

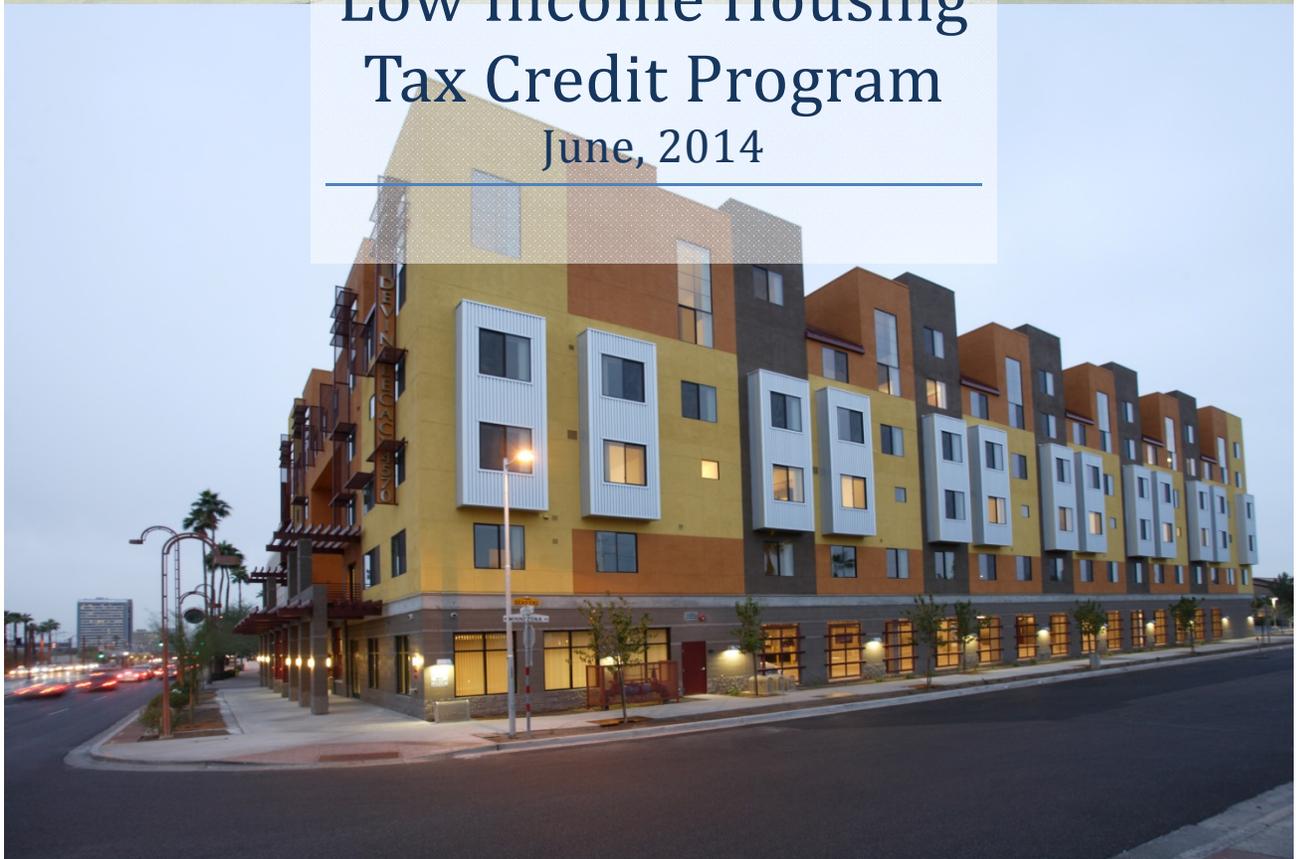


Arizona
Department
of Housing

COMPLIANCE MANUAL

Low Income Housing
Tax Credit Program

June, 2014



THIS DOCUMENT IS AVAILABLE IN ALTERNATIVE FORMATS BY CONTACTING
ADOH AT (602) 771-1000/TTY (602) 771-1001.

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Preface

This manual is a training and reference guide for the administration of the Low-Income Housing Tax Credit (LIHTC or “Credit”) Program. It is designed to answer many questions regarding procedures, rules and regulations that govern LIHTC developments and should be a useful resource for owners and developers, management companies and on-site management personnel.

This manual is to be used as a supplement to the existing laws and rules prescribed by the Internal Revenue Service (the “IRS”) in Section 42 of the Internal Revenue Code and related regulations. This manual should not be considered a complete guide on compliance. The responsibility for compliance with federal LIHTC Program regulations lies with the owner of the building(s) for which the Credit is allowable. If a determination is made that any provision of this manual is in conflict with Section 42 of the Internal Revenue Code, the Internal Revenue Code will govern.

Because of the complexity of LIHTC regulations and the necessity to consider their applicability to specific circumstances, owners are urged to seek competent legal and accounting advice regarding compliance issues. This Agency’s obligation to monitor for compliance with the requirements of Section 42 of the Internal Revenue Code does not make it liable for an owner’s noncompliance (Treasury Regulations, section 1.42-5(g)).

Compliance monitoring for the Arizona Tax Credit Program will be administered by the Arizona Department of Housing (“ADOH”). Questions regarding compliance monitoring should be directed to Housing at (602) 771-1000.

Introduction

The LIHTC Program is a federal Program created by the 1986 Tax Reform Act under Section 42 of the Internal Revenue Code (the “Code”). The LIHTC is an incentive for taxpayers to provide housing for low-income residents in exchange for a credit against federal income taxes. The Credit is a dollar-for-dollar reduction in tax liability to investors in exchange for the construction, acquisition, and/or rehabilitation of low-income rental housing. The amount of Credit allocated is directly based on the number of qualified low-income units that meet federal rent and income targeting requirements.

The Omnibus Budget Reconciliation Acts of 1989, 1990, and 1993 amended the Code. Under Section 42(m),(1)(B)(iii) of the Code, the allocating agency was given the additional responsibility of monitoring all projects for compliance with the provisions of the Code. This applies to all buildings that have been placed in service and for which the LIHTC as determined under the Code is or has been allowed at any time since the inception of the program in 1987. This monitoring requirement was effective January 1, 1992.

Responsibilities

1.1 The Owner

Each owner has chosen to utilize the LIHTC Program to take advantage of the tax benefits provided. In exchange for these tax benefits, certain requirements must be met. Upon receiving an allocation of LIHTCs, the owner/agent is responsible for:

- A. Following the instructions in this **Arizona LIHTC Program Compliance Manual**.
- B. Completing and submitting the **Annual Owners Certificate of Continuing Program Compliance Report. Effective January 1, 2014**, all LIHTC Multi-Family rental developments are required to enter tenant events annually using the ADOH online system. This annual report is due annually on March 15th to the Housing Department. It is the responsibility of the owner/agent to continually check the ADOH website for any changes. The address is www.azhousing.gov. (See section 2.3)
- C. Beginning with the reporting year of 2013 the **Utility Allowance Schedule** for the current year and the Management Agent's annual **Compliance Training Certificate** will need to be submitted with the Annual Report.
- D. Participating in and facilitating the compliance review. This review will include a physical inspection of the project as well as a review of records.
- E. Making all required corrections and/or clarifications as determined necessary for compliance within **45 days** of the initial findings letter. This action must be completed and a response received within the time frame established by Housing. **Housing is required to notify the IRS of an Owner's noncompliance no later than 45 days after the end of 90 day correction period, whether or not the noncompliance is corrected. Housing will notify the IRS by filing IRS Form 8823, explaining the nature of the noncompliance and indicating whether the Owner has corrected the noncompliance.** (See section 2.8.2)
- F. Keeping records for each building pursuant to Section 2.7 of this manual.
- G. Obtain approval from Housing prior to any change in the management agent.
- H. Obtain approval from Housing prior to any change in ownership.
- I. Notifying Housing of any noncompliance with IRS requirements.

1.2 The Arizona Department of Housing

Housing, in an effort to best meet the requirements as a monitoring agency of the LIHTC Program, will perform the following functions once a final allocation has been awarded to a particular development.

- A. Review the **Owners Certificate of Continuing Program Compliance Report** (Exhibit A), **Project Contact Information Sheet** (Exhibit A, Project Info), and the

tenant events that are entered into the ADOH online system as submitted by the owner/agent.

