



# Low-Income Housing Tax Credit (LIHTC) Compliance Manual

Guidance manual for compliance with the applicable laws, rules, regulations, and policies that govern Low-Income Housing Tax Credit (LIHTC) properties

*Reference guide for the  
Administration of LIHTC  
developments*

SOUTH CAROLINA STATE HOUSING  
FINANCE AND DEVELOPMENT AUTHORITY

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## INTRODUCTION

***The mission of the South Carolina State Housing Finance and Development Authority (“SC Housing”) is to create quality affordable housing opportunities for the citizens of South Carolina. We expect to create and maintain a positive work culture that reinforces our mission, encourages innovation, and is based on a spirit of cooperation and teamwork. We will work to improve customer service and enhance employee performance by constantly reviewing processes and using technology. SC Housing will strive to develop mutually supportive relationships that expand our ability to provide affordable housing while enhancing the value of investments. We will actively seek new and innovative ideas to improve affordable housing opportunities throughout the State.***

Established under the Tax Reform Act of 1986 and codified as Section 42 of the Internal Revenue Code, the Low-Income Housing Tax Credit Program (LIHTC) was created by Congress to promote the development of affordable housing for low-income individuals and families. It replaced other federal tax incentives for the production of affordable rental housing. Rather than a direct federally-appropriated subsidy, low-income housing credits encourage investment of private capital by providing a tax credit to reduce an investor’s federal tax liability. These federal income tax credits provide the private housing development community with incentive to develop affordable housing by offsetting development acquisition, new construction, or substantial rehabilitation costs. The amount of tax credit received is based on the costs of the development and the number of qualified low-income units, and can be subtracted on a dollar-for-dollar basis from federal tax liability.

The Internal Revenue Service (IRS) of the Treasury Department is responsible for interpreting the statutes regulating the LIHTC and makes all determinations about the loss or recapture of tax credits. Regulations for the Low-Income Housing Tax Credit Program can be found under Section 42 of the Internal Revenue Code (IRC). These statutes require each state to designate a "housing credit agency" to allocate the tax credits. SC Housing was designated as the Housing Credit Agency to administer the Low-Income Housing Tax Credit program in South Carolina on August 12, 1987, by Executive Order 87-25. A 1990 amendment to Section 42 of the Internal Revenue Code also required that States begin monitoring LIHTC developments for compliance with program

rules. In August 1993, Congress passed the Omnibus Budget Reconciliation Act of 1993 which permanently extended the LIHTC Program.

SC Housing's procedures for Compliance Monitoring have been established to conform to all currently applicable federal statutes and regulations. Statutory or regulatory change may require that these procedures be revised from time to time.

## **PURPOSE OF THE MANUAL**

This manual is designed to be a reference guide for the administration of LIHTC developments in compliance with the applicable laws, rules, regulations and policies that govern tax credit developments. The staff of SC Housing also uses the manual as a program guide for administering its compliance monitoring procedures. We hope it will be a useful source of information for Owners, developers, management companies, and on-site management personnel; however, this manual is to be used only as a supplement to existing laws and regulations. Questions may arise that can only be answered adequately by referring to the regulations themselves.

The laws and regulations governing the LIHTC program as well as the interpretation of these laws can and do change. Owners and managers should keep abreast of all changes in relevant federal and state law that may affect their properties. This may require on-going consultation with legal counsel, tax professionals and/or financial advisors regarding the Owner's participation in the LIHTC Program.

Section 1.42-5(g) states, "Compliance with the requirements of section 42 is the responsibility of the Owner of the building for which the credit is allowable." SC Housing's monitoring efforts do not relieve the property Owner from his duty to obey all program rules. In addition, SC Housing's obligation to monitor for compliance with the requirements of Section 42 does not make SC Housing (or its officers and employees) liable for an Owner's noncompliance.

## OWNER RESPONSIBILITIES

Each property Owner or developer has chosen to participate in the LIHTC program to take advantage of the tax benefits it provides. In exchange for these tax benefits, the Owner must meet requirements that are designed to ensure that the housing development will benefit a targeted section of the low-income population. While it is recognized that an Owner will usually assign most or all of their compliance related tasks to a property manager or property management company, the Owner still remains ultimately responsible for the development's compliance. The Owner must ensure that the on-site management team also understands and complies with all federal and state rules, regulations and policies that govern LIHTC developments. Owner responsibilities include, but are not limited to:

### Required Owner Submissions

1. **Progress Reports and Notice of Project Changes** – It is the responsibility of the Owner or developer to keep SC Housing informed throughout all phases of development, rent-up and operation. This includes the construction phase during which Owners are responsible for sending SC Housing progress reports, notice of the scheduled placed-in-service date(s), and notices of any change(s) in the development's costs, financing, syndication, unit types, and completion schedule. The Low-Income Housing Program Manual and the Qualified Allocation Plan (provided to developers who are interested in applying for tax credits) describe the required progress reports. Until all buildings in a development have placed-in-service, all progress reports should be directed to: **SC Housing's Tax Credit Development Staff.**
2. **Submission of IRS Form(s) 8609 with Part II Completed** – The Owner is required to promptly submit completed and signed copies of IRS Forms 8609 (acquisition/rehab properties will have two 8609's for each building) for each building (BIN) to: **SC Housing's Compliance Monitoring and Tax Credit Development Staff.**

The Owner must communicate the impact of the following elections made on the 8609's and other information provided on the completed forms to the organization tasked with day to day management of the development:

- A. **Physical address of the building with corresponding Building Identification Number (BIN)** – It is essential that the correct physical

structure, including the units contained in the building, is linked to the correct BIN for accurate compliance testing and reporting of noncompliance. Linking physical buildings and units to an incorrect BIN creates avoidable noncompliance issues.

- B. Placed in Service Date (Item 5)** – Used with Item 10a to determine the 1<sup>st</sup> year of the credit period
  - C. Multi-Building Election (Item 8b)** – The Owner can choose to make buildings part of a multi-building development or individual single building developments. Should this election be unanswered on the 8609, the default election is that all buildings are individual single building projects. Overall, this election significantly impacts how many of the LIHTC rules and requirements are applied. Some of the specific areas impacted are:
    - i. The placed-in-service date
    - ii. Whether buildings are considered to be individual projects or are collectively one multi-building project
    - iii. Whether the minimum set aside is calculated for each individual building or across all buildings included in the multi-building election
    - iv. The applicable income/gross rent limits [based on placed in service date or date(s)]
    - v. Whether income averaging, if elected, is calculated within one building or across all buildings included in the multi-building election
    - vi. Whether household moves between buildings are considered to be transfers or move-outs and move-ins and whether over-income households can move between buildings
    - vii. Whether support units (manager/maintenance units) can be approved since the employee is required to work full-time at the property where the support unit is located or the IRS may determine the unit is not reasonably required
  - D. Deferral Election (Item 10a)** – By electing to defer, the Owner can choose to postpone claiming credits and the 1<sup>st</sup> year of the credit period to the year after placing in service.
  - E. Minimum Set-Aside Election (Item 10c)** – In order to receive an allocation of tax credits, the Owner must commit a specific percentage of the development to serving a defined segment of the low-income population
- 3. Notification of Initial Ownership/Management Entities and Subsequent Changes in Management Entities** – Prior to placing buildings in service, the developer or Owner is required to provide full information for the Ownership and Management Entities (i.e. company, tax id number, mailing address, email address, contact person and telephone number) that will be

tasked with the oversight of and performance of the day to day operations of the development. All changes that subsequently occur in the management entity or contact information must be promptly submitted, using form “Current Owner and Management Information Form” (See Forms Section) to: **SC Housing, Compliance Monitoring Staff.**

Beginning January 1, 2020, the Qualified Allocation Plan requires properties placing in service to submit the following for staff who are tasked with qualifying households:

- A. Copies of LIHTC Certification(s), issued by an industry-recognized National LIHTC Compliance Trainer or Training Group, for onsite staff – OR --
  - B. Documentation of attendance at a SC Housing LIHTC Compliance Training Workshop
4. **Emphasys Certification Portal Super User Authorization Form** -- The Owner is responsible for designating 1 Super User per management company. All changes that subsequently occur in the management entity or Super User designation must be promptly reported. The request can be sent to: **SC Housing’s Compliance Monitoring Staff.**
5. **Annual Owner Certification of Continuing Compliance (AOC-1)** – It is the responsibility of the Owner to certify to SC Housing at least annually that, for the preceding 12-month period, the development met the requirements of Section 42 of the Internal Revenue Code. This requirement is satisfied by the completion of an Annual Owner’s Certification. The Owner or an authorized Owner’s representative must sign the AOC-1 under penalty of perjury.
- An AOC-1 must cover the preceding calendar year, or any portion of the preceding year for which tax credits were claimed. If a transfer of ownership occurred, the entire calendar year must be covered. The previous Owner must submit an AOC-1 for the portion of the calendar year prior to the transfer and the new Owner must submit an AOC-1 for the balance of the year after the transfer. Annual Owner’s Certifications are due on or before February 1st of each year, following the first year of the credit period.
6. **Notification to SC Housing of Building Disposition** – It is the Owner’s responsibility to request approval from SC Housing 90 days prior for any proposed sale of LIHTC building, sale of ownership interest or any other

disposition in any such building. This request for approval or notification of disposal should be directed to: **SC Housing’s Tax Credit Development Staff.**

SC Housing is required to notify the Internal Revenue Service of any sale or dispositions involving LIHTC buildings using IRS Form(s) 8823. The form identifies four categories of building dispositions, listed below:

- A. Sale** – Types of activities that would constitute a “sale” (which does not necessarily involve the seller receiving money) include:
    - i. Fee Title Sale of Building – Fee title passes from the seller to a whole new entity (buyer)
    - ii. Termination of Partnership
  
  - B. Foreclosure** – Foreclosure is the legal process reserved by a lender to terminate the borrower’s interest in a property after a loan has been defaulted. On foreclosure, the Owner is deemed to have made a sale of the property for the outstanding amount of the mortgage debt.
    - i. Deed of Property in Lieu of Foreclosure – The Owner voluntarily conveys the property to the mortgage holder to avoid foreclosure proceedings
  
  - C. Destruction** – Destruction is related to a building’s physical structure, and not to the ownership interest in the building. Since destruction affects the building in its entirety, i.e. the eligible basis is reduced to \$0. The destruction is considered to be permanent and the building is not expected to operate as a tax credit project. Violations of the physical inspection standards, or casualty loss that are temporary in nature should not be reported as destruction, which is permanent.
  
  - D. Other** – Any event, not listed above, which results in the disposition of a low-income housing credit unit, building, or property.
- 7. Notification to SC Housing of Casualty Loss** – Casualty loss is defined as damage to LIHTC units and/or buildings that is sudden, unexpected and not progressive or gradual in nature. It also does not include damage that results from an Owner’s negligence.
- A. Casualty Loss -- Presidential Disaster Declaration** -- It is the Owner’s responsibility to notify SC Housing of any loss or damage that occurs to LIHTC units and/or buildings as a result of a presidentially declared natural disaster as soon as possible after the loss event. Included with

the notification, SC Housing requires that the Owner submit: a narrative detailing the damage; estimates for repair; a proposed schedule/work plan for restoring damage or loss, and; a plan for any displaced households. The damage/loss must be restored within twenty-five (25) months after the month of the presidential declaration. At that time, corrected or uncorrected, casualty loss will be reported to the Internal Revenue Service using IRS Forms 8823.

**B. Casualty Loss -- Not Subject to a Presidential Disaster Declaration**

– Owners are required to notify SC Housing of any loss or damage that occurs to LIHTC units and/or buildings as soon as possible following a loss event with: a narrative detailing the damage; estimates for repair; a proposed schedule/work plan for restoring damage/loss, and; a plan for any displaced households. The damage/loss must be restored within twenty-four (24) months from the end of the taxable year of the damage/loss event. At that time, corrected or uncorrected, casualty loss will be reported to the Internal Revenue Service using IRS Forms 8823.

- 8. Payment of Compliance Monitoring Fees** – Property Owners must pay SC Housing annual compliance monitoring fees, which as of January 1, 2025, are eighty dollars (\$80) for each LIHTC unit in the development. Initial compliance monitoring fees must be paid within 30 days from the date on which the building(s) place-in-service. For each of the following years through the end of the extended use period, fees are due on or before the first day of February. SC Housing will assess a ten percent (10%) late fee of the total outstanding balance for payments received after thirty (30) days from the date due. The minimum late fee assessed will be fifty dollars (\$50). A fee will be assessed for any checks that are returned to SC Housing for any reason. SC Housing reserves the right to make future adjustments in the amount of the annual monitoring fee as it deems necessary to defray the cost of compliance monitoring.

SC Housing no longer generates invoices or billing statements. A courtesy letter will be mailed to the Owner by year-end as a reminder of the due date for submission of compliance monitoring fees. If payment is for more than one development or year, all applicable information must be listed on the method of payment submitted including the Project Identification Number (SC-XXXXX). Checks should be made payable to: S.C. State Housing Finance and Development Authority and should be mailed to: **SC State Housing, Attention: Compliance Monitoring, 300-C Outlet Pointe Blvd, Columbia, SC 29210.**

**NOTE: Owners and developers should take note that participation in SC Housing programs requires a certification of good standing. The failure to pay monitoring fees will bar any further participation in all programs administered by SC Housing and may result in the issuance of IRS Forms 8823 to the Internal Revenue Service.**

## **Ongoing Owner Responsibilities**

1. **Due Diligence** -- Due diligence is defined (Black’s Law Dictionary [6th ed. 1990]) as: “Such measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent person under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case.” Due diligence is demonstrated in many ways, including (but not limited to) establishing strong internal controls. Strong internal controls (policies and procedures), identify, measure and safeguard business operation and avoid material misstatements of LIHTC property compliance or financial information. Strong internal controls are generally evidenced by:
  - A. Separation of duties
  - B. Adequate supervision of employees
  - C. Management oversight and review (internal audits)
  - D. Verifications of tenant income
  - E. Independent audits
  - F. Timely recordkeeping
  
2. **Low-Income Occupancy** – During the application process, the Owner/Developer submitted a representation of the proposed development. The Owner is considered for an allocation of credits based on this representation of low-income housing units that meet federal rent and income-targeting requirements. If the development is awarded credits, the development delivered is expected to be as represented in the application process. The criteria outlined in a given year’s Qualified Allocation Plan plus any additional restrictions, elected by the Owner/Developer during the

application process, become part of the monitoring process. Monitoring activities will include review and verification of the following:

**A. Building/Unit Breakdown**

- i. Number of buildings (residential, nonresidential, commercial)
- ii. Number of total units (by bedroom size)
- iii. Number of LIHTC units (by bedroom size)
- iv. Number of market units (identified by bedroom size & BIN), if applicable
- v. Number of support units (identified by bedroom size & BIN), if applicable
- vi. Number of special targeting units (SRO/Transitional, Handicapped Equipped, Large Family, Older Persons, Deeper Income/Rent Restricted, etc.)

