# Indiana Rental Housing Tax Credit Compliance Manual

This manual is a reference guide for the compliance monitoring of the Section 42 Rental Housing Tax Credit (RHTC) Program in Indiana. It is designed to answer questions regarding procedures, rules, and regulations that govern RHTC developments. This manual should be a useful resource for owners, developers, management agents, and onsite management personnel. It provides guidance with respect to the Indiana Housing and Community Development Authority's (IHCDA's) administration of monitoring for compliance under Section 42 of the Internal Revenue Code of 1986 and the Treasury Regulations there under (the "Code"). Section 42 of the IRS Code is available in Appendix A.

In order to realize the benefits afforded by the RHTC Program, it is essential that each building remain in compliance. An especially critical time to ensure compliance is at the time of initial lease-up. Errors made in the screening of applicants for eligibility may have serious implications on the future viability of that building.

IHCDA and its monitoring staff are committed to working closely with owners, management agents, and onsite personnel to assist them in meeting their compliance responsibilities.

**Please note, however, that this manual is to be used only as a supplement to compliance with the Code and all other applicable laws and rules. This manual should not be considered a complete guide to RHTC compliance. The responsibility for compliance with federal program regulations lies with the owner of the building for which the Rental Housing Tax Credit is allowable. (See disclaimer below).**

Because of the complexity of RHTC regulations and the necessity to consider their applicability to specific circumstances, owners are strongly encouraged to seek competent, professional legal and accounting advice regarding compliance issues**. IHCDA's obligation to monitor for compliance with the requirements of the Code does not make IHCDA or its subcontractors liable for an owner's noncompliance.**

****DISCLAIMER****
*The publication of this manual is for convenience only. Your use or reliance upon any of the provisions or forms contained herein does not, expressly or impliedly, directly or indirectly, suggest, represent, or warrant that your development will be in compliance with the requirements of the Internal Revenue Code of 1986, as amended. The Indiana Housing and Community Development Authority and contributing authors hereby disclaim any and all responsibility of liability, which may be asserted or claimed arising from reliance upon the procedures and information or utilization of the forms in this manual. You are urged to consult with your own attorneys, accountants, and tax consultants.*

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# Section 1- Introduction

## Part 1.1|Background of the RHTC Program

In 1986, Congress enacted the Rental Housing Tax Credit (RHTC) Program, also known as the Low-Income Housing Tax Credit (LIHTC) Program. This program provides incentives for the investment of private equity capital in the development of affordable rental housing. The RHTC reduces the federal tax liability of development owners in exchange for the acquisition, rehabilitation, or construction of affordable rental housing units that will remain income and rent restricted over a long period of time. The amount of RHTC allocated is based on the number of qualified low-income units that meet federal rent and income targeting requirements.

The RHTC is authorized and governed by Section 42 of the Internal Revenue Code of 1986, as amended (the "Code"). The Indiana Housing and Community Development Authority (IHCDA) is the designated "housing credit agency" to allocate and administer the RHTC Program for the entire state of Indiana, pursuant to Section 42 of the Code.

Each state develops a Qualified Allocation Plan ("QAP"), which establishes the guidelines and procedures for the acceptance, scoring, and competitive ranking of applications and for the administration of the RHTC Program. The Indiana QAP is developed to be relevant to state housing needs and consistent with state housing priorities.

## Part 1.2|Contents and Summary

Section 42 of the Code requires that each state's Qualified Allocation Plan provide a procedure that the agency will follow in notifying the Internal Revenue Service (IRS) of any noncompliance with the provisions of Section 42 of which it becomes aware. This provision became effective on January 1, 1992.

Final regulations developed by the IRS and published on September 2, 1992 and January 14, 2000, outline minimum requirements for owner record keeping and reporting, state credit agency monitoring and inspecting, and reporting to the IRS instances of noncompliance (See IRS guidance in Appendix A).

Indiana's compliance monitoring plan follows final IRS regulations, as well as the recommendations of the National Council of State Housing Agencies (NCSHA), guidance issued by the IRS in the *Guide for Completing Form 8823 Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition: Revised October 2009** (commonly referred to as the "8823 Guide"), and the income rules found in Chapter 5 of HUD Handbook 4350.3. The current edition of the Compliance Manual is applicable to <u>all</u> owners of <u>all</u> buildings which have ever claimed the Rental Housing Tax Credit in Indiana since the inception of the program in 1987.

*NOTE: All references to the "8823 Guide" made throughout this manual refer to the October 2009 Revision. This document is available in Appendix A.

## Part 1.3|Compliance Period

Once allocated by the housing credit agency, Rental Housing Tax Credits can be claimed annually over a ten (10) year period (the "Credit Period") beginning either in the year the building is placed-in-service or the following year, depending on which option is elected by the owner. Developments must, however, remain in compliance for a minimum of fifteen (15) years (the "Compliance Period"). Additionally, owners who agreed in their Final Applications to have longer Compliance Periods will be bound for the length of time specified.

### A. Compliance Period for All RHTC Developments

All Developments receiving a credit allocation since 1987 must comply with eligibility requirements for a period of fifteen (15) taxable years beginning with the first taxable year of a building's Credit Period (the "Compliance Period").

## B. Compliance Period for Credit Allocations After December 31, 1989

Developments receiving a credit allocation after December 31, 1989, will have entered into a Declaration of Extended Low-Income Housing Commitment with the Indiana Housing and Community Development Authority (IHCDA) at the time the final allocation of credit was issued via IRS Form 8609. These developments must comply with eligibility requirements for an "Extended Use Period." The Extended Use Period is either an additional fifteen (15) years beyond the fifteen (15) year Compliance Period [a total of thirty (30) years], or the date specified in the Declaration of Extended Low-Income Housing Commitment, whichever is longer.

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 Declaration of Extended Low-Income Housing Commitment.

Additional information about the Extended Use Period can be found in Section 5, Parts 5.11-12.

## C. Compliance Period for Credit Allocations for 1987 through 1989 Only

Developments receiving a credit allocation prior to January 1, 1990 did not enter into an Extended Use Agreement, and therefore only have a fifteen (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 be bound by a Declaration of Extended Low-Income Housing Commitment (per Revenue Ruling 92-79).

# Section 2 – Responsibilities

The entities/persons involved in the compliance of the RHTC Program are IHCDA, the development owner, and the management company/agent. The various responsibilities for these entities/persons are set forth below.

## Part 2.1|Responsibilities of the Indiana Housing and Community Development Authority

The Indiana Housing and Community Development Authority (IHCDA) allocates tax credits and administers the RHTC program for the State of Indiana. The responsibilities of IHCDA are as follows:

### A. Issue IRS Form 8609 (Low-Income Housing Certification)

An IRS Form 8609 is prepared by IHCDA for each building in the development. Part I of the Form is completed by IHCDA and then sent to the owner when the development is placed-in-service and all required documentation is received by IHCDA.

The owner must complete Part II of Form 8609 in the first taxable year for which the credit is claimed. After completion of Part II, a copy of the form is sent to the RHTC Compliance Department of IHCDA. The original is sent to the IRS with the owner's personal, partnership, or corporate tax returns in the first taxable year in which the credit is claimed and each year thereafter in the Compliance Period. IHCDA will not issue an IRS Form 8609 for each year of the Compliance Period. Therefore, before signing and dating Part II of the Form 8609, the owner should make copies of it.

Owners are strongly encouraged to consult with their legal and/or tax advisors for advice on completing and filing IRS tax forms. **IHCDA will not give legal or tax advice on the filing or completion of any tax forms.**

The issuance of the IRS Form 8609 begins the compliance monitoring period. A sample copy of IRS Form 8609 is included in Appendix B.

### B. Review Declaration of Extended Low-Income Housing Commitment

IHCDA will review the Declaration of Extended Low-Income Housing Commitment prior to issuance of the IRS Form 8609 for each development. This document must be recorded before the end of the calendar year in which the credit is first claimed. When the original recorded document is returned to IHCDA with the Final Application and all fees have been paid, the IRS Form 8609 will be sent to the owner if everything is appropriate and satisfactory to IHCDA.

### C. Review Annual Owner Certifications

For information on Annual Owner Certifications, see Section 5, Part 5.5.

### D. Conduct File Monitoring and Physical Unit Inspections

IHCDA will perform a file review for each development within two (2) years of the last building being placed-in-service and at least every three (3) years thereafter. Owners of the selected developments will be required to provide detailed information on tenant income and rent for at least 20% or more of the low-income units in the development. Information to be reviewed will include, but is not limited to, the annual Tenant Income Certifications, the documentation received to support those certifications (i.e. income and asset verifications), and rent and utility allowance records. **Owners must provide organized tenant files to IHCDA with documentation in chronological order**. For more information on the monitoring process, see Section 5, Part 5.6.

IHCDA also retains the right (either by a third-party inspector contracted by IHCDA or by IHCDA staff) to perform a physical inspection of any low-income building and/or unit at any time during the Compliance and Extended Use Periods, **with or without notice to the owner.**

### E. Notify IRS of Noncompliance

IHCDA will notify the IRS of instances of potential noncompliance. For information on noncompliance, see Section 6.

### F. Retain Records

IHCDA will retain all Owner Certifications and records for no less than three (3) years from the end of the calendar year in which they are received. IHCDA will retain records of noncompliance or the failure to certify compliance for no less than six (6) years after its filing of an IRS Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance.

### G. Conduct Training

IHCDA will conduct or arrange compliance trainings and will disseminate information regarding the dates and locations of such trainings. For more information on IHCDA Compliance Trainings, refer to Section 5, Part 5.3 and IHCDA's compliance website (**http://www.in.gov/ihcda/2519.htm**).

In addition, IHCDA's RHTC staff can be contacted at:

Multi-Family Department
Indiana Housing and Community Development Authority
30 South Meridian Street, Suite 1000
Indianapolis, IN 46204

Telephone: (317) 232-7777 Fax: (317) 232-7778

### H. Possible Future Subcontracting of Functions

It is currently the intent of IHCDA to perform all file reviews listed above and outlined in the regulations governing this program. However, IHCDA may, in its sole discretion, decide at some future time to retain an agent or private contractor to perform some of the responsibilities listed above. Owners will be notified of the name and contact persons of the private contractor.

## Part 2.2|Responsibilities of Development Owner

Each owner has chosen to utilize the Rental Housing Tax Credit Program to take advantage of the available tax benefits. In exchange for these benefits, certain requirements must be met by the owner that will benefit low-income tenants.

Owners must provide IHCDA comprehensive development information with evidence of overall economic feasibility. Prior to issuance of a final credit allocation, the owner must certify to the total development costs in such form, manner, and detail that IHCDA may from time to time prescribe. The owner must also certify that all RHTC program requirements have been met. Any violation of program requirements could result in the loss of credit allocated.

The responsibilities of development owners also include, but are not limited to:

## A. Leasing RHTC Units to Section 42 Eligible Tenants

For more information on leasing requirements, see Section 4, Part 4.8.

## B. Charging no more than the Maximum RHTC Rents (including utilities)

For more information on Maximum Gross Rent, see Section 3, Part 3.3.

## C. Maintaining the property in habitable condition

The owner is responsible for ensuring that the development is maintained in a decent, safe, and sanitary condition in accordance with appropriate standards. Failure to do so is a reportable act of noncompliance.

## D. Complying with IRS & IHCDA record-keeping requirements

The owner of any building for which credit has been or is intended to be claimed must keep records that include all of the information set forth below, on a building basis, for a minimum of six (6) years after the due date (with extensions) for filing the federal income tax return for that year. <u>However, the records for the first year of the Credit Period (i.e. "initial tenant files") must be kept for six (6) years beyond the filing date of the federal income tax return for the last year of the Compliance Period of the building [a total of twenty-one (21) years].</u>

<u>Per the guidance issued by the IRS in Rev. Proc. 97-22 and Rev. Rul. 2004-83, IHCDA permits the electronic storage of records in lieu of hardcopies. However, hardcopy files should be maintained for all existing current households. The files for households that have vacated the property may be converted into electronic format once a new household moves into the unit. Additionally, original hardcopies should be kept for all initial files.</u>

<u>The records must include the following:</u>

- The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);
- The percentage of residential rental units in the buildings that are low-income units and the percentage of unit floor space in the building that is occupied by low-income households (The Applicable Fraction) ;
- The rent charged on each residential rental unit in the building and the applicable utility allowance. Utility allowance records should include copies of the annual supporting documentation such as utility allowance charts from the local PHA, copies of letters from USDA, IHCDA, or local utility companies, or the usage data used for consumption estimates along with the IHCDA approval letter;
- The number of occupants in each low-income unit;
- The low-income unit vacancies in the building and information that shows when and to whom the next available units were rented (this information must include the unit number, tenant name, move-in dates, and move-out dates for all tenants, including market rate tenants);
- The Tenant Income Certification for each qualified household;
- Documentation to support each eligible household's income certification;
- The Eligible Basis and Qualified Basis of the building at the end of the first year of the Credit Period; and
- The character and use of the nonresidential portion of any building included in the development's Eligible Basis (for example, any community building, recreational facility, etc. available to all tenants and for which no separate fee is charged).

**E. Attending Indiana's RHTC Compliance Workshop or other RHTC training at least once every three (3) years.**

Prior to a request for and issuance of IRS Form 8609, the property management staff and owner of a development that has not received 8609s must receive an IHCDA Rental Housing Tax Credit Compliance Training completion certificate.

The owner must attend an IHCDA sponsored RHTC compliance training or other RHTC compliance training at least once every three (3) years thereafter.

For more information on IHCDA compliance training opportunities, refer to Section 5, Part 5.3 and IHCDA's compliance website (**http://www.in.gov/ihcda/2519.htm**).

**F. Being knowledgeable about:**

- The credit year of the development;
- Placed-in-service dates;
- Relocation of existing tenants, if applicable;
- The Minimum Set-Aside elected (20/50 or 40/60);
- The percentage of the units that are RHTC eligible and the percentage of floor space that is RHTC eligible (The Applicable Fraction);
- The year that credit was first claimed;
- The terms under which the RHTC reservation was made; and
- The Building Identification Number (BIN) of each building in the development.

The items listed above can be found in the Final Application, Declaration of Extended Low-Income Housing Commitment, and/or the Form 8609(s) for the project. To ensure compliance, it is important that the owner and management agents have copies of these documents and are familiar with the terms defined within.

**G. Complying with the terms of the Initial and Final Applications**

**H. Remitting monitoring fees in a timely manner**

For more information on monitoring fees, see Section 5, Part 5.8.

**I. Reporting to IHCDA any changes in ownership or management of the property**

If a change in ownership occurs, a detailed description of the change must be provided in writing to IHCDA. Changes in ownership must be reported via IHCDA's "Property Ownership Change Form," found in Appendix D.

Failure to notify IHCDA of changes in ownership after the issuance of IRS Form 8609 could result in the allocation being rescinded and/or possible noncompliance issues.

Note: The IHCDA Board of Directors must approve any change in ownership or transfer request if made prior to the issuance of IRS Form 8609 for any development that has received an allocation of Rental Housing Tax Credits and/or Bonds.

If a change in management occurs, a detailed description of the change must be provided in writing to IHCDA. Changes in management must be reported via IHCDA's "Property Management Change Form," found in Appendix D.

In addition, the owner must notify IHCDA immediately in writing of any changes in ownership or management contact information including contact person's name, address, e-mail address, telephone number, and fax number.

## J. Reporting tenant events and submitting Annual Owner Certifications

The development owner must annually certify project compliance to the Authority, on or before January 31 of each year (the "Owner Certification of Compliance") for the preceding twelve (12) month period. The first annual owner certification and corresponding fees are due by January 31st of the year following the first year of the credit period. However, the owner must begin reporting tenant events in the online system as soon as the buildings are placed-in-service.

The owner of any building(s)/development(s) that has claimed or plans to claim Rental Housing Tax Credits must annually certify to IHCDA, under penalty of perjury, for each year of the Compliance Period, via IHCDA's Owner Certification form. The Indiana Housing Online Management website has been designed as a tool to conduct compliance checks to ensure properties stay in compliance, to follow the monitoring review process, and as a way for IHCDA to communicate with its partners using a message board. The message board immediately notifies owners and property managers when IHCDA sends monitoring letters, releases Multi-Family Department Notices, or releases other information affecting its Multi-Family partners.

Effective January 1, 2009, all IHCDA assisted multi-family rental developments are required to enter tenant events using the Indiana Housing Online Management rental reporting system. Tenant events include move-ins, move-outs, annual recertification, unit transfers, rent and utility allowance changes, household composition updates, and student status updates. Tenant events that must be reported online do not include interim recertification performed for other programs, such as Section 8 or RD. In order to obtain the maximum benefits from the Indiana Housing Online Management system it is **required that all tenant events be entered into the system within thirty (30) days of the event date.**

Furthermore, it is **mandatory that all Annual Owner Certification Beneficiary Reports be submitted electronically** using the Indiana Housing Online Management website for all developments that contain IHCDA assisted units (i.e. HOME, CDBG, CDBG-D, Tax Credits, and Development Fund/Trust Fund). However, the owner must still submit hardcopies of the original signed and notarized Owner Certification form including the Building Information page with updated contact information, the Multi-Family Housing Utilities Form, and supporting documentation for the utility allowances. **Note:** This process will eliminate the option of importing the annual beneficiary report from an Excel spreadsheet. For more information on Annual Owner Certifications see Section 5, Part 5.5.

To use the rental reporting system or register to become a user, please visit the Indiana Housing Online Management website at **https://ihcdaonline.com/**. Free on-demand training videos that explain how to use the rental reporting system are available online at **https://ihcdaonline.com/Links.htm**. Additionally, in March 2009, IHCDA released detailed guidance on registering for the Online Management website in Multi-Family Department Notice MFD-09-06. This notice (and all other past MFD Notices) is archived online at **http://www.in.gov/ihcda/2520.htm.**

IHCDA will set up the buildings for a project in the online reporting system and approve one project owner web user. It is then the responsibility of that project owner web user to approve designated management web users and to set up the individual units within the buildings.

## K. Training onsite personnel

The owner must make certain that the onsite management knows, understands, and complies with all applicable federal and state rules, regulations, and policies governing the development, including all elections made in the Final Application, 8609(s), and Declaration of Extended Rental Housing Commitment.

As a best practice, IHCDA encourages the owner to make certain that the development's property management and compliance personnel are familiar with the most current edition of the IHCDA Compliance Manual, the compliance forms and information on IHCDA's website (see **http://www.in.gov/ihcda/2519.htm)**, and the online reporting requirements

through the Indiana Housing Online Management website (accessed through **https://ihcdaonline.com/**, for more information read Part 2.2 J above).

For information on IHCDA Compliance Trainings, refer to Section 5, Part 5.3 and IHCDA's compliance website (**http://www.in.gov/ihcda/2519.htm**).

### L. Notifying IHCDA of any noncompliance issues

If the owner and/or management agent determines that a unit, building, or an entire development is out of compliance with RHTC program requirements, IHCDA should be notified immediately. The owner and/or management agent must formulate a plan to bring the development back into compliance and advise IHCDA in writing of such a plan.

Noncompliance issues identified and corrected by the owner prior to notification of an upcoming compliance review or inspection by IHCDA need not be reported to the IRS by IHCDA. The owner and/or management agent must keep documentation outlining: the nature of the noncompliance issue, the date the noncompliance issue was discovered, the date the noncompliance issue was corrected, and a description of the actions taken to correct the noncompliance.

*Example:*
*A household was initially income qualified and moved into a unit on January 1, 2007. The maximum allowable RHTC gross rent is $500. At time of recertification on January 1, 2008 the owner increased the rent to the market rate of $1,000. During an internal audit dated February 1, 2008 the owner and/or management agent noticed that the unit was out of compliance, because the rent charged exceeded the maximum RHTC rent limit. On February 1, 2008, the owner and/or management agent immediately corrected the noncompliance issue, notified IHCDA of the issue, and then documented the file with an explanation of the noncompliance issue, the date that it was corrected, and a summary of the actions taken to correct the noncompliance issue. On June 21, 2008, IHCDA notified the owner and/or management agent of an upcoming compliance review. Because the noncompliance issue was discovered, reported, and corrected by the owner/management agent prior to the notice of IHCDA's upcoming compliance review, IHCDA is not required to report the noncompliance issue to the IRS.*

### M. Providing all pertinent property information to the management company

In order to ensure compliance, the owner should provide management personnel with a copy of the Final Application for rental housing financing, a copy of the Declaration of Extended Low-Income Housing Commitment, copies of the Form 8609 for each building, the QAP for the year the project was awarded credits, the current edition of the Compliance Manual, etc.

Additionally, if there is a change in management companies, the owner is responsible for providing all information and previous tenant files to the new management company.

## Part 2.3|Responsibilities of the Management Company & Onsite Personnel

The management company/agent and all onsite personnel are responsible to the owner for implementing the RHTC program requirements properly. Anyone who is authorized to lease apartment units to tenants should be thoroughly familiar with all federal and state laws, rules, and regulations governing certification and leasing procedures, including Section 42 regulations and Fair Housing laws. It is also important that the management company provide information, as needed, to IHCDA and submit all required reports and documentation in a timely manner. Effective January 1, 2009, IHCDA requires that all tenant events be reported via the Indiana Housing Online Management rental reporting system within thirty (30) days of the event date. (For more information about the online reporting system requirements, see Part 2.2 J).

## Part 2.4|Demonstrating "Due Diligence"

The owner is ultimately responsible for compliance and proper administration of the RHTC Program. IHCDA expects all owners and management companies to demonstrate "due diligence," hereby defined as the appropriate, voluntary efforts to remain in compliance with all applicable Section 42 rules and regulations. Due diligence can be demonstrated through business care and prudent practices and policies.

Page 3-4 of the 8823 Guide indicates that due diligence requires the establishment of internal controls, including but not limited to: separation of duties, adequate supervision of employees, management oversight and review (such as internal audits), third party verifications of tenant income, independent audits, and timely recordkeeping.

IHCDA would add that due diligence includes keeping up-to-date with IHCDA policies by reading the amended Compliance Manual each year, following IHCDA updates via MFD Notices, and attending IHCDA sponsored tax credit trainings. These are all examples of voluntary efforts that owners and management agents can make in order to remain in compliance.

If noncompliance issues are discovered, IHCDA may ask the owner/management to demonstrate due diligence by showing that the proper internal policies and procedures are in place to prevent noncompliance from occurring/recurring. It is understood that mistakes may occur from time to time, but it is the responsibility of the owner/management to have policies in place to minimize and remedy these errors.

# Section 3 – Regulations

The following section highlights some of the statutory and regulatory provisions directly affecting compliance.

**However, this is not meant as an exhaustive listing of compliance regulations (see the Preface and Disclaimer on Page 1).**

## Part 3.1|Calculating and Claiming Credits

### A. The Annual RHTC Amount

The maximum amount of credit that can be allocated is calculated by multiplying the "Eligible Basis" by an "Applicable Fraction" to ascertain the "Qualified Basis" and then multiplying by the "Applicable Credit Percentage."

*QUALIFIED BASIS = Eligible Basis x Applicable Fraction*
*ANNUAL RHTC = Qualified Basis x Applicable Credit Percentage*

The annual credit allocated may not exceed this amount; however, it may be less if IHCDA determines that this maximum amount is not necessary.

*(For definitions of Qualified Basis, Eligible Basis, Applicable Fraction, and Applicable Credit Percentage, see the Glossary in Section 7.)*

In addition, the credit amount allocated to each building in a development is partially calculated on the following criteria;

1. The Eligible Basis is assigned to a building at the time of final credit allocation (issuance of IRS Form 8609). Although the owner apportions the amount of Eligible Basis for each building on its Allocation Certification Request to IHCDA, the total Eligible Basis of the development will be limited by the total amount of credit that IHCDA actually allocated to the development. In calculating the credit amount for each building, IHCDA may adjust the owner's Eligible Basis apportionment per building so as not to exceed the maximum credit amount allocated to the development.
2. The Applicable Fraction is assigned to a building at the time of final credit allocation (issuance of IRS Form 8609). This fraction is defined by the Code as the lesser of:
    a. The "Unit Fraction": the ratio of low-income units to total units (whether occupied or not) in a building; or
    b. The "Floor Space Fraction": the ratio of total floor space of low-income units to total floor space of total units (whether occupied or not) in a building.

### B. Claiming RHTC in the Initial Year

The credit is claimed annually for ten (10) years. The Credit Period begins in the year that the building is placed-in-service, or the following year if the owner elects on Form 8609 to defer the Credit Period. During the first year of the Credit Period, the low-income occupancy percentage is calculated on a monthly basis. The calculation begins with the first month in which the development was placed-in-service even though the building may not be occupied during that month. Occupancy for each month is determined on the last day of the month.

An IRS Form 8609 is completed for each building in the development receiving credits and is filed with the taxpayer's return for the first year of the Credit Period. Owners can elect to defer the start of the Credit Period by checking the appropriate box on the IRS Form 8609. A sample copy of Form 8609 and its instructions are located in Appendix B.

## C. Initial Year Prorate

A development claiming credit in the initial year of occupancy is subject to a special provision that limits the credit to a proportionate amount based on average occupancy during the year.

*For example: If one-half of the low-income units were occupied in November and the remaining one-half were occupied in December, the building would be treated as being in service for 1.5/12 months (12.5% - all of December and half of November) of the year for a calendar year partnership. In the 11th year, the disallowed credit of 10.5/12 (87.5%) could be claimed.*

If a qualified low-income household becomes ineligible prior to the end of the initial RHTC year, that unit cannot be counted in the first year toward the Minimum Set-Aside for purposes of determining the Qualified Basis.

## D. The Two-Thirds Rule

If an owner decides to claim credits for a development in the initial year when, for example, only 80% of the units are rented to RHTC eligible households, the maximum Qualified Basis for the entire Credit Period would be 80% with the remaining 20% eligible for two-thirds (2/3) credit if later rented to eligible households.

## E. Claiming Credit in the Remaining Years of the Compliance Period

Owners must file an IRS Form 8586 (Low-Income Housing Credit) with the Internal Revenue Service every year in the Compliance Period. This form indicates continuing compliance and the Qualified Basis of the development each year of the Compliance Period. A sample copy of IRS Form 8586 is located in Appendix B.

## F. Claiming Credits for Acquisition and Rehabilitation Projects

A project awarded tax credits for the acquisition and rehabilitation of an existing building(s) will receive two sets of credits, one for the acquisition and one for the rehabilitation, and will therefore have two Form 8609s for each building. Neither set of credits can be claimed prior to the date of acquisition nor prior to the year in which the rehabilitation expenditure requirements are completed.

### 1. If Acquisition and Rehabilitation Occur in the Same Year

The owner has a 240-day window (120 days before and 120 days after date of acquisition) in which to begin certifying in-place households (defined as pre-existing households that are living in units at the time of acquisition). The owner may pre-qualify the households up to 120 days before the date of acquisition using the current income limits, or at any time up to 120 days after the date of acquisition using the limits in effect as of the date of acquisition. In either scenario, the effective date of the certification is the date of acquisition, and the certification is noted as an initial move-in, even though the tenant has already been living in the unit. This allows the credit flow to begin on the date of acquisition, assuming rehabilitation is completed within the same year. If an existing household is not certified within the allowable timeframe, the effective date of the certification cannot pull back to the date of acquisition, but instead becomes the date on which the certification is actually completed. New move-in events are treated the same as in new construction projects with the effective date being the date that the household takes possession of the unit. For more information on certification effective dates in acquisition and rehabilitation projects, see Section 4, Part 4.5 A.

*<u>Example 1-Claiming credits when acquisition and rehabilitation are completed in the same year:</u>*
*A building is acquired on February 1, 2010 and rehabilitation is completed on October 1, 2010. The owner may begin claiming credits back to February 1 (date of acquisition) for those units that were qualified.*

*Example 2-The 240-day window:*
*A building is acquired on July 1, 2010. In-place households may be qualified anytime from March 3, 2010 (120 days prior to the date of acquisition) through October 28, 2010 (120 days after the date of acquisition). Any certifications completed during this time will be dated effective as of July 1, 2010 (the date of acquisition). Any existing households that are not certified until after October 28, 2010 will be initially qualified with an effective date of the actual date that the certification was completed.*

**2. If Acquisition and Rehabilitation Occur in Different Years / "The Test"**

The owner has a 240-day window (120 days before and 120 days after date of acquisition) in which to begin certifying in-place households (pre-existing households that are living in units at the time of acquisition). The owner may pre-qualify the households up to 120 days before the date of acquisition, or at any time up to 120 days after the date of acquisition. In either scenario, the effective date of the certification is the date of acquisition, and the certification is noted as an initial move-in, even though the tenant has already been living in the unit. If an existing household is not certified within the allowable timeframe, the effective date of the certification cannot pull back to the date of acquisition, but instead becomes the date on which the certification is actually completed. New move-in events are treated the same as in new construction projects with the effective date being the date that the household takes possession of the unit. For more information on certification effective dates in acquisition and rehabilitation projects, see Section 4, Part 4.5 A.

