2010

Rental Housing Tax Credit Compliance Manual

Hamilton Pointe Apartments

Spring Town Apartments

Armstrong Farm Apartments

Danbury Pointe Apartments

ihcda

Indiana Housing and Community Development Authority

Spring Town Apartments is a 20 unit tax credit development made up of 1, 2, 3, and 4 bedroom apartments in Marengo. The one bedroom units are the product of the rehabilitation of a 100+ year old church. The units include built in microwaves, dishwashers, garbage disposals, walk in closets, central air, and a washer and dryer provided in every unit. Other amenities include a playground and a computer and printer for resident use.

Hamilton Pointe Apartments is a 104 unit development consisting of 96 tax credit and 8 market rate units in Fort Wayne. In addition to residing in an award-winning school system, residents enjoy a rural setting with ample green space provided with a low-density layout. The units are a mix of 1, 2, 3 and 4 bedrooms units with private balconies and patios, attached exterior storage, energy efficient appliances and full size washers and dryers.

Danbury Pointe Apartments is a 100% tax credit development comprised of 24 two bedroom senior apartments in Danville. The energy efficient units are equipped with many special features for the elderly and disabled. Other amenities include laundry facilities, exercise equipment and a large community room. Danbury Pointe serves an area population of approximately 8200 people with about 15% of that population being senior households.

Armstrong Farm Apartment Homes is a 100% tax credit development consisting of 168 units located in Jeffersonville. All of the spacious 1, 2, and 3 bedroom apartments are pet-friendly and include a full-size washer and dryer. Other amenities include a resident computer center, a fitness center, and a swimming pool.

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Changes to the 2010 Compliance Manual

These are the major changes, updates, and additions to the 2010 Compliance Manual. The new information is shown here in red, **bold**, *italic*, and underlined font. However, the changes will not be formatted differently in the actual text of the manual.

Note that the changes identified here only represent those areas where there were major changes in policies or where new examples and clarifications have been added. Minor alterations such as formatting, corrected grammatical errors, and small changes in wording have not been identified in this section.

Part 1.2 Contents and Summary

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 all Owners of all 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.***

Part 2.2 Responsibilities of Development Owner

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 available online at http://www.in.gov/ihcda/2519.htm.***

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.

J. Reporting tenant events and submitting Annual Owner Certifications

Beginning 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, recertifications, unit transfers, rent ~~***and income***~~ ***and utility allowance changes***, ***household composition updates, and student status updates***. 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.***

M. Providing all pertinent property information to the management company (i.e. Final Application for rental housing financing, Declaration of Extended Low-Income Housing Commitment, *copies of the Form 8609 for each building*, QAP, 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 3.2 Minimum Set-Aside Election, Applicable Fraction, and Income Limits

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/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 what federal income restriction these units must be set at (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. Maximum Income Limits

In 2009, HUD published "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). 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 after are not eligible to use the HERA Special Limits.

When determining if a Household's income is at or below the applicable limit, the ***earned*** income from each adult Household member 18 years or older ***and the unearned income of all members of the Household (regardless of age)*** must be included.

Part 3.3 Maximum Gross Rent

C. Section 8 Rents

NOTE: For tenants receiving Section 8 rental assistance, 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.

E. Violations of the Rent Limit

The Revised 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).

Furthermore, the IRS has clarified in the 8823 Guide that 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 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.

Part 3.4 Utility Allowances

*NOTE: The following information is not new, but was reworded and put into a list format to clearly outline the Utility Allowance options for tax credit buildings without HUD or RD assistance.

D. 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.

-Use the county specific Utility Allowance Schedule from IHCDA's website (http://www.in.gov/ihcda/3102.htm.)

-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.

-Options E, F, or G as described below

Part 3.5 Rules Governing the Eligibility of Particular Residential Units

B. Vacant Unit Rule

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 C, Compliance Requirements.

B. Student Status

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, 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 does apply to students taking courses online if they are considered to be full-time by the educational organization.***

There are five exceptions to the full-time student restriction. Full-time student Households that are income eligible and in which at least one of the Household members satisfies 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 the Household meets one of the following five exceptions:

1. 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.

2. The Household consists 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.

   Required Documentation: Copy of the most recent tax return.

3. 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)].

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

4. 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.

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

5. 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.

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).

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.***

Beginning in 2010, IHCDA will require that all tax credit Developments use the student status verification form released by the IRS in the Revised 8823 Guide. This form, entitled "Exhibit 17-1: Student Status Verification," can be found on page 17-5 of the 8823 Guide. A PDF version of the form is available in Appendix D online at http://www.in.gov/ihcda/2519.htm. This form must be included in all tax credit Tenant files.

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.

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 effective rent being charged or***~~ the income level of the manager. ***However, if the staff unit is being considered common area, no rent can be charged for the unit. Furthermore, 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).***

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 available online at **http://www.in.gov/ihcda/2519.htm**. ***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.***

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) & (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.*** The need for a live-in care attendant must be certified with documentation from a medical professional (i.e. 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.

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 clarified 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 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

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.

Part 3.7 Other Regulations

B. 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 (i.e. if Rural Development, use Rural Development 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: When determining Household size, the Owner/management should not 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). All other individuals, including temporarily absent family members, 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. 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.

C. Reasonable Accommodation / Reasonable Modification

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 online at http://www.in.gov/ihcda/2519.htm).

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, 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 online at http://www.in.gov/ihcda/2519.htm).

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.

Part 4.1 Tenant Qualification & Certification Process

7. ***For Tenants receiving Section 8 assistance, 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.***

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. To correct a document, management should draw one line through the erroneous information and write the correct information to the side. All corrections should be signed 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.

****NOTE: 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 (i.e. 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 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. IHCDA strongly recommends using the sample TIC available online in Appendix D at http://www.in.gov/ihcda/2519.htm. If another TIC is***

being used, management must make certain that their form captures all of the same information as the IHCDA sample TIC.

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 (See Appendix D for a sample Tenant Eligibility Questionnaire). ***An Application must be completed by the Household at initial move-in. A Tenant Eligibility Questionnaire must be completed annually by each adult member of the Household (a separate questionnaire for each adult member).*** 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) and student status.