**B. Minimum Set Aside Test (See “Key Concepts”)** – The Minimum Set-Aside must be satisfied before the Owner can claim credits and must continue to be satisfied through the end of the extended use period. The Owner must be aware of the impact of the multi-building election 8b on IRS Form 8609 with regards to the minimum set-aside. Minimum Set-Asides that are currently available in South Carolina are:

- i. **20/50 Election** -- 20 percent (20%) or more of the residential units in the development are both: rent-restricted at or below the applicable 50 percent (50%) Gross Rents Limits and occupied by households whose income is at or below the applicable 50 percent (50%) Income Limits
- ii. **40/60 Election** --40 percent (40%) or more of the residential units in the development are both: rent-restricted at or below the applicable 60 percent (60%) Gross Rents Limits and occupied by household whose income is at or below the applicable 60 percent (60%) Income Limits
- iii. **60% Average Income Election** -- 100 percent (100%) or more of the residential units in the development are both: rent restricted at or below the designated unit rent limit and occupied by households whose average income designation (between 20% AMGI to 80% AMGI) is at or below 60 percent (60%) Income Limits

In order to be included in the LIHTC minimum set-aside, a unit must be:

- i. Suitable for occupancy based on the National Standards of the Physical Inspection of Real Estate (NSPIRE) or any other habitability standard adopted by SC Housing in the future

- ii. Occupied by a qualified low-income household or last occupied by a qualified household and be currently market-ready and available for rental
- iii. Appropriately rent-restricted both on a monthly and annual basis, if occupied
- iv. Used on a non-transient basis (except for SRO/transitional housing)
- v. Available to the General Public

**C. Targeted Applicable Fraction/1st Year Applicable Fraction (See “Key Concepts”)** – The targeted applicable fraction elected in the application process is applied on a project basis. The 1st year applicable fraction, however, is calculated on a building basis and is “locked” in at the end of the first year of the credit period. The applicable fraction in subsequent years must not fall below the applicable fraction established at the end of the first year of the credit period.

- 3. Recordkeeping and Record Retention** – Federal statutes and regulations require that property Owners keep records for each building within a development. SC Housing may stipulate how records are to be prepared and maintained. Records must be retained by the Owner for at least 6 years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period, however, must be retained for at least 6 years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building (a minimum of 21 years). If a building (or development) is sold or otherwise transferred, the new Owner should obtain from the previous Owner all information related to the first year of the credit period so that they will be able to substantiate all tax credits claimed.

These records must include, but are not limited to, the following:

- A.** Applications for residency for all low-income households and recertification applications/questionnaires
- B.** Tenant Income Certifications (TIC) for each affordable unit
- C.** Third-party income verifications (Employment Verification) and/or other supporting documentation for each Certification

- D. Documentation showing that full-time students are eligible to live in a LIHTC development
  - E. Properly executed leases indicating the rent charged for each LIHTC unit
  - F. Documentation of applicable utility allowances and any supporting data from Placed in Service Date to current
  - G. Next Available Unit / Vacant Unit Table
  - H. Documentation to demonstrate that supportive services are of a regular, ongoing nature, are for the benefit of the resident and are provided free of charge, if applicable
  - I. Records which show the character and use of any nonresidential portion of the development included the development's eligible basis under Section 42(d)
    - i. Tenant facilities that are available on a comparable basis to all tenants
    - ii. Facilities are reasonably required by the development
  - J. Copies of executed IRS Forms 8609, Schedule A and Forms 8586 or other documentation filed with the IRS for the purpose of claiming the credit
  - K. Copies of all Annual Owner Certifications
  - L. Documentation to demonstrate marketing efforts, waiting lists, tenant selection criteria
  - M. Resident demographic information
4. **Determining, verifying and certifying household eligibility (See "Qualifying Households")** – This compliance responsibility is covered in greater detail in the later section of this manual.
5. **Following program rules concerning over-income units & vacant units (See "Key Concepts")**
6. **Ensuring that the units are available for use by the general public (on a non-transient basis, except for SRO/transitional housing)**

7. **Appropriately restricting Gross Rents (including utilizing appropriate utility allowances) for low-income units (See “Qualifying Households”)** -- In order to demonstrate that a program unit is acceptably rent-restricted, the total sum of the net tenant contribution, plus any fees which are ongoing, non-optional and non-refundable, plus the utility allowance cannot exceed the applicable Gross Rent Limit.
  
8. **Entering resident certification and re-certification data into external web-based Compliance Monitoring software (Emphasys Certification Portal)** -- Once the Super User has been trained, all tenant data must be updated monthly in the Certification Portal by the 10<sup>th</sup> of the following month. For new properties, Owner must designate a Super User within 30 days of the placed in service date. For transferring ownership, Owner must designate a Super User within 30 days of transferring ownership.
  
9. **Implementing formalized procedures for providing VAWA protections**  
– HUD released final regulations concerning the Violence Against Women Act (“VAWA”) 2016 and 2017 (Federal Register Vol.81, No. 221 and HUD Notice H-2017-05). The 2016 reauthorization broadens the scope of impacted housing programs to include the LIHTC Program. While VAWA is not monitored as a compliance issue, any adjudicated negative finding in a Fair Housing case, resulting from improperly providing VAWA protections, must be reported to the Internal Revenue Service.
  
10. **Providing defined supportive services on an ongoing basis (if applicable)** – Developments receiving preference during the allocation process for providing Tenant Supportive Services will be examined during each Compliance Monitoring Review to verify that services have been implemented and are being delivered at regularly established intervals as described in the Owner’s Supportive Services Plan and/or accompanying exhibits. The Owner shall be responsible for providing information pertaining to Supportive Service(s) upon request or notification of a Compliance Monitoring Review.
  - A. Current categories of supportive services include:
    - i. Family Supportive Services/Tenant Ownership
    - ii. Older Persons Supportive Services
    - iii. Homeless / At Risk Supportive Services

- B. Supportive Services may be modified subsequently to better serve the resident population. In order for a substitute to be approved, the Owner must provide the following:
- i. Description of the proposed substitutionary service(s)
  - ii. Frequency of delivery of proposed service(s)
  - iii. Justification for modification of existing supportive service(s)
11. **Maintenance of the development** – On February 26, 2019, the IRS included, in its final compliance monitoring rules (Federal Register Vol. 84, No. 38), the Agency must physically inspect all buildings in a low-income housing project by the end of the second calendar year following the year the last building in the low-income housing project is placed in service and at least once every 3 years thereafter. SC Housing Authorities may use local codes, HUD’s National Standard of the Physical Inspection of Real Estate (NSPIRE) or any other habitability standards when performing the physical inspections. Major violations of health, safety and building codes (which can include, but are not limited to, items such as impaired structural integrity, exposed wiring, inoperable plumbing, inoperable smoke detectors etc.) are reportable to the Service on the IRS Form 8823. It is the Owner’s responsibility to ensure that the Outside, Inside and Units are regularly inspected and that routine and preventative maintenance is performed. After being vacated, vacant units must be returned within 30 days to a condition suitable for occupancy. Should any vacant unit require additional time over and above the normal “turn” time, documentation should be kept at the site explaining the reason for the delay.
- NOTE: The Owner’s multi-building election impacts, usually by increasing, the required minimum sample size for monitoring reviews.**
12. **Reporting Noncompliance to the Compliance Monitoring Staff** – The Compliance Monitoring Staff should be notified immediately upon the Owner’s discovery of any noncompliance with LIHTC requirements. Most noncompliance issues are correctable and SC Housing will work with Owners to remedy noncompliance within a reasonable amount of time.

## KEY CONCEPTS

The following, while not intended to cover every concept pertinent to the LIHTC program, will provide an overview of basic terms used in this manual to outline compliance responsibilities:

1. **Annual Income** – As defined in 24 CFR § 5.609, annual income is:  
*All amounts, monetary or not, that are anticipated to go to or to be received on behalf of the family head, spouse or co-head (even if the family member is temporarily absent), or any other family member; or all amounts anticipated to be received from a source outside the family during the 12-month period following admission or annual recertification effective date; including amounts derived (during the 12-month period) from assets to which any member of the family has access. Household income is calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937.*

There has been much discussion within the industry concerning the absolute literal application of the Section 8 methodology of determining income. However, the Low-Income Housing Tax Credit Program has consistently, from its inception, included a maximum income test as part of its determination of eligibility. Since there are instances where the Section 8 methodology does not capture maximum income, SC Housing reserves the right to be more restrictive in its income determination methodology.

Income should be anticipated for the twelve-month period following certification/re-certification using current circumstances and factoring in reasonably anticipated changes that are verifiable. Reasonably anticipated changes would be future raises, bonuses, written offers of employment, future receipt of approved benefits, etc. SC Housing does not consider unsecured resident estimates of future earnings on affidavits of unemployment to be income, since these amounts are not verifiable and are speculative at best.

While the definition in 24 CFR § 5.609 specifically uses the term “family”, care must be exercised in applying this term too literally. There is no requirement in the LIHTC Program that occupants of low-income units be related in any manner. The broader term “household”, or any individual or group of individuals who choose to occupy a unit, should be applied instead. Income includes amounts received by the household on a recurring, periodic basis.

2. **Applicable Fraction** – The applicable fraction is calculated on a building by building basis. Using the most basic definition, the applicable fraction is the smaller of a building’s unit fraction (the number of low-income units divided by the total number of all residential units) or the building’s floor space fraction (the low-income floor space divided by the total residential floor space), determined as of the close of the taxable year. The first-year application fraction is established at the end of the first year of the credit period (the first-year credits are claimed). The actual applicable fraction at the end of the taxable year is used in the calculation of the annual credit. The actual annual applicable fraction must always be equal to or greater than the 1<sup>st</sup> year fraction.
3. **Assets** – As defined in 24 CFR § 5.603(b) and § 5.609(b)(3), net family assets are the net cash value that would be derived, after deducting reasonable costs incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land, the value and the equity accounts in HUD homeownership programs. In determining net family assets, Owners shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or recertification, as applicable, in excess of the consideration received therefore. In the case of a disposition, as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant received important consideration not measurable in dollar terms.
4. **Building Identification Number (“BIN”)** – The Building Identification Number is the nine-digit, alpha-numeric designation, assigned during the allocation process to each building that receives an allocation of credits. This number is used to identify a specific low-income building for purposes of tracking, monitoring and reporting noncompliance, both internally and to the IRS.
5. **Compliance Period** – The compliance period is the fifteen (15) year period, beginning with the first taxable year of the credit period (i.e. either the year the

project placed in service or if deferred, the year after placing in service, as declared in Part II of the IRS Form 8609). During the compliance period, the property is required to comply with requirements of both Section 42 and additional state regulatory documents and requirements [Section 42(i)(1)].

6. **Credit Period** – Generally beginning in the year that a building is placed-in-service, unless deferred, the credit period is usually the consecutive ten (10) year period of time during which credits can be claimed. The Owner may elect to defer claiming credits until the next year after placing a building in service. By the end of the calendar year following placing-in-service, however, the Owner must have satisfied the minimum set-aside and must begin claiming credits.
  
7. **Due Diligence** -- Due diligence is defined (Black’s Law Dictionary [6th ed. 1990]) as: “Such measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent person under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case.” Due diligence is demonstrated in many ways, including (but not limited to) establishing strong internal controls. Strong internal controls (policies and procedures) are used to identify, measure and safeguard business operations and avoid material misstatements of LIHTC property compliance or financial information. These strong internal controls are generally evidenced by:
  - A. Separation of duties
  - B. Adequate supervision of employees
  - C. Management oversight and review (internal audits)
  - D. Verifications of tenant income
  - E. Independent audits
  - F. Timely recordkeeping
  
8. **Educational Institution** – An educational facility is defined as one that maintains a regular faculty and curriculum and which has a regularly enrolled body of students in attendance at the place where its educational activities are regularly conducted. This includes institutions that also offer courses via an on-line learning environment.

9. **Electronic Signatures** – In June 2020, SC Housing implemented guidance related to electronic signatures, as outlined in federal law, and reiterated in HUD’s Notice H20-4, “Electronic Signature, Transmission and Storage – Guidance for Multifamily Assisted Housing Partners”, dated May 26, 2020. Although the LIHTC Program is not administered by HUD, the publication does a good job in explaining federal law as it pertains to the acceptable use of electronic methods. (See Resources Section for a full copy of the notice).

**NOTE:** Electronic Signatures are not acceptable for use in the HOME Program.

10. **Extended Use Period** – After January 1, 1990, in addition to the federal minimum compliance period of fifteen (15) years, developments that received LIHTC allocations also became subject to an extended use period of a minimum of fifteen (15) years, as stipulated by a recorded Agreement As To Restrictive Covenants (“Extended Use Agreement”). Often states extend this requirement to retain affordable housing stock for a longer period of time. SC Housing currently allows the Owner/Developer to elect fifteen (15) or twenty (20) years as the extended use period. During this period of time, there will be a relaxation on specific requirements, which are: unit transfers are not restricted provided they occur within the property, household may be comprised entirely of full-time students. Student eligibility shall be determined in accordance with HUD Section 8- criteria, and the next available unit rule and vacant unit rule will no longer be enforced. All other compliance requirements remain intact. Prior to making any changes to compliance procedures during the extended use period, the Owner should confirm the extended use requirements with SC Housing’s Compliance Monitoring.
11. **Fees** – Generally, fees for services that are charged to the resident must be included in the gross rent calculation if the fee is non-refundable or the service is not optional (i.e. a condition of occupancy). For the purposes of the LIHTC Program, a service is considered optional when it is not a condition of occupancy and a reasonable alternative exists. Separate fees should not be charged for the use of tenant facilities if the costs of those facilities are included in the eligible basis. Owners are responsible for physically maintaining LIHTC units in a manner that is suitable for occupancy at all times; therefore, collecting advance non-refundable fees for returning a low-income unit to a market ready condition after occupancy is prohibited (i.e. refurbishment fees, redecorating

fees, administrative fees, etc.). A standardized fee schedule for routine damages must be provided to residents during initial lease-up and during any subsequent lease renewal. These fees must be based on actual costs and may only be charged for damages in excess of normal wear and tear. Any charge for damages for durable items (i.e. carpets, stove, refrigerator, etc.) must be pro-rated, based on the amount of time the item was in service, prior to the damage. The Owner may charge an application fee which is limited to actual, out of pocket expenses associated with the management screening and eligibility determination processes. This one-time application fee will not be included in the gross rent computation. In addition, any fee which is refundable (such as the security deposit fee) will not be included in the rent calculation.

**Costs for Pest Infestations (including bed bugs):**

In order to satisfy the “Standard of Habitability” that exists in state law:

- Owners are required to provide extermination services, as necessary;
- Residents are required to keep the unit clean, and;
- Residents may be charged for damages only when causation for damages can be clearly established due to carelessness, misuse or neglect on the part of the resident.

