



COMPLIANCE MANUAL

Low Income Housing Tax Credit Program



Community Housing and Grants Management Division

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Una traducción al español de este documento está disponible a pedido.



Summary of Changes: 2024 Revision

Date	Section	Description of Changes
4/01/2024	1.05	Added new section on HOTMA applicability
4/01/2024	1.07	Moved Electronic Signatures
4/01/2024	1.09	Added NDHFA Compliance Responsibilities
4/01/2024	1.010	Owner Responsibilities updated and expanded
4/01/2024	1.11	Updated training requirements under Management Agent and On-site Personnel Responsibilities
4/01/2024	1.17	Updated Minimum Set-Asides to include Average Income and the Average Income Test to align with the final regulation released Oct 2022
4/01/2024	1.19	Updated to clarify Utility Allowance rules for buildings with HOME funds
4/01/2024	1.23	Clarified General Public Use rule
4/01/2024	1.24	Added Tenant Selection Plan
4/1/2024	1.25	Added Reasonable Accommodation/Modification Procedure
4/01/2024	1.27	Clarified Employee/Common units
4/01/2024	2.03	Added citizenship clarification
4/01/2024	2.04	Determining Household Size updated to reflect HOTMA changes
4/01/2024	2.07	Updated verification methods to incorporate HOTMA changes and included "Means-tested" verification method
4/01/2024	2.13	Tenant Fraud definition and correction measures
4/01/2024	2.14	Owner Fraud definition and correction measures
4/01/2024	3.01	Late and non-compliance fees have been updated
4/01/2024	3.03	Updated Annual Owner Certification Requirements to include VAWA, IRS Ruling 2004-82 language regarding eviction and non-renewal of lease, and non-transient use
4/01/2024	3.03	Added Emphasys Certification Portal requirement to the Annual Restriction Review
4/01/2024	3.04	File Reviews and Physical Inspections updated with HOTMA and NSPIRE protocols
4/01/2024	3.06	Added daily fee for non-compliance after the correction period
4/01/2024	Section 5	Glossary of terms added
4/01/2024	Attachment A	Added 24 CFE 5.609 (b) and (c) – Part 5 Income and Asset Inclusions and Exclusions
4/01/2024	Attachment B	Added NSPIRE Inspection Sample Checklist
1/01/2025		Updated attachments

Minor formatting, wording, or grammatical changes are not identified in this list. In addition to the items below, all website links referenced in the manual have been validated and updated where appropriate.

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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 is intended 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 implied, 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 forms is mandatory while the use of other forms is optional. Please pay particular attention to language within the manual that indicates mandatory versus optional forms. If on-site management uses forms other than those provided, care should be taken to assure that the forms provide sufficient information to meet HUD 4350.3 income determination guidelines.

1.03 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.

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

The American Recovery and Reinvestment Act of 2009 (ARRA) created two temporary funding programs to supplement the LIHTC program during a time of decreased investor demand for tax credits and low equity pricing.

The Tax Credit Assistance Program (TCAP) provided funding from HUD to be used as gap financing for tax credit awards. To receive a TCAP allocation, a project must also have an award of tax credits. All compliance rules and regulations within this manual apply to the TCAP program.

The Section 1602 Tax Credit Exchange Program (1602) provided an opportunity for unsold tax credits to be exchanged for cash. 1602 funds could be used to fully fund a project or in conjunction with tax credits. Therefore, some projects may be fully funded through 1602 while others may be a combination of LIHTC and 1602 Exchange funding. All compliance rules and regulations within this manual apply to the 1602 program.

1.05 Housing Opportunity Through Modernization Act of 2016 (HOTMA)

Section 102 of HOTMA redefines income and asset calculations and verification requirements and is applicable to certifications effective on or after 1/1/2024. This manual has been updated to include HOTMA provisions, including requirements from the HOTMA final rule and HUD Notice H 2023-10 / PIH 2023-27 "Implementation Guidance: Sections 102 and 104 of the Housing Opportunity Through Modernization Act of 2016."

NDHFA will note HOTMA related non-compliance issues identified in calendar year 2024 and will require necessary corrective action. However, NDHFA will not impose penalties for HOTMA specific issues during calendar year 2024- i.e. will not issue 8823s for items specifically linked to HOTMA changes.

1.06 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 to 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.

1.07 Electronic Signature

Per the N.D.C.C. Chapter 9-16, NDHFA will accept electronic records with electronic signatures from authorized individuals. Electronic documents must be printable, retainable, 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).

1.08 NDHFA Staffing

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

The Compliance Coordinator is the overall compliance lead and is responsible for annual restriction reviews, annual rent approvals, vacancy reports, compliance manual updates, migrating new projects from development to compliance, and oversight of the Emphasys Compliance Portal.

The Compliance Specialist is responsible for tenant file reviews, physical inspections, sending compliance notices to owners/managers, monitoring follow-up compliance, and sending 8823 forms to the IRS.

The Administrative Assistant is responsible for annual restriction review data entry, tracking compliance fees, and assisting with other compliance tasks as needed.

1.09 NDHFA Compliance Responsibilities

Annual Restriction Review

NDHFA will conduct an annual review for each project to determine compliance with the income and rent restrictions defined in the project's LURA, as well as other requirements described in the LURA or the applicable Qualifying Allocation Plan (QAP.) The review will cover the previous calendar year (1/1 through 12/31.) For more information see section 3.03.

File Monitoring and Physical Inspections

All developments will be subject to tenant file monitoring and physical inspections once every three years. NDHFA will perform a file review and physical inspection for each development within two years of the last building being placed-in-service and at least once every three years thereafter. However, NDHFA reserves the right to monitor/inspect more frequently, with or without notification to the owner. Decisions to monitor/inspect more frequently may be based on tenant complaints or NDHFA's assessment that a project is high risk.

Physical Unit Inspections- NDHFA staff will conduct a physical inspection to ensure that the development is suitable for occupancy per the NSPIRE inspection protocol. For more information see 3.04

Tenant File Audits- Information to be reviewed will include, but is not limited to, annual Tenant Income Certifications, Income Questionnaire, documentation received to support those certifications (i.e., income and asset verifications), rent and utility allowance records, leases, tenant selection plans, etc. Owners must provide organized tenant files to NDHFA with documentation in chronological order. For more information see 3.04

NDHFA retains the right to perform a file review and/or physical inspection of any building and/or unit at any time during the Compliance and Extended Use Periods, with or without notice to the owner.

Notify IRS of Noncompliance

NDHFA will notify the IRS of instances of potential noncompliance by issuing Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition. Form 8823 must be sent to the IRS by NDHFA no later than 45 days following the end of the correction period. For information on noncompliance, see Section 3.06.

Suspension and Debarment

NDHFA may suspend or debar entities from participation in NDHFA programs if noncompliance issues are recurring or egregious, funds are misused, an entity engages in fraudulent activity, etc. Suspension or debarment from the program may not only affect the non-compliant award, but also other awards that

the entity is currently associated with. Additionally, suspension or debarment affects future applications submitted to NDHFA.

Retain Records

NDHFA will retain all Annual Owner Certifications and records for no less than three years from the end of the calendar year in which they are received. NDHFA will retain records of noncompliance or failure to certify compliance for no less than six years after its filing of an IRS Form 8823, Low Income Housing Credit Agencies Report of Noncompliance.

Conduct Training

NDHFA will conduct or arrange compliance training and will disseminate information regarding the dates and locations of such training to its partners.

Possible Subcontracting of Functions

NDHFA may, in its sole discretion, decide to retain an agent or private contractor to perform some of the responsibilities listed above. Owners will be notified of the name and contact persons of the contractor.

1.10 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, compliant 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)).

Ongoing compliance training is a requirement and training certifications must not be more than one year old. Proof of training is required as part of the annual compliance monitoring. See section 1.11 for more information.

Provide Pertinent Information to Management Agent and Any Subsequent Owners

To ensure compliance, the owner should provide the management agent with copies of at least the following documents: the Final Application for rental housing financing, the Extended Use Agreement, the

Carryover Agreement, Form 8609 for each building, and the QAP for the year the project was awarded credits.

If there is a change in management agent, the owner is responsible for providing all information and previous tenant files to the new management company. If there is a change in ownership, the existing/previous owner is responsible for providing all award documentation and previous tenant files to the new owner.

Due Diligence

The owner is ultimately responsible for compliance and proper administration of the program and all award requirements. NDHFA expects all owners and management agents to demonstrate “due diligence,” hereby defined as the appropriate, voluntary efforts to remain in compliance with all applicable Federal and State rules and regulations. Due diligence can be demonstrated through business care and prudent practices and policies.

Page 3-4 of the 8823 Guide states that due diligence requires the establishment of internal controls, including but not limited to: separation of duties, adequate supervision of employees, management oversight and review (such as internal audits), third party verifications of tenant income, independent audits, and timely recordkeeping.

Due diligence also includes keeping up to date with NDHFA policies by reading current NDHFA Compliance Manuals, following NDHFA updates via memos published on the NDHFA website, and attending NDHFA sponsored tax credit training when available.

Another way in which the management agent can demonstrate a commitment to due diligence is by establishing and maintaining a consistent file order. Consistent and well-organized files make it easier for management to recognize when documentation is missing and allow for easier reviews.

If noncompliance issues are discovered, NDHFA may ask the owner and management agent to demonstrate due diligence by showing that the proper internal policies and procedures are in place to prevent noncompliance from occurring/recurring. It is understood that mistakes may occur from time to time, but it is the responsibility of the owner and management agent to have policies in place to minimize and remedy these errors.

1.11 Management Agent and On-site Personnel Responsibilities

- The management agent and all onsite personnel are responsible to the owner for implementing all program requirements.
- All staff authorized to lease units must be trained in all federal and state laws pertinent to property management as well as all LIHTC rules and regulations.
- The management agent must provide information, as needed, to NDHFA and submit all required reports and documentation in a timely manner. Failure to submit these requirements by their deadline may result in the assessment of late fees (see section 3.01).
- Management agents are required to complete annual compliance training. Fair housing training alone will not satisfy the requirements; training must be provided by an industry professional. The NDHFA-sponsored compliance training fulfills the requirement. If significant or repeated noncompliance issues are discovered during compliance monitoring activities, additional training may be required.

1.12 Changes in Management Agent or Contact Information

If the owner makes a change in the Management Agent, there is a change of staff within the existing management agent, or if there is a change in the contact information (email, mailing address, phone number) for the ownership entity or property management agent, NDHFA must be notified within 30 days.

Owner must submit a Notification of Change in Contact Information (SFN 61658) and Designation of Authorized Representative (SFN 52845) to NDHFA.

Owners must review the Non-Compliant Organization listing prior to enlisting a new property management agent; a property management agent on the Non-Compliant Organization listing and may not be contracted to manage another property until they have corrected all noncompliance issues.

1.13 Transfer of Ownership

Owners must 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.

Prior to any transfers of ownership, first review the list of Non-Compliance Organizations as transfer to an individual or entity on this list is prohibited. Submit the following to NDHFA:

- State Form: Notice of Intent to Transfer Ownership form (SFN 59468).
- Transfer Fee.
 - \$5000 if transfer is within five years of placed-in-service date.
 - \$500 if transfer is beyond five years of placed-in-service date.
 - There is no fee for a partial change in the underlying organization of the ownership entity such as the replacement of the limited partner.

In addition to the information listed above, the following documentation must be submitted as available, but no later than 30 days after the transfer. Half of the transfer fee will be refunded after NDHFA has received all of the required transfer information.

For Changes in Partnership Status, submit the appropriate document(s):

- 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.

NDHFA will conduct an on-site inspection and compliance review following a transfer of ownership to establish a “baseline” of the physical condition of the project and the state of tenant files and compliance documents.

1.14 Casualty Loss

The Owner is responsible for reporting 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.

1.15 Vacant Units

Vacant low-income units must be made suitable for occupancy as soon as possible to allow for immediate occupancy of an eligible applicant. 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, but typically no more than 45 days. Units determined to be unsuitable for occupancy in a reasonable timeframe will be considered out of compliance.

1.16 Building Identification Numbers

Each LIHTC building is identified by a unique Building Identification Number (BIN) which consists of three parts in the following format: ND-XX-XXXXX.

- Part one: The state abbreviation – **ND**.
- Part two: The last two digits of the Tax Allocation year – ex. **22 for Tax allocation year 2022**.
- Part three: An identification number (always five digits) assigned by NDHFA.

1.17 Minimum Set-Aside

A. Minimum Set-Aside Elections: 20/50, 40/60, or Average Income

On Form 8609, the owner irrevocably elects one of the following Minimum Set-Aside elections on a project basis:

- 20/50 Election: At least 20% of available rental units in the project must be rented to households with incomes not exceeding 50% of Area Median Income adjusted for family size. If the 20/50 Election has been made, no tax credit units in the project may be set aside at a rent or income level above 50% AMI.
- 40/60 Election: At least 40% of available rental units in the project must be rented to households with incomes not exceeding 60% of Area Median Income adjusted for family size. If the 40/60 Election has been made, no tax credit units in the project may be set aside at a rent or income level above 60% AMI.
- Average Income Election: Information on the Average Income Test follows below in this section.

