including manager's units) because it is necessary for WHEDA to monitor the minimum set-aside requirement on a project basis, the applicable fraction of low-income units to total units, and rental of the next available unit to a qualifying household.

The Annual Monitoring Fee is due by March 15 of each year during the project's compliance period. WHEDA reserves the right to adjust fees on an annual basis.

Fees are charged based on the reporting medium used. The current fee schedule below is based on electronic reporting. An additional fee of $30 per unit is added if reported by paper:

i. Unit Status Reports Submitted Electronically in WHEDA's Required ASCII Format – INITIAL 15 YEAR

Financed by:	Per Unit Fee
Rural Development	$30
WHEDA	$30
All other	$45

ii. Unit Status Reports Submitted Electronically in WHEDA's Required ASCII Format –EXTENDED USE PERIOD

Financed by:	Per Unit Fee
Rural Development	$25
WHEDA	$25
All other	$40

D. Late Fee

Failure to comply with any monitoring requirement, including payment of fees, may result in one or more of the following actions:

i. A late charge will be assessed for documentation or fees that are not received by the due date. Late fees will be charged as follows:

a. Annual Monitoring Fee

- Minimum late charge of $50.00

b. Required documentation or reports

- $50.00 late charge for each missing report or documentation

ii. Future allocations of Credit to the owner and affiliated entities may be jeopardized.

iii. Future participation in other WHEDA programs by the owner and affiliated entities may be jeopardized.

iv. Any legal enforcement available to WHEDA

v. Notification to IRS

5. Qualifying Tenants

Potential tenants for rent-restricted units must be advised early in the application process that there are maximum income limits that apply to these units. Management must explain to potential tenants that the anticipated gross income of the family/household expecting to occupy the unit must be included and verified on a Tenant Income Certification (AHTC Form 300) prior to occupancy and annually recertified for continued eligibility in mixed-rate developments.

It is imperative that all sensitive tenant information (bank accounts, social security number, etc.) be treated in a secure and confidential manner. It may be necessary to explain to the applicant that all information provided is considered confidential and will be handled accordingly.

At the present time, IRS Revenue Notice 88-80 provides the only official guidance for section 42 tenant income compliance. The Notice states that determination of annual income of individuals and area median gross income adjusted for household size must be made in a manner consistent with HUD Section 8 income definitions and guidelines. HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs is a good reference guide. The HUD Handbook 4350.3 and HUD notices can be obtained by calling 1-800-767-7468. They are also available on HUD's Internet sites (http://www.hud.gov or http://www.hud.gov/offices/adm/hudclips/index.cfm).

5.1 The Tenant Application

A fully completed application is critical to an accurate determination of tenant eligibility. The information furnished on the application must be used as a tool to determine all sources of income, including total assets and assets disposed of for less than fair market value during the previous two years and actual and/or imputed income from assets. In the event the management agent's application does not include a section for use in collecting asset and asset income information, AHTC Form 305, "Tenant Income Questionnaire" may be used.

At the time of application, it is the management agent's responsibility to obtain sufficient information on all prospective tenants to completely process the application. To facilitate this process, WHEDA recommends that roommates complete separate applications.

The application must include:

- The name, birth date, age, social security number and gender (sex) of each person that will occupy the unit. The applicant's legal name must be given just as it will appear on the lease and tenant income certification.
- All sources and amounts of current and anticipated annual income expected to be derived during the twelve-month certification period. This includes assets now owned and the income from those assets as well as any assets disposed of for less than fair market value during the previous two years.

- The past, current and anticipated student status of each applicant for the twelve-month certification period.

- The signature of the applicant and the date the application was completed.

5.2 Tenant Income Verification

All regular sources of income, including income from assets, must be verified. Verifications must be received by the management agent **prior to** the execution of the Tenant Income Certification and actual move-in. Verifications must contain complete and detailed information and include, at a minimum, direct written verification from all sources of regular income and income from assets.

A. Effective Term of Verification

Third-party verifications of income are valid for 120 days prior to move-in certification date. After this time, a new verification must be obtained.

B. Methods of Verification

Owners must use verification methods that are acceptable. The owner is responsible for determining if the verification documentation is adequate and credible. There are three accepted methods of verification. These are, in order of acceptability: third-party verifications, review of documents, and family certification. If third-party verification is not available, owners must document the tenant file to explain why third-party verification was not available.

C. Third-Party Verification

The following describes ways in which third-party verification may be obtained.

i. **Written Verification:** Written documentation sent directly by a third-party source is the preferred method of verification. It is assumed that third-party sources will send written verification to the owner through the mail.

   The applicant or tenant must not hand-carry the verification to or from the third-party source.

ii. **Electronic Verification:** The owner may obtain accurate third-party verification by facsimile, e-mail or Internet, if adequate effort is made to ensure that the sender is a valid third-party source. (Note: EIV is not acceptable for tax credit eligibility).

   a. Facsimile: Information sent by fax is most reliable if the owner and the verification source agree to use this method in advance during a telephone conversation. The fax must include the company name and fax number of the verification source.

   b. E-Mail: Similar to faxed information, information verified by e-mail is more reliable when preceded by a telephone conversation and/or when the e-mail address includes the name of an appropriate

individual and firm. **Please note that email may not be a secure method of reporting confidential or sensitive information.**

c. Internet: Information verified on the Internet is considered third party verification if the owner is able to view web-based information from a reputable source on the computer screen. Use of a printout from the Internet may also be adequate verification in many instances.

iii. **Verbal Verification:** When written verification is not possible prior to move-in, direct contact with the source will be acceptable only as a last resort and must be followed by written verification.

The conversation must be documented in the applicant's tenant file and include all the information that would be contained in a written verification. Include the name and title of the contact, the name of the on-site management representative accepting the information, and the date. AHTC Form 310, "Clarification Record" may be used to record this information.

Prior steps used to obtain written verification must be documented to show just cause for using this type of verification.

D. Review of Documents

i. An owner may review documents submitted by the applicant or tenant in one of the following situations:

a. Only when third-party verification is not possible or is not required.

b. Third-party verification is delayed. If information from a third-party is not received within two weeks of its request, owners may consider original documents submitted by the tenant.

c. If the documentation is delivered by the applicant or tenant, the owner must examine the document for evidence of tampering. In these situations, the owner may, but does not have to, accept the document as acceptable verification.

E. Family Certification

An owner may accept a tenant’s notarized statement or signed affidavit regarding the veracity of information submitted if the information cannot be verified by another acceptable verification method.

F. Verification Transmittal

i. Applicants should be asked to sign two copies of each verification form. The second copy may be used if the first request is not returned in a timely manner.

ii. Income verification requests must be sent directly to and returned by the source, not through the applicant. It is suggested that a self-addressed,

stamped envelope be included with the request for verification, to ensure a timely response.

iii. Under no circumstances is the applicant or resident allowed to send or deliver the verification form to the third party source.

iv. All tenant income verifications must be date stamped as they are received.