However, when rehabilitation is not completed until the year after the date of acquisition, the owner cannot begin claiming credits on the date of acquisition, but instead must wait until the beginning of the year in which the rehab is completed.

*Example-Claiming credits when acquisition and rehabilitation are completed in different years:*
*A building is acquired on October 1, 2010 and rehabilitation is completed on April 1, 2011. The owner may begin claiming credits on January 1st, 2011 (the beginning of the year in which rehabilitation was completed) for those units that were qualified.*

Rev. Proc. 2003-82 states that a unit occupied before the beginning of the credit period will be considered a low-income unit at the beginning of the credit period, so long as (1) the household was income qualified at the time the owner acquired the building or the date on which the household started occupying the unit, whichever is later, and (2) the unit remains rent-restricted. Therefore, at the beginning of the first year of the credit period, the incomes of the households that were initially certified in the previous year must be tested to determine if any units trigger the Next Available Unit Rule. However, if the effective date of the initial certification is 120 days or less prior to the beginning of the credit year, then the "test" does not have to be performed.

For those units that must be tested, the "test" consists simply of confirming with the household that the sources and amounts of anticipated income listed on the initial Tenant Income Certification form are still current. If additional sources of income are identified, the TIC must be updated based on the household's self-certification (it is not necessary to complete third-party verifications for purposes of conducting the "test"). Any households that exceed the 140% limit at the time of the "test" will invoke the Next Available Unit Rule.

*Example 1- "Test" needed:*
*A building is acquired on July 1, 2010 and rehabilitation is completed on March 1, 2011. The owner certified all existing households within the 240-day window, so the effective date of each certification is July 1, 2010 (the date of acquisition). Because rehabilitation is not completed until 2011, the owner cannot claim credits until January 1, 2011. As of January 1, 2011 (the beginning of the first year of the credit period) the owner must "test" the income of all households that were certified with an effective date more than 120 days prior to January 1, 2011 (this includes all of the in-place households that were certified effective as of July 1, 2010).*

*Example 2- "Test" not needed:*
*A building is acquired on November 1, 2010 and rehabilitation is completed on June 1, 2011. The owner certified all existing households within the 240-day window, so the effective date of each certification is November 1, 2010 (the date of acquisition). Because rehabilitation is not completed until 2011, the owner cannot claim credits until January 1, 2011. In this scenario, the owner will not have to perform the "test," because all certifications had an effective date within 120 days prior to January 1, 2011 (the beginning of the first year of the credit period).*

3. **Relocating Households during Rehabilitation**

An in-place household may have to be relocated from its unit, either temporarily or permanently, in order for the unit to be properly rehabbed. Credits cannot be claimed while a unit is uninhabitable. However, if a household is temporarily moved and then returned to the unit within the same calendar month, credits are not interrupted.

*Example 1- Temporarily relocated but back within same calendar month:*
*Household is temporarily relocated on April 4th. Rehabilitation is completed and the household is returned to the unit on April 26th. The owner is eligible to claim credits for the month of April.*

*Example 2- Temporarily relocated but back in a different calendar month:*
*Household is temporarily relocated on August 15th. Rehabilitation is completed and the household is returned to the unit on September 5th. The owner may not claim credits on the unit for the month of August but may claim credits for September.*

If a household permanently relocates to an empty (never qualified) unit, the credits stop on the original unit and begin in the new unit. If a household permanently relocates to a unit that has already been initially qualified, then the units swap status.

*Example 3- Permanent relocation to an empty unit:*
*Household permanently relocates from Unit 1 to the empty (never qualified) Unit 12. The credits on Unit 1 stop and the owner cannot continue claiming credits on the unit until a new qualified move-in occurs. The owner may begin claiming credits on Unit 12.*

*Example 4- Permanent relocation to a previously qualified unit:*
*Household permanently relocates from Unit 1 to the previously qualified but now vacant Unit 4. The credits continue on both Units 1 and 4 (as per the Vacant Unit Rule). The units swap status, meaning Unit 1 is now treated as a vacant RHTC unit.*

**4. Removing Unqualified In-place Households**

It is possible that some in-place households will not be able to qualify as tax credit households, either due to income or student status ineligibility. In a conventional apartment community, the owner can terminate leases at the end of the lease term. However, if the tax credits are being layered over an existing Section 8 or RD property, the households cannot be terminated due to ineligibility for the tax credit program. Any Section 8 or RD families that are over the tax credit income limits, ineligible under tax credit student status regulations, or are paying over the tax credit rent limit cannot be certified as RHTC households, but cannot be evicted or terminated. The owner may not claim credits on those units until the households become eligible or vacate. Therefore, it may be in the owner's interest to try and negotiate a mutual agreement with the household to encourage them to voluntarily vacate the unit. This could include paying the household's moving expenses, offering other monetary incentives, etc.

If an existing tax credit development receives an additional set of credits for rehabilitation, or if an existing tax credit development is purchased by a new owner who receives a set of acquisition and rehabilitation credits, the in-place tax credit households are grandfathered into the new allocation and considered qualified households. Households exceeding

the 140% limit are considered qualified, but the Next Available Unit Rule will be in effect. See Section 4, Parts 4.5 C & D for more information.

## Part 3.2|Minimum Set-Aside Election, Applicable Fraction, 8609 Line 8b, and Income Limits

### A. Minimum Set-Aside Election

By the time credit is allocated, the owner has elected one of the following Minimum Set-Aside elections on a development basis:

1. "20/50" Election: At least 20% of available rental units in the project must be rented to households with incomes not exceeding 50% of Area Median Income adjusted for family size. NOTE: If the 20/50 Election has been made, no units in that project may be set-aside at the 60% rent or income level.
2. "40/60" Election: At least 40% of available rental units in the project must be rented to households with incomes not exceeding 60% of Area Median Income adjusted for family size.

The Minimum Set-Aside must be met on a project basis (project is defined by the election made by the owner on IRS Form 8609 Part II, Line 8b). Therefore, if each building is its own project, then the Minimum Set-Aside must be met at each building (See Part 3.2 C below).

**Once the election of the Minimum Set-Aside is made on IRS Form 8609, it is irrevocable.** Thus, the elected Minimum Set-Aside and the corresponding rent and income restrictions apply for the duration of the Compliance Period and Extended Use Period applicable to the development.

The owner may have also elected to target a percentage of the units to persons at lower income levels (30% or 40%) and/or to target a higher percentage/number of units to low-income persons. The owner must also comply with those additional elections as defined in the development's Final Application and Extended Use Agreement.

### B. Applicable Fraction

The Applicable Fraction is the portion of a building that the owner has designated for low-income households to occupy. The Applicable Fraction is the lesser of (a) the ratio of the number of low-income units to the total number of units in the building or (b) the ratio of the total floor space of the low-income units to the total floor space of all units in the building.

For a building to remain in compliance, the Applicable Fraction must always be at or above the fraction assigned to that building in the Final Application.

*Example: Building A has 6 units. Units 1-3 are 2 bedroom units at 800 $ft^2$ and units 4-6 are 3 bedroom units at 1200 $ft^2$. According to the Final Application, the building's Applicable Fraction is 50%. The owner of Building A has rented units 4-6 as market rate units so that he can charge higher market rates for the larger sized units. The owner believes he is in compliance because the unit fraction is 3 out of 6, or 50%. However, the owner must consider the floor space fraction as well as the unit fraction. In this case, the total square footage of the units is 6000 $ft^2$. The low-income square footage (sum of square footage for units 1-3) is 2400 $ft^2$. 2400 $ft^2$/6000 $ft^2$ gives a fraction of 40%. Since the Applicable Fraction is defined as the lower of the two ratios, the actual Applicable Fraction for this building is 40%. The owner is out of compliance for violating the Applicable Fraction.*

Note: The Applicable Fraction and the Minimum Set-Aside are not the same thing. The Applicable Fraction tells the percentage of units and floor space that must be reserved for tax credit households in a specific building. The Minimum Set-Aside tells the minimum percentage of units that must be set-aside as tax credit units in the entire project (as defined on Form 8609), and the federal income restriction at which these units must be set-aside (50% or 60%). To be in

compliance, a project must meet its Minimum Set-Aside, and each building within that project must meet its Applicable Fraction.

## C. 8609 Part II Line 8b: Multiple Building Projects

Part II of the Form 8609 is completed by the owner with respect to the first year of the credit period. Under Part II Line 8b, the owner must answer the question "Are you treating this building as part of a multiple building project for purposes of Section 42?" If the owner elects "yes," then the building is part of a multiple building project along with the other buildings in the development. If the owner elects "no," then each building in the development is considered its own project. This election has important compliance implications that affect the project for the duration of the compliance period. All developments that are approved for IHCDA's Extended Use Policy will be treated as multiple building projects for compliance purposes, even if the 8609s reflect that the buildings are not part of a multiple building project.

The Minimum Set-Aside election must be met on a project basis. Therefore, if the owner has elected "yes" on Line 8b, then the building is part of a multiple building project and the Minimum Set-Aside must be met across the entire project. If the owner has elected "no" on Line 8b, then the building is considered its own project and the Minimum Set-Aside must be met within each building.

The Line 8b election also affects unit transfer rules. If the owner has elected "yes" to the multiple building project, then tenants may transfer between buildings without having to recertify for the program, as long as the household is not above the 140% limit. If the owner has elected "no" to the multiple building project, then tenants may not transfer between buildings. If a household wants to move to another building they must be treated as a new move-in and re-qualified for the program based on current circumstances. For more information on unit transfer rules, see Part 3.5D.

Because the election made on Part II Line 8b of the Form 8609 is so important for ongoing compliance, it is crucial that the owner and management agents have copies of the 8609s for each building and understand the elections that have been made.

## D. Maximum Income Limits

Income limits for qualifying households depend on the Minimum Set-Aside election the owner has chosen. Qualifying households in developments operating under the "20/50" election may not have incomes exceeding 50% of Area Median Income adjusted for family size. Qualifying households in developments operating under the "40/60" election may not have incomes exceeding 60% of Area Median Income adjusted for family size. The owner may have also elected to target a percentage of the units to persons at lower income levels (30% or 40%). The owner must also comply with those additional elections as defined in the development's Final Application and Extended Use Agreement.

Developments funded by IHCDA prior to 2003 are both rent and income restricted at the AMI levels selected in their Final Application submitted to IHCDA, and are required to meet those state set-asides identified and recorded in the Extended Use Agreement.

Developments funded in or after 2003 are rent restricted at the individual AMI levels as selected in the Final Application submitted to IHCDA and recorded in the Extended Use Agreement. Income restrictions for these developments are at the federal Minimum Set-Aside elected by the owner (either the "20/50" or "40/60" set-aside).

> ***Example 1- Property funded prior to 2003:*** *XYZ Apartments is a 100% tax credit development with 100 units. The federal Minimum Set-Aside is "40/60," but in the Final Application and Extended Use Agreement, the owner elected that 70 units would be at the 60% AMI level and 30 units would be at the 50% AMI level. The 60% units must be charged no more than the applicable 60% rent level and must be occupied by households not exceeding 60% of area median income. The 50% units must be charged no more than the applicable 50% rent level and must be occupied by*

*households not exceeding 50% of area median income. All units are both rent and income restricted at the state set-aside, as chosen in the Final Application and recorded in the Extended Use Agreement.*

***Example 2- Property funded in or after 2003:*** *XYZ Apartments is a 100% tax credit development with 100 units. The federal Minimum Set-Aside is "40/60," but in the Final Application and Extended Use Agreement, the owner elected that 70 units would be at the 60% AMI level and 30 units would be at the 50% AMI level.*
*The 60% units must be charged no more than the applicable 60% rent level and must be occupied by households not exceeding 60% of area median income. The 50% units must be charged no more than the applicable 50% rent level, BUT may be occupied by households earning up to 60% of area median income. The units are rent restricted at the state set-asides, as chosen in the Final Application and recorded in the Extended Use Agreement. However, the units are income restricted at the elected federal Minimum Set-Aside of 60%.*

The U.S. Department of Housing and Urban Development (HUD) publishes Area Median Income (AMI) information for each county in Indiana on an annual basis. Upon receipt of this information, IHCDA will post the new annual income limits and corresponding rent limits on its website. This information is provided by IHCDA only for the owner's convenience as a courtesy. However, it is the responsibility of the owner, not IHCDA, to verify its accuracy.

In 2009, HUD began publishing "HERA Special" income limits for counties impacted by HUD's "hold-harmless" policy. (Note: "HERA" refers to the Housing and Economic Recovery Act of 2008). Where applicable, the HERA limits must be used by all tax credit projects that placed-in-service on or before December 31, 2008. However, not all counties in Indiana have HERA Special limits. Projects that placed-in-service in 2009 or later are not eligible to use the HERA Special limits.

Owners may not anticipate increases in income limits and corresponding rents. Limits remain in effect until new annual limits are officially published each year by HUD. The owner must implement the new rent and income limits within forty-five (45) days of the effective date of the limits. Income and rent limits are provided in Appendix E.

When determining if a household's income is at or below the applicable limit, the earned income from each adult household member eighteen (18) years of age or older and the unearned income of all members of the household (regardless of age) must be included in the total household income calculation (See HUD Handbook 4350.3 in Appendix C for rules on calculating income).

If the household income of a qualifying unit increases above the 140% limit and the unit initially met the qualifying income requirements, the unit may continue to be counted as a qualifying unit as long as the unit continues to be rent-restricted and the next available unit of comparable or smaller size is rented to a qualified low-income household. (See Part 3.5 for further discussion of the 140% Rule/Next Available Unit Rule).

## Part 3.3|Maximum Gross Rent

The maximum gross rent is the greatest amount of rent, <u>including a utility allowance for tenant-paid utilities</u> (except telephone, cable television, and internet), that can be charged for an RHTC unit. See Part 3.4 for more information on utility allowances.

Gross Rent = Tenant-paid Rent Portion + Utility Allowance + Any Non-optional Charges

### A. Calculating Rent Limits for Developments Allocated Credit After January 1, 1990

Developments receiving RHTC allocations after January 1, 1990, must be rent-restricted based on an imputed, not actual, family size. Family size is imputed by number of bedrooms in the following manner:

1. An efficiency or a unit which does not have a separate bedroom – 1 individual; and

2. A unit which has 1 or more separate bedrooms – 1.5 individuals for each separate bedroom.

The maximum gross rent is calculated as 30% of the applicable income limit for the imputed household size (notwithstanding that the actual household size may be different).

*For Example:*
*Income Limits (by household size)*

| *One Person* | *Two Persons* | *Three Persons* | *Four Persons* |
|---|---|---|---|
| *$10,000* | *$15,000* | *$20,000* | *$25,000* |

*The rent for a two-bedroom unit is calculated based on the imputed household size of three persons (1.5 persons for each of the two bedrooms). Annual rent is 30% of the income limit for the imputed household size [($20,000 x 30%) divided by 12 months equals $500 monthly]. The $500 amount would be the maximum allowable monthly gross rent regardless of the number of persons actually occupying the two-bedroom unit.*

## B. HERA Limits and Gross Rent Floors

The U.S. Department of Housing and Urban Development (HUD) publishes Area Median Income (AMI) information for each county in Indiana on an annual basis. Upon receipt of this information, IHCDA will post the new annual income limits and corresponding rent limits on its website. This information is provided by IHCDA only for the owner's convenience as a courtesy. However, it is the responsibility of the owner, not IHCDA, to verify its accuracy. The owner must implement the new rent and income limits within 45 days of the effective date of the new limits.

In 2009, HUD began publishing "HERA Special" rent limits for Section 42 properties. (Note: "HERA" refers to the Housing and Economic Recovery Act of 2008). Where applicable, the HERA limits must be used by all tax credit projects that placed-in-service on or before December 31, 2008. However, not all counties in Indiana have HERA Special limits. Projects that placed-in-service in 2009 or later are not eligible to use the HERA Special limits.

Every tax credit development has a "gross rent floor," defined as the lowest rent limits that will ever be in place for that particular development. If the current year's HUD published limits drop below the gross rent floor, a project may continue to use the rent limits established within the gross rent floor. It is important to note that there is no floor for income limits.

For tax credit projects, the gross rent floor is either the rent limit in effect at the placed-in-service date of the first building in the development or on the allocation date (as elected by the owner). For bond projects, the gross rent floor is either the rent limit in effect at the placed-in-service date for the first building in the development or on the reservation letter date (as elected by the owner).

Therefore, when determining the rent limits for a project, the owner should compare the current county limit (or HERA limit if applicable) to the project's gross rent floor, and use the higher of the two. Because gross rent floors will differ from project to project, it is possible that two developments within the same county, or even two different phases of a development, will have different rent limits for the year.

## C. Section 8 Rents & Rental Assistance

Gross rent does not include any rental assistance payments (tenant-based or project-based) made to the owner to subsidize the tenants' rent, including Section 8 or any comparable rental assistance program to a unit or its occupants.

Gross rent cannot exceed the applicable tax credit rent limit at initial move-in. However, the gross rent can later increase above the applicable tax credit rent limit if the tenant-paid rent portion increases as a requirement of the rental assistance program (generally rental assistance programs require that the household pays a certain percentage of its income on rent).

*Example 1: In 2008, Mr. Jones moves into a one bedroom unit at XYZ Apartments, a tax credit development with 50 units at the 50% set-aside. The maximum allowable rent for a one bedroom unit at the 50% restriction in this county is $425. Mr. Jones pays a monthly tenant rent portion of $300 and receives Section 8 rental assistance of $100 per month. The utility allowance for the unit is $100. The gross rent for tax credit purposes is the sum of the tenant-paid rent ($300) and the utility allowance ($100), for a total of $400. Since the total monthly gross rent is below the applicable rent limit ($425), the unit is in compliance. XYZ Apartments may take the $100 in monthly rental assistance from the Section 8 program in addition to the tenant-paid rent.*

*Example 2: In 2009, Mr. Jones's annual income increases. Since Section 8 requires that the tenant pay 30% of adjusted income in rent, Mr. Jones's monthly tenant-paid rent portion must increase. Mr. Jones now pays a monthly rent of $350 and the Section 8 rental assistance decreases to $50. The utility allowance remains at $100 and the rent limit remains at $425. The gross rent is now the sum of the tenant-paid rent ($350) and the utility allowance ($100), for a total of $450. This unit is in compliance even though the gross monthly rent exceeds the applicable tax credit rent limit of $425. This is because Mr. Jones's tenant-paid rent portion did not exceed the limit at initial move-in and has since increased to comply with the rules of the Section 8 program.*

**NOTE: For tenants receiving Section 8 vouchers, a copy of the HAP (Housing Assistance Payment) Contract and the current HAP Amendment from the Section 8 agency must be kept in the household's tax credit file in order to verify the amount of Section 8 rental assistance received. For tenants residing in units with project-based Section 8, the current 50059 showing the amount of rental assistance must be included in the file.**

## D. Allowable Fees and Charges

### 1. General Rule

Customary fees that are normally charged to all tenants, such as damage (security) deposits, pet deposits/fees, application fees and/or credit deposits are permissible. However, an eligible tenant cannot be charged a fee for the work involved in completing the additional forms of documentation required by the RHTC Program, such as the Tenant Income Certification and income/asset verification documents.

The 8823 Guide makes it clear that refundable fees associated with renting units (such as security deposits) and one-time penalty fees (such as late fees and fees for prematurely breaking a lease, as long as the fees are clearly defined within the lease) are allowable fees that are not included in the gross rent computation

### 2. Condition of Occupancy Rule (Optional Vs. Non-optional Fees)

Any fee that is charged for a service that is a condition of occupancy (i.e. a fee for a service that is non-optional or mandatory) must be included in the gross rent computation when checking rent against the applicable rent limit. Assuming they are truly optional, fees may be charged for elected services or additional amenities (such as pet fees, fees for extra storage units, etc.) and these fees would not be included in the gross rent calculation. A service or amenity is considered optional if a tenant may opt out of the service or amenity without penalty and continue to live at the development.

Additionally, any services the tenant pays for that are provided by the development (whether optional or non-optional) must be listed in the tenant's lease with the cost of each individual service clearly listed. See IRS Notice 89-6 and IRS Revenue Ruling 91-38 in Appendix B.

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26 CFR Part 1 and 602 Section 1.42-11 Provision of services:

(a) General rule. The furnishing to tenants of services other than housing (whether or not the services are significant) does not prevent the units occupied by the tenants from qualifying as a residential rental property eligible for credit under Section 42. However, any charges to low-income tenants for services that are not optional generally must be included in gross rent for purposes of Section 42(g).

(b) Services that are optional – (1) General rule. A service is optional if payment for the service is not required as a condition of occupancy.

(3) Required services – (i) General rule. The cost of services that are required as a condition of occupancy must be included in gross rent even if federal or state law requires that the services be offered to tenants by buildings owners.

****

*Example: Charges for paying with credit/debit card*

*Some developments may have a credit/debit card machine onsite to allow tenants to pay rent in this method. The monthly fee incurred from having a machine onsite can be passed onto the tenants as long as it is an optional fee. The fee would be considered optional if the tenants have alternative methods of paying rent that do not include a fee (e.g. cash, money order, check, etc.). In this scenario, the credit/debit machine would be an optional service offered for the tenants' convenience. The amount of the fee for paying with credit/debit card, as well as a list of all accepted alternative methods of payment, must be disclosed to all tenants. Furthermore, the fee may not surpass the actual cost incurred from the machine. Management must keep documents showing the actual costs of having the machine onsite and the amount of the fee being charged to tenants.*

*If credit/debit card is the only means of paying monthly rent, then the fee is not optional, but rather a condition of occupancy (as paying rent is a condition of occupancy). In this case, the credit/debit card machine fees would have to be included as part of the gross monthly rent calculation.*

3. **Application Processing Fees**

   Application fees may be charged to cover the actual cost of processing the application and checking criminal history, credit history, landlord references, etc. However, the fee cannot exceed the amount of actual out-of-pocket costs incurred by management. No amount may be charged in excess of the average expected out-of-pocket cost of processing an application.

4. **Mandatory Renter's Insurance**

   If renter's insurance is required as a condition of occupancy, then the amount of renter's insurance must be included in the gross rent calculation. In this scenario, the owner must obtain an estimate similar to creating a utility allowance, in which the average rates are compared for at least three (3) of the primary insurance providers in the area. The annual estimate for renter's insurance should be divided by twelve (12) to reach a monthly estimate. The monthly renter's insurance allowance estimate must be added to the tenant-paid rent portion, the utility allowance, and any other non-optional fees when calculating gross rent.

   IHCDA strongly recommends that owners do not mandate renter's insurance. Rather, owners should include clear language in the lease explaining that the property is not responsible for damage to the household's belongings and recommending that tenants seek out renter's insurance as they see fit.

5. **Month-to-month Fees**

   Although month-to-month fees may seem optional (i.e. the tenant could choose to renew the lease for another year), the 8823 Guide clarifies that month-to-month fees are considered non-optional fees and are included in gross rent computation. Page 11-2 states:

"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.

6. **Prohibited Fees**
   The following fees may not be charged, regardless of whether or not they are included in the gross rent calculation:

   a. Fees for work involved in completing the Tenant Income Certification and other program specific documentation.
   b. Fees for preparing a unit for occupancy. The owner is responsible for maintaining all tax credit units in a manner suitable for occupancy at all times. If a tenant is to be charged decorating, cleaning, or repair fees, the owner must document the file with photos of the damage to prove that the unit is in condition beyond normal expected wear and tear. Charges cannot exceed the amount actually spent on repair. IHCDA will expect to see documentation in the tenant file as to the nature of the damage, including photos and receipts for the repair work.
   c. Fees for the use of facilities and amenities included in Eligible Basis. For example, an owner may not charge a tenant for the use of a clubhouse, swimming pool, parking areas, etc. if those items are included in Eligible Basis. Additionally, tenants may not be charged a deposit for the use of common areas included in Eligible Basis. However, if the facilities are damaged, the responsible tenant(s) may be charged fees in accordance with Item 6-b above.

## E. Violations of the Rent Limit

The 8823 Guide states:

> "A unit is in compliance when the rent charged does not exceed the gross rent limitations on a monthly basis" (Page 11-8).
>
> "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" (Page 11-9).

**Once a unit has exceeded the rent limits, that unit is out of compliance for the entire tax year**, regardless of how quickly the rent is adjusted or if the tenant is reimbursed for the overcharge. The 8823 Guide states on Page 11-10:

> "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. The owner cannot avoid the disallowance of the LIHC by rebating excess rent or fees to the affected tenants."

**Therefore, if IHCDA discovers a violation of the rent limit for a unit, an 8823 will be issued and that unit will be considered out of compliance for the remainder of the year.** A corrected 8823 will be issued at the beginning of the next year, as long as the rent has been properly lowered and is now below the applicable limit. While refunding the overcharge does not prevent the noncompliance 8823 from being issued, **IHCDA will still require the owner to reimburse the tenant before a corrected 8823 will be issued for the unit.**

If the owner or management discovers that rent has been overcharged, IHCDA should be notified immediately and the owner should take action to correctly adjust the rent and reimburse the overcharges. Noncompliance issues identified and reported by the owner to IHCDA prior to notification of an audit do not have to be issued 8823s. For more information on the owner's responsibility to report noncompliance, see Part 2.2 L.

## Part 3.4|Utility Allowances

### A. General Information

The maximum gross rent includes an allowance for tenant-paid utilities. Utilities include heating, air conditioning, water heating, cooking, other electricity, water, sewer, oil, gas, and trash, where applicable. Utilities do not include telephone, cable television, or internet.

When utilities are paid directly by the tenant (as opposed to being paid by the owner/ development), a utility allowance must be used to determine maximum allowable unit rent. To qualify as part of the utility allowance, the cost of any utility (other than telephone, cable television, or internet) must be paid directly by the tenant(s), and not by or through the owner of the building. If the owner or a third-party separately bills the tenant for a utility, the payment designated for the utility must be considered rent and may not be included in the utility allowance (unless the utilities are sub-metered as described in Part 3.4 B below). The utility allowance (for utility costs paid by the tenant) must be subtracted from the maximum gross rent to determine the maximum amount of allowable tenant-paid rent.

*For example: If the maximum gross rent on a unit is $350 and the tenant pays utilities with a utility allowance of $66 per month, the maximum rent chargeable to the tenant is $284 ($350 minus $66).*

If all utilities are included in the household's gross rent payment, no utility allowance is required.

### B. Sub-metering

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

Per IRS Notice 2009-44, utility costs paid by a tenant to the owner/development based on actual consumption in a sub-metered rent-restricted unit are treated as paid directly by the tenant for purposes of the RHTC utility allowance regulations. The notice states:

> For purposes of § 1.42-10(a) of the utility allowance regulations, utility costs paid by a tenant based on actual consumption in a sub-metered rent-restricted unit are treated as paid directly by the tenant, and not by or through the owner of the building. For RHS-assisted buildings under § 1.42-10(b)(1),buildings with RHS tenant assistance under § 1.42-10(b)(2), HUD-regulated buildings under § 1.42-10(b)(3), and rent-restricted units in other buildings occupied by tenants receiving HUD rental assistance under § 1.42-10(b)(4)(i), the applicable RHS or HUD rules apply. For all other tenants in rent-restricted units in other buildings under § 1.42-10(b)(4)(ii):
>
> (1) The utility rates charged to tenants in each sub-metered rent-restricted unit must be limited to the utility company rates incurred by the building owners (or their agents);
>
> (2) If building owners (or their agents) charge tenants a reasonable fee for the administrative costs of sub-metering, then the fee will not be considered gross rent under § 42(g)(2). The fee must not exceed an aggregate amount per unit of 5 dollars per month unless State law provides otherwise; and

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

The utility allowance regulations will be amended to incorporate the guidance set forth in this notice.

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

## C. Approved Utility Allowance Sources

The IRS requires that utility allowances be set according to IRS Notice 89-6 and Federal Register Vol. 73, No. 146 "Section 42 Utility Allowance Regulations Update" (both resources available in Appendix A), which list the following different sources of utility allowances for RHTC developments:

1. Rural Development (RD) Financed Developments: Use the applicable Rural Development utility allowances. If a development has both RD and HUD financing, use the RD utility allowance.