Shifting cost of extermination to the resident is not acceptable unless the Owner can demonstrate that the infestation was caused by carelessness or neglect on the part of a resident(s)

Due to the resurgence of bed bugs, the Environmental Protection Agency (“EPA”) and The Department of Housing and Urban Development (“HUD”) published “Clarification to Housing Notice H 20 12-5 Guidelines on Addressing Infestations in HUD-Insured and Assisted Multifamily Housing” in April 2019. In a collaborative effort to aid in bed bug treatment and prevention in affordable housing, the document outlines and recommends an Integrated Pest Management (“IPM”) plan, which includes:

- Resident education regarding housekeeping, cleanliness, acceptable furniture inspection, unit inspection, and identification of bed bugs to help residents identify and understand the importance of prevention and reporting (See Resources Section for full copy).
- The implementation by the Owner of a regular, proactive inspection and extermination program

**12. File Organization** – Documentation must be contained in the resident file which demonstrates household eligibility for the LIHTC Program. The LIHTC documentation requirements are not removed or subrogated by the existence of other funding sources and their programmatic requirements. In addition, other funding sources may prohibit external review of their documentation by non-program personnel. Due to this, LIHTC compliance files should be maintained separately. It is strongly recommended that the Owner establish a standardized, consistent file set-up which allows Monitoring Officers to more easily follow the trail of documentation in the resident file. Examples of some of the recommended documentation can be found in the Forms Section. Below is the recommended file set-up:

Section I	Section II
<p>Leases /Lease Renewals /Lease Addendums/Fee Schedule (in descending order from current to initial)</p> <p>Section 8 Documentation which provides the assistance payment and the tenant paid portion *</p> <p>(* if Section 8 Housing Choice Voucher holder)</p>	<p>Certification and Supporting Documentation (in descending order from current to initial, separated by certification years)</p>
	<p>Current Tenant Income Certification</p>
	<p>Verifications:</p>
	<p>Certification of Zero Income (must include an applicant or resident disclosure outlining how reasonable basic living expenses are currently being paid)</p>
	<p>Earned and Benefit Income (written 3<sup>rd</sup> party or documentation demonstrating why 3<sup>rd</sup> party couldn't be obtained; clarification records placed on top of verification being clarified)</p>
	<p>Asset Income:</p>
	<p>Asset Self Certification Form (if cash value of all household assets does not exceed \$50,000 or the annual inflation amount)</p> <p>*** If unit is HOME-assisted, see the HOTMA policy.</p>
	<p>3<sup>rd</sup> Party Verification(s) of Assets (if cash value of all household assets exceeds \$50,000 or the annual inflation amount)</p>
<p>Disposal of Assets (written 3<sup>rd</sup> party, if difference exceeds \$1000)</p>	

	Student Affidavit(s) for adult household members – AND, if applicable --
	Documentation demonstrating qualification of full-time student households using one of the five eligibility exemptions/provisions given under Item #13 below, “Full-Time Student” – OR --
	PT Student Status Verification, through the educational institution
	Application/Recertification Application
	Next Available Unit Documentation, if applicable
	VAWA Acknowledgements
	Integrated Pest Management Acknowledgments

13. **Financial aid** – **Student Assistance Type 1** – Any assistance under Title IV, 479B of Higher Education Act of 1965 (HEA), as amended, is excluded from income.

**Student Assistance Type 2** – Student financial assistance for tuition, books, and supplies including supplies and equipment to support students with learning disabilities or other disabilities), room and board, and other fees required and charged to a student by an institution of higher education (as defined under Section 102 of the Higher Education Act of 1965) and, for a student who is not the head of household or spouse, the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit.

- A. Student financial assistance means a grant or scholarship received from –
  - i. The Federal government
  - ii. A State, Tribe, or local government
  - iii. A private foundation registered as a 501c (3) nonprofit
  - iv. A business entity such as a corporation, general partnership, LLC, LP, joint venture, business trust, a public benefit corporation, or nonprofit entity, or
  - v. An institution of higher education
- B. Student financial assistance does not include
  - i. Any assistance that is excluded pursuant to the HEA Title IV, 479B

- ii. Financial support provided to the student in the form of a fee for services performed such as work student or teaching fellowship that is not excluded pursuant to the HES Title IV 479B
  - iii. Gifts including gifts from family or friends, or
  - iv. Any amount of the scholarship or grant that, either by itself or in combination with assistance excluded under this paragraph or the HEA 479B (see above), exceeds the actual covered costs of the student.
- C.** Student financial assistance must be expressly:
- i. for tuition, books, room and board, or other fees required and charged to a student by the educational institution
  - ii. to assist a student with the costs of higher education, or
  - iii. to assist a student who is not the head of household or spouse with the reasonable and actual cost of housing while attending the educational institution and not residing in an assisted unit.
- D.** Student financial assistance may be paid directly to the student or to the educational institution on the student's behalf. Student financial assistance paid to the student must be verified by the responsible entity as student financial assistance
- E.** When the student is also receiving assistance excluded under HEA Title IV 479B the amount of the HEA 479B assistance excluded above is equal to or exceeds the actual covered cost, all of the other assistance is counted as income
- i. If the amount of the HEA 479B assistance excluded above is equal to or exceeds the actual covered cost, all of the other assistance is counted as income
  - ii. If the amount of HEA 479B assistance excluded above is less than the actual covered costs, the amount of assistance that is considered student financial assistance is the amount by which the actual covered costs exceed both types of student assistance

- 14. Full-time Student** – The definition of a full-time student consists of three criteria. If all are met, the individual is considered to be a full-time student. These criteria are:
- A.** Currently attending, has attended or will attend an educational institution on a full-time basis for five or more months during the calendar year of certification or recertification, including a full-time course load offered through an on-line learning environment. (NOTE: Months do not have to be consecutive and the entire month must be included if students attend one day in the month)
  - B.** Attending, attended or will attend at the first grade level or higher (includes elementary, junior and senior high schools, colleges, universities, technical, trade and mechanical schools) , including a full-time course load offered through an on-line learning environment
  - C.** The individual is considered, by the educational institution, to be a full-time student

The student status of every household member, including minors but not including unborn children, must be considered when determining whether the household is comprised completely of full-time students. Unborn children cannot be used as a non-student in order to qualify an otherwise ineligible full-time student household. Unborn children may be included as household members only to determine household size and the applicable income limit. Should a household member, in an otherwise full-time student household, report a part-time student status, their status must be verified with the educational institution and re-verified every time there is an opportunity to add or delete classes.

Generally, a household that is comprised completely of full-time students is not eligible to occupy a LIHTC program unit. There are, however, five exemptions to the student rule that will, if properly satisfied, qualify a full-time student household for the LIHTC program. Please note, however, that all exemptions must be carefully verified and thoroughly documented. All documentation must be available for review in the resident's eligibility file.

Student status eligibility is never “grandfathered” in. Applications and Recertification Questionnaires must ask about current student statuses and any future changes to student statuses. A previously LIHTC-eligible full-time

student household becomes immediately ineligible when none of the following five exemptions listed can be satisfied:

- A. Households, comprised of a single individual who is a full-time student, may be eligible if the student is:**
- i. Currently receiving Title IV of the Social Security Act (Grants to States for Aid and Services to Needy Families with Children and for Child-Welfare Services)** – The Personal Responsibility and Work Opportunity Act of 1996 replaced the Aid to Family with Dependent Children program (“AFDC”) with the Temporary Assistance to Needy Families Program (“TANF”). While the code specifically addresses only AFDC, SC Housing has recognized TANF as a substitute. Other forms of assistance, other than TANF, will not qualify a full-time student household under this exemption. SC Housing requires documentation in the resident file to demonstrate that the exemption has been satisfied (i.e. a Department of Social Services household benefit printout showing receipt of TANF).
  - ii. An individual previously under the care and placement responsibility of the State agency responsible for administering a plan under part B or part E of title IV of the Social Security Act**– Applies to eligibility determinations made after 07/30/08 (i.e. the enactment date of the Housing and Economic Recovery Act of 2008). Until the IRS releases additional guidance, SC Housing will view previous placement as being placed at any time in the past, regardless of the length of time since placement. SC Housing requires documentation in the resident file to demonstrate that this exemption has been satisfied (i.e. written documentation from the placement agency).
  - iii. Currently enrolled in a job training program under the Job Training Partnership Act (JTPA) or under other similar Federal, State or other local program** – The Workforce Investment Act of 1998 repealed the federally funded JTPA; however, there are other federal, state and local programs which are considered to be comparable. In order to determine if a program is considered comparable, it must receive federal, state or local funding and the program’s intent and mission statement must be carefully compared with that of the JTPA program which reads:  
***It is the purpose of this Act to establish programs to prepare youths and adults facing serious barriers to***

*employment for participation in the labor force by providing job training and other services that will result in increased employment and earnings, increased education and occupational skill, and decreased welfare dependence, thereby improving the quality of the workforce and enhancing the productivity and competitiveness of the Nation.*

SC Housing requires documentation in the resident file to demonstrate that this exemption has been satisfied (i.e. proof of participation, the program’s intent and mission statement, etc.).

- B. Households, comprised entirely of full-time students, may be eligible if the students are:**
- i. Single parents with children and such parents are not dependents (as defined in Section 152, determined without regard to subsections (b)(1), (b)(2) and (d)(1)(B) of the Internal Revenue Code) of another individual and such children are not dependents (as so defined) of another individual other than a parent of such children – H.R. 3648, the Mortgage Forgiveness Debt Act of 2007, effective December 20, 2007, amends this exemption by allowing full-time student households comprised of a single parent with children to qualify for the LIHTC Program, even if the absent parent claims the children as a dependent for tax purposes. SC Housing requires documentation in the resident file to demonstrate that this exemption has been satisfied (i.e. copy of tax return showing the status of the child/children for tax purposes).**
  - ii. Married and entitled to file a joint tax return – Per recent guidance by the Service, a married couple who is entitled to file a joint tax return, but has not filed one, will still satisfy this exemption. SC Housing requires documentation to be contained in the resident file demonstrating that this eligibility provision has been satisfied (i.e. copy of a joint tax return and marriage certificate).**

- 15. Gross Rent Floor Election – The LIHTC program creates a gross rent “floor” for projects that received an initial allocation of credits after 1989 ensuring that the Maximum Allowable Rent would never decrease below this limit. Pursuant to Revenue Procedure 94-57, the Internal Revenue Service will treat the gross rent floor in Section 42(g)(2)(A) of the Code as taking effect on the date SC Housing initially allocated\* credits to the property, unless the**

Owner designates the date the property places in service as the date on which the gross rent floor will take effect for such property.

(\*If the property is financed with tax-exempt bonds as defined by Section 42(h)(4)(B), the Service will treat the gross rent floor as taking effect on the date SC Housing initially issues a determination letter unless the Owner designates that the placed-in-service date should be used.)

- 16. Housing and Economic Recovery Act of 2008 (HERA)** – On July 30, 2008, Congress enacted sweeping legislative changes to the LIHTC and Tax-Exempt Bond programs intended to alleviate some of the financial hardships being experienced by investors, developers and Owners. The specific impact of the legislation on compliance concepts will be discussed in various sections of this manual.
- 17. Household Composition** – As a general rule, a “household” consists of individuals who choose to reside together in a unit, including temporarily absent members. A household may consist of unrelated members.
- A.** For LIHTC purposes, all occupants are considered in the household size for determining the applicable income limit, except for the following:
- i. Live-in Aides/Attendants** – For persons with disabilities, near-elderly or elderly persons, a live-in attendant lives is an individual who is determined essential to the care and well-being of the resident in order to allow them to live independently.
- The live-in aide/attendant must:
- Be deemed necessary by a health care provider; and,
  - Live in the unit only to provide necessary supportive services.
- The live-in aide/attendant cannot:
- Be either obligated for the support of the resident or be financially dependent on the resident.
- The live-in aide/attendant must sign documentation acknowledging that:
- They do not have rights of survivorship;
  - Should the resident vacate the unit for any reason, they must also vacate the unit; and,
  - The Owner has the right to evict if they violate any provisions of the lease.

While a relative may be considered to be a live-in aide/attendant, the spouse or minor children of the individual requiring care may never be live-in aides/attendants.

The income of a live-in aide is not included in the household's income. Documentation to support the satisfaction of these conditions must be present in the resident file or the income of the live-in aide will be added to household income as of the date of the live-in aide's initial occupancy.

- ii. **Foster Children/Adults** – Foster children are in the legal guardianship or custody of a State, County, or private adoption or foster care agency, yet are cared for by foster parents in their own homes under a foster care arrangement with the custodial agency. A foster adult is usually an adult with a disability who is unrelated to the household and who is unable to live alone.
  - iii. **Guests** – A guest is a visitor, temporarily staying in the unit with the consent of the household
  - iv. **Permanently absent household members** – A permanently absent household member is an individual no longer lives in the unit and there is no reasonably expected date of return
- B.** When determining family size for income limits, the Owner must include the following individuals who are not living in the unit:
- i. Children temporarily absent due to placement in a foster home
  - ii. Children in joint custody arrangements who are present in the household more than 50% or more of the time
- If disputed, a determination should be made as to which parent claimed the children as dependents for purposes of filing a federal income tax return
- iii. Children who are away at school but who live with the family during school recesses
  - iv. Unborn children of pregnant women (as self-certified by the woman)
  - v. Children who are in the process of being adopted
  - vi. Military personnel, out of town or country, with a spouse or dependent still living in the household
  - vii. A family member, in the hospital or a rehabilitation facility for periods of limited or fixed duration

- viii. For persons permanently confined to a hospital or nursing home, the household may decide if such persons are included when determining household size for income limits.

If including the permanently confined person as a member is chosen, the Owner must also include income and asset income received by the confined person when calculating household income.

- C. Changes to Household Composition** – If additions to or deletions from the household are contemplated, the resident must be required, through the use of appropriate lease provisions, to inform the Owner or Owner’s representative of the proposed change.

- i. **Additions to the household** – Due diligence must be demonstrated by accurately determining initial household eligibility and by implementing strong policies and procedures to deter manipulation of these requirements. Additions of adult household members during the initial certification period should be avoided. However, the Owner must develop and implement clearly-defined procedures which address the few, valid circumstances when the addition of household members is permissible during this period of time. Failure to demonstrate sufficient due diligence will result in the additional household member’s income being included in certified income at the time of move-in.

All income associated with the new household member which is not expressly excluded by regulation, must be verified and added to the existing certification. The effective date of the existing certification does not change. The new total household income must be compared to the applicable income limit at the time of addition, based on the new household size. If household income exceeds 140% of the applicable income limit, the Next Available Unit Rule will be triggered [IRC §42(g) (2) (D)].