G. Acceptable Forms of Income Verification

Specific information must be obtained on income verifications. Agents may develop their own forms. However, for specific types of income situations, the following acceptable forms of verification, in the order of acceptability, must be included:

i. Employment Income

a. Employment verification form completed by the employer or statement from employer on company letterhead. Verification must specify salary or wages and any additional compensation, frequency of pay, year to date earnings, effective date of last pay increase, and probability and effective date of any anticipated increase during the next 12 months.

b. Four to six consecutive check stubs or earnings statements showing the employee's gross pay per pay period and frequency of pay.

c. W-2 forms if applicant has had the same job for at least two years and pay increase can be accurately projected.

d. Notarized statements, affidavits or income tax returns signed by the applicant describing self-employment and amount of income or income from tips and other gratuities, provided that the applicant has the same job as indicated on the tax return.

ii. Net Income From a Business (Self-Employment Income)

a. IRS Tax Return, Form 1040, including any:

1) Schedule C (Small Business)

2) Schedule E (Rental Property Income)

3) Schedule F (Farm Income)

b. An accountant's calculation of depreciation expense, computed using straight-line depreciation rules. (Required when accelerated depreciation was used on the tax return or financial statement.)

c. Audited or unaudited financial statement(s) of the business.

d. Loan application listing income derived from the business during the previous 12 months.

e. Applicant's notarized statement or affidavit as to net income realized from the business during the previous years.

iii. Social Security, Pensions, Supplemental Security Income (SSI), Disability Income:

a. A benefit verification form completed by the agency providing the benefits.

b. An award or benefit notification letter prepared and signed by the authorizing agency. (Since checks or bank deposit slips show only the net amount remaining after deducting Medicare, or state health insurance, they may be used only when award letters cannot be obtained.)

iv. **Unemployment Compensation**

a. A verification form completed by the unemployment compensation agency.

b. Records from the unemployment office stating payment dates and amounts.

v. Alimony or Child Support Payments

a. A copy of a separation or settlement agreement or a divorce decree stating the amount and type of support payment schedule. This may include a verification of child support from the family court.

b. A letter from the person paying support.

c. A copy of the latest check and documentation of how often the check is received.

d. The applicant's notarized statement or affidavit of the amount received or that support payments are not being received and the likelihood of support payments being received in the future, supported by a copy of the current court order, if applicable. An owner may not rely on a sworn statement indicating that the tenant is not receiving child support payments if a reasonable person in the owner's position would conclude that the tenant's income is higher than the tenant's represented annual income. Unless court documents are not available, verification from the family court is required.

vi. Recurring Contributions and Gifts

a. Notarized statement or affidavit signed by the person providing the assistance, stating the purpose, dates, and value of the gifts; or

b. The applicant's notarized statement or affidavit that states the purpose, dates and value of gifts.

vii. Unemployed Applicants

a. The income of unemployed applicants with regular income from any source, such as Social Security, pension, recurring gifts, etc., must be verified as outlined above.

b. If applicant is currently unemployed and claiming $0 income, he/she must provide evidence of anticipated income for the certification year by executing an Certification of Zero Income (AHTC Form 905) and providing a signed copy of the prior year's federal income tax return.

c. If applicant is unemployed with no regular verifiable income from any source and intends to live off of assets only, an Unemployed Applicant's Affidavit (AHTC Form 905) must be submitted along with a signed copy of the prior year's federal income tax return.

viii. Household Assets Now Held

a. Verification forms, letters, or documents from a financial institution, broker, etc.

Note: When financial institutions charge a fee to the applicant or tenant for providing verifications, the forms of verification in paragraph b. below would be the preferred method.

b. Account statements, passbooks, broker's quarterly statements showing value of stocks or bonds, etc., and showing the earnings credited to the applicant's account, or financial statements completed by a financial institution or broker.

Note: The owner must adjust the information provided by the financial institution to project earnings expected for the next 12 months.

c. Quotes from a stock broker or realty agent as to the net amount the applicant/tenant would receive if he or she liquidated securities or real estate.

d. Copy of IRS Form 1099 prepared by the financial institution showing the amount of income provided by the asset.

e. Real estate tax statement(s) if tax authority uses approximate market value.

f. Copies of closing documents showing the selling price, the distribution of the sales proceeds and the net amount to the individual.

g. Appraisals of personal property held as an investment.

h. Applicant's notarized statement or signed affidavit describing assets or verifying cash held at the applicant's home or in safe deposit boxes.

ix. Assets disposed of for less than fair market value during the two years preceding the effective date of the certification or recertification.

Suggested information to obtain and acceptable forms of verification are included below. See AHTC Form 605, "Divestiture of Asset Verification".

a. Applicant's certification as to whether he or she has disposed of assets for less than fair market value during the two years preceding the effective date of the certification or recertification.

b. If the applicant certifies that he or she did dispose of assets for less than fair market value, then the certification must show:

1) All assets disposed of for less than fair market value;

2) The date the assets were disposed;

3) The amount received; and

4) The asset's market value at the time of disposition.

x. Income from the sale of real property pursuant to a purchase money mortgage, installment sales contract, or similar arrangement.

The following provide suggested information to verify with a third party and acceptable forms of verification:

a. A letter from an accountant, attorney, real estate broker, the buyer, or a financial institution stating interest due for the next twelve months. (A copy of the check paid by the buyer to the applicant **is not sufficient** since appropriate breakdowns of interest and principal are not included.)

b. An amortization schedule showing the interest for the twelve months following the effective date of the certification or recertification.

xi. Rental income from a property owned by the applicant/tenant.

The following provide suggested information to verify with a third party and acceptable forms of verification:

a. IRS Form 1040 with Schedule E (Rental Income)

b. Copies of the latest rent checks, leases, or utility bills

c. Documentation of applicant's/tenant's income and expenses in renting the property (tax statements, insurance premiums, receipts for reasonable maintenance and utilities, bank statements or amortization schedules showing monthly interest expense).

d. Lessee's written statement identifying monthly payments due the applicant and applicant's affidavit as to net income realized.

H. Differences in Reported Income

The management agent must give the applicant the opportunity to explain any significant differences between the amounts reported on the application and amounts reported on third-party verifications in order to determine actual income. The explanation of the difference must be documented in the tenant file.

5.3 Annual Income

Annual Income is the gross income the household anticipates it will receive in the 12-month period following the effective date of certification of income.

There will be situations where it will be difficult to estimate income. For example, the tenant may work sporadically or seasonally. If the household’s income cannot be determined based on current information because the household reports little to zero income, or income fluctuates, income may be determined based on actual income received or earned within the last twelve months before the certification of annual income. In such cases, owners are expected to make a reasonable judgment as to the most reliable approach to estimating what the tenant will receive in the coming year. Owners must use due diligence by asking follow-up questions when the income certification process reveals unusual circumstances suggesting additional sources of income.”

A. Whose Income is Counted?

Members	**Employment Income**	**Other Income** (including income from assets)
Head	Yes	Yes
Spouse	Yes	Yes
Co-Head	Yes	Yes
Other adult *(including foster adult)*	Yes	Yes
Dependents		
-Child under 18	No	Yes
Full-time student over 18	See Note	Yes
*Foster child under 18	No	Yes*

Nonmembers		
Live-in aide	No	No

NOTE: The earned income of a full-time student 18 years old or older who is a dependent is excluded to the extent that it exceeds $480.

For further details, see the HUD Handbook 4350.3 Rev.1 CHG-3.

B. Annual Income Includes

i. The gross amount (before any payroll deductions) of wages and salaries, overtime pay, commissions, fees, tips, bonuses, and other compensation for personal services of all adults in the household (including persons under the age of 18 who are the head, spouse or co-head). Includes salaries of adults received from a family-owned business.

ii. The net income from operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.

iii. Interest, dividends and other income of any kind from real or personal property (including income distributed from a nonrevocable trust). Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (ii) above. Any withdrawal of cash or assets from an investment will be included in income, except to extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of $5,000, annual income shall include the greater of the actual income derived from all net family asset or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD.

iv. Gross amount (before deductions for Medicare, etc.) of periodic social security payments. Includes payments received by adults on behalf of individuals under the age of 18 or by individuals under the age of 18 for their own support. (However, see Section 5.3 D Annual Income Excludes.)

    Note: If the Social Security Administration is reducing an applicant's/tenant's benefits to adjust for a prior overpayment, count the amount that is actually provided after the adjustment.

    Example: Mr. Brown's social security payment of $475 per month is being reduced by $50 per month for a period of 6 months to make up for a prior overpayment. Count his social security income as $425 per month for the next 6 months and for the remaining 6 months as $475 per month.

v. The full amount of annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (e.g. Black Lung Sick Benefits, Veterans Disability, Dependent Indemnity Compensation, payments to the surviving spouse of a service person killed in action).

