

Low Income Housing Tax Credit Program Compliance Manual



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SECTION 1 – PROGRAM INFORMATION AND REGULATIONS

The Low Income Housing Tax Credit program (LIHTC) is an incentive for taxpayers to provide affordable rental housing for lower income tenants in exchange for a credit against federal income taxes. The Tax Reform Act of 1986 established the LIHTC program under Section 42 of the Internal Revenue Code (Code). The Omnibus Budget Reconciliation Act of 1990 amended the Code to require that state tax credit allocating agencies provide a procedure for monitoring developments for compliance with the occupancy requirements of the tax credit program.

Each state allocating the LIHTC program must develop a Qualified Allocation Plan (QAP) which establishes guidelines and procedures for the acceptance, scoring and competitive ranking of applications received for funding LIHTC developments, and for the administration and monitoring of the LIHTC program. The QAP and specific program regulations or preferences are developed to be relevant to North Dakota's housing needs and consistent with the state's housing priorities.

Under Section 42(m)(1)(B)(iii) of the Code, an allocating agency must have a procedure for monitoring compliance with the provisions of the Code and notifying the Internal Revenue Service (IRS) of any noncompliance. The monitoring requirements became effective January 1, 1992, and apply to all buildings that received a tax credit at any time. NDHFA, as North Dakota's allocating agency, is authorized by the Code to charge a reasonable fee to cover the costs of compliance monitoring.

1.01 Purpose of the LIHTC Compliance Manual

Section 42 of the Code contains LIHTC program requirements. The Code incorporates program changes and revisions made by the Budget Reconciliation Acts of 1989 and 1990. Additionally, the IRS publishes, on an ongoing basis, revenue notices, rulings and regulations that clarify and/or expand on the law. The publication of this manual is for convenience only and is to be used only as a supplement to existing laws and rules. **This manual is not intended to be a comprehensive guide to the LIHTC program and all of its requirements.** It was designed to assist owners and managers of LIHTC developments in North Dakota to better ensure that the developments remain in compliance with Section 42 of the Code. Your use or reliance upon any of the provisions contained in this manual does not, expressly or impliedly, directly or indirectly, suggest, represent or warrant that the user will be in compliance with the requirements of Section 42 of the Code. Owners and property managers are responsible for understanding regulatory requirements under Section 42 and the various other notices and publications from the IRS including the Guide For Completing Form 8823.

NDHFA hereby disclaims any and all responsibility of liability which may be asserted or claimed arising from reliance upon the procedures and information in this manual. Owners and managers are urged to consult with attorneys and/or accountants that specialize in the LIHTC program in the administration of their LIHTC developments.

1.02 Resources and Materials

NDHFA publishes compliance materials, forms and income and rent guidelines on its website at www.ndhfa.org. The use of some of the forms is mandatory while the use of other forms is optional. Please pay particular attention to language within the manual that states which are required forms. **If on-site management uses forms other than those provided, care should be taken to assure that the forms use sufficient information to meet HUD 4350.3 income determination guidelines.**

1.03 Staffing

The Planning and Housing Development Division administers LIHTC compliance monitoring for NDHFA. Questions regarding compliance monitoring should be directed to NDHFA's Planning and Housing Development Division compliance staff at hfainfo@nd.gov or by calling (701) 328-8080 or (800) 292-8621.

The Compliance Specialist is responsible for monitoring compliance for annual desk reviews and on-site reviews, including tenant file reviews and on-site health/safety/building code inspections, sending compliance notifications to owners/managers, monitoring follow-up compliance, sending 8823 forms to the IRS, and updating this compliance manual and compliance forms.

The Administrative Assistant is responsible for sending notification to owners/managers for the annual desk reviews, annual desk review data entry, contacting owners/managers regarding questions referring to the desk review data entry, desk review billings for yearly fees, vacancy reports, compiling and updating spreadsheets, and migrating new projects from development to compliance.

1.04 Important Time Periods

The Credit Period (IRC 42(f)) usually 10 years following the date the building was placed in service. It is the time period in which the owners of the project receive tax credits, which then apply to their respective tax liabilities.

The Compliance Period (IRC 42 (i)(1)) duration of the credit period plus 5 years. The compliance period is 15 years beginning with the first year of the tax credit period (placed in service year or subsequent year if deferral was elected).

The Extended Use Period (IRC 42 (h)(6)(D)) restricts the eligibility of developments to receive an allocation of Tax Credits to only those developments that agree to keep the property income and rent restricted for an extended period of time. The term for this period is a minimum of 15 years in addition to the Compliance Period of 15 years. The total term of compliance is **30 Years**.

Effective with the 2020 QAP, all owners must waive their right to a qualified contract.

1.05 Declaration of Land Use Restrictive Covenants for Low Income Housing Tax Credits (LURA) The Owner and NDHFA must enter into an agreement pursuant to which the development owner and any successors agree to meet the applicable fraction of low-income tenant occupancy for the compliance period. The LURA is binding for the 30-year term in addition the minimum set aside election the owner will agree to certain additional requirements that were considered in the scoring and final allocation of LIHTCs. Compliance procedures will monitor that these additional elections are fulfilled during the 30-year term.

The Code allows for earlier termination of the compliance period under certain circumstances.

1.06 Owner Responsibilities

Each Owner has chosen to utilize the LIHTC program to take advantage of the tax benefits provided. In exchange for these tax benefits, certain requirements must be met.

Prior to issuance of a final tax credit allocation, the Owner and accountant must certify the total development costs and that all requirements of the LIHTC program have been met. Any violation of

the requirements of the LIHTC program could result in the loss of tax credits to the Owner.

Reporting and Compliance

The Owner is responsible for compliance with the Code. Throughout all phases of development, lease-up, and operation it is the owner's responsibility to provide certain information to NDHFA within the requested timeframe. Any and all financial consequences to the owner as a result of noncompliance, whether identified by NDHFA or the IRS will be the responsibility of the Owner. Required compliance submissions will be discussed further in compliance monitoring procedures.

Physical Compliance of the Project

The Owner is responsible for ensuring the project is suitable for occupancy, compliant with local health, safety, and building codes, compliance with local and federal regulations and compliant with the terms of the recorded LURA.

Program Compliance and Training

The Owner is responsible for ensuring that the development is properly administered. The Owner must make certain that the on-site management team is familiar with and complies with all appropriate rules, regulations, and policies that govern the development. Compliance with the requirements of Section 42 is the responsibility of the owner of the building for which the credit is allowable. NDHFA's obligation to monitor for compliance with the requirements of Section 42 does not make the NDHFA liable for an Owner's non-compliance (Reg. 1.42-5(g)).

Owners and property managers are required to attend or document they have attended industry recognized compliance training within the last four years. Ongoing compliance training is requirement and training certifications must not be more than four years old. Proof of training is required as part of the annual compliance monitoring. If significant or repeated noncompliance events are discovered during ongoing compliance monitoring activities, further follow-up training will be required.

Electronic Signature

Per the N.D.C.C. Chapter 9-16, NDHFA will accept electronic records with electronic signatures from authorized individuals. Documents provided electronically must be capable of retention, able to be printed and stored electronically, by NDHFA for their full life cycle. Owners and property managers are responsible for developing policies and procedures to ensure electronic signatures obtained meet requirements under the Uniform Electronic Transactions Act (UETA) and Electronic Signatures in Global and National Commerce Act (ESIGN).

1.07 Changes in Management and/or Owner Contact Information

NDHFA must be notified within 30 days whenever the owner makes a change in the management agent or if there is a change in the contact ownership entity, agent, and property manager. Changes in ownership must follow the requirements outlined under the Transfer of Ownership section in this manual. **Owners must review the Non-Compliant Organization listing.** A property management organization which is found to be substantially noncompliant will be placed on a Non-Compliance Organization listing and may not be contracted to manage another property until they have corrected all noncompliance issues.

1.08 Transfer of Ownership

Owners should contact NDHFA when considering a transfer of ownership. There are two basic types of LIHTC ownership transfers, a partial change in the underlying organization of the ownership entity (for example, replacement of the investor limited partner upon year-15 exit) or sale or transfer of title to a new organization.

All anticipated transfers of ownership should begin with the submission to NDHFA of a Notice of Intent to Transfer Ownership form (SFN 59468) with all necessary supporting documentation. The Notice of Intent to Transfer Ownership must be completed and submitted **prior to** any transfer of title, change in partnership name, corporate name, or status.

The fee for a transfer of ownership within five years of the placed-in-service date is \$5,000. The fee for a transfer of ownership beyond five years of the placed-in-service date is \$500. Half of the transfer fee will be refunded following NDHFA's receipt of all the required documentation. There is no fee required for a partial change in the underlying organization of the ownership entity such as a replacement of the limited partner.

Submission to NDHFA of a Notice of Intent to Transfer form should be accompanied by the applicable fee, written notice from the seller to the buyer as to the requirements of the LURA, and written agreement by the potential buyer acknowledging and agreeing to abide by the requirements of the LURA.

In addition to the Notice of Intent to Transfer Ownership form, the following documentation must be submitted as available, but no later than 30 days after the transfer.

For Changes in Partnership Status, submit the corresponding document:

- Copy of amended or new partnership agreement.
- Copy of the Articles of Incorporation and By-Laws.
- Copy of the LLP/LLC Organizational Documents.

For Transfers of Ownership:

- Copy of the Purchase Agreement.
- Copy of the recorded Contract for Deed or Warranty Deed transferring the benefits and burdens of ownership of the building(s) to the purchaser, or a Title Policy indicating ownership.
- Copy of the closing settlement statement showing sources and uses of funding.
- Also submit the corresponding document:
 - Copy of amended or new partnership agreement.
 - Copy of the Articles of Incorporation and By-Laws.
 - Copy of the LLP/LLC Organizational Documents.

1.09 Casualty Loss

The Owner is responsible to report any casualty losses of a building or individual unit(s) to NDHFA within 10 days of an incident. Furthermore, the owner must submit a plan to NDHFA within 30 days that sets a timeframe for reconstruction or replacement of lost units.

NDHFA must report the loss and replacement of the units to the IRS within 90 days. If units have not been fully restored, NDHFA will attach a copy of the owner's plan and timeframe for replacement

to its report. Once all units have been restored and available for occupancy, NDHFA will file a corrected IRS Form 8823. If an owner fails to report a casualty loss within the required timeframe NDHFA may report the incident as noncompliance to the IRS using Form 8823.

1.10 Vacant Units

Vacant low-income units must be suitable for occupancy; i.e., prepared for immediate occupancy. NDHFA will allow a reasonable period to clean a vacated unit or repair damages caused by a prior tenant. Reasonableness will be determined dependent on situational facts. Units determined to be unsuitable for occupancy in a reasonable timeframe will be considered out of compliance.

1.11 Building Identification Numbers

Every LIHTC is identified by a unique number. Building Identification Numbers (BINs) indicate the following:

- The States abbreviation, i.e. (ND for North Dakota - **ND**)
- The year the building was allocated tax credits – **16**
- The remaining numbers are state specific identification numbers - **00000**

1.12 Minimum LIHTC Set-Aside Election

At the time of application for the tax credit, the Owner of the property must elect one of two minimum federal set-aside requirements. This election once memorialized within the LURA and elected on the IRS Form 8609 is irrevocable. If the managing agent is unaware of which set-aside requirement must be met, they should contact the Owner to be sure all information about the property has been provided as required.