*Note: Average Income was added as a new Minimum Set-Aside election under the Consolidated Appropriations Act of 2018 enacted on March 23, 2018, and is not retroactive to older tax credit projects.

The Minimum Set-Aside must be met on a project basis (project is defined by the election made by the owner on IRS Form 8609 Part II, Line 8b). Therefore, if each building is its own project, then the Minimum Set-Aside must be met at each building.

Once the election of the Minimum Set-Aside is made on IRS Form 8609, it is irrevocable. Thus, the elected Minimum Set-Aside and the corresponding rent and income restrictions apply for the duration of the Compliance Period and Extended Use Period applicable to the development.

Note: The owner may have also elected to target a percentage of the units to persons at lower income levels (e.g., 30% or 40% AMI) and/or to target a higher percentage/number of units to low-income persons. The owner must also comply with those additional elections as defined in the development's Final Application and Extended Use Agreement.

B. Minimum Set-Aside Violations in the Initial Year

Credits cannot be claimed until the Minimum Set-Aside has been met. Since the Credit Period must begin in either the year that a building is placed-in-service or the following year, the Minimum Set-Aside must also be met by this deadline. If the Minimum Set-Aside is not met by the deadline, no credits can ever be claimed on the project. This is a non-correctable form of noncompliance.

C. Minimum Set-Aside Violations in Subsequent Years

If the minimum set-aside is violated for a particular year of the Compliance Period (not the initial year of the Credit Period), the project is out of compliance for that year and subject to recapture of previously claimed credits. Furthermore, credits are lost, and no additional credits can be claimed until the Minimum Set-Aside has been restored. The project is back in compliance for the taxable year in which the Minimum Set-Aside is restored.

The Minimum Set-Aside is violated if an insufficient number of units are qualified tax credit units. However, per the 8823 Guide (page 10-3), "noncompliance with the Minimum Set-Aside should also be reported if systemic errors affecting all the LHC units are identified, e.g. using incorrect income or rent limits for all the units."

D. Minimum Set-Aside vs. Applicable Fraction

The Applicable Fraction and the Minimum Set-Aside are not the same thing. The Applicable Fraction tells the percentage of units and floor space that must be reserved for qualified low-income households in a specific building. The Minimum Set-Aside tells the minimum percentage of units that must be set-aside as tax credit units in the entire project (as defined on Form 8609), and the federal income restriction at which these units must be set-aside. To comply, a project must meet its Minimum Set-Aside, and each building within that project must meet its Applicable Fraction.

E. Average Income Test

Per Treasury Regulation 1.42-19, a project (as defined by Form 8609 Line 8b) with an Average Income Minimum Set-Aside Election meets the Minimum Set-Aside test if at least 40% of the total units in the project constitute a "qualified group of units." To be considered a "qualified group of units:"

1. Each unit in the group must be a low-income unit- i.e., must be occupied by an eligible household, must be properly rent-restricted, and must be suitable for occupancy; and
2. The average of the imputed income limitations for all units in the group must not exceed 60% AMI. Possible imputed income and rent limit designations under the Average Income Test are 20%, 30%, 40%, 50%, 60%, 70%, or 80% AMI. Other designations are not allowed. A project is not required to have units designated at each of these various limits, as long as the average imputed income limitation for the qualified group is at or below 60% AMI.

Minimum Set-Aside Qualifying Group of Units (Applies to all Average Income projects): The owner must designate units at the various imputed income and rent limits in order to demonstrate that the unit mix will result in a qualifying group of units that meets the Minimum Set-Aside test. The average is calculated based on the AMI designation of the unit, not on the actual income of the household residing in the unit.

For example, if a unit is designated as a 60% AMI unit and the household moving into the unit is at 54% AMI, for purposes of calculating the average this unit is considered 60% AMI.

Applicable Fraction Qualifying Group of Units (Applies only to Average Income projects with an Applicable Fraction less than 100%): All units counted towards the applicable fraction of any building in the development must collectively be included in a qualifying group of units for purposes of meeting the Applicable Fraction. This qualifying group of units must have an average income limitation that does not exceed 60% AMI. Applicable Fraction is still calculated on a building basis. The average on a building-by-building basis does not have to be below 60% as long as the average of all units in the qualifying group of units is below 60% AMI.

NDHFA has established the following policies for the **Average Income Test**:

1. AMI designations are allowed to float between units within the project (i.e., a particular unit is not locked into a specific AMI level), but the total unit mix must be maintained as agreed upon in the Application and as recorded in the Extended Use Agreement. The number of units agreed upon for each AMI level must be maintained, with the exception that NDHFA may allow and approve changes if needed to resolve noncompliance.
2. NDHFA will consider the owner to have “designated” a unit based on the AMI level being:
 - a. Recorded on the Tenant Income Certification form in the file.
 - b. Reported through Emphasys during the Annual Restriction Review.
 - i. NDHFA may also request an Annual Rent Compliance Report (ARCR) or rent roll for verification of unit designations.
3. If a current qualified tenant transfers to another vacant unit in the project, the units swap AMI designations.
4. The income and rent restriction on a unit must match. For example, a unit considered 40% AMI must be rented to a household at or below the 40% AMI income limit and gross rent must be at or below the 40% AMI rent limit.
5. NDHFA does not impose any special rules on recertification requirements based on an Average Income election. A 100% tax credit project that has elected Average Income is still exempt from full recertifications.
6. If a project requires recertification and the household’s income has increased at time of recertification, NDHFA will continue to use the AMI level the household initially qualified under at time of move-in to calculate the Average Income Test, as long as the unit remains restricted at that rent level. The unit is not “redesignated” due to income increases at recertification.
 - a. For example, a household had income at move-in under the 40% income limit and was treated as a 40% household with a 40% rent restriction. At recertification, the household income now exceeds 40% AMI. As long as the unit continues to be rent restricted at the 40% rent limit, NDHFA will continue to consider this a 40% unit for purposes of calculating the Average Income Test.
7. NDHFA will work with owners to allow reasonable corrections to restore compliance with average income requirements. Such corrections may include redesignating units or adding or removing units from the qualifying group of units.
 - a. If an issue is discovered and corrected within the taxable year that the problem occurs, the owner will be allowed to correct the issue to ensure that there is a qualifying group of units and that the Minimum Set-aside test is met by the end of the taxable year.

- b. If an issue is not discovered and corrected within the taxable year that the problem occurs, any retroactive correction to designations must be made within 180 days of discovery of an issue by the owner or NDHFA. If discovered by the owner, the issue and suggested correction must be promptly communicated to NDHFA to benefit from this correction period.
8. Reporting - Section 42 requires the following reporting:
- a. The owner must annually report to the Agency the grouping of qualified units for the minimum set-aside.
 - b. The owner must annually report to the Agency the grouping of qualified units for the 60% average income test (for the applicable fraction).
 - c. The owner must report changes in unit designations upon effectuation of the change and annually.
 - d. Reporting will be completed via the Emphasys Certification Portal as part of the Annual Restriction Review. NDHFA may request at any time a rent roll that includes the following:
 - i. Unit Number
 - ii. Square footage
 - iii. Rental rate
 - iv. Average income designation
 - v. Move-in date
 - vi. Next Available Unit (NAU), if applicable, with NAU form
 - vii. Identification of any units that had to change designations for federal or state-allowed reasons

1.18 Rent and Fees

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)

Except for a low-income building described in section 42(h)(4)(B) (a bond-financed building), the Internal Revenue Service will treat the gross rent floor in section 42(g)(2)(A) as taking effect on the date an Agency initially allocates a housing credit dollar amount to the building under section 42(h)(1).

However, the Service will treat the gross rent floor as taking effect on a building's placed-in-service date if the building owner designates that date as the date on which the gross rent floor will take effect for the building. An owner must make this designation to use the placed-in-service date and inform the Agency that made the allocation to the building no later than the date on which the building is placed-in-service.

For a bond-financed building, the Service will treat the gross rent floor in section 42(g)(2)(A) as taking effect on the date an Agency initially issues a determination letter to the building. However, the Service will treat the gross rent floor as taking effect on a building's placed-in-service date if the building owner designates that date as the date on which the gross rent floor will take effect for the building. An owner must make this designation to use the placed-in-service date and inform the Agency that issued the determination letter to the building no later than the date on which the building is placed-in-service.

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 continues to receive a minimum of one dollar in 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.

Fees (In Addition to Rent) (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.

Allowable Fees Not Included in Gross Rent

- Application fees that do not exceed the actual out-of-pocket costs for checking tenant qualifications such as income, rental history, credit history and criminal history.
- Refundable fees such as security deposits.
- Late Fees.
- Pet deposits, rents, and fees.

- Use of areas not included in the eligible basis (i.e. reserved parking, garage, or storage unit.)
- Lease break fees, except in the case of a VAWA request.

Allowable Fees Included in Gross Rent

- Month-to-month lease fees
- Renter's insurance premium: The Owner is required to obtain proof of the insurance 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. Failure to include the actual premium could result in a tenant paying over the maximum gross rent and impact the unit's eligibility for tax credits.

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.
- Fees for work involved in completed the Tenant Income Certification or other program specific documentation, such as verifications.

If there is any question about whether a specific fee is allowed, contact NDHFA's compliance coordinator.

Overcharged Gross Rent

Gross rent, as previously defined in this section, 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 rent, the affected unit is 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 within 15 days of the day the overcharged rent is discovered. The refund must be issued in a single payment or credit.

1.19 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 by the following methods.

- A. 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).
- B. 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.

- C. 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.
- D. Buildings with HOME funds. Home rules require Owners to use a project-specific utility allowance. Owners are not permitted to use the PHA's utility allowance for HOME-assisted units if HOME funds were committed on or after August 23, 2013. If HOME Funds were committed prior to August 23, 2013, Owners may continue to use the PHA's utility allowance. For more information, review the guidance provided in HOMEfires – Vol 13 No.2, May 2016.
- E. 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:

1. **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.

2. **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.
3. **HUD Utility Schedule Model:** The HUD Utility Schedule Model may be obtained by going to the LIHTC 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 with 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.
4. **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.

5. **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 with 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.

- A. 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).
- B. 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.
- C. 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.

1.20 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 been placed-in-service prior to the implementation cutoff date of the new limits.

HERA Special Income Limits

In 2009, HUD began publishing "HERA special" income limits for counties impacted by the hold-harmless policy. Where applicable, the HERA limits must be used by all tax credit projects placed-in-service on or before December 31, 2008. However, not all counties will have HERA special limits every year. Projects placed-in-service in 2009 or later are not eligible to use the HERA special limits, including projects that receive a subsequent credit allocation. Reminder: project is defined by the election on Line 8b of Form 8609. A multiple building project is considered placed-in-service on the date the first building in that project places in service.

A project is eligible to use the HERA special limits if:

- A. The county in which the project is located has HUD published HERA special limits for the year, and
- B. The project placed in service on or before 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.

1.21 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. However, the transferring household's income may not be above the 140% limit. 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 line item 8b.*

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

A unit is considered non-transient when the initial lease is signed for a term is six months or longer, regardless of whether or not the household actually remains in the unit for that length of time. After the initial six-month term, renewal lease terms may be month-to-month.

Federal regulations allow shorter leases for certain types of transitional housing for homeless individuals and for SRO units. The following types of housing are exempt from the six-month minimum lease period:

- A. The building is used exclusively to facilitate the transition of formerly homeless individuals (as defined in Section 103 of the Stewart B. McKinney Homeless Assistance Act) to independent living.
- B. Single Room Occupancy (SRO) projects.

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.

1.23 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. Owner preferences for certain population groups (homeless, persons with disabilities, older persons, artists, etc.) are permitted provided the preference does not violate Fair Housing, is documented in the written tenant criteria, and approved by NDHFA.

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:

- A. With special needs.
- B. Who are involved in artistic or literary activities.
- C. 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.

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. Likewise, units in a hospital, nursing home,

sanitarium, life care facility, or intermediate care facility for the mentally and physically disabled are not considered for use by the general public and is therefore not eligible for LIHTC.

1.24 Tenant Selection Plans

All developments must have a written Tenant Selection Plan that describes the applicable program eligibility requirements and the screening policies implemented by management. NDHFA will review the Tenant Selection Plan during the pre-lease process as well as during tenant file reviews.

There are no federal or state requirements for the LIHTC program regarding criminal or credit background checks, landlord references, or a minimum income necessary for occupancy. Implementation of these selection criteria is up to owner/management discretion, as long as the screening criteria are applied equally to all applicants and do not violate any Fair Housing or related regulations. Screening criteria must also comply with the requirements of any other funding sources.

Owners implementing criminal background checks must ensure that such screening policies do not violate Fair Housing. Tenant selection plans and screening criteria must be established in compliance with HUD's "Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate Related Transaction" notice issued on April 4, 2016. Per that notice, arrest records are not sufficient basis for denying an application. Conviction records may be used for tenant screening, but "a blanket prohibition on any person with any conviction record- no matter when the conviction occurred, what the underlying conduct entailed, or what the convicted person has done since then" is not permissible. Tenant selection policies must "accurately distinguish between criminal conduct that indicates a demonstrable risk to resident safety and/or property and criminal conduct that does not" and must "take into account the nature and severity of an individual's conviction."