E. 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
-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 already 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 information for HUD through the online reporting system. However, it is possible that the Owner will be required to complete a separate HUD demographic data collection form for each Development. IHCDA will stay current on further updates from HUD regarding demographic data collection and will announce policies as they become finalized. When the final Implementation Plan is released by HUD, IHCDA will notify its Multi-Family partners through an MFD Notice.

Part 4.3 Tenant Income Verification

4. Public Housing Authority Verification

Once the Owner receives the HUD Form 50058, 50059, 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 Tenant's file. ***The 50058/50059/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 50058/50059 (see Part 4.1 for more information).*** The Owner may not rely on the HUD Form 50058, 50059, or PHA form if a reasonable person in the Owner's position would conclude that the Tenant's income is higher than the Tenant's represented annual income. Additionally, the HUD/PHA form must be signed by both the Tenant and the PHA Representative when used as the income ~~***certification***~~ ***verification***.

2. Child Support Verification

- 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 in the county the person is moving from 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, the Owner must count the full amount of court ordered child support as income.***

Part 4.4 Annual 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-3in 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, etc., are not permitted to be subtracted from the Household's gross annual income to determine income eligibility for RHTC units.

A. Effective Dates of Certifications

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 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 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 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. A new 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.*** The combined Household income must be compared to the maximum allowable income limit in effect at the time and based on actual Household size; and
3. If the combined Household's income is greater than 140% of the current maximum allowable income, a determination must be made as to whether the building or Development will be in violation of Section 42 requirements by adding the new Tenant.

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

Example 1: Mixed-use 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 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 a TIC is completed. 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 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 a TIC is completed. 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 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 add it to the existing Household's certified income to determine if the Household's income has exceeded the 140% income limit. The new resident should sign an independent Tenant Income Certification form and complete all verification documents. ***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.***

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 still below the applicable income limit. 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.

Part 4.7 100% Recertification Exemption

*NOTE: The 2009 Manual referred to the "100% Recertification Waiver." This language has been changed to "100% Recertification Exemption" throughout the 2010 Manual and all related forms. Additionally, the following language was added to Part 4.7 of the Manual:

IHCDA may allow the recertification exemption for buildings financed by the Rural Housing Service (RHS) under the Section 515 program and buildings financed with tax-exempt bonds (50% or more of the aggregate basis of the building and land). To qualify for the exemption, IHCDA must enter into an agreement with RHS or the tax-exempt bond issuer. In this agreement, RHS or the bond issuer must agree to provide information concerning the income and rent of the tenants in the building to IHCDA. IHCDA may assume the accuracy of the information provided without further verification.

Note: 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 and verification of student status on file. The IHCDA monitor will then go back and look at the initial move-in file for the Tenant to verify income eligibility. Thus, the 100% Recertification Exemption puts extra importance on correctly performing move-in certifications.

Part 5.1 Owner and Management Agent Contacts

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 available online at http://www.in.gov/ihcda/2519.htm.*** Changes in Management must be reported to IHCDA via the "Property Management Change Form" in Appendix D available online at **http://www.in.gov/ihcda/2519.htm**.

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.

Part 5.3 Compliance Training Workshops

Owners and property management staff assigned to the Development must receive, prior to issuance of IRS Form 8609, an IHCDA Rental Housing Tax Credit Compliance Training completion certificate within the last year. ***An On-Demand Owner Training is available from IHCDA on a flash drive. The drive contains a training presentation (in PowerPoint 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 2010 Compliance 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 nine trainings throughout the year: three in the spring, three in the summer, and three in the fall. ***Three of the trainings will be the same session as was offered in 2009 ("Qualifying Households I"), and the remaining six sessions will be an advanced training ("Qualifying Households II") for those who already completed the first course in 2009.*** All trainings will take place in the community rooms of existing tax credit Developments throughout the state. The cost will be $75 per participant, which includes registration fees, a workshop manual, a 2010 IHCDA Compliance Manual, and a CD with various tax credit resources. The dates and locations are listed below:

TRAINING TYPE	DATE	CITY	LOCATION
QH I	March 30, 2010	Hammond	Golden Manor
QH II	March 31, 2010	Avon	Preserve of Avon
QH II	April 1, 2010	Washington	Cherry Tree
QH II	July 13, 2010	Elkhart	Water Tower Place
QH I	July 14, 2010	Indianapolis	Brookhaven
QH II	July 15, 2010	West Lafayette	Chapelgate Park
QH II	October 12, 2010	Hartford City	Hartford Place Senior
QH II	October 13, 2010	Indianapolis	Bradford Lake
QH I	October 14, 2010	New Albany	Brookview Glen

Additionally, IHCDA and Compliance Solutions will offer the following special trainings in 2010.

TRAINING TYPE	DATE	CITY	LOCATION
HOME Rental Compliance Workshop	June 9, 2010	Indianapolis	TBD
Physical Inspection Compliance Workshop	June 10, 2010	Indianapolis	TBD
Complying with Tax Credits and Multiple Funding Sources	2 days, TBD	Indianapolis	TBD

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

Part 5.5 Annual Owner Certification of Continuing Compliance

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;

~~***Or***~~

~~***In the case of a Tenant receiving Section 8 housing assistance payments, the 50058 or 50059 from the applicable public housing authority to the Development Owner showing that the Tenant's income does not exceed the applicable Income Limits under the Code have been received.***~~

Beginning 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, recertifications, unit transfers, rent ~~***and income***~~ ***and Utility Allowance changes***, ***household composition updates, and student status updates***. 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.***

A copy of the Annual Certification of Compliance that must be used by all Owners is located in Appendices F (RHTC only) and G (Combined Properties Sources) available online at **http://www.in.gov/ihcda/2519.htm**. ***IHCDA will not accept any Owner Certification that is not in the same format as provided in Appendix F /G or any Owner Certification that is handwritten.***

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

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 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 2010 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:

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 files) when the IHCDA Monitor arrives onsite. The Monitor will randomly choose a selection of 20% of the files for review.***

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

2. Respectfully request that copies of the selected files and documentation either be shipped to IHCDA or hand delivered by the Owner or a Representative of the Owner. ~~**NOTE: For in-house audits, IHCDA prefers to receive electronic files rather than paper "hard copies." Electronic documents should be submitted in PDF format on a CD-ROM, not via email attachments. Each requested tenant file should be submitted as a separate PDF file and labeled as the Unit #.**~~ ***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.***

C. Prior to performing an onsite Development Inspection, IHCDA will:

~~***1. Notify the Owner and/or management company, at the beginning of the calendar year, of the date and approximate time of the inspection.***~~

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.***

Part 5.10 Amendments to Compliance Monitoring Procedures

The 2010 Compliance Manual includes major amendments/additions in the following areas. Please make certain to carefully read these sections of the Manual and to contact the IHCDA compliance staff with any questions.

