

**District of Columbia Department of Housing and Community
Development
Low Income Housing Tax Credit Program Compliance Manual**

D.C. Department of Housing and Community Development
Development Finance Division
801 North Capitol Street, N.E.
Washington, D.C. 20002
(202) 442-7280 TELEPHONE
(202) 442-7079 FACSIMILE

DRAFT

Preface

The District of Columbia Department of Housing and Community Development (DHCD or Department) compiled this Compliance Manual in response to its obligation to monitor the compliance of participants in the Low Income Housing Tax Credit (LIHTC) Program in the District of Columbia.

The Manual outlines the components of compliance and the methods of monitoring to be implemented for project owners that are participating in the Low Income Housing Tax Credit Program. The monitoring process is required throughout the qualified project period and will be administered in conjunction with the requirements of any other DHCD financing components within the project. It is important to note that this Manual supplements Section 42 of the Internal Revenue Code (IRS), as amended, as well as the District of Columbia Low Income Housing Tax Credit Qualified Allocation Plan. It is not intended to replace these documents as compliance with the requirements of this document does not guarantee compliance with the requirements from the IRS or other government entity.

It is further noted that the monitoring of compliance by DHCD does not result in liability for the Department on projects that are out of compliance. It is the owner's responsibility to guarantee compliance with all regulations for the documents noted above. Any errors made in compliance are the owner's responsibility.

Background

DHCD is a public agency that provides financing to assist in the development of housing affordable to low and moderate income households. As part of that assistance, DHCD makes construction/rehabilitation and long-term mortgage loans to sponsors/developers of qualified rental housing. These loans, issued at interest rates below that of conventional financing, are made so as to stimulate the creation of quality housing at rental rates that are affordable to those segments of the District's population that, otherwise, would not be served through the private market.

Under the 1986 Tax Reform Act, the LIHTC Program was created to assist in the creation and preservation of housing affordable to low income households. The Program makes available a tax credit, which is a dollar-for-dollar reduction of the tax liability of owners of low income rental housing projects. This credit may be taken over a ten-year period provided that the project remains in compliance with the low income occupancy requirements and applicable rent restrictions during the compliance period.

The Mayor of the District of Columbia has designated DC DHCD to administer the LIHTC Program for the District. In conjunction with the DC Housing Finance Agency, DHCD allocates both 9 percent and 4 percent tax credits using the Qualified Allocation Plans.

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1. Responsibilities

1.1 The DC Department of Housing and Community Development

As the Mayor's designated Low Income Housing Tax Credit monitoring agency, DHCD is responsible for the implementation of all compliance laws set out by the Internal Revenue Service (IRS). DHCD will perform the following functions once a final allocation has been awarded to a particular project:

- Review the project history form and Annual Project Certification Report, as submitted by the owner;
- Notify the owner of any non compliance with LIHTC Program requirements or failure to certify, as required by the IRS;
- Notify the Internal Revenue Service (IRS) of any noncompliance issues through form 8823 within 45 days of the end of the owners correction period, regardless of corrective action;
- Retain compliance records;
- Provide owners with notification of rule and/or regulation changes. However, compliance is ultimately the responsibility of the owner.
- At the discretion of DHCD, perform periodic on-site inspections and management reviews to ensure that LIHC buildings and units are suitable for occupancy. The agency will select which projects will undergo DHCD review and will give owners sufficient notice that the building has been selected for a site visit.

1.2 Owner/Agent

By accepting the allocation of tax credits, the owner/agent is responsible for compliance with all IRS and District rules regarding Low Income Housing Tax Credits, as well as local and Federal regulations regarding tenant rights, fair housing and building code. The Owner/Agent shall:

- Follow the procedures and requirements contained in the DHCD LIHTC Program Compliance Manual as well as the Qualified Allocation Plan (QAP);
- Qualify that tenants are eligible to reside in the tax credit unit, including verification of all income and assets, family size and composition, student status and all other requirements that affect eligibility. For 100% affordable projects, this recertification process is not required.
- Maintain properties in safe, decent, sanitary condition and in good repair, according to either the Uniform Physical Conditions Standards (UPCS) established by HUD, or local inspection standards as required in the QAP;
- Complete and submitting the Project History Form, Exhibit B and submit the Annual and Project Certification Report, Exhibit C, as instructed in the DHCD LIHTC Compliance Manual;
- Make all required corrections and/or clarifications, as determined necessary for compliance, within the time frames established by DHCD;
- Maintain records for each building (pursuant to the Tax Credit Compliance Manual, Section 4.5, Recordkeeping and Record Retention); and
- Assist in the audit and review of any low income building during the compliance period,

to include a physical inspection of the building and the provision of tenant income, rent roll, or other data as required by the agency.