2. HUD Development Based Subsidy Regulated Buildings (i.e. Project Based Rental Assistance): Use the applicable HUD approved utility allowances. If a development has both RD and HUD financing, use the RD utility allowance.

3. HUD Assisted Units (i.e. Tenant Based Rental Assistance): For those individual units occupied by residents that receive HUD tenant based rental assistance (e.g. a Section 8 voucher), use the applicable HUD utility allowance as given by the Public Housing Authority (PHA) administering the assistance. If a development has both RD and HUD financing, use the RD utility allowance.

4. Buildings without Rural Development or HUD assistance (i.e. "Tax Credit only"): Tax credit buildings without HUD or RD funding may use any of the following utility allowance options:

   -Use the applicable local PHA utility allowance; or
   -Use the county specific utility allowance schedule from IHCDA's website (http://www.in.gov/ihcda/3102.htm); or
   -Utility Company Estimate: An interested party may request the utility company estimation of actual utility consumption for each unit of similar size and construction in the building's geographic area. Such an estimate must be in writing, signed by an appropriate local utility company official, prepared on the utility company's letterhead, and maintained in the development file. Use of the actual utility rates, whether higher or lower, is required once they have been requested; or

   -Options 5, 6, or 7 as described below.

5. IHCDA Estimate: Upon request, IHCDA will approve a utility allowance estimate for a development. Requests for an IHCDA Estimate must be made via the "IHCDA Utility Allowance Estimate Request Letter" (available in Appendix G). Along with the request letter, the owner must complete and submit the "IHCDA Tenant Usage Data Form" (available in Appendix G). This usage data form must include information for 30% (rounded up) of the units of each unit type (flat or townhome) for each bedroom size. (Note: There are two separate usage data forms for flats and townhomes). The usage data must contain a full twelve (12) months of consumption. To be included in the estimate, a unit must have at least forty-four (44) weeks of continuous consumption data (i.e. the unit cannot have been vacant for more

than 8 weeks of the year). The consumption data can be no more than sixty (60) days old. Additionally, the owner must submit verification of the tax rate for the county in which the development is located.

*Example: A development has 48 low income units with 20 one bedroom units and 28 two bedroom units. The sample must include 30% of the one bedroom units (6 units) and 30% of the two bedroom units (9 units rounded up from 8.4).*

For new construction developments or renovated buildings with less than twelve (12) months of consumption data available, IHCDA will allow consumption data for the twelve (12) month period of units of similar size and construction in the geographic area in which the new development is located. The existing development that will be used for the comparison must be located in the state of Indiana and must be in the same climate zone as the development for which the estimate is being done. Please reference the Climate Zone Map in Appendix G. Once the project achieves 90% occupancy for ninety (90) consecutive days, the owner is required to resubmit usage data to IHCDA using the actual units in the development.

The request must be made sixty (60) days prior to the expiration date of the current effective utility allowance. The fee for IHCDA to review and approve the model is $75 per development. Once IHCDA approves the estimate, the utility allowance(s) will be effective for one year from the date stated on the IHCDA Approved Utility Allowance Estimate letter.

Note: Developments with non-corrected 8823s will not be eligible to use this option until the outstanding issues have been corrected.

6. HUD Utility Schedule Model: The owner may calculate utility allowances using the HUD Utility Model found at http://www.huduser.org/resources/utilmodel.html. Both the Model and the supporting documentation used in the Model must be submitted to IHCDA for approval prior to implementation. The request must be made sixty (60) days prior to the expiration date of the current effective utility allowance. Once approved, the utility allowance(s) will be good for one year from the date of IHCDA approval. The fee for IHCDA to review the Model is $75 per development.

   Note: Developments with non-corrected 8823s will not be eligible to use this option until the outstanding issues have been corrected.

7. Energy Consumption Model: The owner may use an independent licensed engineer or qualified professional approved by IHCDA to calculate an energy consumption model. A list of approved engineers/professionals will be maintained on IHCDA's website. The qualified professional and the building owner must not be related as defined in Section 267(b) or 707(b). To become IHCDA approved, the engineer/ qualified professional must submit the "Approved Energy Consumption Provider Application" (available in Appendix G).

   The consumption estimate must take into effect the types of appliances, building location, building orientation, design and materials, mechanical systems, and unit size. Usage data must include information for 30% (rounded up) of the units of each unit type (flat or townhome) for each bedroom size. The usage data must contain a full twelve (12 months) of consumption. To be included in the estimate, a unit must have at least forty-four (44) weeks of continuous consumption data (i.e. the unit cannot have been vacant for more than 8 weeks of the year). The consumption data can be no more than sixty (60) days old. Additionally, the owner must submit verification of the tax rate for the county in which the development is located.

   For new construction developments or renovated buildings with less than twelve (12) months of consumption data available, IHCDA will allow consumption data for the twelve (12) month period of units of similar size and construction in the geographic area in which the new development is located. The existing development that will be used for the comparison must be located in the state of Indiana and must be in the same climate zone as the development for which the estimate is being done. Please reference the Climate Zone Map online in Appendix G. Once the project

achieves 90% occupancy for ninety (90) consecutive days, the owner is required to resubmit usage data to IHCDA using the actual units in the development.

The model and supporting documentation must be submitted to IHCDA for approval prior to implementation, along with the "IHCDA Energy Consumption Approval Request" letter (available online in Appendix G). The request must be made sixty (60) days prior to the expiration date of the current effective Utility Allowance. Once approved, the utility allowance(s) will be good for one year from the date of IHCDA approval. The fee for IHCDA to review the model is $75 per development.

Note: Developments with non-corrected 8823s will not be eligible to use this option until the outstanding issues have been corrected.

The owner must use the most current applicable utility allowance and provide documentation annually. Owners may combine utility allowances from different sources to benefit the development. When using multiple utility allowance sources for different utilities, the owner must clearly document which source is being used for each utility type. Furthermore, the owner may elect to change the utility allowance type from year to year. However, utility company estimates must be used for the current year once they have been requested. Contact the appropriate agency or department to request current utility allowance information.

### D: Updating Utility Allowances

To remain in compliance, owners must utilize the correct and most current utility allowance in order to properly determine unit rents. An increase in the utility allowance will increase the gross rent and may cause the rent to be greater than the maximum allowable rent, in which case the tenant-paid rent portion must be lowered. When a utility allowance changes, rents must be refigured within ninety (90) days of the effective date of the change to avoid violating the gross rent limitations of Section 42. Utility allowances need to be reviewed and updated as follows:

- When the rents for a development or building are changed or there is a change in who pays the utilities;
- Within ninety (90) days of an allowance update by IHCDA, HUD, Rural Development, the local PHA, or local utility supplier;
- Within ninety (90) days of a change in the applicable allowance (e.g., a tenant begins receiving Section 8 rental assistance and the applicable PHA approved utility allowance must now be used for that unit);
- Annually for developments or buildings with documentation from a local utility supplier. Developments must provide documentation supporting the use and applicability of local utility allowances; and/or
- Within ninety (90) days of the effective date of the IHCDA Estimate, HUD Utility Schedule Model, or Energy Consumption Model.

## Part 3.5|Rules Governing the Eligibility of Particular Residential Units

### A. Empty Units

Vacant units that have never been occupied (referred to as "empty units") cannot be counted as "low-income units," but must be included in the "total units" figure for purposes of determining the Applicable Fraction. **The transfer of existing tenants to empty units is not allowed for purposes of meeting the Minimum Set-Aside or Applicable Fraction.**

### B. Vacant Unit Rule

Vacant units formerly occupied by low-income individuals may continue to be treated as occupied by a qualified low-income household for purposes of the Minimum Set-Aside and Applicable Fraction requirements (as well as for determining Qualified Basis), provided that reasonable attempts were or are being made to rent the unit (or the next available unit of comparable or smaller size) to an income-qualified household before any units in the development were or will be rented to a nonqualified household. Management must document that reasonable attempts were made to rent vacant tax credit units before renting vacant market-rate units.

Units cannot be left permanently vacant and still satisfy the requirements of the RHTC program. IHCDA reserves the right to question vacancies that are noted during a physical inspection, file review, or Annual Owner Certification review, especially when there is a high quantity of vacancies or when units have been vacant for longer than ninety (90) days. The owner or manager must be able to document attempts to rent the vacant units to eligible tenants.

Note: The Vacant Unit Rule does not apply for developments that have been approved for the Extended Use Policy. For more information on the Extended Use Policy see Part 5.11, specifically part 5.11 D, Compliance Requirements.

## C. 140% Rule/Next Available Unit Rule

### 1. General Rule

If the income of the occupants of a qualifying unit increases to more than 140% of the federal Minimum Set-Aside (i.e. more than 140% of the 50% limit for 20/50 projects or more than 140% of the 60% limit for 40/60 projects) , due either to an increase in income or a decrease in the Area Median Gross Income subsequent to the initial income qualification, the unit may continue to be counted as a low-income unit as long as the following criteria is met: 1) the unit continues to be rent-restricted at the state set-aside, and 2) the next available unit of comparable or smaller size in the same building is rented to a qualified low-income household.

If the income of the occupants of a qualifying unit increases over the140% limit and if any residential unit of comparable or smaller size in the same building is occupied by a new resident whose income exceeds the limit, then the qualifying unit will no longer qualify as a low-income unit and the building is out of compliance with the Next Available Unit Rule. The determination of whether the income of the occupants of a qualifying unit qualifies for the purposes of the low-income set-aside is made on a continuing basis, with respect to both the household's income and the qualifying income for the location, rather than only on the date the household initially occupied the unit. In developments containing more than one low-income building, the Next Available Unit Rule applies separately to each building in the development. Additionally, the property must maintain all state and federal set-aside requirements stated in the development's Final Application and recorded in the Deed Restriction.

Under § 1.42-15(a), a low-income unit in which the aggregate income of the occupants of the unit rises above 140% of the applicable income limitation under § 42(g)(1) is referred to as an "over-income unit."

### 2. Next Available Unit Rule at Mixed-Use Projects

In mixed-use projects, the Next Available Unit Rule may cause market rate units to be converted into tax credit units. The owner must continue renting the next available unit of comparable or smaller size to a tax credit eligible household until the Applicable Fraction is restored. Therefore, multiple market units may have to be converted into tax credit units until the Applicable Fraction is restored (remember the Applicable Fraction includes both the unit and floor space fraction).

Once the Applicable Fraction is restored (without counting the unit that invoked the Next Available Unit Rule), the over-income unit may be converted from tax credit to market rate and the rent may be raised as allowed by the language in the tenant's lease.

*Example 1:*
*A building contains 10 units of equal size. Units 1-7 are qualified low-income units, Units 8 and 9 are market rate units, and Unit 10 is a currently vacant market rate unit. The Applicable Fraction of the building is 70%. On September 1, the income of the tenants in Unit 4 is determined to exceed the 140% limit. The rent for this unit continues to be rent restricted, and therefore the building continues to be in compliance and the Applicable Fraction decreases to 60%. In order to remain in*

*compliance, Unit 10 (the vacant market rate unit) must be rented to a qualified household to replace Unit 4 as a qualified low-income unit. On November 1, a qualifying household moves into Unit 10, thus the current Applicable Fraction is restored at 70%. When the lease language allows, Unit 4 may converted from tax credit to market rate.*

*Example 2:*

*A building contains 10 units of equal size. Units 1-7 are qualified low-income units, Units 8 and 9 are market rate units, and Unit 10 is a currently vacant market rate unit. The Applicable Fraction of the building is 70%. On September 1, the income of the tenants in Unit 4 is determined to exceed the 140% limit. The rent for this unit continues to be rent restricted, and therefore the building continues to be in compliance and the Applicable Fraction decreases to 60%. On November 1, a market rate household moves into Unit 10. At the time of the move in, the current Applicable Fraction was equal to 60%, excluding all over-income units. The market rate unit moving into Unit 10 is a Next Available Unit Rule violation and all over-income units (Unit 4) cease to be treated as low-income units. The date of noncompliance is November 1.*

*Example 3:*

*A property contains 6 units. Units 1-3 are 1000ft2. Unit 1 is a tax credit unit and Units 2 and 3 are market rate. Units 4-6 are 800ft2. Units 4 and 5 are tax credit units and Unit 6 is currently vacant market rate unit. The assigned Applicable Fraction is 48%. The current floor space fraction is 2600 $ft^2$ /5400 $ft^2$ for a total of 48.15%. The current unit fraction is 3/6 for a total of 50%. The current fraction is 48.15% (the lower of the unit fraction vs. the floor space fraction) which is in compliance with the assigned fraction of 48%.*

*On September 1, the income of the tenants in Unit 1 is determined to exceed the 140% limit. The rent for this unit continues to be rent-restricted, and therefore the building continues to be in compliance and the Applicable Fraction decreases to 29.63% (unit fraction is 2/6 or 33.33% and the floor space fraction is 1600/5400 or 29.63%).*

*On November 1, the management moves a qualified tax credit household into Unit 6 (the vacant market rate unit) converting the unit from market rate to tax credit. The unit fraction is now 3/6 (50%) but the floor space fraction is still below the limit at 2400/5400 (44.44%). The next available unit rule is still in effect, even though one market rate unit has already been converted to tax credit. Unit 1 (the over-income unit) will continue to be rent-restricted.*

*Now on January 1 of the following year, the market rate family in Unit 2 vacates the unit. Management moves in a qualified household. The unit fraction is now 4/6 (66.67%) and the floor space fraction is 3400/5400 (62.96%), for a total Applicable Fraction of 62.96%. Since the fraction has been restored, the over-income unit (Unit 1) can be converted to market rate when lease language allows and no longer has to be rent-restricted.*

**3. Next Available Unit Rule at 100% Tax Credit Projects**

Noncompliance with the Next Available Unit Rule can have significant consequences even in 100% RHTC buildings. If any comparable unit that is available or that subsequently becomes available is rented to a non-qualified resident, all over-income comparably-sized or larger units for which the available unit was a comparable unit within the same building lose their status as low-income units and are out of compliance with Section 42.

*Example: A property contains 10 units of equal size. All 10 units are qualified low-income units. The Applicable Fraction of the building is 100%. On September 1, the income of the tenants in Unit 4 is determined to exceed the 140% limit. The rent for this unit continues to be rent-restricted, and therefore the property continues to be in compliance and the Applicable Fraction decreases to 90%. On November 1, a non-qualified household moves into Unit 10, due to an error. At the time of the move-in, the current Applicable Fraction was equal to 90%, excluding all over-income units. The non-qualified household moving into Unit 10 caused a Next Available Unit Rule violation and all over-income units (Units 4 & 10) cease to be treated as low-income units. The Applicable Fraction is now 80% and the date of noncompliance is November 1.*

**4. Additional Notes**

-Section 1.42-15(c), provides that a unit is not available for purposes of the Next Available Unit Rule when the unit is no longer available for rent due to contractual arrangements that are binding under local law (for example, a unit is not available if it is subject to a preliminary reservation that is binding on the owner under local law prior to the date a lease is signed or the unit is occupied).

-The fact that a household's income exceeds the 140% limit at recertification is not considered good cause for eviction or termination of tenancy.

-The Next Available Unit Rule does not apply for developments that have been approved for the Extended Use Policy. For more information on the Extended Use Policy see Part 5.11, specifically Part 5.11 C, Compliance Requirements.

## D. Unit Transfer of Existing Tenants

When a transfer is permitted, the household's lease and Tenant Income Certification are moved over to the new unit. Management does not need to execute a new lease and a new TIC for a transfer, but must report the transfer event in IHCDA's online reporting system. The household's annual recertification effective date will remain on the anniversary date of the initial move-in, not the transfer date.

**1. Unit Transfers within the Same Building**

Effective September 6, 1997, the Next Available Unit Rule was modified to allow residents of RHTC units to transfer to other units ***within the same building*** without having to re-qualify for the program. The vacated unit assumes the status that the newly occupied unit had immediately before the transfer. This provision applies only to households under leases entered into or renewed after September 26, 1997, and is not retroactive. For prior leases, all transfers, including those within the same building, must have been treated as new move-ins.

The main implication for this change in regulation is that households that are over-income at recertification have the ability to move into a different unit within the same building without being disqualified from the program. However, the transfer must be well documented in the tenant file and the household's eligibility must continue to be certified and verified annually as with all RHTC households.

**2. Unit Transfers Outside the Same Building**

Developments that contain multiple buildings within one project may allow residents of RHTC units to transfer to other RHTC units outside of the same building without having to recertify them for the program, similar to unit transfers within the same building. The household's income may not be above the 140% limit. The vacated unit assumes the status the newly occupied unit had immediately before the current resident occupied it. NOTE: This provision applies only if the owner has selected "Yes" under Part II 8b on the IRS Form 8609 to the question, "Is the building part of a multiple building project?"

If the owner has selected "No" under Part II 8b on the IRS Form 8609 to the question, "Is the building part of a multiple building project?" then a household must be treated as a new move-in if it desires to transfer to an RHTC unit in a different building. All application, certification, and verification procedures must be completed for the transferring of resident(s), including the execution of new income and asset verifications to determine continued eligibility, a new Tenant Income Certification, and a new lease. The vacated unit assumes the status the newly occupied unit had immediately before the current resident occupied it.

**Management is not permitted to transfer qualifying tenants to non-qualified vacant units (i.e. empty units that have never been occupied by qualified households) in order for the development to meet the Minimum Set-Aside requirements elected at the time of application.** Such action is considered noncompliance with Section 42 of the Internal Revenue Code and will be reported to the Internal Revenue Service (IRS) via IRS Form 8823.

## Part 3.6|Rules Governing the Eligibility of Particular Tenants and Uses

### A. Household Composition

When determining household size for purposes of implementing the correct income limits, the owner/management should never include the following members: live-in aides, foster children and adults, and guests (See part 3.6 F for information on live-in aides and Part 3.6 J for information on foster children and adults).

The household has the right to decide whether or not to include individuals permanently confined to a hospital or nursing home as a household member. If the individual is included as a household member, his/her income must be certified and included.

Military members away on active duty are only counted as household members if they are the head, spouse, or co-head or if they leave behind a spouse or dependent child in the unit.

All other individuals, including temporarily absent family members (e.g. dependents away at school, etc.), unborn children, and children in joint custody agreements that are in the unit at least 50% of the time, should be included in household size for purposes of determining the applicable income limit.

Household composition may change after the initial tenant(s) moves into a unit. However, at the time of application an applicant should be asked if there are any expected changes in household composition during the next twelve (12) months. If so, the composition change and any subsequent changes in estimated income should be reflected on the initial Tenant Income Certification.

Moreover, if all original members of a household vacate a unit, the remaining members may have to be treated as a new move-in and if so would no longer be treated as a qualified unit if the current household's income is above the Section 42 limits*. To determine if at least one of the original members of the household still resides in the unit, household composition information must include the size of the household and the names of all individuals residing in the unit. This information must be gathered annually at recertification and at anytime a change in household composition occurs.

*See Section 4, Part 4.6 B for more information and examples on documenting changes in household composition and certifying new household members.

### B. Student Status

#### 1. General Rule and Definitions

Student status and household composition must be monitored carefully. A unit that becomes occupied entirely by full-time students could become a non-qualified household that is no longer tax credit eligible.

For purposes of the RHTC Program, IRC § 151(c)(4) defines, in part, a "student" as an individual, who during each of 5 calendar months (may or may not be consecutive) during the calendar year in which the taxable year of the taxpayer begins, is a full-time student (based on the criteria used by the educational institution the student is attending) at an educational organization described in IRC §170(b)(1)(A)(ii).

An educational organization, as defined by IRC §170(b)(1)(A)(ii), is one that normally maintains a regular faculty and curriculum, and normally has an enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. This term includes elementary schools (kindergarten inclusive), junior and senior high schools, colleges, universities, and technical, trade and mechanical schools. This does not include on-the-job training courses. **NOTE: The full-time student definition applies to students taking courses online if they are considered to be full-time by the educational organization.**

Most households in which all of the members are full-time students are not RHTC eligible, and units occupied by these households may not be counted as RHTC units, even if the household has an income that would qualify under the program income limits. The number of credit hours and the definition of full-time are defined by the school the student attends.

**2. Student Status Exemptions**

There are five (5) exceptions to the full-time student restriction. Full-time student households that are income eligible and that satisfy one or more of the following conditions can be considered an eligible household. A household comprised entirely of full-time students may not be counted as a qualified household under the RHTC program unless it meets one of the following five (5) exceptions:

i. All household members are full-time students, and such students are married and are *entitled* to file a joint tax return.

**Required Documentation: Copy of the most recent tax return or the marriage license.**

ii. The household consists entirely of single parents and their children, and such parents and children are not tax dependents of another individual, with the exception that the children may be claimed by the absent parent. Single parent means that only one of the parents lives in the unit. Therefore, the exemption is not met if both parents live in the unit but are not married. Consisting "entirely of single parents and their children" means that the only household members are single parents and their children. Therefore, if one member of the household is not a single parent or his/her child, then the exemption is not met. For example, if the household composition is a single mother, her two children, and a family friend, the exemption is not met because the family friend is not a single parent or his/her child. However, if the household was a single mother, her two children, a family friend who is also a single mother and her child, then the household would meet the exemption since all members are single parents and their children.

**Required Documentation: Copy of the most recent tax return.**

iii. At least one member of the household receives assistance under Title IV of the Social Security Act [Aid to Families with Dependent Children (AFDC) or Temporary Aid to Needy Families (TANF)]. Food stamps, Social Security, and SSI are not considered exemptions under Title IV.

**Required Documentation: Third-party verification of the AFDC or TANF award.**

iv. At least one member of the household is enrolled in a job training program receiving assistance under the Job Training Partnership Act or similar federal, state, or local laws. The mission of the Job Training Partnership Act, as amended by the Job Training Reform Amendments of 1992 and the School-to-Work Opportunities Act of 1994 Sec. 2 is as follows:

> *It is the purpose of this Act to establish programs to prepare youth and adults facing serious barriers to employment for participation in the labor force by providing job training and other services that will result in increased employment and earnings, increased educational and occupational skills, and decreased welfare*

*dependence, thereby improving the quality of the work force and enhancing the productivity and competitiveness of the nation.*

**Required Documentation: Third-party verification of enrollment and a mission statement from the job training program.**

v. At least one member of the household was previously under the care and placement responsibility of the state agency responsible for administering a plan under Part B or Part E of the Title IV of the Social Security Act. The member claiming to have been a foster child must have been placed into foster care through an official state foster agency. NOTE: This exemption only applies to eligibility determinations made on or after 7/30/08.

**Required Documentation: Third-party verification from the foster care agency or self-affidavit from the tenant if third-party verification cannot be obtained.**

**3. Implementing the Student Status Rule**

For purposes of qualifying households containing students to live in RHTC developments, IHCDA will:

- Consider a single person household ineligible if he or she is a full-time student at the time of initial occupancy, has been a full-time student for parts of five (5) or more months out of the calendar year (the five months need not be consecutive), or will be a full-time student at any time during the certification period (unless the individual meets one of the student exceptions described above);
- Consider a household of students eligible if it includes at least one part-time student, one non-student, or if the household meets one of the student exemptions described above;
- Consider a household containing full-time students and at least one child (who is not a full-time student) an eligible household;
- Consider TANF an acceptable Title IV program exception.

*Example- "5 months out of the calendar year"*
*An applicant applies to live in a tax credit unit on June 2, 2009. She graduated college on May 16, 2009 and will be living in the unit by herself. Since the applicant was a full-time student for parts of five months of the calendar year (January-May), she is ineligible for the tax credit unit, even though she is no longer a student. The applicant could apply again in January 2010, if she certified that she would not be returning to school full-time during that calendar and certification year.*

REMINDER: If at least one member of the household is not a student or is a part-time student, then the household is not considered a full-time student household and is an RHTC eligible household (if income qualified).

Note: The Full-Time Student Rule does not apply for developments that have been approved for the Extended Use Policy. For more information on the Extended Use Policy see Part 5.11, specifically Part 5.11 C, Compliance Requirements.

**4. Student Status Documentation**

IHCDA requires that all tax credit developments use the student status self-certification form released by the IRS in the Revised 8823 Guide as "Exhibit 17-1: Student Status Verification on page 17-5 of the Guide. A PDF version of the form, entitled "IRS Student Status Self-Certification," is available in Appendix D. This form must be included in all tax credit tenant files, and a separate form must be completed by each adult household member. This policy applies to all move-in and recertification files (including recertification files for 100% tax credit projects) with an effective date on or after 5/1/10. If an applicant or tenant indicates part-time status or claims an exemption on the certification form, IHCDA will expect to see third-party documentation verifying the information provided.

In addition, IHCDA requires owners to utilize a lease provision in all RHTC units requiring tenants to notify management of any change in student status during the lease term. If student status changes at any time, the household's tax credit eligibility must be reevaluated.

**5. Student Financial Assistance**

Per Chapter 5 of the HUD Handbook 4350.3, student financial assistance must be counted as part of total household income for households receiving Section 8 rental assistance. However, financial assistance is not included as part of annual household income for tax credit households that do not receive Section 8 rental assistance. For Section 8 recipients, all forms of financial assistance in excess of the cost of tuition (not including cost of books, room and board, and other class fees) are included as income. This includes grants, scholarships, private assistance, educational entitlements, etc. but does not include loans.

There are two exceptions to this rule:

i. The student is over the age of 23 with dependent children; or
ii. The student is living with his or her parents who are receiving Section 8 assistance.

If the Section 8 recipient meets one of the previous exceptions, then financial assistance is not included as part of total household income.

**6. Earned Income of Dependent Students**

When full-time students who are 18 years of age or older are dependents of the household, only a maximum of $480 of their total annual earned income is counted in the total household income calculation. Continue to count the full amount of unearned and asset income.

When full-time students who are 18 years of age or older are the head-of-household, co-head, or spouse, the full amount of earned, unearned, and asset income is counted in the total household income calculation.

**7. Important Distinctions between Student and Income Eligibility Rules**

Student status is treated differently than income eligibility in a number of important ways:

-While income eligibility is based on anticipated income for the next twelve (12) months, student status eligibility must consider not only if the applicant/tenant is or anticipates becoming a student within the next year, but also whether or not that applicant/tenant was a student parts of any five (5) months of the current calendar year. In this way, while income eligibility is only looking forward, student status eligibility is looking forward and backward at student history.

-Income verifications are not required at recertification for 100% tax credit projects. However, those projects must continue to certify student status on an annual basis. HERA eliminated the annual income verification requirement, but not the student status requirement for recertifications.

-A change in student status at any time, even during the middle of a lease term, can immediately affect eligibility. Once a household income qualifies, they are considered income eligible regardless of future changes in income (although the Next Available Unit Rule may go into affect). However, a household that was eligible at move-in can later become ineligible based on student status, either at annual recertification or in the middle of a lease term.

## C. Unborn Children and Child Custody

An owner can count an unborn child (or children) when determining household size and applicable income limits. The owner must obtain a self-certification from the household certifying the pregnancy and such statements must exist in the tenant file. If the unborn child has been self-certified by the household, then it must be included in household size.

Additionally, when determining household size, owners should include children subject to a joint custody agreement if such children live in the unit at least fifty (50%) percent of the time. However, a child may not be counted in more than one tax credit unit for household size.

## D. Managers/Employees as Tenants

Resident manager or employee units may be considered in one of the following ways:

1. The manager/employee unit could be considered a common area or other special facility within the development that supports and/or is reserved for the benefit of all the rental units, provided the employee works full-time for the development in which he/she lives. Under this interpretation, the unit would be excluded from the low-income occupancy calculation and the unit could be used by the manager without concern as to the income level of the manager. However, **if the staff unit is being considered common area, no rent can be charged for the unit**, since charging rent would suggest the manager is not necessary for the project and could also be interpreted as the owner charging rent for a facility included in Eligible Basis.

   NOTE: IHCDA will not allow staff units to be considered common area in developments that have market rate units.

   OR

2. The manager/employee unit could be treated as a tax credit rental unit and the unit could be included in the low-income occupancy percentage calculation for the RHTC building. Under this interpretation, the income level of the manager and the effective rent charged would affect the low-income occupancy percentage calculation for the building (i.e. the employee must be income qualified and the unit rent restricted).

In Revenue Ruling 92-61, the Internal Revenue Service ruled to include the unit occupied by the resident manager in the building's Eligible Basis, but exclude the unit from the Applicable Fraction for purposes of determining the building's Qualified Basis.

**IHCDA must approve the use of all manager/employee units.** The consideration of the resident manager's unit must be specified in the development's Initial & Final Multifamily Housing Finance Application and must be approved by IHCDA.