Using the Property Ownership Change Form- See Section 2, Part 2.2 I
Violations of the Rent Limit- See Section 3, Part 3.3 E
Mandatory Student Status Verification Form - See Section 3, Part 3.6 B
Modification Fee charged for Staff Unit Requests- See Section 3, Part 3.6 D
Clarification on Home Based Offices- See Section 3, Part 3.6 I
Clarification on Foster Children and Adults- See Section 3, Part 3.6 J
Clarification on Special Needs Populations- See Section 3, Part 3.6 K
Using the TIC Form in all files- See Section 4, Part 4.1
Owner must collect demographic data for all household members- See Section 4, Part 4.2 F
HUD Form 50058/50059 does not replace the TIC- See Section 4, Part 4.3 B-4
No advance notice of which files will be monitored- See Section 5, Part 5.6 A
IHCDA will no longer accept tenant files in PDF format- See Section 5, Part 5.6 B
Casualty Loss must be reported to IHCDA on Form K- See Section 5, Part 5.12
IHCDA Physical Inspection Guide released- Available online in Appendix I

Part 5.11 Extended Use Policy

B. Reporting Requirements

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

1) The Owner will submit the Extended Use Annual Owner Certification for every year of the Extended Use Period annually by January 31.

2) The 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 ~~***Tenant***~~ ***Project*** Based Section 8 funding. (See Part 5.11 D6).

Part 5.12 Casualty Loss

Casualty loss information must be reported ***via "Casualty Loss Form K" (see Appendix I available online at http://www.in.gov/ihcda/2519.htm).*** The form should be mailed to:

Section 7 - Glossary

*The following terms were added to the glossary:

100% Tax Credit Project
Earned Income
Educational Organization
Empty Unit
Foster Adult
Foster Children
Guest
Live-in Care Attendant/Live-in Aide
Mixed Use Project
Over-income Unit
Referral Agreement
Special Needs Populations
Transient Use
Unearned Income
Vacant Unit

Indiana Rental Housing Tax Credit Compliance Manual

Preface

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 online in Appendix A at **http://www.in.gov/ihcda/2519.htm**.

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.

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, available online at **http://www.in.gov/ihcda/2519.htm**).

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.

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 selected 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, Part 5.11.

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

Developments receiving a credit allocation prior to January 1, 1990 did not sign an Extended Use Agreement, and 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 (Revenue Ruling 92-79).

The one exception to post-1989 eligibility requirements is in calculation of rents. The rent calculation is based on 1.5 persons per bedroom. However, eligibility for occupancy is still based on the actual number of people occupying that unit.

Section 2 – Responsibilities

The entities/persons involved in the compliance of the RHTC Program are IHCDA, the Development Owner, and the Management Company. 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, 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 available online at **http://www.in.gov/ihcda/2519.htm**.

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 property. 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 not 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 six (6) years after its filing of an IRS Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance.

G. Conduct Training

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

The Owner must attend an IHCDA RHTC Compliance Training or other RHTC training at least once every three (3) years thereafter. For more information on compliance trainings, see Section 5, Part 5.3 of the manual and the IHCDA compliance webpage at **http://www.in.gov/ihcda/2519.htm**

IHCDA will conduct or arrange compliance trainings and will disseminate information regarding the dates and locations of such trainings. In addition, IHCDA 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 have provided 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 RHTC 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 RHTC 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 & State 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>

The records must include the following:

- 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;
- The rent charged on each residential rental unit in the building and the applicable Utility Allowance;
- 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 income certification of each eligible person in the Household;
- Documentation to support each eligible Tenant'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.

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**).

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.

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 available online at **http://www.in.gov/ihcda/2519.htm**.

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 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 available online at **http://www.in.gov/ihcda/2519.htm**.

In addition, the Owner must notify IHCDA immediately in writing of any changes in 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 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.

Beginning 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, recertifications, unit transfers, rent and utility allowance changes, household composition updates, and student status updates. 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, beginning in 2009 it is **mandatory that all Annual Owner Certification Rental Reports be submitted electronically** using the Indiana Housing Online Management website for developments that contain more than ten (10) IHCDA assisted units (i.e. HOME, CDBG, Tax Credits, and Development Fund/Trust Fund). **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.**

K. Training onsite personnel

The Owner must make certain that the onsite management knows, understands, and complies with all Code and State applicable rules, regulations, and policies governing the Development.

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 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 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 as to what the noncompliance issue was, the date that it was corrected, and what actions were 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 (i.e. Final Application for rental housing financing, Declaration of Extended Low-Income Housing Commitment, copies of the Form 8609 for each building, QAP, 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.

2.3 Responsibilities of the Management Company & Onsite Personnel

The Management Company 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. As of 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).

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.

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.

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 Development 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 the RHTC

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. low-income units to total units (whether occupied or not) in a building; or

   b. 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 RHTCs 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 available online at **http://www.in.gov/ihcda/2519.htm**.

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 Tenant 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 take the RHTC for a property in the initial year when, for example, only 80% of the units are rented to RHTC eligible Tenants, 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 Tenants.

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 available online at **http://www.in.gov/ihcda/2519.htm.**

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. At least 20% of available rental units in the Development must be rented to Households with incomes not exceeding 50% of Area Median Income adjusted for family size. ("20/50" Election)

2. At least 40% of available rental units in the Development must be rented to Households with incomes not exceeding 60% of Area Median Income adjusted for family size. ("40/60" Election)

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). **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 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. These Development Owners must also comply with those elections.

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/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 what federal income restriction these units must be set at (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. Maximum Income Limits

Income Limits for qualifying Tenants depend on the Minimum Set-Aside election the Owner has chosen. Qualifying Tenants in Developments operating under the "20/50" election may not have incomes exceeding 50% of Area Median Income adjusted for family size. Qualifying Tenants in Developments operating under the "40/60" election may not have incomes exceeding 60% of Area Median Income adjusted for family size.