- B. Review the **Utility Allowance Schedule** and the Management Agent's annual **Compliance Training Certificates** as submitted by the owner/agent beginning with the 2013 reporting year.
- C. Perform management reviews of any project, at Housing's discretion. This review will include a physical inspection of the project and a review of resident records.
- D. Notify the owner/agent of any noncompliance with the LIHTC Program.
- E. Establish a schedule with project owners for correcting any noncompliance.
- F. Notify the IRS of ALL noncompliance issues. **Housing is required to notify the IRS of an Owner's noncompliance no later than 45 days after the end of the allowed time for correction, whether or not the noncompliance is corrected. Housing will notify the IRS by filing IRS Form 8823, explaining the nature of the noncompliance and indicating whether the Owner has corrected the noncompliance.**

Compliance Rules

2.1 The Compliance Period

A project receiving LIHTC allocations must remain a qualified low-income housing project as defined in Section 42 of the Code for its entire compliance period. Projects receiving an allocation during 1987, 1988, and 1989 must comply with eligibility requirements for a period of 15 years beginning with the first taxable year of the credit period. Projects receiving a LIHTC allocation after January 1, 1990, must comply with eligibility requirements for a period of 15 years beginning with the project's first taxable year and enter into a **Declaration of Affirmative Land Use and Restrictive Covenants Agreement (LURA)** with Housing, (which addresses the 30-year extended use period). These projects must comply with eligibility requirements for a total of at least 30 years (and may have agreed to a total of 40 or 50 years). No tax credits may be claimed by an owner for a taxable year unless the **Declaration of Affirmative Land Use and Restrictive Covenants Agreement (LURA)** was recorded prior to December 31st of the placed-in-service year.

As stated above, projects receiving a credit allocation prior to January 1, 1990, have only a 15-year compliance period. However, any building in such a project that received an additional allocation of credits after December 31, 1989, must comply with eligibility requirements in effect beginning January 1, 1990, and will also be bound by a **Declaration of Affirmative Land Use and Restrictive Covenants Agreement (LURA)**.

2.2 The Compliance Manual

Housing will provide this **Compliance Manual** to owners of LIHTC projects at the time projects are placed in service. The manual describes Housing's compliance monitoring procedures which the owner and management agent must follow. Updates will be provided by Housing as changes to the law and/or the procedures occur.

The manual also contains the required reporting and recommended certification forms that must be utilized and submitted to Housing, as well as sample resident verification forms.

2.3 Annual Owner Certification

Housing requires the owner/agent of a low-income housing project to certify at least annually that the project meets the following:

- A. That the project complied with the requirements for Special Set-Asides on which the allocation was based (e.g., 20%, 30%, 40%, 50% AMGI), as applicable.
- B. That the requirements of the 20-50 test or the 40-60 test, as applicable, were met:

(At least 20 percent of the residential units in the Project are both rent-restricted and occupied by individuals whose income is 50 percent or less of the Multi Family Tax Subsidy Limits (MTSP).

At least 40 percent of the residential units in the Project are both rent-restricted and occupied by individuals whose income is 60 percent or less of the MTSP.

- C. That the owner/agent has received an annual **Tenant Income Certification** form (TIC) from each low-income resident and verifying documentation to support that certification.
- D. That the entire project/building was occupied by LIHTC residents.
- E. That each low-income unit was rent-restricted as defined in the Code.
- F. That all units in the project are for use by the general public and are used on a non-transient basis.
- G. That each building in the project was suitable for occupancy taking into account local health, safety, and building codes.
- H. That all resident facilities included in the eligible basis of any building in the project were provided on a comparable basis without a separate fee to all residents in the project.
- I. That there was no change in the applicable fraction of any building in the project (or, if there was a change, a description of the change).

(Applicable fraction is defined as the percentage of qualified low-income units in a building or the percentage of tax credit floor space to rentable floor space in a building, whichever is less.)
- J. That there has been no change in any building's eligible basis under the Code (or that there has been a change, with an explanation of the change).
- K. That a **Declaration of Affirmative Land Use and Restrictive Covenants Agreement** (LURA) as described in the Code is in effect for projects receiving allocations on or after January 1, 1990.
- L. That the project complied with the requirements of all federal or state housing programs (e.g., RD assistance, HOME, Section 8, tax-exempt financing), as applicable.
- M. That, if the owner received its credit allocation from the portion of the state ceiling set aside for projects involving "qualified non-profit organizations," the non-profit entity materially participated in the operation of the development within the meaning of Section 469(h) of the Code.
- N. That if a low-income unit in the project becomes vacant during the year, reasonable attempts are made to rent that unit or the next available unit, of comparable or smaller size to residents having a qualifying income before any units in the project are rented to residents not having a qualifying income.
- O. That if the income of the residents of a low-income unit increases above 140% of the limit allowed in the Code, the next available unit of comparable or smaller size will be rented to residents having a qualifying income.
- P. Whether, for the preceding year, for buildings with four units or less, any of the units in the building were occupied by the owner or a person related to the owner.

- Q. Whether, for the preceding year, the project was the recipient of a federal grant or other federal subsidy that would cause a reduction in eligible basis.
- R. That the state or local government unit responsible for making building code inspections did not issue a report of a violation for the project for the preceding 12-month period.
- S. That the owner has not refused to lease a unit to an applicant due to the applicant holding a HUD Section 8 voucher or certificate.
- T. That the project has received no finding of discrimination under the Fair Housing Act (an adverse final decision by HUD, an adverse final decision by a substantially equivalent state or local fair housing agency, or an adverse judgment from a Federal court).

The owner/agent is required to submit a certification to Housing each year of the compliance period as defined in the **Declaration of Affirmative Land Use and Restrictive Covenants Agreement (LURA)**. The owner/agent must submit to Housing the ownership entity's **financial statements** for the preceding year (**balance sheet, profit and loss, and cash flow**), the annual **Owners Certificate of Continuing Program Compliance Report** (Exhibit A), **Project Contact Information Sheet** (Exhibit A Project Info), **the annual Utility Allowance Schedule** and the Management Agent's annual **Compliance Training Certificate**. The Annual Report covers the preceding calendar year.

Effective January 1, 2014, all LIHTC Multi-Family rental developments are required to enter tenant events annually using the ADOH online system.

Failure to submit a completed **Annual Report** is considered a non-compliance event by regulation. If the **Annual Reports** are not submitted by March 15 of each year of compliance, Housing will inform the owner/agent as soon as possible. The owner/agent will have 30 days from the date of notification to supply the annual report. Housing may grant an extension of this time period, but only if Housing determines that there is good cause for granting such an extension. When late **Annual Reports** have been received and approved, Housing will issue to the IRS a Form 8823, stating the nature of the noncompliance and showing that it has been corrected. If the owner/agent fails to turn in the **Annual Report** or the **requested corrections**, Housing will issue to the IRS a Form 8823, stating the nature of the noncompliance and showing that it is uncorrected.

2.4 Utility Allowance Determination

A utility allowance must be used when determining all eligible unit rents only if, and only for, utilities that are paid directly by the resident. If all utilities are provided by the owner/agent, there is no utility allowance. The Internal Revenue Service requires that utility allowances be set according to Federal Tax Regulations 1.42-10.

A copy of the current utility allowance schedule must be submitted to Housing **each year** with the **Annual Report beginning with the reporting year 2013**. It is noted that utility allowance schedules often remain the same from year to year. If the table has not changed, the owner/agent should include a copy of a letter so stating from the appropriate authority dated in the calendar year covered by the annual report. See Section 3.11 for additional utility allowance information.

2.5 Resident File Review and On-Site Physical Inspections

As provided in IRS compliance monitoring regulations, Housing is required to review resident files and perform physical inspections of LIHTC projects throughout the compliance period.

- A. *Resident Files.* The review of resident files must be conducted at least every three years and include the files for at least 20 percent of the units in the project.
- B. *Physical Inspections.* Housing must conduct the initial physical inspection by the end of the second calendar year following the year when the last building in the project is placed in service and at least once every three years after that. In conducting physical inspections, Housing will inspect each building and at least 20 percent of the units, including a sample of vacant units. Housing will follow UPCS inspection protocol.

Random samples of both projects and units will be selected for review each year. When a project is selected, Housing will:

1. Notify the owner/agent in writing of the inspection.
2. Establish a time for the inspection.
3. Notify the owner/agent in writing of the results of the inspection.

It is possible that a project(s) could be chosen for review two or more years in a row. Housing does not give the owner/agent advance notice that his property will or will not be inspected in any particular year.

2.6 Resident Certification Review Exemptions and Special Circumstances

Although IRS regulations permit Housing to exempt from the resident file review process, outlined above, projects financed under the RD 515 program and those which utilize tax-exempt financing under the volume cap limitation on private activity bonds, Housing does not currently permit exemptions.