Additionally, there are no regulations governing citizenship requirements for LIHTC tenants. Since the Fair Housing Act does not prohibit discrimination based solely on citizenship status, owners may ask applicants to provide documentation of citizenship or immigration status as part of the screening process. If the owner chooses to implement such a policy, the screening criteria must be established in writing and applied in a uniform, nondiscriminatory fashion with caution to avoid any discriminatory impact based on Fair Housing protected classes- particularly race, color, or national origin. Owners should be aware that other housing programs (such as Section 8, other HUD programs, or RD programs) may have stricter citizenship requirements that must be followed if the project has additional funding sources.

Because many of these tenant selection criteria are left to the discretion of the owner, it is required that each development implements a written Tenant Selection Plan. This document must be made available to all applicants and tenants and will be reviewed by NDHFA during file reviews.

At a minimum, a Tenant Selection Plan must include the following:

- A. Occupancy standards in effect (how many tenants can live in a unit based on size of the unit).
- B. Program eligibility factors, including income limits and student status eligibility.
- C. Any minimum income requirements imposed by management, if applicable. Minimum income requirements may not be applied to applicants with tenant-based rental assistance or for units with project-based rental assistance. While a minimum income requirement may be imposed, the tenant selection plan cannot require all applicants to be employed as this could have a disparate impact under Fair Housing.
- D. Any citizenship requirements imposed by management or required by another funding source, if applicable.
- E. Specifics on the information that is analyzed when performing credit checks, criminal background checks, and previous landlord references. Management should clearly spell out what findings constitute a rejection of application. Criminal background check policies must comply with the 2016 HUD Office of General Counsel guidance as described above.

- F. Explanation of the application and waiting list process, including a process through which an applicant is notified in writing of rejection and can then choose to appeal the rejection decision.
- G. Explanation of the transfer policies in effect.
- H. Breakdown of any special preferences set aside at the project (e.g., units reserved for special needs populations).
- I. Housing for Older Persons Act (age restriction on the project).
- J. List of any other relevant items used in considering the household's eligibility for occupancy.

When creating a development's Tenant Selection Plan, the owner must be careful to follow all applicable tax credit eligibility regulations (including General Public Use), nondiscrimination requirements including Fair Housing and the Violence Against Women Reauthorization Act, HUD guidance on criminal background checks, and applicable local occupancy standards.

With the exception of accessible units, all units should be leased on a first-come first-served basis with tenants selected in chronological order from the waiting list.

NOTE: Units designated as permanent supportive housing for persons experiencing homelessness are subject to special tenant selection requirements.

1.25 Reasonable Accommodations and Modifications Procedure

NDHFA strongly advises all owners to have a written policy describing how they will handle requests for reasonable accommodation and modifications. The main steps are outlined below. In this context, "owner agent" means the person receiving the request for a reasonable accommodation or modification, most likely the onsite management agent:

- A. Resident or a family member or someone else acting on the resident's behalf makes a request for an accommodation or modification. A request can be made either orally or in writing. If this request is made orally, the owner agent should document the nature of the request and the date and time received.
- B. Owner agent verifies the need only if (1) the disability is not obvious, (2) if unsure if the disability is permanent or temporary, and/or (3) if unsure how the request relates to the need (i.e., does not understand correlation between the person's needs and the request made). The form used to request verification cannot ask specific information about the nature of a person's disability. The purpose of verification is to verify that the person meets the Fair Housing Act definition of disability and that the requested accommodation or modification is necessary for that person's equal opportunity to enjoy and use the housing.
- C. If verification supports the need, then the owner agent must take the necessary steps to provide the accommodation or modification. **An undue delay is noncompliance** and is treated in the same manner as a denial.
- D. If verification does not support the need, then the owner agent should schedule an interactive meeting with the resident to request clarifications and attempt to achieve a mutually acceptable resolution of the issue. The owner agent should carefully explain the concerns or questions related to the request and, if applicable, why the request is being denied.
- E. Document the tenant file with all related information.

1.26 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.

1.27 Employee Units (Common 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.

Employee or common units no longer needed must be converted to LIHTC at the highest set-aside available at the property.

1.28 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:

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

If 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:

- A. Evicting a household from a LIHTC unit or terminating their tenancy within the lease term other than for "good cause."
- B. 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.

1.29 Violence Against Women Act (VAWA)

All LIHTC projects must comply with the provisions of the Violence Against Women Reauthorization Act of 2013 and 2022 (VAWA). VAWA is legislation designed to improve criminal justice and community-based responses to domestic violence, dating violence, sexual assault and stalking in the United States.

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 because of an incident of domestic violence, dating violence, sexual assault, or stalking that is reported and confirmed.

Prohibited Denial/Termination

No applicant for or tenant of covered housing programs may be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.

VAWA protections apply to all victims of domestic violence, dating violence, sexual assault and stalking regardless of sex, gender identity, or sexual orientation.

Lease Terms

The owner/manager shall ensure that an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as:

- A serious or repeated violation of a lease by the victim or threatened victim of such incident; or
- Good cause for terminating the assistance, tenancy or occupancy rights to housing of the victim of such incident.

Termination on the Basis of Criminal Activity & Bifurcation of Lease

No person may deny assistance, tenancy, or occupancy rights to an applicant or tenant solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking that is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, if the tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking. Notwithstanding the foregoing, the owner and/or manager may bifurcate a lease for the housing in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant of the housing and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual, without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant of the housing. The owner and or manager must provide any remaining tenants with an opportunity to establish eligibility and a reasonable time to find new housing or to establish eligibility.

Confidentiality of Tenant Information Related to Domestic Violence, Dating Violence, Sexual Assault, or Stalking

The owner shall ensure that any information submitted to the staff, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking shall be maintained in confidence and may not be entered into any shared database or disclosed to any other entity or individual, except to the extent that the disclosure is:

- Requested or consented to by the individual in writing.
- Required for use in an eviction proceeding against any individual who is a tenant or lawful occupant of the housing and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking, or
- Otherwise required by applicable law.

Required Notices

HUD has developed, and may amend from time to time, notices of the rights of individuals under VAWA including the right to confidentiality and the limits thereof. The owner agrees to ensure that these notices are utilized and disseminated at the project as directed by HUD and/or NDHFA. See below for information on required forms.

Emergency Transfers

HUD has developed, and may amend from time to time, guidance regarding a model emergency transfer plan that allows tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to transfer to another available and safe dwelling unit. The owner agrees to ensure that any guidance developed will be utilized as directed by HUD and/or NDHFA.

Required Forms

NDHFA mandates the use of the following VAWA forms for all projects subject to VAWA compliance.

- HUD 5380: Notice of Occupancy Rights Under VAWA. Must be provided at the following times, along with a copy of the HUD 5382:
 - At the time of initial admission; and
 - At the time of denial of tenancy; and
 - When termination / eviction notices are sent.
- HUD 5381: Model Emergency Transfer Plan. The owner must create a model plan specific to each project. The plan must be made available for review by tenants and by NDHFA.
- HUD 5382: Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking. This form is to be used by tenants as a self-certification form. A copy must be attached any time the HUD 5380 is distributed.
- HUD 5383: Emergency Transfer Request. This form is used by tenants to request a transfer under VAWA.
- HUD 91067: VAWA Lease Addendum.

Forms are available on the NDHFA site at <https://www.ndhfa.org/index.php/compliance/vawa/>.

Nonretaliation Provisions (Added in VAWA Reauthorization of 2022)

An owner agent may not discriminate against any person because they have opposed any act or practice made unlawful by VAWA or testified, assisted, or participated in any VAWA-related matter.

Noncoercion Provisions (Added in VAWA Reauthorization Act of 2022)

An owner agent may not coerce, intimidate, threaten, interfere with, or retaliate against any person who exercises VAWA protections, assists another person in exercising their VAWA protections, or participates in a VAWA investigation or enforcement activity.

Protection to Report Crimes from Home (Added in VAWA Reauthorization Act of 2022)

Owner agents, residents, guests, and applicants have the right to seek law enforcement or emergency assistance on their behalf or on the behalf of another person seeking assistance and shall not be penalized based on such requests for assistance or their status as a victim of criminal activity. Prohibited penalties include actual or threatened:

- Assessment of monetary or criminal penalties, fines, or fees
- Eviction
- Refusal to rent or renew tenancy
- Refusal to issue occupancy permit or landlord permit
- Closure of the property or designation of the property as a nuisance or similarly negative designation

1.30 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 the 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.

1.31 Reserve Accounts

All projects are required to maintain operating and replacement reserve accounts. Projects should refer to the applicable Qualified Allocation Plan (QAP) for additional reserve account guidance.

Each reserve account identified in this section (operating and replacement) 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.

Operating Reserve

Until the project has achieved a minimum of five years of stabilized operations, all projects will be required to establish and maintain an operating reserve equal to a minimum of six months of projected operating expenses to include mandatory debt service payments and annual replacement reserve payments. This requirement can be met with one of the following:

- A. An up-front cash reserve.
- B. A personal guarantee from the developer/general partner with a surety bond to stand behind the personal guarantee.
- C. 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 QAP under which the project was funded. This account shall be used for major repair or project-wide replacement of building systems and components and not for routine maintenance or 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 may use replacement reserves only for the intended purpose of funding capital improvements and replacement of long-lived capital assets and may not be distributed to owners or partners 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 if 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.

SECTION 2: QUALIFICATION OF APPLICANTS

Applicants for LIHTC units should be advised early in their initial visit to the property that there are maximum income limits that apply to the units. Management should explain to potential tenants that the anticipated income of all adult persons (and the unearned income of minors) expecting to occupy the unit must be verified prior to occupancy (with the exception of foster adults, foster children, and live-in aides.)

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/manager must verify all income and assets. After all income and assets have been verified, the owner/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 Leases and Tax Credit Lease Rider

NDHFA's Tax Credit Lease Rider, or an acceptable substitute, is required to be incorporated into each lease as part of the initial lease packet and, if renewal leases are used, at renewal. Acceptable substitutes may include language within the lease or an owner-prepared lease addendum, 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 tied to the original lease remains in effect.

2.03 Citizenship

There are no citizenship requirements for the LIHTC program. However, citizenship requirements may apply if the property received funding from a source outside of the LIHTC program or if it is stated in the project's Tenant Selection Policy (see section 1.23).

2.04 Determining Household Size

The Owner/Agent must consider all individuals who will reside in the unit to determine the appropriate household composition and family size for purposes of occupancy standards and income limits.

According to HUD guidance, "household members" include all persons (adult and children) authorized to reside in the unit for the purpose of occupancy standards; "family members" are persons counted for income limit purposes as well as occupancy standards.

To this end, the following are considered household members for occupancy standards only. They are not included to determine the applicable income limit:

- A. Foster children
- B. Foster adults
- C. Live-in aides and their children
- D. Guests

There will be times when absent family members will be included as part of the household composition for occupancy standards and for determining the applicable income limit. Such family members include:

- A. Children temporarily placed in a foster care home away from the household and are expected to return.
- B. Children present at least 50 percent of the time, as mandated by joint custody arrangements.
- C. Children who are away at school but return to the household during school recesses.
- D. Unborn children.
- E. Children in the process of being adopted.
- F. Family members temporarily absent due to military service or an out-of-state job assignment.
- G. Children of deployed military personnel.
- H. Family members in rehabilitation facilities or hospitals for a limited time period or longer.
- I. 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.

2.05 Annual Income

Annual income is defined as the gross amount of earned and unearned income to be received by all adult family members (18 years of age and older, including full-time and part-time students) and the gross unearned income of minor family members during the 12 months following the date of certification or recertification.

The owner agent must generally use current circumstances to anticipate income. However, if information is available on known changes expected to occur during the year, the owner must use that information to determine the total anticipated income.

Whose income and assets are counted?

Family Members	Employment Income	Unearned/Asset Income
Head of Household	Yes	Yes
Spouse/Co-Head	Yes	Yes
Other Adult	Yes	Yes
Dependents (under age 18)*	No	Yes
Full-Time Dependent Student **	See Note Below	Yes
Temporarily Absent Member	Yes	Yes
Temporarily Absent Military	Yes	Yes
Member permanently living in hospital or nursing home***	See Note Below	See Note Below
Household Members		
Live-in Aide, foster children, foster adults, guest, co-signors, etc.	No	No

*Emancipated minors who are not head, spouse, or co-head are considered dependents.

**If a full-time student over 18 is a dependent of the household, only a maximum of \$480 (adjusted by inflation) of earned income is included in annual household income.

***A household has the right to decide if a person permanently confined to a hospital or nursing home will be included as a household member. If the individual is included as a household member, their income must be certified and included, but they may not be designated as head, co-head, or spouse.