Additionally, IHCDA will consider requests for additional manager/employee units during the Compliance Period for good cause. To request a manager/employee unit, the owner must submit the request in writing with documentation supporting the need for the manager/employee unit. Requests should be submitted to IHCDA using the "Staff Unit Request Form" in Appendix D. All staff unit requests submitted during the Compliance Period will be charged a $500 modification fee, regardless of whether or not the request is approved by IHCDA.

## E. Model Units

IHCDA recognizes that it may be standard industry practice to utilize a model unit(s), during a project's lease-up period to show prospective tenants the desirability of the project's units. The use of a model unit can be a good marketing tool, in respect to the immediate ability to show the unit without disturbing current tenants in occupied units.

Under IRC §42, a model unit is considered a rental unit and therefore the model unit's cost can be included in the building's Eligible Basis and in the denominator of the Applicable Fraction when determining a building's Qualified Basis. There are several different ways a project can utilize a model unit:

- (1). Model unit is utilized during the lease-up period and is later used as a qualified rental unit and rented to a qualified household. The cost of the unit should be included in the building's Eligible Basis. In the years that the unit was utilized as a model unit, it should be included in the denominator of the Applicable Fraction when determining a building's Qualified Basis; however it should not be included in the numerator of the Applicable Fraction. Once the unit is rented to a qualified household, the owner should follow the rules outlined in IRC §42(f)(3) for increases in Qualified Basis; i.e., the "2/3 Credit Rule" (for more information on the 2/3 Rule, see Section 3, Part 3.1).

- (2). Model is utilized during the lease-up period, as well as the entire Compliance Period. If a model unit is never rented as an RHTC unit, then it should not be included in the numerator of the Applicable Fraction when determining a building's Qualified Basis. However, the costs of the unit should be included in the building's Eligible Basis and in the denominator of the Applicable Fraction when determining a building's Qualified Basis.

- (3). A qualified unit that becomes vacant is utilized as a model unit on a temporary basis. Provided that the unit remains available for rent and is treated like all other qualified units, it may be included in both the numerator and denominator of the Applicable Fraction when determining a building's Qualified Basis. The unit should be listed as "Vacant" on the Annual Owner Certification of Compliance and the Rent Roll, and not listed as a "Model Unit." Furthermore, the development must continue to make reasonable attempts to rent out the vacant units used as model units and must be able to document these efforts. IHCDA recommends that the owner place an "available for rent" sign in the model unit so that applicants, tenants, and management understand that the model unit is an available rental unit, not a permanent model.

### F. Live-in Care Attendants

A live-in care attendant (a.k.a. a live-in aide) is a person who resides with one or more elderly, near-elderly, or disabled persons. To qualify as a live-in care attendant, the individual (a) must be determined to be essential to the care and well being of the tenant, (b) must not be financially obligated to support the tenant, and (c) must certify that he/she would not be living in the unit except to provide the necessary supportive services. While some family members may qualify, spouses can never be considered a live-in care attendant since they would not meet qualifications (b) or (c). Additionally, the live-in aide cannot move a spouse, child, or other member into the unit, as doing so would indicate that the aide is living in the unit for reasons other than the care of the tenant.

A live-in care attendant for an RHTC tenant should not be counted as a household member for purposes of determining the applicable income limits, and the income of the attendant is not counted as part of the total household income. The need for a live-in care attendant must be certified with documentation from a medical professional (e.g. a letter from the tenant's doctor) and included in the tenant file. If the qualified tenant vacates the unit, the attendant must vacate as well. If an attendant would like to be certified as a qualified tenant and remain in the unit, normal certification procedures must be performed and the individual must meet the applicable eligibility requirements of the program.

While the live-in care attendant is not considered a household member, he/she is still subject to criminal background checks (as per the tenant selection criteria effective at the property) and must comply with tenant house rules. An owner may deny a live-in care attendant that does not pass criminal background checks or evict an attendant who exhibits behavior that is disruptive, illegal, or endangering to other tenants, as defined in the tenant selection criteria and lease.

## G. Non-Transient Occupancy

Under program requirements, a unit cannot be RHTC eligible if it is used on a transient basis. A unit is deemed to be in transient use and therefore out of compliance if the initial lease term is less than six (6) months. In order to avoid noncompliance for transient occupancy, there must be an initial lease term of at least six (6) months on all RHTC units. The six (6) month requirement may include free rental periods. Succeeding leases are not subject to a minimum lease period.

The 8823 Guide provides the following clarification in Footnote 2 on Page 11-2:

> "Leases commonly include fees for early termination of the rental agreement. The fact that the lease contains terms for this contingency is not indicative of transient use."

Therefore, a unit is in compliance so long as the initial lease is signed for a term of at least six (6) months, regardless of whether or not the household actually remains in the unit for that length of time.

Federal regulations do allow shorter leases for certain types of housing for homeless individuals. The following types of housing are exempt from the six (6) month minimum lease period:

1. Single Room Occupancy (SRO) units in developments receiving McKinney Act and Section 8 Moderate Rehabilitation assistance; or
2. Single Room Occupancy (SRO) units intended as permanent housing and not receiving McKinney Act assistance; or
3. Single Room Occupancy (SRO) units intended as transitional housing that are operated by a governmental or nonprofit entity and provide certain supportive services; or
4. Units that 1) contain sleeping accommodations and kitchen and bathroom facilities; 2) are located in a building that is used exclusively to facilitate the transition of homeless individuals to independent living within twenty-four (24) months; and 3) for which a governmental entity or qualified nonprofit organization provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing.

*Note: If a development has units set aside in a building for homeless households and/or transitional housing units, those tenants must have leases with at least six (6) month terms, unless the building's primary use is described in one of the Exemptions #1-4 above. Tax credit units may never be used as emergency shelters.

## H. Community Service Facilities

In Revenue Ruling 2003-77, the Internal Revenue Service ruled that Community Service Facilities can be included in a building's Eligible Basis if certain criteria are met, including the requirement that the development must be located within a qualified census tract. The services provided at the facilities can include, but are not limited to: day care, career counseling, literacy training, education, recreation and outpatient clinical health care. This ruling is included in Appendix A. Additionally, further information on community service facilities is available on page 8-7 of the 8823 Guide.

## I. Home-Based Business / Office in a Unit

A tenant may use an RHTC unit to conduct a home-based business, as long as they are income qualified for the unit and the unit is their primary place of residence. The 8823 Guide states on page 4-13:

"A low-income tenant may use a portion of a low-income unit exclusively and on a regular basis as a principle place of business, and claim the associated expenses as tax deductions, as long as the unit is the tenant's primary residence. If the tenant is providing daycare services, the tenant must have applied for (and not have been rejected), be granted (and still have

in effect), or be exempt from having a license, certification, registration, or approval as a daycare facility or home under state law."

## J. Foster Children/Adults

Foster children and adults living in a tax credit unit are not considered household members for purposes of determining income limits. Furthermore, the full amount of income a household receives for the care of foster children and adults is excluded from the calculation of total household income.

However, HUD Handbook 4350.3 Change 3 clarifies that the earned and unearned income received by foster adults, and the unearned income received by foster children, must be included in the calculation of total household income, even though those individuals are not considered members of the household when determining household size and the applicable income limit.

## K. Special Needs Populations

Per the set-asides and scoring criteria defined in the Qualified Allocation Plan (QAP), a tax credit development may have committed in writing to set aside a percentage of total units to qualified tenants who meet the State's definition of "special needs population" (as provided in IC 5-20-1-.45) and must equip each unit to meet a particular person's need at no cost to the tenant. Special needs populations include:

1. Persons with physical or development disabilities
2. Persons with mental impairments
3. Single parent households
4. Victims of domestic violence
5. Abused children
6. Persons with chemical addictions
7. Homeless persons
8. The elderly

Required Documentation:

1). The development and a qualified organization that provides and has the capacity to carry out services for the special needs population must enter into an agreement (signed by all parties) acceptable to the Authority in its sole discretion whereby the owner agrees to: (a) set aside a number of units for the special needs population and (b) notify the qualified organization when vacancies of the set-aside units occur at the development. The qualified organization must agree to: (a) refer qualified households to the development and (b) notify households of the vacancies of the set-aside units at the development. This is called the "referral agreement."

The development may enter into multiple referral agreements throughout the Compliance Period. Furthermore, referral agreements may expire or terminate, as long as at least one active referral agreement with a qualified service provider is in place at all times. IHCDA encourages developments to annually evaluate the affordability and demographic demands of the special needs population in their market area in order to identify potential qualified entities that may provide additional referrals.

2). The resume of the organization providing services for the special needs population (resume must demonstrate ability to provide services).

3). The files of the those tenants who qualify as a special needs population must include documentation to show that the unit is meeting the special needs set-aside. For those tenants referred to the development by the qualified service organization, a copy of the referral should be placed in the file. For special needs tenants who were not referred to the development by the qualified organization, the tenant should self-certify that he/she meets the definition of special needs population. However, management may not inquire into the specific nature of the special need (for example, management cannot ask the tenant details about their disability).

4). When reporting tenant events through the Indiana Housing Online Management website, the owner/management must designate which units meet the special needs population set-aside.

### L. Elderly Housing

The Fair Housing Act and The Housing for Older Persons Act of 1995 (HOPA) exempt certain types of "housing for older persons" from the Act's prohibitions against discrimination because of familial status.

Therefore, tax credit projects may be designated as housing for the elderly (as defined in the project's Final Application and Declaration of Extended Rental Housing Commitment) in one of the following ways and not be in violation of Fair Housing:

1. 100% of the units are restricted for households in which all members are age 62 or older; or

2. At least 80% of the units are restricted for households in which at least one member is age 55 or older. IHCDA discourages the owner from adding additional age restrictions on the remaining household members, as long as one member is over 55, as this could potentially violate familial status protections.

The remaining 20% of the units may also be restricted for households in which at least one member is 55 or older, may have a lower age restriction, or may be left open without any age restrictions. This determination is left up to the owner. The policy elected by the owner in regards to the remaining 20% of the units must be instituted equally for all applicants and must be placed in writing as part of the development's Tenant Selection Criteria Policy.

HUD has noted that phrases such as "adult living," "adult community," or similar statements should not be used to market developments that fall under the 80% at 55 requirements. Rather, the property should be more specifically advertised as senior housing for households in which at least one household member is 55 years of age or older. Moreover, the development may not evict or terminate the leases of families with children or other individuals under the age of 55 in order to achieve the elderly occupancy requirements on the 80% of the units.

For more information on the 80% at 55 restriction, See "Implementation of the Housing for Older Persons Act of 1995; Final Rule" located in the Federal Register, Vol. 64 No. 63 from April 2, 1999. This document is included in Appendix K.

A tax credit project's elderly restrictions should be clearly defined in the Final Application and Declaration of Extended Rental Housing Commitment, and the owner and management should follow the restrictions defined therein. If a project receives federal funding, such as Section 8 or RD, management should check those regulations for other potential elderly housing guidelines.

## Part 3.7|Fair Housing, General Public Use, and Tenant Selection Criteria

### A. Fair Housing: Protected Classes and Affirmative Marketing

The owner or agents of the owner shall not discriminate in the provision of housing on the basis of race, color, sex, national origin, religion, familial status, or disability [the seven (7) protected classes under the Fair Housing Act]. Nondiscrimination

means that owners cannot refuse to rent a unit, provide different selection criteria, fail to allow reasonable accommodations or modifications, evict, or otherwise treat a tenant or applicant in a discriminatory way based solely on that person's inclusion in a protected class. Owners may not engage in steering, segregation, false denial of availability, or discriminatory advertising.

In addition, all RHTC properties with five (5) or more HOME units must have an Affirmative Fair Housing Marketing Plan (AFHMP) and a copy of the approved plan must be submitted to IHCDA within one year of the first building being placed-in-service. In addition, Affirmative Fair Housing Marketing Plans must be evaluated at least once every five (5) years and updated according to the policies of the Fair Housing and Equal Opportunity Office of the Department of Housing and Urban Development (HUD). All updated Affirmative Fair Housing Marketing Plans must also be submitted to IHCDA.

All owners, managers, and staff members should be familiar with both state and federal civil rights and fair housing laws. IHCDA strongly encourages owners and management companies to provide Fair Housing and Equal Opportunity training for all staff, including maintenance staff, associated with any property. Staff should attend a Fair Housing and Equal Opportunity training at least once every calendar year.

IHCDA has established procedures for processing Fair Housing complaints made to IHCDA regarding RHTC properties. The procedures are as follows: 1) IHCDA will forward all written Fair Housing complaints to the Fair Housing and Equal Opportunity Office at HUD and also to the Indiana Civil Rights Commission; 2) IHCDA will notify the owner and management company of such complaint; and 3) if at any time during the Compliance Period it is found that a violation of the Fair Housing Act has occurred at any RHTC development, the property is out of compliance with Section 42 of the Code and IHCDA will report such noncompliance to the IRS via IRS Form 8823.

## B. Fair Housing: Reasonable Accommodations and Modifications

A reasonable accommodation is a change, exception, or adjustment in rules, policies, practices, or services when such a change is necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling, including public and common spaces. Per the Fair Housing Act, an owner must allow a reasonable accommodation unless doing so will be an undue financial burden or fundamentally alter the nature of the provider's operations. For more information on reasonable accommodation, refer to the HUD and Department of Justice (DOJ) Joint Statement "Reasonable Accommodations Under the Fair Housing Act" released May 17, 2004 (available in Appendix K).

A reasonable modification is a change to the physical structure of the premises when such a change is necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling, including public and common spaces. Per the Fair Housing Act, an owner must allow a reasonable modification at the expense of the tenant. However, if the changes needed by the tenant are ones that should have already been included in the unit or common space in order to comply with design and construction accessibility standards, then the owner will be responsible for paying for the modifications. For more information on reasonable modification, refer to the HUD and Department of Justice (DOJ) Joint Statement "Reasonable Modifications Under the Fair Housing Act" released March 5, 2008 (available in Appendix K).

## C. General Public Use

Under program requirements, RHTC units must be available for use by the general public. Owners are allowed to establish preferences for certain population groups (e.g. homeless individuals, persons with disabilities, the elderly, etc.). These preferences, however, must not violate HUD's anti-discrimination policies.

Any residential unit that is part of a hospital, nursing home, sanitarium, life care facility, retirement home providing significant services other than housing, dormitory, trailer park, or intermediate care facility for the mentally and physically disabled is not considered for use by the general public and is therefore not an eligible RHTC unit.

In addition, if a residential rental unit is provided only for a member of a social organization or provided by an employer for its employees, the unit is not for use by the general public and is not eligible for credit under Section 42. (See Section 1.42-9).

Furthermore, owners cannot refuse to accept a prospective tenant based solely on the fact that the applicant holds a Section 8 rental voucher or certificate.

Violations of General Public Use and/or Fair Housing are reportable to the IRS via Form 8823. Depending on the nature of the violation, the noncompliance may be determined at the unit, building, or project level. Any unit found in violation of General Public Use and/or Fair Housing will fail to be considered a qualified low-income unit for purposes of determining the Applicable Fraction.

## D. General Occupancy Guidelines/ Household Size

There are no current RHTC requirements governing minimum or maximum household size for a particular unit. However, owners must comply with all applicable local laws, regulations, and/or financing requirements (e.g. if Rural Development, use RD regulations). IHCDA advises all owners or agents to be consistent when accepting or rejecting applications. Occupancy guidelines or requirements should be incorporated into the development's management plan. Management should be aware of occupancy standards set by federal, state, HUD, PHA, civil rights laws, tenant/landlord laws, and municipal code that may establish a maximum or minimum number of persons per unit.

Note: State and/or local code may dictate when children/siblings are no longer able to share a bedroom.

For guidance on determining household size, see Part 3.6 A.

## E. Tenant Selection Criteria

There are no federal or state tax credit regulations regarding criminal or credit background checks, landlord references, or a minimum income necessary for occupancy. Implementation of these criteria is entirely up to owner/management discretion, so long as the screening criteria are applied equally to all applicants.

Additionally, there are no current regulations governing citizenship requirements for tax credit tenants. Since the Fair Housing Act does not prohibit discrimination based solely on citizenship status, owners may ask applicants to provide documentation of citizenship or immigration status as part of the screening process. If the owner chooses to implement such a policy, the screening criteria must be established in writing and applied in a uniform, nondiscriminatory fashion. Owners should be aware that other housing programs (such as HUD programs) may have stricter citizenship requirements that must be followed if the project has additional funding along with tax credits.

Because many of these tenant selection criteria are left up to the discretion of the owner, it is important for each development to have an established Tenant Selection Criteria Policy in writing. This document should be made available to all applicants and tenants.

At a minimum, a good Tenant Selection Criteria Policy should include the following:

- Occupancy standards in effect (how many tenants can live in a unit based on size of the unit);
- Tax credit program eligibility factors, including income limits and student status eligibility;
- Any minimum income requirements imposed by management;
- Any citizenship requirements imposed by management;

- Specifics on the information that is analyzed when performing credit checks, criminal background checks, and previous landlord references. Management should clearly spell out what findings constitute a rejection of application (e.g. do certain criminal charges or a certain credit score automatically disqualify the household?);
- Explanation of the application and waiting list process, including the process through which a tenant can appeal a rejection decision;
- Explanation of the transfer policies in effect;
- Breakdown of any special preferences set aside at the project (e.g. units reserved for special needs populations or an elderly restriction on the project); and
- List of any other relevant items used in considering the household's eligibility for occupancy

When creating a development's Tenant Selection Criteria Policy, the owner must be careful to follow all applicable tax credit eligibility regulations, Fair Housing regulations, and local occupancy standards.

## Part 3.8|Tax Credits Developments with HOME-Assisted Units

A tax credit development may also receive HOME funds, resulting in a certain number of units reserved as both tax credit and HOME-assisted units. Units that are both RHTC and HOME-assisted must follow the compliance rules of both programs. As a general rule of thumb, when program compliance regulations differ, the owner should follow the stricter of the two.

The following is a sampling of common issues management may face when combining tax credits with HOME funding. This is not meant as an exhaustive listing. For more information on IHCDA's HOME compliance regulations, please refer to the *Indiana HOME, CDBG, and Development Fund Rental Compliance Manual*.

### A. RHTC with HOME: Rent and Income Limits

1. HOME and RHTC rent and income limits may be different within the same county for the same year. IHCDA releases a separate set of limits for each program. For a unit under both programs, the stricter of the two sets of limits should be used (generally the HOME limits are lower and are thus the stricter).

2. Section 42 does not include rental assistance in the gross rent calculation. For HOME-assisted units, tenant-based rental assistance is included in the gross rent calculation. For purposes of determining whether a HOME-assisted unit is in compliance with the rent limits, the sum of the tenant-paid rent portion + tenant-based rental assistance + utility allowance + non-optional fees must be at or below the applicable HOME rent limit.

### B. RHTC with HOME: Certifications and Verifications

1. 100% tax credit projects do not have to perform annual income recertifications. However, those units that are also HOME-assisted must have a full annual recertification to comply with IHCDA's HOME program requirements.

2. The tax credit program allows household self-certification for assets if the total combined value of assets is less than or equal to $5000. HOME requires that all assets be third-party verified, so the "Under $5000 Assets Affidavit" cannot be used to satisfy the verification requirements on HOME-assisted units.

3. In the HOME program, verifications are valid for six (6) months. For Section 42, verifications are only valid for 120 days. Therefore, for units subject to both programs, use the stricter tax credit rule and make sure that all verification documents are no older than 120 days as of the effective date of the certification.

### C. RHTC with HOME: Household Size and Eligibility

1. Section 42 includes unborn children when determining household size for purposes of determining the applicable income limits. However, HOME does not allow unborn children to be included as household members. If a household with an unborn child applies for a unit that is both tax credit and HOME-assisted, management must demonstrate that the household is income eligible under both programs.

2. The HOME program does not limit occupancy by full-time students. However, for HOME-assisted RHTC units, the tax credit full-time student rules apply.

### D. RHTC with HOME: Fair Housing and Lead Based Paint Requirements

1. Upon project entry, households living in HOME-assisted units must be given the Fair Housing brochure entitled "You May Be a Victim Of" and the Lead Based Paint brochure entitled "Protect Your Family from Lead in Your Home." The household must sign documentation acknowledging the receipt of these brochures at time of move-in. Although this is not a requirement of Section 42, all HOME-assisted units in a tax credit development should have a signed copy of the acknowledgement located in the tenant file.

2. Any tax credit development with five (5) or more HOME units must follow Affirmative Fair Housing Marketing procedures. The owner must study the local market to determine the populations that are least likely to apply for housing, and then develop a plan to make sure that marketing efforts are reaching out to these groups. The owner should evaluate the development's Affirmative Marketing plan at least once every five (5) years and update the plan if necessary.

### E. RHTC with HOME: IHCDA Audits

A development with tax credits and IHCDA HOME funds will be audited by IHCDA for each program. The tax credit file monitoring will occur once every three (3) years (see Part 5.6 for an explanation of the tax credit monitoring cycle).

Additionally, the HOME units will be audited according to the following schedule:

-If 1-4 HOME units in the development: once every three (3) years
-If 5-25 HOME units in the development: once every two (2) years
-If more than 25 HOME units in the development: annually

### F. RHTC with HOME: Over-income Units

For tax credit purposes, a unit is not considered to be an over-income unit until the household income exceeds 140% of the federal minimum set-aside election. When this occurs, the 140% Rule or Next Available Unit Rule goes into effect. See Part 3.5 C for more information on the Next Available Unit Rule.

For HOME purposes, a unit is considered to be over-income (and therefore a temporarily noncompliant unit) when household income exceeds 80% of AMI. Under the HOME program, households that exceed 80% of AMI are charged 30% of adjusted income as rent and special rules go into effect to replace the over-income unit.

For units that are under both programs, the tax credit 140% rule overrides the HOME over-income rules and households are not considered over-income until they exceed 140% of the federal minimum set-aside election.

Note: Neither program permits eviction or termination of tenancy due to income increases, even if the household exceeds the 140% or 80% levels.

# Section 4 – Qualifying Tenants for RHTC Units

Potential tenants of low-income, rent-restricted units should be advised early in the application process that there are maximum income limits that apply to these units. Management should explain to potential tenants that the anticipated income of all adult persons (and the unearned income of minors) expecting to occupy the unit must be verified prior to occupancy and then annually recertified for continued eligibility.

The Code states that determination of annual income of individuals and Area Median Gross Income adjusted for family size must be made in a manner consistent with HUD's Section 8 income definitions and guidelines. HUD Handbook 4350.3, *Occupancy Requirements of Subsidized Multifamily Housing Programs* should be used as a reference guide. Chapter 5 of HUD Handbook 4350.3 CHG-3 is included as Appendix C. A complete HUD Handbook 4350.3 may be obtained through the HUD Handbook clearinghouse by telephoning (800) 767-7468.

## Part 4.1|Tenant Qualification & Certification Process

### A. Necessary Documentation for a Tenant File

RHTC units are eligible for the RHTC program if proper documentation verifying the household's eligibility is placed in the tenant file. **At a minimum, the following items must be located in the file and must be organized in chronological order for easy review:**

1. Initial Tenant Application for residency;
2. Tenant Eligibility Questionnaires completed for every year the household resides at the property, including certification of assets and disposal of assets, if applicable. A separate Tenant Eligibility Questionnaire should be completed by each adult household member annually;
3. Tenant Income Certification (see 4.1 B below) signed by each adult member of the household for every year the household resides at the property. The TIC must have proper signature and effective dates clearly stated (effective date of TIC must be date of move-in or recertification, see Part 4.6 B for more information on effective dates);
4. Verifications of all income and asset sources noted on the Tenant Eligibility Questionnaires for all years;
5. A separate "IRS Student Status Self-Certification" document completed by each adult member of the household each year, along with any additional student status verifications needed (e.g. verification of part-time status, verification of a student exemption, etc.);
6. Any other documentation verifying the household's eligibility (e.g. unborn child self-certification, joint custody of a child documentation, all management clarification documents, etc.);
7. Initial and subsequent leases and all lease addenda executed by the tenant and owner; and
8. For tenants receiving Section 8 vouchers, a copy of the Housing Assistance Payment (HAP) Contract and the current HAP Amendment from the Section 8 agency showing the amount of rental assistance. For tenants in project-based Section 8 units, a copy of the current HUD Form 50059 showing the amount of rental assistance.

NOTE: A recertification file for 100% tax credit projects will only include the following documentation: a new Tenant Income Certification Form, new student status certifications for each adult member of the household, and the new lease and all addenda. Verification of income and assets is not necessary at recertification for 100% tax credit projects.

All documents included in the tenant file must be fully completed, signed, and dated. IHCDA will not accept documents that are incomplete, that have been marked with correction fluids (i.e. whiteout), or where information has been obliterated with pen or marker. See 4.1 C below for information on how to properly correct documents in a tenant file.

### B. Tenant Income Certification (TIC) Form

Every tenant file must contain a tax credit Tenant Income Certification (TIC) form, regardless of whether or not that unit/tenant also has an income certification from another program in the file (e.g.. HUD Form 50058/50059 or similar RD certification forms). The Tenant Income Certification form used for the tax credit program includes information that is not found on these other forms, such as the BIN number, the tax credit income and rent limits, household student status, the tax credit set-aside for the unit, the tax credit certification effective dates, etc. Therefore, properties that have multiple funding sources will need to have multiple signed tenant income certification forms in their files to demonstrate compliance with each separate program. **Beginning in 2011, IHCDA's sample TIC (Form #22 in Appendix D) is a mandatory form that must be used in all tenant files. IHCDA will no longer accept any other TIC document, unless the TIC is submitted to IHCDA and specifically approved.**

The TIC must list the IHCDA rent and income set-aside for the unit/household. Therefore, the rent and income restrictions should be listed as 30%, 40%, 50%, or 60%, not the actual AMI % of the household. For example, at time of move-in, a household may actually have income at 47% of AMI. IHCDA does not need to know this, but rather only needs to know the tax credit set-aside the household qualifies under, in this case, either the 50% or 60% limit.

### C. Correcting Documents

To correct a document, management should draw one line through the erroneous information and write the corrected information to the side. All corrections should be dated and initialed. Corrections on forms filled out by the management should be initialed by the management agent. Corrections on forms filled out by the tenant should be initialed by the tenant. Corrections to the lease should be initialed by both parties.

If management fails to obtain the necessary paperwork at time of certification, verifications can be retroactively created to document the income and assets that were in place at the time of certification. All retroactive documents should be signed with the current date, but noted as being "true and effective" as of the actual certification effective date. The "true and effective" statement must be written on each form that is created or signed after the effective date. Neither tenants nor management are ever permitted to backdate documents. The recertification effective date continues to be the anniversary date of the move-in, not the date the documents were completed retroactively.

*Example: Mrs. Smith is due for her annual recertification on December 20th. However, the property manager was distracted putting up holiday decorations and forgot to send out a recertification notice. Therefore, Mrs. Smith does not come in to the office to complete her paperwork until January 2nd. Mrs. Smith should sign all paperwork with the current date (January 2nd) but should make a note at the bottom of each form stating "information true and effective as of December 20th."*

## Part 4.2|Tenant Application & Tenant Eligibility Questionnaire

A fully completed Application and Tenant Eligibility Questionnaire is critical to an accurate determination of tenant eligibility. An Application must be completed by the household at initial move-in. A Tenant Eligibility Questionnaire must be completed annually (at initial move-in and at annual recertification) by each adult member of the household (a separate questionnaire for each adult member). **Beginning in 2011, IHCDA's sample Tenant Eligibility Questionnaire form (Form # 23 in Appendix D) is a mandatory form that must be used in all tenant files. IHCDA will no longer accept any other Questionnaire, unless the Questionnaire is submitted to IHCDA and specifically approved.**

The information furnished on the Application and Tenant Eligibility Questionnaire should be used as a tool to determine all sources of income (including total cash value of assets and income from assets), household composition, and student status.