- Provide documentation for all services to special needs groups if the building was built for a specific population;
- Update DHCD on any changes to the ownership or management of the building, including sale or change of address.

1.3 Notice

The following shall constitute cause for written notification:

- The owner shall notify DHCD of any proposed change in the project's management agent.
- The owner shall notify DHCD of any proposed change in the project's ownership, in accordance with the procedures set forth in IRS Revenue Ruling 90-60.
- The owner shall notify DHCD of any action(s) prescribed by the IRS to abate noncompliance findings.
- DHCD shall notify the owner of any deficiencies, defaults or other violations to District of Columbia code, and/or the requirements set forth in this agreement and/or the requirements of Section 42 of the IRS code.

2. Compliance Policies and Guidelines

The following topics apply to the processing and occupancy of Low Income Housing Tax Credit Units. These guidelines need to meet all District of Columbia landlord/tenant laws as well as comply with Section 42 of the Internal Revenue Code and all local or federal regulations and guidelines.

Compliance Period

The compliance period begins in the first taxable year of the credit period, which is the year buildings are also placed in service. The compliance period extends 15 years and a concurrent extended use period of 30 years. This 30 year compliance period is delineated in the recorded deed of easement and restrictive covenant.

Full time students

In general, a unit is not considered a low income unit if all of the occupants of such unit are students (as defined in Section 15 1(c) (4) of the Code). If the household is made up entirely of students, the household must meet one of these exceptions:

- Any member of the household receives assistance from TANF.
- Any member of the household is enrolled in governmentally supported job training programs (the Job Partnership Training Act and similar federal or local programs)
- Every member of the household is married and files a joint return;
- Every adult member of the household is a single parents and neither they nor their children are dependents of a third party; or
- Any member of the household has formerly been in the foster care system.

Marketing

Owners cannot give preferential treatment, or limit the occupancy of a qualified unit, to special groups or persons if this action would, in any way, result in a violation under the Fair Housing Acts or any other federal or District of Columbia statute or regulation. However, projects may be marketed to individuals with special needs or are involved in artistic activities. In addition, all LIHTC units must be listed in the District's Affordable Housing Locator.

Medical facility, nursing home, or retirement home

A qualified LIHTC project must not be a hospital, nursing home, sanitarium, life-care facility, or retirement home providing significant services other than housing, dormitory or trailer park.

Recapture of Tax Credits

While DHCD is not responsible for the recapture of Low Income Housing Tax Credits, the IRS typically recaptures credits in cases where the tax credit property has been disposed of, the building no longer meets minimum set-aside, gross rent, or other requirements; or there is a decrease in the qualified basis of a the building.

Resident Application Process

Applicants for a LIHTC unit are to be advised of the occupant's income limit restriction, as well as any tenant selection criteria the owner uses to determine an applicant's qualification for occupancy.

The applicant must complete a Release of Verification Form, Exhibit D, for use by the owner in order to obtain the third-party asset and income information necessary to complete the Resident Certification Form, Exhibit E.

Screening

Any and all tenant selection criteria must be established in writing and be evenly applied to all of the project's applicants for housing, notwithstanding the unit's participation in the LIHTC program. The tenant selection process cannot violate any federal or District of Columbia law or regulation.

Should existing tenant(s) wish to transfer to a new set-aside unit, the tenant(s) must be treated exactly as prospective tenants in a new move-in. Therefore, all application, verification and certification procedures must be completed for the transferring tenant(s).

Suitable for Occupancy

All units must meet the health; safety and building code requirements, as prescribed under the Secretary of the Treasury's "suitable for occupancy standards". The owner shall certify that this requirement is being met annually by use of the Annual and Project Certification Report (Exhibit C) which must be submitted to DHCD each year during the compliance period. See Exhibit H for the required submission dates.