- A. Nonrecurring income: Income that is not recurring is **not counted** as income. Examples of income that is considered nonrecurring and thus excluded include:
1. Payments from the U.S. Census Bureau for employment lasting no longer than 180 days and not culminating in permanent employment.
 2. Direct federal or state payments for economic stimulus or recovery.
 3. Tax refunds or tax credits.
 4. Gifts for significant life events or milestones (holidays, birthdays, weddings, baby showers, etc.).
 5. Lump sum additions to net family assets, including lottery or contest winnings.
 6. Non-monetary, in-kind donations such as food, clothing, or toiletries received from a food bank or similar organization.
 7. Nonrecurring payments made to the family or to a third-party on behalf of the family to assist with utilities or eviction prevention.
 8. Security deposits to secure housing.
 9. Payments for participating in research studies (depending on the duration).
 10. Other general one-time payments.
- B. Sporadic or seasonal income: The owner must use reasonable judgment to determine the most reliable method of calculating income in scenarios where income fluctuates, such as when income is received as an independent contractor, day laborer, or seasonal worker.
1. A day laborer is defined as “an individual hired and paid one day at a time without an agreement that the individual will be hired or work again in the future.”
 2. An independent contractor is defined as “an individual who qualifies as an independent contractor instead of an employee in accordance with the Internal Revenue Code Federal income tax requirements and whose earnings are consequently subject to the Self-Employment tax.”
 - a. Individuals with “gig income”, such as babysitters, rideshare or app-based delivery drivers, or others who earn income through any app, website, or digital platform, typically fall into the category of independent contractors.
 3. A seasonal worker is defined as “an individual who is: 1) hired into a short-term position (e.g., for which the customary employment period for the position is six months or fewer); and 2) employment begins about the same time each year (such as summer or winter). Typically, the individual is hired to address seasonal demands that arise for the employer or industry.” Examples include employment linked to holidays, agricultural seasons, lifeguards, ballpark vendors, snowplow drivers, etc.

Such income does not meet HUD’s definition of “nonrecurring” and must be counted as income. If income cannot be determined using current information, the owner may anticipate income based on the actual income that was earned within the last 12 months prior to the income

determination. However, the previous year's income should not be used if information is available that shows the situation has changed.

Note that income limits are based on *gross annual income, not adjusted annual income*. Allowances commonly used in some federal housing programs, like childcare allowance, elderly household allowance, dependent allowance, handicapped assistance allowance, medical deductions, etc., are not permitted to be subtracted from the household's gross annual income to determine income eligibility for LIHTC units.

Income Inclusions and Exclusions

Any income source specifically not excluded must be included. Please refer to 24 CFR 5.609 (b) and (c) (Attachment A) for specifics. You will find the most current version of this regulation on the NDHFA website.

2.06 Assets

Net Family Assets Defined

Net family assets are defined as the net cash value of all assets owned by the family (except necessary personal property and specifically excluded assets), after deducting reasonable costs that would be incurred to dispose of real property, savings, stocks, bonds, and other forms of investment.

There are three types of assets:

- A. Real property is included in net family assets. Real property includes land or a home.
- B. Necessary personal property is excluded from net family assets. Necessary personal property includes (1) items essential to the family for the maintenance, use, and occupancy of the premises as a home, (2) items necessary for employment, education, or health and wellness, (3) items that assist a household member with a disability or that may be required for a reasonable accommodation for a person with a disability, and (4) personal effects including items that are convenient or useful to a reasonable existence and that support and facilitate daily life within the home.
- C. Non-necessary personal property includes bank accounts, other financial investments, luxury items, and other items not counted as necessary personal property. Non-necessary personal property is treated as follows:
 1. If combined value > \$50,000 (adjusted by inflation) include in net family assets.
 2. If combined value < \$50,000 (adjusted by inflation) exclude from net family assets, but actual income from the assets is still included as income.

See Table F1 from HUD Notice H 2023-10/PIH 2023-27 (copied below) for examples of necessary personal property versus non-necessary personal property.

Necessary Personal Property	Non-Necessary Personal Property
<ul style="list-style-type: none"> • Car(s)/vehicles(s) that a family relies on for transportation for personal or business use (e.g., bike, motorcycle, skateboard, scooter) • Furniture, carpets, linens, kitchenware • Common appliances • Common electronics (e.g., radio, television, DVD player, gaming system) • Clothing • Personal effects that are not luxury items (e.g., toys, books) • Wedding and engagement rings • Jewelry used in religious/cultural celebrations and ceremonies • Religious and cultural items • Medical equipment and supplies • Health care related supplies • Musical instruments used by the family • Personal computers, phone, tablets, and related equipment • Professional tools of trade of the family, for example, professional books • Educational materials and equipment used by the family, including equipment to accommodate persons with disabilities • Equipment used for exercising (e.g., treadmill, stationary bike, kayak, paddleboard, ski equipment) 	<ul style="list-style-type: none"> • Recreational car/vehicle not needed for day-to-day transportation (campers, motorhomes, travel trailers, all-terrain vehicles (ATVs)) • Bank accounts or other financial investments (e.g., checking account, savings account, stocks/bonds) • Recreational boat/watercraft • Expensive jewelry without religious or cultural value, or which does not hold family significance • Collectibles (e.g., coins/stamps) • Equipment/machinery that is not used to generate income for a business • Items such as gems/precious metals, antique cars, artwork, etc.

The market value of an asset is its dollar value on the open market. The cash value of an asset is the market value minus reasonable expenses incurred to convert the asset to cash, including for example:

- Penalties or fees for converting financial holdings. Any penalties, fees, or transaction charges incurred when an asset is converted to cash are deducted from the market value to determine its cash value.
- Costs of selling real property. Settlement costs, real estate transaction fees, payment of mortgages/liens against the property, and any legal fees associated with the sale of real property are deducted from the market value to determine equity in real estate.

If an asset is not effectively owned by an individual, do not include it as a household asset. An asset is not considered “effectively owned” by an individual when the asset is held in the individual’s name but the asset and income it earns accrue to the benefit of someone else who is not a member of the family, and that other person is responsible for taxes on income generated by the asset.

NOTE: Some income sources (including benefits such as Social Security) are being paid onto special pay cards / prepaid debit cards instead of through direct deposit into a checking or savings account. These cards are included as assets and are verified in the same way as a checking or savings account. A current

balance must be provided and included as an asset in addition to the benefit income being counted as income. This balance can be obtained through an online account service, a paper statement, or an ATM balance.

Disposed of Assets

Assets disposed of for less than fair market value are included as assets for a period of two years from the date of disposal. The amount to be included as an asset is the difference between the cash value of the asset and the amount that was actually received (if any) in the disposition of the asset. This rule only applies if the difference between the cash value and the amount received is greater than \$1000.

Assets disposed of for less than fair market value as a result of foreclosure or bankruptcy or those lost through a separation or divorce settlement are not included in this calculation.

Jointly Owned Assets

If assets are owned by the household and one more individuals outside of the household, the owner agent must include the total value of the asset in the calculation of net family assets unless (1) the asset is specifically excluded, (2) the household can demonstrate that the asset is inaccessible to them, or (3) the household cannot dispose of any portion of the asset without the consent of another owner who refuses to comply. If the household has access to only a portion of the asset, then only that portion's value is counted in the calculation of net family assets.

If the household member is a beneficiary who is entitled to access the account's funds only upon the death of the account's owner, and may not otherwise draw funds from the account, then the account is not counted as an asset for the household.

Assets with Negative Equity

The value of real property or other assets with negative equity is considered \$0 for purposes of calculating net family assets.

Excluded Assets

The following are excluded from net family assets. Any asset source not specifically excluded must be included in net family assets.

- A. The value of necessary items of personal property.
- B. The value of non-necessary items of personal property with a combined value < \$50,000 (adjusted by inflation). However, actual income earned from such assets is still included as income.
- C. The value of any account under a retirement plan recognized as such by the IRS, including Individual Retirement Accounts.
- D. (IRAs), employer retirement plans such as 401(k) or 403(b) plans, and retirement plans for self-employed individuals.
- E. The value of real property that the household does not have the effective legal authority to sell. Examples include co-ownership situations where one party cannot unilaterally sell the real property (including situations where one owner is a victim of domestic violence), property tied up in litigation, or inherited property in dispute.
- F. Amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a household member arising out of law that resulted in a member of the family being a person with disabilities.
- G. The value of any Coverdell education savings account under Section 530 of the Internal Revenue Code, the value of any qualified tuition program under Section 529 of the Internal Revenue Code, and the

amounts in, contributions to, and distributions from an Achieving a Better Life Experience (ABLE) account under Section 529A of such code.

- H. The value of any “baby bond” account created, authorized, or funded by the federal, state, or local government (money held in a trust by the government for children until they are adults).
- I. Interests in Indian trust land.
- J. Equity in a manufactured home where the family receives assistance under 24 CFR Part 982.
- K. Equity in property under the Homeownership Option for which a family receives assistance under 24 CFR Part 982, Family Self-Sufficiency accounts.
- L. Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family.
- M. The full amount of assets held in an irrevocable trust.
- N. The full amount of assets is held in a revocable trust where a member of the household is the beneficiary, but the grantor/owner and trustee of the trust is not a member of the household.

Subtraction of Federal Tax Refunds or Refundable Tax Credits

Amounts received in the form of a federal tax refund or refundable tax credit are excluded from net family assets.

If a tax refund was received during the previous 12-month period preceding the effective date of certification, then the amount of the refund must be subtracted from the total value of the account into which it was deposited. If the subtraction results in a negative number, the balance of the asset is considered \$0. When calculating this amount, the owner agent must use the refund amount actually received, not an amount anticipated.

Asset Income

A. Actual Income from Assets

The income generated by an asset, such as interest or dividend payments. Actual income from assets is always included in annual income, regardless of whether the asset itself is included or excluded from net family assets, unless the income is specifically excluded.

B. Imputed Income from Assets

Imputed income must be calculated for specific assets (not all assets) when three conditions are met:

1. The value of net family assets exceeds \$50,000 (adjusted by inflation).
2. The specific asset is not specifically excluded.
3. Actual asset income cannot be calculated for that specific asset.

If actual income from asset can be computed for some assets but not all, the owner agent must add up the actual income from assets for those assets where actual income can be calculated and then calculate imputed income just for those assets where actual income cannot be calculated.

4. Imputed income is calculated using the passbook rate.
5. HUD will calculate a new passbook rate each July.

- a. Find the current rate at: <https://www.huduser.gov/portal/datasets/inflationary-adjustments-notifications.html>.

Asset Inclusions and Exclusions

Please refer to 24 CFR 5.609 (b) and (c) (Attachment A) for specifics on asset inclusions and exclusions. You will find the most current version of this section on the NDHFA website.

2.07 General 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.

To qualify 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.

Methods of Verification

Owner agents must follow HUD’s verification hierarchy*, which lists verification documentation from most acceptable to least acceptable. The owner agent must demonstrate efforts to obtain third-party verification prior to accepting self-certification, except in instances where self-certification is explicitly allowed (i.e., when net assets do not exceed \$50,000 adjusted by inflation).

Level	Verification Technique	Ranking/Order of Acceptability
5	Upfront Income Verification (UIV) using non-EIV system- e.g., The Work Number, web-based state benefit systems, etc.	Highest
4	Written third-party verification from the source <i>provided by the tenant</i> - e.g., paystubs, bank statements, benefit letters, etc.	High
3	Written, third-party verification form	Medium- use if applicant or tenant is unable to provide Level 4 documentation
2	Oral, third-party verification	Medium
1	Self-certification (not third-party)	Low- use as last resort if unable to obtain any third-party verification or use when specifically permitted such as when net assets do not exceed \$50,000 (adjusted by inflation)

**Adapted from Table J2: Verification Hierarchy from HUD Notice H 2023-10 / PIH 2023-7. Note: Level 6 EIV has been removed from this chart as it is not applicable to the tax credit program.*

NDHFA looks for the following methods of verification, in order of preference:

A. Third-party verification documents that are prepared by third parties and supplied by the household

1. Earned Income: Defined as income or earnings from wages, tips, salaries, or other employee compensation and net income from self-employment.
 - a. Upfront Income Verification (UIV) such as Equifax’s Work Number.
 - b. Paystubs: Most recent and consecutive, two months minimum. (Two months most recent and consecutive required for HOME units).
 - i. Military Pay stubs are called Leave and Earning Statements (LES).
 - c. Verification of Employment forms completed by the employer.

- d. Independent Contractors should provide an IRS “Schedule C” (profit or loss from business), W-1099, or earning statement from the web-based platform (gig income).
- 2. Unearned Income: Social Security, SSDI, SSI, pensions, veteran benefits, retirement accounts, unemployment, workers’ compensation, TANF and any other “transfer (benefit) payment”
 - a. Statement or benefits/award letter supplied by the household.
 - i. The cost-of-living adjustment (COLA) should be factored in when anticipating household income. The COLA for veterans is equal to the COLA for Social Security (Veterans’ COLA Act of 2023.) Find the current COLA at: <https://www.ssa.gov/oact/cola/latestCOLA.html>.
 - b. Verification forms completed by third parties, when the above are not available.
 - c. If a household member is not employed and receives unearned income the member must complete a Non-Employment Affidavit in addition to verification of the unearned income.
- 3. Child or Spousal Support
 - a. HOTMA Implementation Guidance specifically states that “child support or alimony must be based on the payments received, not the amounts to which the family is entitled by court or agency orders. The actual amount received must be verified to annualize income. A copy of a court order or other written payment agreement may not be sufficient verification since that order would demonstrate the amount the household is entitled to, not the amount they are receiving.”
- 4. Assets
 - a. Financial statements, real estate listings, mortgage deeds, or similar documentation
 - b. Verification forms completed by a financial institution when the above are not available or don’t provide the necessary information.