The set-aside is the minimum number of units that must be rent restricted and reserved for low-income tenants in order for a building to be considered a qualified low-income building. Pursuant to the Code, the federal set-aside options are:

1. At least 20 percent of the available rental units must be rent restricted and occupied by households whose income is 50 percent or less of Area Median Income (AMI) as adjusted for family size.
2. At least 40 percent of the available rental units must be rent restricted and occupied by households whose income is 60 percent or less of AMI as adjusted for family size.
3. At least 40 percent of the units have to be both rent restricted and occupied by individuals whose incomes do not exceed the imputed income limitation and the average of the imputed income limitations designated cannot exceed 60 percent of AMI.

The Owner may have elected to be more restrictive with the percentage of units rent and income restricted, and this election will be reflected under NDHFA restrictions in the LURA. These additional elections will be applicable during the 30-year term of the LURA.

1.13 Rent, Income and Utility Allowance Requirements

Units set aside as low-income must be rent restricted as required by Section 42(g)(2) of the Code. A unit is considered rent restricted if the “gross rent” does not exceed 30 percent of the applicable income limit.

Gross Rent

The Code defines gross rent as resident-paid rent plus a utility allowance and any non-optional fees. The allowance is used to cover any utilities a resident is required to pay other than telephone, cable or internet, unless the fee charged by the owner for telephone, cable or internet is not optional. Utility allowance procedures are described in detail in the Utility Allowance Procedures section. Gross rent must not exceed the applicable maximum rent as listed on the income and rent table in effect for the property as of the date of certification.

Gross rent does not include:

- Housing assistance payments to the owner by HUD under Section 8 of the United States Housing Act of 1937 or any comparable rental assistance program.
- Rental assistance payments to the owner by Rural Development associated with loans made under Section 515 of the Housing Act of 1949.
- Fees for supportive services (any service provided under a planned program of services designed to enable residents of a residential rental property to remain independent). These services must be optional.

Gross Rent Floor (Revenue Procedure 1994-57)

Revenue Procedure 1994-57 allows the Owner to establish minimum rent amounts that will not be affected by fluctuations in income and rent limits. In other words, developments will never have to charge gross rents, rent plus utilities and nonoptional fees, that fall below their established gross rent floor amounts. To establish the gross rent floor, the Owner makes an irrevocable election at either the placed-in-service date or the allocation date. If no election is made, the default will be based on the placed-in-service date.

The amount of rent allowed to be collected by a development that received an allocation after January 1, 1990, is based on the number of bedrooms in the unit as opposed to the actual family size. Example, the maximum rent for an efficiency apartment with no separate bedroom would be based on the income limit for a one-person household regardless of the actual number of persons occupying the unit. Maximum rent is otherwise based on the qualifying income limits for 1.5 persons for each bedroom in the unit.

For one-bedroom units, the maximum rent is determined by using the average of the one- and two-person income limits. The maximum gross rent for a three-bedroom unit is determined by using the average of the four- and five-person income limits.

Rent Increases

Rent increases during term leases are prohibited.

Section 8 Assisted Units (IRC Section 42(g)(2))

A household with Section 8 assistance that originally qualified for a set-aside unit may later be required to pay an amount of gross rent in excess of the tax credit rent limit due to increased earnings and decreased Section 8 subsidy. In this case, the Internal Revenue Code allows an exception to the rent limit as long as all of the following requirements apply:

- The household originally qualified for a tax credit unit.
- The household is a participant in a housing subsidy program.
- The household still receives at least one dollar of subsidy.

If at any time the subsidy is revoked, the owner must lower the tenant rent to ensure that gross rent does not exceed the tax credit rent limit.

Allowable Fees (26 CFR 1.42-11 Provision of Services)

Generally, fees for facilities or services may be charged to residents in addition to gross rent only if all three of the following statements are true:

- The cost of the facilities or services are not included in the project's eligible basis.
- The facilities or services are **optional**.
- There is a reasonable alternative to using these facilities or services.

For example, if an owner offers washers and dryers in the units for an additional fee, the cost of the washers and dryers must not be included in eligible basis and an alternative such as laundry facilities at the building must be provided.

Other Allowable Fees:

- Pet deposits, rents, and fees.
- Early lease termination fees, only when moving out of the community.
- Refundable fees such as security deposits.
- Month-to-month lease fees, must be included in the gross rent as a mandatory fee.
- Renters insurance premium, if required, must be included in the gross rent as a mandatory fee. When the Owner requires residents to maintain renter's insurance and a household obtains their own policy, the Owner is required to obtain a copy of the policy or monthly insurance statement at move-in and at all annual recertifications. The actual monthly premium must then be included as a mandatory fee in the gross rent calculation on the Tenant Income Certification (TIC). Failure to include the actual premium could result in a unit paying over the maximum gross rent and impact the unit's eligibility for tax credits.
- Application fees are allowable as long as the charges do not exceed the actual expected out-of-pocket costs for checking tenant qualifications such as income, rental history, credit history and criminal history.

Any fees charged to the resident must be reasonable and in line with those charged by similar properties.

Disallowed Fees

The following fees may **not** be charged.

- Waiting list fees.
- Nonrefundable redecoration fees.
- Unit transfer fees/utility transfer fees.
- Fees for preparing a unit for occupancy.
- Deposits or monthly pet rent fees for **service** animals.

If there is any question about whether a specific fee is allowed, contact NDHFA.

Overcharged Gross Rent

Gross rent, resident-paid rent, as stated in the lease prior to concessions, plus the applicable utility allowance and any non-optional fees, may not exceed the maximum rent limit. In addition, charge-backs of concessions may not raise the gross rent above the maximum rent limit for any given month. In the event an Owner overcharges gross rents, all affected units in the building are out of compliance. NDHFA is required to report overcharges of gross rent to the IRS using IRS Form 8823. NDHFA will also report to the IRS when the noncompliance is corrected. Noncompliance is corrected when the resident-paid rent plus utility allowance is adjusted and is less than or equal to the applicable maximum rent limit. Further, NDHFA requires owners to refund excess charges to the resident.

Utility Allowance Procedures

An allowance for the cost of any utilities, other than telephone, cable television or Internet, paid directly by the tenant(s) and not by or through the owner of the building, is included in the computation of gross rent under IRC §42(g)(2)(B). A separate estimate is computed for each utility and different methods can be used to compute the individual utility allowances. The utility allowance is computed on a building-by building basis. The maximum rent that may be paid by the tenant must be reduced by utility allowance(s) obtained in the following manner.

1. Buildings assisted by the Rural Housing Service. If a building receives assistance from the Rural Housing Service (RHS-assisted building), the applicable utility allowance for all rent-restricted units in the building is the utility allowance determined under the method prescribed by the RHS for the building (whether or not the building or its tenants also receive other state or federal assistance).
2. Buildings with Rural Housing Service assisted tenants. If any tenant in a building receives RHS rental assistance payments, the applicable utility allowance for all rent-restricted units in the building (including units occupied by tenants receiving rental assistance payments from HUD is the applicable RHS utility allowance.
3. Buildings regulated by HUD. If neither a building nor any tenant received RHS housing assistance, and the rents and utility allowances of the building are reviewed by HUD on an annual basis, the applicable utility allowance for all rent-restricted buildings is the applicable HUD utility allowance.
4. Other Buildings. If a building is neither an RHS-assisted nor a HUD regulated building, and no tenant in the building receives RHS tenant assistance, the applicable utility allowance for rent-restricted units maybe determined under the following methods:

- a. **PHA Estimate:** This is the most common method used by LIHTC properties. A building owner may obtain a utility estimate for each unit in the building from the PHA that has jurisdiction over the building, provided the PHA agrees to provide the estimate. The estimate is obtained when the building owner receives, in writing, information from the PHA providing the estimated per-unit cost of the utilities for units of similar size and construction for the geographic area in which the building is located.
Note: If a property is not HUD regulated or RD regulated, the PHA allowance must be used for any unit that is receiving assistance from HUD through a Section 8 voucher.
- b. **Local Utility Company Estimate:** A building owner may obtain an estimate in writing from the local utility company that offers services to that building. The estimate must be provided on the utility company's letterhead, be dated and signed by a representative of the utility company, reference the property, and document that the estimate is based on 12 months of usage at the current utility rates for units of similar sizes and construction, including any applicable taxes and fees. In the case of deregulated utility services, the owner may obtain an estimate from only one utility company. The utility company furnishing the estimate must offer utility services to the building in order for that utility company's rates to be used. The estimate should include all "component deregulated charges" for providing the utility service.
- c. **HUD Utility Schedule Model:** The HUD Utility Schedule Model may be obtained by going to the Low Income Housing Tax Credits page on the HUD User website <https://www.huduser.gov/portal/resources/utilallowance.html>. The utility data used in this model may be no older than the utility rates in place for 60 days prior to the beginning of the 90-day period. The building owner will bear any and all costs associated in using this method. Owners who use this model will need to document the source and content of all factors entered into the model. NDHFA strongly encourages the use of an unrelated licensed or professional third party to complete the estimates.
- d. **Energy Consumption Model:** This model may be used by a building owner to calculate utility allowance estimates based on an analysis of energy, water and sewage consumption. At minimum, this consumption and analysis model must take into account the unit size, building orientation, design, materials, mechanical systems, building location and appliances. In order to use this method, the building owner must have the calculations performed by a certified/licensed engineer or other state agency approved qualified professional. One of the requirements of using such an engineer/licensed professional is that the engineer is unrelated to the building owner. The data in this option is also limited to no more than the 12-month period ending no earlier than 60 days prior to the 90-day period (defined later in this article). The building owner will bear all costs if this option is chosen.
- e. **Agency Estimate:** Under this option, a building owner may obtain a utility estimate for each unit in the building from the state agency that has jurisdiction over the building as long as the state agency is willing to provide it. The data must factor in, at minimum, local utility rates, property type, climate variables by region in the state, mechanical systems, building materials, and taxes and fees on utility charges. The data is limited to no more than the 12-month period ending no earlier than 60 days prior to the 90-day period (defined later in this article). The state agency has options of how to obtain the estimate and the building owner will bear any costs associated in obtaining this estimate if this option is chosen. At this time, NDHFA is not providing this option.

Changing methods

Owners may change the method used for calculating a utility allowance in order to most accurately calculate the utility allowance for a property. NDHFA must be notified of the proposed change. If

the Owner selects the Energy Consumption Model, NDHFA must review the proposed allowance prior to use.

Allowable methods for utility allowance calculations are based on the funding that the property has received. Some calculation methods are not allowed by certain funding types and are subject to change as revisions are made by the funding sources.

Owners/Agents are responsible for knowing the allowed method of each funding source and should check with NDHFA when trying to determine if a specific method can be utilized.

Annual Updates

Utility allowances must be reviewed at least once each calendar year by the building owner and updated if necessary based on current utility rates. These reviews must also take into consideration any changes to the building that affect energy consumption and utility allowances such as building updates and energy conservation measures. Building owners are required to maintain records of all utility data received, estimates used, and notifications made to tenants and state agencies throughout the extended use period.

Under regulation 26 CFR §1.42-10(c), if the applicable utility allowance changes as part of the annual update, the new utility allowance must be used to calculate gross rents no sooner or later than 90 days **after** the change takes effect. This is referred to as the “90-day period.” In other words, when the utility allowance changes, the owner must demonstrate that the new utility allowance was not implemented and used to calculate gross rents for existing LIHTC households until the first day immediately following the 90-day period. The 90-day period begins on the effective date of the new utility allowance schedule. This requirement is applicable throughout the extended use period (as defined in in the development’s LURA).