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 Indiana county on an annual basis. Upon receipt of this information, IHCDA will post the new Annual Income Limits and corresponding rent limits on its website or mail to agencies by request. This information is provided by

IHCDA only for the Owner's convenience as a courtesy. However, it is the responsibility of the Developer/Owner, not IHCDA, to verify its accuracy.

In 2009, HUD published "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. Income and Rent Limits are provided in Appendix E available online at **http://www.in.gov/ihcda/2519.htm.**

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

If the Household income of a qualifying unit increases above 140% of the income 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 clarification of the 140% Rule/Next Available Unit Rule).

Part 3.3 Maximum Gross Rent

The maximum gross rent is the greatest amount of rent, including a Utility Allowance for Tenant paid utilities (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 + Utility Allowance + Any Non-optional Charges

A. 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. Allowable Fees and Charges

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

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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.

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Accordingly, redecorating fees, recertification fees, and any other type of fees (regardless of name or characterization) that are charged to the Tenant for services required as a condition of occupancy, may be charged, but must be included in the calculation of gross rent.

NOTE: If after occupying a unit, an eligible Tenant cannot pay the rent, the Owner has the same legal rights in dealing with the income-eligible Tenant as with any other Tenant.

Example: Charges for paying with credit/debit card
Some properties 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 alternate methods of paying rent that do not include a fee (i.e. cash, check, etc.). In this scenario, the credit/debit machine would be an optional service offered for the tenant's 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.

C. Section 8 Rents

Gross rent does not include any rental assistance payments 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. 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 rental assistance, 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.

D. Amenities and Services

Charges for any mandatory amenities and/or services, (such as garages, carports, meals, laundry, rental insurance, and housekeeping) must be counted as part of the gross rent for RHTC units. Charges for optional services other than housing do not have to be included in gross rent, but they truly must be optional. Additionally, any services the Tenant chooses to pay for that are provided by the Development 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 available at **http://www.in.gov/ihcda/2519.htm**).

Moreover, charges for the use of any facility that is in the property's Eligible Basis are not permitted. For example, a Development may not charge a Tenant for the use of a clubhouse or swimming pool if it is included in Eligible Basis.

(See also, Part 3.3 B: Allowable Fees and Charges)

E. Violations of the Rent Limit

The Revised 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).

Furthermore, the IRS has clarified in the 8823 Guide that **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 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.**

Part 3.4 Utility Allowances

The maximum gross rent includes the amount of tenant-paid utilities. Utilities include heat, electric, 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. 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. 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 online in Appendix A at **http://www.in.gov/ihcda/2519.htm**), which list the following different sources of Utility Allowances for RHTC developments:

A. Rural Development (RD) Financed Developments: Use the applicable Rural Development Utility Allowances. If a property has both RD and HUD financing, use the RD Utility Allowance.

B. HUD Development Based Subsidy Regulated Buildings (i.e. Project Based Rental Assistance): Use the applicable HUD approved Utility Allowances.

C. HUD Assisted Units (i.e. Tenant Based Rental Assistance): For those individual units occupied by residents who receive HUD tenant based rental assistance, use the applicable HUD Utility Allowance as given by the Public Housing Authority (PHA) administering the assistance.

D. 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.

-Use the county specific Utility Allowance Schedule from IHCDA's website (http://www.in.gov/ihcda/3102.htm).

-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.

-Options E, F, or G as described below

E. 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 L online at **http://www.in.gov/ihcda/2519.htm**). Along with the request letter, the Development must complete and submit the "IHCDA Tenant Usage Data Form" (available in Appendix L online at **http://www.in.gov/ihcda/2519.htm**). This usage data form must include information for 30% 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 12 months of consumption. To be included in the estimate, a unit must have at least 44 weeks of continuous consumption data (i.e. the unit cannot have been vacant for more 8 weeks of the year).

Example: A development has 40 total low income units with 20 one bedroom units and 20 two bedroom units. The sample must include 30% of the one bedroom units (6 units) and 30% of the two bedroom units (6 units).

The request must be made sixty (60) days prior to the ninety (90)-day 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.

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

F. 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 ninety (90)-day 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.

G. Energy Consumption Model: The Owner may use an independent licensed engineer or qualified professional approved by IHCDA (a list of approved engineers will be maintained on IHCDA's website at **http://www.in.gov/ihcda/2519.htm** under Appendix L) to calculate an energy consumption model. 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 L at **http://www.in.gov/ihcda/2519.htm**).

The consumption estimate must take into effect the types of appliances, building location, building orientation, design and materials, mechanical systems, and unit size. 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 L at **http://www.in.gov/ihcda/2519.htm**). The request must be made sixty (60) days prior to the ninety (90)-day 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.

*NOTE: 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.

Contact the appropriate agency or department to request current Utility Allowance information.

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 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 update by 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 HUD approved Utility Allowance must now be used);
- 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. Vacant Units

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 never-occupied units (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 requirement (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

If the income of the occupants of a qualifying unit increases to more than 140% of the income limit, 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 more than 140% of the income 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. 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 Tenant's income and the qualifying income for the location, rather than only on the date the Tenant 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."

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).

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, <u>all</u> 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 1:
A property 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 140% of the income 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 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%.

Example 2:
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 140% of the income 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.

Example 3:
A property 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 140% of the income 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 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.

Note: 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

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's file and the Tenant'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 must be no greater than 140% of the applicable income 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 a 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. 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

Household composition may change after the Tenant 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 months. If so, the composition change and any subsequent changes in estimated income should be reflected on the 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 Tenant 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

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 eligible for RHTCs.

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, 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 does apply 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 RHTC income limits. The number of credit hours and the definition of full-time are defined by the school the student attends.

There are five exceptions to the full-time student restriction. Full-time student Households that are income eligible and in which at least one of the Household members satisfies 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 the Household meets one of the following five exceptions:

1. 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.

2. The Household consists 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.

   Required Documentation: Copy of the most recent tax return.

3. 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)].

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

4. 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.

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

5. 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.

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 at least five 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 one Household member who meets one of the student exceptions 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).

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.

Beginning in 2010, IHCDA will require that all tax credit Developments use the student status verification form released by the IRS in the Revised 8823 Guide. This form, entitled "Exhibit 17-1: Student Status Verification," can be found on page 17-5 of the 8823 Guide. A PDF version of the form is available in Appendix D online at http://www.in.gov/ihcda/2519.htm. This form must be included in all tax credit Tenant files.