B. Public Housing Authority Verification of Household Income

A Housing Choice Voucher (HCV) is a form of tenant-based Section 8 rental assistance provided by a local Public Housing Authority (PHA) to individual households. It is the gross income that is used before any adjustments that the PHA may make to calculate rent. If documentation is received by an owner/agent from the PHA stating the household’s income and composition, the documentation is considered third party verification. The HUD 50058 certification form may be used as verification of income for LIHTC income certification. If it is not possible to obtain the 50058 from the PHA, a signed statement from the PHA indicating all household members and the household’s gross annual income may also be used to verify income. There is a sample form for this purpose on the NDHFA website.

The 50058 only serves as verification of income. Other paperwork such as an application, student status paperwork, and a TIC must also be included in the file. Student financial assistance income is covered in the PHA verification of income. However, such verification does not address LIHTC student eligibility status. Separate student eligibility verification must still be obtained.

Because the HUD Form 50059 used for Section 8 Project Based Rental Assistance is not signed by a PHA representative, the *Form 50059 cannot be used as income verification*.

Furthermore, the tax credit program cannot accept the Enterprise Income Verification (EIV) system used by Section 8 to verify income. EIV documentation must be kept in a separate file from the tax credit verifications so that it is completely inaccessible to the tax credit auditor.

C. Safe Harbor Income Determination for “Means-Tested” Assistance

In lieu of conducting their own income calculation, the owner agent may rely on the income determination completed for another “means-tested” form of federal public assistance within the previous 12-month period. Approved “means-tested” programs are as follows:

1. Temporary Assistance for Needy Families (TANF)
2. Medicaid
3. Supplemental Nutrition Assistance Program (SNAP)- e.g., food stamps
4. Earned Income Tax Credit (EITC)
5. Low Income Housing Tax Credit (LIHTC)
6. Special Supplemental Program for Women, Infants, & Children (WIC)
7. Supplemental Security Income (“SSI”)
8. Other programs determined by HUD to have comparable reliability as announced through the Federal Register

The owner agent must obtain a third-party verification from the applicable program administrator that indicates household size and includes all household members and provides the household’s annual income. This may be in the form of a benefit award letter from the relevant program/agency.

Such verification is valid if any of the following dates falls into the 12-month period prior to receipt of the verification by the owner agent:

1. Income determination effective date
2. Program administrator’s signature date
3. Family’s signature date
4. Report effective date
5. Other report-specific dates that verify the income determination date

If this verification is not available or the household disputes the verification, then the owner agent must conduct a traditional income verification and calculation.

D. Self-Certification

If third-party verification of income or assets has been substantially delayed or has been attempted to no avail, self-certifications made under penalties of perjury may be acceptable for minor issues or matters that don’t significantly affect eligibility.

For more information on specific verification types, see 4350.3 Appendix 3 (Acceptable Forms of Verification). <https://www.hud.gov/sites/documents/43503a3HSGH.PDF>

E. Zero Income Applicants

If a family member claims to have no income from any source, the member must complete a Certification of Zero Income.

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.

2.08 Calculating Annual Income

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.
- If verification indicates a range of hours worked, calculate income based on the average hours worked.
- Do not use year to date to determine annual income.

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.

There is a wage calculation worksheet available on the NDHFA website in the sample forms section.

Asset Valuation Guidelines for Common Assets

- Checking and/or Savings Account: Use current balance.
- Online Payment Apps (Velle, Venmo, PayPal, etc.): Use current balance.
- Equity in Real Estate: Convert to and use the cash value.
- IRA or Keogh 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.

2.09 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.

A. 100 Percent Housing Tax Credit Properties:

1. All initial (move-in) tenant files must contain third-party documentation of family income and assets.
2. Projects are NOT required to verify income or assets annually. However, investors may still require annual certifications.
3. Projects in the first 15 years of the period of affordability must verify student status for all household members annually.

B. Mixed-Unit Tax Credit Properties (market-rate and tax credit units in one property):

1. All initial (move-in) tenant files must contain third-party documentation of family income and assets.

2. Projects must continue to verify household income, assets, and student status annually for all LIHTC units.

2.10 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.

2.11 Leasing to Students

A unit is not considered an eligible LIHTC unit if all the occupants of such a 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:

- A. A student receiving assistance under Title IV of the Social Security Act, (TANF). Verification would be a TANF award letter.
- B. 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.

- C. 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:

- D. 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.
- E. 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 a sample Student Certification Form on its website.

2.12 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, the following steps must be taken:

- A. If within the first six months of tenancy, owners or managers must certify the household as if it were a new move-in. This requirement does not apply in cases of natural changes such as birth, adoption, or death, or in cases covered under the Violence Against Women Reauthorization Action of 2013 (VAWA). The combined household income must be at or below the applicable move-in income for the new household size.
- B. After first six months of tenancy:
 1. 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, however 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).
 2. 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).

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.

2.13 Tenant Fraud

If fraud or misrepresentation of information is discovered while processing an application for residency, the applicant should be denied. Handling tenant fraud/misrepresentation becomes more problematic when discovered at recertification. In this scenario it may be determined that the household was never initially qualified and has been inappropriately occupying the unit. Fraud is considered material noncompliance with the lease and program requirements and is therefore grounds for termination of tenancy.

The footnote on Page 25-2 of the 8823 Guide makes the IRS's position on tenant fraud very clear, stating that "the IRS wants to provide an incentive for owners to identify, and remove (if possible) fraudulent tenants." In this spirit, the IRS provides leniency for owners/management agents that discover tenant fraud as long as they can exhibit due diligence. Page 25-2 of the 8823 Guide states:

"As a general rule, the Internal Revenue service does not want to disturb the credit when the owner has demonstrated due diligence to avoid fraudulent tenants, timely removes fraudulent tenants when identified, and timely notifies the state agency of their actions."

Therefore, if tenant fraud/misrepresentation is discovered, proceed as follows:

- A. Notify NDHFA that an incident of tenant fraud has been identified and provide a written explanation of what happened.
 1. As long as the incident was identified prior to an NDHFA audit, the incident will not be considered reportable noncompliance (i.e., an 8823 will not be issued).
- B. If the fraud is believed to have been intentional, the owner may choose to report the suspected fraud to the Internal Revenue Service's Whistleblower's Office via Form 211. For more information on how to report the event to the IRS, refer to Chapter 25 of the 8823 Guide.
- C. Begin the process of removing the fraudulent unqualified household and replacing it with a qualified household. Every tax credit lease should include language stating that providing inaccurate information regarding program eligibility is cause for termination of tenancy. Thus, the fraud becomes not only a violation of program rules but also a lease violation and grounds for eviction.

In order to reduce the number of instances of tenant fraud/misrepresentation, management should ensure that the forms used in tenant files address the seriousness of providing fraudulent information. As mentioned above, all tax credit leases should include language that fraud is grounds for eviction or non-renewal of a lease. Additionally, it is best practice to include language on other forms signed by the tenant/applicant stating that the forms are signed under penalty of perjury.

The following documentation may help the owner establish that tenant fraud/misrepresentation occurred:

- A. Documentation proving the tenant was made aware of program requirements and prohibitions and did not follow those requirements such as signed lease documents and program agreements.
- B. Documentation showing that the tenant intentionally misstated or withheld information including but not limited to:
 1. Evidence that false names or Social Security Numbers were used.
 2. Copies of falsified, forged, or altered documents.
 3. Proof that the tenant omitted material facts that were known to the tenant such as proof of income and assets sources that were not disclosed by the tenant.
 4. Admission by the tenant that information was falsified or omitted.

2.14 Owner Fraud

If NDHFA becomes aware of an apparent act of fraud by the owner, management company, or other entity involved with the management and compliance of a project, the project will be considered out of compliance and the following steps will be taken:

- A. The entity will be placed on NDHFA's suspension list until further investigation is completed.
- B. A noncompliance 8823 will be issued to the IRS.
- C. Per the 8823 Guide, Form 3949-A "Information Report Referral" may be submitted to the IRS along with the applicable supporting documentation to demonstrate the fraudulent actions of the owner.
- D. Other noncompliance penalties such as increased auditing, as outlined in Section 3.06 may also apply.

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.

- A. 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.
- B. 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. The following are several key points for management to keep in mind at resyndication.

- A. "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:
 1. The household was income-qualified for the LIHTC program under the previous tax credit allocation.
 2. The file contains sufficient documentation to confirm the previous income qualification.
 3. The unit remains rent restricted.
 4. The household meets all other current LIHTC rules including full-time student rule.
- B. 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, tenant file reviews, and annual restriction 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 Compliance Monitoring Fee

An annual compliance monitoring fee is charged to all projects during the compliance period. The annual compliance fee is \$50 per project plus \$40 per set-aside unit. Scattered site projects will be charged \$50 per town or municipality plus \$40 per set-aside unit. This fee will be reviewed periodically and may be adjusted accordingly.

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.

Late Fees

A late fee may be imposed if required information is not submitted to NDHFA by the applicable due date.

- Quarterly Vacancy Report: \$25 per day after the due date
- Annual Restriction Review: The greater of \$250 or 10% of the annual compliance fee will be charged if the compliance documents and/or compliance fees are not submitted by the deadline stated in the review notification.
- File Audit/Physical Inspection: \$25 per day if documentation or responses are not received by the due date stated in the letters or notices from NDHFA, unless an extension is requested and approved prior to the due date.

Follow Up Inspection Fee

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 \$250 reinspection fee plus actual costs for travel and per diem will be charged.

Non-Compliance Fee

Non-compliance that continues after the correction period may be charged a fee of \$25/day.

3.02 Quarterly Vacancy Reporting

Properties are required to report vacancy information on a quarterly basis. Property managers are provided with the report template for each specific project, and this template must be used to fulfill this requirement. This report is due by the 7th of the month following the end of the quarter. Late fees will apply (see 3.01).

3.03 Annual Restrictions Review

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

A. Annual Documentation Requirements:

1. Annual Owner Certification

The monitoring provisions of the Code require the Owner to certify at least annually that the development meets the following:

- a. The minimum set aside election as defined in section 1.16.

- 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. No claim of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, has occurred for this project. A claim 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.
- g. 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.
- h. No request for protection under the Violence Against Women Act (VAWA) has been made by any current tenant of 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 the 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. There has been no change in the ownership or management of the project.
- n. Pursuant to IRS Revenue Ruling 2004-82, the owner has not evicted or refused to renew any leases except for good cause.
- o. 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.
- p. 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. The 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 the years 1987-1989.

- q. 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.

2. **Emphasys Certification Portal**

Projects must submit unit and tenant certification data for each restricted unit to NDHFA using the Emphasys Certification Portal for all tenant activity that occurred during the review year (01/01 through 12/31). Data that must be submitted includes:

- a. Move-ins and move-outs
- b. Household members and demographics
- c. Family income
- d. Gross Rent Calculation for each unit
- e. Vacancy information

In the event of technical difficulties, the owner may request to submit the required information using the Annual Rental Compliance Report (ARCR.)

NDHFA will assign log-in information to one “super user” per management agency. The super user is responsible for assigning roles and access to additional staff within their agency. There is a “Certification Portal How-To Guide” available on the NDHFA website as well as in the portal itself under the “templates” tab.

3. **Other Documentation**

- a. Restrictions Review Questionnaire.
- b. Annual Operating Statements showing project income and expenses for the year reported. Audited Financial Statements are preferred.
- c. Statement of Mortgage Balances, verifying that the mortgage is current.
- d. Verification Property Taxes are current (copy of payment/print-out from county website/receipt).
- e. Reserve accounts: statements which show the deposits and draws for the reserves during the review period. Include supporting documentation for draws from reserves (i.e. invoices.)
- f. Documentation of the current utility allowance and the data used to calculate the utility allowance.
 - i. If using the PHA utility allowance, provide a copy of the PHA document with the dollar amounts used to calculate your project’s UA circled or highlighted.
- g. Copy of the most current LIHTC training certificate for the current manager.
- h. Proof of sufficient property and liability insurance coverage.
- i. 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.
- j. Compliance Monitoring Fees.

- k. Any other documentation determined necessary to determine annual compliance with Section 42.

3.04 Physical Inspection and File Monitoring

NDHFA is required by regulation to monitor and physically inspect each project within two years of the placed-in-service date and at least once every three years thereafter. However, NDHFA reserves the right to inspect the files and/or physical units at any time at its discretion, with or without advance notice to the owner. Decisions to monitor/inspect more frequently may be based on tenant complaints or NDHFA's assessment that a project is high risk. A project may be deemed high risk based on compliance issues identified through the Annual Owner Certification, previous reviews, or inspections, or on financial issues identified through the annual Financial Review (if applicable).