Tenant Opportunity to Purchase

Any building owner wishing to sell the building for which he/she received tax credits is required to provide notification to the existing tenants and allow them the right of first refusal on the

building, as stated in D.C. Official Code § 42-3404.03.

Transient Housing

The building may not be used for transient housing. A resident is considered transient if the initial lease term is less than six months. The only exception to the six month lease restriction is Single Room Occupancy (SRO) housing which permits units to be rented on a monthly basis.

Vacant Units

Vacant units may be counted toward the minimum set-aside if the unit is ready for occupancy, the owner demonstrates reasonable attempts to rent the unit to a qualified low-income household, and that no other unit of comparable or smaller size in the building is rented to non low-income individuals.

3 Resident Income Eligibility

3.1 Income Eligibility Requirements

The LIHTC Program requires that the determination of eligible household income be based on the HUD Regulations in the Code of Federal Regulations. As a result, in order to determine income eligibility, the owner/agent must obtain verification of all income sources of all adult household members age eighteen and older as well as benefits paid on behalf of minors in the household.

Income from assets is to be included in annual income. To arrive at an income from asset figure, the owner needs to verify all assets and establish the cash value of same. At the time of verification, the anticipated income of the asset must be applied as income toward the applicable income limit.

For the LIHTC Program, the amount of income from assets will be determined by the total cash value of all assets owned by the household.

- If the total cash value of all assets owned by the household is less than \$5,000, include the actual income derived from the asset in annual income.
- If the total cash value of all assets owned by the household is \$5,000 Or greater, include in annual income the larger amount of either the actual income derived from the assets or an imputed amount which is calculated by multiplying the total cash value of all assets owned by the household times 3.7 percent

This process cannot occur until third-party Verification of all income and assets has occurred. When this verification has been retrieved, the owner/agent will complete a Resident Certification Form, Exhibit E.

3.2 Income Limits

The US Department of Housing and Urban Development (HUD) publishes median income information for the District of Columbia. These limits are published by HUD on an annual basis and the Agency will make them available to all parties interested in the Low Income Housing

Tax Credit Program. The 2008 income limits for tenants are listed below by household size.

Low Income Housing Tax Credit Income Limits, 2008 (60% of Area Median Income)												
Household Size	1	2	3	4	5	6	7	8	9	10	11	12
Income	41,340	47,220	53,160	59,040	63,780	68,460	73,200	77,940	82,680	87,360	92,100	96,840

3.3 *Income Inclusions and Exclusions*

The following criteria are based on the applicable Code of Federal Regulations, with respect to the determination of income eligibility. Generally, annual income is defined as:

- All income, monetary or not, that comes to the household head, co-head, or spouse (even if that person is temporarily absent), or other adult member of the household;
- All anticipated income for the 12 month period following certification;
- Income from assets; and
- Any other income sources not specifically defined through regulation.

Annual Income Includes:

1. 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 over the age of 18 approved to live in the household, to include salaries received from a family-owned business; and net income, salaries and other amounts distributed from a business;
2. Income of full-time students over the age of 18 who are heads, spouses, or co-heads of household.
3. Up to \$480 of full time adult student dependent income;
4. Government Payments
 - a. The gross amount (before deductions for Medicare, etc.) of periodic Social Security payments, to include payments received by adults on behalf of minors or by minors for their own support; NOTE: (If Social Security reduces a family's benefits to adjust for a prior over payment, use the reduced payment amount. This is usually the "gross" amount reported on Social Security's verification form.)
 - b. Lump sum payments received because of delays in processing unemployment, social security, welfare, or other benefits;
 - c. Payments in lieu of earnings, such as unemployment and disability compensation, workers' compensation and severance pay, to include any payments that commence during the succeeding twelve months;
 - d. Annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts;
5. Alimony and child support of dependents or adults within the household;
6. Interest, dividends and other income from net family assets (including income distributed from trust funds);
7. Amounts by which education grants, scholarships or Veterans Administration benefits exceeds expenses for tuition, fees, books, equipment, and reasonable rent and utility costs for a student living away from home (No part of student loan can be included in Annual

- Income);
8. Regular pay, special pay, and allowance (except hazardous duty pay) paid to a member of the Armed Forces who is a family member and is (a) the spouse or head of a household (whether or not living in the dwelling) or (b) age eighteen or over and have dependents living in the unit;
 9. Lottery winnings paid in periodic payments (Winnings paid in lump sum are included in net family assets, not in Annual Income);
 10. Recurring monetary contributions for gifts regularly received from persons not living in the unit (includes rent or utility payments regularly paid on behalf of the family);
 11. The Supplemental Security Income (551) payment the resident would receive if he/she were not living in a group home; and
 12. All income the resident receives from sources other than 551, e.g., wages, training workshops, interest income, etc.