If the Owner is using a utility allowance other than the Public Housing Authority Schedule, the updated allowance estimates must also be made available to all tenants of the building at the beginning of the 90-day period. This can be accomplished by posting the new schedule in a common area or delivering them to each household by mail.

During this period, the state agency may also require additional data or information if they deem it to be necessary.

Sub-Metering

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

Notice 2009-44 clarifies that, for purposes of Treas. Reg. § 1.42-10(a), utility costs paid by a tenant based on actual consumption in a sub-metered rent-restricted unit are treated as paid directly by the tenant and not by or through the Owner of the building.

1. The utility rates charged to tenants in each sub-metered rent-restricted unit must be limited to the utility company rates incurred by the building owners (or their agents).

2. If building owners (or their agents) charge tenants a reasonable fee for the administrative costs of sub-metering, then the fee will not be considered gross rent under IRC §42(g)(2). The fee must not exceed an aggregate amount per unit of 5 dollars per month unless State law provides otherwise.
3. If the costs for sewerage are based on the tenants' actual water consumption determined with a sub-metering system and the sewerage costs are on a combined water and sewerage bill, the tenants' sewerage costs are treated as paid directly by the tenants for purposes of the utility allowances regulations.

Notice 2009-44 is effective for utility allowances subject to the effective date in Treas. Reg. §1.42(a)(4). Consistent with Treas. Reg. §1.42-12(a)(4), building owners (or their agents) may rely on Notice 2009-44 for any utility allowances effective no earlier than the first day of the building owner's taxable year beginning on or after July 29, 2008.

Rent and Income Limit Publication

NDHFA publishes income and rent limits, based on area median income for developments receiving a LIHTC allocation. NDHFA will provide updated limits as made available by HUD. Beginning with the release of AMGI tables for 2009, HUD is providing a separate table for IRC §§ 42 and 142(d) projects, which HUD now collectively refers to as "Multifamily Tax Subsidy Projects" (MTSP). The Owner is ultimately responsible for using the correct income and rent limits.

Hold Harmless

The IRS protects owners of all LIHTC projects from decreases in rent and income limits. This is referred to as "Hold Harmless" protection. Once a LIHTC project is placed in service, if the limits for the county in which the project is located go down from one year to the next, the project is **not** required to implement the new limits and may continue to use the higher limits already in place. To be held harmless a LIHTC project must have placed in service prior to the implementation cutoff date of the new limits.

HERA

For some counties, HUD publishes a second set of limits called HERA Special Income Limits. To apply HERA Special limits, a LIHTC project must have placed in service as of December 31, 2008. HERA Special limits do not apply to LIHTC projects placed in service after December 31, 2008.

Resyndication

Once a project receives a subsequent allocation of tax credits, it is no longer eligible to use HERA special limits. Likewise, the owner may no longer rely on the previous allocation's highest set of Hold Harmless Limits. Under the new allocation, the Hold Harmless protection will be reset to the limits used in the first year of the new allocation.

1.14 Unit Transfers

Within the Same Building

When a current qualifying household in a tax credit unit transfers to another unit within the same building, the newly occupied unit adopts the status of the vacated unit and the vacated unit adopts

the former status of the newly occupied unit. In other words, the two units swap their status with one another. The result is that the household simply transfers and is not required to be certified as a new move-in. However, a Unit Transfer TIC is required to document the changes regarding the rent, utility allowance, and set-aside.

To Another Building

When a current qualifying household transfers to a unit in another building **within the same project***, the newly occupied unit adopts that status of the vacated unit and the vacated unit adopts the former status of the newly occupied unit provided the household's income does not exceed 140 percent of the current income limit upon transfer. A Unit Transfer TIC is required.

Exception: Properties financed with both Private Activity Bonds and LIHTC. A transfer from one building to another within the same project must always be treated as a new move-in. The household must qualify for the new unit based on the current applicable income limit.

* To determine whether your buildings are treated as individual projects or as one multiple building project, refer to the property's first-year IRS Form 8609 (Part II).

1.15 Non-Transient Occupancy; IRC Section 42(i)(3)(B)(i) and (iii)

A unit is considered non-transient when the initial lease term is six months or longer. A unit used on a transient basis will not be considered low-income, unless it meets one of two exceptions.

Units may be considered low-income and offered on a transient basis if:

- The units are in a building that is used exclusively to facilitate the transition of formerly homeless individuals within the meaning of Section 103 of the Stewart B. McKinney Homeless Assistance Act.
- A property is designated as Single Room Occupancy (SRO).

If a unit meets one of the exceptions, the initial lease term may be less than six months. Otherwise, all initial leases must be for a term of at least six months. After the initial six-month term, renewal lease terms may be month-to-month.

1.16 General Public Use (26 CFR 1.42-9)

To be eligible for tax credits, low-income units must be offered for use by the general public. Low-income units are not offered to the general public if they are provided solely for a member of a social organization or provided by an employer for its employees.

Effective July 30, 2008, the Housing and Economic Recovery Act of 2008 (HERA), HR 3221, amends the general public use requirement to allow for occupancy restrictions or preferences that favor residents:

- With special needs.
- Who are involved in artistic or literary activities.
- Who are members of a specified group under a federal program, a state program, or a policy that supports housing for such a specified group.

This rule affects any building placed in service at any time.

1.17 Vacant Unit Rule (26 CFR 1.42-5(c)(1)(ix), Revenue Ruling 2004-82, Q9)

If a low-income unit in the project becomes vacant during the year, the owner must make reasonable attempts to rent that low-income unit, or the next available unit of comparable or smaller size, to income-qualifying tenants before any other units in the project are rented to tenants that do not income-qualify. Owners must also attempt to make the unit ready for occupancy within a reasonable time.

Attempts to lease the tax credit units must be documented and the documentation kept on file in accordance with the LIHTC Record Retention Requirements outlined in this manual.

1.18 Employee Units (Revenue Ruling 1992-61)

Units occupied by full-time resident managers or other full-time onsite employees that are necessary for the operation of the project are treated as part of the residential rental property and included in a building's eligible basis but are not considered residential rental units. These units are not included in the applicable fraction of the building. The owner of a project with an employee unit may choose to require the employee to pay rent and utilities.

1.19 Good Cause Eviction and Rent Increase Protection (Revenue Ruling 2004-82, Q5)

The IRS determined that during the entire extended use period, owners of LIHTC properties are prohibited from the following actions.

- Evicting a household from a LIHTC unit or terminating their tenancy within the lease term other than for "good cause."
- Increasing the gross rent of a LIHTC unit in a manner not permitted by Section 42.
- The owner determines what "good cause" is in the lease. NDHFA recommends consulting legal counsel for further advice.

In the event that the extended use period is terminated due to foreclosure or deed-in-lieu of foreclosure, the following actions are prohibited for three years following the termination of the extended use period:

- Evicting a household from a LIHTC unit or terminating their tenancy within the lease term other than for "good cause."
- Increasing the gross rent of an existing household in a LIHTC unit in a manner not permitted by Section 42.

Pursuant to Section 1.42-5(c)(1)(xi), owners must certify annually that, for the preceding 12-month period, no tenants in low-income units were evicted or had their tenancies terminated other than for good cause and that no tenants in low-income units had an increase in the gross rent not otherwise permitted under Section 42.

1.20 Violence Against Women Act (VAWA)

The Violence Against Women Act (VAWA), enacted in 1994, is legislation designed to improve criminal justice and community-based responses to domestic violence, dating violence, sexual assault and stalking in the United States. The 2013 reauthorization of VAWA expanded the housing protections from VAWA 2005 to include Low Income Housing Tax Credit developments.

VAWA protects victims of domestic violence, dating violence, sexual assault, or stalking, as well as affiliated individual(s), generally, from being denied housing assistance or being evicted as a result of an incident of domestic violence, dating violence, sexual assault, or stalking that is reported and confirmed.

The VAWA 2013 reauthorization enhances judicial and law enforcement tools to combat violence against women, improves services for victims, and strengthens the health care system's response to violence against women. It should be noted that the protections for VAWA covered violence include sexual assault, women, men, and people in same-sex relationships.

Documentation

1. Notice of Tenant's Rights - VAWA 2013 requires covered housing providers to distribute a notice of applicant or tenant's rights at three points: upon denial of admission, upon admission; or with a notice of eviction or subsidy termination.
2. Model Emergency Plan- The emergency transfer plan communicates to your tenants your commitment to providing safeguards afforded by VAWA, and explains the process for a tenant seeking assistance under VAWA.
3. VAWA 2013 Lease Addendum- a lease addendum reiterating the lease is subject to the provisions of VAWA.
4. Certification of Domestic Violence – a document that allows the tenant to communicate their request for relief under VAWA.
5. Emergency Transfer Request- a document that can be utilized by a tenant seeking emergency transfer from their unit under VAWA.

NDHFA has published sample forms that can be utilized and are available at <https://www.ndhfa.org/index.php/compliance/vawa/>.

1.21 Target Population Set Aside Units

Projects that received points for Permanent Supportive Housing agreed to set aside designated units which must be held for occupancy for members of the special needs population selected by the applicant for points, the Target Population.

During initial lease-up, priority shall be given in the tenant screening process to income-qualified households in the Target Population. Units shall be set aside for qualified Target Population households until the earlier of such time as the Project's minimum Permanent Supportive Housing commitment has been met or for a period of 90 days from the placed-in-service date.

Once a unit occupied by a Target Population household is physically vacated, that unit shall be held for a minimum of 60 days for occupancy by another qualified Target Population household unless the Project otherwise already complies with the minimum Permanent Supportive Housing unit percentage pledged on the application and required under the LURA. Diligent efforts to market the available unit to the Target Population shall be demonstrated during this time period. If after the 60-day period the unit is then leased to a household that is not within the Target Population, and the Project does not otherwise meet the minimum required Permanent Supportive Housing unit percentage, the next subsequent available unit shall be set aside for and marketed to the Target Population for 60 days. This subsequent next-available-unit rule will continue to

apply until the Project has once again met its Permanent Supportive Housing unit percentage.

1.22 Reserve Accounts

All projects are required to maintain operating and replacement reserve accounts. Projects that received credit allocations prior to 2018 will need to refer to the applicable Qualified Allocation Plan for additional reserve account guidance.

Operating Reserve

All projects will be required to establish and maintain, until the project has achieved a minimum of five years of stabilized operations, an operating reserve equal to a minimum of six months of projected operating expenses plus must-pay debt service payments and annual replacement reserve payments. This requirement can be met with an up-front cash reserve; a personal guarantee from the developer/general partner with a surety bond to stand behind the personal guarantee; or partnership documents specifying satisfactory establishment of an operating reserve.

Replacement Reserve

A replacement reserve must be maintained for the term of the compliance period, through the extended use period. The amount of contribution required was determined in the applicable Qualified Allocation plan the project was funded under. This account shall be used for major repair or project-wide replacement of building systems and components, and not for routine maintenance and upkeep expenses. Project owners shall be required to provide NDHFA with a record of all activity in the replacement reserve account during the prior fiscal year in conjunction with submission of the project's annual compliance monitoring materials.

Projects that received allocations under the 2018 and newer QAPs replacement reserves may only be used for the intended purpose of funding capital improvements and replacement of long-lived capital assets and may not be distributed to owners or partners for at least until the end of the extended use period.