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.

C. Unborn Children and Child Custody

An Owner can count an unborn child 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.** Furthermore, 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. **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. IHCDA must approve the use of all manager/employee units.**

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 available online at **http://www.in.gov/ihcda/2519.htm**. 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 rent-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 a LIHTC 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. Unit should be listed as "Vacant" on the Annual Owner Certification of Compliance and the Rent Roll, and not listed as "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 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) & (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. The need for a live-in care attendant must be certified with documentation from a medical professional (i.e. 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.

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 transient if the initial lease term is less than six (6) months. There is an exception to this rule for single room occupancy (SRO) Developments assisted under the Stewart B. McKinney Act.

SRO housing must have a minimum lease term of one month. Federal rules allow for month-by-month leases for the following types of housing:

1. SRO units in Developments receiving McKinney Act and Section 8 Moderate Rehabilitation Assistance;
2. SRO units intended as permanent housing and not receiving McKinney Act assistance; or
3. Units that 1) contain sleeping accommodations and kitchen and bathroom facilities; 2) are located in a building which 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.

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. 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 online at **http://www.in.gov/ihcda/2519.htm**.

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 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

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.

Part 3.7 Other Regulations

A. Fair Housing / General Public Use

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 handicap [the seven (7) protected classes under the Fair Housing Act]. Additionally, Owners cannot refuse to accept a prospective Tenant based solely on the fact that the applicant holds a Section 8 rental voucher or certificate. All Owners, managers, and staff members should be familiar with both state and federal civil rights and fair housing laws. In addition, all RHTC properties with five (5) or more HOME units must have a HUD approved 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 placed-in-service. In addition, Affirmative Fair Housing Marketing Plans must be 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 upon approval by HUD.

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

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).

IHCDA strongly encourages Owners and management companies to provide Fair Housing and Equal Opportunity training for <u>all staff, including maintenance staff</u>, 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. 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 (i.e. if Rural Development, use Rural Development 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: When determining Household size, the Owner/management should not 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). All other individuals, including temporarily absent family members, 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. 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.

C. Reasonable Accommodation / Reasonable Modification

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 online at **http://www.in.gov/ihcda/2519.htm**).

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, 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 online at **http://www.in.gov/ihcda/2519.htm**).

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 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 of this manual (available online at **http://www.in.gov/ihcda/2519.htm**). 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

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 Questionnaire signed by the Tenant for every year the Tenant resides at the property, including certification of assets and disposal of assets, if applicable;
3. Tenant Income Certification***** signed by the Tenant for every year the Tenant resides at the property with 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);
4. Verifications of all income and asset sources noted on the Tenant Eligibility Questionnaire for all years;
5. Any other documentation verifying the Tenants' eligibility (i.e. student status verification, unborn child self-certification, joint custody of a child documentation, all management clarification documents, etc.);
6. Initial and subsequent leases and all lease addendums executed by the Tenant and Owner; and
7. For Tenants receiving Section 8 assistance, 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.

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. To correct a document, management should draw one line through the erroneous information and write the correct information to the side. All corrections should be signed 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.

***NOTE: 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** (i.e. 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 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. IHCDA strongly recommends using the sample TIC available online in Appendix D at **http://www.in.gov/ihcda/2519.htm**. If another TIC is being used, management must make certain that their form captures all of the same information as the IHCDA sample TIC.

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 (See Appendix D at **http://www.in.gov/ihcda/2519.htm** for a sample Tenant Eligibility Questionnaire). An Application must be completed by the Household at initial move-in. A Tenant Eligibility Questionnaire must be completed annually by each adult member of the Household (a separate questionnaire for each adult member). 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) 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, Social Security number, 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
-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 already 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 information for HUD through the online reporting system. However, it is possible that the Owner will be required to complete a separate HUD demographic data collection form for each Development. IHCDA will stay current on further updates from HUD regarding demographic data collection and will announce policies as they become finalized. When the final Implementation Plan is released by HUD, IHCDA will notify its Multi-Family partners through an MFD Notice.

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. After this time, if the Tenant has not yet moved in or recertified**,** a new verification must be obtained.

B. Methods of Verification

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

1. Third-Party Written 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, available online at **http://www.in.gov/ihcda/2519.htm**. 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. 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
d) Probability and effective date of any increase during the next twelve (12) months.

Note: Owners must send verification forms directly to the third-party, not through the applicant.

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.
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.

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 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.

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. Verbal Verification

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.

4. Public Housing Authority Verification

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 Tenant'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, HUD Form 50059, or the IHCDA approved 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 Tenant's move-in date or recertification date.

Once the Owner receives the HUD Form 50058, 50059, 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 Tenant's file. **The 50058/50059/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 50058/50059 (see Part 4.1 for more information).** The Owner may not rely on the HUD Form 50058, 50059, or PHA form if a reasonable person in the Owner's position would conclude that the Tenant's income is higher than the Tenant's represented annual income. Additionally, the HUD/PHA form must be signed by both the Tenant and the PHA Representative when used as the income verification.

C. Verification Transmittal

Applicants should be asked to sign two (2) copies of each verification form. The second copy may be used if the first request has not been returned from the source in a timely manner.

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

For 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, etc., see HUD Handbook 4350.3 CHG-3, specifically "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.

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 entitled to receive child support, but has not received a payment within the previous year, verification from the agency administering the child support payments in the county the person is moving from 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, 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), the Owner may average the payments received over the previous year to project anticipated income for the next twelve (12) months.

E. Differences in Reported Income

The management agent should give the applicant 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

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 (online at **http://www.in.gov/ihcda/2519.htm**). 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, etc., are not permitted to be subtracted from the Household's gross annual income to determine income eligibility for RHTC units.

A. 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.

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.

If net family assets exceed $5,000, asset income (which must be included as part of Household income) will be the greater of: a) actual asset income; or b) net family assets times the HUD approved passbook rate for the area (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 $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 (i.e. annual interest rate). This form must be completed by the Household for the initial Tenant Income Certification and for each subsequent recertification**.** However, the Owner may not rely on the low-income Tenant's signed, sworn statement of annual income from assets if a reasonable person in the Owner's position would conclude that the Tenant'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 yearly income from assets. The yearly income from assets must be included as part of total annual Household income.