Additional household members may continue to be added as long as one member of the initially certified household remains in the unit. Through a combination of additions and deletions (discussed below), once no member of the initially certified household remains, the household must be qualified as a completely new move-in. All initial eligibility criteria must be met.

- ii. **Deletions from the household** – According to guidance from the IRS, deletions from households do not require adjustment to the existing certification. Instead, this household change may be addressed at the time of annual recertification. If the decrease in household size causes household income to exceed 140% of the income limit in effect at the time of annual recertification, the Next Available Unit will be triggered.

**18. Income Limits & Gross Rent Limits** – In order for a household to be considered income qualified, total gross household income must be at or below the income limit, adjusted for household size, that is consistent with the elected minimum set-aside (i.e. 20/50, 40/60 or 60% Average Income). In addition, in order to be considered appropriately rent restricted, the gross rent charged cannot exceed the Maximum Allowable Rent limit that corresponds with the minimum set aside election and the bedroom size. For Average Income units, the gross rent cannot exceed the rent limit that corresponds with the unit's income designation (i.e. 20, 30, 40, 50, 60, 70, and 80%).

- A. **Income Limits** -- The Department of Housing & Urban Development (“HUD”) annually publishes median income information for South Carolina by county or metropolitan statistical area (“MSA”). In 2006, HUD changed the source data used in their methodology for determining area median gross incomes (“AMGIs”) – a change which would have resulted in decreased 2007 median gross income limits in certain areas. Since these decreases were due to the change in methodology and not necessarily reflective of genuine decreases in area median family income levels in these areas, HUD implemented a “Hold Harmless” policy that froze the limits at the previous level in these impacted areas. Hold Harmless Impacted Projects are those developments which are located within these impacted areas and that had placed in service prior to 01/01/09. Enacted 07/30/08, the Housing and Economic Recovery Act of 2008 (HERA) sought to ease some of the financial impact of the frozen limits for LIHTC and Multi-Family Tax Exempt Bond (TEB) developments. The Act created one new higher income limit set (HERA “Special”) for use at impacted LIHTC and Multi-Family Tax Exempt Bond developments and made another, existing but previously unavailable, income limit set available for use at eligible LIHTC projects, National Non-Metropolitan Median Gross Income (“NNMGI”). In addition, HERA created its own hold harmless policy for all LIHTC and TEB projects by legislating that Area Median Gross Incomes for the LIHTC and Tax-

Exempt Bond projects would not decrease from the previous year's limits.

In 2009, HUD released a separate income limit data set, specifically for use in the LIHTC and TEB Programs. The income/rent limit data set, referred to as Multi-Family Tax Subsidy Projects ("MTSPs"), incorporates the changes legislated by HERA. Included within the MTSPs Data Set are two sub-sets:

- Impacted MTSPs for LIHTC and TEB projects which were placed in service prior to 01/01/09 and which are located in areas impacted by the HUD Hold Harmless Policy, and;
- Non-Impacted MTSPs, for LIHTC and TEB projects which placed in service on or after 01/01/09 or located in an area not impacted by HUD's policy.

In 2010, although HUD discontinued its policy of holding income limits frozen, the HERA Hold Harmless Policy remained. As a result, it has become increasingly difficult to determine which income and gross rent limit should be used at any given project. Using a process of elimination, the Owner must determine which income/gross rent limits the project is eligible to use. The project may then use the highest of all income/gross limit sets for which it is eligible.

Note: Family sizes in excess of 8 persons are calculated by adding 8% of the four-person income limit for each additional family member. That is, a 9-person limit should be 140% of the 4-person limit; the 10-person limit should be 148%.

When making determinations about applicable income/gross rent limits, the following must be considered:

- i. **Elections made on IRS Forms 8609, Part II, Line 8b (Multi-Building Election)**
  - a. "No" Election by the Owner -- Each building becomes a separate "project" and appropriate income/gross rent limits will have to be determined for each building using the building's placed in service date and physical location.
  - b. "Yes" Election by the Owner -- The date the 1<sup>st</sup> building placed in service becomes the placed in service date for all buildings designated as being within the multi-building project and is the date used to determine the applicable Income/Gross Rent

Limits for all included buildings. If there is a leasing office at the project, it becomes the physical location for all included buildings. If not, the physical location of the 1<sup>st</sup> building to place in service will be used.

- ii. **Placed in Service Date**
  - a. Projects, placed in service prior to 01/01/09, in impacted areas, are eligible to use the Impacted MTSPs income/gross rent limits (HERA “Special”) and the property may use the highest income/rent limit achieved
  - b. Projects placed in service on or after 01/01/09 are not eligible to use the Impacted MTSPs income/gross rent limits (HERA “Special”) but must use the Non-Impacted MTSPs income/gross rent limits. Properties may use the highest income/gross rent limits achieved since placing in service
- iii. **“Rural” Designation of the Project** – A LIHTC project located in a rural area, as defined by Section 520 of the Housing Act of 1949, may be eligible to use the National Non-Metropolitan Gross Income Limit Set (“NNMGI”) that the HERA legislation made available for income determinations after 07/30/08. It may only be used by developments that meet all of the following criteria:
  - a. 9% LIHTC deals only (i.e. does not apply to LIHTC with Tax Exempt Bond deals)
  - b. Documentation of the “rural” designation for the project address must be obtained from the USDA website below and maintained for review:

<https://eligibility.sc.egov.usda.gov/eligibility/welcomeAction.d>  
[o](#)

The USDA’s designation as rural may change with or without notice. The designation must be re-visited at least annually prior to the implementation of any new income limits.

- B. **Gross Rent Limits** – Gross rent must include an allowance for utilities if they are paid by the resident. Gross rent does not include utility allowances paid under Section 8 of the U.S. Housing Act of 1937 or any comparable rental assistance program. In addition, gross rent does not include any fees for a supportive service which are paid to the Owner of the unit (on the basis of the low-income status of the resident in the unit) by any governmental program of assistance [or by an organization described in Section 501 (c)(3) of the Internal Revenue Code and

exempt from tax under Section 501 (a) of the Code] if such program (or organization) provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services. All other fees for supportive services must be included in the gross rent.

For Post-89 LIHTC developments, all calculations of maximum gross rents begin with the number of bedrooms in the unit. Units with no separate bedroom, Single Room Occupancy units (“SRO”s) are treated as being occupied by 1 person. All other bedroom sizes are treated as being occupied by 1.5 persons per bedroom. The table below indicates the income limit associated with each bedroom size (br. size x 1.5):

Unit Size	Begin calculation using the Income Limit for:
0 Bedroom	1.0 Person
1 Bedroom	1.5 Persons
2 Bedroom	3.0 Persons
3 Bedroom	4.5 Persons
4 Bedroom	6.0 Persons

All low-income units must be appropriately rent-restricted. Rent restriction is demonstrated when the gross rent received for a unit does not exceed 30 percent (30%) of the monthly income limit minus the established Utility Allowance. Per guidance released by the IRS, rent restriction must be evaluated on both a monthly and an annual basis.

To calculate monthly gross rents, use the income limit applicable to the bedroom size and divide by 12 and multiply the result by 30%. **ALWAYS ROUND DOWN RESULTS.**

**EXAMPLE:**

	Income limit	Formula	0 BR Rent	1 BR Rent	2 BR Rent
1 Per	19,380	(0 BR = 1 Per) USE 1 Person limit ÷ 12, × 30% = (round ↓ result)	<b>\$484</b>		

2 Per	22,140	(1 BR= 1.5 Per) Use 1 Person + 2 Per, ÷ 2, ÷ 12, × 30% = (round ↓ result)		<b>\$519</b>	
3 Per	27,660	(2 BR= 3 Per) Use 3 Person limit ÷ 12, × 30% = (round ↓ result)			<b>\$691</b>

- 19. Minimum Set-Aside** – When applying for an allocation of tax credits, the developer is required to choose a minimum set-aside. Once the developer chooses a set-aside, this choice is irrevocable and must be maintained at all times during the compliance period. Set-asides obligate the property Owner to commit a certain percentage of the dwelling units in the development for occupancy by households of a specified income level. Depending on the Multi-Building Election made on IRS Forms 8609, Line 8b, the minimum set-aside is tested either across all buildings within the development (“Yes” to Multi-Building Election) or within one building (“No” to Multi-Building Election). It is calculated using the unit fraction only.

Vacant-Never Rented units are considered to have no “character” and are not counted toward satisfying the minimum set-aside. When a program-qualified household initially occupies a unit (one that is suitable for occupancy, available to the general public, used on a non-transient basis and appropriately rent-restricted), the unit assumes “character” and is counted toward satisfying the minimum set-aside.

Tax credits cannot be claimed until the minimum set-aside test has been satisfied. For properties allocated 1991 and later, the Owner only has until the end of the second calendar year, after placing in service, to meet the minimum set-aside and begin claiming credits. Failure to initially meet the test in the timeframes specified permanently disqualifies the Project from claiming credits. If the set-aside is subsequently violated at any time throughout the compliance period, all credits previously claimed are subject to recapture. The LIHTC set-asides are as follows:

- A. 20/50 Test** – 20 percent (20%) or more of the residential units in the development are both: rent-restricted at or below the applicable 50 percent (50%) Gross Rents Limits and occupied by individuals whose income is at or below the applicable 50 percent (50%) Income Limits
- B. 40/60 Test** – 40 percent (40%) or more of the residential units in the development are both: rent-restricted at or below the applicable 60

percent (60%) Gross Rents Limits and occupied by individuals whose income is at or below the applicable 60 percent (60%) Income Limits

- C. Average Income Test** – The Consolidated Appropriations Act of 2018 established Average Income as an addition Minimum Set-Aside for developments making the set-aside election after March 23, 2018. Forty percent (40%) of the residential units in the development are both: rent-restricted at or below the Owner’s unit designation and the average of unit income designations cannot exceed the sixty percent (60%) Income Limits. If the Owner elected not to make buildings part of a multi-building development, the minimum set-aside must be satisfied within each building.

For developments in which all buildings are part of a multi-building property, SC Housing will consider the set aside to be met if forty percent (40%) of the units across all buildings have an average income of sixty percent (60%) or less. Should individual units be determined to have compliance issues, SC Housing will not consider the minimum set-aside to be violated as long as forty percent (40%) of the remaining units in the development have an average income of sixty percent (60%) or less.

Projects electing to use the Average Income set aside must comply with the following:

- Market-rate units are prohibited
- The average income of any bedroom type must not exceed 60% of area median income
- Unit designation may be floating. However, a change to a unit designation must be approved by the SC Housing Development Department. Federal guidance provides the five instances below where unit designation changes will be permitted:
  - Federally permitted
  - HFA permitted
  - Certain Laws (ADA, VAWA, Fair Housing, etc.)
  - Tenant Movement
- Restoring compliance
- For projects with more than one building, owners must select that each building is part of a multiple building set-aside on the IRS form(s) 8609

- Income bands must be in multiples of 10, from 20% to 80%
- The minimum number of units that must be low income is 40/60 of the total units
- Recertification waiver is not allowed even though the property is 100% LIHTC
- For Units designated as 20%, 30%, 40%, 50%, or 60 AMI:
  - If household income exceeds 140% - \* 60% AMI Limit at recertification
- For Units designated as 70% AMI:
  - If household income exceeds 140% - \*70% AMI Limit at recertification
- For Units designated as 80% AMI:
  - If household income exceeds 140% - \*80% AMI Limit at recertification

If a household income has increased above 140% of the current set-aside limit, the next available unit of comparable or smaller size must be rented to a household at the lower set-aside until the appropriate unit mix is restored. If the household income decreases, it is acceptable to move the unit to the lower set-aside if a slot is available, but is not mandatory.

For average income, the percent shown is the average AMI among the units' designations

For an original minimum set-aside (40% at 60% or 20% at 50%), at least 20% of the units must be affordable to and occupied by households at the AMI shown.

Compliance Monitoring fees are \$80 per LIHTC unit annually, plus an additional \$50 per unit annually for projects using the average income minimum set-aside. All compliance monitoring fees must be paid to the Authority within thirty (30) days of the date on which the first building is placed in service and on or before the first day of February of each succeeding year throughout the remainder of the fifteen (15) year compliance period and any extended use period. The Authority will assess a ten percent (10%) late fee of the total outstanding balance for payments received after thirty (30) days from the date due.

20. **Next Available Unit Rule** -- The Next Available Unit Rule states that if the income of the occupants of a low-income unit increases above 140% of the current applicable income limit, the unit will continue to be treated as a low-income unit if:
- A. The occupants initially met the income limitation
  - B. The unit remains appropriately rent-restricted
  - C. All available units of comparable or smaller size within the building, which become vacant subsequent to this determination, are leased to households with qualifying incomes until the building's applicable fraction has been restored, not including the over-income unit.

The Next Available Unit is no longer triggered if, at subsequent recertifications, the household's income decreases below 140% of the applicable income limit or the income limits increase so that the household's income no longer exceeds 140% of the applicable income limit.

The Next Available Unit rule will not be considered to be triggered for Average Income Units at 20, 30, 40, 50 and 60% until household income exceeds the 60% Income Limits. For 70 and 80% units, the NAU is triggered when household income exceeds 140% of the unit's income designation (either 70 or 80%).

21. **Qualified Contracts** – As per Section 42(h)(6)(E)(ii) of the Code, the termination of the extended use agreement shall not be construed to permit before the close of the 3-year period following the termination of the extended use period either the eviction or the termination of tenancy (other than for good cause) of an existing low-income tenant residing in the building or the increase in the gross rent above the maximum allowed under the Code with respect to such low-income unit. The owner is required, at the end of each calendar year of the 3-year period, to provide a certification and a certified rent roll to the Authority. In addition, a certification from the owner must be provided that states that these requirements have been met. Should the current owner sell the development during the 3-year period the new owner will be required to submit the annual certification to the Authority.

It should be understood that the development is still subject to compliance monitoring according to the extended use parameters during the 3-year decontrol period and therefore must continue to pay the

annual compliance monitoring fees when due. The Authority's monitoring during the decontrol period will be in compliance with Section 42 of the Internal Revenue code and at the discretion of SC Housing. The Authority will investigate and respond to any tenant complaint received during the 3-year period.