   Count the total amount of such amounts received. Do not reduce the amount by any amounts the individual previously paid into the account in order to receive the pension, annuity or insurance policy.

vi. Delayed periodic payments received because of delays in processing unemployment, welfare or other benefits. These are payments that would have been paid periodically, but were paid in lump sum because of circumstances such as processing delays.

   Note: Delayed periodic payments of supplemental security benefits and social security benefits that are received in a lump sum are excluded from annual income. (See Section 5.3 C. xv.)

vii. Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay. Any payments that will begin during the next 12 months must be included.

viii. Alimony and child support received by the household.

   a. For alimony or child support received by a member of the household count the amount specified by the court, in a divorce settlement or separation agreement unless the applicant:

      1) Certifies that the income is not being provided; and

      2) Has made reasonable efforts to collect the amounts due, including filing with courts or agencies responsible for enforcing payment.

   Note: Child support paid by a private source to the state child support enforcement agency can be passed on to the applicant/tenant in different ways. These amounts must be counted as annual income. In some states this will be shown as part of the AFDC grant and in others it will be shown as a separate "pass-through" amount.

   Alimony or child support paid by a member of the household is not deducted from income, even if it is garnished from wages.

   Example: Mr. Smith pays $200 per month in child support. It is garnished from his monthly wages of $1,000. After the child support is deducted from his salary, he receives $800. Mr. Smith's income must be counted as $1,000 per month.

ix. Recurring monetary contributions or gifts regularly received from persons not living in the unit.

Exceptions:

a. Exclude recurring monetary contributions that are paid directly to a child care provider by persons not living in the unit.

b. Exclude gifts of groceries. (See Section 5.3 C. xix. Income excluded by federal statute.)

x. Relocation payments made pursuant to Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

xi. Actual income distributed from trust funds that are not revocable by or under the control of any member of the tenant household. (See discussion in paragraph 5.4 D. i.)

xii. All regular pay, special pay, and allowances of a member of the Armed Forces, except as provided under Annual Income Excludes under 5.3 D.

xiii. Welfare Assistance

a. Welfare assistance received by the family.

b. If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

c. The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities, plus

d. The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.

xiv. Educational Scholarships or Grants

All forms of student financial assistance (grants, scholarships, educational entitlements, work study programs, and financial aid packages) are excluded from annual income except for students receiving Section 8 assistance.** This is true whether the assistance is paid to the student or directly to the educational institution.

**For students receiving Section 8 assistance, all financial assistance a student receives (1) under the Higher Education Act of 1965, (2) from private sources, or (3) from an institution of higher education that is in excess of amounts received for tuition is included in annual income except

if the student is over the age of 23 with dependent children or the student is living with his or her parents who are receiving Section 8 assistance. See Paragraph 3-13 for further information on eligibility of students receiving Section 8 assistance and the Glossary for the definition of Student Financial Assistance.

C. Calculation Methodologies to Use in Determining Annual Income

i. To annualize full-time employment, multiply:

   a. Hourly wages by 2,080 hours for full-time employment with no overtime;

   b. Weekly wages by 52;

   c. Biweekly amounts by 26;

   d. Semimonthly amounts by 24;

   e. Monthly amounts by 12.

ii. To annualize income from other than full-time employment, multiply periodic amounts (hourly, biweekly, monthly, etc.) by the number of periods (hours, weeks, months) the household member expects to work.

   Example 1: $5 per hour x 25 hours per week x 52 weeks = $6,500

   Example 2: $130 per week x 52 weeks = $6,760

iii. Use an annual wage without additional calculations.

   Example: If a school teacher earns an annual salary of $22,000, the $22,000 must be used as the annual salary, regardless of whether the teacher is paid over a 9 or 12 month period. No interim certification is done at the end of the school year to reduce the household's income.

iv. Use current circumstances to project income, unless verification forms indicate that an imminent change will occur.

   Example of Anticipated Increase in Hourly Rate

   The employment verification indicates that as of April 1, 2000 the applicant's current hourly rate is $8.00 per hour. It also indicates that on May 15, the applicant's income will increase to $8.50 per hour. The applicant works 40 hours per week.

   You would make the following calculations:

   - 40 hours per week x 52 weeks = 2080 hours
   - April 1 through May 15 = 6 weeks
   - 6 weeks x 40 hours = 240 hours
   - 2,080 hours - 240 hours = 1,840 hours

Annual Income is calculated as follows:

240 hours x $8.00 =	$1,920
1840 hours x $8.50 =	$15,640
Annual Income	**$17,560**

v. If a household indicates that income might not be received for the full 12 months (e.g. unemployment insurance benefit is expected to terminate), the income must still be annualized.

vi. When an employer gives a range of hours as the number of hours worked, it is recommended that a conservative approach be taken and that the highest number in the range be used for income calculations. It is not recommended to use an average.

Example: John works 25 - 30 hours per week and makes $8.25 per hour. To annualize his hours use:

- 30 hours x 52 weeks = 1,560 hours per year
- 1,560 hours x 8.25 = $12,870 annual income

vii. Year-To-Date income is annualized by dividing the YTD amount by the number of weeks included in the figure multiplied by 52 weeks. Compare the "hourly rate" calculation with the YTD calculation and use the higher of the two calculations. Include any anticipated raises and additional compensation that was excluded from the YTD figure (bonus, tips, etc.) in the YTD calculation.

D. Annual Income Excludes

i. Meals on wheels or other programs that provide food for the needy; groceries provided by persons not living in the household; amounts received under the School Lunch Act or the Child Nutrition Act of 1966 {including reduced lunches and food under Special Supplemental Food Program for Women, Infants and Children (WIC)}.

ii. Income from employment of children (including foster children) under the age of 18 years.

iii. Amounts paid by a State agency to a household with a developmentally disabled family member living at home, to offset the cost of services and equipment needed to keep the developmentally disabled family member in the home. This includes SSI-E.

iv. Grants or other amounts received specifically for:

a. Medical expenses (including Medicare premiums paid by an outside source).

b. Set aside for use under a Plan to Attain Self Sufficiency (PASS) and excluded for purposes of Supplemental Security Income (SSI) eligibility.

Note: A PASS permits a person with disabilities who is receiving Supplemental Social Security (SSI) and who is also receiving other income, to set aside a portion of the other income in order to achieve a work-related goal.

c. Out-of-pocket expenses for participation in publicly assisted programs. Such amounts must be made solely to allow participation in these programs. These expenses include special equipment, clothing, transportation, childcare, etc.

v. Earnings in excess of $480 for each full-time student 18 years old or older (excluding the head of household, co-head, and spouse).

vi. Adoption assistance payments in excess of $480 per adopted child.

vii. Loans (e.g., personal or student loans).

viii. Temporary, nonrecurring or sporadic income (e.g., gifts, census taker income from the Federal Bureau of the Census).

ix. Amounts received by the household in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit.

x. The special pay to a household member serving in the Armed Forces who is exposed to hostile fire (e.g., in the past, special pay included Operation Desert Storm).

xi. Amounts received under training programs funded by HUD (Comprehensive Improvement Assistance Program).

xii. Compensation from State or local employment training programs and training of a household member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for a limited period as determined in advance under the program by the state or local government.

xiii. A resident service stipend. A resident service stipend is a modest amount (not to exceed $200 per month) received by a resident for performing a service for the project, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to; fire patrol, hall monitoring, lawn maintenance, or resident initiative coordination. No resident may receive more than one such stipend during the same period of time.

xiv. 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. Examples include payments by the German and Japanese governments for atrocities committed during the Nazi era.

xv. Deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum payment.