Annual Income Excludes:

1. Employment income of children (including foster children) younger than eighteen;
2. Food stamps, meals on wheels, or other programs that provide food for the needy; groceries provided by persons not living in the household;
3. Grants or other amounts received specifically for (a) auxiliary apparatus for a person with handicap or disability, (b) expenses for attendant care provided by other than a family member living in the household, (c) medical expenses (d) set aside for use under a Plan to Attain Self Sufficiency (PASS) and (e) out-of-pocket expenses for participation in publicly assisted programs (these expenses include special equipment, clothing, transportation, child care, etc;)
4. Income associated with persons that live in the unit but are not household members (e.g. payments received for care of foster children or the income of live-in attendants);
5. The principal portion of payments received on mortgages;
6. Scholarships or veterans benefits used for tuition, fees, books, equipment, or reasonable rent or utility costs for a student living away from home and student loans (regardless of how they are actually spent);
7. Hazardous duty pay to a family member in the military;
8. Lump sum additions to family assets;
9. Casual, sporadic or irregular gifts;
10. Payments, rebates, or credits received under Federal Low Income Home Energy Assistance Programs (Includes any winter differentials given to elderly);
11. Annual rent credits or rebates paid to senior citizens by government agencies;
12. Payments received under training programs funded by HUD (Comprehensive Improvement Assistance Program);
13. Relocation payments received under Tide II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
14. Allotment value of coupons made under Food Stamp Act of 1977;
15. 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);
16. Payments received under Alaskan Native Claims Settlement Act;

17. Payments from certain sub marginal U.S. land held in trust for certain Indian tribes;
18. Payments received under programs funded in whole or in part under the Job Training Partnership Act (employment and training programs for native Americans and migrant and seasonal farm workers, Job Corps, veterans employment programs, State job training programs, career intern programs);
19. Payments from disposal of funds of Grand River Band of Ottawa Indians;
20. The first \$2,000 of per capita shares received from judgments awarded by the Indian Claims Commission of the Court of Claims or from funds the Secretary of Interior holds in trust for an Indian tribe;
21. Payments received under Title V of the Older Americans Act (Green Thumb, Senior Aides, Older American Community Service Employment Program);
22. Payments received after January 1, 1989 from the Agent Orange Settlement Fund or any other fund established pursuant to the statement in the In Re Agent Orange product liability litigation, MDL No. 381 (EDNY);
23. Scholarships funded under Title IV of the Higher Education Act of 1965, including awards under the Federal work study program or under the Bureau of Indian Affairs student assistance programs, or veterans benefits, that are made available to cover the costs of tuition, fees, books, equipment, materials, supplies, transportation, and miscellaneous personal expenses (examples include Pell Grants, Supplemental Opportunity Grants, State Student Incentive Grants, College Work Study and Byrd Scholarships);
24. Payments received under the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96-420, 9z Stat. 1785); and
25. Amounts received by a person with a handicap or disability that are set aside for use under a Plan to Attain Self Sufficiency (PASS).

3.4 *Calculating Income from Earnings and Benefits*

Verified income must be converted to annual amounts by using the following calculations.

1. To annualize full-time employment, multiply:
 - a. Hourly wages by 2080 hours;
 - b. Weekly wages by 52;
 - c. Biweekly amounts by 26;
 - d. Semi-monthly amounts by 24;
 - e. Monthly amounts by 12.
2. To annualize income from anything other than full-time employment, multiply:
 - a. Hourly wages by the number of hours the family expects to work Annually;
 - b. Average weekly amounts by the number of weeks the family expects to work; and
 - c. Any other periodic amounts (Monthly, biweekly, etc.) by the number of periods the family expects to work.
3. Annual wages should always reflect a full 12-month period, regardless of the pay schedule as in the case of seasonal or part time work. For example, if a school teacher earns a gross annual salary of \$27, 000, the \$27,000 should be used as annual salary whether the teacher is paid over only nine months or throughout the year.