The selection of the files and units will be a random sample that is not available to management/owner 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 of the property.

Per Treasury Regulation 1.42-5, a file monitoring or physical inspection must include a review of at least a number of units equal to the lesser of (1) 20% of the LIHTC units or (2) not fewer than the number of units identified in the Minimum Unit Sample Size Chart below. However, the NDHFA Auditor or Inspector may, at their sole discretion, choose to expand the sample size. Per the 8823 Guide (page 3-3), circumstances warranting an expansion of the sample size could include, but are not limited to:

- Poor internal controls (significant risk of error).
- Multiple problems.
- Significant number of nonqualified units.
- Significant number of households that are not income qualified.
- Credible information from a reliable source suggesting problems exist.

Table: Minimum Unit Sample Size Chart per Treasury Regulation 1.42-5

Number of Low-Income Units in- the Low-Income Housing Project	Number of Low-Income Units Selected for Inspection or Low-Income Certification Review (Minimum Unit Sample Size)
1	1
2	2
3	3
4	4
5-6	5
7	6
8-9	7
10-11	8
12-13	9
14-16	10
17-18	11
19-21	12
22-25	13
26-29	14
30-34	15
35-40	16
41-47	17
48-56	18
57-67	19
68-81	20
82-101	21
102-130	22
131-175	23
176-257	24
258-449	25
450-1,461	26
1,462-9,999	27

Tenant File Reviews

NDHFA will conduct Tenant File Reviews once every three years. These reviews will generally be conducted remotely at NDHFA offices (this is referred to as a “Desktop Review.”) However, NDHFA, in its discretion, may choose to do an onsite monitoring instead.

The owner agent will be notified in writing which unit files have been selected for review. Electronic copies of selected files and documentation must be submitted to NDHFA through the [secure file link](#). The following items must be included with each tenant file.

The following items will be reviewed:

- Tenant Income Certification (signed)
- Worksheet used to calculate income
- Employment Income Verification (no less than 2 months of paystubs, if using)
- Asset Verifications
- Application
- Lease
- VAWA Lease Addendum
- Household Demographics
- HOME Student Certification (HOME only)
- Move-in Inspection
- Annual Recertification documents
- Documentation for the receipt of applicable brochures (Fair Housing and Lead Based Paint)
- For tenants receiving tenant based or project based rental assistance, a copy of either the Housing Assistance Payment (HAP) contract and the current HAP Amendment from the PHA or a copy of the current HUD Form 50058 or 50059, whichever is applicable. Tenant Income Certification and supporting documentation/verifications.

White out on any form is not acceptable. If a correction is necessary, a line should be drawn through the incorrect item and the correct item written next to it. Both parties must initial and date the change.

NDHFA will also request the following:

- Current Rent Roll which lists the current households at the time of the file review
- Current Utility Allowance
- Affirmative Fair Housing Plan
- Tenant Selection Policy
- Rent receivables for the most recent two months
- VAWA Emergency Transfer Plan
- Tenant Handbook
- Fee Schedule

Physical Inspections

Inspections will be conducted according to the NSPIRE standards set forth by HUD. Inspectable areas include units, inside, and outside. An NSPIRE Inspection Checklist is included as Attachment B to this manual.

Prior to the physical inspection, NDHFA will notify the management agent/owner of the date and approximate time the inspection will take place. Reasonable notice of inspection is no more than 15 days.

A management agent must be present and accompany the inspector throughout the entire inspection process. Provide the name and direct telephone number of the person accompanying the inspector prior to the inspection.

The manager must notify all households at least **24 hours prior** to the physical inspection. Prior to the day of inspection, provide NDHFA with a copy of the notice sent to the tenants. Also provide a list of the 504/ADA units (if applicable), a list of the current vacant units, and a list of any units with current infestations.

The inspector will need access to applicable certificates, such as fire extinguisher, elevator, boiler, and sprinkler inspections.

It is imperative that all units be available for interior and exterior inspections (vacant units, occupied units, and common areas inclusive). Selection of the units is random and at the discretion of the inspector; advance notice is not given as to which units will be inspected.

The units inspected will not necessarily be the same as the tenant files reviewed.

All vacant units will be inspected to ensure they are suitable for occupancy within a reasonable time frame (45 days.)

Maintenance staff may correct the following during the inspection:

- Missing/burnt out light bulbs
- Pilot lights
- Bathroom Exhaust Fans
- Items preventing a door from closing
- Electrical breakers
- Garbage disposal (reset)
- Unplugged appliances
- Water shut offs
- Outlet/light switch covers

It is recommended that your maintenance staff accompany the inspector with tools, a ladder, and the items necessary to make these minor repairs during the inspection.

After performing an onsite physical inspection, NDHFA will:

- A. If a Critical Violation is found during the inspection, the inspector will tell the management agent/owner at the time of the inspection. If needed, a copy of a Critical Violations Letter identifying all life-threatening or severe issues (per the NSPIRE severity classification) observed at the time of the inspection that require immediate corrections will be issued. All life-threatening or severe issues identified in the Critical Violations Letter must be corrected within 24 hours and NDHFA must be notified of the completed corrections within 72 hours. Critical violations that are not corrected within 24 hours will be fined \$250 per day, starting the first hour after the 24-hour correction period expires.

- B. Send a copy of the inspection report to the owner and management company indicating a correction time frame per the NSPIRE severity classification. Life-threatening or severe issues must be corrected within 24 hours. Moderate severity issues must be corrected within 30 days. Low severity issues must be corrected within 60 days.
- C. Request that all noncompliance issues be corrected within the time frame specified in the inspection report.
- D. Request that legible copies of the proof of the corrections, in the form of work orders, receipts, and/or invoices, along with an owner-signed affidavit, be forwarded to NDHFA within the allotted time frame indicated in the inspection report.
- E. Schedule a second inspection if necessary. NOTE: NDHFA will charge additional monitoring fees if NDHFA staff must return to a site for an additional physical inspection or file review. See 3.01
- F. Review the supporting documents of correction for correlation with the inspection report.
- G. Send correspondence indicating that no further corrective actions regarding the physical condition of the property are needed at this time or contact the owner via letter to identify which deficiencies still exist.

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 NSPIRE standards.

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

3.05 Correction Period

With the exception of severe or life-threatening issues, 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.

3.06 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 corrected 8823 cannot be filed until all instances of noncompliance are corrected for that building.

Non-compliance that continues after the correction period may be charged a fee of \$25/day and receive negative points on future applications.

Examples of Remedial Action

- A. The status of the Owners, managing agents, and or any general partners may be designated as “not in good standing” with NDHFA.
- B. Change in management or site staff may be required.
- C. Additional monitoring may be required.
- D. Requiring full annual recertifications even for projects that are 100% LIHTC.
- E. A professional consultant, at the owner’s expense.
- F. Required third party audits or approvals of files.
- G. Required training for staff.
- H. Suspension or debarment from participation in programs administered by NDHFA.
- I. Legal Action.

3.07 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.

3.08 Record Keeping and Record Retention

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

- A. The total number of residential rental units in the building including the number of bedrooms and the size, in square feet, of each unit.
- B. The number and percentage of residential rental units in the building that are dedicated for low-income usage, offices, and management units.
- C. 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.
- D. The number of occupants in each LIHTC unit and the household’s student status.
- E. The LIHTC unit vacancies in the building, marketing information and information that shows the rentals of the next available units.
- F. 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.
- G. The eligible basis and qualified basis of the building at the end of the first year of the credit period.
- H. 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.)
- I. 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.

3.09 Sample and Mandatory Forms

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

SECTION 4: EXTENDED USE PERIOD COMPLIANCE POLICY (Y15 POLICY)

At the end of the 15-year initial compliance period, the IRS no longer enforces compliance. Therefore, the monitoring state is responsible for creating a policy to monitor and enforce compliance through state courts or other internal measures such as debarment from future participation in NDHFA programs.

As the responsible entity for LIHTC compliance, 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 must include financial aid as income if it is more than the yearly tuition.

4.2 Annual Recertification of Households

All projects will follow the rules for the 100% LIHTC projects. Refer to section 2.09 of this manual.

4.3 Unit Transfers

Unit transfers between buildings in a property will be allowed without having to re-determine a household's eligibility regardless of the multiple building election on the 8609.

4.4 Next Available Unit Rule

Compliance with the Next Available Unit Rule is no longer monitored. A unit occupied by a household that is 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 is only 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 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 NDHFA for review:

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

SECTION 5: GLOSSARY

100% Tax Credit Project: A project in which all units are LIHTC qualified units (i.e., there are no market rate units).

140% Rule: If upon recertification, a low-income household’s income is greater than 140% of the income limit adjusted for family size, the unit will continue to be counted toward satisfaction of the required set-aside, providing that the unit continues to be rent-restricted and the next available unit of comparable or smaller size in the same building is rented to a qualified low- income household.

240-day Window: For acquisition/rehabilitation projects, the owner may certify households as LIHTC eligible up to 120 days prior to the date of acquisition (using the current income limits) or up to 120 days after the date of acquisition (using the income limits in effect as of the date of acquisition). In either scenario, the effective date of the certification is the date of acquisition.

20%/50% Test: One of the Minimum Set-aside options. 20% or more of the residential units must be rented to households with gross annual income of 50% or less of the Area Median Income adjusted for family size.

40%/60% Test: One of the Minimum Set-aside options. 40% or more of the residential units must be rented to households with gross annual income of 60% or less of the Area Median Income adjusted for family size.

8609: The IRS Form entitled “Low Income Housing Credit Allocation and Certification.” Part I of the Form 8609 is completed by NDHFA and issued to the owner so that credits may be claimed. Part II of Form 8609 is completed by the owner and the elections made in Part II are important for ongoing compliance. The owner files Form 8609 with the IRS each year of the Credit Period.

8823: The IRS Form entitled “Low Income Housing Credit Agencies Report of Noncompliance or Building Disposition.” Form 8823 is filed by NDHFA to the IRS in order to report instances of noncompliance or building disposition.

8823 Guide: Common name for the IRS guidebook entitled Guide for Completing Form 8823 Low Income Housing Credit Agencies Report of Noncompliance or Building Disposition: Revised January 2011. While the guide is not considered legal authority, it does provide valuable information regarding the state agency's responsibilities in determining noncompliance and reporting that noncompliance to the IRS.

Actual Income from Assets: The income generated by an asset, such as interest or a dividend. This is counted as income even if the income is not received by the household, for example if the interest or dividend is automatically reinvested into the asset. When net family assets (cash value of all assets) are up to \$50,000, the actual income from assets is always the income used. When net family assets exceed \$50,000 then the actual income must be compared to the value of such assets based on the current passbook savings rate, as determined by HUD, and the higher amount is used for income determination.

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

Affirmative Fair Housing Marketing Plan: Also referred to as the AFHMP or Affirmative Marketing Plan. A plan in which the owner/management of a property confirms that they are following Fair Housing regulations and are making efforts to market the property to those groups determined to be least likely to otherwise apply for residency. All projects with five (5) or more HOME-assisted units must have an AFHMP in place.

Allowable Fee: A fee that may be charged to tax credit tenants. An allowable fee may or may not have to be included in the gross rent calculation, depending on whether the fee is for a service that is optional or mandatory.

AMI: Area Median Income: the median income for a specific county, as published by HUD.

Annual Household Income: The combined anticipated, gross annual income of all persons who intend to reside in a unit. Gross income is the amount of income before taxes or other deductions.

Annual Income: Total anticipated income to be received by a tenant from all sources including assets for the next twelve (12) months.

Annual Income Recertification: Document by which the tenant recertifies his/her income for the purpose of determining whether the tenant will be considered low-income according to the provisions of the LIHTC Program.

Applicable Credit Percentage: Although the credits are commonly described as 9% and 4% credits, these percentages are approximate figures. The U.S. Department of the Treasury publishes the exact credit percentages each month. 4% credits are for acquisition and tax-exempt bond financed projects. 9% credits are for new construction and rehabilitation credits not involving tax exempt bonds.

Applicable Fraction: The portion of a building that is occupied by low-income households. The Applicable Fraction is the lesser of a) the unit fraction, defined as the ratio of the number of low-income units to the total number of units in the building or b) the floor space fraction, defined as the ratio of the total floor space of the low-income units to the total floor space of all units in the building.

Applicant: A prospective tenant who has applied for residency at a development.

Application: Form completed by a person or family seeking rental of a unit in a development. An application should solicit sufficient information to determine the applicant's eligibility and compliance with federal and NDHFA guidelines.

Area Median Income: The median income for a specific county, as published by HUD.

ARRA: The American Recovery and Reinvestment Act of 2009, which created the Section 1602 and TCAP programs.

ARRA Programs: Section 1602 & TCAP

Assets: Items of value, other than necessary and personal items, that are considered in determining the income eligibility of a household.

Asset Income: The amount of money received by a household from items of value as defined in HUD Handbook 4350.3.

Assistance Animal: An animal that assists an individual with a disability. This term includes service animals and support animals. These animals are not treated as pets but rather as reasonable accommodations under Fair Housing.