Note: This exclusion became effective for the Section 8 programs on October 28, 1992. For all other programs (e.g. section 42) this exclusion became effective on May 5, 1995.

xvi. Payments received for the care of foster children or foster adults. (Foster adults are usually adults with disabilities, who are unrelated to the household member(s), and who are unable to live alone.)

xvii. Income of a live-in aide, as defined in 24 CFR 5.403.

xviii. Amounts that are received on behalf of someone who does not reside with the household, as long as the amounts:

a. Are not intermingled with the household member's funds; and

b. Are used solely to benefit the person who does not reside with the tenant household.

Note: For such amounts to be excluded, the individual must provide the owner with an affidavit stating that the amounts are received on behalf of someone who does not reside with the household and the amounts meet the conditions in paragraphs a. and b. above.

Examples:

Julie lives in a section 42 project. Her 14-year-old sister, Mary, lives with her mother in other housing in the same city. Julie has been designated as the Representative Payee for Mary's SSI payments. The Social Security Administration designated Julie. Julie makes sure that Mary's SSI payments are used exclusively for Mary.

Emily receives royalty income that is reported on IRS Form 1099. Emily distributes this income to the designated heirs in accordance with her aunt's will and retains only the amount to which she is entitled. Only count the royalty income that is designated specifically for Emily. Emily will have to show that she distributes this income to the other heirs.

xix. Recurring monetary contributions that are paid directly to a child care provider by persons not living in the unit. This exclusion is based on a handbook interpretation of reimbursed childcare expenses under the definition of adjusted income and its bearing on Annual Income. The regulations define childcare expenses to include "amounts to be paid by the family for child care to the extent they are not reimbursed." This handbook interprets the regulations to mean that childcare expenses that are reimbursed are not included as annual income.

xx. Income excluded by federal statute:

a. The value of the allotment provided to an eligible household under the Food Stamp Act of 1977.

b. Payments received under Domestic Volunteer Service Act of 1973 (employment through VISTA, Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions).

c. The following income:

1) Interests of individual Indians in trust or restricted lands, and the first $2,000 per year of income received by individual Indians that is derived from trust or restricted lands.

2) Payments received under Alaskan Native Claims Settlement Act received from a Native Corporation, including:

i) Cash (including cash dividends on stock received from a Native Corporation) to the extent that it does not, in the aggregate, exceed $2,000 per individual per annum;

ii) A partnership interest;

iii) Land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock); and

iv) An interest in a settlement trust.

Note: For paragraphs iii) and iv), some tribal corporations receive payments on individual's behalf and invest these amounts. The proceeds from these investments are then paid to the individuals. Such amounts also would be excluded from income.

3) Payments from certain submarginal U.S. land held in trust for certain Indian tribes.

4) Payments from disposal of funds of Grand River Bank of Ottawa Indians.

5) The first $2,000 of per capita shares received from judgments awarded by the Indian Claims Commission or the Court of Claims or from funds the Secretary of Interior holds in trust for an Indian tribe.

d. Payments, rebates or credits received under Federal Low-Income Home Energy Assistance Programs. Includes any winter differentials

given to elderly (e.g., Department of Health and Human Services Low-Income Home Energy Assistance Program).

e. 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, veteran's employment programs, state job training programs, career intern programs, AmeriCorps).

f. Payments received under Title V of the Older Americans Act (Green Thumb, Senior Aides, Older American Community Service Employment Program).

g. Payments received after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.).

h. Payments received under the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96-420, 9z Stat.1785).

i. Any earned income tax credit to the extent it exceeds income tax liability. (26 U.S.C. 32(j))

j. Payments by the Indian Claims commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433).

k. Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637[d])

l. Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spinal bifida who is the child of a Vietnam veteran (38 U.S.C. 1805).

m. 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 (42 U.S.C. 10602).

n. Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931).

o. The value of any childcare provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (CCDBGA) (42 U.S.C. 9858q). Participating families may either pay a reduced amount based on a sliding fee scale or they may receive a certificate for childcare services.

Note: This exclusion does not apply to amounts received by a childcare provider for services paid through the CCDBGA.

Examples:

The following is excluded from Annual Income. Ms. Gomez receives a certificate for childcare services under CCDBGA. The amount of the certificate is not included in Ms. Gomez' income.

The following is included in Annual Income. Ms. Anderson, a tenant who is receiving Section 8 assistance, is paid through the CCDBGA for childcare services she provides to Ms. Gomez. The income she receives for providing this childcare is included in annual income.

5.4 Assets

Assets are items of value, other than necessary personal items. Income from assets is taken into consideration when determining the eligibility of a household.

Asset information (asset value and income from the asset) must be obtained at the time of application. The applicant will affirm that this information is correct by executing the Tenant Income Certification (AHTC Form 300).

Third party verification of assets is required when the household's combined value of assets exceeds $5,000. Owners of tax credit projects will not have to obtain third-party verification of income from assets if the tenant(s) submit to the owner a signed, sworn statement (under penalty of perjury) that the value of their combined assets are less than $5,000.[2] The tenant's income from net household assets that are less than $5,000 must still be included in the calculation of the annual income amount when initially qualifying a household and upon recertification.

A. Net Household Assets Include:

i. Cash held in Savings and Checking Accounts, Safety Deposit Boxes, Homes, etc.

   a. For savings accounts, use the current balance.

   b. For checking accounts, use the average balance for the last six months. A six-month average balance is optimal, but other average balances can be used if the six-month average is unavailable.

ii. Revocable Trusts

   Include the cash value of any revocable trust available to the household. See discussion of trusts in paragraph 5.4 D.

[2] Per IRS Revenue Procedure 94-65, an owner or agent is not permitted to rely on a low-income tenant's signed, sworn statement of assets of less than $5,000 if a reasonable person in the owner's/agent's position would conclude that the tenant's actual income is higher than the tenant's represented annual income. In this case, the owner must obtain other documentation of the low-income tenant's annual income from assets to satisfy the documentation requirement of third party asset verification.

iii. Equity in Real Estate or Other Capital Investments

Include current **fair market value** less:

a. any unpaid balance on any loans secured by the property; and

b. reasonable costs that would be incurred in selling the asset (e.g., penalties or broker fees, etc.).

c. When a household indicates they own real estate assets, it is important to determine disposition of the real estate as of the date of move-in, or in the case of a recertification, the effective date of the certification. This disposition includes:

- If there is a pending offer to purchase or settlement date set.
- If there is any income from the real estate from the rental of the property or land contract, including occupancy in exchange for the payment of taxes or mortgage payments .

Any income from the real estate or liquidation must be projected for the 12 month period of the certification.

Note: If the person's main business is real estate, then count any income as business income (see Section 5.2 G. ii.)

iv. Stocks, Bonds, Treasury Bills, Certificates of Deposit, Mutual Funds, and Money Market Accounts

a. Interest or dividends earned are counted as income from assets even when the earnings are reinvested. The value of stocks and other assets vary from one day to another.

v. Individual Retirement Accounts (IRAs) and Keogh Accounts

These are included because participation in such retirement savings accounts is voluntary and the holder has access to the funds, even though a penalty may be assessed. If the individual is withdrawing from the account, determine the amount of the asset by using the average balance for the previous 6 months. (Do not count withdrawals as income.)

Example: Mrs. Caldwell has an IRA account valued at $25,000. When she turns 70 years old, she begins withdrawing $1,500 per year. Continue to include this account as an asset using the guidance in valuing assets. Do not count the $1,500 she withdraws as income.

vi. Retirement and Pension Funds

a. While the person is employed:

Include only amounts the household can withdraw without retiring or terminating employment. Count the whole amount less any penalties or transaction costs.

b. At retirement or termination of employment:

Periodic receipts from pension and retirement funds are counted as income. Lump sum receipts from pension and retirement funds are counted as assets. Count the amount as an asset or as income as provided below:

i) If benefits will be received in a lump sum, include the lump sum receipt in Net Household Assets.

ii) If benefits will be received through periodic payments, include the benefits in annual income. Do not count any remaining amounts in the account as an asset.

iii) If the individual initially receives a lump sum benefit followed by periodic payments, count the lump sum benefit as an asset as provided in the example below and treat the periodic payment as income. In subsequent years, count only the periodic payment as income. Do not count the remaining amount as an asset.