HUD Handbook 4350.3 lists guidelines which the owner may want to adopt for the Application process. The Application should include:

A. The name, age, relationship, disability (if units are set-aside for such tenants and are part of the Development's Extended Use Agreement), and sex of each person that will occupy the unit (legal name should be given just as it will appear on the Lease and Tenant Income Certification form);

B. All sources and amounts of current and anticipated annual income expected to be derived during the twelve (12) month certification period. Include assets now owned and indicate whether or not household members disposed of assets for less than Fair Market Value during the previous two (2) years;

C. The current and anticipated student status of each applicant during the twelve (12) month certification period and current calendar year;

D. A screening process (i.e. previous landlord's rental history, credit information, etc.). Owners should ask applicants whether the family's assistance or tenancy in a subsidized housing program has ever been terminated for fraud, nonpayment of rent, or failure to cooperate with recertification procedures;

E. The signature of the applicant and the date the application was completed. It may be necessary to explain to the applicant that all information provided is considered confidential and will be handled accordingly; and

F. Collection of demographic data: The Housing and Economic Recovery Act (H.R.3221) passed by Congress on July 31, 2008 requires HUD to collect and report the following information for all LIHTC tenants:

-Race
-Ethnicity
-Sex
-Family composition
-Age
-Income
-Use of Section 8 (or similar) Rental Assistance Program
-Disability Status; and
-Monthly Rental Payment

**This policy requires that RHTC developments annually report this demographic data for all household members (each member, not just the head of household).** IHCDA is being proactive in anticipation of these data collection requirements and is requesting the necessary information in the online reporting system. **Beginning in 2010, the owner of an RHTC development must report the demographic data for each household member when reporting tenant events online.**

In order to reduce administrative burden, it is IHCDA's intent to capture all demographic information for HUD through the online reporting system.

As an additional requirement of the review process, each owner will be required to annually submit a compilation of this information through the Indiana Housing Online Management website as part of the Annual Owner Certification process. Failure to submit this information will be considered an act of noncompliance and will be reported accordingly on IRS Form 8823. For more information on Annual Owner Certifications see Section 5, Part 5.5.

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, determine household eligibility, and complete the Tenant Income Certification form. IHCDA requires that each adult household member complete a separate Tenant Eligibility Questionnaire at time of application and at each annual certification. The Tenant Application and Tenant Eligibility Questionnaire is the first step in the tenant certification process.

## Part 4.3|Tenant Income Verification

The income of every prospective occupant of the unit must be verified. All regular sources of income, including income from assets, must be verified. Verifications must be received by the management agent prior to move-in. Verifications must contain complete and detailed information and include, at a minimum, direct written verification of all sources of regular income and income from assets.

### A. Effective Term of Verification

Verifications of income are valid for 120 days prior to move-in or recertification effective date. After this time, if the tenant has not yet moved in or recertified, a new verification must be obtained.

### B. Methods of Verification

Three (3) methods of verification are permitted, but management must attempt to receive third-party verification before using the other methods:

**1. Third-Party Written or Verbal Verification**

**Reasonable effort to obtain written third-party verification is required.** IHCDA does not require that the owner/management agent use particular forms for third-party verifications; however, sample third-party verification forms are included in Appendix D. All requests for income verification must:

a) State the reason for the request;
b) Include a release statement signed and dated by the prospective tenant;
c) Provide a section for the employer or other third-party source to state the applicant/tenant's current anticipated gross annual income or rate of pay, number of hours worked, and frequency of pay. Over-time hours, bonuses, tips, and commissions must be included, as well as the probability and effective date of any increase during the next twelve (12) months. Spaces should also be available for a signature, job title, phone number, and date. If forms are returned with any information incomplete, management MUST contact the source and complete a clarification form to document incomplete information; and

**Note: Owners must send and receive verification forms directly to/from the third-party, not through the applicant or tenant.**

When written verification is not possible prior to move-in, direct contact with the source will be acceptable to IHCDA only as a last resort and should be followed by written verification. The conversation should be documented in the tenant file to include all information that would be contained in a written verification. The information must include the name, title, and phone number of the contact, the name of the onsite management representative accepting the information, and the date the information was obtained.

In addition, if the owner receives third-party verifications that are not clear or are not complete, a documented verbal clarification may be accepted if it includes the name and title of the contact, the name and signature of the onsite management representative accepting the information, and the date.

Furthermore, if after requesting third-party verification, the third-party indicates that the information must be obtained from an automated telephone system, the owner may document the information provided from the telephone system. The documentation must state the date the information is received, all of the information provided, and the name, signature, and title of the person receiving the information.

**2. Second-Party Verification & Electronic Verification**

Owners may use documents submitted by the applicant or tenant only if:

a) Information does not require third-party verification (such as birth certificates or adoption papers verifying household membership, divorce decrees, etc.); or
b) Third-party verification is impossible or delayed beyond two (2) weeks of the initial request. Owners must show efforts (i.e. phone logs, fax receipts, certified mail receipts, etc.) to obtain the third-party verifications before the use of second-party verifications will be permitted; or
c) There is a fee associated with receiving the third-party verification. For example, if a bank will charge a fee for providing bank account information on a checking account, the owner may verify the account by obtaining the most recent six (6) months of bank statements from the tenant.

If second-party verification must be used, the owner is required to document the tenant file explaining the reason third-party verification could not be obtained and showing all efforts that were made to obtain third-party verification. Page 5-61 of the HUD Handbook 4350.3 states that the following documents should be placed in the tenant file:

a) A written note to the file explaining why third-party verification is not possible; and/or
b) A copy of the date-stamped original request that was sent to the third-party; and/or
c) Written notes or documentation indicating follow-up efforts to reach the third-party to obtain verification; and/or
d) A written note to the file indicating that the request has been outstanding without a response from the third-party.

The owner must be able to reasonably project expected income for the next twelve (12) months from the second-party verification. For example, if third-party verification of employment income is impossible and efforts to obtain the third-party verification have been made and delayed two (2) weeks, the owner may obtain the six (6) most current consecutive pay stubs from the tenant. The owner must place copies of the second-party verifications and the efforts to obtain third-party verification in the tenant file.

When using pay stubs in lieu of third-party employment verification, or bank statements in lieu of third-party asset verification, the owner must obtain the six (6) most recent consecutive stubs or statements.

Additionally, if third-party verification is impossible to get from the third-party or is delayed, the owner may use information obtained electronically from e-mail or the internet. For example, an owner may receive the Fair Market Value of a house from an internet site that provides that information from the comparable real estate in the area.

**3. Tenant Self-Certification**

As a last resort, the owner may accept a tenant's signed affidavit if third-party and second-party verifications cannot be obtained. The owner should try to refrain from using self-affidavits except where absolutely necessary.

If a self-affidavit must be used to verify income or asset sources, the owner is required to document the tenant file by explaining the reason third-party or second-party verification could not be obtained and showing all efforts that were made to obtain verification. Per Chapter 5 of the HUD Handbook 4350.3, the following documents should be placed in the tenant file:

a) A written note to the file explaining why third-party verification is not possible; and/or
b) A copy of the date-stamped original request that was sent to the third-party; and/or
c) Written notes or documentation indicating follow-up efforts to reach the third-party to obtain verification; and/or

d) A written note to the file indicating that the request has been outstanding without a response from the third-party; and/or
e) A written note to the file explaining why second-party verification is not possible.

**4. Public Housing Authority Verification & Income for Section 8 Recipients**

In the case of a tenant receiving housing assistance payments under the Section 8 Program, the third-party income verification requirement is satisfied if the Public Housing Authority (PHA) provides a statement to the building owner certifying that the household's income does not exceed the applicable income limit under Section 42(g) of the Internal Revenue Code.

The only documents that will be acceptable from the Public Housing Authority are HUD Form 50058 or the IHCDA approved Public Housing Authority Verification form in Appendix D (if provided by the local PHA). The form must be completed in its entirety by a qualified representative of the PHA and list the members of the household and the gross income of the household before any deductions that the household may be eligible for under the Section 8 Program. These forms will not be considered valid verifications if they are dated more than 120 days prior to the household's move-in date or recertification effective date.

Once the owner receives the HUD Form 50058 or IHCDA approved PHA form, no other verifications of income are required. However, verifications for other Section 42 eligibility requirements such as student status, the Tenant Eligibility Questionnaire, and the tax credit Tenant Income Certification (TIC) form must still be completed and placed in the household's file. **The 50058 or PHA Form replaces the third-party income verifications but does not replace the tax credit TIC. A tax credit TIC must be included in the file, regardless of whether or not there is a 50058 (see Part 4.1 for more information).** The owner may not rely on the HUD Form 50058 or PHA form if a reasonable person in the owner's position would conclude that the tenant's actual annual income is higher than the tenant's represented annual income. Additionally, the HUD/PHA form must be signed by both the tenant and the PHA Representative when used as the income verification.

Because the HUD Form 50059 used for project-based Section 8 is not signed by a PHA representative, the Form 50059 cannot be used as income verification. However, the 50059 should be maintained in the file to verify the amount of rental assistance on the unit.

Furthermore, the tax credit program cannot accept the Enterprise Income Verification (EIV) system used by Section 8 to verify income. Therefore, the income of Section 8 recipients living in RHTC units must continue to be third-party verified. EIV documentation should be kept in a separate file from the tax credit verifications so that it is completely inaccessible to the tax credit monitor.

## C. Verification Transmittal

Income verification requests must be sent directly to the source by the owner or management agent and returned by the source to the owner or management agent. Under no circumstances should the applicant or resident be allowed to send or deliver the verification form to the third-party source or back to the management. It is suggested that a self-addressed, stamped envelope be included with the request for verification to ensure a timely response. In addition, faxed copies of verifications are acceptable.

All income verifications should be date stamped as they are received.

## D. Acceptable Forms of Income Verification

The following section provides brief guidance on some of the more complicated sources of income to verify.

For complete information concerning acceptable forms of income verification for Employment Income, Self-employment Income, Social Security/Pensions/Supplemental Security Income (SSI)/Disability Income, Unemployment Compensations, Alimony or Child Support Payments, Recurring Contributions and Gifts, Scholarships, Grants, Veteran's Administration Benefits, Income from Assets, etc., see HUD Handbook 4350.3 CHG-3, specifically Chapter 5 and "Appendix 3: Acceptable Forms of Verification." Chapter 5 of HUD Handbook 4350.3 is included as Appendix C.

### 1. Social Security and Supplemental Security Income

IHCDA will accept the Annual Benefit Award Letter provided from the Social Security office to verify Social Security Benefits. However, all Supplemental Security Income is required to be verified and dated within 120 days prior to the certification date. When interpreting Social Security benefit letters, remember to use the gross amount before deductions, unless the deduction is for a prior overpayment of benefits. NOTE: Delayed SS and SSI payments received as a lump sum are not counted as income.

### 2. Child Support Verification

As guidance to the owner regarding child support verification, IHCDA requires the following documentation to verify income from child support:

- The tenant must be asked on the application for tenancy and annually on the Tenant Eligibility Questionnaire if anyone in the household is **entitled** to receive child support.
- If the tenant is entitled and is currently receiving child support, a copy of the court order, divorce decree, or verification from the agency administering the child support payments must be received.
- If the tenant is receiving child support but there is no court order (i.e. the tenant has made an alternative arrangement with the child support payer), then the owner should attempt to obtain third-party verification from the source making the payments
- If the tenant is entitled to receive child support, but has not received a payment within the previous year, verification from the agency administering the child support payments must be received by the owner. In addition, an affidavit from the tenant to the owner certifying that a) the tenant is not receiving child support payments; b) the reason the tenant is not receiving the payments; and c) the efforts made by the tenant to receive the payments must be obtained. If there is a court order but the tenant has not made efforts to receive the child support, then the owner must count the full amount of court ordered child support as income.
- If the tenant is entitled to receive child support, but payments over the previous year have been sporadic (i.e. more than one third (1/3) of the payments have not been paid), then the owner may average the payments received over the previous year to project anticipated income for the next twelve (12) months. Management should document the file with the previous twelve (12) month history.

### 3. Unemployment Benefits

The owner must attempt to receive third-party verification of unemployment benefits. When anticipating income from unemployment, the owner must annualize the weekly benefit amount regardless of whether or not the benefit end date suggests that benefits won't last for the full year. The owner may not use the total benefit amount, the remaining benefit amount, or an average of the benefits received.

The only exception is if the tenant knows a date on which he or she will return to work or begin a new job. In this case, the owner would calculate unemployment benefits up until the hire date and then calculate employment income for the rest of the year. IHCDA will expect to see third-party verification of the unemployment benefits and a third-party verification (employment verification) showing the start date for the job, including all other information applicable to employment.

**4. Employment Income**

For purposes of verifying and calculating employment income, it is imperative to consider year-to-date earnings. IHCDA requires the owner to calculate employment income in one of the following manners:

-If third-party employment verification is received, calculate the total anticipated income for the year and compare to the anticipated income based off of the year-to-date (YTD) figure provided on the verification form (all employment verification forms must ask for YTD earnings). Use the higher of the two figures when calculating total household income.

-If the six (6) most recent paystubs are received, calculate the total anticipated income based off of the average of the six paystubs and compare to the total anticipated income based off of the year-to-date (YTD) figure found on the most recent paystub. Use the higher of the two figures when calculating household income.

IHCDA provides sample income calculation worksheets for the convenience of the owner/ management. Form #39 provides a calculation method for using third-party employment verifications and Form #40 provides a calculation method for using paystubs.

### E. Differences in Reported Income

The management agent should give the applicant/tenant the opportunity to explain any significant differences between the amounts reported on the Application/Questionnaire and amounts reported on third-party verifications in order to determine actual income. The explanation of the difference should be documented in the tenant file on a clarification form or self-affidavit.

## Part 4.4|Annual Income

### A. Whose Income and Assets are Counted?

| Member | Employment Income | Unearned/asset income |
|---|---|---|
| Head of household | Yes | Yes |
| Spouse/ Co-head | Yes | Yes |
| Other adult | Yes | Yes |
| Foster adult* | Yes | Yes |
| Dependent Child Under 18 | No | Yes |
| Full-time student over 18 ** | See Note Below | Yes |
| Foster child under 18* | No | Yes |
| Non-members (live-in aides, guests, etc.) | No | No |

*The earned and unearned income of foster adults and the unearned income of foster children is counted in total household income, but foster adults and foster children are not counted for the purposes of determining household size.

**If a full-time student over 18 is a dependent of the household, only a maximum of $480 of earned income is included in annual household income.

## B. Income

Annual income is defined as the gross amount of anticipated earned and unearned income to be received by all adult members of the household (18 years of age and older, including full-time and part-time students) and the unearned income of minors during the twelve (12) months following the date of certification or recertification. For information regarding annual income inclusions and exclusions and how to calculate annual income, see HUD Handbook 4350.3 CHG-3 in Appendix C. Exhibit 5-1 lists income inclusions and exclusions and Exhibit 5-2 lists asset inclusions and exclusions. Note that RHTC income limits are based on gross annual income, not adjusted annual income. Allowances commonly used in some government programs, such as child care allowance, elderly household allowance, dependent allowance, handicapped assistance allowance, medical deductions, etc., are not permitted to be subtracted from the household's gross annual income to determine income eligibility for RHTC units.

## C. Assets

Assets are items of value, other than necessary personal items. Income from assets must be taken into consideration when determining the eligibility of a household. Asset information (asset value and income from assets) should be obtained at the time of application. For more information regarding household asset inclusions and exclusions, and how to determine the cash value and income from assets, see HUD Handbook 4350.3 in Appendix C, specifically Section 5-7 and Exhibit 5-2.

### 1. Net Family Assets Greater than $5,000

Third-party verification of the value of assets and income from assets is required when the combined value of the assets held by all members of the household exceeds $5,000. Third-party verification must be obtained for the initial certification of the household and for each recertification (unless the 100% Recertification Exemption applies).

If net family assets exceed $5,000, asset income (which must be included as part of total gross household income) will be the greater of: a) actual asset income; or b) net family assets times the HUD approved passbook rate (the Imputed Income from Assets). Local HUD offices periodically publish the HUD approved passbook savings rate. The current rate is two percent (2%).

### 2. Net Family Assets Less than or Equal to $5,000

Owners of RHTC developments do not have to obtain third-party verification(s) of the value of assets if the household submits to the owner a signed, sworn statement that the combined value of the assets of the household is less than or equal to $5,000. The sworn statement must include a listing of the household's assets, the cash value of each asset, and the actual annual income from each asset (e.g. annual interest rate). This form must be completed by the household for the initial Tenant Income Certification and for each subsequent recertification (unless the 100% Recertification Exemption applies). However, the owner may not rely on the low-income household's signed, sworn statement of annual income from assets if a reasonable person in the owner's position would conclude that the household's annual income from assets is higher than the amount represented on the self-certification.

If net family assets are less than or equal to $5,000, asset income will equal actual annual income from assets. The annual income from assets must be included as part of total annual household income.

Note: The rule allowing self-certification of assets when total cash value of household assets is less than or equal to $5000 is a tax credit specific rule. Households that are under other programs (e.g. HOME) will need to third-party verify all assets in order to comply with those programs.

### D. 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. In order for the household to qualify for a RHTC unit, the total household income must be at or below 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, then the household cannot be certified for a RHTC unit.

Remember, RHTC income limits are based on gross annual income, not adjusted annual income. Allowances commonly used in some government programs, such as child care allowance, elderly household allowance, dependent allowance, handicapped assistance allowance, medical deductions, etc., are not permitted to be subtracted from the household's gross annual income to determine income eligibility for RHTC units.

## Part 4.5|Move-In Dates

### A. RHTC Developments Involving the Acquisition and Rehabilitation of a Building(s)

If a building is occupied at the time it is acquired and remains occupied throughout the period in which it is being rehabilitated, all existing households (those who occupied the building when it was acquired) must be documented as having been income-eligible no earlier than 120 days prior to the date of acquisition using the current income limits or no later than 120 days after the date of acquisition using the income limits in effect on the day of acquisition, providing a 240 day window during which the certification can be performed. The effective date of the Tenant Income Certification is the date of acquisition and the initial TIC is considered a move-in event, even though the tenant has already lived in the unit prior to the effective date.

If an existing household is not certified within 120 days before or after the date of acquisition, the effective date of the TIC will be the actual date the household is income certified and all documentation is completed. The initial TIC will be considered a move-in event, even though the tenant has already lived in the unit prior to the effective date.

Households that move into the unit after the date of acquisition must be documented as RHTC eligible at the time of actual move-in to the unit. If the building is not occupied during rehabilitation, a household must be RHTC eligible at the time of actual move-in to the unit, using the income limits that are in effect at time of move-in.

For purposes of Rev. Proc. 2003-82, the incomes of the individuals occupying a unit occupied before the beginning of the first credit year must be tested for the Next Available Unit Rule under IRC §42(g)(2)(D)(ii) and Treas. Reg. 1.42-15 at the beginning of the first year of the building's credit period using the following requirements:

1. The "test" must be completed within 120 days prior to the beginning of the first year of the credit period.
2. The "test" consists of confirming with the household that sources and amounts of anticipated income included on the TIC are still current. If additional sources or amounts of income are identified, all additional sources must be self-certified and added to the current TIC. Regardless of whether or not the household notes a change in income sources, the "test" does not require third-party verifications.
3. If the household is over-income based on current income limits, the household remains eligible but the Next Available Unit Rule must be applied.

The test will be necessary if acquisition and rehabilitation are not completed within the same year, because the credit period cannot begin until the year in which rehabilitation is completed. If acquisition and rehabilitation are completed within the same year, the "test" will not need to be completed.

If the household is eligible and proper documentation has been obtained for each tenant, the standard annual certification requirement will then be implemented annually, beginning with the initial certification date.

See Section 3, Part 3.1 F for more information on acquisition/rehabilitation projects, the 240 day certification window, and the "test."

## B. RHTC Developments Involving Rehabilitation Only

If a building is occupied during rehabilitation, all existing households(those who occupied the building while it was being rehabilitated) must be documented as having been RHTC-eligible by no later than 120 days after the rehabilitation placed-in-service date. Households that move into the unit after the rehabilitation placed-in-service date must be documented as RHTC eligible at the time of actual move-in to the unit. If the building is not occupied during rehabilitation, a household must be RHTC eligible at the time of actual move-in to the unit.

## C. Rehabilitation of an Existing Tax Credit Development

It is possible for the owner of an existing tax credit development to be issued another set of credits for rehabilitation after the initial fifteen (15) year compliance period has ended. This is often referred to as a "subsequent allocation." Tax credit households that qualified for the original credits are grandfathered into the new allocation without being recertified as a new move-in. Therefore, the move-in date for the household remains the original move-in date and the recertification cycle does not change. Any households that were over the 140% limit at their last recertification are treated as qualified units but continue to invoke the Next Available Unit Rule.

Additionally, vacant units previously occupied by income-qualified households continue to qualify as RHTC units as long as the owner properly follows the Vacant Unit Rule.

## D. Acquisition and Rehabilitation of an Existing Tax Credit Development

It is possible for an existing tax credit development to be sold to a new owner and then issued a new allocation of acquisition/rehabilitation credits. From the time the project is sold until the time a new declaration is recorded, the new owner is subject to the original extended use agreement between IHCDA and the former owner.

Tax credit households that qualified for the original credits are grandfathered into the new allocation without being recertified as a new move-in. Therefore, the move-in date for the household remains the original move-in date and the recertification cycle does not change. However, when the new credits are allocated and the credit period begins, the new owner must conduct the "test" as described in Part 4.5 A above, and any households exceeding the 140% limit are subject to the Next Available Unit Rule.

Once the new credit period begins, any vacant units that were previously occupied by income-qualified households cease to be treated as qualified RHTC units. Instead these units are treated as empty (never-occupied) units until a qualified household is moved-in.

## E. RHTC Developments Involving New Construction

In newly constructed buildings, all households must be documented as being RHTC eligible at the time of actual move-in to the unit.

### F. Mixed Income Developments- Converting a Market Rate Household to a Qualified Household

In developments that have an Applicable Fraction of less than 100%, a household that is designated as market rate at the time of actual move-in to the unit may later be re-designated as a RHTC household. When this happens, the household must be certified as a RHTC household at the time of re-designation. In this scenario, the household would be treated as a new move-in event. The move-in date and effective date of the initial TIC would both be the date the household was designated as a tax credit eligible household, not the date the household moved in as market rate.

## Part 4.6|Annual and Interim Income Recertification Requirements

The owner must perform, at least on an annual basis, an income certification for each low-income household and receive documentation to support that certification. IHCDA monitors recertification 365 days from the latter of: the move-in date or the one-year anniversary of the effective date of the previous certification. Upon receipt of all verifications, owners or managers should determine if the unit still qualifies for participation in the RHTC program.

### A. Effective Dates of Certifications

Owners may utilize effective dates when performing Tenant Income Certifications. Therefore, the tenant may sign the Tenant Income Certification (TIC form) before the date the certification takes effect. However, **all income and eligibility verifications must be valid (not older than 120 days) on both the signature date and effective date of the Tenant Income Certification.** In addition, if the owner chooses to utilize effective dates on Tenant Income Certifications, the owner should have language in the Tenant Certification indicating that the tenant must inform management of any changes of income, student status, or household composition that may occur between the date the tenant signs the TIC and the effective date of the TIC.

Please note the following excerpt and example from the 8823 Guide, pages 4-22 and 4-23:

> **Tenant Income Certification Effective Date**
> Once all sources of income and assets have been properly verified, owners or managers perform an income calculation using the applicant's tenant income certification to determine whether the applicant qualifies for IRC §42 housing.
>
> **The effective date of the tenant's income certification is the date the tenant actually moves into the unit.** All adult members of the household should sign the certification. HUD Handbook 4350.3, 5-17B. If the certification is more than 120 days old, the tenant must provide a new certification.. **The income recertifications, if required, must be completed annually based on the anniversary of the effective date.**
>
> Example 1: Determining the Tenant Income Certification Effective Date
> A potential household consisting of John and Jane Doe and their two children completed a rental application and income certification on April 12, 2004. The property manager completed the third party verifications and determined that the household was income eligible on April 21, 2004. John and Jane signed the rental lease on April 25th, and took possession of the unit on May1, 2004. **The effective date of the tenant income certification is May 1, 2004. All subsequent tenant income recertifications must be performed within 120 days before May 1st of each subsequent year of the 15-year compliance period.**
>
> When additional adult individuals join the household, the effective day will remain the same until the unit is completely vacated.

**Therefore, the RHTC recertification date for a household may not change to align with the recertification date for other programs, even if this means that a household must be certified multiple times annually for multiple programs.** The effective date of recertification is the anniversary date of the move-in. Recertifications must be completed within 120 days of the anniversary date.

*Example 1: A household moves into a tax credit unit on January 1, 2008. On March 1, 2008 the household begins receiving Section 8 rental assistance and its income is verified and certified for this program. The effective date for the household's annual tax credit recertification is January 1, 2009, NOT March 1, 2009.*

*Example 2: A household moves into a tax credit unit on July 15, 2009. The first annual recertification is due with an effective date of July 15, 2010. The effective date of the recertification TIC does not move up to the first of the month (July 1, 2010) or get pushed back to the first of the next month (August 1, 2010) as may be the case with other low-income housing programs.*

NOTE: **While the effective date of the annual Tenant Income Certification will never change, the effective date of the lease may change**. For example, when a tenant receives a Section 8 voucher, a new lease will be executed to coincide with the voucher. As long as the initial lease was signed for at least a six (6) month term (regardless of whether the term is completed prior to the new lease being executed) there is no tax credit violation. Therefore, **the effective date of the lease and the effective date of the Tenant Income Certification may not always be concurrent**. The effective date regulations discussed in this section are only referring to the effective dates of the tax credit Tenant Income Certification, not the lease.

## B. Changes in Household Composition

### 1: Adding a New Household Member to an Existing Qualified Household

Whenever household composition changes, RHTC eligibility must be reevaluated. Composition changes include a birth, a death, a new tenant moving into the household, or an existing tenant vacating the household. In the event that a new adult household member is added to a qualified household, the following steps must be taken:

1. The new household member should complete an Application and Tenant Eligibility Questionnaire. An independent Tenant Income Certification form (TIC) and verification of income and assets must be completed for the new member.
2. The new household member's income must be included as part of the household's certified income. For 100% RHTC projects, the new tenant's income is added to the original household income at move-in. For mixed-use projects (projects with both RHTC and market rate units), the new tenant's income is added to the household income as of the most recent annual recertification. A new household TIC does not have to be created, but management should notate the file to show that a new total household income has been computed. A management clarification form will suffice. Additionally, a household update event must be input into the online reporting system detailing the new total household member count, new total household income, and the demographic data for the new member.
3. The combined household income must be compared to the maximum allowable income limit in effect at the time and based on actual household size. If the combined household's income is greater than the 140% limit, the Next Available Unit Rule will go into effect.

   *Example: 1 person Household income limit = $15,000*
   *2 person Household income limit = $17,000*
   *140% of 2 person income limit = $23,800*

   *<u>Example 1: Mixed-use Project</u>*
   *Tenant A is a qualified tenant living alone in a one-bedroom unit. Her income at initial certification (March 14, 2008) was $9,000. The tenant recertifies on March 14, 2009 with an income of $10, 500. Eight months later, she informs management that she is getting married and that her new husband, Tenant B, will be moving into the unit on December 1, 2009. Tenant B completes an Application and Questionnaire, his income and assets are verified through third-party*

*sources, and an independent TIC is completed showing only the income and assets of Tenant B. Tenant B is certified as having an annual income of $12,900. The household's combined income will be $23,400 (the sum of Tenant A's income at the last recertification and the newly certified income for the new household member Tenant B). The household still qualifies, since it is below the 140% limit of $23,800. If the combined income of Tenants A and B would exceed 140% of the current income limit, the Next Available Unit Rule would go into effect. The independent TIC for the new tenant is dated December 1, 2009, but the annual household recertification is still due March 14, 2010 (the anniversary of Tenant A's initial move-in).*

*Example 2: 100% Tax Credit Project*

*Tenant A is a qualified tenant living alone in a one-bedroom unit. Her income at initial certification (March 14, 2008) was $9,000. The tenant recertifies on March 14, 2009, but since this is a 100% Tax Credit Project management does not verify her income at this time. Eight months later, she informs management that she is getting married and that her new husband, Tenant B, will be moving into the unit on December 1, 2009. Tenant B completes an Application and Questionnaire, his income and assets are verified through third-party sources, and an independent TIC is completed showing only the income and assets of Tenant B. Tenant B is certified as having an annual income of $12,900. The household's combined income will be $21,900 (the sum of Tenant A's income at move-in and the newly certified income for the new household member Tenant B). The household still qualifies, since it is below the 140% limit of $23,800. If the combined income of Tenants A and B would exceed 140% of the current income limit, the Next Available Unit Rule would go into effect. The independent TIC for the new tenant is dated December 1, 2009, but the annual household recertification is still due March 14, 2010 (the anniversary of Tenant A's initial move-in).*

**NOTE:** Only the income and eligibility of the new resident is required to be verified when adding a member to a household before the Annual Tenant Income Certification is due (i.e. the existing members do not need to be recertified if it is not time for their annual recertification). Owners must verify the new resident's income and complete an independent TIC for that resident. This income must then be added to the existing household's certified income to determine if the household's income has exceeded the 140% income limit. The household's annual recertification will remain on the anniversary of the original move-in date, not the date that the new member was added.

