

MISSOURI HOUSING DEVELOPMENT COMMISSION
LOW-INCOME HOUSING TAX CREDIT PROGRAM
COMPLIANCE MONITORING MANUAL

REVISED September 2006

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PREFACE

This manual is a training and reference guide for the administration of the Low-Income Housing Tax Credit Program (“LIHTC or the Program”). It is designed to provide guidance for compliance with Section 42 of the Internal Revenue Code (“the Code”), the Land Use Restriction Agreement (“LURA”) and generally, to help answer questions regarding the procedures, rules, and regulations that govern LIHTC developments in Missouri.

This manual should be used as a resource for owners, developers, management companies, and on-site management personnel. This manual is to be used only as a supplement to existing laws and rules and is by no means a comprehensive guide to the LIHTC program and all of its requirements. This manual was produced for utilization by LIHTC participants in Missouri and should be used in conjunction with the Code and the LURA, if applicable.

Compliance monitoring by the Missouri Housing Development Commission (MHDC), is administered by the Asset Management Department, Director Deb Giffin. Questions regarding compliance issues should be directed to either John Driver (jdriver@mhdc.com) or Deb Giffin @dgiffin@mhdc.com.

PLEASE NOTE: *IRS Regulation 1.42-5(g) states that “compliance with the requirements of Section 42 is the responsibility of the Owner of the building for which the credit is allowable. The Agency’s obligation to monitor for compliance with the requirements of Section 42 does not make the Agency (or its officers and employees) liable for an Owner’s noncompliance.”*

Because of the complexity of the Code and the necessity to consider its applicability to specific circumstances, owners are urged to seek competent professional legal and accounting advice regarding compliance issues.

The procedures and reporting forms herein have not been approved by the Internal Revenue Service (the “IRS”) and should not be relied upon for interpretation of Federal income tax legislation or regulations.

1. INTRODUCTION

1.1 THE MISSOURI HOUSING DEVELOPMENT COMMISSION

MHDC was established in 1969 by the 75th General Assembly to assist in the creation of low and moderate income housing for the State of Missouri (the "State"). The legislature established a governing body, the Commission, which is currently composed of ten members. The Governor, Lieutenant Governor, the State Treasurer and the Attorney General serve on the Commission by virtue of office. The remaining six members are appointed by the Governor, with the advice and consent of the Senate, for staggered terms of four years.

MHDC programs are varied and are available to low and moderate income Missourians, regardless of race, creed or national origin.

1.2 BACKGROUND

MHDC has been designated by the Governor as the Housing Credit Agency for the State. This designation gives MHDC the responsibility of administering the LIHTC Program established by the Tax Reform Act of 1986 and codified as Section 42 of the Internal Revenue Code. The responsibilities of a Housing Credit Agency are defined in Section 42(m) of the Code, as amended.

One of the statutory duties of the Housing Credit Agency is to monitor for and notify the IRS of any noncompliance with the provisions of the Code and/or any such State requirement documented in the LURA.

1.3 COMPLIANCE PERIOD

- A. All Credit Developments** - In order to claim the credit, all developments receiving a credit allocation since 1987 must comply with all eligibility requirements for a period of 15 taxable years beginning with the first taxable year of a building's credit period. The credit period for a building begins in either the year it is placed in service or the first year after, as declared in Part II of the IRS Form 8609. This 15 year period is referred to in the Code as the "Compliance Period" [Section 42(i)(1)].
- B. Developments Receiving Credit Allocations after December 31, 1989** are required by the Code to comply with all eligibility requirements for an additional 15 years beyond the initial 15 year compliance period for a total of 30 years. This additional 15 year period is referred to in the Code as the "Extended Use Period" [Section 42(h)(6)(D)]. These developments are also required to enter into an extended low-income housing commitment [Section 42(h)(6)], the LURA, with MHDC at the time that a final allocation of credit is issued. The LURA sets forth the eligibility requirements that must be complied with during the compliance and extended use periods and is recorded, as a restrictive covenant against the property, in the County in which the development is located.
- C. Credit Allocations for 1987, 1988, and 1989 Only**
As stated above, developments receiving a credit allocation prior to January 1, 1990 are restricted for the initial 15-year compliance period only. However, any building in such a development that received an additional allocation of credit after December 31, 1989 must comply with eligibility requirements in effect beginning January 1, 1990 and as stated in both Section 42 and the Land Use Restriction Agreement.
- D. Determination of the Final Year of Program Compliance**
To enable MHDC to determine a property's final year of Program compliance, MHDC must be provided with a copy of the First Year Certification Part II of IRS Form 8609, as executed by the owner and filed with the IRS. If this cannot be provided, MHDC will require the development to remain in the program through December 31st of the sixteenth year, for 1987 -1989 credit allocations, or December 31st of the thirty-first year, for credit allocations of 1990 and thereafter.

1.4 RESPONSIBILITIES

A. MHDC Responsibilities

MHDC allocates tax credits through the LIHTC Program for the construction, acquisition and/or substantial rehabilitation of low-income housing within the State. MHDC also monitors for adherence to both IRS and MHDC requirements during the compliance and extended use periods. Once a final allocation is awarded to a development, the Asset Management Department of MHDC will:

1. Provide a Compliance Monitoring Manual;
2. Review and provide written consent to any material changes, such as a proposed change of property management or proposed sale, transfer or exchange of the development.
3. Review Annual Submissions;
4. Conduct physical inspections of the properties and perform on-site reviews of the management and resident files.
5. Evaluate requests for rent increase (see 5.2)
6. Notify the IRS of any non-compliance.

B. OWNER Responsibilities

Each owner has chosen to utilize the LIHTC Program to take advantage of the tax benefits provided. Certain requirements must be met in order to remain eligible for the tax benefits. It is the responsibility of the owner to ensure that the property is managed in accordance with all applicable laws, rules, regulations and policies that govern a LIHTC property. These owner responsibilities include, but are not limited to the following:

1. Administration

- a. To ensure that the development remains in compliance with all Program requirements.
- b. To maintain the development so as to ensure that it is suitable for occupancy at all times, taking into account local health, safety and building codes.
- c. To provide appropriate training to the on-site management team and submit evidence to MHDC of such training every 2 years
- d. To maintain copies, on site, of all regulatory documents (LURA, compliance manuals, etc.) necessary for the successful management of the property.
- e. To utilize program resources, which include, but are not limited to, reference materials and competent legal and accounting assistance.
- f. To make certain the on-site management team complies with all applicable rules, regulations and policies that govern the development, including the Fair Housing Act of 42 U.S.C. 3601.
- g. To ensure that all records are complete and retained so as to comply with IRS Regulation 1.42-5(b)(1).
- h. To maintain the rents at the level prescribed by MHDC. Any and all rent increases must be approved by MHDC prior to implementation.
- i. To update the Affirmative Fair Housing Marketing Plan every 3 years.
- j. To notify MHDC-LIHTC Compliance staff that issues of non-compliance have been corrected and the building is back in LIHTC compliance.
- K. To notify MHDC of sale by submitting the Exhibit G

2. Compliance Training

Developments that are placed-in-service in 2003 and thereafter will be required to have the Owners and their on-site managers complete a compliance training session that is either approved or conducted by MHDC, prior to receiving IRS FORM 8609. In addition, **any and all new managers will be required to attend a compliance training session, with ongoing training to be updated at least every 2 years.** A compliance provider listing can be found on our website, www.mhdc.com.

C. Management Agent and On-Site Personnel

The owner, managing agents and representatives are responsible for the correct implementation of the LIHTC Program requirements. Anyone who is authorized to lease apartment units to residents must be thoroughly familiar with all federal laws, rules and regulations governing certification and leasing procedures. The management company is required to provide information, as needed, to MHDC and submit all required reports and documentation in a timely manner.

1. Noncompliance

If the management company determines that the development is not in compliance with LIHTC Program requirements, MHDC must be notified immediately and steps taken, with MHDC's guidance, to correct the noncompliance whenever possible. NOTE: It is the Owner/Management Agent's responsibility to notify MHDC of any noncompliance issues that have not been corrected by submitting a Corrective Action Plan and it is the owner/management agent's responsibility to update the action plan by the 10th day of every month until all outstanding items have been corrected. It is the Owner/Management Agent's responsibility to notify MHDC when any noncompliance issues have been corrected.

2. Regulations

Program requirements are contained in Section 42 of the Code (included as Attachment 1). Program changes and revisions made by the Budget Reconciliation Acts of 1989, 1990 and 1993 are incorporated within the Code. Additionally, the IRS publishes periodic revenue notices (not included in the manual), rulings, regulations, and procedures that clarify and/or expand on the law. The following items **highlight** some of the Code provisions that directly affect project compliance. **This list is not intended to provide a complete listing of compliance regulations.**

2.1 PROJECT REGULATIONS

A. Minimum Set-Aside Election

Section 42(g) states that to be a "qualified low-income housing project" the project must meet one of two possible minimum set-asides. In Missouri, the owner commits to a specific minimum set-aside for the project during the application process. This election, once made, is irrevocable. If the project does not meet the minimum set-aside by the end of the first year of the credit period, the property does not qualify as a low-income housing project and loses the credit that was awarded to it. Noncompliance also occurs if the project drops below its minimum set-aside anytime during the subsequent compliance period. The minimum set-asides are:

1. **20% @ 50%** - At least 20% of the residential units are both rent-restricted and occupied by individuals whose income does not exceed 50% of area median gross income ("AMGI") adjusted for household size. It is important to understand that if this minimum set-aside is chosen, **ALL** of the LIHTC units must be rent-restricted and occupied by individuals whose income does not exceed 50% of AMGI.
2. **40% @ 60%** - At least 40% of the residential units are both rent-restricted and occupied by individuals whose income does not exceed 60% of AMGI, adjusted for household size.

B. Projects financed with HOME Funds

Under a special statutory rule [Section 42(i)(2)(E)], projects with below-market HOME funded loans, made after August 10, 1993, may avoid being classified as federally subsidized and qualify for the 9% Credit. To qualify for the 9% Credit, 40% or more of **all** the residential units (including market rate) in **every** building must be occupied by individuals with income of 50% or less AMGI.

Example: A project is financed with a below-market HOME loan. The project contains 4 buildings of 4 units each. 40% of 4 units = 1.6 units. To meet the 40% restriction, **2** units in **each** building must be occupied by individuals with income of 50% or less AMGI.

C. Gross Rent Floor (IRS Revenue Ruling 94-57)

In general, a decrease in the area median gross income will require a reduction in the gross rent charged to low income tenants. However Revenue Ruling 94-57 established that the gross rent for a unit does not have to be reduced below the maximum rent that was permitted on the effective date of the Gross Rent Floor Election. For projects which received an initial allocation or a letter of determination (tax exempt bond projects) after October 6, 1994 the Gross Rent Floor takes effect when a project receives its initial LIHTC allocation, unless the owner chooses to designate a building's placed-in-service date as the effective date. For projects that received an initial allocation or a letter of determination prior to October 6, 1994, the effective date of the Gross Rent Floor is when the project received its initial LIHTC allocation.

2.2 BUILDING REGULATIONS

A. The Applicable Fraction

The applicable fraction represents the percentage of a building intended for qualified low-income units. The targeted applicable fraction is assigned to a building at the time of final credit allocation (issuance of IRS Form 8609). However, a final determination of the maximum applicable fraction is made at the close of the first year of the credit period. The maximum credit an owner can claim on a building is based on the lesser of the targeted applicable fraction (8609) or the actual applicable fraction on the last day of the initial LIHTC year. (See IRS Form 8609 - Schedule A, "Annual Statement" for complete instructions on calculating the building's first year applicable fraction.) The applicable fraction is calculated as the lesser of:

1. The number of low-income units in a building divided by the total number of units (whether or not occupied) in a building; OR
2. The total square footage of low-income units in a building divided by the total square footage of all units (whether or not occupied) in a building, with the exception of the manager's unit, which may or may not be included, depending on the following circumstances.

B. Treatment of Resident Manager's Unit (IRS Revenue Ruling 92-61)

NOTE: MHDC must give prior *written* approval for Manager's units.

1. **Buildings Placed-In-Service Prior to September 9, 1992** - The manager's unit is considered a qualified low-income unit. The rent is restricted and the resident manager's household income can not exceed the applicable income limit.
Example: A LIHTC building with 25 units (of the same size) is placed-in-service on January 1, 1990. One unit is set aside for a full-time resident manager. The resident manager is income qualified and the rent is restricted. If 21 of the units are qualified low-income units (including the manager's unit) and 4 of the units are market-rate, the applicable fraction for this building is 84.00% (21/25).
2. **Buildings Placed-In-Service After September 9, 1992** - The full-time resident manager's unit is treated as common space. The unit is excluded from both the numerator and the denominator of the applicable fraction in determining the building's qualified basis. Reference Sect. 42 Appendix 20
Example: A LIHTC building with 25 units (of the same size) is placed-in-service on January 1, 2000. One unit is set aside for a full-time resident manager. If 20 of the units are qualified low-income units and 4 of the units are market-rate, the applicable fraction for this building is 83.33% (20/24)
3. **Maintenance Personnel** – The Code (IRS Revenue Ruling 92-61) defines units for resident managers or maintenance personnel as “facilities reasonably required by a project that are functionally related and subordinate to residential rental units.” Therefore, if maintenance personnel are reasonably required to make operations run smoothly, such units may be treated the same as described in B.1 and B.2 above. It is the responsibility of each development and its legal counsel to determine eligibility of such units.

C. Determining the Numerator and Denominator of the Applicable Fraction

When determining which units to include as low-income units in the numerator of the fraction and total units in the denominator of the fraction, please note:

1. **Units Never Occupied** - Units that have never been occupied cannot be included in the numerator (low-income units), but must be included in the denominator (total units).
2. **Vacant Units** - Units that are vacant at the end of the initial tax year which previously were qualified as low-income units can be considered to be low-income for determining the amount of credits claimed, **only if the units were occupied for a minimum of one full month.**

D. Transferring Low-Income Households to Never-Occupied Units

Transferring low-income households to never occupied units in order to establish a higher first year applicable fraction is not allowed. Any household that transfers to a different unit during the initial year of the compliance period will only be counted as qualifying one unit.

Example: A building with 10 units (of the same size) is placed-in-service on March 1, 2000. The owner has a targeted applicable fraction of 100% and plans to take credit for the first time for 2000. On November 30, 2000, nine of the units were rented to qualified low-income households. Unit #108 has never been occupied. The applicable fraction is 90% for the month. On December 1, 2000, the tenant in Unit #101 transfers to Unit #108. The applicable fraction remains at 90% for December.

E. Calculating the First Year Credit Percentage:

For the first year of the credit period, you must use a modified percentage to reflect the average portion of a 12-month period that the units in a building were occupied by low-income individuals. To calculate the modified percentage, take the low-income percentage as of the end of each full month that the building was in service during the year. Add these percentages together and then divide by 12 (per IRS Form 8609, Schedule A).

Example: Assume that a low-income building placed-in-service in December and so chose to delay the first credit year until the following year. During that first year of the credit period the building had the following lease-up schedule.

Month	Occupied Low-Income Units	Total Units	Occupied Units Divided By Total Units	Monthly Applicable Fraction
January	0	10	0 ÷ 10	00.00%
February	2	10	2 ÷ 10	20.00%
March	4	10	4 ÷ 10	40.00%
April	6	10	6 ÷ 10	60.00%
May	7	10	7 ÷ 10	70.00%
June	7	10	7 ÷ 10	70.00%
July	7	10	7 ÷ 10	70.00%
August	8	10	8 ÷ 10	80.00%
September	9	10	9 ÷ 10	90.00%
October	10	10	10 ÷ 10	100.00%
November	10	10	10 ÷ 10	100.00%
December	10	10	10 ÷ 10	100.00%
TOTAL of Monthly Applicable Fraction				800
TOTAL Divided by 12				66.67%

The amount of credit allowed on this building for the first year would be 66.67% based on the lease-up schedule. The applicable fraction at the end of the first year of the credit period is 100%.

2.3. UNIT REGULATIONS FOR DETERMINING ELIGIBILITY

A. Maximum Income Limits

In order for a household to qualify for a low-income unit in a LIHTC development, their income must not exceed the applicable AMGI. This must be determined before the household is allowed to occupy any LIHTC unit.

The United States Department of Housing and Urban Development (HUD) publishes AMGI information for each Missouri County on an annual basis. Limits remain in effect until the effective date of the next year's published limits. Upon receipt of the updated HUD median income information, MHDC will make every effort to place the new annual income limits and corresponding rent limits for projects in Missouri on MHDC's Internet site (www.MHDC.com). **However, it is the owner's responsibility to obtain the limits when they are published by HUD and to implement the new limits within 45 days of the effective date.**

B. Maximum Rent Limits

Similar to restrictions on tenant income, restrictions also exist on the amount of rent that can be charged for a low-income unit.

1. Projects Receiving a Credit Allocation From 1987 Through 1989

The gross rent, including utilities, for pre-1990 projects is based on the number of occupants in the unit.

Example: A unit is occupied by 4 household members. The maximum allowable rent is 30% of the AMGI for a household of four. All rent calculations for pre-1990 rents should be rounded down to an even dollar amount

AMGI for household of 4 = \$23,350

- \$23,350 is multiplied by 30% = \$ 7,005
- \$7,005 is divided by 12 = \$ 583.75
- \$583.75 is rounded down = \$ 583

The Omnibus Budget Reconciliation Act of 1993 allowed owners to make a one-time election to make the change from maximum rents based on household size to maximum rents based on number of bedrooms. If the election was made, the new rent calculation applies only to tenants that moved in after the election date

2. Projects Receiving a Credit Allocation after December 31, 1989 or that made the Election discussed above - The gross rent, including utilities, paid by a LIHTC tenant may not exceed 30% of the applicable AMGI based on an assumed 1.5 persons per bedroom. The maximum rent, by bedroom size, is also published on an annual basis by HUD (See A above).

C. Utility Allowance:

If the cost of any utilities (other than telephone and cable) is to be paid directly by the tenant, the gross rent for that unit must include an allowance for those utilities. A copy of the updated Utility Allowance must be sent in annually with your Annual Compliance Reports. The source used to calculate the utility allowance must be the same throughout the year. The applicable utility allowance is determined as follows:

1. If a project receives assistance under Rural Development (RD) Section 515, the applicable utility allowance is the utility allowance determined by RD.
2. If a project is HUD regulated, the applicable utility allowance is the HUD utility allowance.
3. All other projects use the local Public Housing Authority utility allowance established for the Section 8 Existing Housing Program.
4. All other projects may also use the actual utility costs from the Utility Company.

D. Rental Assistance Payments

Gross rent does not include any payment from HUD Section 8, RD Section 515, or any comparable rental assistance program. In other words, only the rent and utilities (if applicable) paid by the tenant are counted toward the maximum rent of a qualified LIHTC unit. An increase in the rent paid by a HUD Section 8 or RD Section 515 tenant to an amount that is greater than the maximum LIHTC rent may not disqualify the LIHTC unit if the rent increase is mandated under the provisions of the Section 8 program or Section 515 rental assistance. Such a rent increase may occur if a tenant's income increases significantly, since tenants under these HUD and RD (RD) programs are required by statute to pay rents equal to 30 percent of their adjusted monthly incomes. The amount of rent paid by the tenant in excess of the LIHTC rent limit is known as the "rent overage". The rent overage is treated as follows:

1. **Section 8 Project-Based** - The increase in the tenant's rent payment is allowed if the Section 8 subsidy is reduced by the rent overage.
2. **RD Section 515**
 - a. For properties built before 1991, the rent overage cannot be charged to the tenant, and the owner is responsible to pay the difference.
 - b. For properties built in 1991 and later, the rent amount exceeding the LIHTC rent limit can be collected by the owner, but the owner must pay the overage to RD.

E. Students

1. An individual who is a full-time student or a household where all members are full-time students are not considered qualified tenants for an LIHTC property. The owner/management is required to verify in writing, whether or not applicants and/or existing tenants are full-time students. All adult household members must complete the Non Full-Time Student Affidavit (Exhibit M) prior to admission into a LIHTC property.
2. Full-time students are persons enrolled on a full-time status at an educational institution for at least five calendar months during any taxable year. The Student Verification form (Exhibit F) is required for all full and part-time students. All student financial aid in excess of tuition must be verified and included as income.
3. In general, an educational institution is a school that maintains a regular faculty, an established curriculum, and an organized body of attending students. The definition of full-time is determined by the educational institution. The IRS has stated that the definition of "Full Time Student" for the purpose of this Program was intended to include institutions of primary education.
4. Section 42(i)(3)(D) of the Code provides **exemptions to the student rule** for certain student types. An applicant claiming any of the exemptions must be able to provide documentation to prove that status. For a student to be considered a qualified tenant, they must be one of the following:
 - a. A student and receiving assistance under Title IV of the Social Security Act;
 - b. A student enrolled in a job training program receiving assistance under the Job Training Partnership Act or under a similar Federal, State or local program;
 - c. A student that is a single parent with children and such parent and children are not dependents (as defined in IRC Section 152) claimed by another individual;
 - d. A student that is married and files a joint tax return.
5. Should any member of a previously qualified low-income household become a full-time student, the household must meet one of the exemptions above in order to remain eligible under the Program rules. The owner/management agent must verify in writing whether the household meets the exemption claimed above. If the household does not qualify for one of the exemptions, the unit becomes a market unit.
6. **All properties must incorporate a lease provision requiring tenants to immediately notify management of any change in student status.**

F. Household Size

Household size determines the maximum allowable income. It is also necessary for determining maximum rent limits in pre-1990 projects where maximum rent limits are based on household size, not the number of bedrooms. There are two considerations that affect the determination of household size:

1. **What constitutes a household?**

Any group of persons that choose to live together should be treated as a household. The income of each person must be included to determine the eligibility of the household under applicable income limits.
2. **Who counts as a household member?**
 - a. Year-round occupants;
 - b. Members temporarily away (e.g. Military personnel on temporary duty, children away at school, children temporarily absent due to placement in a foster home).
 - c. Children under joint custody, living with this household at least 50% of the time.
 - d. Unborn children of pregnant women.

- e. A household in the process of adopting a child is treated the same as a pregnancy.
- f. Family members in the hospital or rehabilitation facility for periods of limited or fixed duration; and.
- g. The family decides if persons permanently confined to a hospital or nursing home will be included in the family size for determining the income limit
- h. Any adult household member that moves in with a current qualified household within the first 6 months of the initial occupancy period. The household must recertify and qualify as if they are an initial qualifying household.

2.4 RULES GOVERNING UNITS AFTER INITIAL OCCUPANCY OF QUALIFIED LOW-INCOME TENANTS

A. Annual Recertification of Income – IRS Regulation 1.42-5(c)(ii)

The owner/management is required to recertify each low-income household at least annually. The recertification process is identical to the initial certification in terms of documenting household composition, income and student status. Failure to recertify a household within 365 days of the last certification date is a reportable violation to the IRS.

B. Available Unit Rule – IRS Regulation 1.42-15

If a recertification of income reveals that a household's income now exceeds the applicable income limit by more than 140%, the unit becomes an "over-income unit" and the Available Unit Rule (the "AUR") goes into effect. An over-income unit can continue to be treated as a low-income unit as long as available vacant units of comparable or smaller size in the same building are rented to eligible households and the rent for the unit continues to be restricted. In a mixed-income project, this rule effectively requires the owner/management to substitute another unit that qualifies as a low-income unit for the unit with the over-income household in order to maintain the building's qualified basis.

1. Key Concepts of the Available Unit Rule Include:

- a. In a project containing more than one low income building (non-tax-exempt bond financed), the AUR applies separately to each building. {IRS Regulation 1.42-15(e)}.
- b. In a tax-exempt bond financed project containing more than one low-income building, the AUR is applied on a project basis {IRS Regulation 1.42(d)(3)(B)}.
- c. **If a tax-exempt bond financed project is also receiving LIHTC and contains more than one building, the AUR is applied on BOTH a building and project basis.**
- d. A household whose income rises above 140% of the current income limit may still be considered a low-income household IF the rent remains restricted AND the next available unit(s) is rented to a qualified low-income household.
- e. All comparable units that are available or that subsequently become available in the same building must be rented to qualified households in order to continue to count the over 140%-income unit as a low-income unit. Once the percentage of low-income units in a building (excluding the over-income units) equals the percentage of low-income units on which the credit is based, failure to maintain the over-income units as low-income units has no immediate significance.
- f. If any comparable unit that is available or that subsequently becomes available is rented to a nonqualified resident, all over 140%-income units, within the same building, for which the available unit is comparable or smaller lose their status as low-income units.
- g. For purposes of determining whether a residential unit is comparably sized, a comparable unit must be measured by the same method used to determine qualified basis for the credit year in which the comparable unit became available.
 - 1. If the qualified basis was determined using the square footage percentage, then a comparable unit is measured by square footage; i.e., a comparable

unit is any unit that has the same or less square footage as the over-income unit; or

2. If the qualified basis was determined using the unit fraction, then a comparable unit is measured by the number of bedrooms.
- h. A unit is not available for purposes of the AUR when the unit is not available for rent due to a reservation that is binding under local law.
- i. When a current resident moves to a different unit within the building, the newly occupied unit adopts the status of the vacated unit.
- j. It is the intent of the AUR to replace all over 140%-income households with new qualified households as available units are rented.

C. Unit Vacancy Rule – IRS Regulation 1.42-5(c)(ix)

The Unit Vacancy Rule (the “UVR”) is applied on a project basis. A building is considered in compliance when the current applicable fraction is at or above the first year's fraction. Under the UVR, if a building is at or below its applicable fraction and a tenant vacates a qualified unit, reasonable attempts must be made to rent that unit or the next available unit of comparable or smaller size to a qualified low-income household before any units of comparable or smaller size in the project are rented to non-qualifying (market) tenants. When a qualified low-income unit becomes vacant and reasonable attempts are being made to rent that unit, the unit will continue to be included as a qualified low-income unit for meeting the minimum set-aside and in calculating the applicable fraction of the building, so long as the requirements of the UVR are adhered to. Owners and management agents should document all efforts to rent to a qualified low-income household. When the UVR is violated, all units of comparable or smaller size that are rented to market-rate households prior to renting to a low-income household will be reported to the IRS as a violation.

D. Examples of Minimum Set-Aside, AUR and UVR Violations

Bluff Manor Apartments is a one-building LIHTC project consisting of 10 two-bedroom units of equal size. Units 1 through 5 are rented to qualifying low-income tenants; Units 6 through 10 are rented to market-rate tenants. The owner chose the 40/60 set-aside election. At the end of the first year for which credit was claimed, the owner established an applicable fraction of 50% (5 of 10 units).

Example 1: Units 1 and 2 are recertified; the income of the tenants in both of these units has increased above 140% of the AMGI. At the same time, Unit 6 vacates and a new market-rate tenant moves in. Several violations have taken place.

1. The **AUR** went into effect when Units 1 and 2 were recertified and remained in effect when the vacancy in Unit 6 occurred. Since Unit 6 was rented to a market-rate household, the AUR has been violated.
2. As soon as the market-rate tenant moved into Unit 6, Units 1 and 2 changed to market-rate status. Therefore, seven units are now market-rate units and cause the applicable fraction to be 30%, thus violating the minimum set-aside rule. Reportable violations include both Minimum Set-Aside and Qualified Basis.

Example 2: Qualified low-income Units 1, 4, and 5 vacate. Unit 4 is rented first, to a market-rate household. This causes Units 1, 4, and 5 to be in violation of the UVR. All three of these units are now considered market-rate units, causing the applicable fraction of the building to decrease to 20%. The project has fallen below the minimum set-aside and the established applicable fraction of 50% and has violated the UVR requirements. Reportable violations include the UVR, Minimum Set-Aside and Qualified Basis.

E. Transfers of Existing Tenants to Another Unit

1. Transfer Within The Same Building

Effective September 26, 1997, an existing qualified household may transfer to a different unit in the same building of the project. When a qualified household moves to a different unit within the building, the newly occupied unit adopts the status of the vacated unit.

2. Transfer To A Different Building

Should an existing qualified household wish to transfer to another unit in a different building of the project, **the household must be treated as a new household.** All

application, verification, and certification procedures must be completed for the transferring household and the household must be income qualified using the current maximum allowable income limit for a new household.

3. COMPLIANCE MONITORING

3.1 GENERAL

This section of the manual outlines MHDC's procedures for monitoring all projects receiving the LIHTC. Monitoring is designed to determine if the development is in compliance with federal and state regulations and with MHDC policies. However, compliance is solely the responsibility of the owner and is necessary to retain and use the credit. Monitoring each project is an ongoing activity that extends throughout the credit compliance and extended use period. MHDC is required by Code to conduct this compliance monitoring and is required to inform the IRS of noncompliance, or the failure of the owner to certify to compliance, no later than 45 days after the period of time allowed for correction. MHDC is required to notify the IRS whether the noncompliance has or has not been corrected.

The compliance monitoring process is made up of the following components:

- A. The Compliance Manual;
- B. Compliance Training Workshops;
- C. Reporting and Notification Requirements;
- D. Compliance Forms;
- E. Tenant File Reviews and On-Site Physical Inspections;
- F. Recordkeeping;
- G. Record Retention; and
- H. Noncompliance.

3.2 THE COMPLIANCE MANUAL

MHDC will provide the compliance manual on MHDC's Internet site (www.MHDC.com). The manual may be printed or viewed on-line. The manual describes MHDC's compliance monitoring procedures that the owner and management agent must follow. Updates to the manual will be made as changes to the Code and/or MHDC's procedures occur. The required reporting and certification forms that must be used and submitted to MHDC, as well as sample resident eligibility forms are also available on MHDC's Internet site.

3.3 COMPLIANCE TRAINING

Developments that are placed-in-service in 2003 and thereafter will be required to have the Owners, **and** their on-site managers complete a compliance training session, that is either approved or conducted by MHDC, prior to receiving the IRS FORM 8609. In addition, **any and all new managers will be required to attend compliance training session as a condition of the approval of any new management contract as described in Section 1.6 B.**

MHDC will provide owners with a schedule of available training sessions for the year. The purpose of the training is to provide instruction on:

- A. A sampling of the basic IRS Code Compliance requirements
- B. IRS final regulations for compliance monitoring
- C. MHDC policy and procedures for compliance reporting
- D. MHDC policy and procedures for Resident File Reviews and On-Site Physical Property Inspections
- E. Equal housing opportunity and fair housing regulations and policies
- F. Specific information on the following low-income resident eligibility requirements:
 - 1. Income and Rent Limits
 - 2. Definitions of Income and Assets
 - 3. Certification of resident Income and Assets
 - 4. Verification of resident Income and Assets
 - 5. Leases
 - 6. Student Eligibility

7. Reporting Violations of the Program
8. Other owner responsibilities, including notifying MHDC of any change in management or ownership of the project.