- 22. Sources of Program Requirements (Regulating Documents)** – Low Income Housing Tax Credit properties are to be operated in compliance with Section 42 of the Internal Revenue Service, IRS Regulations found in 26 CFR Section 1.42, IRS Revenue Rulings and Revenue Procedures, HUD's Occupancy Handbook 4350.3, additional program rules prescribed by SC Housing, representations in a development's application and provisions included in the Agreement as to Restrictive Covenants.
- 23. Standardized Forms** – Per guidance issued by the IRS, State agencies may determine how documents are maintained and may mandate the use of standardized forms to document an Owner's compliance with the requirements under Treasury Regulation Section 1.42-5. SC Housing requires the use of the National Council of State Housing Agencies' ("NCSHA") Best Practices Forms. Forms cited in this manual can be found at [www.schousing.com](http://www.schousing.com) under the **Development** section on the **How Developments are Monitored for Compliance** page.
- 24. Support Unit (Resident Manager/Maintenance /Courtesy Officer Unit)** – Support units may only be included in a LIHTC development in one of the ways indicated below:
- A. A program unit is occupied by a qualified household** -- The manager or maintenance personnel is income qualified, pays the same amount of rent charged to other qualified residents (or free or reduced rent recognized as in-kind income as required by the Internal Revenue Code) and meets any other occupancy guidelines adopted by the development.
  - B. Support Unit is designated during application process** -- The Owner designates a support unit in the application process, which is then treated as a common area of the property (non-income producing). This unit is not considered when calculating the applicable fraction. The manager or maintenance personnel or courtesy officer does not have to be income qualified but they do have to be considered a full-time employee of the development. Charging rent or reduced rent for the

support unit may lead the IRS to determine that the unit is not reasonably required by the development.

- C. Support Unit is approved by SC Housing subsequent to the application process** -- If neither A or B apply, the Director of Compliance Monitoring must formally approve the support unit before the Owner may remove a program unit. When submitting the request for approval, documentation must also be included which demonstrates the need for a support unit (i.e. incident reports, crime trend reports, etc.) Once designated either in the application process or through approval, Support Units cannot change in size and may not be moved between BINs.

- 25. Tenant Income Certification Form** – When properly executed, the Tenant Income Certification is the document which summarizes the programmatic eligibility of the household, both initially and on an ongoing basis. Certifications are required for all LIHTC units. SC Housing recommends the use of the NCSHA’s Best Practices Tenant Income Certification but will accept other LIHTC compliant Tenant Income Certification forms. Through the utilization of a Memorandum of Understanding with Rural Housing Services (“RHS”), SC Housing will also accept that agency’s form 3560-8 as the LIHTC Certification. Since this form does not contain student statuses for all household members, student affidavits must be completed by all adult household members. The HUD Forms 50058 and 50059 may not be used as the LIHTC Certification form.
- 26. Transfers** – Household moves between units can be considered either a move-out/move-in or a unit swap.
- A. Moves within a building** – Household moves within a building will be treated in the same way for single building projects and multi-building projects.
- i. 100% LIHTC Project** – Units swap statuses. If a household moves from a qualified tax credit unit into a vacant never rented unit, the vacant never rented unit becomes a qualified tax credit unit and the formerly qualified tax credit unit becomes a vacant never rented unit. If the LIHTC household’s income exceeds 140%, the OI status moves with the household into new unit. The Next Available Unit Rule, previously invoked, must continue to be satisfied using the new unit as the basis for comparison of comparable or smaller size. Recertification is not necessary and the effective and move in dates remain unchanged. The

certification should be appropriately revised (single strike-through any changed info, new information added and the resident/owner representative must initial all changes) to reflect the new unit information. Documentation in the file must also indicate the date of the transfer. To avoid potential confusion, it is recommended that a copy of all original household eligibility documentation be made and retained as a move-out file under the original unit number. Any change to household composition during a certification year should be handled as outlined in Item 17.C. above, titled, “Changes to Household Composition”.

- ii. **Mixed Use Project (LIHTC w/Market Units)** – Units swap statuses. If a household moves from a qualified tax credit unit into a vacant never rented unit, the vacant never rented unit becomes a qualified tax credit unit and the formerly qualified tax credit unit becomes a vacant never rented unit. If a household moves from a qualified tax credit unit into a market unit, the market unit becomes a qualified tax credit unit and the formerly qualified tax credit unit becomes a market unit. The potential impact of unit swaps on the building’s applicable fraction (due to possible decreases in LIHTC floor space/square footage) must be closely monitored to prevent any decreases below the building’s 1<sup>st</sup> year Applicable Fraction. If the LIHTC household’s income exceeds 140%, the OI status moves with the household into new unit. The Next Available Unit Rule, previously invoked, must continue to be satisfied using the new unit as the basis for comparison of comparable or smaller size. Recertification is not necessary and the effective and move in dates remain unchanged. The certification should be appropriately revised (single strike-through any changed info, new information added and the resident/owner representative must initial all changes) to reflect the new unit information. Documentation in the file must also indicate the date of the transfer. To avoid potential confusion, it is recommended that a copy of all original household eligibility documentation be made and retained as a move-out file under the original unit number. Any change to household composition during a certification year should be handled as outlined in Item 17.C. above, titled, “Changes to Household Composition”.

**B. Moves between buildings**

- i. **“No” on IRS Forms 8609, Part II, Line 8b, Multi-Building Election (each building is a separate project)** – Any move from

one building (project) to another building (project) is always a move-out and a move-in, even on 100% LIHTC developments. The household must meet all initial eligibility requirements. A new full certification with all supporting documentation and new lease agreement is required. The certification will reference a new move-in date and effective date.

ii. **“Yes” on IRS Forms 8609, Part II, Line 8b, Multi-Building Election (multiple designated buildings comprise one project):**

a. **100% LIHTC Developments** – Move is considered to be a transfer. May transfer if the household exceeds the current income limit but may not transfer if household income exceeds 140%. The OI status moves with household into new unit. Recertification is not necessary and the effective and move-in dates remain unchanged. The certification should be appropriately revised (single strike-through any changed info, new information added and the resident/owner representative must initial all changes) to reflect the new unit information. Documentation in the file must also indicate the date of the transfer. To avoid potential confusion, it is recommended that a copy of all original household eligibility documentation be made and retained as a move-out file under the original unit number.

b. **Mixed Use Developments (LIHTC w/Market Units)** – IRS guidance is any move from one building to another building will be considered to be a move-out and a move-in. The household must meet all initial eligibility requirements. A new full certification with all supporting documentation and new lease agreement is required. The certification will reference a new move-in date and effective date. The exception is if a qualified household were to move from a qualified tax credit unit into a vacant never rented unit. In this instance, the vacant never rented unit becomes a qualified tax credit unit and the formerly qualified tax credit unit becomes a vacant never rented unit.

\*\* NOTE: Once the 1<sup>st</sup> year applicable fraction has been established, market units may not be moved from one BIN to another.

27. **Utility Allowance** – The following text is taken directly from the IRS “Guide for Completing Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition”, revised January 2011:

***A utility allowance is an estimate of the monthly cost of a resident’s utilities, other than telephone, cable and internet, which are not included in the rent.***

To calculate the maximum amount of rent that can be charged for a low-income unit, the utility allowance must be subtracted from the Gross Rent Limit applicable to the property and the specific unit type (BR size). Documentation to support Utility Allowances from the placed in service date to most current must be retained at the site and be available for review when requested. Determining the applicable Utility Allowance is dependent on the development’s funding sources and whether rental assistance is received for any unit/building.

- A. Rural Housing Services Utility Allowance** -- If a building or any unit in a building receives assistance from Rural Housing Services (“RHS”), then the utility allowance approved during the annual RHS budget process must be used for all units. This also applies to units with HUD Project-based assistance or units that are occupied by Housing Choice Voucher holders.
- B. HUD Project-based Utility Allowance** -- For developments where HUD regulates the rent and utility allowances and where neither any building nor any unit receives RHS housing assistance, the approved HUD project-based utility allowance must be used. This also applies to units occupied by Housing Choice Voucher holders.
- C. Public Housing Authority Utility Allowance** -- If a building is neither RHS-assisted nor HUD-regulated and no resident receives RHS assistance, the Public Housing Authority’s (“PHA”) allowance may be used for all program units. The PHA allowance must be used for units occupied by Housing Choice Voucher holders. The PHA allowances must be obtained annually. If unchanged, documentation must be received from the PHA which states that there was no change. If allowances do change, the new utility allowances must be used to compute gross rents within ninety (90) days from the effective date of the utility allowance.

- D. Explicit written approval must be obtained from SC Housing prior to the implementation of any Utility Allowance methodology indicated below:**
- i.** If neither any building nor any residents are subject to 26.A-B above, then the local PHA allowance may be applied to all program units. However, if an estimate is obtained for any unit from a utility company, that estimate must be applied as the utility allowance for all similar units in the building.
    - a. Utility Company Estimate** -- The utility allowance estimate may be obtained by any interested party to include residents, an Owner, a manager or SC Housing. If an estimate is obtained, the utility company must be located in the same geographic location for a unit which is of similar size and construction. If utilities are deregulated, the interested party is required to obtain an estimate from only one utility company even if multiple utility companies can provide the same utility service. However, the utility company must offer utility services to the building in order for that utility company's rates to be used in calculating the utility allowance. The estimate should include all component deregulating charges for providing the utility service. Utility allowance estimates must be obtained annually and any changed utility allowance estimate must be used to compute gross rents within 90 days from the date of the utility company's correspondence. Notices of Utility Allowance changes must be provided to the residents at the beginning of the 90-day period.
    - b. HUD Utility Schedule Model** -- Under Treasury Regulation § 1.42-10(b) (4) (i) (D), a building owner may calculate a utility allowance using the "HUD Utility Schedule Model", found on HUD's website. The building owner must review the basis on which utility allowances have been established at least once per year. Utility rates used for the HUD Utility Schedule Model must be no older than the rates in place 60 days prior to the date the utility allowance is calculated. SC Housing's approval date begins the 90-day period after which the new utility allowance must be used to compute gross rents. Notices of Utility Allowance changes must be provided to the residents at the beginning of the 90-day period.

- c. **Energy Consumption Model** -- A building owner may retain the services of a contractor to calculate a utility allowance using an energy and water and sewage consumption analysis model. The contractor must be a properly licensed engineer or a qualified professional. A qualified professional must be approved by the state housing credit agency having jurisdiction over the building and must not be related to the building owner within the meaning of IRC §§ 267(b) or 707(b). The energy consumption model must take into account specific factors including, but not limited to: the unit size; building orientation; design and materials; mechanical systems; appliances and characteristics of the building location. The data used to compute the estimate is limited to the building's consumption data for a 12-month period ending no earlier than 60 days prior to the date the utility allowance calculation. For newly constructed or renovated buildings with less than 12 months of consumption data, consumption data for the 12-month period for similarly sized and constructed units in the geographical location in which the building is located will be used. If the applicable utility allowance for a unit changes, the new utility allowance must be used to compute gross rents within 90 days from SC Housing approval. Utility Allowances must be provided to the residents at the beginning of the 90-day period.
- E. **Sub-metering** – Some buildings in qualified low-income housing projects are sub-metered. Sub-metering measures tenants' actual utility consumption and residents pay for the utilities they use. A sub-metering system typically includes a master meter, which is owned or controlled by the utility supplying the electrical, gas, or water service with overall consumption billed to the building owner. In a sub-metered system, building owners (or their agents) use unit-based meters to measure utility consumption and prepare a bill for each residential unit based on actual consumption. The building owners (or their agents) retain records of resident utility consumption, and residents receive documentation of utility costs as specified in the lease.

Notice 2009-44 clarifies that, effective on or after 01/01/09, for purposes of Treasury Regulation § 1.42-10(a), utility costs paid by a tenant based on actual consumption in a sub-metered rent restricted

unit are treated as paid directly by the tenant and not by or through the Owner of the building. For RHS buildings, buildings with RHS tenant assistance, HUD-regulated buildings and rent-restricted units in other buildings occupied by tenants receiving HUD rental assistance, the applicable RHS or HUD rules apply. The regulation states that for all other rent-restricted units in other buildings:

- ***The utility rates charged to tenants in each sub-metered rent restricted unit must be limited to the utility company rates incurred by the building owners (or their agents)***
- ***If building owners charge tenants a reasonable fee for the administrative costs of sub-metering, then the fee will not be considered gross rent. The fee must not exceed an aggregate amount per unit of \$5.00 per month.***
- ***If the costs for sewerage are based on the tenant's actual water consumption determined with a sub-metering system and the sewerage costs are on a combined water and sewerage bill, then the tenants' sewerage costs are treated as paid directly by the tenants for the purposes of the utility allowance regulations.***

F. **Ratio Utility Billing System (“RUBS”)** – Unlike a sub-metering system in which there are unit sub-meters which measure actual resident consumption, ratio utility billing systems use a formula to divide the total utility costs for the development among the individual units. The formula uses criteria such as number of occupants, square footage, bedroom size, etc. to assign a portion of the utility costs to each unit. Although IRS Notice 2009-44 allowed the inclusion of sub-metered utility costs since they are based on actual tenant usage in the Utility Allowance, the utility costs based on the ratio utility billing system may not be included in the Utility Allowance. Instead, these are considered to be recurring, non-refundable fees that are a condition of occupancy and therefore must be included in the calculation of Gross Rent. These fees must be reflected on the Tenant Income Certification. If they fluctuate, documentation must be kept in the resident's file reflecting the actual amounts paid in order to determine that the appropriate rent restriction is in place at all times.

28. **Vacant Unit Rule** – Tax Credits may still be claimed on units vacated by qualified low-income households as long as the unit is suitable for occupancy and reasonable marketing attempts are continuing to re-occupy the vacant tax credit units with households having a qualifying income before any units

of comparable size or smaller (in comparison to the vacant LIHTC unit) in the project are rented to non-qualifying households.

29. **Zero Income Applicants/Tenants** – All contributions to the household, monetary or not, from a source outside of the household are considered to be income, with the exceptions of food and child care paid directly to the childcare provider. Program regulations require that all income from all income sources be disclosed, verified and included on the Tenant Income Certification. Even if receiving rental assistance, households with zero income or with income insufficient to cover reasonable basic living expenses are required to provide a statement outlining how these basic living expenses are currently being paid. If gift or recurring contributions are disclosed, verifications must be obtained for these contributions and this income must be included in certified income.

## QUALIFYING THE HOUSEHOLD

Within this area of ongoing Owner Responsibilities, federal and state programmatic requirements involve the qualification of households for program units. To ensure that the requirements are satisfied, it is essential that the Owner implement a systematic and consistently-applied procedure for qualifying households. This procedure must include the following processes, to be completed in the order given: conducting an interview, obtaining an application for occupancy, verifying income and calculating anticipated annual income. Once these steps have been completed, a determination of household eligibility can be made. Only after this determination is made, may the Owner certify the household as program eligible and grant legal occupancy by executing a lease agreement.