Example: Upon retirement, Mrs. Harvey receives a lump sum amount of $10,000 plus she will receive an annuity of $400 per month. Count the $400 as income and count only that portion of the $10,000 receipt that is placed into an asset.

vii. Cash Value of Life Insurance Policies Available to the Individual Before Death (e.g., the surrender value of a whole life policy or a universal life policy). It would not include a value for term insurance, which has no cash value to the individual before death.

viii. Personal Property Held as an Investment

Include such items as gems, jewelry, coin collections, or antique cars held as an investment. An applicant's wedding ring and other personal jewelry are not considered assets.

ix. Lump Sum Receipts or One-Time Receipts

These include inheritances, capital gains, one-time lottery winnings, victim's restitution, settlements on insurance claims (including health and accident insurance, worker's compensation, and personal or property losses), and any other amounts that are not intended as periodic payments.

x. A Mortgage or Deed of Trust Held by an Applicant (Land Contract)

a. Payments on this type of asset are often received as one combined payment of principle and interest with the interest portion counted as income from the asset.

b. This combined figure needs to be separated into specific principle and interest portions of the payment. (This can be done by referring to an amortization schedule that relates to the specific term and interest rate of the mortgage.)

c. To count the actual income for this asset, use the interest portion paid on the amortization schedule for the 12-month period following the certification.

d. To count the imputed income for this asset, determine the asset value at the end of the 12-month period following the certification. Since this amount will continually be reduced by the principle portion paid during the previous year, the owner will have to determine this amount at each annual recertification.

Example: Computation of Imputed Income: An elderly tenant sells her home and holds the mortgage for the buyer. The cash value of the mortgage is $60,000. The combined payment of principle and interest expected to be received for the upcoming year is $5,000. The amortization schedule breaks that payment into $2,000 in principle and $3,000 in interest. In completing the asset income calculation, the cash value of the asset is $60,000 and projected annual income from the asset is $3,000. In this example, to compute the imputed income, the mortgage would be reduced to $58,000 after the first year. The owner would multiply this amount by the current passbook savings rate provided by the HUD Field Office.

xi. Assets Disposed of for less than Fair Market Value within Two Years of the Effective date of the Certification/Recertification, including assets put into nonrevocable trusts.

a. Applicants and tenants must declare whether an asset has been disposed of for less than fair market value at each certification and recertification.

b. Assets are considered to be disposed of for less than fair market value if the cash value of the disposed asset exceeds the gross amount the applicant/tenant received by more than $1,000.

c. In such cases, the **whole** difference between the cash value of the asset and the amounts received must be included. If the difference is less than $1,000, ignore it.

Note: Use cash value if there are costs incurred in disposing of the asset.

d. Do consider:

1) Assets disposed of for less than fair market value when they are placed into a nonrevocable trust (assuming that no consideration is received or the consideration which is received is less than cash value). (See Section 5.4 D. i. b. for further discussion of nonrevocable trusts.)

Note: Amounts received through settlements or judgments that are placed into nonrevocable trusts on behalf of a member of the household are not considered as assets disposed of for less than fair market value.

Example: Mr. and Mrs. Long's son, John, was injured in a car accident. He received a settlement of $300,000 to compensate him for injuries and future loss of income. The attorney handling the case set up a nonrevocable trust of $300,000 for the benefit of John. This trust is not under the control of any member of the tenant household. Count only the actual income distributed from the trust to John.

2) Business assets that are no longer part of an active business that are disposed of for less than fair market value. (Business assets are excluded from net household assets only while they are part of an active business.)

e. Do not consider assets disposed of for less than fair market value as a result of:

1) A foreclosure;

2) Bankruptcy; or

3) A divorce or separation agreement if the applicant or tenant receives important consideration not measurable in dollars.

B. Net Household Assets Do Not Include:

Important: Do not compute income from any assets listed in this section.

i. Necessary personal property (clothing, furniture, cars, wedding ring, vehicles specially equipped for persons with disabilities, etc.)

ii. Interest in Indian trust land

iii. Term Life insurance policies (i.e., where there is not cash value)

iv. Equity in the cooperative unit in which the household lives

v. Assets that are part of an active business. **Note**: "business" does not include rental of properties that are held as an investment and not a main occupation.

Example: Mr. and Mrs. Truitt own a copier and courier service. None of the equipment that they use in their business is counted as an asset (e.g., the copier, the FAX machines, the bicycles, etc.)

Example: Mrs. Lincoln rents out the home that she and her husband lived in for 35 years. This home is not an active business asset. Therefore, it is considered an asset and the owner must determine the annual income that Mrs. Lincoln receives from it.

vi. Assets That Are Not Effectively Owned By The Applicant

Note: Nonrevocable trusts (irrevocable trusts) are not covered by this paragraph.

When assets are held in an individual's name but:

a. the assets and any income they earn accrue to the benefit of someone else who is not a member of the household; and

b. that other 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.

Example: Mr. Green and his daughter, Ms. Green, have a bank account with both names on the account. Ms. Green's name is on that account for the convenience of her father in case an emergency arises that would result in Ms. Green's handling payments for her father. Ms. Green has not contributed to this asset, does not receive interest income from it, nor does she pay taxes on the interest earned. Therefore, Ms. Green does not own this account. If Ms. Green applies for assisted housing, the owner must not count this account as her asset. This asset belongs to Mr. Green and would be counted entirely as the father's asset must he apply for assisted housing.

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

Note: Nonrevocable trusts (irrevocable trusts) are not covered by this paragraph.

Example: A battered spouse owns a house with her husband. Because of the domestic situation, she receives no income from the asset and cannot convert the asset to cash.

C. Assets Owned Jointly

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

Example: Mrs. Robertson is a tax credit tenant. She and her daughter, Mrs. Duncan, who lives 1,200 miles away, have a joint savings account. Assume that in this example, State law does not specify ownership. Even though either Mrs. Robertson or Mrs. Duncan could withdraw the entire asset for her own use, count Mrs. Robertson's ownership as 50% of the account.

D. Determining the Value of Assets

In determining income from assets, owners must use the cash value of the assets (the amount the applicant/tenant would receive if the assets were converted to cash). Cash value is the market value of the asset minus reasonable costs that were or would be incurred in selling or converting the asset to cash.

Expenses that may be deducted include:

- Penalties for withdrawing funds before maturity;
- Broker/legal fees assessed to sell or convert the asset to cash;
- Settlement costs for real estate transactions; and/or
- Loans on the asset (exception: see paragraph 5.2 G. ii. Net Income From a Business).

i. Assets Converted to Trusts

A trust is generally considered a legal arrangement regulated by state law in which one party holds property for the benefit of another. A trust can contain cash or other liquid assets or real or personal property that could be turned into cash. Trust assets are typically transferred to the beneficiary upon the death of the grantor. This manual recognizes two types of trusts, revocable and nonrevocable (irrevocable) trusts.

a. Revocable Trusts

1) The grantor of a revocable trust can change this type of trust as often as he or she wishes and therefore has access to this asset at any time. Therefore you include the cash value of any revocable trust available to the household.