Authority: The North Dakota Housing Finance Agency (NDHFA)

Available Unit: A vacant unit that is not under any contractual agreement between the owner and a prospective resident. A unit is not available if an applicant has already signed a lease but has not yet moved into the unit.

Average Income: One of the Minimum Set-aside options. At least 40% of the units must constitute a qualifying group of units in which the average imputed income limitation does not exceed 60% AMI.

Bifurcation of Lease: The act of amending a lease to remove some household members while keeping others on the lease. A bifurcation of lease may be required under VAWA to remove a tenant who engages in criminal activity related to domestic violence, dating violence, sexual assault or stalking without removing or otherwise penalizing the victim of such activity.

Cash Value of Asset: The market value of the asset minus the reasonable expenses incurred to convert the asset to cash.

Casualty Loss: A loss of a unit due to fire, natural disaster, or other similar circumstance. A casualty loss is defined by the IRS as “damage destruction, or loss of property resulting from an identifiable event that is sudden, unexpected, or unusual.

Certification Year: The twelve (12) month time period beginning on the date the unit is first occupied and each twelve (12) month period commencing on the same date thereafter.

COLA: Cost of living adjustment increase for Social Security as announced by the Social Security Administration. See <https://www.ssa.gov/oact/cola/latestCOLA.html> for the latest COLA information.

Comparable Unit: A unit of the same size and number of bedrooms with similar amenities and features as another unit.

Compliance: The act of meeting the requirements and conditions specified under the law and the LIHTC program requirements.

Compliance Period: The time period for which a building must comply with the requirements set forth in Section 42 of the Internal Revenue Code and credits can be recaptured for noncompliance. The development’s first fifteen (15) taxable years.

Correction Period: A reasonable time as determined by the Authority for an owner to correct any violation as a result of noncompliance.

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

Credit Period: The period of ten (10) taxable years during which credit may be claimed, beginning with:

- The taxable year the building is placed-in-service.
- At the election of the taxpayer (per Form 8609 Line 10a) the following year, but only if the building is a Qualified Low-Income Building as of the close of the first year of such building and remains qualified throughout succeeding years.

Current Anticipated Income: Gross anticipated income for the next twelve (12) months as of the date of occupancy or recertification, including asset income.

Date of Acquisition: The date on which a building is acquired through purchase.

Debarment: A determined period of time, not to exceed five (5) years, during which an affected person is prohibited from participating in an NDHFA programs

Declaration of Extended Rental Housing Commitment: The Extended Use Agreement between NDHFA and the owner restricting the use of the development during the term of the LIHTC Extended Use Period. This document is now called the Lien and Restrictive Covenant Agreement.

Decontrol Period: The three-year period following the termination of an Extended Use Agreement (either through qualified contract release or foreclosure) during which tenant protections apply to all existing low-income households. The protections include a prohibition against eviction except for good cause and against increases in gross rent except as allowable under Section 42.

Developer: Any individual and/or entity that develops or prepares a real estate site for residential use as an LIHTC development.

Development: Rental housing development receiving a LIHTC allocation.

Disabled (for Fair Housing purposes): For purposes of the Fair Housing Act, disability is defined as a person who has/is:

- A physical or mental impairment which substantially limits one or more of such person's major life activities.
- A record of having such an impairment.
- Being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act).

Disposed of Asset: An asset disposed of for less than fair market value must be counted as a household asset when determining income if the difference between the fair market value and the amount received is greater than \$1000.

Due Diligence: The appropriate, voluntary efforts to remain in compliance with all applicable Section 42 rules and regulations. Due diligence can be demonstrated through business care and prudent practices and policies. The 8823 Guide (page 3-4) indicates that part of due diligence is the establishment of internal controls, including but not limited to: separation of duties, adequate supervision of employees, management oversight and review (internal audits), third party verifications of tenant income, independent audits, and timely recordkeeping. NDHFA expects all LIHTC developments to demonstrate due diligence.

Earned Income: Income from employment, including wages, salaries, tips, commission, bonuses, overtime pay, anticipated raises, and any other compensation. The earned income of all adult household members is included in the Annual Household Income calculation. The earned income of minors (members under age 18) is not included.

Educational Organization: An institution 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 out. This term includes elementary schools, junior and senior high schools, colleges, universities, and technical, trade and mechanical schools. This does not include on-the-job trainings courses but does include online educational institutions.

Effective Date of Tenant Certification: The date the Tenant Income Certification becomes applicable. For initial certifications, this date must be the move-in date of the household. For annual recertifications, this date must be the anniversary date of the move-in.

Effective Term of Verification: A period of time not to exceed one hundred twenty (120) days. After this time, if the tenant has not yet moved in or been recertified, a new written third-party verification must be obtained. A verification document must be dated within the effective term at the time of Tenant's Income Certification.

Eligible Basis: The Eligible Basis of a building includes those costs incurred with respect to the construction, rehabilitation, or acquisition of the property, minus non-depreciable costs such as land and certain other items such as federal grants and some soft costs. Defined in a simpler manner, Eligible Basis is how much the building costs.

Eligible Tenant: The current tenant(s) of the unit, so long as that tenant(s) is eligible to occupy the unit under the requirements of Section 42 of the Internal Revenue Code. This expressly includes a tenant whose income would not currently qualify under Section 42, but who was qualified at the time of tenant's original occupancy of the unit.

Emergency Transfer: Under VAWA protections, an eligible tenant may be entitled to an emergency transfer to a safe dwelling unit. All properties must create a VAWA compliance Model Emergency Transfer Plan using HUD Form 5381.

Employment Income: Wages, salaries, tips, commission, bonuses, overtime pay, anticipated raises, and any other compensation for personal services from a job.

Empty Unit: A unit that is designated as a tax credit unit but has never been occupied by a qualified LIHTC household.

Exempt Manager's Unit: See "manager's unit"

Extended Use Period: The time frame which begins the first day of the initial fifteen (15) year Compliance Period, on which such building is part of a qualified low-income housing development and ends fifteen (15) years after the close of the initial Compliance Period, or the date specified by NDHFA in the Extended Use Agreement, whichever is longer.

Extended Use Policy (Y15 Policy): The set of compliance rules and monitoring procedures for developments that have entered their Extended Use Period. For more information see Section 4.

Fair Market Value: An amount which represents the true value at which a property could be sold on the open market.

First Year of the Credit Period: Either the year a building is placed-in-service, or, at the owner's option, the following year.

Fixed Income Source: Fixed income sources are defined by HUD as "periodic payments at reasonably predictable levels." Fixed income sources can be verified using the Streamlining Rule. Fixed income sources include the following:

- Social Security payments, including Supplemental Security Income (SSI) and Supplemental Disability Insurance (SSDI).
- Federal, state, local, and private pension plans.
- Annuities or other retirement benefit programs, insurance policies, disability or death benefits, or other similar types of periodic receipts.
- Any other source of income subject to adjustment by a verifiable COLA or current rate of interest.

Floor Space Fraction: The fraction, the numerator of which is the total floor space of the low-income units in the building, and the denominator of which is the total floor space of the residential rental units (whether occupied or not) in the building. The floor space fraction is compared to the unit fraction when computing the Applicable Fraction. The Applicable Fraction for a building is the lesser of either the unit fraction or the floor space fraction.

Foreclosure: A foreclosure is a legal procedure occurring when an owner defaults on a loan and the lender takes legal action because the property was used as security for the loan. As a result, the property is sold to recover the debt. Alternately, an owner may deed the property directly to the lender in a “transaction in lieu of foreclosure” in full or partial satisfaction of the mortgage debt.

Foster Adult: An adult, usually with a disability that makes them unable to live alone, who is unrelated to the tenant family but has been placed in their care. Foster adults are not counted as household members when determining household size and the applicable income limit. A foster adult’s income and asset sources are not included in household income.

Foster Children: Foster children are in the legal guardianship or custody of the State or foster care agency but are cared for by foster parents in their home under a foster care arrangement with the custodial agency. Foster children are not counted as household members when determining household size and the applicable income limit. A foster child’s income and asset sources are not included in household income.

Full-time Student: Any tenant or applicant who is, was, or will be a full-time student at an educational organization for parts of five (5) calendar months (may or may not be consecutive) during the calendar year. Full-time status is defined by the educational organization in which the student is enrolled.

Full-time Student Household: A household in which all tenants/applicants are full-time students.

Good-cause Eviction: Tax credit households cannot be evicted or have their tenancy terminated without “good-cause,” generally considered material violation of the lease. The actions that constitute good cause for eviction or termination of tenancy must be given to the tenant in writing at the time of occupancy, preferably in the lease, as well in the property’s Tenant Selection Criteria. Exceeding the 140% limit is not considered good cause for eviction.

Gross Income: See Annual Household Income. Also, income before taxes or other deductions.

Gross Rent: The sum of tenant-paid rent portion + utility allowance + any non-optional fees. The total gross rent must be at or below the applicable rent limit for the unit to be in compliance.

Gross Rent Floor: The lowest rent limit that an owner will ever have to implement for a unit. For tax credit projects, the gross rent floor is either the rent limit in effect at the placed-in-service date of the first building in the development or on the allocation date. For bond projects, the gross rent floor is either the rent limit in effect at the placed-in-service date for the first building in the development or on the reservation letter date. If the HUD published rent limits decrease from year to year, the rent limit for a particular project never has to fall below its gross rent floor.

Gross Rent Floor Election Date: For tax credit projects, the gross rent floor is either the rent limit in effect at the placed-in-service date of the first building in the development or on the allocation date. For bond projects, the gross rent floor is either the rent limit in effect at the placed-in-service date for the first building in the development or on the reservation letter date.

Guest: A visitor temporarily staying in a tax credit unit with the consent of the household. Guests are not treated as household members when determining household size and the applicable income limit, and their income is not included in Annual Household Income calculations.

HERA: The Housing and Economic Recovery Act passed by Congress on July 30, 2008. Among other things, this legislation added the HERA special income and rent limits, the recertification exemption for 100% tax credit properties, and the foster care student status exemption.

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

Imputed Income from Assets: The estimated earnings of assets held by a household using the potential earning rate (passbook rate) established by HUD. Find the current passbook rate here: <https://www.huduser.gov/portal/datasets/inflationary-adjustments-notifications.html>.

Income Limits: The maximum income as published by HUD used for determining household eligibility for low-income units. Income limits are based on family size and will vary depending on the applicable AMI set-aside restriction.

Initial Compliance: The twelve (12) month period commencing with the date the building is placed-in-service. Note: Developments consisting of multiple buildings with phased completion must meet the set-aside requirements on a building-by-building basis with the twelve (12) months commencing with the individual date each building is placed-in-service.

Initial Tenant File: The file for the first household to occupy a unit. Initial tenant files, also called first-year files, contain the records for the first year of the Credit Period and are important for demonstrating that the project was eligible to begin claiming credits. Initial tenant files must be kept for twenty-one (21) years.

Initial Compliance Period: A fifteen (15) year period, beginning with the first taxable year in which credit is claimed, during which the appropriate number of units must be marketed and rented to LIHTC eligible households, at restricted rents.

In-place Household: A household that is already occupying a unit at the time of acquisition.

Inspection: A review of a development made by NDHFA or its agent, including an examination of records, a review of operating procedures, and a physical inspection of units.

Lease: The legal agreement between the tenant and the owner which delineates the terms and conditions of the rental of a unit.

Lease Rent: The actual rent charged to the household by the owner, as defined in the lease. The tenant-paid rent may never exceed the maximum allowable rent, or the applicable HUD published rent limit. Also referred to as “tenant-paid rent.”

LIHTC: Low Income Housing Tax Credit, as authorized by Section 42 of the Internal Revenue Code.

Live-in Care Attendant / Live-in Aide: A person who resides with one or more elderly, near-elderly, or disabled persons. To qualify as a live-in care attendant, the individual (a) must be determined to be essential to the care and well-being of the tenant, (b) must not be financially obligated to support the tenant, and (c) must certify that he/she would not be living in the unit except to provide the necessary supportive services.

A live-in care attendant for an LIHTC tenant should not be counted as a household member for purposes of determining the applicable income limits, the income of the attendant is not counted as part of the total household income, and the live-in aide should not be listed on the TIC.

Low-Income Household/Tenant: Households whose incomes are not more than either 50% or 60% of the median family income for the local area adjusted for family size.

Low-Income Unit: Any unit in a building if:

- Such unit is rent-restricted (as defined in subsection (g)(2) of IRS Section 42 of the Code).
- The individuals occupying such a unit meet the income and student status eligibility limitations applicable under Section 42.
- The unit is suitable for occupancy, available to the general public, and used other than on a transient basis.

LURA: The written and recorded agreement between NDHFA and the owner restricting the use of the development during the term of the Extended Use Period. Formally called the Declaration of Land Use Restrictive Covenants.

Management Company: A firm authorized by the owner to oversee the operation and management of the development and who accepts compliance responsibility.

Manager's Unit: Unit occupied by the full-time resident manager considered a facility reasonably required for the benefit of the project. If the unit is considered an "exempt" area, the manager does not have to be income qualified. The same rule applies for units reserved for maintenance or security staff.

Market Value of Asset: The dollar value of an asset on the open market.