2.7 Record Keeping and Record Retention

As required by IRS Regulations 1.42-5, the owner is required to maintain accurate records for each building in the low-income housing project. These records must include:

- A. The total number of residential rental units in the building, including the number of bedrooms and the square footage of each residential rental unit.
- B. The total number of low-income units in the building.
- C. The number of occupants in each low-income unit.
- D. The rent charged on each residential rental unit in the building, including any utility allowance.
- E. The low-income unit vacancies in the building.
- F. The rentals of the next available units in each building including when and to whom they were rented.

- G. Documentation regarding the eligible and qualified basis of each building as of the end of the first year of the tax credit period.
- H. The character and use of the nonresidential portion of the building that was included in the building's eligible basis under the Code (i.e., resident facilities that are available on a comparable basis to all residents and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project).
- I. The tenant income certification data discussed under Section 4, "Qualifying Residents," of this manual.

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

2.8 Noncompliance

A. Notification to Owner

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

1. The annual **tenant events** haven't been entered into the ADOH online system, and the current **Utility Allowance Schedule** is not received by the due date.
2. The project is found to be out of compliance through inspection, review or other means with the provisions of Section 42 of the Internal Revenue Code.

B. Correction Periods

1. **Annual Report** - The owner will have 30 days from the date of written notice to supply any missing information.
2. **Other Noncompliance** - The owner will have 45 days from the date of notification by Housing to bring the project back into compliance with any other Code provisions which have been violated.

The law allows Housing to set correction periods up to 90 days and to extend a correction period for up to six (6) months. However, any extension can only be for good cause as determined by Housing.

C. Notification to the IRS

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

The IRS must be notified whether or not the noncompliance is corrected. Housing must explain the nature of the noncompliance and state whether the noncompliance has been corrected. Any change in either the applicable fraction or

eligible basis that results in a decrease in the qualified basis of the project is noncompliance that must be reported to the IRS.

Should a building go entirely out of compliance so that it will not be in compliance at any time in the future, Housing must be informed in writing. In this case, Housing will notify the IRS one time only.

D. Monitoring Fees

Housing will charge fees to cover the cost of conducting compliance monitoring as well as auditing the annual reports. This fee will be assessed annually and due on March 15th. The compliance monitoring fees are determined by the Qualified Allocation Plan for the year the tax credits were awarded.

Program Requirements

LIHTC program requirements are contained in Section 42 of the Internal Revenue Code and the Omnibus Budget Reconciliation Acts of 1989, 1990 and 1993. Additionally, the IRS publishes ongoing basis revenue notices, rulings, regulations and procedures that clarify and/or expand on the law. The following highlights some of the Code provisions that directly affect project compliance. **It is not a complete listing of compliance regulations.**

3.1 Minimum LIHTC Set-Aside Election

An irrevocable election of the Minimum Set-aside of Low Income units is made by the owner no later than the date the building is placed in service. One of the following elections must be made:

- A. At least 20 percent of available rental units must be rented to households with incomes not exceeding the 50 percent MTSP Income Limit adjusted for family size.
- B. At least 40 percent of available rental units must be rented to households with incomes not exceeding the 60 percent MTSP Income Limit adjusted for family size.

Buildings receiving tax credits must meet the minimum set-aside no later than the year following the year in which the building is placed in service.

The set-aside is the minimum amount of units that must be reserved for low-income residents for a building to be considered a qualified low-income building and retain any of its tax credits. The amount of units that must be reserved for qualified low-income residents is determined at the end of the first credit year and is established on a building-by-building basis.

3.2 Eligible Basis and Applicable Fraction

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

- A. The eligible basis applicable to a building at the time of final credit allocation (issuance of IRS Form 8609). Although the owner apportions the amount of eligible basis for each building on Allocation Certification Requests to Housing, total project basis will be limited by the total amount of credit that Housing actually allocated to the project.
- B. In calculating the Credit amount for each building, Housing may adjust the owner's eligible basis apportionment per building so as not to exceed the maximum Credit amount allocated to the project.
- C. The applicable fraction assigned to a building at the time of final credit allocation (issuance of IRS Form 8609). This fraction is defined in Section 42(c)(1)(B) as the smaller of:
 - D. Low-income units to total units (whether or not occupied) in a building, or

- E. Total rental residential floor space of low-income units to total rental residential floor space of total units (whether or not occupied) in a building.

3.2.1 Employee Units

Please review IRS Revenue Ruling 92-61, which forms the basis for the discussion below:

The employee unit will be withdrawn from the applicable fraction (on a 100% LIHTC project) but the applicable fraction will remain 100 percent and the unit will be considered “reasonably required by the project.” The employee does not have to be income qualified, and the unit is not monitored. This unit may later be converted to a qualified unit and rented to an income-qualified household (not an employee). The owner must inform Housing if he/she chooses to consider the unit an income-qualified unit.

Note: Owners do have the option of applying IRS Revenue Ruling 92-61 to properties that were placed in service prior to 9/9/92 or received an allocation of credit prior to 9/9/92 by filing amended returns for the period. Housing recommends you seek advice from legal counsel.

IRS Revenue Ruling 92-61 allows only a resident manager’s unit to be considered “reasonably required” by the property. However, IRS private letter rulings 9330013 and 9538015 allow a maintenance person’s unit and a security officer’s unit as well. An owner may still have to show on an audit that the security officer’s presence is “reasonably required.” The IRS reviewed HUD’s definition of a security unit prior to issuing ruling 9538015. If further clarification is required, please contact Housing or seek legal counsel.

A reasonable guideline to follow: one manager’s unit and one maintenance person’s unit per each 100 residential units. Rent must not be charged on an “Exempt Employee Unit”, or the unit will not be considered ‘reasonably required by the project”.

3.3 Maximum Income Limits

Income limits for qualifying residents depend on the minimum set-aside of low-income units that the owner has chosen. Qualifying residents in projects operating under the “20/50” election may not have incomes exceeding the 50 percent of the MTSP income limit adjusted for household size. Qualifying residents in projects operating under the “40/60” election may not have income exceeding 60 percent of the area median income adjusted for household size.

In addition, projects competing for tax credits in Arizona often commit to set-asides of low-income units at lower income levels: 50, 40, and 30 percent of area median income adjusted for household size. These are contractual commitments recorded in the project’s Carryover Agreement and Declaration of Affirmative Land Use and Restrictive Covenants Agreement (LURA) and will be monitored regularly by Housing.

The U.S. Department of Housing and Urban Development (HUD) publishes MTSP income information for Arizona which is broken down into local areas such as county or metropolitan areas. These limits are published by HUD on an annual basis. Upon receipt of this information, Housing will make available to all LIHTC owners new annual income limits and corresponding rent limits for projects. **It is, however, the Owner’s responsibility to obtain the new limits each year.** Owners may not anticipate increases in income limits and corresponding rents.

Limits will remain in effect until new annual limits are officially published by HUD each year and in accordance with IRS Ruling 94-57. This ruling allows project owners to rely on previously issued income limits for 45 days after new income limits have been released.

NOTE: Once a property places a building in service it selects its first income limits from HUDs table for its county. From that point on, the income (and rent) limits used will never go down. If in a future year the published limits go down the property will stay at the highest limits that have applied to the property since it placed in service (or since 2008 for older properties). Since HERA, income limits are "held harmless" at an individual property level in this manner.

3.4 Maximum Rent Limits

The gross rent charged by the owner/agent must comply with the owner's election of the minimum set-aside of low-income units and the owner's commitment to set-asides at lower income levels (50, 40, 30, and 20 percent of area median income).

- A. For projects receiving a Credit allocation after December 31, 1989 ("Post -1989 projects"), gross rents, **including utilities**, are based on unit size rather than family size and may not exceed 30 percent of the area median income for an **imputed** family size. The rent for a unit which does not have a separate bedroom would be based on one person occupying the unit. The rent for units with one or more separate bedrooms is based on 1.5 persons occupying each of the bedrooms.

3.5 Gross Rent Floor

Rev. Proc. 94-57

The gross rent floor limits decreases in max rents to the max rent amount on date of the owner's choice of:

- A. Credit allocation or
- B. Placed in service date.

3.6 Rural and "HERA Special" Income Limits

Some counties have special limits available to them. These are counties that either:

- A. Had their income limits frozen under HUD "hold harmless" policies or;
- B. Are in rural areas that have income limits that are less than the National Non-Metropolitan limit (**note: the Rural Limits are only available to 9% (non-bond-funded) projects**).