Example of a Revocable Trust

Mr. Porter establishes a trust of $30,000 in his daughter's name. (The daughter is not a member of the household.) Because it is revocable, he can modify this trust at any time and have access to it. For purposes of this example, the income is either reinvested into the trust or paid to his daughter. Treat this trust as a current asset. Even though Mr. Porter does not receive the income from this asset, he is required to report the cash value of the asset and the income the trust generates. Because it is still considered to be an asset owned by Mr. Porter, it is not considered an asset disposed of for less than fair market value.

b. Nonrevocable Trusts (Irrevocable Trusts)

1) This is a trust agreement that allows an individual to permanently transfer assets during his or her lifetime to someone else.

2) Trusts, which are not revocable by or under the control of any member of the household, are not considered assets.

3) Instead, the regulation requires that the actual income distributed to the applicant/tenant from such a trust be counted when determining Annual Income. (As with all income, this is the gross amount received before taxes or other deductions.)

   - As long as the trust exists, any income distributed from the trust to the applicant/tenant must be counted as income.
   - If there is no income distributed from the trust, then do not count any income from the trust (e.g., income from the trust that is reinvested into the trust).

4) If an asset is disposed of for less than fair market value by being converted to a nonrevocable trust, assuming that no consideration is received or the consideration which is received is less than fair market value, then the owner must count such an asset for a period of two years. (See Section 5.4 A. xi. Assets disposed of for less than fair market value.)

   - In addition, any actual income distributed from the nonrevocable trust must also be counted as income under paragraph 3) above. Therefore, for a two-year period, the owner/agent will consider this asset for purpose of income computation and, in addition, count actual income distributed from the nonrevocable trust to the applicant/tenant.
   - Following the two-year period, the owner will count only the actual income distributed from the trust to the applicant/tenant.

E. Imputed Income from Assets

If the net household assets exceed $5,000, Annual Income must include the greater of:

i. The actual income from the assets; or

ii. Imputed income from the assets. (Impute income by multiplying total net household assets by the passbook rate specified by HUD. As of 1/1/96, the rate was 2%.)

Example:

Type of Asset	Cash Value of Asset	Actual Income Per Year
Checking Account	$ 550.00	$ 0.00
Savings Account	3,000.00	300.00
Certificate of Deposit	12,000.00	480.00
Property	32,000.00	0.00
Totals:	$ 47,550.00	$ 780.00

Since the total assets in this example exceed $5,000, the imputed income must be calculated. In this example, the Net Household Assets of $47,550 would be multiplied by .02, totaling $951. The actual income from assets ($780) would be compared with the imputed income from assets ($951) and include the greater of the two as part of the household's gross annual income. In this case the imputed amount of $951 is included in the household's income.

5.5 Computing the Total Household Income

After all income and asset information has been obtained and computed for a household, all qualified sources of income are added together to derive the total household income. **WHEDA recommends rounding up to the next dollar amount to provide the most conservative estimate of annual income.** In order for the household to qualify for a tax credit unit, the total household income must be less than or equal to the maximum allowable qualifying income in effect at the time of tenant certification. If the total household income is greater than the maximum allowable qualifying income, the household cannot be certified for a tax credit unit.

Owners must use due diligence by asking follow-up questions when the income certification process reveals unusual circumstances suggesting additional sources of income.

If the tenant manipulated the income limitation requirements, then the unit cannot be treated as a low-income unit as of the date the household initially occupied the unit.

5.6 Full-Time Student Verification

WHEDA requires that management agents use AHTC Form 800, "Student Certification Form" or an equivalent form that addresses all of the student issues, to assist in the verification and qualification of each student applying for residency in a low-income tax credit unit.

Specific information must be obtained regarding student applicants/tenants. Agents may develop their own forms, but each student listed as a qualified tax credit applicant must have a third-party verification located in the tenant file to prove qualification status.

Note: WHEDA does not require third-party verification for children attending primary school.

5.7 Initial Tenant Income Certification Guidelines

Once all the income and asset information has been obtained and computed, management personnel must prepare a Tenant Income Certification (AHTC Form 300) for each tenant. The form is a legal document which, when fully executed, qualifies applicants to live in the tax credit set-aside units in the project. The Tenant Income Certification (TIC) must be executed along with the lease prior to move-in.

The following guidelines apply:

- No one may live in a low-income set-aside unit in the project unless he or she is certified and under lease.
- Upon receipt of all verifications, owners or managers must review all documentation and calculations, as necessary. If all requirements for eligibility are met, the applicant is qualified.
- Management must instruct the prospective tenant(s) to sign the TIC exactly as their name appears on the form.
- It is preferred that the TIC be executed on the date of move-in.

5.8 Annual and Interim Income Recertification Requirements

The IRS states that at least on an annual basis, an income certification must be completed for each low-income tenant[3] and documentation to support that certification must be obtained (26 CFR §1.42-5, April 1, 1994). With the passage of HERA in 2008, annual recertifications are no longer required for projects that were allocated and established themselves as 100% low-income projects. All other program rules remain in effect, including student status and household composition.

Upon receipt of all verifications, owners or managers must determine if the household is below 140% of the current qualifying income limit (see Section 3.4 B. on the Available Unit Rule).

The certification process is not complete until all supporting documentation is obtained and the tenant signs and dates the Tenant Income Certification

A. Recertification of Income

WHEDA monitors recertification of income 365 days from the later of:

i. The move-in date; or

ii. The one-year anniversary of the previous certification.

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[3] WHEDA believes it is important to note that the regulations refer to "tenant" income rather than "household" income. The recordkeeping and record retention provisions of the regulations state the owner must keep records that show "...the annual income certification of each low-income tenant per unit..." For this reason, WHEDA's policy is that in the event a new member is being added to an existing, qualified household, the new member must complete an application for residency and verifications of income and assets must be completed.

B. Adding a New Member to an Existing Household

In the event a new member is added to a qualifying household, the following steps must be taken:

i. The prospective tenant must complete an application for residency and verifications of income and assets must be completed;

ii. The prospective tenant's income must be added to the current household's income.

   a. For 100% low-income projects under the recertification exemption rule, add the prospective tenant's income to the original income certification.

   b. For Mixed-Use projects, add the prospective tenant's income to the most recent tenant income certification.

The combined household income must be compared to the maximum allowable income limit in effect at the time, based on actual (projected) household size; and

iii. If the combined household's income is greater than 140% of the current maximum allowable income, a determination must be made as to whether the building or project will be in violation of section 42 requirements by adding the new household member. For 100% low-income projects, as long as the owner rents the next available unit to an income-qualified household, the Available Unit Rule will not be violated if the household's income exceeds 140% of the income limit.

Example:

1 person household income limit = $15,000

2 person household income limit = $17,000

140% of the 2 person income limit = $23,800

Tenant A is a qualified tenant living alone in a one-bedroom unit. Her income at initial certification was $10,500. Eight months after tenant A moved into the project, she informs management that she is getting married and that her new husband, Tenant B, will be moving into the unit in two months. Before moving in, Tenant B is certified as earning $12,900. The household's combined income will be $23,400. The household will still qualify, since it is below the 140% limit ($23,800).

In this example, if the combined income had been over $23,800 the Available Unit Rule (Section 3.4 B.) may go into effect.

Note: If at any time the household composition changes and none of the original household members live in the unit, then the household is considered a **new** household. The new household must meet all initial qualifying income limitations and requirements to be eligible for a tax credit unit unless:

1. For mixed-used projects, the newly created household was income qualified, or the remaining tenants were independently income qualified at the time they moved into the unit.
2. For 100% LIHTC buildings, the remaining tenants were independently income qualified at the time they moved into the unit.

Example:

Michael moved into a two bedroom unit in May. Jason moves into the unit in October. At that time, Michael and Jason's combined income was below the limit for a two person household. In January, Michael moves out. It is not necessary for Jason to be certified as a new tenant.

However, if Michael and Jason's combined income exceeded the income limit for a two-bedroom in October, then Jason must be certified as an income-qualified tenant when Michael moves out.