3.4 REPORTING AND NOTIFICATION REQUIREMENTS

Failure to supply the required information and/or reports by the due date will be considered noncompliance. The owner will have 30 days from the date of notification in which to submit the required information. MHDC may grant an extension to this time period if it is determined that there is good cause based on a written request sent by the owner and/or management agent **prior** to the date the information and/or report is due.

A. Sale, Transfer or Exchange of Development.

The Owner must notify MHDC in writing and receive prior consent of any proposed sale, transfer or exchange of the development. A Notice of Change in Ownership (Exhibit G) must be completed and submitted as part of the request.

B. Change in Management.

The Owner must notify MHDC in writing and must provide evidence of training and experience. MHDC reserves the authority to deny a management company based on lack of experience. A property data sheet and an Exhibit J must also be completed.

C. Part II of IRS Form 8609.

A copy of the First Year Certification Part II of IRS Form 8609, as executed by the owner and filed with the IRS must be provided to MHDC, **within 90 days after the end of the first year of the credit period.**

D. IRS Notices and Correspondence

A copy of **any and all notices and correspondence from or with the IRS**, concerning the development or the owner, must be provided to MHDC. Copies must also be made available to MHDC compliance officers during the on-site review.

E. Annual Owner Certification of Continuing Program Compliance

The Owner must submit to MHDC, on an annual basis, the Owner's Certificate of Continuing Program Compliance (Exhibit A). The Certification must be received by MHDC no later than March 31 of the year following the reporting period.

The Certification must have the owner's **original** signature and date and must be **notarized**. Signatures of a person other than an authorized signatory of the ownership entity will not be accepted.

Effective 2003 –Annual Reporting must be submitted through the Certification On line.

Additional information can be found on our web site at www.mhdc.com.

Manual submission will only be accepted by developments with 12 units or less.

F. Schedule A, Annual Statement, IRS Form 8609.

A copy of the IRS filed Schedule A, Annual Statement, IRS Form 8609, for each building, must be submitted annually along with the Owner's Certificate of Continuing Program Compliance.

G. Annual Occupancy Reports

Beginning with the 2005 reporting period, the submission deadline for the Annual Owner's Certificate of Continuing Compliance (Exhibit A) and the Annual Occupancy Report have changed. **The due dates are based on the year the last building was/is placed in service as indicated on the schedule.**

SEASONAL REPORTING SCHEDULE

<i>Placed In Service Date</i>	<i>Annual Report Due Date</i>	<i>Activity Period</i>
1990,1991,1992,1993, 2006	April 15	April 1 –March 31
1994,1995,1996,1997	July 15	July 1-June 30
1998,1999,2000,2001	October 15	Oct.1 – Sept. 30
2002,2003,2004,2005	January 15	Jan. 1 –Dec. 31

Please check the MHDC website at www.mhdc.com for the due dates for developments placed in service after 2005.

NOTE: For developments that have entered the Extended Use Period, COL does not currently accept properties operating in the Extended Use Period. The Exhibits EUP1-5 are available in the Exhibits section of this manual.

H. Utility Allowance Documentation

MHDC requires that documentation for the utility allowance(s) used for the prior year be submitted annually along with the Annual Occupancy Reports. If there has been no change in the PHA's utility allowance, this must be documented by the PHA. NOTE: For units that have been remodeled to a different bedroom size, the total Utility Allowance remain unchanged as long as the total square footage of the unit remains unchanged.

I. Financial Information

1. Financial Statements

- a. For developments of 13 or more units, audited annual financial statements must be submitted to MHDC no later than March 31 of the following year.
- b. For developments with 12 units or less, MHDC will accept the submission of an annual certified compilation report in lieu of the audited annual financial statement. This report must be submitted to MHDC no later than March 31 of the following year.
- c. The request should be directed to the Accounting Department, in the St. Louis office of MHDC with "Annual Financial Statement" clearly indicated on the front of the package.

2. Proposed Operating Budget

- a. All developments must submit to MHDC a proposed operating budget for the upcoming year. The budget must be received by MHDC no later than November 15th of each year. The required budget format is available on the MHDC website (www.mhdc.com).
- b. The request should be directed to the Accounting Department, in the St. Louis office of MHDC with "Proposed Operating Budget" clearly indicated on the front of the package.

3.5 COMPLIANCE FORMS

The following MHDC forms must be used. No other forms will be considered acceptable. These forms are to be retained as described in Section 3.8, Record Retention Requirements:

- A.** Owner's Certification of Continuing Program Compliance (Exhibit A)
- B.** Tenant Income Certification (Exhibit B) (HUD 50058/50059 and RD 1944-A can be used in place of Tenant Income Certification) See Section 4.6 for Rehabilitated developments.
- C.** Employment Verification (Exhibit C)
- D.** Under \$5,000 Asset Verifications (Exhibit D) – NOTE: Not required if all assets are verified
- E.** Certification of Zero Income (Exhibit E)
- F.** Student Verification (Exhibit F)
- G.** Notice of Change in Ownership (Exhibit G)
- H.** Annual Occupancy Report (for not internet filing) (Exhibit H)
- I.** Unit Certification form (Exhibit I)
- J.** Authorized Representative Designation (Exhibit J)
- K.** Annual Certification of Continuing Program Compliance (Exhibit K)
- L.** Affirmative fair Housing Marketing Plan (Exhibit L) *HUD form 935.2*
- M.** Non Full-Time Student Affidavit (Exhibit M)
- N.** Lead-Based Paint Notification (Exhibit N)
- O.** LIHTC Lease Addendum (Tenant Eviction Language)

3.6 TENANT FILE REVIEWS AND ON-SITE PHYSICAL INSPECTIONS

The Code mandates that MHDC conduct on-site property inspections and perform file reviews for each LIHTC development. Additionally, at the time of inspection MHDC must review any building code violation notices received since MHDC's last inspection. MHDC will review a project's resident files in-house (at MHDC), or on-site at the project, as deemed necessary.

A. Inspection Requirements

1. The Code requires that MHDC conduct on-site inspections at least once every 3 years. MHDC must conduct on-site inspections of all buildings in the project and inspect at least 20 percent of the project's low-income units. All units occupied by eligible tenants must be made available for random selection during the inspection. MHDC must also review the resident files which includes, but is not limited to, all certifications, supporting documentation and rent records for those units.
NOTE: The corresponding file for each unit inspected will be reviewed. In addition, for **new projects** placed-in-service after January 1, 2001, the Code requires MHDC to conduct the first on-site physical inspection and unit reviews no later than the end of the second calendar year following the year the last building is placed-in-service.
2. MHDC and RD have entered into a "Memorandum of Understanding" (the "MOU"). The MOU sets forth that RD will conduct the inspections for developments which RD has financed. These results will be provided to MHDC who will then review the results for compliance with Code requirements.
3. The Owner or an owner's representative is required to be present for on-site reviews. Failure to do so may result in a report of non-compliance to the IRS.

B. Notification of Inspection

1. The owner will be notified at least 10 days prior to the arrival of the MHDC compliance officer. The owner, or an owner's representative, must be present to ensure access to the needed records and to answer any questions the compliance officer may have.
2. All residents should be given notice that MHDC will be conducting unit inspections and that their unit may be selected for review.

C. Preparation for the On-Site Physical Inspection

1. Appropriate keys must be available to access all individual apartments, boiler rooms, janitorial rooms, storage areas, etc.
2. Copies of any and all building code violation letters/notices received since MHDC's last inspection, as well as records regarding those repairs, must be on-site and available at the time of the review.

D. Tenant File Review and Physical Inspection Results

At the end of the review, the MHDC compliance officer will conduct an exit interview with the owner or owner's representative to discuss any non-compliance issues discovered.

E. Written Notification of Results

MHDC will provide written notice to the owner of any issues discovered during the tenant file review and/or the physical inspection. The written report represents only buildings and units inspected during the review. Additional deficiencies requiring correction may exist in buildings and units that were not inspected. The information is collected to ascertain the physical condition of a program property. This is necessary for project owners to receive approvals for future funding actions. The information is non-sensitive and no assurance of confidentiality is given. The owner will be given 30 days to respond to the written notification. Responses must be submitted on Owner/Management letterhead and must address all findings whether corrected or not.

Owner/Agents of properties receiving a "Below Average" or "Unsatisfactory" rating may appeal their rating in the following sequence:

- Submit the appeal in writing to MHDC c/o John Driver, Compliance Officer Supervisor, 4625 Lindell, Suite 300 St. Louis, MO 63108.
- The appeal must be post marked within 30 days of the date of the review/rating letter.
- The appeal must include all facts that you wish to be considered in the final review of the rating.
- John Driver will offer his recommendation, based on the facts submitted, to Deb Giffin, Director of Asset Management.
- Deb Giffin will consider the recommendation and issue a final rating, in writing, within 45 days of the date of the appeal submission.

- ***The decision of the Director is final. The next opportunity to improve a rating will be at the subsequent annual review.***
- NOTE: All items noted for correction in the inspection report must be addressed and responded to within the 30 day timeframe regardless of appeal.

F. Corrective Action Plan

Should there be any issues that can not be cured within the above mentioned 30 day period, the owner must submit to MHDC a corrective action plan describing how and when the issues will be corrected. The Corrective Action Plan must be updated and submitted to MHDC by the 10th of every month until all issues are resolved.

3.7 RECORDKEEPING - IRS Regulation 1.42-5(b)(1)

Owners are required, by Code, to keep records for each qualified low-income building in the project. The records must show the following for each year in the compliance period:

- A. The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);
- B. The percentage of residential rental units in the building that are low-income units;
- C. The rent charged on each residential rental unit in the building (including utility allowances with supporting documentation);
- D. The number of occupants in each low-income unit; (if rent is determined by number of occupants);
- E. The low-income unit vacancies in the building and information that shows when and to whom, the next available units were rented;
- F. The annual income certification of each qualifying low-income resident;
- G. Documentation to support each qualifying low-income resident's income qualification;
- H. The eligible basis and qualified basis of the building at the end of the first year of the credit period.
- I. The character and use of the nonresidential portion of the building included in the building's eligible basis under Section 42(d) of the Code (e.g., 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 development).

3.8 RECORD RETENTION - (IRS Regulation 1.42-5(b)(1)).

The owner is required, by Code, to retain the records described in Section 4.7 above 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 must be retained for a minimum of six years after the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.

NOTE: Electronic storage of documents is acceptable as long as hard copies of ALL initial qualifying documentation and all tenant file documentation is readily available for review by the compliance staff.

3.9 NON-COMPLIANCE

MHDC is required by Code to monitor all LIHTC projects and to report to the IRS occurrences of noncompliance. A notice will advise the owner of any noncompliance, the nature of the violation and specify a period for correction. The owner will then be given a period of time (the "correction period) not to exceed 45 days from the date of the notice, to correct the noncompliance issues. MHDC is allowed by Code to provide an extension of up to 180 days. However, any requests for extension must be submitted to MHDC, in writing, prior to the expiration of the original correction period, and will only be granted for good cause as determined by MHDC, in its sole discretion.

MHDC is required to report all findings of noncompliance to the IRS within 45 days after the end of the correction period, even if the violation has been corrected. IRS Form 8823 will be sent to the IRS reporting the violation and whether or not it has been corrected.

A. Missing Reports, Information or Documentation

The owner will have **30 days** from the date of written notification by MHDC in which to submit any missing report(s), information, or documentation. This includes, but is not

limited to occupancy reports, annual Owner's Certificate of Continuing Compliance, utility allowance documentation and financial statements.

Note: Documents not available at the time of the inspection but made available within 30 days of the inspection will have no bearing on the inspection rating.

B. Code Violations

The owner will have **45 days** from the date of written notification by MHDC to bring the project back into compliance with any Code provisions which have been violated.

C. Correction Information

When the owner receives a notification of noncompliance from MHDC, the owner has an opportunity to respond in writing to the letter within the prescribed correction period. Because of the complexity of the LIHTC regulations and the necessity to consider their applicability to specific circumstances, owners are urged to seek competent professional legal and accounting advice regarding compliance issues.

Note: The owner's response to a notification of noncompliance may be forwarded to the IRS. Therefore, the owner should send such data or response to correct the noncompliance that the IRS would deem a reasonable cure. MHDC makes no assumptions from the data and does not interpret the information for the IRS. The IRS has provided no guidance or rulings at this time regarding what constitutes a cure of noncompliance. Therefore, MHDC may not indicate to the IRS if the violation was cured. MHDC checks the "corrected" box on the 8823, consequently, any cure information submitted may not clear the indicated violations with the IRS. It is the sole province of the IRS to determine what constitutes a cure and whether recapture of full or partial credit will occur. **It is in the owner's best interest to respond in writing within the allowed time period to all violation letters sent by MHDC.**

D. Chronic Noncompliance

Chronic noncompliance may result in the owner or related entities being denied participation in the Missouri LIHTC Program and potentially recapture of credits. Examples of chronic noncompliance include, but are not limited to:

1. Chronic non-submission of required reports; and
2. Repeated material violations of the Code.

3.10 DISASTER RELIEF

Owners are encouraged to rent vacant units to disaster-displaced residents for **temporary housing**. Please note that the owners are not required to hold vacant units off the market for disaster-displaced residents. In the case of a disaster please refer to www.mhdc.com for specific guidelines and required documentation for placing disaster-displaced residents.

4. QUALIFYING TENANTS

A written application must be fully executed and signed by all adult applicants prior to certification. Applicants for low-income units should be advised early in their initial visit to the development that there are income limits which apply to these units. Management should clearly explain to the applicants that the income and assets over \$5,000, of all persons expecting to occupy the low-income unit must be verified by a third party and certified prior to occupancy and on an annual basis thereafter.

Please note that for HUD Section 8 and RD Section 515 developments, the HUD and Section 515 annual certification/recertification forms may be used. (See Section 4.6 regarding rehabilitated developments on existing residents) However, RD uses *adjusted income* to determine eligibility. These figures must be modified to show annual gross income as defined by HUD. See HUD 50058/50059 and RD 1944-A.

It is imperative that all sensitive tenant information (bank accounts, social security number, etc.) be treated in a secure and confidential manner. It may be necessary to explain to the applicant that all information provided is considered confidential and will be handled accordingly.

4.1 TENANT ELIGIBILITY

The owner's election of the minimum set-aside (see 2.1-A) for a project determines the income limit for low-income tenants in the project. Certain other factors may affect the eligibility of households, such as student status (see 2.3-E.), and U S Citizen status (see 4.14-C).

4.2 ACCEPTABLE METHODS OF INCOME VERIFICATION

Owners/managers must verify the household's income prior to effective date of Tenant Income Certification. Acceptable methods of verification for specific types of income situations include (see HUD Handbook 4350.3 Rev. 1 for more detail):

A. Employment Income

1. The Employment Verification form (Exhibit C) completed by the employer.
2. If formal written third party verification is unobtainable, pay stubs, showing gross pay per period and frequency, may be used. Pay stubs that cover a minimum of three pay periods and the year-to-date amount must be collected. The year-to-date amount as well as the hourly/salary amount must be calculated, compared and the higher amount used as the annual income. **Efforts to obtain third party verification must be thoroughly documented.**

B. Self-Employment Income

An income certification for self-employed persons must be completed and notarized by the individual, this form must be submitted along with a signed copy of the prior 2 year's income 1040 tax return (including income Schedules C, E and/or F). If this is a new business, a business plan or financial statement must be included itemizing the anticipated income and expenses that would be necessary to calculate the net income of the business and should be documented in the file.

C. Social Security, Pensions, Supplemental Security Income (SSI), Disability Income

1. A benefit verification completed by the agency providing the benefits; OR,
2. An award or benefit notification letter prepared and signed by the authorizing agency. Please note: Since checks or bank deposit slips show only net amount remaining after deducting SSI, Medicare, or state health insurance, they should not be used. Any withholdings must be verified and included in annual income.

D. Public Housing Authority

If a resident is receiving a housing assistance payment under Section 8, the verification requirements may be fulfilled by obtaining a written Public Housing Authority Statement of Income. A consent to release information must be signed by the resident, prior to the initial certification, and is effective throughout the resident's occupancy at the development.

E. Unemployment Compensation

1. An unemployment benefits verification completed by the unemployment compensation agency; OR **If unavailable,**
2. Records from the unemployment office stating payment dates and amounts.

F. Alimony or Child Support Payments

1. A copy of a separation or settlement agreement or a divorce decree stating the amount and type of support and payment schedule; OR
2. A notarized letter from the person paying support; OR,
3. As a last resort, a notarized statement or affidavit from the receiver of the support stating the frequency and value of the support along with copies of checks. **Efforts to collect the third party verification must be thoroughly documented.**
4. **All single parent households must certify in writing whether child support is due or received.**
 - a. If the household is decreed to receive alimony and/or child support payments but do not receive such payments, supporting documentation must be placed in the file.
 - b. If no support is legally agreed, collected, documented or decreed; a notarized statement or affidavit from the applicant/resident must be documented and placed in the file.

G. Recurring Contributions and Gifts

1. Notarized statement or affidavit signed by the person providing the gift stating the frequency and value of the gift; OR,
2. A verification letter from a bank, attorney or a trustee administering the gift; OR,
3. As a last resort, a notarized statement from the receiver of the gift stating the frequency and value of the gift along with copies of checks.

H. Unemployed Individuals

1. The income of unemployed residents and applicants that anticipate or receive regular income from any source, such as Social Security, pension, recurring gifts, etc., must be verified as covered previously. Anticipated income for the certification year should be determined by using an unemployment resident certification or affidavit.
2. If a resident is currently unemployed and claiming no wages and/or intends to live off assets only, evidence of anticipated income for the certification year should be determined using an unemployed resident affidavit, obtaining a signed copy of the previous year's tax return and verifying and certifying assets as described in Section 4.4.

I. Zero Income

If an applicant is currently unemployed, has no regular verifiable income from any source and claiming zero (0) income, a Certification of Zero Income (Exhibit E) must be executed by that applicant.

J. Documentation of Verification Attempts

All attempts to 3rd party verify tenant information must be thoroughly documented. Owners/management should:

1. Keep copies of all form letters sent to third-party sources;
2. Keep copies of all correspondence from third-party sources;
3. Maintain telephone log sheets for oral inquiries; and
4. Make appropriate notations in the resident files.

4.3 EFFECTIVE TERM OF INCOME VERIFICATION - HUD Handbook 4350.3 REV-1 Chapter 5-17 (B)

Written verifications of income and assets are valid for 120 days from the date the source provides the information. Verbal verification should only be used to update a written verification after 90 days. Verbal verifications are valid for an additional 30 days and should be documented in the resident file. After this time a new written verification must be obtained.

4.4 Verification and Certification of Assets

If a household has assets that total less than \$5,000, third party verification of assets is not required. However, the Under \$5,000 Asset Certification form (Exhibit D) must be completed. (If all assets are verified, the Exhibit D is not required, for example, when LIHTC combined with HOME funds, etc.) If the development is layered with LIHTC, HOME funds or any other HUD program then the Under \$5,000 Asset Certification form (Exhibit D) must be used if the resident states that they have no assets. This is to comply with the LIHTC required documentation as well as complying with 4-10 (11) (a) of the LIHTC Compliance manual (Assets disposed of for less than fair market value)

For households whose assets total more than \$5,000, all assets **must** be verified by a third party. Acceptable methods for verifying a household's assets are (see HUD Handbook 4350.3, REV-1 for more detail):

- A.** Asset Verification Form
- B.** Copies of current statements, passbooks, CDs, etc.
- C.** Form 1099 from the institution, if the amount is not expected to change over the next 12 months.
- D.** **If formal third party verification is unobtainable, all efforts to obtain such verification must be thoroughly documented.**

NOTE: All accessible assets must be listed on the TIC (Tenant Income Certification) until disposal of asset can be verified and documented.

4.5 Differences in Reported Income

Owner/management **must** 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 explanation of the difference **must** be documented in the tenant file.

4.6. Completion of the Tenant Income Certification (the “TIC”) (Exhibit B)

After all of the income and asset information has been obtained, verified and computed, management personnel must prepare a TIC. The form is a document which, when fully executed, certifies that the applicant is eligible to live in a low-income unit in the development. The TIC (or for Section 8 or Section 515 developments, the certification forms used for those programs), must be executed along with the lease prior to move-in and at each annual recertification. For Rehabilitated developments with Section 8 or Section 515, a MHDC TIC (Exhibit B) form **must be completed for existing residents at the initial certification**. Thereafter, for annual and interim re-certifications, the certification forms used for those programs are acceptable.

The following guidelines apply:

- A. Management should instruct the prospective low-income resident to sign the TIC exactly as the name appears on the form.
- B. The move-in date is the date the tenant will take possession of the unit.
- C. The effective date is one of the following:
 - 1. at initial certification, the date the tenant takes possession of the unit; (See Section 4.7 for Rehabilitated developments)
 - 2. The move-in date, lease date and the TIC effective date must match.
 - 3. Initial forms of verification of income and assets must be dated within 90-days of the effective date.
 - 4. annual recertification, must be no more than 365 calendar days from the previous certification. The move-in effective date should always be the same date on the TIC.
 - 5. At recertification, all forms of verification of income and assets are acceptable up to 120-days of the effective date with a phone clarification.
- D. All occupants, age 18 or older, of a low-income unit must be certified, execute the TIC, and on the lease with one exception. A live-in attendant (who is not the spouse or a minor child) is not considered a household member and therefore not required to be certified or on the lease.
- E. 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:
 - 1. A new TIC must be completed adding the prospective resident.
 - 2. The prospective resident must provide verification of income and asset information as required of the original residents;
 - 3. A determination must be made as to whether the Available Unit Rule (see 2.4-B) must be implemented by adding an additional occupant.

NOTE: If an unborn child is included on the initial certification for income and occupancy limits and all anticipated income is certified or verified (child support) prior to move in, no further documentation is needed until the annual recertification.
- F. In the event that a roommate or household member vacates the unit or a new household member moves in, the unit will remain a qualified unit as long as an original qualified household member remains in the unit and the Full Time Student Rule (see 2.3-E) and the Available Unit Rule (see 2.4-B) are not violated. The resident file should be documented when any household member vacates or moves in the unit.

4.7 Certification of Existing Residents of Acquisition and/or Rehabilitated Buildings

Some acquisition and rehabilitation developments qualify for two sets of tax credits, one for the acquisition of the building(s) and one for the rehabilitation of the building(s). Each set of credits may have a different placed-in-service (the “P-I-S”) date. In order for the development to claim the credits, tax credit units must be initially occupied by qualified tenants. If there are tenants who lived in the units PRIOR to the P-I-S date(s) of the credits, these tenants must be also be

certified as if they were new tenants. **The effective date on the TIC must match the PIS date of that building. See 4.6 for completing the TIC Exhibit (B) form at initial qualification only.**

Technically, if there are two sets of credits each with a different P-I-S date, the existing tenants should need to initially qualify twice, once prior to the P-I-S date of the acquisition credits and again prior to the P-I-S date of the rehabilitation credits.

The Code does not provide separate requirements for developments with two sets of credits each with a different P-I-S date. Some have interpreted this silence to mean that the existing tenants need to be certified only once, prior to the P-I-S date of the acquisition credits.

Because of the complexity of this issue and there could be far-reaching consequences, it is recommended that owner's of such developments seek guidance and documentation from legal counsel.

4.8. Effect of Move-in Prior to Placed-in-Service Date

In the event that a tenant moves into a building prior to the P-I-S date of the building (as shown on the project's IRS Form(s) 8609), and the verification of the tenant's income was performed more than 90 days prior to the P-I-S date, the tenant must be recertified within 90 days of the P-I-S date.

4.9 Annual Income

Annual Income is the gross income the household anticipates it will receive in the 12-month period following the effective date of certification of income.

"Some circumstances present more than the usual challenges to estimating *anticipated income*. In all instances, owners are expected to make a *reasonable judgment as to the most reliable approach to estimating* what the tenant will receive during the year." HUD 4350.3: 5-5 (A:1,2; B, C)

A. Annual Income Includes

1. The gross amount (before any payroll deductions) of wages and salaries, overtime pay, commissions, fees, tips, bonuses, and other compensation for personal services of all adults in the household (including persons under the age of 18 who are the head, spouse or co-head). Includes salaries of adults received from a family-owned business.
2. Net income, salaries, and other amounts distributed from a business.
3. Interest, dividends and other income from net household assets (including income distributed from an irrevocable trust).
4. Gross amount (before deductions for Medicare, etc.) of periodic social security payments. This includes 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.
5. The full amount of annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts, (e.g. Veterans Disability). These payments should be reduced by any amounts the individual previously paid into the account in order to receive the pension, annuity or insurance policy. (must be verified by 3rd party and thoroughly documented in the file)
6. Delayed periodic payments received because of delays in processing unemployment, welfare or other benefits. These are payments that would have been paid periodically, but were paid in lump sum because of circumstances such as processing delays.
7. Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay. Any payments that will begin during the next 12 months must be included.
8. Alimony and child support received by the household.
 - a. For alimony and/or child support received by a member of the household count the amount specified in a divorce settlement or separation agreement unless the applicant:
 1. Certifies that the income is not being provided; and
 2. Has made reasonable efforts to collect the amounts due, including filing with courts or agencies responsible for enforcing payment.

- b. Alimony or child support paid by a member of the household **is not** deducted from income, even if it is garnished from wages.
Example: Mr. Smith pays \$200 per month in child support. It is garnished from his monthly wages of \$1,000. After the child support is deducted from his salary, he receives \$800. Mr. Smith's income must be counted as \$1,000 per month.
9. Recurring monetary contributions or gifts regularly received from persons not living in the unit. Exceptions:
 - a. Exclude recurring monetary contributions that are paid directly to a child care provider by persons not living in the unit.
 - b. Exclude gifts of groceries.
10. Relocation payments made pursuant to Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
11. Actual income distributed from trust funds that are not revocable by or under the control of any member of the tenant household.
12. Only the stipend income that is received from a general pool of funds and the household member has no access to funds and will not receive any of the funds (periodically or in bulk) if they are no longer employed or affiliated with the source of the stipend income.
13. Student financial assistance (Scholarships and Grants) in excess of tuition is now considered income.

B. Calculation Methodologies to Use in Determining Annual Income

1. To annualize full-time employment, multiply:
 - a. Hourly wages by 2,080 hours for full-time employment with no overtime;
 - b. Weekly wages by 52;
 - c. Biweekly amounts by 26;
 - d. Semimonthly amounts by 24;
 - e. Monthly amounts by 12.
2. To annualize income from other than full-time employment, multiply periodic amounts (hourly, biweekly, monthly, etc.) by the number of periods (hours, weeks, months) the household member expects to work.
Example 1: \$5 per hour - 25 hours per week - 52 weeks = \$6,500
Example 2: \$130 per week - 52 weeks = \$6,760
3. Use an annual wage without additional calculations.
Example: If a school teacher earns an annual salary of \$22,000, the \$22,000 should be used as the annual salary, regardless of whether the teacher is paid over a 9 or 12 month period. No interim certification is done at the end of the school year to reduce the household's income.
4. Use anticipated employment and current circumstances to determine projected income, unless verification forms indicate that an imminent change will occur.
Example of Anticipated Increase in Hourly Rate: The employment verification indicates that as of April 1, 2000 the applicant's current hourly rate is \$8.00 per hour. It also indicates that on May 15, the applicant's income will increase to \$8.50 per hour. The applicant works 40 hours per week. You would make the following calculations:
 - 40 hours per week - 52 weeks = 2080 hours
 - April 1 through May 15 = 6 weeks
 - 6 weeks - 40 hours = 240 hours
 - 2,080 hours - 240 hours = 1,840 hours

Annual Income is calculated as follows:

 - 240 hours - \$8.00 = \$1,920
 - 1840 hours - \$8.50 = \$15,640
 - **Annual Income = \$17,560**

5. If a household indicates that income might not be received for the full 12 months (e.g. unemployment insurance benefit is expected to terminate), the income should still be annualized.
6. When an employer gives a range of hours as the number of hours worked, it is recommended that a conservative approach be taken and that the highest number in the range be used for income calculations. It is not recommended to use an average.
Example: John works 25 - 30 hours per week and makes \$8.25 per hour. To annualize his hours use:
 - 30 hours - 52 weeks = 1,560 hours per year
 - 1,560 hours - 8.25 = \$12,870 annual income

C. Annual Income Excludes

1. Meals on wheels or other programs that provide food for the needy; groceries provided by persons not living in the household; amounts received under the School Lunch Act or the Child Nutrition Act of 1966 (including reduced lunches and food under Special Supplemental Food Program for Women, Infants and Children).
2. Amounts paid by a State agency to a household with a developmentally disabled family member living at home, to offset the cost of services and equipment needed to keep the developmentally disabled family member in the home.
3. Grants or other amounts received specifically for:
 - a. Medical expenses (including Medicare premiums paid by an outside source).
 - b. Set aside for use under a Plan to Attain Self Sufficiency (PASS) and excluded for purposes of Supplemental Security Income (SSI) eligibility.
Note: A PASS permits a person with disabilities who is receiving Supplemental Social Security (SSI) and who is also receiving other income, to set aside a portion of the other income in order to achieve a work-related goal.
 - c. Out-of-pocket expenses for participation in publicly assisted programs. Such amounts must be made solely to allow participation in these programs. These expenses include special equipment, clothing, transportation, childcare, etc.
4. The full amount of student tuition and/or student loans.
5. Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household, co-head, and spouse).
6. Adoption assistance payments in excess of \$480 per adopted child.
7. Loans (e.g., personal or student loans).
8. Temporary, nonrecurring or sporadic income (e.g., gifts, census taker income from the Federal Bureau of the Census).
9. Amounts received by the household in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit.
10. The special pay to a household member serving in the Armed Forces who is exposed to hostile fire (e.g., in the past, special pay included Operation Desert Storm).
11. Amounts received under training programs funded by HUD (Comprehensive Improvement Assistance Program).
12. Compensation from State or local employment training programs and income from training programs not affiliated with a local government, and income from the training of a family member resident to serve on the management staff, is also excluded.
 - a. Excluded income must be received under employment training programs with clearly defined goals and objectives and for a specific, limited time period. The initial enrollment must not exceed one year, although income earned during extensions for additional specific time periods may also be eligible for exclusion.
 - b. Training income may be excluded only for the period during which the family member participates in the employment training program.
 - c. Exclusions include stipends, wages, transportation or child care payments or reimbursements.
 - d. Income received as compensation for employment is excluded only if the employment is a component of a job training program. Once training is completed, the employment income becomes income that is counted.