The process of selecting limits is now considerably more complex. The flow chart on the following pages provides a method for selecting the correct limits. **(The flow charts were designed by Compliance Solutions).**

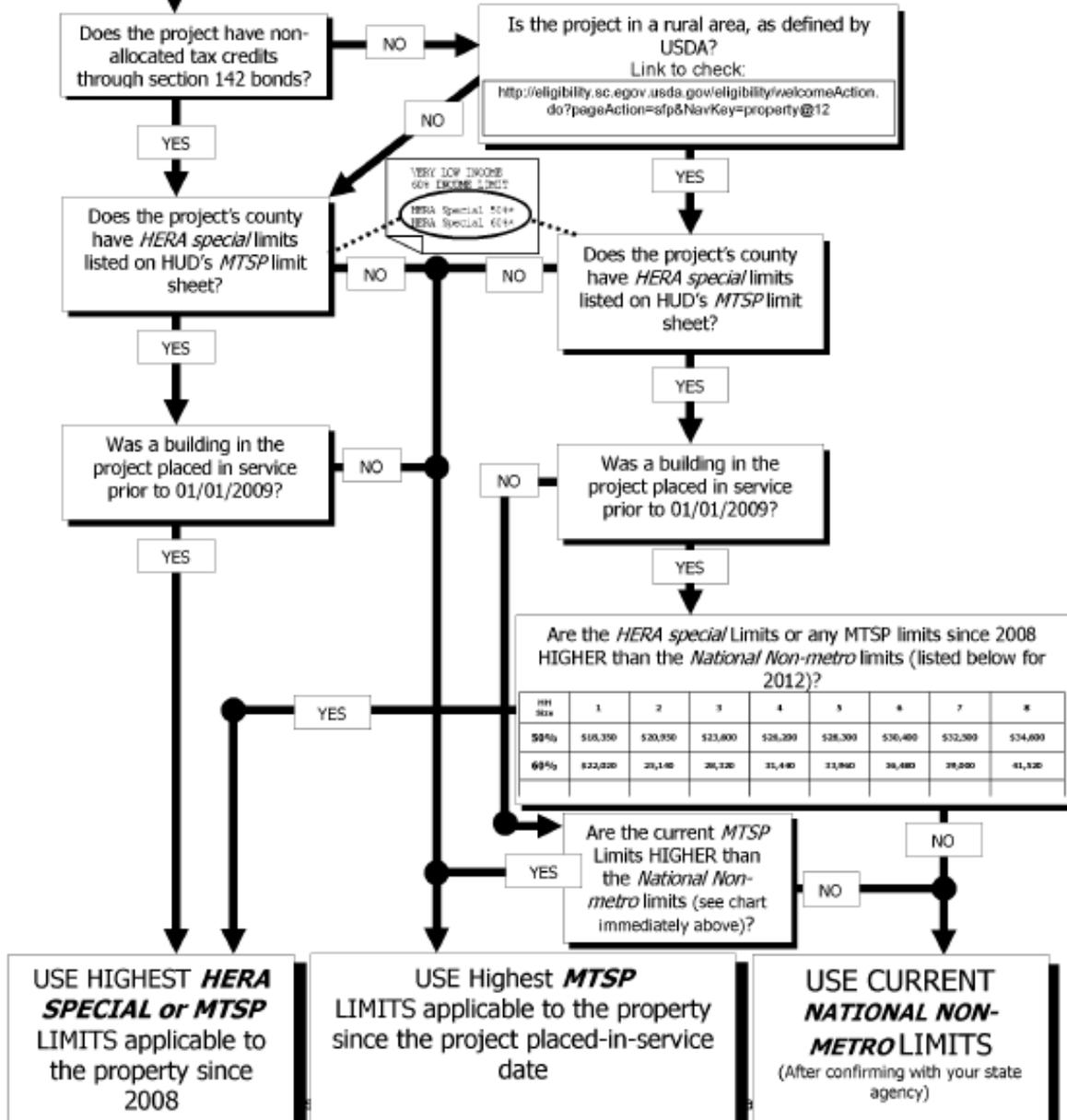
Finding the Correct Current MTSP Income Limits

Option # 1: For projects in states where the national non-metropolitan limit is GREATER than the state non-metropolitan limit.



If in doubt as to the above, this option will yield accurate results.

First Step: Get the current HUD MTSP limits from www.huduser.org/datasets/mtsp.html



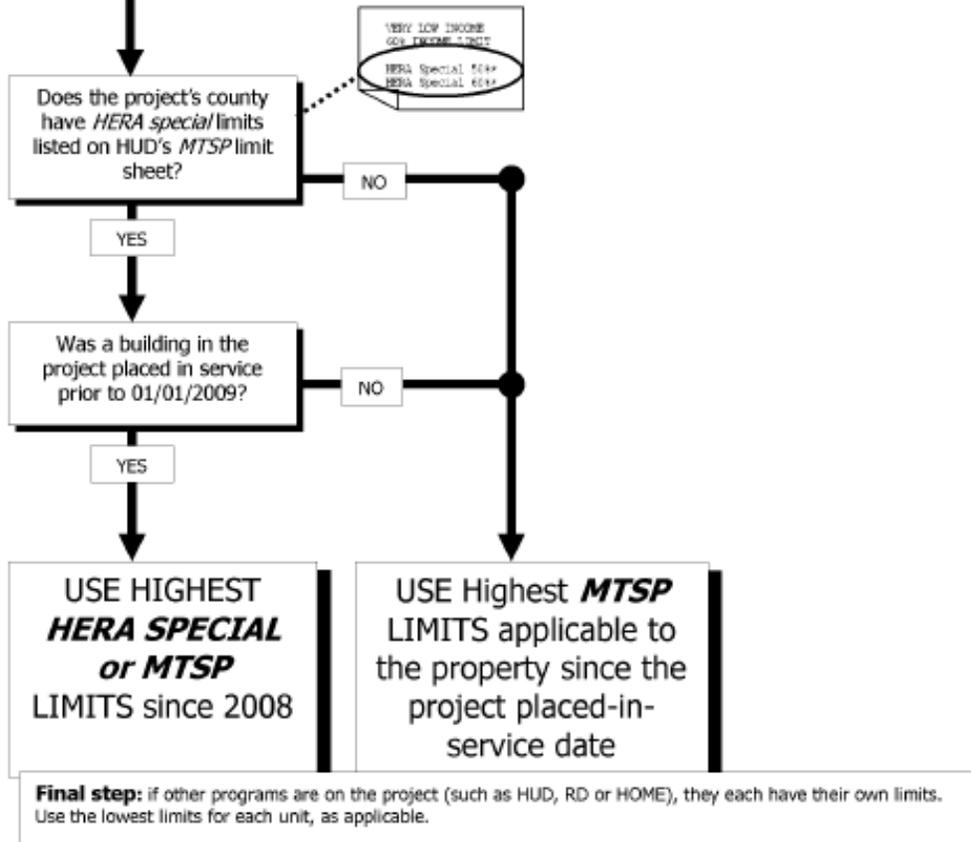
Final step: if other programs are on the project (such as HUD, RD or HOME), they each have their own limits. Use the lowest limits for each unit, as applicable.

Finding the Correct Current MTSP Income Limits



If in doubt as to the above, *Option # 1* should be used

First Step: Get the current HUD MTSP limits from www.huduser.org/datasets/mtsp.html



3.7 Rental Assistance Payments

Gross rent does not include any rental assistance payments made on behalf of the resident under Section 8 of the United States Housing Act of 1937 or under comparable rental assistance programs. In addition, amounts paid for supportive services other than housing (e.g., meals) are not included in gross rent if either:

- A. The costs of such services are paid under a governmental or tax-exempt organization's assistance program (see IRC Section 42(g)(2)(B)(iii) for specific conditions), or
- B. The cost of such services is optional and not required as a condition of occupancy (see below).

3.8 Optional Resident Services

Owners may charge fees for additional services if payment for the services is not required as a condition of occupancy. To be considered optional, another option must be available. For example, an owner may charge residents for meals served in a dining facility if use of the facility is not required and if meals are available elsewhere.

Similar treatment is required for other optional services such as transportation, laundry and cleaning, recreation, and health care.

3.9 Charges for Facilities

Owners may charge fees for the use of facilities, e.g., community rooms, swimming pools, garages and carports, washers and dryers, if the cost of the facilities was **not** included in the eligible basis of the project.

3.10 Reducing Rents

If it is necessary to reduce rents as a result of new Utility Allowances, the residents' rents should be reduced immediately. Generally, owners/agents are not required to lower the gross rents below the initially permitted maximum rent (the "Gross Rent Floor") established in the Carryover Allocation or at placed-in-service, at the owner's election. Normally, rents will not be increased until the beginning of a new lease term, unless otherwise specified in the current lease.

NOTE: If you have further questions regarding rent reduction procedures, Housing recommends you seek advice from legal counsel.

The actual rent charged to the resident cannot exceed the gross rent from the current Income/Rent table minus the utility allowance. See Utility Allowance in Section 3.11.