Owners must ensure that sufficient allowance is made for routine maintenance and upkeep items such as repairs, unit turn around, cleaning, pest control, grounds maintenance and snow removal, as these expenses are not eligible to be paid for using replacement reserves. Such costs are operating expenses, paid from sufficient operating income (rents). Therefore, operating reserves should be used in the event that operating revenues are insufficient to cover operating expenses. Items covered in full by insurance, product warranties, or tenant security/damage deposits are not eligible for reimbursement from the replacement reserve.

In general, the replacement of small individual items is considered a repair. If an item is replaced throughout the project over a short period of time, it may be considered a capital improvement, and therefore eligible to be paid with replacement reserves. For example, the replacement of three sink fixtures would be considered a repair. However, the replacement of all sink fixtures throughout the property would be considered eligible for replacement reserve use. Owners and property managers are encouraged to contact NDHFA with any questions.

If applicable, a tax escrow account must be maintained in a federally insured financial institution or the Bank of North Dakota.

Each reserve account identified in this section (replacement, operating, and tax escrow) must be

maintained in separate accounts held in a federally insured financial institution or the Bank of North Dakota. Reserve accounts must also be separate from the project's ordinary operating account.

SECTION 2 – QUALIFICATION OF APPLICANTS

Applicants for LIHTC units should be advised early in their initial visit to the development that there are maximum income limits that apply to the units. Management should explain to the tenants that the anticipated income of **all** persons expecting to occupy the unit must be verified and included on an Application and Income Certification form prior to occupancy.

2.01 The Application

A fully completed application is critical to an accurate determination of eligibility. The information furnished on the application should be used as a tool to determine all sources of income and assets. NDHFA encourages the use of the sample Rental Application form. If management chooses to use their own application, it must solicit sufficient information to make an accurate determination of the household's total income and assets using HUD 4350.3 standards. It is recommended that roommates complete separate applications.

After the household completes the application, the Owner must verify all income and assets. After all income and assets have been verified, the Owner or manager must then complete the **Tenant Income Certification (TIC)**. The TIC must be signed and dated by both the tenant(s) and Owner/manager and a copy retained in the tenant file. The TIC must be used for all move-ins. The TIC, along with the lease, is to be executed prior to move-in. All occupants in a LIHTC unit must be certified and under lease.

Any file documentation completed or obtained from a third party should be complete and accurate. Any corrections should be made by crossing out incorrect data, writing corrected information, and date and initial the correction. Correction fluids (white-out) are not permissible.

2.02 Determining Household Size

In order to determine the appropriate household composition and family size for purposes of rent and income limits, the **Owner/Agent must consider all individuals who will reside in the unit.**

Household members include all adults and children who live in the unit including foster children and foster adults. There will be times when absent family members will be included as part of the household composition and for determining the applicable income limit for the household.

Such family members include:

- Children temporarily placed in a foster care home.
- Children present at least 50 percent of the time, as mandated by joint custody arrangements.
- Children who are away at school but return to the household during school recesses.
- Unborn children.
- Children in the process of being adopted.
- Family members temporarily absent due to military service or an out-of-state job assignment.
- Family members in rehabilitation facilities or hospitals for a limited time period or longer.
- If a family member is permanently confined to a nursing home or hospital, the family makes the decision as to whether to include the permanently confined family member as part of the household's composition.

If it is determined that a family member is only temporarily absent from the home, their entire income must be counted as if they were living in the unit.

If the family decides that a person permanently confined to a hospital or nursing home will be included as a household member, he or she may not be designated as head, co-head or spouse.

You must count income of all family members approved as household members even if some are temporarily absent.

Some households may include persons who are not considered as family members for the purposes of determining household size and income eligibility, including:

- Live-in aides.
- Children of live-in aides.
- Guests.

These persons should not be counted as household members when determining household size, and their income, if any, is not included when calculating annual income.

2.03 Income

Income for the following household members **must be included**:

- All adult members 18 years and older.
- Emancipated minors residing with a family as a member, other than head, spouse, or co-head, would be considered a dependent.
- Household members, children, and students who receive unearned income
- Temporarily absent family members
- Full-time students who are head, co-head, or spouse, include all income.
- Full-time students who are age 18 and older, and **not** head, co-head or spouse, include all unearned income and only the first \$480 of earned income.
- Full-time students under age 18, include only unearned income.
- Active military members who are head, co-head or spouse.

Income, as described below, for the following household members **must be excluded** from household income calculations:

- Family members under the age of 18, including foster children, who receive earned income.
- Qualifying students who receive financial assistance.
- Full-time students who are age 18 and older and **not** head, co-head or spouse, exclude all but the first \$480 of earned income.
- Active military members who are **not** head, co-head or spouse.
- Family members who receive payments for the care of foster children and foster adults.
- Nonmembers including live-in aides, guests, and co-signors.

| Household Members | Employment Income | Other Income – Unearned (including income from assets) |
|-------------------|-------------------|---|
| Head of Household | Yes | Yes |

| | | |
|--|----------------------|----------------------|
| Spouse | Yes | Yes |
| Co-Head | Yes | Yes |
| Other Adults (includes foster adult) | Yes | Yes |
| Dependents (under 18) | No | Yes |
| Foster Child (under 18) | No | Yes |
| Full-Time Student (over 18) | See Note Below* | Yes |
| Temporarily Absent Member | Yes | Yes |
| Member permanently living in hospital or nursing home | A household decision | A household decision |
| Non-Household Members | | |
| Live-in Aide | No | No |
| Guest | No | No |

*The earned income of a full-time student 18 years old or older who is a dependent is excluded to the extent that it exceeds \$480.

2.04 General Income Verification Requirements

Generally, the LIHTC program uses HUD Handbook 4350.3, Chapter 5, for guidance in determining how to count and calculate income and assets.

Annual income is the gross income a family anticipates it will receive in the 12-month period following the effective date of the certification of income. The effective date at move-in is the date the household takes possession of the unit.

For qualifying residents, NDHFA's policy is to use the highest income (i.e., most conservative) scenario to determine household income. The maximum potential household income must be considered first to ensure the household qualifies for the unit. When maximum potential household income would put an applicant over the income limit, **and** there is credible documentation to confirm that the maximum estimate is unrealistic, a realistic amount that is less than the maximum potential may be used to qualify a household. Files should be well documented to reflect this scenario.

Income Inclusions and Exclusions; 24 CFR 5.609 (b) and (c)

Income Inclusions include:

1. The **full amount**, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services.
2. **The net income from operation of a business or profession.** Expenditures for business expansion or amortization of capital indebtedness shall not be used as

deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.

3. **Interest, dividends and other net income** of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in Inclusion 2. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD.
4. The full amount of **periodic amounts** received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (e.g., Black Lung Sick benefits, Veterans Disability, Dependent Indemnity Compensation, payments to the widow of a serviceman killed in action). See Exclusion 13 for an exception.
5. **Payments in lieu of earnings**, such as unemployment, disability compensation, worker's compensation, and severance pay, except as provided in Exclusion 3.
6. **Welfare Assistance.**
 - a. Welfare assistance received by the family.
 - b. If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance to be included as income shall consist of both:
 - i. The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities.
 - ii. The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.
7. **Periodic and determinable allowances** such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling.
8. **All regular pay, special pay and allowances** of a member of the Armed Forces, except as provided in Exclusion 7.
9. For Section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)),

shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph "financial assistance" does not include loan proceeds for the purpose of determining income. *(Note: This paragraph also does not apply to a student who is living with his/her parents who are applying for or receiving Section 8 assistance.)

Income Exclusions include:

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

9. Temporary, nonrecurring or sporadic income including gifts.
10. Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era (i.e., payments by the German and Japanese governments for atrocities committed).
11. Earnings in excess of \$480 for each full-time student 18 years or older, excluding the head of household and spouse.
12. Adoption assistance payments in excess of \$480 per adopted child.
13. Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump-sum amount or in prospective monthly amounts.
14. Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit.
15. Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home.
16. Amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary. The following is a list of income sources that qualify for that exclusion:
 - a. The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 [b]).
 - b. Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058) (e.g., employment through AmeriCorps, Volunteers in Service to America [VISTA], Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions).
 - c. Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626[c]).
 - d. Income derived from certain sub marginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e).
 - e. Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624[f]).
 - f. Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552[b]). Effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 [29 U.S.C. 2931], e.g., employment and training programs for Native Americans and migrant and seasonal farm workers, Job Corps, veterans employment programs, state job training programs, career intern programs, Americorps.
 - g. Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L94-540, 90 Stat. 2503-04).
 - h. The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court and the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income

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

2.05 Verification Procedures

All regular income sources, including asset income must be verified. Written verification of income directly from the source, third-party verification, must always be attempted.

- Applicants should be asked to sign two copies of each verification form. The second copy may be used if the first request has not been returned in a timely manner.
- Income verification requests must be sent directly to and from the source, **not** through the tenant. It is suggested that a self-addressed, stamped envelope be included with the request for verification.
- When written verification is not possible prior to move-in, direct contact with the source will be acceptable to NDHFA but **must be followed up by written verification**. The conversation should be documented in the applicant's file to include all the information that would be included in a written verification. The name and title of the contact, the name of the management representative accepting the information and the date must be included. **Document Viewed or Telephone Information Received** may be used for documentation of a direct contact. By using this approach, the ultimate risk of admitting an ineligible tenant is borne solely by the Owner and management.
- Management should give the applicant the opportunity to explain any significant differences between the amounts reported on the application and amounts reported on third-party

verification in order to determine actual income. The explanation should be documented in the tenant file.

Effective Term of Verification

Written verifications are valid for 120 days. Missing or incomplete information on the verification may be followed up by a phone call. After the 120-day time period, a new written verification must be obtained.

Verification Documentation

1. When a tenant has a **Housing Choice Vouchers (HCV)**, you may obtain third-party written verification from the local public housing authority that verifies their income and assets instead of from the employer, bank, etc.
2. **Employment Income** verification must be received from the employer. Methods of verification have a hierarchy of acceptability from the most to the least acceptable method. Attempts to obtain the most acceptable forms of verification must be documented before the owner may use a lesser form of verification.
 - a. **Third Party Written Verification** is the preferred method of verifying almost all sources of income and must be attempted first. Third-party verification is written verification that is received by the owner/agent directly from the employer. Forms **must not** be hand carried by the resident to or from the employer. Any blanks or discrepancies in the verification must be clarified with the employer by the owner prior to certifying the resident. **Exceptions:** The Work Number, when available, is an acceptable alternative to sending a written verification to the employer. However, paystubs may also be needed to verify any required information not included in The Work Number's printout. **Using the Work Number is not required if it charges a fee.**
 - b. Owners may obtain a **Third-Party Verbal Verification** from an employer if attempts to obtain written verification are unsuccessful and are well-documented. To complete a verbal verification, the person verifying the information must obtain all of the same information on the Verification of Employment (VOE) form and document the name of the person providing the information, including the person's title and phone number and the date of the conversation.
 - c. **Pay Stubs** or earning statements showing the employee's gross income per pay period and frequency of income may be obtained if unable to verify with a third party. A minimum of four pay stubs.
3. Complete the **Self Employment Certification** and include the federal tax return (Schedule C or F) or an accountant's statement of net income.
4. **Social Security**
 - a. Verification completed by the agency providing the benefits.
 - b. Award or benefit notification letter prepared and signed by the authorizing agency.
5. **Retirement Accounts**
 - a. Verification of the amount and frequency of distributions with the agency that issues periodic payments from annuities, insurance policies, retirement funds, pensions, and disability or death benefits is required.
 - b. If direct verification is not possible, an annual benefit notification letter, dated within one year of the certification effective date, or a current statement prepared by the agency is acceptable.