C. Subtracting a Member from the Existing Household

Decrease in family size does not trigger the immediate income certification of a new household. Subsequent annual income recertifications will be based on the income of the remaining members of the household. If the remaining household's income is more than 140% of the income limit at the time of the annual recertification, then the Available Unit Rule if applicable.

D. Changes in Student Status

If all tenants in a previously qualified household become full-time students, recertification must be done and the household can only be considered as a qualified tax credit household if at least one of the student criteria is met. (See Section 3.3 E. of this manual for further information.)

E. Effect of Move-in Prior to Placed-in-Service Date

In the event that a tenant moves into a building prior to the placed-in-service date of the building (as shown on the project's IRS Form(s) 8609), and the verification of the tenant's income was performed more than 120 days prior to the placed-in-service date, the tenant must be recertified on the placed-in-service date.

F. Timely Notice

If the owner gives timely notice then initiates an eviction proceeding and the household vacates the unit, no recertification is necessary. However, should the eviction proceedings be terminated, or result in the household remaining, a recertification will be due 120 days from the determination.

5.9 Adjustments to Rent, Utility Allowance, or Subsidy

Any changes to rent, utility allowance, or rent subsidies occurring between recertification dates must be reported to WHEDA on the due date of the next Unit Status Reports. These types of events are recorded as an **adjustment** (A) on the report.

5.10 Miscellaneous Rules Governing Low-Income Eligibility of Units

A. Live-in Care Attendant

If a tenant in a tax credit unit requires a live-in care attendant, the attendant is not included as a household member for purposes of determining the eligible income and rent limits. (The attendant is considered for purposes of determining the appropriate unit size.)

The need for a live-in care attendant must be certified. The live-in care attendant must abide by the lease agreement, but has no survivorship rights to the apartment. If the tenant who requires assistance moves (or no longer requires assistance), the attendant must vacate as well.

B. Pregnant Woman or Household in the Process of Adoption

A pregnant woman or a household in the process of adopting a child must include the additional person(s) for the purpose of determining the maximum allowable income. Applicant/tenant self-certifies to pregnancy. Owner may not verify further than self-certification.

C. Section 8 Rental Voucher or Certificate

With the passage of the Omnibus Budget Reconciliation Act of 1993, owners are prohibited from refusing to lease to a prospective tenant based solely on the fact that the applicant holds a Section 8 rental voucher or certificate. Additionally, language prohibiting discrimination based on Section 8 status is included in the extended use agreement (Land Use Restriction Agreement) entered into by the owner and WHEDA.

5.11 Leases and Rent Limits

Rents on the set-aside (tax credit) units may not exceed the amounts allowed by section 42 of the code. All residents occupying set-aside units must be certified and under lease.

A. At minimum, the lease must include:

i. The legal name of parties to the agreement and all other occupants;

ii. A description of the unit to be rented;

iii. The date the lease becomes effective;

iv. The term of the lease;

v. The rental amount plus any other amounts paid by the tenant for parking, pets, air conditioning, etc.;

vi. The use of the premises;

vii. The rights and obligations of the parties, including the obligation of the tenant to certify annually to income as defined herein; and

viii. The correct date of move-in or date tenant takes possession of the unit.

B. Initial Lease Term

There must be an initial lease term of at least 6 months on all tax credit units. (See C. below for exceptions for housing for the homeless and single room occupancy.) The six-month requirement may include free rental periods of one month or less. Succeeding leases are not subject to a minimum lease period; however a lease must be in effect. Noncompliance is corrected on the effective date of a newly executed lease with a term of at least 6 months.

C. Single Room Occupancy

Single room occupancy (SRO) housing must have a minimum lease term of one month. SRO housing is allowed to have tenants share bathrooms, cooking facilities, and dining areas.

Federal rules allow for month-by-month leases for the following types of SRO housing for homeless individuals:

i. SRO units in projects receiving McKinney Act and Section 8 Moderate Rehabilitation assistance;

ii. SRO units intended as permanent housing and not receiving McKinney Act assistance;

iii. SRO units intended as transitional housing that are operated by a governmental or nonprofit entity and providing certain supportive services.

D. Evictions

The owner must not evict, non-renew the lease for, or otherwise terminate the tenancy, of an existing tenant of any low-income unit for other than good cause.

6. Program Glossary

Applicable Fraction: The percentage of low-income units or low-income square footage in a tax credit building. It is calculated as the lesser of:

> Low-income units divided by total units (whether or not occupied) in a building; or
>
> Total square footage of low-income units divided by total square footage of all units (whether or not occupied) in a building, with the exception of the manager's unit, which may or may not be included, depending on the circumstances.

Available Unit Rule (AUR): This rule is also known as the Next Available Unit Rule (NAUR). Following initial certification, if the household income of tenants in a low-income unit increases above 140% of the current income limit and the building is at or below its applicable fraction, the NAUR goes into effect.

To satisfy the NAUR requirements, the available unit(s) of comparable or smaller size in the same building must be rented to a qualified low-income household. This rule is implemented on a building-by-building basis.

When the household income increases above 140% of the current qualifying amount, the unit will continue to be treated as a qualified unit as long as the unit remains rent-restricted and the next available unit(s) of comparable or smaller size is rented to a qualified low-income household.

Compliance Period: Generally the 15-year period during which a Tax Credit project must comply with the requirements of section 42 of the Internal Revenue Code.

County Median Income (CMI): the average household income in a given county, as estimated by the Department of Housing and Urban Development (HUD).

Eligible Basis: Cost elements of a building that are eligible for obtaining tax credits. The eligible basis is always determined separately for each building in the project.

Extended Use Period: The 15-year period following the compliance period in which developments receiving credit allocations after December 31, 1989 must comply with eligibility requirements.

Final Allocation: A building's approval for tax credits by WHEDA's issuance of an IRS Form 8609 for the building.

Household: An individual or group of individuals occupying a single housing unit.

Initial Credit Period: The year or portion of a year that an owner first claims credit for a project.

Land Use Restriction Agreement (LURA): A contractual agreement between WHEDA and the ownership entity of a tax credit project extending the use of a tax credit property as low-income beyond the 15-year compliance period. The agreement is a restricted covenant recorded against the property.

Noncompliance: A period of time in which a project, a building, or a unit(s) is ineligible for tax credits because of a failure to adhere to section 42 requirements.

Non-Qualified Household: A household that does not meet the eligibility requirements of the Tax Credit Program. This is also referred to as an ineligible household.

Over-Income Household: A qualified household whose income later exceeds 140% of county median income.

Placed-in-Service Date: The date a building is certified as ready for occupancy. It marks the beginning of the reporting period for tax credit monitoring purposes. All events in a building must be reported to WHEDA dating back to the placed-in-service date.

Project Minimum Set-Aside: In order to earn tax credits, a development must meet the project minimum set-aside test. The owner must choose and maintain one of the following minimum percentages of low-income units in order to qualify for the tax credits.

> **20/50**: 20% of the units in the project must be occupied by households whose incomes are 50% or less of the county median income, as adjusted for household size; **or**
>
> **40/60**: 40% of the units in the project must be occupied by households whose incomes are 60% or less of the county median income, as adjusted for household size.

Qualified Basis: Eligible basis is multiplied by the applicable fraction. The qualified basis of a building is the portion of the eligible basis attributable to low-income rental units. When all of the units are low-income units, the qualified basis will equal the eligible basis. The amount of qualified basis is determined annually. Multiplying the qualified basis by the credit rate (4% or 9%) determines the maximum amount of tax credit that the building/project can generate for that year.

Qualified Household: A household that meets all eligibility requirements of the Tax Credit Program.

Recapture: The loss of tax credits, as determined by the IRS, due to noncompliance with section 42 requirements.