3.5 *Income from Assets*

The Resident Certification Form will help in working through the calculation to determine income from assets.

Third-party verification is required to determine the market value of an asset. The value of the asset may then be reduced by whatever costs that may be incurred to convert that asset to cash.

Examples of these costs are:

- Penalties for premature withdrawal
- Brokers fees
- Legal fees
- Settlement costs for real estate transactions.

How to Calculate Cash Value

Owners must use the cash value of the asset, i.e., the amount the family-would receive if the asset were converted to cash. Cash value is the market value minus any reasonable expense that would be incurred in selling or conveying the asset to cash, such as:

- Penalties for early withdrawals;
- Broker and legal fees;
- Settlement costs for real estate.

If the total cash value of a family's assets is more than \$5,000, annual income from those assets includes the greater of the actual income of the assets or the imputed income (the income that the money would earn if the asset were in a savings account) of the assets as established by HUD.

A. Trusts

- a. If the trust is nonrevocable, the family has no access to the income or principle of the trust, and there fore the trust is not included in family income or assets.
- b. For revocable trusts in which the family can access the funds, the cash value is added to the total net assets and the income received is counted toward income from assets.

B. Lump Sum Payments

- a. Lump sum payments such as inheritances, lottery winnings, capital gains, or insurance settlements should be counted as an asset unless a non asset is purchased with that sum.

C. Retirement Accounts

- a. Retirement accounts are only considered assets when the funds are accessible, regardless of whether or not there is a penalty. The penalty must be subtracted from the available funds and counted toward the total asset amount.

D. Mortgage or Deed of Trust

- a. A mortgage of deed of trust should be included as an asset. The value of the asset would equal the unpaid principle as of the certification date.

3.6 *Asset Inclusions and Exclusions*

Assets Include

1. Amounts in savings and average 6 months balance of checking account.
2. Stocks, bonds, Treasury Bills, certificates of deposit, money market funds.

3. Equity in real property or other capital -investments. Equity is the estimated current market value of the asset less the unpaid balance on all loans secured by the asset and reasonable costs (such as broker fees) that would be included in selling the asset.
4. Principal value of trusts that are available to the household.
5. IRA, Keogh and similar retirement savings accounts, even though withdrawal would result in a penalty.
6. Some contributions to retirement/pension funds
7. Personal property held as an investment (such as jewelry or antiques).
8. Inheritances, lottery winnings, capital gains, insurance settlements and other lump-sum amounts are generally considered assets.

Assets do not include:

1. Personal property.
2. Interest in Indian trust lands.
3. Assets that are part of an active business or farming operation.
4. Assets that an applicant/resident legally owns but that are not accessible by the applicant, e.g., a battered spouse owns a house with her husband but because of the domestic situation she receives no income from the asset and cannot convert it to cash.
5. Assets that are not effectively owned by the applicant. i.e., when asset is held in applicant's name but:
 - a. Asset and income from asset accrued to someone else; and
 - b. That other person is responsible for paying taxes on the asset income.
 - c. Not to be confused with joint ownership.
6. Equity in the cooperative unit in company which the family lives

All sources and forms of income and assets must be verified. Verification must be received by the owner/agent prior to the execution of the Move-in Certification and occupancy as well as annual re-certification.

An Authorization for Release of Verification Form, Exhibit D, should be signed by each adult household member prior to the application interview and again at the annual re-certification. This form is a general consent form to release information necessary for third-party verification. Additional signatures of new adult members should be obtained prior to move-in or when the member turns 18 years of age.

3.7 Income and Asset Verification

All items that affect an applicant's eligibility must be verified-within 90 days of the move in or annual re-certification. Three methods of verification are acceptable. They follow in the order of preferred acceptance:

1. Written verification by a third-party (may not be transmitted by the tenant/prospective tenant);
2. Documentation, evidencing income sources, that can be reviewed by the owner to determine eligibility (may be used only when a third-party verification is not possible);
3. Tenant certification (a notarized statement) when third-party verification or review of documentation is not possible within a four week period (this method may only be used

as a last resort).