- e. Amounts received during the training period from sources that are unrelated to the job training program, such as welfare benefits, social security payments, or other employment are not excluded.
- 13. 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 project, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to; fire patrol, hall monitoring, lawn maintenance, or resident initiative coordination. No resident may receive more than one such stipend during the same period of time.
- 14. 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.
- 15. Deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum payment.
- 16. Payments received for the care of foster children or foster adults. (Foster adults are usually adults with disabilities, who are unrelated to the household member(s), and who are unable to live alone.)
- 17. Amounts that are received on behalf of someone who does not reside with the household, as long as the amounts:
 - a. Are not intermingled with the household member's funds; and
 - b. Are used solely to benefit the person who does not reside with the tenant household.

Note: For such amounts to be excluded the individual must provide the owner with an affidavit stating that the amounts are received on behalf of someone who does not reside with the household and the amounts meet the conditions in paragraphs a. and b. above.

Examples:

- Julie lives in a Section 42 project. Her 14-year-old sister, Mary, lives with her mother in other housing in the same city. Julie has been designated as the Representative Payee for Mary's SSI payments. The Social Security Administration designated Julie because her mother is a heroine addict. Julie makes sure that Mary's SSI payments are used exclusively for Mary.
- Emily receives royalty income that is reported on IRS Form 1099. Emily distributes this income to the designated heirs in accordance with her aunt's will and retains only the amount to which she is entitled. Only count the royalty income that is designated specifically for Emily. Emily will have to show that she distributes this income to the other heirs.
- 18. Income excluded by federal statute:
 - a. The value of the allotment provided to an eligible household under the Food Stamp Act of 1977.
 - b. Payments received under Domestic Volunteer Service Act of 1973 (employment through VISTA, Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions).
 - c. The following income:
 - 1. Interests of individual Indians in trust or restricted lands, and the first \$2,000 per year of income received by individual Indians that is derived from trust or restricted lands.
 - 2. Payments received under Alaskan Native Claims Settlement Act received from a Native Corporation, including:
 - a. Cash (including cash dividends on stock received from a Native Corporation) to the extent that it does not, in the aggregate, exceed \$2,000 per individual per annum;
 - b. A partnership interest;

- c. Land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock); and
3. Payments from certain sub marginal U.S. land held in trust for certain Indian tribes.
4. Payments from disposal of funds of Grand River Bank of Ottawa Indians.
5. The first \$2,000 of per capita shares received from judgments awarded by the Indian Claims Commission or the Court of Claims or from funds the Secretary of Interior holds in trust for an Indian tribe.
6. Payments, rebates or credits received under Federal Low-Income Home Energy Assistance Programs. Includes any winter differentials given to elderly (e.g. Department of Health and Human Services Low-Income Home Energy Assistance Program).
7. Payments received under programs funded in whole or in part under the Job Training Partnership Act (employment and training programs for Native Americans and migrant and seasonal farm workers, Job Corps, veteran's employment programs, state job training programs, career intern programs, AmeriCorps).
8. Payments received under Title V of the Older Americans Act (Green Thumb, Senior Aides, Older American Community Service Employment Program).
9. Payments received after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.).
10. Payments received under the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96-420, 9z Stat.1785).
11. Any earned income tax credit to the extent it exceeds income tax liability. (26 U.S.C. 32(j))
12. The value of any childcare 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 (CCDBG) (42 U.S.C. 9858q). Participating families may either pay a reduced amount based on a sliding fee scale or they may receive a certificate for childcare services. **Note:** This exclusion does not apply to amounts received by a childcare provider for services paid through the CCDBG.

Examples:

- The following is excluded from Annual Income. Ms. Smith receives a certificate for childcare services under CCDBG. The amount of the certificate is not included in Ms. Smiths' income.
- The following is included in Annual Income. Ms. Anderson, a tenant who is receiving Section 8 assistance, is paid through the CCDBG for childcare services she provides to Ms. Smith. The income she receives for providing this childcare is included in annual income.

4.10 ASSETS

Assets are items of value, other than necessary personal items. Income from assets is taken into consideration when determining the eligibility of a household. Asset information (asset value and income from the asset) must be obtained at the time of application.

If a household has assets that total less than \$5,000, third party verification of assets is not required. However, the Under \$5,000 Asset Certification form (Exhibit D) must be completed. Remember, **the tenant's income from net household assets that are less than \$5,000 must**

still be included in the calculation of the annual income amount when initially qualifying a household and at the time of recertification.

Per IRS Revenue Procedure 94-65, an owner or agent is not permitted to rely on a low-income tenant's signed, sworn statement of assets of less than \$5,000 if a reasonable person in the owner's/agent's position would conclude that the tenant's actual income is higher than the tenant's represented annual income. In this case, the owner/agent must obtain other documentation of the low-income tenant's annual income from assets to satisfy the documentation requirement of third party asset verification.

Third party verification of assets is required when the household's combined value of assets exceeds \$5,000.

NOTE: All accessible assets must be listed on the TIC (Tenant Income Certification) until disposal of the asset can be verified and documented.

A. Net Household Assets Include:

1. Cash held in Savings and Checking Accounts, Safety Deposit Boxes, Homes, etc.
 - a. For savings accounts, use the current balance.
 - b. For checking accounts, use the average balance for the last six months. A six-month average balance is optimal, but other average balances can be used if the six-month average is unavailable.
2. Revocable Trusts include the cash value of any revocable trust available to the household. See discussion of trusts in Section 4.10-A2.
3. Equity in Real Estate or Other Capital Investments Include 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 or broker fees, etc.).

Note: If the person's main business is real estate, then count any income as business income (see 4.9-A2)

4. Stocks, Bonds, Treasury Bills, Certificates of Deposit, Money Market Accounts
5. Individual Retirement Accounts (IRAs) and Keogh Accounts These are included because participation in such retirement savings accounts is voluntary and the holder has access to the funds, even though a penalty may be assessed. If the individual is withdrawing from the account, determine the amount of the asset by using the average balance for the previous 6 months. (Do not count withdrawals as income)
 - a. The withdrawal of cash or assets from an investment received as periodic payments should be counted as income unless the family can document that the amounts withdrawn are reimbursement of amounts invested. When a family is making regular withdrawals from an account in which it has made an investment, the withdrawals will count as income only after the amount invested has been totally paid out. Withdrawals from investments will be treated as income only when the withdrawals are made on a regular basis, as in the monthly payments received from an annuity.
 - b. Generally, when the holder has begun receiving annuity payments, the holder can no longer convert it to a lump sum of cash. In this situation, the holder will receive regular payments from the annuity that will be treated as regular income, and no calculations of income from assets will be made. **However, the amount that the holder invested in the annuity will not be counted as income.**

Example: Mrs. Caldwell has an IRA account valued at \$25,000. When she turns 70 years old, she begins withdrawing \$1,500 per year. Continue to include this account as an asset using the guidance in valuing assets. Do not count the \$1,500 she withdraws as income.

Calculations when an annuity is considered an asset.

- 1) **When an applicant or tenant has the option of withdrawing the balance of an annuity, the annuity will be treated like any other asset...**

- 2) In most instances, an annuity from which payments have not yet been made is earning income on the balance in the annuity,...
 - 3) The owner will need to verify with the insurance agent or other appropriate source:
 - a) The right of the holder to withdraw the balance even if penalties are involved.
 - b) The basis on which the annuity may be expected to grow the coming year.
 - c) The surrender or early withdrawal penalty fee.
 - d) The tax rate and tax penalty that would apply if the family withdrew the annuity.
 - 4) The cash value will be full value of the annuity, less the surrender penalty, and less any taxes and tax penalties that would be due.
 - 5) The actual income is the balance in the annuity times the percentage at which the annuity is expected to grow over the coming year. This money will be reinvested into the annuity, but it is still considered actual income.
6. Retirement and Pension Funds
- a. While the person is employed, include only amounts the household can withdraw without retiring or terminating employment. Count the whole amount less any penalties or transaction costs.
 - b. At retirement or termination of employment, 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:
 1. If benefits will be received in a lump sum, include the lump sum receipt in Net Household Assets.
 2. 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.
 3. 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.
Example: Upon retirement, Mrs. Harvey receives a lump sum amount of \$10,000 plus she will receive an annuity of \$400 per month. Count the \$400 as income and count only that portion of the \$10,000 receipt that is placed into 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). Do 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 such items as gems, jewelry, coin collections, or antique cars held as an investment. An applicant's wedding ring and other personal jewelry are not considered assets.
9. Lump Sum Receipts or One-Time 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 (Land Contract)
- a. Payments on this type of asset are often received as one combined payment of principle and interest with the interest portion counted as income from the asset.
 - b. This combined figure needs to be separated into specific principle 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 paid on the amortization schedule for the 12-month period following the certification.
- d. To count the imputed income for this asset, determine the asset value at the end of the 12-month period following the certification. Since this amount will continually be reduced by the principle portion paid during the previous year, the owner/management will have to determine this amount at each annual recertification.

Example: 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 principle and interest expected to be received for the upcoming year is \$5,000. The amortization schedule breaks that payment into \$2,000 in principle and \$3,000 in interest. In completing the asset income calculation, the cash value of the asset is \$60,000 and projected annual income from the asset is \$3,000. In this example, to compute the imputed income, the mortgage would be reduced to \$58,000 after the first year. The owner/management would multiply this amount by the current passbook savings rate provided by the HUD Field Office.

- 11. If an asset is not or has not been disposed of, documentation of the intent of use (i.e rental, sale, etc.) should be obtained at certification and each annual recertification and documentation must be placed in the file.
- 12. Assets disposed of for less than Fair Market Value within Two Years of the Effective date of the Certification/Recertification, including assets put into irrevocable trusts.
 - a. Applicants and tenants must declare **in writing** whether an asset has been disposed of for less than fair market value at each certification and recertification.
 - b. Assets are considered to be disposed of for less than fair market value if the cash value of the disposed asset exceeds the gross amount the applicant/tenant received by more than \$1,000.
 - c. In such cases, the **whole** difference between the cash value of the asset and the amounts received must be included. If the difference is less than \$1,000, ignore it.

Note: Use cash value if there are costs incurred in disposing of the asset.
 - d. Do consider:
 - 1. Assets disposed of for less than fair market value when they are placed into an irrevocable trust (assuming that no consideration is received or the consideration which is received is less than cash value). **Note:** Amounts received through settlements or judgments that are placed into trusts on behalf of a member of the household are not considered as assets disposed of for less than fair market value.

Example: Mr. and Mrs. Long's son, John, was injured in a car accident. He received a settlement of \$300,000 to compensate him for injuries and future loss of income. The attorney handling the case set up an irrevocable trust of \$300,000 for the benefit of John. This trust is not under the control of any member of the tenant household. Count only the actual income distributed from the trust to John.
 - 2. Business assets that are no longer part of an active business that is disposed of for less than fair market value. (Business assets are excluded from net household assets only while they are part of an active business.)
 - e. Do not consider assets disposed of for less than fair market value as a result of:
 - 1. A foreclosure;
 - 2. Bankruptcy; or
 - 3. A divorce or separation agreement if the applicant or **resident** receives important consideration not measurable in dollars.

B. Net Household Assets Do Not Include:

Important: Do not compute income from any assets listed in this section.

1. Necessary personal property (clothing, furniture, cars, wedding ring, vehicles specially equipped for persons with disabilities, etc.)
2. Interest in Indian trust land
3. Term Life insurance policies (i.e., where there is not cash value)
4. Equity in the cooperative unit in which the household lives
5. Assets that are part of an active business. **Note:** "business" does not include rental of properties that are held as an investment and not a main occupation.

Example: Mr. and Mrs. Truitt own a copier and courier service. None of the equipment that they use in their business is counted as an asset (e.g., the copier, the FAX machines, the bicycles, etc.)

Example: Mrs. Lincoln rents out the home that she and her husband lived in for 35 years. This home is not an active business asset. Therefore, it is considered an asset and the owner/management must determine the annual income that Mrs. Lincoln receives from it.

6. Assets that are not effectively owned by the applicant (**Note:** Irrevocable trusts are not covered by this paragraph.)

When assets 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.

Example 1: 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 2: Mr. Green and his daughter, Ms. Brown, have a bank account with both names on the account. Ms. Brown's name is on that account for the convenience of her father in case an emergency arises that would result in Ms. Brown's handling payments for her father. Ms. Brown has not contributed to this asset, does not receive interest income from it, nor does she pay taxes on the interest earned. Therefore, Ms. Green does not own this account. If Ms. Green applies for assisted housing, the owner/management should not count this account as her asset. This asset belongs to Mr. Green 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. **Note:** Irrevocable trusts are not covered by this paragraph.

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.

C. **Assets Owned Jointly**

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 statute or local law, prorate the assets evenly among all owners.

Example: Mrs. Robertson is a LIHTC tenant. She and her daughter, Mrs. Duncan, who lives 1,200 miles away, have a joint savings account. Assume that in this example, State law does not specify ownership. Even though either Mrs. Robertson or Mrs. Duncan could withdraw the entire asset for her own use, count Mrs. Robertson's ownership as 50% of the account.

D. **Determining the Value of Assets**

In determining income from assets, owner/management must use the cash value of the assets (the amount the applicant/tenant would receive if the assets were converted to cash). Cash value is the market value of the asset minus reasonable costs that were or would be incurred in selling or converting the asset to cash.

1. Expenses that may be deducted include:
 - a. Penalties for withdrawing funds before maturity;

- b. Broker/legal fees assessed to sell or convert the asset to cash;
 - c. Settlement costs for real estate transactions; and/or
 - d. Loans on the asset
2. Assets Converted to Trusts

A trust is generally considered a legal arrangement regulated by state law in which one party holds property for the benefit of another. A trust can contain cash or other liquid assets or real or personal property that could be turned into cash. Trust assets are typically transferred to the beneficiary upon the death of the grantor. This manual will discuss two types of trusts, revocable and irrevocable trusts.

a. Revocable Trusts

The grantor of a revocable trust can change this type of trust as often as he or she wishes and therefore has access to this asset at any time. Therefore you include the cash value of any revocable trust available to the household.

Example of a Revocable Trust: Mr. Porter establishes a trust of \$30,000 in his daughter's name. (The daughter is not a member of the household.) Because it is revocable, he can modify this trust at any time and has access to it. For purposes of this example, the income is either reinvested into the trust or paid to his daughter. Treat this trust as a current asset. Even though Mr. Porter does not receive the income from this asset, he is required to report the cash value of the asset and the income the trust generates. Because it is still considered to be an asset owned by Mr. Porter, it is not considered an asset disposed of for less than fair market value.

b. Irrevocable Trusts

1. This is a trust agreement that allows an individual to permanently transfer assets during his or her lifetime to someone else.

2. Trusts, which are not revocable by or under the control of any member of the household, are not considered assets.

3. Instead, the regulation requires that the actual income distributed to the applicant/tenant from such a trust be counted when determining Annual Income. (As with all income, this is the gross amount received before taxes or other deductions.)

a. As long as the trust exists; any income distributed from the trust to the applicant/tenant must be counted as income.

b. If there is no income distributed from the trust, then do not count any income from the trust (e.g., income from the trust that is reinvested into the trust).

4. If an asset is disposed of for less than fair market value by being converted to an irrevocable trust, assuming that no consideration is received or the consideration which is received is less than fair market value, then the owner/management must count such an asset for a period of two years.

a. In addition, any actual income distributed from the irrevocable trust must also be counted as income under paragraph 3) above. Therefore, for a two-year period, the owner/management will consider this asset for purpose of income computation and, in addition, count actual income distributed from the irrevocable trust to the applicant/tenant.

b. Following the two-year period, the owner/management will count only the actual income distributed from the trust to the applicant/tenant.

E. Actual and Imputed Income from Assets

1. If the net household assets are less than \$5,000, Annual Income must include the actual income from the assets.

Example:

Type of Asset	Cash Value	Imputed Income per Year
---------------	------------	-------------------------

Checking Account	\$ 550	\$ 0
Savings Account	\$3,000	\$300
Totals	\$3,550	\$300

2. If the net household assets exceed \$5,000, Annual Income must include the greater of:
- The actual income from the assets; or
 - Imputed income from the assets. (Impute income by multiplying total net household assets by the passbook rate specified by HUD. As of 1/1/96, the rate was 2%.)

Example:

Type of Asset	Cash Value	Actual Income per Year
Checking Account	\$ 550	\$ 0
Savings Account	\$ 3,000	\$300
Cert of Deposit	\$12,000	\$480
Property	\$32,000	\$ 0
Totals	\$47,550	\$780

Since the total assets in this example exceed \$5,000, the imputed income must be calculated. In this example, the Net Household Assets of \$47,550 would be multiplied by .02, totaling \$951. The actual income from assets (\$780) would be compared with the imputed income from assets (\$951) and include the greater of the two as part of the household's gross annual income. In this case the imputed amount of \$951 is included in the household's income. **MHDC recommends rounding up to the next dollar amount to provide the most conservative estimate of annual income.**

4.11 COMPUTING THE TOTAL HOUSEHOLD INCOME

After all income and asset information has been obtained and computed for a household, all qualified sources of income are added together to derive the total household income. In order for the household to qualify for a LIHTC unit, the total household income must be less than or equal to the maximum allowable qualifying income in effect at the time of tenant certification. If the total household income is greater than the maximum allowable qualifying income, the household cannot be certified for a LIHTC unit.

4.12 INITIAL TENANT INCOME CERTIFICATION GUIDELINES

Once all the income and asset information has been obtained and computed, management personnel must prepare a TIC (Exhibit B) for each tenant. The form is a legal document which, when fully executed, qualifies applicants to live in the LIHTC set-aside units in the project. The TIC must be executed along with the lease prior to move-in.

NOTE: *White-out should not be allowed on any file documentation and any changes to documentation must be initialed by all parties involved.*

The following guidelines apply:

- Management should instruct the prospective tenant(s) to sign the TIC exactly as their name appears on the form.
- The TIC must be executed on or prior to the date of move-in.
- No one may live in a low-income unit in the project unless he or she is certified and under lease.
- Upon receipt of all verifications, owner/management should review all documentation and calculations, as necessary. If all requirements for eligibility are met, the applicant is qualified.

NOTE: A TIC (Exhibit B) MUST be completed on all initial residents at move in. (The 50059 and 50058 are only acceptable certification documents at annual recertification.)

4.13. ANNUAL AND INTERIM INCOME RECERTIFICATION REQUIREMENTS

The Code states that at least on an annual basis, an income certification must be completed and documentation to support that certification must be obtained for each low-income tenant. Upon

receipt of all verifications, owner/management should determine if the household is below 140% of the current qualifying income limit.

Note: MHDC believes it is important to note that the regulations refer to "tenant" income rather than "household" income. The recordkeeping and record retention provisions of the regulations state the owner must keep records that show "...the annual income certification of each low-income tenant per unit..." For this reason, MHDC's policy is that in the event a new member is being added to an existing, qualified household, the new member must complete an application for residency and verifications of income and assets must be completed.

A. Recertification of Income

MHDC monitors recertification of income 365 days from the later of:

1. The move-in date; or
2. The date of the last certification.

B. Adding a New Member to an Existing Household

If the new adult member joins the existing household during the *initial 6 months of residency, the household must re-qualify as if they are a new household qualifying for residency.*

NOTE: If an unborn child was included on the initial certification for income and occupancy limits and all anticipated income was certified or verified (child support) prior to move in, no further documentation is needed until the annual recertification.

In the event a new member is added to a qualifying household after the first initial 6 months, the following steps must be taken:

1. The prospective tenant must complete an application for residency and verifications of income and assets must be completed;
2. The prospective tenant's income must be added to the current household's previously certified income. The combined household income must be compared to the maximum allowable income limit in effect at the time, based on actual (projected) household size; and
3. If the combined household's income is greater than 140% of the current maximum allowable income, a determination must be made as to whether the building or project will be in violation of Code requirements by adding the new household member.

Example:

1 person household income limit = \$15,000

2 person household income limit = \$17,000

140% of the 2 person income limit = \$23,800

Tenant A is a qualified tenant living alone in a one-bedroom unit. Her income at initial certification was \$10,500. Eight months after tenant A moved into the project, she informs management that she is getting married and that her new husband, Tenant B, will be moving into the unit in two months. Before moving in, Tenant B is certified as earning \$12,900. The household's combined income will be \$23,400. The household will still qualify, since it is below the 140% limit (\$23,800).

Note: If at any time the household composition changes and none of the original household members live in the unit, then the household is considered a **new** household. The new household must meet all initial qualifying income limitations and requirements to be eligible for a LIHTC unit.

C. Changes in Student Status

If all tenants in a previously qualified household become full-time students, recertification must be done and the household can only be considered as a qualified LIHTC household if at least one exemption of the student criteria is met. (see 2.3-E)

4.14 MISCELLANEOUS RULES GOVERNING LOW-INCOME ELIGIBILITY OF UNITS

- A. Live-in Care Attendant:** If a resident in a LIHTC unit requires a live-in care attendant, the attendant should not be included as a household member for purposes of determining the eligible income and rent limits. (The attendant should be considered for purposes of determining the appropriate unit size.) The need for a live-in care attendant must be certified. The live-in care attendant must abide by the lease agreement, but has no survivorship rights to the apartment. If the resident who requires assistance moves (or no longer requires assistance), the attendant must vacate as well.
- B. Section 8 Rental Voucher or Certificate**
With the passage of the Omnibus Budget Reconciliation Act of 1993, owner/management is prohibited from refusing to lease to a prospective tenant based solely on the fact that the applicant holds a Section 8 rental voucher or certificate. Additionally, language prohibiting discrimination based on Section 8 status is included in the LURA entered into by the owner and MHDC.
- C. US Citizen Status**
The IRS does not currently have a regulation for US citizen and has directed owners to refer to HUD policies for guidance. Section 214 of the Housing and Community Development Act of 1980, as amended, prohibits the Secretary of HUD from making financial assistance available to persons other than US citizens, nationals, or certain categories of eligible non-citizens in certain HUD programs. The covered programs are: (1) Section 236 properties; (2) Rent Supplement; (3) Rental Assistance Payments (RAP); and (4) Section 8 programs. Notice H95-95 issued by HUD provides the procedures for implementing the requirements of Section 214 and is available on the HUD website (www.HUDCLIPS.org)

5. OTHER MHDC REQUIREMENTS

5.1 ADJUSTMENTS TO RENT, UTILITY ALLOWANCE, OR SUBSIDY

Any changes to rent, utility allowance, or rent subsidies occurring between recertification dates must be reported to MHDC on the next Occupancy Report.

5.2 RENT LIMITS AND INCREASES

Rents on LIHTC units may not exceed the mandatory base rents prescribed by MHDC. Any and all rent increases must be approved by MHDC prior to implementation. Rents may only be increased 12 months from the last requested date (if denied) or Schedule II date (if approved). ALL requests must be sent to MHDC between Feb 1 and April 30. The request should be directed to the Accounting Department, in the St. Louis office of MHDC with "Rent Increase Request" clearly indicated on the front of the package.

If a project is a Tax Credit (TC) only project (no MHDC or HOME financing is involved), then the project may use the following procedures:

- **All** TC only projects will be required to submit a Schedule II (attached) notifying MHDC of the new rent increase **PRIOR TO** implementation. MHDC will compare the proposed Schedule II rents to the 7% criteria and the maximum allowable Tax Credit rent limits. Rents **MUST NOT** be implemented until the Schedule II is signed by MHDC and returned to the owner with the effective date specified.
- In the event the owner has not complied with the following, the Schedule II will be placed on hold until the non-compliance is corrected:
 1. Failure to comply with the Sect. 42 rent limits
 2. Failure to adequately close out a Physical and Occupancy Inspection
 3. Failure to maintain a Satisfactory Inspection rating
 4. Failure to submit annual budget
 5. Failure to submit annual Financial Statement
 6. Failure to charge approved rents

- If a project is a Tax Credit project and has MHDC or HOME financing, then the project MUST submit the following information in order for the request to be considered :
 1. A narrative explaining the need for the rent increase;
 2. The current annual budget;
 3. The last audited financial statement for developments of 13 or more units or an annual certified compilation report for developments with 12 units or less;
 4. Vacancy information for the past 6 months
 5. Information on rents and vacancies for the past year, from 3 comparable projects; and
 6. Documentation supporting the utility allowances in use at the time of the request.

MHDC will approve rental increases sufficient for the Owner to compensate for any net increases in taxes (other than income taxes) over which the Owner has no effective control, and to make all payments required under project financing, so as to maintain at least a 1.2 debt service coverage. MHDC will not approve any rent increase which will inflict an undo burden on existing tenants, an increase that is greater than 7% of the prior approved rent for an existing tenant or that will exceed the maximum allowed under the Code.

MHDC and RD have executed a Memorandum of Understanding regarding annual rent increases. MHDC will accept rent increases approved by RD for RD funded developments provided that the prescribed rents do not exceed the maximum allowed under the Code. Such developments must provide to MHDC a copy of the notification from RD of the rent increase.

Additionally, if Section 8 voucher rent is collected at a higher amount than the tax credit rent and the Section 8 rent exceeds the 7% maximum increase, MHDC will recognize the higher amount provided that documentation is submitted showing the rent amount and the effective date (i.e., signed lease). This rent is known as the "Section 8 Tenant Rent" and is contingent on the tenant receiving Section 8 vouchers. The Schedule II **must** reflect the two rent types.

5.3 Projects with outstanding noncompliance issues will not be approved for any funding requests (rent increase, reserve for replacement, residual receipts) until those issues have been corrected.

5.4 LEASES

All residents occupying LIHTC units must be certified and under lease.

A. At a minimum, the lease should include:

1. The legal name of parties to the agreement and all other occupants;
2. A description of the unit to be rented;
3. The date the lease becomes effective;
4. The term of the lease;
5. The rental amount plus any other amounts paid by the tenant for parking, pets, air conditioning, etc;
6. The use of the premises;
7. The rights and obligations of the parties, including:
 - a. The obligation of the tenant to certify annually to income as defined herein; and
 - b. The obligation of the tenant to notify management should there be any change in student status;
8. The correct date of move-in or date tenant takes possession of the unit.
9. LIHTC Lease Addendum (Tenant Eviction Language) Exhibit O

B. Lease Addendum

It is strongly recommended that leases for LIHTC units contain an addendum that contains specific provisions obligating the tenants to cooperate with the owner/management. These provisions should clearly set forth the tenant's responsibility to provide the information necessary to assess the household's eligibility to occupy a LIHTC unit. At a minimum, the addendum should include:

1. Explanation of the LIHTC program;
2. A place to list all of the certified tenants and language stating that:
 - a. Only the tenants listed are permitted to occupy the unit;

- b. Management must be notified, immediately, of any changes of any changes to the household, these changes include , but are not limited to changes in:
 - 1. Household members;
 - 2. Income or assets;
 - 3. Full-time student status;
 - 4. Need for live-in attendant; and
 - 5. Rental assistance.
 - c. Any new household members are subject to eligibility requirements of the LIHTC program; and
 - d. Eligibility of any new household member must be certified PRIOR to occupancy. and
3. A provision defining eligibility requirements, such as annual recertifications, and the consequences of not promptly complying with those requirements.

C. Initial Lease Term

There must be an initial lease term of at least 6 months on all LIHTC units. (See D. below, on exceptions for housing for the homeless, and single room occupancy.) The six-month requirement may include free rental periods of one month or less. Succeeding leases are not subject to a minimum lease period; however a lease must be in effect.

D. Single Room Occupancy

Single room occupancy (SRO) housing must have a minimum lease term of one month. SRO housing is allowed to have tenants share bathrooms, cooking facilities, and dining areas. Federal rules allow for month-by-month leases for the following types of SRO housing for homeless individuals:

- 1. SRO units in projects receiving McKinney Act and Section 8 Moderate Rehabilitation assistance;
- 2. SRO units intended as permanent housing and not receiving McKinney Act assistance;
- 3. SRO units intended as transitional housing that are operated by a governmental or nonprofit entity and providing certain supportive services.

6. WAIVER OF ANNUAL RECERTIFICATION FOR 100% LOW-INCOME DEVELOPMENTS

Revenue Ruling 94-64 allows owners of 100% low-income developments to request a waiver of the annual income recertification requirement. However, **MHDC will not process any requests** for the Special Waiver for the following reasons:

- A. Due to the Available Unit Rule (see 2.4-B), compliance problems may arise for 100% developments that do not recertify each year;
- B. It is also necessary to determine each year if any units are occupied by full time students that do not qualify under the Full Time Student Exceptions Rule (see 2.4-E); and
- C. At times LIHTC is combined with other types of financing programs that require annual certifications.

7. PROPERTY SIGNS

All property signs must be in good condition. Signs in place prior to 2004. At a minimum the property sign should include:

- A. The property name
- B. Fair Housing Logo

Signs built or put in place after 2004 should include

- C. The on-site office number &/or manager's emergency contact phone number as well as the local TDD number
- D. Fair Housing Logo
- E. Handicap Logo (if applicable)

8. LEAD-BASED PAINT CERTIFICATION

All properties which are not exempt from the Disclosure Rule as defined by HUD must have a fully executed Exhibit N in each resident's occupancy file prior to occupancy.

HUD Handbook 4350.3 REV-1 6-8 (A) Figure 6-4: Disclosure Rule Exemptions

6-8 Lead- Based Paint Disclosure Form

A. Applicability

The Disclosure Rule [40 CFR part 745, subpart F and 24 CFR part 35, subpart A- Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing], published March 6, 1996, specifies the types of information that owners must give to applicants prior to signing their leases. These requirements apply to all properties built prior to January 1, 1978, including cooperatives, with certain exemptions established by regulation.

Figure 6-4 lists specific exemptions when the disclosure rule does not apply. If a property is exempt, the owner does not need to comply with the requirements discussed in this paragraph. Figure 6-4: Disclosure Rule Exemptions

Residential structures built after January 1, 1978, are exempt from lead-based paint requirements because Congress banned the use of lead-based paint for residences after that date.