3.11 Utility Allowance

Utility allowances must be determined according to program requirements set forth in IRS Regulations 1.42-10. In addition, Housing requires that verification of utility allowances used to calculate rents be obtained by owners/agents at least annually.

Applicable documentation as follows must be readily available to on-site personnel and, upon request, to Housing.

3.11.1 RD-Assisted Building

Use the applicable utility allowance as determined by RD for all LIHTC rent-restricted units in the building.

3.11.2 Buildings with RD Residents

If any resident in a building received RD rental assistance, use the applicable RD utility allowance for all LIHTC rent-restricted units in the building (including any units occupied by residents receiving HUD rental assistance payments).

3.11.3 HUD-Regulated Buildings

If neither a building nor any resident in the building receives RD rental assistance and the rents and utility allowances are reviewed by HUD annually, use the applicable HUD utility allowance for all LIHTC rent-restricted units in the building.

3.11.4 Conventional LIHTC may choose between:

- a. The schedule used by the local PHA (always used for voucher holders)
- b. An estimate from utility company UPDATE! Additional options effective 7-29-08 (for most properties starting in 2009):
- c. HUD's Utility Schedule Model (www.huduser.org/dataset/lihtc/html)
- d. An energy consumption model

Changes to "a" above must be implemented within 90 days. Changes to "b", "c" or "d" above must be given to HFA and tenants 90 days in advance.

3.12 Unit Eligibility Requirements

For a building to qualify for the LIHTC, the following requirements must be considered:

3.12.1 General Public Use

All eligible units must be made available for use by the general public and cannot be restricted to members of particular organizations. Owners/Agents should consider the Fair Housing laws and all state and federal statutes and regulations when giving preference to special persons or groups. Please see HUD-Assisted Residents in Section 3.7.

A. Resident Selection Criteria

Should the owner/agent choose to establish criteria for the screening of an applicant for occupancy, the criteria must be established in writing. The criteria must be applied to all applicants for housing in the project. This would include the LIHTC

applicant as well as all other applicants. The criteria must be in compliance with all federal and state statutes and regulations.

B. Non-Transient Housing

The building must not be used for transient housing. In general, a resident is considered transient if the initial lease term is less than six months. The only exceptions to the initial six-month lease restriction are Single Room Occupancy (SRO) housing, which permits units to be rented on a monthly basis, and Transitional Housing for the Homeless (no length of lease or minimum rental requirements).

C. Suitable for Occupancy

All units must be suitable for occupancy as determined under regulations prescribed by the Secretary of Treasury which will take into account health, safety and building codes. The owner/agent shall certify that this requirement is being met annually by use of the **Annual Project Certification** Form. See HUD's Uniform Physical Condition Standards (UPCS) for additional guidance.

3.12.2 Student Eligibility

A full-time student is defined as any individual who is a full-time student at an educational institution with regular facilities at least five months a calendar year (Section 151(c)(4) of the Code).

A unit may not be considered to be occupied by low-income individuals if all the occupants of such unit are full-time students (as defined above) and none of the occupants meet an exception below. **These students may be eligible to live at the property, but the unit will not qualify as a low-income unit.**

However, full-time students are eligible LIHTC residents if one of the following applies:

- A. All adult household members are married and **entitled** to file a joint tax return.
- B. A single parent with a dependent child in the unit. The parent is not claimed on anyone outside the household's tax return and the child is only claimed by one of their parents. (Even if the other parent is not in the household).
- C. At least one member of the household receives assistance under Title IV of the Social Security Act. (AFDC or TANF).
- D. At least one member of the household is enrolled in a job training program that receives assistance under JTPA or similar federal, state, or local laws. (Workforce Investment Act) has replaced (JTPA).
- E. Household includes a member who formerly received foster care assistance. (A former foster child)

H.R.3221 added this exception [Effective for eligibility determinations after 7/30/08]

3.12.3 Transfer of Existing Residents to Other Set-Aside Units

ADOH does allow transfers between buildings for households that are below the 140% limit, which is proved through recertification prior to transfer. The TIC should show a move-in and effective date which reflects the transfer date.

Exception: Transfers Within a Building

Residents may move from one unit to another within the same building. Document both the old and the new file with move out/move in information and the resident's eligibility status.

3.12.4 Vacant Units

When a unit becomes vacant which was formerly occupied by low-income individuals, it may continue to be treated as occupied by a qualified low-income individual for purposes of the set-aside requirement (as well as for determining qualified basis) provided reasonable attempts are made to rent the unit. The LIHTC vacant units must also be in rent ready condition within 30 days from the date vacated. Market units may be rented before LIHTC units as long as reasonable attempts are made to market LIHTC units. Efforts to market LIHTC units should be maintained in a file.

3.12.5 Available Unit Rule

If the household income of residents in a low-income unit increases above the maximum allowable income limits, the unit will still qualify as a low-income unit as long as the residents initially qualified and the unit remains rent-restricted.

If the household income of residents in a low-income unit increases above 140 percent of the current maximum allowable income limits, the next available unit of comparable or smaller size in the building must be rented to a household having a qualifying income. This rule must be followed until the correct mix of tax credit units is restored. (Not counting the over 140% units). Since all units at a 100% LIHTC project are intended to be rented to qualified households, this rule requires that owners demonstrate due diligence with renting units to avoid errors.

3.12.6 Deep-Target Units

Federal guidelines permit the annual income of residents in Program units to rise above initial move-in limits, administrative regulations on deep set-aside units are under the jurisdiction of Housing. Housing has determined to follow Federal guidelines.

In the event that a tenant in a deep set-aside unit recertifies at an income above the 140 percent of the current maximum allowable income limit (as adjusted for family size), the tenant should be moved up into the set-aside for which they now qualify. The swap may be handled on paper, and the tenant need not move from one unit to the other. Unlike the Available Unit Rule, which deals with tax credit/market rate swaps (which are handled on a building-by-building basis), set-aside swaps are to be made on a property basis. In the event that a comparable unit in the appropriate set-aside is not immediately available, the tenant may continue to be temporarily treated as qualifying for the set-aside unit until a comparable unit becomes available.

If the tenant's income rises above the highest set-aside level, they should be moved to the highest level. A determination should then be made as to whether they continue to qualify for a tax credit unit. If the tenant's income exceeds 140% of the highest level, the Federal Available Unit Rule would apply.

3.13 HUD-Assisted Residents

The 1993 Tax Act provides that an applicant cannot be denied occupancy in a tax credit project because the applicant holds a voucher or certificate under Section 8 of the Housing Act of 1937. This provision was effective on the date of enactment.

With regard to compliance with the Program's gross rent ceilings, gross rent does not include any rental assistance payments made on behalf of the resident under Section 8 of the Housing Act of 1937 or comparable rental assistance programs

3.14 Deposits and Fees

The Program permits an owner to charge fully refundable security deposits. Non-refundable fees and/or deposits that are non-optional and/or considered a requirement of residency must be handled as indicated below. The IRS has clarified that a property owner is responsible for maintaining the units therefore a non-refundable redecoration fee, transfer fee or unit preparation fee is strictly **prohibited** and will be reported as non-compliance on IRS form 8823. Additionally, any fee associated with an amenity or structure included in eligible basis is prohibited, examples include: parking lot, swimming pool, workout room, community center, etc.

An application fee may be charged to cover the cost of credit/criminal report(s) obtained. It may **not** be in excess of the average expected out-of-pocket costs to verify whether or not a household qualifies for residency.

Any fees charged by a property that are non-optional must be included in the calculation when determining gross rent for a unit. These fees include, but are not limited to, renter's insurance (whether paid to the property owner or to a 3rd party), parking, washer/dryer hook ups, month to month fees, etc.

Fees charged that are considered optional and not a requirement for residency may be charged, for example, monthly pet rent, cost of coin operated washer/dryers (laundry room), garages, additional storage, etc. Note: any structure included in eligible basis may not have a fee associated with it. Always check the property's LIHTC application and underwriting to determine whether or not an item was included in eligible basis.

Finally, fees for non-performance of the terms of the lease agreement may be charged as they are considered optional one-time charges and not a requirement for residency. Examples include late fees, legal fees, lease termination fees, move-in concessions, actual damages caused by the household to the unit or property, etc.

Qualifying Residents

Applicants for low-income, rent-restricted units should be advised early in their initial visit to the project that there are maximum income limits which apply to the units. Management should explain to the residents that the anticipated income of all persons expecting to occupy the unit must be verified and included on an Application and a **Tenant Income Certification Form (TIC)** prior to occupancy and that they will be required to have their financial status reviewed annually.