Maximum Allowable Rent: The maximum amount that an owner is permitted to actually charge for rent. Maximum allowable rent is determined by taking the applicable rent limit and subtracting the utility allowance for tenant-paid utilities and fees for any other non-optional charges. May also be referred to as the maximum chargeable rent or net rent.

Median Income: A determination made through statistical methods establishing a middle point for determining income limits.

Median is the amount that divides the distribution into two equal groups, one group having income above the median and one group having income below the median.

Minimum Set-Aside: The minimum number of units that the owner has elected and set forth in the Declaration of Low Income Housing Commitment to be income and rent restricted.

Mixed-Income Project: A project with both LIHTC and market-rate units.

Model Unit: A rental unit set aside to show prospective tenants the desirability of the project's units without disturbing current tenants in occupied units. The model unit's cost can be included in the building's Eligible Basis and in the denominator of the Applicable Fraction when determining a building's Qualified Basis.

MTSP Limits: The income limits published by HUD specifically for the tax credit program. MTSP stands for Multifamily Tax Subsidy Program.

Multiple-building Project: A project in which multiple buildings are all considered to be part of one project. A project is a multi-building project only if the owner elected so by choosing "yes" on Line 8b of Part II of the Form 8609.

NDHFA: The North Dakota Housing Finance Agency

Next Available Unit Rule: (See definition under 140% Rule)

Noncompliance: The period of time that a development, specific building, or unit is ineligible for LIHTC because of failure to satisfy program requirements.

Non-Compliant Organization List: NDHFA's list of organizations that have outstanding compliance issues and are not working toward correction of those issues. These entities are not permitted to submit applications for development assistance, be a part of any application considered for funding under any NDHFA program or be hired to manage any project under any NDHFA program.

Non-optional fee: A fee charged for services/amenities that are mandatory (i.e. services that are required as a condition of occupancy). A fee may be charged for non-optional services, but the fee must be included in the gross rent calculation. NOTE: Owners may never charge fees for amenities that are included in Eligible Basis, regardless of whether or not the fee is included in gross rent calculation.

Optional fee: A fee charged for an extra service or amenity that is selected by a tenant. If the service or amenity is truly optional (i.e. it is not a condition of occupancy that the tenant accepts the service), then

a fee may be charged without being included in the gross rent calculation. NOTE: Owners may never charge fees for amenities that are included in Eligible Basis, regardless of whether or not the fee is included in gross rent calculation.

Over-income Unit: Under § 1.42-15(a), a low-income unit in which the aggregate income of the occupants of the unit rises above 140% of the applicable income limitation under § 42(g)(1) is referred to as an “over-income unit.”

Owner: Any individual, association, corporation, joint venture, or partnership that owns a LIHTC development.

Passbook Rate: The HUD approved rate for imputing assets. Find the current passbook rate here: <https://www.huduser.gov/portal/datasets/inflationary-adjustments-notifications.html>.

Placed-in-service Date: For buildings, this is the date on which the building is ready and available for its specifically assigned function, as set forth on IRS Form 8609. For new construction, the placed-in-service date is generally the date a building receives its Certificate of Occupancy. For acquisition, the placed-in-service date is the date of acquisition.

PHA: Public Housing Authority.

Project: A project may be all of the buildings in a development, or one particular building within a development, depending on the election made by the owner on Line 8b on Part II of Form 8609. If Line 8b is marked yes, then the building is part of a multi- building project. If Line 8b is marked no, then the building is considered its own project.

Protected Class: One of the groups specifically protected by the Fair Housing Act and/or the North Dakota Housing Discrimination Act. The protected classes in North Dakota are race, sex, national origin, marital status, disability, religion, color, age (40 years or over), familial status (presence of children under age 18, being pregnant or securing custody of a minor), receipt of public assistance, and status as a domestic violence victim.

Qualified Allocation Plan: The plan developed by NDHFA to set out the guidelines and selection criteria by which NDHFA allocates tax credits.

Qualified Basis: The portion of the Eligible Basis attributable to low-income rental units, equal to the Eligible Basis multiplied by the Applicable Fraction. The amount of Qualified Basis is determined annually on the last day of each taxable year.

Qualified Low-Income Building: Any building that is part of a qualified low-income housing development at all times during the period beginning on the first day in the Compliance Period on which such building is part of such a development and ending on the last day of the Compliance Period with respect to such building (Section 42(c)(2)(A) of the Code).

Qualified Unit: A unit in a qualified low-income building occupied by qualified persons at a qualified rent.

Qualifying Group of Units: A group of units in which all units are qualified low-income units, and the average imputed income limitation of such units does not exceed 60% AMI. This concept is used for determining the Minimum Set-aside test and the Applicable Fraction for an Average Income project.

Ratio Utility Billing System (RUBS): A utility billing system in which all units are on one utility meter instead of separate sub- metering. Utilities paid through a RUBS system are not eligible to be included in a utility allowance because the tenants are billed based on a distribution formula instead of actual consumption.

Reasonable Accommodation: A change, exception, or adjustment in rules, policies, practices, or services when such a change is necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling, including public and common spaces. Under the Fair Housing Act, an owner must allow reasonable accommodation unless doing so will be an undue financial burden or fundamentally alter the nature of the provider’s operations.

Reasonable Modification: A change to the physical structure of the premises when such a change is necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling, including public and common spaces. Under the Fair Housing Act, an owner must allow a reasonable modification at the expense of the tenant, unless the change is one that should have already been included in order to comply with design and construction accessibility standards, in which case the owner will be responsible for paying for the modifications.

Recapture: An increase in the owner's tax liability because of a loss in tax credit due to noncompliance with program requirements. Recapture is the return of the accelerated portion of the credits that was claimed during the ten (10) year credit period.

Referral Agreement: A development that includes units set-aside for special needs populations must enter into a Referral Agreement with a qualified organization that will provide services to the special needs population. The owner must agree to: (a) set aside a number of units for the special needs population and (b) notify the qualified organization when vacancies of the set-aside units occur at the development. The qualified organization must agree to: (a) refer qualified households to the development and (b) notify households of the vacancies of the set-aside units at the development.

Rent Limit: The HUD published maximum amount that can be charged for a tax credit unit, including a utility allowance and any non- optional fees.

Second-party Verification: See "Tenant-provided Document."

Section 1602: The Tax Credit Exchange program created by the American Recovery and Reinvestment Act of 2009 (ARRA). 1602 allowed unsold tax credits to be exchanged for cash.

Section 8: Section 8 of the United States Housing Act of 1937, as Amended.

Section 42: Section 42 of the Internal Revenue Code of 1986, as Amended, which establishes the Rental Housing Tax Credit Program.

Self-certification: A signed affidavit from a tenant or applicant used to clarify information or to provide information that cannot be verified through third-party or second-party documents.

Set-aside: Shall mean and require that units designated as "set-aside" for a specific population may be used only for the identified population and for no other. If qualified tenants in the designated population are not available, the unit(s) must remain vacant. Tax credit units will all be set-aside at the 30%, 40%, 50%, or 60% rent and income limit and may additionally be set-aside for special needs populations.

Special Needs Populations: Tenants with special needs include individuals or families who:

- Suffer from serious or persistent mental illness.
- Suffer from substance use disorders.
- Have disabilities, including intellectual, physical, or developmental.
- Are experiencing long-term homelessness or are at significant risk of long-term homelessness.
- Are justice involved.
- Are frail elderly, defined as those 62 years of age or older, who are unable to perform one or more "activities of daily living" without help. Activities of daily living comprise walking, eating, bathing, grooming, dressing, transferring, and home management activities. Assisted living, or projects serving a similar purpose, are not eligible under LIHTC.

Staff Unit: See "manager's unit"

Streamlining Rule: HUD's Streamlining Administrative Regulations for Public Housing, Housing Choice Voucher, Multifamily Housing, and Community Planning and Development Programs Final Rule. Among

other provisions, the rule provides a simplified manner of verifying fixed income sources effective April 7, 2016.

Student: Any tenant or applicant who is, was, or will be a full-time student at an educational organization for parts of five (5) calendar months (may or may not be consecutive) during the calendar year. Full-time status is defined by the educational organization in which the student is enrolled.

Sub-metering: A system for measuring tenants' actual utility consumption. Some buildings in qualified low-income housing developments may be sub-metered. A sub-metering system typically includes a master meter, which is owned or controlled by the utility company supplying the electricity, gas, or water, with overall utility consumption billed to the building owner. In a sub-metered system, building owners use unit-based meters to measure utility consumption and prepare a bill for each residential unit based on consumption. The building owners retain records of resident utility consumption, and tenants receive documentation of utility costs as specified in the lease. For more information see part 1.18.CR.

Subsequent Credit Allocation: A set of rehabilitation credits allocated to a project that has already completed an original Credit Period and fifteen (15) year Compliance Period. A project receiving a subsequent credit allocation begins a new ten (10) year Credit Period and fifteen (15) year Compliance Period. Existing tenants are grandfathered into the new allocation without being recertified as new move-in events.

Suspension: An indefinite but temporary status assigned to an affected person making it ineligible to apply for additional funding until such a time that the suspension status is revoked. Suspension is generally invoked for failure to meet federal and/or state compliance obligations and reporting requirements. Other considerations leading to suspension could include but are not limited to fraudulent activity, financial health concerns, and poor record of past performance. Unlike debarment, suspension is not for a set amount of time and can generally be revoked as soon as NDHFA's concerns, and any identified issues have been resolved.

Tax Credit: A tax credit is a dollar-for-dollar reduction in the federal income tax liability of the owner. The tax credit amount is calculated by multiplying the Qualified Basis by the Applicable Credit Percentage. The credit percentage, determined monthly, changes so as to yield over a ten (10) year period, a credit equal to either 30% or 70% of the present value of the Qualified Basis of the building. An owner may elect to lock in the Applicable Credit Percentage either at the time a Commitment is made by NDHFA, or at the time the allocation is made.

TCAP: The Tax Credit Assistance Program created by the American Recovery and Reinvestment Act of 2009 (ARRA). TCAP provided special HOME funding to supplement tax credit projects.

Tenant: Any person occupying the unit.

Tenant-paid rent: The actual rent charged to the household by the owner, as defined in the lease. The tenant-paid rent may never exceed the maximum allowable rent, or the applicable HUD published rent limit. Also referred to as the "lease rent."

Tenant-provided Document: Source documentation submitted to management by a tenant or applicant in order to disclose information about income or asset sources or other eligibility factors. Tenant-provided documentation is considered an eligible type of third-party verification.

Tenant/ Unit File: Complete and accurate records pertaining to each dwelling unit, containing the application for each tenant, verification of income and assets of each tenant, the annual Tenant Income Certification for the household, utility schedules, rent records, all leases and lease addenda, etc. Any authorized representative of NDHFA or the Department of Treasury shall be permitted access to these files.

Third-party Verification: A verification document submitted to management by a third-party entity in order to disclose information about the income or asset sources or other eligibility factors of an applicant

or tenant. Third-party verifications must be sent to and received directly from the third-party source, not through the tenant or applicant. An example of third-party verification is an employment verification form completed by the employer.

Transient Use: An LIHTC unit is considered to be in transient use and is therefore out of compliance if the initial lease term is less than six (6) months. For information on the exceptions to this rule see section 1.21.CR

Unearned Income: Income from assets and benefit sources such as Social Security. The unearned income of all household members (regardless of age) is included in the calculation of Annual Household Income.

Unit Fraction: The fraction, the numerator of which is the number of low-income units in the building, and the denominator of which is the number of residential rental units (whether or not occupied) in the building. The unit fraction is compared to the floor space fraction when computing the Applicable Fraction. The Applicable Fraction for a building is the lesser of either the unit fraction or the floor space fraction.

Utility Allowance: An allowance representing the average monthly cost of tenant-paid utilities for a particular unit size and type. Utility allowances include costs of heat, unit electricity, gas, oil, water, sewer, and trash service as applicable. Utility allowances do not include the costs of telephone, cable television, or internet services. The utility allowance is added to tenant-paid rent and any other non-optional charges when determining the gross rent for a unit. The total gross rent for a unit (utility allowance inclusive) must be at or below the applicable published rent limit.

For more information on Utility Allowances see 1.18.CR

Vacant Unit: A unit that is currently unoccupied but was formerly occupied by a qualified LIHTC household.

Vacant Unit Rule: Vacant units formerly occupied by low-income individuals may continue to be treated as occupied by a qualified low-income household for purposes of the Minimum Set-Aside requirement (as well as for determining Qualified Basis) provided reasonable attempts were or are being made to rent the unit (or the next available unit of comparable or smaller size) to an income qualified tenant before any units in the development were or will be rented to a nonqualified tenant. Management must document that reasonable attempts were made to rent vacant tax credit units before renting vacant market- rate units.

VAWA: The Violence Against Women Reauthorization Act of 2013, which provides protections against housing discrimination for victims of domestic violence, dating violence, sexual assault, or stalking.

Verification: Information from a third-party or second-party source that is collected in order to corroborate the accuracy of information about the income and/or assets or other eligibility factors of an applicant or tenant.