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.

B. 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, the Household cannot be certified for a RHTC unit.

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 Tenants (those who occupied the building when it was acquired) must be documented as having been income-eligible by no later than 120 days after the date of acquisition using the income limits in effect on the day of acquisition. The effective date of the Tenant Income Certification is the date of acquisition.

Tenants who moved 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 verified and added to the current TIC. If income sources have not changed, it will not be necessary to complete new third-party verifications.

3. If the Household is over-income based on current income limits, the Next Available Unit Rule must be applied.

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.

B. RHTC Developments Involving Rehabilitation Only

If a building is occupied during rehabilitation, all existing Tenants (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. Tenants who moved 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. 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.

D. Mixed Income Developments

In Developments that have less than a 100% Applicable Fraction, if a Tenant is designated as market rate at the time of actual move-in to the unit, but later is re-designated as an RHTC Household, the Tenant must be certified as a RHTC Household at the time of re-designation.

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 the Owner of any changes of income, student status, or Household composition that may occur between the date the Tenant signs the Certification and the effective date of the Certification.

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 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 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. A new 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. The combined Household income must be compared to the maximum allowable income limit in effect at the time and based on actual Household size; and

3. If the combined Household's income is greater than 140% of the current maximum allowable income, a determination must be made as to whether the building or Development will be in violation of Section 42 requirements by adding the new Tenant.

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 a TIC is completed. 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 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).

<u>Example 2: 100% Tax Credit 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, 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 a TIC is completed. 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 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 <u>of the new resident</u> 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 add it to the existing Household's certified income to determine if the Household's income has exceeded the 140% income limit. The new resident should sign an independent Tenant Income Certification form and complete all verification documents. 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.

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.

<u>Example 1: Mixed-use Project</u>
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.

<u>Example 2: 100% Tax Credit Project</u>
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.

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 of this manual. 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 Development's IRS Form(s) 8609), and the verification of the Tenant's income was performed more than 120 days prior to the placed-in-service date, the Tenant must be recertified on the placed-in-service date. **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, i.e., birth, death, marriage, divorce, or a family member or roommate vacates the unit, 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 waive 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, **management must still verify Household composition and student status 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, available online at **http://www.in.gov/ihcda/2519.htm**.

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 waiver applies on a project level.

100% tax credit projects with HOME, Trust Fund, or CDBG funds 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: 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 the HOME program rules have not changed in regards to recertification requirements. The 40 tax credit only units may follow the 100% Recertification Exemption Policy.

IHCDA may allow the recertification exemption for buildings financed by the Rural Housing Service (RHS) under the Section 515 program and buildings financed with tax-exempt bonds (50% or more of the aggregate basis of the building and land). To qualify for the exemption, IHCDA must enter into an agreement with RHS or the tax-exempt bond issuer. In this agreement, RHS or the bond issuer must agree to provide information concerning the income and rent of the tenants in the building to IHCDA. IHCDA may assume the accuracy of the information provided without further verification.

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 and verification of student status on file. The IHCDA monitor will then go back and look at the initial move-in file for the Tenant to verify income eligibility. Thus, the 100% Recertification Exemption puts extra importance on correctly performing move-in certifications.

Note: IHCDA encourages the Owner/Development 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 moves into the unit. Leasing guidelines are listed below.

A. Lease Requirements

At a minimum, the lease 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 and monthly allowance being provided;
7. The use of the premises;
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; and

9. Language which addresses income decreases, income increases, 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 eligiblity.

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

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.

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;

2. Single Room Occupancy (SRO) units intended as permanent housing and not receiving McKinney Act assistance;

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 which 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, those Tenants must have leases with at least six (6) month terms, unless the building's primary use is described in Exemption 4 above. **Tax credit units may never be used as emergency shelters.**

**Note: Leases must reflect the correct date of move-in, and/or the date the Tenant takes possession of the unit.

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 Development 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

IRS Section 42 regulations state that there must be just cause for Eviction or Termination of Tenancy (i.e. 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.

For more information, see Rev. Proc. 2005-37 – Safe Harbor in Appendix A available online at **http://www.in.gov/ihcda/2519.htm**.

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, state, and local 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 Credit 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 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 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 available online at **http://www.in.gov/ihcda/2519.htm**. Changes in Management must be reported to IHCDA via the "Property Management Change Form" in Appendix D available online at **http://www.in.gov/ihcda/2519.htm**.

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 (i.e. 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. 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 Monitoring 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. 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**.

Owners and property management staff assigned to the Development must receive, prior to issuance of IRS Form 8609, an IHCDA Rental Housing Tax Credit Compliance Training completion certificate within the last year. An On-Demand Owner Training is available from IHCDA on a flash drive. The drive contains a training presentation (in PowerPoint 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 2010 Compliance 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 nine trainings throughout the year: three in the spring, three in the summer, and three in the fall. Three of the trainings will be the same session as was offered in 2009 ("Qualifying Households I"), and the remaining six sessions will be an advanced training ("Qualifying Households II") for those who already completed the first course in 2009. All trainings will take place in the community rooms of existing tax credit Developments throughout the state. The cost will be $75 per participant, which includes registration fees, a workshop manual, a 2010 IHCDA Compliance Manual, and a CD with various tax credit resources. The dates and locations are listed below:

TRAINING TYPE	DATE	CITY	LOCATION
QH I	March 30, 2010	Hammond	Golden Manor
QH II	March 31, 2010	Avon	Preserve of Avon
QH II	April 1, 2010	Washington	Cherry Tree
QH II	July 13, 2010	Elkhart	Water Tower Place
QH I	July 14, 2010	Indianapolis	Brookhaven
QH II	July 15, 2010	West Lafayette	Chapelgate Park
QH II	October 12, 2010	Hartford City	Hartford Place Senior
QH II	October 13, 2010	Indianapolis	Bradford Lake
QH I	October 14, 2010	New Albany	Brookview Glen

Additionally, IHCDA and Compliance Solutions will offer the following special trainings in 2010.