The LIHTC Program requires that the determination of eligible household income be based on the HUD Regulations in the Code of Federal Regulations. HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs chapter 5, is a good reference guide and is readily available on the Internet at www.hudclips.org.

4.1 The Application

A fully completed application is critical to an accurate determination of resident eligibility. The information furnished on the application should be used as a tool to determine all sources of income and assets.

4.2 Annual Income

Annual income is defined as the gross amount of income eminent and known, to be received by all members of the household (except dependent minors) during the twelve (12) months following the date of certification or recertification. The Code of Federal Regulations defines annual income as follows.

Exhibit 5-1: Income Inclusions and Exclusions

24 CFR 5.609(b) and (c)

Examples included in parentheses have been added to the regulatory language for clarification.

4.12.1 Income Inclusions

1. The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;
2. The net income from operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;
3. Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (2) above. Any withdrawal of cash or assets from an

investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;

4. The full amount of periodic amounts received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a **periodic amount (e.g., Black Lung Sick benefits, Veterans Disability, Dependent Indemnity Compensation, payments to the widow of a serviceman killed in action). See paragraph (13) under Income Exclusions for an exception to this paragraph;**
5. Payments in lieu of earnings, such as unemployment, disability compensation, worker's compensation, and severance pay, except as provided in paragraph (3) under Income Exclusions;
6. Welfare Assistance.
7. Welfare assistance received by the family.
8. If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:
 - a. The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus
 - b. The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.
9. Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling; and
10. All regular pay, special pay, and allowances of a member of the Armed Forces, except as provided in paragraph (7) under Income Exclusions;
11. For Section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph "financial assistance" does not include loan proceeds for the purpose of determining income.

NOTE: This paragraph also does not apply to a student who is living with his/her parents who are applying for or receiving Section 8 assistance.

4.12.2 Income Exclusions:

1. Income from employment of children (including foster children) under the age of 18 years;
2. Payments received for the care of foster children or foster adults (usually persons with disabilities unrelated to the tenant family, who are unable to live alone);
3. Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains, and settlement for personal or property losses, except as provided in paragraph (5) under Income Inclusions;
4. Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
5. Income of a live-in aide, as defined in 24 CFR 5.403;
6. The full amount of student financial assistance paid directly to the student or to the educational institution (see Income Inclusions (9), above, for students receiving Section 8 assistance);
7. The special pay to a family member serving in the Armed Forces who is exposed to hostile fire (e.g., in the past, special pay included Operation Desert Storm);
8. **(a)** Amounts received under training programs funded by HUD (e.g., training received under Section 3); **(b)** Amounts received by a person with a disability that are disregarded for a limited time for purposes of supplemental security income eligibility and benefits because they are set-aside for use under a Plan to Attain Self-Sufficiency (PASS); **(c)** Amounts received by a participant in other publicly assisted programs that are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program; **(d)** Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the owner, on a part-time basis, that enhances the quality of life in the project. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, and resident initiative coordination. No resident may receive more than one such stipend during the same period of time; or **(e)** Incremental earnings and benefits resulting to any family member from participation in qualifying state or local employment training programs (including training programs not affiliated with a local government) and training of a family member as a resident management staff person. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program.
9. Temporary, nonrecurring, or sporadic income (including gifts);

10. Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era. (Examples include payments by the German and Japanese governments for atrocities committed during the Nazi era);
11. Earnings in excess of \$480 for each full-time student 18 years or older (excluding the head of household and spouse);
12. Adoption assistance payments in excess of \$480 per adopted child;
13. Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump-sum amount or in prospective monthly amounts;
14. Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit;
15. Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or
16. Amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the *Federal Register* and distributed to housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary. The following is a list of income sources that qualify for that exclusion:
 - a. The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 [b]);
 - b. Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058) (employment through AmeriCorps, Volunteers in Service to America [VISTA], Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions);
 - c. Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626[c]);
 - d. Income derived from certain sub-marginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);
 - e. Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624[f]);
 - f. Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552[b]); (effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 [29 U.S.C. 2931], e.g., employment and training programs for Native Americans and migrant and

seasonal farm workers, Job Corps, veterans employment programs, state job training programs, career intern programs, Americorps);

- g. Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L-94-540, 90 Stat. 2503-04);
- h. The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court and the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408);
- i. Amounts of scholarships funded under title IV of the Higher Education Act of 1965, including awards under federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);
- j. Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056[f]), e.g., Green Thumb, Senior Aides, Older American Community Service Employment Program;
- k. Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in *In Re Agent-product liability litigation*, M.D.L. No. 381 (E.D.N.Y.);
- l. Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721);
- m. The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q);
- n. Earned income tax credit (EITC) refund payments received on or after January 1, 1991, including advanced earned income credit payments (26 U.S.C. 32[j]);
- o. Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433);
- p. Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637[d]);
- q. Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran (38 U.S.C. 1805);
- r. Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602); and
- s. Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931).

Exhibit 5-2: Assets

NOTE: There is no asset limitation for participation in HUD assisted-housing programs. However, the definition of annual income includes net income from family assets.

A. Net Family Assets include the following:

1. Cash held in savings and checking accounts, safe deposit boxes, homes, etc. For savings accounts, use the current balance. For checking accounts, use the average balance for the last six months. Assets held in foreign countries are considered assets.
2. Revocable trusts. Include the cash value of any revocable trust available to the family. See discussion of trusts in paragraph 5-7 G.1.
3. Equity in rental property or other capital investments. Include the current fair market value less (a) any unpaid balance on any loans secured by the property and (b) reasonable costs that would be incurred in selling the asset (e.g., penalties, broker fees, etc.).

NOTE: If the person's main business is real estate, then count any income as business income under paragraph 5-6 G of the chapter. Do not count it both as an asset and business income.

4. 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 the earnings are reinvested. The value of stocks and other assets vary from one day to another. The value of the asset may go up or down the day before or after rent is calculated and multiple times during the year thereafter. The owner may assess the value of these assets at any time after the authorization for the release of information has been received. The tenant may request an interim recertification at any time thereafter that a decrease in stock value may result in a decrease in rent.
5. 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.)

Example – Withdrawals from a Keogh Account

Ly Pham has a Keogh account valued at \$30,000. When she turns 70 years old, she begins drawing \$2,000 a year. Continue to count the account as an asset. Use the guidance in paragraph 5-7 to determine the cash value and imputed income from the asset. Do not count the \$2,000 she withdraws as income.

6. Retirement and pension funds.
 - a. While the person is employed. Include only amounts the family can withdraw without retiring or terminating employment. Count the whole amount less any penalties or transaction costs. Follow paragraph 5-7 G.4 of the chapter on determining the value of assets.

- b. At retirement, termination of employment, or withdrawal. Periodic receipts from pension and retirement funds are counted as income. Lump-sum receipts from pension and retirement funds are counted as assets. Count the amount as an asset or as income, as provided below.
- i. If benefits will be received in a lump sum, include the lump sum receipt in net family assets.
 - ii. If benefits will be received through periodic payments, include the benefits in annual income. Do not count any remaining amounts in the account as an asset.
 - iii. If the individual initially receives a lump-sum benefit followed by periodic payments, count the lump-sum benefit as an asset as provided in the example below and treat the periodic payment as income. In subsequent years, count only the periodic payment as income. Do not count the remaining amount as an asset.

NOTE: This paragraph and the example below assume that the lump-sum receipt is a one-time receipt and that it does not represent delayed periodic payments. However, in situations in which a lump-sum payment does represent delayed periodic payments, then the amount would be considered as income and not an asset.

Example – Retirement Benefits as Lump-Sum and Periodic Payments

Upon retirement, Eleanor Reilly received a lump-sum payment of \$15,000. She will also receive periodic pension payments of \$350 a month.

The lump-sum amount of \$15,000 is generally treated as an asset. In this instance, however, Eleanor spent \$5,000 of the lump sum on a trip following her retirement. The remaining \$10,000 she placed in her mutual fund with other savings. The entire mutual fund will be counted as an asset.

The owner has verified that Eleanor is now not able to withdraw the balance from her pension. Therefore, the owner will count the \$350 monthly pension payment as annual income and will not list the pension account as an asset.

7. Cash value of life insurance policies available to the individual before death (e.g., the surrender value of a whole life policy or a universal life policy). It would not include a value for term insurance, which has no cash value to the individual before death.
8. Personal property held as an investment. Include gems, jewelry, coin collections, or antique cars held as an investment. Personal jewelry is NOT considered an asset.
9. Lump-sum receipts or one-time receipts. (See paragraph 5-6 ****P**** for additional information on what is counted as a lump-sum receipt and how to treat lump-sum receipts.) These include inheritances, capital gains, one-time lottery winnings, victim's restitution, settlements on insurance claims (including health and accident insurance, worker's compensation, and personal or property losses), and any other amounts that are not intended as periodic payments.