6. **Unemployment Compensation**
 - a. Verification completed by the unemployment compensation agency.
 - b. Records from the unemployment office stating payment dates and amounts.
7. **Workers Compensation or other Pension**
 - a. Verification completed by the agency providing the benefits.
 - b. Award or benefit notification letter prepared and signed by the authorizing agency.
8. **Veterans Benefits**
 - a. Verification completed by the agency providing the benefits.
 - b. Award or benefit notification letter prepared and signed by the authorizing agency.
9. **Military Pay**
 - a. Leave and Earning Statement, online verification.
 - b. Verification completed by the military branch of service.
10. **Child Support and/or Alimony/Spousal Support**
 - a. Copy of separation or divorce decree stating the amount and type of support payment schedule and a **State Disbursement Unit Child Support and/or Alimony Verification**.
 - b. **Former Spouse Child Support and/or Alimony Verification** completed by spouse.
Note: If the applicant is reporting the receipt of less child support and/or alimony/spousal support than is shown in the divorce decree, you must obtain a certification from the applicant stating that the full amount is not being received and that the applicant has made reasonable efforts to enforce payment.
11. **Public Assistance, i.e.TANF**
 - a. Verification completed by the agency providing the benefits.
 - b. Copy of TANF or other budget signed and dated by caseworker.
12. **Recurring Contributions and Gifts**
Residents claiming zero or extremely–low-income may receive gifts or contributions on a regular basis from friends, family members or charitable organizations. Such recurring gifts are considered income under the LIHTC program and must be included in household income.
 - a. Verification completed and signed by the person providing the assistance stating the purpose, dates and value of the gifts, or a verification letter from the bank, attorney, or a trustee administering the contribution.
 - b. Certification from the applicant stating the purpose, dates and value of the gifts.
13. **Verification of Tribal Trust Land Ownership/Income** is completed by an official representative of the BIA, Tribal Lands Office, or other Tribal Designated Official.
14. **Verification of Tribal Per Capita and/or Gaming Income** is completed by an official representative of the tribal enrollment office or other tribal designated official.
15. **Section 8 Eligibility Verification** is completed by the PHA staff.
16. **Real Estate Verification**
 - a. Completed by Real Estate, Mortgagee or Closing Company.
 - b. Copies of the Settlement and Closing Statements.

17. **Investment, Pension or Annuity Verification** is completed by Insurance Agent/Administrator.

18. **Stocks/Bonds Verification** is completed by Broker or Authorized Official.

19. **Student Status and Financial Aid Verification** is completed by Financial Aid Provider and/or Educational Institution.

2.06 Unemployed Zero Income Applicants

If a household member is currently unemployed and claims no income from such sources as Social Security, pensions, income from assets, etc., the tenant must complete the **Certification of Zero Income and the Non-employed Affidavit**.

The income of unemployed household members, with regular income from any source such as Social Security, pension, recurring gifts, income from assets, etc., must be verified.

2.07 Calculating Annual Income – Use the Wage Calculation Worksheet

Owners must convert all verified incomes to annual amounts. To annualize full-time employment multiply:

- Hourly wages by 2080.
- Weekly wages by 52.
- Bi-weekly amounts by 26.
- Semi-monthly amounts by 24.
- Monthly amounts by 12.

To annualize income from other than full-time employment multiply:

- Hourly wages by the number of hours the family expects to work annually.
- Average weekly amounts by the number of weeks the family expects to work.
- Other periodic amounts (e.g., monthly, bi-weekly, etc.) by the number of periods the family expects to work.

Use an annual wage without additional calculations. For example, if a teacher is paid \$24,000 a year, use \$24,000 whether the payment is made in 12 monthly installments, 9 installments or some other payment schedule.

2.08 Assets

Assets, other than necessary personal items, are considered along with verified income in determining the eligibility of a household.

Valuing Assets

In computing assets, owners must use the cash value of the asset (the amount the family would receive if the asset was converted to cash). Cash value is the market value of the asset less reasonable costs that were or would be incurred in selling or converting the asset to cash. NDHFA considers 10 percent as a reasonable basis for the costs of conversion.

Example: An applicant owns a home with a market value of \$30,000 and a loan against the home

of \$18,000. The cash value of the asset would be shown as \$9,000 (\$30,000 less 10 percent less \$18,000).

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

Asset Valuation Guidelines

| | |
|-----------------------|--|
| Checking Account | Use the past six months' average balance. |
| Savings Account | Use the current balance. |
| Equity in Real Estate | Convert to and use the cash value. |
| IRA or Keogh Accounts | If not withdrawing, use cash value. |
| Retirement Accounts | While employed, use the amount that can be withdrawn without retiring or terminating employment. At retirement, add lump sum amounts to net family assets or add periodic distributions to annual income. |
| Jointly-owned Assets | Prorate according to the percentage of ownership. If no percentage is specified or provided by state or local law, prorate the assets evenly among all owners. |

Do Include:

1. Cash held in savings and checking accounts, safety deposit boxes, homes, etc.
2. Trusts, include the principal value of any trust available to the household. Do **not** include irrevocable trusts, i.e. ones that no household or family member can control.
3. Equity in rental property or other capital investments. Include the current market value less:
 - a. Any unpaid balance on any loans secured by the property.
 - b. Reasonable costs that would be incurred in selling the asset – penalties, broker fees, etc.
4. Stocks, bonds, treasury bills, certificates of deposits, money market funds, etc.
5. Individual Retirement and Keogh Accounts.
6. Retirement and pension funds.
 - a. While the person is employed, include only amounts the family can withdraw without retiring or terminating employment.
 - b. At retirement or termination of employment, if benefits will be received in a lump sum, include the benefits in Net Family Assets. If benefits will be received through periodic payments, include the benefits in annual income.
7. Lump sum receipts: include inheritances, capital gains, one-time lottery winnings, and settlements on insurance and other claims. (Do not count lump sum receipts that must be counted as income.)
8. Personal property held as an investment. Include gems, jewelry, coin collections, or antique cars held as an investment. (An applicant's wedding ring and other personal jewelry are not counted as an asset.)

9. Cash value of life insurance policies available to the individual before death.
10. Assets disposed of within two years before effective date of certification/recertification.
 - a. If the cash value of the disposed assets exceeds the actual amount the family received by more than \$1000, include the whole difference between the cash value and the amounts received. Do not include if the difference is less than \$1,000.
For example, on 6-1-99 a couple gave \$2,000 to each of their three grandchildren and deeded a home to their son. The home had a cash value of \$40,000 and the son paid his parents \$12,000 for the home. \$34,000 (\$40,000 less \$12,000 plus \$2,000 x 3) is counted as an asset until such time as the household can certify on an Income Certification that they did not dispose of any assets during the two years preceding the certification date. The \$12,000 paid by the son may also be counted as an asset, depending on what was done with the payment.
 - b. **Do not** consider assets disposed of for less than fair market value as a result of a foreclosure, bankruptcy, or a divorce or separation agreement.

Do Consider:

1. Assets put into trusts.
2. Business assets disposed of for less than fair market value. (Business assets are excluded from net family assets only while they are part of an active business.)

Do Not Include:

1. Necessary personal property (e.g., clothing, furniture, cars, etc.).
2. Life insurance policies that do not have any cash value.
3. Assets that are part of an active business. (A business does not include rental of properties that are held as an investment and not a main occupation.)
4. Assets that are not effectively owned by the applicant, i.e., when assets are held in an individual's name but the assets and any income they earn accrue to the benefit of someone else or another person is responsible for income taxes incurred on income generated by the assets. For example, 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.
5. Assets that are not accessible to the applicant and provide no income to the applicant. For example, a battered spouse owns a house jointly but because of the domestic situation receives no income from the asset and cannot convert the asset to cash.

2.09 Asset Verification Guidelines

All income from household assets that total \$5,000 or more including checking accounts, savings accounts, certificates of deposit and money market accounts must be verified by a third party using the **Asset Verification Form**. Other assets such as bonds, stocks, IRA's and retirement funds may be verified by documentation provided by the tenant, such as copies of statements.

Assets under \$5,000 can be verified using the using the **Under \$5,000 Asset Certification Form**.

When assets exceed \$5,000, add the greater of the actual annual income to be derived from these assets or the imputed income using the passbook interest rate (currently set at .06 percent) to the total verified household income. The household's combined total income cannot exceed the applicable low-income limits at move-in.

2.10 Income Recertification

Due to the passing of the Housing and Economic Recovery Act of 2008, HR 3221, there have been several changes made to the tax credit compliance program regarding annual certifications.

1. 100 Percent Housing Tax Credit Properties:
 - All initial (move-in) tenant files must contain third-party documentation.
 - Subsequent year self-certifications are not required by the IRS for 100 percent tax credit properties.
 - NDHFA's LIHTC property owners should demonstrate due diligence during the initial move-in. It is the Owner's responsibility to select and rent to qualified tenants. NDHFA will not qualify or approve eligible tenants. Check with your investors to see if they still require annual recertifications.

2. Mixed-Unit Tax Credit Properties (market-rate and tax credit units in one property):
 - All initial (move-in) tenant files must contain third-party documentation.
 - Subsequent years will continue to be certified with third-party certifications on the anniversary date of the tenant's move-in. The Tenant Income Certification continues to be required annually.

2.11 Increases in Household Income

A unit does not lose its status as LIHTC unit solely because of an increase in the household's income. Once a unit qualifies as a LIHTC unit, the unit continues to qualify as such until the tenant's income exceeds 140 percent of the applicable income limit. Once the 140 percent is exceeded, the household is referred to as an "over-income" household. Even then, the unit remains a LIHTC unit as long as the Owner continues to fill vacancies using comparable or smaller units within the same building with tenants who qualify as LIHTC tenants and restricts the rent to the allowable tax credit rent.

The unit ceases to qualify as a LIHTC unit if any vacancy in a comparable or smaller unit within the same building is filled with an over income tenant. The Owner is then also subject to recapture of the accelerated portion of the Tax Credits previously taken with respect to these units.

If a tenant wishes to move to a different unit within the same building, the units simply change status and a new certification is not required. If the tenant wishes to transfer to a different building within the same development, a new certification is required if the building is not part of a multi-building project stated on the 8609. Remember any tenant household that is over the 140 percent income limit will carry the over income designation to the new unit which could affect the available unit rule. In this case, you may not be able to transfer an over income unit to another building. Check the 8823 guide.

2.12 Leasing to Students

A unit is not considered an eligible LIHTC unit if all the occupants of such unit are full time students.

IRC 151 (c)(4) defines, in part, a “student” as an individual, who during each of five calendar months during the calendar year in which the taxable year of the taxpayer begins, is a full-time student of an educational organization described in IRC 170(b)(1)(A)(ii). Treasury regulation 1.151-3(b) further provides that the five calendar months need not be consecutive.

The determination of student status as full- or part-time should be based on the criteria used by the educational institution the student is attending. Part-time student status should be verified with the educational institution. If one household member is a part-time student and all other household members are full-time students, the household is eligible.