Verification should be date stamped upon receipt to ensure compliance. Sample verification forms are in Exhibit G.

3.8 HUD-Assisted Residents

Should a LIHTC tenant also be participating in the Section 8 rental assistance program (Section 8 Certificate, Section 8 Voucher, or Section Moderate Rehabilitation Contract), the owner should certify to the Section 8 contract administrator (CA), at the District of Columbia's Department of Public and Assisted Housing, that the tenant is income eligible under the LIHTC Program.

3.9 Recertification

The determination of continued tenant eligibility for all sit-aside units must be performed annually. This determination process is identical to initial eligibility certification procedure. When this re-certification procedure is performed, the owner/agent needs to pay particular attention to the circumstances which may have affected the continuing eligibility of a resident in a set-aside unit. Areas of concern include:

- New or additional income sources
- Change in employment status
- Change in family composition
- Additional assets
- Deletion of assets

The owner must complete a Resident Certification Form, Exhibit E, supported by the background information to establish continued eligibility. This process is identical to the move-in eligibility process, except the income limits are amended to reflect 140 percent of the median income limit as adjusted for family size.

- If the household annual income at re-certification increases above the qualifying income level at move-in, but is less than 140 percent of the area median income limit as adjusted for family size, the family continues to qualify as a low income set-aside unit.
- If the household annual income at re-certification exceeds 140 percent of the area median income limit as adjusted for family size, the unit may continue to count as a low income set-aside unit as long as the next vacant unit of comparable or smaller size is occupied by a qualified low income resident.

4. Rent Requirements

With respect to the Project's set-aside units, the gross rent charged by the owner must conform to the rent levels established under the LIHTC Reservation and Allocation Agreements; however, under no circumstances shall the set-aside low income unit rents exceed those permitted under Section 42 of the IRS code. Once the building is placed in service, the percentage of set-aside units may not be reduced.

4.1 Projects receiving tax credits before 1990

Maximum gross rent for projects that received tax credits before 1990 must be based on

household size. The rent is calculated by multiplying the area median income limitation for the household size by .3 and dividing it by 12 to determine the monthly rent.

4.2 *Projects receiving tax credits beginning January 1, 1990*

The rent for a unit with one or more separate bedrooms is based on 1.5 individuals occupying each of the bedrooms. The area median income limitation of 1.5 individuals per bedroom is multiplied by .3 and divided by 12 to determine gross rent. However, if the unit is an efficiency unit, one individual should be assumed.

4.3 *Utility allowances*

Utility allowances should be calculated as follows:

1. Housing and Urban Development (HUD) regulated buildings use HUD approved utility allowances;
2. Conventional buildings use Public Housing Authority (PHA) Section 8 Existing utility allowance.

The maximum allowable gross rent must include an allowance for all utilities to be paid by the resident, such as: heat, lights, air conditioning, water, sewer, oil or gas, where applicable. For information on the applicable utility allowance for the project, please refer to IRS Notice 89-6, Utility Allowance Requirements, Determination of General Public Use, and Provision of Services. Utility allowances must be updated regularly since they are included in the maximum allowable rent calculations. Any changes in utility allowances may impact on the net chargeable rent to the tenant.

4.4 *Over-Income Tenants*

If, on recertification, a family income increases beyond the area median income limitation, the unit will continue to be treated as a low-income unit for set-aside purposes, provided the income of the household was compliant on initial certification. However, if the income of the household increases above 140 percent of Area Median income, the next available unit in the building (of comparable or smaller size) must be rented to a low-income household to make up for the loss of the set-aside unit.

Tenants should not be evicted. However, the landlord may increase the rent when the lease is renewed as long as the next available unit was rented to a low-income household. If the building is 100 percent low-income, the landlord is not eligible to impose a rent-increase, regardless of the income of the tenant.