Rental property found to be lead-based paint free by a lead-based paint inspector certified under the federal certification program or under a federally accredited State or Tribal certification program is exempt.

Zero-room dwelling units, including single room occupancy (SRO) units, are exempt.

Housing, *specifically designated* for elderly or persons with disabilities is exempt, unless a child under age 6 resides or is expected to reside in the unit.

Short-term leases of 100 days or less when no lease renewal or extension can occur.

The following website links provide additional information on the requirements of owner's disclosure to residents, i.e. pamphlets to give to all new residents, etc.

- <http://www.hud.gov/offices/lead/1018/fs-discl.pdf>
- http://www.hud.gov/offices/lead/1018/lesr_eng.pdf
- <http://www.epa.gov/opptintr/lead/leadpdfe.pdf>

9. COMPLIANCE MONITORING DURING THE EXTENDED USE PERIOD

Compliance Period:

Internal Revenue Code Section 42(j)(1) defines the term “compliance period” as, with respect to any building, **the period of 15 taxable years beginning with the 1st taxable year of the credit period with respect thereto.**

The first year of the compliance period is the first year in which the owner claimed credits. Owners should rely on the Form 8609, as filed with the IRS, to determine the first year of credits. The Missouri Housing Development Commission (MHDC) will not have record of this information unless it was provided by the owner at the time the credits were claimed.

All requirements of the Internal Revenue Code Section 42 apply to the “compliance period”.

Extended (“Additional”) Compliance Period:

This period is not defined by Section 42 of the Internal Revenue Code, although MHDC did offer this option to developers through the competitive application process. MHDC defines this period as beginning on the 1st day following the initial “compliance period” and ending on the date specified by the Land Use Restriction Agreement (LURA).

Extended Use Period :

The “extended use period” is described in IRC 42(h)(6)(D) as follows:

- (i) beginning on the 1st day in the compliance period on which such building is part of a qualified low-income housing project, and
- (ii) ending on the later of –
 - (I) the date specified by such agency in such agreement, or
 - (II) the date which is 15 years after the close of the compliance period

The agreement used by MHDC is referred to as the Land Use Restriction Agreement (LURA)

IRC 42(h)(6)(E) provides for exceptions if foreclosure or if no buyer is willing to maintain low-income status as further described in IRC 42(h)(6)(E)(I) and (II).

Compliance with the Land Use Restriction Agreement (LURA):

As per the originally recorded LURA, the owner agreed to comply with the following:

I. Recorded Language: (page 2 par 6) The Taxpayer has represented to the Commission in Taxpayer’s application that it will limit occupancy to (family) (elderly), notwithstanding anything to the contrary contained in this Agreement, the provisions of the Fair Housing Act contained in Title VII of the 1968 Civil Rights Act, as amended, (42 U.S.C. 3601, et. Seq.)

No amendment available

II. Recorded Language: (Sect. 3(e))The Owner shall not demolish any part of the Project or substantially subtract from any real or personal property of the Project; or permit the use of any residential rental unit for any purpose other than rental housing during the term of this Agreement unless such action was the result of eminent domain.

Furthermore, Sect. 3(s) states the Owner shall not sell or exchange with any person or entity, any portion of the Project to which this Agreement applies unless the entire Project to which this Agreement applies is disposed of to such person or entity.

Amendment available upon request: MHDC may authorize a partial release of buildings in locations where evidence, as deemed acceptable by MHDC, suggests high vacancy rates related to market conditions.

III. Recorded Language: (Sect. 3(o)) During the term of this Agreement, all units subject to Tax Credits shall be leased and rented or made available to members of the general public who qualify as low-income tenants.

Furthermore, Sect 6(a) states the Owner irrevocably elects that at least (%) of the residential rental units in the Project shall be both rent-restricted (as hereinafter defined) and occupied by individuals or families whose income is (%) or less of area median gross income.

Amendment available upon request: MHDC may authorize an income waiver to 80% of Area Median Income (as defined by HUD) in locations where evidence, as deemed acceptable by staff, suggests high vacancy rates related to more restrictive income levels.

IV. Recorded Language: (Sect. 6(d)) The determination of whether an individual or family is a Qualifying Tenant (that is, meets the income requirements of subsection (b) of this Section 6) shall be made at least annually on the basis of the income of such Qualifying Tenant(s). Any unit occupied by an individual or family who is a Qualifying Tenant at the commencement of occupancy shall continue to be treated as a Low-Income Unit under subsection (b) of this Section 6 provided that, if such Qualifying Tenant's income subsequently exceeds one hundred forty percent (140%) of the applicable income limit, such unit shall no longer be a Low-Income Unit if after the determination of such increase, but prior to the next determination, any residential unit of comparable or smaller size is rented to a tenant who is not a Qualifying Tenant.

Amendment A: MHDC has determined that 100% LIHTC properties are no longer required to recertify tenant income annually. Mixed-use properties must recertify annually, although a self-certification from the household attesting to the continued compliance with income restrictions and acknowledged by management as being true to the best of his/her knowledge is acceptable.

Amendment B: MHDC has determined the Available Unit Rule (AUR) will no longer pertain to "comparable or smaller size". Any currently vacant unit will suffice.

V. Recorded Language: (Sect. 6 (j)) MHDC shall approve rental increases sufficient for the Owner to compensate for any net increases in taxes (other than income taxes) over which the Owner has no effective control.

Amendment: MHDC will defer to the tax credit rent limits and will no longer approve annual rent increases. Owner/managers must request a final Schedule II from MHDC which will reflect the current year tax credit limit. MHDC will rely on owner/managers to apply increases fairly and in a manner that will not jeopardize current occupancy rates. Random audits will be performed and MHDC may at any time during the extended use period begin regulating rents to ensure project viability.

VI. Recorded Language: (Sect. 8(b)) The Owner shall annually provide to the Secretary of the United States Department of the Treasury (the "Secretary"), or to his or her designee, at such time and in such manner as the Secretary shall prescribe, a certification as to the continuing compliance of the Project with requirements of Section 42 of the Code. A copy of such annual certification shall be provided to MHDC.

Furthermore, Sect. 8(c) states the Owner shall provide to MHDC, annually, a Certification of Continuing Program Compliance and an Occupancy Report, each in the form provided, from time to

time, by MHDC, together with a copy, for each building, of the most recently filed Schedule A, Annual Statement, IRS Form 8609.

Furthermore, Section 10 (f) states the Owner shall submit a copy of the Annual Development Certification of Continuing Compliance shown as Exhibit “B” in the Compliance Manual together with the Occupancy Report shown as Exhibit “B2” in the Compliance Manual, at least annually, or as requested by MHDC in order to monitor compliance with the provisions specified in this Agreement and the Code, please refer to the “Missouri Housing Development Commission Low Income Housing Tax Credit Program Compliance Monitoring Manual” for the annual reporting deadlines.

Amendment: MHDC will continue to require a Certification of Continued Compliance with requirements of the Land Use Restriction Agreement and annual Occupancy Report ONLY.

VII. Recorded Language: (Sect. 10(d))The owner is required to keep records for each Qualified Low-Income Building in the Project showing the following: (vi) the annual income certification of each Qualifying Tenant; (vii) documentation to support each Qualifying Tenant’s income certification

Amendment: Refer to Amendment A and B of Section IV.

VIII. Recorded Language: (Sect. 10(g)) The owner is required to keep all records for each building for a minimum of six years after the due date (with extensions) for filing the Owner’s federal income tax return for any year; provided, that 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.

Amendment: Record retention during the Extended Use Period is limited to 6 years for “move out” and/or “denied” files.

Monitoring for Noncompliance During the Extended Use Period:

IRC Section 1.42-5 defines agency requirements for the monitoring of Section 42 compliance. The IRC does not address specific requirements once the compliance period has ended and the extended use period commences. Therefore, it is left to each state monitoring agency to establish policy for their respective state.

Based on the requirements of the LURA, specified in Section 42 regulations and the agreement itself, the agency has the authority to set policy for the following criteria during the Extended Use Period:

- Annual recertifications
- Eligible/ineligible student households
- Unit transfers
- Available unit rule
- Income and rent restrictions
- General Use Requirements
- Section 8 acceptance

MHDC will further require the following:

1. An initial income certification is required on all new move-ins as described in the MHDC Low Income Housing Tax Credit compliance manual.
2. An annual recertification is required on mixed-use properties ONLY. MHDC will accept, in lieu of income/asset verification, a self-certification from the household attesting to the continued compliance with income restrictions and acknowledged by management to be true to the best of their knowledge.
3. An annual recertification is not required on 100% Low Income Housing Tax Credits properties.
4. Student rules, as defined by Section 42, will no longer apply.

5. Unit transfers from building to building are allowed. 100% LIHTC properties do not need to certify income. Mixed-use properties will be required to monitor the set-asides of low income units.
6. The available unit rule no longer pertains to “comparable or smaller size”. The amended rule provides that if a household’s income goes over 140% of the applicable AMI, a currently vacant unit or the next unit in the same building must be rented to a qualifying household.
7. An annual Owner Certification of Continuing Program Compliance (amended form to reflect state requirements) is required.
8. An annual Occupancy Report is required through the Certification On-Line process and state agency (rather than IRS) testing will be performed.
9. Rent increases will no longer be reviewed annually. Tax Credit Rent Limits will apply with a final Schedule II from MHDC.
10. Annual budgets will no longer be required by the tax credit program although loan requirements still apply.
11. Annual financial statements will no longer be required by the tax credit program although loan requirements still apply.
12. Tax credit income restrictions will apply although MHDC may, as deemed necessary, authorize income waivers upon request.
13. Physical inspections and file reviews will be performed every 5 years or as deemed necessary by staff.
 - Physical Inspection - a minimum of 3 units chosen at random or a maximum of 10% of the low income units not to exceed 15 units in any development. Evidence of deficiency trends may trigger additional unit inspections.
 - File Review – MHDC will no longer limit the review to files that relate to the inspected unit. New move-ins will require income and asset verifications. Recertification files on mixed-use properties will require a self-certification at minimum. Files may be chosen at random. Evidence of deficiency trends may trigger additional file reviews.
14. MHDC will rely on Section 8 or Rural Development inspection reports for those properties with layered financing or rental assistance provided by either agency.
15. Submission of a transfer agreement (MHDC form) is required prior to ownership transfers. Such transfer agreement puts new ownership on notice that the property is subject to compliance restrictions and monitoring.
16. During the “3 year decontrol period” the owner is required to submit an annual certification stating that no leases have been terminated or residents displaced for other than good cause.

Consequences of Noncompliance During the Extended Use Period:

IRS Form 8823 has been amended to reflect agency-defined language. Evidence of noncompliance reported through agency Form 8823 will affect future funding clearance by MHDC and may be reported to other agencies inquiring of the compliance status of the owner or manager.

MHDC’s mission is to provide strength, dignity, and quality of life through the partnerships that we have created in the affordable housing industry. It is our intent to create more reasonable compliance criteria during the extended use period as a means of reducing the administrative burden on the owners and managers of Low Income Housing Tax Credit properties. These efforts ensure the longevity of the affordable housing program and therefore provide quality affordable housing to the citizens of Missouri.

10. LIHTC Program Glossary

Area Median Gross Income (AMGI): the average household income, as estimated by the Department of Housing and Urban Development (HUD).

Applicable Fraction: The percentage of low-income units or low-income square footage in a LIHTC building. It is calculated as the lesser of:

- a. Low-income units divided by total units (whether or not occupied) in a building; or

- b. Total square footage of low-income units divided by total square footage of all units (whether or not occupied) in a building, with the exception of the manager's unit, which may or may not be included, depending on the circumstances.

Available Unit Rule (AUR): Following initial certification, if the household income of tenants in a low-income unit increases above 140% of the current income limit and the building is at or below its applicable fraction, the AUR goes into effect. To satisfy the AUR requirements, the available unit(s) of comparable or smaller size in the same building must be rented to a qualified low-income household. This rule is implemented on a building-by-building basis.

When the household income increases above 140% of the current qualifying amount, the unit will continue to be treated as a qualified unit as long as the unit remains rent restricted and the next available unit(s) of comparable or smaller size are rented to a qualified low-income household.

Compliance Period: The 15-year period during which a LIHTC project must comply with the requirements of Section 42 of the Internal Revenue Code.

Eligible Basis: Cost elements of a building that are eligible for obtaining LIHTCs. The eligible basis is always determined separately for each building in the project.

Extended Use Period: The 15-year period following the compliance period in which developments receiving credit allocations after December 31, 1989, must comply with eligibility requirements. The agreement used by MHDC is referred to as the Land Use Restriction Agreement (LURA)

The "extended use period" is described in IRC 42(h)(6)(D) as follows:

- (iii) beginning on the 1st day in the compliance period on which such building is part of a qualified low-income housing project, and
- (iv) ending on the later of –
 - (I) the date specified by such agency in such agreement, or
 - (II) the date which is 15 years after the close of the compliance period

(IRC 42(h)(6)(E) provides for exceptions if foreclosure or if no buyer is willing to maintain low-income status as further described in IRC 42(h)(6)(E)(I) and (II)).

Extended ("Additional") Compliance Period: This period is not defined by Section 42 of the Internal Revenue Code, although MHDC did offer this option to developers through the competitive application process. *MHDC defines this period as beginning on the 1st day following the initial "compliance period" and ending on the date specified by the Land Use Restriction Agreement (LURA).*

Final Allocation: A building's approval for LIHTC by MHDC issuance of the IRS Form 8609 for the building(s).

First Year of the Credit Period: The year that an owner first claims LIHTC for a project.

Household: An individual or group of individuals occupying a single housing unit.

Land Use Restriction Agreement (LURA): A contractual agreement between MHDC and the ownership entity of a LIHTC project. The LURA sets forth the eligibility requirements that must be complied with during the compliance and extended use periods and is recorded, as a restrictive covenant against the property, in the County in which the development is located.

Noncompliance: A period of time in which a project, a building, or a unit(s) is ineligible for LIHTCs because of a failure to adhere to Code requirements.

Non-Qualified Household: A household that does not meet the eligibility requirements of the Program. This is also referred to as an ineligible household.

Over-Income Household: A qualified household whose income later exceeds 140% of AMGI.

Placed-in-Service (P-I-S) Date: The date a building is certified as ready for occupancy. It marks the beginning of the reporting period for LIHTC monitoring purposes.

Project Minimum Set-Aside: In order to earn LIHTCs, a development must meet the project minimum set-aside test. The owner must choose and maintain one of the following minimum percentages of low-income units in order to qualify for the LIHTCs.

- a. **20/50:** 20% of the units in the project must be occupied by households whose incomes are 50% or less of AMGI, as adjusted for household size; **or**
- b. **40/60:** 40% of the units in the project must be occupied by households whose incomes are 60% or less of AMGI, as adjusted for household size.

Qualified Basis: Eligible basis is multiplied by the applicable fraction. The qualified basis of a building is the portion of the eligible basis attributable to low-income rental units. When all of the units are low-income units, the qualified basis will equal the eligible basis. The amount of qualified basis is determined annually. Multiplying the qualified basis by the credit rate (4% or 9%) determines the maximum amount of LIHTC that the building/project can generate for that year.

Qualified Household: A household that meets all eligibility requirements of the Program.

Recapture: The loss of LIHTCs, as determined by the IRS, due to noncompliance with Code requirements.

Section 42 (Code): Congress enacted Section 42 of the Internal Revenue Code as part of the Tax Reform Act of 1986 to replace traditional tax benefits on multifamily real estate that had been eliminated. The purpose was to encourage production of Low-Income multifamily rental housing for persons with low to moderate income. LIHTCs increase the owner's/investor's down payment in a housing project, which lowers the mortgage and financing costs and results in lower rents. Without the LIHTC, cash flow from rents is often not adequate to support such housing developments.

Unit Vacancy Rule (UVR): The Unit Vacancy Rule is applied on a project basis. A building is considered in compliance when the current applicable fraction is at or above the first year's fraction. When a low-income unit becomes vacant during the year and the building is at or below its applicable fraction, reasonable attempts must be made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units of comparable or smaller size in the project are rented to non-qualifying tenants. It is the intent of the UVR for management to actively market the project's low-income units and to rent to low income households prior to renting to market rate tenants.

Exhibits

EXHIBIT A

OWNER'S CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

TO:

Missouri Housing Development Commission; Tax Credit Compliance; 4625 Lindell Suite 300, St. Louis, MO.
63108-3729

Certification Dates:	From: January 1, 20	To: December 31, 20	
Project Name:		Project No:	
Project Address:		City:	Zip:
Owner Tax ID #			

- No buildings have been Placed-in-Service
 At least one building has been Placed-in-Service but owner elects to begin credit period in the following year.
If either of the above applies. Please check the appropriate box, and proceed to page 2 to sign and date this form.

The undersigned

on behalf of
(the "Owner"), hereby

certifies that:

- The project meets the minimum requirements of: (check one)
 20 - 50 test under Section 42(g)(1)(A) of the Code
 40 - 60 test under Section 42(g)(1)(B) of the Code
 15 - 40 test for "deep rent-skewed" projects under Section 42(g)(4) and 142(d)(4)(B) of the Code
- There has been **no change in the applicable fraction** (as defined in Section 42(c)(1)(B) of the Code) for any building in the project:
 NO CHANGE **CHANGE**
If "**Change**", list the applicable fraction to be reported to the IRS for each building in the project for the certification year on page 3:
- The owner has received an annual Tenant Income Certification from each low-income resident and documentation to support that certification, or the owner has a re-certification waiver letter from the IRS in good standing, has received an annual Tenant Income Certification from each low-income resident, and documentation to support the certification at their initial occupancy.
 YES **NO**
- Each low-income unit in the project has been rent-restricted under Section 42(g)(2) of the Code:
 YES **NO**
- All low-income units in the project are and have been for use by the general public and used on a non-transient basis (except for transitional housing for the homeless provided under Section 42 (i)(3)(B)(iii) of the Code):
 YES **NO** **HOMELESS**
- No finding of discrimination under the Fair Housing Act, 42 U.S.C 3601-3619, has occurred for this project. A finding of discrimination includes an adverse final decision by the Secretary of Housing and Urban Development (HUD), 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C 3616a(a)(1), or an adverse judgment from a federal court:
 NO FINDING **FINDING**

Title: _____ Date: _____

STATE OF MISSOURI _____)

_____) ss.

County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20 _____ by _____

My commission expires _____

Notary Public

(SEAL)

**PLEASE EXPLAIN ANY ITEMS THAT WERE
ANSWERED "NO", "CHANGE" OR "FINDING"
ON QUESTIONS 1-14.**

<u>Question Number</u>	<u>Explanation</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

—	—
—	—

CHANGES IN OWNERSHIP OR MANAGEMENT

(to be completed **ONLY** if “CHANGE” marked
for question 14 above)

Please also submit Exhibit G.

TRANSFER OF OWNERSHIP

Date of Change:	_____
Taxpayer ID Number:	_____
Legal Owner Name	_____
General Partnership	_____
Status of Partnership (LLC, etc):	_____

***Please also submit property data sheet and Exhibit J**

CHANGE IN OWNER CONTACT

Date of Change:	_____
Owner Contact:	_____
Owner Contact Phone:	_____
Owner Contact Fax:	_____
Owner Contact Email:	_____

Please also complete property data sheet and Exhibit J

CHANGE IN MANAGEMENT CONTACT

Date of Change:	_____
Management Co. Name:	_____
Management Address:	_____
Management city, state, zip:	_____
Management Contact:	_____
Management Contact Phone:	_____
Management Contact Fax:	_____
Management Contact Email:	_____

EXHIBIT B TENANT INCOME CERTIFICATION	Effective Date: _____
<input type="checkbox"/> Initial Certification <input type="checkbox"/> Recertification <input type="checkbox"/> Other _____	Move-in Date: _____ (MM/DD/YYYY)

PART I - DEVELOPMENT DATA

Property Name: _____	County: _____	BIN #: _____
Address: _____	Unit Number: _____	# Bedrooms: _____

PART II. HOUSEHOLD COMPOSITION

HH Mbr #	Last Name	First Name & Middle Initial	Relationship to Head of Household	Date of Birth (MM/DD/YYYY)	F/T Student (Y or N)	Social Security or Alien Reg. No.
1	_____	_____	HEAD	_____	_____	_____
2	_____	_____	_____	_____	_____	_____
3	_____	_____	_____	_____	_____	_____
4	_____	_____	_____	_____	_____	_____
5	_____	_____	_____	_____	_____	_____
6	_____	_____	_____	_____	_____	_____
7	_____	_____	_____	_____	_____	_____

PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)

HH Mbr #	(A) Employment or Wages	(B) Soc. Security/Pensions	(C) Public Assistance	(D) Other Income
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
TOTALS	\$ _____	\$ _____	\$ _____	\$ _____
Add totals from (A) through (D), above				TOTAL INCOME (E): \$ _____

PART IV. INCOME FROM ASSETS

HH Mbr #	(E) Type of Asset	(G) C/I	(H) Cash Value of Asset	(I) Annual Income from Asset
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
TOTALS:			\$ _____	\$ _____
Enter Column (H) Total		Passbook Rate		
If over \$5000		\$ _____	X 2.00%	= (J) Imputed Income \$ _____
Enter the greater of the total of column I, or J: imputed income				TOTAL INCOME FROM ASSETS (K) \$ _____
(L) Total Annual Household Income from all Sources [Add (E) + (K)]				\$ _____

HOUSEHOLD CERTIFICATION & SIGNATURES

The information on this form will be used to determine maximum income eligibility. I/we have provided for each person(s) set forth in Part II acceptable verification of current anticipated annual income. I/we agree to notify the landlord immediately upon any member of the household moving out of the unit or any new member moving in. I/we agree to notify the landlord immediately upon any member becoming a full time student.

Under penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement.

Signature (Date) Signature (Date)

Signature

(Date)

Signature

(Date)

PART V. DETERMINATION OF INCOME ELIGIBILITY

TOTAL ANNUAL HOUSEHOLD INCOME FROM ALL SOURCES:
From item (L) on page 1

\$ _____

Household Meets Income Restriction at:
 60% 50%

RECERTIFICATION ONLY:

Current Income Limit x 140%:

\$ _____

Household Income exceeds 140% at recertification:
 Yes No

Current Income Limit per Family Size:

\$ _____

Household Income at Move-in:

\$ _____

Household Size at Move-in: _____

PART VI. RENT

Tenant Paid Rent \$ _____

Rent Assistance: \$ _____

Utility Allowance \$ _____

Other non-optional charges: \$ _____

GROSS RENT FOR UNIT:
(Tenant paid rent plus Utility Allowance & other non-optional charges)

\$ _____

Unit Meets Rent Restriction at: _____

60% 50%

Maximum Rent Limit for this unit:

\$ _____

PART VII. STUDENT STATUS

ARE ALL OCCUPANTS FULL TIME STUDENTS?

If yes, Enter student explanation*

(also attach documentation)

yes no

***Student Explanation:**

- 1 TANF assistance
- 2 Job Training Program
- 3 Single parent/dependent child
- 4 Married/joint return

Enter 1-4 _____

PART VIII. PROGRAM TYPE

Mark the program(s) listed below (a. through e.) for which this household's unit will be counted toward the property's occupancy requirements. Under each program marked, indicate the household's income status as established by this certification/recertification.

a. Tax Credit

See Part V above.

b. HOME

Income Status

- ≤ 50% AMGI
- ≤ 60% AMGI
- ≤ 80% AMGI
- OI**

c. Tax Exempt

Income Status

- 50% AMGI
- 60% AMGI
- 80% AMGI
- OI**

d. AHDP

Income Status

- 50% AMGI
- 80% AMGI
- OI**

e. _____

(Name of Program)

Income Status

-
-
- OI**

** Upon recertification, household was determined over-income (OI) according to eligibility requirements of the program(s) marked above.

SIGNATURE OF OWNER/REPRESENTATIVE

Based on the representations herein and upon the proofs and documentation required to be submitted, the individual(s) named in Part II of this Tenant Income Certification is/are eligible under the provisions of Section 42 of the Internal Revenue Code, as amended, and the Land Use Restriction Agreement (if applicable), to live in a unit in this Project.

SIGNATURE OF OWNER/REPRESENTATIVE

DATE

<u>Column (F)</u>	<u>List the type of asset (i.e., checking account, savings account, etc.)</u>
<u>Column (G)</u>	<u>Enter C (for current, if the family currently owns or holds the asset), or I (for imputed, if the family has disposed of the asset for less than fair market value within two years of the effective date of (re)certification).</u>
<u>Column (H)</u>	<u>Enter the cash value of the respective asset.</u>
<u>Column (I)</u>	<u>Enter the anticipated annual income from the asset (i.e., savings account balance multiplied by the annual interest rate).</u>
<u>TOTALS</u>	<u>Add the total of Column (H) and Column (I), respectively.</u>
<u>If the total in Column (H) is greater than \$5,000, you must do an imputed calculation of asset income. Enter the Total Cash Value, multiply by 2% and enter the amount in (J), Imputed Income.</u>	
<u>Row (K)</u>	<u>Enter the greater of the total in Column (I) or (J)</u>
<u>Row (L)</u>	<u>Total Annual Household Income From all Sources Add (E) and (K) and enter the total</u>

HOUSEHOLD CERTIFICATION AND SIGNATURES

After all verifications of income and/or assets have been received and calculated, each household member age 18 or older must sign and date the Tenant Income Certification. For move-in, it is recommended that the Tenant Income Certification be signed no earlier than 5 days prior to the effective date of the certification.

Part V – Determination of Income Eligibility

<u>Total Annual Household Income from all Sources</u>	<u>Enter the number from item (L).</u>
<u>Current Income Limit per Family Size</u>	<u>Enter the Current Move-in Income Limit for the household size.</u>
<u>Household income at move-in Household size at move-in</u>	<u>For recertifications, only. Enter the household income from the move-in certification. On the adjacent line, enter the number of household members from the move-in certification.</u>
<u>Household Meets Income Restriction</u>	<u>Check the appropriate box for the income restriction that the household meets according to what is required by the set-aside(s) for the project.</u>
<u>Current Income Limit x 140%</u>	<u>For recertifications only. Multiply the Current Maximum Move-in Income Limit by 140% and enter the total. Below, indicate whether the household income exceeds that total. If the Gross Annual Income at recertification is greater than 140% of the current income limit, then the available unit rule must be followed.</u>

Part VI - Rent

<u>Tenant Paid Rent</u>	<u>Enter the amount the tenant pays toward rent (not including rent assistance payments such as Section 8).</u>
<u>Rent Assistance</u>	<u>Enter the amount of rent assistance, if any.</u>
<u>Utility Allowance</u>	<u>Enter the utility allowance. If the owner pays all utilities, enter zero.</u>
<u>Other non-optional charges</u>	<u>Enter the amount of non-optional charges, such as mandatory garage rent, storage lockers, charges for services provided by the development, etc.</u>
<u>Gross Rent for Unit</u>	<u>Enter the total of Tenant Paid Rent plus Utility Allowance and other non-optional charges.</u>
<u>Maximum Rent Limit for this unit</u>	<u>Enter the maximum allowable gross rent for the unit.</u>
<u>Unit Meets Rent Restriction at</u>	<u>Check the appropriate rent restriction that the unit meets according to what is required by the set-aside(s) for the project.</u>

Part VII - Student Status

If all household members are full time* students, check "yes". If at least one household member is not a full time student, check "no".

If "yes" is checked, the appropriate exemption must be listed in the box to the right. If none of the exemptions apply, the household is ineligible to rent the unit.

*Full time is determined by the school the student attends.

Part VIII – Program Type

Mark the program(s) for which this household's unit will be counted toward the property's occupancy requirements. Under each program marked, indicate the household's income status as established by this certification/recertification. If the property does not participate in the HOME, Tax-Exempt Bond, Affordable Housing Disposition, or other housing program, leave those sections blank.

Tax Credit See Part V above.

HOME If the property participates in the HOME program and the unit this household will occupy will count towards the HOME program set-asides, mark the appropriate box indicting the household's designation.

Tax Exempt If the property participates in the Tax Exempt Bond program, mark the appropriate box indicating the household's designation.

AHDP If the property participates in the Affordable Housing Disposition Program (AHDP), and this household's unit will count towards the set-aside requirements, mark the appropriate box indicting the household's designation.

Other If the property participates in any other affordable housing program, complete the information as appropriate.

SIGNATURE OF OWNER/REPRESENTATIVE

It is the responsibility of the owner or the owner's representative to sign and date this document immediately following execution by the resident(s).

The responsibility of documenting and determining eligibility (including completing and signing the Tenant Income Certification form) and ensuring such documentation is kept in the tenant file is extremely important and should be conducted by someone well trained in tax credit compliance.

These instructions should not be considered a complete guide on tax credit compliance. The responsibility for compliance with federal program regulations lies with the owner of the building(s) for which the credit is allowable.

**EXHIBIT C
EMPLOYMENT VERIFICATION**

THIS SECTION TO BE COMPLETED BY MANAGEMENT AND EXECUTED BY TENANT

TO: (Name & address of employer) _____ Date: _____

RE: _____
_____ Applicant/Tenant Name _____ Social Security Number _____ Unit # (if assigned)

I hereby authorize release of my employment information.

_____ Signature of Applicant/Tenant _____ Date

The individual named directly above is an applicant/tenant of a housing program that requires verification of income. The information provided will remain confidential to satisfaction of that stated purpose only. Your prompt response is crucial and greatly appreciated.

_____ Project Owner/Management Agent _____ Phone: _____

Please Return Form To: _____

THIS SECTION TO BE COMPLETED BY EMPLOYER

Employee Name: _____ Job Title: _____

Presently Employed: Yes _____ Date First Employed _____ No _____ Last Day of Employment _____

Current Wages/Salary: \$ _____ (circle one) hourly weekly bi-weekly semi-monthly monthly yearly Other _____

Average # of regular hours per week: _____ Year-to-date earnings: \$ _____ through _____ / _____ / _____

Overtime Rate: \$ _____ per hour _____ Average # of overtime hours per week: _____

Shift Differential Rate: \$ _____ per hour _____ Average # of shift differential hours per week: _____

Commissions, bonuses, tips, other: \$ _____ (circle one) hourly weekly bi-weekly semi-monthly monthly yearly Other _____

List any anticipated change in the employee's rate of pay within the next 12 months: _____ ; Effective date: _____

If the employee's work is seasonal or sporadic, please indicate the layoff period(s): _____

Additional remarks: _____

_____ Employer's Signature _____ Printed Name of Signatory _____ Date

_____ Employer [Company] Name and Address

_____ Phone Number _____ Fax Number _____ E-mail Address

NOTE: Section 1001 of Title 18 of the U.S. Code makes it a criminal offense to make willful false statements or misrepresentations to any Department or Agency of the United States as to any matter within its jurisdiction.