1. **Interview Process** – During the prospective applicant's initial visit to the development, management should explain the LIHTC Program, its benefits and the programmatic requirements to determine household eligibility, both initially and annually. Management should explain the requirement for full disclosure by the household of all anticipated income and asset information for all household members (including temporarily absent members) and verification of information. It is strongly recommended that all adult household members be present during this process, unless unavoidable circumstances exist. It is helpful to explain that all information provided is confidential and will be handled accordingly. When educated and properly prepared at move-

in, most residents will not object to the subsequent requirement to again disclose during the recertification process. The following should be discussed:

- A. **Household composition:** Current and anticipated future household member(s), temporarily absent household member(s), permanently absent household member(s), live-in attendants, foster adults/children
  - B. **Student statuses for all household members:** LIHTC Full-Time Student rules and eligibility provision(s)
  - C. **Income:** Household earned and unearned income sources, including child support, maintenance and/or alimony and documentation requirements
  - D. **Assets and Asset Income:** Preliminary explanation of assets, inclusions and exclusions, asset income and documentation requirements
  - E. **Applicable Income and Gross Rents:** Provide and discuss the applicable income and gross limits for the property
  - F. **Tenant Selection Criteria:** Provide a copy of the property's Tenant Selection Plan. Although the use of Tenant Selection Plans and waiting lists/waiting list procedures are not mandated by the LIHTC Program regulations, it is strongly recommended that Owners establish and consistently apply reasonable and equitable screening criteria and wait list procedures that are compliant with Fair Housing law.
  - G. **VAWA Protections and procedures:** HUD released final regulations concerning the Violence Against Women Act ("VAWA") in 2016 and 2017 (Federal Register Vol.81, No. 221 and HUD Notice H-2017-05). The 2016 reauthorization broadens the scope of impacted housing programs to include the LIHTC Program. While VAWA is not monitored as a compliance issue, any adjudicated, negative fair housing finding, including any that result from improperly providing VAWA protections, must be reported to the Internal Revenue Service.
2. **Application Process** – As stated in the Owner's Recordkeeping and Record Retention responsibilities, an application for residency is required for each program unit. Ideally, once the interview has been conducted, the

applicant(s) should complete the application. The form should be simple but thorough, capturing sufficient information with clarity to enable management to proceed with verification processes. Questions that can be answered with either “yes” or “no” are recommended and open-ended questions should be avoided. Questions on the application that typically causes confusion should be explained (i.e. assets, temporarily absent household members, etc.).

Applicant(s)/Resident(s) must complete their own application. In rare instances, when they are unable to do so, the applicant(s)/resident(s) may choose another individual, independent of management, to complete the application on their behalf. The application should be documented to this effect and the applicant(s) must signify their agreement with the disclosed information. One of the “checks and balances” built into the LIHTC Program is for the applicant(s) to independently disclose household eligibility information and for management to independently verify the information disclosed. This process discourages fraud and manipulation of the determination of eligibility.

Whenever possible, management should review the application, at the time submitted, with all adult applicant(s). Any information that is missing should be obtained and any unclear information should be clarified. Please note that any change to the application must be made and initialed by the applicant, not management. Contact information for verification sources and releases of information should be obtained. The applicant(s)/ should be asked to voluntarily disclose household demographic information. However, housing may not be denied solely because the household declined to disclose demographic information.

At a minimum, the application for residency should include:

- A.** The legal name, age, relationship to head of household for each household member and whether any changes to household composition are anticipated within the twelve (12) month period following certification.  
If the applicant voluntarily discloses a pregnancy, the unborn child may be counted as a household member for income-qualification purposes. No verification of the disclosed pregnancy is allowable.
- B.** The student status of all household members, past and current, and if any changes are anticipated within the 12-month period following certification

- C. Disclosure as to whether the household is assisted through a Section 8 Housing Choice Voucher
  - D. All sources and amounts of current income, earned and unearned, for all household members (including financial aid, if applicable) and if any changes to household income are anticipated within the twelve (12) month period following certification
  - E. All currently held household assets and amounts of income anticipated to be generated by assets and if any changes to assets are anticipated within the twelve (12) month period following certification
  - F. All assets disposed of for less than fair market value by any household member during the twenty-four (24) months preceding application
  - G. Signature and signature dates of all household members 18 and older
3. **The Verification Process** – Owners are required to verify information collected in the application process in order to make a determination of household eligibility

- A. **Requirements for Verifications** – In order to be valid, verifications must be appropriately dated, legible and unaltered.

Missing or unclear information must be clarified with the verifying party and the conversation documented on a separate record in the resident's file.

It is strongly recommended that an income summary worksheet be included in the resident file which shows detailed calculations for each income source. Calculator tape may also be attached to verifications showing calculations, taking care not to obscure pertinent information. This greatly expedites the monitoring process by allowing Monitoring Officer to quickly identify the source of any income variances. In the case of computer printouts, the 120-day period begins on the date that the report is printed, not the effective date listed on the printout.

- B. **Information to be Third-Party Verified** – The Owner is required to verify: all regular sources of income; income derived from household assets with a combined cash value greater than \$50,000 or the annual inflation amount; disposal of assets for less than fair market value;

student status, through the educational facility; foster status for adults and children, through the state or local agency; the need for a live-in attendant, through the healthcare practitioner. Additional information that impacts program eligibility, while not specifically listed above, may also require verification.

**C. Methods of Verification** – Under the new HOTMA, the verification hierarchy of preferred verifications are listed.

**“High Level”**

1. The Enterprise Income Verification system (EIV) contains personal information on individual tenants that is covered by the Privacy Act. It must not be used when determining income for LIHTC program participation.

**Verification provided documents** – Written, third-party verification from the source provided by the tenant such as pay stubs, payroll summary reports, employer notices/letters of hire/termination.

The required number of paystubs are as follow:

<b>Pay wage cycle:</b>	<b># of consecutive stubs to cover 2 months</b>
Weekly	9
Bi-weekly	5
Semi-monthly	4
Monthly	2

When annualizing income using pay stubs, must use the highest amount of the year-to-date or the average gross amount calculated.

Copies of the documentation reviewed must be placed in the applicant or resident’s file. In order for the documentation to be considered acceptable and valid, the documents copied for the file must be unaltered originals, be current (dated within 120 days prior to the effective date of the certification) and contain sufficient information to include resident/applicant’s name,

address, employer's name, address and/or cover a sufficient period of time to anticipate income with accuracy. Actual paychecks are not considered acceptable or valid employment verifications since only net income, after deductions, is shown. The pay stubs must be within 120 days from ending pay period date.

**“Medium Level”**

**2. Third-Party Verification** – Third-party verifications are sent directly to and from the verifying source. After signing the appropriate release of information, the applicant or resident has no further participation in the completion of the verification. The applicant or resident must not transport the verification to the employer. The following describes the methods for verifications:

- A. Written** – The Owner must obtain written third-party verification whenever possible. The Owner must use an acceptable Income Verification form.

For Housing Choice Voucher holders, the verification requirement is satisfied if the Public Housing Authority (“PHA”) provides the building owner with a statement that declares that the gross annual income of the residents in the unit does not exceed the stated applicable income limit under Section 42(g) of the Internal Revenue Code. The Income Verification Form for Section 8, Form IVS8, may be used (See Forms Section). The income of Housing Choice Voucher holders may also be verified using the appropriate verification forms.

If the household has no income, the Zero Income Affidavit will be the only verification possible.

- B. Electronic** – Per HUD’s Occupancy Handbook 4350.3 REV-1 Chg. 4, the Owner may now obtain third-party verification by facsimile, e-mail, or Internet, if adequate effort is made to ensure that the sender is a valid third-party source.
  - i. Facsimile** – In order to be considered acceptable

verifications, faxes must be completely legible, date-stamped and must include the signature, signature date, name, job title, fax and phone numbers of the person making the verification. Due to record retention requirements, faxes received on thermal paper should immediately be copied to plain white bond.

- i. **E-mail** – Electronic mail must contain the name of an appropriate individual and firm to be considered reliable.
- ii. **Internet** – Computer generated internet printouts are considered third-party verifications if the Owner is able to view web-based information directly from the employer’s website on the computer screen. A printout should contain pertinent information including information that identifies the employer source.

**“Lowest Level”**

**Family Certification** – As a last resort, when all other methods of verification prove unsuccessful a notarized resident self-affidavit may be used as a verification. Notarized resident self-affidavits may also be used to supplement another method of verification.

- D. Application of Verification Methods for Specific Income Types** – Since few household income scenarios are “textbook”, questions may arise about acceptable alternatives when management encounters roadblocks in the verification process. The purpose of the verification methods outlined is to give management the ability to move beyond obstacles, without compromising the validity of the determination of household eligibility. (See Resources Section for alternative verifications for specific eligibility items). Please keep in mind that SC Housing will specify where our policies are more restrictive than those published by HUD. The following specific income types will illustrate practical applications of the procedure outlined. The methods are given in descending order of preference and the applicant or resident’s file must be documented, as previously outlined in “Review of Documents”, prior to moving to the next method of verification.

Additionally, due to confidentiality concerns, HUD has restricted the review of the EIV to only HUD-authorized staff persons. SC Housing's LIHTC Compliance Monitoring staff persons will not review any resident file which contains the EIV Form.

**1. Employment**

- a. Review of Documents –The preferred verification methodology is for the Owner to obtain the resident's most current, consecutive check stubs that covers according to the chart above or; a copy of the most recent income tax returns signed by the applicant which provides the amount of income, including income from tips and gratuities, or; a copy of the resident's most recent W-2 forms. Should an applicant be relocating from out of state, the most recent tax return and a verification of termination of employment must be obtained.

**2. Self-employment**

- a. An accountant's or bookkeeper's statement of anticipated net income and salaries distributed to household members for the 12-month period following certification/recertification
- b. Financial statement(s) of the business plus a notarized affidavit from the resident forecasting the anticipated net income for the 12-month period following certification
- c. The resident's most recent income tax return, with the appropriate IRS schedules plus a notarized affidavit from the resident forecasting the anticipated net income for the 12-month period following certification

**3. Social Security, Pensions, Supplemental Security Income (SSI), Disability**

- a. A Social Security or pension award or benefit notification letter, prepared by the authorizing agency. The Social Security letter is considered valid until a new award or benefit letter is generated by the Social Security Administration, typically in the late fall of each year. Pensions that are noted as unchanging life-time benefits are valid until a new award or benefit letter is generated. In cases where pensions are subject to a cost of living

adjustment (“COLA”), please follow additional documentation requirements outlined in Item b.

- b. Since SSI benefits and some pension benefits are subject to change, documentation for these sources are valid for 120 days from the printing date. If the documentation is not dated within 120 days prior to the effective date of certification, the most recent award or benefit notification letter should still be obtained and a notarized resident affidavit that confirms the amount in the award or benefit letter also obtained.

**4. Unemployment Compensation**

- a. Printout from the unemployment office, dated within 120 days prior to the certification/recertification effective date, stating payment dates and amounts.

**5. Alimony or Child Support**

**a. Court ordered Alimony/Child Support:**

- i. A copy of the complete separation or maintenance agreement, divorce decree for alimony support and child support printout or any subsequent modifications, stating the amount and frequency of payment should be obtained.
- ii. If the document in item (i) above is not dated within 120 days prior to the effective date of the certification, copies of the complete court documentation should still be obtained. In addition, it is necessary to obtain one other document, such as the family court printout or a notarized resident affidavit, which confirms the amount and frequency of payment in the decree.
- iii. If a copy of the separation or maintenance agreement or divorce decree is not available or the applicant or resident must pay to obtain a copy of the decree, documentation in item ii may be used. The file must be documented to this effect.

**b. Voluntary Alimony/Child Support:**

- i. If the support is voluntary a notarized affidavit should be obtained from the person providing the support that provides: the amount; frequency of pay; and which

indicates if the support will continue during the 12-month period following certification/recertification.

**6. Recurring Gifts and Contributions**

- a. A notarized affidavit, from the person providing the recurring gift or contribution, that states the purpose, amount, frequency and that indicates if the assistance will continue during the 12-month period following certification
- b. A letter from a bank, attorney or trustee providing the same information outlined in Item a. above.

**E. Calculation of Anticipated Annual Household Income** – As defined in 24 CFR § 5.609, annual income is:

***All amounts, monetary or not, which go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and which are not specifically excluded.***

Owners must project or estimate the annual income that the household expects to receive in the 12-month period following certification. Generally, the Owner must use current circumstances to anticipate income. If information is available about reasonably anticipated changes that are expected to occur during the 12-month period, this information should be factored into anticipated income. Income that may not last for a full 12 months (e.g., unemployment compensation) should be calculated assuming current circumstances will last a full 12 months. Note that if the calculation of annual income using the year to date information disagrees with the anticipated income calculated based on rate of pay given, management should use the higher of the two.

1. **Income Inclusions:** For a listing of income inclusions, please see Resources Section.
2. **Income Exclusions:** For a listing of income exclusions, please see Resources Section.
3. **Annualization factors:**
4. **Example of annualizing income:**

On the Employment Verification, the employer indicates that the resident/applicant earns \$10.00 per hour, works 35-40 per week, 52 weeks per year. A raise of \$.50 per hour will occur on 11/15/2021 which is 6 weeks from the effective date of the certification, 10/01/2021. No additional raises, overtime, bonuses, commissions, no loss of pay, etc. are anticipated.

	Rate	Frequency	# of hours	# of pay periods	Subtotals
Base	\$ 10.00	Hourly	40	52	20,800
Raise	\$ .50	Hourly	40	46	920
OT	\$				
Other	\$				
Loss of Pay (-)	\$				
<b>Total</b>					<b>\$ 21,720</b>

F. **Whose Income is Counted** – Just as there are certain types of income, listed above, that are included and excluded, the incomes associated with certain household members are either included, partially included or excluded, as follows:

1. **Adults** – Count all the income (earned income, benefit income, income from held or disposed of household assets, financial aid if applicable) of the head, spouse or co-head, and all other adult members of the family with the exception of foster child/ adults and live-in aides. They are not considered household members for program purposes; therefore, their incomes are excluded. Persons under the age of 18, who have entered into a lease under state law, are treated as adults (emancipated minors). Their annual income must be counted if they are the head of household, spouse, or co-head. If they are residing with a family as a member other than the head, spouse or co-head, they would be considered a dependent and their income handled as described in paragraph 2.
2. **Dependents** – A dependent is a family member who is under 18 years of age, or over 18 and a full-time student. The head of

household, spouse, and co-head can never be dependents. Some income of dependents is counted and some is not.

- a. Earned income of minors (family members under 18) is not counted
- b. Up to a maximum of \$480 or (as adjusted by inflation) per year of the earned income is included in annual income for full-time students, aged 18 and older, who are not the head, spouse or co-head. Income in excess of \$480 or (as adjusted by inflation) should be excluded.
- c. The total amount of benefit income of minors and full-time students 18 and older (who are not the head, spouse or cohead) is counted in annual income
- d. See Section, “Key Concepts – Financial Aid”, to determine instances where student financial assistance (grants, scholarships, educational entitlements, work study programs, and financial aid packages) is included in annual income.

For students receiving Section 8 assistance, all financial assistance a student receives (1) under the Higher Education Act of 1965, (2) from private sources, or (3) from an institution of higher education that is in excess of amounts received for tuition is included in annual **except** if the student is over the age of 23 with dependent children or the student is living with his or her parents who are receiving Section 8 assistance.