An educational organization, as defined by IRC 170(b)(1)(A)(ii), is one that normally maintains a regular faculty and curriculum, and normally has an enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. The term “educational organization” includes elementary schools, junior and senior high schools, colleges, universities and technical, trade and mechanical schools. It does not include on-the-job training courses.

Exceptions:

There are exceptions to the full-time student status outlined in IRC 42(i)(3)(D). The section provides that a unit shall not fail to be treated as a low-income unit merely because it is occupied by either an individual who is:

1. A student receiving assistance under Title IV of the Social Security Act, (TANF). Verification would be a TANF award letter.
2. A student enrolled in a job training program receiving assistance under the Workforce Innovation and Opportunity Act (WIOA) of 2014 (which superseded the Workforce Investment Act of 1998, which superseded the Job Training Partnership Act of 1982) or under other similar Federal, State or local laws. Verification would be a copy of the assistance award letter.
3. The student was previously under the care and placement responsibility of the state agency responsible for administering a plan under Title IV of the Social Security Act (i.e. Foster Care). Verification would be a foster care paperwork from social services.

Or entirely by full-time students if such students are:

4. Single parents with children, all of whom are students, and such parents and children are not dependents (as defined in IRC 152) of another individual and are not dependents of another individual other than a parent of such children. Verification would be a copy of the tax return or divorce decree.
5. Married and filing a joint return or are entitled to file a joint return. Verification would be a copy of their tax return or marriage certificate.

Revenue Ruling 2013-17 – Recognizes same-sex marriages, married in any state, that would meet the married and filing a joint return exception.

A unit occupied solely by a low-income tenant who becomes a full-time student after move-in would not qualify as a LIHTC unit. Owners may wish to protect themselves by including language in their tenant leases indicating that full-time student status will be a violation of the lease unless the property is in the extended 15-year compliance period.

If the applicant indicates that he or she is a student, have the applicant sign the **Student Certification**

Form. If the applicant is a student and receiving Section 8 Assistance also, have the applicant sign the **Student Status and Financial Aid Verification Form** and send it to the educational institution to verify full- or part-time student status and financial aid for income purposes.

The student status of all households must be annually verified as per IRS ruling. NDHFA has provided the Student Certification Form on its website.

2.13 Change in Household Composition

All household members must be certified and named on the lease. In the event the tenant in a LIHTC unit wishes to have an additional person move into the unit during the first six months of tenancy, the following steps must be taken:

1. The prospective tenant must complete an Application for Housing and allow for verification of income and assets as required of the initial tenant.
2. For Mixed-Use Projects, the new tenant's income is added to the income disclosed on the existing household's most recent tenant income certification. The household continues to be income-qualified, and the income of the new member is taken into consideration with the income of the existing household for purposes of the Available Unit Rule under IRC Section 42(g)(2)(D).
3. If the project is a 100 percent LIHTC Project, then the new tenant's income is added to the income disclosed on the existing household's original income certification. The combined income can be over the 140 percent limit as long as the next available unit is rented to a qualified household. Available Unit Rule under IRC Section 42 (g)(2)(D).
4. The lease should include the legal name(s) of the parties to the agreement and all other occupants age 18 and older, a description of the unit to be rented, the term of the lease, the rental amount, the use of the premises, and the rights and obligations of the parties. The lease should refer to the tax credit rules and regulations, or an addendum can be added to the lease stating the tax credit information. The lease should contain the language that a tenant cannot be evicted except for good cause.

In the event a household member vacates the unit, the unit will remain in the category as originally certified. Any changes in household composition should be documented in the tenant file.

A household may continue to add members as long as at least one member of the original low-income household continues to live in the unit. Once all the original tenants have moved out of the unit, the remaining tenants must be certified as new income qualified households unless the remaining tenants were income qualified at the time they moved into the unit.

2.14 Leases and Tax Credit Lease Rider

LIHTC units may not be rented on a transient basis. Initial leases must have at least a minimum term of six months. Renewal leases are not required and residents may continue occupancy on a month-to-month basis after the initial lease expires.

NDHFA's Tax Credit Lease Rider verbiage is required to be incorporated into each lease or an acceptable substitute is required as part of the initial lease packet and, if renewal leases are used, at renewal. Acceptable substitutes include an owner-prepared form or language within the lease, either of which must contain similar language to the NDHFA-provided addendum. If leases are automatically renewed, a new lease addendum is not required, because the original lease

addendum is tied to the original lease that remains in effect.

2.15 Acquisition Rehabilitation Tax Credits

When an owner receives tax credits for the acquisition and rehabilitation of an existing building that does not already have LIHTC, additional rules apply when first certifying and qualifying units for tax credits. In the first year, Initial Certifications must be completed for households as follows.

1. Existing households can be certified within 120 days before or after the acquisition date of the building using the income and rent limits in effect as of the acquisition date. In this case, the effective date of the initial LIHTC certification is the acquisition date.
2. If existing households are certified more than 120 days after the acquisition date of the building, they must be treated as a new move-in using the income and rent limits in effect as of the date the last adult member signs the TIC. The effective date of the initial LIHTC certification is the date the last adult member signs the TIC.

2.16 Resyndication Tax Credits

Resyndication occurs when an owner receives a new allocation of tax credits for the acquisition (purchase) and rehabilitation of an existing LIHTC project. Following are several key points for management to keep in mind at resyndication.

1. "Income Grandfathering" If an existing household is over the income limit applicable under the new allocation, it will remain eligible for a tax credit unit under the new allocation as long as:
 - The household was income-qualified for the LIHTC program under the previous tax credit allocation.
 - The file contains sufficient documentation to confirm the previous income qualification.
 - The unit remains rent-restricted.
 - The household meets all other current LIHTC rules including full-time student rule.
2. First year Income Certifications for Existing Households. As long as the file contains sufficient documentation of program eligibility under the previous tax credit allocation, NDHFA does not require new full certifications for existing households during the first credit year of resyndication. Recertifications should be completed as previously scheduled.

SECTION 3 – COMPLIANCE MONITORING PROCEDURES

NDHFA allocates tax credits through the LIHTC program within the state of North Dakota. Once a final allocation is awarded to a development, the Code requires NDHFA to monitor compliance by reviewing certain records kept by the Owners of the LIHTC housing developments.

NDHFA will accomplish this monitoring requirement by conducting onsite physical inspections and annual desk reviews of the project. NDHFA makes all attempts to streamline compliance regulation and in most cases the most restrictive policy will take precedence.

3.01 Fees

Annual Fee

An annual fee is charged to all developments during the compliance period. The annual compliance fee is \$50 per development plus \$40 per set-aside unit. Scattered site developments will be charged \$50 per building plus \$40 per set-aside unit. This fee will be reviewed periodically and may be adjusted accordingly.

Late Fee

Owners filing the required annual reports late will be assessed a Late Fee of the greater of \$100 or 10 percent of the annual fee.

Follow Up Inspections

If NDHFA is required to reinspect the property due to noncompliance, management no show, or failure to properly notify the tenants of an inspection, a \$150 reinspection fee plus actual costs for travel and per diem will be charged.

Developments which are subject to annual compliance monitoring fees for other programs administered by NDHFA may be eligible for a reduction in their annual fee at the sole discretion of NDHFA.

3.02 Annual Desk Review

NDHFA will perform an annual desk review on every LIHTC project. NDHFA will send a request for the submission of these documents. The annual desk review will cover the period 01/01-12/31 of the prior year.

Annual Documentation Requirements:

1. **Owner Certification:** The monitoring provisions of the Code require the Owner to certify at least annually that the development meets the following:
 - a. The requirements of the 20-50 test or the 40-60 test, as applicable. At least 20 percent or more of the residential units in the development are both rent-restricted and occupied by individuals whose income is 50 percent or less of area median income; or at least 40 percent or more of the residential units in the development are both rent-restricted and occupied by individuals whose income is 60 percent or less of area median income.
 - b. There was no change in the applicable fraction of any building in the development, or that there was a change and a description of the change. Applicable fraction is defined as the percentage of qualified low-income units in a development or the percentage of

- floor space of qualified low-income units, whichever is less.
- c. The Owner has conducted an initial certification for each LIHTC household and is retaining documentation to support that certification.
 - d. That each LIHTC unit is rent-restricted as defined in the Code.
 - e. No tenants in low-income units were evicted or had their tenancies terminated other than for good cause and no tenants had an increase in the gross rent with respect to a low-income unit not otherwise permitted under Section 42.
 - f. All low-income units in the project are and have been for use by the general public and used on a non-transient basis. Exception, transitional housing for the homeless provided under Section 42 (i)(3)(B)(iii) of the Code.
 - g. 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 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.
 - h. 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.
 - i. There has been no change in the eligible basis, as defined in Section 42 (d) of the Code, of any building in the project since last certification.
 - j. 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 buildings where applicable.
 - k. 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 comparable or smaller size to tenants having a qualifying income before any units were or will be rented to tenants not having a qualifying income.
 - l. 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 of comparable or smaller size in that building was or will be rented to residents having a qualifying income.
 - m. 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. 1437's. 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 provision, including any special provision, as outlined in the extended low-income housing commitment. Not applicable to buildings with tax credits from years 1987-1989.
 - n. 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 469 (h) of the Code.
 - o. There has been no change in the ownership or management of the project.

Annual certifications can be made by completing the **Annual Owner Certification** form.

2. **Annual Rental Compliance Report or Housing Credit Summary Report**

The owner is required to submit an Annual Rental Compliance Report. This report details information about each income and rent restricted unit in the project as well as tenant information for those units including household demographics (race, ethnicity, and disability

status). The report must contain information about each vacant unit. The report should reflect activities of a project during the reporting cycle 01/01-12/31 each year. NDHFA recommends property owners and managers submit the report provided by NDHFA HTC Software, however if the software used by the owner provides the same information in a report NDHFA may accept that format.

3. Other Documentation

- Desk Review Questionnaire.
- Certification of Tax Credit Summary Report for each building.
- Annual Operating Statements showing project income and expenses for the year reported. Audited Financial Statements are preferred.
- Statement of Mortgage Balances, showing that payments are current.
- Property Tax Statement showing taxes are paid and current.
- Bank Statements for operating reserve and replacement reserve accounts as of the end of the project fiscal year.
- Documentation to show the current utility allowance that is being used.
- Copy of most current LIHTC training certificate.
- Proof of sufficient property and liability insurance coverage.
- For projects that received points for pledging to provide permanent supportive services to special needs populations, an affidavit attesting to the supportive services provided or made available to the tenants during the fiscal year.
- Compliance Monitoring Fees.
- Any other documentation determined necessary to determine annual compliance with Section 42.

3.03 Onsite Inspection

Consists of an inspection of all buildings in the development by the end of the second calendar year following the year the last building in the development was placed in service and at least once every three years thereafter.

Onsite inspections include a physical inspection of property and review of the tenant income certifications (TIC), the documentation supporting the TIC, and the rent records for the tenants. NDHFA is required to review a random sampling of at least 20 percent of the tenant files and multi-family units. All vacant units will be inspected to ensure they are suitable for occupancy.

NDHFA will also request the following:

- Current Rent Roll.
- Current utility allowance.
- Affirmative Fair Housing Plan, if required by HUD Programs.

The selection of the files and units will be a random sample that is not available prior to the review. The units inspected will not necessarily be the tenant files reviewed. Approximately 14 days prior to the inspection, a notification letter will be sent to the Owner/agent of the property. Any violations corrected prior to the date of the confirmation letter will not be reported to the IRS in the form of an 8823.