5. *Compliance Procedures*

5.1 *Election of Minimum Set-Aside*

As outlined in Exhibit A, an irrevocable election of the Minimum Set-Aside of Low Income Units is made by the owner no later than the date the building is placed-in-service. The Set-Aside elections are as follows:

1. At least 20 percent of the rental units must be rented to residents with qualifying income

- at or below 50 percent of area median income;
2. At least 40 percent of the rental units must be rented to residents with qualifying income at or below 60 percent of area median income; or
3. The number of Set-Aside units agreed to in the Conditional Reservation and/or Allocation Agreement governing the project, whichever is greater.

The Set-Aside is the minimum amount of units that must be reserved for low income residents for a building to be considered a qualified low income building and retain any of its tax credits. However, the amount of units that must be reserved for qualified low, income residents is determined at the placed-in-service date and is referred to as the Applicable Fraction of low income units. For a further explanation of the determination of the Applicable Fraction, please refer to Exhibit A. The applicable Fraction of units may not be decreased during the compliance or extended compliance period. A decrease in the Fraction may result in a partial recapture of tax credits, an event of noncompliance, and applicable penalties.

5.2 Compliance Period

A project receiving an allocation of tax credits must remain a qualified low income housing project as defined in Section 42(g) of the Code for its entire compliance period. Projects receiving an allocation of 1987-89 tax credits must remain a qualified project for a period of 15 taxable years beginning with the first taxable year of the credit period, which runs concurrent with a 30 year extended use period. Projects receiving an allocation of tax credits after 1989 must enter into a Restrictive Covenant Agreement with the Agency. This agreement addresses not only the maintenance of the applicable fraction of tax credit units, but also the rights of the residents and provisions for an extended low income compliance period beyond the initial 15 year compliance period. No tax credit may be claimed by an owner for a taxable year unless the Restrictive Covenant Agreement is in effect for such taxable year.

5.3 Eligibility Reporting Requirements for all LIHTC Developments

As the monitoring agency for the LIHTC, DHCD will request the owner/agent utilizing the Program to complete the following steps:

1. Annual and Project Certification Report: The owner/agent shall submit to the Agency an Annual and Project Certification Report, Exhibit C, and attach the Resident Certification Form, Exhibit E, each year throughout the compliance period. The annual report covers the period of the prior calendar year.
2. Compliance Review: At the discretion of DHCD, a random compliance review will be performed on any LIHTC units. A review will be performed by a DHCD representative to determine compliance with this Manual and the Low Income Housing Tax Credit Program. The number of files reviewed will not be less than 20 percent of the Low Income Housing Tax Credit Resident Files but may be 100 percent of the files.
3. DHCD will respond to the owner/agent as to any finding during this review. The owner/agent will be required to respond to the Agency within 60 days of the date of the letter addressing the method and/or action completed to rectify each item. DHCD will notify the Internal Revenue Service within 21 days from the above referenced correction period of all outstanding items that have not been rectified as well as any deficiencies that have been corrected. This notification is on IRS Form 8823.

If a project has DCHFA mortgage financing, monitoring requirements for the project must meet additional DCHFA compliance procedures and requirements as set forth in the mortgage loan documents and the additional requirements as set forth below.

5.4 Recordkeeping and Record Retention

As required by the Internal Revenue Service, Federal Register, Parts 1 and 602, the owner is required to maintain accurate records for each building in the low income housing project. These data must include:

- The total number of residential units in the building, and the square footage of all resident units in the building.
- The total number of all low income units in the building.
- The number of occupants in each low income unit
- The rent charged on each residential unit in the building, including utilities paid both by the resident and/or owner or utility allowance.
- The number of bedrooms in each unit.
- The low income unit vacancies in the building.
- The rentals of the next available units in each building including when and to who rented.
- Documentation regarding the eligible and qualified basis of each building as of the end of the first year of the tax credit period.
- The character and use of the nonresidential portion of the building that was included in the building's Eligible Basis.
- Tenant characteristics: race, ethnicity, family composition, age, income, use of Section 8 rental assistance, and disability status.
- The certification data discussed in Section 5.3 of this Chapter.

These records must be kept for a minimum of six years after the due date (with extensions) for filing the federal income tax return for that year. However, the records for the first year of the credit period must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building. All records must be available to the agency at any time for its review.

Exhibits

- A. Tax Credit Program Guide
- B. Project History Form
- C. Annual & Project Certification Report
- D. Release Form
- E. Resident certification Form
- F. Income limits
- C. Sample Verification Forms

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