The new resident should sign an independent Tenant Income Certification form and complete all verification documents. The independent TIC should not include information about the other household members or their income. The TIC will be noted as a "household update" rather than a move-in or recertification. The importance of an independent TIC will be discussed in the section below. The new total household income (combined from the new member and existing members) will not show on the independent TIC, but can simply be listed on a management clarification sheet to prove whether or not the household invokes the Next Available Unit Rule.

**2: Qualifying Units When All Original Household Members Vacate the Unit**

The Revised 8823 Guide includes a section on "Changes in Family Size" (pages 4-4 through 4-7 of the Guide). The following excerpt (from page 4-5) is of particular importance:

> "A household may continue to add members as long as at least one member of the original low-income household continues to live in the unit. Once all the original tenants have moved out of the unit, the remaining tenants must be certified as new income-qualified households unless:
>
> 1. For mixed-use 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% LIHC buildings, the remaining tenants were independently income qualified at the time they moved into the unit."

So, even if all of the original household members vacate a unit, tenants who moved in at a later date may be eligible to remain in the unit without being treated as a new move-in if they meet one of the two exceptions above.

*Example 1: Mixed-use Project*
*Jerry moves into a two bedroom RHTC unit (in a mixed-use project) on May 1, 2007 and is recertified on May 1, 2008. His friend Thomas decides to move into the unit on October 1, 2008. Thomas completes all of the necessary paperwork and his income is added to Jerry's income as of the most recent certification (the May 2008 recertification). The combined household income from both members is below the applicable income limit for a 2 person household. On January 1, 2009, Jerry (the original member) moves out to live with his new fiancée. Thomas does not have to be certified as a new tenant, because the newly created household was below the income limits when he moved in on October 1, 2008.*

*Example 2: 100% Tax Credit Project*
*Jerry moves into a two bedroom RHTC unit (in a 100% tax credit project) on May 1, 2007 and is recertified on May 1, 2008. His friend Thomas decides to move into the unit on October 1, 2008. Thomas completes all of the necessary paperwork and his income is added to Jerry's income at move-in (the May 2007certification). On January 1, 2009 Jerry (the original member) moves out to live with his new fiancée. Management must determine if Thomas independently qualified as a one person household at the time he moved into the unit. If so, he may remain as a qualified tax credit household. If not, Thomas must be immediately certified and treated as a new household. If his current conditions allow him to qualify as a new move-in, he may stay. If not, he will have to vacate the unit. Management's need to determine if the tenant independently qualified illustrates the necessity to complete an independent TIC when a new member is added to an existing household.*

### C. Additional Comments on Tenant Certifications

Also, note the following recertification requirements:

1. If tenants in a previously qualified household become full-time students at any time, the household can only be considered as a qualified RHTC household if at least one of the exceptions under the Full-Time Student Rule is met as described in Section 3, Part 3.6 B. This eligibility determination must be made immediately upon the tenant becoming a full-time student and cannot be delayed until a recertification of the household is due.

2. In the event that a tenant moves into a building prior to the placed-in-service date of the building (as shown on the building's IRS Form 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. **All income verifications must be valid (no older than 120 days) on the placed-in-service date**.

3. In the event household composition changes in any way (e.g. birth, death, marriage, divorce, a family member or roommate vacates or moves into the unit, etc.), the household should notify management of the changes (See Part 4.6 B above for guidance on adding household members).

4. See Section 3, Part 3.5 for information regarding unit transfers.

## Part 4.7|100% Recertification Exemption

Effective July 31, 2008 with the passing of the Housing and Economic Recovery Act (a.k.a. HERA or H.R.3221), IHCDA will exempt the Annual Income Recertification requirement for 100% tax credit projects. This policy applies only to recertifications due after the effective date of July 31, 2008 and is not retroactive.

Projects that choose to use the 100% Recertification Exemption Policy only have to obtain verifications of household income and assets at move-in. However, **the household must continue to annually complete a TIC to verify household composition and each**

**adult member must continue to complete a separate student status certification on an annual basis.** This must be done on the annual recertification date for the household. IHCDA recommends using the "100% Tenant Recertification Exemption Tenant Recertification" Form in Appendix D. This form is only valid for recertifications, not for move-in events at 100% tax credit projects.

The Recertification Exemption automatically applies to all projects with 100% RHTC units (i.e. those projects that have no market rate units). Projects do not need to apply for or ask for IHCDA permission to stop performing annual income recertifications. This policy replaces IHCDA's former waiver request policy and procedures.

If a project is not 100% RHTC, then the Annual Income Recertification is still required. If there is one market unit in the project, or if a staff unit is treated as a market unit, then all units in the project must be recertified annually. It is important to correctly define "Project" for each tax credit development. If "No" was checked on Part II 8b of IRS Form 8609, then the building is considered its own project. If "Yes" was checked on Part II 8b of IRS Form 8609, then the building is considered part of a "multi-building project." The recertification exemption applies on a project basis.

100% tax credit projects with Section 8, HUD, RD, HOME, Development Fund (formerly known as Trust Fund), CDBG/CDBG-D, and other funding sources are still required to annually obtain third-party income verifications (as required for those programs) for all units receiving the additional sources of funding.

*Example 1: XYZ Apartments is a 100% tax credit project with 50 units. 10 of these units are HOME assisted units. The 10 HOME assisted units must continue to recertify income on an annual basis, since IHCDA's HOME program rules have not changed in regards to recertification requirements. The 40 tax credit only units may follow the 100% Recertification Exemption Policy.*

*Example 2: XYZ Apartments is 100% tax credit with RD funding. For tax credit compliance purposes, XYZ Apartments may institute the 100% Recertification Exemption policy. However, management will need to continue following all applicable RD regulations in order to comply with RD funding.*

IHCDA may allow the recertification exemption for buildings financed with tax-exempt bonds (50% or more of the aggregate basis of the building and land). The owner must demonstrate to IHCDA that the local bond issuer has granted the project permission to stop performing annual income recertifications.

**When monitoring files at projects that are using the 100% Recertification Exemption, IHCDA will look at the current certification to ensure that the rent limits are not exceeded and to check that there is still a TIC, lease/lease renewal, and verification of student status on file. The IHCDA monitor will then go back and look at the initial move-in file for the household to verify income eligibility. Thus, the 100% Recertification Exemption puts extra importance on correctly performing move-in certifications.**

Note: IHCDA encourages the owner/management to check with their investor before initiating the 100% Recertification Exemption Policy.

## Part 4.8|Lease and Rent Requirements

All residents occupying RHTC units must be certified and under a lease no later than the time a tenant/household moves into the unit. Leasing guidelines are listed below.

### A. Lease Requirements

A signed lease must be in effect for each year that a household resides in a unit. Leases must reflect the correct date that the household moves into or otherwise takes possession of the unit.

A unit must be leased directly to the household, not to an organization that is providing services to the household. The household may have a cosigner if necessary, but the cosigner should sign a self-affidavit stating that he or she will not reside in the unit.

At a minimum, the lease language should include (but is not limited to):

1. The legal name of all parties to the agreement and all other occupants;
2. A description of the unit to be rented; must include unit/bedroom size, set-aside percentage, and unit address (if unit /bedroom size and set-aside percentage can be located on the TIC, it is not mandatory to be on the lease as well);
3. The date the lease becomes effective;
4. The term of the lease;
5. The rental amount;
6. The utility allowance requirements, including a clear breakdown of which utilities are owner-paid and which are tenant-paid;
7. The use of the premises including language addressing that only members listed on the lease/TIC may dwell in the unit, that the unit must be the household's primary residence, and that the unit may not be sublet;
8. The rights and obligations of the parties, including the obligation of the tenant to certify annually (or more frequently as required) to income as defined herein;
9. Language addressing income decreases and increases (i.e. the 140% Rule), utility allowance increases/decreases, basic rent changes (in Rural Development or 236 Developments), family composition changes, student status changes, or any other change and its impact on the tenant's rent and eligibility.
10. Description of the lease renewal and lease termination process;
11. Signature of tenants;
12. Signature of owner/management representative; and
13. Date of execution.

## B. Rents

Rents on the RHTC units may not exceed the amounts allowed by Section 42 of the Code. Any violation of overcharging rents is considered noncompliance and an IRS Form 8823 will be issued. For more information on maximum rent limits, see Section 3, Part 3.3.

## C. Initial Minimum Term of Lease

Under program requirements, a unit cannot be RHTC eligible if it is used on a transient basis. A unit is deemed to be in transient use and is therefore out of compliance if the initial lease term is less than six (6) months. In order to avoid noncompliance for transient occupancy, there must be an initial lease term of at least six (6) months on all RHTC units. The six (6) month requirement may include free rental periods. Succeeding leases are not subject to a minimum lease period.

The 8823 Guide provides the following clarification in Footnote 2 on Page 11-2:

> "Leases commonly include fees for early termination of the rental agreement. The fact that the lease contains terms for this contingency is not indicative of transient use."

Therefore, a unit is in compliance so long as the initial lease is signed for a term of at least six (6) months, regardless of whether or not the household actually remains in the unit for that length of time.

Federal regulations do allow shorter leases for certain types of housing for homeless individuals. The following types of housing are exempt from the six (6) month minimum lease period:

1. Single Room Occupancy (SRO) units in developments receiving McKinney Act and Section 8 Moderate Rehabilitation assistance; or
2. Single Room Occupancy (SRO) units intended as permanent housing and not receiving McKinney Act assistance; or
3. Single Room Occupancy (SRO) units intended as transitional housing that are operated by a governmental or nonprofit entity and provide certain supportive services; or
4. Units that 1) contain sleeping accommodations and kitchen and bathroom facilities; 2) are located in a building that is used exclusively to facilitate the transition of homeless individuals to independent living within twenty-four (24) months; and 3) for which a governmental entity or qualified nonprofit organization provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing.

*Note: If a development has units set aside in a building for homeless households and/or transitional housing units, those tenants must have leases with at least six (6) month terms, unless the building's primary use is described in one of the Exemptions #1-4 above. Tax credit units may never be used as emergency shelters.

### D. Lease to Own Program / Lease Purchase Program

The goal of the Lease to Own Program (referred to as "the Program" for the rest of this section) is to enable low-income families to purchase a home – something that often would not be possible without the Program. The development owner also benefits from the Program because the residents who opt for the Program agree to assist in maintaining the unit. Below are several of the minimum requirements for a Lease to Own Program to obtain IHCDA approval:

- "Eligible tenant" shall mean the current tenant of the unit, so long as that tenant is eligible to occupy the unit under the requirements of Section 42 of the Internal Revenue Code. This expressly includes a tenant whose income would not currently qualify under Section 42, but who was qualified at the time of the tenant's original occupancy of the unit.
- The development owner must partner with a non-profit organization dedicated to assisting low to moderate income families in obtaining clean, safe and affordable housing.
- The development owner and the non-profit organization must enter into a written Right of First Refusal whereby the owner agrees not to sell the low-income housing unit to anyone else at the end of the fifteen (15) year Compliance Period before offering it to the non-profit organization for a price equal to (i) the sum of all outstanding indebtedness secured by the development (including capital improvement debt) plus any accrued interest and (ii) all federal, state, and local taxes attributable to the sale.
- The non-profit organization must enter into an agreement with IHCDA regarding the release of the Declaration of Extended Rental Housing Commitment upon sale to an eligible tenant.
- The non-profit organization must enter into an option agreement (approved by IHCDA) with the resident for the purchase of the unit.
- The Program must be structured so that the tenant's total monthly payments for principle, interest, insurance, taxes, utilities, and maintenance after purchase are equivalent to the tenant's monthly rent and utilities before purchase (the Equivalency Principle).
- The unit must be less than thirty (30) years old.
- The unit must meet I.R.C. §42 standards regarding the condition of the unit and habitability.
- The Program must provide for sale at the end of the fifteen (15) year Compliance Period to an "eligible tenant" for a minimum purchase price (as defined in I.R.C. §42(i)(7)(B)).
- The Program must include a system whereby a resident is rewarded for long-term residency by obtaining a credit against the purchase price of the unit.
- After one year of responsible tenancy, the development owner must waive its right to not renew the lease of a resident without cause.
- The Program should include periodic workshops for residents enrolled in the Program on issues of property maintenance and financial counseling.

- The Program must address common tenant misconceptions including:

  - The misconception that the tenant will acquire the property free and clear after the Compliance Period;
  - The misconception that the tenant is an equity owner in the property rather than simply a tenant;
  - The misconception that the tenant will be compensated for any capital improvements made to the property by the tenant; and
  - The misconception that the tenant's rent will never increase.

The Program must conform to and comply with any future Internal Revenue Service statutes, regulations and rulings regarding lease to own programs.

## E. Eviction or Termination of Tenancy

If after occupying a unit, an eligible household cannot pay the rent or otherwise commits material violation of the lease, the owner has the same rights in dealing with the income-eligible tenant as with any other tenant, including, if necessary, eviction.

IRS Section 42 regulations state that there must be just cause for eviction or other form of termination of tenancy (e.g. non-renewal of lease). This provision is often referred to as "good cause eviction." Language outlining actions that constitute just cause for eviction or termination of tenancy must be included in writing at the time of initial occupancy, preferably in the lease, as well as in a property's Tenant Selection Criteria. When a tenant is evicted or a lease is terminated, IHCDA will expect to see documentation outlining the specific cause for non-renewal.

Exceeding the 140% limit at recertification is not considered good cause for eviction or termination of tenancy.

All leases should address changes in student status. If a household becomes an unqualified student household at recertification or at any time during the lease term, it is no longer qualified under Section 42 and the lease can be non-renewed or terminated.

For more information, see Rev. Proc. 2005-37 – Safe Harbor in Appendix A.

# Section 5 – Compliance Monitoring Procedures

This section of the manual outlines IHCDA's procedures for monitoring all developments receiving credit. Monitoring is designed to assist the owners with federal and state regulations regarding IHCDA's compliance monitoring requirements and procedures in accordance with the IRS guidelines in Section 42 of the Internal Revenue Code. However, compliance is solely the responsibility of the owner and is necessary to retain and use the credit.

Monitoring each development is an ongoing activity that extends throughout the Compliance Period. IHCDA is required by law to conduct this compliance monitoring and is required to inform the IRS of noncompliance, or the failure of an owner to certify to compliance, no later than forty-five (45) days after the period of time allowed for correction. Notification to the IRS by IHCDA is required whether or not the noncompliance has been corrected.

## Part 5.1|Owner and Management Agent Contacts

Correspondence from IHCDA to the owner will be sent to the owner contact person provided in the development's Final Application for RHTC. IHCDA will copy the management agent contact person, with owner approval, on any correspondence from IHCDA to the owner regarding file monitoring reviews and physical inspections. All other correspondence will be sent directly to the owner contact person. IHCDA will annually update its contact list based on the information provided in the development's Annual Owner Certification of Compliance. As part of the Owner Certification documentation, the owner is able to elect one designated primary owner contact and one designated primary management contact per development.

IHCDA will allow no more than one owner contact name and address and one management contact name and address per development. If at any time the contact person of the owner or management agent changes, it is the sole responsibility of the owner to inform IHCDA in writing of such change with supporting documentation. Changes in ownership must be reported to IHCDA via the "Property Ownership Change Form" in Appendix D. Changes in management must be reported to IHCDA via the "Property Management Change Form" in Appendix D.

Failure to notify IHCDA of changes in ownership after the issuance of IRS Form 8609 could result in the allocation being rescinded and/or possible noncompliance issues.

Note: The IHCDA Board of Directors must approve any change in ownership or transfer request if made prior to the issuance of IRS Form 8609 for any development that has received an allocation of Rental Housing Financing and/or Bonds.

If the designated owner contact person requests extra copies of documentation (e.g. copies of Form 8823), the cost of such copies will be $0.10 per single sided page.

## Part 5.2|The Compliance Manual

IHCDA will provide this Compliance Manual to owners of RHTC developments when RHTCs are reserved for a development. The manual describes the compliance monitoring procedures that the owner and management agents must follow. **An amended Compliance Manual is released annually and the newest edition overrides all previous editions. Except where otherwise noted, all amendments to the Compliance Manual apply to all developments, regardless of year of allocation**. All appendices to the Compliance Manual are available online at **http://www.in.gov/ihcda/2519.htm**.

## Part 5.3|Compliance Training Workshops

IHCDA will conduct periodic RHTC Compliance Training Workshops. All development owners and management agents are required to attend an IHCDA RHTC Compliance Training prior to the issuance of an IRS Form 8609. A Form 8609 will not be issued to a development owner who has not met the compliance training requirement within the past year. After the issuance of Form 8609, all

owners must continue to complete a compliance training at least once every three (3) years. Trainings will be held periodically throughout the year and information regarding the times and dates of the trainings will be distributed by IHCDA and posted on the IHCDA website at **http://www.in.gov/ihcda/2519.htm**.

An On-Demand Owner Training is available from IHCDA on a flash drive. The drive contains a training presentation (in PowerPoint format with audio voice annotation), a post-quiz that must be taken by the owner, and a folder containing numerous tax credit reference materials. Cost of the training is $150.

IHCDA's 2011Compliance Trainings are targeted towards onsite property management personnel. The trainings will be in the format of interactive workshops, involving work with tenant files, as well as case studies and games. IHCDA has contracted with Compliance Solutions to offer three two-day trainings throughout the year. The cost will be $75 per participant for one day or a discounted price of $125 per participant for both days. Cost includes registration fees, a workshop manual, a 2011 IHCDA Compliance Manual, and a CD with various tax credit resources. This course is entitled "Onsite Compliance: Understanding Qualifying Households with RHTC." The training dates are listed below (locations will be announced online when finalized):

| TRAINING TYPE | DATE | LOCATION |
|---|---|---|
| Onsite Compliance Day 1 | March 22, 2011 | Delaware Trace- Evansville |
| Onsite Compliance Day 2 | March 23, 2011 | Delaware Trace- Evansville |
| Onsite Compliance Day 1 | July 26, 2011 | Jackson Square- Roanoke |
| Onsite Compliance Day 2 | July 27, 2011 | Jackson Square- Roanoke |
| Onsite Compliance Day 1 | October 19, 2011 | Fishers Library- Fishers |
| Onsite Compliance Day 2 | October 20, 2011 | Fishers Library- Fishers |

Additionally, IHCDA and Compliance Solutions will offer the following special trainings in 2011:

| TRAINING TYPE | DATE | LOCATION |
|---|---|---|
| Onsite Compliance: Managing Multiple Programs with RHTC | June 21, 2011 | Fishers Library- Fishers |
| Preparing for an IHCDA Physical Inspection | June 22, 2011 | Fishers Library- Fishers |

For registration and other additional information, please see IHCDA's compliance webpage at **http://www.in.gov/ihcda/2519.htm**. Demand for the 2009 and 2010 trainings was high and most sessions sold out. Please register early for a guaranteed spot at the 2011 trainings.

***Note: While participation is usually voluntary, IHCDA compliance staff may at their own discretion mandate training attendance for those management personnel/companies that:**

1. **Exhibit trends in noncompliance;**
2. **Are issued non-corrected 8823's; or**
3. **Otherwise demonstrate a need for compliance training.**

## Part 5.4|Initial Information

If the owner chooses to defer claiming credit until the year following the year in which the development is placed-in-service, the owner shall notify IHCDA prior to the end of the year the building is placed-in-service. Failure to notify IHCDA of a deferment will be considered noncompliance.

The first year credits are claimed, the owner must submit to IHCDA:

1. The Annual Owner Certification. See Appendix F;
2. A copy of the completed IRS Form 8609 and Schedule A (Form 8609);
3. Utility allowance documentation;
4. Authorized Signatory Form. See Appendix F;
5. Property Directional Form. See Appendix F;
6. If the development has five (5) or more HOME units, a copy of the Affirmative Fair Housing Marketing Plan.

## Part 5.5 Annual Owner Certification of Continuing Compliance

### A. The Owner Certification

The development owner must annually certify project compliance to the Authority, on or before January 31 of each year (the "Owner Certification of Compliance") for the preceding twelve (12) month period. The first annual owner certification and corresponding fees are due by January 31st of the year following the first year of the credit period. However, the owner must begin reporting tenant events in the online system as soon as the buildings are placed-in-service.

The owner must certify:

1. The development meets the requirements of the 20/50 test or the 40/60 test (whichever was selected on Form 8609) under Section 42 of the Code.
2. There was no change in the Applicable Fraction as defined in the Code of any building in the development; or there was a change in the Applicable Fraction, and a description of that change is attached to this certification.
3. The owner has received a Tenant Income Certification form for each low-income tenant in the development and sufficient documentation to support that certification.
4. Each low-income unit in the development was restricted as provided under the Code.
5. The development is in continuing compliance with all promises, covenants, set-asides, and agreed upon restrictions as set forth in the application for credits.
6. The unit types, gross rents, utility allowance, and actual rents.
7. All units in the development are for use by the general public and no finding of discrimination under the Fair Housing Act occurred for the development. All units are used on a non-transient basis (except for transitional housing units allowed for in the Code). NOTE: If such findings have occurred, documentation of such findings must be attached to the certification.
8. All units in the development are suitable for occupancy, taking into account all federal, state, and local health, safety, and building codes and the state or local government unit responsible for making health, safety, or building code inspections did not issue a violation report for any building or low-income unit in the development. If a violation report or notice was issued by the governmental unit, the owner must attach a statement summarizing the violation report or notice to the certification.
9. There has been no change in the Eligible Basis of any building in the development (as defined in the Code); or there has been a change in the Eligible Basis (as defined in the Code) and documentation setting forth the nature and amount of such a change (e.g. a common area has become commercial space or a fee is now charged for a tenant facility formerly provided without charge) must be attached to the certification.
10. All tenant facilities included in the Eligible Basis of the development under the Code, such as swimming pools, recreational facilities, and parking areas, are provided on a comparable basis without charge to all tenants of the development.
11. No low-income units in the building became vacant during the applicable year; or one or more low-income units in the building became vacant during the applicable year and reasonable efforts were or are being made to rent such units or the next available unit or units of comparable size in the building to tenants having a qualifying income.
12. No tenant of any low-income units in the development experienced an increase in income above the limit allowed in the Code; or income of tenants of a low-income unit in the development increased above the limit allowed in the Code, and the next available unit of comparable or smaller size in the same building was or will be rented to tenants having a qualifying

income. (The Next Available Unit Rule does not apply to developments approved for the Extended Use Policy. For more information, see Part 5.11).

13. The development has at least one smoke detector on each level of the rental dwelling unit.
14. There have been no changes in entity ownership or if there have been, IHCDA has been provided with all details and all necessary documentation.
15. The development is in continuing compliance with the Declaration of Extended Low-Income Housing Commitment applicable to the development and filed in the office of the Recorder of the Indiana County in which the property is located.
16. The development is otherwise in compliance with the Code, including any Treasury Regulations pursuant thereto, and applicable laws, rules, regulations, and ordinances.

A copy of the Annual Certification of Compliance that must be used by all owners is located in Appendix F. **IHCDA will not accept any Owner Certification that is not in the same format as provided in Appendix F or any Owner Certification that is handwritten.** Tax credit developments with no additional funding sources from IHCDA must also submit a copy of Exhibit A. Tax credit developments with IHCDA HOME, CDBG, and/or Development Fund (formerly known as Trust Fund) awards must submit a copy of Exhibit B along with the Owner Certification.

### B. Beneficiary Report/ Reporting Tenant Events Online

Beginning in 2009, it is **mandatory that all Annual Owner Certification Beneficiary Reports be submitted electronically using the Indiana Housing Online Management website**. This process will eliminate the option of submitting a hardcopy spreadsheet or importing the annual beneficiary report from an Excel spreadsheet.

The Indiana Housing Online Management website has been designed as a tool to conduct compliance checks to ensure properties stay in compliance, to follow the monitoring review process, and as a way for IHCDA to communicate with our partners using a message board. The message board immediately notifies owners and property managers when IHCDA sends monitoring letters, releases Multi-Family Department Notices, or releases other information affecting our Multi-Family partners.

Effective January 1, 2009, all IHCDA assisted multi-family rental developments are required to enter tenant events using IHCDA's Indiana Housing Online Management rental reporting system. Tenant events include move-ins, move-outs, annual recertifications, unit transfers, rent and utility allowance changes, household composition updates, and student status updates. Tenant events that must be reported online do not include interim recertifications performed for other programs, such as Section 8 or RD. In order to obtain the maximum benefits from the Indiana Housing Online Management system it is **required that all tenant events be entered into the system within thirty (30) days of the event date.**

To use the rental reporting system or register to become a user, please visit the Indiana Housing Online Management website at **https://ihcdaonline.com/**. Free on-demand training videos that explain how to use the rental reporting system are available online at **https://ihcdaonline.com/Links.htm**. Additionally, in March 2009, IHCDA released detailed guidance on registering for the Online Management website in Multi-Family Department Notice MFD-09-06. This notice (and all other past MFD Notices) is archived online at **http://www.in.gov/ihcda/2520.htm**).

After reviewing the Owner Certification and the online Beneficiary Report tenant events, IHCDA will notify the owner in writing of any errors or incompleteness and will allow an appropriate Correction Period. All correspondence to the owner will be sent electronically.

## Part 5.6|IHCDA Tenant/Unit File Review and Onsite Development Inspections

As provided in IRS compliance monitoring regulations, IHCDA has the right to review a development's tenant/unit files and record keeping and record retention files either in-house (at IHCDA offices) or onsite at the development and/or to perform physical inspections of RHTC developments as deemed necessary throughout the Compliance Period.

IHCDA is required to monitor and physically inspect each Section 42 property within two (2) years of the placed-in-service date and every three (3) years thereafter. However, IHCDA reserves the right to inspect the files and/or physical units of a Section 42 property at any time at its discretion.

*Example of regular monitoring/physical inspection schedule:*
*A development consists of three buildings. The last building was placed-in-service in 2009. IHCDA's first monitoring and physical inspection will occur in 2011 (two years after the year of the placed-in-service date of the last building). After this initial monitoring/inspection, a regularly scheduled monitoring will occur once every three years (2014, 2017, etc). However, IHCDA has the right to perform additional monitorings/inspections at any time, with or without notice to the owner/management.*

IHCDA will release a tentative monitoring list at the beginning of the year. This list will include all of the developments that IHCDA intends to monitor and inspect for the calendar year (including onsite file reviews, desktop file reviews, and physical inspections). The list will not tell the date of the monitoring/inspection or identify the files/units that will be reviewed. This list will be released as a courtesy to development owners. However, IHCDA reserves the right to add or remove developments from the list throughout the year as necessary. The 2011 list is available online at **http://www.in.gov/ihcda/2519.htm**.

## A. When performing an onsite (at the development or management office) review, IHCDA will:

1. As a courtesy, IHCDA will notify the owner and/or management agent two (2) weeks in advance of the intended site visit. However, **IHCDA reserves the right to inspect any RHTC unit/tenant file at any time at its discretion without prior notification.**
2. IRS guidance in the 8823 Guide (page 3-2), states: "A random selection of tenant files or LIHC units is required. The method of choosing the sample of files or units to be inspected must not give the owner advance notice of which units and tenants records are to be inspected and reviewed." Therefore, IHCDA will no longer provide advance notice of which tenant files will be reviewed during an onsite audit. Management must have all tenant files accessible (including initial and move-out files) when the IHCDA Compliance Monitor arrives onsite. The Monitor will randomly choose a selection of 20% of the files for review.
3. Provide an exit interview summary to management representative.
4. Inform the owner of any findings of noncompliance with regard to such review.
5. Allow the owner ninety (90) days to notify IHCDA of correction of noncompliance.
6. Report all instances of noncompliance to the IRS whether or not the noncompliance has been corrected.

NOTE: If files are not available or are in such an unorganized condition that an IHCDA Monitor cannot effectively review the files, the ninety (90) day correction period will begin immediately.

## B. When performing an in-house/desktop (at IHCDA offices) review, IHCDA will:

1. Notify the owner in writing which unit files have been selected for review.
2. Respectfully request that hardcopies of the selected files and documentation either be shipped to IHCDA or hand delivered by the owner or a representative of the owner. **IHCDA can no longer accept tenant files in PDF format due to compatibility issues.** IHCDA is investigating other avenues of submitting files electronically, but until further notice all files must be submitted as paper hardcopies. IHCDA may continue to accept PDF documents in some circumstances, such as if the owner/management is submitting a few pages of correction documents. Please check with the Monitor conducting your file review to see if this is acceptable in your situation.
3. Ask for a current rent roll and utility allowance information.
4. Shred all files and confidential information after the review is completed.
5. Give a time frame in which the tenant file documentation must be submitted.
6. Inform the owner of any findings of noncompliance with regard to such review.