EXHIBIT E
CERTIFICATION OF ZERO INCOME

(To be completed by adult household members only, if appropriate.)

Household Name: _____ Unit No. _____

Development Name: _____ City: _____

1. I hereby certify that I do not individually receive income from any of the following sources:

- a. Wages from employment (including commissions, tips, bonuses, fees, etc.);
- b. Income from operation of a business;
- c. Rental income from real or personal property;
- d. Interest or dividends from assets;
- e. Social Security payments, annuities, insurance policies, retirement funds, pensions, or death benefits;
- f. Unemployment or disability payments;
- g. Public assistance payments;
- h. Periodic allowances such as alimony, child support, or gifts received from persons not living in my household;
- i. Sales from self-employed resources (Avon, Mary Kay, Shaklee, etc.);
- j. Any other source not named above.

2. I currently have no income of any kind and there is no imminent change expected in my financial status or employment status during the next 12 months.

3. I will be using the following sources of funds to pay for rent and other necessities:

Under penalty of perjury, I certify that the information presented in this certification is true and accurate to the best of my knowledge. The undersigned further understand(s) that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of a lease agreement.

Signature of Applicant/Tenant Printed Name of Applicant/Tenant Date

**EXHIBIT F
STUDENT VERIFICATION**

THIS SECTION TO BE COMPLETED BY MANAGEMENT AND EXECUTED BY STUDENT

This Student Verification is being delivered in connection with the undersigned's eligibility for residency in the following Low-Income Housing development.

Project Name: _____

Building Address: _____

Unit Number if assigned: _____

I hereby grant disclosure of the information requested below from:

Name of Educational Institution

Signature Date

Printed Name Student ID#

Return Form To: _____

THIS SECTION TO BE COMPLETED BY EDUCATIONAL INSTITUTION

The above-named individual has applied for residency or is currently residing in housing that requires verification of student status. Please provide the information requested below:

Is the above-named individual a student at this educational institution? YES NO

If so, part-time or full-time? PART-TIME FULL-TIME

If full-time, the date the student enrolled as such: _____

Expected date of graduation: _____

I hereby certify that the information supplied in this section is true and complete to the best of my knowledge.

Signature Date

Printed Name Telephone Number

Title

Educational Institution

NOTE: Section 1001 of Title 18 of the U. S. Code makes it a criminal offense to make willful false statements or misrepresentations to any Department or Agency of the United States as to any matter within its jurisdiction.

EXHIBIT G
NOTICE OF CHANGE IN OWNERSHIP

“Internal Revenue Code Section 42(j)(6) NO RECAPTURE ON DISPOSITION OF BUILDING (OR INTEREST THEREIN) WHERE BOND POSTED. - In the case of a disposition of a building or an interest therein, the taxpayer shall be discharged from liability for any additional tax under this subsection by reason of such disposition if –

(A) the taxpayer furnishes to the Secretary a bond in an amount satisfactory to the Secretary and for the period required by the Secretary, and

(B) it is reasonably expected that such building will continue to be operated as a qualified low-income building for the remaining compliance period with respect to such building.”

Property Name

Property Address

Original Property Owner

Original Owner Tax Identification Number

MHDC Project Number:

I, _____

as an authorized signatory for the original owner of record with MHDC for the above mentioned development, to certify to the following:

1. Type of **original** ownership entity: _____
(general partnership, limited partnership, LLC, etc)

2. Credit allocation received from:
a) General Pool
b) Non-profit set-aside
c) Other

3. If credit was received from the Non-profit set aside, state whether or not there will continue to be material participation by a qualified non-profit entity.
 Yes No

4. Indicate the type of ownership change: Sale Exchange
 Transfer Trade InsureForec

5. Type of **new** ownership entity: _____
(general partnership, limited partnership, LLC, etc)

6. Date of ownership change: _____

7. New Owner's Taxpayer Identification Number: _____

8. New Owner's Name and Address:

9. New Owner's Phone Number: _____

10. New Owner's Email Address: _____

11. By checking below I confirm the following statements (If applicable):

Pursuant to IRC Section 42(j)(6)(A), IRS Form 8693 that meets the requirements of IRC Section 42(j)(6), has been filed. (Attach copy)

AND

Pursuant to IRC Section 42(j)(6)(B), I reasonably expect the building will continue to be operated as a qualified low-income building for the remaining compliance period.

AND

I have provided the buyer with a copy of the Land Use Restriction Agreement (LURA). The buyer intends to operate the building as a qualified low-income building for the remaining compliance period with respect to such building. I have received a signed statement from the buyer that the LURA will be adhered to and the property will be operated in accordance with Section 42 and MHDC monitoring requirements. (Attach copy of buyer's statement).

Signed: _____

Name (please print)

Title

Date

STATE OF MISSOURI _____)
_____) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____

My commission expires: _____

Notary Public

(S E A L)

MISSOURI HOUSING DEVELOPMENT COMMISSION
LIHTC/HOME ANNUAL OCCUPANCY REPORT (Only for Projects NOT reporting on-line)
Report Covering Period _____ to _____

Project Number _____ **Owner Name** _____ **If Student AND**

Qualified Project Name _____ **Owner Address** _____ enter Explanation

Code below
Project Address _____ 1 - Married filing joint return

_____ **Mgmt. Agent** _____ 2 - Single parent/dependent child

County _____ **Phone Number** _____ 3 - Title IV recipient

Total Number of Units _____ **Mgmt. Tax ID #** _____ 4 - Qualified Job Training Program



<u>IRS Building ID Number</u>	<u>Unit No</u>	<u>Unit Sq Ft</u>	<u>Bdms #</u>	<u>Move-In Date</u>	<u>Move-Out Date</u>	<u>Head of Household Social Security Number</u>	<u>Head of Household Full Name</u>	<u>Date of Last Certification</u>	<u>Age Head of Hshld</u>	<u>Gross Annual Income at Recert</u>	<u>Gross Annual Income at Move-in</u>	<u>Monthly Tenant Paid Rent</u>	<u>Amount of Rental Subsidy</u>	<u>Util Allow</u>	<u># in Hshld at Recrt</u>	<u>Non-qual Stdnt Y/N</u>	<u>Qual Stdnt Expln Code</u>	<u>50% HM Unit Y/N</u>	<u>60% Mrkt Unit Y/N</u>
_____	_____	_____	-	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	-	-	-	-
_____	_____	_____	-	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	-	-	-	-
_____	_____	_____	-	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	-	-	-	-
_____	_____	_____	-	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	-	-	-	-
_____	_____	_____	-	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	_____	-	-	-	-
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EXHIBIT I
UNIT CERTIFICATION

MHDC LIHTC No. _____

This form must be completed upon the occupancy and annual certification of all tax credit units. This form is to be placed in the tenant file and made available to MHDC upon request.

The undersigned hereby (certify) (certifies) that:

1. This Unit Certification is being delivered in connection with the undersigned's application for the occupancy of LIHTC Unit No. _____ in the _____ project. The address of the particular building where the unit is located is _____, State of Missouri and has been issued Building Identification Number of _____ by MHDC.
2. The information indicated below is an accurate description of the physical and financial conditions of the unit as of the date occupied by the _____ household.
 - (a) Term of Lease: _____
 - (b) Number of Rooms _____ Bedrooms _____ Baths _____
 - (c) Approximate square foot of rental area: _____ No. of occupants _____
 - (d) Equipment (check if applicable):

<u>Refrigerator _____</u>	<u>Air Cond _____</u>	<u>Garage _____</u>	<u>Stove _____</u>
<u>Dishwasher _____</u>	<u>Clubhouse _____</u>	<u>Disposal _____</u>	<u>Drape/Blinds _____</u>
<u>Washer/Dryer _____</u>	<u>Fireplace _____</u>	<u>Pool _____</u>	<u>Other _____</u>
 - (e) Services included in rent: _____
 - (f) Utilities (indicate if paid by Owner):

<u>Heating _____</u>	<u>Hot Water _____</u>	<u>Air Cond. _____</u>	<u>Cold Water _____</u>
<u>Cooking _____</u>	<u>Sewer _____</u>	<u>Lighting _____</u>	<u>Trash _____</u>
 - (g) The following boxes should be initialed if the parties agree that the unit appears to satisfy local health, safety and building codes:

<u>Owner _____</u>	<u>Tenant _____</u>
--------------------	---------------------
3. List the following financial information for the unit:
 - (a) Total rent charged for the unit \$ _____.
 - (b) Actual rent paid by Tenant \$ _____.
 - (c) Amount of rental assistance, (if any) \$ _____.
 - (d) Type of rental assistance, (if any) _____.
 - (e) Estimated utility allowance \$ _____.
 - (f) Gross income (from Exhibit B) \$ _____.

OWNER

TENANT

By: _____

Date _____ Date _____

Owner Tax I.D. # _____ Social Security Number _____

EXHIBIT J
AUTHORIZED REPRESENTATIVE DESIGNATION

Dated this _____ day of _____, 20____

I, _____, duly recognized owner of the Low Income Tax Credit Project
known as _____,

MHDC project number _____, hereby authorize the following individual to act as
representative and signatory to required documents in my behalf:

Name of Authorized Representative

Title of Authorized Representative

Address of Authorized Representative

Authorized Representative City, State and Zip

I understand that this authorization will remain in effect until revoked by me in writing.

Name of Owner

Signature of Authorized Signatory of Owner

Name of Signatory (please print)

Title of Signatory

Owner Address

Owner City, State and Zip

STATE OF MISSOURI _____)
_____) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by

My commission expires:

Notary Public

(SEAL)

LIHTC CERTIFICATION OF STUDENT ELIGIBILITY

Household Name: _____

Unit Address: _____

THIS SECTION TO BE COMPLETED BY APPLICANT/RESIDENT

For the purpose of this form, a full-time student is defined as one who is or will be carrying a full-time subject load at an institution with a degree or certificate program (including school age children) or one who was carrying a full-time subject load during any portion of five months within the current calendar year.

CHECK ONE

- This household is NOT comprised ENTIRELY of full-time students as defined above.
- ALL members of this household are full-time students, but the following checked item applies:
 - A member of this household is receiving assistance under Title IV of the Social Security Act (TANF).
 - A member of this household is enrolled in a job-training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or Local Laws.
 - The entire household is composed of a Head of Household who is a single parent with children and such parent and children are not dependents (as defined in IRC Section 152) of another individual.
 - The entire household is composed of individuals who are married and file a joint tax return.

I understand that this Certification is made part of the qualification process to determine eligibility for residency. Any misrepresentation herein will be considered a material breach of the Lease Agreement and subject me to immediate eviction. Under penalties of perjury, I certify the above information to be true, as of the date shown below.

APPLICANT/RESIDENT	DATE	/	/	APPLICANT/RESIDENT	DATE	/	/
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APPLICANT/RESIDENT	DATE	/	/	APPLICANT/RESIDENT	DATE	/	/
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Exhibits

FOR EXTENDED USE PERIOD

EXHIBIT EUP-2
EXTENDED USE PERIOD
OWNER'S CERTIFICATE OF CONTINUING COMPLIANCE

TO:
 Missouri Housing Development Commission: Tax Credit Compliance; 4625 Lindell, Suite 300, St. Louis, MO 63108-3729

Certification Dates:	From:	To:	
Project Name:			Project No:
Project Address:			City:
			Zip:
Owner Tax ID #:			

The undersigned _____ on behalf of _____ (Owner) hereby certifies that:

1. The project meets the minimum requirements of: (check one)

- 20 – 50 test under Section 42 (g)(1)(A) of the Code
 40 – 60 test under Section 42 (g)(1)(A) of the Code
 20– 80 Extended Use Period
 40 – 80 Extended Use Period

2. There has been **no change in the applicable fraction** (as defined in Section 42(c)(1)(B) of the Code) for any building in the project:

- NO CHANGE** **CHANGE**

3. The owner of a mix income project has recertified annually all Tenant Income Certification's for each low-income resident and a self certification to support that certification, or the owner has a re-certification waiver letter from MHDC in good standing and has received an annual Tenant Income Certification from each low-income resident, and documentation to support the certification at their initial occupancy. 100% properties are no longer required to recertify tenant income annually.

- YES** **NO** **N/A**

4. Each low-income unit in the project has been rent-restricted under Section 42(g)(2) of the Code:

- YES** **NO**

5. All low-income units in the project are and have been for use by the general public and used on a non-transient basis (except for transitional housing from the homeless provided under Section 42 (i)(3)(B)(iii) of the Code):

- YES** **NO** **HOMELESS**

6. No finding of discrimination under the Fair Housing Act, 42 U.S.C 3601-3619, has occurred for this project. A finding of discrimination includes an adverse final decision by the Secretary of Housing and Urban Development (HUD), 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C 3616a(a)(1), or an adverse judgment from a federal court:

- NO FINDING** **FINDING**

7. Each building in the project is and has been suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards). and the state or local government unit responsible for making building code inspections did not issue a report of a violation for any building or low income unit in the project:

- YES** **NO**

8. Has the state or local government unit responsible for making building code inspections issued a report of a violation for any building(s) or low income unit(s) in the project:

- YES** **NO**

If **"Yes"**, state nature of violation on page 3 and attach a copy of the violation report as required by 26 CFR 1.42-5 and any documentation of correction.

9. There has been no change in the minimum set-aside (as defined in Section 42(d) of the Code) of any building in the project since last certification submission.

- NO CHANGE** **CHANGE**

If **"Change"**, state nature of change (e.g., a common area has become commercial space, a fee is now charged for a tenant facility formerly provided without charge, project owner has received federal subsidies with respect to the project or the partial MHDC approved sale) (attach copy of authorization).

10. All tenant facilities included in the eligible basis under Section 42(d) of the Code of any building in the project, such as swimming pools, other recreational facilities, parking areas, washer/dryer hookups, and appliances were provided on a comparable basis without charge to all tenants in the building:
 YES NO
11. If a low-income unit in the project has been vacant during the year, reasonable attempts were or are being made to rent that unit or the next available unit of any size to tenants having a qualifying income before any units were or will be rented to tenants not having a qualifying income:
 YES NO
12. If the income of tenants of a low-income unit in any building increased above the limit allowed in Section 42(g)(2)(D)(ii) of the Code, the next available unit in that building was or will be rented to residents having a qualifying income:
 YES NO
13. An extended low-income housing commitment as described in section 42(h)(6) was in effect, including the requirement under section 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437s. Owner has not refused to lease a unit to an applicant based solely on their status as a holder of a Section 8 voucher and the project otherwise meets the provisions, including any special provisions, as outlined in the extended low-income housing commitment.
 YES NO
14. The owner received its credit allocation from the portion of the state ceiling set-aside for a project involving "qualified non-profit organizations" under Section 42(h)(5) of the code and its non-profit entity materially participated in the operation of the development within the meaning of Section 269(h) of the Code.
 YES NO N/A
15. There has been no change in the ownership or management of the project during the current year:
 NO CHANGE CHANGE
- If "Change", complete page 3 detailing the changes in ownership or management of the project.

Note: Failure to complete this form in its entirety will result in noncompliance with program requirements. In addition, any individual other than an owner or general partner of the project is not permitted to sign this form, unless permitted by the state agency.

The project is otherwise in compliance with the Land Use Restriction Agreement and all other applicable laws, rules and regulations. This Certification and any attachments are made UNDER PENALTY OF PERJURY.

 (Ownership Entity)
 By: _____
 Title: _____ Date: _____

STATE OF MISSOURI
 County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by _____.
 My commission expires _____.

 Notary Public

(SEAL)

EXHIBIT EUP-4
EXTENDED USE PERIOD
NOTICE OF CHANGE IN OWNERSHIP

Land Use Restriction Agreement (LURA) 9 (a) The owner shall not sell, assign, convey, transfer or otherwise dispose of the Project or any building in the Project without the prior written consent of MHDC. Such consent shall be given provided that: (i) the owner is in compliance with the requirements of this agreement and of Section 42(j)(6) of the Code; (ii) the proposed transferee of the Project evidences, to the reasonable satisfaction of MHDC, by its performance with the respect to other low-income housing tax credit or government-assisted housing projects and otherwise, its willingness and ability to comply with the terms of this Agreement; and (iii) MHDC shall be paid a transfer fee, as determined, from time to time, by MHDC. In no event shall the Owner dispose of any portion of any building in the Project to any other person unless all of such building is disposed of to such person. In addition, any change in the composition of the Owner must receive the prior written consent of MHDC.

(b) The Owner shall include, verbatim or by incorporation by reference, all requirements and restrictions contained in this Agreement in any deed or other documents transferring any interest in the Project or in any building in the Project to any other person or entity to the end that such transferee has notice of and is bound by such restrictions, and shall obtain the express written assumption of this Agreement by any transferee.

Property Name

Property Address

Previous Property Owner

Previous Owner Tax Identification Number

MHDC Project Number: _____

I, _____

As an authorized signatory for the previous owner of record with MHDC for the above mentioned development, do certify to the following:

1. Type of previous ownership entity: _____
(general partnership, limited partnership, LLC, etc.)
2. Credit allocation received from:
 - a) General Pool
 - b) Non-profit set-aside
 - c) Other
3. If credit was received from the Non-profit set-aside, state whether or not there will continue to be material participation by a qualified non-profit entity.
 Yes No
4. Indicate the type of ownership change: Sale Exchange
 Transfer Trade Foreclosure

EXHIBIT EUP-4
EXTENDED USE PERIOD
NOTICE OF CHANGE IN OWNERSHIP
Continued

5. Type of new ownership entity: _____
 (general partnership, limited partnership, LLC, etc.)

6. Date of ownership change: _____

7. New Owner's Taxpayer Identification Number: _____

8. New Owner's Name and Address: _____

9. New Owner's Phone Number: _____

10. New Owner's Email Address: _____

11. By checking below I confirm the following statements (if applicable):

Owner is aware that he/she must provide the buyer with a copy of the Land Use Restriction Agreement (LURA) and the buyer must operate the project as qualified low-income project for the remaining Extended Use period with respect to such project. I have received a signed statement from the buyer that the LURA will be adhered to and the property will be operated in accordance with MHDC monitoring requirements. (Attach copy of buyer's statement.)

Signed: _____

 Name (please print)

 Title

 Date

STATE OF MISSOURI

County of

)
) ss.
)

The foregoing instrument was acknowledged before me on _____ day of _____, 20____, by _____.

My commission expires: _____

 Notary Public

(S E A L)

**LOW-INCOME HOUSING TAX CREDIT
LAND USE RESTRICTION AGREEMENT**

, 2004

GRANTEE:

MISSOURI HOUSING DEVELOPMENT COMMISSION
3435 Broadway, Kansas City, Missouri 64111

GRANTOR:

OWNER
NAME
(mailing address)

LEGAL DESCRIPTION:

See attached Exhibit "A"

RETURN RECORDED DOCUMENT TO:

MISSOURI HOUSING DEVELOPMENT COMMISSION
ATTENTION: GARY L. MEYER
3435 BROADWAY
KANSAS CITY, MISSOURI 64111-2403

REFERENCE TO RECORDING INFORMATION:

Book No. N/A Page No. N/A Date N/A

**LOW-INCOME HOUSING TAX CREDIT
LAND USE RESTRICTION AGREEMENT**

ALLOCATION OF CREDITS TO THIS PROJECT IS BASED ON THE FOLLOWING:

- Credits from Set-Aside for Projects involving Qualified Non-Profit Organizations
- HOME 40/50 Income Targeting [Section 6]

THIS LAND USE RESTRICTION AGREEMENT, dated as of _____, 2004, is by and between _____, a Missouri _____, and its grantees, successors and assigns (the "Owner"), and the Missouri Housing Development Commission, a body corporate and political subdivision of the State of Missouri ("MHDC").

W I T N E S S E T H:

WHEREAS, the Owner is the owner of a _____ () unit rental housing development located on lands in the City of _____, County of _____, State of Missouri, more particularly described in Exhibit "A" attached hereto and incorporated herein, known as _____ (the "Project"); and

WHEREAS, MHDC has been designated by the Governor of the State of Missouri (the "State") as the housing credit agency for the State for the allocation of low-income housing tax credits under Section 42 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder and RSMO Section 135.350 (collectively called the "Code"); and

WHEREAS, the Owner has applied to MHDC for an allocation of low-income housing tax credits, both federal and state to the Project and has made certain representations to MHDC in its Low-Income Housing Tax Credit Conditional Reservation Request (as the same may have been amended or supplemented by the Owner's Carryover Allocation Application, if any, progress reports and the Owner's Final Allocation Application, collectively, the "Application") about the Project, including representations as to the number of Low-Income Units (hereinafter defined) and the term of occupancy restrictions, upon which representations MHDC relied, in considering the Application for a reservation and allocation of credits; and

WHEREAS, the Code requires as a condition precedent to the final allocation of tax credits (as evidenced by the issuance of IRS Form 8609), that the Owner execute and deliver this land use restriction agreement (this "Agreement") and that this Agreement be recorded in the official land records of the county in which the Project is located in order to create covenants running with the land for the purpose of enforcing the requirements of the Code, the occupancy restrictions imposed by MHDC through statutes, regulations and policies and certain additional undertakings of the Owner in connection with its Application by regulating and restricting the use and occupancy of the Project as set forth herein; and

WHEREAS, based upon the Owner's representations, MHDC is willing to allocate low-income housing tax credits to the Project provided that the Owner, by entering into this Agreement, consents to be regulated by MHDC in order that MHDC may enforce the occupancy restrictions and other covenants, terms and conditions of this Agreement; and

WHEREAS, the Taxpayer has represented to the Commission in Taxpayer's application that it will limit occupancy to persons 55 years of age and older, or persons with a physical or mental disability, notwithstanding anything to the contrary contained in this Agreement, the provisions of the Fair Housing Act contained in Title VIII of the 1968 Civil Rights Act, as amended, (42 U.S.C. 3601, et. Seq.) shall prevail; and

WHEREAS, the Owner, under this Agreement, intends, declares and covenants that the regulatory and restrictive covenants set forth herein governing the use and occupancy of the Project shall be and are covenants running with the Project land for the term stated herein and binding upon all subsequent owners of the Project for such term.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and of other valuable consideration, the Owner and MHDC agree as follows:

1. Definitions.

All words and phrases defined in Section 42 of the Code shall have the same meanings in this Agreement.

2. Recording and Filing; Covenants to Run with the Land.

(a) This Agreement shall be placed of record in the real property records of the county in which the Project is located and, except as otherwise provided herein, the covenants contained herein shall run with the land and shall bind, and the benefits shall inure to, respectively, the Owner and its grantees, successors and assigns, MHDC and its successors and assigns, and all subsequent owners of the Project or any interest therein, for the period prescribed in Section 4 hereof.

(b) The Owner hereby agrees that any and all requirements of the laws of the State to be satisfied in order for the provisions of this Agreement to constitute restrictive covenants running with the land shall be deemed to be satisfied in full, and that any requirements of privity of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to insure that these restrictions run with the land. During the term of this Agreement, each and every contract, deed or other instrument hereafter executed conveying or transferring the Project or portion thereof shall expressly provide that such conveyance is subject to this Agreement, provided, however, the covenants contained herein shall survive and be effective as to grantees, successors and/or assigns of all or any portion of the Project, regardless of whether such contract, deed or other instrument hereafter executed conveying the Project or portion thereof provides that such conveyance is subject to this Agreement.

3. Representations, Covenants and Warranties of the Owner. The Owner covenants, represents and warrants as follows:

(a) The Owner (i) is duly organized under the laws of the State of _____, and is qualified to transact business under the laws of the Missouri (ii) has the power and authority to own the Project and to carry on its business as now being conducted and contemplated by this Agreement, and (iii) has the full legal right, power and authority to execute and deliver this Agreement and to perform all the undertakings hereunder.

(b) The Owner has a good and marketable fee simple title/leasehold estate to the premises constituting the Project, free and clear of any lien or encumbrance, except those approved by MHDC, including the encumbrances created pursuant to this Agreement.

(c) Each building which is the subject of an allocation of low-income housing tax credits is, or, by not later than the last day of the first year of the "credit period", as defined in Section 42(f) of the Code ("Credit Period"), will be, a "qualified low-income building" as defined in Section 42(c)(2) of the Code ("Qualified Low-Income Building"), and the Project constitutes or will constitute a "qualified low-income housing Project" as defined in Section 42(g) of the Code ("Qualified Low-Income Housing Project"). (See also Section 5.)

(d) The Owner shall comply fully with the requirements of the Fair Housing Act of 42 U.S.C. 3601, et seq., as it may be amended from time to time, including not discriminating on the basis of race, creed, color, sex, age, marital status, national origin, disability or familial status in the lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project, and shall not refuse to lease a unit in the Project to the holder of a voucher or certificate of eligibility under Section 8 of the U.S. Housing Act of 1937, as it may be amended from time to time, on account of the status of the prospective tenant as such holder.

(e) The Owner shall not demolish any part of the Project or substantially subtract from any real or personal property of the Project; or permit the use of any residential rental unit for any purpose other than rental housing during the term of this Agreement unless such action was the result of eminent domain.

(f) The Owner has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other provisions in conflict herewith.

(g) If the Owner becomes aware of any situation, event or condition which would result in non compliance of the Project or the Owner with Section 42 of the Code, the Owner shall promptly give written notice thereof to MHDC.

(h) The Owner shall insure that the Low-Income Units (as hereinafter defined) shall be of comparable quality to other units, if any, in the Project.

(i) If the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Owner will use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms hereof.

(j) The Owner has obtained from prior recorded lienholders on the Project, its consent and partial subordination to this Agreement as a condition precedent to the issuance of Internal Revenue Service Form 8609 which evidences the final allocation of the Credit.

(k) If the Qualified Non-Profit box is checked at the beginning of this document, a "qualified nonprofit organization," as defined in Section 42(h)(5)(C) of the Code, shall own an interest in the Project and shall "materially participate," within the meaning of Section 469(h) of the Code, in the development and operation of the Project throughout the "compliance period" as defined in Section 42(i)(1) of the Code ("Compliance Period").

(l) The execution and performance of this Agreement by the Owner (i) will not violate or, as applicable, have not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, State or Federal, and (ii) will not violate or, as applicable, have not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Owner is a party or by which it or its property is bound, and (iii) will not result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature.

(m) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Owner, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on the business substantially as now conducted (and as now contemplated by this Agreement) or would materially adversely affect its financial condition.

(n) Each unit in the Project contains complete facilities for living, sleeping, eating, cooking and sanitation (unless the Project qualifies as a single-room occupancy Project, transitional housing for the homeless or qualifies as an assisted living project) which is to be used on other than a transient basis. (See also Section 5.)

(o) During the term of this Agreement, all units subject to Tax Credits shall be leased and rented or made available to members of the general public who qualify as low-income tenants. (See also Section 5.)

(p) During the term of this Agreement, the Owner covenants, agrees and warrants that each low-income unit is and will remain suitable for occupancy in accordance with local occupancy standards, local building codes, HUD Housing Quality Standards and MHDC requirements.

(q) Subject to the requirements of Section 42 of the Code, this Agreement, and MHDC and/or HUD requirements, the Owner may sell, transfer or exchange the entire Project at any time, but the Owner shall provide the Buyer with written notice that the Project or any interest attendant to such acquisition, is subject to the requirements of this Agreement, the requirements of Section 42 of the Code and the applicable regulations. This provision shall not act to waive any other restriction on sale, transfer or exchange of the Project or any low-income portion of the Project. The Owner agrees that MHDC may void any sale, transfer or exchange of the Project if the Buyer, successor or other person fails to assume in writing the requirements of this Agreement and the requirements of Section 42 of the Code. (See also Section 9.)

(r) The Owner agrees to notify MHDC in writing of any proposed sale, transfer or exchange of the entire Project or any portion of the Project, and no such sale, transfer or exchange shall occur without the prior written consent of MHDC.

(s) The Owner shall not sell or exchange with any person or entity, any portion of the Project to which this Agreement applies unless the entire Project to which this Agreement applies is disposed of to such person or entity. (See also Section 9.)

(u) During the term of this Agreement the Owner shall not evict or terminate the tenancy of any existing tenant of any low-income tax credit unit other than for good cause and shall not increase the gross rent of any such unit above the maximum allowed by MHDC, and any increase to such rent must be approved in writing by MHDC.

(v) Each year the Owner will provide MHDC with an audited annual financial statement for each Project of twelve (24) units or more. For Projects of twenty three (23) units or less, MHDC will accept an audited annual financial statement or an annual certified compilation.

4. Term of Restrictions.

(a) Except as otherwise provided herein, this Agreement, including the occupancy restrictions set forth in Sections 6 and 7 hereof, shall be in effect for each building which is part of the Project for the Mandatory Compliance Period of fifteen (15) taxable years and for an additional period of () taxable years thereafter (the "Additional Compliance Period").

(b) If the Additional Compliance Period described in subsection (a) above is less than fifteen (15) taxable years, the Owner shall continue to comply with the occupancy requirements set forth in Sections 6 and 7 hereof at all times during the remaining term of the Extended Use Period.

(c) Except as provided in subsection (d) of this Section 4, this Agreement and the Extended Use Period for any building which is part of the Project shall terminate:

(i) on the date the Project or the building is acquired by foreclosure or deed in lieu of foreclosure unless the Secretary (hereinafter defined) determines that such acquisition is part of an arrangement with the Owner a purpose of which is such termination; or

(ii) on the last day of the one-year period beginning on the date the Owner submits a written request to MHDC (request may be submitted no earlier than the end of the 14th year of the compliance period) to find a person or entity to acquire and continue to operate as a qualified low-income building the Owner's interest in the low-income portion of the building and MHDC is unable to present, a "qualified contract" as such term is defined in Section 42(h)(6)(F) of the Code *above*].

(d) During the period of three (3) years following any termination pursuant to subsection (c) above, the Owner shall not evict or terminate the tenancy of an existing tenant of any Low-Income Unit (hereinafter defined) other than for good cause and shall not increase the gross rent above the maximum allowed by MHDC limits with respect to such Low-Income Unit in effect as of the date of the termination. This subsection (d) shall survive any such termination.