- e. Payments received by the family, for the care of foster children or foster adults, are NOT counted.
  - f. Adoption assistance payments in excess of \$480 or (as adjusted by inflation)
3. **Temporarily Absent Family Members** – If the temporarily absent individual is the head of household, spouse or co-head and there is a reasonable date of return, the person should be included, as part of the household and associated income should be counted. In the case of active military, the person should be included as a part of the household and income counted if: they are the head of household, spouse, co-head; or if the person on active military duty has a spouse or dependent living in the unit

4. **Permanently Confined Family Members** – An individual permanently confined to a nursing home or hospital may not be named as head of household, spouse or co-head but may continue to be a household member at the family’s discretion. If included as a household member, all associated income must also be included.

#### G. Calculating Specific Income Types

1. **Alimony or Child Support** – Owners must count alimony amount awarded by the court and child support the average actual amount received within the last six weeks if receive on a weekly/bi-weekly basis or the last 6 months if receive monthly or the annual amount (do not include court fees) unless the applicant can provide documentation to demonstrate that no payments have been made for the last twelve (12) months, do not count the child support
2. **Regular Cash Contributions and Gifts** – Owners must count as income any regular contributions and gifts from persons not living in the unit. This does not include groceries and/or contributions paid directly to the childcare provider. Temporary, nonrecurring, or sporadic income is not included in annual income.
3. **Income from a Business** – When calculating annual income, Owners must include the net income from the operation of a business or profession, including self-employment income. Net income is gross income less business expenses, interest on loans, and depreciation computed on a straight-line basis. In addition to net income, Owners must count any salaries or other amounts distributed to family members from the business. If the net income from a business is negative, it must be counted as zero income. A negative amount must not be used to offset other family income.
4. **Worker’s Compensation** - used to be included, but now is excluded, as long as it is expected to end during the certification year. This is considered ‘nonrecurring’ income. If it extends past an annual effective date, it is counted until the year it ends.

5. **Periodic Social Security Payments** – Count the gross amount, before any deduction of periodic Social Security payments, including payments received by adults on behalf of individuals under the age of 18 or by individuals under the age of 18 for their own support.
6. **Adjustments for Prior Overpayment of Benefits** – If an agency is reducing a family’s benefits to adjust for a prior overpayment, count only the amount that is actually being provided after the adjustment.
7. **Periodic Payments from Long-Term Care Insurance, Pensions, Annuities, and Disability or Death Benefits** – The full amount of periodic payments from annuities, insurance policies, retirement funds, pensions, and disability or death benefits is included in annual income. Withdrawals from retirement savings accounts, such as Individual Retirement Accounts and 401K accounts that are not periodic payments, do not fall in this category and are not counted in annual income.
  - a. If the tenant is receiving long-term care insurance payments, any payments in excess of \$180 per day must be counted toward annual income.
  - b. If a Federal government pension fund, or any portion thereof, is paid directly to a former spouse pursuant to the terms of a court decree of divorce, annulment, or legal separation, it is not counted as annual income. The pension funds paid to the former spouse are counted as income for the applicant or tenant receiving such funds.
8. **Resident Service Stipends** – Resident service stipends are generally modest amounts of money received by residents for performing services such as hall monitoring, fire patrol, lawn maintenance, and resident management. If the stipend exceeds \$200 per month, the entire amount of the stipend must be included. If the stipend is \$200 or less per month, none of the stipend is included in annual income.
9. **Withdrawal of Cash or Assets from an Investment** – The withdrawal of cash or assets from an investment received as periodic payments should be counted as income. Lump sum

receipts from pension and retirement funds are counted as assets. If benefits are received through periodic payments, do not count any remaining amounts in the account as an asset.

- 10. Lump Sum Payments Counted as Income** – Generally, lump sum amounts received by a household, such as inheritances, insurance settlements, or proceeds from the sale of property, are considered to be assets, not income. Typically, the differentiating factor is whether amounts are received as lump sums or as periodic payments.
- a.** When social security or SSI benefit income is paid in a lump sum as a result of deferred (delayed) periodic payments, that amount is excluded from annual income and included in household assets.
  - b.** Settlement payments from claim disputes over welfare, unemployment, or similar benefits may be counted as assets.
  - c.** Lump sum payments caused by delays in processing periodic payments for unemployment or welfare assistance are included as income.

- H. Income from Assets** – An asset is an item of value that can be converted into cash. This is a hypothetical conversion only. At no time is the household required to convert held assets into cash. Household assets include the assets of ALL household members, including minors. Necessary personal property is not counted as an asset.

Assets may or may not earn actual income (e.g., interest, dividends, etc.), depending on how or if the assets are invested. The applicant(s) or resident(s) must disclose the market value of assets and all associated income generated by the assets held by all household members. Once the market value of assets is converted to a combined cash value, if the combined cash value of household assets is \$50,000 or less than the annual inflation amount, third-party verification of income derived from assets is not required. In these instances, the ACTUAL income derived from assets, as disclosed by the household, will be transferred to the household certification.

Owners need to verify the applicant/resident disclosure of household assets only if the information does not appear to agree with other information reported by the applicant/resident. However, when the

combined cash value of household assets exceeds \$50,000 or the annual inflation amount, third-party verification is required. When net family assets are valued over \$50,000 or the annual inflation amount, and actual returns on specific assets cannot be calculated, imputed returns are included in income. All actual returns that can be calculated continue to be included in income.

Effective 01/01/2025 and thereafter, per HUD's Notice H 2023-10, the Passbook Savings Rate is set based on the annual inflation amount.

1. **Cash Value of an Asset** – Cash value of an asset is the market value minus reasonable expenses (e.g., penalties for premature withdrawal, broker fees, legal fees, and settlement costs for real estate transactions) that would be incurred in selling or converting the asset to cash. Note that the family is NOT required to convert the assets to cash. This conversion to cash is done as a hypothetical calculation only in order to determine income from assets.
2. **Ownership of Assets** – It is possible for multiple individuals to own an asset. Determine the percentage of ownership by household members and prorate the asset accordingly. Assume equal ownership if no percentage is specified or provided by state or local law. If an asset is not effectively owned by an individual, do not count it as an asset. An asset is not effectively owned when the asset is held in an individual's name but (a) the asset and any income it earns accrue to the benefit of someone else who is not a member of the household, and (b) that other person is responsible for income taxes incurred on income generated by the assets.
3. **Treatment of Specific Assets**
  - a. **Cash held in savings and checking accounts, safe deposit boxes, homes, etc.** – For savings accounts, the cash value is the current balance. Income is calculated by multiplying the current balance by the Annual Percentage Rate.

SC Housing is treating cash cards as savings accounts, and the cash value would be the current balance.

For checking accounts, the new requirement is the current balance, just as with a savings account.

Many management companies require bank statements for household assets with a combined cash value of \$50,000 or less for applicants and residents, including all deposits as household income. This practice is problematic since the program requires that the gross amount, not net, of any income be periodic, on-going and appropriately verified prior to adding it to household income. Sporadic and non-recurring gift income, loans, and any repayment of loans between individuals are not considered income.

Note that assets held in foreign countries are considered assets.

- b. Trusts** – Trusts are legal arrangements in which one party (the creator or grantor) transfers property to a second party (the trustee) who holds the property for the benefit of one or more third parties (the beneficiaries). A trust can contain cash or other liquid assets or real or personal property that could be turned into cash. Trusts can be revocable or nonrevocable, depending on whether the principal of the trust is accessible. The beneficiary frequently will be unable to touch any of the trust funds until a specified date or event (i.e., the beneficiary's 21<sup>st</sup> birthday or the grantor's death). In some instances, the beneficiary may receive the investment income but not be able to withdraw the principal. The basis for determining how to treat a trust relies on access to the principal and/or the income from the account.
  - i.** A revocable trust is a trust that can be accessed and may be amended or ended (revoked) by the creator of the trust. If any member of the household has the right to withdraw the funds in the account (has access), the trust is considered to be a household asset. Include the cash value (the amount, after conversion costs, that the household would receive if they withdrew all that could be withdrawn) of any revocable trust available to the family in total household net assets. In addition, include, in actual income derived from assets, the interest accrued on the trust, even if it is reinvested in the trust.

- ii. A nonrevocable trust is a trust that cannot be accessed by the creator once created. If no household member has access to either the principal or the income generated by the trust, it is not considered to be a currently held asset. If only the income is available to a household member, include the income, but do not include the cash value of the trust in total household net assets until the principal is accessible.
- iii. A special needs trust is a trust that is created under state laws, often by family members, for disabled persons who are not able to make financial decisions for themselves. Generally, the beneficiary does not have access to the principal of the trust. In those instances where the beneficiary does not have access to the principal or the income, the trust is not considered to be a currently held asset. If the interest is paid to the beneficiary regularly, the payments are included in actual income derived from assets, but do not include the cash value of the trust in total household net assets until the principal is accessible.
- c. **Equity in rental property or other capital investments** – Include the current fair market value of real estate minus (a) any unpaid balance on any loans secured by the property (i.e., pre-existing mortgage, etc.) and (b) reasonable costs that would be incurred in selling the asset.
- d. **Stocks, bonds, Treasury bills, certificates of deposit, mutual funds, and money market accounts** – Interest or dividends earned are counted as income from assets even when they are reinvested. Although the value of these assets is variable, the value is fixed on the date of assessment by management.
- e. **Annuities** -- An annuity is a contract sold by an insurance company designed to provide payments, usually to a retired person, at specified intervals. Annuities can be fixed (interest is accrued at a fixed rate), variable (earnings/losses are based on market fluctuation), or hybrid (combination of fixed and variable features) annuities. The basis for determining how to treat an annuity relies on access to the balance of the annuity and whether periodic payments are being received. If the holder does not have the right to withdraw the balance, the annuity is not considered to be a

currently held asset. Once payments are being made to the holder regularly, the payments are included in income, but the cash value of the annuity should not be included in total household net assets. If the holder has the right to withdraw the balance, even if penalties would be assessed, the cash value of the annuity is included with household net assets, and the interest earned is included in actual income derived from assets, even though they are reinvested.

- f. Individual retirement, 401K, and Keogh accounts –**  
These are included when the holder has access to the funds, even though a penalty may be assessed. If the individual is making occasional withdrawals from the account, determine the amount of the asset by using the average balance for the previous six months. Do not count withdrawals as income. Once benefits are being received through periodic payments, count payments as income. Do not count any remaining amounts in the account as an asset.
- g. Retirement and pension funds**
  - i.** At retirement, termination of employment, count periodic receipts as income. Do not include the cash value of any remaining amounts in the account in household net assets. Lump-sum receipts should be included in total household net assets. If the individual initially receives a lump-sum benefit followed by periodic payments, count the lump-sum receipt as an asset and the periodic payments as income. In subsequent years, count only the periodic payments as income. Do not count the remaining balance as an asset.
- h. Cash value of life insurance policies available to the individual before death –** Count the surrender value of a whole life policy or a universal life policy.

Assets would not include a value for term life insurance, which has no cash value to the individual before death.

- i. A mortgage or deed of trust held by the applicant –**  
Occasionally, when an individual sells a piece of real estate, the seller may loan money to the purchaser through a mortgage of sale or deed of trust. This may be referred to as a “contract sale”.

- i. Payments on this type of asset are often received as one combined payment of principal and interest, with the interest portion counted as income from the asset.
- ii. This combined figure needs to be separated into the principal (cash value) and interest portions (income from the asset) of the payment. The amortization schedule should be used to determine the breakdown.

4. **Asset Exclusions**

- a. **Necessary Personal property** -- Clothing, furniture, cars, wedding ring, other jewelry that is not held as an investment, vehicles specially equipped for a person with disabilities are not considered assets.  
Non-necessary Personal property-
- b. **Interests in Indian trust land**
- c. **Term life insurance policies (i.e., where there is no cash value)**
- d. **Equity in the cooperative in which the family lives**
- e. **Assets that are part of an active business** – “Business” does not include rental of properties that are held as investments unless such properties are the applicant’s or resident’s main occupation
- f. **Assets that are not effectively owned by the applicant** – Assets that are effectively owned when they are held in an individual’s name, but (a) the assets and any income they earn accrue to the benefit of someone else who is not a member of the household, and (b) that other person is responsible for income taxes incurred on income generated by the assets
- g. **Assets that are not accessible to the resident/applicant and provide no income to the resident/applicant**

5. **Assets disposed of for less than fair market value** –

Applicants and residents must declare whether an asset has been disposed of for less than fair market value at each certification and recertification. Owners must count assets disposed of for less than fair market value during the twenty-four (24) months preceding certification and recertification. The amount counted as an asset is the difference between the cash value and the amount actually received. This amount should be

added to the cash value of all other household assets for a period of 24 months following the disposal. The rule applies only when the fair market value of all assets disposed of exceeds the gross amount received by more than \$1000. Assets, disposed of as a result of foreclosure, bankruptcy, divorce, or separation, are not considered disposed of for less than fair market value. Assets placed in nonrevocable trusts are considered to be assets disposed of for less than fair market value unless the assets were placed in trust were received through settlements or judgments.

6. **Retirement plans** recognized as such by the IRS ([www.irs.gov](http://www.irs.gov)) Annuities, Stocks, Bond, CDs, etc. that are part of a retirement account are also excluded. If receiving a distribution, the distribution is considered income.

4. **The Certification and Leasing Processes** -- After all of the income and asset information has been obtained, verified, and computed, a final determination of household eligibility must be made. At that time, if eligible, the household must be certified and a lease agreement executed. Management must prepare a Tenant Income Certification. This form is a legal document that, when properly executed, satisfies the income certification of the Code. The complete certification form must be executed by all household members 18 and older prior to move-in.

**A. Initial Certification** – No one may live in a LIHTC program unit unless he/she is certified. There are no permissible exceptions to this rule.

1. All adult household members (including full-time students, over the age of 18, and who are not the Head, Co-Head, or Spouse) must sign the Tenant Income Certification (TIC) using their legal names
2. Generally, the actual date of move-in will be the effective date of the TIC. Please be aware that this may not be true when other funding sources are present or when acquisition/rehabilitation and re-syndication rules apply.
3. The TIC must be executed (signed by all parties) on or before the date of move-in

4. The TIC must also be executed (signed and dated) by the Owner or Owner’s representative
- B. Annual Recertification** – Generally, Owners must verify the income of residents occupying low-income units at least annually and complete a certification for continuing household eligibility. If certification is not completed within 365 days of the previous certification date, SC Housing may report this to the IRS as noncompliance.
1. **Recertification Waiver** – The Housing and Economic Recovery Act of 2008 (“HERA”), enacted on July 30, 2008, made provision for 100% LIHTC developments to utilize an “annual recertification waiver”. Prior to discontinuing the full recertification process, the Owner must request approval from SC Housing to use the waiver. Failure to obtain prior written approval will result in findings of noncompliance. With SC Housing approval, the waiver allows the discontinuation of annual income verifications only. All other LIHTC requirements still apply.