TRAINING TYPE	DATE	CITY	LOCATION
HOME Rental Compliance Workshop	June 9, 2010	Indianapolis	TBD
Physical Inspection Compliance Workshop	June 10, 2010	Indianapolis	TBD
Complying with Tax Credits and Multiple Funding Sources	2 days, TBD	Indianapolis	TBD

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

***Note: While participation is usually voluntary, IHCDA compliance staff may at their own discretion mandate attendance for those management personnel/companies that exhibit trends in noncompliance and/or are issued non-corrected 8823's.**

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 (RHTC only) or G (Combined Properties) available online at **http://www.in.gov/ihcda/2519.htm**);
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 (RHTC only) or G (Combined Properties) available online at **http://www.in.gov/ihcda/2519.htm**);
5. Property Directional Form. See Appendix F (RHTC only) or G (Combined Properties) available online at **http://www.in.gov/ihcda/2519.htm**); and
6. If the property has five (5) or more HOME units, a copy of the Affirmative Fair Housing Marketing Plan submitted to HUD by the Owner must be submitted to IHCDA. Once the plan has been approved by HUD, a copy of the approved plan must be submitted to IHCDA (See Appendix G available online at **http://www.in.gov/ihcda/2519.htm**). The Affirmative Fair Housing Marketing Plan must be approved by HUD and is a requirement for all RHTC Developments regardless of the placed-in-service date of the Development. Therefore, all Developments that are in their Compliance Periods must have a HUD approved Affirmative Fair Housing Marketing Plan.

Part 5.5 Annual Owner Certification of Continuing Compliance

The Development Owner must annually certify to the Authority, on or before January 31 of each year (the "Owner Certification of Compliance") for the preceding twelve (12) month period. 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 for the Development.

6. If the Development has benefited from HOME funds, the amount of HOME funds received from IHCDA and from other sources, the source of the HOME funds, and the affordability period associated with the HOME funds.

7. The unit types, gross rents, Utility Allowance, and actual rents.

8. 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.

9. 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.

10. 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 of the building in the Development (as defined in the Code) and documentation setting forth the nature and amount of such a change (i.e. 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.

11. 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.

12. 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.

13. 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 Development 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).

14. The Development has at least one smoke detector on each level of the rental dwelling unit.

15. There have been no changes in entity ownership or if there have been, IHCDA has been provided with all details and all necessary documentation.

16. 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.

17. The Development is otherwise in compliance with the Code, including any Treasury Regulations pursuant thereto, and applicable laws, rules, regulations, and ordinances.

In addition, the Owner must submit a Rental Housing Tax Credit Development Compliance Report {See Appendices F (RHTC only) and G (Combined Properties Sources) available online at **http://www.in.gov/ihcda/2519.htm**} for each building in the Development, which must present a detailing of all Tenants living in the building from January 1 through December 31 of the certifying year.

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.

Beginning 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, recertifications, unit transfers, rent and utility allowance changes, household composition updates, and student status updates. 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, beginning in 2009 it is **mandatory that all Annual Owner Certification Rental Reports be submitted electronically using the Indiana Housing Online Management website** for developments that contain more than ten (10) IHCDA assisted units (i.e. HOME, CDBG, Tax Credits, and Development Fund/Trust Fund). Note: This process will eliminate the option of importing the annual beneficiary report from an Excel spreadsheet.

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 Certification and the Report, 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.

A copy of the Annual Certification of Compliance that must be used by all Owners is located in Appendices F (RHTC only) and G (Combined Properties Sources) available online at **http://www.in.gov/ihcda/2519.htm**. **IHCDA will not accept any Owner Certification that is not in the same format as provided in Appendix F /G or any Owner Certification that is handwritten.**

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, 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 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 2010 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.** ***NOTE:*** Physical inspection is not limited to vacant units. Staff will ask to inspect specific units whether the unit is occupied or not.
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 files) when the IHCDA 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.**
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.

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).

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 legible work orders, receipts, and/or invoices, 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 new Physical Inspection Compliance Guide (Appendix I). Both appendixes are available online at **http://www.in.gov/ihcda/2519.htm**.

Part 5.7 Noncompliance

Noncompliance is defined as a period of time a Development, specific building, or unit is ineligible for RHTC 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 year a Development is placed-in-service, 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 31. 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 and 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 on the RHTC Development Information Report; 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. Correction Fees

A charge of one hundred dollars ($100.00) per unit/common area 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 or a physical inspection.

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

A charge of two hundred dollars ($200.00) per common area and a maximum fee of $15,000 per development will be imposed for any physical common area re-inspections required 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

	Per Unit Fee	Maximum Fee Per Development
File re-inspection	$100	$15,000
Physical re-inspection	$200	$15,000

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 owner/management representative was not available onsite at the designated time and location.

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 the following to IHCDA:

1. A copy of all sale documents;
2. The newly amended and stated partnership agreement; and
3. 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 of available online at **http://www.in.gov/ihcda/2519.htm**). In the absence of a valid bond, Owners likely will recapture the accelerated portion of the Credit using Form 8611 (see Appendix B available online at **http://www.in.gov/ihcda/2519.htm**).

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 available online at **http://www.in.gov/ihcda/2519.htm**) 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 2010 Compliance Manual includes major amendments/additions in the following areas. Please make certain to carefully read these sections of the Manual and to contact the IHCDA compliance staff with any questions.

Using the Property Ownership Change Form- See Section 2, Part 2.2 I
Violations of the Rent Limit- See Section 3, Part 3.3 E
Mandatory Student Status Verification Form - See Section 3, Part 3.6 B
Modification Fee charged for Staff Unit Requests- See Section 3, Part 3.6 D
Clarification on Home Based Offices- See Section 3, Part 3.6 I
Clarification on Foster Children and Adults- See Section 3, Part 3.6 J
Clarification on Special Needs Populations- See Section 3, Part 3.6 K
Using the TIC Form in all files- See Section 4, Part 4.1
Owner must collect demographic data for all household members- See Section 4, Part 4.2 F
HUD Form 50058/50059 does not replace the TIC- See Section 4, Part 4.3 B-4
No advance notice of which files will be monitored- See Section 5, Part 5.6 A
IHCDA will no longer accept tenant files in PDF format- See Section 5, Part 5.6 B
Casualty Loss must be reported to IHCDA on Form K- See Section 5, Part 5.12
IHCDA Physical Inspection Guide released- Available online in Appendix I

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 for IHCDA INFO at **http://www.in.gov/ihcda/2347.htm**.

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 at **http://www.in.gov/ihcda/2519.htm**).