5. Qualified Low-Income Housing Project. The Owner shall maintain the Project as a Qualified Low-Income Housing Project at all times, commencing not later than the last day of the first year of the Credit Period and continuing throughout the term of this Agreement. To this end, and without limitation, the Owner shall assure that all of the residential units in the Project are available for use by the general public, suitable for occupancy and used on other than a transient basis.

6. Occupancy Restrictions.

(a) For the purpose of Section 42(g)(1) of the Code, the Owner irrevocably elects that at least percent (%) of the residential rental units in the Project shall be both rent-restricted (as hereinafter defined) and occupied by individuals or families whose income is percent (%) or less of area median gross income. [Insert either "20%/50%" or "40%/60%"]

(b) Notwithstanding the election described in subsection (a) above, the Owner covenants and agrees that, commencing not later than the last day of the first year of the Credit Period and continuing throughout the term of this Agreement, at least () of the residential rental units shall be both rent-restricted and occupied by individuals or families whose income is percent (%) or less of area median gross income, at least () of the residential rental units shall be both rent-restricted and occupied by individuals or families whose income is percent (%) or less of area median gross income and at least an additional () of the residential rental units shall be both rent-restricted and occupied by individuals or families whose income is percent (%) or less of area median gross income. All of the foregoing residential rental units are collectively referred to herein as the "Low-Income Units", and, with respect to all of such Low Income Units, "median gross income" shall be determined in accordance with the Code. The Owner further agrees that additional units in the Project shall be both rent-restricted and occupied by low-income individuals or families whose incomes meet the requirements of this subsection (b) to the extent necessary to maintain the "applicable fraction," as defined in Section 42(c) (1)

(B) of the Code, at not less than percentage(s) shown on Exhibit "B" hereto for each taxable year of the Extended Use Period. A unit is "rent-restricted" if the gross rent with respect to such unit does not exceed thirty percent (30%) of the imputed income limitation applicable to such unit [based upon the income limitations set forth in this subsection (b)], all as determined in accordance with Section 42(g) of the Code.

(1) If HOME money has created the 50% restriction and said HOME dollars are repaid by the Owner, then these restrictions applied pursuant to the HOME regulations will be considered terminated, after the minimum affordability period mandated by HUD regulations for projects financed with HOME funds has expired.

(2) The Owner shall be deemed to be in compliance with the tenant income limitations of subsection (a) of this Section 6 as long as (i) tenant income meets the applicable limitation at the time that any unit is initially leased to such tenant, and (ii) thereafter the Owner meets the requirements of Section 42(g)(2)(D) of the Code.

(c) If the HOME 40/50 Income Targeting Box is checked at the beginning of this Agreement, this project has received a below-market loan funded with HOME funds. In accordance with Section 42(i)(2)(E) of the Code at least 40% of **all** the residential unites (including unrestricted units) in **every building in the Project** shall be occupied by individuals whose income is 50% or less of area median gross income.

(dc) The determination of whether an individual or family is a Qualifying Tenant (that is, meets the income requirements of subsection (b) of this Section 6) shall be made at least annually on the basis of the income of such Qualifying Tenant(s). Any unit occupied by an individual or family who is a Qualifying Tenant at the commencement of occupancy shall continue to be treated as a Low-Income Unit notwithstanding an increase in the income of such individual or family above the income limitation applicable under subsection (b) of this Section 6 provided that, if such Qualifying Tenant's income subsequently exceeds one hundred forty percent (140%) of the applicable income limit, such unit shall no longer be a Low-Income Unit if after the determination of such increase, but prior to the next determination, any residential unit of comparable or smaller size is rented to a tenant who is not a Qualifying Tenant.

(ed) As a condition to occupancy, each individual or family who is intended to be a Qualifying Tenant shall be required to sign and deliver to the Owner a fully completed Certification of Resident Eligibility in the form provided from time to time by MHDC, and the income and assets of such individual or family must be verified in the manner prescribed by MHDC.

(fe) The form of lease to be utilized by the Owner in renting any unit in the Project to any person who is intended to be a Qualifying Tenant shall provide for termination of the lease and consent by such person to immediate eviction for failure to qualify as a Qualifying Tenant as a result of any material misrepresentation made by such person with respect to the Income Certification or the failure by such tenant to execute a Certification of Resident Eligibility annually.

(gf) Attached hereto and made a part hereof as Exhibit "D" are the mandatory Base Rents approved by MHDC.

(hg) The Owner represents warrants and covenants that the base rents for the low-income units will remain in effect for one (1) year after the date a qualified low-income building in the Project is placed in service, and may be increased only upon application to and receipt of written approval from MHDC. The base rent is considered to be the total monthly amount paid by the Tenant, not including utilities, to the Owner, or any amount paid to the Owner on behalf of the tenant in the form of rental assistance. The Owner further agrees to limit any rent increases to those approved by MHDC upon an annual written request.

(ih) MHDC will consider the audited operating statement from the prior year and the proposed operating budget for the next year in approving the proposed annual rent increase. For all MHDC financed developments with MHDC Regulatory Agreements in place, and all other Low Income Housing Tax Credit developments, the Owner will be permitted to reflect a line item in the proposed operating budget to allow for the MHDC approved debt service and a cash distribution equal to the original underwriting of the development as reflected on the MHDC Form 2013 attached to the final allocation letter. The MHDC Form 2013 is attached hereto as Exhibit "C" and made part hereof. If the authorized distribution

has been unavailable to the owner in prior years, the unfunded balance may be carried forward and accumulated from prior years. This annual distribution in no case may exceed 8% of the Owner's equity in the project.

(ji) MHDC shall approve rental increases sufficient for the Owner to compensate for any net increases in taxes (other than income taxes) over which the Owner has no effective control.

(kj) Notwithstanding the above, since MHDC will not approve any rent increase which will inflict an undo burden on existing tenants, MHDC will not consider a rent increase request greater than ten (10%) per cent of the prior approved rent for an existing tenant, with the following exception: tenants of USDA/Rural Development funded developments for which MHDC and USDA/Rural Development have executed a Memorandum of Understanding or Memorandum of Agreement regarding annual rent increases.

(lk) MHDC occupancy restrictions, as established and as amended from time to time during the term of this Agreement, shall commence with and remain in place for at least the term of this Agreement.

(l) Owner will not refuse to rent a unit to a tenant because the tenant receives Section 8 rental assistance, or other type of rental assistance.

(m) Under no circumstances shall the proposed rents exceed the maximum allowed under the Code with respect to such low-income units.

7. Additional Owner Agreements. *[To be completed by MHDC.]* The Owner further covenants and agrees that not later than the last day of the first year of the Credit Period, as defined in Section 42(f) of the Code:

(a) At least _____ (_____) of the residential rental units in the Project shall be constructed, equipped, set aside and occupied (or held vacant and available for immediate occupancy) by _____ *[describe special housing needs resident]* at all times during the term of this Agreement, and the Owner shall provide evidence to MHDC of any license, permit or other governmental approval required for such occupancy.

(b) Of the residential units which are to be subject to the restrictions of Section 6 hereof, at least _____ (_____) shall be _____ -bedroom units and at least _____ (_____) -bedroom units.

[ADD ANY ADDITIONAL REQUIREMENTS]

78. Compliance Monitoring; Fees.

(a) The Owner acknowledges that Section 42 of the Code requires MHDC to monitor the compliance by the Owner and the Project with the requirements of said Section 42, and agrees to strictly comply, at all times, with MHDC's Low-Income Housing Tax Credit Program Compliance Manual, Revised July, 2004, as may be amended from time to time, (the "Compliance Manual"), the terms and provisions of which are by this reference incorporated in this Agreement and made a part hereof. In the event of any conflict between the provisions of this Agreement and the provisions of the Compliance Manual, this Agreement shall control.

(b) In addition to its specific agreements and undertakings in this Agreement, the Owner shall take or cause to be taken all other and further actions required of the Owner by MHDC in order to satisfy such monitoring requirement, which actions shall be designated in writing by MHDC to the Owner not less than sixty (60) days (or such other period as may be required by law) prior to the date by which such actions must first be taken.

(c) The Owner agrees to pay to MHDC such fees in such amounts and at such times as MHDC shall, in its sole discretion, reasonably require the Owner to pay in order to reimburse MHDC for the costs of such monitoring. **Such fee originally to be \$_____ per annum.**

89. Owner Certifications and Reports.

(a) Within ninety (90) days of the end of the first year of the Credit Period, the Owner shall provide to MHDC a copy of the First Year Certification Part II of IRS Form 8609, as filed or prepared for filing with the Internal Revenue Service and executed by or on behalf of the Owner.

(b) The Owner shall annually provide to the Secretary of the United States Department of the Treasury (the "Secretary"), or to his or her designee, at such time and in such manner as the Secretary shall prescribe, a certification as to the continuing compliance of the Project with requirements of Section 42 of the Code. A copy of such annual certification shall be provided to MHDC.

(c) The Owner shall provide to MHDC, annually, a Certification of Continuing Program Compliance and an Occupancy Report, each in the form provided, from time to time, by MHDC, together with a copy, for each building, of the most recently filed Schedule A, Annual Statement, IRS Form 8609.

(d) The Owner shall maintain in its records and provide to MHDC copies of any and all notices and correspondence from or with the Internal Revenue Service concerning the Project or the Owner.

(e) In addition to the information provided for in Section 78 and in this Section 89, the Owner shall provide any other information, documents or certifications requested, from time to time, by MHDC with respect to the Project's physical, operational and financial condition and residents which MHDC reasonably deems necessary to substantiate the Owner's continuing compliance with the provisions of this Agreement and Section 42 of the Code.

910. Transfer Restrictions.

(a) The Owner shall not sell, assign, convey, transfer or otherwise dispose of the Project or any building in the Project without the prior written consent of MHDC. Such consent shall be given provided that : (i) the Owner is in compliance with the requirements of this Agreement and of Section 42(j)(6) of the Code; (ii) the proposed transferee of the Project evidences, to the reasonable satisfaction of MHDC, by its performance with respect to other low-income housing tax credit or government-assisted housing projects and otherwise, its willingness and ability to comply with the terms of this Agreement; and (iii) MHDC shall be paid a transfer fee, as determined, from time to time, by MHDC. In no event shall the Owner dispose of any portion of any building in the Project to any person unless all of such building is disposed of to such person. In addition, any change in the composition of the Owner must receive the prior written consent of MHDC.

(b) The Owner shall include, verbatim or by incorporation by reference, all requirements and restrictions contained in this Agreement in any deed or other documents transferring any interest in the Project or in any building in the Project to any other person or entity to the end that such transferee has notice of and is bound by such restrictions, and shall obtain the express written assumption of this Agreement by any such transferee.

101. Physical Maintenance/Management/Books/Records/Inspections.

(a) The Owner shall maintain each building in the Project such that all units are suitable for occupancy, taking into account applicable health, safety and building codes, and otherwise in a manner reasonably satisfactory to MHDC.

(b) The Owner shall provide for the management of the Project in a manner determined by MHDC to assure compliance with this Agreement. Any management contract entered into by the Owner involving the Project shall provide that it shall be subject to termination, without penalty and with or without cause, upon written request by the Authority MHDC addressed to the Owner. Upon such request the Owner shall immediately terminate the contract within a period of not more than thirty (30) days and shall make arrangements reasonably satisfactory to MHDC for continuing proper management of the Project.

(c) The books, contracts, records, computerized data, documents and other papers relating to compliance of the Owner and the Project with Section 42 of the Code and with this Agreement and to the eligibility of the Owner to claim credits with respect to the Project shall at all times be maintained at the Project, or at the Owner's principal place of business in the State of Missouri, in reasonable condition for proper audit and shall be subject to examination and inspection and copying at any reasonable time by IRS or MHDC or its authorized agents. MHDC shall also have the right to enter and inspect the Project at any reasonable time.

(d) The Owner is required to keep records for each Qualified Low-Income Building in the Project showing the following:

(i) the total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each unit);

(ii) the percentage of residential rental units in the building that are Low-Income Units;

(iii) the rent charged on each residential rental unit in the building (including any utility allowance);

(iv) the number of occupants in each Low-Income Unit;

(v) the Low-Income Unit vacancies in the building and information that shows when, and to whom, the next available units were rented;

(vi) the annual income certification of each Qualifying Tenant;

(vii) documentation to support each Qualifying Tenant's income certification;

(viii) the eligible basis and qualified basis of the building at the end of the first year of the credit period; and

(ix) the character and use of the nonresidential portion of the building included in the building's eligible basis under Section 42(d) of the Code (e.g., tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the Project).

(e) The Owner shall submit any other information, documents or certifications requested by MHDC which MHDC shall deem necessary to substantiate the Owner's continuing compliance with the provisions of the Occupancy Restrictions specified in this Agreement.

(f) The Owner shall submit a copy of the Annual Development Certification of Continuing Compliance shown as Exhibit "B" in the Compliance Manual together with the Occupancy Report shown as Exhibit "B2" in the Compliance Manual, at least annually, or as requested by MHDC in order to monitor compliance with the provisions specified in this Agreement and the Code, please refer to the "Missouri Housing Development Commission Low-Income Housing Tax Credit Program Compliance Monitoring Manual" for the annual reporting deadlines.

(g) The Owner is required to keep all records for each building for a minimum of six years after the due date (with extensions) for filing the Owner's federal income tax return for any year; provided, that 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.

112. Enforcement.

(a) The Owner covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of Section 42 of the Code or of this Agreement. Moreover, the Owner covenants to take any lawful action (including amendment of this Agreement) as may be necessary, in the opinion of MHDC, to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury or the Internal Revenue Service from time to time pertaining to the Owner's obligations under Section 42 of the Code and affecting the Project.

(b) The Owner shall promptly advise MHDC as to the date each building in the Project is a Qualified Low-Income Building.

(c) In the event of any failure of the Owner to comply with the provisions of Section 42 of the Code or of this Agreement, MHDC shall inform the Owner by written notice of such failure and provide the Owner a period of time in which to correct such failure. If any such failure is not corrected to the satisfaction of MHDC within the period of time specified by MHDC, which shall be at least thirty (30) days after the date any notice to the Owner is mailed, or within such further time as MHDC determines is necessary to correct the violation, but not to exceed any limitations set by applicable regulations, without further notice, MHDC may declare a default under this Agreement effective on the date of such declaration of default, and MHDC may (i) apply to any court, state or federal, for specific performance of this Agreement or an injunction against any violation of this Agreement; (ii) secure the appointment of a receiver to operate the Project in compliance with this Agreement; or (iii) exercise any other remedies at law or in equity or any such other action as shall be necessary or desirable to correct non-compliance with this Agreement.

(d) The Owner and MHDC each acknowledges that the primary purpose of requiring compliance by the Owner with the restrictions provided in this Agreement is to assure compliance of the Project and the Owner with Section 42 of the Code and the Treasury Regulations thereunder, AND BY REASON THEREOF, THE OWNER IN CONSIDERATION OF RECEIVING AN ALLOCATION OF LOW-

INCOME HOUSING TAX CREDITS FOR THE PROJECT HEREBY AGREES AND CONSENTS THAT MHDC, ANY QUALIFYING TENANT AND ANY INDIVIDUAL WHO MEETS THE INCOME LIMITATION APPLICABLE TO THE BUILDING UNDER THE CODE (WHETHER PRESENT, PROSPECTIVE OR FORMER OCCUPANTS OF THE BUILDING) (ANY OR ALL OF THEM) SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE OWNER OF ITS OBLIGATIONS UNDER THIS AGREEMENT IN ANY COURT, STATE OR FEDERAL, OF COMPETENT JURISDICTION. , Tthe Owner hereby further specifically acknowledging that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.

(e) In the event of the Owner's or Project's failure to comply fully with the Code, the covenants and agreements contained herein or with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury or the Internal Revenue Service or MHDC from time to time pertaining to the obligations of the Owner as set forth therein or herein, MHDC, in addition to all of the remedies provided by law or in equity, shall notify the Internal Revenue Service of such noncompliance.

(f) The Owner acknowledges receipt of and familiarity with MHDC's requirements and procedures for monitoring compliance with low-income housing credits under Section 42(m)(1)(B)(iii) of the Code and under Section 1.42-5 et seq. of the IRS monitoring compliance regulations. The Owner further agrees to comply with the requirements of MHDC, as now or hereafter issued from time to time, for monitoring compliance of the Project with the requirements of the Code.

(g) The Owner hereby agrees that the representations and covenants set forth herein may be relied upon by MHDC and all persons interested in Project compliance under the Code and the applicable regulations.

123. Issuance of Form 8609. MHDC shall prepare and file with the Internal Revenue Service ("IRS") IRS Form 8609 with respect to each building in the Project, evidencing MHDC's allocation of low-income housing tax credits with respect to the Project. MHDC shall issue Form 8609(s) to the Owner when the following conditions have been met:

(a) Each building in the Project for which a Form 8609 is issued is a Qualified Low-Income Building. MHDC will not issue 8609(s) for any portion of an incomplete project.

(b) The Owner and the Project are in compliance with the terms of this Agreement.

(c) The Owner shall have provided, on form(s) approved by the AuthorityMHDC, a certification of each building's "eligible basis" as defined in Section 42(d) of the Code and the AuthorityMHDC shall have made its final determination of the credit amount and its final determination pursuant to Section 42(m)(2) of the Code.

(d) The Owner shall have provided a copy of the latest executed partnership or operating agreement and any and all other organizational documents of the Owner required by MHDC.

(e) The Owner shall have provided to MHDC the partial subordination of any prior recorded lien on the Project to this Agreement.

(f) MHDC has completed its final inspection of all buildings.

(gf) The Owner and its management agent shall have completed compliance training provided or approved by MHDC.

(hg) The Owner shall have paid the compliance monitoring fee to MHDC.

134. Return of Unused Credit. Pursuant to Section 42(h)(3)(C) of the Code and Treasury Regulation §1.42-14(d) thereunder, the housing tax credit dollar amount allocated to the Owner with respect to the Project shall be canceled and returned to MHDC, in whole or in part, if any building in the Project is not a Qualified Low-Income Building within the time period required by Section 42 of the Code, or (ii) the "Qualified Basis" of any building in the Project is less than the qualified basis on which the credit amount was allocated by MHDC.

145. Release and Indemnification. The Owner acknowledges that, in issuing Internal Revenue Service Form 8609 with respect to the Project, MHDC is relying or will rely upon information and representations given by or on behalf of the Owner and has made or will make no independent

investigation and does not and will not have independent knowledge of the basis for such information and representations. Accordingly, to induce MHDC to issue the Form 8609, the Owner agrees as follows:

(a) The Owner agrees to release and forever discharge MHDC, its members, employees, agents, officers, successors and assigns of and from any and all claims, demands, causes of actions, judgments and executions which Owner has or may hereafter have against MHDC, whether in law or in equity, arising or resulting from, or on account of or pertaining to, whether directly or indirectly, the issuance of a Form 8609 with respect to the Project by MHDC.

(b) The Owner hereby agrees to indemnify, save harmless and defend MHDC, and its members officers, agents, employees, successors and assigns from any obligation, claim, loss, demand, cost, expense (including the costs of the investigation and settlement of any claim, and including reasonable attorney's fees) or judgment against MHDC arising or resulting from, or on account of or pertaining to, whether directly or indirectly, MHDC's issuance of a Form 8609 with respect to the Project. If any such claim is asserted, any indemnified party hereunder will give prompt notice to the Owner and will cooperate in the investigation and defense of any such claim. The Owner will assume the defense of any such asserted claim by engaging counsel approved by the indemnified party (which approval shall not be unreasonably withheld), it being understood that the indemnified party shall have the right to employ its own separate counsel and participate in such proceedings at its own cost and expense.

(c) If the indemnification provided in subsection (b) is, for any reason, either unavailable to MHDC or any of the other persons intended to be indemnified thereby or insufficient to hold it or any of them harmless, then the Owner hereby agrees to contribute to all amounts paid or payable by MHDC and such other persons as a result of any such obligation, claim, loss, demand, cost, expense, or judgment. The amount to be contributed by the Owner shall be the amount that is appropriate to reflect both the relative benefits received by the Owner, on the one hand, and by MHDC and such other persons, on the other hand, and the relative degrees of fault of the Owner, on the one hand, and of MHDC and such other persons, on the other hand.

156. Miscellaneous.

(a) The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

(b) All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

To MHDC: Missouri Housing Development Commission
3435 Broadway
Kansas City, Missouri 64111
Attention: Gary L. Meyer, Tax Credit Administrator

To the Owner:

Attention:

MHDC and the Owner may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

(c) This Agreement shall be governed by the laws of the State of Missouri and, where applicable, the laws of the United States of America.

(d) This Agreement may be amended from time to time by any written instruments signed by both the MHDC and the Owner. The signing of any such instrument by the MHDC shall be deemed for all purposes to be on behalf of, and shall be legally binding on, the MHDC, any Qualifying Tenant and any individual who meets the income limitation applicable to the Project under the Code (whether present, prospective or former occupants of the Project). The Owner and MHDC agree that they will take all actions necessary to effect amendment of this Agreement as may be necessary to comply with the Code and any and all applicable rules, regulations, policies, procedures, rulings or other official statements pertaining to the Credit.

(e) Any terms not defined in this Agreement shall have the same meaning as terms defined in Section 42 of the Code and the Treasury Regulations promulgated thereunder.

(f) This Agreement and the covenants and conditions contained herein shall run with the land and shall bind, and the benefits shall inure to, respectively, the Owner and its grantees, successors and assigns and all subsequent Owners of the Project or any interest therein, MHDC and its successors and assigns, for the period specified in Section 4(a) hereof unless terminated sooner pursuant to Section 4(c) hereof.

(g) Notwithstanding anything in this entire Agreement to the contrary, failure of the Owner to comply fully with the Code, the covenants and agreements contained herein and with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury or the Internal Revenue Service or the Missouri Department of Revenue or MHDC FROM TIME TO TIME PERTAINING TO THE OBLIGATIONS OF THE OWNER AS SET FORTH THEREIN OR HEREIN, MHDC MAY, AND IN ADDITION TO ALL OF THE REMEDIES PROVIDED BY LAW OR IN EQUITY, REQUEST THE IRS TO DECERTIFY THE PROJECT FOR LOW-INCOME HOUSING TAX CREDITS AND TO IMMEDIATELY COMMENCE RECAPTURE OF THE TAX CREDIT DOLLARS HERETOFORE ALLOCATED TO THE PROJECT.

(h) The obligations of the Owner as set forth herein and in the Application shall survive the allocation of Tax Credit Dollars and shall not be deemed to terminate or merge with the awarding of the allocation, or the execution, delivery, or recording of this Agreement.

IN WITNESS WHEREOF, the parties have caused this agreement to be signed by their respective duly authorized representatives, as of the day and year first written above.

"OWNER"

"COMMISSION"
MISSOURI HOUSING DEVELOPMENT COMMISSION

By:
Printed Name
Printed Title

By:
Gary Meyer
Tax Credit Administrator

STATE OF _____)
) ss.
County of _____)

On this _____ day of _____, 2004, personally appeared before me, a Notary Public in and for the County and State aforesaid, personally appeared _____, to me personally known, who, being by me duly sworn, did say that he is the _____ of _____, a Missouri corporation and the sole general partner of _____ Limited Partnership, a Missouri limited partnership, and acknowledged before me that, acting under due corporate and partnership authority, he executed the forgoing instrument for the purposes therein expressed as the free act and deed of said corporation, and limited partnership.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the aforesaid County and State, the day and year first above written.

My commission expires: _____.

(S E A L)

Notary Public
Printed Name:

**EXHIBIT A
LEGAL DESCRIPTION**

EXHIBIT "C"
MHDC FORM 2013

EXHIBIT "D"

INITIAL BASE RENT PROVISIONS

The following base rents for the low-income units which were represented to MHDC will remain in effect for one (1) year after the date a qualified building in the Project is placed in service, and may be increased only upon application to and receipt of written approval from MHDC.

Studio	\$	Three Bedroom	\$
Unit Sq. Ft.		Unit Sq. Ft.	
One Bedroom	\$	Three Bedroom	\$
Unit Sq. Ft.		Unit Sq. Ft.	
Two Bedroom	\$	Four Bedroom	\$
Unit Sq. Ft.		Unit Sq. Ft.	
Two Bedroom	\$	Four Bedroom	\$
Unit Sq. Ft.		Unit Sq. Ft.	

RETURN RECORDED DOCUMENT TO:

MISSOURI HOUSING DEVELOPMENT COMMISSION
ATTENTION: GARY L. MEYER
3435 BROADWAY
KANSAS CITY, MISSOURI 64111-2403

Attachments

Sec. 42. Low-income housing credit

TITLE 26, Subtitle A, CHAPTER 1, Subchapter A, PART IV, Subpart D, Sec. 42

STATUTE

(a)

In general

For purposes of section 38, the amount of the low-income housing credit determined under this section for any taxable year in the credit period shall be an amount equal to -

(1)

the applicable percentage of

(2)

the qualified basis of each qualified low-income building.

(b)

Applicable percentage: 70 percent present value credit for certain new buildings; 30 percent present value credit for certain other buildings

For purposes of this section -

(1)

Building placed in service during 1987

In the case of any qualified low-income building placed in service by the taxpayer during 1987, the term "applicable percentage" means -

(A)

9 percent for new buildings which are not federally subsidized for the taxable year, or

(B)

4 percent for -

(i)

new buildings which are federally subsidized for the taxable year, and

(ii)

existing buildings.

(2)

Buildings placed in service after 1987

(A)

In general

In the case of any qualified low-income building placed in service by the taxpayer after 1987, the term "applicable percentage" means the appropriate percentage prescribed by the Secretary for the earlier of -

(i)

the month in which such building is placed in service, or

(ii)

at the election of the taxpayer -

(I)

the month in which the taxpayer and the housing credit agency enter into an agreement with respect to such building (which is binding on such agency, the taxpayer, and all successors in interest) as to the housing credit dollar amount to be allocated to such building, or

(II)

in the case of any building to which subsection (h)(4)(B) applies, the month in which the tax-exempt obligations are issued. A month may be elected under clause (ii) only if the election is made not later than the 5th day after the close of such month. Such an election, once made, shall be irrevocable.

(B)

Method of prescribing percentages

The percentages prescribed by the Secretary for any month shall be percentages which will yield over a 10-year period amounts of credit under subsection (a) which have a present value equal to -

(i)

70 percent of the qualified basis of a building described in paragraph (1)(A), and

(ii)

30 percent of the qualified basis of a building described in paragraph (1)(B).

(C)

Method of discounting

The present value under subparagraph (B) shall be determined -

(i)

as of the last day of the 1st year of the 10-year period referred to in subparagraph (B).

(ii)

by using a discount rate equal to 72 percent of the average of the annual Federal mid-term rate and the annual Federal long-term rate applicable under section 1274(d)(1) to the month applicable under clause (i) or (ii) of subparagraph (A) and compounded annually, and

(iii)

by assuming that the credit allowable under this section for any year is received on the last day of such year.

(3)

Cross references

(A)

For treatment of certain rehabilitation expenditures as separate new buildings, see subsection (e).

(B)

For determination of applicable percentage for increases in qualified basis after the 1st year of the credit period, see subsection (f)(3).

(C)

For authority of housing credit agency to limit applicable percentage and qualified basis which may be taken into account under this section with respect to any building, see subsection (h)(7).

(c)

Qualified basis; qualified low-income building

For purposes of this section -

(1)

Qualified basis

(A)

Determination

The qualified basis of any qualified low-income building for any taxable year is an amount equal to -

(i)

the applicable fraction (determined as of the close of such taxable year) of

(ii)

the eligible basis of such building (determined under subsection (d)(5)).

(B)

Applicable fraction

For purposes of subparagraph (A), the term "applicable fraction" means the smaller of the unit fraction or the floor space fraction.

(C)

Unit fraction

For purposes of subparagraph (B), the term "unit fraction" means the fraction -

(i)

the numerator of which is the number of low-income units in the building, and

(ii)

the denominator of which is the number of residential rental units (whether or not occupied) in such building.

(D)

Floor space fraction

For purposes of subparagraph (B), the term "floor space fraction" means the fraction -

(i)

the numerator of which is the total floor space of the low-income units in such building, and

(ii)

the denominator of which is the total floor space of the residential rental units (whether or not occupied) in such building.

(E)

Qualified basis to include portion of building used to provide supportive services for homeless

In the case of a qualified low-income building described in subsection (i)(3)(B)(iii), the qualified basis of such building for any taxable year shall be increased by the lesser of -

(i)
so much of the eligible basis of such building as is used throughout the year to provide supportive services designed to assist tenants in locating and retaining permanent housing, or
(ii)
20 percent of the qualified basis of such building (determined without regard to this subparagraph).

(2)
Qualified low-income building
The term "qualified low-income building" means any building -

(A)
which is part of a qualified low-income housing project at all times during the period -
(i)
beginning on the 1st day in the compliance period on which such building is part of such a project, and
(ii)
ending on the last day of the compliance period with respect to such building, and

(B)
to which the amendments made by section 201(a) of the Tax Reform Act of 1986 apply. Such term does not include any building with respect to which moderate rehabilitation assistance is provided, at any time during the compliance period, under section 8(e)(2) (FOOTNOTE 1) of the United States Housing Act of 1937 (other than assistance under the Stewart B. McKinney Homeless Assistance Act of 1988 (as in effect on the date of the enactment of this sentence)). (FOOTNOTE 1) See References in Text note below.

(d)

Eligible basis
For purposes of this section -

(1)
New buildings
The eligible basis of a new building is its adjusted basis as of the close of the 1st taxable year of the credit period.

(2)
Existing buildings

(A)
In general
The eligible basis of an existing building is -

(i)
in the case of a building which meets the requirements of subparagraph (B), its adjusted basis as of the close of the 1st taxable year of the credit period, and
(ii)
zero in any other case.

(B)
Requirements
A building meets the requirements of this subparagraph if -

(i)
the building is acquired by purchase (as defined in section 179(d)(2)),
(ii)
there is a period of at least 10 years between the date of its acquisition by the taxpayer and the later of -
(I)
the date the building was last placed in service, or
(II)
the date of the most recent nonqualified substantial improvement of the building,

(iii)
the building was not previously placed in service by the taxpayer or by any person who was a related person with respect to the taxpayer as of the time previously placed in service, and

(iv)
except as provided in subsection (f)(5), a credit is allowable under subsection (a) by reason of subsection (e) with respect to the building.