3.04 Tenant File Review Procedures

Based on the total number of units in the development, on-site tenant file reviews will consist of 20 percent of the tenant files. If there are serious non-compliance issues the number of units sampled may increase.

The following items will be reviewed:

- Application.
- Tenant Questionnaire.
- Lease Agreement.
- Rent Rebate, if applicable.
- Student Status Verification.
- Tax Credit Addendum.
- VAWA Lease Addendum.
- Asset Verification/Under \$5000 Asset Verification.
- Move-in Inspection signed by landlord and tenant.
- Consent and Release forms.
- Tenant Income Certification and supporting documentation/verifications.

Corrections should be made to documents with a line drawn through the incorrect item, write in the correct item and have both parties initial and date the change. White out is not acceptable.

3.05 Physical Inspection Procedures

The first physical inspection of the property will be no later than the end of the second year after the last building is placed in service. The review of the tenant files and physical review of the units will be conducted in the year required.

NDHFA utilizes the Uniform Physical Conditions Standards (UPCS) as the physical inspection criteria for LIHTC developments. All LIHTC properties must be safe, decent and sanitary, and comply with the NDHFA Minimum Housing Rehabilitation and Property Standards which are hereby incorporated into this compliance manual by reference.

The manager is required to notify all households at least 24 hours in advance of the physical inspection. The selection of the units is random and at the discretion of the inspector.

Owners of a LIHTC property must maintain such housing in a manner that meets the physical condition standards set forth in this section in order to be considered decent, safe, sanitary, and in good repair. These standards address the major areas of the LIHTC property: the site; the building exterior; the building systems; the dwelling units; the common areas; and health and safety considerations

- **Site:** The inspectable items related to Site, such as fencing and gates, retaining walls, grounds, lighting, mailboxes/project signs, parking lots/driveways, play areas and equipment, refuse disposal, roads, market appeal, storm drainage, walkways, and steps must be free of health and safety hazards and be in good repair. The site must not be subject to material adverse conditions, such as abandoned vehicles, dangerous walks or steps, poor drainage, septic tank back-ups, sewer hazards, excess accumulation of trash, vermin or rodent infestation, or fire hazards.

Examples of observable deficiencies for inspectable items related to Site include, but are not limited to, the following.

- Fencing and Gates, both security/safety and non-security fences and gates: damaged, falling, or leaning; holes; missing sections.
 - Grounds: Erosion; rutting areas; overgrown or penetrating vegetation; ponding or poor site drainage.
 - Mailboxes/Project Signs: Missing or damaged.
 - Market Appeal: graffiti or litter
 - Parking Lots/Driveways/Roads: Cracks; ponding; potholes; loose material; settlement or heaving.
 - Play Areas and Equipment: Damaged or broken equipment; deteriorated play area surface.
 - Refuse Disposal: Broken or damaged enclosure; inadequate outdoor storage space.
 - Retaining Walls: Damaged, falling, or leaning.
 - Storm Drainage: Damaged or obstructed.
 - Walkways/Steps: Broken or missing handrail; cracks; settlement; heaving; spalling; exposed rebar.
- **Building Exterior:** Each building on the site must be structurally sound, secure, habitable and in good repair. The inspectable items related to Building Exterior, which includes each building's doors, fire escapes, foundations, lighting, roofs, walls, and windows, where applicable, must be free of health and safety hazards, operable and in good repair.

Examples of observable deficiencies for inspectable items related to Building Exterior include, but are not limited to, the following.

- Doors: Damaged frames, threshold, lintels, or trim; Damaged hardware or locks; Damaged surface (Holes, paint, rusting, glass); Damaged or missing screen, storm or security door; Deteriorated or missing caulking or seals; Missing door.
 - FIRE ESCAPES: BLOCKED EGRESS OR LADDERS; VISIBLY MISSING COMPONENTS.
 - Foundations: Cracks or gaps; Spalling; Exposed rebar.
 - Lighting: Broken fixtures or bulbs.
 - Roofs: Damaged soffits or fascia; Damaged vents; Damaged or clogged drains; Damaged or torn membrane; Missing ballast; Missing or damaged components from downspout or gutter; Missing or damaged shingles; Ponding.
 - Walls: Cracks or gaps; Damaged chimneys; Missing or damaged caulking or mortar; Missing pieces, holes, or spalling; Stained, peeling, or needs paint.
 - Windows: Broken, missing, or cracked panes; Damaged sills, frames, lintels, or trim; Damaged or missing screens; Missing or deteriorated caulking, seals, or glazing compound; Peeling or missing paint; SECURITY BARS PREVENT EGRESS.
- **Building Systems:** The inspectable items related to Building Systems, which includes each building's domestic water, electrical system, elevators, emergency power, fire protection, HVAC, roof exhaust system, and sanitary system must be free of health and safety hazards, functionally adequate, operable, and in good repair.

Examples of observable deficiencies for inspectable items related to Building Systems include, but are not limited to, the following.

- Domestic Water: Leaking central water supply; Missing pressure relief valve; RUST OR CORROSION ON HEATER CHIMNEY; IMPROPER ANGLE OF OR DISCONNECTED FLUE ON WATER HEATER; Water supply inoperable.
 - Electrical System: Blocked access or improper storage; Burnt breakers; Evidence of leaks or corrosion; Frayed wiring; MISSING BREAKERS OR FUSES; MISSING OUTLET COVERS.
 - Elevators: Not operable.
 - Emergency Power: Auxiliary lighting inoperable; Run-up records/Documentation not available.
 - Fire Protection: Missing/disabled/painted/blocked/capped sprinkler head; Missing, damaged, or expired extinguishers.
 - HVAC: Boiler or pump leaks; Fuel supply leaks; General rust or corrosion; MISALIGNED CHIMNEY OR VENTILATION SYSTEM.
 - Roof Exhaust System: Roof exhaust fan(s) inoperable.
 - Sanitary System: Broken, leaking, or clogged pipes or drains; Missing drain, cleanout, or manhole covers.
- **Dwelling Units:** Each dwelling unit within a building must be structurally sound, habitable, and in good repair. All inspectable items of the dwelling unit (for example, the unit's bathroom, call-for-aid (if applicable), ceiling, doors, electrical systems, floors, hot water heater, HVAC, kitchen, lighting, laundry area, outlets/switches, patio/porch/balcony, smoke detectors, stairs, walls, and windows) must be free of health and safety hazards, functionally adequate, operable, and in good repair.

Examples of observable deficiencies for inspectable items related to the Dwelling Units include, but are not limited to, the following.

- Bathroom: Bathroom cabinets damaged or missing; Lavatory sink damaged or missing; Plumbing has clogged drains or faucets or leaking faucet or pipes; Shower or tub is damaged or missing; Ventilation or exhaust system is absent or inoperable; Water closet or toilet is damaged, clogged, or missing.
- Call-for-Aid (if applicable): Inoperable.
- Ceiling: Bulging, bucking, or leaking; Holes, missing tiles, panels, or cracks; Peeling or missing paint; Water stains, water damage, mold or mildew.
- Doors: Damaged frames, threshold, lintels, or trim; Damaged hardware or locks; Damaged or missing screen, storm or security door; Damaged surface, including holes, bad paint, rusting, broken glass, or rotting; Deteriorated or missing seals on the entry door; Missing door.
- Electrical System: Blocked access to electrical panel; Burnt breakers; Evidence of leaks or corrosion; Frayed wiring; GFI inoperable; MISSING BREAKERS OR FUSES; MISSING COVERS.
- Floors: Bulging or buckling; Hard floor covering damage; Missing flooring tiles; Peeling or missing paint; Rotten or deteriorated subfloor; Water stains, water damage, mold, or mildew.
- Hot Water Heater: MISALIGNED CHIMNEY OR VENTILATION SYSTEM; Inoperable unit or components; Leaking valves, tanks, or pipes; Pressure relief valve missing; Rust or corrosion.
- HVAC System: Convection or radiant heat system covers missing or damaged; Inoperable system; MISALIGNED CHIMNEY OR VENTILATION SYSTEM; Noisy, vibrating, or leaking system; Rust or corrosion.

- Kitchen: Cabinets are missing or damaged; Countertops are missing or damaged; Dishwasher or garbage disposal is inoperable; Plumbing has clogged drains, leaking faucets, or pipes; Range hood or exhaust fans are inoperable; Excessive grease buildup; Range or stove is missing, damaged, or inoperable; Refrigerator is missing, damaged, or inoperable; Sink is damaged or missing.
 - Laundry Area: Dryer vent is missing, damaged, or inoperable.
 - Lighting: Missing or inoperable fixture.
 - Outlets/Switches: Missing outlet or switch; MISSING OR BROKEN COVER PLATE.
 - Patio/Porch/Balcony: Baluster or side railings damaged.
 - SMOKE DETECTOR: MISSING OR INOPERABLE.
 - Stairs: Broken, missing, or damaged steps or handrail.
 - Walls: Bulging or buckling; Damaged wall surface; Damaged or deteriorated trim; Peeling or missing paint; Water stains, water damage, mold, or mildew.
 - Windows: Cracked, broken, or missing panes; Damaged window sill; Missing or deteriorated caulking, seals, glazing; Inoperable or not lockable; Peeling or missing paint; SECURITY BARS PREVENT EGRESS.
- **Common Areas:** The common areas must be structurally sound, secure, and functionally adequate for the purposes intended. The basement/garage/carport, restrooms, closets, utility, mechanical, community rooms, day care, halls/corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony, and trash collection areas, if applicable, must be free of health and safety hazards, operable, and in good repair. All common area ceilings, doors, floors, HVAC, lighting, outlets/switches, smoke detectors, stairs, walls, and windows, to the extent applicable, must be free of health and safety hazards, operable, and in good repair.

Examples of observable deficiencies for inspectable items related to the Common Areas include, but are not limited to, the following. Common Areas include Basement, Garage, Carport, Closet, Utility or Mechanical Room, Community Room, Halls, Corridors, Stairs, Kitchens, Laundry Room, Lobby, Office, Patio, Porch, Balcony, Restrooms, Storage Areas, Pedestrian or Wheelchair Ramps, Pools and Related Structures, Trash Collection Areas, or Other Community Spaces.

- Missing or damaged balusters or side railings.
- Cabinets missing or damaged.
- Call-for-Aid system (if applicable) inoperable.
- Ceiling: Holes, missing tiles or panels, cracks; Peeling or missing paint; Water stains, water damage, mold, or mildew; Bulging or buckling.
- Chutes: Damaged or missing components.
- Countertops missing or damaged.
- Dishwasher or garbage disposal inoperable.
- Doors: Damaged frames, threshold, lintels, or trim; Damaged hardware or locks; Damaged surface (holes, paint, rust, glass); Damaged or missing screen, storm, or security door; Deteriorated or missing seals on entry door; Missing door.
- Dryer Vent: Missing, damaged, or inoperable.
- Electrical: Blocked access to electrical panel; Burnt breakers, Evidence of leaks or corrosion; Frayed wiring; MISSING BREAKERS; MISSING PLATES OR COVERS; Inoperable GFI; Missing or broken outlets, switches, or cover plates.
- Fencing: Damaged or not intact.