10. A mortgage or deed of trust held by an applicant.
- a. 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.
 - b. This combined figure needs to be separated into the principal and interest portions of the payment. (This can be done by referring to an amortization schedule that relates to the specific term and interest rate of the mortgage.)
 - c. To count the actual income for this asset, use the interest portion
 - d. due, based on the amortization schedule, for the 12-month period following the certification.
 - e. To count the imputed income for this asset, determine the asset value ****as of the effective date of the certification****. Since this amount will continually be reduced by the principal portion paid during the previous year, the owner will have to determine this amount at each annual recertification. See the following example:

Example – Deed of Trust and Imputed Income

Computation of imputed income:

An elderly tenant sells her home and holds the mortgage for the buyer. The cash value of the mortgage is \$60,000. The combined payment of principal and interest expected to be received for the upcoming year is \$5,000. The amortization schedule breaks that payment into \$2,000 in principal and \$3,000 in interest. In completing the asset income calculation, the cash value of the asset is \$60,000, and the projected annual income from that asset is \$3,000. ****The imputed income would be calculated by multiplying the cash value of \$60,000 by the 2% imputed passbook rate.**** Each subsequent year, the cash value of the asset should be reduced by the principal portion paid. In this example, it would be reduced to \$58,000 in the following year (\$60,000 – \$2,000 principal payment = \$58,000). ****When calculating the imputed income for the following year, the owner would multiply the cash value of \$58,000 by the 2% passbook savings rate.****

Regulatory References

(These references are current as of the date of publication. Readers should refer to the latest edition of the Code of Federal Regulations.)

24 CFR part 5.603 defines net family assets as follows:

Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and the equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded. . . . 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 therefor. 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 receives important consideration not measurable in dollar terms.

B. Net family assets **DO NOT** include the following:

IMPORTANT: The owner does not compute income from any assets in this paragraph.

1. Personal property (clothing, furniture, cars, wedding ring, other jewelry that is not held as an investment, vehicles specially equipped for persons with disabilities).
2. Interests in Indian trust land.
3. Term life insurance policies (i.e., where there is no cash value).
4. Equity in the cooperative unit in which the family lives.
5. 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 tenant's main occupation.

Example – Assets that are Part of an Active Business

- Laura and Lester Hines own a copier and courier service. None of the equipment that they use in their business is counted as an asset (e.g., the copiers, the FAX machines, the bicycles).
- Alice Washington rents out the home that she and her husband lived in for 42 years. This home is not an active business asset. Therefore, it is considered an asset and the owner must determine the annual income that Alice receives from it.

6. Assets that are NOT effectively owned by the applicant. Assets are not 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 family, and (b) that other person is responsible for income taxes incurred on income generated by the assets.

NOTE: Nonrevocable trusts (i.e., irrevocable trusts) are not covered by this paragraph. See information on nonrevocable trusts in paragraph 5-7 G.1.

Example – Assets not Effectively Owned by the Applicant

Net family assets do not include assets held pursuant to a power of attorney because one party is not competent to manage the assets, or assets held in a joint account solely to facilitate access to assets in the event of an emergency.

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

7. Assets that are not accessible to the applicant and provide no income to the applicant. Nonrevocable trusts are not covered under this paragraph. See information on nonrevocable trusts in paragraph 5-7 G.1.

Example

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

4.3 Income and Asset Verification

All sources and forms of income and assets must be verified. Verification must be received by the owner/agent prior to the applicant executing a lease agreement and completing the **Tenant Income Certification Form (TIC)**. Verification must also be received prior to the annual recertification date.

Income and Asset Verification Forms should be signed by each adult household member during the application process and again at time of certification or recertification. These forms provide consent to release information necessary for third-party verification. Additional signatures of new adult members should be obtained prior to move-in or when the member turns 18 years of age.

Four methods of verification are acceptable. They are listed in order of acceptance:

- A. **Asset Certification Only** – A 3rd party verification is not required if the household's family assets do not exceed \$5,000. The Tenant Income Certification Form (TIC), has a section to complete that satisfies the "Under" \$5,000 certification form.
- B. Written verification by a third-party which should be received via fax, mail, or email. The verification should not be hand carried by an applicant.
- C. Review of documents showing income sources, but only when a 3rd party verification is not possible. Examples include pay stubs (at least four, current and consecutive), current tax returns or an annual SSI notification letter.
- D. A notarized statement or signed affidavit from the resident when third-party verification or review of documents is not possible or delayed beyond four weeks. This method should only be used as a **last** resort. (This is not to be used for self employment verifications).

The owner/agent should give the applicant the opportunity to explain any significant differences between the amounts reported on the application and amounts reported on third-party verifications in order to determine actual income. The file should be documented to explain the difference by using a clarification form.

See Acceptable Forms of Verification in Section 4.9. Recommended verification forms are located in Appendix 3 of the HUD Handbook.

4.4 Verification Term

All earned and unearned income and assets that affect an applicant's eligibility must be verified and be 120 days current (prior to) the initial certification or annual recertification date. Do not write clarifications on the original verification form.

4.5 Acceptable Forms of Verification

Acceptable forms of verification for specific types of income and asset situations are as follows:

Employment Income

1st Choice: Employment Verification Form completed by the employer or statement from employer on company letterhead. 3rd party requests must be received via fax, mail or email.

2nd Choice (only if 1st choice is impossible or impractical): Check stubs or earnings statements showing the employee's name, social security number, gross income per pay period and frequency of income.

Self Employment Income

1st Choice: the most recent Federal Tax Return Forms 1040 with schedule(s): C or F, or accountant's statements of net income.

2nd Choice: Current financial statements of the business **AND** a certification from the applicant giving the anticipated income for the 12 months following certification.

Social Security

1st Choice: Social Security Verification Form completed by the agency providing the benefits.

2nd Choice: An award or benefit notification letter prepared and signed by the authorizing agent for the current year.

Railroad Retirement

1st Choice: Railroad Retirement Verification Form completed by the firm providing the benefits.

2nd Choice: An award or benefit notification letter prepared and signed by the authorizing firm for the current year.

Unemployment Compensation

1st Choice: Verification of Unemployment Benefits Form completed by the unemployment compensation agency.

2nd Choice: Records from the unemployment office stating payment dates and amounts.

Workers Compensation or Other Pension

1st Choice: Pension or Workers Comp Verification Form completed by the agency providing the benefits.

2nd Choice: An award or benefit notification letter prepared and signed by the authorizing agent for the current year.

Veterans Benefits

1st Choice: Veterans Verification Form completed by the agency providing the benefits.

2nd Choice: An award or benefit notification letter prepared and signed by the authorizing agent for the current year.

Military Pay

1st Choice: Military Pay Verification Form completed by the employer or statement from employer on business letterhead.

2nd Choice: “Leave and Earnings” (LES) statement showing the employee’s gross pay per pay period and frequency of pay.

Child Support and/or Alimony

1st Choice: Child Support and/or Alimony Verification Form completed by the Clerk of Court for court-ordered support.

2nd Choice: Child Support and/or Alimony Affidavit completed by the spouse/custodial parent.

3rd Choice: Copy of separation or divorce decree stating the amount and type of support payment schedule and a copy of the latest support check.

Welfare

1st Choice: Welfare Verification Form completed by the agency providing the benefits.

2nd Choice: Copy of recipient’s budget signed and dated by caseworker.

Recurring Contributions and Gifts

1st Choice: Certification signed by the person providing the assistance giving the purpose, dates and value of the gifts, or a verification letter from the bank, attorney, or a trustee administering the contribution.

2nd Choice: Certification from the applicant giving the purpose, dates and value of the gifts.

Checking Account

1st Choice: Asset Verification Form completed by the financial institution (average balance for last six months).

2nd Choice: Six months of current consecutive bank statements showing the average balance and earnings.

Savings Account

1st Choice: Asset Verification Form completed by the financial institution.

2nd Choice: Current bank statement showing the current balance and earnings.

Certificates of Deposit/Money Market Funds

1st Choice: Asset Verification Form completed by the financial institution.

2nd Choice: Statement showing the amount of the certificate/funds and the interest rate.

Trusts

1st Choice: Statement from attorney or trust executor giving the amount of the trust and earnings.

Stocks/Bonds/Treasury Bills

1st Choice: Asset Verification Form completed by the financial institution, stockbroker.

2nd Choice: Statement from stockbroker or accountant giving the name of the stocks, number of shares held, current value and interest/dividends earned (for bonds and treasury bills, give the number held, current value and interest earned).