(C)

Adjusted basis

For purposes of subparagraph (A), the adjusted basis of any building shall not include so much of the basis of such building as is determined by reference to the basis of other property held at any time by the person acquiring the building.

(D)

Special rules for subparagraph (B)

(i)

Nonqualified substantial improvement

For purposes of subparagraph (B)(ii) -

(I)

In general

The term "nonqualified substantial improvement" means any substantial improvement if section 167(k) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) was elected with respect to such improvement or section 168 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) applied to such improvement.

(II)

Date of substantial improvement

The date of a substantial improvement is the last day of the 24-month period referred to in subclause (III).

(III)

Substantial improvement

The term "substantial improvement" means the improvements added to capital account with respect to the building during any 24-month period, but only if the sum of the amounts added to such account during such period equals or exceeds 25 percent of the adjusted basis of the building (determined without regard to paragraphs (2) and (3) of section 1016(a)) as of the 1st day of such period.

(ii)

Special rules for certain transfers

For purposes of determining under subparagraph (B)(ii) when a building was last placed in service, there shall not be taken into account any placement in service -

(I)

in connection with the acquisition of the building in a transaction in which the basis of the building in the hands of the person acquiring it is determined in whole or in part by reference to the adjusted basis of such building in the hands of the person from whom acquired,

(II)

by a person whose basis in such building is determined under section 1014(a) (relating to property acquired from a decedent),

(III)

by any governmental unit or qualified nonprofit organization (as defined in subsection (h)(5)) if the requirements of subparagraph (B)(ii) are met with respect to the placement in service by such unit or organization and all the income from such property is exempt from Federal income taxation,

(IV)

by any person who acquired such building by foreclosure (or by instrument in lieu of foreclosure) of any purchase-money security interest held by such person if the requirements of subparagraph (B)(ii) are met with respect to the placement in service by such person and such building is resold within 12 months after the date such building is placed in service by such person after such foreclosure, or

(V)

of a single-family residence by any individual who owned and used such residence for no other purpose than as his principal residence.

(iii)

Related person, etc.

(I)

Application of section 179

For purposes of subparagraph (B)(i), section 179(d) shall be applied by substituting "10 percent" for "50 percent" in section (FOOTNOTE 2) 267(b) and 707(b) and in section 179(b)(7). (FOOTNOTE 2) So in original. Probably should be "sections".

(II)

Related person

For purposes of subparagraph (B)(iii), a person (hereinafter in this subclause referred to as the "related person") is related to any person if the related person bears a relationship to such person specified in

section 267(b) or 707(b)(1), or the related person and such person are engaged in trades or businesses under common control (within the meaning of subsections (a) and (b) of section 52). For purposes of the preceding sentence, in applying section 267(b) or 707(b)(1), "10 percent" shall be substituted for "50 percent".

(3)

Eligible basis reduced where disproportionate standards for units

(A)

In general

Except as provided in subparagraph (B), the eligible basis of any building shall be reduced by an amount equal to the portion of the adjusted basis of the building which is attributable to residential rental units in the building which are not low-income units and which are above the average quality standard of the low-income units in the building.

(B)

Exception where taxpayer elects to exclude excess costs

(i)

In general

Subparagraph (A) shall not apply with respect to a residential rental unit in a building which is not a low-income unit if -

(I)

the excess described in clause (ii) with respect to such unit is not greater than 15 percent of the cost described in clause (ii)(II), and

(II)

the taxpayer elects to exclude from the eligible basis of such building the excess described in clause (ii) with respect to such unit.

(ii)

Excess

The excess described in this clause with respect to any unit is the excess of -

(I)

the cost of such unit, over

(II)

the amount which would be the cost of such unit if the average cost per square foot of low-income units in the building were substituted for the cost per square foot of such unit. The Secretary may by regulation provide for the determination of the excess under this clause on a basis other than square foot costs.

(4)

Special rules relating to determination of adjusted basis

For purposes of this subsection -

(A)

In general

Except as provided in subparagraph (B), the adjusted basis of any building shall be determined without regard to the adjusted basis of any property which is not residential rental property.

(B)

Basis of property in common areas, etc., included

The adjusted basis of any building shall be determined by taking into account the adjusted basis of property (of a character subject to the allowance for depreciation) used in common areas or provided as comparable amenities to all residential rental units in such building.

(C)

No reduction for depreciation

The adjusted basis of any building shall be determined without regard to paragraphs (2) and (3) of section 1016(a).

(5)

Special rules for determining eligible basis

(A)

Eligible basis reduced by Federal grants

If, during any taxable year of the compliance period, a grant is made with respect to any building or the operation thereof and any portion of such grant is funded with Federal funds (whether or not includible in gross income), the eligible basis of such building for such taxable year and all succeeding taxable years shall be reduced by the portion of such grant which is so funded.

(B)

Eligible basis not to include expenditures where section 167(k) elected

The eligible basis of any building shall not include any portion of its adjusted basis which is attributable to amounts with respect to which an election is made under section 167(k) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

(C)

Increase in credit for buildings in high cost areas

(i)

In general

In the case of any building located in a qualified census tract or difficult development area which is designated for purposes of this subparagraph -

(I)

in the case of a new building, the eligible basis of such building shall be 130 percent of such basis determined without regard to this subparagraph, and

(II)

in the case of an existing building, the rehabilitation expenditures taken into account under subsection (e) shall be 130 percent of such expenditures determined without regard to this subparagraph.

(ii)

Qualified census tract

(I)

In general

The term "qualified census tract" means any census tract which is designated by the Secretary of Housing and Urban Development and, for the most recent year for which census data are available on household income in such tract, in which 50 percent or more of the households have an income which is less than 60 percent of the area median gross income for such year. If the Secretary of Housing and Urban Development determines that sufficient data for any period are not available to apply this clause on the basis of census tracts, such Secretary shall apply this clause for such period on the basis of enumeration districts.

(II)

Limit on MSA's designated

The portion of a metropolitan statistical area which may be designated for purposes of this subparagraph shall not exceed an area having 20 percent of the population of such metropolitan statistical area.

(III)

Determination of areas

For purposes of this clause, each metropolitan statistical area shall be treated as a separate area and all nonmetropolitan areas in a State shall be treated as 1 area.

(iii)

Difficult development areas

(I)

In general

The term "difficult development areas" means any area designated by the Secretary of Housing and Urban Development as an area which has high construction, land, and utility costs relative to area median gross income.

(II)

Limit on areas designated

The portions of metropolitan statistical areas which may be designated for purposes of this subparagraph shall not exceed an aggregate area having 20 percent of the population of such metropolitan statistical areas. A comparable rule shall apply to nonmetropolitan areas.

(iv)

Special rules and definitions

For purposes of this subparagraph -

(I)

population shall be determined on the basis of the most recent decennial census for which data are available.

(II)

area median gross income shall be determined in accordance with subsection (g)(4).

(III)

the term "metropolitan statistical area" has the same meaning as when used in section 143(k)(2)(B), and

(IV)

the term "nonmetropolitan area" means any county (or portion thereof) which is not within a metropolitan statistical area.

(6)

Credit allowable for certain federally-assisted buildings acquired during 10-year period described in paragraph

(2)(B)(ii)

(A)

In general

On application by the taxpayer, the Secretary (after consultation with the appropriate Federal official) may waive paragraph (2)(B)(ii) with respect to any federally-assisted building if the Secretary determines that such waiver is necessary -

(i)

to avert an assignment of the mortgage secured by property in the project (of which such building is a part) to the Department of Housing and Urban Development or the Farmers Home Administration, or

(ii)

to avert a claim against a Federal mortgage insurance fund (or such Department or Administration) with respect to a mortgage which is so secured. The preceding sentence shall not apply to any building described in paragraph (7)(B).

(B)

Federally-assisted building

For purposes of subparagraph (A), the term "federally-assisted building" means any building which is substantially assisted, financed, or operated under -

(i)

section 8 of the United States Housing Act of 1937,

(ii)

section 221(d)(3) or 236 of the National Housing Act, or

(iii)

section 515 of the Housing Act of 1949, as such Acts are in effect on the date of the enactment of the Tax Reform Act of 1986.

(C)

Low-income buildings where mortgage may be prepaid

A waiver may be granted under subparagraph (A) (without regard to any clause thereof) with respect to a federally-assisted building described in clause (ii) or (iii) of subparagraph (B) if -

(i)

the mortgage on such building is eligible for prepayment under subtitle B of the Emergency Low Income Housing Preservation Act of 1987 or under section 502(c) of the Housing Act of 1949 at any time within 1 year after the date of the application for such a waiver,

(ii)

the appropriate Federal official certifies to the Secretary that it is reasonable to expect that, if the waiver is not granted, such building will cease complying with its low-income occupancy requirements, and

(iii)

the eligibility to prepay such mortgage without the approval of the appropriate Federal official is waived by all persons who are so eligible and such waiver is binding on all successors of such persons.

(D)

Buildings acquired from insured depository institutions in default

A waiver may be granted under subparagraph (A) (without regard to any clause thereof) with respect to any building acquired from an insured depository institution in default (as defined in section 3 of the Federal Deposit Insurance Act) or from a receiver or conservator of such an institution.

(E)

Appropriate Federal official

For purposes of subparagraph (A), the term "appropriate Federal official" means -

(i)

the Secretary of Housing and Urban Development in the case of any building described in subparagraph (B) by reason of clause (i) or (ii) thereof, and

(ii)

the Secretary of Agriculture in the case of any building described in subparagraph (B) by reason of clause (iii) thereof.

(7)

Acquisition of building before end of prior compliance period

(A)

In general

Under regulations prescribed by the Secretary, in the case of a building described in subparagraph (B) (or interest therein) which is acquired by the taxpayer -

(i)

paragraph (2)(B) shall not apply, but

(ii)

the credit allowable by reason of subsection (a) to the taxpayer for any period after such acquisition shall be equal to the amount of credit which would have been allowable under subsection (a) for such period to the prior owner referred to in subparagraph (B) had such owner not disposed of the building.

(B)

Description of building

A building is described in this subparagraph if -

(i)

a credit was allowed by reason of subsection (a) to any prior owner of such building, and

(ii)

the taxpayer acquired such building before the end of the compliance period for such building with respect to such prior owner (determined without regard to any disposition by such prior owner).

(e)

Rehabilitation expenditures treated as separate new building

(1)

In general

Rehabilitation expenditures paid or incurred by the taxpayer with respect to any building shall be treated for purposes of this section as a separate new building.

(2)

Rehabilitation expenditures

For purposes of paragraph (1) -

(A)

In general

The term "rehabilitation expenditures" means amounts chargeable to capital account and incurred for property (or additions or improvements to property) of a character subject to the allowance for depreciation in connection with the rehabilitation of a building.

(B)

Cost of acquisition, etc. (FOOTNOTE 3) not included (FOOTNOTE 3) So in original. Probably should be "etc.,".

Such term does not include the cost of acquiring any building (or interest therein) or any amount not permitted to be taken into account under paragraph (3) or (4) of subsection (d).

(3)

Minimum expenditures to qualify

(A)

In general

Paragraph (1) shall apply to rehabilitation expenditures with respect to any building only if -

(i)

the expenditures are allocable to 1 or more low-income units or substantially benefit such units, and

(ii)

the amount of such expenditures during any 24-month period meets the requirements of whichever of the following subclauses requires the greater amount of such expenditures:

(I)

The requirement of this subclause is met if such amount is not less than 10 percent of the adjusted basis of the building (determined as of the 1st day of such period and without regard to paragraphs (2) and (3) of section 1016(a)).

(II)

The requirement of this subclause is met if the qualified basis attributable to such amount, when divided by the number of low-income units in the building, is \$3,000 or more.

(B)

Exception from 10 percent rehabilitation

In the case of a building acquired by the taxpayer from a governmental unit, at the election of the taxpayer, subparagraph (A)(ii)(I) shall not apply and the credit under this section for such rehabilitation expenditures shall be determined using the percentage applicable under subsection (b)(2)(B)(ii).

(C)

Date of determination

The determination under subparagraph (A) shall be made as of the close of the 1st taxable year in the credit period with respect to such expenditures.

(4)

Special rules

For purposes of applying this section with respect to expenditures which are treated as a separate building by reason of this subsection -

(A)

such expenditures shall be treated as placed in service at the close of the 24-month period referred to in paragraph (3)(A), and

(B)

the applicable fraction under subsection (c)(1) shall be the applicable fraction for the building (without regard to paragraph (1)) with respect to which the expenditures were incurred. Nothing in subsection (d)(2) shall prevent a credit from being allowed by reason of this subsection.

(5)

No double counting

Rehabilitation expenditures may, at the election of the taxpayer, be taken into account under this subsection or subsection (d)(2)(A)(i) but not under both such subsections.

(6)

Regulations to apply subsection with respect to group of units in building

The Secretary may prescribe regulations, consistent with the purposes of this subsection, treating a group of units with respect to which rehabilitation expenditures are incurred as a separate new building.

(f)

Definition and special rules relating to credit period

(1)

Credit period defined

For purposes of this section, the term "credit period" means, with respect to any building, the period of 10 taxable years beginning with -

(A)

the taxable year in which the building is placed in service, or

(B)

at the election of the taxpayer, the succeeding taxable year, but only if the building is a qualified low-income building as of the close of the 1st year of such period. The election under subparagraph (B), once made, shall be irrevocable.

(2)

Special rule for 1st year of credit period

(A)

In general

The credit allowable under subsection (a) with respect to any building for the 1st taxable year of the credit period shall be determined by substituting for the applicable fraction under subsection (c)(1) the fraction -

(i)

the numerator of which is the sum of the applicable fractions determined under subsection (c)(1) as of the close of each full month of such year during which such building was in service, and

(ii)

the denominator of which is 12.

(B)

Disallowed 1st year credit allowed in 11th year

Any reduction by reason of subparagraph (A) in the credit allowable (without regard to subparagraph (A))

for the 1st taxable year of the credit period shall be allowable under subsection (a) for the 1st taxable year following the credit period.

(3)

Determination of applicable percentage with respect to increases in qualified basis after 1st year of credit period

(A)

In general

In the case of any building which was a qualified low-income building as of the close of the 1st year of the credit period, if -

(i)

as of the close of any taxable year in the compliance period (after the 1st year of the credit period) the qualified basis of such building exceeds

(ii)

the qualified basis of such building as of the close of the 1st year of the credit period, the applicable percentage which shall apply under subsection (a) for the taxable year to such excess shall be the percentage equal to 2/3 of the applicable percentage which (after the application of subsection (h)) would but for this paragraph apply to such basis.

(B)

1st year computation applies

A rule similar to the rule of paragraph (2)(A) shall apply to any increase in qualified basis to which subparagraph (A) applies for the 1st year of such increase.

(4)

Dispositions of property

If a building (or an interest therein) is disposed of during any year for which credit is allowable under subsection (a), such credit shall be allocated between the parties on the basis of the number of days during such year the building (or interest) was held by each. In any such case, proper adjustments shall be made in the application of subsection (j).

(5)

Credit period for existing buildings not to begin before rehabilitation credit allowed

(A)

In general

The credit period for an existing building shall not begin before the 1st taxable year of the credit period for rehabilitation expenditures with respect to the building.

(B)

Acquisition credit allowed for certain buildings not allowed a rehabilitation credit

(i)

In general

In the case of a building described in clause (ii) -

(I)

subsection (d)(2)(B)(iv) shall not apply, and

(II)

the credit period for such building shall not begin before the taxable year which would be the 1st taxable year of the credit period for rehabilitation expenditures with respect to the building under the modifications described in clause (ii)(II).

(ii)

Building described

A building is described in this clause if -

(I)

a waiver is granted under subsection (d)(6)(C) with respect to the acquisition of the building, and

(II)

a credit would be allowed for rehabilitation expenditures with respect to such building if subsection (e)(3)(A)(ii)(I) did not apply and if subsection (e)(3)(A)(ii)(II) were applied by substituting "\$2,000" for "\$3,000".

(g)

Qualified low-income housing project

For purposes of this section -

(1)

In general

The term "qualified low-income housing project" means any project for residential rental property if the project meets the requirements of subparagraph (A) or (B) whichever is elected by the taxpayer:

(A)

20-50 test

The project meets the requirements of this subparagraph if 20 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income.

(B)

40-60 test

The project meets the requirements of this subparagraph if 40 percent or more of the residential units in such project are both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income. Any election under this paragraph, once made, shall be irrevocable. For purposes of this paragraph, any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes.

(2)

Rent-restricted units

(A)

In general

For purposes of paragraph (1), a residential unit is rent-restricted if the gross rent with respect to such unit does not exceed 30 percent of the imputed income limitation applicable to such unit. For purposes of the preceding sentence, the amount of the income limitation under paragraph (1) applicable for any period shall not be less than such limitation applicable for the earliest period the building (which contains the unit) was included in the determination of whether the project is a qualified low-income housing project.

(B)

Gross rent

For purposes of subparagraph (A), gross rent -

(i)

does not include any payment under section 8 of the United States Housing Act of 1937 or any comparable rental assistance program (with respect to such unit or occupants thereof),

(ii)

includes any utility allowance determined by the Secretary after taking into account such determinations under section 8 of the United States Housing Act of 1937,

(iii)

does not include any fee for a supportive service which is paid to the owner of the unit (on the basis of the low-income status of the tenant of the unit) by any governmental program of assistance (or by an organization described in section 501(c)(3) and exempt from tax under section 501(a) 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, and

(iv)

does not include any rental payment to the owner of the unit to the extent such owner pays an equivalent amount to the Farmers' Home Administration under section 515 of the Housing Act of 1949. For purposes of clause (iii), the term "supportive service" means any service provided under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped. In the case of a single-room occupancy unit or a building described in subsection (i)(3)(B)(iii), such term includes any service provided to assist tenants in locating and retaining permanent housing.

(C)

Imputed income limitation applicable to unit

For purposes of this paragraph, the imputed income limitation applicable to a unit is the income limitation which would apply under paragraph (1) to individuals occupying the unit if the number of individuals occupying the unit were as follows:

(i)

In the case of a unit which does not have a separate bedroom, 1 individual.

(ii)

In the case of a unit which has 1 or more separate bedrooms, 1.5 individuals for each separate bedroom. In the case of a project with respect to which a credit is allowable by reason of this section and for which financing is provided by a bond described in section 142(a)(7), the imputed income limitation shall apply in lieu of the otherwise applicable income limitation for purposes of applying section 142(d)(4)(B)(ii).

(D)

Treatment of units occupied by individuals whose incomes rise above limit

(i)

In general

Except as provided in clause (ii), notwithstanding an increase in the income of the occupants of a low-income unit above the income limitation applicable under paragraph (1), such unit shall continue to be treated as a low-income unit if the income of such occupants initially met such income limitation and such unit continues to be rent-restricted.

(ii)

Next available unit must be rented to low-income tenant if income rises above 140 percent of income limit

If the income of the occupants of the unit increases above 140 percent of the income limitation applicable under paragraph (1), clause (i) shall cease to apply to such unit if any residential rental unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation. In the case of a project described in section 142(d)(4)(B), the preceding sentence shall be applied by substituting "170 percent" for "140 percent" and by substituting "any low-income unit in the building is occupied by a new resident whose income exceeds 40 percent of area median gross income" for "any residential unit in the building (of a size comparable to, or smaller than, such unit) is occupied by a new resident whose income exceeds such income limitation".

(E)

Units where Federal rental assistance is reduced as tenant's income increases

If the gross rent with respect to a residential unit exceeds the limitation under subparagraph (A) by reason of the fact that the income of the occupants thereof exceeds the income limitation applicable under paragraph (1), such unit shall, nevertheless, be treated as a rent-restricted unit for purposes of paragraph (1) if -

(i)

a Federal rental assistance payment described in subparagraph (B)(i) is made with respect to such unit or its occupants, and

(ii)

the sum of such payment and the gross rent with respect to such unit does not exceed the sum of the amount of such payment which would be made and the gross rent which would be payable with respect to such unit if -

(I)

the income of the occupants thereof did not exceed the income limitation applicable under paragraph (1), and

(II)

such units were rent-restricted within the meaning of subparagraph (A). The preceding sentence shall apply to any unit only if the result described in clause (ii) is required by Federal statute as of the date of the enactment of this subparagraph and as of the date the Federal rental assistance payment is made.

(3)

Date for meeting requirements

(A)

In general

Except as otherwise provided in this paragraph, a building shall be treated as a qualified low-income building only if the project (of which such building is a part) meets the requirements of paragraph (1) not later than the close of the 1st year of the credit period for such building.

(B)

Buildings which rely on later buildings for qualification

(i)

In general

In determining whether a building (hereinafter in this subparagraph referred to as the "prior building") is a qualified low-income building, the taxpayer may take into account 1 or more additional buildings placed in service during the 12-month period described in subparagraph (A) with respect to the prior building only if the taxpayer elects to apply clause (ii) with respect to each additional building taken into account.

(ii)

Treatment of elected buildings

In the case of a building which the taxpayer elects to take into account under clause (i), the period under subparagraph (A) for such building shall end at the close of the 12-month period applicable to the prior building.

(iii)

Date prior building is treated as placed in service

For purposes of determining the credit period and the compliance period for the prior building, the prior building shall be treated for purposes of this section as placed in service on the most recent date any additional building elected by the taxpayer (with respect to such prior building) was placed in service.

(C)

Special rule

A building -

(i)

other than the 1st building placed in service as part of a project, and

(ii)

other than a building which is placed in service during the 12-month period described in subparagraph (A) with respect to a prior building which becomes a qualified low-income building, shall in no event be treated as a qualified low-income building unless the project is a qualified low-income housing project (without regard to such building) on the date such building is placed in service.

(D)

Projects with more than 1 building must be identified

For purposes of this section, a project shall be treated as consisting of only 1 building unless, before the close of the 1st calendar year in the project period (as defined in subsection (h)(1)(F)(ii)), each building which is (or will be) part of such project is identified in such form and manner as the Secretary may provide.

(4)

Certain rules made applicable

Paragraphs (2) (other than subparagraph (A) thereof), (3), (4), (5), (6), and (7) of section 142(d), and section 6652(j), shall apply for purposes of determining whether any project is a qualified low-income housing project and whether any unit is a low-income unit; except that, in applying such provisions for such purposes, the term "gross rent" shall have the meaning given such term by paragraph (2)(B) of this subsection.

(5)

Election to treat building after compliance period as not part of a project

For purposes of this section, the taxpayer may elect to treat any building as not part of a qualified low-income housing project for any period beginning after the compliance period for such building.

(6)

Special rule where de minimis equity contribution

Property shall not be treated as failing to be residential rental property for purposes of this section merely because the occupant of a residential unit in the project pays (on a voluntary basis) to the lessor a de minimis amount to be held toward the purchase by such occupant of a residential unit in such project if -

(A)

all amounts so paid are refunded to the occupant on the cessation of his occupancy of a unit in the project, and

(B)

the purchase of the unit is not permitted until after the close of the compliance period with respect to the building in which the unit is located. Any amount paid to the lessor as described in the preceding sentence shall be included in gross rent under paragraph (2) for purposes of determining whether the unit is rent- restricted.

(7)

Scattered site projects

Buildings which would (but for their lack of proximity) be treated as a project for purposes of this section shall be so treated if all of the dwelling units in each of the buildings are rent-restricted (within the meaning of paragraph (2)) residential rental units.

(8)

Waiver of certain de minimis errors and recertifications

On application by the taxpayer, the Secretary may waive -

(A)

any recapture under subsection (j) in the case of any de minimis error in complying with paragraph (1), or

(B)

any annual recertification of tenant income for purposes of this subsection, if the entire building is occupied by low-income tenants.

(h)

Limitation on aggregate credit allowable with respect to projects located in a State

(1)

Credit may not exceed credit amount allocated to building

(A)

In general

The amount of the credit determined under this section for any taxable year with respect to any building shall not exceed the housing credit dollar amount allocated to such building under this subsection.

(B)

Time for making allocation

Except in the case of an allocation which meets the requirements of subparagraph (C), (D), (E), or (F), an allocation shall be taken into account under subparagraph (A) only if it is made not later than the close of the calendar year in which the building is placed in service.

(C)

Exception where binding commitment

An allocation meets the requirements of this subparagraph if there is a binding commitment (not later than the close of the calendar year in which the building is placed in service) by the housing credit agency to allocate a specified housing credit dollar amount to such building beginning in a specified later taxable year.

(D)

Exception where increase in qualified basis

(i)

In general

An allocation meets the requirements of this subparagraph if such allocation is made not later than the close of the calendar year in which ends the taxable year to which it will 1st apply but only to the extent the amount of such allocation does not exceed the limitation under clause (ii).

(ii)

Limitation

The limitation under this clause is the amount of credit allowable under this section (without regard to this subsection) for a taxable year with respect to an increase in the qualified basis of the building equal to the excess of -

(I)

the qualified basis of such building as of the close of the 1st taxable year to which such allocation will apply, over

(II)

the qualified basis of such building as of the close of the 1st taxable year to which the most recent prior housing credit allocation with respect to such building applied.

(iii)

Housing credit dollar amount reduced by full allocation

Notwithstanding clause (i), the full amount of the allocation shall be taken into account under paragraph (2).

(E)

Exception where 10 percent of cost incurred

(i)

In general

An allocation meets the requirements of this subparagraph if such allocation is made with respect to a qualified building which is placed in service not later than the close of the second calendar year following the calendar year in which the allocation is made.

(ii)

Qualified building

For purposes of clause (i), the term "qualified building" means any building which is part of a project if the taxpayer's basis in such project (as of the close of the calendar year in which the allocation is made) is more than 10 percent of the taxpayer's reasonably expected basis in such project (as of the close of the second calendar year referred to in clause (i)). Such term does not include any existing building unless a credit is allowable under subsection (e) for rehabilitation expenditures paid or incurred by the taxpayer with respect to such building for a taxable year ending during the second calendar year referred to in clause (i) or the prior taxable year.

(F)

Allocation of credit on a project basis

(i)

In general

In the case of a project which includes (or will include) more than 1 building, an allocation meets the requirements of this subparagraph if -

(I)

the allocation is made to the project for a calendar year during the project period,

(II)

the allocation only applies to buildings placed in service during or after the calendar year for which the allocation is made, and

(III)

the portion of such allocation which is allocated to any building in such project is specified not later than the close of the calendar year in which the building is placed in service.

(ii)

Project period

For purposes of clause (i), the term "project period" means the period -

(I)

beginning with the 1st calendar year for which an allocation may be made for the 1st building placed in service as part of such project, and

(II)

ending with the calendar year the last building is placed in service as part of such project.

(2)

Allocated credit amount to apply to all taxable years ending during or after credit allocation year

Any housing credit dollar amount allocated to any building for any calendar year -

(A)

shall apply to such building for all taxable years in the compliance period ending during or after such calendar year, and

(B)

shall reduce the aggregate housing credit dollar amount of the allocating agency only for such calendar year.

(3)

Housing credit dollar amount for agencies

(A)

In general

The aggregate housing credit dollar amount which a housing credit agency may allocate for any calendar year is the portion of the State housing credit ceiling allocated under this paragraph for such calendar year to such agency.

(B)

State ceiling initially allocated to State housing credit agencies

Except as provided in subparagraphs (D) and (E), the State housing credit ceiling for each calendar year

shall be allocated to the housing credit agency of such State. If there is more than 1 housing credit agency of a State, all such agencies shall be treated as a single agency.

(C)

State housing credit ceiling

The State housing credit ceiling applicable to any State for any calendar year shall be an amount equal to the sum of -

(i)

\$1.25 multiplied by the State population,

(ii)

the unused State housing credit ceiling (if any) of such State for the preceding calendar year,

(iii)

the amount of State housing credit ceiling returned in the calendar year, plus

(iv)

the amount (if any) allocated under subparagraph (D) to such State by the Secretary. For purposes of clause (ii), the unused State housing credit ceiling for any calendar year is the excess (if any) of the sum of the amounts described in clauses (i) and (iii) over the aggregate housing credit dollar amount allocated for such year. For purposes of clause (iii), the amount of State housing credit ceiling returned in the calendar year equals the housing credit dollar amount previously allocated within the State to any project which does not become a qualified low-income housing project within the period required by this section or the terms of the allocation or to any project with respect to which an allocation is cancelled by mutual consent of the housing credit agency and the allocation recipient.

(D)

Unused housing credit carryovers allocated among certain States

(i)

In general

The unused housing credit carryover of a State for any calendar year shall be assigned to the Secretary for allocation among qualified States for the succeeding calendar year.

(ii)

Unused housing credit carryover

For purposes of this subparagraph, the unused housing credit carryover of a State for any calendar year is the excess (if any) of the unused State housing credit ceiling for such year (as defined in subparagraph (C)(ii)) over the excess (if any) of -

(I)

the aggregate housing credit dollar amount allocated for such year, over

(II)

the sum of the amounts described in clauses (i) and (iii) of subparagraph (C).

(iii)

Formula for allocation of unused housing credit carryovers among qualified States

The amount allocated under this subparagraph to a qualified State for any calendar year shall be the amount determined by the Secretary to bear the same ratio to the aggregate unused housing credit carryovers of all States for the preceding calendar year as such State's population for the calendar year bears to the population of all qualified States for the calendar year. For purposes of the preceding sentence, population shall be determined in accordance with section 146(j).

(iv)

Qualified State

For purposes of this subparagraph, the term "qualified State" means, with respect to a calendar year, any State -

(I)

which allocated its entire State housing credit ceiling for the preceding calendar year, and

(II)

for which a request is made (not later than May 1 of the calendar year) to receive an allocation under clause (iii).

(E)

Special rule for States with constitutional home rule cities

For purposes of this subsection -

(i)

In general

The aggregate housing credit dollar amount for any constitutional home rule city for any calendar year shall be an amount which bears the same ratio to the State housing credit ceiling for such calendar year as -

(I)

the population of such city, bears to

(II)

the population of the entire State.

(ii)

Coordination with other allocations

In the case of any State which contains 1 or more constitutional home rule cities, for purposes of applying this paragraph with respect to housing credit agencies in such State other than constitutional home rule cities, the State housing credit ceiling for any calendar year shall be reduced by the aggregate housing credit dollar amounts determined for such year for all constitutional home rule cities in such State.

(iii)

Constitutional home rule city

For purposes of this paragraph, the term "constitutional home rule city" has the meaning given such term by section 146(d)(3)(C).