Please note that the HERA recertification waiver applies only to the LIHTC Program and does not apply to other programs, including the Tax-Exempt Bond Program.

- a. In order to be eligible to utilize this exemption, SC Housing requires that developments be:
  - i. “In compliance” (i.e. no outstanding noncompliance issues, monitoring fees, submissions of AOCs, or submissions of resident data through the Emphasys Certification Portal).
  - ii. Without any other funding source(s) that require annual certification
  - iii. Comprised of only 100% LIHTC buildings, even if the Owner elected not to make buildings part of a multi-building project on IRS Forms 8609, Line 8b.
- b. **Utilizing the exemption**
  - i. Effective 10/01/2021, a full recertification must be performed on the anniversary of the initial certification, which includes a recertification questionnaire/application and income verifications.

- ii. In subsequent years, the household must complete a recertification questionnaire/application, which contains household composition, total household income, and student statuses for all household members

Student status is never grandfathered in and will continue to be an eligibility factor and may have to be 3<sup>rd</sup> party verified.

- iii. Disclosed household eligibility information must be summarized on a Tenant Income Certification annually
- iv. If disclosed household income exceeds 140% of the current applicable income limit, the Next Available Unit Rule is triggered and must be continually satisfied.

**c. Rescinding the Recert Waiver**

- i. SC Housing has the right to rescind any previously approved recertification waiver if the following are found:
  - Multiple file issues (such as habitual expired recerts, poor document/documentations, etc.
  - Poor internal controls (significant risk of error)
  - The tenant data through the Emphasys Certification Portal is not being updated continuously

If the recertification waiver is denied, the Owner must wait until the next cyclic file review has been completed. Only if all findings are resolved, and none of the above issues are identified during the review, will a recertification waiver be considered.

2. **Over-income Residents at Recertification** – If the income of a household qualified when such resident(s) initially occupied a program unit in the development, an increase in the household income of up to one hundred forty percent (140%) of the current applicable limit (adjusted for household size) will not result in disqualification. At annual recertification, if the household's income increases to a level greater than 140% of the applicable limit, all units of comparable or smaller size that become vacant in the building must be leased to a qualified low-income household until the applicable fraction for the building has been restored. The over-income unit may still be counted as a program unit as long as it remains rent-restricted and the next

available unit rule is followed. To calculate 140% of the income limit, multiply the current income limit, for the household size, applicable at the time of income determination by 1.4.

- C. Lease** – All LIHTC units must be under lease, however, legal occupancy (execution of the Lease) cannot take place prior to the execution of the Tenant Income Certification (summary of eligibility). To demonstrate non-transient use, leases must be properly executed with an initial minimum term of at least six months (except for SRO's and transitional housing). The lease agreement should contain the following:
1. Beginning and ending date of the agreement
  2. Legal Names of all household members; all household members, aged 18 and older, must be listed as leaseholders and must sign the agreement, except for full-time students who are dependents of the household (not the Head, Co-Head or Spouse)
  3. To demonstrate appropriate rent-restriction, the lease must reflect the rental rate and all other applicable recurring, non-optional fees
  4. Signatures of all Leaseholders and an authorized Owner's Representative. If the signatures are "wet signature", then the lease must be dated with "wet date".
  5. In addition, Owners should include the following provisions to provide the basis for termination of Lease in the event of LIHTC ineligible or fraudulent households
    - a. Provisions stating that intentional misrepresentation of household size or income or any other attempt to mislead the Owner as to the tenant's qualifications to occupy a low-income unit will result in the termination of lease
    - b. Provisions stating that failure to recertify will result in the termination of lease
    - c. Provisions stating that any change in the household composition and/or student status must be immediately reported to the Owner/management agent
    - d. Provisions addressing termination of lease for ineligible student households

- e. Provisions that prohibit subletting or assignment of lease
- f. Provision stating that the Owner, the Owner's representative, staff of SC Housing and representatives of the Internal Revenue Service reserve the right to enter the unit to inspect the physical condition of such unit
- g. If the unit will be occupied by more than one adult, all adult residents should be leaseholders and should sign the lease with the exception of dependent full-time students who are not the head, co-head or spouse

## COMPLIANCE MONITORING ACTIVITIES

This section briefly describes SC Housing's Compliance Monitoring activities. These monitoring procedures may be modified as SC Housing deems necessary, or as required by the Internal Revenue Service, IRS regulations, Revenue Rulings, and Revenue Procedures.

1. **Compliance Monitoring Briefings** -- Owners, managers and any other personnel who are directly involved in the management of a housing development and do not have previous experience with the LIHTC Program may be required to attend a basic, educational Monitoring briefing or obtain a LIHTC Certification from a national accredited LIHTC training firm before SC Housing releases IRS Forms 8609s allocating the place-in-service tax credits. SC Housing also reserves the right to require management personnel to attend briefings at any time during the compliance period if the development's compliance efforts are deemed deficient or if staff changes occur. Monitoring Officers will also conduct briefings upon request and will periodically hold briefings/training sessions at various locations throughout the State. The purpose of the briefings is to provide instruction on the following:
  - A. Federal regulations for determining eligibility of low-income residents
  - B. SC Housing procedures for determining eligibility of low-income residents
  - C. Specific information which must be obtained from a prospective resident through the rental application
  - D. Income and Rent Limits
  - E. Income Verifications
  - F. Asset and Income from asset Verifications
  - G. Annual Recertifications

- H. SC Housing Required Forms and/or Documentation
  - I. External Compliance Monitoring Module – Emphasys’ Certification Portal
  - J. Such other topics, which SC Housing or the representatives of the development may deem necessary to ensure the proper management of the development as a successful LIHTC participant
2. **File Reviews and On-Site Building Inspections** – In order to meet its monitoring obligations to the IRS, SC Housing inspects a percentage of the State’s LIHTC developments each year. These periodic inspections include a record review and inspections of the outside, inside, and a sample of occupied and vacant units. Residents chosen for a record review will be selected at random by Monitoring Officers at the time of review. On-site physical inspections include inspecting the outside, inside and dwelling units for compliance with applicable National Standards for the Physical Inspection (“NSPIRE”). SC Housing also reserves the right, under the provisions of Section 42 of the Internal Revenue Code and Regulation 1.42-5 to perform record reviews and/or unit inspections of LIHTC developments at any time during the compliance period. Property Owners will be notified in writing prior to the arrival of the Monitoring Officer. On-site management staff must notify residents, in writing, at least 24 hours before the scheduled review that their units may receive an inspection. An Owner (or Owner’s representative) must be present to ensure access to records and units selected for inspection. After completing the review, the Monitoring Officer will prepare a formal report of their findings. The general monitoring review process involves the following:
- A. **Notification of Review** -- Notification to the Owner or Owner’s representative occurs approximately 15 days prior to the review date. As part of this notification, the Owner is provided with a detailed list of required documentation which must be submitted in advance to enable the performance of the review. Failure to provide this information in the timeframe given is considered noncompliance.

(NOTE: Due to the annually increasing monitoring portfolio, Monitoring Officers are required to prepare their annual review schedule at the beginning of each year. Due to this, they have little ability to offer flexibility in the scheduling or re-scheduling of reviews.)

- B. Work Area** -- On the day of the review, the Monitoring Officer will arrive at the property. A work area should be selected and prepared in advance for the Monitoring Officer, preferably in a quiet location, ideally removed from front door traffic and interruptions. If no such area is available at the development, arrangements should be made in advance with the Monitoring Officer to arrange for an alternate work area.
- C. Entrance Conference** -- Once the Monitoring Officer has organized their review documentation and set-up any equipment, they will conduct an entrance conference with staff. Included in this entrance conference will be an overview of the review processes and the order in which they will be performed. Since Monitoring Officers are prohibited from communicating the review sample to the Owner prior to the day of the review, this information will be communicated to staff during the entrance conference. This will allow staff to pull the keys and resident files for the selected units. Staff will be asked to sign an “Acknowledgement of Entrance Conference” form.
- D. Physical Inspection** -- The physical inspection is performed. It is requested that maintenance personnel be present during the entrance conference since guidance about the physical inspection guidance will be given.
- i.** Monitoring Officers must be accompanied at all times while performing the physical inspection. The review may be terminated if the Monitoring Officer is repeatedly left unaccompanied. The Outside and Inside will be inspected as the physical inspection of the unit interiors progresses. Outside and Inside are inspected prior to the units selected within the building. Deficiencies will be identified during the inspection process.
  - ii.** Site staff will gain access, enter the unit and all interior rooms first. Units will not be entered, no alternative unit selected, if the following conditions are found:
    - a.** Any unit that cannot be accessed, due to missing keys for exterior locks /resident exterior lock changes/chain locks
    - b.** Units that cannot be accessed, due to resident refusal of or objection to entry
    - c.** Units that cannot be accessed fully, due to locked interior doors
    - d.** Units that contain unsupervised, minor child(ren)
    - e.** Units that contain unrestrained animals

- f. Any unit, occupied or vacant, with health and safety issues that threaten the life, health or safety of the Monitoring Officer (natural gas leaks, heavy mold concentrations, compromised structural integrity of floors, walls, etc.)
    - g. Any unit that has confirmed report(s) of bed bug infestation
    - h. Units that contain visible drugs or drug paraphernalia
    - i. Units that contain visible, unsecured weapons
    - j. Units without essential services (i.e. electrical, water, sewer, etc.)
  - E. **Record Review** – Once the physical inspection is completed, the resident files and any other relevant documentation will be reviewed. Since concentration and focus is required to perform this task, it is requested that the Monitoring Officer be interrupted as infrequently as possible. If the Monitoring Officer needs additional assistance or information from staff, they will request it.
  - F. **Exit Conference** -- At the conclusion of the file review, an exit conference will be performed. During this conference, physical and file deficiencies will be identified. Recommended corrective action will be discussed and time frames, for the submission of corrective action, will be established. Staff will be asked to sign an Acknowledgment of Exit Conference Form indicating that an exit conference was performed. SC Housing reserves the right to modify the preliminary findings, solely at their discretion, if deemed necessary.
3. **Review Reports (Findings Letters and IRS Forms 8823)** – SC Housing will provide a final written report with scoring of any noncompliance identified, via E-mail or Certified Mail, to the Owner or its designated representative. Without prior written permission to release, SC Housing will not release the Findings Letters to any individual or group other than the Owner's Contact on record. If the review reveals no noncompliance, SC Housing will notify the Owner that no evidence of noncompliance was identified.

If the review indicates that a LIHTC development is not in compliance with program rules, the Monitoring Officer will issue a detailed discrepancy report for the Owner. Some noncompliance situations are correctable. Others are not. If the noncompliance issues are correctable, the Owner will be allowed a period of time ("cure period") in which to correct the discrepancies. Curing deficiencies usually involves obtaining missing documentation or making repairs to the Outside, Inside, and/or Dwelling Units. Physical deficiencies,

which threaten the health and safety of residents, must be corrected in 24 hours, as indicated by the Monitoring Officer at the time of review. Other problems must be corrected within a reasonable period of time, which cannot exceed 30 days. The Owner must respond to SC Housing's findings and address all identified noncompliance individually and indicate the manner in which the corrections were made.

SC Housing may grant an extension beyond the 30-day correction period only for judicially caused delays in the eviction of non-qualified residents or other circumstances beyond the Owner's control. Timely responses to monitoring reviews are critical to ensure that noncompliance is corrected and the Owner/Management Company remains in good standing with SC Housing.

All reportable noncompliance must be submitted to the IRS within 45 days of the end of the correction period, whether corrected or not. Noncompliance is reported on the IRS Form 8823 generated as corrected or not corrected, based on the status at the end of the cure period. For a period of three years after the generation and filing of an uncorrected 8823, if documentation is submitted evidencing correction, SC Housing will submit an IRS Form 8823 showing correction of previously reported noncompliance.

Any change in the applicable fraction or the eligible basis which results in a decrease in the qualified basis of the development under Section 42(c)(1)(A) is noncompliance and must be reported to the Service. LIHTC buildings (or any interest therein), which are sold or otherwise transferred by the Owner, must also be reported to the Service.

All decisions concerning whether audits will be performed and whether previously claimed tax credits will be recaptured due to noncompliance are made solely by the IRS. SC Housing does not make recommendations to the IRS and does not otherwise participate in making decisions about audits and recapture of tax credits.

SC Housing is required to retain its inspection reports, Annual Owner's Certifications and other monitoring records for a period of 3 years from the end of the calendar year in which SC Housing received the certifications or generated the reports. Records of noncompliance are retained for a period of 6 years beyond the date when SC Housing files a Form 8823 with the Service.

Though SC Housing currently performs all of its own monitoring duties, it may subcontract monitoring work to outside agents. If, in the future, SC Housing does subcontract its monitoring duties, it will notify a development's Owner that a contracted compliance monitoring agent is assigned to monitor the property.

4. **Reporting Permanent Noncompliance** – Owners who intend to remove buildings from the LIHTC Program should notify SC Housing immediately. Permanent noncompliance must be reported to the IRS as described above. All decisions as to whether or not previously claimed tax credits are subject to recapture as a result of permanent noncompliance would be made by the Service and not SC Housing.

**NOTE: SC Housing's compliance monitoring procedures are designed to test a sampling of resident records and dwelling units for compliance. A successful management review and inspection does not mean that the development has completely satisfied all of the program rules since undetected noncompliance may still exist. Property Owners are completely and solely responsible for keeping their developments in compliance with the law and SC Housing is not responsible if they fail to do so.**

## RESOURCES

HUD Notice H 20-4 Electronic Signatures:

<https://www.hud.gov/sites/dfiles/OCHCO/documents/2020-04hsgn.pdf>

Clarification HUD Notice H2012-5 Infestations:

[https://www.hud.gov/sites/dfiles/Housing/documents/ClarificationofHousingNoticeH2012\\_05.pdf](https://www.hud.gov/sites/dfiles/Housing/documents/ClarificationofHousingNoticeH2012_05.pdf)

HUD HOTMA Income and Income Exclusions Resource Sheet:

<https://www.hudexchange.info/resource/6876/hotma-income-and-income-exclusions-resource-sheet/>

HUD 5382 Certification VAWA: <https://www.hud.gov/sites/dfiles/OCHCO/documents/5382.pdf>

HUD 5380 Form VAWA: <https://www.hud.gov/sites/dfiles/OCHCO/documents/5380.pdf>

HUD 5383 Form Request for Transfer VAWA:

<https://www.hud.gov/sites/dfiles/OCHCO/documents/5383.pdf>

HUD 5381 Model Emergency Transfer Plan VAWA:

<https://www.hud.gov/sites/dfiles/OCHCO/documents/5381.pdf>

FORMS

See forms on our website at  
<https://schousing.sc.gov/development/compliance-monitoring-resources>

Or scan QR Code for Compliance Monitoring Resources:



For all forms, if the signatures are “wet signature”, then the forms must be dated with “wet date”.