Equity in Real Estate

1st Choice: Appraisal or recent settlement statement on real estate, letter or mortgage statement from financial institution showing loan balance, letter from real estate broker regarding reasonable costs associated with selling asset.

2nd Choice: Letter from real estate broker or financial institution regarding value of asset, loan balance and reasonable costs associated with selling assets.

IRAs

1st Choice: Asset Verification Form completed by the financial institution.

2nd Choice: Letter from accountant giving the value and income of the IRA.

Lump Sum Receipts

1st Choice: Documentation of value of lump sum if invested in other assets, refer to those types for acceptable forms of verification.

NOTE: A 3rd party verification is not required if the household's family assets do not exceed \$5,000. The Tenant Income Certification Form (TIC), has a section to complete that satisfies the "Under" \$5,000 certification form

4.6 Calculating Annual Income

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

To annualize full-time employment, multiply:

- A. hourly wages by weekly hours by 52
- B. weekly wages by 52
- C. bi-weekly amounts by 26
- D. semi-monthly amounts by 24
- E. monthly amounts by 12
- F. Annual wages should always reflect a full 12-month period regardless of how the wages are paid. For example, if a teacher is paid \$21,000 gross annual salary, use \$21,000 as the wages regardless of whether the teacher is paid in 12 monthly installments, 9 installments or some other payment schedule.

4.7 Valuing Assets

Asset information (total value and income to be derived) should be obtained at the time of application or prior to the annual recertification. Third-party verification is required to determine the market value of an asset. The market value of the asset may then be converted to a Cash Value by subtracting whatever costs would be incurred to convert the asset to cash.

Examples:

- A. Penalties for premature withdrawal

- B. Broker fees
- C. Legal fees
- D. Settlement costs for real estate transactions

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

NOTE: People may be on another’s account for survivorship reasons and may not actually “own” the account. Determining who contributes to the account and who pays taxes on the account may be useful in establishing who “owns” jointly held assets.

When valuing a checking account, remember to use the average monthly balance for the last six months. If the bank will not provide this information, you must collect the statements from the resident and compute a six-month average.

Examples:

1. A couple has a \$5,000 Certificate of Deposit earning 6 percent interest, but they will have a three-month penalty for early withdrawal.

$\$5,000 \times 6 \text{ percent} = \300 (actual yearly income from asset)

$\$300 \text{ divided by } 12 \text{ (months in a year)} \times 3 \text{ (months penalty)} = \75 (penalty for early withdrawal)

$\$5,000 - \$75 \text{ (penalty)} = \$4,925$ (cash value of asset)

2. A couple has a home valued at \$50,000. Broker fees for the home would be \$2,000 and the settlement costs would be \$6,000.

Market Value of Home	\$50,000
Minus Broker Fees	2,000
Minus Settlement Costs	<u>6,000</u>
Cash Value	\$42,000

Actual yearly income from the asset is zero.

4.8 Income Derived From Assets

When the cash value of all family assets does not exceed \$5,000, add the actual amount of income derived from the asset to the total verified income of the household.

When the cash value of all family assets exceeds \$5,000, add to the total verified income of the household the greater of:

- A. the actual income derived from the asset, or
- B. the imputed income from assets based on the passbook rate established by HUD

NOTE: HUD has established a national passbook rate of 2 percent, which must be used to impute asset income for assets over \$5,000 (see HUD Handbook 4350.3). Please use this rate until further notice. This rate applies to RD properties receiving tax credits to determine if the household is tax credit qualified. You must continue to use the RD-approved rate to determine if the household is RD-qualified.

4.9 Unemployed Applicants

If any adult household member is unemployed, they must complete an Unemployed Adult Affidavit.

Anticipated income that is revealed on the Unemployed Adult Affidavit, that is eminent or verifiable, must be determined.

Household members who are unemployed but receive regular income from any source such as Social Security, pension, recurring gifts, etc., must complete an Unemployed Applicant's Affidavit in addition to the verification of income.

4.10 Income and Asset Verification of HUD-Assisted Residents

Should the LIHTC Resident be the recipient of Section 8 assistance in the form of a Section 8 Certificate, Section 8 Voucher, or Section 8 Moderate Rehabilitation Contract, the Contract Administrator for the HUD assistance (i.e., the local Public Housing Authority) may provide to the owner/agent a statement that the resident's income does not exceed the applicable income limit under IRC § 42(g). If the Contract Administrator has not provided this statement, standard income and asset verification procedures must be followed. (EIV is **NOT** an acceptable form of verification.)

The Contract Administrator's statement may be obtained by the owner/agent writing a letter to the Contract Administrator outlining the income requirements as well as the income limits. The Contract Administrator should certify that these income requirements and limits are being met by the participant in the assistance program and return the owner's/agent's letter along with a certification form (e.g., HUD Form 50058 or 50059) for the recipient. This certification may be obtained for all move-ins and recertifications.

4.11 Recertification

Resident eligibility must be determined annually for all low-income units. This is performed in the same manner as the initial eligibility requirements. The owner/agent is required to obtain third-party verification of all income sources of all household members except dependent minors as well as benefits paid on behalf of minors in the household. Income from assets is also included in annual income for recertification purposes and must be verified in the same manner as the initial eligibility requirements. **Tenant Income Certifications (TIC)** should not be signed and dated more than 45 days prior to the recertification effective date and no more than 5 days prior to the move in certification date.

When recertification procedures are performed, the owner/agent needs to pay particular attention to the circumstances that may have affected the continuing eligibility of a resident in a low-income unit. Areas of concern include:

- A. New or additional income sources
- B. Change in employment status
- C. Change in household composition
- D. Additional Assets
- E. Deletion of Assets

The owner/agent must complete a **Tenant Income Certification (TIC)** supported by the income/asset verifications to establish continued eligibility. This process is identical to the move-in eligibility process, except the income limits are amended to reflect 140 percent of the median income limit as adjusted for family size.

- A. If the household annual income at recertification increases above the qualifying income level at move-in, but is less than 140 percent of the area median income limit as adjusted for family size, the family continues to qualify as a low income set-aside unit.
- B. If the household annual income at recertification exceeds 140 percent of the area median income limit as adjusted for family size, the unit may continue to count as a low income set-aside unit as long as the next vacant unit of comparable or smaller size in the building are occupied by a qualified low income resident, until the original mix of LIHTC units is restored, not counting the over 140% units.

For mixed-income properties, if the household annual income at recertification exceeds 140 percent of the area median income limit as adjusted for family size and the next available unit of equal or smaller size is a unit that was previously occupied by a market rate resident, then that unit must be rented to a qualified low income household at the tax credit rental rate. The owner is then free to charge market rate rent to the household that has exceeded 140 percent of the area median income limit. The Available Unit Rule applies on a building-by-building basis.

For 100 percent low-income properties, however, the 140 percent income ceiling does not apply. These projects automatically meet the program requirements because every vacant unit should be rented to an eligible tenant. The program allows the over-income tenant to remain in the unit. When the unit is vacated, it simply needs to be occupied by an eligible tenant.

4.12 Determining Household Size

Household members include all persons who consider the unit to be their primary residence for the next twelve months. This includes,

- A. Children under joint custody or foster care that will be returning to the unit.
- B. Tenants that are in the hospital or nursing home that will be returning to the unit.
- C. Children being adopted.
- D. A future roommate or spouse.
- E. Unborn children
- F. We must always count dependant students away at school and military household members who have a spouse or child in the unit.
- G. Foster children and foster adults (Update Change 4 4350.3 3-6.E.3/3-8)

NOTE: There may be some cause for leniency where children are involved.

Persons Not Counted in the Household Composition:

- A. Live in Attendants (for elderly or disabled, a live in aide must never be a dependant)
- B. Temporary visitors and/or guests

4.13 Changes in Household Composition

All household members must be certified and under lease. In the event the resident in a low-income unit later wishes to have an additional person move into the unit, the following steps must be taken:

- A. The new residents must complete a new application and allow for verification of income and assets as required.
- B. The prospective resident's income must be added to the current resident's most recently certified income and a determination made as to whether the available unit rule is now in effect. It also must be determined if any deeper targeting set aside must be adjusted.
- C. A revised **Tenant Income Certification (TIC)** must be completed and signed by all household members 18 years of age and older.

In the event a household member vacates the unit, the unit will remain in the category as originally certified. The resident file should be documented when any household member vacates the unit. The household is considered the original household as long as one member from the original household remains.

Sample Forms

To view sample forms and to access the Online Annual Report Instructions, please visit our website at: <http://www.azhousing.gov/ShowPage.aspx?ID=450&CID=16>.