Section 42: Congress enacted section 42 of the Internal Revenue Code as part of the Tax Reform Act of 1986 to replace traditional tax benefits on multifamily real estate that had been eliminated. The purpose was to encourage production of affordable multifamily rental housing for persons with low to moderate income. Tax credits increase the owner's/investor's down payment in a housing project, which lowers the mortgage and financing costs and results in lower rents. Without the tax credits, cash flow from rents are often not adequate to support housing development.

Unit Vacancy Rule (UVR): The Unit Vacancy Rule is applied on a project basis. A building is considered in compliance when the current applicable fraction is at or above the first year's fraction. When a low-income unit becomes vacant during the year and the building is at or below its applicable fraction, reasonable attempts must be made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units of comparable or smaller size in the project is rented to non-qualifying tenants. It is the intent of the Unit Vacancy Rule for management to actively market the project's low-income units and to rent to low income households prior to renting to market rate.

7. Contact and Address Information

7.1 Mailing Addresses and Fax Number

A. Written Correspondence

All written correspondence (including report submission) must be addressed as follows, or to any of the individuals listed in 7.1 above.

AHTC MONITORING
WHEDA
PO BOX 1728
MADISON WI 53701-1728

B. Fax Number

WHEDA Asset Management's general fax number is: 608-261-5928

8. Extended Use Period

Credits are claimed each year for the first ten years of the credit period. Some of those credits are considered accelerated and are not deemed to be fully earned until the end of year'15. Credits are subject to recapture if noncompliance is detected at any time until the end of year'15. At the end of the 15-year initial compliance period, there is no longer a threat of recapture and the IRS is no longer involved in enforcing compliance. It is left up to the states to set a policy for monitoring and to enforce compliance through state courts or other internal measures such as debarment from participating with the agency in any new programs, etc.

The following guidelines will be in place for compliance activities during the extended use compliance period. This will apply to those properties that have completed the initial 15-year compliance period and are unable to opt-out of the program; or that are able to opt-out but choose to remain in the program.

8.1 Annual Recertification of Households

Initial 15 Year Compliance Period:

IRS Code requires that a certification of household income, including third-party verification, be completed prior to initial occupancy and an annual recertification at least once every 12 months thereafter in mixed-use projects.

Extended Use Compliance Period:

An initial certification, including third party verification consistent with HUD Section 8 guidelines will continue to be required for initial occupancy. Annual recertification requirements will be relaxed. For mixed-rate developments, (any property with less than 100% applicable fraction), the annual recertification will consist of a self-certification (AHTC Extended Use Period Form 300) from the tenant. For 100% low-income properties, annual recertification will not be required. However, annual household composition and student status verification will continue to be required.

8.2 Available Unit Rule (aka Next Available Unit Rule)

Initial 15 Year Compliance Period:

IRS regulations state that, upon annual recertification, if it is determined that a household's income has exceeded 140% of the allowable income limit and the building is at or below its applicable fraction, that unit can continue to be counted as a qualifying unit as long as the unit remains rent restricted and the next available unit(s) of comparable or smaller size are rented to a qualified low-income household.

Extended Use Compliance Period:

The Available Unit Rule will be applied in the same manner as during the initial 15-year compliance period.

8.3 Unit Vacancy Rule

Initial 15 Year Compliance Period:

IRS regulations state that when a low-income unit becomes vacant during the year and the building is at or below its applicable fraction, reasonable attempts must be made to rent that unit or the next available unit of comparable or smaller size to tenants having qualifying income before any units of comparable or smaller size in the project are rented to non-qualifying tenants.

Extended Use Compliance Period:

The Unit Vacancy Rule will be applied on a building basis during the extended use period.

8.4 Applicable Fraction

Initial 15 Year Compliance Period:

The Applicable Fraction is the percentage of low-income units or low-income square footage in a tax credit building. It is calculated as the lesser of:

Low-income units divided by total units in a building; or

> Total square footage of low-income units divided by total square footage of all units in a building, with the exception of the manager's unit, which may or may not be included, depending on the circumstances.

Extended Use Compliance Period:

The Applicable Fraction will be calculated in the same manner as during the Initial 15 Year Compliance Period.

8.5 Owner's Certification of Continuing Program Compliance

Initial 15 Year Compliance Period:

An annual certification of compliance with program requirements is required annually, according to IRS regulations.

Extended Use Compliance Period:

A modified version of the Owner's Certification (AHTC Extended Use Period Form 100) will be required annually.

8.6 Physical Inspection and File Audit

Initial 15 Year Compliance Period:

IRS regulations require that WHEDA perform an inspection of the physical property and tenant records at least once every three years. The inspection is done on 20% of the units and corresponding tenant records (files). In addition, all common areas must be inspected.

Extended Use Compliance Period:

The physical property and tenant records will be inspected every five years. Ten percent (10%) of the low-income units and files will be inspected, with a minimum of three units and maximum of fifteen. Properties participating in another federally regulated affordable housing program, (i.e. HUD, Rural Development), that requires physical and file inspections will be exempt from this inspection requirement.

8.7 Utility Allowance

Extended Use Compliance Period:

An AHTC Form 205 Parts A and B, "Utilities Information" along with documentation for the utility allowance(s) 90 days prior to effective date for the properties that utilized the following calculation methods:

Local Utility Company estimate

HUD Schedule Model

Energy Consumption Model

If a property is utilizing the local PHA utility allowance only an AHTC Form 205 A will need to be submitted to WHEDA 90 days prior to effective date. (Sites are required to keep complete copies of AHTC Form 205 A&B, including the back-up documentation, for review during management inspections).

8.8 Compliance Reporting and Monitoring

Owners will be required to complete and submit annual reports (AHTC Extended Use Period Form 200) of unit activity similar to those required for the initial 15-year compliance period. WHEDA will continue to do annual desk audits of information submitted. Compliance monitoring fees will continue to be charged during the extended use period.

At the conclusion of the extended use period, owners will be required to submit an annual Owner's Certification of Continuing Program Compliance under the 3 year tenant

protection period. The form will detail the status of any low-income residents that are covered under the three-year protection period to show that no residents have been displaced or evicted for other than good cause and the rents have not been raised above the housing credit ceiling rents.

If an owner fails to comply with the monitoring requirements during the extended compliance period, a notice of noncompliance will be issued. When the owner receives a notification of noncompliance (violation letter) from WHEDA, the owner has an opportunity to respond in writing to the letter within the prescribed correction period. The owner will have 90 days from the date of written notification by WHEDA in which to respond. In the case of non-submission of required reports, information, or fees, the owner will have no more than 30 days in which to submit the missing item. A late charge will be assessed for documentation or fees that are not received by the due date. Annual monitoring and late fees can be found in The AHTC Compliance Manual.

If the noncompliance is not corrected within this time, or a plan for correction has not been agreed upon, the owner will be considered to be "not in good standing" with the Authority. Once the noncompliance is corrected, this designation will be removed. While the owner is "not in good standing", they are ineligible to be part of the development team for any new tax credit awards. WHEDA also has the right to enforce specific performance in a state court of competent jurisdiction.

8.9 Set Aside and Special Set-aside Provisions

All set-aside (40/60 or 20/50) and special set-aside provisions (30%, 40%, 50%) that were in place at the end of the initial compliance period remain in effect for the extended use period.

8.10 Qualified Allocation Plan Scoring (QAP)

All provisions of the QAP that were in place at the end of the initial compliance period remain in effect for the extended use period.

8.11 Additional Provisions

This policy will be reviewed periodically and may be modified to facilitate better administration of the Affordable Housing Tax Credit program. Furthermore, WHEDA may waive or adjust any items contained within, on a case-by-case basis, for good cause shown to address unforeseen circumstances. As stated within the Land Use Restriction Agreement, individuals who meet the income limitations applicable to qualifying households, whether prospective, present or former occupants of the project, shall have the right to enforce such Agreement.