2) The development's Annual Owner Certifications, Onsite Inspections, and File Monitorings must be free of noncompliance for the three (3) consecutive years leading up to Year 15 (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: 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: A Development is issued an 8823 in Year 12. In Year 13, the noncompliance is resolved and a corrected Form 8823 is issued. Since the noncompliance was found 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.

Upon approval of the request, the Owner must have the Declaration of Extended Low-Income Housing Commitment amended to include the Extended Use Policy provisions. The cost of recording the Declaration of Extended Low-Income Housing Commitment will be incurred by the Owner.

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 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.

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).

5) The Owner will submit the Affirmative Marketing plan for the development annually.

C. Record Retention Requirements

1) 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 units must remain both rent and income restricted at the state set asides.

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) The 140%/ Next Available Unit Rule will not apply during the Extended Use Period.

4) 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.

5) The Full-time Student Rule will not apply during the Extended Use Period.

6) 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 twenty (20) units or less, then a desktop monitoring will occur. If 10% of the units equals twenty-one (21) 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.

7) 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 Projected Based Section 8 Inspection should be submitted to IHCDA within thirty (30) days of receipt.

8) 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).

9) Annual recertifications require only the completion of the IHCDA "Extended Use Annual Household and Rent Update Form" (available in Appendix D at **http://www.in.gov/ihcda/2519.htm**). This means that income verifications will only be required at initial move-in during the Extended Use Period.

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 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 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 available online at **http://www.in.gov/ihcda/2519.htm**). 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 RHTC because of failure to satisfy RHTC 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.
D. An ineligible Household resides in a RHTC Unit.

Part 6.2 Consequences

If the Development is out of compliance, a penalty could apply to all units in the Development. Penalties include:

A. Additional fees paid to IHCDA
B. Recapture of the accelerated portion of the RHTC 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 IRS via IRS Form 8823;
F. Negative points on any subsequent RHTC reservation applications;
G. Rejection of future applications; and/or
H. Repayment of rent overages.

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 Certification, 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 (i.e. copies of Form 8823, Form 8609, etc.) for specific Developments to more than one contact person in an ownership entity (usually the general partner) for each Development. 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 LIHTC 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 LIHTC 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 as to what the noncompliance issue was, the date that it was corrected, and what actions were 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 which 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 the Owner to cure the noncompliance. 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, who will in turn report it 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 available online at **http://www.in.gov/ihcda/2519.htm**) 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 RHTC due to noncompliance with program requirements.

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

IRS Form 8611 (see Appendix B available online at **http://www.in.gov/ihcda/2519.htm**) is used by taxpayers who must recapture RHTC previously claimed. 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 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 Tenant'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 unit continues to be rent-restricted and the next available unit of comparable or smaller size in the Development is rented to a qualified Low-income Household.

20%/50% Test: 20% or more of the residential units must be rented to Households with aggregate Gross Income of 50% or less of the area median Gross Income adjusted for family size.

40%/60% Test: 40% or more of the units must be rented to Households with aggregate Gross Income of 60% or less of the area median Gross Income adjusted for family size.

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

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, the 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 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.

Applicant: Any owner, principal and participant, including any affiliates associated with a Development that is seeking an award of RHTCs.

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.

Assets: Items of value, other than necessary and personal items, which are considered in determining the 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)

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.

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: 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 that is expected to be received by the Tenant(s) including Imputed Income.

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 who develops or prepares a real estate site for residential use to be 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, or 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 educational organization is one that normally maintains a regular faculty and curriculum, and normally has 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 or correspondence schools. This 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 Tenant. 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, a new written third-party verification must be obtained. A verification must be 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 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 Tenant's original occupancy of the unit.

Employment Income: Wages, salaries, tips, commission, bonuses, overtime pay, or 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 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.

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.

Gross Income: See Annual Household Income.

Gross Rent: Maximum amount that a Tenant can pay for rent before deducting a utility allowance. **Note:** The Owner must be aware of the year in which the RHTC allocation was made and the specific guidelines that refer to the calculation of gross rent for those years, i.e. 1987, 1988, and 1989 RHTC allocations base gross rent on the actual number of persons residing in the unit.

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.

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

IHCDA: The Indiana Housing and Community Development Authority

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

Income Limits: Maximum incomes as published by HUD for Developments giving the maximum income limits per unit for low-income (40%, 50% or 60% of median) units.

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 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.

Inspection: A review of a Development which may be made annually by IHCDA or its agent, which includes 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 this 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, know at 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 limitation applicable under subsection 42(g)(1) to the Development of which such building is part;
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. If the unit is considered a rental unit, the resident manager would need to be income qualified.

Maximum Chargeable Rent (Net Rent): Gross Rent less Utility Allowance paid by the Tenant 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/**).

Narrative Summary: A description written by the Applicant of the need for the Development within the community and 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's needs that the Development will help meet
Community support and/or opposition for Development
The constituency served by the Development
Development quality
Development location
Effective use of resources
Unique features
Services to be offered
Address Allocation Plan points **MUST** include pages 3-9 of Form- A (the Application).

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.

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.

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.

Qualified Allocation Plan: The plan developed and promulgated from time to time by IHCDA, which sets out the guidelines and selection criteria by which IHCDA allocates RHTC.

Qualified Basis: The portion of the Eligible Basis attributable to low-income rental units. It is 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.

Note: This is the lesser of the Applicable Fraction/Occupancy Percentage:

a. the proportion of low-income units to all residential rental units; or
b. the proportion of floor space of the low-income units to the floor space of all residential rental units.

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, On-site Inspections, and 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.

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.

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

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.

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.

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 individual who is, or will be, 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 (as defined by the organization) at an educational organization with regular facilities and students. An educational organization is one that normally maintains a regular faculty and curriculum, and normally has 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 or correspondence schools. This does include online educational institutions.

Tax Credit: 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, Annual Income Recertification, utility schedules, rent records, Lease and Lease addendums. Any authorized representative of IHCDA or the Department of Treasury shall be permitted access to these files upon receipt by Development Owner or Management Company of prior written notice of not less than two (2) calendar days.

Transient Use: An RHTC unit is considered as transient use and is 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.

Utility Allowance: The amount of utilities for a particular unit, as set by a Utility Allowance 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 that is collected in order to corroborate the accuracy of information about income provided by applicants to a Development.