- Floors: Bulging or buckling; Floor covering damaged; Missing flooring or tiles; Peeling painted surface; Rotten or deteriorated subflooring; Water stains, water damage, mold, or mildew.
 - Graffiti
 - HVAC: Convection or radiant heat system covers missing or damaged; General rust or corrosion; Inoperable unit or system; MISALIGNED CHIMNEY OR VENTILATION SYSTEM; Noisy, vibrating, or leaking.
 - Lavatory Sink: Damaged or missing fixture.
 - Lighting: Missing, damaged, or inoperable fixture.
 - Mailbox: Missing or damaged.
 - Plumbing: Clogged drains; Leaking faucet or pipes.
 - Range Hood/Exhaust Fans: Excessive grease buildup; Inoperable.
 - Range/Stove: Missing, damaged, or inoperable.
 - Refrigerator: Missing, damaged, or inoperable.
 - Shower/Tub/Sink: Damaged or missing.
 - SMOKE DETECTORS: MISSING OR INOPERABLE.
 - Stairs: Broken, damaged, or missing steps or handrail.
 - Ventilation/Exhaust system inoperable.
 - Walls: Bulging or buckling; Damaged surface, peeling or missing paint; Damaged or deteriorated trim; Water stains, water damage, mold, or mildew.
 - Water Closet/Toilet: Damaged, clogged, or missing.
 - Windows: Cracked, broken, or missing panes; Damaged window sill; Inoperable or missing lock; Missing or deteriorated caulking, seals, or glazing; Peeling or missing paint; SECURITY BARS PREVENT EGRESS.
- **Health and Safety Concerns:** All areas and components of the housing must be free of health and safety hazards. The inspectable areas related to Health and Safety include, air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, general hazards, infestation, and lead-based paint. For example, the buildings must have fire exits that are not blocked and have handrails that are undamaged and have no other observable deficiencies. The housing must have no evidence of infestation by rats, mice, or other vermin, or of garbage and debris. The housing must have no evidence of electrical hazards, natural hazards, or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold, odor (e.g., propane, natural gas, methane gas), or other observable deficiencies. The housing must comply with all requirements related to the evaluation and reduction of lead-based paint hazards and have proper certifications of such (see 24 CFR part 35). For projects which include acquisition of occupied housing, life threatening deficiencies in areas of health and safety must be addressed and corrected immediately. Life threatening health and safety deficiencies are identified below by ALL CAPS.

Examples of observable deficiencies for inspectable items related to Health and Safety include, but are not limited to, the following.

- Air Quality: Mold and/or mildew observed; PROPANE, NATURAL GAS, OR METHANE GAS DETECTED; Sewer odor detected.
- ELECTRICAL HAZARDS: EXPOSED WIRES; OPEN PANELS; WATER LEAKS ON OR NEAR ELECTRICAL EQUIPMENT.
- Elevator: Elevator is misaligned with floor by $\frac{3}{4}$ inches or more.
- Emergency Fire Exits: EXITS BLOCKED OR UNUSABLE; Missing exit signs.
- Flammable or Combustible Material: Improperly stored and secured.
- Garbage and Debris: Present indoors or outdoors.

- General Hazards: Sharp edges; Tripping; unsafe or missing handrails.
- Infestation: Insects, rats, mice, or other vermin.
- **Compliance with State and Local Codes:** These physical condition standards do not supersede or preempt State and local codes for building and maintenance with which HTF-assisted housing must comply. HTF-assisted housing must continue to adhere to those codes.

NDHFA recommends using preventative maintenance and maintaining a maintenance schedule at all developments

The Code requires NDHFA to conduct the onsite inspection at least through the end of the 15-year compliance period and the extended use period, Y-15.

NDHFA must notify the Owner of a LIHTC housing development in writing as soon as possible if NDHFA discovers on audit, inspection, review, or in some other manner that the development is not in compliance with the Code.

3.06 Correction Period

The Owner has an opportunity to correct noncompliance within 30 days from the date of the notice. An extension of up to six months may be granted by NDHFA for good cause as determined by NDHFA.

NDHFA is required to notify the IRS of an owner's noncompliance no later than 45 days after the end of the allowed time for correction whether or not the noncompliance is corrected. NDHFA will notify the IRS by filing Form 8823, explaining the nature of the noncompliance, and indicating whether the Owner has corrected the noncompliance.

3.07 Quarterly Vacancy Reporting

Properties are required to report vacancy information on a quarterly basis. Information required includes total number of units occupied, vacant and ready for occupancy, total number of units not ready for occupancy and an AMI percentage breakdown of the units that are vacant. Quarterly reports are due by the 7th of the month following quarter end. Property managers will be provided with the report template for each specific project.

3.08 Non-Compliance

If NDHFA does not receive the required certifications by the due date or if NDHFA discovers on audit, inspection, review or in some other manner that the development is not in compliance with the Code, NDHFA will notify the owner within 30 days.

The Owner will have an opportunity to supply missing certifications or to correct noncompliance within a specified correction period.

NDHFA is required to notify the IRS of an owner's failure to file the Annual Owner Certification on a timely basis, or any other noncompliance issues no later than 45 days after the end of the allowed time for correction, whether or not the noncompliance or failure to certify has been corrected.

The IRS has published a “Guide for Completing Form 8823.” Commonly called the 8823 Guide which provides instructions for monitoring agencies to determine noncompliance, what constitutes correction, and how and when noncompliance and property dispositions are reported. Owners and managers are encouraged to use the Guide as a reference tool.

If uncorrected noncompliance is reported to the IRS, a corrective 8823 cannot be filed until all instances of noncompliance are corrected for that building.

Examples of Remedial Action

- The status of the Owners, managing agents, and or any general partners may be designated as “not in good standing” with NDHFA.
- Change in management or site staff may be required.
- Additional monitoring may be required.
- A professional consultant, at the owner’s expense.
- Required third party audits or approvals of files.
- Required training for staff.
- Future applications for of any NDHFA programs may be denied.
- Legal Action

3.09 Tax Credit Assistance Program (TCAP) and Section 1602 (Tax Credit Exchange)

1. Compliance and Asset Management

Properties funded with TCAP and/or Section 1602 Program funds must comply with NDHFA’s Housing Loan documents and with IRC Section 42 for the full term of the compliance and extended use periods, as evidenced by a Declaration of Land Use Restrictive Covenants.

2. Monitoring and Reporting

NDHFA will monitor compliance with TCAP and Section 1602 Programs in the same manner as the Housing Tax Credit Program as described in this manual.

3.10 Liability

Compliance with Section 42 of the Code is the sole responsibility of the Owner of the development for which the LIHTC is allowed. NDHFA's obligation to monitor for compliance with the requirements of the Code does not make NDHFA liable for an owner's noncompliance.

3.11 Record Keeping and Record Retention

Owners are required to keep records on a monthly basis, unless otherwise noted, for each qualified LIHTC building in the development showing the following information:

1. The total number of residential rental units in the building including the number of bedrooms and the size, in square feet, of each unit.
2. The number and percentage of residential rental units in the building that are dedicated for low-income usage, offices, and management units.
3. The rent charged on each residential rental unit in the building, including any utility allowance,

as well as any additional charges to tenants. Documentation must include tenant ledgers, leases, and utility allowances as required by the Internal Revenue Service.

4. The number of occupants in each LIHTC unit and the household's student status.
5. The LIHTC unit vacancies in the building, marketing information and information that shows the rentals of the next available units.
6. The Tenant Income Certification (TIC) for each LIHTC unit and documentation to support that certification. Documentation includes but is not limited to application/recertification questionnaires, income and asset verifications, student status, and collection of household demographics including race, ethnicity, and disabled status.
7. The eligible basis and qualified basis of the building at the end of the first year of the credit period.
8. The character and use of any nonresidential portions of the building included in the building's eligible basis under 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 development.)
9. Records demonstrating that any elections or pledges made on the LIHTC application, particularly those for which points were received, have been fulfilled for the compliance period.

Owners are required to keep all records for each building for six years beyond the due date (with extensions) for filing the federal income tax return for that year. Example: records for the 2006 tax year used to prepare the federal tax return which was due April 15, 2007, must be retained until April 15, 2013. However, the records for the first year of the credit period must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period for the building.

3.12 Sample and Mandatory Forms

NDHFA has made available all mandatory and sample forms on our website at www.ndhfa.org under Rental Compliance.

SECTION 4- COMPLIANCE POLICY FOR EXTENDED USE PERIOD (Y15 POLICY)

At the end of the 15-year initial compliance period the IRS is no longer involved in enforcing compliance and is left up the monitoring state to set a policy for monitoring and to enforce compliance through state courts or other internal measures such as debarment from participating with NDHFA in any new programs, etc.

As the responsible entity mandated to develop policies in regard to compliance of LIHTC, NDHFA has developed the following guidelines for compliance activities during the extended 15-year compliance period. All other guidelines remain unchanged.

4.1 Student Rule

LIHTC units may now be occupied by households consisting entirely of income-eligible, full-time students, without exception. Student status still needs to be verified to determine income-eligibility. Those students receiving Section 8 assistance have to include financial aid as income if it is more than the yearly tuition.

4.2 Annual Recertification of Households

IRS Code requires that a certification of household income, including third-party verification, be completed prior to initial occupancy and an annual recertification at least once every 12 months thereafter for mixed income LIHTC developments. During the extended 15 Year Compliance Period, an initial certification, including third party verification consistent with HUD Section 8 guidelines will continue to be required for initial occupancy but annual recertification requirements will be relaxed and consist of a self-certification from the tenant on the signed Annual Household Tenant Certification Update.

4.3 Unit Transfers

Unit transfers between buildings in a property will be allowed without having to re-determine a household's eligibility.

4.4 Next Available Unit Rule

Compliance with the Next Available Unit Rule is no longer monitored. A unit occupied by a household that qualified at move-in may retain its designation until it is reoccupied as long as the unit remains rent-restricted.

4.5 Applicable Fraction

The building's applicable fraction would only be determined by the unit fraction.

4.6 Waiver of Certain Income Restrictions

Properties experiencing sustained vacancy rates greater than 10% average over a 12-month period ending with the most recent reporting period may request relief from the low-income usage requirements as established at initial funding. On a case by case basis, the NDHFA will grant a waiver to rent vacant units to non-qualified households, providing the owner is in good standing with NDFHA.

The waiver may allow for no more than 50 percent of the units to be leased to non-qualified households for a 100 percent restricted project. At no time will the number of waived units allow a project to forgo minimum set-aside election. Preference must always be given to qualified households. Steering of qualified households to less desirable units will not be allowed and will be cause for revocation of the waiver.

To request a waiver the following items must be submitted to the NDHFA for review.

- Detailed explanation as to the property's current financial situation and difficulty that it is presently experiencing with leasing units to qualified tenants. The narrative must also provide details of the current marketing efforts.
- Balance sheets and Profit and Loss statements for the most recent 2 years available.
- Reports showing the number of vacant units each month for a 12-month period.
- NDHFA may request additional information as deemed necessary.

If a waiver is granted, it shall continue for the property's remaining extended use period unless rescinded by the NDHFA for good cause.

Owners may not be eligible to apply for this waiver if it would be in conflict with program requirements of other funding sources in the property such as RD, HOME and HUD Section 8.

4.7 Physical Inspections and Tenant File Review

Physical inspections and tenant file reviews will be performed every five years. Ten percent of the units and files will be inspected during the review. The units are not required to be the same for file review and the physical inspection. NDHFA reserves the right to inspect additional units, files, and records as deemed necessary.

In the event of an ownership or management change, a review may be performed within that year to ensure the new entity is maintaining compliance with the LURA.