(F)

State may provide for different allocation

Rules similar to the rules of section 146(e) (other than paragraph (2)(B) thereof) shall apply for purposes of this paragraph.

(G)

Population

For purposes of this paragraph, population shall be determined in accordance with section 146(j).

(4)

Credit for buildings financed by tax-exempt bonds subject to volume cap not taken into account

(A)

In general

Paragraph (1) shall not apply to the portion of any credit allowable under subsection (a) which is attributable to eligible basis financed by any obligation the interest on which is exempt from tax under section 103 if -

(i)

such obligation is taken into account under section 146, and

(ii)

principal payments on such financing are applied within a reasonable period to redeem obligations the proceeds of which were used to provide such financing.

(B)

Special rule where 50 percent or more of building is financed with tax-exempt bonds subject to volume cap

For purposes of subparagraph (A), if 50 percent or more of the aggregate basis of any building and the land on which the building is located is financed by any obligation described in subparagraph (A), paragraph (1) shall not apply to any portion of the credit allowable under subsection (a) with respect to such building.

(5)

Portion of State ceiling set-aside for certain projects involving qualified nonprofit organizations

(A)

In general

Not more than 90 percent of the State housing credit ceiling for any State for any calendar year shall be allocated to projects other than qualified low-income housing projects described in subparagraph (B).

(B)

Projects involving qualified nonprofit organizations

For purposes of subparagraph (A), a qualified low-income housing project is described in this subparagraph if a qualified nonprofit organization is to own an interest in the project (directly or through a

partnership) and materially participate (within the meaning of section 469(h)) in the development and operation of the project throughout the compliance period.

(C)

Qualified nonprofit organization

For purposes of this paragraph, the term "qualified nonprofit organization" means any organization if -

(i)

such organization is described in paragraph (3) or (4) of section 501(c) and is exempt from tax under section 501(a).

(ii)

such organization is determined by the State housing credit agency not to be affiliated with or controlled by a for-profit organization; (FOOTNOTE 4) and (FOOTNOTE 4) So in original. The semicolon probably should be a comma.

(iii)

1 of the exempt purposes of such organization includes the fostering of low-income housing.

(D)

Treatment of certain subsidiaries

(i)

In general

For purposes of this paragraph, a qualified nonprofit organization shall be treated as satisfying the ownership and material participation test of subparagraph (B) if any qualified corporation in which such organization holds stock satisfies such test.

(ii)

Qualified corporation

For purposes of clause (i), the term "qualified corporation" means any corporation if 100 percent of the stock of such corporation is held by 1 or more qualified nonprofit organizations at all times during the period such corporation is in existence.

(E)

State may not override set-aside

Nothing in subparagraph (F) of paragraph (3) shall be construed to permit a State not to comply with subparagraph (A) of this paragraph.

(6)

Buildings eligible for credit only if minimum long-term commitment to low-income housing

(A)

In general

No credit shall be allowed by reason of this section with respect to any building for the taxable year unless an extended low-income housing commitment is in effect as of the end of such taxable year.

(B)

Extended low-income housing commitment

For purposes of this paragraph, the term "extended low-income housing commitment" means any agreement between the taxpayer and the housing credit agency -

(i)

which requires that the applicable fraction (as defined in subsection (c)(1)) for the building for each taxable year in the extended use period will not be less than the applicable fraction specified in such agreement and which prohibits the actions described in subclauses (I) and (II) of subparagraph (E)(ii).

(ii)

which allows individuals who meet the income limitation applicable to the building under subsection (g) (whether prospective, present, or former occupants of the building) the right to enforce in any State court the requirement and prohibitions of clause (i).

(iii)

which prohibits the disposition to any person of any portion of the building to which such agreement applies unless all of the building to which such agreement applies is disposed of to such person.

(iv)

which prohibits the refusal to lease to a holder of a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder.

(v)

which is binding on all successors of the taxpayer, and

(vi)

which, with respect to the property, is recorded pursuant to State law as a restrictive covenant.

(C)

Allocation of credit may not exceed amount necessary to support commitment

(i)

In general

The housing credit dollar amount allocated to any building may not exceed the amount necessary to support the applicable fraction specified in the extended low-income housing commitment for such building, including any increase in such fraction pursuant to the application of subsection (f)(3) if such increase is reflected in an amended low-income housing commitment.

(ii)

Buildings financed by tax-exempt bonds

If paragraph (4) applies to any building the amount of credit allowed in any taxable year may not exceed the amount necessary to support the applicable fraction specified in the extended low-income housing commitment for such building. Such commitment may be amended to increase such fraction.

(D)

Extended use period

For purposes of this paragraph, the term "extended use period" means the period -

(i)

beginning on the 1st day in the compliance period on which such building is part of a qualified low-income housing project, and

(ii)

ending on the later of -

(I)

the date specified by such agency in such agreement, or

(II)

the date which is 15 years after the close of the compliance period.

(E)

Exceptions if foreclosure or if no buyer willing to maintain low-income status

(i)

In general

The extended use period for any building shall terminate -

(I)

on the date the building is acquired by foreclosure (or instrument in lieu of foreclosure) unless the Secretary determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period, or

(II)

on the last day of the period specified in subparagraph (I) if the housing credit agency is unable to present during such period a qualified contract for the acquisition of the low-income portion of the building by any person who will continue to operate such portion as a qualified low-income building. Subclause (II) shall not apply to the extent more stringent requirements are provided in the agreement or in State law.

(ii)

Eviction, etc. of existing low-income tenants not permitted

The termination of an extended use period under clause (i) shall not be construed to permit before the close of the 3-year period following such termination -

(I)

the eviction or the termination of tenancy (other than for good cause) of an existing tenant of any low-income unit, or

(II)

any increase in the gross rent with respect to such unit not otherwise permitted under this section.

(F)

Qualified contract

For purposes of subparagraph (E), the term "qualified contract" means a bona fide contract to acquire (within a reasonable period after the contract is entered into) the nonlow-income portion of the building for

fair market value and the low-income portion of the building for an amount not less than the applicable fraction (specified in the extended low-income housing commitment) of -

(i)

the sum of -

(I)

the outstanding indebtedness secured by, or with respect to, the building.

(II)

the adjusted investor equity in the building, plus

(III)

other capital contributions not reflected in the amounts described in subclause (I) or (II), reduced by

(ii)

cash distributions from (or available for distribution from) the project. The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph, including regulations to prevent the manipulation of the amount determined under the preceding sentence.

(G)

Adjusted investor equity

(i)

In general

For purposes of subparagraph (E), the term "adjusted investor equity" means, with respect to any calendar year, the aggregate amount of cash taxpayers invested with respect to the project increased by the amount equal to -

(I)

such amount, multiplied by

(II)

the cost-of-living adjustment for such calendar year, determined under section 1(f)(3) by substituting the base calendar year for "calendar year 1987". An amount shall be taken into account as an investment in the project only to the extent there was an obligation to invest such amount as of the beginning of the credit period and to the extent such amount is reflected in the adjusted basis of the project.

(ii)

Cost-of-living increases in excess of 5 percent not taken into account

Under regulations prescribed by the Secretary, if the CPI for any calendar year (as defined in section 1(f)(4)) exceeds the CPI for the preceding calendar year by more than 5 percent, the CPI for the base calendar year shall be increased such that such excess shall never be taken into account under clause

(i).

(iii)

Base calendar year

For purposes of this subparagraph, the term "base calendar year" means the calendar year with or within which the 1st taxable year of the credit period ends.

(H)

Low-income portion

For purposes of this paragraph, the low-income portion of a building is the portion of such building equal to the applicable fraction specified in the extended low-income housing commitment for the building.

(I)

Period for finding buyer

The period referred to in this subparagraph is the 1-year period beginning on the date (after the 14th year of the compliance period) the taxpayer submits a written request to the housing credit agency to find a person to acquire the taxpayer's interest in the low-income portion of the building.

(J)

Effect of noncompliance

If, during a taxable year, there is a determination that an extended low-income housing agreement was not in effect as of the beginning of such year, such determination shall not apply to any period before such year and subparagraph (A) shall be applied without regard to such determination if the failure is corrected within 1 year from the date of the determination.

(K)

Projects which consist of more than 1 building

The application of this paragraph to projects which consist of more than 1 building shall be made under regulations prescribed by the Secretary.

(7)

Special rules

(A)

Building must be located within jurisdiction of credit agency

A housing credit agency may allocate its aggregate housing credit dollar amount only to buildings located in the jurisdiction of the governmental unit of which such agency is a part.

(B)

Agency allocations in excess of limit

If the aggregate housing credit dollar amounts allocated by a housing credit agency for any calendar year exceed the portion of the State housing credit ceiling allocated to such agency for such calendar year, the housing credit dollar amounts so allocated shall be reduced (to the extent of such excess) for buildings in the reverse of the order in which the allocations of such amounts were made.

(C)

Credit reduced if allocated credit dollar amount is less than credit which would be allowable without regard to placed in service convention, etc.

(i)

In general

The amount of the credit determined under this section with respect to any building shall not exceed the clause (ii) percentage of the amount of the credit which would (but for this subparagraph) be determined under this section with respect to such building.

(ii)

Determination of percentage

For purposes of clause (i), the clause (ii) percentage with respect to any building is the percentage which

-

(I)

the housing credit dollar amount allocated to such building bears to

(II)

the credit amount determined in accordance with clause (iii).

(iii)

Determination of credit amount

The credit amount determined in accordance with this clause is the amount of the credit which would (but for this subparagraph) be determined under this section with respect to the building if -

(I)

this section were applied without regard to paragraphs (2)(A) and (3)(B) of subsection (f), and

(II)

subsection (f)(3)(A) were applied without regard to "the percentage equal to 2/3 of".

(D)

Housing credit agency to specify applicable percentage and maximum qualified basis

In allocating a housing credit dollar amount to any building, the housing credit agency shall specify the applicable percentage and the maximum qualified basis which may be taken into account under this section with respect to such building. The applicable percentage and maximum qualified basis so specified shall not exceed the applicable percentage and qualified basis determined under this section without regard to this subsection.

(8)

Other definitions

For purposes of this subsection -

(A)

Housing credit agency

The term "housing credit agency" means any agency authorized to carry out this subsection.

(B)

Possessions treated as States

The term "State" includes a possession of the United States.

(i)

Definitions and special rules

For purposes of this section -

(1)

Compliance period

The term "compliance period" means, with respect to any building, the period of 15 taxable years beginning with the 1st taxable year of the credit period with respect thereto.

(2)

Determination of whether building is federally subsidized

(A)

In general

Except as otherwise provided in this paragraph, for purposes of subsection (b)(1), a new building shall be treated as federally subsidized for any taxable year if, at any time during such taxable year or any prior taxable year, there is or was outstanding any obligation the interest on which is exempt from tax under section 103, or any below market Federal loan, the proceeds of which are or were used (directly or indirectly) with respect to such building or the operation thereof.

(B)

Election to reduce eligible basis by balance of loan or proceeds of obligations

A loan or tax-exempt obligation shall not be taken into account under subparagraph (A) if the taxpayer elects to exclude from the eligible basis of the building for purposes of subsection (d) -

(i)

in the case of a loan, the principal amount of such loan, and

(ii)

in the case of a tax-exempt obligation, the proceeds of such obligation.

(C)

Special rule for subsidized construction financing

Subparagraph (A) shall not apply to any tax-exempt obligation or below market Federal loan used to provide construction financing for any building if -

(i)

such obligation or loan (when issued or made) identified the building for which the proceeds of such obligation or loan would be used, and

(ii)

such obligation is redeemed, and such loan is repaid, before such building is placed in service.

(D)

Below market Federal loan

For purposes of this paragraph, the term "below market Federal loan" means any loan funded in whole or in part with Federal funds if the interest rate payable on such loan is less than the applicable Federal rate in effect under section 1274(d)(1) (as of the date on which the loan was made). Such term shall not include any loan which would be a below market Federal loan solely by reason of assistance provided under section 106, 107, or 108 of the Housing and Community Development Act of 1974 (as in effect on the date of the enactment of this sentence).

(E)

Buildings receiving HOME assistance

(i)

In general

Assistance provided under the HOME Investment Partnerships Act (as in effect on the date of the enactment of this subparagraph) with respect to any building shall not be taken into account under subparagraph (D) if 40 percent or more of the residential units in the building are occupied by individuals whose income is 50 percent or less of area median gross income. Subsection (d)(5)(C) shall not apply to any building to which the preceding sentence applies.

(ii)

Special rule for certain high-cost housing areas

In the case of a building located in a city described in section 142(d)(6), clause (i) shall be applied by substituting "25 percent" for "40 percent".

(3)

Low-income unit

(A)

In general

The term "low-income unit" means any unit in a building if -

(i)
such unit is rent-restricted (as defined in subsection (g)(2)), and

(ii)
the individuals occupying such unit meet the income limitation applicable under subsection (g)(1) to the project of which such building is a part.

(B)
Exceptions

(i)
In general

A unit shall not be treated as a low-income unit unless the unit is suitable for occupancy and used other than on a transient basis.

(ii)
Suitability for occupancy

For purposes of clause (i), the suitability of a unit for occupancy shall be determined under regulations prescribed by the Secretary taking into account local health, safety, and building codes.

(iii)
Transitional housing for homeless

For purposes of clause (i), a unit shall be considered to be used other than on a transient basis if the unit contains sleeping accommodations and kitchen and bathroom facilities and is located in a building -

(I)
which is used exclusively to facilitate the transition of homeless individuals (within the meaning of section 103 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11302), as in effect on the date of the enactment of this clause) to independent living within 24 months, and

(II)
in which a governmental entity or qualified nonprofit organization (as defined in subsection (h)(5)) provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing.

(iv)
Single-room occupancy units

For purposes of clause (i), a single-room occupancy unit shall not be treated as used on a transient basis merely because it is rented on a month-by-month basis.

(C)
Special rule for buildings having 4 or fewer units

In the case of any building which has 4 or fewer residential rental units, no unit in such building shall be treated as a low-income unit if the units in such building are owned by -

(i)
any individual who occupies a residential unit in such building, or

(ii)
any person who is related (as defined in subsection (d)(2)(D)(iii)) to such individual.

(D)
Certain students not to disqualify unit

A unit shall not fail to be treated as a low-income unit merely because it is occupied -

(i)
by an individual who is -

(I)
a student and receiving assistance under title IV of the Social Security Act, or

(II)
enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws, or

(ii)
entirely by full-time students if such students are -

(I)
single parents and their children and such parents and children are not dependents (as defined in section 152) of another individual, or

(II)
married and file a joint return.

(E)

Owner-occupied buildings having 4 or fewer units eligible for credit where development plan

(i)

In general

Subparagraph (C) shall not apply to the acquisition or rehabilitation of a building pursuant to a development plan of action sponsored by a State or local government or a qualified nonprofit organization (as defined in subsection (h)(5)(C)).

(ii)

Limitation on credit

In the case of a building to which clause (i) applies, the applicable fraction shall not exceed 80 percent of the unit fraction.

(iii)

Certain unrented units treated as owner-occupied

In the case of a building to which clause (i) applies, any unit which is not rented for 90 days or more shall be treated as occupied by the owner of the building as of the 1st day it is not rented.

(4)

New building

The term "new building" means a building the original use of which begins with the taxpayer.

(5)

Existing building

The term "existing building" means any building which is not a new building.

(6)

Application to estates and trusts

In the case of an estate or trust, the amount of the credit determined under subsection (a) and any increase in tax under subsection (j) shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(7)

Impact of tenant's right of 1st refusal to acquire property

(A)

In general

No Federal income tax benefit shall fail to be allowable to the taxpayer with respect to any qualified low-income building merely by reason of a right of 1st refusal held by the tenants (in cooperative form or otherwise) or resident management corporation of such building or by a qualified nonprofit organization (as defined in subsection (h)(5)(C)) or government agency to purchase the property after the close of the compliance period for a price which is not less than the minimum purchase price determined under subparagraph (B).

(B)

Minimum purchase price

For purposes of subparagraph (A), the minimum purchase price under this subparagraph is an amount equal to the sum of -

(i)

the principal amount of outstanding indebtedness secured by the building (other than indebtedness incurred within the 5-year period ending on the date of the sale to the tenants), and

(ii)

all Federal, State, and local taxes attributable to such sale. Except in the case of Federal income taxes, there shall not be taken into account under clause (ii) any additional tax attributable to the application of clause (ii).

(i)

Recapture of credit

(1)

In general

If -

(A)

as of the close of any taxable year in the compliance period, the amount of the qualified basis of any building with respect to the taxpayer is less than

(B)

the amount of such basis as of the close of the preceding taxable year, then the taxpayer's tax under this chapter for the taxable year shall be increased by the credit recapture amount.

(2)

Credit recapture amount

For purposes of paragraph (1), the credit recapture amount is an amount equal to the sum of -

(A)

the aggregate decrease in the credits allowed to the taxpayer under section 38 for all prior taxable years which would have resulted if the accelerated portion of the credit allowable by reason of this section were not allowed for all prior taxable years with respect to the excess of the amount described in paragraph (1)(B) over the amount described in paragraph (1)(A), plus

(B)

interest at the overpayment rate established under section 6621 on the amount determined under subparagraph (A) for each prior taxable year for the period beginning on the due date for filing the return for the prior taxable year involved. No deduction shall be allowed under this chapter for interest described in subparagraph (B).

(3)

Accelerated portion of credit

For purposes of paragraph (2), the accelerated portion of the credit for the prior taxable years with respect to any amount of basis is the excess of -

(A)

the aggregate credit allowed by reason of this section (without regard to this subsection) for such years with respect to such basis, over

(B)

the aggregate credit which would be allowable by reason of this section for such years with respect to such basis if the aggregate credit which would (but for this subsection) have been allowable for the entire compliance period were allowable ratably over 15 years.

(4)

Special rules

(A)

Tax benefit rule

The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

(B)

Only basis for which credit allowed taken into account

Qualified basis shall be taken into account under paragraph (1)(B) only to the extent such basis was taken into account in determining the credit under subsection (a) for the preceding taxable year referred to in such paragraph.

(C)

No recapture of additional credit allowable by reason of subsection (f)(3)

Paragraph (1) shall apply to a decrease in qualified basis only to the extent such decrease exceeds the amount of qualified basis with respect to which a credit was allowable for the taxable year referred to in paragraph (1)(B) by reason of subsection (f)(3).

(D)

No credits against tax

Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under subpart A, B, D, or G of this part.

(E)

No recapture by reason of casualty loss

The increase in tax under this subsection shall not apply to a reduction in qualified basis by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period established by the Secretary.

(F)

No recapture where de minimis changes in floor space

The Secretary may provide that the increase in tax under this subsection shall not apply with respect to any building if -

(i)
such increase results from a de minimis change in the floor space fraction under subsection (c)(1), and
(ii)
the building is a qualified low-income building after such change.

(5)
Certain partnerships treated as the taxpayer

(A)
In general

For purposes of applying this subsection to a partnership to which this paragraph applies -

(i)
such partnership shall be treated as the taxpayer to which the credit allowable under subsection (a) was allowed.

(ii)
the amount of such credit allowed shall be treated as the amount which would have been allowed to the partnership were such credit allowable to such partnership.

(iii)
paragraph (4)(A) shall not apply, and

(iv)
the amount of the increase in tax under this subsection for any taxable year shall be allocated among the partners of such partnership in the same manner as such partnership's taxable income for such year is allocated among such partners.

(B)
Partnerships to which paragraph applies

This paragraph shall apply to any partnership which has 35 or more partners unless the partnership elects not to have this paragraph apply.

(C)
Special rules

(i)
Husband and wife treated as 1 partner

For purposes of subparagraph (B)(i), a husband and wife (and their estates) shall be treated as 1 partner.

(ii)
Election irrevocable

Any election under subparagraph (B), once made, shall be irrevocable.

(6)
No recapture on disposition of building (or interest therein)
where bond posted

In the case of a disposition of a building or an interest therein, the taxpayer shall be discharged from liability for any additional tax under this subsection by reason of such disposition if -

(A)
the taxpayer furnishes to the Secretary a bond in an amount satisfactory (FOOTNOTE 5) to the Secretary and for the period required by the Secretary, and (FOOTNOTE 5) So in original. Probably should be "satisfactory".

(B)
it is reasonably expected that such building will continue to be operated as a qualified low-income building for the remaining compliance period with respect to such building.

(k)

Application of at-risk rules
For purposes of this section -

(1)
In general

Except as otherwise provided in this subsection, rules similar to the rules of section 49(a)(1) (other than subparagraphs (D)(ii)(II) and (D)(iv)(I) thereof), section 49(a)(2), and section 49(b)(1) shall apply in determining the qualified basis of any building in the same manner as such sections apply in determining the credit base of property.

(2)
Special rules for determining qualified person

For purposes of paragraph (1) -

(A)

In general

If the requirements of subparagraphs (B), (C), and (D) are met with respect to any financing borrowed from a qualified nonprofit organization (as defined in subsection (h)(5)), the determination of whether such financing is qualified commercial financing with respect to any qualified low-income building shall be made without regard to whether such organization -

(i)

is actively and regularly engaged in the business of lending money, or

(ii)

is a person described in section 49(a)(1)(D)(iv)(II).

(B)

Financing secured by property

The requirements of this subparagraph are met with respect to any financing if such financing is secured by the qualified low-income building, except that this subparagraph shall not apply in the case of a federally assisted building described in subsection (d)(6)(B) if -

(i)

a security interest in such building is not permitted by a Federal agency holding or insuring the mortgage secured by such building, and

(ii)

the proceeds from the financing (if any) are applied to acquire or improve such building.. (FOOTNOTE 6) (FOOTNOTE 6) So in original.

(C)

Portion of building attributable to financing

The requirements of this subparagraph are met with respect to any financing for any taxable year in the compliance period if, as of the close of such taxable year, not more than 60 percent of the eligible basis of the qualified low-income building is attributable to such financing (reduced by the principal and interest of any governmental financing which is part of a wrap-around mortgage involving such financing).

(D)

Repayment of principal and interest

The requirements of this subparagraph are met with respect to any financing if such financing is fully repaid on or before the earliest of -

(i)

the date on which such financing matures.

(ii)

the 90th day after the close of the compliance period with respect to the qualified low-income building, or

(iii)

the date of its refinancing or the sale of the building to which such financing relates. In the case of a qualified nonprofit organization which is not described in section 49(a)(1)(D)(iv)(II) with respect to a building, clause (ii) of this subparagraph shall be applied as if the date described therein were the 90th day after the earlier of the date the building ceases to be a qualified low-income building or the date which is 15 years after the close of a compliance period with respect thereto.

(3)

Present value of financing

If the rate of interest on any financing described in paragraph (2)(A) is less than the rate which is 1 percentage point below the applicable Federal rate as of the time such financing is incurred, then the qualified basis (to which such financing relates) of the qualified low-income building shall be the present value of the amount of such financing, using as the discount rate such applicable Federal rate. For purposes of the preceding sentence, the rate of interest on any financing shall be determined by treating interest to the extent of government subsidies as not payable.

(4)

Failure to fully repay

(A)

In general

To the extent that the requirements of paragraph (2)(D) are not met, then the taxpayer's tax under this chapter for the taxable year in which such failure occurs shall be increased by an amount equal to the applicable portion of the credit under this section with respect to such building, increased by an amount of interest for the period -

(i)
beginning with the due date for the filing of the return of tax imposed by chapter 1 for the 1st taxable year for which such credit was allowable, and

(ii)
ending with the due date for the taxable year in which such failure occurs, determined by using the underpayment rate and method under section 6621.

(B)
Applicable portion

For purposes of subparagraph (A), the term "applicable portion" means the aggregate decrease in the credits allowed to a taxpayer under section 38 for all prior taxable years which would have resulted if the eligible basis of the building were reduced by the amount of financing which does not meet requirements of paragraph (2)(D).

(C)

Certain rules to apply

Rules similar to the rules of subparagraphs (A) and (D) of subsection (j)(4) shall apply for purposes of this subsection.

(l)

Certifications and other reports to Secretary

(1)

Certification with respect to 1st year of credit period

Following the close of the 1st taxable year in the credit period with respect to any qualified low-income building, the taxpayer shall certify to the Secretary (at such time and in such form and in such manner as the Secretary prescribes) -

(A)

the taxable year, and calendar year, in which such building was placed in service,

(B)

the adjusted basis and eligible basis of such building as of the close of the 1st year of the credit period,

(C)

the maximum applicable percentage and qualified basis permitted to be taken into account by the appropriate housing credit agency under subsection (h),

(D)

the election made under subsection (g) with respect to the qualified low-income housing project of which such building is a part, and

(E)

such other information as the Secretary may require. In the case of a failure to make the certification required by the preceding sentence on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, no credit shall be allowable by reason of subsection (a) with respect to such building for any taxable year ending before such certification is made.

(2)

Annual reports to the Secretary

The Secretary may require taxpayers to submit an information return (at such time and in such form and manner as the Secretary prescribes) for each taxable year setting forth -

(A)

the qualified basis for the taxable year of each qualified low-income building of the taxpayer,

(B)

the information described in paragraph (1)(C) for the taxable year, and

(C)

such other information as the Secretary may require. The penalty under section 6652(j) shall apply to any failure to submit the return required by the Secretary under the preceding sentence on the date prescribed therefor.

(3)

Annual reports from housing credit agencies

Each agency which allocates any housing credit amount to any building for any calendar year shall submit to the Secretary (at such time and in such manner as the Secretary shall prescribe) an annual report specifying -

(A)

the amount of housing credit amount allocated to each building for such year,

(B)

sufficient information to identify each such building and the taxpayer with respect thereto, and

(C)

such other information as the Secretary may require. The penalty under section 6652(j) shall apply to any failure to submit the report required by the preceding sentence on the date prescribed therefor.

(m)

Responsibilities of housing credit agencies

(1)

Plans for allocation of credit among projects

(A)

In general

Notwithstanding any other provision of this section, the housing credit dollar amount with respect to any building shall be zero unless -

(i)

such amount was allocated pursuant to a qualified allocation plan of the housing credit agency which is approved by the governmental unit (in accordance with rules similar to the rules of section 147(f)(2) (other than subparagraph (B)(ii) thereof)) of which such agency is a part, and

(ii)

such agency notifies the chief executive officer (or the equivalent) of the local jurisdiction within which the building is located of such project and provides such individual a reasonable opportunity to comment on the project.

(B)

Qualified allocation plan

For purposes of this paragraph, the term "qualified allocation plan" means any plan -

(i)

which sets forth selection criteria to be used to determine housing priorities of the housing credit agency which are appropriate to local conditions,

(ii)

which also gives preference in allocating housing credit dollar amounts among selected projects to -

(I)

projects serving the lowest income tenants, and

(II)

projects obligated to serve qualified tenants for the longest periods, and

(iii)

which provides a procedure that the agency (or an agent or other private contractor of such agency) will follow in monitoring for noncompliance with the provisions of this section and in notifying the Internal Revenue Service of such noncompliance which such agency becomes aware of.

(C)

Certain selection criteria must be used

The selection criteria set forth in a qualified allocation plan must include

(i)

project location,

(ii)

housing needs characteristics,

(iii)

project characteristics,

(iv)

sponsor characteristics,

(v)

participation of local tax-exempt organizations,

(vi)

tenant populations with special housing needs, and

(vii)

public housing waiting lists.

(D)

Application to bond financed projects

Subsection (h)(4) shall not apply to any project unless the project satisfies the requirements for allocation

of a housing credit dollar amount under the qualified allocation plan applicable to the area in which the project is located.

(2)

Credit allocated to building not to exceed amount necessary to assure project feasibility

(A)

In general

The housing credit dollar amount allocated to a project shall not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period.

(B)

Agency evaluation

In making the determination under subparagraph (A), the housing credit agency shall consider -

(i)

the sources and uses of funds and the total financing planned for the project,

(ii)

any proceeds or receipts expected to be generated by reason of tax benefits,

(iii)

the percentage of the housing credit dollar amount used for project costs other than the cost of intermediaries, and

(iv)

the reasonableness of the developmental and operational costs of the project. Clause (iii) shall not be applied so as to impede the development of projects in hard-to-develop areas. Such a determination shall not be construed to be a representation or warranty as to the feasibility or viability of the project.

(C)

Determination made when credit amount applied for and when building placed in service

(i)

In general

A determination under subparagraph (A) shall be made as of each of the following times:

(I)

The application for the housing credit dollar amount.

(II)

The allocation of the housing credit dollar amount.

(III)

The date the building is placed in service.

(ii)

Certification as to amount of other subsidies

Prior to each determination under clause (i), the taxpayer shall certify to the housing credit agency the full extent of all Federal, State, and local subsidies which apply (or which the taxpayer expects to apply) with respect to the building.

(D)

Application to bond financed projects

Subsection (h)(4) shall not apply to any project unless the governmental unit which issued the bonds (or on behalf of which the bonds were issued) makes a determination under rules similar to the rules of subparagraphs (A) and (B).

(n)

Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations -

(1)

dealing with -

(A)

projects which include more than 1 building or only a portion of a building,

(B)

buildings which are placed in service in portions,

(2)

providing for the application of this section to short taxable years.

(3)

preventing the avoidance of the rules of this section, and

(4)

providing the opportunity for housing credit agencies to correct administrative errors and omissions with respect to allocations and record keeping within a reasonable period after their discovery, taking into account the availability of regulations and other administrative guidance from the Secretary.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 38, 39, 55, 469 of this title; title 42 sections 1437, 1485, 12745.

SOURCE

PRIOR PROVISIONS

AMENDMENTS

EFFECTIVE DATE OF 1993 AMENDMENT

EFFECTIVE DATE OF 1991 AMENDMENT

EFFECTIVE DATE OF 1990 AMENDMENT

EFFECTIVE DATE OF 1989 AMENDMENT

EFFECTIVE DATE OF 1988 AMENDMENT

EFFECTIVE DATE OF 1986 AMENDMENT

EFFECTIVE DATE

SAVINGS PROVISION

ELECTION TO DETERMINE RENT LIMITATION BASED ON NUMBER OF BEDROOMS AND

DEEP RENT SKEWING

ELECTION TO ACCELERATE CREDIT INTO 1990

EXCEPTION TO TIME PERIOD FOR MEETING PROJECT REQUIREMENTS IN ORDER TO

QUALIFY AS LOW-INCOME HOUSING

STATE HOUSING CREDIT CEILING FOR CALENDAR YEAR 1990

TRANSITIONAL RULES

REFERENCES IN TEXT

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