7. Allow the owner ninety (90) days to notify IHCDA of correction of noncompliance.
8. Report all instances of noncompliance to the IRS whether or not the noncompliance has been corrected.

NOTE: The desktop notification/file request letter will include a checklist of the items that must be included in each tenant file submitted. When reviewing copies of the files, IHCDA will expect to see all of the applicable documents listed on the checklist, in the approximate order that they are listed (leasing information, tenant information, income verifications, asset verifications, other clarifications). Monitors will not review files that are submitted in a disorderly or incomplete fashion.

**C. Prior to performing an onsite development inspection, IHCDA will:**

1. Notify the owner and/or the management company, one week prior to the inspection, of the date and approximate time the inspection will take place.
2. Request that the owner and/or management company representative be present and accompany the inspector throughout the entire inspection process.

NOTE: It is imperative that **all** units be available for interior inspections as well as exterior (vacant units, occupied units, and common areas inclusive). Physical inspection is not limited to vacant units. Staff will ask to inspect specific units whether or not the unit is occupied.

**D. After performing an onsite development inspection, IHCDA will:**

1. Provide to the property representative, if needed, a copy of a Critical Violations Letter identifying all exigent health, safety, and/or fire hazards observed at the time of the inspection that require immediate corrections. **All exigent health and safety issues identified in the Critical Violations Letter must be corrected within twenty-four (24) hours and IHCDA must be notified of the completed corrections within seventy-two (72) hours. Critical violations that are not corrected within twenty-four (24) hours will be fined $250 per day, starting the first hour after the twenty-four (24) hour correction period expires.**
2. Forward a copy of the inspection report to the owner and management company indicating a correction time frame.
3. Request that all noncompliance issues be corrected within the time frame specified in the inspection report.
4. Request that legible copies of the proof of the corrections, in the form of work orders, receipts, and/or invoices, along with an owner-signed affidavit be forwarded to IHCDA within the allotted time frame indicated in the inspection report.
5. Review the correction documents for completeness and forward applicable correspondence indicating that an in depth review of the documents will be completed as soon as possible.
6. Schedule a second inspection if necessary. **NOTE: IHCDA will charge additional monitoring fees if IHCDA staff must return to a site for an additional physical inspection or file review. These fees will equal the greater of (a) $250 or (b) $35 per unit.** For more information on these additional fees, see 5.8 C.
7. Review the supporting documents of correction for correlation with the inspection report.
8. Forward correspondence indicating that no further corrective actions regarding the physical condition of the property are needed at this time, or contact the owner by phone detailing what deficiencies, in the corrective correspondence, still exist.

For more information on physical inspections, see the Inspection Process Flow Chart (Appendix J), as well as IHCDA's Physical Inspection Compliance Guide (Appendix I).

## Part 5.7|Noncompliance

Noncompliance is defined as a period of time a development, specific building, or unit is ineligible for credit because of failure to satisfy program requirements. For more information on noncompliance, see Section 6.

## Part 5.8|Compliance Monitoring Fees

### A. Annual Monitoring Fees

Beginning in the calendar year following the first year credits are claimed, development owners shall be required to pay annual monitoring fees for the immediately preceding calendar year, which will be due with each Annual Owner Certification of Compliance on or before January 31st. Every development owner shall be required to pay $22 per RHTC unit with a minimum fee of $180 per development and a maximum fee of $6000 per development.

If IHCDA does not receive a **complete** Annual Owner Certification of Compliance, subsequent forms and documentation, and monitoring fees by January 31, a fee equal to double the property's annual monitoring fee will be due to IHCDA by April 30. After April 30, failure to pay fees due to the Authority and submit the required documents shall constitute a violation by the development owner of the Authority's requirements and IHCDA will report the violation to the IRS.

**Additionally, if significant errors are found when the Owner Certification of Compliance and subsequent forms are reviewed by IHCDA, the owner may be charged double monitoring fees. Significant errors include, but are not limited to: 1) an unauthorized signatory signing the Owner Certification; 2) the owner's signature not being notarized; 3) all required forms and documentation not being submitted by the owner; 4) incorrect tenants/units reported in the online reporting system; 5) incorrect or no monitoring fees submitted with the Owner Certification, etc.**

**Table 1: Annual Monitoring Fees for Submissions On or Before January 31st**

| Annual Fee Per Unit | Minimum Annual Fee Per Development | Maximum Annual Fee Per Development |
|---|---|---|
| $22 | $180 | $6000 |

**Table 2: Annual Monitoring Fees for Submissions After January 31st**

| Annual Fee Per Unit | Minimum Annual Fee Per Development | Maximum Annual Fee Per Development |
|---|---|---|
| $44 | $360 | $12,000 |

### B. 8823 Correction Fees

A charge of one hundred dollars ($100.00) per unit and a maximum fee of $15,000 per development will be imposed for any unit where documentation must be re-inspected after the issuance of IRS Form 8823 because of a finding of noncompliance as a result of a tenant file review.

A charge of two hundred dollars ($200.00) per unit/common area and a maximum fee of $15,000 per development will be imposed for any physical unit/common area re-inspections required after the issuance of IRS Form 8823 because of a finding of noncompliance.

A flat fee of one hundred and fifty dollars ($150.00) will be imposed for any Annual Owner Certification that must be re-inspected after the issuance of IRS Form 8823 because of a finding of noncompliance.

However, an owner may request a waiver of the correction fee for good cause. To obtain such a waiver, the owner must submit the request in writing detailing and documenting the reason for the request. Waiver of the correction fee is in IHCDA's sole discretion.

**Table 3: 8823 Correction Fees**

| Type of Correction | Per Unit Fee | Maximum Fee Per Development |
|---|---|---|
| File re-inspection | $100 | $15,000 |
| Physical re-inspection | $200 | $15,000 |
| Owner Certification re-inspection | $150 flat fee | $150 |

### C. Re-inspection or Re-monitoring Fees

IHCDA will charge additional monitoring fees if IHCDA staff must return to a site for an additional physical inspection or file review. These fees will equal the greater of (a) $250 or (b) $35 per unit, with a maximum fee of $15,000 per development. These fees will be applied in the following situations:

1. If staff must return to check on deficiencies or errors noted during the initial inspection/monitoring; or

2. If staff could not complete the initial inspection/monitoring because an owner ormanagement representative was not available onsite at the designated time and location.

### D. Other fees

IHCDA will impose a $150 fee for the request of an extension for any compliance deadline.

IHCDA will impose a $150 resubmission fee if requested tenant files are not submitted in a complete and orderly fashion.

**Table 4: Re-inspection / Re-monitoring Fees**

| Per Unit Fee | Minimum Fee Per Development | Maximum Fee Per Development |
|---|---|---|
| $35 | $250 | $15,000 |

## Part 5.9|Procedures for the Transfer of RHTC and Developments

### A. Transfer of Credits Prior to Issuance of Form 8609

As a condition of the Authority's consideration of a proposed transfer of credits prior to the issuance of Form 8609, the following criteria must be met by the owner:

1. The proposed transferee must submit a new Rental Housing Tax Credit Application setting forth any and all information contemplated therein as if the proposed transferee were the original applicant, sponsor, or owner (the "new application"). The new application must be filed and marked to show any and all changes in information from that which is set forth in the original application for RHTC.
2. The proposed transferee must also submit a schedule identifying all differences between the original application for RHTC and the new application with cross references to page numbers and sections which differ.
3. All applicable filing fees for the new application must be paid at the time of the filing of the new applications (See QAP in Schedule N for application fees). The Authority may, in its sole discretion, refund a portion of the fees to the applicant.
4. The proposed transferor and transferee of the credits must certify that the information set forth in the new application or otherwise filed with the Authority is true, complete, and not misleading in any respect. The proposed transferee

shall agree therein to complete the development in the manner and within the time schedule set forth in the new application and assume all obligations of the transferor to the Authority.

5. The proposed transferor and transferee must submit such further documents, assurances, certificates, and other information and materials in support of the new application as the Authority shall require in its sole and absolute discretion.

Based on the Authority's review of the new application and other filings referred to herein, the Authority may approve or disapprove the proposed transfer in its sole and absolute discretion. No consent or approval of the Authority with respect to the proposed transfer shall be effective without the written consent of the Authority and any attempt to effect a transfer without such prior consent shall be void from inception. Such approval may be conditioned upon receipt by the Authority of any and all documents or instruments to be executed by the proposed transferor and transferee in order to effectuate the transfer contemplated hereby and such future conditions as the Authority may impose from time to time. Consent to a transfer shall not be deemed to be the consent to any subsequent transfer or waiver of the Authority's right to require the Authority's consent to any future transfers. Any consent, action, review, recommendation, approval, or other activity taken by or on behalf of the Authority shall not, expressly or impliedly, directly or indirectly, suggest, represent, or warrant that the sponsor, owner, and/or development qualify for the credit, or that the development complies with applicable statutes and regulations or that the development is or will be economically feasible.

## B. Transfer of Development After Issuance of Form 8609

**Sale of a Building(s) or an interest therein**

After the issuance of Form 8609, upon the sale, transfer or disposition of a Qualified Low-Income Building or an interest therein, the transferee shall immediately submit a "Property Ownership Change Form" to IHCDA, along with the following supplemental documentation:

1. A copy of completed Form 8693;
2. A copy of all sale documents;
3. The newly amended and stated partnership agreement;
4. Proof that the new owner has attended a tax credit compliance training within the past three (3) years;
5. An interim Owner Certification completed by the new owner for the current year;
6. A check for the sum equal to the compliance monitoring fees for one year; and
7. Any other additional information the Authority may request.

**Receivership Information and Foreclosure**

If a building(s) is in the foreclosure process, the receivership documents must be submitted to IHCDA immediately. Additionally, once final foreclosure occurs, the foreclosure documents must be submitted to IHCDA immediately, so that proper reporting to the IRS may occur.

## C. Bond for Dispositions of Qualified Low-Income Buildings

Under the Code, a taxpayer that disposes of a Qualified Low-Income Building or an interest therein, can defer or avoid recapture by furnishing a bond to the Secretary in an amount satisfactory to and for the period prescribed by the Secretary.

The above bond posting only pertains to situations where it is reasonably expected that the building will continue to be operated as a Qualified Low-Income Building for the remainder of the building's Compliance Period.

The taxpayer's obligation under the bond must be secured by a surety holding a Certificate of Authority from the Department of the Treasury, Financial Management Service, and that surety must be listed in Treasury Department Circular 570. Taxpayers having problems obtaining a surety through the Circular 570 should call the Internal Revenue Service.

For specific guidance on the bond process, see Revenue Ruling 90-60 (see Appendix B). In the absence of a valid bond, owners likely will recapture the accelerated portion of the credit using Form 8611 (see Appendix B).

The minimum required bond amount is generally the product of the total credits of the taxpayer times the appropriate bond factor amount. Bond Factor Tables to calculate the above were initially published in Revenue Ruling 90-60, and subsequent updates have been provided via additional Revenue Rulings: 90-88, 91-67, 92-101, 93-83, 94-71, 95-83, 96-16, 96-33, 96-45, and 96-59.

Form 8693 (see Appendix B) is the correct form to file to post a Rental Housing Tax Credit disposition bond under Section 42 (o)(6). This form includes applicable information regarding the building, the owner, and the surety. This form is signed by both the owner and the surety, and should be sent to the IRS.

Alternatively, Revenue Procedure 99-11 establishes a collateral program as an alternative to providing a surety bond to avoid or defer recapture of low-income housing tax credits under Section 42(j)(6) of the Internal Revenue Code. Under this program, taxpayers may establish a Treasury Direct Account and pledge certain United States Treasury securities to the Internal Revenue Service as security. Procedures for establishing the Treasury Direct Account are provided in Section 3 of Revenue Procedure 99-11.

## Part 5.10|Amendments to Compliance Monitoring Procedures

The compliance monitoring procedures and requirements set forth herein are issued by IHCDA pursuant to Treasury Regulations. These provisions may be amended by the Authority for purposes of conforming with the Treasury Regulations and/or as may otherwise be appropriate, as determined by the Authority or the Internal Revenue Service. In the event of any inconsistency or conflict between the terms of these procedures and the monitoring procedures set forth in such Regulations, the provisions set forth in the Regulations shall control.

The 2011 Compliance Manual includes major amendments/additions in the following areas.

- Electronic storage of documents- See 2.2 D
- Claiming credits for acquisition/rehabilitation developments- See 3.1 F
- Consequences of the 8609 Line 8b Election- See 3.2 C
- Implementing HERA rent limits and gross rent floors- See 3.3B
- Clarifications and examples on allowable fees- See 3.3 D
- Sub-metered utilities- See 3.4 B
- Discussion of student income calculations- See 3.6 B #5-7
- Elderly housing designations- See 3.6 L
- Tenant selection criteria guidelines- See 3.7 E
- Mixing Tax Credits with HOME- See 3.8
- Mandatory TIC and Questionnaire- See 4.1B and 4.2
- Correcting erroneous documents in a tenant file- See 4.1C
- Enterprise Income Verification (EIV) for Section 8- See 4.3 B4
- Table: Whose Income is Counted? - See 4.4A
- Move-in dates for acquisition/rehab or rehab of existing RHTC developments- See 4.5 C-D
- Stricter documentation requirements for transfer or developments- See 5.9B
- Release from Extended Use Agreement & tenant protections- See 5.12

In addition, IHCDA periodically releases Multi-Family Department Notices (MFD Notices) containing updates on policies, sample forms, and other issues relevant to the Section 42 RHTC Program. These notices are available online at **http://www.in.gov/ihcda/2520.htm** and on the message board on the Indiana Housing Online Management rental reporting system

(**https://ihcdaonline.com/**). MFD Notices are also released via IHCDA INFO, an electronic newsletter sent twice a month. Register to receive IHCDA INFO by clicking the "Newsletter Signup" link on IHCDA's homepage **http://www.in.gov/ihcda**.

## Part 5.11|Extended Use Policy

The purpose of the Extended Use Policy is to outline the inspection and monitoring requirements for each LIHTC development once the initial fifteen (15) year Compliance Period has ended. The **Compliance Period** is the time period for which a building must comply with the requirements set forth in Section 42 of the Internal Revenue Code and credits can be recaptured for noncompliance (i.e. the development's first 15 taxable years). The **Extended Use Period** is the time frame which begins the first day of the initial fifteen (15) year compliance period, on which such building is part of a qualified low-income housing development and ends fifteen (15) years after the close of the Initial Compliance Period, or the date specified by IHCDA in the Declaration of Extended Low-Income Housing Commitment.

### A. Qualifying for the Extended Use Policy

In order to qualify for the Extended Use Policy, the following criteria must be met:

1) The owner of the development must request use of the Extended Use Policy via the "IHCDA Extended Use Policy Request Form" (available in Appendix D).
2) The development's Annual Owner Certifications, onsite inspections, and tenant file monitoring reviews must be free of noncompliance for the three (3) consecutive years leading up to Year 16 (Years 13-15) **or** any three (3) consecutive years thereafter (Years 14-16, 15-17, 16-18, etc.). Free of noncompliance means that IHCDA did not issue IRS Form 8823 during this time period.

   NOTE: The only exception to this rule is if Form 8823 is filed to show the correction of a previously reported noncompliance problem and only if that previous noncompliance was reported prior to the three year Qualifying Period.

   *Example 1:*
   *Noncompliance discovered and corrected during same year of the Qualifying Period*
   *A development is issued an 8823 in Year 13. Later that year, a corrected Form 8823 is issued to show that the noncompliance has been resolved. Although the issue has been resolved, Year 13 is not free of noncompliance and thus the Qualifying Period cannot begin this year.*

   *Example 2:*
   *Noncompliance discovered and corrected during a later year of the Qualifying Period*
   *A development is issued an 8823 in Year 13. The issue requires a significant amount of time to correct and the noncompliance continues for part of Year 14. Later in Year 14, a corrected Form 8823 is issued to show that the noncompliance has been resolved. Years 13 and 14 are both considered to have noncompliance and the Qualifying Period cannot begin until Year 15 at the earliest.*

   *Example 3:*
   *Previously reported noncompliance is reported as corrected during Qualifying Period*
   *A development is issued an 8823 in Year 12 and the issue is resolved by the owner within that same year. In Year 13, IHCDA reviews the correction documentation and a corrected Form 8823 is issued. Since the noncompliance was found and cured in Year 12, Year 13 is considered to be "free of noncompliance" as the Form 8823 filed in this year was only to report the correction of noncompliance that occurred prior to the beginning of the Qualifying Period.*

*Example 4:*
*<u>Previously reported noncompliance continues into the Qualifying Period</u>*
*A development is issued an 8823 in Year 12. The issue requires a significant amount of time to correct and the noncompliance continues for part of Year 13. Later in Year 13, a corrected Form 8823 is issued to show that the noncompliance has been resolved. Years 12 and 13 are both considered to have noncompliance and the Qualifying Period cannot begin until Year 14 at the earliest.*

Upon approval of the request, the owner must have the development's Declaration of Extended Low-Income Housing Commitment amended to include the Extended Use Policy provisions. This is referred to as the "Amendment to Declaration of Extended Low-Income/Rental Housing Commitment." The cost of recording the amendment will be incurred by the owner. After the amendment is sent to the owner by IHCDA, the owner must have the document recorded and returned to IHCDA within 120 days.

## B. Reporting Requirements

The reporting requirements for developments approved for the Extended Use Policy are as follows:

1) The owner will continue to submit the Annual Owner Certification for every year of the Extended Use Period annually by January 31.
2) The annual monitoring fee will be $10 per unit, with a minimum fee of $110 and a maximum fee of $2730. However, IHCDA will not charge a fee for units that have Rural Development or Project Based Section 8 funding. Documentation must be provided to prove that the project receives such funding.
3) The owner must continue to enter all tenant events in the IHCDA Online Reporting System within thirty (30) days of the event date. For more information on online reporting requirement see Part 2.2, J.
4) The utility allowances must continue to be updated annually. For more information on utility allowances, see Part 3.4.

## C. Record Retention Requirements

Tenant files for move-ins will be retained for a minimum of six (6) years from the date of move-in.

## D. Compliance Requirements

The compliance requirements for developments approved for the Extended Use Policy are as follows:

1) All tax credit units must remain rent-restricted at the state set-asides and income restricted at the federal set-aside. HOME assisted units must remain both rent and income restricted at the state set asides. Stricter rent and income limits on Development Fund (formerly known as Trust Fund) units will be reduced to match the tax credit limits.
2) Move-in files must contain third-party verification of income. Additionally, if new member(s) are added to the household after initial move-in, third-party verification of income for the new member(s) only is required.
3) Annual recertifications require only the completion of the IHCDA "Extended Use Annual Household and Rent Update Form" (available in Appendix D). This means that income verifications will only be required at initial move-in during the Extended Use Period.
4) The 140%/ Next Available Unit Rule will not apply during the Extended Use Period.
5) The Vacant Unit Rule will not apply during the Extended Use Period. However, if there are high vacancy rates in the development, IHCDA reserves the right to request proof of marketing efforts and an explanation of the high vacancy rate
6) The Full-time Student Rule will not apply during the Extended Use Period.
7) File monitoring will occur once every five (5) years. However, IHCDA reserves the right to monitor more frequently if deemed necessary. During a monitoring, 10% of the units will be monitored. If 10% of the units equals ten (10) units or less, then a desktop monitoring will occur. If 10% of the units equals eleven (11) units

or more, an onsite monitoring will be performed. If issues are identified during the monitoring, a correction period of ninety (90) days will be allowed. IHCDA may, at its discretion, allow extensions up to six (6) months.

8) Physical inspections will continue once every three (3) years. However, IHCDA reserves the right to inspect more frequently if deemed necessary. Rural Development Inspections or Project Based Section 8 Inspections will be accepted in lieu of the IHCDA's Physical Inspection where applicable. The Rural Development or Project Based Section 8 Inspection should be submitted to IHCDA within thirty (30) days of receipt.
9) Projects that did not elect to be treated as "Multiple Building Projects" on form 8609 during the first fifteen (15) years will automatically be treated as multiple building projects during the Extended Use Period. Therefore, households may transfer between buildings in the development without being treated as new-move-ins and will not trigger an initial move-in certification. (See Section 3, Part 3.5 D for information on unit transfers).
10) Rental housing developments must participate in the Affordable Housing Database, **www.indianahousingnow.org.**

### E. Commitment Changes

The following changes may be allowed during the Extended Use Period with IHCDA approval.

1) If the development can justify the need for a staff unit, the employee does not have to be full-time. For more information on requesting a staff unit, see Part 3.6 D.
2) The owner can change transitional units or homeless units to permanent supportive housing with IHCDA approval.

### F. Noncompliance with Extended Use Policy

Issues of noncompliance identified during the Extended Use Period may be addressed by IHCDA in one or more of the following manners:

1) If a development does not show "due diligence" in using the Extended Use Policy, IHCDA will issue IRS Form 8823 to the Internal Revenue Service. IHCDA may also enforce the Extended Use Period compliance regulations through all applicable legal remedies.
2) The owners, general partners, and/or management agents will be considered "Not in Good Standing with IHCDA", and will not be allowed to participate in future tax credit applications or other IHCDA programs.
3) IHCDA reserves the right to reinstate all prior declaration requirements.

### G. Reinstatement of Extended Use Policy

A development that was removed from the Extended Use Policy due to issues of noncompliance in the Extended Use Period may be reinstated in the following manner:

1) To bring a development back into compliance, the development will reenter the three (3) year "Qualifying Period" and must be free of noncompliance during this time in order to regain Extended Use Policy privileges. During this time, the development must follow all Section 42 guidelines that were in effect during the initial fifteen (15) year Compliance Period.
2) Once the Qualifying Period has been completed, the owner may request reinstatement of the Extended Use Policy.

## Part 5.12|Release from Extended Use Agreement

### A. Special Circumstances for Release

IHCDA will consider releasing all or a portion of the units under the Extended Use Declaration for projects that have completed their initial fifteen (15) year compliance period if at least one of the following criteria is met to the satisfaction of the Authority:

1. The economic viability of the property is poor and cannot be maintained throughout the Extended Use Period through its current rental structure.
2. Current rents are approximately the same as Fair Market Rents for units of similar size and structure and will remain similar for the foreseeable future.
3. There is a low measurable impact to the affordable housing market in the area.

Approval for the release of an Extended Use Declaration is at the sole discretion of IHCDA and the Authority may require the submission of additional information to support any request for release.

For more information, see the Qualified Contract Provisions in Appendix H.

### B. Protection of Tenant Rights

The Code provides a specific "Protection of Tenant Rights" for those tenants living in projects that are released from their Extended Use Agreement. Two requirements must be met when an Extended Use Agreement is terminated.

1. The owner may not evict or terminate the tenancy (other than for "good-cause") of any existing tenant of a former tax credit unit before the close of the three (3) year period following the termination of the Extended Use Agreement; and

2. The owner may not increase the gross rent of any unit occupied by a formerly qualified tax credit household (except as permitted under Section 42) before the close of the three (3) year period following the termination of the Extended Use Agreement. Therefore, all existing tax credit households remain rent restricted for three years.

All existing tax credit households are protected by items #1 and #2 above for the three (3) year period following the termination of the Extended Use Agreement. However, new households moving into the project do not have to be rent or income restricted effective the date the Extended Use Agreement is terminated.

## Part 5.13|Casualty Loss

An owner that experiences a loss of unit due to fire, natural disaster, or other circumstance must:
1. Inform IHCDA of the loss in writing within ten (10) days of the incident;
2. Submit a plan to IHCDA within thirty (30) days that sets a timeframe for reconstruction or replacement of lost units;
3. IHCDA must report the loss and replacement of the units to the Internal Revenue Service (IRS) after ninety (90) days. If the units have not been fully replaced, IHCDA will attach a copy of the owner's plan and timeframe for replacement to its report. Once all units have been replaced, IHCDA will then report the replacement of the lost units.

If a building is damaged by casualty and fully restored and rented to qualified households within the same taxable year, the IRS has stated that there will be no recapture or loss of credits. Therefore, the owner of a building damaged by casualty should act quickly to remedy the issue.

If an owner fails to report a casualty loss to IHCDA within ten (10) days, IHCDA will report the incident as noncompliance to the IRS immediately via IRS Form 8823.

Casualty loss information must be reported via "Casualty Loss Form K" (see Appendix I). The form should be mailed to:

Indiana Housing & Community Development Authority
ATTN: Multi-Family Inspector
30 S. Meridian St., Suite 1000
Indianapolis, IN 46204

# Section 6 - Noncompliance

Noncompliance is defined as a period of time a development, specific building, or unit is ineligible for credit because of failure to satisfy program requirements.

## Part 6.1|Types of Noncompliance

Generally, during the Compliance Period, a development is out of compliance and recapture may apply if:

A. There has been a change in the Applicable Fraction or Eligible Basis that results in a decrease in the Qualified Basis of the building from one year to the next; or
B. The building no longer meets the Minimum Set-Aside requirements of Section 42, the gross rent requirements of Section 42, or the other requirements for the units which are set-aside; or
C. There is failure to submit the annual utility allowance documentation, Owner Certification, tenant income and rent report, or compliance monitoring fees, along with any applicable supporting documentation in a timely manner; or
D. An ineligible household resides in a RHTC unit.

## Part 6.2|Consequences

If noncompliance is discovered, a penalty could apply to some or all units in the development. Noncompliance may be determined at the unit, building, or project level. Penalties include:

A. Additional fees paid to IHCDA
B. Recapture of the accelerated portion of the credit for prior years;
C. Disallowance of the credit for the entire year in which the noncompliance occurs;
D. Assessment of interest for the recapture year and previous years;
E. Notification to the IRS via Form 8823;
F. Negative points on any subsequent RHTC reservation applications;
G. Rejection of future applications;
H. Repayment of rent overages; and/or
I. Mandatory attendance at an IHCDA sponsored compliance training.

## Part 6.3|Notification of Noncompliance to Owner

IHCDA is required to provide written notice of noncompliance to the owner if:

A. Any required submissions are not received by the due dates;
B. Tenant Income Certifications, supporting documentation, and rent records are not submitted when requested by IHCDA; and/or
C. The development is found to be out of compliance through inspection, review, and/or other means with the provisions of Section 42 of the Internal Revenue Code.

**IHCDA will not provide documentation (e.g. copies of Form 8823, Form 8609, etc.) for specific developments to more than one contact person in an ownership entity (usually the general partner). If other individuals within an ownership entity wish to receive such documentation, they must obtain it from the contact person named in the development's Multi-Family Housing Finance Application.**

## Part 6.4|Notification by Owner to IHCDA

If the owner and/or management agent determines that a unit, building, or an entire development is not in compliance with RHTC program requirements, IHCDA should be notified immediately. The owner and/or management agent must formulate a plan to bring the development back into compliance and advise IHCDA in writing of such a plan.

Noncompliance issues identified and corrected by the owner prior to notification of an upcoming compliance review or inspection by the IHCDA need not be reported to the IRS by IHCDA. The owner and/or management agent must keep documentation outlining: the noncompliance issue, date the noncompliance issue was discovered, date that noncompliance issue was corrected, and actions taken to correct noncompliance.

> *Example: A household was initially income qualified and moved into a unit on January 1, 2007. The maximum allowable RHTC gross rent is $500. At time of recertification on January 1, 2008 the owner increased the rent to the market rate of $1,000. During an internal audit dated February 1, 2008 the owner and/or management agent noticed that the unit was out of compliance, because the rent charged exceeded the maximum RHTC rent limit. On February 1, 2008, the owner and/or management agent immediately corrected the noncompliance issue, notified IHCDA of the issue, and then documented the file with an explanation of the noncompliance issue, the date that it was corrected, and a summary of the actions taken to correct the noncompliance issue. On June 21, 2008, IHCDA notified the owner and/or management agent of an upcoming compliance review. Because the noncompliance issue was discovered, reported, and corrected by the owner/management agent prior to the notice of IHCDA's upcoming compliance review, IHCDA is not required to report the noncompliance issue to the IRS.*

## Part 6.5|Correction Period

Should IHCDA discover (as a result of an inspection or review or in any other manner) that the development is not in compliance with Section 42 or that credit has been claimed or will be claimed for units that are ineligible, IHCDA shall notify the owner. The owner is to commence appropriate action to cure such noncompliance.

The owner shall have a **maximum of ninety (90) days from the date of notice to cure the noncompliance.** However, if IHCDA determines that there is good cause, an extension of up to six (6) months to complete the cure for noncompliance may be granted.

## Part 6.6| Reporting Noncompliance to the Internal Revenue Service

Noncompliance will occur if noncompliance issues are not corrected within a "reasonable" time period. Potential noncompliance of which the owner or management agent becomes aware must be reported to IHCDA (see Part 6.4 above). Potential noncompliance discovered by IHCDA during a file audit, physical inspection, Owner Certification review, etc. must be reported to the IRS. The IRS ultimately determines whether or not there is noncompliance.

IHCDA is required to file IRS Form 8823 "Low-Income Housing Credit Agencies Report of Non-Compliance" (see Appendix B) with the IRS no later than forty-five (45) days after the end of the Correction Period (as described above, including extensions) and no earlier than the end of the Correction Period, whether or not the noncompliance or failure to certify is corrected.

IHCDA must identify on IRS Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify.

If a building is entirely out of compliance and will not be in compliance at any time in the future, IHCDA will report it on an IRS Form 8823 one time and need not file IRS Form 8823 in subsequent years to report that building's noncompliance.

## Part 6.7|Recapture

Recapture is defined as an increase in the owner's tax liability because of a loss in tax credit due to noncompliance with program requirements.

The IRS will make the determination as to whether or not the owner faces recapture of credit as a result of noncompliance.

IRS Form 8611 (see Appendix B) is used by taxpayers who must recapture previously claimed tax credits. A copy of IRS Form 8611 must be sent to the IRS and IHCDA upon completion by the owner.

## Part 6.8|Retention of Noncompliance Records by IHCDA

IHCDA will retain records of noncompliance or failure to certify for six (6) years beyond IHCDA's filing of the respective IRS Form 8823. In all other cases, IHCDA will retain the certifications and records for three (3) years from the end of the calendar year in which IHCDA received the certifications and records.

## Part 6.9|Noncompliance during the Extended Use Period

For information on noncompliance during the Extended Use Period, see Section 5, Parts 5.11 F & 5.11 G

# Section 7 - Glossary

**100% Tax Credit Project:** A project in which all units are RHTC qualified units (i.e. there are no market rate units).

**140% Rule:** If upon recertification, a low-income household's income is greater than 140% of the income limit adjusted for family size, the unit will continue to be counted toward satisfaction of the required set-aside, providing that the unit continues to be rent-restricted and the next available unit of comparable or smaller size in the same building is rented to a qualified low-income household.

**240-day Window:** For acquisition/rehabilitation projects, the owner may certify households as RTHC eligible up to 120 days prior to the date of acquisition (using the current income limits) or up to 120 days after the date of acquisition (using the income limits in effect as of the date of acquisition). In either scenario, the effective date of the certification is the date of acquisition.

**20%/50% Test:** 20% or more of the residential units must be rented to households with gross annual income of 50% or less of the Area Median Income adjusted for family size.

**40%/60% Test:** 40% or more of the residential units must be rented to households with gross annual income of 60% or less of the Area Median Income adjusted for family size.

**8609:** The IRS Form entitled "Low-Income Housing Credit Allocation and Certification." Part I of the Form 8609 is completed by IHCDA and issued to the owner so that credits may be claimed. Part II of the Form 8609 is completed by the owner and the elections made in Part II are important for ongoing compliance. The owner files Form 8609 with the IRS each year of the Credit Period.

**8823:** The IRS Form entitled "Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition." Form 8823 is filed by IHCDA to the IRS in order to report instances of noncompliance or building disposition.

**8823 Guide:** Common name for the IRS guide book entitled *Guide for Completing Form 8823 Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition: Revised October 2009*. While the guide is not considered legal authority, it does provide valuable information regarding the state agency's responsibilities in determining noncompliance and reporting that noncompliance to the IRS.

**Adjusted Basis:** The cost basis of a building adjusted for capital improvements minus depreciation allowable.

**Affirmative Fair Housing Marketing Plan:** Also referred to as the AFHMP or Affirmative Marketing Plan. A plan in which the owner/management of a property confirms that they are following Fair Housing regulations and are making efforts to market the property to those groups determined to be least likely to otherwise apply for residency. All projects with five (5) or more HOME-assisted units must have an AFHMP in place.

**Allowable Fee:** A fee that may be charged to tax credit tenants. An allowable fee may or may not have to be included in the gross rent calculation, depending on whether the fee is for a service that is optional or mandatory.

**AMI:** Area Median Income

**Annual Household Income:** The combined anticipated, gross annual income of all persons who intend to reside in a unit.

**Annual Income:** Total current anticipated income to be received by a tenant from all sources including assets for the next twelve (12) months.

**Annual Income Recertification:** Document by which the tenant recertifies his/her income for the purpose of determining whether the tenant will be considered low-income according to the provisions of the RHTC Program.

**Applicable Credit Percentage:** Although the credits are commonly described as 9% and 4% credits, these percentages are approximate figures. The U.S. Department of the Treasury publishes the exact credit percentages each month.

**Applicable Fraction:** The portion of a building that is occupied by low-income households. The Applicable Fraction is the lesser of a) the unit fraction, defined as the ratio of the number of low-income units to the total number of units in the building or b) the floor space fraction, defined as the ratio of the total floor space of the low-income units to the total floor space of all units in the building.

**Applicant:** A prospective tenant who has applied for residency at a development.

**Application:** Form completed by a person or family seeking rental of a unit in a development. An application should solicit sufficient information to determine the applicant's eligibility and compliance with federal and IHCDA guidelines.

**Area Median Income:** The median income for a specific county, as published by HUD.

**Assets:** Items of value, other than necessary and personal items, that are considered in determining the income eligibility of a household.

**Asset Income:** The amount of money received by a household from items of value as defined in HUD Handbook 4350.3.

**Authority:** The Indiana Housing and Community Development Authority (IHCDA)

**Available Unit:** A vacant unit that is not under any contractual agreement between the owner and a prospective resident. A unit is not available if an applicant has already signed a lease but has not yet moved into the unit.

**Certification Year:** The twelve (12) month time period beginning on the date the unit is first occupied and each twelve (12) month period commencing on the same date thereafter.

**Comparable Unit:** A unit of the same size and number of bedrooms with similar amenities and features as another unit.

**Compliance:** The act of meeting the requirements and conditions specified under the law and the RHTC program requirements.

**Compliance Period:** The time period for which a building must comply with the requirements set forth in Section 42 of the Internal Revenue Code and credits can be recaptured for noncompliance. The development's first fifteen (15) taxable years.

**Correction Period:** A reasonable time as determined by the Authority for an owner to correct any violation as a result of noncompliance.

**Credit:** Rental Housing Tax Credit as authorized by Section 42 of the Internal Revenue Code.

**Credit Period:** The period of ten (10) taxable years during which credit may be claimed, beginning with:

1) the taxable year the building is placed-in-service; or
2) at the election of the taxpayer, the succeeding year, but only if the building is a Qualified Low-Income Building as of the close of the first year of such building and remains qualified throughout succeeding years.

**Current Anticipated Income:** Gross anticipated income for the next twelve (12) months as of the date of occupancy or recertification, including asset income.

**Date of Acquisition:** The date on which a building is acquired through purchase.

**Declaration of Extended Low-Income Housing Commitment:** The agreement between IHCDA and the owner restricting the use of the development during the term of the RHTC Extended Use Period.

**Developer:** Any individual and/or entity that develops or prepares a real estate site for residential use as an RHTC development.

**Development:** Rental housing development receiving a RHTC allocation.

**Due Diligence:** The appropriate, voluntary efforts to remain in compliance with all applicable Section 42 rules and regulations. Due diligence can be demonstrated through business care and prudent practices and policies. The 8823 Guide (page 3-4) indicates that part of due diligence is the establishment of internal controls, including but not limited to: separation of duties, adequate supervision of employees, management oversight and review (internal audits), third party verifications of tenant income, independent audits, and timely recordkeeping. IHCDA expects all RHTC developments to demonstrate due diligence.

**Earned Income:** Income from employment, including wages, salaries, tips, commission, bonuses, overtime pay, anticipated raises, and any other compensation. The earned income of all adult household members is included in the Annual Household Income calculation. The earned income of minors (members under age 18) is not included.

**Educational Organization:** An institution that normally maintains a regular faculty and curriculum, and normally has an enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. This term includes elementary schools, junior and senior high schools, colleges, universities, and technical, trade and mechanical schools. This does not include on-the-job trainings courses, but does include online educational institutions.

**Effective Date of Tenant Certification:** The date the Tenant Income Certification becomes applicable. For initial certifications, this date must be the move-in date of the household. For annual recertifications, this date must be the anniversary date of the move-in.

**Effective Term of Verification:** A period of time not to exceed one hundred twenty (120) days. After this time, if the tenant has not yet moved in or been recertified, a new written third-party verification must be obtained. A verification document must be dated within the effective term at time of Tenant's Income Certification.

**Eligible Basis:** The Eligible Basis of a qualifying development generally includes those capital assets incurred with respect to the construction, rehabilitation, or acquisition in certain circumstances, of the property, minus non-depreciable costs such as land and certain other items such as financing fees. While it may not include any parts of the property used for commercial purposes, it may include the cost of facilities for use by tenants to the extent there is no separate fee for their use and they are available to all tenants. It may also include the cost of amenities if the amenities are comparable to the cost of amenities in other units.

Eligible Basis is reduced by an amount equal to the portion of a building's adjusted basis which is attributable to non low-income units which exceed the average quality standard of the low-income units unless the cost of building the market rate units does not exceed the cost of the average low-income units by more than 15% and the excess cost is excluded from Eligible Basis. Eligible Basis is further reduced by the amount of any federal grants applied towards the development, and, should the owner so elect, it may be reduced by "federal subsidies" to take advantage of the higher applicable RHTC percentage. It is determined without regard to depreciation.

**Eligible Tenant:** The current tenant(s) of the unit, so long as that tenant(s) is eligible to occupy the unit under the requirements of Section 42 of the Internal Revenue Code. This expressly includes a tenant whose income would not currently qualify under Section 42, but who was qualified at the time of tenant's original occupancy of the unit.

**Employment Income:** Wages, salaries, tips, commission, bonuses, overtime pay, anticipated raises, and any other compensation for personal services from a job.

**Empty Unit:** A unit that is designated as a tax credit unit, but has never been occupied by a qualified RHTC household.

**Extended Use Period:** The time frame which begins the first day of the initial fifteen (15) year Compliance Period, on which such building is part of a qualified low-income housing development and ends fifteen (15) years after the close of the initial Compliance Period, or the date specified by IHCDA in the Declaration of Extended Low-Income Housing Commitment, whichever is longer.

**Extended Use Policy:** The set of compliance rules and monitoring procedures for developments that have entered their Extended Use Period. For more information see Section 5, Part 5.11.

**Fair Market Value:** An amount which represents the true value at which property could be sold on the open market.

**First Year of the Credit Period:** Either the year a building is placed-in-service, or, at the owner's option, the following year.

**Floor Space Fraction:** The fraction, the numerator of which is the total floor space of the low-income units in the building, and the denominator of which is the total floor space of the residential rental units (whether occupied or not) in the building. The floor space fraction is compared to the unit fraction when computing the Applicable Fraction. The Applicable Fraction for a building is the lesser of either the unit fraction or the floor space fraction.

**Foster Adult:** An adult, usually with a disability that makes him/her unable to live alone, who is unrelated to the tenant family but has been placed in their care. Foster adults are not counted as household members when determining household size and the applicable income limit.

**Foster Children:** Foster children are in the legal guardianship or custody of the State or foster care agency, but are cared for by foster parents in their home under a foster care arrangement with the custodial agency. Foster children are not counted as household members when determining household size and the applicable income limit.

**Full-time Student**: Any tenant or applicant who is, was, or will be a full-time student at an educational organization for parts of five (5) calendar months (may or may not be consecutive) during the calendar year. Full-time status is defined by the educational organization at which the student is enrolled.

**Full-time Student Household:** A household in which all tenants/applicants are full-time students.

**Good-cause Eviction:** Tax credit households cannot be evicted or have their tenancy terminated without "good-cause," generally considered material violation of the lease. The actions that constitute good-cause for eviction or termination of tenancy must be given to the tenant in writing at the time of occupancy, preferably in the lease, as well in the property's Tenant Selection Criteria. Exceeding the 140% limit is not considered good-cause for eviction.

**Gross Income:** See Annual Household Income.

**Gross Rent Floor:** The lowest rent limit that an owner will ever have to implement for a unit. For tax credit projects, the gross rent floor is either the rent limit in effect at the placed-in-service date of the first building in the development or on the allocation date. For bond projects, the gross rent floor is either the rent limit in effect at the placed-in-service date for the first building in the development or on the reservation letter date. If the HUD published rent limits decrease from year to year, the rent limit for a particular project never has to fall below its gross rent floor.

**Gross Rent Floor Election Date:** For tax credit projects, the gross rent floor is either the rent limit in effect at the placed-in-service date of the first building in the development or on the allocation date. For bond projects, the gross rent floor is either the rent limit in effect at the placed-in-service date for the first building in the development or on the reservation letter date.

**Gross Rent:** Tenant-paid rent portion + utility allowance + any non-optional fees. The total gross rent must be at or below the applicable rent limit for the unit to be in compliance.

**Guest:** A visitor temporarily staying in a tax credit unit with the consent of the household. Guests are not treated as household members when determining household size and the applicable income limit, and their income is not included in Annual Household Income calculations.

**HERA:** The Housing and Economic Recovery Act passed by Congress on July 30, 2008. Among other things, this legislation added the HERA special income and rent limits, the recertification exemption for 100% tax credit properties, and the foster care student status exemption.

**Household:** The individual, family, or group of individuals living in a unit.

**IHCDA:** The Indiana Housing and Community Development Authority.

**Imputed Income:** The estimated earnings of assets held by a household using the potential earning rate (passbook rate) established by HUD.

**Income Limits:** The maximum incomes as published by HUD, used for determining household eligibility for low-income units. Income limits are based on family size and will vary depending on the applicable AMI set-aside restriction (30%, 40%, 50%, or 60%).

**Initial Compliance:** The twelve (12) month period commencing with the date the building is placed-in-service. Note: Developments consisting of multiple buildings with phased completion must meet the set-aside requirements on a building-by-building basis with the twelve (12) months commencing with the individual date each building is placed-in-service.

**Initial Tenant File:** The file for the first household to occupy a unit. Initial tenant files, also called first-year files, contain the records for the first year of the credit period and are important for demonstrating that the project was eligible to begin claiming credits. Initial tenant files must be kept for twenty-one (21) years.

**Initial Compliance Period:** A fifteen (15) year period, beginning with the first taxable year in which credit is claimed, during which the appropriate number of units must be marketed and rented to RHTC eligible households, at restricted rents.

**In-place Household:** A household that is already occupying a unit at the time of acquisition.

**Inspection:** A review of a development made by IHCDA or its agent, including an examination of records, a review of operating procedures, and a physical inspection of units.

**Joint Venture:** A combination of one or more independent entities that combine to form a new legal entity for the purpose of a development.

**Lease:** The legal agreement between the tenant and the owner which delineates the terms and conditions of the rental of a unit.

**LIHTC:** Low Income Housing Tax Credit, also known as Rental Housing Tax Credit (RHTC). Tax Credit as authorized by Section 42 of the Internal Revenue Code.

**Live-in Care Attendant / Live-in Aide:** A person who resides with one or more elderly, near-elderly, or disabled persons. To qualify as a live-in care attendant, the individual (a) must be determined to be essential to the care and well being of the tenant, (b) must not be financially obligated to support the tenant, and (c) must certify that he/she would not be living in the unit except to provide the necessary supportive services. While some family members may qualify, spouses can never be considered a live-in care attendant since they would not meet qualifications (b) & (c).

A live-in care attendant for an RHTC tenant should not be counted as a household member for purposes of determining the applicable income limits, and the income of the attendant is not counted as part of the total household income.

**Low-Income Household/Tenant:** Households whose incomes are not more than either 50% or 60% of the median family income for the local area adjusted for family size.

**Low-Income Unit:** Any unit in a building if:

1. Such unit is rent-restricted (as defined in subsection (g)(2) of IRS Section 42 of the Code);
2. The individuals occupying such unit meet the income and student status eligibility limitations applicable under Section 42; and
3. The unit is suitable for occupancy, available to the general public, and used other than on a transient basis.

**Management Company:** A firm authorized by the owner to oversee the operation and management of the development and who accepts compliance responsibility.

**Manager's Unit:** Unit occupied by the full-time resident manager considered a facility reasonably required for the benefit of the project. If the unit is considered common area, the manager does not have to be income qualified, but no rent can be charged. If the unit is considered a tax credit rental unit, the resident manager must be income qualified and rent can be charged for the unit.

**Maximum Chargeable Rent (Net Rent):** The applicable rent limit minus the utility allowance for tenant-paid utilities and any other non-optional charges.

**Median Income:** A determination made through statistical methods establishing a middle point for determining income limits. Median is the amount that divides the distribution into two equal groups, one group having income above the median and one group having income below the median.

**Minimum Set-Aside:** The minimum number of units that the owner has elected and set forth in the Declaration of Low-Income Housing Commitment to be income and rent-restricted.

**Mixed-use Project:** A project with both RHTC and market-rate units.

**Model Unit:** A rental unit set aside to show prospective tenants the desirability of the project's units without disturbing current tenants in occupied units. The model unit's cost can be included in the building's Eligible Basis and in the denominator of the Applicable Fraction when determining a building's Qualified Basis.

**Multi-Family Department (MFD) Notices:** Notices published by IHCDA's Multi-Family Department to announce changes, updates, or clarifications on policies and issues affecting the Section 42 RHTC Program. These notices are made available online at **http://www.in.gov/ihcda/2520.htm** , through the electronic newsletter IHCDA INFO, and are also posted on the message board on the Indiana Housing Online Management rental reporting system (**https://ihcdaonline.com/**).

**Multiple-building Project:** A project in which multiple buildings are all considered to be part of one project. A project is a multi-building project only if the owner elected so by choosing "yes" on Line 8b of Part II of the Form 8609.

**Narrative Summary:** A description written by a tax credit developer/applicant describing the need for the development within the community and the characteristics of the development itself. This narrative should give an accurate depiction of how this development will benefit the particular community. Generally, the summary should include the following points:

-Development and unit description
-Amenities in and around the development
-Area needs that the development will help meet
-Community support and/or opposition for development
-The constituency to be served by the development
-Development quality
-Development location
-Effective use of resources
-Unique features
-Services to be offered
-Address Qualified Allocation Plan points (Must include pages 3-9 of the Application Form-A)

**Next Available Unit Rule:** (See definition under 140% Rule)

**Noncompliance:** The period of time that a development, specific building, or unit is ineligible for RHTC because of failure to satisfy program requirements.

**Non-optional fee:** A fee charged for services/amenities that are mandatory (i.e. services that are required as a condition of occupancy). A fee may be charged for non-optional services, but the fee must be included in the gross rent calculation. NOTE: Owners may never charge fees for amenities that are included in Eligible Basis, regardless of whether or not the fee is included in gross rent calculation.

**Optional fee:** A fee charged for an extra service or amenity that is elected by a tenant. If the service or amenity is truly optional (i.e. it is not a condition of occupancy that the tenant accept the service), then a fee may be charged without being included in the gross rent calculation. NOTE: Owners may never charge fees for amenities that are included in Eligible Basis, regardless of whether or not the fee is included in gross rent calculation.

**Over-income Unit:** Under § 1.42-15(a), a low-income unit in which the aggregate income of the occupants of the unit rises above 140% of the applicable income limitation under § 42(g)(1) is referred to as an "over-income unit."

**Owner:** Any individual, association, corporation, joint venture, or partnership that owns a RHTC development.

**Passbook Rate:** The HUD approved rate for imputing assets. The current passbook rate is 2%.

**Placed-in-service Date:** For buildings, this is the date on which the building is ready and available for its specifically assigned function, as set forth on IRS Form 8609. For new construction, the placed-in-service date is generally the date a building receives its Certificate of Occupancy. For acquisition, the placed-in-service date is the date of acquisition.

**PHA:** Public Housing Authority.

**Project:** A project may be all of the buildings in a development, or one particular building within a development, depending on the election made by the owner on Line 8b on Part II of Form 8609. If Line 8b is marked yes, then the building is part of a multi-building project. If Line 8b is marked no, then the building is considered its own project.

**Protected Class:** One of the seven groups specifically protected by the Fair Housing Act. The seven protected classes are race, color, national origin, religion, sex, disability, and familial status.

**Qualified Allocation Plan:** The plan developed and promulgated from time to time by IHCDA, to set out the guidelines and selection criteria by which IHCDA allocates tax credits.

**Qualified Basis:** The portion of the Eligible Basis attributable to low-income rental units, equal to the Eligible Basis multiplied by the Applicable Fraction. The amount of Qualified Basis is determined annually on the last day of each taxable year.

**Qualified Low-Income Building:** Any building that is part of a qualified low-income housing development at all times during the period beginning on the first day in the compliance period on which such building is part of such a development and ending on the last day of the compliance period with respect to such building (Section 42(c)(2)(A) of the Code).

**Qualified Unit:** A unit in a qualified low-income building occupied by qualified persons at a qualified rent.

**Qualifying Period:** To qualify for the compliance rules outlined in IHCDA's Extended Use Policy, a development must have Annual Owner Certifications, onsite inspections, and tenant file monitorings free of noncompliance for three consecutive years. This three-year, noncompliance-free period is called the Qualifying Period.

Note: The Qualifying Period begins in years 13-15. If noncompliance is found in year 13, the Qualifying Period restarts for years 14-16, so on and so forth, until there have been three consecutive years with no issues of noncompliance. Once the Qualifying Period has been met, the development qualifies for the Extended Use Policy.

**Reasonable Accommodation:** A change, exception, or adjustment in rules, policies, practices, or services when such a change is necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling, including public and common spaces. Under the Fair Housing Act, an owner must allow a reasonable accommodation unless doing so will be an undue financial burden or fundamentally alter the nature of the provider's operations.

**Reasonable Modification:** A change to the physical structure of the premises when such a change is necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling, including public and common spaces. Under the Fair Housing Act, an owner must allow a reasonable modification at the expense of the tenant, unless the change is one that should have already been included in order to comply with design and construction accessibility standards, in which case the owner will responsible for paying for the modifications.

**Recapture:** An increase in the owner's tax liability because of a loss in tax credit due to noncompliance with program requirements.

**Referral Agreement:** A development that includes units set-aside for special needs populations must enter into a Referral Agreement with a qualified organization that will provide services to the special needs population. The owner must agree to: (a) set aside a number of units for the special needs population and (b) notify the qualified organization when vacancies of the set-aside units occur at the development. The qualified organization must agree to: (a) refer qualified households to the development and (b) notify households of the vacancies of the set-aside units at the development.

**Rent Limit:** The HUD published maximum amount that a tenant can pay for rent, including a utility allowance and any non-optional fees.

**RHTC:** Rental Housing Tax Credit, also known as Low Income Housing Tax Credit (LIHTC). Tax Credit as authorized by Section 42 of the Internal Revenue Code.

**Second-party Verification:** Source documentation submitted to management by a tenant or applicant in order to disclose information about income or asset sources or other eligibility factors. Second-party verifications may only be used when third-party verifications cannot be received or are not necessary (see Part 4.3 for more info). An example of second-party verification is a paystub or bank statement provided to management by the tenant/applicant.

**Section 8:** Section 8 of the United States Housing Act of 1937, as Amended.

**Section 42:** Section 42 of the Internal Revenue Code of 1986, as Amended, which establishes the Rental Housing Tax Credit Program.

**Self-certification:** A signed affidavit from a tenant or applicant used to clarify information or to provide information that cannot be verified through third-party or second-party documents.

**Set-aside**: Shall mean and require that units designated as "set-aside" for a specific population may be used only for the identified population and for no other. If qualified tenants in the designated population are not available, the unit(s) must remain vacant. Tax credit units will all be set-aside at the 30%, 40%, 50%, or 60% rent and income limit and may additionally be set-aside for special needs populations.

**Special Needs Populations:** Per the set-asides and scoring criteria defined in the Qualified Allocation Plan (QAP), a tax credit development may have committed in writing to set aside a percentage of total units in the development to qualified tenants who meet the state definition of "special needs population," as provided in IC 5-20-1-.45 and must equip each unit to meet a particular person's need at no cost to the tenant. Special needs populations include:

1. Persons with physical or development disabilities
2. Persons with mental impairments
3. Single parent households
4. Victims of domestic violence
5. Abused children
6. Persons with chemical addictions
7. Homeless persons
8. The elderly

**Student:** Any tenant or applicant who is, was, or will be a full-time student at an educational organization for parts of five (5) calendar months (may or may not be consecutive) during the calendar year. Full-time status is defined by the educational organization at which the student is enrolled.

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

For more information see part 3.4 B

**Subsequent Credit Allocation:** A set of rehabilitation credits allocated to a project that has already completed an original credit period and fifteen (15) year compliance period. A project receiving a subsequent credit allocation begins a new ten (10) year credit period and fifteen (15) year compliance period. Existing tenants are grandfathered into the new allocation without being recertified as new move-in events.

**Tax Credit:** A tax credit is a dollar-for-dollar reduction in the federal income tax liability of the owner.

The tax credit amount is calculated by multiplying the Qualified Basis by the Applicable Credit Percentage. The credit percentage, determined monthly, changes so as to yield over a ten (10) year period, a credit equal to either 30% or 70% of the present value of the Qualified Basis of the building. An owner may elect to lock in the Applicable Credit Percentage either at the time a Commitment is made by IHCDA, or at the time the allocation is made.

**Tenant:** Any person occupying the unit.

**Tenant/ Unit File:** Complete and accurate records pertaining to each dwelling unit, containing the application for each tenant, verification of income and assets of each tenant, the annual Tenant Income Certification for the household, utility schedules, rent records, all leases and lease addenda, etc.. Any authorized representative of IHCDA or the Department of Treasury shall be permitted access to these files.

**Third-party Verification:** A verification document submitted to management by a third-party entity in order to disclose information about the income or asset sources or other eligibility factors of an applicant or tenant. Third-party verifications must be sent to and received directly from the third-party source, not through the tenant or applicant. An example of third-party verification is an employment verification form completed by the employer.

**Transient Use:** An RHTC unit is considered to be in transient use and is therefore out of compliance if the initial lease term is less than six (6) months. The exceptions to the transient occupancy rule for SRO housing can be found in Section 3, part 3.6 G.

**Unearned Income:** Income from assets and benefit sources such as Social Security. The unearned income of all household members (regardless of age) is included in the calculation of Annual Household Income.

**Unit Fraction:** The fraction, the numerator of which is the number of low-income units in the building, and the denominator of which is the number of residential rental units (whether or not occupied) in the building. The unit fraction is compared to the floor space fraction when computing the Applicable Fraction. The Applicable Fraction for a building is the lesser of either the unit fraction or the floor space fraction.

**Utility Allowance:** An allowance representing the average monthly cost of tenant-paid utilities for a particular unit size and type. Utility allowances include costs of heat, unit electricity, gas, oil, water, sewer, and trash service as applicable. Utility allowances do not include costs of telephone, cable television, or internet services. The utility allowance is added to tenant-paid rent and any other non-optional charges when determining the gross rent for a unit. The total gross rent for a unit (utility allowance inclusive) must be at or below the applicable published rent limit.

Acceptable utility allowance methods include a utility schedule published by HUD, Rural Development, or the PHA, or established by a letter from the utility company which states the rates, an IHCDA estimate, the HUD Utility Schedule Model, or an Energy Consumption Model as calculated by an approved engineer or licensed professional.

The IRS requires that Utility Allowances be set according to IRS Notice 89-6 and Federal Register Vol. 73, No. 146 "Section 42 Utility Allowance Regulations Update" (both resources are available in Appendix A at **http://www.in.gov/ihcda/2519.htm** )

For more information on Utility Allowances see Section 3, Part 3.4.

**Vacant Unit:** A unit that is currently unoccupied, but was formerly occupied by a qualified RHTC household.

**Vacant Unit Rule:** Vacant units formerly occupied by low-income individuals may continue to be treated as occupied by a qualified low-income household for purposes of the Minimum Set-Aside requirement (as well as for determining qualified basis) provided reasonable attempts were or are being made to rent the unit (or the next available unit of comparable or smaller size) to an income-qualified tenant before any units in the development were or will be rented to a nonqualified tenant. Management must document that reasonable attempts were made to rent vacant tax credit units before renting vacant market-rate units.

**Verification:** Information from a third-party or second-party source that is collected in order to corroborate the accuracy of information about the income and/or assets or other eligibility factors of an applicant or tenant.

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